

**WSR 24-18-099**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)  
[Filed September 3, 2024, 10:27 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-18-016.

Title of Rule and Other Identifying Information: The department of social and health services (DSHS) is proposing to amend WAC 388-60B-0015 What definitions apply to this chapter?, 388-60B-0025 What is the purpose of this chapter?, 388-60B-0105 Application process—How must a program apply for certification or recertification to provide domestic violence assessments or intervention treatment services?, 388-60B-0110 Required documentation for certification and recertification—What must be included in an application to provide domestic violence assessments or treatment?, 388-60B-0120 Facility requirements—What facility requirements must a program meet for the space where domestic violence intervention assessments or treatment services are provided?, 388-60B-0125 Quality management—What are the minimum treatment outcomes for participants and how must a program measure staff and treatment effectiveness?, 388-60B-0130 Adding to existing certification—How must a program add assessments or a level of treatment to an existing certification?, 388-60B-0140 Change of address—What must be sent to the department when a program changes the physical location of where they provide assessments or groups?, 388-60B-0210 Minimum staff qualifications—What staff qualifications must a program document for direct service staff?, 388-60B-0260 Supervisor responsibilities—What responsibilities must the supervisor document for the program?, 388-60B-0280 Adding direct treatment staff—What documentation must a program submit to the department to add a new direct service staff person, or request designation as a staff or supervisor for existing direct service staff during a certification period?, 388-60B-0315 Group treatment—What standards must programs follow regarding the provision of group treatment?, 388-60B-0320 Treatment practices—How must a program approach treatment and what must happen if it is determined that a participant should move into a different level of treatment?, 388-60B-0325 Victim safety—What steps must programs take in order to help increase victim safety?, 388-60B-0345 Participant requirements—What must the program require of participants accepted into a domestic violence intervention treatment program?, 388-60B-0400 Behavioral assessment and interview criteria—Who may conduct the interview and assessment and what must it include?, 388-60B-0500 On-site reviews and plans of correction—How does the department review certified programs for compliance with the regulations of this chapter?, and 388-60B-0510 Complaint investigations—How must an investigation get initiated and what is the process of the investigation?

Hearing Location(s): On October 22, 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 October 23, 2024.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA, email [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax

360-664-6185, beginning noon on September 4, 2024, by 5:00 p.m. on October 22, 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 8, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These amendments will allow domestic violence intervention treatment (DVIT) programs to provide services via Health Insurance Portability and Accountability Act (HIPAA) compliant live video sessions when certain standards are met. This filing is in response to a rule-making petition received from a consortium of DVIT providers seeking to preserve the ability to provide treatment through virtual platforms, which began during pandemic-related shut-downs. As applicable, these amendments make additional changes required to improve clarity, update policy, or better align rule language with state and federal law or regulations.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 43.20A.735.

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: Amie Roberts, P.O. Box 45470, Olympia, WA 98504-5470, 360-790-1483.

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 Amie Roberts, P.O. Box 45470, Olympia, WA 98504-5470, phone 360-790-1483, email amie.roberts@dshs.wa.gov.

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

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. DSHS' domestic violence perpetrator treatment program analyzed the probable costs and probable benefits of the proposed amendments, taking into account both the qualitative and quantitative benefits and costs:

- The consideration of starting or continuing to use HIPPA compliant web-based software to conduct assessments and DVIT treatment online.
- The consideration of allowing DVIT programs to serve participants of treatment in all counties of the state.
- The consideration of DVIT programs needing to be informed of the DV coalitions and procedures in each of the areas where they serve participants.
- The consideration of the costs and savings of providing these services online.

DSHS solicited input from DVIT programs through an email inquiry and a survey. Out of 60 currently certified DVIT programs, 27 responded to the survey.

**Costs:** Domestic violence perpetrator treatment program analysis revealed that any new costs imposed by the proposed amendments would only be minor.

The cost of maintaining software to provide HIPAA compliant DVIT services online, and the cost to attend one to three meetings online, per month, of domestic violence coalitions in the areas where programs provide services, are considered to be minor costs when taken collectively.

**Benefits:** Many DVIT programs express a financial benefit to providing DVIT services online, and a savings in their brick and mortar costs of doing business. Additionally, online services allow DVIT programs to reach more participants throughout the state, and could increase their participant numbers substantially.

**Conclusion:** DSHS' domestic violence perpetrator treatment program concludes that the benefits of these regulations exceed any possible costs.

DSHS has complied with the appropriate sections of the Administrative Procedure Act and is prepared to proceed with the rule filing.

A copy of the detailed cost calculations may be obtained by contacting Amie Roberts, P.O. Box 45470, Olympia, WA 98504-5470, phone 360-790-1483, email amie.roberts@dshs.wa.gov.

August 29, 2024  
Katherine I. Vasquez  
Rules Coordinator

SHS-5017.4

#### Chapter 388-60B WAC

#### DOMESTIC VIOLENCE INTERVENTION TREATMENT PROGRAM STANDARDS (~~Domestic violence perpetrator treatment program standards~~)

AMENDATORY SECTION (Amending WSR 19-15-044, filed 7/11/19, effective 7/28/19)

**WAC 388-60B-0015 What definitions apply to this chapter?** The following definitions apply to this chapter:

**"Administrative hearing"** means a hearing held before an administrative law judge and conducted according to chapter 34.05 RCW and chapter 388-02 WAC.

**"Assessment"** means the process of obtaining pertinent bio-psycho-social information, as identified by the participant, family, and collateral sources to determine a level of care and to plan individualized domestic violence intervention services and possible referrals for ancillary treatment, assessments, and services.

**"Certified"** means the status given to domestic violence intervention treatment programs by the department under its authority to certify domestic violence perpetrator programs under RCW ((26.50.150)) 43.20A.735.

**"Corrective action"** means the steps required of the domestic violence intervention treatment program by the department in order to maintain or regain certification.

**"Critical incident"** means any one of the following events:

(1) Any death, serious injury, or sexual assault that occurs at a program that is certified by the department;

(2) Alleged abuse or a gross violation of rights of an individual receiving services, that is of a serious or emergency nature caused by an employee, volunteer, contractor, or another individual receiving services;

(3) Alleged abuse, harassment, or a gross violation of rights of a direct treatment service staff member by an employee, volunteer, contractor, or another individual receiving services;

(4) A natural disaster, such as an earthquake, volcanic eruption, tsunami, urban fire, flood, or outbreak of communicable disease that presents substantial threat to program operation or client safety;

(5) A bomb threat or death threat;

(6) Theft or loss of data in any form regarding an individual receiving services, including but not limited to, a missing or stolen computer, or a missing or stolen computer disc or flash drive, or any other type of memory device;

(7) Any physical violence that occurs at the program;

(8) Any violence that is perpetrated by a participant of a certified program that results in death, serious injury, or sexual assault;

(9) Any negative media event regarding a participant receiving services, or regarding a direct treatment staff member or owner(s) of the program; or

(10) Any response to the premises of a program by law enforcement or emergency personnel.

**"Department"** or **"DSHS"** means the Washington state department of social and health services.

**"Direct service staff"** means a person who works or volunteers at a certified domestic violence intervention treatment program and has been designated by the department as a trainee, staff, or supervisor.

**"Domestic violence intervention treatment program"** or **"program"** means a program that provides domestic violence assessments or intervention treatment to perpetrators of intimate partner violence and is certified by DSHS under ~~((this))~~ chapter ~~((388-60A))~~ 388-60B WAC.

**"Evidence-based"** means strategies, activities, or approaches which have been shown through scientific research and evaluation to be effective in preventing or delaying a negative outcome.

**"Face-to-face"** means either physically in person or by way of live HIPAA compliant video conferencing.

**"Forensic counseling"** means the provision of group or individual counseling sessions with a participant who has also been engaged with the criminal justice system. Forensic counseling involves skills in assessment, interviewing, report writing, strong verbal communication skills, and case presentation when needed. The practice of forensic counseling involves investigations, research, assessments, consultations, and the design and implementation of treatment programs. In this chapter it specifically relates to assessing, making recommendations, and providing treatment to those who have committed acts of domestic violence regardless of whether the abuse was illegal or resulted in a criminal conviction or not.

**"Intimate partner"** means a person who is or was married, in a state registered partnership, or in an intimate or dating relationship with another person presently or at some time in the past. Any person who has one or more children in common with another person, regardless of whether they have been married, in a domestic partnership with each other, or lived together at any time, shall be considered an intimate partner.



**"Intimate partner abuse"** or **"intimate partner violence"** means a pattern of abusive behavior that is used by one intimate partner against the other and may include, but is not limited to, assaultive and coercive behaviors, physical, sexual, emotional, verbal, psychological, and economic abuse or coercion, or the improper use of children to control the victim. It may also include the infliction or threat of harm against an intimate partner and is directed at achieving compliance from or control over that intimate partner. It may include, but is not limited to, a categorization of domestic violence offenses as defined in RCW 10.99.020 committed by one intimate partner against another.

**"Level of treatment"** or **"level of care"** means the level of treatment a participant is required, recommended, or currently receiving as determined by a certified program through a behavioral assessment, standardized testing, the "risk, needs, and responsivity" form, and a current treatment plan.

**"Off-site"** means the provision of services by a provider from a certified domestic violence intervention treatment program at a location where the domestic violence assessment or treatment is not the primary purpose of the site, such as in correctional facilities.

**"Participant"** means an individual being assessed, enrolled, discharged, or treated in a certified domestic violence intervention treatment program. This individual may be court-ordered to participate in treatment or someone who chooses to voluntarily participate in treatment. The terms "client," "perpetrator," and "participant" are used interchangeably in this chapter.

**"Promising practices"** means programs and strategies that have some scientific research or data showing positive outcomes in delaying a negative outcome, but do not have enough evidence to support generalized conclusions.

**"Service area"** means each geographic location, by county, where a program has more than one active participant attending group or individual sessions.

**"Victim services program"** means a nonprofit program or organization that provides, as its primary purpose, assistance and advocacy for domestic violence victims. Domestic violence assistance and advocacy must include crisis intervention, individual and group support, information, referrals, safety assessments, and planning. Domestic violence victim assistance and advocacy may also include, but is not limited to: provision of shelter; emergency transportation; self-help services; culturally specific services; legal advocacy; economic advocacy; and accompaniment and advocacy through medical, legal, immigration, human services, and financial assistance systems. Domestic violence programs that are under the auspices of, or the direct supervision of a court, law enforcement, a prosecution agency, or the child protective services section of the department as defined in RCW 26.44.020 are not considered victim services programs.

**"Victim"** or **"survivor"** means a person who has been subjected to domestic violence. The terms "victim" and "survivor" are used interchangeably in this chapter.

AMENDATORY SECTION (Amending WSR 19-15-044, filed 7/11/19, effective 7/28/19)

**WAC 388-60B-0025 What is the purpose of this chapter?** (1) The overall purpose of this chapter is to increase accountability and competency for programs that provide domestic violence intervention treatment as well as provide minimum standards and a pathway to achieve the following:

(a) To responsibly and as accurately as possible with the information relied upon, assess the risks, needs, and responsibility for perpetrators of intimate partner violence who are seeking assessment and treatment;

(b) To increase the safety of the victim, current partner, children, and other children in the care or residence of perpetrators of intimate partner violence who are enrolled in intervention treatment; and

(c) To hold perpetrators of intimate partner violence accountable in meeting their program requirements and achieving core competencies, including documentation of their cognitive and behavioral changes and personal accountability as outlined in WAC ((~~388-60A-0430~~)) 388-60B-0430, through intervention treatment using evidence-based and promising practices.

(2) The rules in chapter ((~~388-60A~~)) 388-60B WAC establish the following standards for programs that provide domestic violence assessments or any level of intervention treatment to perpetrators of intimate partner violence and include:

(a) Minimum certification requirements for programs that provide services to participants of domestic violence intervention treatment;

(b) Program administrative requirements;

(c) Program staff requirements;

(d) Quality management requirements;

(e) Facility requirements;

(f) Program policies and procedures;

(g) Program treatment record requirements;

(h) Program assessment and treatment requirements; and

(i) A grievance system that includes a grievance process, an appeal process, and access to administrative hearings.

(3) Unless otherwise provided by law, these standards apply to any program that:

(a) Provides or advertises that it provides domestic violence perpetrator assessments or evaluations for intimate partners;

(b) Provides or advertises that it provides domestic violence intervention or perpetrator treatment for intimate partners; or

(c) Defines its services as meeting court orders that require assessment, evaluation, or enrollment in, or completion of, domestic violence perpetrator treatment or domestic violence intervention treatment for intimate partners.

(4) These programs provide assessments, recommendations, or treatment to perpetrators of intimate partner violence, including participants who are self-referred or those who are court-ordered to be assessed or attend treatment.

(5) A program may administer other service programs in addition to domestic violence intervention treatment services; however, the domestic violence intervention treatment program for intimate partners must be considered a separate and distinct program from all other services the agency provides.

(6) Participants of the domestic violence intervention treatment program for intimate partners must not attend the same groups or sessions as participants of other programs or services as part of their domestic violence intervention treatment.

(7) The department requires new applicants who are in the process of applying to DSHS to provide domestic violence intervention assessments or any level of treatment to comply with the requirements in this chapter as of the day it is adopted.

~~((8) All programs affected by this rule that were certified under the chapter 388-60 WAC and have a current certification are to fully comply and provide written verification to the department with the requirements in this chapter no later than six months following the adoption of this chapter.)~~

~~(9) All programs that have a current certification under the chapter 388-60 WAC and are in compliance with the requirements of chapter 388-60A WAC will be issued a new certification under chapter 388-60A WAC and will be certified to provide assessments and levels one, two, and three treatments.)~~

~~(10) If a program certified under the previous chapter 388-60 WAC would like to add level four treatment or remove any service, they must make a written request to the department and await a determination by the department before providing any level four treatment or removing any service.)~~

~~(11) Written requests can be emailed to CADVProgram@dshs.wa.gov or mailed to:~~

~~Department of social  
— and health services  
Domestic violence intervention  
— treatment program manager  
P.O. Box 47510  
Olympia, WA 98504~~

~~(12) All programs that were certified under the chapter 388-60 WAC and have a current certification may complete treatment for current participants under the rules of chapter 388-60 WAC until their discharge from treatment.)~~

~~(13) New participants assessed by or participating in the program as of the adoption of this chapter 388-60A WAC must comply with the standards in this chapter.)~~

AMENDATORY SECTION (Amending WSR 19-15-044, filed 7/11/19, effective 7/28/19)

**WAC 388-60B-0105 Application process—How must a program apply for certification or recertification to provide domestic violence assessments or intervention treatment services?** (1) Initial and recertification applications can be downloaded at ~~((<https://www.dshs.wa.gov/ea/domestic-violence/certification-process>))~~ <https://www.dshs.wa.gov/esa/community-services-offices/certification-process>. Completed applications, the required fee, and documentation must be mailed together to:

Department of social  
and health services  
Domestic violence intervention

treatment program manager  
P.O. Box ((47510)) 45470  
Olympia, WA 98504-5470

(2) A program cannot provide assessments or any level of direct treatment services to domestic violence participants without being certified by the department.

(3) Certification and recertification applications must include the application fee, be filled out completely, and contain all documentation required as indicated on the application in order to be processed by the department.

(4) The department will review the application within ((~~thirty~~)) 30 days after an application is received to determine if the program meets the standards and certification requirements in this chapter.

(a) Programs may supplement their application as needed during the ((~~thirty~~)) 30 days after the application is received and the department is reviewing it; and

(b) If a program does not meet the application requirements within the ((~~thirty~~)) 30 days following submission, the program must reapply for certification.

(5) After initial certification programs certified under this chapter must reapply for certification every two years.

(6) The department must notify the applicant whether the program meets the standards set forth in this chapter.

(a) If a program meets the standards set forth in this chapter, the department will issue the program an approval letter and a certificate; or

(b) If a program does not meet the standards set forth in this chapter, the department will provide the program with:

(i) A written notice containing the reasons the department determined the program did not meet these standards; and

(ii) A list of the specific provisions of this chapter that the program failed to meet.

(7) Treatment programs have the right to an administrative hearing to contest the department's denial of their certification applications. Such hearings shall be governed by this chapter and chapter 388-02 WAC. Where provisions of this chapter and chapter 388-02 WAC conflict, the provisions of this chapter will control.

(8) Certified programs must report to the department any and all changes that occur following the initial or renewal certification process.

(9) The department may request a copy of additional disclosure statements or background inquiries if there is reason to believe that offenses specified under RCW 43.43.830 have occurred since the original application was submitted.

(10) The department may grant an exception or waiver from compliance with specific program certification requirements if the exception or waiver does not violate existing local, state, federal, or tribal law.

(a) To request an exception or waiver to a rule in this chapter, the program must:

(i) Submit the request in writing to the department;

(ii) Assure that any exception or waiver would not jeopardize the safety, health, or treatment of an individual; and

(iii) Assure that any exception or waiver would not impede fair competition of another service program;

(b) The department approves or denies an exception or waiver request in writing and requires the program to keep a copy of the decision; and

(c) The department's decision to deny an exception or waiver request is not subject to administrative review under chapter 388-02 WAC.

(11) The department considers each geographical location of a program an individual program and must certify each location separately.

(a) A program certified to provide assessments or any level of treatment may do so at an off-site location as defined in this chapter, without an additional certification for the off-site location;

(b) If the program provides assessments only, then the program is only required to have one certification and does not need a separate certification for each geographical location it serves; and

(c) If a program that has provided only assessments wants to add certification to provide any level of care, the program must certify each geographical location where any level of care will be offered unless it meets the 'off-site' definition in this chapter.

(12) The application fee for initial certification and recertification of a domestic violence intervention treatment program is (~~one hundred twenty-five dollars~~) \$125.00.

(a) The department publishes the application fee for certification of domestic violence intervention treatment programs in the application packet; and

(b) If there is any change in the fee, the update will be done and made effective in July of each year.

AMENDATORY SECTION (Amending WSR 19-15-044, filed 7/11/19, effective 7/28/19)

**WAC 388-60B-0110 Required documentation for certification and recertification—What must be included in an application to provide domestic violence assessments or treatment?** (1) For programs applying for initial certification or recertification the program's director must submit the following documentation with the program's application:

(a) A written statement signed by the program's director that the program complies with the standards contained in this chapter;

(b) A copy of the current business license that authorizes the program, or its governing agency, to do business in Washington state at the physical address indicated on the application;

(c) A list of any off-site locations where the program will be providing services;

(d) A list of all direct treatment staff at the program;

(e) Results of current criminal history background checks conducted by the Washington state patrol for all current direct treatment program staff;

(i) If the program staff has lived outside of the state of Washington in the last (~~ten~~) 10 years, then a background check that covers each state they lived in prior to Washington for the last (~~ten~~) 10 years must be included with the application; and

(ii) The results of an FBI or other national criminal background check can be used in place of the Washington state patrol check if it

documents the state of Washington, and any other state they lived in for the past (~~ten~~) 10 years was part of the background check search;

(f) An attestation for each current paid or volunteer staff person, documented in the application, whether the staff person has ever been a party to any civil proceedings involving domestic violence or crimes of moral turpitude;

(g) If the staff person has been party to any civil proceedings involving domestic violence or crimes of moral turpitude, the application must also include the legal findings of each incident along with the staff person's written explanation (see WAC (~~388-60A-0210~~) 388-60B-0210 (2) (b));

(h) Proof that each direct treatment staff is currently registered or licensed as a counselor with the Washington state department of health; and

(i) Written documentation that the program maintains cooperative and collaborative relationships with agencies providing services related to domestic violence which must include, at a minimum, all of the following:

(i) One item of documentation showing that the program has established and continues to maintain a cooperative relationship with another local program or agency involved in the provision of direct or ancillary services related to domestic violence including, but not limited to, probation services, legal services, a domestic violence intervention treatment program, or a victim services program;

(ii) One item of documentation showing that the program regularly attends and participates in a local domestic violence task force, intervention committee, coordinated community response group, or workgroup if one exists, and attendance is possible in person, or remotely, in (~~their community~~) each service area where they have more than one active participant;

(iii) One item of documentation showing that the program has a collaborative relationship, either electronic or in person, with another Washington state certified domestic violence intervention treatment program which includes:

(A) Written documentation of regularly scheduled opportunities for confidential case staffing; and

(B) Written documentation of regularly scheduled opportunities for collaboration in the delivery of domestic violence intervention treatment services and procedures for victim safety (the program can find a current list of certified domestic violence intervention treatment programs in the state of Washington online at (~~https://www.dshs.wa.gov/ea/domestic-violence/domestic-violence-perpetrator-treatment~~) https://www.dshs.wa.gov/esa/community-services-offices/domestic-violence-intervention-treatment); and

(iv) (~~(A)~~) With the initial certification application only, a current list of all the local domestic violence victim services programs in the program's area as reasonably available.

(2) If applying to provide any level of domestic violence intervention treatment services the program must include the following on their application, which must be approved by the department prior to certification:

(a) An explanation of the program's evidence-based or promising practice treatment modalities (see WAC (~~388-60A-0310~~) 388-60B-0310 (3)); and

(b) The program's methods of treatment.

(3) In order to apply for level four domestic violence intervention treatment, the program must also submit documentation of the su-

supervisor level direct treatment staff who will be responsible for facilitating group and individual sessions for participants in level four treatment.

(a) The supervisor must document an initial six hours of training, approved by DSHS in providing level four treatment; and

(b) For recertification, the supervisor must document four hours every (~~twenty-four~~) 24 months of continuing education, approved by DSHS in providing level four treatment, focused on criminogenic factors, risk issues, psychopathy, and related topics.

(4) All programs must submit the applicable required policies and procedures as outlined in WAC (~~(388-60A-0115)~~) 388-60B-0115, which must be approved by the department prior to initial certification.

(5) If the program was certified prior to the adoption of chapter (~~(388-60A)~~) 388-60B WAC, the program must submit the applicable policies and procedures with their first recertification application after the adoption of these rules.

(6) For programs applying for recertification, the program must also submit:

(a) A statement of qualifications for any staff added since the last certification period (form #10-210) which can be found online at (~~(https://www.dshs.wa.gov/ca/domestic-violence/certification-processor)~~) https://www.dshs.wa.gov/esa/community-services-offices/domestic-violence-intervention-treatment or requested by mail from the address listed in WAC (~~(388-60A-0105)~~) 388-60B-0105(1);

(b) An update of continuing education hours for each direct treatment staff (form #14-544) which can be found online at (~~(https://www.dshs.wa.gov/ca/domestic-violence/certification-processor)~~) https://www.dshs.wa.gov/esa/community-services-offices/domestic-violence-intervention-treatment or requested by mail from the address listed in WAC (~~(388-60A-0105)~~) 388-60B-0105(1); and

(c) If the program is applying to provide a new domestic violence intervention service on their recertification application, then the program must also submit the following with their application:

(i) The applicable policies and procedures which have not already been approved, but are necessary to provide the new service(s) (see WAC (~~(388-60A-0115)~~) 388-60B-0115); and

(ii) If the program is applying to provide a new level of treatment the following must be submitted and approved by the department prior to providing the service:

(A) A description of the program's evidence-based or promising practice treatment modalities; and

(B) The program's methods of treatment.

AMENDATORY SECTION (Amending WSR 19-15-044, filed 7/11/19, effective 7/28/19)

**WAC 388-60B-0120 Facility requirements—What facility requirements must a program meet for the space where domestic violence intervention assessments or treatment services are provided?** Each program certified to provide assessments or any level of care must ensure that its physical and virtual treatment space is suitable for the purposes intended.

(1) For programs that offer behavioral assessments or any level of treatment at a physical location:

(a) The group room must easily accommodate ((fourteen)) 14 people, not counting space taken by staff desks, file cabinets, or similar items; or

(b) If the program regularly and consistently holds groups smaller than ((twelve)) 12 participants, the group room must be able to comfortably accommodate the size of the group and facilitator based on attendance records.

(2) The program must ensure that the facility space:

(a) Is not a personal residence;

(b) Is accessible to an individual with a disability, and if a program operates in a historic building or a building that was constructed before current ADA standards, the program must inform potential participants of barriers to accessibility and offer the participant a referral to programs that are ADA accessible when applicable;

(c) Has a reception area separate from treatment areas;

(d) Ensures confidentiality and anonymity for participants including:

(i) Having window coverings for reception, group, and assessment spaces; and

(ii) Having signage outside the building that does not indicate domestic violence treatment;

(e) Has adequate private space for personal consultation with an individual, staff charting, and therapeutic activities, as appropriate;

(f) Has secure and locked storage of active and closed confidential participant and victim records which are not accessible to participants or the public;

(g) Has separate, secure storage of poisonous external chemicals and caustic materials;

(h) Has evacuation routes with highlighted emergency exits posted in each room used by participants or staff;

(i) Has a restroom available to participants and staff during business hours; and

(j) Has sufficient ventilation and temperature control to facilitate assessments or groups comfortably.

(3) If the program operates in the same building or in very close proximity to a victim services program, the domestic violence intervention treatment program must conduct assessments and groups sessions at least three hours apart from any victim services.

(4) A different agreement in ((regards)) regard to proximity and day or time allowances or restrictions may supersede the requirements of the standard in WAC ((388-60A-0120)) 388-60B-0120(3) when it is outlined by a signed memorandum of understanding between the treatment program and the victim services program.

**Exception:** Domestic violence intervention treatment services being delivered off-site, such as in jails or prisons are not subject to the facility standards in this section.

(5) For programs that offer behavioral assessments or any level of treatment through live HIPAA compliant video conferencing:

(a) The assessor or group facilitator must ensure they are in a confidential setting, unable to be heard by others who are not part of the session.

(b) Permanent walls must separate the assessor or group facilitator from others. A temporary screen or cubicle or other barrier of the like is not permitted to create a confidential space.



AMENDATORY SECTION (Amending WSR 19-15-044, filed 7/11/19, effective 7/28/19)

**WAC 388-60B-0125 Quality management—What are the minimum treatment outcomes for participants and how must a program measure staff and treatment effectiveness?** Each treatment program certified to provide assessments or any level of domestic violence intervention treatment must document program specific quality management procedures to increase staff and program treatment effectiveness.

(1) Programs providing assessments or any level of domestic violence intervention treatment must document their quality management in writing and at a minimum include:

(a) How the program monitors compliance with the rules in this chapter, at a minimum every six months, including the supervisor's direct observance of groups when applicable and a review of assessments and participants' records for compliance with this chapter and the program's policies and procedures;

(b) How the program reviews and improves its cultural competency, at a minimum on an annual basis;

(c) How the program will provide services to participants who require sign language or interpretation; and

(d) How the program regularly attends and participates in a local domestic violence task force, intervention committee, or workgroup in each of their service areas, as defined in WAC 388-60B-0015, when they have more than one active participant in that area.

(2) Programs providing any level of domestic violence intervention treatment must also document in writing:

(a) The use of evidence-based or promising practices;

(b) A copy of the program's treatment outline along with any handouts, exercises, or instructions, as a guide for the facilitators of groups;

(c) How the program coordinates with local victim services;

(d) How the program collaborates with at least one other certified domestic violence intervention treatment program, either electronically or in person, including written documentation of regularly scheduled opportunities for:

(i) Confidential case staffing;

(ii) Collaboration in the delivery of domestic violence intervention treatment services; and

(iii) Procedures for victim safety;

(e) The policies and procedures the program has in place regarding complaints and grievances; and

(f) How the program collects a confidential evaluation of treatment outcomes for treatment participants which must outline how:

(i) Each participant is given a treatment outcomes evaluation at discharge and asked to complete it at that time. The treatment outcomes form is found online at ~~<https://www.dshs.wa.gov/ca/domestic-violence/certification-processor>~~) <https://www.dshs.wa.gov/esa/community-services-offices/domestic-violence-intervention-treatment> or may be requested by mail from:

Domestic violence intervention  
treatment program manager  
Department of social and  
health services (DSHS)  
P.O. Box ((45710)) 45470  
Olympia, Washington 98504-((5710)) 5470

(ii) If completed physically, in person the confidential results of the treatment outcomes evaluation is sealed by the participant after it is completed and submitted by the program to DSHS by United States mail ((by the 15th day of the month, for the previous quarter)) within 30 days of completion;

(iii) If completed electronically, the confidential results are submitted by the participant to DSHS via electronic mail at DVPrograms@dshs.wa.gov, as soon as it is completed.

~~((A) The first quarter is January 1 to March 31, with the results due to DSHS by April 15;~~

~~(B) The second quarter is April 1 to June 30, with the results due to DSHS by July 15;~~

~~(C) The third quarter is July 1 to September 30, with the results due to DSHS by October 15;~~

~~(D) The fourth quarter is October 1 to December 31, with the results due to DSHS by January 15;~~

~~(g) If the program fails to submit quarterly treatment outcome evaluation data to the department by the designated deadlines, the department may require corrective actions, initiate an investigation, or take action on the program's certification status; and)~~

~~((h))~~ (g) If the survivor chooses to provide feedback, the program will provide them with a treatment outcomes evaluation for survivors regarding their experience of the participant's behaviors before, during treatment, and at discharge;

(i) The treatment outcomes form for survivors is found at ~~https://www.dshs.wa.gov/ca/domestic-violence/certification-processor)~~ https://www.dshs.wa.gov/esa/community-services-offices/domestic-violence-intervention-treatment or may be requested by mail from the address listed in this subsection; and

(ii) The survivor may give the outcomes evaluation to the program to be kept confidential and sent to DSHS ~~((quarterly))~~, or they may send it directly to DSHS if they choose by United States mail to the address listed in this subsection, or electronically to ~~((CADVProgram@dshs.wa.gov))~~ DVProgram@dshs.wa.gov.

**Reviser's note:** The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

### PROGRAM CHANGES

AMENDATORY SECTION (Amending WSR 19-15-044, filed 7/11/19, effective 7/28/19)

**WAC 388-60B-0130 Adding to existing certification—How must a program add assessments or a level of treatment to an existing certification?** (1) To add certification to provide any service(s) to an existing certified domestic violence intervention program, the program must submit an abbreviated application that is signed by the program's director.

(2) The abbreviated application to add services can be downloaded at (~~(<https://www.dshs.wa.gov/ca/domestic-violence/certification-processor>)~~) <https://www.dshs.wa.gov/esa/community-services-offices/domestic-violence-intervention-treatment-or-requested-by-mail-from> or requested by mail from:

Domestic violence intervention  
treatment program manager  
Department of social and  
health services (DSHS)  
P.O. Box ((45710)) 45470  
Olympia, Washington 98504-((5710)) 5470

(3) Completed applications and required documentation can be emailed to (~~([CADVProgram@dshs.wa.gov](mailto:CADVProgram@dshs.wa.gov))~~) [DVProgram@dshs.wa.gov](mailto:DVProgram@dshs.wa.gov) or mailed to the address in this section.

(4) The application must be signed, dated, completed entirely, and must include the following:

- (a) The name of the supervisor providing management and supervision of services;
- (b) The physical address of the program where the new requested service(s) will be provided;
- (c) A copy of the program's policies and procedures applicable to the new service(s);
- (d) A copy of the program's treatment topics and evidence-based or promising practice treatment modality related to the new service(s), if applicable; and
- (e) Updated quality management procedures to include the new service(s).

(5) The department must approve the application for the provision of the new requested service(s) before the program can provide the service(s).

(6) The department may conduct an on-site review prior to approving the new requested service(s) or issuing a new certificate that includes the added service(s).

AMENDATORY SECTION (Amending WSR 19-15-044, filed 7/11/19, effective 7/28/19)

**WAC 388-60B-0140 Change of address—What must be sent to the department when a program changes the physical location of where they provide assessments or groups?** (1) When a certified domestic violence intervention treatment program relocates to another address, the department requires the program to submit a completed change of address form found online at (~~(<https://www.dshs.wa.gov/ca/domestic-violence/certification-processor>)~~) <https://www.dshs.wa.gov/esa/community-services-offices/domestic-violence-intervention-treatment-or-requested-by-mail-from> or requested by mail from:

Domestic violence intervention  
treatment program manager  
Department of social and  
health services (DSHS)  
P.O. Box ((45710)) 45470  
Olympia, Washington 98504-((5710)) 5470

(2) The program must provide the department with:

(a) The effective date and physical address of the program's new location;

(b) Notification of any changes to direct service staff members or supervisor(s), who must receive department approval before providing any direct client services;

(c) A statement regarding the management of all participant and victim records in accordance with applicable state and federal laws; and

(d) An attestation that the new location complies with facility requirements under WAC ((388-60A-0125)) 388-60B-0125.

(3) The program must receive a certification for the new location's address before providing any assessments or any level of domestic violence intervention treatment service at that address.

(a) An exception may be granted at the discretion of the department if the program had to move suddenly due to an emergency or danger in the previous facility; and

(b) The department may conduct an on-site review prior to approving or issuing a new certificate for the new location.

AMENDATORY SECTION (Amending WSR 19-15-044, filed 7/11/19, effective 7/28/19)

**WAC 388-60B-0210 Minimum staff qualifications—What staff qualifications must a program document for direct service staff?** (1) (~~Direct treatment staff who are currently recognized by the department as a trainee, staff, or supervisor at a certified program under chapter 388-60 WAC will be granted the same designation by the department with the adoption of chapter 388-60A WAC.~~

~~(2))~~ Each treatment program certified for assessments or any level of domestic violence intervention treatment must ensure that all staff with direct treatment contact with participants be:

(a) Currently licensed or registered as counselors as required under chapter 18.19 RCW;

(b) Free of criminal convictions involving domestic violence or moral turpitude;

(i) Direct service staff who have convictions involving crimes of domestic violence or moral turpitude may submit a written explanation of their convictions and a request for an exception to this requirement;

(ii) The department will review the explanation and request for an exception on a case-by-case basis, and the decision to grant or deny such a request will be at the department's discretion; ~~((and))~~

(iii) This discretionary decision is not subject to an administrative hearing appeal as outlined under chapter 388-02 WAC; and

(c) In good standing with DSHS:

(i) A direct treatment staff person whose actions have been the subject of a DSHS investigation and have resulted in the denial, suspension, or revocation of a program's certification status is subject to a review by DSHS to determine if the direct treatment staff person is considered to be in good standing;

(ii) The department will review the status of a direct service staff on a case-by-case basis and decisions for designation and recognition of the direct service staff person as a trainee, staff, or supervisor will be at the discretion of the department; and

(iii) This discretionary decision is not subject to an administrative hearing appeal as outlined under chapter 388-02 WAC.

~~((3))~~ (2) Each direct treatment staff person must have a bachelor's degree from an accredited university in counseling, psychology, social work, or similar social services field.

(a) The department may grant an exception or waiver from compliance with this requirement if the exception would not violate an existing local, state, federal, or tribal law;

(b) In order to qualify for an exception, the employee must possess year-for-year professional level experience equivalent to a related bachelor's degree in counseling, psychology, social work, or similar social service field and the department determines this equivalency at the discretion of the DSHS program manager responsible for monitoring domestic violence intervention treatment programs;

(c) To request an exception to a rule in this chapter, the program must:

(i) Submit the request in writing to the department;

(ii) Assure that the exception would not jeopardize the safety, health, or treatment of an individual; and

(iii) Assure that the exception would not impede fair competition of another service agency;

(d) The department approves or denies an exception request in writing and requires the program to keep a copy of the decision; and

(e) The department's decision to deny an exception request is not subject to administrative review under chapter 388-02 WAC.

~~((4))~~ (3) Prior to providing any direct treatment services to program participants, each direct treatment staff person must have completed:

(a) A minimum of ~~((thirty))~~ 30 hours of domestic violence training from an established domestic violence victim or survivor services program, as defined in this chapter;

(b) A portion, but not all of the victim training hours may be accrued through training from the Washington State Coalition Against Domestic Violence and those trainings may be attended in person or online;

(c) A minimum of ~~((thirty))~~ 30 hours of training on the provision of domestic violence intervention assessment and services, provided by an established and certified domestic violence intervention treatment services program or other organization that has been approved by the department to provide the training and must include:

(i) An orientation to the treatment program if the training is through a certified program;

(ii) An overview of all applicable policies and procedures;

(iii) Instructions on how to conduct behavioral assessments;

(iv) Instructions on how to facilitate groups; and

(v) Instructions regarding the implementation, administration, interpretation, and utilization of domestic violence offender risk assessment tools;

(A) If located within Washington state, the domestic violence intervention treatment program must be certified and meet the standards as outlined in this chapter; and

(B) If located out-of-state, the domestic violence intervention treatment program must meet the standards outlined in this chapter and in chapter ~~((26.50))~~ 43.20A RCW; and

(d) Direct service staff must complete all ~~((sixty))~~ 60 hours of required training before the employee may apply for trainee status and begin to provide any direct services to participants and any work ex-

perience accrued prior to completion of the ((sixty)) 60 hours of training will not count toward any requirement for work experience.

AMENDATORY SECTION (Amending WSR 19-15-044, filed 7/11/19, effective 7/28/19)

**WAC 388-60B-0260 Supervisor responsibilities—What responsibilities must the supervisor document for the program?** (1) Each program certified for assessments or any level of domestic violence intervention treatment must have at least one person providing supervision to direct treatment staff.

(2) Supervision must be documented in the direct service staff's personnel file and follow the program's policies and procedures regarding supervision. At a minimum this must include:

(a) At least once every six months, the supervisor must (~~directly~~) observe all treatment staff who are at the trainee or staff level and who provide direct treatment services such as assessments or any level of treatment;

(b) At least once every six months, the supervisor must review a sample of each direct treatment staff's assessments and participant's records as applicable for compliance with program policies and the WAC standards found in this chapter;

(c) A program's supervisor must document their observations and feedback for the program trainee or staff member and include it in the employee or volunteer's personnel file; and

(d) Programs that consist of one employee, who is the supervisor, are not required to document group observations or file reviews.

(3) A supervisor may be located either on or off-site.

~~(4) ((If no other direct treatment staff besides the supervisor possesses at least two hundred fifty hours of experience providing direct treatment services to participants, then the supervisor must be present on site at all times that direct treatment services are being provided.~~

~~(5))~~ The supervisor is responsible for reporting critical incidents, as defined in this chapter to the department within one business day.

~~((6))~~ (5) The supervisor must provide the department with documentation of the incident and the actions the program has taken as a result of the incident.

~~((7))~~ (6) If a program has more than one supervisor, the program must either:

(a) Designate a lead supervisor to fulfill the responsibilities of this section; or

(b) Document in writing how the responsibilities in this section will be shared among the supervisors.

AMENDATORY SECTION (Amending WSR 19-15-044, filed 7/11/19, effective 7/28/19)

**WAC 388-60B-0280 Adding direct treatment staff—What documentation must a program submit to the department to add a new direct service staff person, or request designation as a staff or supervisor for**

**existing direct service staff, during a certification period?** (1) A new direct service staff person or an existing person requesting a change in staff level must be approved by the department as a trainee, staff, or supervisor before providing any direct services such as assessments or any level of treatment.

(2) The certified program must submit an application to add or change direct service staff which can be obtained online at (~~https://www.dshs.wa.gov/ea/domestic-violence/certification-processor~~) <https://www.dshs.wa.gov/esa/community-services-offices/domestic-violence-intervention-treatment> or requested by mail from:

Domestic violence intervention  
treatment program manager  
Department of social and  
health services (DSHS)  
P.O. Box (~~(45710)~~) 45470  
Olympia, Washington 98504-~~(5710)~~ 5470

(3) With the application, the program must submit documentation to the department which proves that the staff meets the minimum qualifications for all treatment staff stated in WAC (~~(388-60A-0210)~~) 388-60B-0210 in addition to the staff level being requested as stated in WAC (~~(388-60A-0230)~~) 388-60B-0230 through (~~(WAC 388-60A-0250)~~) 388-60B-0250.

AMENDATORY SECTION (Amending WSR 19-15-044, filed 7/11/19, effective 7/28/19)

**WAC 388-60B-0315 Group treatment—What standards must programs follow regarding the provision of group treatment?** (1) Each treatment program certified for any level of treatment must meet face-to-face with the participant and adhere to the following standards regarding group treatment:

- (a) Participants must attend group sessions on a weekly basis;
- (b) The group sessions must be single gender;
- (c) Participants must be given the choice to attend the group they feel most comfortable in when gender identity is a factor;
- (d) The group size is limited to a maximum of (~~(twelve)~~) 12 participants, and a minimum of two participants;
- (e) On a short-term basis the program may accept a participant into their domestic violence intervention treatment program even if the program lacks sufficient participants to constitute a group;
- (f) Group sessions with four to (~~(twelve)~~) 12 participants in attendance must be at least (~~(ninety)~~) 90 minutes in length;
- (g) Group sessions with three or fewer participants in attendance must be at least (~~(sixty)~~) 60 minutes in length;
- (h) Group sessions must be closed to all persons other than participants, group facilitators, and others specifically invited by the group facilitators including, but are not limited to:
  - (i) Professionals in related fields;
  - (ii) A research scholar or state of Washington evaluator;
  - (iii) Advocates from victim service agencies;
  - (iv) Persons offering interpretation services for the deaf (~~(and)~~) or hearing impaired or language translation or interpretation; (~~(and)~~)

(v) Interns, trainees, or others who bring specific information applicable to the group; and

(i) Any person attending the group as specified under this section must sign a confidentiality agreement of which the program must keep a record.

(2) Groups facilitated by way of live HIPAA compliant video conferencing must comply with the following standards:

(a) The group facilitator must remind all participants of confidentiality standards before each group begins and when any new group member joins thereafter.

(i) Confidentiality standards must include the group participant's physical location, which must not allow for any other person to hear or see the group, and the prohibition of the use of any recording devices.

(ii) The participant must be visible from the torso up while attending group.

(iii) The participant must not use a virtual background or screen, which distorts their background, and makes it more difficult for the facilitator to check for confidentiality requirements.

(b) The group facilitator must disconnect any group participant who violates the confidentiality standards immediately upon discovery and meet one-on-one with that group participant regarding confidentiality standards before they are permitted to attend group again.

(i) The domestic violence intervention treatment program must have a policy regarding online confidentiality, and the consequences for violating that confidentiality, when the program uses live video conferencing for group or individual sessions.

(ii) If a group participant violates confidentiality standards then it is up to the policy and discretion of the domestic violence intervention treatment program whether the group member can resume treatment via video conferencing or not.

AMENDATORY SECTION (Amending WSR 19-15-044, filed 7/11/19, effective 7/28/19)

**WAC 388-60B-0320 Treatment practices—How must a program approach treatment and what must happen if it is determined that a participant should move into a different level of treatment?** Each treatment program certified for any level of domestic violence intervention treatment must:

(1) Provide forensic counseling, using evidence-based or promising practices in all levels of treatment;

(2) Require participants to attend face-to-face weekly group or individual sessions, depending on their level of treatment and individual treatment plan;

(3) Use a trauma-informed approach in treatment;

(4) Provide treatment that meets the individual needs of participants based on their ongoing assessment information, motivations for abuse, and motivations for creating healthy relationships;

(5) Document the required cognitive and behavioral changes required by participants in treatment as cited in WAC (~~388-60A-0415~~) 388-60B-0415;



- (6) Submit compliance reports and relevant information to the courts or appropriate probation office when requested by the referral source or court when applicable;
- (7) When increasing or decreasing the level of treatment of a participant the program must document:
- (a) Updated assessment information;
  - (b) A change in treatment needs;
  - (c) Justification for the treatment level change;
  - (d) Written approval from the program's supervisor; ~~((and))~~
  - (e) An updated treatment plan; and
- (8) When a program changes the level of treatment for a participant the program must notify the participant and the referring agency, when applicable.
- (a) The program must document if the referring agency has opted out of receiving treatment change notifications and if so, it must be documented in the participant's file; and
  - (b) If the program cannot reach the recipient the program must document their reasonable efforts to reach them.

AMENDATORY SECTION (Amending WSR 19-15-044, filed 7/11/19, effective 7/28/19)

**WAC 388-60B-0325 Victim safety—What steps must programs take in order to help increase victim safety?** (1) Each treatment program certified for assessments or any level of treatment must adequately consider the safety of the victims, current partners, and children of the participants receiving assessments or who are enrolled in the treatment program.

(2) All victim contact initiated by the program must be done by a staff or supervisor level employee as defined in WAC ~~((388-60A-0240))~~ 388-60B-0240 and ~~((WAC 388-60A-0250))~~ 388-60B-0250, unless the program contracts with a victim services agency to contact victims.

(3) Programs that are certified for assessments or any level of treatment must take the following steps, as applicable to help increase victim safety:

(a) Notify the victim of each program participant before completing the assessment that the participant is being seen by the certified program for an assessment to determine:

(i) If domestic violence intervention treatment is appropriate for the participant, and if so, what level of treatment the participant will start in at the program; and

(ii) If applicable, what other treatments may be required or recommended as part of the participant's treatment plan;

(b) Inform victims if the program offers live HIPAA compliant video conferencing for assessments or treatment, and the safety concerns this poses for victims, their children, and anyone else who may be in close proximity to the participant during and immediately after assessment or treatment;

(c) Inform victims about emergency and safety planning, outreach, advocacy, and other applicable services offered by a domestic violence victim services program in their community;

~~((e))~~ (d) Notify the victim of each program participant within ~~((fourteen))~~ 14 days of the participant being accepted or denied en-

trance to the program that the participant has enrolled in or has been rejected for treatment services; and

~~((d))~~ (e) When the participant has been accepted into treatment, give victims a brief description of the domestic violence intervention treatment program including all of the following:

(i) The primary objective of the domestic violence intervention treatment program to help increase the safety of the victim and children as well as holding the participant accountable;

(ii) The core competencies and minimum completion criteria for the participant in treatment;

(iii) The fact that the victim is not expected to do anything to help the participant complete any treatment program requirements;

(iv) The limitations of domestic violence intervention treatment; and

(v) The program's direct treatment staff's responsibility regarding mandated reporting and duty to warn.

(4) The program must document in writing the program's efforts to notify the victim by phone of the requirements in this section.

(a) The program may mail the required information in this section if they cannot reach the victim by phone after three documented attempts;

(b) The program must document in writing the program's efforts to obtain the victim's contact information;

(c) When communicating with the victim at the time of assessment, enrollment, or denial into treatment the program must not assess the victim in any way, but the program may ask if the victim has any information they would like to share; and

(d) If on their own accord the victim provides the program with information regarding the participant or aspects of their relationship, then the program must keep the victim's information in a separate file from the participant's file.

(5) The program must not invite or require the victim to attend domestic violence intervention treatment sessions or education groups which the program requires participants to attend as a condition of their contracts.

(6) Programs may meet the requirements of this section through an agreement or contract with a victim services program, but it is the responsibility of the certified program to ensure and document in writing that all requirements are met.

AMENDATORY SECTION (Amending WSR 19-15-044, filed 7/11/19, effective 7/28/19)

**WAC 388-60B-0345 Participant requirements—What must the program require of participants accepted into a domestic violence intervention treatment program?** (1) All participants enrolled in domestic violence intervention treatment must attend consecutive, same gendered, weekly group treatment sessions that are face-to-face (~~and in person~~).

(2) Another type of intervention may be approved for participants in any level of treatment for certain documented clinical reasons, such as psychosis, disability, or other conditions that make the individual not amenable to treatment in a group setting.

(3) A program may develop policies which allow level three and four participants to attend individual sessions as part of the partic-

ipant's treatment plan in order to address their risk factors and meet their unique needs.

(4) Participants who experience hardship attending a certified program, which provides assessments or treatments in person, may ask the program to ((request an exception for the requirement of attending treatment group meetings in person in order to attend via live video feed)) accommodate them in attending face-to-face by way of live HIPAA compliant video conferencing.

(a) ((An exception to the requirement to attend group in person must be requested by the program on behalf of a participant and is subject to approval by the department)) The domestic violence intervention treatment program is not required to accommodate any participant with the option of live HIPAA compliant video conferencing;

(b) ((The department will review exception requests on a case by case basis and approve or deny the request within seven calendar days after receiving it, unless circumstances warrant a longer period of time)) If the program does not choose to accommodate the participant with live HIPAA compliant video conferencing for assessment or treatment, the program must refer the participant to another certified domestic violence intervention treatment program who can accommodate the participant with video conferencing. ((~~+~~

~~(c) The department's decision to deny an exception request is not subject to administrative review under chapter 388-02 WAC; and~~

~~(d) The program submitting the exception request must be certified under this chapter and send written documentation by electronic or US mail to the department that outlines all of the following:~~

~~(i) Documentation that the participant does not have access to reliable transportation and their residence and place of employment are more than forty-five miles from a certified program, or the participant has a physical disability that creates a hardship for attending in person, or other good cause;~~

~~(ii) The program's applicable policies and procedures related to connecting participants to their home group through live video; and~~

~~(iii) How the program will ensure all participants' confidentiality including the use of a HIPAA compliant live video attendance program.))~~

(5) The program must assign participants to a home group and the participant must be required to attend the same scheduled group each week.

(6) The program's supervisor must authorize any exceptions to this requirement and document the reason for the exception in the participant's file.

(7) A program may develop policies which allow a brief lapse in treatment of no more than ~~((thirty))~~ 30 days when a participant transfers from another program or experiences extraordinary circumstances that impede their attendance.

(8) Any lapse in treatment must be approved by the program's supervisor and must not exceed ~~((thirty))~~ 30 days unless approved in writing by the program's supervisor.

(9) Before the participant begins any level of domestic violence intervention treatment, the program must document in the participant's record:

(a) The participant has signed all applicable releases of information required by the treatment program, including those specified in WAC ~~((388-60A-0365))~~ 388-60B-0365;

(b) The participant has signed a contract for services with the treatment program; and

(c) The participant has an assessment and treatment plan completed by a Washington state certified domestic violence intervention treatment program.

AMENDATORY SECTION (Amending WSR 19-15-044, filed 7/11/19, effective 7/28/19)

**WAC 388-60B-0400 Behavioral assessment and interview criteria—  
Who may conduct the interview and assessment and what must it include?**

(1) A participant must complete an individual interview and behavioral assessment with a certified program prior to starting any level of treatment.

(2) The purpose of the assessment is to determine:

(a) The level of risk, needs, and responsivity for the participant;

(b) The level of treatment the program will require for the participant; and

(c) Behaviorally focused individualized treatment goals or objectives for an initial treatment plan.

(3) Only treatment staff who meet the minimum qualifications for direct treatment staff as defined in this chapter may complete the interview and assessment process and all related paperwork.

(a) An assessment must be completed by a staff person who has been designated by the department at the staff or supervisor level as outlined in WAC (~~(388-60A-0240)~~) 388-60B-0240 and (~~(388-60A-0250)~~) 388-60B-0250;

(b) A trainee must not have sole responsibility for conducting an interview or assessment;

(c) A trainee may sit in on an interview and assessment process, but the staff or supervisor level person must conduct the interview and write the assessment.

(4) The assessment process must include:

(a) Verification of the participant's identity by photo identification, shared in person or electronically, unless photo identification is a barrier to treatment and the provider documents this in the participant's record;

(b) A behavioral assessment and screening interview with the participant;

~~((b))~~ (c) Collateral information and input from third party sources;

~~((c))~~ (d) The participant's legal history; and

~~((d))~~ (e) A summary of the results from all applicable evidence-based, empirical, and objective standardized tests.

(5) The assessment process is ongoing throughout treatment and changes to the participant's program based on updated assessment information must be documented in the participant's record.

(6) Each program certified for assessments must comply with the following:

(a) The program staff must meet (~~in person and~~) face-to-face with the participant to conduct the assessment, and the assessment must be kept in the participant's file;

(b) Information gathered by or provided to the program from the current victim, past victims, significant others, children, or other family members must not be included in the assessment unless:

(i) The program has written consent from that person to include such information in the written assessment; or

(ii) The program is quoting public information gathered from a public record such as a police report, protective order, no contact order, or a similar document;

(c) The assessment must be written, completed, signed, and dated by the staff or supervisor who completed the interview and assessment; and

(d) The program must document their reasonable efforts to share a completed assessment in a timely manner when it is requested by another certified program and an applicable release of information has been signed by the participant.

(7) **General assessment information:** During the assessment interview a program staff or supervisor must write the assessment and document information that includes the following:

(a) The participant's referral source and contact information for the source when applicable;

(b) Basic demographic and contact information;

(c) The participant's current relationship status and their plans for the relationship;

(d) The participant's access to the victim and their children, family, and coworkers;

(e) An assessment of the participant's individual culture which includes:

(i) Gender identity;

(ii) Preferred pronouns;

(iii) Sexual orientation;

(iv) Religion or spiritual beliefs;

(v) Race;

(vi) Ethnicity; and

(vii) Groups with which the participant identifies;

(f) The possible cultural context for the participant's views about using violence in family relationships;

(g) An assessment of the participant's history of victimization that includes:

(i) Domestic violence victimization;

(ii) Sexual assault victimization; and

(iii) Other trauma history including complex trauma;

(h) Current or past protective orders, no contact orders, parenting assessments, parenting plans, and orders for supervised visitation with children;

(i) A summary of information from police or incident reports for current and past incidents involving coercive or abusive behaviors;

(i) The program must document the participant's specific abusive behaviors; and

(ii) The program must document whether there were children present during any incidents or in the immediate aftermath of an incident and what the children's exposure was to the abuse, the victim's injuries, and damage to property;

(j) The participant's comments or views about specific abusive behaviors in current and past incidents;

(k) Additional collateral information that is necessary to assess the participant's risks and needs, including, but not limited to information from:

(i) Probation or parole officers;

(ii) The victim, previous partners, or a current partner if they choose to provide information;

- (iii) Victim advocates;
- (iv) 911 tapes;
- (v) Guardians ad litem, CASAs, or parenting evaluators; ((and))
- (vi) Child protective service workers; and

(l) An assessment of whether children have been effected in any way by the participant's domestic violence and if a parenting class specific to perpetrators of domestic violence will be required by the program.

(8) **Domain 1:** An assessment of the participant's current and past high risk factors that include, but are not limited to:

- (a) Victim initiated separation from the participant in the last six months or other indication the victim may initiate separation;
- (b) The infliction or threat of physical harm against an intimate partner including strangulation, physical, sexual, and psychological abuse, or a pattern of assaultive, coercive, and controlling behaviors directed at achieving compliance from or control over that partner;
- (c) Access to a firearm, previous use or threats to use a weapon as it is defined in chapter 9.41 RCW, or prior training with weapons;
- (d) Signs of jealousy, possessiveness, isolation, monitoring, stalking, or holding a victim captive;
- (e) Abuse of children, pets, or an elderly person;
- (f) Instability in the participant's life including, but not limited to employment, new or increased substance use, friendships, or intimate relationships;
- (g) Children of the victim that are not the participant's biological children;
- (h) History of violence in or outside of the home and any police contacts for the violence;
- (i) Previous domestic violence or anger management assessments or treatments;
- (j) Ideation, attempts, or threats of homicide and suicide; and
- (k) Repeated violations of probation, no contact orders, protection orders, or similar orders.

(9) **Domain 2:** A screening for traumatic brain injury, making appropriate referrals for further assessment or treatment when needed. Screening information gathered must include:

- (a) Traumatic brain injury or report of injury to the frontal lobe from an accident, sports, military, or similar activities;
- (b) Any history of concussions or brain disease or injuries from strokes or dementia; and
- (c) A history of experiencing repeated blows to the head regardless of whether the participant ever lost consciousness.

(10) **Domain 3:** A screening for indicators associated with the participant's mental health, making appropriate referrals for further assessment or treatment when needed. The screening must include:

- (a) A complete diagnostic evaluation when it is completed by an appropriately credentialed mental health professional practicing within their scope of practice; and
- (b) Whether the participant reveals any of the following:
  - (i) Indicators associated with post-traumatic stress disorder;
  - (ii) Indicators associated with bipolar disorder;
  - (iii) Indicators associated with anxiety and depression;
  - (iv) Indicators associated with personality anomalies;
  - (v) Anti-social traits;
  - (vi) Sociopathic traits;
  - (vii) Psychopathic traits;
  - (viii) Previous or current mental health treatment; and

(ix) Other mental health or emotional indicators the participant or staff consider relevant to planning successful participation in domestic violence intervention treatment, such as psychosis.

(11) **Domain 4:** An assessment of the participant's belief system as it relates to:

- (a) Hierarchical relationships;
- (b) Spiritual, cultural, or religious beliefs about gender and family roles that condone partner violence;
- (c) Readiness to change; and
- (d) Level of accountability.

(12) **Domain 5:** A screening for substance use, making appropriate referrals for further assessment or treatment by a chemical dependency professional when needed. The screening must include:

- (a) Past and current substance use;
- (b) Information about charges, assessments, or treatments related to substance use; and
- (c) Other substance use information the participant or staff consider relevant to successful participation in domestic violence intervention treatment.

(13) **Domain 6:** An assessment of the participant's environmental factors which must include:

- (a) Criminal history from the participant's:
  - (i) Self-report;
  - (ii) A background check that covers each state they have lived in over the last (~~ten~~) 10 years; and
  - (iii) Collateral sources;
- (b) Friends and family with criminogenic behaviors;
- (c) The absence or presence of pro-social supports;
- (d) A brief employment history and current status including:
  - (i) Length of employment; and
  - (ii) Level of job satisfaction;
- (e) Highest level of education completed and any barriers to education or learning, including literacy, learning disabilities, or language needs;
- (f) The people who make up the participant's support system and how their beliefs do or do not support the participant's abusive behaviors;
- (g) The participant's motivations for healthy family relationships;
- (h) The participant's strengths, social activities, hobbies, and recreational activities; and
- (i) Whether or not the participant is socially isolated.

(14) **Domain 7:** Documentation of the results from an evidence-based, empirical, and objective standardized test that assesses risk, lethality, or needs for domestic violence perpetrators and documentation of the participant's level of psychopathy when needed.

(a) Examples of acceptable assessments for risk, lethality, or needs for domestic violence perpetrators include, but are not limited to:

- (i) The Domestic Violence Inventory;
- (ii) The Domestic Violence Screening Instrument - Revised;
- (iii) The Ontario Domestic Assault Risk Assessment; and
- (iv) The Spousal Assault Risk Assessment;
- (b) If a program staff or supervisor has reason to believe it is needed or the participant has indicated any combination of three or more anti-social, sociopathic, or psychopathic traits, then the staff

or supervisor must gather information related to the participant's level of psychopathy; and

(c) Examples of acceptable assessments for psychopathy include, but are not limited to:

- (i) Self-Report Psychopathy Scale (SRP4);
- (ii) Hare P-scan; or
- (iii) Psychopathy checklist (PCL-R or PCL-SV);

(A) The administration of the PCL requires appropriate credentials and training; and

(B) The Interpersonal measure of psychopathy (IM-P) may be used with the PCL-R.

(15) **Acute or critical factors:** The following assessment factors are considered critical or acute and indicate the participant is at a higher risk for lethality or recidivism and must be required to attend level three or four treatment unless the program's supervisor documents extraordinary reasons for an exception in the participant's record.

(16) Other assessment factors may indicate a participant is at a high risk even if they do not meet any of these factors. The critical or acute factors include, but are not limited to:

(a) Previous incidents of physical assaults causing injury, sexual assaults, strangulation, or previous reported incidents toward more than one partner;

(b) Previous use or threats with weapons against an intimate partner or family member;

(c) Stalking behaviors;

(d) Physical, sexual, or assaultive violence against children, pets, or an elderly person;

(e) Attempts or threats of homicide or suicide in the last ((twelve)) 12 months;

(f) Repeated violations of probation, no contact orders, protective orders, or similar orders; or

(g) A medium or high level of psychopathy.

(17) If the program cannot obtain one or more of the items required in the assessment, then the program must document within the assessment their reasonable efforts to obtain the information.

(18) During an assessment process, the program staff or supervisor who conducted the interview must document a completed DSHS domestic violence 'risks, needs and responsibility form,' which can be downloaded from (~~(<https://www.dshs.wa.gov/ea/domestic-violence/certification-process>)~~) <https://www.dshs.wa.gov/esa/community-services-offices/domestic-violence-intervention-treatment>.

(19) **Summary:** The assessment must contain a written summary which at a minimum includes findings from the behavioral assessment and interview with the participant, collateral information, and input from third party sources, and includes:

(a) A summary of the participant's social and legal history;

(b) An assessment of the degree of abusive cognitive and behavioral patterns;

(c) An assessment of the behaviors that need to be targeted in domestic violence intervention treatment;

(d) An assessment of the participant's level of accountability and their motivations and readiness to change;

(e) A summary and assessment of the results of all evidence-based, empirical, and objective standardized tests given through the assessment process; and



(f) The program's recommendation and rationale for no domestic violence intervention treatment or a condition for treatment that indicates level one, two, three, or four treatment that corresponds to the participant's risks and needs as determined through the interview and assessment process;

(i) The recommended level of treatment must not be diminished by factors such as the absence of legal charges, the type of legal charge the participant may have received, plea deals, or any other influences from outside entities; and

(ii) The program must recommend a level of domestic violence intervention treatment when intimate partner violence has occurred, unless the program has documented a reasonable and valid rationale for a recommendation of an alternative service or no treatment at all in the assessment; and

(g) All required and recommended referrals to other types of treatment such as substance use, parenting, or mental health treatment in order for the participant to be successful in domestic violence intervention treatment.

AMENDATORY SECTION (Amending WSR 19-15-044, filed 7/11/19, effective 7/28/19)

**WAC 388-60B-0500 On-site reviews and plans of correction—How does the department review certified programs for compliance with the regulations of this chapter?** To obtain and maintain certification to provide domestic violence intervention treatment services, including certification to provide assessments or any level of care, each program is subject to an on-site or remote review to determine if the program is in compliance with the minimum certification standards of this chapter.

(1) The determination of whether the review will be conducted on-site or remotely will be made by the department and is not subject to administrative review under chapter 388-02 WAC.

(2) The determination to conduct an on-site or remote review will take into consideration the program's location, self-reported health conditions or complications of the program's personnel, and any other factors which the department considers valid in its determination process.

(3) For a standard review, a department representative(s) conducts an entrance meeting with the program ((and an on-site review)) that may include a review of:

- (a) Program policies and procedures;
- (b) Direct service staff personnel records;
- (c) Participant and victim records;
- (d) Written documentation of the program's treatment program;
- (e) Attendance sheets and other forms related to the provision of domestic violence intervention treatment services;

(f) The facility where services are delivered and where physical or electronic records are kept;

(g) The program's quality management plan; and

(h) Any other information that the department determines to be necessary to confirm compliance with the minimum standards of this chapter, including, but not limited to interviews with:

(i) Individuals served by the program; and

(ii) The program's direct treatment staff members.

~~((2))~~ (4) The department representative(s) concludes ~~((an on-site))~~ a review ~~((, which may or may not happen in the same visit,))~~ with an exit meeting that includes, if available and applicable:

(a) A discussion of findings;

(b) A statement of deficiencies requiring corrective action; and

(c) A compliance report signed by the program's designated official and the department representative.

~~((3))~~ (5) The department requires the program to correct the deficiencies listed on the plan of correction:

(a) By the negotiated time frame agreed upon by the program and the department representative; or

(b) Immediately if the department determines participant or victim health and safety concerns require immediate corrective action.

~~((4))~~ (6) If the program fails to make satisfactory corrective actions by the negotiated deadline in the compliance report, the department may:

(a) Begin to take progressive action against the program's certification; or

(b) Initiate an investigation of the program.

~~((5))~~ (7) The department may schedule a follow-up review after a standard review or investigation to ensure all corrective actions have been successfully implemented.

AMENDATORY SECTION (Amending WSR 19-15-044, filed 7/11/19, effective 7/28/19)

**WAC 388-60B-0510 Complaint investigations—How must an investigation get initiated and what is the process of the investigation?**

DSHS investigates complaints regarding domestic violence intervention treatment programs that provide assessments or any level of intervention services.

(1) Any person may submit a written complaint to DSHS if the person has the following concerns about a certified program:

(a) The program has acted in a way that places the identified victim, current partner, or children at risk; or

(b) The program has failed to follow standards in this chapter.

(2) Once it receives a complaint about a certified program, the department will:

(a) Determine that the complaint includes sufficient information to be deemed valid;

(b) Notify the program within ~~((fourteen))~~ 14 days of the complaint being determined valid that the department has received a complaint about the program; and

(c) Notify the program by US Mail or electronic mail that an investigation has been initiated.

(3) The department may begin an investigation of a domestic violence intervention treatment program without a written complaint if the department believes that the program:

(a) Has placed the identified victim, current partner, or children at risk; or

(b) Failed to follow the standards of this chapter.

(4) The investigation of a complaint against a domestic violence intervention treatment program may include:

(a) Contact with:

- (i) The person making the complaint;
- (ii) Other persons involved in the complaint; and
- (iii) The treatment program;

(b) A request for written documentation of evidence; and

(c) An on-site or online visit to the program to review files or interview program staff.

(5) The department must complete its investigation within (~~six-~~~~ty~~) 60 days of beginning the investigation, unless circumstances warrant a longer period of time.

(6) The department will prepare written results of the complaint investigation.

(7) If the department decides that the treatment program behaved in a way that placed victims at risk or failed to meet the standards outlined in this chapter, the written results must include a decision regarding the status of the program's certification.

(8) If the department determines that a complaint against a domestic violence intervention treatment program is founded, the department may:

(a) Send a written warning to the treatment program;

(b) Suspend the treatment program's certification;

(c) Revoke the treatment program's certification; or

(d) Temporarily or indefinitely remove a program staff's designation as a trainee, staff, or supervisor.

(9) The department must send the written results of its investigation to the program.

(a) If any allegations were founded, the written results must be sent by certified mail, return receipt requested, or electronic mail, with read receipt, within (~~twenty~~) 20 days after completing the investigation; and

(b) If all allegations were unfounded, the written results may be sent to the program by electronic mail.

(10) The department will send a copy of the written results of the investigation to the person who made the complaint against the domestic violence intervention treatment program either by United States mail or electronic mail when feasible.

WSR 24-19-013  
PROPOSED RULES  
BOARD OF INDUSTRIAL  
INSURANCE APPEALS

[Filed September 5, 2024, 2:53 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: Chapter 263-12 WAC, Practice and procedure (before the board of industrial insurance appeals (board)).

Hearing Location(s): On October 30, 2024, at 10 a.m., virtual or telephonic hearing only. Please use your computer or mobile app to join on Zoom <https://us06web.zoom.us/j/2427334324>; or call in (audio only) at 253-205-0468, Meeting ID 242 733 4324.

Date of Intended Adoption: November 6, 2024.

Submit Written Comments to: Brian Watkins, P.O. Box 42401, Olympia, WA 98501, email [brian.watkins@biia.wa.gov](mailto:brian.watkins@biia.wa.gov), fax 855-586-5611, beginning October 2, 2024, by October 28, 2024.

Assistance for Persons with Disabilities: Contact Tim Blood, phone 360-753-6823, fax 855-586-5611, TTY 800-833-6384, email [timothy.blood@biia.wa.gov](mailto:timothy.blood@biia.wa.gov), website for reasonable accommodation [www.biia.wa.gov/Accommodation.html](http://www.biia.wa.gov/Accommodation.html), by October 23, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: (1) Proposal to amend WAC 263-12-01501 to clarify that court reporters are the persons who must file perpetuation deposition transcripts.

(2) Proposal to amend WAC 263-12-115 to clarify the order of presentation in worker appeals from claim rejection orders where the worker argues that a presumption applies and there is a dispute about whether the presumption applies.

(3) Proposal to amend WAC 263-12-117 to clarify that the court reporter hired by the party taking the deposition is responsible for filing perpetuation deposition transcripts.

(4) Proposal to amend WAC 263-12-11801 to change the chapter reference to reflect the correct RCW.

(5) Proposal to amend WAC 263-12-145 to clarify that to toll the deadline to file a petition for review, a request for translation of a proposed decision and order must be received before the deadline to file a petition for review has expired.

(6) Proposal to amend WAC 263-12-170 to add that documents sealed by the board after *in camera* review are not part of the certified appellate board record and shall not be submitted to the superior court unless ordered by the superior court.

Reasons Supporting Proposal: **(1) Filings with the board:** Amend WAC 263-12-01501(1) to clarify that written communications can only be filed at the board's Olympia office. We no longer accept mail at the board field offices. Also amend WAC 263-12-01501(6) to ensure that written communication filed with the board shall not include personal identifiers as described in GR 31(e) and, if present, shall be redacted. Change would prohibit or discourage parties from filing Social Security numbers, financial account numbers, and driver's license numbers.

**(2) Order of presentation in worker appeals from claim rejection orders where the worker argues that a presumption applies:** Amend WAC 263-12-115 to clarify that if a claimant or beneficiary appeals a termination rejecting an industrial insurance claim and asserts that a

statutory presumption applies, the appealing party will first present evidence in support of that assertion. The employer or department may then present evidence in opposition of the assertion a statutory presumption applies. The judge shall then rule on whether a statutory presumption applies. If a statutory presumption applies, the department or self-insured employer may present evidence to rebut the statutory presumption. The claimant may then present additional evidence. Nothing in this subsection prohibits the industrial appeals judge or board from consolidating or bifurcating trial to decide issues or appeals, consistent with CR 42.

**Explanation:** With the advent of occupational disease presumptions now present in the Industrial Insurance Act, it is time to reexamine the board's strict rule on the order of presentation at trial. Change rule to recognize the difference in the order of presentation when a worker appeals a claim rejection order and claims entitlement to a statutory presumption. The notion is that when a worker appeals a claim rejection order and claims entitlement to a statutory presumption, the worker should first show that the presumption applies, then the defense should go next to have an opportunity to rebut the presumption, then the claimant should be allowed to present evidence in response to the case presented by the defense. Note: A change was made after early comment from stakeholder. The Washington State Association for Justice requested that we clarify that this applies only when there is a claim rejection **and it is disputed** as to whether a presumption applies.

**(3) Perpetuation depositions:** Amend WAC 263-12-117(4) to clarify that the court reporter hired by the party taking a perpetuation deposition is responsible for filing perpetuation deposition transcripts. Why? There have been some instances where there was confusion about whether the court reporter or the attorney should file it. Also amend WAC 263-12-117(4) to ensure that deposition transcripts are Americans with Disabilities Act compliant (readable by reader software for people with vision impairment).

**(4) Affidavits and declarations:** Housekeeping change. WAC 263-12-11801(2) currently refers to affidavits or declarations conforming to the requirements of RCW 9A.72.085. But that RCW has been repealed. Chapter 5.50 RCW is titled Uniform Unsworn Declarations Act. We should change the reference to chapter 5.50 RCW.

**(5) Requests for translation of proposed decisions and orders (PDO) by limited-English-proficient persons:** Amend WAC 263-12-145 to clarify that to toll the deadline to file a petition for review, a request for translation of a PDO must be received before the deadline to file a petition for review has expired.

**(6) Certified appellate board record (CABR):** WAC 263-12-170 (governing the board's final record) should be amended to add that documents sealed by the board (e.g., trade secrets or privileged information) after in camera review are not part of CABR and shall not be furnished to the parties unless ordered by the superior court.

**Background:** When a party files an appeal to the superior court from a board order, the chief legal officer or designee must certify the record made before the board to the court. RCW 51.52.110 and WAC 263-12-170. This is colloquially called the board's CABR.

**Good faith and fair dealing issue:** Under SHB 1521, effective July 1, 2024, all self-insured municipal employers, self-insured private sector firefighter employers, and their third party administrators have a duty of good faith and fair dealing to workers. Penalties can be imposed by the department of labor and industries for the breach of

this duty. Appeals will be heard by the board, resulting in "good faith litigation." With the new good faith litigation, the board will expect motions from workers to pierce attorney-client privilege under *Cedell v. Farmers Ins.*, 176 Wn.2d 686, 295 P.3d 239 (2013), which permits piercing of that privilege in first-party bad faith insurance claims. There will be motions relying upon *Cedell* to the board. *Cedell* requires an *in camera* review in superior court to rule on privilege issues. Obviously, CR 53.3 applies to the board, so the industrial appeal judges (IAJ) can perform *in camera* reviews.

**Trade secrets issue:** Another issue is that the board is beginning to see industrial safety appeals where employers assert that certain exhibits or testimony contain trade secrets and should be placed under seal under GR 15 and chapter 19.18 RCW (Uniform Trade Secrets Act), which apply to board appeals.

It has been proposed that the exhibits/testimony the IAJ excludes on privilege or trade secrets grounds would, presumably, not be initially included in CABR until ordered by the superior court. But that potentially hampers the superior court from conducting its own *de novo* review of those documents/evidence.

The board should develop a system to keep a sealed portion of the CABR file in these limited circumstances that contains the submitted, but ruled privilege or trade secret materials. The board members can of course conduct their own review if/when they review a petition for review of a proposed decision and order from an IAJ.

Question: How, whether, and when should the board transmit this sensitive information to superior court. We need to amend our rule to make it clear that **documents sealed by the board after *in camera* review are not part of the certified appellate board record and shall not be furnished to the parties unless ordered by the superior court. The party who wants the superior court to review this information should file a motion in superior court to order the board to provide the documents so this sensitive information can be handled carefully in the manner directed by the courts.**

Statutory Authority for Adoption: RCW 51.52.020.

Statute Being Implemented: For number 6 above, SHB 1521; and in light of *Cedell v. Farmers Ins. Co. of Washington*, 176 Wn.2d 686 (2013).

Rule is necessary because of state court decision, [no further information supplied by agency].

Name of Proponent: Douglas Palmer, Attorney, Hamrick Palmer Johansen, private.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brian Watkins, Olympia, 360-753-6823.

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 are procedural rules relating to procedures, practices, or requirements relating to agency rules. There are no significant legislative rules proposed.

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 5, 2024  
Brian Watkins  
Chief Legal Officer

**OTS-5832.1**

AMENDATORY SECTION (Amending WSR 23-23-010, filed 11/1/23, effective 12/2/23)

**WAC 263-12-01501 Communications and filing with the board.** (1)  
**Where to file communications with the board.** (~~Except as provided elsewhere in this section~~) All written communications shall be filed with the board at its headquarters in Olympia, Washington. (~~With written permission of the industrial appeals judge assigned to an appeal, depositions, witness confirmations, motions (other than motions for stay filed pursuant to RCW 51.52.050), briefs, stipulations, agreements, and general correspondence may be filed in the appropriate regional board facilities located in Tacoma, Spokane, or Seattle.~~)

(2) **Methods of filing.** Unless otherwise provided by statute or these rules any written communication may be filed with the board by using one of four methods: Personally, by mail, by telephone facsimile, or by electronic filing. Failure of a party to comply with the filing methods selected by the party for use under this section, or as otherwise set forth in these rules or statute for filing written communications may prevent consideration of a document.

(a) **Filing personally.** The filing of a written communication with the board personally is accomplished by delivering the written communication to an employee of the board at the board's headquarters in Olympia during customary office hours.

(b) **Filing by mail.** The filing of a written communication with the board is accomplished by mail when the written communication is deposited in the United States mail, properly addressed to the board's headquarters in Olympia and with postage prepaid. Where a statute or rule imposes a time limitation for filing the written communication, the party filing the same should include a certification demonstrating the date filing was perfected as provided under this subsection. Unless evidence is presented to the contrary, the date of the United States postal service postmark shall be presumed to be the date the written communication was mailed to the board.

(c) **Filing by telephone facsimile.**

(i) The filing of a written communication with the board by telephone facsimile is accomplished when a legible copy of the written communication is reproduced on the board's telephone facsimile equipment during the board's customary office hours. All facsimile communications must be filed with the board via fax numbers listed on the board's website.

(ii) The hours of staffing of the board's telephone facsimile equipment are the board's customary office hours. Documents sent by facsimile communication comments outside of the board's customary office hours will be deemed filed on the board's next business day.

(iii) Any written communication filed with the board by telephone facsimile should be preceded by a cover page identifying the party

making the transmission, listing the address, telephone and telephone facsimile number of such party, referencing the appeal to which the written communication relates, and indicating the date of, and the total number of pages included in, such transmission. A separate transmission must be used for each appeal. Transmissions containing more than one docket number will be rejected and filing will not be accomplished, unless the multiple docket numbers have been previously consolidated by the board.

(iv) The party attempting to file a written communication by telephone facsimile bears the risk that the written communication will not be received or legibly printed on the board's telephone facsimile equipment due to error in the operation or failure of the equipment being utilized by either the party or the board.

(v) The board may require a party to file an original of any document previously filed by telephone facsimile.

(d) **Electronic filing.** Electronic filing is accomplished by using the electronic filing link on the board's website. Communication sent by email will not constitute or accomplish filing. Communication filed using the board's website outside of the board's customary office hours will be deemed filed on the board's next business day. A separate transmission must be used for each appeal. Transmissions containing more than one docket number will be rejected and filing will not be accomplished, unless the multiple docket numbers have been previously consolidated by the board.

(3) **Electronic filing of a notice of appeal.** A notice of appeal may be filed electronically when using the appropriate form for electronic filing of appeals as provided on the board's website. An electronic notice of appeal is filed when it is received by the board's designated computer during the board's customary office hours pursuant to WAC 263-12-015. Appeals received via the board's website outside of the board's customary office hours will be deemed filed on the board's next business day. The board will issue confirmation to the filing party that an electronic notice of appeal has been received. The board may reject a notice of appeal that fails to comply with the board's filing requirements. The board will notify the filing party of the rejection.

(4) **Electronic filing of application for approval of claim resolution settlement agreement.** An application for approval of claim resolution settlement agreement must be filed electronically using the form for electronic filing of applications for approval of claim resolution settlement agreement as provided on the board's website. An electronic application for approval of claim resolution settlement agreement is filed when received by the board's designated computer during the board's customary office hours pursuant to WAC 263-12-015. Applications received by the board via the board's website outside of the board's customary office hours will be deemed filed on the board's next business day. The board will issue confirmation to the filing party that an electronic application for approval of claim resolution settlement agreement has been received. An electronic copy of the signed agreement for claim resolution settlement agreement must be submitted as an attachment to the application for approval. The board will reject an application for approval of claim resolution settlement agreement that fails to comply with the board's filing requirements. The board will notify the filing party of the rejection.

(5) **Sending written communication.** All correspondence or written communication filed with the board pertaining to a particular case, before the entry of a proposed decision and order, should be sent to



the attention of the industrial appeals judge assigned to the case. Interlocutory appeals should be sent to the attention of the chief industrial appeals judge. In all other instances, written communications shall be directed to the chief legal officer of the board.

(6) **Form and service requirements.** Any written communications with the board concerning an appeal should reference the docket number assigned by the board to the appeal, if known. Written communication shall not include personal identifiers including Social Security numbers (last four digits if necessary), financial account numbers (last four digits if necessary), and driver's license numbers, and as described in GR 31. If present, the filing party shall redact such personal identifiers (completely removed, not masked). The responsibility for redacting personal identifiers rests solely with counsel and the parties. Copies of any written communications filed with the board shall be served on all other parties or their representatives of record, and the original shall demonstrate compliance with the requirement to serve all parties. Where service is accomplished electronically (for example, facsimile or email), the proof of service must include language certifying that an electronic agreement exists (for example, "per electronic service agreement"). All written communications with the board shall be on paper 8 1/2" x 11" in size.

AMENDATORY SECTION (Amending WSR 23-23-010, filed 11/1/23, effective 12/2/23)

**WAC 263-12-115 Procedures at hearings.** (1) **Industrial appeals judge.** All hearings shall be conducted by an industrial appeals judge who shall conduct the hearing in an orderly manner and rule on all procedural matters, objections and motions.

(2) **Order of presentation of evidence.**

(a) In any appeal under either the Industrial Insurance Act, the Worker and Community Right to Know Act, or the Crime Victims Compensation Act, the appealing party shall initially introduce all evidence in his or her case-in-chief except that in an appeal from an order of the department that alleges fraud or willful misrepresentation the department or self-insured employer shall initially introduce all evidence in its case-in-chief.

(b) In all appeals subject to the provisions of the Washington Industrial Safety and Health Act, the department shall initially introduce all evidence in its case-in-chief.

(c) After the party with the initial burden has presented his or her case-in-chief, the other parties may then introduce the evidence necessary to their cases-in-chief. In the event there is more than one other party, they may either present their cases-in-chief successively or may join in their presentation. Rebuttal evidence shall be received in the same order. Witnesses may be called out of turn in contravention of this rule only by agreement of all parties.

(d) If a claimant or beneficiary appeals a determination rejecting an industrial insurance claim and asserts that a statutory presumption applies, and the assertion is disputed, the appealing party will first present evidence in support of that assertion. The employer or the department may then present evidence in opposition of the assertion that a presumption applies. The judge shall then rule on whether a presumption applies. If a presumption applies, the department or employer may present evidence to rebut the statutory presump-

tion. The claimant may then present additional evidence. Nothing in this subsection prohibits the industrial appeals judge from consolidating or bifurcating trial to decide issues or appeals, consistent with CR 42.

(3) **Objections and motions to strike.** Objections to the admission or exclusion of evidence shall be in short form, stating the legal grounds of objection relied upon. Extended argument or debate shall not be permitted.

(4) **Rulings.** The industrial appeals judge on objection or on his or her own motion shall exclude all irrelevant or unduly repetitious evidence and statements that are inadmissible pursuant to WAC 263-12-095(5). All rulings upon objections to the admissibility of evidence shall be made in accordance with rules of evidence applicable in the superior courts of this state.

(5) **Interlocutory appeals to the board - Confidentiality of trade secrets.** A direct appeal to the board shall be allowed as a matter of right from any ruling of an industrial appeals judge adverse to the employer concerning the confidentiality of trade secrets in appeals under the Washington Industrial Safety and Health Act.

(6) **Interlocutory review by a chief industrial appeals judge.**

(a) Except as provided in subsection (5) of this section interlocutory rulings of the industrial appeals judge are not subject to direct review by the board. A party to an appeal or a witness who has made a motion to quash a subpoena to appear at board related proceedings, may within five working days of receiving an adverse ruling from an industrial appeals judge request a review by a chief industrial appeals judge or his or her designee. Such request for review shall be in writing and shall be accompanied by an affidavit in support of the request and setting forth the grounds for the request, including the reasons for the necessity of an immediate review during the course of conference or hearing proceedings. Within 10 working days of receipt of the written request, the chief industrial appeals judge, or designee, may decline to review the ruling based upon the written request and supporting affidavit; or, after such review as he or she deems appropriate, may either affirm or reverse the ruling, or refer the matter to the industrial appeals judge for further consideration.

(b) Failure to request review of an interlocutory ruling shall not constitute a waiver of the party's objection, nor shall an unfavorable response to the request preclude a party from subsequently renewing the objection whenever appropriate.

(c) No conference or hearing shall be interrupted for the purpose of filing a request for review of the industrial appeals judge's rulings; nor shall any scheduled proceedings be canceled pending a response to the request.

(7) **Recessed hearings.** Where, for good cause, all parties to an appeal are unable to present all their evidence at the time and place originally set for hearing, the industrial appeals judge may recess the hearing to the same or a different location so as to insure that all parties have reasonable opportunity to present their respective cases. No written "notice of hearing" shall be required as to any recessed hearing.

(8) **Failure to present evidence when due.**

(a) If any party is due to present certain evidence at a hearing or recessed hearing and, for any reason on its part, fails to appear and present such evidence, the industrial appeals judge may conclude the hearing and issue a proposed decision and order on the record, or

recess or set over the proceedings for further hearing for the receipt of such evidence.

(b) In cases concerning Washington Industrial Safety and Health Act citations, a failure to appear by the person and/or party who filed the appeal is deemed to be an admission of the validity of any citation, abatement period, or penalty issued or proposed, and constitutes a waiver of all rights except the right to receive a copy of the decision.

(c) In cases concerning willful misrepresentation, the industrial appeals judge may proceed with the hearing, receive evidence, and issue a proposed decision and order without requirement of further notice to the appealing party who fails to appear.

(9) **Offers of proof in colloquy.** When an objection to a question is sustained an offer of proof in question and answer form shall be permitted unless the question is clearly objectionable on any theory of the case.

(10) **Hearing format.** Hearings generally occur by contemporaneous transmission from different locations (for example, video or telephone). Participants may request to appear in person. If the parties disagree on the format for the hearing, the industrial appeals judge will determine the format for the hearing, and may consider the following nonexclusive factors:

- The need to weigh a witness's demeanor or credibility.
- Difficulty in handling documents and exhibits.
- The number of parties participating in the hearing.
- Whether any of the testimony will need to be interpreted.
- Ability of the witness to travel.
- Feasibility of taking a perpetuation deposition.
- Availability of quality telecommunications equipment and service.

The industrial appeals judge presiding at the hearing will swear in the witness testifying by telephone or video as if the witness appeared in person at the hearing. For rules relating to telephone or video deposition testimony, see WAC 263-12-117.

AMENDATORY SECTION (Amending WSR 23-23-010, filed 11/1/23, effective 12/2/23)

**WAC 263-12-117 Perpetuation depositions.** (1) **Evidence by deposition.** The industrial appeals judge may permit or require the perpetuation of testimony by deposition, subject to the applicable provisions of WAC 263-12-115. Such ruling may only be given after the industrial appeals judge gives due consideration to:

- (a) The complexity of the issues raised by the appeal;
- (b) The desirability of having the witness's testimony presented at a hearing;
- (c) The costs incurred by the parties in complying with the ruling; and
- (d) The fairness to the parties in complying with the ruling.

(2) **Deposition format:** When testimony is taken by perpetuation deposition, a party or witness, representative, or other participant may participate, and testimony may be presented, in person or by contemporaneous transmission from a different location (telephone or video) if all parties agree. If there is no agreement, the industrial ap-

peals judge may consider the following nonexclusive factors when determining the format by which participation occurs:

- The need of a party to observe a witness's demeanor.
- Difficulty in handling documents and exhibits.
- The number of parties participating in the deposition.
- Whether any of the testimony will need to be interpreted.
- Ability of the witness to travel.
- Availability of quality telecommunications equipment and service.

If a perpetuation deposition is taken by telephone or video, the court reporter transcribing the deposition is authorized to swear in the deponent, regardless of the deponent's location within or outside the state of Washington.

(3) The industrial appeals judge may require that depositions be taken and published within prescribed time limits. The time limits may be extended by the industrial appeals judge for good cause. Each party shall bear its own costs except when the industrial appeals judge allocates costs to parties or their representatives. If a party takes a deposition under this section, but elects not to file the deposition as evidence in the appeal, the party shall provide written notice to the assigned industrial appeals judge and all other parties prior to the deposition filing deadline.

(4) The (~~party~~) court reporter filing a deposition must submit the stenographically reported and transcribed deposition, certification, and exhibits in an electronic format in accordance with procedures established by the board. The following requirements apply to the submission of depositions:

(a) Video depositions will not be considered as part of the record on appeal;

(b) The electronic deposition transcript must be submitted in searchable pdf format that is accessible to persons with disabilities (including, but not limited to, being compatible with screen readers such as JAWS, NVDA, Narrator for Windows, VoiceOver for Apple, and TalkBack for Android);

(c) Exhibits to the deposition must be filed electronically as a single attachment separate from the deposition transcript and certification;

(d) Any media exhibit (audio or video) must meet the requirements set forth in WAC 263-12-116; and

(e) If the deposition is not transcribed in a reproducible format that is accessible to persons with disabilities, or not properly submitted, it may be excluded from the record.

(5) **Procedure at deposition.** Unless the parties stipulate or the industrial appeals judge determines otherwise all depositions permitted to be taken for the perpetuation of testimony shall be taken subject to the following conditions:

(a) That all motions and objections, whether to form or otherwise, shall be raised at the time of the deposition and if not raised at such time shall be deemed waived.

(b) That all exhibits shall be marked and identified at the time of the deposition and, if offered into evidence, appended to the deposition.

(c) That the deposition be published without necessity of further conference or hearing at the time it is received by the industrial appeals judge.

(d) That all motions, including offers to admit exhibits and objections raised at the time of the deposition, shall be ruled upon by the industrial appeals judge in the proposed decision and order.

(e) That the deposition may be appended to the record as part of the transcript, and not as an exhibit, without the necessity of being retyped into the record.

AMENDATORY SECTION (Amending WSR 14-24-105, filed 12/2/14, effective 1/2/15)

**WAC 263-12-11801 Motions that are dispositive—Motion to dismiss; motion for summary judgment; voluntary dismissal. (1) Motion to dismiss.**

(a) **General.** A party may move to dismiss another party's appeal on the asserted basis that the notice of appeal fails to state a claim on which the board may grant relief. The board will consider the standards applicable to a motion made under CR 12(b)(6) of the Washington superior court's civil rules. Examples of other grounds for a motion to dismiss include, but are not limited to, a lack of jurisdiction, failure to present evidence when due, and failure to present a prima facie case.

(b) **Time for filing motion to dismiss.** A motion to dismiss for lack of jurisdiction should be filed as early as possible to avoid unnecessary litigation. In all cases other than appeals under the Washington Industrial Safety and Health Act, a motion to dismiss for failure to present evidence when due may be made if the appealing party fails to appear at an evidentiary hearing held pursuant to due and proper notice. A motion to dismiss for failure to present a prima facie case may be made at any time prior to closure of the record.

(c) **Response.** A party who opposes a written motion to dismiss may file a response within (~~ten~~) 10 days after service of the motion, or at such other time as may be set by the industrial appeals judge. The industrial appeals judge may allow oral argument.

**(2) Motion for summary judgment.**

(a) **General.** A party may move for summary judgment of one or more issues in the appeal if the pleadings filed in the proceeding, together with any properly admissible evidentiary support (e.g., affidavits or declarations conforming to the requirements of (~~RCW 9A.72.085~~) chapter 5.50 RCW, fact stipulations, matters of which official notice may be taken), show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In considering a motion made under this subsection, the industrial appeals judge will consider the standards applicable to a motion made under CR 56 of the Washington superior court's civil rules.

(b) **Oral argument.** All summary judgment motions will be decided after oral argument, unless waived by the parties. The assigned industrial appeals judge will determine the length of oral argument allowed. Summary judgment motions must be heard more than (~~fourteen~~) 14 calendar days before the hearing on the merits unless leave is granted by the industrial appeals judge. The time and date for hearing shall be scheduled in advance by contacting the judicial assistant for the assigned industrial appeals judge.

(c) **Dates for filing.** The deadlines to file and serve a motion for summary judgment and opposing and reply documents shall be as set

forth in CR 56 unless the industrial appeals judge establishes different deadlines in the litigation order.

(3) **Motion for voluntary dismissal - General.** The party who filed the appeal may move to have the appeal voluntarily dismissed in accordance with CR 41(a) at any time.

AMENDATORY SECTION (Amending WSR 18-24-123, filed 12/5/18, effective 1/5/19)

**WAC 263-12-145 Petition for review.** (1) **Time for filing.** Within (~~twenty~~) 20 days from the date of communication of the proposed decision and order to the parties or their representatives of record, any aggrieved party may file with the board a written petition for review. When a petition for review is filed, the failure of any party not aggrieved by the proposed decision and order to file a petition for review shall not be deemed a waiver by such party of any objections or irregularities disclosed by the record.

(2) **A petition for review must be filed separately.** A petition for review must be filed separately from any other pleading or communication with the board and must note "PETITION FOR REVIEW" prominently on the first page of the submission.

(3) **Extensions of time.**

(a) The board may extend the time for filing a petition for review upon written request of a party filed within (~~twenty~~) 20 days from the date of communication of the proposed decision and order to the parties or their representatives of record. Such extension of time, if granted, will apply to all parties to the appeal. Further extensions of time beyond any initial extension may be allowed only if an application for further extension is filed within (~~twenty~~) 20 days from the date of communication of the proposed decision and order to the parties or their representatives of record or the board, on its own motion or at the request of a party, acts to further extend the time for filing a petition for review before the prior extended time for filing a petition for review has expired.

(b) An unrepresented limited-English-proficient party may file a request for translation of a proposed decision and order. A request for translation of a proposed decision and order by an unrepresented limited-English-proficient party that the board received within the time frame for a petition for review will also be treated as a request for extension of time. When the board receives and mails the translated proposed decision and order, the board will also extend the time for filing a petition for review for all parties for an additional (~~thirty~~) 30 days.

(4) **Contents.** A petition for review shall set forth in detail the grounds for review. A party filing a petition for review waives all objections or irregularities not specifically set forth therein. A general objection to findings of fact on the ground that the weight of evidence is to the contrary shall not be considered sufficient compliance, unless the objection shall refer to the evidence relied upon in support thereof. A general objection to all evidentiary rulings adverse to the party shall be considered adequate compliance with this rule. If legal issues are involved, the petition for review shall set forth the legal theory relied upon and citation of authority and/or argument in support thereof. The board shall, at the request of any party, provide a copy of the transcript of testimony and other pro-

ceedings at the hearing. The requesting party shall sign an acknowledgment that receipt of the transcript of proceedings shall constitute compliance by the board with any statute requiring service on the party of a certified copy of the testimony.

(5) **Action by board on petition for review.**

(a) After receipt of a petition for review, the board shall enter an order within (~~twenty~~) 20 days either:

(i) Denying the petition for review, in which case the proposed decision and order shall become the final order of the board(~~(7)~~); or

(ii) Granting the petition for review, in which case the board shall within (~~one hundred and eighty~~) 180 days from the date the petition for review was filed issue a final decision and order based upon its review of the record.

(b) After (~~twenty~~) 20 days of receipt. If a petition for review is not acted upon by the board, it shall be deemed to have been granted.

(c) Remands for further hearing.

After review of the record, the board may set aside the proposed decision and order and remand the appeal to the hearing process, with instructions to the industrial appeals judge to whom the appeal is assigned on remand, to dispose of the matter in any manner consistent with chapter 263-12 WAC.

(6) **Reply to petition for review.** Any party may, within (~~ten~~) 10 days of receipt of the board's order granting review, submit a reply to the petition for review, a written brief, or a statement of position regarding the matters to which objections were made, or the board may, on its own motion, require the parties to submit written briefs or statements of position or to appear and present oral argument regarding the matters to which objections were made, within such time and on such terms as may be prescribed.

AMENDATORY SECTION (Amending WSR 21-15-042, filed 7/14/21, effective 8/14/21)

**WAC 263-12-170 Appeals to superior court—Certification of record.** Upon receipt of a copy of notice of appeal to superior court from a board order, served upon the board by the appealing party pursuant to RCW 51.52.110, 7.68.110, 51.48.131, 34.05.542 or 49.17.150, the chief legal officer or his or her designee shall certify the record made before the board to the court pursuant to the provisions of RCW 51.52.110, 7.68.110, 51.48.131, 34.05.566 or 49.17.150. Copies of such record (except nonreproducible exhibits) shall be furnished to all parties to the proceedings before the board. Documents sealed by the board after in camera review are not part of the certified appellate board record and shall not be furnished to the parties unless ordered by the superior court.

## WSR 24-19-016

## PROPOSED RULES

## COUNTY ROAD

## ADMINISTRATION BOARD

[Filed September 6, 2024, 8:54 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: Amending WAC 136-60-040, 136-60-050, and 136-60-060 to make changes to the standard of good practice for maintenance of county road logs. Amending WAC 136-161-040 to make changes to the rural arterial program.

Hearing Location(s): On October 24, 2024, at 9:15 a.m., at 6 West Rose Street, Walla Walla, WA 99362. The county road administration board (CRAB) meeting will be held in the Marcus Whitman Hotel. Virtual attendance is available.

Date of Intended Adoption: October 24, 2024.

Submit Written Comments to: Drew Woods, 2404 Chandler Court S.W., Suite 240, Olympia, WA 98504, email Drew.Woods@CRAB.Wa.Gov, by October 18, 2024.

Assistance for Persons with Disabilities: Contact Drew Woods, phone 360-753-5989, TTY 800-883-6384, email Drew.Woods@CRAB.Wa.Gov, by October 18, 2024.

Reasons Supporting Proposal: WAC 136-60-040, 136-60-050, and 136-60-060 are being updated to require a specific frequency of traffic counts on roads carrying over 4,000,000 tons of freight and/or have an average daily traffic over 5,000. Chapter 136-161 WAC is being amended to remove the requirement that CRAB staff who perform preliminary project reviews must be a licensed professional civil engineer.

Statutory Authority for Adoption: RCW 36.78.070.

Statute Being Implemented: RCW 36.78.070 (1) and (6) and 36.79.060(1).

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

Name of Proponent: CRAB, governmental.

Name of Agency Personnel Responsible for Drafting and Enforcement: Drew Woods, 2402 Chandler Court S.W., Suite 240, Olympia, WA 98504, 360-753-5989; Implementation: Mike Clark or Steve Johnson, 2402 Chandler Court S.W., Suite 240, Olympia, WA 98504, 360-753-5989.

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 relates only to internal governmental operations that are not subject to violation by a nongovernment party.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Is exempt under chapter 36.78 RCW.

Scope of exemption for rule proposal:

Is fully exempt.

September 6, 2024  
Jane Wall  
Executive Director



OTS-5848.1

AMENDATORY SECTION (Amending WSR 03-05-009, filed 2/7/03, effective 3/10/03)

**WAC 136-60-040 Validation of annual updates.** All control field updates will be subject to review, approval and acceptance (i.e., "validation") by the county road administration board. This process will involve reviewing the submitted documentation and conducting spot-checks as may be necessary. All such updates which are reviewed, approved and accepted by July 1st of each year will be entered into the master county road log. Noncontrol field updates will be entered into the master county road log file without review. The master county road log as of July 1st of each year will be utilized by the county road administration board for general informational purposes and:

- (1) On each odd-numbered year, for computation of motor vehicle fuel tax allocations to the counties;
- (2) Annually, for the computation of county arterial preservation program allocations to the counties; (~~and~~)
- (3) On each odd-numbered year, for computation of rural arterial program allocations to the rural arterial program regions; and
- (4) For submittal of freight and goods route information to be included in required federal and state freight planning reports and studies.

AMENDATORY SECTION (Amending WSR 22-05-015, filed 2/4/22, effective 3/7/22)

**WAC 136-60-050 Validation requirements for control fields.** Each update of a road log segment that involves a change in a control field (including additions or deletions of road segments) will be validated by the county road administration board. Documentation necessary to support control field changes is as follows:

**Function class** - Notice of FHWA approval from WSDOT.

**Pavement type** - Statement signed by county engineer with list of pavement type changes.

**Responsible agency** - The responsible agency is the legislative authority of the appropriate governmental agency with the authority to make the decision required for the action, or the state or federal government person authorized to approve changes.

**Addition of mileage** - Official document signed by responsible agency authorizing and describing the circumstances of the addition. For example, additions can occur through county legislative approval of new plat, construction/reconstruction on new alignment, or a change in jurisdiction.

**Deletion of mileage** - Official document signed by responsible agency authorizing and describing the circumstances of the deletion. For example, deletions can occur through legislative approval of vacations or a change in jurisdiction.

**Traffic volume** - Statement signed by county engineer with list of segments affected by change in traffic volume above or below 5,000 average daily traffic (ADT). If the ADT is over 5,000, the county shall also submit the traffic counts used to determine the ADT.

**Freight and goods** - Statement signed by county engineer with list of segments above 4,000,000 tons of freight annually and the traffic counts used to determine the annual tons of freight exceed 4,000,000 tons.

All changes to a control field will be (~~located on appropriate map(s)~~) updated in the approved GIS data set layer with sufficient detail to identify the location of each change. ((All map(s) furnished in support of control field changes will be forwarded by the county road administration board to WSDOT for future reference and use.)) This GIS layer will then be forwarded annually to WSDOT for the new federal requirements for Highway Performance Monitoring System (HPMS) and Model Inventory Roadway Elements: Fundamental data elements (MIRE FDE).

#### NEW SECTION

**WAC 136-60-070 Traffic study update frequency.** Any traffic counts used to validate that a segment has an ADT over 5,000 or has more than 4,000,000 tons of freight annually shall be updated by December 31, 2025. After December 31, 2025, traffic counts for ADT over 5,000 validation shall be updated a minimum of every two years and a minimum of every four years for annual freight tonnage more than 4,000,000 tons.

#### **OTS-5849.1**

AMENDATORY SECTION (Amending WSR 21-22-083, filed 11/1/21, effective 12/2/21)

**WAC 136-161-040 RAP program cycle—Field review by county road administration board.** After all preliminary prospectuses are received, the county road administration board will schedule and conduct an on-site field review of each project. During the field review, conducted jointly with the county engineer or his/her designee (unless waived by the county engineer), the assigned county road administration board staff person will review the overall project scope with the county representative and, using that region's priority rating process, determine the rating score of all priority elements which are based on a visual examination. To ensure both uniformity and professional judgment in the visual ratings, the assigned county road administration board staff person shall be assigned by the deputy director, and be a licensed professional civil engineer in the state of Washington or have significant experience in the design of road and bridge projects, and the same person shall review and rate all projects within a region. All field reviews will be completed, each project's type will be set, and the visual rating scores returned to each submitting county, by July 1st of each even-numbered year prior to a funding period.

## WSR 24-19-025

## PROPOSED RULES

## TACOMA COMMUNITY COLLEGE

[Filed September 9, 2024, 11:42 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-16-068 and 24-15-105.

Title of Rule and Other Identifying Information: Chapter 132V-130 WAC, Hazing policy; and chapter 132V-121 WAC, Code of student conduct.

Hearing Location(s): On October 22, 2024, at 2:00 p.m., at 6501 South 19th Street, Tacoma, WA 98466, Building 12, Board Room (Room # 120); and Zoom <https://tacomacc-edu.zoom.us/j/87227127064?pwd=RPHXYZuubhaif2LXvWCpwDWT8IKAC9.1>.

Date of Intended Adoption: November 6, 2024, regular board meeting.

Submit Written Comments to: Natalie Boes, 6501 South 19th Street, Tacoma, WA 98466, email [nboes@tacomacc.edu](mailto:nboes@tacomacc.edu), beginning September 18, 2024, at 9:00 a.m., by Monday, October 14, 2024, at 9:00 a.m.

Assistance for Persons with Disabilities: Contact Natalie Boes, phone 253-566-5169, email [nboes@tacomacc.edu](mailto:nboes@tacomacc.edu), 253-341-2107, by Wednesday, October 16, 2024, at 9:00 a.m.

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, Tacoma Community College is updating its student conduct code to bring it into compliance with the antihazing provision of SBH [2SHB] 1751 and RCW 28B.10.900 - 28B.10.902 and to align procedures with the Administrative Procedure Act under chapter 34.05 RCW.

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: Natalie Boas, public.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jason Parker, 6501 South 19th Street, Tacoma, WA 98466, Building 7, Counseling and Advising Office, 253-566-5159.

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 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: [No further information supplied by agency].

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).

Scope of exemption for rule proposal:

Is fully exempt.

September 9, 2024

Natalie Boes

Rules Coordinator

## OTS-5638.1

AMENDATORY SECTION (Amending WSR 11-24-031, filed 12/1/11, effective 1/1/12)

**WAC 132V-121-020 ((Title-)) Authority.** ((This chapter will be known as the code of student conduct of Tacoma Community College.)) The Tacoma Community 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 affairs 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 11-24-031, filed 12/1/11, effective 1/1/12)

**WAC 132V-121-030 ((Definitions-)) Statement of jurisdiction.** ((The definitions and phrases in this section apply throughout this chapter.

**Academic misconduct** is the violation of college policies (e.g., tampering with grades, taking part in obtaining or distributing any part of an exam prior to the scheduled testing time).

**Calendar day** means all days of the month, not just instructional days. In cases where a specified due date falls on a weekend or holiday, the working day closest to the date due will be used (i.e., if the seventh day deadline falls on Saturday the document will be due on Friday).

**Cheating** includes, but is not limited to, when a student misrepresents that he or she mastered information on an academic exercise.

**College** means Tacoma Community College main campus and any other campus or college facility which may be created by the board of trustees.

**College employee** includes any person employed by the college performing assigned administrative or professional responsibilities.

**College premises** includes all land, buildings, facilities and other property in the possession of or owned, used, controlled, or leased/rented by the college, and agencies or institutions that have educational agreements with the college, extending to associated electronic communication including websites and distance learning classroom environments.

**Complainant** means any person who alleges that a student violated the code of student conduct.

**Conduct hold** means a block prohibiting the student from registering for classes until he or she receives clearance from the student conduct administrator.

**Fabrication** is the use of invented information or the falsification of research or other findings with the intent to deceive or mislead.

**Faculty** means any person hired by the college to conduct classroom or teaching activities or who is otherwise considered by the college to be a member of its faculty.

**Instructional day** means any regularly scheduled instructional day designated in the instructional calendar, including summer quarter, as a day when classes are held or during final examination week. Saturdays and Sundays are not regularly scheduled instructional days.

**May** is used in the permissive sense.

**Member of the college community** includes any person who is a student, faculty member, college employee, or volunteer. A person's status in a particular situation will be determined by the student conduct administrator.

**Plagiarism** includes, but is not limited to, the inclusion of someone else's words, ideas or data as one's own work.

**Policy** means the written regulations of the college as found in, but not limited to, the code of student conduct, college website, college catalog, and college administrative manual.

**Respondent** means any student accused of violating the code of student conduct.

**Student conduct administrator** means a college employee authorized by the vice president for student services to impose consequences upon any student(s) found to have violated the code of student conduct.

**Student conduct appeal board** means members of the college community authorized by the vice president for student services to hear an appeal by a student of a student conduct administrator's determination and imposed consequences for an alleged violation of the code of student conduct.

**Student** means any person who is admitted to or enrolled for classes through the college, including any person in affiliated distance learning courses. Admitted or enrolled students who withdraw after allegedly violating the code are considered students.

**Will** is used in the imperative sense.)) (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 organiza-

tions, 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.

AMENDATORY SECTION (Amending WSR 11-24-031, filed 12/1/11, effective 1/1/12)

**WAC 132V-121-040** ~~((Code of student conduct authority.))~~ **State-ment of student rights.** ~~((1) The vice president for student services will develop policies for the administration of the student conduct system and procedural rules for the conduct of student conduct appeal board hearings that are consistent with provisions of the code of student conduct.~~

~~(2) Decisions made by the student conduct appeal board and/or student conduct administrator will be final.)~~ 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.

AMENDATORY SECTION (Amending WSR 11-24-031, filed 12/1/11, effective 1/1/12)

**WAC 132V-121-050 ((Jurisdiction of the college code of student conduct.)) Definitions.** ((~~(1) The college code of student conduct will apply to conduct that occurs on college premises, at college sponsored activities, and to off-campus conduct that adversely affects the college community and/or the pursuit of its objectives.~~

~~(2) Each student will be responsible for his/her conduct beginning at the time of application for admission and for the duration of their enrollment through the college, even though conduct may occur before classes begin or after classes end. The code of student conduct will apply to a student's conduct even if the student withdraws from school after the alleged misconduct has occurred.~~

~~(3) The vice president for student services will decide whether the code of student conduct will be applied to conduct occurring off-campus, on a case-by-case basis.~~

~~(4) Violation of law and college discipline.~~

~~(a) College disciplinary proceedings are separate and independent of any civil or criminal proceedings.~~

~~(b) The college will cooperate with law enforcement and other agencies in the enforcement of criminal law on campus. Members of the college community, acting in their personal capacities, are free to interact with governmental representatives as they deem appropriate.))~~  
The following definitions shall apply for the purposes 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 the 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 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.

(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, 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.

(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.

AMENDATORY SECTION (Amending WSR 11-24-031, filed 12/1/11, effective 1/1/12)

**WAC 132V-121-060 ((Standards for)) Prohibited student conduct.**

~~((Any student found to have committed or to have attempted to commit the following misconduct is subject to the disciplinary consequences outlined in WAC 132V-121-070, Code of student conduct procedures.~~

~~(1) Acts of dishonesty including, but not limited to, the following (see Tacoma Community College Administrative Procedure for Academic Dishonesty):~~

~~(a) Cheating, plagiarism, fabrication, academic misconduct or other forms of academic dishonesty.~~

~~(b) Withholding information or furnishing false information to any college official, faculty member or office.~~

~~(c) Forgery, alteration or misuse of any college document, record, or instrument of identification.~~

~~(2) Disruption or obstruction of teaching, research, administration, disciplinary proceedings, other college activities, including its public service functions on or off campus, or of other authorized noncollege activities when the conduct occurs on college premises.~~

~~(3) Physical abuse, verbal abuse, threats, intimidation, harassment, coercion, or other conduct which threatens or endangers the health or safety of any person, including reckless driving.~~

~~(4) Stalking which is a pattern of unwanted behavior that is directed at a specific person that would cause a reasonable person alarm and/or fear.~~

~~(5) Sexual harassment which is defined as engaging in unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when such behavior offends the recipient, causes discomfort or humiliation, or interferes with school-related performance (as stated in chapter 132V-300 WAC, Grievance Procedure Sexual Harassment, Sex Discrimination and Disability Discrimination).~~

~~(6) Attempted or actual theft of and/or damage to property of the college or property of a member of the college community on campus.~~

~~(7) Hazing which means any method of initiation into a student group or any pastime or amusement engaged in with respect to such a group that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student or other person attending any institution of higher education (as stated in chapter 132V-130 WAC, Hazing policy).~~

~~(8) Failure to comply with directions of college employees acting in performance of their duties and/or failure to identify oneself to these persons when requested to do so.~~

~~(9) Unauthorized possession, duplication or use of keys to any college premises or unauthorized entry to or use of college premises.~~

~~(10) Violation of any college policy.~~

~~(11) Violation of any federal, state or local law.~~

~~(12) Being under the influence, use, possession, manufacturing or distribution of marijuana (including medical marijuana), heroin, narcotics or other controlled substances, or associated paraphernalia (pursuant to RCW 69.50.102).~~

~~(13) Being under the influence, use, possession, manufacturing or distribution of alcoholic beverages (except as expressly permitted by college regulations) at college-sponsored events. Alcoholic beverages may not, in any circumstances, be used by, possessed by or distributed to any person under twenty-one years of age.~~

~~(14) Possession of firearms, explosives, other weapons, or dangerous chemicals on college premises or use of any such item in a manner that harms, threatens or causes fear to others.~~

~~(15) Leading or inciting others to disrupt scheduled and/or normal activities on any college premises.~~

~~(16) Obstruction of the free flow of pedestrian or vehicular traffic on college premises or at college sponsored or supervised functions.~~

~~(17) 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.~~

~~(18) Conduct that is disorderly, breach of peace, or aiding, abetting or procuring another person to breach the peace on college premises or at functions sponsored by the college or members of the academic community. Disorderly conduct includes, but is not limited to, any unauthorized use of electronic or other devices to make an audio or video record of any person while on college premises without his/her prior knowledge, or with his/her effective consent when such a recording is likely to cause injury or distress. This includes, but is not limited to, taking pictures of another person in a locker room or restroom without their permission.~~

~~(19) Theft or other abuse of computer facilities and resources including, but not limited to:~~

~~(a) Unauthorized entry into a file for any purpose;~~

~~(b) Use of another individual's identification and/or password without his or her permission;~~

~~(c) Use of computing facilities and resources to interfere with the work of another student, faculty member or college official;~~

~~(d) Interfering with normal operation of the college computing system;~~

~~(e) Violation of copyright laws;~~

~~(f) Any violation of the college's acceptable use of information systems and services policy.~~

~~(20) Abuse of the student conduct system including, but not limited to:~~

~~(a) Failure to obey the notice from a student conduct appeal board or college employee to appear for a meeting or hearing as part of the student conduct system;~~

~~(b) Falsification, distortion or misrepresentation of information before a student conduct appeal board;~~

~~(c) Disruption or interference with the orderly conduct of a student conduct appeal board hearing;~~

~~(d) Institution of a code of student conduct proceeding in bad faith;~~

~~(e) Attempting to discourage an individual's participation in, or use of, the student conduct system;~~

~~(f) Attempting to influence the impartiality of a member of a student conduct appeal board prior to and/or during the course of the student conduct appeal board proceeding;~~

~~(g) Harassment (verbal or physical) and/or intimidation of a member of a student conduct appeal board prior to, during and/or after a code of student conduct proceeding;~~

~~(h) Failure to comply with the consequence(s) imposed under the code of student conduct;~~

~~(i) Influencing or attempting to influence another person to violate the code of student conduct system.)) 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 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 account 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, domestic violence, 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.

AMENDATORY SECTION (Amending WSR 11-24-031, filed 12/1/11, effective 1/1/12)

**WAC 132V-121-070 ((Code of student conduct procedures-)) Corrective action, disciplinary sanctions, terms and conditions.** ((1) Purpose. The code of student conduct procedures are designed to afford complainants and respondents a fair and accessible process that educates students about their rights and responsibilities, holds students accountable for their actions, and provides due process.

(2) Complaints and student conduct appeal board hearings.

(a) Any member of the college community may submit a complaint against a student for violation of the code of student conduct. Any complaint must be submitted in writing to the student conduct administrator within ten instructional days of the date the person became aware or reasonably can be expected to have become aware of the alleged violation of the code of student conduct.

(b) All complaints will be presented to the respondent by the college in written form (i.e., by U.S. mail to the student's address of record, to the student's TCC email address, or delivered in person).

(c) The student conduct administrator will schedule an initial meeting with the respondent to discuss the complaint.

(i) During the initial meeting, the student conduct administrator will explain the process, the respondent's rights and responsibilities, and review the complaint and alleged violation(s) of the code of student conduct. The student conduct administrator will seek information from the respondent regarding the allegations and may seek additional information from other involved parties or observers.

(ii) If there is more than one respondent involved in the complaint, the student conduct administrator at sole discretion may permit the conferences concerning each respondent to be conducted either separately or jointly.

(3) The student conduct administrator will investigate to determine if the complaint has merit and will take one of the following actions:

(a) If the student conduct administrator determines that the case has no merit, the case will be dismissed;

(b) If the respondent and the student conduct administrator mutually agree to the resolution of the complaint, it will be put in writing and there will be no subsequent proceedings;

(c) If the respondent disagrees with the student conduct administrator's resolution of the complaint, the respondent may appeal the decision of the student conduct administrator to the student conduct appeal board, provided:

(i) The respondent must submit his or her appeal in writing to the student conduct administrator within seven calendar days of the date the decision is communicated to the student, either verbally or in writing, by the student conduct administrator;

(ii) A time will be set for a student conduct board appeal board hearing no later than the fifteenth instructional day after the respondent's written appeal has been received by the student conduct administrator;

(d) Such other action as the student conduct administrator deems appropriate.

(4) At any time during this process, failure to meet with the student conduct administrator at the appointed time may subject the respondent to a conduct hold. If the respondent fails to meet with the

~~student conduct administrator in a timely fashion the complaint will be determined in the respondent's absence.~~

~~(5) Student conduct appeal board hearings will be conducted according to the following guidelines:~~

~~(a) Formal rules of process, procedure, and/or rules of evidence, such as are applied in criminal or civil court, are not used in student conduct proceedings;~~

~~(b) The respondent will be notified in written form (i.e., by U.S. mail to the student's address of record, to the student's TCC email address, or delivered in person) at least seven calendar days in advance of the hearing. Such notification will include the time, date and location of the hearing; and the specific complaints against the respondent. Upon request, any documents or other physical evidence that will be presented by any party at the hearing will be provided no less than three instructional days before the hearing to all other parties. Upon request, a list of persons who may appear at the hearing or provide written testimony for any party will be provided no less than three instructional days before the hearing to all other parties;~~

~~(c) Student conduct appeal board hearings normally will be conducted in private;~~

~~(d) The student conduct appeal board will be composed of five members. The membership will consist of one member of the exempt staff, chosen by the vice president for student services; two faculty members chosen by the faculty union president; and two students chosen by the president of the associated student body;~~

~~(i) Chairperson. The student conduct appeal board will elect its own chairperson for each complaint brought before it.~~

~~(ii) Quorum. A quorum will consist of no less than three members, provided, that one exempt staff, one faculty and one student are present.~~

~~(iii) Substitutes:~~

~~(A) Any member of the student conduct appeal board who has direct knowledge or involvement in a complaint under consideration may be excused from participation in the hearing or appeal.~~

~~(B) Substitutes may be appointed to form a quorum.~~

~~(c) The complainant and respondent and their advisors, if any, will be allowed to attend the entire portion of the student conduct appeal board hearing at which information is received (excluding deliberations). Admission of any other person to the student conduct appeal board hearing and level of involvement will be at the sole discretion of the student conduct appeal board and/or the student conduct administrator;~~

~~(f) In student conduct appeal board hearings involving more than one respondent, the student conduct administrator, in his or her sole discretion, may permit the student conduct appeal board hearings concerning each student to be conducted either separately or jointly;~~

~~(g) The complainant and the respondent may be assisted by an advisor of their choice. The advisor must be a member of the college community and may not be an attorney. The complainant and/or the respondent is responsible for presenting his or her own information. Therefore, advisors are not permitted to speak or to participate directly in any hearing before a student conduct appeal board. A student should select as an advisor a person whose schedule allows attendance at the scheduled date and time for the student conduct appeal board hearing because delays will not normally be allowed due to the scheduling conflicts of an advisor;~~

~~(h) The complainant, the respondent and the student conduct appeal board may arrange for witnesses to present pertinent information to the student conduct appeal board. The college will try to arrange the attendance of possible witnesses who are members of the college community, if reasonably possible, and who are identified by the complainant and/or respondent at least two weekdays prior to the student conduct appeal board hearing. Witnesses will provide information to and answer questions from the student conduct appeal board. Questions may be suggested by the respondent and/or complainant to be answered by each other or by other witnesses. This will be conducted by the student conduct appeal board with such questions directed to the chairperson, rather than to the witness directly. This method is used to preserve the educational tone of the hearing and to avoid creation of an adversarial environment. The chairperson of the student conduct appeal board will determine relevancy of the questions;~~

~~(i) Pertinent records, exhibits and written statements may be accepted as information for consideration by the student conduct appeal board at the sole discretion of the chairperson;~~

~~(j) All procedural questions are subject to the final decision of the chairperson of the student conduct appeal board;~~

~~(k) After the portion of the student conduct appeal board hearing concludes in which all pertinent information has been received, the student conduct appeal board will determine which section(s) of the code of student conduct, if any, that the respondent has violated.~~

~~(6) The student conduct appeal board's determination will be made on the basis of whether it is more likely than not that the respondent violated the code. Formal rules of process, procedure, and/or rules of evidence, such as are applied in criminal or civil court, are not used in student conduct proceedings. There will be a single verbatim record, such as a tape recording, of all student conduct appeal board hearings before a student conduct appeal board (not including deliberations). Deliberations will not be recorded. The record will be the property of the college.~~

~~(7) If a respondent does not appear before a student conduct appeal board hearing, the information in support of the charges will be presented and considered even if the respondent is not present.~~

~~(8) The student conduct appeal board may accommodate concerns for the personal safety, well-being, and/or fears of confrontation of the complainant, respondent, or other witness during the hearing by providing separate facilities, by using a visual screen, or by permitting participation by telephone, videophone, closed circuit television, video conferencing, videotape, audio tape, written statement, or other means, where and as determined by the vice president for student services to be appropriate.~~

~~(9) In consultation and agreement with the vice president for student services, the student conduct appeal board will issue a final determination as follows:~~

~~(a) The board determines that the case has no merit, and the case is dismissed;~~

~~(b) The board upholds the determination of responsibility and consequences imposed by the student conduct administrator;~~

~~(c) The board upholds part or all of the determination of responsibility and modifies the consequences.~~

~~(10) Consequences.~~

~~(a) Any student found to have violated the code of student conduct will be subject to one or more of the following consequences:~~

~~(i) Warning. Written notice to a student that the student has been in violation of college policy or has otherwise failed to meet the college's standards of conduct. Such warnings will include the statement that continuation or repetition of the specific conduct involved or other misconduct may result in one of the more serious consequences;~~

~~(ii) Reprimand. Written action censuring a student for violation of college policy or otherwise failing to meet the college's standards of conduct. The written reprimand will be filed in the office of the vice president for student services for the duration of the student's attendance at the college. A reprimand will include the statement that continuation or repetition of the specific conduct involved or other misconduct may result in one of the more serious consequences;~~

~~(iii) Probation. Conditions placed upon the student's continued attendance for violation of this chapter. Notice will be made in writing and specify the period of probation and the conditions to be met by the student. Disciplinary probation may be for a specific term or for an indefinite period which may extend to graduation. Violation of the terms of the probation or violation of any college policy during the probation period may be grounds for additional consequences;~~

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

~~(v) Restitution. Compensation for loss, damage, or injury. This may take the form of appropriate service and/or monetary or material replacement;~~

~~(vi) Withholding admission or degree. Admission to or a degree awarded from the college may be withheld for a specified amount of time;~~

~~(vii) Revocation of admission or degree. Admission to or a degree awarded from the college is revoked and noted on the transcript. In general this action is reserved for conduct that includes, but is not limited to, acts of dishonesty;~~

~~(viii) Discretionary consequences. Work assignments, essays, service to the college, or other related discretionary assignments;~~

~~(ix) No contact. The student may have no contact with other student members of the college community;~~

~~(x) Suspension. Temporary dismissal from the college and termination of the person's student status;~~

~~(xi) Expulsion. Permanent dismissal from the college and termination of the person's student status.~~

~~(b) More than one of the consequences listed in (a) (i) through (xi) of this subsection may be imposed for any single violation.~~

~~(c) Consequences for conduct in class.~~

~~(i) Each faculty member is responsible for conduct in class and is authorized to take such steps as are necessary when behavior of a student interrupts the normal class procedure. When behavior is disruptive, the faculty member may dismiss the student from class for that one class period and make reasonable effort to resolve the situation. This includes electronically removing a disruptive student from online class situations. However, if the matter becomes so serious as to result in removing the student from the class for two consecutive class periods or when a pattern of periodic misconduct occurs, the faculty member will report the incident to the student conduct administrator in order to seek resolution to the situation and allow for due process.~~

~~(ii) Consequences for academic dishonesty or abetting in academic dishonesty may be imposed at the discretion of a faculty member up to~~

and including a failing grade for the course. Students should refer to each of their faculty's course syllabus.

~~(d) Disciplinary consequences will be made part of both the complainant's and the respondent's education record. The records may be expunged of disciplinary consequences, other than expulsion, seven years after the quarter in which the incident occurred.~~

~~(11) Emergency suspension.~~

~~(a) In certain circumstances, the vice president for student services, or designee, may impose an emergency suspension. Emergency suspension may be imposed only:~~

~~(i) To ensure the student's own physical or emotional safety and well-being; or~~

~~(ii) To ensure the safety and well-being of members of the college community or preservation of college property; or~~

~~(iii) If the student poses an ongoing threat of disruption or interference with the normal operations of the college.~~

~~(b) During the emergency suspension, a student will be denied access to the campus (including classes) and/or all other college activities or privileges for which the student might otherwise be eligible, as the vice president for student services or the student conduct administrator may determine to be appropriate.~~

~~(c) The student will be notified in writing of this action and the reasons for the emergency suspension. The student will also be informed in writing of the time, date and place of an initial meeting.~~

~~(d) An initial meeting will take place within five instructional days of the emergency suspension. At the initial meeting the student may show cause why his or her continued presence on the campus does not constitute a threat and may contest whether a campus policy was violated.~~

~~(e) At the initial meeting the student conduct administrator, in consultation and agreement with the vice president for student services, will decide to uphold the emergency suspension, dismiss it, or impose other consequences. The student will be informed in writing of this decision.~~

~~(f) The emergency suspension does not replace the code of student conduct procedures, which will proceed on the normal schedule, up to and through a student conduct appeal board hearing, if required.~~

~~(g) Appeals.~~

~~(i) A decision reached or a consequence imposed by the student conduct administrator may be appealed by the respondent within five instructional days of the decision. Such appeals must be in writing and delivered to the student conduct administrator who will convene a student conduct appeal board hearing as outlined in subsection (5) of this section.~~

~~(ii) The decision of the student conduct appeal board will be final.) (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 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 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 disciplinary sanction or condition must be completed either prior to or upon the student's reenrollment, depending on the nature of the sanction, condition, and/or the underlying violation. Completion of disciplinary sanctions and conditions may be considered in petitions for readmission to the college.

AMENDATORY SECTION (Amending WSR 11-24-031, filed 12/1/11, effective 1/1/12)

**WAC 132V-121-080 ((Interpretation and revision.)) Hazing sanctions.** ~~((1) Any question of interpretation or application of the code of student conduct will be referred to the vice president for student services or his or her designee for final determination.~~

~~(2) The code of student conduct will be reviewed every five years under the direction of the student conduct administrator.))~~ (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 nonprofit, 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 132V-121-090 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 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.

(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 132V-121-070; 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 132V-121-100 Appeal from disciplinary action.** (1) Except as specified for cases involving allegations of sex discrimination, as set forth in WAC 132V-121-090(12) (Initiation of disciplinary action), 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 132V-121-110 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 132V-121-120 Brief adjudicative proceedings—Review of an initial decision.** (1) 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.

(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 132V-121-130 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 relations to questions and evidence, and the types of evidence that are impermissible, regardless of relevance in accordance with 34 C.F.R. §§ 106.45 and 106.46.

(6) The college may, in its sole discretion, contract with an administrative law judge or other qualified person to act as the presiding officer, authorized to exercise any or all duties of the student conduct committee and/or committee chair.

(7) 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 132V-121-140 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:

- (a) The student conduct officer's notification of imposition of discipline (or referral to the committee); and
- (b) The notice of appeal (or any response to referral) by the respondent. If doing so, 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) For any matters involving a disciplinary sanction of suspension of more than one quarter, dismissal, or sex-based harassment, the college shall provide an advisor to the respondent and any complainant, if they have not otherwise identified an advisor to assist them during the hearing. 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, 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 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 132V-121-150 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 determination, 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 132V-121-160 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 20 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 132V-121-170 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 president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the appeal.

(5) The president shall serve a written decision on all parties and their attorneys, if any, within 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 132V-121-180 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.

**OTS-5286.1**

AMENDATORY SECTION (Amending WSR 96-16-036, filed 8/1/96, effective 9/1/96)

**WAC 132V-130-010 Hazing prohibited—Sanctions.** (1) Hazing (~~is prohibited at Tacoma Community College.~~

~~(2) Hazing means any method of initiation into a student group or any pastime or amusement engaged in with respect to such a group that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student or other person attending any institution of higher education or postsecondary education. Excluded from this definition are "customary athletic events or other similar contests or competitions.") by a student or a student group is prohibited pursuant to WAC 132V-121-060.~~

~~(2) No student may conspire to engage in hazing or participate in hazing of another. State law provides that hazing is a criminal offense, punishable as a misdemeanor.~~

~~(3) Washington state law provides that:~~

~~(a) 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 nonprofit, the individual directors of the corporation may be held individually liable for damages.~~

~~(b) 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.~~

~~(c) Student groups that knowingly permit 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.~~

~~(d) Student groups 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.~~

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 132V-130-020 Penalties.

## WSR 24-19-032

## PROPOSED RULES

## HEALTH CARE AUTHORITY

[Filed September 10, 2024, 10:26 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-11-004.

Title of Rule and Other Identifying Information: WAC 182-530-7150 Reimbursement—Compounded prescriptions, and 182-530-8150 Reimbursement—Automated maximum allowable cost (AMAC).

Hearing Location(s): On October 22, 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\\_icWpKqAQTxyCXgTcltuVgA](https://us02web.zoom.us/webinar/register/WN_icWpKqAQTxyCXgTcltuVgA). If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than October 23, 2024.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, beginning September 11, 2024, 8:00 a.m., by October 22, 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](mailto:Johanna.Larson@hca.wa.gov), by October 11, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is removing all instances of "automated maximum allowable cost" and "AMAC" from WAC 182-530-7150 and repealing WAC 182-530-8150. HCA no longer uses AMAC as a reimbursement method.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Jensen, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0815; Implementation and Enforcement: Wendy Steffens, P.O. Box 45500, Olympia, WA 98504-5500, 360-725-5145.

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).

Explanation of exemptions: The proposed rule removes references to an obsolete reimbursement method and does not impose any costs on businesses.

Scope of exemption for rule proposal:

Is fully exempt.

September 10, 2024  
Wendy Barcus

**OTS-5726.1**

AMENDATORY SECTION (Amending WSR 17-07-001, filed 3/1/17, effective 4/1/17)

**WAC 182-530-7150 Reimbursement—Compounded prescriptions.** (1)

The medicaid agency does not consider reconstitution to be compounding.

(2) The agency covers a drug ingredient used for a compounded prescription only when the manufacturer has a signed rebate agreement with the federal Department of Health and Human Services (DHHS).

(3) The agency considers bulk chemical supplies used in compounded prescriptions as nondrug items, which do not require a drug rebate agreement. The agency covers such bulk chemical supplies only as specifically approved by the agency.

(4) The agency reimburses pharmacists for compounding drugs only if the client's drug therapy needs are unable to be met by commercially available dosage strengths or forms of the medically necessary drug.

(a) The pharmacist must ensure the need for the adjustment of the drug's therapeutic strength or form is well-documented in the client's file.

(b) The pharmacist must ensure that the ingredients used in a compounded prescription are for an approved use as defined in "medically accepted indication" in WAC 182-530-1050.

(5) The agency requires that each drug ingredient used for a compounded prescription be billed to the agency using its eleven-digit national drug code (NDC) number.

(6) Compounded prescriptions are reimbursed as follows:

(a) The agency allows only the lowest cost for each covered ingredient, whether that cost is determined by actual acquisition cost (AAC), federal upper limit (FUL), maximum allowable cost (MAC), (~~automated maximum allowable cost (AMAC),~~) or amount billed.

(b) The agency applies current prior authorization requirements to drugs used as ingredients in compounded prescriptions, except as provided under (c) of this subsection. The agency denies payment for a drug requiring authorization when authorization is not obtained.

(c) The agency may designate selected drugs as not requiring authorization when used for compounded prescriptions. For the list of selected drugs, refer to the agency's prescription drug program billing instructions.

(d) The agency pays a professional dispensing fee as described under WAC 182-530-7050 for each drug ingredient used in compounding when the conditions of this section are met and each ingredient is billed separately by the eleven-digit NDC.

(e) The agency does not pay a separate fee for compounding time.

(7) The agency requires pharmacists to document the need for each inactive ingredient added to the compounded prescription. The agency limits reimbursement to the inactive ingredients that meet the follow-

ing criteria. To be reimbursed by the agency, each inactive ingredient must be:

- (a) A necessary component of a compounded drug; and
- (b) Billed by an eleven-digit national drug code (NDC).

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 182-530-8150      Reimbursement—Automated maximum allowable cost (AMAC).



## 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](mailto: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](mailto: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

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the [24-20](#) issue of the Register.

## WSR 24-19-061

## PROPOSED RULES

## HEALTH CARE AUTHORITY

[Filed September 16, 2024, 8:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-14-064.

Title of Rule and Other Identifying Information: WAC 182-538-110  
The grievance and appeal system and agency administrative hearing for managed care organization (MCO) enrollees.

Hearing Location(s): On October 22, 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\\_icWpKqAQTxycXgTcltuVgA](https://us02web.zoom.us/webinar/register/WN_icWpKqAQTxycXgTcltuVgA). If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than October 23, 2024.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, beginning September 17, 8:00 a.m., by October 22, 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](mailto:Johanna.Larson@hca.wa.gov), by October 11, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending WAC 182-538-110 to align it with applicable federal government regulations and simplify the MCO appeal process.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Jensen, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0815; Implementation and Enforcement: Jodie Arneson, P.O. Box 45506, Olympia, WA 98504-5506, 360-725-1410.

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).

Explanation of exemptions: The proposed rule applies to medicaid MCOs, which are not small businesses.

Scope of exemption for rule proposal:

Is fully exempt.

September 16, 2024

Wendy Barcus

Rules Coordinator

## OTS-5710.1

AMENDATORY SECTION (Amending WSR 19-24-063, filed 11/27/19, effective 1/1/20)

**WAC 182-538-110 The grievance and appeal system and agency administrative hearing for managed care organization (MCO) enrollees.**

(1) **Introduction.** This section contains information about the grievance and appeal system and the right to an agency administrative hearing for MCO enrollees. See WAC 182-538-111 for information about PCCM enrollees.

(2) **Statutory basis and framework.**

(a) Each MCO must have a grievance and appeal system in place for enrollees.

(b) Once an MCO enrollee has completed the MCO appeals process, the MCO enrollee has the option of requesting an agency administrative hearing regarding any adverse benefit determination upheld by the MCO. See chapter 182-526 WAC.

(3) **MCO grievance and appeal system - General requirements.**

(a) The MCO grievance and appeal system must include:

(i) A process for addressing complaints about any matter that is not an adverse benefit determination, which is a grievance;

(ii) An appeal process to address enrollee requests for review of an MCO adverse benefit determination; and

(iii) Access to the agency's administrative hearing process for review of an MCO's resolution of an appeal.

(b) MCOs must provide information describing the MCO's grievance and appeal system to all providers and subcontractors.

(c) An MCO must have agency approval for written materials sent to enrollees regarding the grievance and appeal system and the agency's administrative hearing process under chapter 182-526 WAC.

(d) MCOs must inform enrollees in writing within (~~fifteen~~) 15 calendar days of enrollment about enrollees' rights with instructions on how to use the MCO's grievance and appeal system and the agency's administrative hearing process.

(e) An MCO must give enrollees any reasonable assistance in completing forms and other procedural steps for grievances and appeals (e.g., interpreter services and toll-free numbers).

(f) An MCO must allow enrollees and their authorized representatives to file grievances and appeals orally as well as in writing.

(g) Methods to file either a grievance or appeal include, but are not limited to, U.S. mail, commercial delivery services, hand delivery, fax, telephone, and email.

(h) MCOs may not require enrollees to provide written follow-up for a grievance the MCO received orally.

(i) The MCO must resolve each grievance and appeal and provide notice of the resolution as expeditiously as the enrollee's health condition requires, and within the time frames identified in this section.

(j) The MCO must ensure that the people who make decisions on grievances and appeals:

(i) Neither were involved in any previous level of review or decision making, nor a subordinate of any person who was so involved; and

(ii) Are health care professionals with appropriate clinical expertise in treating the enrollee's condition or disease if deciding any of the following:

(A) An appeal of an adverse benefit determination concerning medical necessity;

(B) A grievance concerning denial of an expedited resolution of an appeal; or

(C) A grievance or appeal that involves any clinical issues.

(iii) Take into account all comments, documents, records, and other information submitted by the enrollee or the enrollee's representative without regard to whether the information was submitted or considered in the initial adverse benefit determination.

**(4) The MCO grievance process.**

(a) Only an enrollee or enrollee's authorized representative may file a grievance with the MCO. A provider may not file a grievance on behalf of an enrollee without the enrollee's written consent.

(b) The MCO must acknowledge receipt of each grievance within two business days. Acknowledgment may be orally or in writing.

(c) The MCO must complete the resolution of a grievance and provide notice to the affected parties as expeditiously as the enrollee's health condition requires, but no later than (~~forty-five~~) 45 days after receiving the grievance.

(d) The MCO must notify enrollees of the resolution of grievances within five business days of determination.

(i) Notices of resolution of grievances not involving clinical issues can be oral or in writing.

(ii) Notices of resolution of grievances for clinical issues must be in writing.

(e) Enrollees do not have a right to an agency administrative hearing to dispute the resolution of a grievance unless the MCO fails to adhere to the notice and timing requirements for grievances.

(f) If the MCO fails to adhere to the notice and timing requirements for grievances, the enrollee is deemed to have completed the MCO's appeals process and may initiate an agency administrative hearing.

**(5) MCO's notice of adverse benefit determination.**

(a) **Language and format requirements.** The notice of adverse benefit determination must be in writing in the enrollee's primary language, and in an easily understood format, in accordance with 42 C.F.R. Sec. 438.404.

(b) **Content of notice.** The notice of MCO adverse benefit determination must explain:

(i) The adverse benefit determination the MCO has made or intends to make, and any pertinent effective date;

(ii) The reasons for the adverse benefit determination, including citation to rules or regulations and the MCO criteria that were the basis of the decision;

(iii) The enrollee's right to receive upon request, free of charge, reasonable access to and copies of all documents, records, and other information relevant to the enrollee's adverse benefit determination, including medical necessity criteria and any processes, strategies, or evidentiary standards used in setting coverage limits;

(iv) The enrollee's right to file an appeal of the MCO adverse benefit determination, including information on the MCO appeal process and the right to request an agency administrative hearing;

(v) The procedures for exercising the enrollee's rights;

(vi) The circumstances under which an appeal can be expedited and how to request it;

(vii) The enrollee's right to have benefits continued pending resolution of an appeal, how to request that benefits be continued, and the circumstances under which the enrollee may be required to pay the costs of these services.

(c) **Timing of notice.** The MCO must mail the notice of adverse benefit determination within the following time frames:

(i) For termination, suspension, or reduction of previously authorized services, at least (~~ten~~) 10 calendar days prior to the effective date of the adverse benefit determination in accordance with 42 C.F.R. Sec. 438.404 and 431.211. This time period does not apply if the criteria in 42 C.F.R. Sec. 431.213 or 431.214 are met. This notice must be mailed by a method that certifies receipt and assures delivery within three calendar days.

(ii) For denial of payment, at the time of any adverse benefit determination affecting the claim. This applies only when the enrollee can be held liable for the costs associated with the adverse benefit determination.

(iii) For standard service authorization decisions that deny or limit services, as expeditiously as the enrollee's health condition requires not to exceed (~~fourteen~~) 14 calendar days following receipt of the request for service. An extension of up to (~~fourteen~~) 14 additional days may be allowed if:

(A) The enrollee or enrollee's provider requests the extension.

(B) The MCO determines and justifies to the agency upon request, a need for additional information and that the extension is in the enrollee's interest.

(iv) If the MCO extends the time frame for standard service authorization decisions, the MCO must:

(A) Give the enrollee written notice of the reason for the decision to extend and inform the enrollee of the right to file a grievance if the enrollee disagrees with that decision; and

(B) Issue and carry out its determination as expeditiously as the enrollee's health condition requires and no later than the date the extension expires.

(v) For expedited authorization decisions:

(A) In cases involving mental health drug authorization decisions, or where the provider indicates or the MCO determines that following the standard time frame could seriously jeopardize the enrollee's life or health or ability to attain, maintain, or regain maximum function, the MCO must make an expedited authorization decision and provide notice no later than (~~seventy-two~~) 72 hours after receipt of the request for service.

(B) The MCO may extend the (~~seventy-two~~) 72-hour time frame up to (~~fourteen~~) 14 calendar days if:

(I) The enrollee requests the extension; or

(II) The MCO determines and justifies to the agency, upon request, there is a need for additional information and it is in the enrollee's interest.

(6) **The MCO appeal process.**

(a) **Authority to appeal.** An enrollee, the enrollee's authorized representative, or the provider acting with the enrollee's written consent may appeal an adverse benefit determination from the MCO.

(b) **Oral appeals.** An MCO must treat oral inquiries about appealing an adverse benefit determination as an appeal to establish the earliest possible filing date for the appeal. (~~The oral appeal must~~

be confirmed in writing by the MCO, unless the enrollee or provider requests an expedited resolution.)

(c) **Acknowledgment letter.** The MCO must acknowledge in writing receipt of each standard appeal to both the enrollee and the requesting provider within five calendar days of receiving the appeal request. The appeal acknowledgment letter sent by the MCO serves as written confirmation of ~~((an))~~ a standard appeal filed orally by an enrollee. The MCO must acknowledge receipt of each expedited appeal either orally or in writing within two business days

(d) **Standard service authorization - ~~((Sixty))~~ 60-day deadline.** For appeals involving standard service authorization decisions, an enrollee must file an appeal within ~~((sixty))~~ 60 calendar days of the date on the MCO's notice of adverse benefit determination. This time frame also applies to a request for an expedited appeal.

(e) **Previously authorized service - ~~((Ten))~~ 10-day deadline.** For appeals of adverse benefit determinations involving termination, suspension, or reduction of a previously authorized service, and the enrollee is requesting continuation of the service, the enrollee must file an appeal within ~~((ten))~~ 10 calendar days of the MCO mailing notice of the adverse benefit determination.

(f) **Untimely service authorization decisions.** When the MCO does not make a **service authorization decision** within required time frames, it is considered a denial. In this case, the MCO sends a formal notice of adverse benefit determination, including the enrollee's right to an appeal.

(g) **Appeal process requirements.** The MCO appeal process must:

(i) Provide the enrollee a reasonable opportunity to present evidence and allegations of fact or law, in person, by telephone, or in writing. The MCO must inform the enrollee of the limited time available for this in the case of expedited resolution;

(ii) Provide the enrollee and the enrollee's representative opportunity before and during the appeal process to examine the enrollee's case file, including medical records, other relevant documents and records, and any new or additional evidence considered, relied upon, or generated by the MCO (or at the direction of the MCO) in connection with the appeal of the adverse benefit determination. This information must be provided free of charge and sufficiently in advance of the resolution time frame for appeals as specified in this section; and

(iii) Include as parties to the appeal:

(A) The enrollee and the enrollee's representative; or

(B) The legal representative of the deceased enrollee's estate.

(h) **Level of appeal.** There will only be one level of review in the MCO appeals process.

(i) Time frames for resolution of appeals and notice to the enrollee. MCOs must resolve each appeal and provide notice as expeditiously as the enrollee's health condition requires, and within the following time frames:

(i) For standard resolution of appeals, including notice to the affected parties, no longer than ~~((thirty))~~ 30 calendar days from the day the MCO receives the appeal. This includes appeals involving termination, suspension, or reduction of previously authorized services.

(ii) For expedited resolution of appeals, including notice to the affected parties, no longer than ~~((seventy-two))~~ 72 hours after the MCO receives the appeal. The MCO may extend the ~~((seventy-two))~~ 72-hour time frame up to ~~((fourteen))~~ 14 calendar days if:

(A) The enrollee requests the extension; or

(B) The MCO determines and shows to the satisfaction of the agency, upon request, there is a need for additional information and it is in the enrollee's interest.

(iii) If the MCO fails to adhere to the notice and timing requirements for appeals, the enrollee is deemed to have completed the MCO's appeals process and may request an agency administrative hearing.

**(j) Language and format requirements - Notice of resolution of appeal.**

(i) The notice of the resolution of the appeal must be in writing in the enrollee's primary language and in an easily understood format, in accordance with 42 C.F.R. Sec. 438.10.

(ii) The notice of the resolution of the appeal must be sent to the enrollee and the requesting provider.

(iii) For notice of an expedited resolution, the MCO must also make reasonable efforts to provide oral notice.

**(k) Content of resolution of appeal.**

(i) The notice of resolution must include the results of the resolution process and the date it was completed;

(ii) For appeals not resolved wholly in favor of the enrollee, the notice of resolution must include:

(A) The right to request an agency administrative hearing under RCW 74.09.741 and chapter 182-526 WAC, and how to request the hearing;

(B) The right to request and receive benefits while an agency administrative hearing is pending, and how to make the request in accordance with subsection (9) of this section and the agency's administrative hearing rules in chapter 182-526 WAC;

(C) That the enrollee may be held liable for the cost of those benefits received for the first (~~sixty~~) 60 days after the agency or the office of administrative hearings (OAH) receives an agency administrative hearing request, if the hearing decision upholds the MCO's adverse benefit determination. See RCW 74.09.741 (5)(g).

**(7) MCO expedited appeal process.**

(a) Each MCO must establish and maintain an expedited appeal process when the MCO determines or the provider indicates that taking the time for a standard resolution of an appeal could seriously jeopardize the enrollee's life, physical or mental health, or ability to attain, maintain, or regain maximum function.

(b) The enrollee may file an expedited appeal either orally, according to WAC 182-526-0095, or in writing. No additional follow-up is required of the enrollee.

(c) The MCO must make a decision on the enrollee's request for expedited appeal and provide written notice as expeditiously as the enrollee's health condition requires and no later than two calendar days after the MCO receives the appeal. The MCO must also make reasonable efforts to orally notify the enrollee of the decision.

(d) The MCO may extend the time frame for decision on the enrollee's request for an expedited appeal up to (~~fourteen~~) 14 calendar days if:

(i) The enrollee requests the extension; or

(ii) The MCO determines and shows to the satisfaction of the agency, upon its request, that there is a need for additional information and the delay is in the enrollee's interest.

(e) The MCO must make reasonable efforts to provide the enrollee prompt verbal notice and provide written notice for any extension not requested by the enrollee with the reason for the delay.



(f) If the MCO grants an expedited appeal, the MCO must issue a decision as expeditiously as the enrollee's physical or mental health condition requires, but not later than (~~seventy-two~~) 72 hours after receiving the appeal. The MCO may extend the time frame for a decision and to provide notice to the enrollee for an expedited appeal, up to (~~fourteen~~) 14 days, if:

(i) The enrollee requests the extension; or

(ii) The MCO determines and shows to the satisfaction of the agency, upon its request, that there is a need for additional information and the delay is in the enrollee's interest.

(g) The MCO must provide written notice for any extension not requested by the enrollee within two calendar days of the decision and inform the enrollee of the reason for the delay and the enrollee's right to file a grievance.

(h) If the MCO denies a request for expedited resolution of an appeal, it must:

(i) Process the appeal based on the time frame for standard resolution;

(ii) Make reasonable efforts to give the enrollee prompt oral notice of the denial; and

(iii) Provide written notice within two calendar days.

(i) The MCO must ensure that punitive action is not taken against a provider who requests an expedited resolution or supports an enrollee's appeal.

**(8) The right to an agency administrative hearing for managed care (MCO) enrollees.**

(a) **Authority to file.** Only an enrollee, the enrollee's authorized representative, or a provider with the enrollee's or authorized representative's written consent may request an administrative hearing. See RCW 74.09.741, WAC 182-526-0090, and 182-526-0155.

(b) **Right to agency administrative hearing.** If an enrollee has completed the MCO appeal process and does not agree with the MCO's resolution of the appeal, the enrollee may file a request for an agency administrative hearing based on the rules in this section and the agency administrative hearing rules in chapter 182-526 WAC.

(c) **Deadline - (~~One hundred twenty~~) 120 days.** An enrollee's request for an agency administrative hearing must be filed no later than (~~one hundred twenty~~) 120 calendar days from the date of the written notice of resolution of appeal from the MCO.

(d) **Independent party.** The MCO is an independent party and responsible for its own representation in any agency administrative hearing, appeal to the board of appeals, and any subsequent judicial proceedings.

(e) **Applicable rules.** The agency's administrative hearing rules in chapter 182-526 WAC apply to agency administrative hearings requested by enrollees to review the resolution of an enrollee appeal of an MCO adverse benefit determination.

**(9) Continuation of previously authorized services.**

(a) The MCO must continue the enrollee's services if all of the following apply:

(i) The enrollee, or enrollee's authorized representative, or provider with written consent files the appeal on or before the later of the following:

(A) Within (~~ten~~) 10 calendar days of the MCO mailing the notice of adverse benefit determination; or

(B) The intended effective date of the MCO's proposed adverse benefit determination.

(ii) The appeal involves the termination, suspension, or reduction of previously authorized services;

(iii) The services were ordered by an authorized provider; and

(iv) The original period covered by the original authorization has not expired.

(b) If the MCO continues or reinstates the enrollee's services while the appeal is pending at the enrollee's request, the services must be continued until one of the following occurs:

(i) The enrollee withdraws the MCO appeal;

(ii) The enrollee fails to request an agency administrative hearing within (~~ten~~) 10 calendar days after the MCO sends the notice of an adverse resolution to the enrollee's appeal;

(iii) The enrollee withdraws the request for an agency administrative hearing; or

(iv) The office of administrative hearings (OAH) issues a hearing decision adverse to the enrollee.

(c) If the final resolution of the appeal upholds the MCO's adverse benefit determination, the MCO may recover from the enrollee the amount paid for the services provided to the enrollee for the first (~~sixty~~) 60 calendar days after the agency or the office of administrative hearings (OAH) received a request for an agency administrative hearing, to the extent that services were provided solely because of the requirement for continuation of services.

**(10) Effect of reversed resolutions of appeals.**

(a) **Services not furnished while an appeal is pending.** If the MCO or a final order entered by the HCA board of appeals, as defined in chapter 182-526 WAC, or an independent review organization (IRO) reverses a decision to deny, limit, or delay services that were not provided while the appeal was pending, the MCO must authorize or provide the disputed services promptly, and as expeditiously as the enrollee's health condition requires, but not later than (~~seventy-two~~) 72 hours from the date it receives notice reversing the determination.

(b) **Services furnished while the appeal is pending.** If the MCO reverses a decision to deny authorization of services or the denial is reversed through an IRO or a final order of OAH or the board of appeals and the enrollee received the disputed services while the appeal was pending, the MCO must pay for those services.

**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](mailto: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](mailto: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

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 24-20 issue of the Register.

## WSR 24-19-064

## PROPOSED RULES

## HEALTH CARE AUTHORITY

[Filed September 16, 2024, 10:54 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-16-087.

Title of Rule and Other Identifying Information: WAC 182-503-0535 Washington apple health—Citizenship and immigration status, and 182-507-0135 Immigration status requirement for refugee medical assistance (RMA).

Hearing Location(s): On October 22, 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\\_icWpKqAQTxyCXgTcltuVgA](https://us02web.zoom.us/webinar/register/WN_icWpKqAQTxyCXgTcltuVgA). If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than October 23, 2024.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, beginning September 17, 2024, 8:00 a.m., by October 22, 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](mailto:Johanna.Larson@hca.wa.gov), by October 11, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending WAC 182-503-0535 and 182-507-0135 to update the parole period for certain persons from Ukraine to qualify for refugee medical assistance. This change is required by federal law. HCA filed an emergency rule under WSR 24-16-047 to give this change immediate effect.

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 necessary because of federal law, P.L. 118-50 (Ukraine Security Supplemental Appropriations Act, 2024 (Division B)).

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Jensen, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0815; Implementation and Enforcement: Giovanni Delgado, P.O. Box 42722, Olympia, WA 98504-2722, 360-725-1919.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: P.L. 118-50 (Ukraine Security Supplemental Appropriations Act, 2024 (Division B)). Failure

to comply with this law could result in the loss of federal funds.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rules pertain to client program eligibility and do not impose costs on businesses.

Scope of exemption for rule proposal:

Is fully exempt.

September 16, 2024

Wendy Barcus

Rules Coordinator

## OTS-5636.1

AMENDATORY SECTION (Amending WSR 23-20-043, filed 9/27/23, effective 10/28/23)

### **WAC 182-503-0535 Washington apple health—Citizenship and immigration status. (1) Definitions.**

(a) **Nonqualified alien** means someone who is lawfully present in the United States (U.S.) but who is not a qualified alien, a U.S. citizen, a U.S. national, or a qualifying American Indian born abroad.

(b) **Qualified alien** means someone who is lawfully present in the United States and who is one or more of the following:

(i) A person lawfully admitted for permanent residence (LPR).

(ii) An abused spouse or child, a parent of an abused child, or a child of an abused spouse who no longer resides with the person who committed the abuse, and who has one of the following:

(A) A pending or approved I-130 petition or application to immigrate as an immediate relative of a U.S. citizen or as the spouse of an unmarried LPR younger than 21 years of age.

(B) Proof of a pending application for suspension of deportation or cancellation of removal under the Violence Against Women Act (VAWA).

(C) A notice of prima facie approval of a pending self-petition under VAWA. An abused spouse's petition covers his or her child if the child is younger than 21 years of age. In that case, the child retains qualified alien status even after he or she turns 21 years of age.

(iii) A person who has been granted parole into the U.S. for one year or more, under the Immigration and Nationality Act (INA) Section 212 (d) (5), including public interest parolees.

(iv) A member of a Hmong or Highland Laotian tribe that rendered military assistance to the U.S. between August 5, 1964, and May 7, 1975, including the spouse, unremarried widow or widower, and unmarried dependent child of the tribal member.

(v) A person who was admitted into the U.S. as a conditional entrant under INA Section 203 (a) (7) before April 1, 1980.

(vi) A person admitted to the U.S. as a refugee under INA Section 207.

(vii) A person who has been granted asylum under INA Section 208.

(viii) A person granted withholding of deportation or removal under INA Section 243(h) or 241 (b) (3).

(ix) A Cuban or Haitian national who was paroled into the U.S. or given other special status.

(x) An Amerasian child of a U.S. citizen under 8 C.F.R. Section 204.4(a).

(xi) A person from Iraq or Afghanistan who has been granted one of the following:

(A) Special immigrant status under INA Section 101 (a)(27);

(B) Special immigrant conditional permanent resident; or

(C) Parole under Section 602 (b)(1) of the Afghan Allies Protection Act of 2009 or Section 1059(a) of the National Defense Authorization Act of 2006.

(xii) An Afghan who, under Section 2502 of the Extending Government Funding and Delivering Emergency Assistance Act of 2021, is evaluated as a qualified alien until March 31, 2023, or the end of their parole term, whichever is later, when granted parole:

(A) Between July 31, 2021, and September 30, 2023; or

(B) After September 30, 2022, and is:

(I) Their spouse or child; or

(II) The parent or guardian of an unaccompanied minor described under this subsection.

(xiii) A citizen or national of Ukraine (or a person who last habitually resided in Ukraine) who, under section 401 of the Additional Ukraine Supplemental Appropriations Act, 2022 (AUSAA) and the Ukraine Security Supplemental Appropriations Act, 2024 (USSAA), is evaluated as a qualified alien until the end of their parole term when:

(A) Granted parole into the United States between February 24, 2022, and September 30, ((2023)) 2024; or

(B) Granted parole into the United States after September 30, ((2023)) 2024, and is:

(I) The spouse or child of a person described in (b)(xiii)(A) of this subsection; or

(II) The parent, legal guardian, or primary caregiver of a person described in (b)(xiii)(A) of this subsection who is determined to be an unaccompanied child under section 462 (g)(2) of the Homeland Security Act of 2002 or section 412 (d)(2)(B) of the Immigration and Nationality Act.

(xiv) A person who has been certified or approved as a victim of trafficking by the federal office of refugee resettlement, or who is:

(A) The spouse or child of a trafficking victim of any age; or

(B) The parent or minor sibling of a trafficking victim who is younger than 21 years of age.

(xv) A person from the Federated States of Micronesia, the Republic of Palau, or the Republic of the Marshall Islands living in the United States in accordance with the Compacts of Free Association.

(c) **U.S. citizen** means someone who is a United States citizen under federal law.

(d) **U.S. national** means someone who is a United States national under federal law.

(e) **Undocumented person** means someone who is not lawfully present in the U.S.

(f) **Qualifying American Indian born abroad** means someone who:

(i) Was born in Canada and has at least 50 percent American Indian blood, regardless of tribal membership; or

(ii) Was born outside of the United States and is a member of a federally recognized tribe or an Alaska Native enrolled by the Secretary of the Interior under the Alaska Native Claims Settlement Act.

(2) **Eligibility.**

(a) A U.S. citizen, U.S. national or qualifying American Indian born abroad may be eligible for:

- (i) Apple health for adults;
- (ii) Apple health for kids;
- (iii) Apple health for pregnant women; or
- (iv) Classic medicaid.

(b) A qualified alien who meets or is exempt from the five-year bar may be eligible for:

- (i) Apple health for adults;
- (ii) Apple health for kids;
- (iii) Apple health for pregnant women; or
- (iv) Classic medicaid.

(c) A qualified alien who neither meets nor is exempt from the five-year bar may be eligible for:

- (i) Alien medical programs;
- (ii) Apple health for kids;
- (iii) Apple health for pregnant women; or
- (iv) Medical care services.

(d) A nonqualified alien may be eligible for:

- (i) Alien medical programs;
- (ii) Apple health for kids;
- (iii) Apple health for pregnant women; or
- (iv) Medical care services.

(e) An undocumented person may be eligible for:

- (i) Alien medical programs;
- (ii) State-only funded apple health for kids; or
- (iii) State-only funded apple health for pregnant women.

(3) **The five-year bar.**

(a) A qualified alien meets the five-year bar if he or she:

(i) Continuously resided in the U.S. for five years or more from the date he or she became a qualified alien; or

(ii) Entered the U.S. before August 22, 1996, and:

(A) Became a qualified alien before August 22, 1996; or

(B) Became a qualified alien on or after August 22, 1996, and has continuously resided in the U.S. between the date of entry into the U.S. and the date he or she became a qualified alien.

(b) A qualified alien is exempt from the five-year bar if he or she is:

(i) A qualified alien as defined in subsection (1)(b)(vi) through (xv) of this section;

(ii) An LPR, parolee, or abused person, who is also an armed services member or veteran, or a family member of an armed services member or veteran, as described below:

(A) An active-duty member of the U.S. military, other than active-duty for training;

(B) An honorably discharged U.S. veteran;

(C) A veteran of the military forces of the Philippines who served before July 1, 1946, as described in Title 38 U.S.C. Section 107; or

(D) The spouse, unremarried widow or widower, or unmarried dependent child of an honorably discharged U.S. veteran or active-duty member of the U.S. military.

OTS-5637.1



AMENDATORY SECTION (Amending WSR 23-20-043, filed 9/27/23, effective 10/28/23)

**WAC 182-507-0135 Immigration status requirement for refugee medical assistance (RMA).** (1) An individual is eligible for refugee medical assistance (RMA) if the individual provides documentation issued by the United States Citizenship and Immigration Services (USCIS) to show that the individual is:

(a) Admitted as a refugee under section 207 of the Immigration and Nationalities Act (INA);

(b) Paroled into the United States as a refugee or asylee under section 212 (d) (5) of the INA;

(c) Granted conditional entry under section 203 (a) (7) of the INA;

(d) Granted asylum under section 208 of the INA;

(e) Admitted as an Amerasian immigrant from Vietnam through the orderly departure program, under section 584 of the Foreign Operations Appropriations Act, incorporated in the FY88 continuing resolution P.L. 100-212;

(f) A Cuban-Haitian entrant who was admitted as a public interest parolee under section 212 (d) (5) of the INA;

(g) Certified as a victim of human trafficking by the federal Office of Refugee Resettlement (ORR);

(h) An eligible family member of a victim of human trafficking certified by ORR who has a T-2, T-3, T-4, or T-5 visa;

(i) Admitted as special immigrant from Iraq or Afghanistan under one of the following:

(i) Special immigrant status under section 101 (a) (27) of the INA;

(ii) Special immigrant conditional permanent resident; or

(iii) Parole under section 602 (b) (1) of the Afghan Allies Protection Act of 2009 or section 1059(a) of the National Defense Authorization Act of 2006;

(j) An Afghan granted humanitarian parole between July 31, 2021, and September 30, 2023, their spouse or child, or a parent or guardian of an unaccompanied minor who is granted parole after September 30, 2022, under section 2502 of the Extending Government Funding and Delivering Emergency Assistance Act of 2021; or

(k) A citizen or national of Ukraine (or a person who last habitually resided in Ukraine) who, under section 401 of the Additional Ukraine Supplemental Appropriations Act, 2022 (AUSAA) and the Ukraine Security Supplemental Appropriations Act, 2024 (USSAA), is evaluated as a qualified alien when:

(i) Granted parole into the United States between February 24, 2022, and September 30, ((2023)) 2024; or

(ii) Granted parole into the United States after September 30, ((2023)) 2024, and is:

(A) The spouse or child of a person described in (k) (i) of this subsection; or

(B) The parent, legal guardian, or primary caregiver of a person described in (k) (i) of this subsection who is determined to be an unaccompanied child under section 462 (g) (2) of the Homeland Security Act of 2002 or section 412 (d) (2) (B) of the Immigration and Nationality Act.

(2) A permanent resident alien meets the immigration status requirements for RCA and RMA if the individual was previously in one of the statuses described in subsection (1) of this section.

**WSR 24-19-072**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed September 17, 2024, 8:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-13-090.

Title of Rule and Other Identifying Information: 2025 Industrial Insurance Premium Rates. Chapter 296-17 WAC, General reporting rules, audit and recordkeeping, rates and rating system for Washington workers' compensation insurance; and chapter 296-17B WAC, Retrospective rating for workers' compensation insurance.

Hearing Location(s): On October 28, 2024, at 10 a.m., at the Department of Labor and Industries (L&I) Headquarters, Rooms S117, S118, S119, 7273 Linderson Way S.W., Tumwater, WA 98501; or join electronically <https://lni-wa-gov.zoom.us/j/4283482697?omn=81289237905>, Meeting ID 428 348 2697; or join by phone (audio only) 253-215-8782 US (Tacoma), Meeting ID 428 348 2697. The in-person and virtual/telephonic hearing starts at 10:00 a.m. and will continue until all oral comments are received.

On October 29, 2024, at 10 a.m., at the CenterPlace Event Center, Meeting Room, 2426 Discover Place, Spokane Valley, WA 99216. The in-person hearing starts at 10:00 a.m. and will continue until all oral comments are received.

Date of Intended Adoption: November 26, 2024.

Submit Written Comments to: Jo Anne Attwood, L&I, Insurance Services/Employer Services, P.O. Box 44148, Olympia, WA 98504-4148, email [JoAnne.Attwood@lni.wa.gov](mailto:JoAnne.Attwood@lni.wa.gov), fax 360-902-4988, beginning September 18, 2024, at 8 a.m., by October 30, 2024, at 5 p.m.

Assistance for Persons with Disabilities: Contact Jo Anne Attwood, phone 360-902-4777, fax 360-902-4988, by October 24, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule amends the tables of classification base premium rates, experience rating plan parameters, and experience modification factor calculation limitations for the workers' compensation insurance program for calendar year 2025. Classification base rates were updated to align with expected losses. L&I proposes a 3.8 percent overall average premium rate change.

Amending WAC 296-17-855 Experience modification, 296-17-875 Table I, 296-17-880 Table II, 296-17-885 Table III, 296-17-890 Table IV, 296-17-895 Industrial insurance accident fund base rates, stay at work and medical aid base rates by class of industry, 296-17-89502 Industrial insurance accident fund, stay at work, medical aid and supplemental pension rates by class of industry for nonhourly rated classifications, 296-17-89507 Horse racing rates, 296-17-89508 Farm internship program industrial insurance, accident fund, stay at work fund, medical aid fund, and supplemental pension by class, 296-17-901 Risk classification hazard group table, 296-17-920 Assessment for supplemental pension fund, 296-17B-540 Determining loss incurred for each claim, and 296-17B-900 Retrospective rating plans standard premium size ranges.

Reasons Supporting Proposal: Washington law provides that rates should be adjusted annually to reflect the hazards of each industry and in accordance with recognized workers' compensation insurance principles.

L&I is proposing an overall average rate increase of 3.8 percent to ensure premiums to cover most of the expected costs of 2025 workers' compensation claims. This modest increase is below the indicated break-even rate and consistent with our rate-making principle of keeping rates steady and predictable. This rate increase is required to partially account for four consecutive years of higher-than-normal increases in the state's average wage. In addition, the increase enables us to begin gradually increasing our working capital in the supplemental pension fund, which pays for annual cost of living adjustments (COLAs) for pensions. L&I is able to minimize the increase for this upcoming year thanks to previous investment earnings that benefit the workers' compensation contingency reserve (surplus).

The proposed rule is also notice that the director intends to transfer the amount of the accident and medical-aid funds combined that exceed 10 percent of funded liabilities as required by RCW 51.44.023.

Statutory Authority for Adoption: RCW 51.16.035 (base rates), 51.32.073 (supplemental pension), 51.18.010 (retrospective rating), and 51.04.020(1) (general authority).

Statute Being Implemented: RCW 51.16.035, 51.32.073, and 51.18.010.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Jo Anne Attwood, Tumwater, 360-902-4777; Implementation: Michelle O'Brien, Tumwater, 360-902-4826; and Enforcement: Brenda Heilman, Tumwater, 360-902-6369.

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

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required per RCW 34.05.328 (5)(b)(vi), as the proposed rules are adjusting rates pursuant to legislative standards.

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

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

Scope of exemption for rule proposal:

Is fully exempt.

September 17, 2024  
Joel Sacks  
Director

**OTS-5833.2**

AMENDATORY SECTION (Amending WSR 23-24-039, filed 11/30/23, effective 1/1/24)

**WAC 296-17-855 Experience modification.** The basis of the experience modification shall be a comparison of the actual losses charged to an employer during the experience period with the expected losses for an average employer reporting the same exposures in each classification. The comparison shall contain actuarial refinements designed to weigh the extent to which the actual experience is credible, due consideration being given to the volume of the employer's experience. Except for those employers who qualify for an adjusted experience modification as specified in WAC 296-17-860 or 296-17-865, the experience modification factor shall be calculated from the formula:

$$\begin{aligned} \text{EXPERIENCE MODIFICATION FACTOR} &= \frac{(\text{Credible Actual Primary Loss} + \text{Credible Actual Excess Loss})}{\text{Expected Loss}} \\ \text{Where} & \\ \text{Credible Actual Primary Loss} &= \text{Actual Primary Loss} \times \text{Primary Credibility} \\ &+ \text{Expected Primary Loss} \times (100\% - \text{Primary Credibility}) \\ \text{Credible Actual Excess Loss} &= \text{Actual Excess Loss} \times \text{Excess Credibility} \\ &+ \text{Expected Excess Loss} \times (100\% - \text{Excess Credibility}) \end{aligned}$$

The meaning and function of each term in the formula is specified below.

For each claim, the actual primary loss is the first dollar portion of the claim costs, which has been shown in actuarial studies, to have the greater credibility in predicting future experience. These amounts are summed over all claims. For each claim in excess of (~~(\$25,170)~~) \$25,750 the actual primary loss shall be determined from the formula:

$$\text{Primary Loss} = \frac{((\del{62,920}) \text{ } 64,380)}{(\text{Total Loss} + ((\del{37,750}) \text{ } 38,630))} \times \text{Total Loss}$$

For each claim, less than (~~(\$25,170)~~) \$25,750 the full value of the claim shall be considered a primary loss.

For each claim, the excess actual loss is the remaining portion of the claim costs, which have been shown in actuarial studies to have less credibility in predicting future experience. The excess actual loss for each claim shall be determined by subtracting the primary loss from the total loss. These amounts are summed over all claims.

For any claim without disability benefits (time loss, partial permanent disability, total permanent disability or death) either actually paid or estimated to be paid, the total actual losses for calculating the primary loss and excess loss shall first be reduced by the lesser of (~~(\$3,670)~~) \$3,930 or the total cost of the claim. Here are some examples for these claims:

Total Loss	Type of Claim	Total Loss (after deduction)	Primary Loss	Excess Loss
(2,000	Medical-Only	0	0	0
5,000	Medical-Only	1,330	1,330	0
5,000	Timeless	5,000	5,000	0
30,000	Medical-Only	26,330	25,853	477
30,000	Timeless	30,000	27,861	2,139
90,000	PPD	90,000	44,327	45,673

Total Loss	Type of Claim	Total Loss (after deduction)	Primary Loss	Excess Loss
150,000	PPD	150,000	50,269	99,731
500,000	TPD Pension	405,520	57,562	347,958
2,000,000	TPD Pension	405,520	57,562	347,958))
2,000	Medical Only	0	0	0
5,000	Medical Only	1,070	1,070	0
5,000	Timeloss	5,000	5,000	0
30,000	Medical Only	26,070	25,941	129
30,000	Timeloss	30,000	28,142	1,858
90,000	PPD	90,000	45,045	44,955
150,000	PPD	150,000	51,195	98,805
500,000	TPD Pension	417,090	58,923	358,167
2,000,000	TPD Pension	417,090	58,923	358,167

**Note:** The deduction, ((~~\$3,670~~) \$3,930), is twice the average case incurred cost of these types of claims occurring during the three-year period used for experience rating. On average this results in reducing the average actual loss about 70 percent for these types of claims adjusted. This is done to help make the transition between the two different experience rating methods better by helping make the change in experience factor reasonable for small changes to the actual losses.

For each employer, the primary credibility and the excess credibility determines the percentage weight given to the corresponding actual primary losses and the actual excess losses, included in the calculation of the experience modification, based on the volume of expected losses. Primary credibility and excess credibility values are set forth in Table II.

An employer's expected losses shall be determined by summing the expected loss for each of the three years of the experience period, which are calculated by multiplying the reported exposure in each classification during the year by the corresponding classification expected loss rate and rounding the result to the nearest cent. Classification expected loss rates by year are set forth in Table III.

Expected losses in each classification shall be multiplied by the classification "Primary-Ratio" to obtain "expected primary losses" which shall be rounded to the nearest cent. Expected excess losses shall then be calculated by subtracting expected primary losses from expected total losses rounded to the nearest cent. Primary-Ratios are also set forth in Table III.

AMENDATORY SECTION (Amending WSR 23-24-039, filed 11/30/23, effective 1/1/24)

**WAC 296-17-875 Table I.**

**Primary Losses for Selected Claim Values  
Effective January 1, ((2024)) 2025**

TOTAL LOSS AFTER DEDUCTION	PRIMARY LOSS
5,000	5,000
10,000	10,000
15,000	15,000
((25,170	25,170
34,402	30,000
47,323	35,000

TOTAL LOSS AFTER DEDUCTION	PRIMARY LOSS
65,881	40,000
94,796	45,000
116,286	47,500
405,520 **	57,562))
<u>25,750</u>	<u>25,750</u>
<u>33,709</u>	<u>30,000</u>
<u>46,019</u>	<u>35,000</u>
<u>63,380</u>	<u>40,000</u>
<u>89,698</u>	<u>45,000</u>
<u>108,704</u>	<u>47,500</u>
<u>417,090 **</u>	<u>58,923</u>

\*\* Maximum claim value

AMENDATORY SECTION (Amending WSR 23-24-039, filed 11/30/23, effective 1/1/24)

**WAC 296-17-880 Table II.**

PRIMARY AND EXCESS CREDIBILITY VALUES  
**Effective January 1, ((2024)) 2025**

Maximum Claim Value = ((~~\$405,520~~)) \$417,090  
 Average Death Value = ((~~\$405,520~~)) \$417,090

Expected Losses	Primary Credibility	Excess Credibility
((0 - 6,061	12%	7%
6,062 - 6,471	13%	7%
6,472 - 6,884	14%	7%
6,885 - 7,301	15%	7%
7,302 - 7,726	16%	7%
7,727 - 8,155	17%	7%
8,156 - 8,590	18%	7%
8,591 - 9,029	19%	7%
9,030 - 9,473	20%	7%
9,474 - 9,926	21%	7%
9,927 - 10,383	22%	7%
10,384 - 10,851	23%	7%
10,852 - 11,320	24%	7%
11,321 - 11,800	25%	7%
11,801 - 12,289	26%	7%
12,290 - 12,782	27%	7%
12,783 - 13,286	28%	7%
13,287 - 13,798	29%	7%
13,799 - 14,318	30%	7%
14,319 - 14,851	31%	7%
14,852 - 15,390	32%	7%
15,391 - 15,944	33%	7%
15,945 - 16,510	34%	7%

Expected Losses		Primary Credibility	Excess Credibility
16,511	- 17,087	35%	7%
17,088	- 17,677	36%	7%
17,678	- 18,282	37%	7%
18,283	- 18,907	38%	7%
18,908	- 19,543	39%	7%
19,544	- 20,200	40%	7%
20,201	- 20,875	41%	7%
20,876	- 21,575	42%	7%
21,576	- 22,298	43%	7%
22,299	- 23,047	44%	7%
23,048	- 23,828	45%	7%
23,829	- 24,644	46%	7%
24,645	- 25,497	47%	7%
25,498	- 26,398	48%	7%
26,399	- 27,354	49%	7%
27,355	- 28,371	50%	7%
28,372	- 29,472	51%	7%
29,473	- 30,677	52%	7%
30,678	- 32,019	53%	7%
32,020	- 32,157	54%	7%
32,158	- 33,568	54%	8%
33,569	- 35,458	55%	8%
35,459	- 53,665	56%	8%
53,666	- 59,148	57%	8%
59,149	- 84,486	57%	9%
84,487	- 87,017	57%	10%
87,018	- 109,978	58%	10%
109,979	- 120,370	58%	11%
120,371	- 135,630	59%	11%
135,631	- 153,725	59%	12%
153,726	- 161,437	60%	12%
161,438	- 187,080	60%	13%
187,081	- 187,407	61%	13%
187,408	- 213,537	61%	14%
213,538	- 220,432	61%	15%
220,433	- 239,832	62%	15%
239,833	- 253,786	62%	16%
253,787	- 266,292	63%	16%
266,293	- 287,140	63%	17%
287,141	- 292,919	64%	17%
292,920	- 319,713	64%	18%
319,714	- 320,492	64%	19%
320,493	- 346,681	65%	19%
346,682	- 353,845	65%	20%
353,846	- 373,812	66%	20%
373,813	- 387,201	66%	21%
387,202	- 401,120	67%	21%

Expected Losses		Primary Credibility	Excess Credibility
401,121	- 420,555	67%	22%
420,556	- 428,604	68%	22%
428,605	- 453,905	68%	23%
453,906	- 456,264	69%	23%
456,265	- 484,100	69%	24%
484,101	- 487,259	69%	25%
487,260	- 512,117	70%	25%
512,118	- 520,616	70%	26%
520,617	- 540,315	71%	26%
540,316	- 553,969	71%	27%
553,970	- 568,697	72%	27%
568,698	- 587,323	72%	28%
587,324	- 597,262	73%	28%
597,263	- 620,678	73%	29%
620,679	- 626,016	74%	29%
626,017	- 654,031	74%	30%
654,032	- 654,959	75%	30%
654,960	- 684,090	75%	31%
684,091	- 687,383	75%	32%
687,384	- 713,416	76%	32%
713,417	- 720,738	76%	33%
720,739	- 742,932	77%	33%
742,933	- 754,092	77%	34%
754,093	- 772,650	78%	34%
772,651	- 787,445	78%	35%
787,446	- 802,562	79%	35%
802,563	- 820,800	79%	36%
820,801	- 832,676	80%	36%
832,677	- 854,151	80%	37%
854,152	- 862,994	81%	37%
862,995	- 887,506	81%	38%
887,507	- 893,514	82%	38%
893,515	- 920,861	82%	39%
920,862	- 924,240	83%	39%
924,241	- 954,215	83%	40%
954,216	- 955,174	84%	40%
955,175	- 986,321	84%	41%
986,322	- 987,565	84%	42%
987,566	- 1,017,676	85%	42%
1,017,677	- 1,020,918	85%	43%
1,020,919	- 1,049,252	86%	43%
1,049,253	- 1,054,274	86%	44%
1,054,275	- 1,081,041	87%	44%
1,081,042	- 1,087,629	87%	45%
1,087,630	- 1,113,052	88%	45%
1,113,053	- 1,120,982	88%	46%
1,120,983	- 1,145,283	89%	46%



Expected Losses		Primary Credibility	Excess Credibility
1,145,284	- 1,154,335	89%	47%
1,154,336	- 1,177,739	90%	47%
1,177,740	- 1,187,690	90%	48%
1,187,691	- 1,210,420	91%	48%
1,210,421	- 1,221,042	91%	49%
1,221,043	- 1,243,330	92%	49%
1,243,331	- 1,254,398	92%	50%
1,254,399	- 1,276,471	93%	50%
1,276,472	- 1,287,751	93%	51%
1,287,752	- 1,309,848	94%	51%
1,309,849	- 1,321,103	94%	52%
1,321,104	- 1,343,459	95%	52%
1,343,460	- 1,354,457	95%	53%
1,354,458	- 1,377,308	96%	53%
1,377,309	- 1,387,811	96%	54%
1,387,812	- 1,411,398	97%	54%
1,411,399	- 1,421,165	97%	55%
1,421,166	- 1,445,732	98%	55%
1,445,733	- 1,454,519	98%	56%
1,454,520	- 1,480,312	99%	56%
1,480,313	- 1,487,872	99%	57%
1,487,873	- 1,515,141	100%	57%
1,515,142	- 1,550,222	100%	58%
1,550,223	- 1,585,559	100%	59%
1,585,560	- 1,621,151	100%	60%
1,621,152	- 1,657,004	100%	61%
1,657,005	- 1,693,119	100%	62%
1,693,120	- 1,729,501	100%	63%
1,729,502	- 1,766,150	100%	64%
1,766,151	- 1,803,071	100%	65%
1,803,072	- 1,840,266	100%	66%
1,840,267	- 1,877,742	100%	67%
1,877,743	- 1,915,494	100%	68%
1,915,495	- 1,953,533	100%	69%
1,953,534	- 1,991,860	100%	70%
1,991,861	- 2,030,477	100%	71%
2,030,478	- 2,069,388	100%	72%
2,069,389	- 2,108,596	100%	73%
2,108,597	- 2,148,105	100%	74%
2,148,106	- 2,187,916	100%	75%
2,187,917	- 2,228,036	100%	76%
2,228,037	- 2,268,466	100%	77%
2,268,467	- 2,309,212	100%	78%
2,309,213	- 2,350,277	100%	79%
2,350,278	- 2,391,664	100%	80%
2,391,665	- 2,433,380	100%	81%
2,433,381	- 2,475,420	100%	82%

Expected Losses		Primary Credibility	Excess Credibility
2,475,421	- 2,517,799	100%	83%
2,517,800	- 2,560,511	100%	84%
2,560,512	- 2,603,569	100%	85%
2,603,570	and higher	100%	86%))
0	= 6,000	12%	7%
6,001	= 6,406	13%	7%
6,407	= 6,815	14%	7%
6,816	= 7,228	15%	7%
7,229	= 7,649	16%	7%
7,650	= 8,073	17%	7%
8,074	= 8,504	18%	7%
8,505	= 8,939	19%	7%
8,940	= 9,378	20%	7%
9,379	= 9,827	21%	7%
9,828	= 10,279	22%	7%
10,280	= 10,742	23%	7%
10,743	= 11,207	24%	7%
11,208	= 11,682	25%	7%
11,683	= 12,166	26%	7%
12,167	= 12,654	27%	7%
12,655	= 13,153	28%	7%
13,154	= 13,660	29%	7%
13,661	= 14,175	30%	7%
14,176	= 14,702	31%	7%
14,703	= 15,236	32%	7%
15,237	= 15,785	33%	7%
15,786	= 16,345	34%	7%
16,346	= 16,916	35%	7%
16,917	= 17,500	36%	7%
17,501	= 18,099	37%	7%
18,100	= 18,718	38%	7%
18,719	= 19,348	39%	7%
19,349	= 19,998	40%	7%
19,999	= 20,666	41%	7%
20,667	= 21,359	42%	7%
21,360	= 22,075	43%	7%
22,076	= 22,817	44%	7%
22,818	= 23,590	45%	7%
23,591	= 24,398	46%	7%
24,399	= 25,242	47%	7%
25,243	= 26,134	48%	7%
26,135	= 27,080	49%	7%
27,081	= 28,087	50%	7%
28,088	= 29,177	51%	7%
29,178	= 30,370	52%	7%
30,371	= 31,699	53%	7%
31,700	= 31,835	54%	7%

Expected Losses		Primary Credibility	Excess Credibility	
<u>31,836</u>	=	<u>33,232</u>	<u>54%</u>	<u>8%</u>
<u>33,233</u>	=	<u>35,103</u>	<u>55%</u>	<u>8%</u>
<u>35,104</u>	=	<u>53,128</u>	<u>56%</u>	<u>8%</u>
<u>53,129</u>	=	<u>58,557</u>	<u>57%</u>	<u>8%</u>
<u>58,558</u>	=	<u>83,641</u>	<u>57%</u>	<u>9%</u>
<u>83,642</u>	=	<u>86,147</u>	<u>57%</u>	<u>10%</u>
<u>86,148</u>	=	<u>108,878</u>	<u>58%</u>	<u>10%</u>
<u>108,879</u>	=	<u>119,166</u>	<u>58%</u>	<u>11%</u>
<u>119,167</u>	=	<u>134,274</u>	<u>59%</u>	<u>11%</u>
<u>134,275</u>	=	<u>152,188</u>	<u>59%</u>	<u>12%</u>
<u>152,189</u>	=	<u>159,823</u>	<u>60%</u>	<u>12%</u>
<u>159,824</u>	=	<u>185,209</u>	<u>60%</u>	<u>13%</u>
<u>185,210</u>	=	<u>185,533</u>	<u>61%</u>	<u>13%</u>
<u>185,534</u>	=	<u>211,402</u>	<u>61%</u>	<u>14%</u>
<u>211,403</u>	=	<u>218,228</u>	<u>61%</u>	<u>15%</u>
<u>218,229</u>	=	<u>237,434</u>	<u>62%</u>	<u>15%</u>
<u>237,435</u>	=	<u>251,248</u>	<u>62%</u>	<u>16%</u>
<u>251,249</u>	=	<u>263,629</u>	<u>63%</u>	<u>16%</u>
<u>263,630</u>	=	<u>284,269</u>	<u>63%</u>	<u>17%</u>
<u>284,270</u>	=	<u>289,990</u>	<u>64%</u>	<u>17%</u>
<u>289,991</u>	=	<u>316,516</u>	<u>64%</u>	<u>18%</u>
<u>316,517</u>	=	<u>317,287</u>	<u>64%</u>	<u>19%</u>
<u>317,288</u>	=	<u>343,214</u>	<u>65%</u>	<u>19%</u>
<u>343,215</u>	=	<u>350,307</u>	<u>65%</u>	<u>20%</u>
<u>350,308</u>	=	<u>370,074</u>	<u>66%</u>	<u>20%</u>
<u>370,075</u>	=	<u>383,329</u>	<u>66%</u>	<u>21%</u>
<u>383,330</u>	=	<u>397,109</u>	<u>67%</u>	<u>21%</u>
<u>397,110</u>	=	<u>416,349</u>	<u>67%</u>	<u>22%</u>
<u>416,350</u>	=	<u>424,318</u>	<u>68%</u>	<u>22%</u>
<u>424,319</u>	=	<u>449,366</u>	<u>68%</u>	<u>23%</u>
<u>449,367</u>	=	<u>451,701</u>	<u>69%</u>	<u>23%</u>
<u>451,702</u>	=	<u>479,259</u>	<u>69%</u>	<u>24%</u>
<u>479,260</u>	=	<u>482,386</u>	<u>69%</u>	<u>25%</u>
<u>482,387</u>	=	<u>506,996</u>	<u>70%</u>	<u>25%</u>
<u>506,997</u>	=	<u>515,410</u>	<u>70%</u>	<u>26%</u>
<u>515,411</u>	=	<u>534,912</u>	<u>71%</u>	<u>26%</u>
<u>534,913</u>	=	<u>548,429</u>	<u>71%</u>	<u>27%</u>
<u>548,430</u>	=	<u>563,010</u>	<u>72%</u>	<u>27%</u>
<u>563,011</u>	=	<u>581,450</u>	<u>72%</u>	<u>28%</u>
<u>581,451</u>	=	<u>591,289</u>	<u>73%</u>	<u>28%</u>
<u>591,290</u>	=	<u>614,471</u>	<u>73%</u>	<u>29%</u>
<u>614,472</u>	=	<u>619,756</u>	<u>74%</u>	<u>29%</u>
<u>619,757</u>	=	<u>647,491</u>	<u>74%</u>	<u>30%</u>
<u>647,492</u>	=	<u>648,409</u>	<u>75%</u>	<u>30%</u>
<u>648,410</u>	=	<u>677,249</u>	<u>75%</u>	<u>31%</u>
<u>677,250</u>	=	<u>680,509</u>	<u>75%</u>	<u>32%</u>
<u>680,510</u>	=	<u>706,282</u>	<u>76%</u>	<u>32%</u>

Expected Losses		Primary Credibility	Excess Credibility	
<u>706,283</u>	=	<u>713,531</u>	76%	33%
<u>713,532</u>	=	<u>735,503</u>	77%	33%
<u>735,504</u>	=	<u>746,551</u>	77%	34%
<u>746,552</u>	=	<u>764,923</u>	78%	34%
<u>764,924</u>	=	<u>779,571</u>	78%	35%
<u>779,572</u>	=	<u>794,536</u>	79%	35%
<u>794,537</u>	=	<u>812,592</u>	79%	36%
<u>812,593</u>	=	<u>824,349</u>	80%	36%
<u>824,350</u>	=	<u>845,609</u>	80%	37%
<u>845,610</u>	=	<u>854,364</u>	81%	37%
<u>854,365</u>	=	<u>878,631</u>	81%	38%
<u>878,632</u>	=	<u>884,579</u>	82%	38%
<u>884,580</u>	=	<u>911,652</u>	82%	39%
<u>911,653</u>	=	<u>914,998</u>	83%	39%
<u>914,999</u>	=	<u>944,673</u>	83%	40%
<u>944,674</u>	=	<u>945,622</u>	84%	40%
<u>945,623</u>	=	<u>976,458</u>	84%	41%
<u>976,459</u>	=	<u>977,689</u>	84%	42%
<u>977,690</u>	=	<u>1,007,499</u>	85%	42%
<u>1,007,500</u>	=	<u>1,010,709</u>	85%	43%
<u>1,010,710</u>	=	<u>1,038,759</u>	86%	43%
<u>1,038,760</u>	=	<u>1,043,731</u>	86%	44%
<u>1,043,732</u>	=	<u>1,070,231</u>	87%	44%
<u>1,070,232</u>	=	<u>1,076,753</u>	87%	45%
<u>1,076,754</u>	=	<u>1,101,921</u>	88%	45%
<u>1,101,922</u>	=	<u>1,109,772</u>	88%	46%
<u>1,109,773</u>	=	<u>1,133,830</u>	89%	46%
<u>1,133,831</u>	=	<u>1,142,792</u>	89%	47%
<u>1,142,793</u>	=	<u>1,165,962</u>	90%	47%
<u>1,165,963</u>	=	<u>1,175,813</u>	90%	48%
<u>1,175,814</u>	=	<u>1,198,316</u>	91%	48%
<u>1,198,317</u>	=	<u>1,208,832</u>	91%	49%
<u>1,208,833</u>	=	<u>1,230,897</u>	92%	49%
<u>1,230,898</u>	=	<u>1,241,854</u>	92%	50%
<u>1,241,855</u>	=	<u>1,263,706</u>	93%	50%
<u>1,263,707</u>	=	<u>1,274,873</u>	93%	51%
<u>1,274,874</u>	=	<u>1,296,750</u>	94%	51%
<u>1,296,751</u>	=	<u>1,307,892</u>	94%	52%
<u>1,307,893</u>	=	<u>1,330,024</u>	95%	52%
<u>1,330,025</u>	=	<u>1,340,912</u>	95%	53%
<u>1,340,913</u>	=	<u>1,363,535</u>	96%	53%
<u>1,363,536</u>	=	<u>1,373,933</u>	96%	54%
<u>1,373,934</u>	=	<u>1,397,284</u>	97%	54%
<u>1,397,285</u>	=	<u>1,406,953</u>	97%	55%
<u>1,406,954</u>	=	<u>1,431,275</u>	98%	55%
<u>1,431,276</u>	=	<u>1,439,974</u>	98%	56%
<u>1,439,975</u>	=	<u>1,465,509</u>	99%	56%

Expected Losses		Primary Credibility	Excess Credibility
<u>1,465,510</u>	- <u>1,472,993</u>	99%	57%
<u>1,472,994</u>	- <u>1,499,990</u>	100%	57%
<u>1,499,991</u>	- <u>1,534,720</u>	100%	58%
<u>1,534,721</u>	- <u>1,569,703</u>	100%	59%
<u>1,569,704</u>	- <u>1,604,939</u>	100%	60%
<u>1,604,940</u>	- <u>1,640,434</u>	100%	61%
<u>1,640,435</u>	- <u>1,676,188</u>	100%	62%
<u>1,676,189</u>	- <u>1,712,206</u>	100%	63%
<u>1,712,207</u>	- <u>1,748,488</u>	100%	64%
<u>1,748,489</u>	- <u>1,785,040</u>	100%	65%
<u>1,785,041</u>	- <u>1,821,863</u>	100%	66%
<u>1,821,864</u>	- <u>1,858,965</u>	100%	67%
<u>1,858,966</u>	- <u>1,896,339</u>	100%	68%
<u>1,896,340</u>	- <u>1,933,998</u>	100%	69%
<u>1,933,999</u>	- <u>1,971,941</u>	100%	70%
<u>1,971,942</u>	- <u>2,010,172</u>	100%	71%
<u>2,010,173</u>	- <u>2,048,694</u>	100%	72%
<u>2,048,695</u>	- <u>2,087,510</u>	100%	73%
<u>2,087,511</u>	- <u>2,126,624</u>	100%	74%
<u>2,126,625</u>	- <u>2,166,037</u>	100%	75%
<u>2,166,038</u>	- <u>2,205,756</u>	100%	76%
<u>2,205,757</u>	- <u>2,245,781</u>	100%	77%
<u>2,245,782</u>	- <u>2,286,120</u>	100%	78%
<u>2,286,121</u>	- <u>2,326,774</u>	100%	79%
<u>2,326,775</u>	- <u>2,367,747</u>	100%	80%
<u>2,367,748</u>	- <u>2,409,046</u>	100%	81%
<u>2,409,047</u>	- <u>2,450,666</u>	100%	82%
<u>2,450,667</u>	- <u>2,492,621</u>	100%	83%
<u>2,492,622</u>	- <u>2,534,906</u>	100%	84%
<u>2,534,907</u>	- <u>2,577,533</u>	100%	85%
<u>2,577,534</u>	<u>and higher</u>	100%	86%

AMENDATORY SECTION (Amending WSR 23-24-039, filed 11/30/23, effective 1/1/24)

**WAC 296-17-885 Table III.**

**Expected Loss Rates and Primary Ratios  
by Risk Classification and Fiscal Year  
Expected Loss Rates in Dollars Per Worker Hour  
Effective January 1, ((2024)) 2025**

((Class	2020	2021	2022	Primary Ratio
<b>101</b>	0.7333	0.6414	0.5407	0.401
<b>103</b>	0.9153	0.8163	0.7019	0.415
<b>104</b>	0.6145	0.5355	0.4484	0.420
<b>105</b>	0.7852	0.6928	0.5818	0.481

<b>((Class</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>Primary Ratio</b>
<b>106</b>	2.0555	1.8460	1.5991	0.415
<b>107</b>	0.6483	0.5688	0.4799	0.423
<b>108</b>	0.6145	0.5355	0.4484	0.420
<b>112</b>	0.5619	0.4957	0.4204	0.420
<b>201</b>	1.5387	1.3384	1.1315	0.351
<b>202</b>	1.2789	1.1146	0.9341	0.413
<b>210</b>	0.6925	0.6069	0.5147	0.387
<b>212</b>	0.6877	0.6055	0.5120	0.424
<b>214</b>	1.0860	0.9419	0.7861	0.407
<b>217</b>	0.7191	0.6310	0.5306	0.439
<b>219</b>	0.5315	0.4649	0.3883	0.460
<b>301</b>	0.7365	0.6531	0.5537	0.456
<b>302</b>	1.3453	1.1765	0.9902	0.405
<b>303</b>	1.2698	1.1121	0.9350	0.418
<b>306</b>	0.5597	0.4883	0.4080	0.442
<b>307</b>	0.5886	0.5166	0.4325	0.470
<b>308</b>	0.4717	0.4196	0.3549	0.498
<b>403</b>	1.0815	0.9465	0.7916	0.450
<b>502</b>	0.6106	0.5331	0.4435	0.462
<b>504</b>	1.2805	1.1317	0.9657	0.398
<b>507</b>	2.0453	1.8278	1.5794	0.398
<b>508</b>	1.0918	0.9473	0.7952	0.368
<b>509</b>	0.6212	0.5390	0.4551	0.353
<b>510</b>	1.6222	1.4403	1.2328	0.409
<b>511</b>	1.0116	0.8828	0.7341	0.470
<b>512</b>	0.8457	0.7470	0.6334	0.441
<b>513</b>	0.6717	0.5884	0.4924	0.450
<b>514</b>	0.9857	0.8657	0.7236	0.482
<b>516</b>	1.0326	0.9059	0.7616	0.438
<b>517</b>	1.1617	1.0253	0.8767	0.374
<b>518</b>	0.8724	0.7620	0.6431	0.399
<b>519</b>	1.2490	1.0923	0.9198	0.405
<b>521</b>	0.5227	0.4628	0.3931	0.438
<b>601</b>	0.3764	0.3273	0.2717	0.460
<b>602</b>	0.5093	0.4378	0.3617	0.402
<b>603</b>	0.5910	0.5160	0.4358	0.382
<b>604</b>	0.7968	0.7055	0.5971	0.463
<b>606</b>	0.4629	0.4028	0.3286	0.544
<b>607</b>	0.6142	0.5342	0.4385	0.501
<b>608</b>	0.3036	0.2634	0.2175	0.469
<b>701</b>	0.9427	0.8201	0.6932	0.351
<b>803</b>	0.4940	0.4295	0.3535	0.497
<b>901</b>	0.8724	0.7620	0.6431	0.399
<b>1002</b>	0.6018	0.5267	0.4418	0.437
<b>1003</b>	0.4331	0.3805	0.3191	0.463
<b>1004</b>	0.3464	0.2996	0.2477	0.438
<b>1005</b>	6.6130	5.7458	4.7845	0.410

<b>((Class</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>Primary Ratio</b>
<b>1006</b>	0.1937	0.1684	0.1378	0.526
<b>1007</b>	0.2539	0.2229	0.1861	0.480
<b>1101</b>	0.9133	0.7955	0.6538	0.506
<b>1102</b>	1.1601	1.0102	0.8467	0.400
<b>1103</b>	0.8617	0.7481	0.6131	0.497
<b>1104</b>	0.4912	0.4341	0.3653	0.492
<b>1105</b>	0.5880	0.5129	0.4245	0.486
<b>1106</b>	0.3362	0.2967	0.2463	0.550
<b>1108</b>	0.4261	0.3762	0.3151	0.498
<b>1109</b>	1.5210	1.3325	1.1180	0.428
<b>1301</b>	0.4946	0.4335	0.3634	0.445
<b>1303</b>	0.3336	0.2876	0.2327	0.527
<b>1304</b>	0.0143	0.0125	0.0104	0.478
<b>1305</b>	0.3630	0.3160	0.2618	0.458
<b>1401</b>	0.2842	0.2536	0.2147	0.501
<b>1404</b>	0.6867	0.6063	0.5047	0.522
<b>1405</b>	0.6258	0.5468	0.4506	0.520
<b>1407</b>	0.5391	0.4719	0.3905	0.503
<b>1501</b>	0.6902	0.5981	0.4894	0.497
<b>1507</b>	0.3732	0.3277	0.2715	0.524
<b>1701</b>	0.6082	0.5356	0.4540	0.408
<b>1702</b>	0.8486	0.7362	0.6255	0.309
<b>1703</b>	0.6770	0.5877	0.4909	0.400
<b>1704</b>	0.6082	0.5356	0.4540	0.408
<b>1801</b>	0.4116	0.3587	0.3004	0.413
<b>1802</b>	0.6586	0.5739	0.4807	0.413
<b>2002</b>	0.5909	0.5186	0.4336	0.473
<b>2004</b>	0.5056	0.4452	0.3689	0.557
<b>2007</b>	0.5327	0.4727	0.4032	0.428
<b>2008</b>	0.2106	0.1859	0.1552	0.502
<b>2009</b>	0.3263	0.2900	0.2449	0.511
<b>2101</b>	0.5288	0.4682	0.3946	0.481
<b>2102</b>	0.5797	0.5130	0.4311	0.493
<b>2103</b>	1.3986	1.2100	0.9730	0.567
<b>2104</b>	0.3250	0.2943	0.2520	0.559
<b>2105</b>	0.6154	0.5355	0.4390	0.520
<b>2106</b>	0.4628	0.4095	0.3432	0.513
<b>2201</b>	0.2972	0.2667	0.2278	0.491
<b>2202</b>	0.5796	0.5080	0.4222	0.493
<b>2203</b>	0.4401	0.3897	0.3257	0.541
<b>2204</b>	0.2972	0.2667	0.2278	0.491
<b>2401</b>	0.3494	0.3075	0.2597	0.439
<b>2903</b>	0.5178	0.4605	0.3888	0.506
<b>2904</b>	0.4917	0.4359	0.3747	0.391
<b>2905</b>	0.4611	0.4090	0.3437	0.520
<b>2906</b>	0.4576	0.4086	0.3510	0.443
<b>2907</b>	0.3709	0.3291	0.2755	0.550

<b>((Class</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>Primary Ratio</b>
<b>2908</b>	0.6598	0.5871	0.4969	0.508
<b>2909</b>	0.3617	0.3238	0.2771	0.467
<b>3101</b>	0.5876	0.5169	0.4333	0.481
<b>3102</b>	0.2263	0.1980	0.1650	0.471
<b>3103</b>	0.2738	0.2422	0.2063	0.417
<b>3104</b>	0.6366	0.5639	0.4719	0.531
<b>3105</b>	0.7116	0.6367	0.5460	0.463
<b>3303</b>	0.3278	0.2882	0.2397	0.511
<b>3304</b>	0.6121	0.5448	0.4615	0.489
<b>3309</b>	0.3292	0.2886	0.2398	0.498
<b>3402</b>	0.3633	0.3211	0.2697	0.500
<b>3403</b>	0.1137	0.1000	0.0837	0.493
<b>3404</b>	0.4530	0.3986	0.3333	0.493
<b>3405</b>	0.2181	0.1926	0.1617	0.501
<b>3406</b>	0.2207	0.1947	0.1626	0.516
<b>3407</b>	0.6797	0.5923	0.4931	0.440
<b>3408</b>	0.2299	0.1998	0.1630	0.531
<b>3409</b>	0.1468	0.1298	0.1081	0.538
<b>3410</b>	0.1468	0.1298	0.1081	0.538
<b>3411</b>	0.3961	0.3461	0.2876	0.475
<b>3412</b>	0.5536	0.4824	0.4045	0.408
<b>3414</b>	0.6939	0.6042	0.4976	0.495
<b>3415</b>	1.2034	1.0492	0.8585	0.530
<b>3501</b>	0.3384	0.3028	0.2596	0.463
<b>3503</b>	0.2775	0.2444	0.2039	0.513
<b>3506</b>	0.6186	0.5413	0.4558	0.417
<b>3509</b>	0.4120	0.3596	0.2940	0.549
<b>3510</b>	0.3266	0.2915	0.2470	0.517
<b>3511</b>	0.7117	0.6316	0.5331	0.490
<b>3512</b>	0.3320	0.2946	0.2471	0.528
<b>3513</b>	0.3972	0.3489	0.2909	0.491
<b>3602</b>	0.0837	0.0739	0.0620	0.501
<b>3603</b>	0.3840	0.3407	0.2884	0.476
<b>3604</b>	0.6974	0.6169	0.5207	0.474
<b>3605</b>	0.3633	0.3211	0.2697	0.500
<b>3701</b>	0.2263	0.1980	0.1650	0.471
<b>3702</b>	0.3036	0.2676	0.2227	0.531
<b>3708</b>	0.5049	0.4474	0.3805	0.443
<b>3802</b>	0.1605	0.1428	0.1213	0.485
<b>3808</b>	0.3234	0.2857	0.2406	0.474
<b>3901</b>	0.1196	0.1069	0.0898	0.573
<b>3902</b>	0.4631	0.4097	0.3407	0.553
<b>3903</b>	0.7207	0.6374	0.5302	0.553
<b>3905</b>	0.1195	0.1070	0.0905	0.551
<b>3906</b>	0.4361	0.3883	0.3271	0.532
<b>3909</b>	0.2258	0.2002	0.1668	0.563
<b>4101</b>	0.1730	0.1532	0.1284	0.526



<b>((Class</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>Primary Ratio</b>
<b>4103</b>	0.4884	0.4333	0.3655	0.490
<b>4107</b>	0.1539	0.1346	0.1120	0.481
<b>4108</b>	0.1673	0.1472	0.1215	0.545
<b>4109</b>	0.1852	0.1646	0.1391	0.501
<b>4201</b>	0.6672	0.5725	0.4673	0.443
<b>4301</b>	0.7551	0.6725	0.5662	0.527
<b>4302</b>	0.6262	0.5518	0.4636	0.472
<b>4304</b>	0.7595	0.6851	0.5901	0.478
<b>4305</b>	0.9929	0.8592	0.7012	0.497
<b>4401</b>	0.3278	0.2882	0.2397	0.511
<b>4402</b>	0.5202	0.4545	0.3765	0.496
<b>4404</b>	0.4413	0.3918	0.3332	0.450
<b>4501</b>	0.1480	0.1296	0.1062	0.568
<b>4502</b>	0.0490	0.0432	0.0363	0.465
<b>4504</b>	0.1065	0.0953	0.0805	0.564
<b>4802</b>	0.4171	0.3712	0.3144	0.488
<b>4803</b>	0.4217	0.3768	0.3179	0.549
<b>4804</b>	0.4656	0.4166	0.3547	0.496
<b>4805</b>	0.3239	0.2901	0.2459	0.543
<b>4806</b>	0.1345	0.1191	0.0984	0.593
<b>4808</b>	0.4504	0.3995	0.3386	0.460
<b>4809</b>	0.2285	0.2029	0.1708	0.523
<b>4810</b>	0.2264	0.2013	0.1692	0.523
<b>4811</b>	0.4294	0.3866	0.3315	0.503
<b>4812</b>	0.3570	0.3168	0.2689	0.470
<b>4813</b>	0.2843	0.2550	0.2155	0.561
<b>4814</b>	0.1099	0.0999	0.0859	0.548
<b>4815</b>	0.2066	0.1884	0.1622	0.561
<b>4816</b>	0.3081	0.2807	0.2438	0.504
<b>4900</b>	0.1010	0.0888	0.0750	0.439
<b>4901</b>	0.0336	0.0293	0.0243	0.469
<b>4902</b>	0.0643	0.0562	0.0464	0.507
<b>4903</b>	0.1647	0.1431	0.1170	0.525
<b>4904</b>	0.0120	0.0106	0.0088	0.547
<b>4905</b>	0.3448	0.3072	0.2587	0.534
<b>4906</b>	0.0967	0.0841	0.0687	0.535
<b>4907</b>	0.0454	0.0408	0.0347	0.594
<b>4908</b>	0.0838	0.0756	0.0647	0.598
<b>4909</b>	0.0335	0.0303	0.0258	0.598
<b>4910</b>	0.4111	0.3606	0.3007	0.480
<b>4911</b>	0.0526	0.0464	0.0393	0.439
<b>5001</b>	5.9546	5.2490	4.5130	0.333
<b>5002</b>	0.4903	0.4276	0.3518	0.514
<b>5003</b>	1.9782	1.7291	1.4584	0.379
<b>5004</b>	0.8698	0.7863	0.6874	0.392
<b>5005</b>	0.7939	0.6941	0.5861	0.385
<b>5006</b>	0.9455	0.8243	0.6943	0.375

<b>((Class</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>Primary Ratio</b>
<b>5101</b>	0.7206	0.6267	0.5206	0.438
<b>5103</b>	0.7483	0.6614	0.5550	0.505
<b>5106</b>	0.7483	0.6614	0.5550	0.505
<b>5108</b>	0.7342	0.6353	0.5152	0.532
<b>5109</b>	0.3750	0.3273	0.2720	0.481
<b>5201</b>	0.2481	0.2190	0.1824	0.546
<b>5204</b>	0.9048	0.7776	0.6343	0.449
<b>5206</b>	0.3154	0.2789	0.2379	0.411
<b>5207</b>	0.1370	0.1220	0.1025	0.546
<b>5208</b>	0.4894	0.4317	0.3644	0.469
<b>5209</b>	0.4982	0.4389	0.3690	0.475
<b>5300</b>	0.0731	0.0642	0.0534	0.507
<b>5301</b>	0.0227	0.0201	0.0167	0.502
<b>5302</b>	0.0052	0.0045	0.0039	0.464
<b>5305</b>	0.0429	0.0375	0.0307	0.551
<b>5306</b>	0.0335	0.0295	0.0244	0.549
<b>5307</b>	0.6044	0.5248	0.4310	0.487
<b>5308</b>	0.0760	0.0676	0.0573	0.520
<b>6103</b>	0.0838	0.0749	0.0628	0.580
<b>6104</b>	0.3233	0.2849	0.2371	0.525
<b>6105</b>	0.4547	0.3950	0.3248	0.493
<b>6107</b>	0.1543	0.1381	0.1157	0.640
<b>6108</b>	0.2260	0.2018	0.1700	0.582
<b>6109</b>	0.1033	0.0900	0.0742	0.498
<b>6110</b>	0.3484	0.3029	0.2483	0.516
<b>6120</b>	0.2704	0.2355	0.1941	0.504
<b>6121</b>	0.3900	0.3389	0.2777	0.508
<b>6201</b>	0.4618	0.4022	0.3298	0.523
<b>6202</b>	0.7344	0.6458	0.5372	0.512
<b>6203</b>	0.0889	0.0804	0.0686	0.606
<b>6204</b>	0.1052	0.0941	0.0800	0.516
<b>6205</b>	0.1613	0.1422	0.1184	0.530
<b>6206</b>	0.1814	0.1606	0.1340	0.550
<b>6207</b>	0.7886	0.6993	0.5914	0.459
<b>6208</b>	0.2000	0.1804	0.1534	0.574
<b>6209</b>	0.2530	0.2274	0.1938	0.534
<b>6301</b>	0.1147	0.1008	0.0848	0.426
<b>6303</b>	0.0399	0.0351	0.0293	0.494
<b>6305</b>	0.0945	0.0838	0.0698	0.575
<b>6306</b>	0.3461	0.3032	0.2495	0.549
<b>6308</b>	0.0681	0.0596	0.0491	0.513
<b>6309</b>	0.2004	0.1770	0.1472	0.541
<b>6402</b>	0.2249	0.1998	0.1669	0.573
<b>6403</b>	0.1421	0.1251	0.1030	0.572
<b>6404</b>	0.2896	0.2578	0.2169	0.529
<b>6405</b>	0.5597	0.4890	0.4034	0.510
<b>6406</b>	0.1472	0.1295	0.1067	0.572

<b>((Class</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>Primary Ratio</b>
<b>6407</b>	0.2397	0.2118	0.1769	0.527
<b>6408</b>	0.5435	0.4810	0.4056	0.480
<b>6409</b>	0.5946	0.5214	0.4369	0.451
<b>6410</b>	0.2631	0.2307	0.1909	0.526
<b>6411</b>	0.0393	0.0353	0.0302	0.514
<b>6501</b>	0.0873	0.0757	0.0614	0.553
<b>6502</b>	0.0173	0.0152	0.0129	0.490
<b>6503</b>	0.0731	0.0627	0.0505	0.515
<b>6504</b>	0.2365	0.2112	0.1773	0.581
<b>6505</b>	0.1334	0.1193	0.0998	0.626
<b>6506</b>	0.1060	0.0931	0.0771	0.528
<b>6509</b>	0.2073	0.1849	0.1558	0.563
<b>6510</b>	0.3551	0.3069	0.2540	0.413
<b>6511</b>	0.2390	0.2106	0.1741	0.561
<b>6512</b>	0.0830	0.0729	0.0608	0.472
<b>6601</b>	0.1799	0.1587	0.1325	0.502
<b>6602</b>	0.5469	0.4865	0.4117	0.481
<b>6603</b>	0.2539	0.2251	0.1887	0.539
<b>6604</b>	0.0550	0.0486	0.0408	0.524
<b>6605</b>	0.2554	0.2234	0.1836	0.561
<b>6607</b>	0.1078	0.0957	0.0800	0.553
<b>6608</b>	0.3724	0.3213	0.2682	0.370
<b>6620</b>	3.1804	2.7312	2.1789	0.578
<b>6704</b>	0.1142	0.1002	0.0824	0.564
<b>6705</b>	0.7315	0.6593	0.5597	0.578
<b>6706</b>	0.2093	0.1881	0.1610	0.511
<b>6707</b>	8.4102	7.5223	6.2413	0.671
<b>6708</b>	7.9882	7.2913	6.3822	0.474
<b>6709</b>	0.2337	0.2061	0.1710	0.549
<b>6801</b>	0.5667	0.4811	0.3804	0.527
<b>6802</b>	0.8584	0.7449	0.6059	0.531
<b>6803</b>	0.4434	0.3807	0.3131	0.413
<b>6804</b>	0.2353	0.2066	0.1709	0.541
<b>6809</b>	2.8632	2.5546	2.1642	0.524
<b>6901</b>	0.0196	0.0200	0.0194	0.813
<b>6902</b>	0.6483	0.5706	0.4825	0.415
<b>6903</b>	3.0259	2.6602	2.2921	0.310
<b>6904</b>	1.1712	1.0068	0.8300	0.405
<b>6905</b>	0.8792	0.7494	0.6125	0.410
<b>6906</b>	0.2888	0.2811	0.2591	0.578
<b>6907</b>	0.7100	0.6262	0.5207	0.539
<b>6908</b>	0.3660	0.3221	0.2685	0.510
<b>6909</b>	0.0962	0.0849	0.0714	0.499
<b>7100</b>	0.0150	0.0130	0.0106	0.531
<b>7101</b>	0.0203	0.0177	0.0148	0.423
<b>7103</b>	0.9373	0.8098	0.6648	0.454
<b>7104</b>	0.0227	0.0199	0.0164	0.498

<b>((Class</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>Primary Ratio</b>
<b>7105</b>	0.0155	0.0136	0.0113	0.502
<b>7106</b>	0.2293	0.2025	0.1679	0.548
<b>7107</b>	0.3910	0.3405	0.2774	0.554
<b>7108</b>	0.3026	0.2656	0.2166	0.605
<b>7109</b>	0.0899	0.0788	0.0654	0.506
<b>7110</b>	0.4115	0.3619	0.3036	0.454
<b>7111</b>	0.2982	0.2548	0.2055	0.478
<b>7112</b>	0.6178	0.5515	0.4660	0.523
<b>7113</b>	0.4294	0.3761	0.3087	0.553
<b>7114</b>	0.7298	0.6439	0.5308	0.583
<b>7115</b>	0.5980	0.5322	0.4454	0.551
<b>7116</b>	0.5349	0.4683	0.3873	0.501
<b>7117</b>	0.9013	0.7958	0.6656	0.506
<b>7118</b>	1.3247	1.1638	0.9761	0.457
<b>7119</b>	1.6112	1.4007	1.1497	0.492
<b>7120</b>	4.9649	4.2957	3.5059	0.497
<b>7121</b>	5.6128	4.9433	4.2532	0.325
<b>7122</b>	0.3291	0.2950	0.2510	0.507
<b>7200</b>	2.1770	1.8651	1.5115	0.463
<b>7201</b>	1.5670	1.3480	1.0921	0.492
<b>7202</b>	0.0157	0.0138	0.0115	0.489
<b>7203</b>	0.0845	0.0762	0.0653	0.568
<b>7204</b>	0.0000	0.0000	0.0000	0.500
<b>7205</b>	0.0000	0.0000	0.0000	0.500
<b>7301</b>	0.6152	0.5545	0.4810	0.436
<b>7302</b>	0.7492	0.6758	0.5848	0.451
<b>7307</b>	0.4081	0.3616	0.3021	0.529
<b>7308</b>	0.2507	0.2240	0.1883	0.581
<b>7309</b>	0.1974	0.1769	0.1496	0.570
<b>7400</b>	2.5036	2.1448	1.7382	0.463))

<b>Class</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>Primary Ratio</b>
<b>101</b>	<u>0.6527</u>	<u>0.5614</u>	<u>0.5145</u>	<u>0.425</u>
<b>103</b>	<u>0.8889</u>	<u>0.7754</u>	<u>0.7310</u>	<u>0.423</u>
<b>104</b>	<u>0.6145</u>	<u>0.5253</u>	<u>0.4767</u>	<u>0.427</u>
<b>105</b>	<u>0.7462</u>	<u>0.6442</u>	<u>0.5944</u>	<u>0.489</u>
<b>106</b>	<u>2.1930</u>	<u>1.9206</u>	<u>1.8224</u>	<u>0.392</u>
<b>107</b>	<u>0.6066</u>	<u>0.5204</u>	<u>0.4757</u>	<u>0.443</u>
<b>108</b>	<u>0.6145</u>	<u>0.5253</u>	<u>0.4767</u>	<u>0.427</u>
<b>112</b>	<u>0.5388</u>	<u>0.4653</u>	<u>0.4299</u>	<u>0.444</u>
<b>201</b>	<u>1.4095</u>	<u>1.2030</u>	<u>1.0878</u>	<u>0.360</u>
<b>202</b>	<u>1.2094</u>	<u>1.0322</u>	<u>0.9335</u>	<u>0.418</u>
<b>210</b>	<u>0.6870</u>	<u>0.5902</u>	<u>0.5414</u>	<u>0.387</u>
<b>212</b>	<u>0.7209</u>	<u>0.6228</u>	<u>0.5750</u>	<u>0.420</u>
<b>214</b>	<u>1.0346</u>	<u>0.8807</u>	<u>0.7922</u>	<u>0.404</u>
<b>217</b>	<u>0.6999</u>	<u>0.6011</u>	<u>0.5494</u>	<u>0.460</u>
<b>219</b>	<u>0.4831</u>	<u>0.4142</u>	<u>0.3774</u>	<u>0.465</u>

<b><u>Class</u></b>	<b><u>2021</u></b>	<b><u>2022</u></b>	<b><u>2023</u></b>	<b><u>Primary Ratio</u></b>
<b><u>301</u></b>	<u>0.7027</u>	<u>0.6086</u>	<u>0.5651</u>	<u>0.464</u>
<b><u>302</u></b>	<u>1.2366</u>	<u>1.0595</u>	<u>0.9623</u>	<u>0.429</u>
<b><u>303</u></b>	<u>1.2734</u>	<u>1.0912</u>	<u>0.9903</u>	<u>0.431</u>
<b><u>306</u></b>	<u>0.5370</u>	<u>0.4598</u>	<u>0.4185</u>	<u>0.454</u>
<b><u>307</u></b>	<u>0.5772</u>	<u>0.4956</u>	<u>0.4537</u>	<u>0.476</u>
<b><u>308</u></b>	<u>0.4758</u>	<u>0.4123</u>	<u>0.3839</u>	<u>0.509</u>
<b><u>403</u></b>	<u>1.0183</u>	<u>0.8743</u>	<u>0.7988</u>	<u>0.448</u>
<b><u>502</u></b>	<u>0.6171</u>	<u>0.5295</u>	<u>0.4820</u>	<u>0.462</u>
<b><u>504</u></b>	<u>1.2611</u>	<u>1.0881</u>	<u>1.0043</u>	<u>0.412</u>
<b><u>507</u></b>	<u>1.9572</u>	<u>1.7061</u>	<u>1.6075</u>	<u>0.406</u>
<b><u>508</u></b>	<u>1.0158</u>	<u>0.8660</u>	<u>0.7792</u>	<u>0.399</u>
<b><u>509</u></b>	<u>0.6031</u>	<u>0.5139</u>	<u>0.4652</u>	<u>0.361</u>
<b><u>510</u></b>	<u>1.5652</u>	<u>1.3571</u>	<u>1.2646</u>	<u>0.406</u>
<b><u>511</u></b>	<u>1.0446</u>	<u>0.8931</u>	<u>0.8104</u>	<u>0.459</u>
<b><u>512</u></b>	<u>0.8485</u>	<u>0.7328</u>	<u>0.6789</u>	<u>0.445</u>
<b><u>513</u></b>	<u>0.6296</u>	<u>0.5416</u>	<u>0.4967</u>	<u>0.449</u>
<b><u>514</u></b>	<u>0.9539</u>	<u>0.8201</u>	<u>0.7525</u>	<u>0.487</u>
<b><u>516</u></b>	<u>0.9589</u>	<u>0.8240</u>	<u>0.7539</u>	<u>0.448</u>
<b><u>517</u></b>	<u>1.1112</u>	<u>0.9599</u>	<u>0.8873</u>	<u>0.383</u>
<b><u>518</u></b>	<u>0.7979</u>	<u>0.6838</u>	<u>0.6251</u>	<u>0.414</u>
<b><u>519</u></b>	<u>1.3093</u>	<u>1.1228</u>	<u>1.0230</u>	<u>0.410</u>
<b><u>521</u></b>	<u>0.5350</u>	<u>0.4633</u>	<u>0.4314</u>	<u>0.438</u>
<b><u>601</u></b>	<u>0.3834</u>	<u>0.3267</u>	<u>0.2948</u>	<u>0.455</u>
<b><u>602</u></b>	<u>0.5257</u>	<u>0.4443</u>	<u>0.3932</u>	<u>0.404</u>
<b><u>603</u></b>	<u>0.5704</u>	<u>0.4879</u>	<u>0.4425</u>	<u>0.389</u>
<b><u>604</u></b>	<u>0.7383</u>	<u>0.6391</u>	<u>0.5948</u>	<u>0.474</u>
<b><u>606</u></b>	<u>0.4554</u>	<u>0.3895</u>	<u>0.3518</u>	<u>0.540</u>
<b><u>607</u></b>	<u>0.5885</u>	<u>0.5032</u>	<u>0.4540</u>	<u>0.501</u>
<b><u>608</u></b>	<u>0.2791</u>	<u>0.2380</u>	<u>0.2144</u>	<u>0.478</u>
<b><u>701</u></b>	<u>0.7460</u>	<u>0.6367</u>	<u>0.5756</u>	<u>0.360</u>
<b><u>803</u></b>	<u>0.4946</u>	<u>0.4218</u>	<u>0.3799</u>	<u>0.500</u>
<b><u>901</u></b>	<u>0.7979</u>	<u>0.6838</u>	<u>0.6251</u>	<u>0.414</u>
<b><u>1002</u></b>	<u>0.5722</u>	<u>0.4917</u>	<u>0.4504</u>	<u>0.457</u>
<b><u>1003</u></b>	<u>0.4276</u>	<u>0.3677</u>	<u>0.3368</u>	<u>0.479</u>
<b><u>1004</u></b>	<u>0.3598</u>	<u>0.3065</u>	<u>0.2752</u>	<u>0.428</u>
<b><u>1005</u></b>	<u>4.2340</u>	<u>3.6386</u>	<u>3.3331</u>	<u>0.457</u>
<b><u>1006</u></b>	<u>0.2011</u>	<u>0.1717</u>	<u>0.1544</u>	<u>0.532</u>
<b><u>1007</u></b>	<u>0.2630</u>	<u>0.2258</u>	<u>0.2060</u>	<u>0.504</u>
<b><u>1101</u></b>	<u>0.8987</u>	<u>0.7683</u>	<u>0.6926</u>	<u>0.519</u>
<b><u>1102</u></b>	<u>1.1567</u>	<u>0.9882</u>	<u>0.8921</u>	<u>0.405</u>
<b><u>1103</u></b>	<u>0.7934</u>	<u>0.6782</u>	<u>0.6117</u>	<u>0.502</u>
<b><u>1104</u></b>	<u>0.4797</u>	<u>0.4148</u>	<u>0.3858</u>	<u>0.504</u>
<b><u>1105</u></b>	<u>0.5642</u>	<u>0.4830</u>	<u>0.4387</u>	<u>0.491</u>
<b><u>1106</u></b>	<u>0.3343</u>	<u>0.2883</u>	<u>0.2654</u>	<u>0.557</u>
<b><u>1108</u></b>	<u>0.4672</u>	<u>0.4023</u>	<u>0.3683</u>	<u>0.510</u>
<b><u>1109</u></b>	<u>1.5078</u>	<u>1.2938</u>	<u>1.1770</u>	<u>0.430</u>
<b><u>1301</u></b>	<u>0.4700</u>	<u>0.4047</u>	<u>0.3717</u>	<u>0.445</u>

<u>Class</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>Primary Ratio</u>
<u>1303</u>	<u>0.3193</u>	<u>0.2709</u>	<u>0.2404</u>	<u>0.528</u>
<u>1304</u>	<u>0.0135</u>	<u>0.0117</u>	<u>0.0106</u>	<u>0.474</u>
<u>1305</u>	<u>0.3513</u>	<u>0.3003</u>	<u>0.2708</u>	<u>0.458</u>
<u>1401</u>	<u>0.2929</u>	<u>0.2545</u>	<u>0.2372</u>	<u>0.509</u>
<u>1404</u>	<u>0.6781</u>	<u>0.5857</u>	<u>0.5394</u>	<u>0.534</u>
<u>1405</u>	<u>0.6244</u>	<u>0.5351</u>	<u>0.4860</u>	<u>0.527</u>
<u>1407</u>	<u>0.5817</u>	<u>0.4988</u>	<u>0.4524</u>	<u>0.508</u>
<u>1408</u>	<u>0.2625</u>	<u>0.2282</u>	<u>0.2127</u>	<u>0.497</u>
<u>1501</u>	<u>0.6928</u>	<u>0.5908</u>	<u>0.5306</u>	<u>0.493</u>
<u>1507</u>	<u>0.3659</u>	<u>0.3146</u>	<u>0.2881</u>	<u>0.539</u>
<u>1701</u>	<u>0.5811</u>	<u>0.5024</u>	<u>0.4642</u>	<u>0.415</u>
<u>1702</u>	<u>0.8169</u>	<u>0.6959</u>	<u>0.6285</u>	<u>0.315</u>
<u>1703</u>	<u>0.6631</u>	<u>0.5660</u>	<u>0.5105</u>	<u>0.406</u>
<u>1704</u>	<u>0.5811</u>	<u>0.5024</u>	<u>0.4642</u>	<u>0.415</u>
<u>1801</u>	<u>0.4117</u>	<u>0.3524</u>	<u>0.3196</u>	<u>0.423</u>
<u>1802</u>	<u>0.6586</u>	<u>0.5638</u>	<u>0.5114</u>	<u>0.423</u>
<u>2002</u>	<u>0.5635</u>	<u>0.4842</u>	<u>0.4429</u>	<u>0.479</u>
<u>2004</u>	<u>0.4824</u>	<u>0.4163</u>	<u>0.3857</u>	<u>0.561</u>
<u>2007</u>	<u>0.4990</u>	<u>0.4337</u>	<u>0.4063</u>	<u>0.443</u>
<u>2008</u>	<u>0.2046</u>	<u>0.1764</u>	<u>0.1616</u>	<u>0.511</u>
<u>2009</u>	<u>0.3186</u>	<u>0.2759</u>	<u>0.2573</u>	<u>0.545</u>
<u>2101</u>	<u>0.5097</u>	<u>0.4428</u>	<u>0.4139</u>	<u>0.481</u>
<u>2102</u>	<u>0.5276</u>	<u>0.4570</u>	<u>0.4248</u>	<u>0.496</u>
<u>2103</u>	<u>1.3692</u>	<u>1.1648</u>	<u>1.0361</u>	<u>0.562</u>
<u>2104</u>	<u>0.3246</u>	<u>0.2852</u>	<u>0.2745</u>	<u>0.569</u>
<u>2105</u>	<u>0.6719</u>	<u>0.5736</u>	<u>0.5160</u>	<u>0.520</u>
<u>2106</u>	<u>0.4636</u>	<u>0.4007</u>	<u>0.3708</u>	<u>0.520</u>
<u>2201</u>	<u>0.2978</u>	<u>0.2601</u>	<u>0.2457</u>	<u>0.493</u>
<u>2202</u>	<u>0.6103</u>	<u>0.5230</u>	<u>0.4754</u>	<u>0.506</u>
<u>2203</u>	<u>0.4403</u>	<u>0.3804</u>	<u>0.3525</u>	<u>0.552</u>
<u>2204</u>	<u>0.2978</u>	<u>0.2601</u>	<u>0.2457</u>	<u>0.493</u>
<u>2401</u>	<u>0.3329</u>	<u>0.2860</u>	<u>0.2621</u>	<u>0.464</u>
<u>2903</u>	<u>0.4911</u>	<u>0.4267</u>	<u>0.3995</u>	<u>0.513</u>
<u>2904</u>	<u>0.4675</u>	<u>0.4050</u>	<u>0.3784</u>	<u>0.407</u>
<u>2905</u>	<u>0.4608</u>	<u>0.3994</u>	<u>0.3727</u>	<u>0.526</u>
<u>2906</u>	<u>0.4262</u>	<u>0.3710</u>	<u>0.3496</u>	<u>0.452</u>
<u>2907</u>	<u>0.3601</u>	<u>0.3131</u>	<u>0.2944</u>	<u>0.541</u>
<u>2908</u>	<u>0.6139</u>	<u>0.5343</u>	<u>0.5043</u>	<u>0.514</u>
<u>2909</u>	<u>0.3587</u>	<u>0.3136</u>	<u>0.2960</u>	<u>0.470</u>
<u>3101</u>	<u>0.5933</u>	<u>0.5106</u>	<u>0.4700</u>	<u>0.502</u>
<u>3102</u>	<u>0.2228</u>	<u>0.1909</u>	<u>0.1741</u>	<u>0.474</u>
<u>3103</u>	<u>0.2646</u>	<u>0.2291</u>	<u>0.2127</u>	<u>0.423</u>
<u>3104</u>	<u>0.6167</u>	<u>0.5329</u>	<u>0.4936</u>	<u>0.529</u>
<u>3105</u>	<u>0.6876</u>	<u>0.6006</u>	<u>0.5692</u>	<u>0.467</u>
<u>3303</u>	<u>0.3298</u>	<u>0.2833</u>	<u>0.2585</u>	<u>0.524</u>
<u>3304</u>	<u>0.5782</u>	<u>0.5020</u>	<u>0.4702</u>	<u>0.491</u>
<u>3309</u>	<u>0.3308</u>	<u>0.2842</u>	<u>0.2594</u>	<u>0.507</u>

<u>Class</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>Primary Ratio</u>
<u>3402</u>	<u>0.3515</u>	<u>0.3039</u>	<u>0.2823</u>	<u>0.510</u>
<u>3403</u>	<u>0.1128</u>	<u>0.0971</u>	<u>0.0894</u>	<u>0.509</u>
<u>3404</u>	<u>0.4541</u>	<u>0.3908</u>	<u>0.3592</u>	<u>0.498</u>
<u>3405</u>	<u>0.2150</u>	<u>0.1856</u>	<u>0.1721</u>	<u>0.513</u>
<u>3406</u>	<u>0.2097</u>	<u>0.1809</u>	<u>0.1665</u>	<u>0.525</u>
<u>3407</u>	<u>0.6569</u>	<u>0.5620</u>	<u>0.5083</u>	<u>0.451</u>
<u>3408</u>	<u>0.2209</u>	<u>0.1886</u>	<u>0.1694</u>	<u>0.539</u>
<u>3409</u>	<u>0.1488</u>	<u>0.1283</u>	<u>0.1181</u>	<u>0.550</u>
<u>3410</u>	<u>0.1488</u>	<u>0.1283</u>	<u>0.1181</u>	<u>0.550</u>
<u>3411</u>	<u>0.3689</u>	<u>0.3166</u>	<u>0.2889</u>	<u>0.483</u>
<u>3412</u>	<u>0.5300</u>	<u>0.4532</u>	<u>0.4104</u>	<u>0.423</u>
<u>3414</u>	<u>0.6492</u>	<u>0.5557</u>	<u>0.5035</u>	<u>0.504</u>
<u>3415</u>	<u>1.1492</u>	<u>0.9831</u>	<u>0.8874</u>	<u>0.517</u>
<u>3501</u>	<u>0.2836</u>	<u>0.2477</u>	<u>0.2347</u>	<u>0.467</u>
<u>3503</u>	<u>0.2843</u>	<u>0.2450</u>	<u>0.2257</u>	<u>0.525</u>
<u>3506</u>	<u>0.5615</u>	<u>0.4823</u>	<u>0.4427</u>	<u>0.428</u>
<u>3509</u>	<u>0.4068</u>	<u>0.3480</u>	<u>0.3138</u>	<u>0.555</u>
<u>3510</u>	<u>0.3342</u>	<u>0.2902</u>	<u>0.2719</u>	<u>0.544</u>
<u>3511</u>	<u>0.6813</u>	<u>0.5908</u>	<u>0.5510</u>	<u>0.492</u>
<u>3512</u>	<u>0.3127</u>	<u>0.2711</u>	<u>0.2528</u>	<u>0.519</u>
<u>3513</u>	<u>0.3914</u>	<u>0.3367</u>	<u>0.3079</u>	<u>0.490</u>
<u>3602</u>	<u>0.0736</u>	<u>0.0637</u>	<u>0.0592</u>	<u>0.503</u>
<u>3603</u>	<u>0.3804</u>	<u>0.3300</u>	<u>0.3076</u>	<u>0.486</u>
<u>3604</u>	<u>0.7096</u>	<u>0.6145</u>	<u>0.5720</u>	<u>0.483</u>
<u>3605</u>	<u>0.3515</u>	<u>0.3039</u>	<u>0.2823</u>	<u>0.510</u>
<u>3701</u>	<u>0.2228</u>	<u>0.1909</u>	<u>0.1741</u>	<u>0.474</u>
<u>3702</u>	<u>0.2823</u>	<u>0.2435</u>	<u>0.2251</u>	<u>0.545</u>
<u>3708</u>	<u>0.4904</u>	<u>0.4240</u>	<u>0.3933</u>	<u>0.460</u>
<u>3802</u>	<u>0.1537</u>	<u>0.1334</u>	<u>0.1249</u>	<u>0.492</u>
<u>3808</u>	<u>0.3073</u>	<u>0.2648</u>	<u>0.2439</u>	<u>0.477</u>
<u>3901</u>	<u>0.1153</u>	<u>0.1002</u>	<u>0.0941</u>	<u>0.581</u>
<u>3902</u>	<u>0.4599</u>	<u>0.3977</u>	<u>0.3694</u>	<u>0.544</u>
<u>3903</u>	<u>0.6656</u>	<u>0.5755</u>	<u>0.5345</u>	<u>0.544</u>
<u>3905</u>	<u>0.1183</u>	<u>0.1031</u>	<u>0.0972</u>	<u>0.558</u>
<u>3906</u>	<u>0.4609</u>	<u>0.3987</u>	<u>0.3701</u>	<u>0.543</u>
<u>3909</u>	<u>0.2278</u>	<u>0.1971</u>	<u>0.1831</u>	<u>0.574</u>
<u>4101</u>	<u>0.1633</u>	<u>0.1413</u>	<u>0.1318</u>	<u>0.542</u>
<u>4103</u>	<u>0.5042</u>	<u>0.4365</u>	<u>0.4054</u>	<u>0.507</u>
<u>4107</u>	<u>0.1457</u>	<u>0.1246</u>	<u>0.1128</u>	<u>0.487</u>
<u>4108</u>	<u>0.1794</u>	<u>0.1540</u>	<u>0.1402</u>	<u>0.560</u>
<u>4109</u>	<u>0.1849</u>	<u>0.1604</u>	<u>0.1494</u>	<u>0.511</u>
<u>4201</u>	<u>0.6430</u>	<u>0.5437</u>	<u>0.4785</u>	<u>0.452</u>
<u>4301</u>	<u>0.6938</u>	<u>0.6023</u>	<u>0.5631</u>	<u>0.528</u>
<u>4302</u>	<u>0.6210</u>	<u>0.5354</u>	<u>0.4936</u>	<u>0.481</u>
<u>4304</u>	<u>0.6987</u>	<u>0.6130</u>	<u>0.5847</u>	<u>0.476</u>
<u>4305</u>	<u>0.9799</u>	<u>0.8351</u>	<u>0.7472</u>	<u>0.494</u>
<u>4401</u>	<u>0.3298</u>	<u>0.2833</u>	<u>0.2585</u>	<u>0.524</u>

<u>Class</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>Primary Ratio</u>
<u>4402</u>	<u>0.5130</u>	<u>0.4395</u>	<u>0.3999</u>	<u>0.508</u>
<u>4404</u>	<u>0.4831</u>	<u>0.4194</u>	<u>0.3917</u>	<u>0.455</u>
<u>4501</u>	<u>0.1412</u>	<u>0.1214</u>	<u>0.1108</u>	<u>0.574</u>
<u>4502</u>	<u>0.0468</u>	<u>0.0403</u>	<u>0.0370</u>	<u>0.476</u>
<u>4504</u>	<u>0.1160</u>	<u>0.1010</u>	<u>0.0956</u>	<u>0.566</u>
<u>4802</u>	<u>0.4141</u>	<u>0.3594</u>	<u>0.3359</u>	<u>0.487</u>
<u>4803</u>	<u>0.4236</u>	<u>0.3683</u>	<u>0.3462</u>	<u>0.566</u>
<u>4804</u>	<u>0.4612</u>	<u>0.4007</u>	<u>0.3745</u>	<u>0.504</u>
<u>4805</u>	<u>0.3260</u>	<u>0.2840</u>	<u>0.2680</u>	<u>0.555</u>
<u>4806</u>	<u>0.1421</u>	<u>0.1227</u>	<u>0.1131</u>	<u>0.598</u>
<u>4808</u>	<u>0.4512</u>	<u>0.3911</u>	<u>0.3639</u>	<u>0.460</u>
<u>4809</u>	<u>0.2241</u>	<u>0.1944</u>	<u>0.1820</u>	<u>0.538</u>
<u>4810</u>	<u>0.2159</u>	<u>0.1876</u>	<u>0.1756</u>	<u>0.520</u>
<u>4811</u>	<u>0.4186</u>	<u>0.3670</u>	<u>0.3505</u>	<u>0.500</u>
<u>4812</u>	<u>0.3442</u>	<u>0.2981</u>	<u>0.2781</u>	<u>0.479</u>
<u>4813</u>	<u>0.3084</u>	<u>0.2684</u>	<u>0.2530</u>	<u>0.562</u>
<u>4814</u>	<u>0.1036</u>	<u>0.0912</u>	<u>0.0881</u>	<u>0.554</u>
<u>4815</u>	<u>0.2653</u>	<u>0.2323</u>	<u>0.2215</u>	<u>0.560</u>
<u>4816</u>	<u>0.3219</u>	<u>0.2852</u>	<u>0.2786</u>	<u>0.514</u>
<u>4900</u>	<u>0.1053</u>	<u>0.0905</u>	<u>0.0833</u>	<u>0.440</u>
<u>4901</u>	<u>0.0319</u>	<u>0.0273</u>	<u>0.0247</u>	<u>0.476</u>
<u>4902</u>	<u>0.0557</u>	<u>0.0477</u>	<u>0.0436</u>	<u>0.511</u>
<u>4903</u>	<u>0.1668</u>	<u>0.1420</u>	<u>0.1270</u>	<u>0.537</u>
<u>4904</u>	<u>0.0108</u>	<u>0.0093</u>	<u>0.0086</u>	<u>0.534</u>
<u>4905</u>	<u>0.3523</u>	<u>0.3058</u>	<u>0.2860</u>	<u>0.527</u>
<u>4906</u>	<u>0.0911</u>	<u>0.0778</u>	<u>0.0702</u>	<u>0.537</u>
<u>4907</u>	<u>0.0440</u>	<u>0.0385</u>	<u>0.0372</u>	<u>0.604</u>
<u>4908</u>	<u>0.0818</u>	<u>0.0721</u>	<u>0.0698</u>	<u>0.606</u>
<u>4909</u>	<u>0.0327</u>	<u>0.0288</u>	<u>0.0279</u>	<u>0.606</u>
<u>4910</u>	<u>0.3992</u>	<u>0.3434</u>	<u>0.3141</u>	<u>0.488</u>
<u>4911</u>	<u>0.0545</u>	<u>0.0467</u>	<u>0.0430</u>	<u>0.459</u>
<u>5001</u>	<u>5.6417</u>	<u>4.8481</u>	<u>4.4349</u>	<u>0.349</u>
<u>5002</u>	<u>0.4760</u>	<u>0.4073</u>	<u>0.3686</u>	<u>0.520</u>
<u>5003</u>	<u>2.0318</u>	<u>1.7405</u>	<u>1.5754</u>	<u>0.397</u>
<u>5004</u>	<u>0.8044</u>	<u>0.7061</u>	<u>0.6717</u>	<u>0.401</u>
<u>5005</u>	<u>0.7569</u>	<u>0.6488</u>	<u>0.5906</u>	<u>0.394</u>
<u>5006</u>	<u>0.9124</u>	<u>0.7809</u>	<u>0.7080</u>	<u>0.380</u>
<u>5101</u>	<u>0.6826</u>	<u>0.5835</u>	<u>0.5268</u>	<u>0.444</u>
<u>5103</u>	<u>0.7380</u>	<u>0.6391</u>	<u>0.5958</u>	<u>0.512</u>
<u>5106</u>	<u>0.7380</u>	<u>0.6391</u>	<u>0.5958</u>	<u>0.512</u>
<u>5108</u>	<u>0.6847</u>	<u>0.5834</u>	<u>0.5212</u>	<u>0.526</u>
<u>5109</u>	<u>0.3604</u>	<u>0.3081</u>	<u>0.2799</u>	<u>0.494</u>
<u>5201</u>	<u>0.2323</u>	<u>0.2002</u>	<u>0.1855</u>	<u>0.550</u>
<u>5204</u>	<u>0.8745</u>	<u>0.7412</u>	<u>0.6539</u>	<u>0.452</u>
<u>5206</u>	<u>0.2957</u>	<u>0.2552</u>	<u>0.2357</u>	<u>0.434</u>
<u>5207</u>	<u>0.1462</u>	<u>0.1269</u>	<u>0.1189</u>	<u>0.557</u>
<u>5208</u>	<u>0.4475</u>	<u>0.3867</u>	<u>0.3595</u>	<u>0.475</u>



<u>Class</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>Primary Ratio</u>
<u>5209</u>	<u>0.4386</u>	<u>0.3783</u>	<u>0.3496</u>	<u>0.490</u>
<u>5300</u>	<u>0.0677</u>	<u>0.0582</u>	<u>0.0533</u>	<u>0.506</u>
<u>5301</u>	<u>0.0196</u>	<u>0.0168</u>	<u>0.0155</u>	<u>0.518</u>
<u>5302</u>	<u>0.0049</u>	<u>0.0042</u>	<u>0.0039</u>	<u>0.462</u>
<u>5305</u>	<u>0.0431</u>	<u>0.0369</u>	<u>0.0333</u>	<u>0.561</u>
<u>5306</u>	<u>0.0338</u>	<u>0.0291</u>	<u>0.0267</u>	<u>0.543</u>
<u>5307</u>	<u>0.5665</u>	<u>0.4839</u>	<u>0.4357</u>	<u>0.493</u>
<u>5308</u>	<u>0.0772</u>	<u>0.0670</u>	<u>0.0631</u>	<u>0.521</u>
<u>6103</u>	<u>0.0813</u>	<u>0.0707</u>	<u>0.0665</u>	<u>0.584</u>
<u>6104</u>	<u>0.3068</u>	<u>0.2643</u>	<u>0.2433</u>	<u>0.519</u>
<u>6105</u>	<u>0.4458</u>	<u>0.3798</u>	<u>0.3409</u>	<u>0.509</u>
<u>6107</u>	<u>0.1565</u>	<u>0.1366</u>	<u>0.1305</u>	<u>0.646</u>
<u>6108</u>	<u>0.2241</u>	<u>0.1946</u>	<u>0.1835</u>	<u>0.597</u>
<u>6109</u>	<u>0.1007</u>	<u>0.0861</u>	<u>0.0778</u>	<u>0.513</u>
<u>6110</u>	<u>0.3596</u>	<u>0.3064</u>	<u>0.2748</u>	<u>0.518</u>
<u>6120</u>	<u>0.2688</u>	<u>0.2293</u>	<u>0.2067</u>	<u>0.502</u>
<u>6121</u>	<u>0.3819</u>	<u>0.3256</u>	<u>0.2924</u>	<u>0.500</u>
<u>6201</u>	<u>0.4428</u>	<u>0.3791</u>	<u>0.3431</u>	<u>0.535</u>
<u>6202</u>	<u>0.7457</u>	<u>0.6435</u>	<u>0.5942</u>	<u>0.520</u>
<u>6203</u>	<u>0.0880</u>	<u>0.0772</u>	<u>0.0745</u>	<u>0.609</u>
<u>6204</u>	<u>0.1032</u>	<u>0.0898</u>	<u>0.0849</u>	<u>0.522</u>
<u>6205</u>	<u>0.1701</u>	<u>0.1469</u>	<u>0.1357</u>	<u>0.555</u>
<u>6206</u>	<u>0.1724</u>	<u>0.1491</u>	<u>0.1388</u>	<u>0.551</u>
<u>6207</u>	<u>0.7566</u>	<u>0.6566</u>	<u>0.6094</u>	<u>0.457</u>
<u>6208</u>	<u>0.1939</u>	<u>0.1700</u>	<u>0.1626</u>	<u>0.570</u>
<u>6209</u>	<u>0.2399</u>	<u>0.2096</u>	<u>0.1997</u>	<u>0.526</u>
<u>6301</u>	<u>0.1076</u>	<u>0.0928</u>	<u>0.0853</u>	<u>0.423</u>
<u>6303</u>	<u>0.0390</u>	<u>0.0336</u>	<u>0.0307</u>	<u>0.513</u>
<u>6305</u>	<u>0.0956</u>	<u>0.0827</u>	<u>0.0770</u>	<u>0.579</u>
<u>6306</u>	<u>0.3450</u>	<u>0.2961</u>	<u>0.2701</u>	<u>0.546</u>
<u>6308</u>	<u>0.0692</u>	<u>0.0593</u>	<u>0.0538</u>	<u>0.512</u>
<u>6309</u>	<u>0.1979</u>	<u>0.1706</u>	<u>0.1573</u>	<u>0.548</u>
<u>6402</u>	<u>0.2130</u>	<u>0.1847</u>	<u>0.1729</u>	<u>0.587</u>
<u>6403</u>	<u>0.1446</u>	<u>0.1245</u>	<u>0.1145</u>	<u>0.575</u>
<u>6404</u>	<u>0.2822</u>	<u>0.2445</u>	<u>0.2276</u>	<u>0.526</u>
<u>6405</u>	<u>0.5107</u>	<u>0.4385</u>	<u>0.4001</u>	<u>0.510</u>
<u>6406</u>	<u>0.1478</u>	<u>0.1273</u>	<u>0.1171</u>	<u>0.567</u>
<u>6407</u>	<u>0.2467</u>	<u>0.2127</u>	<u>0.1961</u>	<u>0.547</u>
<u>6408</u>	<u>0.5257</u>	<u>0.4546</u>	<u>0.4217</u>	<u>0.487</u>
<u>6409</u>	<u>0.5815</u>	<u>0.4987</u>	<u>0.4542</u>	<u>0.458</u>
<u>6410</u>	<u>0.2577</u>	<u>0.2215</u>	<u>0.2030</u>	<u>0.538</u>
<u>6411</u>	<u>0.0444</u>	<u>0.0387</u>	<u>0.0368</u>	<u>0.511</u>
<u>6501</u>	<u>0.0781</u>	<u>0.0666</u>	<u>0.0600</u>	<u>0.555</u>
<u>6502</u>	<u>0.0160</u>	<u>0.0138</u>	<u>0.0128</u>	<u>0.503</u>
<u>6503</u>	<u>0.0716</u>	<u>0.0605</u>	<u>0.0532</u>	<u>0.515</u>
<u>6504</u>	<u>0.2329</u>	<u>0.2026</u>	<u>0.1912</u>	<u>0.591</u>
<u>6505</u>	<u>0.1394</u>	<u>0.1210</u>	<u>0.1139</u>	<u>0.631</u>

<u>Class</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>Primary Ratio</u>
<u>6506</u>	<u>0.1013</u>	<u>0.0871</u>	<u>0.0797</u>	<u>0.533</u>
<u>6509</u>	<u>0.2165</u>	<u>0.1881</u>	<u>0.1768</u>	<u>0.562</u>
<u>6510</u>	<u>0.3407</u>	<u>0.2898</u>	<u>0.2586</u>	<u>0.416</u>
<u>6511</u>	<u>0.2314</u>	<u>0.1996</u>	<u>0.1839</u>	<u>0.571</u>
<u>6512</u>	<u>0.0814</u>	<u>0.0701</u>	<u>0.0641</u>	<u>0.471</u>
<u>6601</u>	<u>0.1912</u>	<u>0.1649</u>	<u>0.1510</u>	<u>0.511</u>
<u>6602</u>	<u>0.5426</u>	<u>0.4708</u>	<u>0.4384</u>	<u>0.485</u>
<u>6603</u>	<u>0.2424</u>	<u>0.2102</u>	<u>0.1968</u>	<u>0.537</u>
<u>6604</u>	<u>0.0533</u>	<u>0.0461</u>	<u>0.0427</u>	<u>0.531</u>
<u>6605</u>	<u>0.2435</u>	<u>0.2097</u>	<u>0.1934</u>	<u>0.570</u>
<u>6607</u>	<u>0.1094</u>	<u>0.0946</u>	<u>0.0878</u>	<u>0.566</u>
<u>6608</u>	<u>0.3500</u>	<u>0.2971</u>	<u>0.2658</u>	<u>0.376</u>
<u>6620</u>	<u>3.1082</u>	<u>2.6294</u>	<u>2.3140</u>	<u>0.583</u>
<u>6704</u>	<u>0.1133</u>	<u>0.0972</u>	<u>0.0884</u>	<u>0.569</u>
<u>6705</u>	<u>0.7436</u>	<u>0.6514</u>	<u>0.6233</u>	<u>0.584</u>
<u>6706</u>	<u>0.2030</u>	<u>0.1771</u>	<u>0.1681</u>	<u>0.519</u>
<u>6707</u>	<u>8.1554</u>	<u>7.1356</u>	<u>6.8460</u>	<u>0.685</u>
<u>6708</u>	<u>7.8573</u>	<u>6.9564</u>	<u>6.7760</u>	<u>0.482</u>
<u>6709</u>	<u>0.2242</u>	<u>0.1933</u>	<u>0.1788</u>	<u>0.556</u>
<u>6801</u>	<u>0.6073</u>	<u>0.5095</u>	<u>0.4368</u>	<u>0.532</u>
<u>6802</u>	<u>0.8676</u>	<u>0.7404</u>	<u>0.6635</u>	<u>0.529</u>
<u>6803</u>	<u>0.4345</u>	<u>0.3669</u>	<u>0.3232</u>	<u>0.427</u>
<u>6804</u>	<u>0.2382</u>	<u>0.2043</u>	<u>0.1862</u>	<u>0.542</u>
<u>6809</u>	<u>2.7416</u>	<u>2.3850</u>	<u>2.2458</u>	<u>0.525</u>
<u>6901</u>	<u>0.0198</u>	<u>0.0193</u>	<u>0.0233</u>	<u>0.827</u>
<u>6902</u>	<u>0.6391</u>	<u>0.5498</u>	<u>0.5034</u>	<u>0.423</u>
<u>6903</u>	<u>2.7800</u>	<u>2.3910</u>	<u>2.2000</u>	<u>0.316</u>
<u>6904</u>	<u>1.2461</u>	<u>1.0538</u>	<u>0.9311</u>	<u>0.401</u>
<u>6905</u>	<u>0.9121</u>	<u>0.7653</u>	<u>0.6706</u>	<u>0.378</u>
<u>6906</u>	<u>0.3340</u>	<u>0.3091</u>	<u>0.3279</u>	<u>0.556</u>
<u>6907</u>	<u>0.6911</u>	<u>0.5956</u>	<u>0.5489</u>	<u>0.552</u>
<u>6908</u>	<u>0.3645</u>	<u>0.3144</u>	<u>0.2896</u>	<u>0.525</u>
<u>6909</u>	<u>0.0975</u>	<u>0.0841</u>	<u>0.0778</u>	<u>0.515</u>
<u>7100</u>	<u>0.0135</u>	<u>0.0116</u>	<u>0.0103</u>	<u>0.516</u>
<u>7101</u>	<u>0.0208</u>	<u>0.0177</u>	<u>0.0161</u>	<u>0.419</u>
<u>7103</u>	<u>0.9311</u>	<u>0.7921</u>	<u>0.7065</u>	<u>0.454</u>
<u>7104</u>	<u>0.0227</u>	<u>0.0196</u>	<u>0.0177</u>	<u>0.507</u>
<u>7105</u>	<u>0.0159</u>	<u>0.0136</u>	<u>0.0124</u>	<u>0.511</u>
<u>7106</u>	<u>0.2261</u>	<u>0.1948</u>	<u>0.1791</u>	<u>0.546</u>
<u>7107</u>	<u>0.3683</u>	<u>0.3152</u>	<u>0.2851</u>	<u>0.548</u>
<u>7108</u>	<u>0.3086</u>	<u>0.2646</u>	<u>0.2407</u>	<u>0.607</u>
<u>7109</u>	<u>0.0913</u>	<u>0.0784</u>	<u>0.0715</u>	<u>0.512</u>
<u>7110</u>	<u>0.3905</u>	<u>0.3360</u>	<u>0.3075</u>	<u>0.459</u>
<u>7111</u>	<u>0.2860</u>	<u>0.2411</u>	<u>0.2104</u>	<u>0.467</u>
<u>7112</u>	<u>0.6242</u>	<u>0.5417</u>	<u>0.5072</u>	<u>0.531</u>
<u>7113</u>	<u>0.4425</u>	<u>0.3788</u>	<u>0.3424</u>	<u>0.565</u>
<u>7114</u>	<u>0.7039</u>	<u>0.6064</u>	<u>0.5569</u>	<u>0.585</u>

<u>Class</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>Primary Ratio</u>
<u>7115</u>	<u>0.5878</u>	<u>0.5088</u>	<u>0.4718</u>	<u>0.544</u>
<u>7116</u>	<u>0.5504</u>	<u>0.4717</u>	<u>0.4274</u>	<u>0.510</u>
<u>7117</u>	<u>0.8665</u>	<u>0.7470</u>	<u>0.6867</u>	<u>0.515</u>
<u>7118</u>	<u>1.2609</u>	<u>1.0836</u>	<u>0.9898</u>	<u>0.477</u>
<u>7119</u>	<u>1.5027</u>	<u>1.2845</u>	<u>1.1553</u>	<u>0.489</u>
<u>7120</u>	<u>4.8995</u>	<u>4.1755</u>	<u>3.7361</u>	<u>0.494</u>
<u>7121</u>	<u>5.2636</u>	<u>4.5244</u>	<u>4.1468</u>	<u>0.338</u>
<u>7122</u>	<u>0.3308</u>	<u>0.2880</u>	<u>0.2702</u>	<u>0.526</u>
<u>7200</u>	<u>2.0507</u>	<u>1.7353</u>	<u>1.5264</u>	<u>0.465</u>
<u>7201</u>	<u>1.5510</u>	<u>1.3148</u>	<u>1.1609</u>	<u>0.488</u>
<u>7202</u>	<u>0.0149</u>	<u>0.0128</u>	<u>0.0118</u>	<u>0.494</u>
<u>7203</u>	<u>0.0819</u>	<u>0.0719</u>	<u>0.0692</u>	<u>0.573</u>
<u>7204</u>	<u>0.0000</u>	<u>0.0000</u>	<u>0.0000</u>	<u>0.500</u>
<u>7205</u>	<u>0.0000</u>	<u>0.0000</u>	<u>0.0000</u>	<u>0.500</u>
<u>7301</u>	<u>0.5954</u>	<u>0.5217</u>	<u>0.4967</u>	<u>0.459</u>
<u>7302</u>	<u>0.8054</u>	<u>0.7057</u>	<u>0.6696</u>	<u>0.453</u>
<u>7307</u>	<u>0.3776</u>	<u>0.3264</u>	<u>0.3022</u>	<u>0.529</u>
<u>7308</u>	<u>0.2592</u>	<u>0.2250</u>	<u>0.2109</u>	<u>0.594</u>
<u>7309</u>	<u>0.1843</u>	<u>0.1607</u>	<u>0.1525</u>	<u>0.572</u>
<u>7400</u>	<u>2.3583</u>	<u>1.9955</u>	<u>1.7553</u>	<u>0.465</u>

**Expected Loss Rates in Dollars Per Sq. Ft. of Wallboard Installed**

<u>Class</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>Primary Ratio</u>
<u>540</u>	<u>0.0123</u>	<u>0.0108</u>	<u>0.0091</u>	<u>0.459</u>
<u>541</u>	<u>0.0067</u>	<u>0.0059</u>	<u>0.0050</u>	<u>0.435</u>
<u>550</u>	<u>0.0274</u>	<u>0.0242</u>	<u>0.0209</u>	<u>0.338</u>
<u>551</u>	<u>0.0096</u>	<u>0.0085</u>	<u>0.0072</u>	<u>0.376</u>

  

<u>Class</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>Primary Ratio</u>
<u>540</u>	<u>0.0123</u>	<u>0.0106</u>	<u>0.0098</u>	<u>0.469</u>
<u>541</u>	<u>0.0062</u>	<u>0.0053</u>	<u>0.0049</u>	<u>0.445</u>
<u>550</u>	<u>0.0284</u>	<u>0.0245</u>	<u>0.0226</u>	<u>0.354</u>
<u>551</u>	<u>0.0096</u>	<u>0.0083</u>	<u>0.0077</u>	<u>0.361</u>

AMENDATORY SECTION (Amending WSR 23-24-039, filed 11/30/23, effective 1/1/24)

**WAC 296-17-890 Table IV.**

**Maximum Experience Modifications  
For Firms with No Compensable Accidents:  
Effective January 1, ((2024)) 2025**

Expected Loss Range	Maximum Experience Modification
((1 - 5,490	0.90
5,491 - 6,703	0.89
6,704 - 7,392	0.88
7,393 - 8,082	0.87
8,083 - 8,772	0.86
8,773 - 9,462	0.85
9,463 - 10,152	0.84
10,153 - 10,841	0.83
10,842 - 11,531	0.82
11,532 - 12,248	0.81
12,249 - 12,995	0.80
12,996 - 13,771	0.79
13,772 - 14,576	0.78
14,577 - 15,411	0.77
15,412 - 16,274	0.76
16,275 - 17,168	0.75
17,169 - 18,090	0.74
18,091 - 19,042	0.73
19,043 - 20,023	0.72
20,024 - 21,034	0.71
21,035 - 22,074	0.70
22,075 - 23,143	0.69
23,144 - 24,242	0.68
24,243 - 25,370	0.67
25,371 - 26,527	0.66
26,528 - 27,714	0.65
27,715 - 29,494	0.64
29,495 - 32,164	0.63
32,165 - 36,169	0.62
36,170 - 42,177	0.61
42,178 and higher	0.60))
<u>1</u> - <u>5,435</u>	<u>0.90</u>
<u>5,436</u> - <u>6,636</u>	<u>0.89</u>
<u>6,637</u> - <u>7,319</u>	<u>0.88</u>
<u>7,320</u> - <u>8,002</u>	<u>0.87</u>
<u>8,003</u> - <u>8,685</u>	<u>0.86</u>
<u>8,686</u> - <u>9,368</u>	<u>0.85</u>
<u>9,369</u> - <u>10,051</u>	<u>0.84</u>
<u>10,052</u> - <u>10,735</u>	<u>0.83</u>
<u>10,736</u> - <u>11,418</u>	<u>0.82</u>
<u>11,419</u> - <u>12,128</u>	<u>0.81</u>
<u>12,129</u> - <u>12,868</u>	<u>0.80</u>
<u>12,869</u> - <u>13,636</u>	<u>0.79</u>
<u>13,637</u> - <u>14,433</u>	<u>0.78</u>
<u>14,434</u> - <u>15,260</u>	<u>0.77</u>
<u>15,261</u> - <u>16,115</u>	<u>0.76</u>

Expected Loss Range		Maximum Experience Modification
<u>16,116</u>	= <u>17,000</u>	<u>0.75</u>
<u>17,001</u>	= <u>17,913</u>	<u>0.74</u>
<u>17,914</u>	= <u>18,856</u>	<u>0.73</u>
<u>18,857</u>	= <u>19,827</u>	<u>0.72</u>
<u>19,828</u>	= <u>20,828</u>	<u>0.71</u>
<u>20,829</u>	= <u>21,858</u>	<u>0.70</u>
<u>21,859</u>	= <u>22,916</u>	<u>0.69</u>
<u>22,917</u>	= <u>24,004</u>	<u>0.68</u>
<u>24,005</u>	= <u>25,120</u>	<u>0.67</u>
<u>25,121</u>	= <u>26,266</u>	<u>0.66</u>
<u>26,267</u>	= <u>27,441</u>	<u>0.65</u>
<u>27,442</u>	= <u>29,202</u>	<u>0.64</u>
<u>29,203</u>	= <u>31,845</u>	<u>0.63</u>
<u>31,846</u>	= <u>35,810</u>	<u>0.62</u>
<u>35,811</u>	= <u>41,756</u>	<u>0.61</u>
<u>41,757</u>	<u>and higher</u>	<u>0.60</u>

AMENDATORY SECTION (Amending WSR 23-17-146, filed 8/22/23, effective 10/1/23)

**WAC 296-17-901 Risk classification hazard group table.** Effective October 1, 2023.

Risk Classification	Hazard Group
101	9
103	9
104	8
105	4
106	7
107	9
108	9
112	8
201	9
202	9
210	9
212	8
214	9
217	7
219	7
301	5
302	9
303	9
306	9
307	7
308	3
403	6

<b>Risk Classification</b>	<b>Hazard Group</b>
502	7
504	8
507	9
508	9
509	9
510	7
511	7
512	8
513	7
514	7
516	8
517	9
518	9
519	8
521	7
540	8
541	9
550	9
551	9
601	8
602	9
603	9
604	7
606	3
607	6
608	7
701	9
803	5
901	8
1002	7
1003	5
1004	6
1005	8
1006	4
1007	7
1101	5
1102	8
1103	7
1104	4
1105	6
1106	3
1108	5
1109	7
1301	6
1303	4
1304	4
1305	6

<b>Risk Classification</b>	<b>Hazard Group</b>
1401	5
1404	3
1405	4
1407	3
<u>1408</u>	<u>5</u>
1501	6
1507	4
1701	8
1702	9
1703	9
1704	7
1801	8
1802	8
2002	6
2004	2
2007	7
2008	3
2009	3
2101	5
2102	3
2103	2
2104	2
2105	3
2106	4
2201	3
2202	5
2203	2
2204	3
2401	6
2903	4
2904	7
2905	3
2906	6
2907	3
2908	4
2909	7
3101	6
3102	7
3103	7
3104	4
3105	5
3303	4
3304	3
3309	4
3402	6
3403	5
3404	4

<b>Risk Classification</b>	<b>Hazard Group</b>
3405	5
3406	1
3407	7
3408	2
3409	1
3410	1
3411	6
3412	8
3414	6
3415	6
3501	6
3503	3
3506	8
3509	1
3510	4
3511	6
3512	1
3513	3
3602	4
3603	6
3604	6
3605	4
3701	6
3702	3
3708	6
3802	4
3808	5
3901	1
3902	2
3903	2
3905	1
3906	3
3909	2
4101	4
4103	5
4107	6
4108	3
4109	4
4201	8
4301	4
4302	5
4304	5
4305	6
4401	3
4402	3
4404	4
4501	1



<b>Risk Classification</b>	<b>Hazard Group</b>
4502	6
4504	1
4802	5
4803	2
4804	3
4805	3
4806	1
4808	6
4809	4
4810	2
4811	3
4812	5
4813	3
4814	2
4815	1
4816	4
4900	8
4901	6
4902	4
4903	3
4904	2
4905	1
4906	3
4907	1
4908	1
4909	1
4910	5
4911	7
5001	9
5002	3
5003	9
5004	8
5005	9
5006	9
5101	7
5103	4
5106	4
5108	3
5109	6
5201	2
5204	8
5206	8
5207	2
5208	6
5209	6
5300	2
5301	5

<b>Risk Classification</b>	<b>Hazard Group</b>
5302	3
5305	3
5306	1
5307	4
5308	2
6103	1
6104	3
6105	6
6107	1
6108	1
6109	4
6110	4
6120	4
6121	4
6201	4
6202	4
6203	1
6204	2
6205	3
6206	1
6207	5
6208	1
6209	3
6301	8
6303	4
6305	1
6306	4
6308	5
6309	3
6402	1
6403	1
6404	3
6405	5
6406	1
6407	2
6408	7
6409	6
6410	2
6411	3
6501	1
6502	4
6503	2
6504	1
6505	1
6506	2
6509	2
6510	9

<b>Risk Classification</b>	<b>Hazard Group</b>
6511	1
6512	5
6601	4
6602	3
6603	2
6604	2
6605	2
6607	2
6608	9
6620	1
6704	1
6705	1
6706	3
6707	1
6708	6
6709	2
6801	2
6802	3
6803	9
6804	3
6809	1
6901	1
6902	8
6903	9
6904	6
6905	4
6906	1
6907	3
6908	5
6909	3
7100	4
7101	7
7103	5
7104	3
7105	3
7106	3
7107	1
7108	2
7109	3
7110	4
7111	5
7112	3
7113	3
7114	2
7115	3
7116	7
7117	4

Risk Classification	Hazard Group
7118	6
7119	5
7120	8
7121	7
7122	4
7200	7
7201	5
7202	3
7203	1
7301	6
7302	7
7307	2
7308	1
7309	1
7400	6

The following classes have no hazard group assigned to them

- 6618
- 6625
- 6626
- 6627
- 7204
- 7205

**OTS-5842.1**

AMENDATORY SECTION (Amending WSR 23-24-039, filed 11/30/23, effective 1/1/24)

**WAC 296-17-895 Industrial insurance accident fund base rates, stay at work and medical aid base rates by class of industry.** Industrial insurance accident fund, stay at work and medical aid fund base rates by class of industry shall be as set forth below.

Class	Base Rates Effective January 1, ((2024)) 2025		
	Accident Fund	Stay at Work	Medical Aid Fund
((101	1.4877	0.0227	0.5543
103	1.5929	0.0239	0.8860
104	1.2520	0.0191	0.4479
105	1.3124	0.0197	0.7101
106	3.3748	0.0503	2.0647
107	1.2683	0.0193	0.5116
108	1.2520	0.0191	0.4479
112	1.0447	0.0158	0.4734
201	3.4864	0.0536	1.0267

**Base Rates Effective  
January 1, ((2024)) 2025**

<b>Class</b>	<b>Accident Fund</b>	<b>Stay at Work</b>	<b>Medical Aid Fund</b>
202	2.6273	0.0402	0.9024
210	1.4479	0.0221	0.5287
212	1.2793	0.0193	0.5827
214	2.3252	0.0357	0.7117
217	1.3531	0.0205	0.5847
219	0.9941	0.0151	0.4249
301	1.2323	0.0185	0.6766
302	2.6965	0.0411	1.0067
303	2.4508	0.0373	0.9725
306	1.1022	0.0168	0.4276
307	1.0659	0.0161	0.5007
308	0.7231	0.0107	0.4620
403	2.0354	0.0309	0.8657
502	1.1293	0.0171	0.4724
504	2.4401	0.0369	1.0806
507	3.6133	0.0542	1.9782
508	2.4274	0.0373	0.6922
509	1.4626	0.0225	0.4028
510	2.9253	0.0441	1.4592
511	1.9058	0.0289	0.7953
512	1.5414	0.0232	0.7458
513	1.2445	0.0189	0.5370
514	1.7357	0.0262	0.8473
516	1.9385	0.0294	0.8271
517	2.2952	0.0349	0.9404
518	1.8522	0.0283	0.6483
519	2.5143	0.0383	0.9342
521	0.9268	0.0140	0.4608
601	0.7468	0.0114	0.2825
602	1.1533	0.0178	0.2924
603	1.2589	0.0193	0.4241
604	1.3621	0.0204	0.7285
606	0.7478	0.0113	0.3669
607	1.0648	0.0161	0.4607
608	0.5889	0.0090	0.2209
701	2.1361	0.0328	0.6291
803	0.8897	0.0135	0.3708
901	1.8522	0.0283	0.6483
1002	1.1596	0.0176	0.4745
1003	0.7765	0.0117	0.3653
1004	0.7123	0.0109	0.2390
1005	13.3138	0.2034	4.6604
1006	0.3313	0.0050	0.1555
1007	0.4428	0.0067	0.2162
1101	1.5663	0.0237	0.7019

**Base Rates Effective  
January 1, ((2024)) 2025**

<b>Class</b>	<b>Accident Fund</b>	<b>Stay at Work</b>	<b>Medical Aid Fund</b>
1102	2.3924	0.0366	0.8072
1103	1.5270	0.0232	0.6384
1104	0.8335	0.0125	0.4736
1105	1.0598	0.0161	0.4605
1106	0.4889	0.0073	0.3165
1108	0.6867	0.0103	0.4008
1109	2.8511	0.0433	1.1736
1301	0.9267	0.0141	0.3956
1303	0.5963	0.0091	0.2305
1304	0.0261	0.0004	0.0118
1305	0.6753	0.0103	0.2660
1401	0.4039	0.0060	0.2893
1404	1.0128	0.0151	0.6163
1405	1.0448	0.0157	0.5178
1407	0.8888	0.0134	0.4345
1501	1.2413	0.0189	0.4917
1507	0.5990	0.0090	0.3269
1701	1.1472	0.0174	0.5013
1702	2.0818	0.0321	0.5103
1703	1.4303	0.0219	0.4586
1704	1.1472	0.0174	0.5013
1801	0.8398	0.0128	0.2994
1802	1.3437	0.0205	0.4791
2002	1.0465	0.0158	0.4954
2004	0.7771	0.0116	0.4813
2007	0.9359	0.0141	0.4885
2008	0.3251	0.0049	0.1921
2009	0.5092	0.0076	0.3313
2101	0.8575	0.0128	0.4940
2102	0.9187	0.0137	0.5384
2103	2.1598	0.0326	0.9995
2104	0.3953	0.0056	0.4028
2105	1.0526	0.0159	0.4826
2106	0.7155	0.0107	0.4285
2201	0.4191	0.0062	0.3135
2202	0.9908	0.0149	0.4757
2203	0.6598	0.0098	0.4355
2204	0.4191	0.0062	0.3135
2401	0.6550	0.0099	0.2959
2903	0.7874	0.0117	0.5193
2904	0.9723	0.0147	0.4452
2905	0.7057	0.0105	0.4559
2906	0.7879	0.0118	0.4671
2907	0.5454	0.0080	0.3849
2908	1.0308	0.0153	0.6810

**Base Rates Effective  
January 1, ((2024)) 2025**

<b>Class</b>	<b>Accident Fund</b>	<b>Stay at Work</b>	<b>Medical Aid Fund</b>
2909	0.5502	0.0081	0.3897
3101	1.0273	0.0155	0.5100
3102	0.4229	0.0064	0.1823
3103	0.5026	0.0076	0.2434
3104	0.9477	0.0141	0.6052
3105	1.1487	0.0170	0.7530
3303	0.5294	0.0079	0.2839
3304	0.9375	0.0139	0.5875
3309	0.5523	0.0083	0.2763
3402	0.5938	0.0089	0.3393
3403	0.2021	0.0030	0.1016
3404	0.7749	0.0116	0.4001
3405	0.3629	0.0054	0.2041
3406	0.3448	0.0052	0.2000
3407	1.3048	0.0199	0.5034
3408	0.3819	0.0058	0.1759
3409	0.2128	0.0032	0.1372
3410	0.2128	0.0032	0.1372
3411	0.7216	0.0109	0.3143
3412	1.1463	0.0175	0.3996
3414	1.2195	0.0185	0.5262
3415	1.9075	0.0288	0.9190
3501	0.5461	0.0081	0.3580
3503	0.4497	0.0067	0.2553
3506	1.2453	0.0190	0.4798
3509	0.6362	0.0095	0.3384
3510	0.4804	0.0071	0.3410
3511	1.1215	0.0167	0.6773
3512	0.4922	0.0073	0.3248
3513	0.6686	0.0100	0.3465
3602	0.1381	0.0021	0.0771
3603	0.6256	0.0093	0.3676
3604	1.1811	0.0177	0.6483
3605	0.5938	0.0089	0.3393
3701	0.4229	0.0064	0.1823
3702	0.4694	0.0070	0.2809
3708	0.8867	0.0133	0.4609
3802	0.2594	0.0039	0.1595
3808	0.5508	0.0083	0.2882
3901	0.1554	0.0023	0.1299
3902	0.6636	0.0098	0.4431
3903	1.0331	0.0153	0.6899
3905	0.1613	0.0024	0.1325
3906	0.6238	0.0092	0.4431
3909	0.3151	0.0046	0.2255

**Base Rates Effective  
January 1, ((2024)) 2025**

<b>Class</b>	<b>Accident Fund</b>	<b>Stay at Work</b>	<b>Medical Aid Fund</b>
4101	0.2687	0.0040	0.1663
4103	0.7651	0.0114	0.4577
4107	0.2779	0.0042	0.1274
4108	0.2440	0.0036	0.1436
4109	0.2869	0.0043	0.1874
4201	1.3965	0.0215	0.3911
4301	1.0638	0.0157	0.7499
4302	1.0820	0.0163	0.5458
4304	1.0558	0.0154	0.8323
4305	1.7974	0.0274	0.7034
4401	0.5294	0.0079	0.2839
4402	0.9186	0.0139	0.4241
4404	0.7531	0.0113	0.4099
4501	0.2238	0.0033	0.1318
4502	0.0868	0.0013	0.0425
4504	0.1449	0.0021	0.1196
4802	0.6420	0.0095	0.4008
4803	0.5675	0.0083	0.4463
4804	0.6812	0.0100	0.4831
4805	0.4398	0.0064	0.3544
4806	0.1729	0.0025	0.1330
4808	0.7464	0.0112	0.4184
4809	0.3436	0.0051	0.2268
4810	0.3295	0.0049	0.2259
4811	0.5992	0.0087	0.4862
4812	0.5997	0.0090	0.3342
4813	0.3541	0.0051	0.3104
4900	0.1895	0.0029	0.0845
4901	0.0658	0.0010	0.0261
4902	0.1103	0.0017	0.0512
4903	0.2863	0.0043	0.1268
4904	0.0183	0.0003	0.0112
4905	0.4816	0.0071	0.3474
4906	0.1700	0.0026	0.0769
4907	0.0640	0.0009	0.0609
4908	0.1124	0.0016	0.1176
4909	0.0450	0.0006	0.0470
4910	0.7109	0.0107	0.3418
4911	0.0993	0.0015	0.0447
5001	12.6105	0.1924	4.5905
5002	0.8388	0.0127	0.3952
5003	4.0337	0.0616	1.4232
5004	1.3714	0.0203	0.9287
5005	1.6370	0.0250	0.5744
5006	1.9942	0.0305	0.6507



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<b>Class</b>	<b>Accident Fund</b>	<b>Stay at Work</b>	<b>Medical Aid Fund</b>
5101	1.4033	0.0214	0.5149
5103	1.2189	0.0182	0.7122
5106	1.2189	0.0182	0.7122
5108	1.2451	0.0189	0.5443
5109	0.7108	0.0108	0.3022
5201	0.3847	0.0057	0.2350
5204	1.8262	0.0280	0.5438
5206	0.5967	0.0090	0.2778
5207	0.1952	0.0029	0.1438
5208	0.8838	0.0133	0.4449
5209	0.8783	0.0132	0.4474
5300	0.1228	0.0018	0.0619
5301	0.0382	0.0006	0.0205
5302	0.0099	0.0001	0.0043
5305	0.0700	0.0011	0.0362
5306	0.0518	0.0008	0.0306
5307	1.0920	0.0166	0.4341
5308	0.1193	0.0018	0.0799
6103	0.1102	0.0016	0.0909
6104	0.5117	0.0077	0.2909
6105	0.8821	0.0134	0.3476
6107	0.1916	0.0027	0.1962
6108	0.3425	0.0050	0.2658
6109	0.2006	0.0030	0.0836
6110	0.6449	0.0098	0.2752
6120	0.5167	0.0078	0.2175
6121	0.7253	0.0110	0.2946
6201	0.7769	0.0117	0.3732
6202	1.1898	0.0178	0.6552
6203	0.1053	0.0015	0.1155
6204	0.1550	0.0023	0.1124
6205	0.2498	0.0037	0.1503
6206	0.2663	0.0039	0.1774
6207	1.2653	0.0189	0.7275
6208	0.2402	0.0034	0.2398
6209	0.3405	0.0050	0.2833
6301	0.2146	0.0033	0.0926
6303	0.0698	0.0011	0.0342
6305	0.1279	0.0019	0.0948
6306	0.5369	0.0080	0.3004
6308	0.1118	0.0017	0.0550
6309	0.2992	0.0044	0.1870
6402	0.3106	0.0046	0.2361
6403	0.1990	0.0030	0.1301
6404	0.4109	0.0061	0.2856

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<b>Class</b>	<b>Accident Fund</b>	<b>Stay at Work</b>	<b>Medical Aid Fund</b>
6405	0.9393	0.0142	0.4517
6406	0.2090	0.0031	0.1346
6407	0.3684	0.0055	0.2255
6408	0.8975	0.0134	0.4981
6409	1.0915	0.0165	0.4764
6410	0.4310	0.0065	0.2291
6411	0.0543	0.0008	0.0440
6501	0.1410	0.0021	0.0667
6502	0.0296	0.0004	0.0157
6503	0.1393	0.0021	0.0472
6504	0.3129	0.0045	0.2669
6505	0.1569	0.0022	0.1550
6506	0.1669	0.0025	0.0920
6509	0.3060	0.0045	0.2341
6510	0.7395	0.0113	0.2241
6511	0.3438	0.0051	0.2225
6512	0.1412	0.0021	0.0682
6601	0.2776	0.0041	0.1640
6602	0.8346	0.0124	0.5191
6603	0.3789	0.0056	0.2512
6604	0.0866	0.0013	0.0539
6605	0.4213	0.0063	0.2414
6607	0.1536	0.0023	0.1101
6608	0.8614	0.0133	0.2228
6620	5.4004	0.0819	2.2920
6704	0.1709	0.0025	0.1024
6705	0.8624	0.0124	0.8589
6706	0.2985	0.0044	0.2278
6707	8.9916	0.1268	10.2898
6708	10.6233	0.1529	10.0536
6709	0.3506	0.0052	0.2181
6801	1.0721	0.0165	0.3129
6802	1.4126	0.0214	0.6342
6803	0.9759	0.0151	0.2468
6804	0.3729	0.0056	0.2101
6809	4.2952	0.0633	3.0867
6901	0.0000	0.0000	0.0726
6902	1.2078	0.0183	0.5160
6903	6.8158	0.1045	2.1419
6904	2.5875	0.0399	0.6747
6905	2.0753	0.0321	0.4332
6906	0.0000	0.0000	0.5503
6907	1.0822	0.0161	0.6665
6908	0.5923	0.0089	0.3265
6909	0.1649	0.0025	0.0910

**Base Rates Effective  
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<b>Class</b>	<b>Accident Fund</b>	<b>Stay at Work</b>	<b>Medical Aid Fund</b>
7100	0.0269	0.0004	0.0112
7101	0.0416	0.0006	0.0160
7103	1.8271	0.0280	0.6056
7104	0.0389	0.0006	0.0189
7105	0.0267	0.0004	0.0132
7106	0.3265	0.0049	0.2063
7107	0.6067	0.0091	0.3137
7108	0.4003	0.0059	0.2716
7109	0.1525	0.0023	0.0770
7110	0.7127	0.0108	0.3330
7111	0.6359	0.0098	0.1800
7112	0.8541	0.0126	0.6054
7113	0.6459	0.0097	0.3676
7114	0.9879	0.0146	0.6906
7115	0.7896	0.0116	0.5900
7116	0.8811	0.0133	0.4270
7117	1.4180	0.0212	0.8262
7118	2.3715	0.0358	1.0980
7119	2.7980	0.0424	1.1889
7120	8.9874	0.1368	3.5170
7121	12.1415	0.1856	4.2077
7122	0.4582	0.0067	0.3545
7200	4.5303	0.0697	1.2621
7201	2.9715	0.0455	0.9833
7202	0.0271	0.0004	0.0132
7203	0.1140	0.0016	0.1076
7204	0.0000	0.0000	0.0000
7205	0.0000	0.0000	0.0000
7301	0.9643	0.0142	0.6739
7302	1.1065	0.0163	0.8223
7307	0.5832	0.0087	0.3749
7308	0.3307	0.0048	0.2834
7309	0.2605	0.0038	0.2271
7400	5.2100	0.0802	1.4512))
<u>101</u>	<u>1.3751</u>	<u>0.0206</u>	<u>0.5262</u>
<u>103</u>	<u>1.6528</u>	<u>0.0243</u>	<u>0.8809</u>
<u>104</u>	<u>1.3666</u>	<u>0.0206</u>	<u>0.4517</u>
<u>105</u>	<u>1.3633</u>	<u>0.0202</u>	<u>0.6791</u>
<u>106</u>	<u>4.0360</u>	<u>0.0594</u>	<u>2.2039</u>
<u>107</u>	<u>1.2697</u>	<u>0.0190</u>	<u>0.4778</u>
<u>108</u>	<u>1.3666</u>	<u>0.0206</u>	<u>0.4517</u>
<u>112</u>	<u>1.0490</u>	<u>0.0156</u>	<u>0.4688</u>
<u>201</u>	<u>3.4894</u>	<u>0.0528</u>	<u>0.9311</u>
<u>202</u>	<u>2.7297</u>	<u>0.0411</u>	<u>0.8432</u>
<u>210</u>	<u>1.5644</u>	<u>0.0235</u>	<u>0.5266</u>

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<b>Class</b>	<b>Accident Fund</b>	<b>Stay at Work</b>	<b>Medical Aid Fund</b>
<u>212</u>	<u>1.4587</u>	<u>0.0217</u>	<u>0.6165</u>
<u>214</u>	<u>2.4596</u>	<u>0.0372</u>	<u>0.6837</u>
<u>217</u>	<u>1.4133</u>	<u>0.0211</u>	<u>0.5733</u>
<u>219</u>	<u>0.9846</u>	<u>0.0147</u>	<u>0.3873</u>
<u>301</u>	<u>1.2745</u>	<u>0.0188</u>	<u>0.6460</u>
<u>302</u>	<u>2.6406</u>	<u>0.0396</u>	<u>0.9318</u>
<u>303</u>	<u>2.6845</u>	<u>0.0403</u>	<u>0.9554</u>
<u>306</u>	<u>1.1410</u>	<u>0.0171</u>	<u>0.4222</u>
<u>307</u>	<u>1.1640</u>	<u>0.0173</u>	<u>0.4868</u>
<u>308</u>	<u>0.7861</u>	<u>0.0115</u>	<u>0.4622</u>
<u>403</u>	<u>2.1149</u>	<u>0.0316</u>	<u>0.8226</u>
<u>502</u>	<u>1.2402</u>	<u>0.0185</u>	<u>0.4932</u>
<u>504</u>	<u>2.6055</u>	<u>0.0389</u>	<u>1.0486</u>
<u>507</u>	<u>3.7294</u>	<u>0.0551</u>	<u>1.8837</u>
<u>508</u>	<u>2.3541</u>	<u>0.0356</u>	<u>0.6716</u>
<u>509</u>	<u>1.5397</u>	<u>0.0233</u>	<u>0.3948</u>
<u>510</u>	<u>3.1260</u>	<u>0.0465</u>	<u>1.3952</u>
<u>511</u>	<u>2.2291</u>	<u>0.0334</u>	<u>0.8014</u>
<u>512</u>	<u>1.6906</u>	<u>0.0251</u>	<u>0.7525</u>
<u>513</u>	<u>1.2684</u>	<u>0.0189</u>	<u>0.5232</u>
<u>514</u>	<u>1.8613</u>	<u>0.0277</u>	<u>0.8275</u>
<u>516</u>	<u>1.9579</u>	<u>0.0292</u>	<u>0.7801</u>
<u>517</u>	<u>2.3599</u>	<u>0.0353</u>	<u>0.9066</u>
<u>518</u>	<u>1.8099</u>	<u>0.0272</u>	<u>0.6127</u>
<u>519</u>	<u>2.8758</u>	<u>0.0432</u>	<u>0.9843</u>
<u>521</u>	<u>1.0234</u>	<u>0.0152</u>	<u>0.4822</u>
<u>601</u>	<u>0.8600</u>	<u>0.0129</u>	<u>0.2809</u>
<u>602</u>	<u>1.3088</u>	<u>0.0199</u>	<u>0.2975</u>
<u>603</u>	<u>1.3316</u>	<u>0.0201</u>	<u>0.4034</u>
<u>604</u>	<u>1.3636</u>	<u>0.0201</u>	<u>0.6945</u>
<u>606</u>	<u>0.8208</u>	<u>0.0122</u>	<u>0.3753</u>
<u>607</u>	<u>1.1145</u>	<u>0.0166</u>	<u>0.4570</u>
<u>608</u>	<u>0.5890</u>	<u>0.0088</u>	<u>0.2092</u>
<u>701</u>	<u>1.8467</u>	<u>0.0279</u>	<u>0.4928</u>
<u>803</u>	<u>0.9826</u>	<u>0.0147</u>	<u>0.3735</u>
<u>901</u>	<u>1.8099</u>	<u>0.0272</u>	<u>0.6127</u>
<u>1002</u>	<u>1.1550</u>	<u>0.0172</u>	<u>0.4724</u>
<u>1003</u>	<u>0.8271</u>	<u>0.0123</u>	<u>0.3642</u>
<u>1004</u>	<u>0.8228</u>	<u>0.0124</u>	<u>0.2489</u>
<u>1005</u>	<u>8.5475</u>	<u>0.1275</u>	<u>3.4954</u>
<u>1006</u>	<u>0.3761</u>	<u>0.0056</u>	<u>0.1602</u>
<u>1007</u>	<u>0.4878</u>	<u>0.0072</u>	<u>0.2244</u>
<u>1101</u>	<u>1.6599</u>	<u>0.0247</u>	<u>0.7107</u>
<u>1102</u>	<u>2.6097</u>	<u>0.0393</u>	<u>0.7997</u>
<u>1103</u>	<u>1.5161</u>	<u>0.0226</u>	<u>0.6179</u>

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<b>Class</b>	<b>Accident Fund</b>	<b>Stay at Work</b>	<b>Medical Aid Fund</b>
<u>1104</u>	<u>0.8847</u>	<u>0.0130</u>	<u>0.4713</u>
<u>1105</u>	<u>1.1020</u>	<u>0.0164</u>	<u>0.4525</u>
<u>1106</u>	<u>0.5238</u>	<u>0.0077</u>	<u>0.3152</u>
<u>1108</u>	<u>0.8345</u>	<u>0.0123</u>	<u>0.4169</u>
<u>1109</u>	<u>3.1194</u>	<u>0.0467</u>	<u>1.1499</u>
<u>1301</u>	<u>0.9398</u>	<u>0.0140</u>	<u>0.3926</u>
<u>1303</u>	<u>0.6317</u>	<u>0.0095</u>	<u>0.2255</u>
<u>1304</u>	<u>0.0276</u>	<u>0.0004</u>	<u>0.0111</u>
<u>1305</u>	<u>0.7219</u>	<u>0.0108</u>	<u>0.2594</u>
<u>1401</u>	<u>0.4573</u>	<u>0.0067</u>	<u>0.2906</u>
<u>1404</u>	<u>1.0701</u>	<u>0.0157</u>	<u>0.6300</u>
<u>1405</u>	<u>1.1357</u>	<u>0.0168</u>	<u>0.5292</u>
<u>1407</u>	<u>1.0477</u>	<u>0.0156</u>	<u>0.4747</u>
<u>1501</u>	<u>1.3848</u>	<u>0.0207</u>	<u>0.5135</u>
<u>1507</u>	<u>0.6307</u>	<u>0.0093</u>	<u>0.3295</u>
<u>1701</u>	<u>1.1708</u>	<u>0.0174</u>	<u>0.4996</u>
<u>1702</u>	<u>2.1662</u>	<u>0.0329</u>	<u>0.4922</u>
<u>1703</u>	<u>1.5263</u>	<u>0.0230</u>	<u>0.4588</u>
<u>1704</u>	<u>1.1708</u>	<u>0.0174</u>	<u>0.4996</u>
<u>1801</u>	<u>0.9083</u>	<u>0.0136</u>	<u>0.3058</u>
<u>1802</u>	<u>1.4533</u>	<u>0.0218</u>	<u>0.4892</u>
<u>2002</u>	<u>1.0947</u>	<u>0.0163</u>	<u>0.4748</u>
<u>2004</u>	<u>0.7996</u>	<u>0.0117</u>	<u>0.4787</u>
<u>2007</u>	<u>0.9444</u>	<u>0.0139</u>	<u>0.4848</u>
<u>2008</u>	<u>0.3508</u>	<u>0.0052</u>	<u>0.1825</u>
<u>2009</u>	<u>0.5198</u>	<u>0.0076</u>	<u>0.3254</u>
<u>2101</u>	<u>0.8889</u>	<u>0.0130</u>	<u>0.5040</u>
<u>2102</u>	<u>0.9108</u>	<u>0.0134</u>	<u>0.5057</u>
<u>2103</u>	<u>2.3396</u>	<u>0.0348</u>	<u>1.0157</u>
<u>2104</u>	<u>0.4244</u>	<u>0.0060</u>	<u>0.4057</u>
<u>2105</u>	<u>1.2772</u>	<u>0.0190</u>	<u>0.5262</u>
<u>2106</u>	<u>0.7755</u>	<u>0.0114</u>	<u>0.4375</u>
<u>2201</u>	<u>0.4564</u>	<u>0.0066</u>	<u>0.3133</u>
<u>2202</u>	<u>1.1425</u>	<u>0.0170</u>	<u>0.4993</u>
<u>2203</u>	<u>0.7238</u>	<u>0.0106</u>	<u>0.4358</u>
<u>2204</u>	<u>0.4564</u>	<u>0.0066</u>	<u>0.3133</u>
<u>2401</u>	<u>0.6723</u>	<u>0.0100</u>	<u>0.2786</u>
<u>2903</u>	<u>0.8119</u>	<u>0.0118</u>	<u>0.5037</u>
<u>2904</u>	<u>0.9880</u>	<u>0.0147</u>	<u>0.4255</u>
<u>2905</u>	<u>0.7699</u>	<u>0.0113</u>	<u>0.4660</u>
<u>2906</u>	<u>0.7951</u>	<u>0.0117</u>	<u>0.4317</u>
<u>2907</u>	<u>0.5769</u>	<u>0.0084</u>	<u>0.3901</u>
<u>2908</u>	<u>1.0506</u>	<u>0.0153</u>	<u>0.6635</u>
<u>2909</u>	<u>0.5993</u>	<u>0.0087</u>	<u>0.3840</u>
<u>3101</u>	<u>1.1106</u>	<u>0.0165</u>	<u>0.5297</u>

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<b>Class</b>	<b>Accident Fund</b>	<b>Stay at Work</b>	<b>Medical Aid Fund</b>
<u>3102</u>	<u>0.4610</u>	<u>0.0069</u>	<u>0.1811</u>
<u>3103</u>	<u>0.5270</u>	<u>0.0078</u>	<u>0.2367</u>
<u>3104</u>	<u>1.0323</u>	<u>0.0151</u>	<u>0.5923</u>
<u>3105</u>	<u>1.2036</u>	<u>0.0176</u>	<u>0.7355</u>
<u>3303</u>	<u>0.5794</u>	<u>0.0086</u>	<u>0.2841</u>
<u>3304</u>	<u>0.9762</u>	<u>0.0143</u>	<u>0.5673</u>
<u>3309</u>	<u>0.6091</u>	<u>0.0090</u>	<u>0.2837</u>
<u>3402</u>	<u>0.6148</u>	<u>0.0090</u>	<u>0.3385</u>
<u>3403</u>	<u>0.2138</u>	<u>0.0032</u>	<u>0.1027</u>
<u>3404</u>	<u>0.8571</u>	<u>0.0127</u>	<u>0.4038</u>
<u>3405</u>	<u>0.3846</u>	<u>0.0057</u>	<u>0.2052</u>
<u>3406</u>	<u>0.3551</u>	<u>0.0052</u>	<u>0.1929</u>
<u>3407</u>	<u>1.3725</u>	<u>0.0206</u>	<u>0.4930</u>
<u>3408</u>	<u>0.4010</u>	<u>0.0060</u>	<u>0.1745</u>
<u>3409</u>	<u>0.2372</u>	<u>0.0035</u>	<u>0.1393</u>
<u>3410</u>	<u>0.2372</u>	<u>0.0035</u>	<u>0.1393</u>
<u>3411</u>	<u>0.7201</u>	<u>0.0107</u>	<u>0.3066</u>
<u>3412</u>	<u>1.1769</u>	<u>0.0177</u>	<u>0.3879</u>
<u>3414</u>	<u>1.2339</u>	<u>0.0184</u>	<u>0.5207</u>
<u>3415</u>	<u>2.0485</u>	<u>0.0305</u>	<u>0.8977</u>
<u>3501</u>	<u>0.4963</u>	<u>0.0072</u>	<u>0.3033</u>
<u>3503</u>	<u>0.4989</u>	<u>0.0073</u>	<u>0.2657</u>
<u>3506</u>	<u>1.2280</u>	<u>0.0184</u>	<u>0.4561</u>
<u>3509</u>	<u>0.6904</u>	<u>0.0102</u>	<u>0.3377</u>
<u>3510</u>	<u>0.5178</u>	<u>0.0075</u>	<u>0.3486</u>
<u>3511</u>	<u>1.1723</u>	<u>0.0172</u>	<u>0.6619</u>
<u>3512</u>	<u>0.5121</u>	<u>0.0075</u>	<u>0.3109</u>
<u>3513</u>	<u>0.7297</u>	<u>0.0108</u>	<u>0.3369</u>
<u>3602</u>	<u>0.1341</u>	<u>0.0020</u>	<u>0.0707</u>
<u>3603</u>	<u>0.6732</u>	<u>0.0099</u>	<u>0.3719</u>
<u>3604</u>	<u>1.2986</u>	<u>0.0191</u>	<u>0.6794</u>
<u>3605</u>	<u>0.6148</u>	<u>0.0090</u>	<u>0.3385</u>
<u>3701</u>	<u>0.4610</u>	<u>0.0069</u>	<u>0.1811</u>
<u>3702</u>	<u>0.4693</u>	<u>0.0069</u>	<u>0.2708</u>
<u>3708</u>	<u>0.9337</u>	<u>0.0138</u>	<u>0.4445</u>
<u>3802</u>	<u>0.2681</u>	<u>0.0039</u>	<u>0.1529</u>
<u>3808</u>	<u>0.5762</u>	<u>0.0085</u>	<u>0.2676</u>
<u>3901</u>	<u>0.1676</u>	<u>0.0024</u>	<u>0.1271</u>
<u>3902</u>	<u>0.7332</u>	<u>0.0107</u>	<u>0.4506</u>
<u>3903</u>	<u>1.0610</u>	<u>0.0155</u>	<u>0.6521</u>
<u>3905</u>	<u>0.1759</u>	<u>0.0025</u>	<u>0.1309</u>
<u>3906</u>	<u>0.7311</u>	<u>0.0107</u>	<u>0.4519</u>
<u>3909</u>	<u>0.3436</u>	<u>0.0050</u>	<u>0.2315</u>
<u>4101</u>	<u>0.2686</u>	<u>0.0039</u>	<u>0.1646</u>
<u>4103</u>	<u>0.8567</u>	<u>0.0126</u>	<u>0.4847</u>

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<b>Class</b>	<b>Accident Fund</b>	<b>Stay at Work</b>	<b>Medical Aid Fund</b>
<u>4107</u>	<u>0.2901</u>	<u>0.0043</u>	<u>0.1146</u>
<u>4108</u>	<u>0.2818</u>	<u>0.0041</u>	<u>0.1544</u>
<u>4109</u>	<u>0.3092</u>	<u>0.0045</u>	<u>0.1844</u>
<u>4201</u>	<u>1.4710</u>	<u>0.0223</u>	<u>0.3823</u>
<u>4301</u>	<u>1.0881</u>	<u>0.0158</u>	<u>0.7007</u>
<u>4302</u>	<u>1.1659</u>	<u>0.0173</u>	<u>0.5505</u>
<u>4304</u>	<u>1.0677</u>	<u>0.0154</u>	<u>0.7691</u>
<u>4305</u>	<u>1.9552</u>	<u>0.0293</u>	<u>0.7173</u>
<u>4401</u>	<u>0.5794</u>	<u>0.0086</u>	<u>0.2841</u>
<u>4402</u>	<u>0.9818</u>	<u>0.0146</u>	<u>0.4278</u>
<u>4404</u>	<u>0.8780</u>	<u>0.0129</u>	<u>0.4567</u>
<u>4501</u>	<u>0.2339</u>	<u>0.0034</u>	<u>0.1309</u>
<u>4502</u>	<u>0.0901</u>	<u>0.0013</u>	<u>0.0400</u>
<u>4504</u>	<u>0.1727</u>	<u>0.0025</u>	<u>0.1305</u>
<u>4802</u>	<u>0.7033</u>	<u>0.0103</u>	<u>0.4009</u>
<u>4803</u>	<u>0.6021</u>	<u>0.0087</u>	<u>0.4548</u>
<u>4804</u>	<u>0.7455</u>	<u>0.0109</u>	<u>0.4586</u>
<u>4805</u>	<u>0.4774</u>	<u>0.0069</u>	<u>0.3580</u>
<u>4806</u>	<u>0.1988</u>	<u>0.0029</u>	<u>0.1390</u>
<u>4808</u>	<u>0.8203</u>	<u>0.0121</u>	<u>0.4202</u>
<u>4809</u>	<u>0.3625</u>	<u>0.0053</u>	<u>0.2326</u>
<u>4810</u>	<u>0.3431</u>	<u>0.0050</u>	<u>0.2211</u>
<u>4811</u>	<u>0.6405</u>	<u>0.0092</u>	<u>0.4771</u>
<u>4812</u>	<u>0.6298</u>	<u>0.0093</u>	<u>0.3272</u>
<u>4813</u>	<u>0.4266</u>	<u>0.0061</u>	<u>0.3331</u>
<u>4900</u>	<u>0.2182</u>	<u>0.0033</u>	<u>0.0869</u>
<u>4901</u>	<u>0.0695</u>	<u>0.0010</u>	<u>0.0248</u>
<u>4902</u>	<u>0.1037</u>	<u>0.0015</u>	<u>0.0464</u>
<u>4903</u>	<u>0.3190</u>	<u>0.0048</u>	<u>0.1275</u>
<u>4904</u>	<u>0.0188</u>	<u>0.0003</u>	<u>0.0102</u>
<u>4905</u>	<u>0.5506</u>	<u>0.0080</u>	<u>0.3561</u>
<u>4906</u>	<u>0.1761</u>	<u>0.0026</u>	<u>0.0747</u>
<u>4907</u>	<u>0.0686</u>	<u>0.0010</u>	<u>0.0591</u>
<u>4908</u>	<u>0.1204</u>	<u>0.0017</u>	<u>0.1143</u>
<u>4909</u>	<u>0.0482</u>	<u>0.0007</u>	<u>0.0457</u>
<u>4910</u>	<u>0.7468</u>	<u>0.0111</u>	<u>0.3395</u>
<u>4911</u>	<u>0.1104</u>	<u>0.0016</u>	<u>0.0454</u>
<u>5001</u>	<u>13.1763</u>	<u>0.1986</u>	<u>4.0792</u>
<u>5002</u>	<u>0.8918</u>	<u>0.0133</u>	<u>0.3898</u>
<u>5003</u>	<u>4.4756</u>	<u>0.0674</u>	<u>1.4471</u>
<u>5004</u>	<u>1.4083</u>	<u>0.0206</u>	<u>0.8348</u>
<u>5005</u>	<u>1.6891</u>	<u>0.0254</u>	<u>0.5504</u>
<u>5006</u>	<u>2.0933</u>	<u>0.0316</u>	<u>0.6337</u>
<u>5101</u>	<u>1.4450</u>	<u>0.0217</u>	<u>0.4998</u>
<u>5103</u>	<u>1.3191</u>	<u>0.0194</u>	<u>0.7405</u>

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<b>Class</b>	<b>Accident Fund</b>	<b>Stay at Work</b>	<b>Medical Aid Fund</b>
<u>5106</u>	<u>1.3191</u>	<u>0.0194</u>	<u>0.7405</u>
<u>5108</u>	<u>1.2916</u>	<u>0.0193</u>	<u>0.5180</u>
<u>5109</u>	<u>0.7334</u>	<u>0.0110</u>	<u>0.2892</u>
<u>5201</u>	<u>0.3955</u>	<u>0.0058</u>	<u>0.2251</u>
<u>5204</u>	<u>1.9345</u>	<u>0.0292</u>	<u>0.5379</u>
<u>5206</u>	<u>0.5997</u>	<u>0.0089</u>	<u>0.2556</u>
<u>5207</u>	<u>0.2264</u>	<u>0.0033</u>	<u>0.1556</u>
<u>5208</u>	<u>0.8685</u>	<u>0.0129</u>	<u>0.4180</u>
<u>5209</u>	<u>0.8388</u>	<u>0.0124</u>	<u>0.4055</u>
<u>5300</u>	<u>0.1267</u>	<u>0.0019</u>	<u>0.0582</u>
<u>5301</u>	<u>0.0353</u>	<u>0.0005</u>	<u>0.0182</u>
<u>5302</u>	<u>0.0102</u>	<u>0.0002</u>	<u>0.0041</u>
<u>5305</u>	<u>0.0762</u>	<u>0.0011</u>	<u>0.0364</u>
<u>5306</u>	<u>0.0593</u>	<u>0.0009</u>	<u>0.0304</u>
<u>5307</u>	<u>1.0993</u>	<u>0.0164</u>	<u>0.4263</u>
<u>5308</u>	<u>0.1335</u>	<u>0.0019</u>	<u>0.0815</u>
<u>6103</u>	<u>0.1177</u>	<u>0.0017</u>	<u>0.0894</u>
<u>6104</u>	<u>0.5439</u>	<u>0.0080</u>	<u>0.2790</u>
<u>6105</u>	<u>0.9336</u>	<u>0.0140</u>	<u>0.3433</u>
<u>6107</u>	<u>0.2121</u>	<u>0.0030</u>	<u>0.2025</u>
<u>6108</u>	<u>0.3701</u>	<u>0.0054</u>	<u>0.2618</u>
<u>6109</u>	<u>0.2108</u>	<u>0.0031</u>	<u>0.0828</u>
<u>6110</u>	<u>0.7393</u>	<u>0.0111</u>	<u>0.2777</u>
<u>6120</u>	<u>0.5769</u>	<u>0.0086</u>	<u>0.2122</u>
<u>6121</u>	<u>0.7950</u>	<u>0.0119</u>	<u>0.2883</u>
<u>6201</u>	<u>0.8118</u>	<u>0.0120</u>	<u>0.3755</u>
<u>6202</u>	<u>1.2873</u>	<u>0.0189</u>	<u>0.6953</u>
<u>6203</u>	<u>0.1177</u>	<u>0.0017</u>	<u>0.1149</u>
<u>6204</u>	<u>0.1665</u>	<u>0.0024</u>	<u>0.1107</u>
<u>6205</u>	<u>0.2765</u>	<u>0.0040</u>	<u>0.1662</u>
<u>6206</u>	<u>0.2811</u>	<u>0.0041</u>	<u>0.1740</u>
<u>6207</u>	<u>1.3313</u>	<u>0.0196</u>	<u>0.7032</u>
<u>6208</u>	<u>0.2593</u>	<u>0.0037</u>	<u>0.2341</u>
<u>6209</u>	<u>0.3586</u>	<u>0.0052</u>	<u>0.2686</u>
<u>6301</u>	<u>0.2213</u>	<u>0.0033</u>	<u>0.0890</u>
<u>6303</u>	<u>0.0731</u>	<u>0.0011</u>	<u>0.0339</u>
<u>6305</u>	<u>0.1393</u>	<u>0.0020</u>	<u>0.0972</u>
<u>6306</u>	<u>0.5954</u>	<u>0.0088</u>	<u>0.3045</u>
<u>6308</u>	<u>0.1253</u>	<u>0.0019</u>	<u>0.0565</u>
<u>6309</u>	<u>0.3203</u>	<u>0.0047</u>	<u>0.1868</u>
<u>6402</u>	<u>0.3169</u>	<u>0.0046</u>	<u>0.2305</u>
<u>6403</u>	<u>0.2202</u>	<u>0.0032</u>	<u>0.1365</u>
<u>6404</u>	<u>0.4439</u>	<u>0.0065</u>	<u>0.2747</u>
<u>6405</u>	<u>0.9230</u>	<u>0.0137</u>	<u>0.4320</u>
<u>6406</u>	<u>0.2309</u>	<u>0.0034</u>	<u>0.1399</u>



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<b>Class</b>	<b>Accident Fund</b>	<b>Stay at Work</b>	<b>Medical Aid Fund</b>
<u>6407</u>	<u>0.4017</u>	<u>0.0059</u>	<u>0.2319</u>
<u>6408</u>	<u>0.9388</u>	<u>0.0138</u>	<u>0.4855</u>
<u>6409</u>	<u>1.1713</u>	<u>0.0175</u>	<u>0.4593</u>
<u>6410</u>	<u>0.4579</u>	<u>0.0068</u>	<u>0.2343</u>
<u>6411</u>	<u>0.0682</u>	<u>0.0010</u>	<u>0.0491</u>
<u>6501</u>	<u>0.1359</u>	<u>0.0020</u>	<u>0.0628</u>
<u>6502</u>	<u>0.0294</u>	<u>0.0004</u>	<u>0.0151</u>
<u>6503</u>	<u>0.1516</u>	<u>0.0023</u>	<u>0.0464</u>
<u>6504</u>	<u>0.3319</u>	<u>0.0048</u>	<u>0.2657</u>
<u>6505</u>	<u>0.1801</u>	<u>0.0026</u>	<u>0.1593</u>
<u>6506</u>	<u>0.1741</u>	<u>0.0026</u>	<u>0.0896</u>
<u>6509</u>	<u>0.3638</u>	<u>0.0053</u>	<u>0.2417</u>
<u>6510</u>	<u>0.7777</u>	<u>0.0118</u>	<u>0.2180</u>
<u>6511</u>	<u>0.3562</u>	<u>0.0052</u>	<u>0.2224</u>
<u>6512</u>	<u>0.1518</u>	<u>0.0023</u>	<u>0.0681</u>
<u>6601</u>	<u>0.3279</u>	<u>0.0048</u>	<u>0.1706</u>
<u>6602</u>	<u>0.9056</u>	<u>0.0133</u>	<u>0.5151</u>
<u>6603</u>	<u>0.4005</u>	<u>0.0058</u>	<u>0.2502</u>
<u>6604</u>	<u>0.0917</u>	<u>0.0013</u>	<u>0.0522</u>
<u>6605</u>	<u>0.4398</u>	<u>0.0065</u>	<u>0.2469</u>
<u>6607</u>	<u>0.1698</u>	<u>0.0025</u>	<u>0.1108</u>
<u>6608</u>	<u>0.8816</u>	<u>0.0134</u>	<u>0.2130</u>
<u>6620</u>	<u>5.8246</u>	<u>0.0871</u>	<u>2.2633</u>
<u>6704</u>	<u>0.1878</u>	<u>0.0028</u>	<u>0.1008</u>
<u>6705</u>	<u>0.9531</u>	<u>0.0134</u>	<u>0.8987</u>
<u>6706</u>	<u>0.3182</u>	<u>0.0046</u>	<u>0.2210</u>
<u>6707</u>	<u>9.4089</u>	<u>0.1293</u>	<u>11.0873</u>
<u>6708</u>	<u>11.2966</u>	<u>0.1604</u>	<u>9.8933</u>
<u>6709</u>	<u>0.3665</u>	<u>0.0054</u>	<u>0.2170</u>
<u>6801</u>	<u>1.2757</u>	<u>0.0193</u>	<u>0.3325</u>
<u>6802</u>	<u>1.5573</u>	<u>0.0232</u>	<u>0.6618</u>
<u>6803</u>	<u>1.0372</u>	<u>0.0158</u>	<u>0.2424</u>
<u>6804</u>	<u>0.4225</u>	<u>0.0062</u>	<u>0.2082</u>
<u>6809</u>	<u>4.4939</u>	<u>0.0654</u>	<u>2.9356</u>
<u>6901</u>	<u>0.0000</u>	<u>0.0000</u>	<u>0.0748</u>
<u>6902</u>	<u>1.3030</u>	<u>0.0195</u>	<u>0.5041</u>
<u>6903</u>	<u>6.7388</u>	<u>0.1017</u>	<u>1.9662</u>
<u>6904</u>	<u>3.0710</u>	<u>0.0467</u>	<u>0.7006</u>
<u>6905</u>	<u>2.4863</u>	<u>0.0380</u>	<u>0.4182</u>
<u>6906</u>	<u>0.0000</u>	<u>0.0000</u>	<u>0.6341</u>
<u>6907</u>	<u>1.1490</u>	<u>0.0169</u>	<u>0.6594</u>
<u>6908</u>	<u>0.6210</u>	<u>0.0091</u>	<u>0.3379</u>
<u>6909</u>	<u>0.1768</u>	<u>0.0026</u>	<u>0.0922</u>
<u>7100</u>	<u>0.0277</u>	<u>0.0004</u>	<u>0.0102</u>
<u>7101</u>	<u>0.0474</u>	<u>0.0007</u>	<u>0.0158</u>

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<b>Class</b>	<b>Accident Fund</b>	<b>Stay at Work</b>	<b>Medical Aid Fund</b>
<u>7103</u>	<u>1.9863</u>	<u>0.0299</u>	<u>0.6188</u>
<u>7104</u>	<u>0.0426</u>	<u>0.0006</u>	<u>0.0188</u>
<u>7105</u>	<u>0.0298</u>	<u>0.0004</u>	<u>0.0133</u>
<u>7106</u>	<u>0.3569</u>	<u>0.0052</u>	<u>0.2049</u>
<u>7107</u>	<u>0.6380</u>	<u>0.0094</u>	<u>0.3070</u>
<u>7108</u>	<u>0.4527</u>	<u>0.0066</u>	<u>0.2800</u>
<u>7109</u>	<u>0.1686</u>	<u>0.0025</u>	<u>0.0782</u>
<u>7110</u>	<u>0.7366</u>	<u>0.0110</u>	<u>0.3183</u>
<u>7111</u>	<u>0.6948</u>	<u>0.0105</u>	<u>0.1688</u>
<u>7112</u>	<u>0.9209</u>	<u>0.0134</u>	<u>0.6150</u>
<u>7113</u>	<u>0.7337</u>	<u>0.0108</u>	<u>0.3762</u>
<u>7114</u>	<u>1.0638</u>	<u>0.0155</u>	<u>0.6763</u>
<u>7115</u>	<u>0.8854</u>	<u>0.0129</u>	<u>0.5695</u>
<u>7116</u>	<u>0.9889</u>	<u>0.0147</u>	<u>0.4426</u>
<u>7117</u>	<u>1.5082</u>	<u>0.0222</u>	<u>0.7868</u>
<u>7118</u>	<u>2.4151</u>	<u>0.0359</u>	<u>1.0488</u>
<u>7119</u>	<u>2.8786</u>	<u>0.0430</u>	<u>1.1312</u>
<u>7120</u>	<u>9.7758</u>	<u>0.1465</u>	<u>3.5865</u>
<u>7121</u>	<u>12.4469</u>	<u>0.1877</u>	<u>3.7784</u>
<u>7122</u>	<u>0.4990</u>	<u>0.0072</u>	<u>0.3472</u>
<u>7200</u>	<u>4.6551</u>	<u>0.0704</u>	<u>1.2612</u>
<u>7201</u>	<u>3.2588</u>	<u>0.0491</u>	<u>1.0007</u>
<u>7202</u>	<u>0.0275</u>	<u>0.0004</u>	<u>0.0127</u>
<u>7203</u>	<u>0.1205</u>	<u>0.0017</u>	<u>0.1035</u>
<u>7204</u>	<u>0.0000</u>	<u>0.0000</u>	<u>0.0000</u>
<u>7205</u>	<u>0.0000</u>	<u>0.0000</u>	<u>0.0000</u>
<u>7301</u>	<u>0.9856</u>	<u>0.0143</u>	<u>0.6445</u>
<u>7302</u>	<u>1.3069</u>	<u>0.0190</u>	<u>0.8547</u>
<u>7307</u>	<u>0.5921</u>	<u>0.0087</u>	<u>0.3533</u>
<u>7308</u>	<u>0.3776</u>	<u>0.0054</u>	<u>0.2866</u>
<u>7309</u>	<u>0.2683</u>	<u>0.0038</u>	<u>0.2127</u>
<u>7400</u>	<u>5.3532</u>	<u>0.0810</u>	<u>1.4504</u>

AMENDATORY SECTION (Amending WSR 23-24-039, filed 11/30/23, effective 1/1/24)

**WAC 296-17-89502 Industrial insurance accident fund, stay at work, medical aid and supplemental pension rates by class of industry for nonhourly rated classifications.** The base rates as set forth below are for classifications whose premium rates are based on units other than hours worked.

**Base Rates Effective  
January 1, ((2024)) 2025**

Class	Accident Fund	Stay at Work	Medical Aid Fund	Supplemental Pension Fund
((540	0.0220	0.0003	0.0107	0.0014
541	0.0126	0.0002	0.0057	0.0014
550	0.0573	0.0009	0.0215	0.0014
551	0.0191	0.0003	0.0076	0.0014))
540	0.0237	0.0004	0.0106	0.0014
541	0.0128	0.0002	0.0053	0.0014
550	0.0632	0.0009	0.0224	0.0014
551	0.0211	0.0003	0.0077	0.0014

AMENDATORY SECTION (Amending WSR 23-24-039, filed 11/30/23, effective 1/1/24)

**WAC 296-17-89507 Horse racing rates.** Horse racing industry industrial insurance accident fund, stay at work fund, medical aid fund, supplemental pension fund and composite rate by class.

**Base Rates Effective  
January 1, ((2024)) 2025**

Class	Accident Fund	Stay at Work	Medical Aid Fund	Supplemental Pension Fund	Composite Rate
((6618	74.00*	1.00*	74.00*	1.00*	150.00*
6625	89.44**	1.54**	80.21**	17.10**	188.29**
6626	0.7101***	0.0123***	0.6866***	0.1710***	1.5800***
6627	12.7540****	0.2200****	9.1630****	1.2830****	23.4200****))
6618	74.00*	1.00*	74.00*	1.00*	150.00*
6625	99.59**	1.70**	81.11**	17.58**	199.98**
6626	0.8527***	0.0145***	0.7270***	0.1758***	1.7700***
6627	13.7170****	0.2340****	9.1500****	1.3190****	24.4200****

\*This rate is calculated on a percentage of ownership in a horse or horses.

\*\*This rate is calculated per month.

\*\*\*This rate is calculated per horse per day.

\*\*\*\*This rate is calculated per day.

Note: These rates are not subject to experience rating or retrospective rating.

AMENDATORY SECTION (Amending WSR 23-24-039, filed 11/30/23, effective 1/1/24)

**WAC 296-17-89508 Farm internship program industrial insurance, accident fund, stay at work fund, medical aid fund, and supplemental pension by class.**

**Base Rates Effective  
January 1, ((2024)) 2025**

Class	Accident Fund	Stay at Work Fund	Medical Aid Fund	Supplemental Pension Fund
((4814	0.1233	0.0018	0.1298	0.1710

Class	Accident Fund	Stay at Work Fund	Medical Aid Fund	Supplemental Pension Fund
4815	0.3197	0.0046	0.3109	0.1710
4816	0.3783	0.0054	0.4197	0.1710))
<u>4814</u>	<u>0.1293</u>	<u>0.0018</u>	<u>0.1323</u>	<u>0.1758</u>
<u>4815</u>	<u>0.3701</u>	<u>0.0052</u>	<u>0.3411</u>	<u>0.1758</u>
<u>4816</u>	<u>0.3432</u>	<u>0.0048</u>	<u>0.3302</u>	<u>0.1758</u>

AMENDATORY SECTION (Amending WSR 23-24-039, filed 11/30/23, effective 1/1/24)

**WAC 296-17-920 Assessment for supplemental pension fund.** The amount of (~~85.5 mils (\$0.0855)~~) 87.9 mils (\$0.0879) shall be retained by each employer from the earnings of each worker for each hour or fraction thereof the worker is employed. The amount of money so retained from the employee shall be matched in an equal amount by each employer, except as otherwise provided in these rules, all such moneys shall be remitted to the department on or before the last day of January, April, July, and October of each year for the preceding calendar quarter, provided self-insured employers shall remit to the department as provided under WAC 296-15-229. All such moneys shall be deposited in the supplemental pension fund.

**OTS-5843.1**

AMENDATORY SECTION (Amending WSR 23-24-039, filed 11/30/23, effective 1/1/24)

**WAC 296-17B-540 Determining loss incurred for each claim.** (1) Calculating the initial loss incurred:

For each of your claims, we will multiply the case incurred loss by the appropriate discounted loss development factors to determine the initial loss incurred.

If you have a fatality, we will use (~~(\$544,000)~~) \$576,200 as the claim's initial incurred loss for the claim, with (~~(\$507,800)~~) \$537,700 for accident fund incurred loss and (~~(\$36,200)~~) \$38,500 for the medical aid incurred loss, regardless of the case incurred loss, and before recovery factors if applicable.

(2) Applying the single loss occurrence limit:

The initial loss incurred for a claim will be the amount we use as the loss incurred unless the single loss occurrence limit applies.

The single loss occurrence limit applies when the sum of all initial losses incurred for your claims arising out of a single event is greater than your selected single loss occurrence limit. In that case, each claim's initial loss incurred will be its proportionate share of your single loss occurrence limit.

(3) Applying the expected loss ratio factors:

The preliminary loss incurred for a claim will be the amount of the initial loss incurred, after application of the single loss limit, multiplied by the appropriate expected loss ratio factor. The accident

fund and medical aid fund portions of each claim will have separate expected loss ratio factors applied.

AMENDATORY SECTION (Amending WSR 23-24-039, filed 11/30/23, effective 1/1/24)

**WAC 296-17B-900 Retrospective rating plans standard premium size ranges.**

**RETROSPECTIVE RATING STANDARD PREMIUM SIZE RANGES  
Effective January 1, ((2024)) 2025**

Size Group Number	Standard Premium Range	
	From:	To:
1	5,660	6,599
2	6,600	7,459
3	7,460	8,399
4	8,400	9,409
5	9,410	10,479
6	10,480	11,629
7	11,630	12,869
8	12,870	14,169
9	14,170	15,559
10	15,560	17,019
11	17,020	18,559
12	18,560	20,229
13	20,230	21,979
14	21,980	23,849
15	23,850	25,809
16	25,810	27,889
17	27,890	30,109
18	30,110	32,439
19	32,440	34,919
20	34,920	37,519
21	37,520	40,319
22	40,320	43,269
23	43,270	46,409
24	46,410	49,729
25	49,730	53,279
26	53,280	57,049
27	57,050	61,059
28	61,060	65,319
29	65,320	69,869
30	69,870	74,729
31	74,730	79,929
32	79,930	85,499
33	85,500	91,469
34	91,470	97,879
35	97,880	104,799
36	104,800	112,299

Size Group Number	Standard Premium Range	
	From:	To:
37	112,300	120,299
38	120,300	128,899
39	128,900	138,199
40	138,200	148,199
41	148,200	159,099
42	159,100	170,599
43	170,600	183,099
44	183,100	196,799
45	196,800	211,599
46	211,600	227,499
47	227,500	244,699
48	244,700	264,099
49	264,100	284,799
50	284,800	307,499
51	307,500	332,799
52	332,800	360,799
53	360,800	392,399
54	392,400	427,299
55	427,300	466,599
56	466,600	511,299
57	511,300	561,799
58	561,800	619,899
59	619,900	687,199
60	687,200	765,699
61	765,700	857,899
62	857,900	967,199
63	967,200	1,099,999
64	1,100,000	1,263,999
65	1,264,000	1,468,999
66	1,469,000	1,733,999
67	1,734,000	2,081,999
68	2,082,000	2,568,999
69	2,569,000	3,285,999
70	3,286,000	4,468,999
71	4,469,000	6,698,999
72	6,699,000	12,259,999
73	12,260,000	31,359,999
74	31,360,000	and over))
<u>1</u>	<u>5,890</u>	<u>6,869</u>
<u>2</u>	<u>6,870</u>	<u>7,769</u>
<u>3</u>	<u>7,770</u>	<u>8,739</u>
<u>4</u>	<u>8,740</u>	<u>9,799</u>
<u>5</u>	<u>9,800</u>	<u>10,909</u>
<u>6</u>	<u>10,910</u>	<u>12,109</u>
<u>7</u>	<u>12,110</u>	<u>13,399</u>
<u>8</u>	<u>13,400</u>	<u>14,749</u>

Size Group Number	Standard Premium Range	
	From:	To:
<u>9</u>	<u>14,750</u>	<u>16,199</u>
<u>10</u>	<u>16,200</u>	<u>17,719</u>
<u>11</u>	<u>17,720</u>	<u>19,319</u>
<u>12</u>	<u>19,320</u>	<u>21,059</u>
<u>13</u>	<u>21,060</u>	<u>22,879</u>
<u>14</u>	<u>22,880</u>	<u>24,829</u>
<u>15</u>	<u>24,830</u>	<u>26,869</u>
<u>16</u>	<u>26,870</u>	<u>29,029</u>
<u>17</u>	<u>29,030</u>	<u>31,339</u>
<u>18</u>	<u>31,340</u>	<u>33,769</u>
<u>19</u>	<u>33,770</u>	<u>36,349</u>
<u>20</u>	<u>36,350</u>	<u>39,059</u>
<u>21</u>	<u>39,060</u>	<u>41,969</u>
<u>22</u>	<u>41,970</u>	<u>45,039</u>
<u>23</u>	<u>45,040</u>	<u>48,309</u>
<u>24</u>	<u>48,310</u>	<u>51,769</u>
<u>25</u>	<u>51,770</u>	<u>55,459</u>
<u>26</u>	<u>55,460</u>	<u>59,389</u>
<u>27</u>	<u>59,390</u>	<u>63,559</u>
<u>28</u>	<u>63,560</u>	<u>67,999</u>
<u>29</u>	<u>68,000</u>	<u>72,729</u>
<u>30</u>	<u>72,730</u>	<u>77,789</u>
<u>31</u>	<u>77,790</u>	<u>83,209</u>
<u>32</u>	<u>83,210</u>	<u>89,009</u>
<u>33</u>	<u>89,010</u>	<u>95,219</u>
<u>34</u>	<u>95,220</u>	<u>101,899</u>
<u>35</u>	<u>101,900</u>	<u>109,099</u>
<u>36</u>	<u>109,100</u>	<u>116,899</u>
<u>37</u>	<u>116,900</u>	<u>125,199</u>
<u>38</u>	<u>125,200</u>	<u>134,199</u>
<u>39</u>	<u>134,200</u>	<u>143,899</u>
<u>40</u>	<u>143,900</u>	<u>154,299</u>
<u>41</u>	<u>154,300</u>	<u>165,599</u>
<u>42</u>	<u>165,600</u>	<u>177,599</u>
<u>43</u>	<u>177,600</u>	<u>190,599</u>
<u>44</u>	<u>190,600</u>	<u>204,899</u>
<u>45</u>	<u>204,900</u>	<u>220,299</u>
<u>46</u>	<u>220,300</u>	<u>236,799</u>
<u>47</u>	<u>236,800</u>	<u>254,699</u>
<u>48</u>	<u>254,700</u>	<u>274,899</u>
<u>49</u>	<u>274,900</u>	<u>296,499</u>
<u>50</u>	<u>296,500</u>	<u>320,099</u>
<u>51</u>	<u>320,100</u>	<u>346,399</u>
<u>52</u>	<u>346,400</u>	<u>375,599</u>
<u>53</u>	<u>375,600</u>	<u>408,499</u>
<u>54</u>	<u>408,500</u>	<u>444,799</u>

Size Group Number	Standard Premium Range	
	From:	To:
<u>55</u>	<u>444,800</u>	<u>485,699</u>
<u>56</u>	<u>485,700</u>	<u>532,299</u>
<u>57</u>	<u>532,300</u>	<u>584,799</u>
<u>58</u>	<u>584,800</u>	<u>645,299</u>
<u>59</u>	<u>645,300</u>	<u>715,399</u>
<u>60</u>	<u>715,400</u>	<u>797,099</u>
<u>61</u>	<u>797,100</u>	<u>893,099</u>
<u>62</u>	<u>893,100</u>	<u>1,006,999</u>
<u>63</u>	<u>1,007,000</u>	<u>1,144,999</u>
<u>64</u>	<u>1,145,000</u>	<u>1,315,999</u>
<u>65</u>	<u>1,316,000</u>	<u>1,528,999</u>
<u>66</u>	<u>1,529,000</u>	<u>1,804,999</u>
<u>67</u>	<u>1,805,000</u>	<u>2,166,999</u>
<u>68</u>	<u>2,167,000</u>	<u>2,673,999</u>
<u>69</u>	<u>2,674,000</u>	<u>3,420,999</u>
<u>70</u>	<u>3,421,000</u>	<u>4,651,999</u>
<u>71</u>	<u>4,652,000</u>	<u>6,973,999</u>
<u>72</u>	<u>6,974,000</u>	<u>12,759,999</u>
<u>73</u>	<u>12,760,000</u>	<u>32,649,999</u>
<u>74</u>	<u>32,650,000</u>	<u>and over</u>



## WSR 24-19-075

## PROPOSED RULES

## DEPARTMENT OF ECOLOGY

[Order 24-11—Filed September 17, 2024, 8:32 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: The department of ecology (ecology) proposes updates to the human health criteria and associated footnotes in Table 240 of WAC 173-201A-240 Toxic substances, to remove state-adopted human health criteria that the Environmental Protection Agency (EPA) disapproved and adopt as state law federal human health criteria (HHC) that EPA promulgated for Washington. HHC are pollution limits on toxic substances that are set to protect people who consume fish and shellfish and drink untreated water from Washington's surface waters.

The state's water quality standards, chapter 173-201A WAC, set limits on pollution in our lakes, rivers, and marine water in order to protect beneficial uses, such as swimming and fishing. The water quality standards are implemented through discharge permits and other regulatory mechanisms under the federal Clean Water Act. They are also used to identify polluted waters and set levels for water cleanup.

Hearing Location(s): On October 22, 2024, at 5:30 p.m., via webinar. Presentation and question and answer session followed by the hearing. This is an online meeting that you can attend from any computer using internet access. Join online and see instructions <https://waecy-wa-gov.zoom.us/meeting/register/tZUqcOygpjgrE9YnQmdRmlg3gMthCX8BZk-Z>. For audio, call US Toll number 1-253-205-0468 and enter access code 817 7588 3192. Or, to receive a free call back, provide your phone number when you join the event.

Date of Intended Adoption: November 27, 2024.

Submit Written Comments to: Marla Koberstein, Send US mail to: Department of Ecology, Water Quality Program, P.O. Box 47696, Olympia, WA 98504-7696; or send parcel delivery services to: Department of Ecology, Water Quality Program, P.O. Box 47696, Olympia, WA 98504-7696, online <https://wq.ecology.commentinput.com?id=PYcJ7i5sk>, beginning September 17, 2024, at 12:00 a.m., by October 25, 2024, at 11:59 p.m.

Assistance for Persons with Disabilities: Contact ecology ADA coordinator, phone 360-407-6831, speech disability may call TTY at 877-833-6341, impaired hearing may call Washington relay service at 711, email [ecyADAcordinator@ecy.wa.gov](mailto:ecyADAcordinator@ecy.wa.gov), by October 15, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Ecology proposes to remove from WAC certain state-adopted HHC that EPA previously disapproved and replace those disapproved criteria with the limits that EPA put in place for Washington's waters under 40 C.F.R. § 131.45.

This proposed rule would replace 143 HHC for 73 pollutants that were disapproved by EPA. In addition, ecology proposes to adopt three criteria for two pollutants that EPA put into effect for Washington in 2016 that ecology did not adopt state criteria for. We also updated the footnotes in Table 240 associated with the replaced criteria.

By adopting the current federal HHC as state law, ecology aims to provide durability and regulatory certainty for pollution limits that were set to protect human health, including vulnerable populations, from the harmful effects of toxic substances. **The proposed rule will**

**not result in any change to water quality criteria that ecology is already implementing.**

Ecology is also correcting typographical errors in Table 240.

Ecology is starting this rule making at the rule proposal (CR-102) filing phase. This rule making is exempt from the requirement to file a preproposal statement of inquiry (CR-101) under the Administrative Procedure Act (chapter 34.05 RCW) because this rule making intends to adopt without material change federal regulations. Additionally, this rule making is exempt from completing analyses required under the Regulatory Fairness Act (chapter 19.85 RCW).

Reasons Supporting Proposal: In 2016, ecology adopted human health criteria for Washington's waters through an extensive public rule-making process and following tribal consultation. We submitted the adopted rule to EPA for review and approval. EPA approved 45 of Washington's criteria and disapproved 143 criteria on the basis that those criteria were not protective of designated uses (such as fishing). EPA promulgated criteria for Washington for 141 of the values that were disapproved, and promulgated criteria for two substances (methylmercury and bis(2-Chloro-1-Methylethyl)Ether) that Washington did not include in their state rule adoption.

In 2017, a group of Washington businesses petitioned EPA to reconsider the 2016 partial disapproval and repeal the federally promulgated HHC. Washington and several tribes urged EPA to deny the petition.

In 2019, EPA granted the petition to reconsider their 2016 disapproval of Washington's adopted human health criteria. In 2020, EPA formally reversed their decision and approved the previously disapproved criteria, which resulted in the 2016 state adopted criteria to go into effect for permits and other Clean Water Act programs. EPA also approved HHC for two substances (dioxin and thallium) that they deferred action on in 2016.

However, in 2022, EPA reversed that decision following legal challenges by Washington and several tribes. As a result, EPA once again formally promulgated those criteria that they originally promulgated in 2016. Washington's promulgated HHC went back into effect on December 19, 2022.

Ecology's proposal provides durability and regulatory certainty for the HHC already in place for Clean Water Act regulatory programs in Washington. The state-adopted HHC that were disapproved by EPA are not being implemented in state regulatory programs.

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

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

Rule is necessary because of federal law, 40 C.F.R. 131.45.

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Marla Koberstein, Headquarters, Lacey, 360-628-6376; Implementation: Melissa Gildersleeve, Headquarters, Lacey, 360-522-6441; and Enforcement: Vincent McGowan, Headquarters, Lacey, 360-407-6405.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5) (b) (iii) exempts rules from a cost-benefit analysis when

they adopt 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.

We propose to remove HHC disapproved by EPA and adopt without change HHC that EPA put into effect for Washington under 40 C.F.R. 131.45. These criteria went into effect for Washington's waters on December 19, 2022. Ecology is already implementing the EPA promulgated HHC into Clean Water Act regulatory programs across the state. The state-adopted HHC that were disapproved by EPA are not being implemented in state regulatory programs.

RCW 34.05.328 (5)(b)(iv) likewise exempts rules from a cost-benefit analysis when they only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

We propose to correct typographical errors in Table 240 of WAC 173-201A-240, such as correcting the number of significant figures for a criterion.

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; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of exemptions: This rule making proposes to adopt without material change federal regulations that specify HHC currently in place for Washington. This proposal also includes corrections to typographical errors.

Scope of exemption for rule proposal:

Is fully exempt.

September 17, 2024  
Heather R. Bartlett  
Deputy Director

**OTS-5866.1**

AMENDATORY SECTION (Amending WSR 24-17-048, filed 8/14/24, effective 9/14/24)

**WAC 173-201A-240 Toxic substances.** (1) Toxic substances shall not be introduced above natural background levels in waters of the state which have the potential either singularly or cumulatively to adversely affect characteristic water uses, cause acute or chronic toxicity to the most sensitive biota dependent upon those waters, or adversely affect public health, as determined by the department.

(2) The department shall employ or require chemical testing, acute and chronic toxicity testing, and biological assessments, as appropriate, to evaluate compliance with subsection (1) of this section and to ensure that aquatic communities and the existing and designated uses of waters are being fully protected.

(3) USEPA Quality Criteria for Water, 1986, as revised, shall be used in the use and interpretation of the values listed in subsection (5) of this section.

(4) Concentrations of toxic, and other substances with toxic propensities not listed in Table 240 of this section shall be determined in consideration of USEPA Quality Criteria for Water, 1986, and as revised, and other relevant information as appropriate.

(5) The following criteria, found in Table 240, shall be applied to all surface waters of the state of Washington. Values are µg/L for all substances except ammonia and chloride which are mg/L, tissue-based aquatic life criteria for selenium, perfluorooctane sulfonic acid (PFOS), and perfluorooctanoic acid (PFOA) which are mg/kg, and asbestos which is million fibers/L. The department shall formally adopt any appropriate revised criteria as part of this chapter in accordance with the provisions established in chapter 34.05 RCW, the Administrative Procedure Act. The department shall ensure there are early opportunities for public review and comment on proposals to develop revised criteria.

(a) **Aquatic life protection.** The department may revise the criteria in Table 240 for aquatic life on a statewide or water body-specific basis as needed to protect aquatic life occurring in waters of the state and to increase the technical accuracy of the criteria being applied. The department shall formally adopt any appropriate revised criteria as part of this chapter in accordance with the provisions established in chapter 34.05 RCW, the Administrative Procedure Act.

(b) **Human health protection.** The following provisions apply to the human health criteria in Table 240. All waters shall maintain a level of water quality when entering downstream waters that provides for the attainment and maintenance of the water quality standards of those downstream waters, including the waters of another state. The human health criteria in the tables were calculated using a fish consumption rate of 175 g/day. Criteria for carcinogenic substances were calculated using a cancer risk level equal to one-in-one-million (~~(, or as otherwise specified in this chapter)~~). The human health criteria calculations and variables include chronic durations of exposure up to 70 years. All human health criteria for metals are for total metal concentrations, unless otherwise noted. Dischargers have the obligation to reduce toxics in discharges through the use of AKART.

**Table 240  
Toxics Substances Criteria**

Compound/Chemical	Chemical Abstracts Service (CAS)#	Aquatic Life Criteria - Freshwater		Aquatic Life Criteria - Marine Water		Human Health Criteria for Consumption of:	
		Acute	Chronic	Acute	Chronic	Water & Organisms	Organisms Only
<b>Metals:</b>							
Aluminum	7429905	Western Cordillera: 288 Marine West Coast Forest: 630 Cold Desert: 1400 (a,e)	Western Cordillera: 180 Marine West Coast Forest: 302 Cold Desert: 720 (b,e)	-	-	-	-
Antimony	7440360	-	-	-	-	((12(H))) 6.0	((180(H))) 90
Arsenic	7440382	300 (a,f)	130 (b,f)	69 (a,f,g)	36 (b,f,g)	((10(A,H))) 0.018 (A,B)	((10(A,H))) 0.14 (A,B)
Asbestos	1332214	-	-	-	-	((7,000,000)) 7000000 fibers/L (C)	-
Beryllium	7440417	-	-	-	-	-	-
Cadmium	7440439	(a,f,h)	(b,f,i)	33 (a,f)	7.9 (b,f)	-	-
Chromium (III)	16065831	(a,j,k)	(b,j,l)	-	-	-	-
Chromium (VI)	18540299	18 (a,f,m)	6.6 (b,f,n)	((1,100.0)) 1,100 (a,f,g)	((50.0)) 50 (b,f,g)	-	-
Copper	7440508	Western Cordillera: 1.4 Marine West Coast Forest: 2.4 Cold Desert: 4.8 (a,f,o)	Western Cordillera: 1.2 Marine West Coast Forest: 1.8 Cold Desert: 3.2 (b,f,p)	4.8 (a,f,g)	3.1 (b,f,g)	1,300 (C)	-
Lead	7439921	(a,f,q)	(b,f,r)	((210.0)) 210 (a,f,g)	8.1 (b,f,g)	-	-
Mercury	7439976	1.4 (a,f,s)	0.012 (b,t,u)	1.8 (a,f,g)	0.025 (b,t,u)	((G)) (D)	((G)) (D)
Methylmercury	22967926	-	-	-	-	-	((- (H))) 0.030 (E)
Nickel	7440020	(a,f,v)	(b,f,w)	74.0 (a,f,g)	8.2 (b,f,g)	((150 (H))) 80	((190 (H))) 100
Selenium	7782492	(x)	(y)	290 (a,f,g)	((71.0)) 71 (b,f,g)	((120 (H))) 60	((480 (H))) 200
Silver	7440224	(a,f,z)	(b,f,aa)	2.3 (a,f,g)	0.91 (b,f,g)	-	-
Thallium	7440280	-	-	-	-	0.24	0.27
Zinc	7440666	(a,f,bb)	(b,f,cc)	((90.0)) 90 (a,f,g)	((81.0)) 81 (b,f,g)	((2,300 (H))) 1000	((2,900 (H))) 1000
<b>Other chemicals:</b>							
1,1,1-Trichloroethane	71556	-	-	-	-	((47,000 (H))) 20000	((160,000 (H))) 50000
1,1,2,2-Tetrachloroethane	79345	-	-	-	-	((0.12 (B,H))) 0.10 (F)	((0.46 (B,H))) 0.30 (F)

Compound/Chemical	Chemical Abstracts Service (CAS)#	Aquatic Life Criteria - Freshwater		Aquatic Life Criteria - Marine Water		Human Health Criteria for Consumption of:	
		Acute	Chronic	Acute	Chronic	Water & Organisms	Organisms Only
1,1,2-Trichloroethane	79005	-	-	-	-	$\frac{((0.44 \text{ (H)}))}{0.35 \text{ (F)}}$	$\frac{((1.8 \text{ (H)}))}{0.90 \text{ (F)}}$
1,1-Dichloroethane	75343	-	-	-	-	-	-
1,1-Dichloroethylene	75354	-	-	-	-	$\frac{((1200 \text{ (H)}))}{700}$	$\frac{((4100 \text{ (H)}))}{4000}$
1,2,4-Trichlorobenzene	120821	-	-	-	-	$\frac{((0.12 \text{ (B,H)}))}{0.036 \text{ (F)}}$	$\frac{((0.14 \text{ (B,H)}))}{0.037 \text{ (F)}}$
1,2-Dichlorobenzene	95501	-	-	-	-	$\frac{((2000 \text{ (H)}))}{700}$	$\frac{((2500 \text{ (H)}))}{800}$
1,2-Dichloroethane	107062	-	-	-	-	$\frac{((9.3 \text{ (B,H)}))}{8.9 \text{ (F)}}$	$\frac{((120 \text{ (B,H)}))}{73 \text{ (F)}}$
1,2-Dichloropropane	78875	-	-	-	-	$\frac{0.71 \text{ ((B)) (F)}}$	$\frac{3.1 \text{ ((B)) (F)}}$
1,3-Dichloropropene	542756	-	-	-	-	$\frac{0.24 \text{ ((B)) (F)}}$	$\frac{((2 \text{ (B))})}{2.0 \text{ (F)}}$
1,2-Diphenylhydrazine	122667	-	-	-	-	$\frac{((0.015 \text{ (B,H)}))}{0.010 \text{ (F)}}$	$\frac{((0.023 \text{ (B,H)}))}{0.020 \text{ (F)}}$
1,2-Trans-Dichloroethylene	156605	-	-	-	-	$\frac{((600 \text{ (H)}))}{200}$	$\frac{((5,800 \text{ (H)}))}{1000}$
1,3-Dichlorobenzene	541731	-	-	-	-	$\frac{((13 \text{ (H)}))}{2.0}$	$\frac{((16 \text{ (H)}))}{2.0}$
1,4-Dichlorobenzene	106467	-	-	-	-	$\frac{((460 \text{ (H)}))}{200}$	$\frac{((580 \text{ (H)}))}{200}$
2,3,7,8-TCDD (Dioxin)	1746016	-	-	-	-	0.000000064	0.000000064
2,4,6-Trichlorophenol	88062	-	-	-	-	$\frac{0.25 \text{ ((B)) (F)}}$	$\frac{0.28 \text{ ((B)) (F)}}$
2,4-Dichlorophenol	120832	-	-	-	-	$\frac{((25 \text{ (H)}))}{10}$	$\frac{((34 \text{ (H)}))}{10}$
2,4-Dimethylphenol	105679	-	-	-	-	85	97
2,4-Dinitrophenol	51285	-	-	-	-	$\frac{((60 \text{ (H)}))}{30}$	$\frac{((610 \text{ (H)}))}{100}$
2,4-Dinitrotoluene	121142	-	-	-	-	$\frac{0.039 \text{ ((B)) (F)}}$	$\frac{0.18 \text{ ((B)) (F)}}$
2,6-Dinitrotoluene	606202	-	-	-	-	-	-
2-Chloroethyvinyl Ether	110758	-	-	-	-	-	-
2-Chloronaphthalene	91587	-	-	-	-	$\frac{((170 \text{ (H)}))}{100}$	$\frac{((180 \text{ (H)}))}{100}$
2-Chlorophenol	95578	-	-	-	-	15	17
2-Methyl-4,6-Dinitrophenol (4,6-dinitro-o-cresol)	534521	-	-	-	-	$\frac{((7.1 \text{ (H)}))}{3.0}$	$\frac{((25 \text{ (H)}))}{7.0}$
2-Nitrophenol	88755	-	-	-	-	-	-
3,3'-Dichlorobenzidine	91941	-	-	-	-	$\frac{0.0031 \text{ ((B)) (F)}}$	$\frac{0.0033 \text{ ((B)) (F)}}$
3-Methyl-4-Chlorophenol (parachlorometa cresol)	59507	-	-	-	-	36	36

Compound/Chemical	Chemical Abstracts Service (CAS)#	Aquatic Life Criteria - Freshwater		Aquatic Life Criteria - Marine Water		Human Health Criteria for Consumption of:	
		Acute	Chronic	Acute	Chronic	Water & Organisms	Organisms Only
4,4'-DDD	72548	-	-	-	-	((0.000036 (B,H))) <u>0.0000079</u> (F)	((0.000036 (B,H))) <u>0.0000079</u> (F)
4,4'-DDE	72559	-	-	-	-	((0.000051 (B,H))) <u>0.0000088</u> (F)	((0.000051 (B,H))) <u>0.0000088</u> (F)
4,4'-DDT	50293	-	-	-	-	((0.000025 (B,H))) <u>0.0000012</u> (F)	((0.000025 (B,H))) <u>0.0000012</u> (F)
4,4'-DDT (and metabolites)	50293	1.1 (c)	((0.001)) <u>0.0010</u> (d)	0.13 (c)	((0.001)) <u>0.0010</u> (d)	-	-
4-Bromophenyl Phenyl Ether	101553	-	-	-	-	-	-
4-Chorophenyl Phenyl Ether	7005723	-	-	-	-	-	-
4-Nitrophenol	100027	-	-	-	-	-	-
Acenaphthene	83329	-	-	-	-	((110 (H))) <u>30</u>	((110 (H))) <u>30</u>
Acenaphthylene	208968	-	-	-	-	-	-
Acrolein	107028	((3)) <u>3.0</u> (a)	((3)) <u>3.0</u> (b)	-	-	1.0	1.1
Acrylonitrile	107131	-	-	-	-	0.019 ((B)) (F)	0.028 ((B)) (F)
Aldrin	309002	((3)) <u>3.0</u> (c,dd)	0.0019 (d,dd)	1.3 (c,e)	0.0019 (d,dd)	((0.000057 (B,H))) <u>0.00000041</u> (F)	((0.000058 (B,H))) <u>0.00000041</u> (F)
alpha-BHC	319846	-	-	-	-	((0.0005 (B,H))) <u>0.000048</u> (F)	((0.00056 (B,H))) <u>0.000048</u> (F)
alpha-Endosulfan	959988	0.22 (c,ee)	0.056 (d,ee)	0.034 (c,ee)	0.0087 (d,ee)	((9.7 (H))) <u>6.0</u>	((10 (H))) <u>7.0</u>
Ammonia	7664417	(a,ff,ii)	(b,gg,ii)	0.233 (a,hh,ii)	0.035 (b,hh,ii)	-	-
Anthracene	120127	-	-	-	-	((3,100 (H))) <u>100</u>	((4,600 (H))) <u>100</u>
Benzene	71432	-	-	-	-	0.44 ((B)) (F)	1.6 ((B)) (F)
Benzidine	92875	-	-	-	-	((0.00002 (B))) <u>0.000020</u> (F)	0.000023 ((B)) (F)
Benzo(a) Anthracene	56553	-	-	-	-	((0.014 (B,H))) <u>0.00016</u> (F)	((0.021 (B,H))) <u>0.00016</u> (F)
Benzo(a) Pyrene	50328	-	-	-	-	((0.0014 (B,H))) <u>0.000016</u> (F)	((0.0021 (B,H))) <u>0.000016</u> (F)
Benzo(b) Fluoranthene	205992	-	-	-	-	((0.014 (B,H))) <u>0.00016</u> (F)	((0.021 (B,H))) <u>0.00016</u> (F)
Benzo(ghi) Perylene	191242	-	-	-	-	-	-
Benzo(k) Fluoranthene	207089	-	-	-	-	((0.014 (B,H))) <u>0.0016</u> (F)	((0.21 (B,H))) <u>0.0016</u> (F)

Compound/Chemical	Chemical Abstracts Service (CAS)#	Aquatic Life Criteria - Freshwater		Aquatic Life Criteria - Marine Water		Human Health Criteria for Consumption of:	
		Acute	Chronic	Acute	Chronic	Water & Organisms	Organisms Only
beta-BHC	319857	-	-	-	-	((0.0018 (B,H))) 0.0013 (F)	((0.002 (B,H))) 0.0014 (F)
beta-Endosulfan	33213659	0.22 (c,ee)	0.056 (d,ee)	0.034 (c,ee)	0.0087 (d,ee)	9.7	10
Bis(2-Chloroethoxy) Methane	111911	-	-	-	-	-	-
Bis(2-Chloroethyl) Ether	111444	-	-	-	-	((0.02 (B))) 0.020 (F)	((0.06 (B))) 0.060 (F)
((Bis(2-Chloroisopropyl)) Bis(2-Chloro-1-Methylethyl) Ether	39638329	-	-	-	-	((- (H))) 400	((- (H))) 900
Bis(2-Ethylhexyl) Phthalate	117817	-	-	-	-	((0.23 (B,H))) 0.045 (F)	((0.25 (B,H))) 0.046 (F)
Bromoform	75252	-	-	-	-	((5.8 (B,H))) 4.6 (F)	((27 (B,H))) 12 (F)
Butylbenzyl Phthalate	85687	-	-	-	-	((0.56 (B,H))) 0.000022 (F)	((0.58 (B,H))) 0.000022 (F)
Carbaryl	63252	2.1 (a)	2.1 (b)	1.6 (a)	-	-	-
Carbon Tetrachloride	56235	-	-	-	-	((0.2 (B))) 0.20 (F)	0.35 ((B)) (F)
Chlordane	57749	2.4 (c)	0.0043 (d)	((0.09)) 0.090 (c)	((0.004)) 0.0040 (d)	((0.000093 (B,H))) 0.000022 (F)	((0.000093 (B,H))) 0.000022 (F)
Chloride (dissolved)	168870	860 (a,hh,jj)	230 (b,hh,jj)	-	-	-	-
Chlorine (total residual)	7782505	19 (a)	11 (b)	13 (a)	7.5 (b)	-	-
Chlorobenzene	108907	-	-	-	-	((380 (H))) 100	((890 (H))) 200
Chlorodibromomethane	124481	-	-	-	-	((0.65 (B,H))) 0.060 (F)	((3 (B,H))) 2.2 (F)
Chloroethane	75003	-	-	-	-	-	-
Chloroform	67663	-	-	-	-	((260 (H))) 100	((1200 (H))) 600
Chlorpyrifos	2921882	0.083 (a)	0.041 (b)	0.011 (a)	0.0056 (b)	-	-
Chrysene	218019	-	-	-	-	((1.4 (B,H))) 0.016 (F)	((2.1 (B,H))) 0.016 (F)
Cyanide	57125	8.2 (a,kk)	1.9 (b,kk)	1.0 (a,kk,ll)	1.0 (b,kk,ll)	((19 (B,H))) 9.0 (G)	((270 (B,H))) 100 (G)
delta-BHC	319868	-	-	-	-	-	-
Demeton	8065483	-	((0.1)) 0.10 (b)	-	((0.1)) 0.10 (b)	-	-
Diazinon	333415	0.17 (a)	0.17 (b)	0.82 (a)	0.82 (b)	-	-



Compound/Chemical	Chemical Abstracts Service (CAS)#	Aquatic Life Criteria - Freshwater		Aquatic Life Criteria - Marine Water		Human Health Criteria for Consumption of:	
		Acute	Chronic	Acute	Chronic	Water & Organisms	Organisms Only
Dibenzo(a,h) Anthracene	53703	-	-	-	-	<del>((0.0014 (B,H)))</del> <u>0.000016 (F)</u>	<del>((0.0021 (B,H)))</del> <u>0.000016 (F)</u>
Dichlorobromomethane	75274	-	-	-	-	<del>((0.77 (B,H)))</del> <u>0.73 (F)</u>	<del>((3.6 (B,H)))</del> <u>2.8 (F)</u>
Dieldrin	60571	0.24 (a,dd)	0.056 (b,dd)	0.71 (c,dd)	0.0019 (d,dd)	<del>((0.000061 (B,H)))</del> <u>0.00000070 (F)</u>	<del>((0.000061 (B,H)))</del> <u>0.00000070 (F)</u>
Diethyl Phthalate	84662	-	-	-	-	<del>((4,200 (H)))</del> <u>200</u>	<del>((5,000 (H)))</del> <u>200</u>
Dimethyl Phthalate	131113	-	-	-	-	<del>((92,000 (H)))</del> <u>600</u>	<del>((130,000 (H)))</del> <u>600</u>
Di-n-Butyl Phthalate	84742	-	-	-	-	<del>((450 (H)))</del> <u>8.0</u>	<del>((510 (H)))</del> <u>8.0</u>
Di-n-Octyl Phthalate	117840	-	-	-	-	-	-
Endosulfan Sulfate	1031078	-	-	-	-	<del>((9.7 (H)))</del> <u>9.0</u>	10
Endrin	72208	0.086 (a)	0.036 (b)	0.037 (c)	0.0023 (d)	<del>((0.034 (H)))</del> <u>0.0020</u>	<del>((0.035 (H)))</del> <u>0.0020</u>
Endrin Aldehyde	7421934	-	-	-	-	0.034	0.035
Ethylbenzene	100414	-	-	-	-	<del>((200 (H)))</del> <u>29</u>	<del>((270 (H)))</del> <u>31</u>
Fluoranthene	206440	-	-	-	-	<del>((16 (H)))</del> <u>6.0</u>	<del>((16 (H)))</del> <u>6.0</u>
Fluorene	86737	-	-	-	-	<del>((420 (H)))</del> <u>10</u>	<del>((610 (H)))</del> <u>10</u>
Guthion	86500	-	<del>((0.01))</del> <u>0.010 (b)</u>	-	<del>((0.01))</del> <u>0.010 (b)</u>	-	-
Hexachlorocyclohexane (gamma-BHC; Lindane)	58899	0.95 (a)	<del>((0.08))</del> <u>0.080 (d)</u>	0.16 (c)	-	<del>((15 (H)))</del> <u>0.43</u>	<del>((17 (H)))</del> <u>0.43</u>
Heptachlor	76448	0.52 (c)	0.0038 (d)	0.053 (c)	0.0036 (d)	<del>((0.000099 (B,H)))</del> <u>0.00000034 (F)</u>	<del>((0.00001 (B,H)))</del> <u>0.00000034 (F)</u>
Heptachlor Epoxide	1024573	-	-	-	-	<del>((0.000074 (B,H)))</del> <u>0.0000024 (F)</u>	<del>((0.000074 (B,H)))</del> <u>0.0000024 (F)</u>
Hexachlorobenzene	118741	-	-	-	-	<del>((0.000051 (B,H)))</del> <u>0.0000050 (F)</u>	<del>((0.000052 (B,H)))</del> <u>0.0000050 (F)</u>
Hexachlorobutadiene	87683	-	-	-	-	<del>((0.69 (B,H)))</del> <u>0.010 (F)</u>	<del>((4.1 (B,H)))</del> <u>0.010 (F)</u>
Hexachlorocyclopentadiene	77474	-	-	-	-	<del>((150 (H)))</del> <u>1.0</u>	<del>((630 (H)))</del> <u>1.0</u>
Hexachloroethane	67721	-	-	-	-	<del>((0.11 (B,H)))</del> <u>0.20 (F)</u>	<del>((0.13 (B,H)))</del> <u>0.20 (F)</u>

Compound/Chemical	Chemical Abstracts Service (CAS)#	Aquatic Life Criteria - Freshwater		Aquatic Life Criteria - Marine Water		Human Health Criteria for Consumption of:	
		Acute	Chronic	Acute	Chronic	Water & Organisms	Organisms Only
Indeno(1,2,3-cd) Pyrene	193395	-	-	-	-	((0.014 (B,H))) 0.00016 (F)	((0.021 (B,H))) 0.00016 (F)
Isophorone	78591	-	-	-	-	27 ((B)) (F)	110 ((B)) (F)
Malathion	121755	-	((0.1)) 0.10 (b)	-	((0.1)) 0.10 (b)	-	-
Methoxychlor	72435	-	((0.03)) 0.030 (b)	-	((0.03)) 0.030 (b)	-	-
Methyl Bromide	74839	-	-	-	-	((520 (H))) 300	((2,400)) 2400
Methyl Chloride	74873	-	-	-	-	-	-
Methylene Chloride	75092	-	-	-	-	((16 (B,H))) 10 (F)	((250 (B,H))) 100 (F)
Mirex	2385855	-	((0.001)) 0.0010 (b)	-	((0.001)) 0.0010 (b)	-	-
N-(1,3-Dimethylbutyl)-N'-phenyl-p-phenylenediamine-quinone ((6PPD-q)) (6PPD-quinone)		0.012 (a)	-	-	-	-	-
Napthalene	91203	-	-	-	-	-	-
Nitrobenzene	98953	-	-	-	-	((55 (H))) 30	((320 (H))) 100
N-Nitrosodimethylamine	62759	-	-	-	-	0.00065 ((B)) (F)	0.34 ((B)) (F)
N-Nitrosodi-n-Propylamine	621647	-	-	-	-	0.0044 ((B)) (F)	0.058 ((B)) (F)
N-Nitrosodiphenylamine	86306	-	-	-	-	0.62 ((B)) (F)	0.69 ((B)) (F)
Nonylphenol	84852153	28 (a)	6.6 (b)	((7)) 7.0 (a)	1.7 (b)	-	-
Parathion	56382	0.065 (a)	0.013 (b)	-	-	-	-
Pentachlorophenol (PCP)	87865	(a,mm)	(b,nn)	13 (a)	6.7 (b)	((0.046 (B,H))) 0.0020 (F)	((0.1 (B,H))) 0.0020 (F)
Perfluorooctane sulfonic acid (PFOS)		3000 (a)	(oo)	550 (a)	-	-	-
Perfluorooctanoic acid (PFOA)		49000 (a)	(pp)	7000 (a)	-	-	-
Phenanthrene	85018	-	-	-	-	-	-
Phenol	108952	-	-	-	-	((18,000 (H))) 9000	((200,000 (H))) 70000
Polychlorinated Biphenyls (PCBs)		2.0 (d)	0.014 (d)	((10.0)) 10 (d)	((0.03)) 0.030 (d)	((0.00017 (E,H))) 0.0000070 (H)	((0.00017 (E,H))) 0.0000070 (H)
Pyrene	129000	-	-	-	-	((310 (H))) 8.0	((460 (H))) 8.0
Tetrachloroethylene	127184	-	-	-	-	((4.9 (B,H))) 2.4 (F)	((7.1 (B,H))) 2.9 (F)
Toluene	108883	-	-	-	-	((180 (H))) 72	((410 (H))) 130

Compound/Chemical	Chemical Abstracts Service (CAS)#	Aquatic Life Criteria - Freshwater		Aquatic Life Criteria - Marine Water		Human Health Criteria for Consumption of:	
		Acute	Chronic	Acute	Chronic	Water & Organisms	Organisms Only
Toxaphene	8001352	0.73 (a)	((0.0002)) <u>0.00020</u> (b)	0.21 (a)	((0.0002)) <u>0.00020</u> (b)	0.000032 ((B)) (F)	0.000032 ((B)) (F)
Tributyltin		0.46 (a)	0.072 (b)	0.42 (a)	0.0074 (b)	-	-
Trichloroethylene	79016	-	-	-	-	((0.38 (B,H)) <u>0.30</u> (F)	((0.86 (B,H)) <u>0.70</u> (F)
Vinyl Chloride	75014	-	-	-	-	((0.02 (B,F)) <u>0.020</u> (F)	((0.26 (B,F,H)) <u>0.18</u> (F)

Footnotes for aquatic life criteria in Table 240:

- a. A 1-hour average concentration not to be exceeded more than once every three years on the average.
- b. A 4-day average concentration not to be exceeded more than once every three years on average.
- c. An instantaneous concentration not to be exceeded at any time.
- d. A 24-hour average not to be exceeded at any time.
- e. Criteria are calculated using the Aluminum Criteria Calculator V.2.0 that is published in EPA's "Final Aquatic Water Quality Criteria for Aluminum 2018" (EPA-822-R-1-001). Default criteria values were calculated for EPA Level II ecoregions and are applicable in the absence of water body or site-specific water quality data. The freshwater default acute criterion in the Western Cordillera ecoregion is 288 µg/L, 630 µg/L is the default acute criterion in the Marine West Coast Forest ecoregion, and 1400 µg/L is the default acute criterion in the Cold Desert ecoregion. The freshwater default chronic criterion in the Western Cordillera ecoregion is 180 µg/L, 302 µg/L is the default chronic criterion in the Marine West Coast Forest ecoregion, and 720 µg/L is the default chronic criterion in the Cold Desert ecoregion. The default criterion is used in the absence of concurrently sampled pH, hardness, and dissolved organic carbon for a site-specific location or water body. Criteria calculated using concurrently sampled pH, hardness, and dissolved organic carbon for a specific water body supersede the default criteria. The aluminum criteria are based on aluminum toxicity studies where aluminum was analyzed using total recoverable analytical methods. Washington may utilize total recoverable analytical methods to implement the criteria. For characterizing ambient waters, Washington may also utilize, as scientifically appropriate and as allowable by state and federal regulations, analytical methods that measure the bioavailable fraction of aluminum (e.g., utilizing a less aggressive initial acid digestion, such as to a pH of approximately 4 or lower, that includes the measurement of amorphous aluminum hydroxide yet minimizes the measurement of mineralized forms of aluminum such as aluminum silicates associated with suspended sediment particles or clays). Washington shall use measurements of total recoverable aluminum where required by federal regulations.
- f. These ambient criteria in the table are for the dissolved fraction. The cyanide criteria are based on the weak acid dissociable method. The metals criteria may not be used to calculate total recoverable effluent limits unless the seasonal partitioning of the dissolved to total metals in the ambient water are known. When this information is absent, these metals criteria shall be applied as total recoverable values, determined by back-calculation, using the conversion factors incorporated in the criterion equations. Metals criteria may be adjusted on a site-specific basis when data are made available to the department clearly demonstrating the effective use of the water effects ratio approach established by USEPA, as generally guided by the procedures in USEPA Water Quality Standards Handbook, December 1983, as supplemented or replaced by USEPA or ecology. The adjusted site-specific criteria are not in effect until they have been incorporated into this chapter and approved by EPA. Information which is used to develop effluent limits based on applying metals partitioning studies or the water effects ratio approach shall be identified in the permit fact sheet developed pursuant to WAC 173-220-060 or 173-226-110, as appropriate, and shall be made available for the public comment period required pursuant to WAC 173-220-050 or 173-226-130(3), as appropriate. Ecology has developed supplemental guidance for conducting water effect ratio studies.
- g. Marine conversion factors (CF) which were used for calculating dissolved metals concentrations are given below. Conversion factors are applicable to both acute and chronic criteria for all metals except mercury. The CF for mercury was applied to the acute criterion only and is not applicable to the chronic criterion. Conversion factors are already incorporated into the criteria in the table. Dissolved criterion = criterion x CF

Metal	CF
Arsenic	1.000
Cadmium	0.994
Chromium (VI)	0.993
Copper	0.83
Lead	0.951
Mercury	0.85
Nickel	0.990
Selenium	0.998
Silver	0.85
Zinc	0.946

- h. Acute criterion = (CF)(e<sup>(0.9789[ln(hardness)] - 4.189)</sup>). Conversion factor (CF) is hardness dependent. CF is calculated for other hardnesses as follows: CF = 1.136672 - [(ln hardness)(0.041838)].
- i. Chronic criterion = (CF)(e<sup>(0.7977[ln(hardness)] - 4.446)</sup>). Conversion factor (CF) is hardness dependent. CF is calculated for other hardnesses as follows: CF = 1.101672 - [(ln hardness)(0.041838)].
- j. Where methods to measure trivalent chromium are unavailable, these criteria are to be represented by total-recoverable chromium.
- k. Acute criterion = (0.316)(e<sup>(0.8190[ln(hardness)] + 3.533)</sup>)
- l. Chronic criterion = (0.860)(e<sup>(0.8190[ln(hardness)] + 0.4921)</sup>)
- m. The conversion factor used to calculate the dissolved metal concentration is 0.982.
- n. The conversion factor used to calculate the dissolved metal concentration is 0.962.
- o. The acute criterion is represented by the higher criteria value of the two equations: 1) Acute criterion = e<sup>(0.700\*ln(DOC) + 0.579\*ln(hardness) + 0.778\*pH - 6.738)</sup> and 2) Acute criterion = e<sup>(0.855\*ln(DOC) + 0.221\*ln(hardness) + 0.216\*pH - 1.183)</sup>. Default criteria values were calculated for EPA Level II ecoregions and are applicable in the absence of water body or site-specific water quality data. The freshwater default acute criterion in the Western Cordillera ecoregion is 1.4 µg/L, 2.4 µg/L is the default acute criterion in the Marine West Coast Forest ecoregion, and 4.8 µg/L is the default acute criterion in the Cold Desert ecoregion. The default criterion is used in the absence of concurrently sampled pH, hardness, and dissolved organic carbon for a site-specific location or water body. Criteria calculated using concurrently sampled pH, hardness, and dissolved organic carbon for a specific water body supersede the default criteria.

- p. Chronic criterion =  $e^{(0.855 \ln(\text{DOC}) + 0.221 \ln(\text{hardness}) + 0.216 \text{pH} - 1.402)}$ . Default criteria values were calculated for EPA Level II ecoregions and are applicable in the absence of water body or site-specific water quality data. The freshwater default chronic criterion in the Western Cordillera ecoregion is 1.2 µg/L, 1.8 µg/L is the default chronic criterion in the Marine West Coast Forest ecoregion, and 3.2 µg/L is the default chronic criterion in the Cold Desert ecoregion. 1.6 µg/L is applicable in western Washington and 1.8 µg/L is the applicable default chronic criterion in eastern Washington. The default criterion is used in the absence of concurrently sampled pH, hardness, and dissolved organic carbon for a site-specific location or water body. Criteria calculated using concurrently sampled pH, hardness, and dissolved organic carbon for a specific water body supersede the default criteria.
- q. Acute criterion =  $(\text{CF})e^{(1.273 \ln(\text{hardness}) - 1.460)}$ . Conversion factor (CF) is hardness dependent. CF is calculated for other hardnesses as follows:  
 $\text{CF} = 1.46203 - [(\ln \text{hardness})(0.145712)]$ .
- r. Chronic criterion =  $(\text{CF})e^{(1.273 \ln(\text{hardness}) - 4.705)}$ . Conversion factor (CF) is hardness dependent. CF is calculated for other hardnesses as follows:  
 $\text{CF} = 1.46203 - [(\ln \text{hardness})(0.145712)]$ .
- s. The conversion factor used to calculate the dissolved metal concentration is 0.85.
- t. These criteria are based on the total-recoverable fraction of the metal.
- u. If the four-day average chronic concentration is exceeded more than once in a three-year period, the edible portion of the consumed species should be analyzed. Said edible tissue concentrations shall not be allowed to exceed 1.0 mg/kg of methylmercury.
- v. Acute criterion =  $(0.998)e^{(0.8460 \ln(\text{hardness}) + 0.1667)}$
- w. Chronic criterion =  $(0.997)e^{(0.8460 \ln(\text{hardness}) - 1.466)}$
- x. There is no freshwater acute criterion for aquatic life for selenium. The freshwater chronic criterion is expected to adequately protect against acute effects.
- y. Freshwater chronic selenium criteria:

- 15.1 mg/kg dry weight (egg-ovary tissue)<sup>1</sup>
- 8.5 mg/kg dry weight (whole-body tissue)<sup>2</sup>
- 11.3 mg/kg dry weight (muscle tissue)<sup>2</sup>
- 1.5 µg/L (water lentic)<sup>3</sup>
- 3.1 µg/L (water lotic)<sup>3</sup>

$$\text{WQC}_{\text{int}} = \text{WQC} - C_{\text{bkgnd}} (1 - f_{\text{int}}) / f_{\text{int}} \text{ (water lentic or lotic)}^{3,4}$$

<sup>1</sup> Egg-ovary supersedes any whole-body, muscle, or water column element when fish egg-ovary concentrations are measured, except as noted in footnote 4. Tissue criterion is not to be exceeded.

<sup>2</sup> Fish whole-body or muscle tissue supersedes the water column element when both fish tissue and water concentrations are measured, except as noted in footnote 4. Tissue criterion is not to be exceeded.

<sup>3</sup> Water column values are based on dissolved total selenium in water and are derived from fish tissue values via bioaccumulation modeling. When selenium inputs are increasing, water column values are the applicable criterion element in the absence of steady-state condition fish tissue data. Water column criteria are based on a 30-day average concentrations, except for  $\text{WQC}_{\text{int}}$  (see footnote 4). Water column criteria are not to be exceeded more than once every three years on average.

<sup>4</sup> Where  $\text{WQC}_{\text{int}}$  is the intermittent exposure concentration in µg/L; WQC is the applicable water column element, for either lentic or lotic waters;  $C_{\text{bkgnd}}$  is the average daily background concentration occurring during the remaining time, integrated over 30 days;  $f_{\text{int}}$  is the fraction of any 30-day period during which elevated selenium concentrations occur, with  $f_{\text{int}}$  assigned a value  $\geq 0.033$  (corresponding to one day). Intermittent exposure criteria averaging period is the number of days per month with an elevated concentration.

- z. Acute criterion =  $(0.85)e^{(1.72 \ln(\text{hardness}) - 8.590)}$
- aa. Chronic criterion =  $(0.85)e^{(1.72 \ln(\text{hardness}) - 9.511)}$
- bb. Acute criterion =  $(0.978)e^{(0.8473 \ln(\text{hardness}) + 0.3313)}$
- cc. Chronic criterion =  $(0.986)e^{(0.8473 \ln(\text{hardness}) - 0.6900)}$
- dd. Aldrin is metabolically converted to Dieldrin. Therefore, the sum of the Aldrin and Dieldrin concentrations are compared with the Dieldrin criteria.
- ee. This value was derived from data for endosulfan. Where concentrations for both alpha-endosulfan and beta-endosulfan are available, the sum of alpha-endosulfan and beta-endosulfan concentrations shall be compared to the criteria.
- ff. Shall not exceed the numerical value in total ammonia nitrogen (mg N/L) given by:

$$\begin{aligned} \text{For salmonids present:} & \quad \frac{0.275}{1 + 10^{7.204-\text{pH}}} + \frac{39.0}{1 + 10^{\text{pH}-7.204}} \\ \text{For salmonids absent:} & \quad \frac{0.411}{1 + 10^{7.204-\text{pH}}} + \frac{58.4}{1 + 10^{\text{pH}-7.204}} \end{aligned}$$

- gg. Shall not exceed the numerical concentration calculated as follows:  
 Unionized ammonia concentration for waters where salmonid habitat is an existing or designated use:

$$0.80 \div (\text{FT})(\text{FPH})(\text{RATIO})$$

where:

$$\begin{aligned} \text{RATIO} &= 13.5; 7.7 \leq \text{pH} \leq 9 \\ \text{RATIO} &= \frac{(20.25 \times 10^{(7.7-\text{pH})})}{7.7} \div (1 + 10^{(7.4-\text{pH})}); 6.5 \leq \text{pH} \leq 7.7 \\ \text{FT} &= 1.4; 15 \leq T \leq 30 \\ \text{FT} &= 10^{[0.03(20-T)]}; 0 \leq T \leq 15 \\ \text{FPH} &= 1; 8 \leq \text{pH} \leq 9 \\ \text{FPH} &= (1 + 10^{(7.4-\text{pH})}) \div 1.25; 6.5 \leq \text{pH} \leq 8.0 \end{aligned}$$

Total ammonia concentrations for waters where salmonid habitat is not an existing or designated use and other fish early life stages are absent:

$$\text{Chronic Criterion} = \left( \frac{0.0577}{1 + 10^{7.688-\text{pH}}} + \frac{2.487}{1 + 10^{\text{pH}-7.688}} \right) \times (1.45 \times 10^{0.028(25-A)})$$

where: A = the greater of either T (temperature in degrees Celsius) or 7.

Applied as a 30-day average concentration of total ammonia nitrogen (in mg N/L) not to be exceeded more than once every three years on average. The highest four-day average within the 30-day period should not exceed 2.5 times the chronic criterion.

Total ammonia concentration for waters where salmonid habitat is not an existing or designated use and other fish early life stages are present:

$$\text{Chronic Criterion} = \left( \frac{0.0577}{1 + 10^{7.688 - pH}} + \frac{2.487}{1 + 10^{pH - 7.688}} \right) \times B$$

where: B = the lower of either 2.85, or  $1.45 \times 10^{0.028 \times (25 - T)}$ . T = temperature in degrees Celsius.

Applied as a 30-day average concentration of total ammonia nitrogen (in mg N/L) not to be exceeded more than once every three years on the average. The highest four-day average within the 30-day period should not exceed 2.5 times the chronic criterion.

- hh. Measured in milligrams per liter rather than micrograms per liter.
- ii. The listed freshwater criteria are based on un-ionized or total ammonia concentrations, while those for marine water are based on un-ionized ammonia concentrations. Tables for the conversion of total ammonia to un-ionized ammonia for freshwater can be found in the USEPA's Quality Criteria for Water, 1986. Criteria concentrations based on total ammonia for marine water can be found in USEPA Ambient Water Quality Criteria for Ammonia (Saltwater)-1989, EPA440/5-88-004, April 1989.
- jj. Criterion based on dissolved chloride in association with sodium. This criterion probably will not be adequately protective when the chloride is associated with potassium, calcium, or magnesium, rather than sodium.
- kk. The criteria for cyanide is based on the weak acid dissociable method in the 19th Ed. Standard Methods for the Examination of Water and Wastewater, 4500-CN I, and as revised (see footnote f, above).
- ll. The cyanide criteria are: 2.8 µg/L chronic and 9.1 µg/L acute and are applicable only to waters which are east of a line from Point Roberts to Lawrence Point, to Green Point to Deception Pass; and south from Deception Pass and of a line from Partridge Point to Point Wilson. The chronic criterion applicable to the remainder of the marine waters is 1 µg/L.
- mm. Acute criterion =  $e^{[1.005(pH) - 5.450]}$
- nn. Chronic criterion =  $e^{[1.005(pH) - 6.155]}$
- oo. Freshwater chronic PFOS criteria:

$$\begin{aligned} & 8.4 \mu\text{g/L (water)}^{1,2} \\ & 0.937 \text{ mg/kg ww (invertebrate whole-body)}^{1,3,4} \\ & 6.75 \text{ mg/kg ww (fish whole-body)}^{1,3,4} \\ & 2.91 \text{ mg/kg ww (fish muscle)}^{1,3,4} \end{aligned}$$

<sup>1</sup> All water column and tissue criteria are intended to be independently applicable for compliance determinations and no one criterion takes primacy.

<sup>2</sup> Water column criteria are based on a four-day average concentration not to be exceeded more than once every three years on average.

<sup>3</sup> Tissue criteria derived from the chronic water column concentration with the use of bioaccumulation factors and are expressed as wet weight (ww) concentrations.

<sup>4</sup> Tissue data is an instantaneous point measurement that reflect integrative accumulation of PFOS over time and space. Criteria are not to be exceeded more than once every 10 years on average.

- pp. Freshwater chronic PFOA criteria:

$$\begin{aligned} & 94 \mu\text{g/L (water)}^{1,2} \\ & 1.11 \text{ mg/kg ww (invertebrate whole-body)}^{1,3,4} \\ & 6.10 \text{ mg/kg ww (fish whole-body)}^{1,3,4} \\ & 0.125 \text{ mg/kg ww (fish muscle)}^{1,3,4} \end{aligned}$$

<sup>1</sup> All water column and tissue criteria are intended to be independently applicable for compliance determinations and no one criterion takes primacy.

<sup>2</sup> Water column criteria are based on a four-day average concentration not to be exceeded more than once every three years on average.

<sup>3</sup> Tissue criteria derived from the chronic water column concentration with the use of bioaccumulation factors and are expressed as wet weight (ww) concentrations.

<sup>4</sup> Tissue data is an instantaneous point measurement that reflect integrative accumulation of PFOS over time and space. Criteria are not to be exceeded more than once every 10 years on average.

Footnotes for human health criteria in Table 240:

- A. ~~(This criterion for total arsenic is the maximum contaminant level (MCL) developed under the Safe Drinking Water Act. The MCL for total arsenic is applied to surface waters where consumption of organisms only and where consumption of water + organisms reflect the designated uses. When the department determines that a direct or indirect industrial discharge to surface waters designated for domestic water supply may be adding arsenic to its wastewater, the department will require the discharger to develop and implement a pollution prevention plan to reduce arsenic through the use of AKART. Industrial wastewater discharges to a privately or publicly owned wastewater treatment facility are considered indirect discharges.~~
- B. ~~This criterion was calculated based on an additional lifetime cancer risk of one-in-one-million ( $1 \times 10^{-6}$  risk level).~~
- C. ~~This criterion is based on a regulatory level developed under the Safe Drinking Water Act.~~
- D. ~~These criteria were promulgated for Washington in the National Toxics Rule at 40 C.F.R. 131.36 and are moved to 40 C.F.R. 131.45 to have one comprehensive human health criteria rule for Washington.~~
- B. ~~This criterion refers to the inorganic form of arsenic only.~~
- C. ~~This criterion is based on a regulatory level developed under the Safe Drinking Water Act.~~
- D. ~~EPA has removed Washington from the National Toxics Rule at 40 C.F.R. 131.36 for mercury and promulgated new human health criteria for methylmercury in the EPA's final federal rule at 40 C.F.R. 131.45.~~
- E. ~~This criterion is expressed as the fish tissue concentration of methylmercury (mg methylmercury/kg fish). See Water Quality Criterion for the Protection of Human Health: Methylmercury (EPA-823-R-01-001, January 3, 2001) for how this value is calculated using the criterion equation in EPA's 2000 Human Health Methodology rearranged to solve for a protective concentration in fish tissue rather than in water.~~
- E. ~~This criterion was calculated based on an additional lifetime cancer risk of one-in-one-million ( $1 \times 10^{-6}$  risk level).~~
- G. ~~This recommended water quality criterion is expressed as total cyanide, even though the integrated risk information system RfD used to derive the criterion is based on free cyanide. The multiple forms of cyanide that are present in ambient water have significant differences in toxicity due to their differing abilities to liberate the CN-moiety. Some complex cyanides require even more extreme conditions than refluxing with sulfuric acid to liberate the CN-moiety. Thus, these complex cyanides are expected to have little or no "bioavailability" to humans. If a substantial fraction of the cyanide present in a water body is present in a complexed form (e.g.,  $\text{Fe}_4[\text{Fe}(\text{CN})_6]_3$ ), this criterion may be overly conservative.~~
- (E-) ~~This criterion applies to total PCBs, (e.g., the sum of all congener or all isomer or homolog or Aroclor analyses). (The PCBs criteria were calculated using a chemical-specific risk level of  $4 \times 10^{-5}$ . Because that calculation resulted in a higher (less protective) concentration than the current criterion concentration (40 C.F.R. 131.36) the state made a chemical-specific decision to stay at the current criterion concentration.~~
- F. ~~This criterion was derived using the cancer slope factor of 1.4 (linearized multistage model with a twofold increase to 1.4 per mg/kg-day to account for continuous lifetime exposure from birth).~~
- G. ~~EPA has removed Washington from the National Toxics Rule at 40 C.F.R. 131.36 for mercury and promulgated new human health criteria for methylmercury in the EPA's final federal rule at 40 C.F.R. 131.45.~~

H. Human health criteria applicable for Clean Water Act purposes in the state of Washington are contained in 40 C.F.R. 131.45 and effective as of December 19, 2022 (87 FR 69183.)

**Reviser's note:** The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

**WSR 24-19-078**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed September 17, 2024, 9:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-08-026.

Title of Rule and Other Identifying Information: Transportation network companies (TNC) classification, premium rate, and death benefit. Chapter 296-17 WAC, General reporting rules, audit and record-keeping, rates and rating system for Washington workers' compensation insurance; and chapter 296-17A WAC, Classifications for Washington workers' compensation insurance.

Hearing Location(s): On October 24, 2024, at 10 a.m., via Zoom Meeting at <https://lni-wa-gov.zoom.us/j/4283482697?omn=84109922262>, 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>. The virtual and telephonic hearing will begin at 10:00 a.m. and will continue until all oral comments are received.

Date of Intended Adoption: November 26, 2024.

Submit Written Comments to: Jo Anne Attwood, Department of Labor and Industries (L&I), Insurance Services, Employer Services, P.O. Box 44148, Olympia, WA 98504-4148, email [JoAnne.Attwood@lni.wa.gov](mailto:JoAnne.Attwood@lni.wa.gov), fax 360-902-4988, beginning September 18, 2024, at 8 a.m., by October 24, 2024, at 5 p.m.

Assistance for Persons with Disabilities: Contact Jo Anne Attwood, phone 360-902-4777, fax 360-902-4988, TTY 360-902-5797, email [JoAnne.Attwood@lni.wa.gov](mailto:JoAnne.Attwood@lni.wa.gov), by October 22, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 51.16.035 requires L&I to classify all occupations or industries by degree of hazard. Since January 1, 2023, TNCs have reported and paid premiums for hours their drivers worked during dispatch and passenger platform time in Classification 1401 with taxis. L&I has researched and evaluated the impact of TNCs on Classification 1401 and determined TNCs represent at least 95 percent of the classification. L&I proposes creating a new risk classification for TNCs. The proposed rule includes a premium rate for the new TNC risk classification for 2025.

L&I also proposes rules to implement SHB 2382, chapter 184, Laws of 2024, which provides for TNC driver death benefits during noncovered times in certain circumstances. The rule proposal creates a rule describing the new benefit and creates an administrative classification to manage death benefit claims meeting the new law's criteria. Qualifying death benefit claims will be included in the annual rate calculation of the new TNC classification, but will not be included in any one TNC's experience calculation.

New WAC 296-17A-1408 Passenger transportation network companies, 296-17-945 Classification 1408 Passenger transportation network companies rate, 296-17A-1409 Passenger transportation network company driver death benefit claims, and 296-17-946 Passenger transportation network driver death benefit claims; and amending WAC 296-17A-1401 Classification 1401 Passenger transportation companies.

Reasons Supporting Proposal: L&I is required by law to establish and maintain a workers' compensation classification plan that classifies all occupations or industries in accordance with their degree of

hazard and in a manner consistent with recognized insurance principles (RCW 51.16.035). The proposed rules will ensure fair and equitable rates for TNC and taxi businesses.

Also, L&I is required to implement the new law established by SHB 2382 TNC driver death benefits.

Statutory Authority for Adoption: RCW 51.16.035 and 51.32.053.

Statute Being Implemented: RCW 51.16.035 and 51.32.053.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Jo Anne Attwood, Tumwater, 360-902-4777; Implementation: Michelle O'Brien, Tumwater, 360-902-4826; and Enforcement: Brenda Heilman, Tumwater, 360-902-6369.

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

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required per RCW 34.05.328 (5)(b)(vi), as the proposed rules adjust rates pursuant to legislative standards in RCW 51.16.035. This rule amends the risk classifications under chapter 296-17A WAC. Each risk classification has an assigned rate that is used to calculate an employer's workers' compensation premium.

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

Is exempt under RCW 19.85.025(3) as the rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

Scope of exemption for rule proposal:

Is fully exempt.

September 17, 2024  
Joel Sacks  
Director

**OTS-5841.1**

NEW SECTION

**WAC 296-17-945 Classification 1408.**

**Passenger Transportation Network Companies Rate  
Effective January 1, 2025**

<b>Class</b>	<b>Accident Fund</b>	<b>Stay at Work Fund</b>	<b>Medical Aid Fund</b>	<b>Supplemental Pension Fund</b>
1408	0.04668	0.0061	0.2587	0.1758

**OTS-5821.1**



NEW SECTION

**WAC 296-17-946 Passenger transportation network driver death benefit claims.** In addition to the limited coverage provided in RCW 51.16.250, death benefits are provided in accordance with RCW 51.32.053 when a transportation network company driver's death results from an injury occurring while the driver is:

- Logged onto the transportation network company's digital network as available for work;
- Physically inside the transportation network company driver's vehicle or within the immediate proximity of the transportation network company driver's vehicle; and
- Not otherwise covered by this title.

The TNC definitions in RCW 49.46.300 apply.

For the purposes of this section, the applicable statute of limitations begins upon the driver's death.

The cost of the death benefits must be included in the consideration of rate changes for the risk class. The costs of death benefits are not included in the calculation of any individual transportation network company's experience modification factor.

**OTS-5822.2**

AMENDATORY SECTION (Amending WSR 23-05-075, filed 2/14/23, effective 4/1/23)

**WAC 296-17A-1401 Classification 1401.****1401-01 Passenger transportation companies - Flat rate by driver**

This classification is for reporting drivers on a flat rate of 480 hours per driver each quarter.

**Applies to:**

Businesses providing passenger transportation to others, including:

- Businesses that employ taxi or for-hire drivers as defined under either chapter 81.72 or 46.72 RCW; and WAC 296-17-35205, which describes special reporting.
- Taxi or for-hire drivers as defined under either chapter 81.72 or 46.72 RCW, and who own their own vehicles or who lease vehicles from others; and elect optional coverage as provided by RCW 51.32.030 and as defined in WAC 296-17-31007.

**Work activities include, but are not limited to:**

- Operation of the vehicle;
- Loading/unloading passengers' luggage;
- Assisting passengers in and out of the vehicle; and
- Incidental "cabulance" services which may be offered in conjunction with the taxi service.

**Exclusions:**

- Transportation network companies as defined by Title 49 RCW are classified in 1408;
- Businesses that operate ambulance services are classified in 1405;

- Businesses that operate cabulance and paratransit services exclusively are classified in 1404;
- Dispatchers with no other job duties may be classified separately in 4904; and
- Work performing maintenance/repair of the vehicle is classified separately in 3411.

**Special note:** If all conditions are met for the general reporting rules about standard exception employees, businesses that furnish only a dispatch service for taxicab drivers who own their own vehicles, or who lease vehicles from others, may be classified separately in 4904. Employees of a taxicab dispatch service who perform maintenance/repair of vehicles are classified separately in 3411.

#### **1401-02 Passenger transportation companies - Flat rate by vehicle**

This classification is for reporting vehicles on a flat rate of 960 hours per vehicle each quarter.

##### **Applies to:**

- Businesses providing passenger transportation to others, including:
- Businesses that employ taxi or for-hire drivers as defined under either chapter 81.72 or 46.72 RCW; and WAC 296-17-35205, which describes special reporting.
  - Taxi or for-hire drivers as defined under either chapter 81.72 or 46.72 RCW, and who own their own vehicles or who lease vehicles from others; and elect optional coverage as provided by RCW 51.32.030 and as defined in WAC 296-17-31007.

##### **Work activities include, but are not limited to:**

- Operation of the vehicle;
- Loading/unloading passengers' luggage;
- Assisting passengers in and out of the vehicle; and
- Incidental "cabulance" services which may be offered in conjunction with the taxi service.

##### **Exclusions:**

- Transportation network companies as defined by Title 49 RCW are classified in 1408;
- Businesses that operate ambulance services are classified in 1405;
- Businesses that operate cabulance and paratransit services exclusively are classified in 1404;
- Dispatchers with no other job duties may be classified separately in 4904; and
- Work performing maintenance/repair of the vehicle is classified separately in 3411.

**Special note:** If all conditions are met for the general reporting rules about standard exception employees, businesses that furnish only a dispatch service for taxicab drivers who own their own vehicles, or who lease vehicles from others, may be classified separately in 4904. Employees of a taxicab dispatch service who perform maintenance/repair of vehicles are classified separately in 3411.

#### **1401-03 Passenger transportation companies - Actual hours**

This classification is for reporting employees on an actual hours worked basis.

##### **Applies to:**

- Businesses providing passenger transportation to others, including:

~~((• Transportation network companies as defined in Title 49 RCW. Special reporting and coverage requirements in WAC 296-17-35205;))~~

- Businesses that employ taxi or for-hire drivers as defined under either chapter 81.72 or 46.72 RCW; and WAC 296-17-35205, which describes special reporting.

- Taxi or for-hire drivers as defined under either chapter 81.72 or 46.72 RCW, and who own their own vehicles or who lease vehicles from others; and elect optional coverage as provided by RCW 51.32.030 and as defined in WAC 296-17-31007.

**Work activities include, but are not limited to:**

- Operation of the vehicle;
- Loading/unloading passengers' luggage;
- Assisting passengers in and out of the vehicle; and
- Incidental "cabulance" services which may be offered in conjunction with the taxi service.

**Exclusions:**

- Transportation network companies as defined by Title 49 RCW are classified in 1408;

- Businesses that operate ambulance services are classified in 1405;

- Businesses that operate cabulance and paratransit services exclusively are classified in 1404;

- Dispatchers with no other job duties may be classified separately in 4904; and

- Work performing maintenance/repair of the vehicle is classified separately in 3411.

**Special note:** If all conditions are met for the general reporting rules about standard exception employees, businesses that furnish only a dispatch service for taxicab drivers who own their own vehicles, or who lease vehicles from others, may be classified separately in 4904. Employees of a taxicab dispatch service who perform maintenance/repair of vehicles are classified separately in 3411.

**1401-04 Pedicab and horse-drawn carriage companies**

Applies to businesses engaged in furnishing passenger transportation to others using pedicab or horse-drawn carriage.

**Work activities include, but are not limited to:**

- Operation of the vehicle;
- Assisting passengers in and out of the vehicle; and
- The care and feeding of animals while vehicle is available for transporting passengers.

Businesses in this classification report the actual hours their employees work and must maintain verifiable records.

**OTS-5823.1**

NEW SECTION

**WAC 296-17A-1408 Passenger transportation network companies.**

This classification is for reporting TNC drivers for all dispatch platform time and passenger platform time.

**Applies to:**

Businesses providing passenger transportation to others, including:

- Transportation network companies as defined in Title 49 RCW.

Special reporting and coverage requirements in WAC 296-17-35205.

**Work activities include, but are not limited to:**

- Operation of the vehicle;
- Loading/unloading passengers' luggage;
- Assisting passengers in and out of the vehicle.

**Exclusions:**

- Businesses that employ taxi or for-hire drivers as defined under either chapter 81.72 or 46.72 RCW; and WAC 296-17-35205, which describes special reporting. Classified in 1401;

- Taxi or for-hire drivers as defined under either chapter 81.72 or 46.72 RCW, and who own their own vehicles or who lease vehicles from others; and elect optional coverage as provided by RCW 51.32.030 and as defined in WAC 296-17-31007. Classified in 1401;

- Businesses that operate ambulance services are classified in 1405;

- Businesses that operate cabulance and paratransit services exclusively are classified in 1404;

- Dispatchers with no other job duties may be classified separately in 4904; and

- Businesses engaged in maintenance/repair of vehicles report maintenance/repair worker hours are classified separately in 3411.

**Special note:** If all conditions are met for the general reporting rules about standard exception employees, classification 4904 may be assigned.

**OTS-5824.1**NEW SECTION

**WAC 296-17A-1409 Passenger transportation network company driver death benefit claims.** This classification is only to be used to assign claims for death benefits for drivers who meet the criteria set forth in chapter 51.32 RCW passed by 2024 legislature session. No hours will be reported or premium paid for this classification and no standalone classification rate will be developed.

## WSR 24-19-080

## PROPOSED RULES

## BELLEVUE COLLEGE

[Filed September 17, 2024, 9:14 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-17-078.

Title of Rule and Other Identifying Information: Student conduct code, policy 2050.

Hearing Location(s): On October 22, 2024, at 2:00 - 2:45 p.m., via Zoom <https://bellevuecollege.zoom.us/j/81112531610>, Meeting ID 811 1253 1610; or One-tap mobile +12532050468,,81112531610# US, +12532158782,,81112531610# US (Tacoma).

Date of Intended Adoption: December 5, 2024.

Submit Written Comments to: Loreen McRea Keller, 3000 Landerholm Circle S.E., Bellevue, WA 98007, email [loreen.keller@bellevuecollege.edu](mailto:loreen.keller@bellevuecollege.edu).

Assistance for Persons with Disabilities: Contact disability resource center.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Final Title IX regulations provide greater clarity regarding: The definition of "sex-based harassment"; the scope of sex discrimination, including schools' obligations not to discriminate based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity; and schools' obligations to provide an educational environment free from discrimination based on sex. Two additional clarifications were made around document delivery methods and adding artificial intelligence to academic plagiarism.

Reasons Supporting Proposal: On April 19, 2024, the United States Department of Education (department) released its final rule to fully effectuate Title IX's promise that no person experiences sex discrimination in federally funded education. Before issuing the proposed regulations, the department received feedback on its Title IX regulations, as amended in 2020, from a wide variety of stakeholders. The final regulations strengthen several major provisions from the current regulations and provide schools with information to meet their Title IX obligations while providing appropriate discretion and flexibility to account for variations in school size, student populations, and administrative structures. The final regulations are effective on August 1, 2024, and apply to complaints of sex discrimination regarding alleged conduct that occurs on or after that date. Existing policies and procedures will remain in place for complaints of alleged conduct that occurs prior to August 1, 2024.

Statutory Authority for Adoption: Chapter 34.05 RCW and RCW 28B.50.140.

Statute Being Implemented: RCW 34.05.020.

Rule is necessary because of federal law, 34 C.F.R. 106.1.

Name of Proponent: Bellevue College, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Megan Kaptik, Bellevue College, U-219, 425-564-2757.

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 19.85.061 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. 106.1 Nondiscrimination on the basis of sex.

Scope of exemption for rule proposal:

Is fully exempt.

September 16, 2024  
 Loreen M. Keller  
 Associate Director  
 Policies and Special Projects

### OTS-5664.1

AMENDATORY SECTION (Amending WSR 21-01-008, filed 12/2/20, effective 1/2/21)

**WAC 132H-126-010 Authority.** The board of trustees, acting pursuant to RCW 28B.50.140(14), delegates to the president of Bellevue College the authority to administer student disciplinary action. Administration of the disciplinary procedures is the responsibility of the (~~provost for academic and~~) vice president of student affairs or designee and/or the designated student conduct officer. (~~The~~) Except in cases involving reports of sex discrimination, including sex-based harassment, a student conduct officer, or delegate, shall serve as the principal investigator and administrator for reported violations of this code.

AMENDATORY SECTION (Amending WSR 23-04-040, filed 1/25/23, effective 2/25/23)

**WAC 132H-126-030 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-sponsored activities; or
- (c) Off-campus, if in the judgment of the college the conduct adversely affects the college community (~~or~~), 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 official college activities including, but not limited to, foreign or domestic travel, activities funded by the Bellevue College's associated student government, athletic events, student groups, training internships, cooperative and distance education, online education, internships, practicums, supervised work experiences, (~~or~~)

any other college-sanctioned social or club activities ((and)), or college-sponsored housing.

(3) 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.

(4) Students are responsible for their conduct from the time of application for admission through the last day of enrollment or actual ((receipt)) award of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment.

(5) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending.

(6) In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

AMENDATORY SECTION (Amending WSR 23-04-040, filed 1/25/23, effective 2/25/23)

**WAC 132H-126-040 Definitions.** The following definitions shall apply for the purposes of this student conduct code:

(1) **"Business day"** means a weekday, excluding weekends and college holidays.

(2) **"College official"** is an employee of the college performing assigned administrative, security, professional, or paraprofessional duties.

(3) **"College premises"** shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, other property owned, used, or controlled by the college, study abroad program, retreat, and conference sites, and college-sponsored and/or college-hosted online platforms.

(4) **"Complainant"** ~~((is a student or another member of the college community who is allegedly directly affected by a reported violation of this student conduct code. The complainant may be the reporting party, but not necessarily; witnesses or other third parties may report concerns. In any case involving a report of sexual misconduct as defined in this student conduct code, a complainant is afforded certain rights under this student conduct code including, but not limited to:~~

~~(a) The right to be informed of all orders issued in the disciplinary case in which this person is a complainant;~~

~~(b) The right to appeal a disciplinary decision; and~~

~~(c) The right to be accompanied by a process advisor.)) 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 reported discrimination.~~

(5) **"Conduct review officer"** is ~~((the provost for academic and student affairs or designee or other))~~ a college administrator designee

nated by the president to be responsible for receiving and reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code. (~~The president is authorized to re-assign any and all of the conduct review officer's duties or responsibilities, as set forth in this chapter, as may be reasonably necessary.~~)

(6) **"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.

(7) **"Disciplinary appeal"** is the process by which an aggrieved (~~student~~) party can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of 10 instructional days or a dismissal are heard by the student conduct committee. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings (BAP).

(8) **"Filing"** is (~~the process by which~~) how a document is officially delivered to a college official responsible for facilitating a disciplinary review. Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified college official or college official's assistant; or

(b) Sending the document by email (~~and first class mail~~) to the specified college official's college email (~~and office address~~).

(9) **"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.

(10) **"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.

(11) **"Process advisor"** is a person selected by a respondent or a complainant to provide support and guidance during disciplinary proceedings under this student conduct code.

(~~(10)~~) (12) **"Program" or "programs and activities"** means all operations of the college.

(13) **"Relevant"** means related to the reports of sex discrimination under investigation. Questions are relevant when they seek evidence that may aid in showing whether the reported sex discrimination occurred, and evidence is relevant when it may aid a decision maker in determining whether the reported sex discrimination occurred.

(14) **"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.



~~(15) "Respondent" is a student against whom disciplinary action is initiated. ((Each respondent is afforded certain rights including, but not limited to:~~

~~(a) The right to be presumed not responsible for the reported misconduct unless or until a determination of responsibility is reached after completion of the disciplinary process;~~

~~(b) The right to be informed of all orders issued in the respondent's disciplinary case;~~

~~(c) The right to appeal a disciplinary decision; and~~

~~(d) The right to be accompanied by a process advisor.~~

~~(11)) (16) "Service" is the process by which a document is officially delivered to a party. Service is deemed complete upon hand delivery of the document or upon the date the document is emailed ((and deposited in the mail)). Unless otherwise provided, service upon a party shall be accomplished by:~~

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

~~(b) Sending the document by email ((and by certified mail or first class mail to the party's last known address)) to the party's official college email.~~

~~((12) "Sexual misconduct" includes prohibited sexual or gender-based conduct by a student including, but not limited to, sexual harassment, sexual violence, sexual exploitation, indecent exposure, dating violence, or domestic violence.~~

~~(13)) (17) "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, graduate, or complete courses after the date of a reported violation, 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 ("students.") a "student" for purposes of this code.~~

~~((14)) (18) "Student conduct officer" is a college administrator designated by the president ((or provost for academic and student affairs or designee)) to be responsible for implementing and enforcing the student conduct code. ((The president or provost for academic and student affairs or designee is authorized to reassign any and all of the student conduct officer's duties or responsibilities, as set forth in this chapter, as may be reasonably necessary.~~

~~(15)) (19) "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 reported student conduct code violation including, but not limited to, sex-based harassment, occurred while the individual was performing employment-related work.~~

~~(20) "Student group" is a student organization, athletic team, or living group including, but not limited to, student clubs and organizations, members of a class or student cohort, student performance groups, and student living groups within student housing.~~

~~((16) "The president" is the president of the college. The president is authorized to delegate any and all of their responsibilities, as set forth in this chapter, as may be reasonably necessary.))~~

~~(21) "Supportive measures" means reasonably available, individualized and appropriate, nonpunitive and nondisciplinary measures of-~~

ferred by the college to a 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.

(22) "Title IX coordinator" is the administrator responsible for processing complaints of sex discrimination, including sex-based harassment, and overseeing investigations and informal resolution processes in accordance with college policy.

AMENDATORY SECTION (Amending WSR 23-04-040, filed 1/25/23, effective 2/25/23)

**WAC 132H-126-100 Prohibited student conduct.** The college may impose disciplinary sanctions against a student or a college-sponsored student group who commits ~~((or)),~~ attempts to commit, ~~((or))~~ aids, abets, incites, encourages, or assists another person to commit ~~((the following acts))~~ an act(s) of misconduct:

(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) **Abuse of the student conduct process.**

(a) Abuse of the student conduct process includes:

(i) Attempting to influence the impartiality or participation of any decision maker including a student conduct officer, conduct review officer, or presiding student conduct committee member;

(ii) Influencing or attempting to influence another person to commit an abuse of the student conduct process;

(iii) Harassment or intimidation of any participant in the student conduct process; or

(iv) Submitting or providing false or misleading information in bad faith or with a view to personal gain or intentional harm to another in the conduct process.

(b) This provision does not apply to reports made or information provided in good faith, even if the respondent is ultimately found not responsible in that conduct proceeding.

(4) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication. The decision to bring a student conduct proceeding under this code for academic dishonesty is at the sole discretion of the student conduct officer. Nothing in this code prohibits instructors and/or academic divisions or departments from imposing academic consequences, up to and including a failing grade in an academic course or dismissal from an academic program, in response to academic dishonesty. Policies and procedures governing the imposition of academic consequences for academic dishonesty can be found in the course syllabus and any applicable program handbook.

(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, or work of another person or artificial intelligence in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) **Fabrication.** Falsifying data, information, or citations in completing an academic assignment. Fabrication also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(d) ~~((Multiple submissions. Submitting the same work in separate courses without the express permission of the instructor(s)).~~

~~(e))~~ **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.

(5) **Acts of dishonesty.** Acts of dishonesty include, but are not limited to:

(a) Forgery, alteration, submission of falsified documents, or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students; ~~((or))~~

(c) Furnishing false information, or failing to furnish correct information, in response to the reasonable request or requirement of a college official or employee; or

(d) Knowingly making a false statement or submitting false information in relation, or in response, to a college academic or disciplinary investigation or process.

(6) **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.

(7) **Cyber misconduct.** Cyberstalking, cyberbullying, or online harassment. Use of electronic communications including, but not limited to, electronic mail, text messaging, social media sites, or applications (apps), to harass, abuse, bully, or engage in other conduct that 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 electronic communications or computer activities directly or through spyware, sending threatening emails or ~~((texts))~~ messages, disrupting electronic communications with spam or by sending a computer virus, ~~((or))~~ sending false emails or texts to third parties using another's identi-

ty (spoofing), nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

~~(8) ((**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.~~

~~(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; ((honorably discharged)) 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)) (9) **Disorderly conduct.** Conduct that is disorderly, lewd, or indecent; disturbing the peace; or assisting or encouraging another person to disturb the peace.~~

~~((11)) (10) **Disruption or obstruction.** Disruption or obstruction of any instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity, or any activity that is authorized to occur on college property, whether ((or not)) actually conducted or sponsored by the college.~~

~~((12) **Domestic violence.** Use or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior, by a person:~~

~~(a) Who is a current or former spouse or intimate partner of the victim, or a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington;~~

~~(b) Who is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;~~

~~(c) Who shares a child in common with the victim; or~~

~~(d) Who commits acts 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.~~

~~(13))~~ **(11) Economic abuse.** In the context of domestic violence dating violence, economic abuse includes behavior that is coercive, deceptive, or unreasonably controls or restrains a person's ability to acquire, use, or maintain economic resources to which they are entitled, including using coercion, fraud, or manipulation to:

(a) Restrict a person's access to money, assets, credit, or financial information;

(b) Unfairly use a person's personal economic resources, including money, assets, and credit, for one's own advantage; or

(c) Exert undue influence over a person's financial and economic behavior or decisions, including forcing default on joint or other financial obligations, exploiting powers of attorney, guardianship, or conservatorship, or failing or neglecting to act in the best interests of a person to whom one has a fiduciary duty.

~~((14))~~ **(12) 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.

~~((15))~~ **(13) Failure to comply with directive.** Failure to comply with the reasonable direction of a college official 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.

~~((16))~~ **(14) Harassment or bullying.** Conduct unrelated to a protected class that is unwelcome and sufficiently severe, persistent, or pervasive such that it could reasonably be expected to create an intimidating, hostile, or offensive environment, or has the purpose or effect of unreasonably interfering with a person's academic or work performance, or a person's ability to participate in or benefit from the college's programs, services, opportunities, or activities.

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

(b) For purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior not otherwise protected by law when a reasonable person would feel humiliated, harmed, or intimidated.

(c) For purposes of this code, "intimidation" is an implied threat. Intimidation exists when a reasonable person would feel threatened or coerced even though an explicit threat or display of physical force has not been made. Intimidation is evaluated based on the intensity, frequency, ~~((e))~~ context, and duration of the comments or actions.

~~((17))~~ **(15) Hazing.**

(a) Hazing is any act committed as part of:

(i) A person's recruitment, initiation, pledging, admission into, or affiliation with a student group; or

(ii) Any pastime or amusement engaged in with respect to such a student group that causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student.

(b) Examples of hazing include, but are not limited to:

(i) Causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm;

(ii) Humiliation by ritual act;

(iii) Striking another person with an object or body part;

(iv) Causing someone to experience excessive fatigue, or physical and/or psychological shock; or

(v) Causing someone to engage in degrading or humiliating games or activities that create a risk of serious psychological, emotional, and/or physical harm.

(c) "Hazing" does not include customary athletic events or other similar contests or competitions.

(d) Consent is not a valid defense against hazing.

~~((18))~~ **(16) 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))~~ way such exposure is likely to cause affront or alarm. Breastfeeding or expressing breast milk is not indecent exposure.

~~((19))~~ **(17) Cannabis or other drugs.**

(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 under the influence of any prescription drug or possession of drug paraphernalia, 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.

~~((20))~~ **(18) 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 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 computer time or resources to interfere with someone else's work;

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

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

(g) Use of computer 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.

~~((21))~~ **(19) Property violation.** Damage to, misappropriation of, unauthorized use or possession of, vandalism of, or other nonaccidental damaging or destruction of college property or the property of another person. Property, for purposes of this subsection, also includes computer passwords, access codes, identification cards, personal fi-

financial account numbers, other confidential personal information, intellectual property, and college trademarks.

~~((22))~~ (20) Retaliation. Harming, threatening, intimidating, coercing, or ~~((taking adverse action of any kind against a person because such person reported a violation of this code or college policy, provided information about a reported violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.~~

~~(23))~~ 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.

(21) Safety violations. ~~((Safety violations include committing any))~~ Nonaccidental, reckless, or unsafe ((aet)) conduct that ((endangers others, failing to follow established safety procedures (e.g., failing to evacuate during a fire alarm), or interfering with or otherwise compromising any college equipment relating to the safety and security of the campus community including, but not limited to, tampering with fire safety or first-aid equipment, or)) 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.

~~((24))~~ (22) Sexual exploitation. Taking nonconsensual or abusive sexual advantage of another for the respondent's own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, when the behavior does not otherwise constitute one of the other ~~((sexual misconduct))~~ sex-based harassment offenses described herein. Examples of sexual exploitation may include, but are not limited to:

- (a) Invading another person's sexual privacy;
- (b) Prostituting another person;
- (c) Nonconsensual photography and digital or video recording of nudity or sexual activity, or nonconsensual audio recording of sexual activity;
- (d) Unauthorized sharing or distribution of photographs or digital or video recording of nudity or sexual activity, or audio recording of sexual activity, unless otherwise protected by law;
- (e) Engaging in voyeurism. A person commits voyeurism if they knowingly view, photograph, record, or film another person, without that person's knowledge and consent, while the person being viewed, photographed, recorded, or filmed is in a place where the person has a reasonable expectation of privacy;
- (f) Knowingly or recklessly exposing another person to a significant risk of sexually transmitted disease or infection; or
- (g) Causing the nonconsensual indecent exposure of another person, as defined by subsection ~~((18))~~ (16) of this section.

~~((25))~~ Sexual harassment. ~~Unwelcome sexual or gender-based conduct, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual or gender-based nature that is sufficiently severe, persistent or pervasive as to:~~

- ~~(a) Deny or limit the ability of a student to participate in or benefit from the college's educational program;~~
- ~~(b) Alter the terms or conditions of employment; or~~

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

~~For sexual harassment prohibited under Title IX, refer to WAC 132H-126-410.~~

~~(26) **Sexual violence.** A type of sexual harassment that includes nonconsensual intercourse, nonconsensual sexual contact, and sexual coercion.~~

~~(a-)) (23) **Sex discrimination.** The term "sex discrimination" includes sex-based harassment and may occur when a respondent causes more than de minimis (insignificant) 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 harm on the basis of sex and is prohibited.~~

~~(a) **Sex-based harassment.** 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.**~~

~~(A) **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.~~

~~(B) **Nonconsensual sexual contact (fondling).** Any actual or attempted intentional 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, or sibling, brother or sister either wholly~~



or half related. Descendant includes stepchildren and adopted children under the age of 18.

(D) **Statutory rape (rape of a child).** Nonforcible sexual intercourse with a person who is under the statutory age of consent.

(E) **Domestic violence.** Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, coercive control, damage or destruction of personal property, or 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.** 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.** 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. Effective consent cannot result from force, ((~~or~~)) threat of physical force, coercion, dishonesty, or intimidation.

(ii) ((Physical force means someone is physically exerting control of another person through violence. Physical force includes, but is not limited to, hitting, kicking, and restraining.

(iii) Threatening someone to obtain consent for a sexual act is a violation of this policy. Threats exist where a reasonable person would have been compelled by the words or actions of another to give permission to sexual activity to which they otherwise would not have consented.

(iv)) Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

((~~v~~)) (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.

~~((b) **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.~~

~~(c) **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.~~

~~(d) **Sexual coercion.** Unreasonably pressuring another for sexual contact. When a complainant makes it clear through words or actions that they do not want to engage in sexual contact, want to stop, or do not want to go past a certain point of sexual interaction, continued pressure beyond that point is presumptively unreasonable and coercive. Other examples of coercion may include using blackmail or extortion, or administering drugs and/or alcohol to overcome resistance or gain consent to sexual activity. Sexual contact that is the result of coercion is nonconsensual.~~

~~(e) **Incest.** Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of 18.~~

~~(f) **Statutory rape.** Consensual sexual intercourse between someone who is 18 years of age or older and someone who is under the age of 16.~~

~~(27) **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. 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 an intent.~~

~~(28)) (c) **Title IX retaliation.** Intimidation, threats, coercion, or discrimination against any person by a student, for the purpose of interfering with any right or privilege secured by Title IX, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in a sex discrimination investigation, proceeding, or hearing under this part, including during an informal resolution process, during a sex discrimination investigation, or during any disciplinary proceeding involving reports of sex discrimination.~~

~~(24) **Technological abuse.** An act or pattern of behavior that occurs within domestic violence, sexual assault, dating violence, or stalking and is intended to harm, threaten, intimidate, control, stalk, harass, impersonate, exploit, extort, or monitor, except as otherwise permitted by law, another person, that occurs using any form of technology including, but not limited to: Internet-enabled devices, online spaces and platforms, computers, mobile devices, cameras and imaging programs, apps, location tracking devices, or communication technologies, or any other emerging technologies.~~

~~((29)) (25) **Tobacco, electronic cigarettes, and related products.** The use of tobacco, electronic cigarettes, and related products is prohibited 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. The use of tobacco, electronic cigarettes, and related products is prohibited in vehicles owned, leased, rented, or operated by the college. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, and snuff.

~~((30))~~ (26) 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. Providing keys to an unauthorized person or providing access to an unauthorized person is also prohibited.

~~((31))~~ (27) Unauthorized recording. The following conduct is prohibited:

(a) Making audio, video, digital recordings, or photographic images of a person without that person's consent in a location where that person has a reasonable expectation of privacy (e.g., restroom or residence hall room).

(b) Storing, sharing, publishing, or otherwise distributing such recordings or images by any means.

~~((32))~~ (28) Violation of other laws or policies. Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including ~~((on-campus))~~ college housing ~~((policies and college))~~, traffic, and parking rules.

~~((33))~~ (29) Weapons.

~~((a))~~ Possessing, holding, wearing, transporting, storing, or exhibiting 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:

~~((i))~~ (a) Commissioned law enforcement personnel ~~((; or (ii)))~~ or legally authorized military personnel while in performance of their official duties.

(b) Students with legally issued concealed weapons permits may store their weapons in vehicles parked in accordance with RCW 9.41.050 on campus provided the vehicle is locked and the weapon is concealed from view.

(c) The president or delegate may authorize possession of a weapon on campus upon a showing that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to any terms or conditions ~~((incorporated therein))~~ in the written permission.

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

AMENDATORY SECTION (Amending WSR 19-01-082, filed 12/17/18, effective 1/17/19)

**WAC 132H-126-110 Corrective action, disciplinary sanctions—**  
**Terms and conditions.** (1) ~~((The following disciplinary sanctions may be imposed upon students found to have violated the student conduct code:))~~ One or more of the following corrective actions or disciplinary sanctions may be imposed upon a student or upon college-sponsored

student groups found responsible for violating the student conduct code.

(a) **((Disciplinary)) Warning.** A verbal or written statement to a student that ~~((they are violating or have violated the student conduct code))~~ there is a violation and that continuation of the same or similar behavior may result in more severe discipline. 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))~~ this student conduct code 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, which may include a deferred disciplinary sanction.

(i) Probation may be for a limited period of time or may be for the duration of the student's attendance at the college.

(ii) 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.

(d) **Disciplinary suspension.** Separation from the college and from the student status for a stated period of time.

(i) There will be no refund of tuition or fees for the quarter in which the action is taken.

(ii) Conditions of suspension may be imposed and will be specified. Except as otherwise specified in the final order, all conditions must be fulfilled before the end of the suspension period. Failure to fulfill all conditions of suspension in a timely manner ~~((will))~~ may extend the suspension period and any conditions, and may result in additional disciplinary sanctions.

(iii) The college may put a conduct hold in place during the suspension period.

(e) **Dismissal.** The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or college-controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the action is taken.

(2) Disciplinary terms and conditions that may be imposed 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) **No contact ~~((order))~~ directive.** ~~((A prohibition of direct or indirect physical, verbal, electronic, and/or written contact with another individual or group.))~~ 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.

(d) **Not in good standing.** A student found to be "not in good standing" with the college shall be subject to the following restrictions:

(i) Ineligible to hold an office in any student (~~(organization)~~) group 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.

(e) **Professional evaluation.** Referral for drug, alcohol, psychological, or medical evaluation by an appropriately certified or licensed professional.

(i) The student may choose the professional within the scope of practice and with the professional credentials as defined by the college.

(ii) The student will sign all necessary releases to allow the college access to any such evaluation.

(iii) 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) **Residence hall suspension.** Separation of the student from a residence hall or halls for a definite period of time, after which the student may be eligible to return. Conditions (~~(for reacceptance may be specified)~~) may be imposed before a student is permitted to return to a residence hall.

(g) **Residence hall dismissal.** Permanent separation of the student from a residence hall or halls.

(h) **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.

(i) **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 disciplinary sanction or condition must be completed either prior to or upon the student's reenrollment, depending on the nature of the sanction, condition, and/or the underlying violation. Completion of disciplinary sanctions and conditions may be considered in petitions for readmission to the college.

AMENDATORY SECTION (Amending WSR 23-04-040, filed 1/25/23, effective 2/25/23)

**WAC 132H-126-115 Hazing prohibited—Sanctions.** (1) (~~(Hazing by a student or a student group is prohibited pursuant to WAC 132H-126-100(17)).~~

~~(2) No student may conspire to engage in hazing or participate in hazing of another. State law provides that hazing is a criminal offense, punishable as a misdemeanor.~~

~~(3) Washington state law provides that:~~

~~(a)) 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 nonprofit, the individual directors of the corporation may be held individually liable for damages.~~

~~((b)) (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.~~

~~((e)) (3) Any student group((s)) 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.~~

~~((d)) (4) Student groups 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.~~

AMENDATORY SECTION (Amending WSR 23-04-040, filed 1/25/23, effective 2/25/23)

**WAC 132H-126-120 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) Upon receipt, a 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) ((**Student on student sexual misconduct.** The college's Title IX coordinator or designee shall investigate complaints or other reports of sexual misconduct by a student against a student.~~

~~(b) **Sexual misconduct involving an employee.** The college's human resource office or designee shall investigate complaints or other reports of sexual misconduct in which an employee is either the complainant or respondent.~~

~~(c)) **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. Reports involving employees, student 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.

~~((d))~~ (3) Investigations will be completed in a timely manner according to college procedures and the results of the investigation shall be referred to the student conduct officer for student disciplinary action.

~~((e))~~ College personnel will honor requests to keep sexual misconduct complaints confidential to the extent this can be done in compliance with federal and state laws and without unreasonably risking the health, safety, and welfare of the complainant or other members of the college community.

~~(3))~~ (4) If a student conduct officer determines that a complaint appears to state a violation of the student conduct code, the student conduct officer will consider whether the matter might be resolved through agreement with the respondent or through alternative dispute resolution proceedings involving the complainant and the reporting party.

(a) Informal dispute resolution shall not be used to resolve ~~((sexual misconduct complaints))~~ sex discrimination reports without written permission from both the complainant and the respondent.

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

~~((4))~~ (5) If the student conduct officer has determined that a complaint has merit and if the matter is not resolved through agreement or alternative dispute resolution, the student conduct officer may initiate disciplinary action against the respondent.

~~((a))~~ (6) Both the respondent and the complainant in cases involving ~~((allegations of sexual misconduct))~~ reports of sex discrimination shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the ~~((initial))~~ disciplinary ~~((decision-making))~~ process and to appeal any disciplinary decision.

~~((b))~~ The student conduct officer, prior to initiating disciplinary action in cases involving allegations of sexual misconduct, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or conditions, if any, that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.

~~(5))~~ (7) All disciplinary actions will be initiated by a student conduct officer. If that officer is the subject of a complaint initiated by the respondent or the complainant, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complaint.

~~((6))~~ (8) A student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing them to attend a disciplinary meeting. ~~((a))~~ The notice shall briefly describe the factual allegations, the provision(s) of the student conduct code the respondent is reported to have violated, the range of possible sanctions for the reported violation(s), and it will specify the time and location of the meeting.

~~((b))~~ (9) At the ~~((disciplinary))~~ meeting, the student conduct officer will present the allegations to the respondent ~~((r))~~ and the respondent shall be afforded an opportunity to explain what occurred. ~~((e))~~ If the respondent fails to attend the meeting, the student conduct officer may take disciplinary action based upon the available information.

~~((7))~~ (10) Within 10 business days of the initial disciplinary meeting and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting the 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 ~~((if))~~ at the sole discretion of the student conduct officer ~~(, based on information presented at the disciplinary meeting, concludes that additional investigation is necessary. If the period is extended, the student conduct officer will notify the respondent, and the complainant in cases involving allegations of sexual misconduct, of this extension, the reason(s), and the anticipated extension time frame)~~ 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.

~~((8))~~ (11) A 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 condition(s), as described in WAC 132H-126-110 and 132H-126-115 ~~((-))~~; 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.

~~((9) In cases involving allegations of sexual misconduct, the student conduct officer, on the same date that a disciplinary decision is served on the respondent, will serve a written notice informing the complainant of the decision, the reasons for the decision, and any disciplinary sanctions and/or conditions that may have been imposed upon the respondent, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure prompt notice of the protective disciplinary sanctions and/or conditions.)~~

(12) In cases involving reports 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 reported by the complainant would not constitute sex discrimination; or

(v) The conduct reported 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 sex discrimination resolution procedure.

(i) If the respondent is found responsible for engaging in sex discrimination, the Title IX coordinator shall also take prompt steps to coordinate and implement any necessary remedies to ensure that sex discrimination does not recur and that complainant has equal access to the college's programs and activities.

AMENDATORY SECTION (Amending WSR 23-04-040, filed 1/25/23, effective 2/25/23)

**WAC 132H-126-130 Appeal from disciplinary action.** (1) Except as specified for cases involving allegations of sex discrimination, as set forth in WAC 132H-126-120, the respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review 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. ((If a case involves allegations of sexual misconduct, a complainant also has a right to appeal a disciplinary decision or to intervene in the respondent's appeal of a disciplinary decision to the extent the disciplinary decision, sanc-

tions or conditions relate to allegations of sexual misconduct against the respondent.)

(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 the respondent has been summarily suspended.

(7) The student conduct committee shall hear appeals (~~regard-~~ing) from:

(a) (~~The imposition of~~) Disciplinary suspensions in excess of 10 instructional days (or, for a student group, suspensions in excess of two academic quarters);

(b) ~~Dismissals (or, for a student group, deprivation of recognition or approval granted by the college); (and)~~

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

(d) Discipline cases referred to the committee by (the) a student conduct officer, (the) a conduct review officer, or the president.

(8) (~~Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:~~) A conduct review officer shall conduct a brief adjudicative proceeding for appeals of:

(a) Residence hall dismissals;

(b) Residence hall suspensions;

(c) Suspensions of 10 instructional days or less;

(d) Disciplinary probation;

(e) Written reprimands; and

(f) (~~Sanctions against a student group, other than those set forth in subsection (7)(a) and (b) of this section;~~

~~(g)) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions (;~~ and

~~(h) Appeals by a complainant in student disciplinary proceedings involving allegations of sexual misconduct in which the student conduct officer:~~

~~(i) Dismisses disciplinary proceedings based upon a finding that the allegations of sexual misconduct have no merit; or~~

~~(ii) Issues a verbal warning to the respondent.~~

(9) ~~Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary complaints are final actions and are not subject to appeal.~~

(10) ~~In cases involving allegations of sexual misconduct, the complainant has the right to appeal the following actions by the student conduct officer following the same procedures as set forth above for the respondent:~~

~~(a) The dismissal of a sexual misconduct complaint; or~~

~~(b) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary warning.~~

(11) ~~If the respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college shall notify the complainant of the appeal and provide the complainant an opportunity to intervene as a party to the appeal.~~

~~(12) Except as otherwise specified in this chapter, a complainant who timely appeals a disciplinary decision or who intervenes as a party to respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as are afforded the respondent).~~

AMENDATORY SECTION (Amending WSR 19-01-082, filed 12/17/18, effective 1/17/19)

**WAC 132H-126-150 Amnesty policy.** (1) Bellevue College values the health, safety and wellness of those in our college community. Students are encouraged to report crimes, share concerns, and seek medical attention for themselves or others in need.

(2) A student conduct officer may elect not to initiate disciplinary action against a student who, while in the course of helping another person seek medical or other emergency assistance, admits to a possible policy violation under this student conduct code, provided that any such violations did not and do not place the health or safety of any other person at risk.

(3) A student conduct officer may elect not to initiate disciplinary action against a student who, while in the course of reporting violence, ~~((sexual misconduct))~~ sex discrimination, or a crime in progress, admits to personal consumption of alcohol or drugs at or near the time of the incident, provided that any such use did not place the health or safety of any other person at risk.

(4) While policy violations cannot be overlooked, the college may elect to offer educational options or referrals, rather than initiating disciplinary action against students who report crimes, serve as witnesses, or seek medical attention as described in this section.

(5) This amnesty policy may not apply to students who repeatedly violate college policies in regard ~~((s))~~ to alcohol, drugs, or other prohibited conduct.

AMENDATORY SECTION (Amending WSR 21-01-008, filed 12/2/20, effective 1/2/21)

**WAC 132H-126-160 Interim measures.** (1) After receiving a report of ~~((sexual misconduct))~~ sex discrimination or other serious student misconduct, a student conduct officer or designee may implement interim measures which may include, but are not limited to:

(a) A no-contact order prohibiting direct or indirect contact, by any means, with a complainant, a respondent, a reporting party, other specified persons, and/or a specific student group or organization;

(b) Reassignment of on-campus housing;

(c) Changes to class schedules, assignments, or test schedules;

(d) Modified on-campus employment schedule or location;

(e) Restrictions on access to portions of campus including, but not limited to, on-campus housing; or

(f) Alternative safety arrangements such as campus safety escorts.

(2) If an interim measure is put in place pending or during a conduct proceeding, the student will be notified of the interim measure and be advised how to raise an objection about the interim measure or request that it be made less restrictive. ~~((The))~~ A student conduct

officer may adjust or modify interim measures as students' situations and schedules change and evolve over time. Interim measures will remain in place until ~~((the))~~ student receives notice they have been lifted or modified from ~~((the))~~ a student conduct officer.

(3) Implementation of any interim measure does not assume any determination of, or create any presumption regarding responsibility for, a violation under this student conduct code.

AMENDATORY SECTION (Amending WSR 21-01-008, filed 12/2/20, effective 1/2/21)

**WAC 132H-126-170 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))~~ A student conduct officer may impose a summary suspension if there is reasonable basis to believe that the respondent:

(a) Has violated a provision of the student conduct code; and

(b) Presents an immediate danger to the health, safety, or welfare of members of the college community; or

(c) Poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.

(3) Notice. Any respondent who has been summarily suspended shall be served with oral or written notice of the summary suspension. If oral notice is given, a written notification shall be served on the respondent within two business days of the oral notice.

(4) The written notice 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 reportedly violated;

(b) The date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and

(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included that warns the student that their privilege to enter or remain on college premises has been withdrawn and that the respondent shall be ~~((considered to be))~~ trespassing and subject to arrest for criminal trespass if the respondent enters the college campus. The respondent may be authorized to access college premises for the limited purpose of meeting with the student conduct officer, the conduct review officer, or to attend a disciplinary hearing. All such meetings and hearings shall be confirmed in writing in advance and the respondent entering college premises shall be required to produce the written permission to a college official on request.

(5) ~~((The))~~ A 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 the 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 sexual misconduct))~~ reports 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 21-01-008, filed 12/2/20, effective 1/2/21)

**WAC 132H-126-200 Brief adjudicative proceedings—~~((Initial))~~**

**Hearing.** (1) Brief adjudicative proceedings shall be conducted by a conduct review officer designated by the president. 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))~~ acting, 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 parties within ~~((ten business))~~ 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 ~~((twenty-one))~~ 21 calendar days of service of the initial decision, the initial decision shall be deemed the final decision.

(4) ~~((If the matter is an appeal by the respondent, or the complainant in the case of sexual misconduct, the conduct review officer may affirm, reverse, or modify the disciplinary sanctions and/or conditions imposed by the student conduct officer and/or impose addition-~~

~~al disciplinary sanctions or conditions as authorized herein. If the conduct review officer, upon review, determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.~~

~~(5) In cases involving allegations of sexual misconduct, the conduct review officer, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant of the decision, the reasons for the decision, and a description of any disciplinary sanctions and/or conditions that may have been imposed upon the respondent. The notice will also inform the complainant of their appeal rights.) 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.~~

AMENDATORY SECTION (Amending WSR 21-01-008, filed 12/2/20, effective 1/2/21)

**WAC 132H-126-210 Brief adjudicative proceedings—Review of an initial decision.** (1) An initial decision is subject to review by the president, provided the respondent files a written request for review with the conduct review officer within ~~((twenty-one))~~ 21 calendar days of service of the initial decision.

(2) The president 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.

(3) During the review, the president shall give each party an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to determine whether the findings or 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, include a brief statement of the reasons for the decision and typically must be served on the parties within ~~((twenty))~~ 20 calendar days of the initial decision or 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 ~~((twenty))~~ 20 calendar days after the request is submitted without a response from the president.

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

~~((6) In cases involving allegations of sexual misconduct, the president, on the same date as the final decision is served on the respondent, will serve a written notice upon the complainant informing the complainant of the decision, the reasons for the decision, and a description of any disciplinary sanctions and/or conditions that may~~

have been imposed upon the respondent. The notice will also inform the complainant of their appeal rights.)

AMENDATORY SECTION (Amending WSR 21-01-008, filed 12/2/20, effective 1/2/21)

- WAC 132H-126-300 Student conduct committee.** (1) The student conduct committee shall consist of six members:
- (a) Two full-time students appointed by the student government;
  - (b) Two faculty members appointed by the president;
  - (c) Two administrative staff members, other than an administrator serving as a student conduct or conduct review officer, appointed by the president prior to the beginning of the academic year for alternating two-year terms.
- (2) One of the administrative staff members shall serve as the chair of the committee and may ~~((take action))~~ act on preliminary hearing matters prior to convening the committee. ~~((The administrative staff members shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.))~~
- (3) Hearings may be heard by a quorum of three members of the committee, so long as one faculty member, one student, and one administrative staff member 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 ~~((:~~
- ~~(a) Are a complainant or witness;~~
  - ~~(b) Have direct or personal interest, prejudice, or bias; or~~
  - ~~(c) Have acted previously in an advisory capacity.~~
- ~~(5) Any party may petition for disqualification of a committee member pursuant to RCW 34.05.425(4))~~ 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 reports of sex discrimination, including sex-based harassment, members of the student conduct committee must receive training on serving impartially, avoiding prejudgment of facts at issue, conflicts of interest, and bias. The chair must also receive training on the student conduct process for sex discrimination cases, as well as the meaning and application of the term "relevant," in relations to questions and evidence, and the types of evidence that are impermissible, regardless of relevance in accordance with 34 C.F.R. §§ 106.45 and 106.46.
- (6) 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.

AMENDATORY SECTION (Amending WSR 21-01-008, filed 12/2/20, effective 1/2/21)

**WAC 132H-126-310 Student conduct committee—Prehearing.** (1)

Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW, and by the Model Rules of Procedure, chapter 10-08 WAC. To the extent there is a conflict between these rules and chapter 10-08 WAC, these rules shall control.

(2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven calendar days in advance of the hearing date (~~(, as further specified in RCW 34.05.434 and WAC 10-08-040 and 10-08-045)~~). The chair may shorten this notice period if both parties agree, and also may continue the hearing to a later time for good cause shown. The notice must include:

- (a) A copy of the student conduct code;
- (b) The basis for jurisdiction;
- (c) The reported violation(s);
- (d) A summary of facts underlying the allegations;
- (e) The range of possible sanctions that may be imposed; and
- (f) A statement that retaliation is prohibited.

(3) The (~~committee~~) chair is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

(4) Upon request, filed at least five calendar days before the hearing by any party or at the direction of the (~~committee~~) chair, the parties shall exchange, no later than the third day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(5) The (~~committee~~) chair may provide to the committee members in advance of the hearing copies of: (a) The conduct officer's notice of discipline, or referral to the committee (~~(+)~~) and (b) the notice of appeal, or any response to referral, by the respondent or, in a case involving (~~allegations of sexual misconduct~~) reports of sex discrimination, the complainant. 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~~) A student conduct officer, upon request, shall provide reasonable assistance to the respondent and complainant in obtaining relevant and admissible evidence that is within the college's control.

(8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate. Any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.



(9) ~~((All parties))~~ Each party may be accompanied at the hearing by a process advisor of their choice, which may be an attorney retained at the party's expense.

~~(10) ((The respondent, in all appeals before the committee, and the complainant, in an appeal involving allegations of sexual misconduct before the committee, may elect to be represented by an attorney at their own expense. The respondent and/or complainant will be deemed to have waived the right to be represented by an attorney unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer.~~

~~(11))~~ 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 also be represented by ~~((a second, appropriately screened,))~~ an assistant attorney general.

(11) Attorneys for students must file a notice of appearance with the committee chair at least five 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 reports 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, 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 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 reported 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.

AMENDATORY SECTION (Amending WSR 21-01-008, filed 12/2/20, effective 1/2/21)

**WAC 132H-126-320 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 assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted, in accordance with WAC 10-08-190.

(4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.

(5) The student conduct officer, unless represented by an assistant attorney general, shall present the case for imposing disciplinary sanctions.

(6) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

(7) In cases involving reports of ~~((sexual misconduct))~~ sex discrimination, the respondent and complainant shall not directly question or cross-examine one another ~~((. Attorneys for the respondent and complainant are also prohibited from directly questioning opposing parties absent express permission from the committee chair. Subject to this exception, all cross-examination questions by the respondent and complainant shall be directed to the committee chair, who in their discretion shall pose the questions on the party's behalf. All cross-examination questions submitted to the chair in this manner shall be memorialized in writing and maintained as part of the hearing record.))~~ 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 witness by a party's attorney or advisor. The chair may revise this process if, in the chair's determination, the questioning by any party, attorney, or advisor, becomes contentious or harassing.

(a) Prior to 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 reported conduct, or is evidence of specific instances of prior sexual conduct with the respondent that is offered to prove consent to the reported 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 reported 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.

AMENDATORY SECTION (Amending WSR 21-01-008, filed 12/2/20, effective 1/2/21)

**WAC 132H-126-330 Student conduct committee—Initial decision.**

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

(2) Within (~~twenty~~) 20 calendar days following the conclusion of the hearing or the committee's receipt of closing arguments, whichever is later, the committee shall issue (~~an initial~~) a decision in accordance with RCW 34.05.461 and WAC 10-08-210. The (~~initial~~) decision shall include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified and explained.

(3) The committee's (~~initial order~~) decision shall also include a determination on appropriate (~~discipline~~) sanctions, if any. If the matter was referred to the committee by (~~the~~) a student conduct officer, the committee shall identify and impose disciplinary sanctions or conditions, if any, as authorized in the student conduct code. If the matter is an appeal by (~~the respondent or the complainant in the case of sexual misconduct~~) a party, the committee may affirm, reverse, or modify the disciplinary sanctions and/or conditions imposed by the student conduct officer and/or impose additional disci-

plinary sanctions or conditions as authorized herein. The notice will also inform the respondent of their appeal rights.

(4) The committee chair shall cause copies of ~~((the initial))~~ its decision to be served on the parties and their ~~((legal counsel of record. The committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the president.~~

~~(5) In cases involving allegations of sexual misconduct, the chair of the student conduct committee will make arrangements to have a written notice served on the complainant informing the complainant of the decision, the reasons for the decision, and a description of any disciplinary sanctions and/or conditions that may have been imposed upon the respondent, including suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights. This notice shall be served on the complainant on the same date as the initial decision is served on the respondent. The complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to other parties.)~~ 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.

AMENDATORY SECTION (Amending WSR 21-01-008, filed 12/2/20, effective 1/2/21)

**WAC 132H-126-340 Student conduct committee—Review of an initial decision.** (1) ~~((A respondent, or a complainant in a case involving allegations of sexual misconduct, who is aggrieved by the findings or conclusions issued by the student conduct committee may request a review of the committee's initial decision to the president by filing a notice of appeal with the president's office within twenty-one days of service of the committee's initial decision or a written notice.))~~ 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 request within this time frame constitutes a waiver of the right and the initial decision shall be deemed final.

(2) ~~The ((notice of))~~ written appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain an argument as to why the appeal should be granted. ~~((The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to those issues and arguments raised in the notice of appeal. As part of the review process, the president may ask the non-appealing party(ies) to respond to the arguments contained in the notice of appeal.~~

~~(3) The president shall provide a written decision to all parties within thirty days after receipt of the notice of appeal or receipt of the response from nonappealing parties, whichever is later. The presi-~~

~~dent's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.~~

~~(4) In cases involving allegations of sexual misconduct, the president, on the same date that the final decision is served upon the respondent, shall serve a written notice informing the complainant of the final decision. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.~~

~~(5) The president shall not engage in an ex parte communication with any of the parties regarding an appeal.) Appeals may be based upon, but are not limited to:~~

~~(a) Procedural irregularity that would change the outcome;~~

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

~~(c) The investigator, decision maker, or Title IX coordinator had a conflict of interest or bias for or against a respondent or complainant individually or respondents or complainants generally.~~

~~(3) Upon receiving a timely appeal, the president or a designee will promptly serve a copy of the appeal on all nonappealing parties, who will have 10 business days from the date of service to submit a written response addressing the issues raised in the appeal to the president or a designee and serve it on all parties. Failure to file a timely response constitutes a waiver of the right to participate in the appeal.~~

~~(4) If necessary to aid review, the president may ask for additional briefing from the parties on issues raised on appeal. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the appeal.~~

~~(5) The president shall serve a written decision on all parties and their attorneys, if any, within 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.~~

**SUPPLEMENTAL TITLE IX STUDENT CONDUCT PROCEDURES FOR REPORTED INCIDENTS OCCURRING BEFORE AUGUST 1, 2024**

AMENDATORY SECTION (Amending WSR 23-04-040, filed 1/25/23, effective 2/25/23)

**WAC 132H-126-400 Order of precedence.** This supplemental procedure applies to allegations of sexual harassment occurring before Au-

gust 1, 2024, subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with the college's standard disciplinary procedures, WAC 132H-126-100 through 132H-126-340, these supplemental procedures shall take precedence. Bellevue College may, at its discretion, contract with an administrative law judge or other person to act as presiding officer and assign such presiding officer to exercise any or all of the duties in lieu of the student conduct committee and committee chair.

AMENDATORY SECTION (Amending WSR 23-04-040, filed 1/25/23, effective 2/25/23)

**WAC 132H-126-410 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." These definitions apply to reported incidents occurring before August 1, 2024.

For purposes of this supplemental 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:
  - (a) **Nonconsensual sexual intercourse.** Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.
  - (b) **Nonconsensual sexual contact.** Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.
  - (c) **Incest.** Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of 18.
  - (d) **Statutory rape.** Consensual sexual intercourse between someone who is 18 years of age or older and someone who is under the age of 16.
- (4) **Domestic violence.** Use or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a

victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior, by a person:

(a) Who is a current or former spouse or intimate partner of the victim, or a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington;

(b) Who is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;

(c) Who shares a child in common with the victim; or

(d) Who commits acts against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(5) **Dating 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) **Economic abuse.** In the context of domestic violence dating violence, economic abuse includes behavior that is coercive, deceptive, or unreasonably controls or restrains a person's ability to acquire, use, or maintain economic resources to which they are entitled, including using coercion, fraud, or manipulation to:

(a) Restrict a person's access to money, assets, credit, or financial information;

(b) Unfairly use a person's personal economic resources, including money, assets, and credit, for one's own advantage; or

(c) Exert undue influence over a person's financial and economic behavior or decisions, including forcing default on joint or other financial obligations, exploiting powers of attorney, guardianship, or conservatorship, or failing or neglecting to act in the best interests of a person to whom one has a fiduciary duty.

(7) **Technological abuse.** An act or pattern of behavior that occurs within domestic violence, sexual assault, dating violence, or stalking and is intended to harm, threaten, intimidate, control, stalk, harass, impersonate, exploit, extort, or monitor, except as otherwise permitted by law, another person, that occurs using any form of technology including, but not limited to: Internet-enabled devices, online spaces and platforms, computers, mobile devices, cameras and imaging programs, apps, location tracking devices, or communication technologies, or any other emerging technologies.

(8) **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 21-01-008, filed 12/2/20, effective 1/2/21)

**WAC 132H-126-420 Title IX jurisdiction.** (1) This supplemental procedure applies only if the reported misconduct:



- (a) Occurred in the United States;
- (b) Occurred during a college educational program or activity;
- ((and))
- (c) Meets the definition of sexual harassment as that term is defined in this supplemental procedure; and
- (d) Before August 1, 2024.

(2) For purposes of this supplemental procedure, an "educational program or activity" is defined as locations, events, or circumstances over which the college exercised substantial control over both the respondent and the context in which the reported sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by the college.

(3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1)(a) through ~~((e))~~ (d) of this section have not been met. Dismissal under this supplemental procedure does not prohibit the college from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the college's student conduct code, chapter 132H-126 WAC.

(4) If the student conduct officer determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the student conduct officer will issue a notice of dismissal in whole or part to both parties explaining why some or all of the Title IX claims have been dismissed.

AMENDATORY SECTION (Amending WSR 21-01-008, filed 12/2/20, effective 1/2/21)

**WAC 132H-126-430 Initiation of discipline.** These supplemental procedures apply to reported incidents occurring before August 1, 2024.

(1) Upon receiving the Title IX investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

(2) If the student conduct officer determines that there are sufficient grounds to proceed under these supplemental procedures, the student conduct officer will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice with the chair of the student conduct committee and serving the notice on the respondent, the complainant, and their respective advisors. The notice must:

- (a) Set forth the basis for Title IX jurisdiction;
- (b) Identify the reported Title IX violation(s);
- (c) Set forth the facts underlying the allegation(s);
- (d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the reported violation(s); and
- (e) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:
  - (i) The advisors will be responsible for questioning all witnesses on their party's behalf;
  - (ii) An advisor may be an attorney; and

(iii) The college will appoint the party an advisor of the college's choosing at no cost to the party, if the party fails to do so; and

(3) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

AMENDATORY SECTION (Amending WSR 21-01-008, filed 12/2/20, effective 1/2/21)

**WAC 132H-126-440 Prehearing procedure.** These supplemental prehearing procedures apply to reported incidents occurring before August 1, 2024.

(1) Upon receiving the disciplinary notice, the chair of the student conduct committee will send a hearing notice to all parties, in compliance with WAC 132H-126-310. In no event will the hearing date be set less than (~~ten~~) 10 business days after the Title IX coordinator provided the final investigation report to the parties.

(2) A party may choose to have an attorney serve as their advisor at the party's own expense. This right will be waived unless, at least five business days before the hearing, the attorney files a notice of appearance with the committee chair with copies to all parties and the student conduct officer.

(3) In preparation for the hearing, the parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether the college intends to offer the evidence at the hearing.

AMENDATORY SECTION (Amending WSR 21-01-008, filed 12/2/20, effective 1/2/21)

**WAC 132H-126-470 Initial order.** These supplemental procedures apply to reported incidents occurring before August 1, 2024.

(1) In addition to complying with WAC 132H-126-330, the student conduct committee will be responsible for conferring and drafting an initial order that:

(a) Identifies the allegations of sexual harassment;

(b) Describes the grievance and disciplinary procedures, starting with filing of the formal complaint through the determination of responsibility, including notices to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and hearings held;

(c) Makes findings of fact supporting the determination of responsibility;

(d) Reaches conclusions as to whether the facts establish whether the respondent is responsible for engaging in sexual harassment in violation of Title IX;

(e) Contains a statement of, and rationale for, the committee's determination of responsibility for each allegation;

(f) Describes any disciplinary sanction or conditions imposed against the respondent, if any;

(g) Describes to what extent, if any, complainant is entitled to remedies designed to restore or preserve complainant's equal access to the college's education programs or activities; and

(h) Describes the process for appealing the initial order to the president.

(2) The committee chair will serve the initial order on the parties simultaneously.

AMENDATORY SECTION (Amending WSR 21-01-008, filed 12/2/20, effective 1/2/21)

**WAC 132H-126-480 Appeals.** These supplemental procedures apply to reported incidents occurring before August 1, 2024.

(1) The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in WAC 132H-126-340.

(2) The president or their delegate will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction and condition(s) imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s).

(3) President's office shall serve the final decision on the parties simultaneously.

**WSR 24-19-081**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Behavioral Health Administration)  
[Filed September 17, 2024, 9:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-14-109.

Title of Rule and Other Identifying Information: Chapter 388-881 WAC, Sexual predator program—External oversight, and possible other sections in chapter 388-880 WAC.

Hearing Location(s): On October 22, 2024, at 10:00 a.m., virtually 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> for the most current information.

Date of Intended Adoption: Not earlier than October 23, 2024.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax 360-664-6185, beginning noon on September 18, 2024, by 5:00 p.m. on October 22, 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](mailto:shelley.tencza@dshs.wa.gov), by 5:00 p.m. on October 8, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DSHS is proposing to amend chapter 388-881 WAC, Sexual predator program, to update gender neutral language throughout as well as identify current practices.

Reasons Supporting Proposal: These changes are due to the progression and change within the special commitment center (SCC) program, which includes the oversight of the program from external sources.

Statutory Authority for Adoption: RCW 71.09.800.

Statute Being Implemented: RCW 71.09.800.

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

Name of Proponent: Governmental.

Name of Agency Personnel Responsible for Drafting: Christina Wells, SCC, 253-363-0274; Implementation and Enforcement: Keith Devos, CEO, SCC, 253-617-6322.

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 a significant legislative rule. RCW 34.05.328 (5)(b)(ii): Rules relating only to internal governmental operations that are not subject to violation by a nongovernment party.

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

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

Explanation of exemptions: RCW 34.05.328 (5)(b)(ii): Rules relating only to internal governmental operations that are not subject to violation by a nongovernmental party.

Scope of exemption for rule proposal:

Is fully exempt.

September 16, 2024  
Katherine I. Vasquez  
Rules Coordinator

**SHS-5056.1**

AMENDATORY SECTION (Amending WSR 02-02-054, filed 12/27/01, effective 1/27/02)

**WAC 388-881-010 External oversight of the special commitment center.** Independent external oversight of the SCC (~~(shall)~~) must include:

- (1) (~~A governing body;~~  
~~(2)~~) Professional standards to be used as a benchmark for evaluation;
- (~~(3)~~) (2) An inspection of care according to accepted professional standards;
- (~~(4)~~) (3) An (~~ombudsman~~) ombudsperson service; and
- (~~(5)~~) (4) External investigation of incidents.

AMENDATORY SECTION (Amending WSR 02-02-054, filed 12/27/01, effective 1/27/02)

**WAC 388-881-020 External oversight—Professional standards.** (1) The department (~~(shall)~~) must develop (~~(and governing body approve for use)~~) professional practice standards applicable to treatment programs for adults civilly committed (~~(adult)~~) for sex (~~(offenders)~~) offenses.

- (2) Such standards (~~(shall)~~) must include provisions requiring:
  - (a) Staff competency, training, and supervision;
  - (b) Adequacy of treatment components and measures of progress;
  - (c) A treatment-supportive environment;
  - (d) Provision of medical services appropriate to a residential treatment setting; and
  - (e) Program oversight.

AMENDATORY SECTION (Amending WSR 02-02-054, filed 12/27/01, effective 1/27/02)

**WAC 388-881-025 External oversight—Annual inspection of care (IOC).** (1) An independent, annual, on-site inspection of care, performed according to professional standards approved under this chapter, (~~(shall)~~) will be conducted of the SCC at least annually.

(2) The purpose of the IOC (~~(shall be)~~) is to provide objective measures of service delivery, for internal program use and quality management (~~(, to the governing body)~~).

(3) Members of the inspection of care team (~~(shall)~~) will be contracted by the department annually for a specified period during which they (~~(shall)~~) must:

- (a) Conduct an on-site and documentary inspection;
- (b) Prepare interim and final, and, as requested by the SCC (~~((superintendent or governing body))~~) chief executive officer, supplementary reports;
- (c) Receive and consider SCC program responses to all reports.
- (4) The IOC team (~~((shall))~~) must be of no fewer than (~~((four))~~) three and no more than six persons.
  - (a) At least one member of the IOC team must not be a DSHS employee; and
  - (b) At least one member must be a sex offender treatment provider.

AMENDATORY SECTION (Amending WSR 02-02-054, filed 12/27/01, effective 1/27/02)

**WAC 388-881-030 External oversight—(~~((Ombudsman))~~) Ombudsperson service.** (1) The SCC (~~((shall))~~) must retain an (~~((ombudsman))~~) ombudsperson service for the purpose of conducting independent, neutral reviews of program conformance with internal SCC policies in the care, control, and treatment of residents at the SCC.

(2) The (~~((ombudsman))~~) ombudsperson function (~~((shall))~~) must be outside the supervision of the (~~((superintendent))~~) chief executive officer of the SCC and of the assistant secretary for the behavioral health (~~((and rehabilitation services))~~) administration.

(3) In performance of the (~~((ombudsman))~~) ombudsperson function, the individual(s) so employed (~~((shall))~~) must be afforded access to all records and documents normally available to public inspection according to rules and policies of the department and of the state of Washington.

AMENDATORY SECTION (Amending WSR 02-02-054, filed 12/27/01, effective 1/27/02)

**WAC 388-881-035 External oversight—Investigation of incidents.** (~~((1))~~) The Washington state patrol shall investigate incidents which involve SCC residents in accordance with department policy.

(~~((2))~~) The scope and authority for such investigations shall be determined through an interagency agreement between the department and the Washington state patrol.

(~~((3))~~) Criteria to determine which incidents (~~((justify))~~) will be investigated by an external (~~((investigation shall))~~) entity must be (~~((approved))~~) determined by the DSHS secretary(~~((, DSHS))~~).

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-881-015 External oversight—Governing body.

## WSR 24-19-082

## PROPOSED RULES

## RENTON TECHNICAL COLLEGE

[Filed September 17, 2024, 9:28 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-15-137.

Title of Rule and Other Identifying Information: Renton Technical College (college) is adding WAC 495E-110-035 and amending WAC 495E-110-010, 495E-110-030, 495E-110-040, 495E-110-050, 495E-110-060, 495E-110-070, 495E-110-080, 495E-110-090, 495E-110-100, 495E-110-110, 495E-110-120, 495E-110-130, 495E-110-140, 495E-110-150, 495E-110-160, and 495E-110-210, student conduct code and hearing procedure, in accordance to the April 19, 2024, final rule under Title X [IX] by the United States Department of Education.

Hearing Location(s): On October 23, 2024, at 2:00 - 3:00 p.m., at Renton Technical College, 3000 N.E. 4th Street, C-110, C Building, Renton, WA 98056; and on Zoom <https://rtcedu.zoom.us/j/85188530140?pwd=vOyI5w5pGYhPxYKbhM7WGpiccjibO7.1>, Meeting ID 851 8853 0140, Pass-code 814206; or One-tap mobile +12532050468,,85188530140# US, +12532158782,,85188530140# US (Tacoma). Please contact Kendra Van Beek, human resources manager, 425-235-7874 as soon as possible for disability accommodation requests.

Date of Intended Adoption: November 21, 2024.

Submit Written Comments to: Matt Wurz, Executive Assistant, Vice President of Student Services and Dean of Student Success, 3000 N.E. 4th Street, Renton, WA 98056, email [mgwurz@rtc.edu](mailto:mgwurz@rtc.edu), beginning 9:00 a.m., October 2, 2024, by 5:00 p.m., October 22, 2024.

Assistance for Persons with Disabilities: Contact Kendra Van Beek, human resources manager, phone 425-235-7874, Washington relay service 711 or 800-833-6388, email [kvanbeek@rtc.edu](mailto:kvanbeek@rtc.edu), by 5:00 p.m., October 9, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To bring the college's student conduct code (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 improve student conduct procedures and compliance with the Washington Administrative Procedure Act, chapter 34.05 RCW. 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).

Rule is necessary because of federal law, the United States Department of Education regulates Title IX of the Education Amendments

of 1972; Department of Education April 2024 Title IX Regulations final rule.

Name of Proponent: Renton Technical College, public.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jessica Gilmore English, 3000 N.E. 4th Street, Renton, WA 98056, 425-235-2463.

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

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required under RCW 34.05.328 and does not apply to college rules.

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

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: Revisions impact college-specific internal policies.

Scope of exemption for rule proposal:

Is fully exempt.

September 17, 2024

Lesley Hogan

Vice President of Human Resources

## OTS-5652.2

AMENDATORY SECTION (Amending WSR 21-10-038, filed 4/28/21, effective 5/29/21)

**WAC 495E-110-010 Authority.** The board of trustees, acting pursuant to RCW 28B.50.140(14), delegates to the president of the college the authority to administer disciplinary action. Administration of the disciplinary procedures is the responsibility of the vice president of student ((affairs)) 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 23-22-005, filed 10/18/23, effective 10/19/23)

**WAC 495E-110-030 Prohibited student conduct.** The college may impose disciplinary sanctions against a student or student 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, but not limited to, cheating, plagiarism, and fabrication.

(a) Cheating includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person, or artificial intelligence, in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

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

(e) Academic consequences for academic dishonesty or abetting in academic dishonesty may be imposed at the discretion of a faculty member up to and including a failing grade for the course. Students should refer to each faculty course syllabus. Further academic consequences may follow consistent with the provisions in any program handbook. Incidents of academic dishonesty may also be referred to the student conduct officer for disciplinary action consistent with this chapter in addition to the academic consequences identified above.

~~((2))~~ (4) **Other dishonesty.** Any other acts of dishonesty. Such acts include, but are not limited to:

(a) Forgery, alteration, submission of falsified documents, or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students; or

(c) Furnishing false information or failing to furnish correct information, in response to the request or requirement of a college officer or employee.

~~((3))~~ (d) Knowingly making a false statement or submitting false information in relation, or in response, to a college academic or disciplinary investigation or process.

(5) **Obstruction or disruptive conduct.** Conduct, not otherwise protected by law, that interferes with, impedes, or otherwise unreasonably hinders:

(a) Instruction, research, administration, disciplinary proceeding, or other college activities, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

~~((4)) **Assault, intimidation, harassment.** Unwanted touching, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this section, "bullying" is defined as repeated or aggressive unwanted behavior, not otherwise protected by law that intentionally humiliates, harms, or intimidates the victim.~~

~~(5))~~ **(6) Cyber misconduct.** Cyberstalking, cyberbullying or on-line harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, applications (apps), and social media sites, to harass, abuse, bully, or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

~~((6))~~ **(7) Property violation.** Damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging or destruction of college property or the property of another person. Property for purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.

~~((7))~~ **(8) Failure to comply with directive.** Failure to comply with the directive of a college officer or employee who is acting in the legitimate performance of their duties, including failure to properly identify oneself to such a person when requested to do so.

~~((8))~~ **(9) 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 duties;

(b) A student with a valid concealed weapons permit may store a pistol 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; or

(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) This policy does not apply to the possession and/or use of disabling chemical sprays when possessed and/or used for self-defense.

~~((9))~~ **(10) Hazing.**

(a) Hazing is any act committed as part of:

(i) A person's recruitment, initiation, pledging, admission into, or affiliation with a student group; or

(ii) Any pastime or amusement engaged in with respect to such a student group;

(iii) That causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student.

(b) Examples of hazing include, but are not limited to:

(i) Causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm;

(ii) Humiliation by ritual act;

(iii) Striking another person with an object or body part;

(iv) Causing someone to experience excessive fatigue, or physical and/or psychological shock; or

(v) Causing someone to engage in degrading or humiliating games or activities that create a risk of serious psychological, emotional, and/or physical harm.

(c) "Hazing" does not include customary athletic events or other similar contests or competitions.

(d) Consent is not a valid defense against hazing.

~~((10) **Alcohol, drug, and tobacco violations.**~~

~~((a)) (11) **Alcohol.** The use, possession, manufacture, delivery, sale, or (being observably under the influence of any alcoholic beverage,) distribution of alcoholic beverages or paraphernalia (except as permitted by federal, state, and local laws and applicable college policies), or being observably under the influence of any alcoholic beverage or public intoxication on college premises or at college-sponsored events. Alcoholic beverages may not, in any circumstance, be used by, be possessed by, or distributed to any person not of legal age.~~

~~((b)) (12) **Cannabis, drug, and tobacco violations.**~~

~~((b)) **Marijuana.** The use, possession, delivery, or sale of marijuana or the psychoactive compounds found in marijuana intended for human consumption, regardless of form, or being observably under the influence of marijuana or the psychoactive compounds found in marijuana. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.~~

~~((e)) (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.~~

~~((d)) (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. There are designated smoking areas on campus.

~~((11) **Lewd conduct.** Conduct which is lewd or obscene that is not otherwise protected under the law.~~

~~(12) **Discriminatory conduct.** Discriminatory conduct which harms or adversely affects any member of the college community because of their race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; sexual orientation; gender identity; veteran's status; or any other legally protected classification.~~

~~(13) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX is defined in the supplemental procedures to this code. (Supplemental Title IX student conduct procedures.)~~

~~(a) **Sexual harassment.** The term "sexual harassment" means unwelcome sexual or gender-based conduct, including, unwelcome sexual advances, requests for sexual favors, quid pro quo harassment, and other verbal, nonverbal, or physical conduct of a sexual or a gendered nature that is sufficiently severe, persistent, or pervasive as to:~~

~~(i) Deny or limit the ability of a student to participate in or benefit from the college's educational program;~~

~~(ii) Alter the terms or conditions of employment for a college employee(s); and/or~~

~~(iii) Creates an intimidating, hostile, or offensive environment for other campus community members.~~

~~(b) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.~~

~~(c) **Sexual violence.** "Sexual violence" is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.~~

~~(i) Nonconsensual sexual intercourse. Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.~~

~~(ii) Nonconsensual sexual contact. Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.~~

~~(iii) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren, and adopted children under the age of 18.~~

~~(iv) Statutory rape. Consensual intercourse between a person who is 18 years of age or older, and a person who is under the age of 16.~~

~~(v) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or~~

stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

~~(vi) Dating violence, physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:~~

~~(A) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and~~

~~(B) Where the existence of such a relationship shall be determined based on a consideration of the following factors:~~

~~(I) The length of the relationship;~~

~~(II) The type of relationship; and~~

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

~~(vii) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:~~

~~(A) Fear for their safety or the safety of others; or~~

~~(B) Suffer substantial emotional distress.~~

~~(d) For purposes of this chapter, "consent" means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.~~

~~A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.~~

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

~~(14) **Harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program, that changes the terms or conditions of employment for a college employee, or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "Sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic communications.~~

~~(15) **Retaliation.** Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such person reported an alleged violation of this code or college policy, provided information about an alleged violation, or participated as a~~

witness or in any other capacity in a college investigation or disciplinary proceeding.

~~(16))~~ (13) **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.

(14) **Harassment or bullying.** Conduct unrelated to a protected class that is unwelcome and sufficiently severe, persistent, or pervasive such that it could reasonably be expected to create an intimidating, hostile, or offensive environment, or has the purpose or effect of unreasonably interfering with a person's academic or work performance, or a person's ability to participate in or benefit from the college's programs, services, opportunities, or activities.

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

(15) **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.

(16) **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, domestic violence, 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 protec-

ted from that person's acts under the domestic or family violence laws of the state of Washington.

(F) **Dating violence** is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:

(I) The length of the relationship;

(II) The type of relationship; and

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

(G) **Stalking** means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or to suffer substantial emotional distress.

(b) **Consent.** For purposes of this code, "consent" means knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity.

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

(ii) For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

(iii) A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

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

(c) **Title IX retaliation** means intimidation, threats, coercion, or discrimination against any person by a student, for the purpose of interfering with any right or privilege secured by Title IX, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in a sex discrimination investigation, proceeding, or hearing under this part, including during an informal resolution process, during a Title IX investigation, or during any disciplinary proceeding involving allegations of sex discrimination.

(17) **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.

(18) **Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

(a) Unauthorized use of such resources or opening of a file, message, or other item;

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

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

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



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

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

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

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

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

~~((17))~~ **(19) Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

~~((18))~~ **(20) 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))~~ **(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.

~~((20))~~ **(22) Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

~~((In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college reserves the right to pursue student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.))~~

#### NEW SECTION

##### **WAC 495E-110-035 Denial of access to Renton Technical College.**

(1) The vice president of student services, or delegate, may deny admission to a prospective student, or continued attendance to an enrolled student, if it reasonably appears that the student would not be competent to profit from the curriculum offerings of the college, or would, by the student's presence or conduct, create a disruptive atmosphere within the college or a substantial risk of actual harm to self or other members of the campus community.

(2) Denial of access decisions may be appealed, as or like disciplinary actions, to the student conduct committee.

AMENDATORY SECTION (Amending WSR 21-10-038, filed 4/28/21, effective 5/29/21)

**WAC 495E-110-040 Corrective action, disciplinary sanctions, and terms and conditions.** (1) One or more of the following disciplinary

sanctions may be imposed upon students or upon college-sponsored student organizations, athletic teams, or living groups found to have violated the student conduct code.

(a) **((Disciplinary)) Warning.** A verbal or written statement to a student that there is a violation and that continued violation may be cause for further disciplinary action. Warnings are corrective actions, not disciplinary, and may not be appealed.

(b) **Written reprimand.** Notice in writing that the student has violated one or more terms of this code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action.

(c) **Disciplinary probation.** Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation and which may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction which may include, but is not limited to, a suspension or a dismissal from the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance at the college.

(d) **Disciplinary suspension.** Dismissal from the college and from the student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action is taken.

(e) **Dismissal.** The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the action is taken.

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

(a) **Restitution.** Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.

(b) **Professional evaluation.** Referral for drug, alcohol, psychological, or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(c) **Not in good standing.** A student may be deemed "not in good standing" with the college. If so the student shall be subject to the following restrictions:

(i) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college;

(ii) Ineligible to represent the college to anyone outside the college community in any way, including representing the college at any official function, or any forms of intercollegiate competition or representation.

(d) **No contact order.** 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) **Education.** Participation in or successful completion of an educational assignment designed to create an awareness of the student's misconduct.

(f) **Loss of privileges.** Denial of specified privileges for a designated period of time.

(g) **Trespass or restriction.** A student may be restricted from any or all college premises and/or college-sponsored activities based on the violation.

(3) If a student withdraws from the college or fails to reenroll before completing a disciplinary sanction or condition, the disciplinary sanction or condition must be completed either prior to or upon the student's reenrollment, depending on the nature of the sanction, condition, and/or the underlying violation. Completion of disciplinary sanctions and conditions may be considered in petitions for readmission to the college.

AMENDATORY SECTION (Amending WSR 23-22-005, filed 10/18/23, effective 10/19/23)

**WAC 495E-110-045 Hazing prohibited, sanctions.** (1) Hazing by a student or a student group is prohibited pursuant to WAC 495E-110-030(~~(+9)~~) (10).

(2) No student may conspire to engage in hazing or participate in hazing of another. State law provides that hazing is a criminal offense, punishable as a misdemeanor.

(3) Washington state law provides that:

(a) 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 nonprofit, the individual directors of the corporation may be held individually liable for damages.

(b) 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.

(c) Student groups 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.

(d) Student groups found responsible for violating the code of student conduct, college (~~(anti-hazing)~~) 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.

AMENDATORY SECTION (Amending WSR 23-22-005, filed 10/18/23, effective 10/19/23)

**WAC 495E-110-050 Statement of jurisdiction.** (1) The student conduct code shall apply to conduct by students and student groups that occurs:

- (a) On college premises;
- (b) At or in connection with college-sponsored activities; or
- (c) To off-campus conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives, or the ability of a student or staff to participate in the college's programs and activities.

(2) Jurisdiction extends to, but is not limited to, locations in which students or student groups are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences or any other college-sanctioned social or club activities and college-sanctioned housing.

(3) Students are responsible for their conduct from notification of admission to the college through the last day of enrollment or the actual receipt of a certificate or degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment.

(4) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending.

(5) The student conduct officer 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 discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college reserves the right to pursue student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

AMENDATORY SECTION (Amending WSR 23-22-005, filed 10/18/23, effective 10/19/23)

**WAC 495E-110-060 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) (~~(A "complainant" is an alleged victim of sexual misconduct.)~~) "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 the vice president of student services or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of 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 ~~((student))~~ party can appeal the discipline imposed or recommended by the student conduct officer. Disciplinary appeals from a suspension in excess of 10 instructional days or ~~((an expulsion))~~ a dismissal are heard by the student conduct ~~((appeals board))~~ committee. Appeals of all other appealable disciplinary action shall be reviewed 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) ("Respondent" is the student against whom disciplinary action is initiated.~~

~~(9))~~ "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) "Program" or "programs and activities" means all operations of the college.

(10) "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.

(11) "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.

(12) "Respondent" is a student who is alleged to have violated the student conduct code.

(13) "Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:

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

(b) Sending the document by email and by certified mail or first class mail to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is emailed and deposited in the mail, whichever is first.

~~((10)) "Sexual misconduct" has the meaning ascribed to this term in WAC 495E-110-030(13).~~

~~((11))~~ (14) "Student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered "students" for purposes of this chapter.

~~((12))~~ (15) "Student conduct officer" is a college administrator designated by the president or vice president of student services to be responsible for implementing and enforcing the student conduct code.

~~((13))~~ (16) "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.

(17) "Student group" for purposes of this code, is a student organization, athletic team, or living group including, but not limited to, student clubs and organizations, members of a class or student cohort, student performance groups, and student living groups within student housing.

~~((14))~~ (18) "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.

(19) "The 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.

(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.

AMENDATORY SECTION (Amending WSR 21-10-038, filed 4/28/21, effective 5/29/21)

**WAC 495E-110-070 Initiation of disciplinary actions.** (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 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.

(7) All disciplinary actions will be initiated by the student conduct officer. If that officer is the subject of a complaint initiated by the respondent, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.

~~((2))~~ (8) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing them to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specify the time and location of the meeting. ~~((At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting, the student conduct officer may take disciplinary action based upon the available information.~~

~~(3) The student conduct officer, prior to taking disciplinary action in a case involving allegations of sexual misconduct, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or conditions, if any, that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.~~

~~(4))~~ (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, the student conduct officer may take disciplinary action based upon the available information.

(10) Within ~~((ten))~~ 10 business days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting ~~((his or her))~~ 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.

~~((5))~~ (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 495E-110-040.

(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.

~~((6) In cases involving allegations of sexual misconduct, the student conduct officer, on the same date that a disciplinary decision is served on the respondent, will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer~~



~~shall make a reasonable effort to contact the complainant to ensure prompt notice of the protective disciplinary sanctions and/or conditions.)~~ (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) The respondent is not participating in the college's educational programs or activities;

(iii) The complainant has voluntarily withdrawn any or all of the allegations in the complaint, and the Title IX coordinator has declined to initiate their own complaint;

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

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

(f) In cases involving allegations of sex-based harassment, the college must obtain the complainant's voluntary withdrawal in writing before the matter can be dismissed.

(g) If no request for a full hearing is provided to the student conduct officer, the student conduct officer's written recommendation shall be final and implemented immediately following the expiration of 21 calendar days from the date of the written recommendation.

(h) Upon receipt of the student conduct officer's written recommendation, the Title IX coordinator or their designee shall review all supportive measures and, within five business days, provide written direction to the complainant and respondent as to any supportive measures that will be implemented, continued, modified, or terminated. If either party is dissatisfied with the supportive measures, the party may seek review in accordance with the college's Title IX investigation procedure.

(i) If the respondent is found responsible for engaging in sex discrimination, the Title IX coordinator shall also take prompt steps to coordinate and implement any necessary remedies to ensure that sex discrimination does not recur and that complainant has equal access to the college's programs and activities.

AMENDATORY SECTION (Amending WSR 21-10-038, filed 4/28/21, effective 5/29/21)

**WAC 495E-110-080 Appeal from disciplinary action.** (1) Except as specified for cases involving allegations of sex discrimination, as set forth in WAC 495E-110-070(12), the respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within ~~((ten))~~ 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 ~~((review))~~ 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) The student conduct committee shall hear appeals from:

(a) ~~((ten))~~ 10 instructional days;

(b) Dismissals; ~~((and))~~

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

(d) Discipline cases referred to the committee by the student conduct officer, the conduct review officer, or the president.

(8) ~~((Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:))~~ A conduct review officer shall conduct a brief adjudicative proceeding for appeals of:

(a) Suspensions of ~~((ten))~~ 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.

(9) Except as provided elsewhere in these rules, ~~((disciplinary))~~ warnings and dismissals of disciplinary actions are final action and are not subject to appeal.

~~((10) In cases involving allegations of sexual misconduct, the complainant has the right to appeal the following actions by the student conduct officer following the same procedures as set forth above for the respondent:~~

~~(a) The dismissal of a sexual misconduct complaint; or~~

~~(b) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary warning.~~

~~(11) If the respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college shall notify the complainant of the appeal and provide the complainant an opportunity to intervene as a party to the appeal.~~

~~(12) Except as otherwise specified in this chapter, a complainant who timely appeals a disciplinary decision or who intervenes as a party to the respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as are afforded the respondent.)~~

AMENDATORY SECTION (Amending WSR 21-10-038, filed 4/28/21, effective 5/29/21)

**WAC 495E-110-090 Brief adjudicative proceedings—Initial hearing.** (1) Brief adjudicative proceedings shall be conducted by a conduct review officer. The conduct review officer shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(2) The parties to a brief adjudicative proceeding are the respondent ~~((,))~~ and the student conduct officer ~~((, and in cases involving sexual misconduct, the complainant))~~. 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 ~~((ten))~~ 10 business days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within ~~((ten))~~ 21 calendar days of service of the initial decision, the initial decision shall be deemed the final decision.

~~(4) ((In cases involving allegations of sexual misconduct, the conduct review officer, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection. The notice will also inform the complainant of their appeal rights.~~

~~(5))~~ If the conduct review officer upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension in excess of ~~((more than ten))~~ 10 instructional days or ~~((expulsion))~~ dismissal, the matter shall be referred to the student conduct committee for a disciplinary hearing.

AMENDATORY SECTION (Amending WSR 21-10-038, filed 4/28/21, effective 5/29/21)

**WAC 495E-110-100 Brief adjudicative proceedings—Review of an initial decision.** (1) An initial decision is subject to review by the president, provided the respondent files a written request for review with the conduct review officer within ~~((ten))~~ 21 calendar days of service of the initial decision.

(2) The president 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.

(3) During the review, the president shall give each party an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the student conduct committee for a formal adjudicative hearing.

(4) The decision on review must be in writing and must include a brief statement of the reasons for the decision and must be served on the parties within ~~((twenty))~~ 20 calendar days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the president does not make a disposition of the matter within ~~((twenty))~~ 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 ~~((ten))~~ 10 instructional days or ~~((expulsion))~~ dismissal, the matter shall be referred to the student conduct committee for a disciplinary hearing.

~~((6) In cases involving allegations of sexual misconduct, the president, on the same date as the final decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights.))~~

AMENDATORY SECTION (Amending WSR 21-10-038, filed 4/28/21, effective 5/29/21)

**WAC 495E-110-110 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; and  
 (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. ~~((The chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.))~~

(3) Hearings may be heard by a quorum of three members of the committee so long as the chair, one faculty member, and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness, in which they have direct or personal interest, prejudice, or bias, or

in which they have acted previously in an advisory capacity. Any party may petition for disqualification of a committee member.

(5) For cases involving allegations of sex discrimination, including sex-based harassment, members of the student conduct committee must receive training on serving impartially, avoiding prejudgment of facts at issue, conflicts of interest, and bias. The chair must also receive training on the student conduct process for sex discrimination cases, as well as the meaning and application of the term "relevant," in relations to questions and evidence, and the types of evidence that are impermissible, regardless of relevance in accordance with 34 C.F.R. §§ 106.45 and 106.46.

(6) The college may, in its sole discretion, contract with an administrative law judge or other qualified person to act as the presiding officer, authorized to exercise any or all duties of the student conduct committee and/or committee chair.

AMENDATORY SECTION (Amending WSR 21-10-038, filed 4/28/21, effective 5/29/21)

**WAC 495E-110-120 ((~~Appeal~~)) Student conduct committee—~~Prehear-~~  
~~ing.~~** (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 committee chair is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

(4) Upon request filed at least five calendar days before the hearing by any party or at the direction of the committee chair, the parties shall exchange, no later than the third day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(5) The committee chair may provide to the committee members in advance of the hearing copies of (a) the conduct officer's notification of imposition of discipline (or referral to the committee), and (b) the notice of appeal (or any response to referral) by the respondent. If doing so, 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, wheth-

er the committee chair may provide copies of these admissible exhibits to the committee members before the hearing.

(7) The student conduct officer (~~(, upon request,)~~) shall provide reasonable assistance to the respondent (~~(in obtaining relevant and admissible evidence that is within the college's control)~~) and complainant in procuring the presence of college students, employees, staff, and volunteers to appear at a hearing, provided the respondent and complainant provide a witness list to the student conduct officer no less than three business days in advance of the hearing. The student conduct officer shall notify the respondent and complainant no later than 24 hours in advance of the hearing if they have been unable to contact any prospective witnesses to procure their appearance at the hearing. The committee chair will determine how to handle the absence of a witness and shall describe on the record their rationale for any decision.

(8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(9) In cases heard by the committee, each party may be accompanied at the hearing by ~~((a nonattorney))~~ an assistant of their choice, which may be an attorney retained at the party's expense. ~~((The respondent, in all appeals before the committee, or a complainant in an appeal involving allegations of sexual misconduct before the committee, may elect to be represented by an attorney at their own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer. The committee will ordinarily be advised by an assistant attorney general. If the respondent is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened assistant attorney general.))~~

(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, 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 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.

AMENDATORY SECTION (Amending WSR 21-10-038, filed 4/28/21, effective 5/29/21)

**WAC 495E-110-130 Student conduct committee hearings—Presentations of evidence.** (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

- (a) 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 he/she 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 assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted, in accordance with WAC 10-08-190.

(4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.

(5) The student conduct officer (unless represented by an assistant attorney general) shall present the case for imposing disciplinary sanctions.

(6) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

(7) ~~In cases involving allegations of ((sexual misconduct, no party shall directly question or cross examine one another. Attorneys for the parties are also prohibited from questioning the opposing party absent express permission from the committee chair. Subject to this exception, all cross-examination questions shall be directed to the committee chair, who in their discretion shall pose the questions on the party's behalf))~~ sex-based harassment, the complainant and respondent may not directly question one another or other witnesses. In such circumstances, the chair will determine whether questions will be submitted to the chair, who will then ask questions of the parties and witnesses, or allow questions to be asked directly of any party or witnesses by a party's attorney or advisor. The committee chair may



revise this process if, in the chair's determination, the questioning by any party, attorney, or advisor, becomes contentious or harassing.

(a) Prior to 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.

AMENDATORY SECTION (Amending WSR 21-10-038, filed 4/28/21, effective 5/29/21)

**WAC 495E-110-140 Student conduct committee—Initial decision.**

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

(2) Within ~~((twenty))~~ 20 calendar days following the later of the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.

(3) The committee's initial order shall also include a determination on appropriate discipline, if any. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanction(s) or conditions (if any) as authorized in the student code. If the matter is an appeal by the ~~((respondent))~~ 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 the initial decision to be served on the parties and their ~~((legal counsel of record))~~ attorneys, 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 ~~((allegations of sexual misconduct, the chair of the student conduct committee, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to other parties. The notice will also inform the complainant of their appeal rights))~~ sex-based harassment, the initial decision shall be served on all parties simultaneously, as well as the Title IX coordinator.

AMENDATORY SECTION (Amending WSR 21-10-038, filed 4/28/21, effective 5/29/21)

**WAC 495E-110-150 Appeal from student conduct committee initial decision.** (1) ~~((A party who is aggrieved by the findings or conclusions issued by the student conduct committee))~~ Any party, including a complainant in sex-based harassment cases, may appeal the committee's initial decision to the president by filing a notice of appeal with the president's office ~~((or designee))~~ within ~~((ten))~~ 21 calendar days of service of the committee's ~~((initial))~~ decision. Failure to file a timely appeal constitutes a waiver of the right and the ~~((initial))~~ decision shall be deemed final.

(2) ~~((The notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain argument why the appeal should be granted. If necessary to aid review, the president may ask for additional briefing from the parties on issues raised on appeal. The president's review~~

~~shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the notice of appeal.~~

~~(3) The president shall provide a written decision to the party and the student conduct officer within twenty days after receipt of the notice of appeal. The president's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.~~

~~(4) In cases involving allegations of sexual misconduct, the president, on the same date that the final decision is served upon the respondent, shall serve a written notice informing the complainant of the final decision. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.~~

~~(5)) The written appeal must identify the specific findings of fact and/or conclusions of law in the decision that are challenged and must contain argument why the appeal should be granted. Appeals may be based upon, but are not limited to:~~

~~(a) Procedural irregularity that would change the outcome;~~

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

~~(c) The investigator, decision maker, or Title IX coordinator had a conflict of interest or bias for or against a respondent or complainant individually or respondents or complainants generally.~~

~~(3) Upon receiving a timely appeal, the president or a designee will promptly serve a copy of the appeal on all nonappealing parties, who will have 10 business days from the date of service to submit a written response addressing the issues raised in the appeal to the president or a designee, and serve it on all parties. Failure to file a timely response constitutes a waiver of the right to participate in the appeal.~~

~~(4) If necessary to aid review, the president may ask for additional briefing from the parties on issues raised on appeal. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the appeal.~~

~~(5) The president shall serve a written decision on all parties and their attorneys, if any, within 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.~~

AMENDATORY SECTION (Amending WSR 21-10-038, filed 4/28/21, effective 5/29/21)

**WAC 495E-110-160 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 oth-

erwise 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 (~~business~~) calendar days of the oral notice.

(4) The written notification shall be entitled "Notice of Summary Suspension" and shall include:

(a) The reasons for imposing the summary suspension, including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student conduct code or the law allegedly violated;

(b) The date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and

(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included warning the 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) ((The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.~~

~~(b))~~ 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.

~~((e))~~ (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.

~~((d))~~ (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.

~~((e))~~ (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.

~~((f))~~ (e) To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or officers who may be bound or protected by it.

(6) In cases involving allegations of (~~sexual misconduct~~) sex discrimination, the complainant shall be notified that a summary suspension has been imposed on the same day that the summary suspension notice is served on the respondent. The college will also provide the complainant with timely notice of any subsequent changes to the summary suspension order.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 495E-110-210      Brief adjudicative proceedings  
authorized.

## WSR 24-19-090

## PROPOSED RULES

## HEALTH CARE AUTHORITY

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

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-15-117.

Title of Rule and Other Identifying Information: WAC 182-550-5130 Payment method—Institution for mental diseases disproportionate share hospital (IMDDSH) and institution for mental diseases (IMD) state grants, 182-550-5210 Payment method—Small rural indigent assistance disproportionate share hospital (SRIADSH), 182-550-5220 Payment method—Nonrural indigent assistance disproportionate share hospital (NRIADSH), and 182-550-5380 Payment method—Sole community disproportionate share hospital (SCDSH).

Hearing Location(s): On October 22, 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\\_icWpKqAQTxyCXgTcltuVgA](https://us02web.zoom.us/webinar/register/WN_icWpKqAQTxyCXgTcltuVgA). If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than October 23, 2024.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, beginning September 18, 2024, 8:00 a.m., by October 22, 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](mailto:Johanna.Larson@hca.wa.gov), by October 4, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending WAC 182-550-5130 to remove subsections (5) and (6). HCA does not distribute any state funded grants for IMDDSH; there is no state money allocated to IMD. HCA is repealing WAC 182-550-5210, 182-550-5220, and 182-550-5380; old information, the programs have not been funded by the legislature for over 10 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: Mary O'Hare, P.O. Box 42716, Olympia, WA 98504, 360-725-9820.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

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

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. These are changes to hospital rules; does not affect small businesses.

September 17, 2024

Wendy Barcus

Rules Coordinator

## OTS-5665.1

AMENDATORY SECTION (Amending WSR 15-18-065, filed 8/27/15, effective 9/27/15)

**WAC 182-550-5130 Payment method—Institution for mental diseases disproportionate share hospital (IMDDSH) and institution for mental diseases (IMD) state grants.** (1) A psychiatric hospital owned and operated by the state of Washington is eligible to receive payments under the institution for mental diseases disproportionate share hospital (IMDDSH) program.

(2) For the purposes of the IMDDSH program, the following definitions apply:

(a) "Institution for mental diseases (IMD)" means a hospital, nursing facility, or other institution of more than (~~sixteen~~) 16 beds, that is primarily engaged in providing diagnosis, treatment, or care of people with mental diseases, including medical attention, nursing care, and related services.

(b) "Psychiatric community hospital" means a psychiatric hospital other than a state-owned and operated hospital.

(c) "Psychiatric hospital" means an institution which is primarily engaged in providing psychiatric services for the diagnosis and treatment of mentally ill people. The term applies to a medicare-certified distinct psychiatric care unit, a medicare-certified psychiatric hospital, or a state-designated pediatric distinct psychiatric unit in a medicare-certified acute care hospital.

(d) "State-owned and operated psychiatric hospital" means eastern state hospital and western state hospital.

(3) Except as provided in subsection (4) of this section, a psychiatric community hospital, regardless of location, is not eligible to receive:

(a) IMDDSH payments; or

(b) Any other disproportionate share hospital (DSH) payment from the medicaid agency. See WAC 182-550-4800 regarding payment for psychiatric claims for clients eligible under the medical care services programs.

(4) A psychiatric community hospital within the state of Washington that is designated by the agency as an IMD is eligible to receive IMDDSH payment if:

(a) IMDDSH funds remain available after the amounts appropriated for state-owned and operated psychiatric hospitals are exhausted; and

(b) The legislature provides funds specifically for this purpose.

~~(5) ((A psychiatric community hospital within the state of Washington that is designated by the agency as an IMD is eligible to receive a state grant amount from the agency if the legislature appropriates funds specifically for this purpose.~~

~~(6) An institution for mental diseases located out-of-state, including an IMD located in a designated bordering city, is not eligible to receive a Washington state grant amount.~~

~~(7)) Under federal law, 42 U.S.C. 1396r-4 (h) (2), the state's annual IMDDSH expenditures are capped at ((thirty-three)) 33 percent of the state's annual statewide DSH cap. This amount represents the maximum that the state can spend in any given fiscal year on IMDDSH, but the state is under no obligation to actually spend that amount.~~

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 182-550-5210	Payment method—Small rural indigent assistance disproportionate share hospital (SRIADSH).
WAC 182-550-5220	Payment method—Nonrural indigent assistance disproportionate share hospital (NRIADSH).
WAC 182-550-5380	Payment method—Sole community disproportionate share hospital (SCDSH).



## WSR 24-19-096

## PROPOSED RULES

## HEALTH CARE AUTHORITY

[Filed September 17, 2024, 4:09 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-13-055.

Title of Rule and Other Identifying Information: WAC 182-501-0070 Health care coverage—Noncovered services, 182-502-0002 Eligible provider types, 182-502-0003 Noneligible provider types, 182-531-0150 Noncovered physician-related and health care professional services—General and administrative, 182-556-0200 Chiropractic services, and 182-556-0250 Acupuncture services.

Hearing Location(s): On October 22, 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\\_icWpKqAQTxycXgTcltuVgA](https://us02web.zoom.us/webinar/register/WN_icWpKqAQTxycXgTcltuVgA). If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than October 23, 2024.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, beginning September 18, 2024, 8:00 a.m., by October 22, 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 (TRS) 711, email [Johanna.Larson@hca.wa.gov](mailto:Johanna.Larson@hca.wa.gov), by October 4, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is revising these rules to provide adult chiropractic benefits in alignment with ESB 5693, section 211(95) and ESSB 5187, section 211(43). HCA is also adding rules to provide adult acupuncture benefits in alignment with ESSB 5693, section 211(94) and ESSB 5187, section 211(42). HCA is revising WAC 182-501-0070 to remove acupuncture, naturopathy, and chiropractic for adults from the noncovered services list. HCA is also revising WAC 182-502-0002 to add acupuncturist to the eligible provider types and remove acupuncturist from WAC 182-502-0003 noneligible provider types. This filing also removes acupuncturist from the noncovered physician-related services, WAC 182-531-0150.

A separate addition, birth doula, is being added to WAC 182-502-0002 as an eligible provider type. This addition is under a separate rule making filed under WSR 24-10-016 on April 19, 2024.

Another separate addition, behavior health support specialist (BHSS), is being added to WAC 182-502-0002 as an eligible provider type. This addition is under a separate rule making filed under WSR 24-16-024 on July 26, 2024.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; ESSB 5693, section 211 (94) and (95); ESSB 5187, section 211 (42) and (43).

Statute Being Implemented: RCW 41.05.021, 41.05.160; ESSB 5693, section 211 (94) and (95); ESSB 5187, section 211 (42) and (43).

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: Joan Chappell, P.O. Box 45506, Olympia, WA 98504-5506, 360-725-1071.

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.

Scope of exemption for rule proposal:

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The rules provide new and additional benefits for eligible medicaid clients.

September 17, 2024

Wendy Barcus

Rules Coordinator

## OTS-5757.1

AMENDATORY SECTION (Amending WSR 22-07-105, filed 3/23/22, effective 4/23/22)

### **WAC 182-501-0070 Health care coverage—Noncovered services.** (1)

The medicaid agency or ~~((its))~~ the agency's designee does not pay for any health care service not listed or referred to as a covered health care service under the medical programs described in WAC 182-501-0060, regardless of medical necessity. For the purposes of this section, health care services includes treatment, equipment, related supplies, and drugs. Circumstances in which clients are responsible for payment of health care services are described in WAC 182-502-0160.

(2) This section does not apply to health care services provided as a result of the early and periodic screening, diagnosis, and treatment (EPSDT) program as described in chapter 182-534 WAC.

(3) The agency or ~~((its))~~ the agency's designee does not pay for any ancillary health care service(s) provided in association with a noncovered health care service.

(4) The following list of noncovered health care services is not intended to be exhaustive. Noncovered health care services include, but are not limited to:

(a) Any health care service specifically excluded by federal or state law;

(b) ~~((Acupuncture,))~~ Christian Science practice, faith healing, herbal therapy, homeopathy, massage, massage therapy, ~~((naturopathy,))~~ and sanipractice;

(c) ~~((Chiropractic care for adults;~~

~~(d))~~ Cosmetic, reconstructive, or plastic surgery, and any related health care services, not specifically allowed under WAC 182-531-0100(4) or 182-531-1675;

~~((e))~~ (d) Discography;

~~((f))~~ (e) Ear or other body piercing;

- ~~((g))~~ (f) Face lifts or other facial cosmetic enhancements;  
~~((h))~~ (g) Fertility, infertility or sexual dysfunction testing, and related care, drugs, and/or treatment including but not limited to:
- (i) Artificial insemination;
  - (ii) Donor ovum, donor sperm, or gestational carrier;
  - (iii) In vitro fertilization;
  - (iv) Penile implants;
  - (v) Reversal of sterilization; and
  - (vi) Sex therapy.
- ~~((i))~~ (h) Hair transplants;  
~~((j))~~ (i) Epilation (hair removal) and electrolysis not specifically allowed under WAC 182-531-1675;
- ~~((k))~~ (j) Marital counseling;
  - ~~((l))~~ (k) Motion analysis, athletic training evaluation, work hardening condition, high altitude simulation test, and health and behavior assessment;
  - ~~((m))~~ (l) Nonmedical equipment;
  - ~~((n))~~ (m) Penile implants;
  - ~~((o))~~ (n) Prosthetic testicles not specifically allowed under WAC 182-531-1675;
  - ~~((p))~~ (o) Psychiatric sleep therapy;
  - ~~((q))~~ (p) Subcutaneous injection filling;
  - ~~((r))~~ (q) Tattoo removal;
  - ~~((s))~~ (r) Transport of Involuntary Treatment Act (ITA) clients to or from out-of-state treatment facilities, including those in bordering cities;
  - ~~((t))~~ (s) Upright magnetic resonance imaging (MRI); and
  - ~~((u))~~ (t) Vehicle purchase - New or used vehicle.
- (5) For a specific list of noncovered health care services in the following service categories, refer to the WAC citation:
- (a) Ambulance transportation and nonemergent transportation as described in chapter 182-546 WAC;
  - (b) Dental services as described in chapter 182-535 WAC;
  - (c) Durable medical equipment as described in chapter 182-543 WAC;
  - (d) Hearing care services as described in chapter 182-547 WAC;
  - (e) Home health services as described in WAC 182-551-2130;
  - (f) Hospital services as described in WAC 182-550-1600;
  - (g) Health care professional services as described in WAC 182-531-0150;
  - (h) Prescription drugs as described in chapter 182-530 WAC;
  - (i) Vision care hardware for clients 20 years of age and younger as described in chapter 182-544 WAC; and
  - (j) Vision care exams as described in WAC 182-531-1000.
- (6) A client has a right to request an administrative hearing, if one is available under state and federal law. When the agency or its designee denies all or part of a request for a noncovered health care service(s), the agency or its designee sends the client and the provider written notice, within 10 business days of the date the decision is made, that includes:
- (a) A statement of the action the agency or its designee intends to take;
  - (b) Reference to the specific WAC provision upon which the denial is based;
  - (c) Sufficient detail to enable the recipient to:

- (i) Learn why the agency's or its designee's action was taken;  
and
- (ii) Prepare a response to the agency's or its designee's decision to classify the requested health care service as noncovered.
- (d) The specific factual basis for the intended action; and
- (e) The following information:
- (i) Administrative hearing rights;
- (ii) Instructions on how to request the hearing;
- (iii) Acknowledgment that a client may be represented at the hearing by legal counsel or other representative;
- (iv) Instructions on how to request an exception to rule (ETR);
- (v) Information regarding agency-covered health care services, if any, as an alternative to the requested noncovered health care service; and
- (vi) Upon the client's request, the name and address of the nearest legal services office.
- (7) A client can request an exception to rule (ETR) as described in WAC 182-501-0160.

**OTS-5760.1**

AMENDATORY SECTION (Amending WSR 24-12-036, filed 5/30/24, effective 7/1/24)

**WAC 182-502-0002 Eligible provider types.** The following health care professionals, health care entities, suppliers or contractors of service may request enrollment with the Washington state health care authority (medicaid agency) to provide covered health care services to eligible clients. For the purposes of this chapter, health care services include treatment, equipment, related supplies, and drugs.

- (1) Professionals:
- (a) Acupuncturists;
- ~~(b)~~ (b) Advanced registered nurse practitioners;
- ~~(c)~~ (c) Advanced social workers;
- ~~(d)~~ (d) Advanced social worker associates;
- ~~(e)~~ (e) Anesthesiologists;
- ~~(f)~~ (f) Applied behavior analysis (ABA) professionals, as provided in WAC 182-531A-0800:
- (i) Licensed behavior analyst;
- (ii) Licensed assistant behavior analyst; and
- (iii) Certified behavior technician;
- ~~(g)~~ (g) Audiologists;
- ~~(h)~~ (h) Behavioral health support specialists (BHSS);
- (i) Birth doulas;
- (j) Chiropractors;
- ~~(k)~~ (k) Dentists;
- ~~(l)~~ (l) Dental health aide therapists, as provided in chapter 70.350 RCW;
- ~~(m)~~ (m) Dental hygienists;
- ~~(n)~~ (n) Denturists;
- ~~(o)~~ (o) Dietitians or nutritionists;
- ~~(p)~~ (p) Hearing aid fitters/dispensers;

- ((n)) (g) Home health aide credentialed with DOH as nursing assistant certified or nursing assistant registered;
- ((o)) (r) Independent clinical social workers;
- ((p)) (s) Independent clinical social worker associates;
- ((q)) (t) Licensed practical nurse;
- ((r)) (u) Marriage and family therapists;
- ((s)) (v) Mental health counselors;
- ((t)) (w) Mental health counselor associates;
- ((u)) (x) Mental health care providers;
- ((v)) (y) Midwives;
- ((w)) (z) Naturopathic physicians;
- ((x)) (aa) Nurse anesthetist;
- ((y)) (bb) Ocularists;
- ((z)) (cc) Occupational therapists;
- ((aa)) (dd) Ophthalmologists;
- ((bb)) (ee) Opticians;
- ((cc)) (ff) Optometrists;
- ((dd)) (gg) Orthodontists;
- ((ee)) (hh) Orthotist;
- ((ff)) (ii) Osteopathic physicians;
- ((gg)) (jj) Osteopathic physician assistants;
- ((hh)) (kk) Peer counselors;
- ((ii)) (ll) Podiatric physicians;
- ((jj)) (mm) Pharmacists;
- ((kk)) (nn) Physicians;
- ((ll)) (oo) Physician assistants;
- ((mm)) (pp) Physical therapists;
- ((nn)) (qq) Prosthetist;
- ((oo)) (rr) Psychiatrists;
- ((pp)) (ss) Psychologists;
- ((qq)) (tt) Radiologists;
- ((rr)) (uu) Registered nurse;
- ((ss)) (vv) Registered nurse delegators;
- ((tt)) (ww) Registered nurse first assistants;
- ((uu)) (xx) Respiratory therapists;
- ((vv)) (yy) Speech/language pathologists; and
- ((ww)) (zz) Substance use disorder professionals:
  - (i) Mental health providers; and
  - (ii) Peer counselors.
- (2) Agencies, centers and facilities:
  - (a) Adult day health centers;
  - (b) Ambulance services (ground and air);
  - (c) Ambulatory surgery centers (medicare-certified);
  - (d) Birthing centers (licensed by the department of health);
  - (e) Cardiac diagnostic centers;
  - (f) Case management agencies;
  - (g) Substance use disorder treatment facilities certified by the department of health (DOH);
  - (h) Withdrawal management treatment facilities certified by DOH;
  - (i) Community AIDS services alternative agencies;
  - (j) Community behavioral health support services provider facilities;
  - (k) Community mental health centers;
  - (l) Diagnostic centers;
  - (m) Early and periodic screening, diagnosis, and treatment (EPSDT) clinics;
  - (n) Family planning clinics;

- (o) Federally qualified health centers (designated by the federal department of health and human services);
- (p) Genetic counseling agencies;
- (q) Health departments;
- (r) Health maintenance organization (HMO)/managed care organization (MCO);
- (s) HIV/AIDS case management;
- (t) Home health agencies;
- (u) Hospice agencies;
- (v) Hospitals;
- (w) Indian health service facilities/tribal 638 facilities;
- (x) Tribal or urban Indian clinics;
- (y) Inpatient psychiatric facilities;
- (z) Intermediate care facilities for individuals with intellectual disabilities (ICF-IID);
- (aa) Kidney centers;
- (bb) Laboratories (CLIA certified);
- (cc) Maternity support services agencies; maternity case managers; infant case management, first steps providers;
- (dd) Neuromuscular and neurodevelopmental centers;
- (ee) Nurse services/delegation;
- (ff) Nursing facilities (approved by the DSHS aging and long-term support administration);
- (gg) Pathology laboratories;
- (hh) Pharmacies;
- (ii) Private duty nursing agencies;
- (jj) Radiology - Stand-alone clinics;
- (kk) Rural health clinics (medicare-certified);
- (ll) School districts and educational service districts; and
- (mm) Sleep study centers.
- (3) Suppliers of:
  - (a) Blood, blood products, and related services;
  - (b) Durable and nondurable medical equipment and supplies;
  - (c) Complex rehabilitation technologies;
  - (d) Infusion therapy equipment and supplies;
  - (e) Prosthetics/orthotics;
  - (f) Hearing aids; and
  - (g) Respiratory care, equipment, and supplies.
- (4) Contractors:
  - (a) Transportation brokers;
  - (b) Spoken language interpreter services agencies;
  - (c) Independent sign language interpreters; and
  - (d) Eyeglass and contact lens providers.

**OTS-5668.1**

AMENDATORY SECTION (Amending WSR 14-06-054, filed 2/27/14, effective 3/30/14)

**WAC 182-502-0003 Noneligible provider types.** The medicaid agency does not enroll licensed or unlicensed health care practitioners not specifically listed in WAC 182-502-0002, including, but not limited to:

- (1) (~~(Acupuncturists;~~
- ~~(2))~~ Sanipractors;
- (~~(3))~~ (2) Homeopaths;
- (~~(4))~~ (3) Herbalists;
- (~~(5))~~ (4) Massage therapists;
- (~~(6))~~ (5) Christian science practitioners, theological healers,  
and spiritual healers;
- (~~(7))~~ (6) Chemical dependency professional trainee (CDPT); and
- (~~(8))~~ (7) Mental health trainee (MHT).

**OTS-5758.1**

AMENDATORY SECTION (Amending WSR 23-23-058, filed 11/8/23, effective 12/9/23)

**WAC 182-531-0150 Noncovered physician-related and health care professional services—General and administrative.** (1) The medicaid agency evaluates a request for noncovered services in this chapter under WAC 182-501-0160. In addition to noncovered services found in WAC 182-501-0070, except as provided in subsection (2) of this section, the agency does not cover:

- (a) (~~(Acupuncture,)~~) Massage(~~(7))~~ or massage therapy;
- (b) Any service specifically excluded by statute;
- (c) Care, testing, or treatment of infertility or sexual dysfunction. This includes procedures for donor ovum, donor sperm, gestational carrier, and reversal of vasectomy or tubal ligation;
- (d) Hysterectomy performed solely for the purpose of sterilization;
- (e) Cosmetic treatment or surgery, except as provided in WAC 182-531-0100 (4) (x);
- (f) Experimental or investigational services, procedures, treatments, devices, drugs, or application of associated services, except when the individual factors of an individual client's condition justify a determination of medical necessity under WAC 182-501-0165;
- (g) Hair transplantation;
- (h) Marital counseling or sex therapy;
- (i) More costly services when the medicaid agency determines that less costly, equally effective services are available;
- (j) Vision-related services as follows:
  - (i) Services for cosmetic purposes only;
  - (ii) Group vision screening for eyeglasses; and
  - (iii) Refractive surgery of any type that changes the eye's refractive error. The intent of the refractive surgery procedure is to reduce or eliminate the need for eyeglass or contact lens correction. This refractive surgery does not include intraocular lens implantation following cataract surgery;
- (k) Payment for body parts, including organs, tissues, bones and blood, except as allowed in WAC 182-531-1750;
- (l) Physician-supplied medication, except those drugs which the client cannot self-administer and therefore are administered by the physician in the physician's office;

- (m) Physical examinations or routine checkups, except as provided in WAC 182-531-0100;
- (n) Foot care, unless the client meets criteria and conditions outlined in WAC 182-531-1300, as follows:
  - (i) Routine foot care including, but not limited to:
    - (A) Treatment of tinea pedis;
    - (B) Cutting or removing warts, corns and calluses; and
    - (C) Trimming, cutting, clipping, or debriding of nails.
  - (ii) Nonroutine foot care including, but not limited to, treatment of:
    - (A) Flat feet;
    - (B) High arches (cavus foot);
    - (C) Onychomycosis;
    - (D) Bunions and tailor's bunion (hallux valgus);
    - (E) Hallux malleus;
    - (F) Equinus deformity of foot, acquired;
    - (G) Cavovarus deformity, acquired;
    - (H) Adult acquired flatfoot (metatarsus adductus or pes planus);
    - (I) Hallux limitus.
  - (iii) Any other service performed in the absence of localized illness, injury, or symptoms involving the foot;
- (o) Except as provided in WAC 182-531-1600, weight reduction and control services, procedures, treatments, devices, drugs, products, gym memberships, equipment for the purpose of weight reduction, or the application of associated services;
- (p) Nonmedical equipment;
- (q) Nonemergent admissions and associated services to out-of-state hospitals or noncontracted hospitals in contract areas; and
- (r) Early elective deliveries as defined in WAC 182-500-0030.
- (2) The medicaid agency covers excluded services listed in (1) of this subsection if those services are mandated under and provided to a client who is eligible for one of the following:
  - (a) The EPSDT program;
  - (b) A Washington apple health program for qualified **medicare** beneficiaries (QMBs); or
  - (c) A waiver program.

#### OTS-5759.1

AMENDATORY SECTION (Amending WSR 15-10-018, filed 4/24/15, effective 5/25/15)

**WAC 182-556-0200 Chiropractic services ((for children)).** (1) **Requirements for chiropractic services.** The agency pays for chiropractic services when they are:

- (a) Medically necessary under WAC 182-500-0070, safe, effective, and not experimental;
- (b) Provided in-state or in a border city according to WAC 182-501-0175 by a chiropractor who is licensed in the state where services are rendered;
- (c) Within the scope of the provider's license; and
- (d) Diagnostic and for treatment of neuromusculoskeletal disorder of the spine.



(2) Services for clients age 20 and younger. The medicaid agency pays ~~((only))~~ for the chiropractic services ~~((+ (a-)))~~ described in subsection (1) of this section for clients who are ~~((+ (i) Under age twenty-one; and (ii) Referred by a screening provider under the healthy kids/early and periodic screening, diagnosis, and treatment (EPSDT) program. (b) That are: (i) Medically necessary under WAC 182-500-0070, safe, effective, and not experimental; (ii) Provided by a chiropractor licensed in the state where services are provided; and (iii) Within the scope of the chiropractor's license. (c) Limited to: (i) Chiropractic manipulative treatments of the spine; and (ii) X-rays of the spine))~~ age 20 and younger.

((+2)) (3) Services for clients age 21 and older.

(a) The agency pays for chiropractic service for clients age 21 and older as described in subsection (1) of this section.

(b) Services are limited to 24 visits of chiropractic care within a calendar year.

(c) The agency evaluates requests for authorization of services that exceed limitations in this chapter in accordance with WAC 182-501-0169.

(d) Chiropractic services for the treatment of chronic migraine and chronic tension-type headache is a noncovered service.

(4) Payment. The agency pays for chiropractic services ~~((are paid))~~ according to fees established by the ~~((agency using))~~ methodology set out in WAC 182-531-1850.

### OTS-4290.3

#### NEW SECTION

**WAC 182-556-0250 Acupuncture services.** (1) The agency pays for acupuncture services for clients age 18 years and older when:

(a) Services are medically necessary under WAC 182-500-0070 and are:

(i) Safe;

(ii) Effective; and

(iii) Not experimental or investigational as defined in WAC 182-501-0165.

(b) Services are provided by an acupuncturist or other qualified provider where acupuncture is within the practitioner's scope of practice; and

(c) Services are provided in-state or in a border city according to WAC 182-501-0175 and are provided by an acupuncturist or practitioner who is licensed in the state where services are rendered.

(2) Acupuncture services are limited to:

(a) Twenty-four visits per year; and

(b) Acupuncture needle treatment only, with or without electrical stimulation.

- (3) Covered diagnoses include:
  - (a) Chronic migraine;
  - (b) Chemotherapy induced nausea and vomiting;
  - (c) Chronic musculoskeletal pain; or
  - (d) Acute postoperative pain.
- (4) The following services are noncovered:
  - (a) Dry needling;
  - (b) Eastern medicine services other than acupuncture as defined in WAC 246-803-030; and
  - (c) Acupuncture for the diagnosis of chronic tension-type headache or chronic daily headache.
- (5) If acupuncture is requested or prescribed under the EPSDT program, the agency evaluates it as a covered service under EPSDT's standard of coverage that requires the service to be:
  - (a) Medically necessary;
  - (b) Safe and effective; and
  - (c) Not experimental or investigational as defined in WAC 182-501-0165.
- (6) The agency evaluates requests for covered services that are subject to limitations or other restrictions and approves such services beyond those limitations or restrictions when medically necessary, under the provisions of WAC 182-501-0165 and 182-501-0169.

## WSR 24-19-098

## PROPOSED RULES

## DEPARTMENT OF ECOLOGY

[Order 23-08—Filed September 18, 2024, 7:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-03-093.

Title of Rule and Other Identifying Information: The department of ecology (ecology) is proposing amendments to chapter 173-400 WAC, General regulations for air pollution sources, and chapter 173-401 WAC, Operating permit regulation.

For more information on this rule making visit <https://ecology.wa.gov/regulations-permits/laws-rules-rulemaking/rulemaking/wac-173-400-401-air-pollution-sources>.

Hearing Location(s): On October 22, 2024, at 10:00 a.m., via webinar. Register and see instructions [https://waecy-wa-gov.zoom.us/joining/register/tZ0lcO2oqjktEtDDyFJ9M-rTR8Q9rgk3\\_8PW](https://waecy-wa-gov.zoom.us/joining/register/tZ0lcO2oqjktEtDDyFJ9M-rTR8Q9rgk3_8PW); join by phone 253-205-0468, Meeting ID: 898 7404 2784. Presentation and public hearing.

Date of Intended Adoption: February 12, 2025.

Submit Written Comments to: Linda Kildahl, Department of Ecology, Air Quality Program, 300 Desmond Drive S.E., Lacey, WA 98503, email [linda.kildahl@ecy.wa.gov](mailto:linda.kildahl@ecy.wa.gov), beginning September 18, 2024, at 12:00 a.m., by October 31, 2024, at 11:59 p.m.

Assistance for Persons with Disabilities: Contact ecology ADA coordinator, phone 360-407-6831, Washington relay service or TTY call 711 or 877-833-6341, [ecyADAcordinator@ecology.wa.gov](mailto:ecyADAcordinator@ecology.wa.gov), by October 18, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 173-400 WAC: The rule making will update references in WAC 173-400-040, 173-400-050, 173-400-060, and 173-400-105 to incorporate an updated publication date for Ecology's *Source Test Manual—Procedures for Compliance Testing*, a technical manual used in source testing and certification. This rule making will also update WAC 173-400-025 to establish a new rule adoption date for adopting federal rules by reference.

Chapter 173-401 WAC: This rule making will repeal WAC 173-401-645, which establishes emergency affirmative defense provisions in Washington. The purpose is to align the rule with federal rules as required under the federal Clean Air Act (CAA). In July 2023, the Environmental Protection Agency (EPA) adopted a rule update that removed the emergency affirmative defense provisions from federal operating permit program regulations under Title V of the federal CAA. This rule making will also correct a minor typo.

The rule making will also make minor administrative updates, including updating references in both chapters to two chapters of RCW that were recodified in 2020.

Reasons Supporting Proposal: Chapter 173-400 WAC: Amendments to this chapter are needed to incorporate and enforce the updated version of ecology's *Source Test Manual (STM)—Procedures for Compliance Testing*. The manual establishes requirements and procedures for industrial emitters, Washington clean air agencies, and other entities conducting testing and certification of air pollution sources. Updating the rule adoption date in WAC 173-400-025 is needed to establish an updated date for adopting applicable federal rules by reference.

Chapter 173-401 WAC: Amendments to this chapter are needed to comply with EPA's direction to state permitting authorities to make

necessary changes to their operating permit programs to align with the July 2023 update to the federal operating permit program regulations.

Statutory Authority for Adoption: Chapter 70A.15 RCW, Washington Clean Air Act.

Statute Being Implemented: Chapter 70A.15 RCW, Washington Clean Air Act.

Rule is necessary because of federal law, 88 F.R. 47029; 42 U.S.C. Chapter 85.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Interested parties can stay informed about the rule making and public involvement opportunities as described above. Ecology will extend an offer for government-to-government consultation with Tribal governments during each phase of rule development.

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Linda Kildahl, Lacey, 360-706-3038; Implementation: Gary Huitsing, chapter 173-400 WAC, or MengChiu Lim, chapter 173-401 WAC, Lacey, 360-522-0925, 360-995-3448; and Enforcement: Philip Gent, Lacey, 360-918-6922.

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 Linda Kildahl, 300 Desmond Drive S.E., Lacey, WA 98503, phone 360-706-3038, email linda.kildahl@ecy.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 19.85.061 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: C.F.R. 40 Chapter I, Subchapter C, the federal CAA, and 40 C.F.R. Part 52, Subpart WW, Washington state's implementation plan. Federal air quality standards have been updated and this rule adopts those by reference. This maintains Washington's good standing to implement the federal CAA via its rules. Not maintaining this standing would require the federal government to create a plan to implement the federal Clean Air Act.

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 19.85.025(4).

Explanation of exemptions: Incorporation by reference: WAC 173-400-025 incorporates the latest federal air quality standards by reference.

Correct or clarify language: WAC 173-401-925 incorrectly references WAC 173-491-920. It was intended to reference WAC 173-401-920. This rule makes that correction.

Dictated by statute: Washington state's CAA, chapter 70A.15 RCW, directs ecology: "To take all action necessary to secure to the state the benefits of the federal Clean Air Act." (RCW 70A.15.1090(2)).

Scope of exemption for rule proposal:

Is fully exempt.

Ecology baselines are typically complex, consisting of multiple requirements fully or partially specified by existing rules, statutes, or federal laws. Where the proposed rule differs from this baseline of existing requirements, it is typically subject to (i.e., not exempt from) analysis required under the Regulatory Fairness Act (RFA; chapter 19.85 RCW) based on meeting criteria referenced in RCW 19.85.025(3) as defined by the Administrative Procedure Act in RCW 34.05.310. The rule may also be fully exempt from the RFA if it does not affect small businesses (i.e., it does not impose compliance costs on small businesses, or on any businesses).

We analyzed the impacts of the proposed rule amendments relative to the existing rule, within the context of all existing requirements (federal and state laws and rules). This context for comparison is called the baseline and reflects the most likely regulatory circumstances that entities would face if ecology does not adopt the proposed rule.

**Baseline for this rule making:** The baseline for our analyses generally consists of existing laws and rules. This is what allows us to make a consistent comparison between the state of the world with and without the proposed rule amendments.

For this rule making, the baseline includes:

- The federal CAA, C.F.R., Title 40, chapter I, Subchapter C.
- Washington state's CAA, chapter 70A.15 RCW.
- Chapter 173-400 WAC, General regulations for air pollution sources.
- WAC 173-401-645, the section of the WAC containing the emergency defense provision.
- The EPA-approved state implementation plans (SIP) for Washington state, 40 C.F.R. Part 52, subpart WW.

**Summary of proposed rule amendments:** The proposed rule amendments would:

- Change the adoption by reference date of federal air quality rules to the adoption date of this proposed rule (WAC 173-400-025).
- Update a reference to ecology's *Source Test Manual—Procedures for Compliance Testing* (STM) (WAC 173-400-040, 105).
- Remove old STM methods as testing options and a limit on carbonyl for incinerators (WAC 173-400-050, 173-400-060).
- Repeal the emergency defense for air emission exceedances, per federal mandate (WAC 173-401-645).

**Change the adoption by reference date of federal air quality rules to the adoption date of this rule (WAC 173-400-025).**

Baseline: In WAC 173-400-025, the federal rules mentioned in Chapter 173-400 WAC are adopted by reference as they existed on August 24, 2022.

Proposed: The proposed rule changes the date of adoption of federal rules as they exist to February 12, 2025, which is the expected adoption date of this proposed rule.

Expected impact: There is no expected cost from this aspect of the proposed rule, as compared to the baseline. Washington benefits by maintaining good standing to implement the federal CAA as required by RCW 70A.15.1090.

The latest federal standards were issued February 7, 2024.

**Update a reference to ecology's STM (WAC 173-400-040, 173-400-105).**

Baseline: In WAC 173-400-040 and 173-400-105, the STM as of September 20, 2004 is referenced. The manual contains 14 methods of testing for determining amounts of air pollution from sources of emissions.

Proposed: An updated STM, with a publication date of February 12, 2025, would instead be referenced to replace the 2004 manual. The updated manual contains two methods for evaluating air pollution sources. Twelve previously approved testing methods would be removed.

Expected impact: No significant cost is expected due to the changes in the STM which would be referenced. The 2004 version of the STM contains outdated information and testing methods. The 12 removed procedures have been replaced in practice by other testing methods available elsewhere and therefore no longer needed in ecology's manual. While regulated parties could use the outdated methods, outreach indicated they were in disuse and there was no opposition to their removal. The STM was meant to contain only testing methods not available elsewhere. Some of the newer alternative methods are both improved and safer and contained in federal regulations.

The changes in the two retained procedures add additional options for testing, lessening the compliance burden without reducing the effectiveness of the testing method.

The regulated community benefits by having an up-to-date and more concise guidance manual.

**Remove old STM methods as testing options and limits on carbonyl (WAC 173-400-050, 173-400-060).**

Baseline: WAC 173-400-050 is titled "Emission standards for combustion and incineration units." STM methods are allowed in testing for particulate matter and carbonyl emissions. WAC 173-400-050 also specifies, for incinerators, a limit for carbonyls of 100 parts per million (ppm).

The 100-ppm carbonyl limit has been removed from the Washington SIP with the EPA's approval. However, the carbonyl limit currently in this section is excepted from that approval. This proposed amendment would make the WAC and SIP consistent in this regard, allowing the EPA to remove the exception. SIPs are incorporated into federal regulations and published in the C.F.R.

In WAC 173-400-060, test methods in the current STM are allowed in determining compliance for particulate emissions of general process units.

Proposed: The proposed rule removes methods in the 2004 STM as an option for testing for particulate matter for combustion, incinerator, and general process units.

For incinerators, it removes the 100-ppm carbonyl limit.

Expected impact: Minimal if any cost is expected from this change while the state will benefit by having an updated STM and a WAC more consistent with its SIP. The 2004 version of the STM contains outdated information and testing methods.

The 12 test methods proposed for removal have been replaced in practice with other more complete, appropriate, and in some cases, safer, methods specified in 40 C.F.R. Parts 50, 60, 61, 63.

We don't expect parties to want to use the old methods and received no opposition to their removal during outreach.

The changes in the two retained procedures add additional options for testing, lessening the compliance burden without reducing the effectiveness of the testing.

The removal of the carbonyl limit makes the WAC consistent with other parts of Washington State's federally approved SIP, which is part of the baseline

**Repeal of WAC 173-401-645.**

Baseline: WAC 173-401-645 allows an emergency situation as a defense for exceeding air emissions standards. An emergency consists of "... any situation arising from sudden and reasonably unforeseeable events beyond the control of the source [of the pollution] ..."

This provision allows air pollution sources to avoid liability in enforcement proceedings by arguing the violations of emissions limitations were caused by an "emergency."

Proposed: The proposed amendment would repeal WAC 173-401-645, where this defense is established. This would align the state's rules with EPA's July 2023 decision to remove the emergency affirmative defense provisions from federal operating permit regulations under Title V of the federal CAA.

Expected impact: There is no expected cost from this aspect of the proposed rule. It is outside of ecology's discretion.

The EPA directed state air quality permitting authorities to make necessary changes to their operating permit programs.

Washington state will benefit by being in compliance with federal regulations. The federal rule became effective August 21, 2023. Generally, if federal authorities determine states are not in compliance with the federal CAA, they may need to intervene with a federal implementation plan to ensure the requirements of the federal law are met. This would entail developing a federal plan to stand in lieu of the state's either inadequate or missing plan.

September 18, 2024  
Heather R. Bartlett  
Deputy Director

**OTS-5720.1**

AMENDATORY SECTION (Amending WSR 12-24-027, filed 11/28/12, effective 12/29/12)

**WAC 173-400-020 Applicability.** (1) The provisions of this chapter shall apply statewide, except for specific subsections where a local authority has adopted and implemented corresponding local rules that apply only to sources subject to local jurisdiction as provided under RCW ((70.94.141)) 70A.15.2040 and ((70.94.331)) 70A.15.3000.

(2) An authority may enforce this chapter and may also adopt standards or requirements. These standards or requirements may not be less stringent than the current state air quality rules and may be

more stringent than the current regulations. Unless properly delegated by ecology, authorities do not have jurisdiction over the following sources:

- (a) Specific source categories over which the state, by separate regulation, has assumed or hereafter does assume jurisdiction.
- (b) Automobiles, trucks, aircraft.
- (c) Those sources under the jurisdiction of the energy facility site evaluation council.

AMENDATORY SECTION (Amending WSR 18-17-111, filed 8/16/18, effective 9/16/18)

**WAC 173-400-030 Definitions.** The definitions in this section apply statewide except where a permitting authority has redefined a specific term. Except as provided elsewhere in this chapter, the definitions in this section apply throughout the chapter:

- (1) **"Actual emissions"** means the actual rate of emissions of a pollutant from an emission unit, as determined in accordance with (a) through (c) of this subsection.
  - (a) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. Ecology or an authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the emissions unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.
  - (b) Ecology or an authority may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the emissions unit.
  - (c) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the emissions unit on that date.
- (2) **"Adverse impact on visibility"** is defined in WAC 173-400-117.
- (3) **"Air contaminant"** means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof. "Air pollutant" means the same as "air contaminant."
- (4) **"Air pollution"** means the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities, and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interferes with enjoyment of life and property. For the purposes of this chapter, air pollution shall not include air contaminants emitted in compliance with chapter 17.21 RCW, the Washington Pesticide Application Act, which regulates the application and control of the use of various pesticides.
- (5) **"Allowable emissions"** means the emission rate of a source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:
  - (a) The applicable standards as in 40 C.F.R. Part 60, 61, 62, or 63;



(b) Any applicable SIP emissions standard including those with a future compliance date; or

(c) The emissions rate specified as a federally enforceable approval condition, including those with a future compliance date.

(6) **"Alternative emission limit"** or **"alternative emission limitation"** means an emission limitation that applies to a source or an emissions unit only during a specifically defined transient mode of operation. An alternative emission limitation is a component of a continuously applicable emission limit. An alternative emission limit may be a numerical limit or a design characteristic of the emission unit and associated emission controls, work practices, or other operational standard, such as a control device operating range.

(7) **"Ambient air"** means the surrounding outside air.

(8) **"Ambient air quality standard"** means an established concentration, exposure time, and frequency of occurrence of air contaminant(s) in the ambient air which shall not be exceeded.

(9) **"Approval order"** is defined in **"order of approval."**

(10) **"Attainment area"** means a geographic area designated by EPA at 40 C.F.R. Part 81 as having attained the National Ambient Air Quality Standard for a given criteria pollutant.

(11) **"Authority"** means any air pollution control agency whose jurisdictional boundaries are coextensive with the boundaries of one or more counties.

(12) **"Begin actual construction"** means, in general, initiation of physical on-site construction activities on an emission unit that are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipe work and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

(13) **"Best available control technology (BACT)"** means an emission limitation based on the maximum degree of reduction for each air pollutant subject to regulation under chapter ((70.94)) 70A.15 RCW emitted from or which results from any new or modified stationary source, which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of each such pollutant. In no event shall application of the "best available control technology" result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard under 40 C.F.R. Part 60 and Part 61. Emissions from any source utilizing clean fuels, or any other means, to comply with this paragraph shall not be allowed to increase above levels that would have been required under the definition of BACT in the federal Clean Air Act as it existed prior to enactment of the Clean Air Act Amendments of 1990.

(14) **"Best available retrofit technology (BART)"** means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant which is emitted by an existing stationary facility. The emission limitation must be established, on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and nonair quality environmental impacts of compliance, any pollution control equipment in use or in existence at

the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.

(15) "**Brake horsepower (BHP)**" means the measure of an engine's horsepower without the loss in power caused by the gearbox, alternator, differential, water pump, and other auxiliary components.

(16) "**Bubble**" means a set of emission limits which allows an increase in emissions from a given emissions unit in exchange for a decrease in emissions from another emissions unit, pursuant to RCW ((70.94.155)) 70A.15.2240 and WAC 173-400-120.

(17) "**Capacity factor**" means the ratio of the average load on equipment or a machine for the period of time considered, to the manufacturer's capacity rating of the machine or equipment.

(18) "**Class I area**" means any area designated under section 162 or 164 of the federal Clean Air Act (42 U.S.C., Sec. 7472 or 7474) as a Class I area. The following areas are the Class I areas in Washington state:

- (a) Alpine Lakes Wilderness;
- (b) Glacier Peak Wilderness;
- (c) Goat Rocks Wilderness;
- (d) Mount Adams Wilderness;
- (e) Mount Rainier National Park;
- (f) North Cascades National Park;
- (g) Olympic National Park;
- (h) Pasayten Wilderness; and
- (i) Spokane Indian Reservation.

(19) "**Combustion and incineration units**" means units using combustion for waste disposal, steam production, chemical recovery or other process requirements; but excludes outdoor burning.

(20) (a) "**Commence**" as applied to construction, means that the owner or operator has all the necessary preconstruction approvals or permits and either has:

(i) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(ii) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(b) For the purposes of this definition, "necessary preconstruction approvals" means those permits or orders of approval required under federal air quality control laws and regulations, including state, local and federal regulations and orders contained in the SIP.

(21) "**Concealment**" means any action taken to reduce the observed or measured concentrations of a pollutant in a gaseous effluent while, in fact, not reducing the total amount of pollutant discharged.

(22) "**Criteria pollutant**" means a pollutant for which there is established a National Ambient Air Quality Standard at 40 C.F.R. Part 50. The criteria pollutants are carbon monoxide (CO), particulate matter, ozone (O<sub>3</sub>) sulfur dioxide (SO<sub>2</sub>), lead (Pb), and nitrogen dioxide (NO<sub>2</sub>).

(23) "**Director**" means director of the Washington state department of ecology or duly authorized representative.

(24) "**Dispersion technique**" means a method that attempts to affect the concentration of a pollutant in the ambient air other than by

the use of pollution abatement equipment or integral process pollution controls.

(25) **"Ecology"** means the Washington state department of ecology.

(26) **"Electronic means"** means email, fax, FTP site, or other electronic method approved by the permitting authority.

(27) **"Emission"** means a release of air contaminants into the ambient air.

(28) **"Emission reduction credit (ERC)"** means a credit granted pursuant to WAC 173-400-131. This is a voluntary reduction in emissions.

(29) **"Emission standard," "emission limitation" and "emission limit"** means a requirement established under the federal Clean Air Act or chapter ((70.94)) 70A.15 RCW which limits the quantity, rate, or concentration of emissions of air contaminants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction and any design, equipment, work practice, or operational standard adopted under the federal Clean Air Act or chapter ((70.94)) 70A.15 RCW.

(30) **"Emission threshold"** means an emission of a listed air contaminant at or above the following rates:

Air Contaminant	Annual Emission Rate
Carbon monoxide:	100 tons per year
Fluorides:	3 tons per year
Hydrogen sulfide (H <sub>2</sub> S):	10 tons per year
Lead:	0.6 tons per year
Nitrogen oxides:	40 tons per year
Particulate matter (PM):	25 tons per year of PM emissions
	10 tons per year of PM-2.5
	15 tons per year of PM-10 emissions
Reduced sulfur compounds (including H <sub>2</sub> S):	10 tons per year
Sulfur dioxide:	40 tons per year
Sulfuric acid mist:	7 tons per year
Total reduced sulfur (including H <sub>2</sub> S):	10 tons per year
Volatile organic compounds:	40 tons per year

(31) **"Emissions unit" or "emission unit"** means any part of a stationary source or source which emits or would have the potential to emit any pollutant subject to regulation under the federal Clean Air Act, chapter ((70.94)) 70A.15 or ((70.98)) 70A.388 RCW.

(32) **"Excess emissions"** means emissions of an air pollutant in excess of any applicable emission standard or an emission limit established in a permit or order, including an alternative emission limit.

(33) **"Excess stack height"** means that portion of a stack which exceeds the greater of ((sixty-five)) 65 meters or the calculated stack height described in WAC 173-400-200(2).

(34) **"Existing stationary facility (facility)"** is defined in WAC 173-400-151.

(35) **"Federal Clean Air Act (FCAA)"** means the federal Clean Air Act, also known as Public Law 88-206, 77 Stat. 392, December 17, 1963,

42 U.S.C. 7401 et seq., as last amended by the Clean Air Act Amendments of 1990, P.L. 101-549, November 15, 1990.

(36) "**Federal Class I area**" means any federal land that is classified or reclassified Class I. The following areas are federal Class I areas in Washington state:

- (a) Alpine Lakes Wilderness;
- (b) Glacier Peak Wilderness;
- (c) Goat Rocks Wilderness;
- (d) Mount Adams Wilderness;
- (e) Mount Rainier National Park;
- (f) North Cascades National Park;
- (g) Olympic National Park; and
- (h) Pasayten Wilderness.

(37) "**Federal land manager**" means the secretary of the department with authority over federal lands in the United States.

(38) "**Federally enforceable**" means all limitations and conditions which are enforceable by EPA, including those requirements developed under 40 C.F.R. Parts 60, 61, 62 and 63, requirements established within the Washington SIP, requirements within any approval or order established under 40 C.F.R. 52.21 or under a SIP approved new source review regulation, emissions limitation orders issued under WAC 173-400-081(4), 173-400-082, or 173-400-091.

(39) "**Fossil fuel-fired steam generator**" means a device, furnace, or boiler used in the process of burning fossil fuel for the primary purpose of producing steam by heat transfer.

(40) "**Fugitive dust**" means a particulate emission made airborne by forces of wind, man's activity, or both. Unpaved roads, construction sites, and tilled land are examples of areas that originate fugitive dust. Fugitive dust is a type of fugitive emission.

(41) "**Fugitive emissions**" means emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(42) "**General process unit**" means an emissions unit using a procedure or a combination of procedures for the purpose of causing a change in material by either chemical or physical means, excluding combustion.

(43) "**Good engineering practice (GEP)**" refers to a calculated stack height based on the equation specified in WAC 173-400-200 (2) (a) (ii).

(44) "**Greenhouse gases (GHGs)**" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(45) "**Hog fuel**" (hogged fuel) means waste wood that is reduced in size to facilitate burning.

(46) "**Incinerator**" means a furnace used primarily for the thermal destruction of waste.

(47) "**In operation**" means engaged in activity related to the primary design function of the source.

(48) "**Mandatory Class I federal area**" means any area defined in Section 162(a) of the federal Clean Air Act (42 U.S.C., 7472(a)). The following areas are the mandatory Class I federal areas in Washington state:

- (a) Alpine Lakes Wilderness;
- (b) Glacier Peak Wilderness;
- (c) Goat Rocks Wilderness;
- (d) Mount Adams Wilderness;
- (e) Mount Rainier National Park;

(f) North Cascades National Park;

(g) Olympic National Park; and

(h) Pasayten Wilderness;

(49) **"Masking"** means the mixing of a chemically nonreactive control agent with a malodorous gaseous effluent to change the perceived odor.

(50) **"Materials handling"** means the handling, transporting, loading, unloading, storage, and transfer of materials with no significant chemical or physical alteration.

(51) **"Modification"** means any physical change in, or change in the method of operation of, a stationary source that increases the amount of any air contaminant emitted by such source or that results in the emissions of any air contaminant not previously emitted. The term modification shall be construed consistent with the definition of modification in Section 7411, Title 42, United States Code, and with rules implementing that section.

(52) **"National Ambient Air Quality Standard (NAAQS)"** means an ambient air quality standard set by EPA at 40 C.F.R. Part 50 and includes standards for carbon monoxide (CO), particulate matter, ozone (O<sub>3</sub>), sulfur dioxide (SO<sub>2</sub>), lead (Pb), and nitrogen dioxide (NO<sub>2</sub>).

(53) **"National Emission Standards for Hazardous Air Pollutants (NESHAP)"** means the federal rules in 40 C.F.R. Part 61.

(54) **"National Emission Standards for Hazardous Air Pollutants for Source Categories"** means the federal rules in 40 C.F.R. Part 63.

(55) **"Natural conditions"** means naturally occurring phenomena that reduce visibility as measured in terms of light extinction, visual range, contrast, or coloration.

(56) **"New source"** means:

(a) The construction or modification of a stationary source that increases the amount of any air contaminant emitted by such source or that results in the emission of any air contaminant not previously emitted; and

(b) Any other project that constitutes a new source under the federal Clean Air Act.

(57) **"New Source Performance Standards (NSPS)"** means the federal rules in 40 C.F.R. Part 60.

(58) **"Nonattainment area"** means a geographic area designated by EPA at 40 C.F.R. Part 81 as exceeding a National Ambient Air Quality Standard (NAAQS) for a given criteria pollutant. An area is nonattainment only for the pollutants for which the area has been designated nonattainment.

(59) **"Nonroad engine"** means:

(a) Except as discussed in (b) of this subsection, a nonroad engine is any internal combustion engine:

(i) In or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers); or

(ii) In or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers); or

(iii) That, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

(b) An internal combustion engine is not a nonroad engine if:

(i) The engine is used to propel a motor vehicle or a vehicle used solely for competition, or is subject to standards promulgated under section 202 of the federal Clean Air Act (42 U.S.C., Sec. 7521); or

(ii) The engine is regulated by a New Source Performance Standard promulgated under section 111 of the federal Clean Air Act (42 U.S.C., Sec. 7411); or

(iii) The engine otherwise included in (a)(iii) of this subsection remains or will remain at a location for more than (~~twelve~~) 12 consecutive months or a shorter period of time for an engine located at a seasonal source. A location is any single site at a building, structure, facility, or installation. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a stationary source that remains in a single location on a permanent basis (i.e., at least two years) and that operates at that single location approximately three months (or more) each year. This paragraph does not apply to an engine after the engine is removed from the location.

(60) **"Notice of construction application"** means a written application to allow construction of a new source, modification of an existing stationary source or replacement or substantial alteration of control technology at an existing stationary source.

(61) **"Opacity"** means the degree to which an object seen through a plume is obscured, stated as a percentage.

(62) **"Outdoor burning"** means the combustion of material in an open fire or in an outdoor container, without providing for the control of combustion or the control of the emissions from the combustion. Waste wood disposal in wigwam burners or silo burners is not considered outdoor burning.

(63) **"Order"** means any order issued by ecology or a local air authority pursuant to chapter (~~(70.94)~~) 70A.15 RCW, including, but not limited to RCW (~~(70.94.332, 70.94.152, 70.94.153, 70.94.154, and 70.94.141)~~) 70A.15.3010, 70A.15.2210, 70A.15.2220, 70A.15.2230, and 70A.15.2040(3), and includes, where used in the generic sense, the terms order, corrective action order, order of approval, and regulatory order.

(64) **"Order of approval"** or **"approval order"** means a regulatory order issued by a permitting authority to approve the notice of construction application for a proposed new source or modification, or the replacement or substantial alteration of control technology at an existing stationary source.

(65) **"Ozone depleting substance"** means any substance listed in Appendices A and B to Subpart A of 40 C.F.R. Part 82.

(66) **"Particulate matter"** or **"particulates"** means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.

(67) **"Particulate matter emissions"** means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in Title 40, chapter I of the Code of Federal Regulations or by a test method specified in the SIP.

(68) "**Parts per million (ppm)**" means parts of a contaminant per million parts of gas, by volume, exclusive of water or particulates.

(69) "**Permitting authority**" means ecology or the local air pollution control authority with jurisdiction over the source.

(70) "**Person**" means an individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.

(71) "**PM-10**" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on 40 C.F.R. Part 50 Appendix J and designated in accordance with 40 C.F.R. Part 53 or by an equivalent method designated in accordance with 40 C.F.R. Part 53.

(72) "**PM-10 emissions**" means finely divided solid or liquid material, including condensable particulate matter, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate method, specified in 40 C.F.R. Part 51, Appendix M (in effect on the date in WAC 173-400-025) or by a test method specified in the SIP.

(73) "**PM-2.5**" means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by a reference method based on 40 C.F.R. Part 50 Appendix L and designated in accordance with 40 C.F.R. Part 53 or by an equivalent method designated in accordance with 40 C.F.R. Part 53.

(74) "**PM-2.5 emissions**" means finely divided solid or liquid material, including condensable particulate matter, with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate method, specified in 40 C.F.R. Part 51 (in effect on the date in WAC 173-400-025) or by a test method specified in the SIP.

(75) "**Portable source**" means a type of stationary source which emits air contaminants only while at a fixed location but which is capable of being transported to various locations. Examples include a portable asphalt plant or a portable package boiler.

(76) "**Potential to emit**" means the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a source.

(77) "**Prevention of significant deterioration (PSD)**" means the program in WAC 173-400-700 to 173-400-750.

(78) "**Projected width**" means that dimension of a structure determined from the frontal area of the structure, projected onto a plane perpendicular to a line between the center of the stack and the center of the building.

(79) "**Reasonably attributable**" means attributable by visual observation or any other technique the state deems appropriate.

(80) "**Reasonably available control technology (RACT)**" means the lowest emission limit that a particular source or source category is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. RACT is determined on a case-by-case basis for an individual

source or source category taking into account the impact of the source upon air quality, the availability of additional controls, the emission reduction to be achieved by additional controls, the impact of additional controls on air quality, and the capital and operating costs of the additional controls. RACT requirements for any source or source category shall be adopted only after notice and opportunity for comment are afforded.

(81) "**Regulatory order**" means an order issued by a permitting authority that requires compliance with:

(a) Any applicable provision of chapter ((70.94)) 70A.15 RCW or rules adopted thereunder; or

(b) Local air authority regulations adopted by the local air authority with jurisdiction over the sources to whom the order is issued.

(82) "**Secondary emissions**" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the major stationary source or major modification which causes the secondary emissions. Secondary emissions include emissions from any off-site support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(83) "**Shutdown**" means, generally, the cessation of operation of a stationary source or emission unit for any reason.

(84) "**Source**" means all of the emissions unit(s) including quantifiable fugitive emissions, that are located on one or more contiguous or adjacent properties, and are under the control of the same person or persons under common control, whose activities are ancillary to the production of a single product or functionally related groups of products.

(85) "**Source category**" means all sources of the same type or classification.

(86) "**Stack**" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct.

(87) "**Stack height**" means the height of an emission point measured from the ground-level elevation at the base of the stack.

(88) "**Standard conditions**" means a temperature of 20°C (68°F) and a pressure of 760 mm (29.92 inches) of mercury.

(89) "**Startup**" means, generally, the setting in operation of a stationary source or emission unit for any reason.

(90) "**State implementation plan (SIP)**" or "**Washington SIP**" means the Washington SIP in 40 C.F.R. Part 52, Subpart WW. The SIP contains state, local and federal regulations and orders, the state plan and compliance schedules approved and promulgated by EPA, for the purpose of implementing, maintaining, and enforcing the National Ambient Air Quality Standards.

(91) "**Stationary source**" means any building, structure, facility, or installation which emits or may emit any air contaminant. This term does not include emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in Section 216(11) of the federal Clean Air Act (42 U.S.C., 7550(11)).



(92) "**Sulfuric acid plant**" means any facility producing sulfuric acid by the contact process by burning elemental sulfur, alkylation acid, hydrogen sulfide, or acid sludge.

(93) "**Synthetic minor**" means any source whose potential to emit has been limited below applicable thresholds by means of an enforceable order, rule, or approval condition.

(94) "**Total reduced sulfur (TRS)**" means the sum of the sulfur compounds hydrogen sulfide, mercaptans, dimethyl sulfide, dimethyl disulfide, and any other organic sulfides emitted and measured by 40 C.F.R. Part 60, Appendix A, Test Method 16 (in effect on the date in WAC 173-400-025) or an EPA approved equivalent method and expressed as hydrogen sulfide.

(95) "**Total suspended particulate**" means particulate matter as measured by the method described in 40 C.F.R. Part 50 Appendix B.

(96) "**Toxic air pollutant (TAP)**" or "**toxic air contaminant**" means any toxic air pollutant listed in WAC 173-460-150. The term toxic air pollutant may include particulate matter and volatile organic compounds if an individual substance or a group of substances within either of these classes is listed in WAC 173-460-150. The term toxic air pollutant does not include particulate matter and volatile organic compounds as generic classes of compounds.

(97) "**Transient mode of operation**" means a short-term operating period of a source or an emission unit with a specific beginning and end, such as startup, shutdown, or maintenance.

(98) "**Unclassifiable area**" means an area that cannot be designated attainment or nonattainment on the basis of available information as meeting or not meeting the National Ambient Air Quality Standard for the criteria pollutant and that is listed by EPA at 40 C.F.R. Part 81.

(99) "**United States Environmental Protection Agency (USEPA)**" shall be referred to as EPA.

(100) "**Useful thermal energy**" means energy (steam, hot water, or process heat) that meets the minimum operating temperature, flow, and/or pressure required by any system that uses energy provided by the affected boiler or process heater.

(101) "**Visibility impairment**" means any humanly perceptible change in visibility (light extinction, visual range, contrast, or coloration) from that which would have existed under natural conditions.

(102) "**Volatile organic compound (VOC)**" means any carbon compound that participates in atmospheric photochemical reactions.

(a) Exceptions. The following compounds are not a VOC: Acetone; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates; ammonium carbonate, methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro 1-fluoroethane (HCFC-141b); 1-chloro 1,1-difluoroethane (HCFC-142b); 2-chloro 1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; perchloroethylene (tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane

(HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1 chloro-1-fluoroethane (HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (C<sub>4</sub>F<sub>9</sub>OCH<sub>3</sub> or HFE-7100); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF<sub>3</sub>)<sub>2</sub>CF<sub>2</sub>OCH<sub>3</sub>); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C<sub>4</sub>F<sub>9</sub>OC<sub>2</sub>H<sub>5</sub> or HFE-7200); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF<sub>3</sub>)<sub>2</sub>CF<sub>2</sub>OC<sub>2</sub>H<sub>5</sub>); methyl acetate; 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane (n-C<sub>3</sub>F<sub>7</sub>OCH<sub>3</sub> or HFE-7000); 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE-7500); 1,1,1,2,3,3,3-heptafluoropropane (HFC 227ea); methyl formate (HCOOCH<sub>3</sub>); 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300); dimethyl carbonate; propylene carbonate; trans-1,3,3,3-tetrafluoropropene; HCF<sub>2</sub>OCF<sub>2</sub>H (HFE-134); HCF<sub>2</sub>OCF<sub>2</sub>OCF<sub>2</sub>H (HFE-236cal2); HCF<sub>2</sub>OCF<sub>2</sub>CF<sub>2</sub>OCF<sub>2</sub>H (HFE-338pcc13); HCF<sub>2</sub>OCF<sub>2</sub>OCF<sub>2</sub>CF<sub>2</sub>OCF<sub>2</sub>H (H-Galden 1040x or H-Galden ZT 130 (or 150 or 180)); trans 1-chloro-3,3,3-trifluoroprop-1-ene; 2,3,3,3-tetrafluoropropene; 2-amino-2-methyl-1-propanol; t-butyl acetate; 1,1,2,2-tetrafluoro-1-(2,2,2-trifluoroethoxy) ethane; and perfluorocarbon compounds that fall into these classes:

- (i) Cyclic, branched, or linear completely fluorinated alkanes;
- (ii) Cyclic, branched, or linear completely fluorinated ethers with no saturations;
- (iii) Cyclic, branched, or linear completely fluorinated tertiary amines with no saturations; and
- (iv) Sulfur containing perfluorocarbons with no saturations and with sulfur bonds only to carbon and fluorine.

(b) For the purpose of determining compliance with emission limits, VOC will be measured by the appropriate methods in 40 C.F.R. Part 60, Appendix A (in effect on the date in WAC 173-400-025). Where the method also measures compounds with negligible photochemical reactivity, these negligibly reactive compounds may be excluded as VOC if the amount of the compounds is accurately quantified, and the exclusion is approved by ecology, the authority, or EPA.

(c) As a precondition to excluding these negligibly reactive compounds as VOC or at any time thereafter, ecology or the authority may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the satisfaction of ecology, the authority, or EPA the amount of negligibly reactive compounds in the source's emissions.

(103) **"Wigwam"** or **"silo burner"** means a cone-shaped or cylindrical structure that burns waste wood for disposal. A silo burner is a cylinder and may be made with refractory material rather than metal.

(104) **"Wood-fired boiler"** means an enclosed device using controlled flame combustion of wood or waste wood with the primary purpose of recovering thermal energy in the form of a steam or hot water boiler that burns wood or waste wood for fuel for the primary purpose of producing hot water or steam by heat transfer. Controlled flame combustion refers to a steady-state, or near steady-state, process wherein fuel and/or air feed rates are controlled.

(105) **"Waste wood"** means wood pieces or particles generated as a by-product or waste from the manufacturing of wood products, and the handling and storage of raw materials, trees, and stumps. This includes, but is not limited to, sawdust, chips, shavings, bark, pulp, log sort yard waste, and wood materials from forest health logging, land clearing or pruning, but does not include wood pieces or particles containing chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenate.

AMENDATORY SECTION (Amending WSR 18-17-111, filed 8/16/18, effective 9/16/18)

**WAC 173-400-082 Alternative emission limit that exceeds an emission standard in the SIP.** (1) Applicability. The owner or operator may request an alternative emission limit for a specific emission unit(s) that exceeds a limit in the SIP. The new limit would apply during a clearly defined transient mode of operation. An alternative emission limit established under this section becomes a facility-specific SIP emission standard once EPA approves the new limit in the SIP. This section does not apply to the approval of a revised emission limit that does not exceed a limit in the SIP.

(2) Pollutant scope. An alternative emission limit may be established under this section for any of the following emission standards in Washington's SIP in 40 C.F.R. 52.2470:

(a) Opacity emission standard in:

- (i) WAC 173-400-040(2);
- (ii) WAC 173-405-040(6);
- (iii) WAC 173-415-030(3); and
- (iv) WAC 173-434-130(4).

(b) Sulfur dioxide emission standard in:

- (i) WAC 173-400-040(7);
- (ii) WAC 173-405-040(11);
- (iii) WAC 173-410-040(1);
- (iv) WAC 173-415-030(5); and
- (v) WAC 173-434-130(3).

(c) Particulate matter emission standards in:

- (i) WAC 173-400-050(1) and 173-400-060;
- (ii) WAC 173-405-040 (1)(a), (2), (3)(a), and (5);
- (iii) WAC 173-410-040(2);
- (iv) WAC 173-415-030(2); and
- (v) WAC 173-434-130(1).

(d) Emission standards or limits in a local air pollution control authority rule, order, or plan referenced in 40 C.F.R. 52.2470.

(3) Requirements for an owner or operator requesting an alternative emission limit.

(a) The owner or operator may request an alternative emission limit for a specific transient mode of operation for an emission unit that exceeds a standard in the SIP.

(b) A request for an alternative emission limit must be submitted to the permitting authority in writing. The permitting authority shall determine the adequacy of the information.

(c) A request for an alternative emission limit must provide data and documentation sufficient to:

(i) Specify which emission unit(s) and specific transient mode(s) of operation the requested alternative emission limit is to cover;

(ii) Demonstrate that the operating characteristics of the emission unit(s) prevent meeting the applicable emission standard during the specific transient mode of operation. Operating characteristics may include the operational variations in the emission unit, installed emission control equipment, work practices, or other means of emission control that could affect the frequency, or duration and quantity of emissions during the transient mode of operation;

(iii) Demonstrate why it is not technically feasible to use the existing control system or any practicable operating scenario that would enable the emission unit to comply with the SIP emission standard, and avoid the need for an alternative emission limit;

(iv) Demonstrate that PSD increments, when applicable, and ambient air quality standards in chapter 173-476 WAC will not be exceeded by emissions from the proposed alternative limit;

(v) Determine best operational practices for the emission unit(s) involved;

(vi) Demonstrate that the frequency and duration of the specific transient mode of operation is limited to the shortest practicable amount of time;

(vii) Demonstrate the quantity and impact of the emissions resulting from the specific transient mode of operation are the lowest practicably possible; and

(viii) Demonstrate that the emissions allowed by the alternative emission limit will not exceed an applicable emission standard in 40 C.F.R. Parts 60, 61, 62, 63, or 72 (in effect on the date in WAC 173-400-025). For the purpose of this subsection, an automatic or discretionary exemption in any of these federal rules does not apply.

(4) Requirements for processing a request for an alternative emission limit.

(a) Completeness determination.

(i) Within (~~sixty~~) 60 days of receiving a request, the permitting authority must:

(A) Notify the applicant that the request is complete or incomplete;

(B) Specify the reason(s) for determining the request is incomplete, if applicable.

(ii) The permitting authority may request or accept additional information after determining a request complete.

(b) Denial. The permitting authority or ecology may deny a request. The denial must include the basis for the denial.

(c) Final determination.

(i) Within (~~ninety~~) 90 days of receipt of a complete application, the permitting authority must:

(A) Initiate notice, a (~~thirty~~) 30-day public comment period (required by WAC 173-400-171), and a mandatory hearing (when required by RCW (~~70.94.380~~) 70A.15.3050) followed as promptly as possible by a final decision; and

(B) Send the draft order and supporting materials electronically to ecology at least (~~thirty~~) 30 days in advance of the public hearing.

(ii) A permitting authority may extend the deadline for making a determination due to the complexity of the request.

(iii) Ecology recommends combining the public comment period for the draft order (permitting authority responsibility) and the ecology approval and SIP hearing (ecology responsibility).

(iv) A permitting authority shall not issue a final order until ecology notifies the permitting authority in writing that the proposed

alternative emission limit is consistent with the purposes of the Washington Clean Air Act as required by RCW ((70.94.380)) 70A.15.3050. If on review, ecology denies the request, ecology will inform the permitting authority and the applicant of the reason(s) for the denial; and

(v) The final order shall not be effective until the effective date of EPA's approval of the order as a SIP amendment.

(5) The draft regulatory order must include:

(a) The name or other designation to identify the specific emission unit(s) subject to the alternative emission limit;

(b) A clearly defined specific transient mode of operation during which the alternative emission limit applies, including parameters for determining the starting and stopping point, and when the alternative emission limit applies;

(c) The emission limit for the specific transient mode of operation;

(d) A requirement that the applicable emission unit(s) be operated consistent with good operating practices for minimizing emissions during the time the alternative emission limit applies; and

(e) Monitoring, recordkeeping and reporting requirements sufficient to ensure that the source complies with each condition in the order.

(6) Fees. A permitting authority may assess and collect fees for processing the request for an alternative emission limit according to its fee schedule for processing a permit application.

AMENDATORY SECTION (Amending WSR 11-06-060, filed 3/1/11, effective 4/1/11)

**WAC 173-400-091 Voluntary limits on emissions.** (1) Upon request by the owner or operator of a new or existing source or stationary source, the permitting authority with jurisdiction over the source shall issue a regulatory order that limits the potential to emit any air contaminant or contaminants to a level agreed to by the owner or operator and the permitting authority with jurisdiction.

(2) A condition contained in an order issued under this section shall be less than the source's or stationary source's otherwise allowable annual emissions of a particular contaminant under all applicable requirements of ((the)) chapter ((70.94)) 70A.15 RCW and the FCAA, including any standard or other requirement provided for in the Washington state implementation plan. The term "condition" refers to limits on production or other limitations, in addition to emission limitations.

(3) Any order issued under this section shall include monitoring, recordkeeping and reporting requirements sufficient to ensure that the source or stationary source complies with any condition established under this section. Monitoring requirements shall use terms, test methods, units, averaging periods, and other statistical conventions consistent with the requirements of WAC 173-400-105.

(4) Any order issued under this section must comply with WAC 173-400-171.

(5) The terms and conditions of a regulatory order issued under this section are enforceable. Any proposed deviation from a condition contained in an order issued under this section shall require revision or revocation of the order.

AMENDATORY SECTION (Amending WSR 18-22-006, filed 10/25/18, effective 11/25/18)

**WAC 173-400-101 Registration issuance.** (1) General. Any person operating or responsible for the operation of an air contaminant source for which registration and reporting are required must register the source emission unit with the permitting authority. The owner or operator must make reports containing information required by the permitting authority concerning location, size and height of contaminant outlets, processes employed, nature and quantity of the air contaminant emission and such other information as is relevant to air pollution and available or reasonably capable of being assembled.

(2) Registration. Sources must provide registration information in a manner and time prescribed by the permitting authority and must provide the required information within the time specified by the permitting authority. Sources must list each emission unit within the facility separately unless the permitting authority determines that the facility may combine certain emission units into process streams for purposes of registration and reporting.

(3) Signatory responsibility. The owner, operator, or their designated management representative must sign the registration form for each source. The owner or operator of the source is responsible for notifying the permitting authority of the existence of the source, and for the accuracy, completeness, and timely submittal of registration reporting information and any accompanying fee.

(4) Operational and maintenance plan. Owners or operators of registered sources within ecology's jurisdiction must maintain an operation and maintenance plan for process and control equipment. The plan must reflect good industrial practice and must include a record of performance and periodic inspections of process and control equipment. In most instances, a manufacturer's operations manual or an equipment operation schedule may be considered a sufficient operation and maintenance plan. The source owner or operator must review and update the plan at least annually. The source owner or operator must make a copy of the plan available to ecology upon request.

(5) Report of closure. The owner or operator must file a report of closure with the permitting authority within (~~ninety~~) 90 days after operations producing emissions permanently cease at any applicable source under this section.

(6) Report of change of ownership. A new owner or operator must report to the permitting authority within (~~ninety~~) 90 days of any change of ownership or change in operator.

(7) Operating permit program source exemption. Permit program sources, as defined in RCW (~~70.94.030~~) 70A.15.1030(18), are not required to comply with the registration requirements of WAC 173-400-100 through 173-400-104.

AMENDATORY SECTION (Amending WSR 12-24-027, filed 11/28/12, effective 12/29/12)

**WAC 173-400-110 New source review (NSR) for sources and portable sources.** (1) **Applicability.**

(a) WAC 173-400-110, 173-400-111, 173-400-112, and 173-400-113 apply statewide except where a permitting authority has adopted its own new source review regulations.

(b) This section applies to new sources and stationary sources as defined in RCW (~~(70.94.030)~~) 70A.15.1030, and WAC 173-400-030, but does not include nonroad engines.

(c) For purposes of this section:

(i) "Establishment" means to begin actual construction;

(ii) "New source" includes:

(A) A modification to an existing stationary source, as "modification" is defined in WAC 173-400-030;

(B) The construction, modification, or relocation of a portable source as defined in WAC 173-400-030, except those relocating in compliance with WAC 173-400-036;

(C) The establishment of a new or modified toxic air pollutant source, as defined in WAC 173-460-020; and

(D) A major modification to an existing major stationary source, as defined in WAC 173-400-710 and 173-400-810.

(d) New source review of a modification is limited to the emission unit or units proposed to be modified and the air contaminants whose emissions would increase as a result of the modification. Review of a major modification must comply with WAC 173-400-700 through 173-400-750 or 173-400-800 through 173-400-860, as applicable.

(e) The procedural requirements pertaining to NOC applications and orders of approval for new sources that are not major stationary sources, as defined in WAC 173-400-710 and 173-400-810, shall not apply to any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, Model Toxics Control Act, or to the department of ecology when it conducts a remedial action under chapter 70.105D RCW. The department of ecology shall ensure compliance with the substantive requirements of this chapter through the consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW using the procedures outlined in WAC 173-340-710(9) or during a department-conducted remedial action, through the procedures outlined in WAC 173-340-710(9).

(2) **Preconstruction approval requirements.** The applicant must evaluate the proposed project and submit an application addressing all applicable new source review requirements of this chapter.

(a) A notice of construction application must be filed and an order of approval must be issued by the permitting authority prior to the establishment of any new source or modification except for those new sources or modifications exempt from permitting under subsections (4), (5), and (6) of this section.

(b) If the proposed project is a new major stationary source or a major modification, located in a designated nonattainment area, and if the project emits the air pollutant or precursors of the air pollutant for which the area is designated nonattainment, and the project meets the applicability criteria in WAC 173-400-820, then the project is subject to the permitting requirements of WAC 173-400-800 through 173-400-860.

(c) If the proposed project is a new major stationary source or a major modification that meets the applicability criteria of WAC 173-400-720, then the project is subject to the PSD permitting requirements of WAC 173-400-700 through 173-400-750.

(d) If the proposed project will increase emissions of toxic air pollutants regulated under chapter 173-460 WAC, then the project must meet all applicable requirements of that program.

(3) **Modifications.** New source review is required for any modification to a stationary source that requires:

- (a) An increase in a plant-wide cap; or
- (b) An increase in an emission unit or activity specific emission limit.

(4) **Emission unit and activity exemptions.** The construction or modification of emission units or an activity in one of the categories listed below is exempt from new source review, provided that the modified unit continues to fall within one of the listed categories. The construction or modification of an emission unit or an activity exempt under this subsection does not require the filing of a notice of construction application.

- (a) Maintenance/construction:
  - (i) Cleaning and sweeping of streets and paved surfaces;
  - (ii) Concrete application, and installation;
  - (iii) Dredging wet spoils handling and placement;
  - (iv) Paving application and maintenance. This provision does not exempt asphalt plants from this chapter;
  - (v) Plant maintenance and upkeep activities (grounds keeping, general repairs, house keeping, plant painting, welding, cutting, brazing, soldering, plumbing, retarring roofs, etc.);
  - (vi) Plumbing installation, plumbing protective coating application and maintenance activities;
  - (vii) Roofing application and maintenance;
  - (viii) Insulation application and maintenance;
  - (ix) Janitorial services and consumer use of janitorial products;
  - (x) Construction activities that do not result in new or modified stationary sources or portable stationary sources.
- (b) Storage tanks:

Note: It can be difficult to determine requirements for storage tanks. Ecology strongly recommends that an owner or operator contact the permitting authority to determine the exemption status of storage tanks prior to their installation.

- (i) Lubricating oil storage tanks. This provision does not exempt wholesale distributors of lubricating oils from this chapter;
- (ii) Polymer tanks and storage devices and associated pumping and handling equipment, used for solids dewatering and flocculation;
- (iii) Storage tanks, reservoirs, pumping and handling equipment of any size containing soaps, vegetable oil, grease, animal fat, and nonvolatile aqueous salt solutions;
- (iv) Process and white water storage tanks;
- (v) Operation, loading and unloading of storage tanks and storage vessels, with lids or other appropriate closure and less than 260-gallon capacity (35 cubic feet);
- (vi) Operation, loading and unloading of storage tanks,  $\leq$  1100 gallon capacity, with lids or other appropriate closure, not for use with materials containing toxic air pollutants, as listed in chapter 173-460 WAC, max. VP 550 mm mercury at 21°C;
- (vii) Operation, loading and unloading storage of butane, propane, or liquefied petroleum gas with a vessel capacity less than 40,000 gallons;
- (viii) Tanks, vessels and pumping equipment, with lids or other appropriate closure for storage or dispensing of aqueous solutions of inorganic salts, bases and acids.
- (c) New or modified emission units with combined aggregate heat inputs to combustion units (excluding emergency engines exempted by subsection (4) (h) (xxxix) of this section), less than or equal to all of the following, as applicable:
  - (i)  $\leq$  500,000 Btu/hr using coal with  $\leq$  0.5% sulfur or other solid fuels with  $\leq$  0.5% sulfur;



- (ii)  $\leq$  500,000 Btu/hr using used oil, per the requirements of RCW ((70.94.610)) 70A.15.4510;
- (iii)  $\leq$  400,000 Btu/hr using wood waste or paper;
- (iv)  $\leq$  1,000,000 Btu/hr using gasoline, kerosene, #1, or #2 fuel oil and with  $\leq$  0.05% sulfur;
- (v)  $\leq$  4,000,000 Btu/hr using natural gas, propane, or LPG.
- (d) Material handling:
  - (i) Continuous digester chip feeders;
  - (ii) Grain elevators not licensed as warehouses or dealers by either the Washington state department of agriculture or the U.S. Department of Agriculture;
  - (iii) Storage and handling of water based lubricants for metal working where organic content of the lubricant is  $\leq$  10%;
  - (iv) Equipment used exclusively to pump, load, unload, or store high boiling point organic material in tanks less than one million gallon, material with initial atmospheric boiling point not less than 150°C or vapor pressure not more than 5 mm mercury at 21°C, with lids or other appropriate closure.
- (e) Water treatment:
  - (i) Septic sewer systems, not including active wastewater treatment facilities;
  - (ii) NPDES permitted ponds and lagoons used solely for the purpose of settling suspended solids and skimming of oil and grease;
  - (iii) De-aeration (oxygen scavenging) of water where toxic air pollutants as defined in chapter 173-460 WAC are not emitted;
  - (iv) Process water filtration system and demineralizer vents;
  - (v) Sewer manholes, junction boxes, sumps and lift stations associated with wastewater treatment systems;
  - (vi) Demineralizer tanks;
  - (vii) Alum tanks;
  - (viii) Clean water condensate tanks.
- (f) Environmental chambers and laboratory equipment:
  - (i) Environmental chambers and humidity chambers using only gases that are not toxic air pollutants listed in chapter 173-460 WAC;
  - (ii) Gas cabinets using only gases that are not toxic air pollutants regulated under chapter 173-460 WAC;
  - (iii) Installation or modification of a single laboratory fume hood;
  - (iv) Laboratory research, experimentation, analysis and testing at sources whose primary purpose and activity is research or education. To be exempt, these sources must not engage in the production of products, or in providing commercial services, for sale or exchange for commercial profit except in a de minimis manner. Pilot-plants or pilot scale processes at these sources are not exempt.
  - (v) Laboratory calibration and maintenance equipment.
- (g) Monitoring/quality assurance/testing:
  - (i) Equipment and instrumentation used for quality control/assurance or inspection purpose;
  - (ii) Hydraulic and hydrostatic testing equipment;
  - (iii) Sample gathering, preparation and management;
  - (iv) Vents from emission monitors and other analyzers.
- (h) Miscellaneous:
  - (i) Single-family residences and duplexes;
  - (ii) Plastic pipe welding;
  - (iii) Primary agricultural production activities including soil preparation, planting, fertilizing, weed and pest control, and harvesting;

- (iv) Comfort air conditioning;
- (v) Flares used to indicate danger to the public;
- (vi) Natural and forced air vents and stacks for bathroom/toilet activities;
- (vii) Personal care activities;
- (viii) Recreational fireplaces including the use of barbecues, campfires, and ceremonial fires;
- (ix) Tobacco smoking rooms and areas;
- (x) Noncommercial smokehouses;
- (xi) Blacksmith forges for single forges;
- (xii) Vehicle maintenance activities, not including vehicle surface coating;
- (xiii) Vehicle or equipment washing (see (c) of this subsection for threshold for boilers);
- (xiv) Wax application;
- (xv) Oxygen, nitrogen, or rare gas extraction and liquefaction equipment not including internal and external combustion equipment;
- (xvi) Ozone generators and ozonation equipment;
- (xvii) Solar simulators;
- (xviii) Ultraviolet curing processes, to the extent that toxic air pollutant gases as defined in chapter 173-460 WAC are not emitted;
- (xix) Electrical circuit breakers, transformers, or switching equipment installation or operation;
- (xx) Pulse capacitors;
- (xxi) Pneumatically operated equipment, including tools and hand held applicator equipment for hot melt adhesives;
- (xxii) Fire suppression equipment;
- (xxiii) Recovery boiler blow-down tank;
- (xxiv) Screw press vents;
- (xxv) Drop hammers or hydraulic presses for forging or metal working;
- (xxvi) Production of foundry sand molds, unheated and using binders less than 0.25% free phenol by sand weight;
- (xxvii) Kraft lime mud storage tanks and process vessels;
- (xxviii) Lime grits washers, filters and handling;
- (xxix) Lime mud filtrate tanks;
- (xxx) Lime mud water;
- (xxxi) Stock cleaning and pressurized pulp washing down process of the brown stock washer;
- (xxxii) Natural gas pressure regulator vents, excluding venting at oil and gas production facilities and transportation marketing facilities;
- (xxxiii) Solvent cleaners less than 10 square feet air-vapor interface with solvent vapor pressure not more than 30 mm mercury at 21°C where no toxic air pollutants as listed under chapter 173-460 WAC are emitted;
- (xxxiv) Surface coating, aqueous solution or suspension containing  $\leq 1\%$  (by weight) VOCs, or  $\leq 1\%$  (by weight) toxic air pollutants as listed in chapter 173-460 WAC;
- (xxxv) Cleaning and stripping activities and equipment using solutions having  $\leq 1\%$  VOCs (by weight) or  $\leq 1\%$  (by weight) toxic air pollutants. Acid solutions used on metallic substances are not exempt;
- (xxxvi) Dip coating operations, using materials less than 1% VOCs (by weight) or  $\leq 1\%$  (by weight) toxic air pollutants as listed in chapter 173-460 WAC.
- (xxxvii) Abrasive blasting performed inside a booth or hangar designed to capture the blast grit or overspray.

(xxxviii) For structures or items too large to be reasonably handled indoors, abrasive blasting performed outdoors that employs control measures such as curtailment during windy periods and enclosure of the area being blasted with tarps and uses either steel shot or an abrasive containing less than one percent (by mass) which would pass through a No. 200 sieve.

(xxxix) Stationary emergency internal combustion engines with an aggregate brake horsepower that is less than or equal to 500 brake horsepower.

(xl) Gasoline dispensing facilities with annual gasoline throughputs less than those specified in WAC 173-491-040 (4) (a). Gasoline dispensing facilities subject to chapter 173-491 WAC are exempt from toxic air pollutant analysis pursuant to chapter 173-460 WAC.

(5) **Exemptions based on emissions.**

(a) Except as provided in this subsection:

(i) Construction of a new emissions unit that has a potential to emit below each of the levels listed in Table 110(5) Exemption levels is exempt from new source review.

(ii) A modification to an existing emissions unit that increases the unit's actual emissions by less than each of the threshold levels listed in Table 110(5) Exemption levels of this subsection is exempt from new source review.

(b) Greenhouse gas emissions are exempt from new source review requirements except to the extent required under WAC 173-400-720, prevention of significant deterioration. The owner or operator of a source or emission unit, may request that the permitting authority impose emission limits and/or operation limitations for greenhouse gas in any new source review order of approval.

Table 110(5) Exemption levels:

POLLUTANT	LEVEL (TONS PER YEAR)
Carbon monoxide	5.0
Lead	0.005
Nitrogen oxides	2.0
PM-10	0.75
PM-2.5	0.5
Total suspended particulates	1.25
Sulfur dioxide	2.0
Volatile Organic Compounds, total	2.0
Ozone Depleting Substances, total	1.0
Toxic Air Pollutants	The de minimis emission rate specified for each TAP in WAC 173-460-150.

(6) **Portable source with order of approval.** A portable source is authorized to operate without obtaining a site-specific or a permitting authority specific approval order to relocate if the portable source complies with the provisions of WAC 173-400-036.

AMENDATORY SECTION (Amending WSR 12-24-027, filed 11/28/12, effective 12/29/12)

**WAC 173-400-112 Requirements for new sources in nonattainment areas—Review for compliance with regulations.** WAC 173-400-110, 173-400-111, 173-400-112, and 173-400-113 apply statewide except where a permitting authority has adopted its own new source review regulations. The permitting authority that is reviewing an application required by WAC 173-400-110(2) to establish a new source in a nonattainment area shall issue the order of approval if it determines that the proposed project satisfies each of the following requirements:

- (1) The proposed new source or modification will comply with all applicable new source performance standards, national emission standards for hazardous air pollutants, national emission standards for hazardous air pollutants for source categories, emission standards adopted under chapter (~~(70-94)~~) 70A.15 RCW and, for sources regulated by an authority, the applicable emission standards of that authority.
- (2) The proposed new source or modification will achieve LAER for any air contaminants for which:
  - (a) The area has been designated nonattainment; and
  - (b) (i) The proposed new source is major; or
  - (ii) The existing source is major and the major modification is significant.
- (3) The proposed new source will employ BACT for those air contaminants not subject to LAER that the new source will emit or for which the proposed modification will cause an emissions increase.
- (4) The proposed new source or modification will not cause any ambient air quality standard to be exceeded, will not violate the requirements for reasonable further progress established by the SIP and will comply with WAC 173-400-113 (3) and (4) for all air contaminants for which the area has not been designated nonattainment.
- (5) If the proposal is a new major stationary source or a major modification as those terms are defined in WAC 173-400-810 then it must also comply with WAC 173-400-800 through 173-400-860.

AMENDATORY SECTION (Amending WSR 12-24-027, filed 11/28/12, effective 12/29/12)

**WAC 173-400-113 New sources in attainment or unclassifiable areas—Review for compliance with regulations.** WAC 173-400-110, 173-400-111, 173-400-112, and 173-400-113 apply statewide except where a permitting authority has adopted its own new source review regulations. The permitting authority that is reviewing an application to establish a new source or modification in an attainment or unclassifiable area shall issue an order of approval if it determines that the proposed project satisfies each of the following requirements:

- (1) The proposed new source or modification will comply with all applicable new source performance standards, national emission standards for hazardous air pollutants, national emission standards for hazardous air pollutants for source categories, emission standards adopted under chapter (~~(70-94)~~) 70A.15 RCW and, for sources regulated by an authority, the applicable emission standards of that authority.

(2) The proposed new source or modification will employ BACT for all pollutants not previously emitted or whose emissions would increase as a result of the new source or modification.

(3) Allowable emissions from the proposed new source or the increase in emissions from the proposed modification will not cause or contribute to a violation of any ambient air quality standard. If the modeled concentrations of allowable emissions from the proposed new source or the increase in emissions from the proposed modification are below the levels in Table 4a, the proposed source does not contribute to a violation of an ambient air quality standard.

(4) (a) If the projected impact of the allowable emissions from the proposed new major stationary source (as defined in WAC 173-400-810) or the projected impact of the increase in allowable emissions from the proposed major modification (as defined in WAC 173-400-810) at any location within a nonattainment area does not exceed the following levels for the pollutants for which the area has been designated nonattainment, then the proposed new source or modification will not be considered to cause or contribute to a violation of an ambient air quality standard:

Table 4a:  
Cause or Contribute Threshold Values for Nonattainment Area Impacts

Pollutant	Annual Average	24-Hour Average	8-Hour Average	3-Hour Average	1-Hour Average
CO-	-	-	0.5 mg/m <sup>3</sup>	-	2 mg/m <sup>3</sup>
SO <sub>2</sub>	1.0 µg/m <sup>3</sup>	5 µg/m <sup>3</sup>	-	25 µg/m <sup>3</sup>	30 µg/m <sup>3</sup>
PM <sub>10</sub>	1.0 µg/m <sup>3</sup>	5 µg/m <sup>3</sup>	-	-	-
PM <sub>2.5</sub>	0.3 µg/m <sup>3</sup>	1.2 µg/m <sup>3</sup>	-	-	-
NO <sub>2</sub>	1.0 µg/m <sup>3</sup>	-	-	-	-

(b) If the projected impact of the allowable emissions from the proposed new major stationary source (as defined in WAC 173-400-810) or the projected impact of the increase in allowable emissions from the proposed major modification (as defined in WAC 173-400-810) results in a projected impact at any location inside a nonattainment area above the appropriate value in Table 4a of this section may use an offsetting emission reduction or other method identified in 40 C.F.R. Part 51 Appendix S, Sections III and IV.A which reduce the projected impacts to the above values or less. If the owner or operator of the proposed new major stationary source or major source proposed to be modified is unable to reduce emissions or obtain offsetting emissions reductions adequate to reduce modeled impacts below the values in Table 4a of this section, then the permitting authority shall deny approval to construct and operate the proposed new major stationary source or major modification.

(5) If the proposal is a new major stationary source or a major modification as defined in WAC 173-400-720, then it must also comply with WAC 173-400-700 through 173-400-750.

AMENDATORY SECTION (Amending WSR 12-24-027, filed 11/28/12, effective 12/29/12)

**WAC 173-400-114 Requirements for replacement or substantial alteration of emission control technology at an existing stationary source.** (1) Any **person** proposing to replace or substantially alter

the **emission** control technology installed on an existing **stationary source** or **emission unit** shall file a **notice of construction application** with the appropriate **authority**, or with **ecology** in areas or for **sources** over which **ecology** has jurisdiction. Replacement or substantial alteration of control technology does not include routine maintenance, repair or similar parts replacement.

(2) A project to replace or substantially alter emission control technology at an existing stationary source that results in an increase in emissions of any air contaminant is subject to new source review as provided in WAC 173-400-110. For any other project to replace or significantly alter control technology the permitting **authority** may:

(a) Require that the owner or operator employ **RACT** for the affected **emission unit**;

(b) Prescribe reasonable operation and maintenance conditions for the control equipment; and

(c) Prescribe other requirements as authorized by chapter ((70.94)) 70A.15 RCW.

(3) Within ((thirty)) 30 days of receipt of a **notice of construction application** under this section **ecology** or the **authority** shall either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application. Within ((thirty)) 30 days of receipt of a complete **notice of construction application** under this section **ecology** or the **authority** shall either issue an **order of approval** or a proposed **RACT** determination for the proposed project.

(4) Construction shall not "**commence**," as defined in WAC 173-400-030, on a project subject to review under this section until **ecology** or the **authority** issues a final **order of approval**. However, any **notice of construction application** filed under this section shall be deemed to be approved without conditions if **ecology** or the **authority** takes no action within ((thirty)) 30 days of receipt of a complete **notice of construction application**.

(5) Approval to replace or substantially alter **emission** control technology shall become invalid if construction is not **commenced** within ((eighteen)) 18 months after receipt of such approval, if construction is discontinued for a period of ((eighteen)) 18 months or more, or if construction is not completed within a reasonable time. **Ecology** or the **authority** may extend the ((eighteen)) 18-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within ((eighteen)) 18 months of the projected and approved commencement date.

AMENDATORY SECTION (Amending WSR 18-17-111, filed 8/16/18, effective 9/16/18)

**WAC 173-400-171 Public notice and opportunity for public comment.** The purpose of this section is to specify the requirements for notifying the public about air quality actions and to provide opportunities for the public to participate in those actions. This section applies statewide except that the requirements of WAC 173-400-171 (1) through (11) do not apply where the permitting authority has adopted its own public notice provisions.

(1) **Applicability to prevention of significant deterioration, and relocation of portable sources.** This section does not apply to:

(a) A notice of construction application designated for integrated review with actions regulated by WAC 173-400-700 through 173-400-750. In such cases, compliance with the public notification requirements of WAC 173-400-740 is required.

(b) Portable source relocation notices as regulated by WAC 173-400-036, relocation of portable sources.

(2) **Internet notice of application.**

(a) For those applications and actions not subject to a mandatory public comment period per subsection (3) of this section, the permitting authority must post an announcement of the receipt of notice of construction applications and other proposed actions on the permitting authority's internet website.

(b) The internet posting must remain on the permitting authority's website for a minimum of (~~fifteen~~) 15 consecutive days.

(c) The internet posting must include a notice of the receipt of the application, the type of proposed action, and a statement that the public may request a public comment period on the proposed action.

(d) Requests for a public comment period must be submitted to the permitting authority in writing via letter, or electronic means during the (~~fifteen~~) 15-day internet posting period.

(e) A public comment period must be provided for any application or proposed action that receives such a request. Any application or proposed action for which a public comment period is not requested may be processed without further public involvement at the end of the (~~fifteen~~) 15-day internet posting period.

(3) **Actions subject to a mandatory public comment period.** The permitting authority must provide public notice and a public comment period before approving or denying any of the following types of applications or other actions:

(a) Any application, order, or proposed action for which a public comment period is requested in compliance with subsection (2) of this section.

(b) Any notice of construction application for a new or modified source, including the initial application for operation of a portable source, if there is an increase in emissions of any air pollutant at a rate above the emission threshold rate (defined in WAC 173-400-030) or any increase in emissions of a toxic air pollutant above the acceptable source impact level for that toxic air pollutant as regulated under chapter 173-460 WAC; or

(c) Any use of a modified or substituted air quality model, other than a guideline model in Appendix W of 40 C.F.R. Part 51 (in effect on the date in WAC 173-400-025) as part of review under WAC 173-400-110, 173-400-113, or 173-400-117; or

(d) Any order to determine reasonably available control technology, RACT; or

(e) An order to establish a compliance schedule issued under WAC 173-400-161, or a variance issued under WAC 173-400-180; or

Note: Mandatory notice is not required for compliance orders issued under WAC 173-400-230.

(f) An order to demonstrate the creditable height of a stack which exceeds the good engineering practice, GEP, formula height and (~~sixty-five~~) 65 meters, by means of a fluid model or a field study, for the purposes of establishing an emission limit; or

(g) An order to authorize a bubble; or

- (h) An action to discount the value of an emission reduction credit, ERC, issued to a source per WAC 173-400-136; or
- (i) A regulatory order to establish best available retrofit technology, BART, for an existing stationary facility; or
- (j) A notice of construction application or regulatory order used to establish a creditable emission reduction; or
- (k) An order issued under WAC 173-400-091 that establishes limitations on a source's potential to emit; or
- (l) The original issuance and the issuance of all revisions to a general order of approval issued under WAC 173-400-560 (this does not include coverage orders); or
- (m) An extension of the deadline to begin actual construction of a "major stationary source" or "major modification" in a nonattainment area; or
- (n) An application or other action for which the permitting authority determines that there is significant public interest; or
- (o) An order issued under WAC 173-400-081(4) or 173-400-082 that establishes an emission limitation that exceeds a standard in the SIP.

**(4) Advertising the mandatory public comment period.**

- (a) Public notice of all applications, orders, or actions listed in subsection (3) of this section must be posted on the permitting authority website for the duration of the public comment period.
- (i) The permitting authority may supplement this method of notification by advertising in a newspaper of general circulation in the area of the proposed action or by other methods appropriate to notify the local community. The applicant or other initiator of the action must pay the publishing cost for all supplemental noticing.
- (ii) A permitting authority must publish a notice of the public comment period in a newspaper of general circulation in the area of the proposed action until June 30, 2019. We recommend that a permitting authority continue publishing a notice in a newspaper for a project with high interest. The applicant or other initiator of the action must pay this publishing cost.
- (b) This public notice can be posted or given only after all of the information required by the permitting authority has been submitted and after the applicable preliminary determinations, if any, have been made.

(c) The notice must be posted or given before any of the applications or other actions listed in subsection (3) of this section are approved or denied.

**(5) Information available for public review.**

(a) Administrative record. The information submitted by the applicant, and any applicable preliminary determinations, including analyses of the effects on air quality, must be available for public inspection. A permitting authority may comply with this requirement by making these materials available on its website or in at least one physical location near the proposed project.

(b) The permitting authority must post the following information on its website for the duration of the public comment period:

- (i) Public notice complying with subsection (6) of this section;
- (ii) Draft permit, order, or action; and
- (iii) Information on how to access the administrative record.

(c) Exemptions from this requirement include information protected from disclosure under any applicable law including, but not limited to, RCW (~~(70.94.205)~~) 70A.15.2510 and chapter 173-03 WAC.

**(6) Public notice components.**

(a) The notice must include:



- (i) The date the notice is posted;
- (ii) The name and address of the owner or operator and the facility;
- (iii) A brief description of the proposal and the type of facility, including a description of the facility's processes subject to the permit;
- (iv) A description of the air contaminant emissions including the type of pollutants and quantity of emissions that would increase under the proposal;
- (v) The location where those documents made available for public inspection may be reviewed;
- (vi) Start date and end date for a public comment period consistent with subsection (7) of this section;
- (vii) A statement that a public hearing will be held if the permitting authority determines that there is significant public interest;

(viii) The name, address, and telephone number and email address of a person at the permitting authority from whom interested persons may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials, including any compliance plan, permit, and monitoring and compliance certification report, and all other materials available to the permitting authority that are relevant to the permit decision, unless the information is exempt from disclosure;

(b) For projects subject to special protection requirements for federal Class I areas, as required by WAC 173-400-117, public notice must include an explanation of the permitting authority's draft decision or state that an explanation of the draft decision appears in the support document for the proposed order of approval.

**(7) Length of the public comment period.**

(a) The public comment period must consist of a minimum of ~~((thirty))~~ 30 days and start at least ~~((thirty))~~ 30 days prior to any hearing. The first day of the public comment period begins on the next calendar day after the permitting authority posts the public notice on their website.

(b) If a public hearing is held, the public comment period must extend through the hearing date.

(c) The final decision cannot be issued until the public comment period has ended and any comments received during the public comment period have been considered.

**(8) Requesting a public hearing.** The applicant, any interested governmental entity, any group, or any person may request a public hearing within the public comment period. All hearing requests must be submitted to the permitting authority in writing via letter, or electronic means. A request must indicate the interest of the entity filing it and why a hearing is warranted.

**(9) Setting the hearing date and providing hearing notice.** If the permitting authority determines that significant public interest exists, then it will hold a public hearing. The permitting authority will determine the location, date, and time of the public hearing.

**(10) Notice of public hearing.**

(a) At least ~~((thirty))~~ 30 days prior to the hearing the permitting authority must provide notice of the hearing as follows:

- (i) Post the public hearing notice on the permitting authority website as directed by subsections (4) and (7) of this section;
- (ii) The permitting authority may supplement the web posting by advertising in a newspaper of general circulation in the area of the

proposed source or action, or by other methods appropriate to notify the local community; and

(iii) Distribute by electronic means or via the United States postal service the notice of public hearing to any person who submitted written comments on the application or requested a public hearing and in the case of a permit action, to the applicant.

(b) This notice must include the date, time and location of the public hearing and the information described in subsection (6) of this section.

(c) In the case of a permit action, the applicant must pay all supplemental notice costs when the permitting authority determines a supplemental notice is appropriate. Supplemental notice may include, but is not limited to, publication in a newspaper of general circulation in the area of the proposed project.

(11) **Notifying the EPA.** The permitting authority must distribute by electronic means or via the United States postal service a copy of the notice for all actions subject to a mandatory public comment period to the EPA Region 10 regional administrator.

(12) **Special requirements for ecology only actions.**

(a) This subsection applies to ecology only actions including:

(i) A Washington state recommendation to EPA for the designation of an area as attainment, nonattainment or unclassifiable after EPA promulgation of a new or revised ambient air quality standard or for the redesignation of an unclassifiable or attainment area to nonattainment;

(ii) A Washington state submittal of a SIP revision to EPA for approval including plans for attainment and maintenance of ambient air quality standards, plans for visibility protection, requests for revision to the boundaries of attainment and maintenance areas, requests for redesignation of Class I, II, or III areas under WAC 173-400-118, and rules to strengthen the SIP.

(b) Ecology must provide a public hearing or an opportunity for requesting a public hearing on an ecology only action. The notice providing the opportunity for a public hearing must specify the manner and date by which a person may request the public hearing and either provide the date, time and place of the proposed hearing or specify that ecology will publish a notice specifying the date, time and place of the hearing at least (~~thirty~~) 30 days prior to the hearing. When ecology provides the opportunity for requesting a public hearing, the hearing must be held if requested by any person. Ecology may cancel the hearing if no request is received.

(c) The public notice for ecology only actions must comply with the requirements of 40 C.F.R. 51.102 (in effect on the date in WAC 173-400-025).

(13) **Other requirements of law.** Whenever procedures permitted or mandated by law will accomplish the objectives of public notice and opportunity for comment, those procedures may be used in lieu of the provisions of this section.

AMENDATORY SECTION (Amending WSR 05-03-033, filed 1/10/05, effective 2/10/05)

**WAC 173-400-175 Public information.** All information, except information protected from disclosure under any applicable law, including, but not limited to, RCW (~~70.94.205~~) 70A.15.2510, is available

for public inspection at the issuing agency. This includes copies of notice of construction applications, orders, and applications to modify orders.

AMENDATORY SECTION (Amending WSR 07-19-005, filed 9/6/07, effective 10/7/07)

**WAC 173-400-180 Variance.** Any person who owns or is in control of a plant, building, structure, establishment, process, or equipment may apply to ecology for a variance from provisions of this chapter governing the quality, nature, duration, or extent of discharges of air contaminants in accordance with the provisions of RCW ((70.94.181)) 70A.15.2310.

(1) **Jurisdiction.** Sources in any area over which a local air pollution control authority has jurisdiction shall make application to that authority rather than ecology. Variances to state rules shall require ecology's approval prior to being issued by an authority. Ecology or the authority may grant such variance, but only after public involvement per WAC 173-400-171.

(2) **Full faith and credit.** Variances granted in compliance with state and federal laws by an authority for sources under their jurisdiction will be accepted as variances to this regulation.

(3) **EPA concurrence.** No variance or renewal shall be construed to set aside or delay any requirements of the Federal Clean Air Act except with the approval and written concurrence of the USEPA.

(4) Fees relating to this section can be found in chapter 173-455 WAC.

AMENDATORY SECTION (Amending WSR 93-05-044, filed 2/17/93, effective 3/20/93)

**WAC 173-400-230 Regulatory actions.** Ecology may take any of the following regulatory actions to enforce this chapter to meet the provisions of RCW 43.21B.300 which is incorporated by reference.

(1) **Enforcement actions by ecology—Notice to violators.** 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, the department of ecology shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of this chapter or the 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, ecology may require that the alleged violator or violators appear before it for the purpose of providing ecology information pertaining to the violation or the charges complained of. Every notice of violation shall offer to the alleged violator an opportunity to meet with ecology prior to the commencement of enforcement action.

(2) **Civil penalties.**

(a) In addition to or as an alternate to any other penalty provided by law, any person who violates any of the provisions of chapter ((70.94)) 70A.15 or ((70.120)) 70A.25 RCW, or any of the rules in

force under such chapters may incur a civil penalty in an amount as set forth in RCW ((70.94.431)) 70A.15.3160. Each such violation shall be a separate and distinct offense, and in case of 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 amounts established in RCW ((70.94.431)) 70A.15.3160 may be increased annually to account for inflation as determined by the state office of the 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 43.21B.300.

(d) All penalties recovered under this section by ecology shall be paid into the state treasury and credited to the air pollution control account established in RCW ((70.94.015)) 70A.15.1010 or, if recovered by the authority, shall be paid into the treasury of the authority and credited to its funds. If a prior penalty for the same violation has been paid to a local authority, the penalty imposed by ecology under subsection (a) of this section shall be reduced by the amount of the payment.

(e) To secure the penalty incurred under this section, the state or the authority shall have a lien on any vessel used or operated in violation of this chapter which shall be enforced as provided in RCW 60.36.050.

(f) Public or private entities that are recipients or potential recipients of ecology grants, whether for air quality related activities or not, may have such grants rescinded or withheld by ecology for failure to comply with provisions of this chapter.

(g) In addition to other penalties provided by this chapter, persons knowingly under-reporting emissions 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.** Personnel of ecology or an authority 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 or any order issued thereunder 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 chap-

ter, the director, 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.** Ecology may issue such orders as authorized by chapter 173-435 WAC via chapter ((70.94)) 70A.15 RCW, whenever an air pollution episode forecast is declared.

(6) **Compliance orders.** Ecology 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.

AMENDATORY SECTION (Amending WSR 91-05-064, filed 2/19/91, effective 3/22/91)

**WAC 173-400-240 Criminal penalties.** Persons in violation of Title 173 WAC may be subject to the provisions of RCW ((70.94.430)) 70A.15.3150.

AMENDATORY SECTION (Amending WSR 18-17-111, filed 8/16/18, effective 9/16/18)

**WAC 173-400-740 PSD permitting public involvement requirements.**

(1) **Actions requiring notification of the public.** Ecology must provide public notice before approving or denying any of the following types of actions related to implementation of the PSD program contained in WAC 173-400-720:

(a) Any preliminary determination to approve or disapprove a PSD permit application; or

(b) An extension of the time to begin construction or suspend construction under a PSD permit; or

(c) A revision to a PSD permit, except an administrative amendment to an existing permit; or

(d) Use of a modified or substituted model in Appendix W of 40 C.F.R. Part 51 (in effect on the date in WAC 173-400-025) as part of review of air quality impacts.

(2) **Notification of the public.** As expeditiously as possible after the receipt of a complete PSD application, and as expeditiously as possible after receipt of a request for extension of the construction time limit under WAC 173-400-730(6) or after receipt of a nonadministrative revision to a PSD permit under WAC 173-400-750, ecology shall:

(a) Administrative record. Make available for public inspection in at least one location in the vicinity where the proposed source would be constructed, or for revisions to a PSD permit where the permittee exists, a copy of the information submitted by the applicant, and any applicable preliminary determinations, including analyses of the effects on air quality and air quality related values, considered in making the preliminary determination. Ecology may comply with this requirement by making these materials available on ecology's website or at a physical location.

(i) Some materials comprising the administrative record (such as air quality modeling data) may be too large to post on a website but may be made available as part of the record either in hard copy or on a data storage device.

(ii) Exemptions from this requirement include information protected from disclosure under any applicable law, including, but not limited to, RCW ((70.94.205)) 70A.15.2510 and chapter 173-03 WAC.

(b) Notify the public.

(i) Public notice must be posted on ecology's website for a minimum of ((thirty)) 30 days. Day one of the public comment period begins on the next calendar day after ecology posts the public notice.

(ii) The following information must be posted for the duration of the public comment period:

(A) Public notice elements in subsection (3) of this section;

(B) PSD draft permit;

(C) PSD technical support document; and

(D) Information on how to access the administrative record.

(iii) If ecology grants a request to extend the public comment period, ecology must:

(A) Post the extension notice on the same web page where the original notice was posted;

(B) Specify the closing date of the extended comment period in the extension notice; and

(C) Distribute a copy of the extension notice by electronic means or via the United States postal service to whomever requested the extension and the organizations and individuals listed in (c) and (d) of this subsection.

(iv) If a hearing is held, the public comment period must extend through the hearing date and comply with the notice requirements in subsection (4)(c) of this section.

(v) If ecology determines a supplemental notice is appropriate, the applicant or other initiator of the action must pay the cost of providing this supplemental public notice. Supplemental notice may include, but is not limited to, publication in a newspaper of general circulation in the area of the proposed project.

(c) Distribute by electronic means or via the United States postal service a copy of the public notice to:

(i) Any Indian governing body whose lands may be affected by emissions from the project;

(ii) The chief executive of the city where the project is located;

(iii) The chief executive of the county where the project is located;

(iv) Individuals or organizations that requested notification of the specific project proposal;

(v) Other individuals who requested notification of PSD permits;

(vi) Any state within 100 km of the proposed project.

(d) Distribute by electronic means or via the United States postal service a copy of the public notice, PSD preliminary determination, and the technical support document to:

(i) The applicant;

(ii) The affected federal land manager;

(iii) EPA Region 10;

(iv) The permitting authority with authority over the source under chapter 173-401 WAC; and

(v) Individuals or organizations who request a copy.

(3) **Public notice content.** The public notice shall contain at least the following information:

- (a) The name and address of the applicant;
- (b) The location of the proposed project;
- (c) A brief description of the project proposal;
- (d) The preliminary determination to approve or disapprove the application;
- (e) How much increment is expected to be consumed by this project;
- (f) The name, address, and telephone number of the person to contact for further information;
- (g) A brief explanation of how to comment on the project;
- (h) An explanation on how to request a public hearing;
- (i) The start date and end date of the public comment period consistent with subsection (2)(b)(i) of this section;
- (j) A statement that a public hearing may be held if ecology determines within the public comment period that significant public interest exists;
- (k) The length of the public comment period in the event of a public hearing; and
- (l) For projects subject to special protection requirements for federal Class I areas, in WAC 173-400-117, and where ecology disagrees with the analysis done by the federal land manager, ecology shall explain its decision in the public notice or state that an explanation of the decision appears in the technical support document for the proposed approval or denial.

(4) **Public hearings.**

(a) The applicant, any interested governmental entity, any group, or any person may request a public hearing within the public comment period established consistent with subsection (2)(b)(i) of this section. A request must indicate the interest of the entity filing it and why a hearing is warranted. Whether a request for a hearing is filed or not, ecology may hold a public hearing if it determines significant public interest exists. Ecology will determine the location, date, and time of the public hearing.

(b) Notification of a public hearing will be accomplished per the requirements of WAC 173-400-740(2).

(c) The public must be notified at least (~~thirty~~) 30 days prior to the date of the hearing (or first of a series of hearings).

(5) **Consideration of public comments.** Ecology shall make no final decision on any application or action of any type described in subsection (1) of this section until the public comment period has ended and any comments received during the public comment period have been considered. Ecology shall make all public comments available for public inspection at the same website where the preconstruction information on the proposed major source or major modification was made available.

(6) **Issuance of a final determination.**

(a) The final approval or disapproval determination must be made within one year of receipt of a complete application and must include the following:

- (i) A copy of the final PSD permit or the determination to deny the permit;
- (ii) A summary of the comments received;
- (iii) Ecology's response to those comments;
- (iv) A description of what approval conditions changed from the preliminary determination; and

(v) A cover letter that includes an explanation of how the final determination may be appealed.

(b) Ecology shall post the final determination on the same web page where the draft permit and public notice was posted according to subsection (2)(b) of this section.

(c) Ecology shall distribute by electronic means or via the United States postal service a copy of the cover letter that accompanies the final determination to:

(i) Individuals or organizations that requested notification of the specific project proposal; and

(ii) Other individuals who requested notification of PSD permits.

(d) Ecology shall distribute a copy of the final determination to:

(i) The applicant;

(ii) U.S. Department of the Interior - National Park Service;

(iii) U.S. Department of Agriculture - Forest Service;

(iv) EPA Region 10;

(v) The permitting authority with authority over the source under chapter 173-401 WAC; and

(vi) Any person who commented on the preliminary determination.

AMENDATORY SECTION (Amending WSR 16-12-099, filed 5/31/16, effective 7/1/16)

**WAC 173-400-930 Emergency engines. (1) Applicability.**

(a) This section applies statewide except where a permitting authority has not adopted this section in rule.

(b) This section applies to diesel-fueled compression ignition emergency engines with a cumulative BHP rating greater than 500 BHP and equal to or less than 2000 BHP.

(c) This section is not applicable to emergency engines proposed to be installed as part of a new major stationary source, as defined in WAC 173-400-710 and 173-400-810, or major modification, as defined in WAC 173-400-710 and 173-400-810.

(d) In lieu of filing a notice of construction application under WAC 173-400-110, the owner or operator may comply with the requirements of this section for emergency engines.

(e) Compliance with this section satisfies the requirement for new source review of emergency engines under RCW ((~~70.94.152~~)) 70A.15.2210 and chapter 173-460 WAC.

(f) An applicant may choose to submit a notice of construction application in accordance with WAC 173-400-110 for a site specific review of criteria and toxic air pollutants in lieu of using this section's provisions.

(g) If an applicant cannot meet the requirements of this section, then they must file a notice of construction application.

(2) **Operating requirements for emergency engines.** Emergency engines using this section must:

(a) Meet EPA emission standards applicable to all new nonroad compression-ignition engines in 40 C.F.R. 89.112 Table 1 and 40 C.F.R. 1039.102 Tables 6 and 7 (in effect on the date in WAC 173-400-025), as applicable for the year that the emergency engine is put in operation.

(b) Be fueled by ultra low sulfur diesel or ultra low sulfur bio-diesel, with a sulfur content of 15 ppm or 0.0015% sulfur by weight or less.



(c) Operate a maximum of (~~fifty~~) 50 hours per year for maintenance and testing or other nonemergency use.

(3) **Definitions.**

(a) **Emergency engine** means a new diesel-fueled stationary compression ignition engine. The engine must meet all the criteria specified below. The engine must be:

(i) Installed for the primary purpose of providing electrical power or mechanical work during an emergency use and is not the source of primary power at the facility; and

(ii) Operated to provide electrical power or mechanical work during an emergency use.

(b) **Emergency use** means providing electrical power or mechanical work during any of the following events or conditions:

(i) The failure or loss of all or part of normal power service to the facility beyond the control of the facility; or

(ii) The failure or loss of all or part of a facility's internal power distribution system.

Examples of emergency operation include the pumping of water or sewage and the powering of lights.

(c) **Maintenance and testing** means operating an emergency engine to:

(i) Evaluate the ability of the engine or its supported equipment to perform during an emergency; or

(ii) Train personnel on emergency activities; or

(iii) Test an engine that has experienced a breakdown, or failure, or undergone a preventative overhaul during maintenance; or

(iv) Exercise the engine if such operation is recommended by the engine or generator manufacturer.

## OTS-5315.2

AMENDATORY SECTION (Amending WSR 23-01-102, filed 12/19/22, effective 1/19/23)

**WAC 173-400-025 Adoption by reference.** (1) Adoption by reference date: (~~August 24, 2022~~) February 12, 2025.

(2) Federal rules mentioned in this rule are adopted as they exist on the date in subsection (1) of this section. Adoption by reference means the federal rule applies as if it was copied into this rule.

AMENDATORY SECTION (Amending WSR 18-17-111, filed 8/16/18, effective 9/16/18)

**WAC 173-400-040 General standards for maximum emissions.** (1) **General requirements.**

(a) All sources and emissions units are required to meet the emission standards of this chapter. Where an emission standard listed in another chapter is applicable to a specific emissions unit, such standard takes precedence over a general emission standard listed in this chapter.

(b) When two or more emissions units are connected to a common stack and the operator elects not to provide the means or facilities to sample emissions from the individual emissions units, and the relative contributions of the individual emissions units to the common discharge are not readily distinguishable, then the emissions of the common stack must meet the most restrictive standard of any of the connected emissions units.

(c) All emissions units are required to use reasonably available control technology (RACT) which may be determined for some sources or source categories to be more stringent than the applicable emission limitations of any chapter of Title 173 WAC. Where current controls are determined to be less than RACT, the permitting authority shall, as provided in RCW (~~(70.94.154)~~) 70A.15.2230, define RACT for each source or source category and issue a rule or regulatory order requiring the installation of RACT.

(2) **Visible emissions.** No person shall cause or allow the emission for more than three minutes, in any one hour, of an air contaminant from any emissions unit which at the emission point, or within a reasonable distance of the emission point, exceeds (~~(twenty)~~) 20 percent opacity as determined by ecology method 9A. The following are exceptions to this standard:

(a) Soot blowing or grate cleaning alternate visible emission standard.

(i) This provision is in effect until the effective date of EPA's removal of the September 20, 1993, version of WAC 173-400-107 from the SIP. The opacity emission standard in subsection (2) of this section shall apply except when the emissions occur due to soot blowing/grate cleaning and the operator can demonstrate that the emissions will not exceed (~~(twenty)~~) 20 percent opacity for more than (~~(fifteen)~~) 15 minutes in any eight consecutive hours. The intent of this provision is to allow the soot blowing and grate cleaning necessary to the operation of boiler facilities. This practice, except for testing and trouble shooting, is to be scheduled for the same approximate times each day and the permitting authority must be advised of the schedule.

(ii) This provision takes effect on the effective date of EPA's removal of the September 20, 1993, version of WAC 173-400-107 from the SIP. For emissions that occur due to soot blowing or grate cleaning of a hog fuel or wood-fired boiler: Visible emissions (as determined by ecology method 9A) shall not exceed (~~(twenty)~~) 20 percent opacity; except that opacity shall not exceed (~~(forty)~~) 40 percent for up to a (~~(fifteen)~~) 15 minute period in any eight consecutive hours. For this provision to apply, the owner or operator must:

(A) Schedule the soot blowing and/or grate cleaning for the same approximate time(s) each day;

(B) Notify the permitting authority in writing of the schedule before using the (~~(forty)~~) 40 percent standard; and

(C) Maintain contemporaneous records sufficient to demonstrate compliance. Records must include the date, start time, and stop time of each episode, and the results of opacity readings conducted during this time.

(b) When the owner or operator of a source supplies valid data to show that the presence of uncombined water is the only reason for the opacity to exceed (~~(twenty)~~) 20 percent or an alternative opacity standard established in this section.

(c) When two or more emission units are connected to a common stack, the permitting authority may allow or require the use of an alternate time period if it is more representative of normal operations.

(d) When an alternative opacity limit has been established per RCW ((~~70.94.331~~)) 70A.15.3000 (2)(c), WAC 173-400-081(4) or 173-400-082.

(e) Alternative visible emission standard for a hog fuel or wood-fired boiler in operation before January 24, 2018. This provision takes effect on the effective date of EPA's removal of the September 20, 1993, version of WAC 173-400-107 from the SIP. For emissions that occur due to planned startup or shutdown of a hog fuel or wood-fired boiler with dry particulate matter controls, an owner or operator may use the alternative standard in this subsection when all of the following requirements are met.

Note: This subsection does not apply to a combustion unit with wet particulate matter controls.

(i) A planned startup or shutdown means that the owner or operator notifies the permitting authority:

(A) At least ((~~twenty-four~~)) 24 hours prior to the planned boiler startup or shutdown; or

(B) Within two hours after restarting the boiler for a startup within ((~~twenty-four~~)) 24 hours after the end of an unplanned shutdown (i.e., malfunction or upset).

Note: A shutdown due to a malfunction is part of the malfunction.

(ii) Startup begins when fuel is ignited in the boiler fire box.

(iii) Startup ends:

(A) When the boiler starts supplying useful thermal energy; or

(B) Four hours after the boiler starts supplying useful thermal energy if the facility follows the work practices in (e)(vi)(B) of this subsection.

(iv) Shutdown begins when the boiler no longer supplies useful thermal energy, or when no fuel is being fed to the boiler or process heater, whichever is earlier.

(v) Shutdown ends when the boiler or process heater no longer supplies useful thermal energy and no fuel is being combusted in the boiler.

(vi) The facility complies with one of the following requirements:

(A) Visible emissions during startup or shutdown shall not exceed ((~~forty~~)) 40 percent opacity for more than three minutes in any hour, as determined by ecology method 9A; or

(B) During startup or shutdown, the owner or operator shall:

(I) Operate all continuous monitoring systems;

(II) In the boiler, use only clean fuel identified in 5.b. in Table 3 in 40 C.F.R. Part 63, Subpart DDDDD;

(III) Engage all applicable control devices so as to comply with the ((~~twenty~~)) 20 percent opacity standard within four hours of the start of supplying useful thermal energy;

(IV) Engage and operate particulate matter control within one hour of first feeding fuels that are not clean fuels; and

(V) Develop and implement a written startup and shutdown plan.

The plan must minimize the startup period according to the manufacturer's recommended procedure. In the absence of manufacturer's recommendation, the owner or operator shall use the recommended startup procedure for a unit of a similar design. The plan must be maintained on-site and available upon request for public inspection.

(vii) The facility maintains records sufficient to demonstrate compliance with (e)(i) through (v) of this subsection. The records must include the following:

(A) The date and time of notification of the permitting authority;

(B) The date and time when startup and shutdown began;

(C) The date and time when startup and shutdown ended;

(D) The compliance option in (e)(vi) of this subsection that was chosen (either (A) or (B)) and documentation of how the conditions of that option were met.

(f) Furnace refractory alternative visible emission standard. This provision takes effect on the effective date of EPA's removal of the September 20, 1993, version of WAC 173-400-107 from the SIP. For emissions that occur during curing of furnace refractory in a lime kiln or boiler, visible emissions (as determined by ecology method 9A) shall not exceed (~~forty~~) 40 percent opacity for more than three minutes in any hour, except when (b) of this subsection applies. For this provision to apply, the owner or operator must meet all of the following requirements:

(i) The total duration of refractory curing shall not exceed (~~thirty-six~~) 36 hours; and

(ii) Use only clean fuel identified in 5.b. in Table 3 in 40 C.F.R. Part 63, Subpart DDDDD; and

(iii) The owner or operator provides a copy of the manufacturer's instructions on curing refractory to the permitting authority; and

(iv) The manufacturer's instructions on curing refractory must be followed, including all instructions on temperature increase rates and holding temperatures and time; and

(v) The emission controls must be engaged as soon as possible during the curing process; and

(vi) The permitting authority must be notified at least one working day prior to the start of the refractory curing process.

(g) Visible emissions reader certification testing. Visible emissions from the "smoke generator" used during testing and certifying visible emission readers are exempt from the (~~twenty~~) 20 percent opacity limit. Testing must follow testing and certification requirements in 40 C.F.R. Part 60, Appendix A, Test Method 9 (in effect on the date in WAC 173-400-025) and Source Test Methods 9A and 9B in *Source Test Manual - Procedures for Compliance Testing*, state of Washington, department of ecology, as of (~~September 20, 2004~~) February 12, 2025, on file at ecology.

(h) Military training exercises. Visible emissions during military obscurant training exercises are exempt from the (~~twenty~~) 20 percent opacity limit when the following requirements are met:

(i) No visible emissions shall cross the boundary of the military training site/reservation.

(ii) The operation shall have in place methods, which have been reviewed and approved by the permitting authority, to detect changes in weather that would cause the obscurant to cross the site boundary either during the course of the exercise or prior to the start of the exercise. The approved methods shall include provisions that result in cancellation of the training exercise, cease the use of obscurants during the exercise until weather conditions would allow such training to occur without causing obscurant to leave the site boundary of the military site/reservation.

(i) Firefighter training. Visible emissions from fixed and mobile firefighter training facilities occurring during the training of firefighters are exempt from the (~~twenty~~) 20 percent opacity limit. Compliance with chapter 173-425 WAC is required.

(3) **Fallout.** No person shall cause or allow the emission of particulate matter from any source to be deposited beyond the property under direct control of the owner or operator of the source in sufficient quantity to interfere unreasonably with the use and enjoyment of the property upon which the material is deposited.

(4) **Fugitive emissions.** The owner or operator of any emissions unit engaging in materials handling, construction, demolition or other operation which is a source of fugitive emission:

(a) If located in an attainment area and not impacting any nonattainment area, shall take reasonable precautions to prevent the release of air contaminants from the operation.

(b) If the emissions unit has been identified as a significant contributor to the nonattainment status of a designated nonattainment area, the owner or operator shall be required to use reasonable and available control methods, which shall include any necessary changes in technology, process, or other control strategies to control emissions of the air contaminants for which nonattainment has been designated.

(5) **Odors.** Any person who shall cause or allow the generation of any odor from any source or activity which may unreasonably interfere with any other property owner's use and enjoyment of her or his property must use recognized good practice and procedures to reduce these odors to a reasonable minimum.

(6) **Emissions detrimental to persons or property.** No person shall cause or allow the emission of any air contaminant from any source if it is detrimental to the health, safety, or welfare of any person, or causes damage to property or business.

(7) **Sulfur dioxide.** No person shall cause or allow the emission of a gas containing sulfur dioxide from any emissions unit in excess of (~~one thousand~~) 1,000 ppm of sulfur dioxide on a dry basis, corrected to seven percent oxygen for combustion sources, and based on the average of any period of (~~sixty~~) 60 consecutive minutes.

(8) **Concealment and masking.** No person shall cause or allow the installation or use of any means which conceals or masks an emission of an air contaminant which would otherwise violate any provisions of this chapter.

(9) **Fugitive dust.**

(a) The owner or operator of a source or activity that generates fugitive dust must take reasonable precautions to prevent that fugitive dust from becoming airborne and must maintain and operate the source to minimize emissions.

(b) The owner or operator of any existing source or activity that generates fugitive dust that has been identified as a significant contributor to a PM-10 or PM-2.5 nonattainment area is required to use reasonably available control technology to control emissions. Significance will be determined by the criteria found in WAC 173-400-113(4).

AMENDATORY SECTION (Amending WSR 23-01-102, filed 12/19/22, effective 1/19/23)

**WAC 173-400-050 Emission standards for combustion and incineration units.** (1) Combustion and incineration emissions units must meet all requirements of WAC 173-400-040 and, in addition, no person shall cause or allow emissions of particulate matter in excess of 0.23 gram per dry cubic meter at standard conditions (0.1 grain/dscf), except,

for an emissions unit combusting waste wood for the production of steam. No person shall allow the emission of particulate matter in excess of 0.46 gram per dry cubic meter at standard conditions (0.2 grain/dscf), as measured by 40 C.F.R. Part 60, Appendix A, Test Method 5 (in effect on the date in WAC 173-400-025) (~~or approved procedures in Source Test Manual — Procedures for Compliance Testing, state of Washington, department of ecology, as of September 20, 2004, on file at ecology.~~

~~(2) For any incinerator, no person shall cause or allow emissions in excess of one hundred ppm of total carbonyls as measured by Source Test Method 14 procedures in Source Test Manual — Procedures for Compliance Testing, state of Washington, department of ecology, as of September 20, 2004, on file at ecology. An applicable EPA reference method or other procedures to collect and analyze for the same compounds collected in the ecology method may be used if approved by the permitting authority prior to its use.~~

~~(a) )~~.

~~(2) **Incinerators** not subject to the requirements of chapter 173-434 WAC or WAC 173-400-050 (4) or (5), or requirements in WAC 173-400-075 (40 C.F.R. Part 63, Subpart EEE in effect on the date in WAC 173-400-025) and WAC 173-400-115 (40 C.F.R. Part 60, Subparts E, Ea, Eb, Ec, AAAA, and CCCC (in effect on the date in WAC 173-400-025)) shall be operated only during daylight hours unless written permission to operate at other times is received from the permitting authority.~~

~~((b) Total carbonyls means the concentration of organic compounds containing the =C=O radical as collected by Source Test Method 14 procedures in Source Test Manual — Procedures for Compliance Testing, state of Washington, department of ecology, as of September 20, 2004, on file at ecology.))~~

(3) Measured concentrations for combustion and incineration units shall be adjusted for volumes corrected to seven percent oxygen, except when the permitting authority determines that an alternate oxygen correction factor is more representative of normal operations such as the correction factor included in an applicable NSPS or NESHAP, actual operating characteristics, or the manufacturer's specifications for the emission unit.

(4) **Commercial and industrial solid waste incineration units** constructed on or before November 30, 1999. A commercial and industrial solid waste incineration unit that commenced construction on or before November 30, 1999, that meets the applicability requirements in 40 C.F.R. 62.14510, must comply with the requirements in 40 C.F.R. Part 62, Subpart GGG (in effect on the date in WAC 173-400-025).

((Note: Subsection (2) of this section (a state-only provision) does not apply to a unit subject to this subsection because this subsection is a federal requirement.))

(a) Definitions.

(i) "Commercial and industrial solid waste incineration (CISWI) unit" means any combustion device that combusts commercial and industrial waste, as defined in this subsection. The boundaries of a CISWI unit are defined as, but not limited to, the commercial or industrial solid waste fuel feed system, grate system, flue gas system, and bottom ash. The CISWI unit does not include air pollution control equipment or the stack. The CISWI unit boundary starts at the commercial and industrial solid waste hopper (if applicable) and extends through two areas:

(A) The combustion unit flue gas system, which ends immediately after the last combustion chamber.

(B) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

(ii) "Commercial and industrial solid waste" means solid waste combusted in an enclosed device using controlled flame combustion without energy recovery that is a distinct operating unit of any commercial or industrial facility (including field erected, modular, and custom built incineration units operating with starved or excess air), or solid waste combusted in an air curtain incinerator without energy recovery that is a distinct operating unit of any commercial or industrial facility.

(b) Applicability. This section applies to incineration units that meet all three criteria:

(i) The incineration unit meets the definition of CISWI unit in this subsection.

(ii) The incineration unit commenced construction on or before November 30, 1999.

(iii) The incineration unit is not exempt under (c) of this subsection.

(c) The following types of incineration units are exempt from this subsection:

(i) *Pathological waste incineration units.* Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste as defined in 40 C.F.R. 60.2265 (in effect on the date in WAC 173-400-025) are not subject to this section if you meet the two requirements specified in (c)(i)(A) and (B) of this subsection.

(A) Notify the permitting authority that the unit meets these criteria.

(B) Keep records on a calendar quarter basis of the weight of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste burned, and the weight of all other fuels and wastes burned in the unit.

(ii) *Agricultural waste incineration units.* Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of agricultural wastes as defined in 40 C.F.R. 60.2265 (in effect on the date in WAC 173-400-025) are not subject to this section if you meet the two requirements specified in (c)(ii)(A) and (B) of this subsection.

(A) Notify the permitting authority that the unit meets these criteria.

(B) Keep records on a calendar quarter basis of the weight of agricultural waste burned, and the weight of all other fuels and wastes burned in the unit.

(iii) *Municipal waste combustion units.* Incineration units that meet either of the two criteria specified in (c)(iii)(A) and (B) of this subsection.

(A) Units are regulated under 40 C.F.R. Part 60, Subpart Ea or Subpart Eb (in effect on the date in WAC 173-400-025); Spokane County Air Pollution Control Authority Regulation 1, Section 6.17 (in effect on February 13, 1999); 40 C.F.R. Part 60, Subpart AAAA (in effect on the date in WAC 173-400-025); or WAC 173-400-050(5).

(B) Units burn greater than 30 percent municipal solid waste or refuse-derived fuel, as defined in 40 C.F.R. Part 60 (in effect on the date in WAC 173-400-025), Subparts Ea, Eb, and AAAA, and WAC

173-400-050(5), and that have the capacity to burn less than 35 tons (32 megagrams) per day of municipal solid waste or refuse-derived fuel, if you meet the two requirements in (c)(iii)(B)(I) and (II) of this subsection.

(I) Notify the permitting authority that the unit meets these criteria.

(II) Keep records on a calendar quarter basis of the weight of municipal solid waste burned, and the weight of all other fuels and wastes burned in the unit.

(iv) *Medical waste incineration units.* Incineration units regulated under 40 C.F.R. Part 60, Subpart Ec (Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996) (in effect on the date in WAC 173-400-025);

(v) *Small power production facilities.* Units that meet the three requirements specified in (c)(v)(A) through (C) of this subsection.

(A) The unit qualifies as a small power-production facility under section 3 (17)(C) of the Federal Power Act (16 U.S.C. 796 (17)(C)).

(B) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity.

(C) You notify the permitting authority that the unit meets all of these criteria.

(vi) *Cogeneration facilities.* Units that meet the three requirements specified in (c)(vi)(A) through (C) of this subsection.

(A) The unit qualifies as a cogeneration facility under section 3 (18)(B) of the Federal Power Act (16 U.S.C. 796 (18)(B)).

(B) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(C) You notify the permitting authority that the unit meets all of these criteria.

(vii) *Hazardous waste combustion units.* Units that meet either of the two criteria specified in (c)(vii)(A) or (B) of this subsection.

(A) Units for which you are required to get a permit under section 3005 of the Solid Waste Disposal Act.

(B) Units regulated under 40 C.F.R. Part 63, Subpart EEE (National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors) (in effect on the date in WAC 173-400-025).

(viii) *Materials recovery units.* Units that combust waste for the primary purpose of recovering metals, such as primary and secondary smelters;

(ix) *Air curtain incinerators.* Air curtain incinerators that burn only the materials listed in (c)(ix)(A) through (C) of this subsection are only required to meet the requirements under "Air Curtain Incinerators" in 40 C.F.R. 60.2245 through 60.2260 (in effect on the date in WAC 173-400-025).

(A) 100 percent wood waste, as defined in 40 C.F.R. 60.2265.

(B) 100 percent clean lumber.

(C) 100 percent mixture of only wood waste, clean lumber, and/or yard waste, as these terms are defined in 40 C.F.R. 60.2265.

(x) *Cyclonic barrel burners.* See 40 C.F.R. 60.2265 (in effect on the date in WAC 173-400-025).

(xi) *Rack, part, and drum reclamation units.* See 40 C.F.R. 60.2265 (in effect on the date in WAC 173-400-025).

(xii) *Cement kilns.* Kilns regulated under 40 C.F.R. Part 63, Subpart LLL (National Emission Standards for Hazardous Air Pollutants



from the Portland Cement Manufacturing Industry) (in effect on the date in WAC 173-400-025).

(xiii) *Sewage sludge incinerators*. Incineration units regulated under 40 C.F.R. Part 60, Subpart O (Standards of Performance for Sewage Treatment Plants) (in effect on the date in WAC 173-400-025).

(xiv) *Chemical recovery units*. Combustion units burning materials to recover chemical constituents or to produce chemical compounds where there is an existing commercial market for such recovered chemical constituents or compounds. The seven types of units described in (c)(xiv)(A) through (G) of this subsection are considered chemical recovery units.

(A) Units burning only pulping liquors (i.e., black liquor) that are reclaimed in a pulping liquor recovery process and reused in the pulping process.

(B) Units burning only spent sulfuric acid used to produce virgin sulfuric acid.

(C) Units burning only wood or coal feedstock for the production of charcoal.

(D) Units burning only manufacturing by-product streams/residues containing catalyst metals which are reclaimed and reused as catalysts or used to produce commercial grade catalysts.

(E) Units burning only coke to produce purified carbon monoxide that is used as an intermediate in the production of other chemical compounds.

(F) Units burning only hydrocarbon liquids or solids to produce hydrogen, carbon monoxide, synthesis gas, or other gases for use in other manufacturing processes.

(G) Units burning only photographic film to recover silver.

(xv) *Laboratory analysis units*. Units that burn samples of materials for the purpose of chemical or physical analysis.

(d) Exceptions.

(i) Physical or operational changes to a CISWI unit made primarily to comply with this section do not qualify as a "modification" or "reconstruction" (as defined in 40 C.F.R. 60.2815) (in effect on the date in WAC 173-400-025).

(ii) Changes to a CISWI unit made on or after June 1, 2001, that meet the definition of "modification" or "reconstruction" as defined in 40 C.F.R. 60.2815 (in effect on the date in WAC 173-400-025) mean the CISWI unit is considered a new unit and subject to WAC 173-400-115, which adopts 40 C.F.R. Part 60, Subpart CCCC (in effect on the date in WAC 173-400-025).

(e) A CISWI unit must comply with 40 C.F.R. 60.2575 through 60.2875 (in effect on the date in WAC 173-400-025). The federal rule contains these major components:

- Increments of progress towards compliance in 60.2575 through 60.2630;
- Waste management plan requirements in 60.2620 through 60.2630;
- Operator training and qualification requirements in 60.2635 through 60.2665;
- Emission limitations and operating limits in 60.2670 through 60.2685;
- Performance testing requirements in 60.2690 through 60.2725;
- Initial compliance requirements in 60.2700 through 60.2725;
- Continuous compliance requirements in 60.2710 through 60.2725;
- Monitoring requirements in 60.2730 through 60.2735;
- Recordkeeping and reporting requirements in 60.2740 through 60.2800;

- Title V operating permits requirements in 60.2805;
- Air curtain incinerator requirements in 60.2810 through 60.2870;

- Definitions in 60.2875; and

- Tables in 60.2875. In Table 1, the final control plan must be submitted before June 1, 2004, and final compliance must be achieved by June 1, 2005.

(i) Exception to adopting the federal rule. For purposes of this section, "administrator" includes the permitting authority.

(ii) Exception to adopting the federal rule. For purposes of this section, "you" means the owner or operator.

(iii) Exception to adopting the federal rule. For purposes of this section, each reference to "the effective date of state plan approval" means July 1, 2002.

(iv) Exception to adopting the federal rule. The Title V operating permit requirements in 40 C.F.R. 60.2805(a) are not adopted. Each CISWI unit, regardless of whether it is a major or nonmajor unit, is subject to the air operating permit regulation, chapter 173-401 WAC, beginning on July 1, 2002. See WAC 173-401-500 for the permit application requirements and deadlines.

(v) Exception to adopting the federal rule. The following compliance dates apply:

(A) The final control plan (Increment 1) must be submitted no later than July 1, 2003. (See Increment 1 in Table 1.)

(B) Final compliance (Increment 2) must be achieved no later than July 1, 2005. (See Increment 2 in Table 1.)

(5) **Small municipal waste combustion units** constructed on or before August 30, 1999. A small municipal waste combustion unit constructed on or before August 30, 1999, that meets the applicability requirements in 40 C.F.R. 62.14510, must comply with the requirements in 40 C.F.R. Part 62, Subpart JJJ (in effect on the date in WAC 173-400-025).

(a) Definition. "Municipal waste combustion unit" means any setting or equipment that combusts, liquid, or gasified municipal solid waste including, but not limited to, field-erected combustion units (with or without heat recovery), modular combustion units (starved air- or excess-air), boilers (for example, steam generating units), furnaces (whether suspension-fired, grate-fired, mass-fired, air-curtain incinerators, or fluidized bed-fired), and pyrolysis/combustion units. Two criteria further define municipal waste combustion units:

(i) Municipal waste combustion units do not include the following units:

(A) Pyrolysis or combustion units located at a plastics or rubber recycling unit as specified under the exemptions in this subsection (5)(c)(viii) and (ix).

(B) Cement kilns that combust municipal solid waste as specified under the exemptions in this subsection (5)(c)(x).

(C) Internal combustion engines, gas turbines, or other combustion devices that combust landfill gases collected by landfill gas collection systems.

(ii) The boundaries of a municipal waste combustion unit are defined as follows. The municipal waste combustion unit includes, but is not limited to, the municipal solid waste fuel feed system, grate system, flue gas system, bottom ash system, and the combustion unit water system. The municipal waste combustion unit does not include air pollution control equipment, the stack, water treatment equipment, or the turbine-generator set. The municipal waste combustion unit boundary

starts at the municipal solid waste pit or hopper and extends through three areas:

(A) The combustion unit flue gas system, which ends immediately after the heat recovery equipment or, if there is no heat recovery equipment, immediately after the combustion chamber.

(B) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

(C) The combustion unit water system, which starts at the feed water pump and ends at the piping that exits the steam drum or superheater.

(b) Applicability. This section applies to a municipal waste combustion unit that meets these three criteria:

(i) The municipal waste combustion unit has the capacity to combust at least 35 tons per day of municipal solid waste but no more than 250 tons per day of municipal solid waste or refuse-derived fuel.

(ii) The municipal waste combustion unit commenced construction on or before August 30, 1999.

(iii) The municipal waste combustion unit is not exempt under (c) of this section.

(c) Exempted units. The following municipal waste combustion units are exempt from the requirements of this section:

(i) *Small municipal waste combustion units that combust less than 11 tons per day.* Units are exempt from this section if four requirements are met:

(A) The municipal waste combustion unit is subject to a federally enforceable order or order of approval limiting the amount of municipal solid waste combusted to less than 11 tons per day.

(B) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(C) The owner or operator of the unit sends a copy of the federally enforceable order or order of approval to the permitting authority.

(D) The owner or operator of the unit keeps daily records of the amount of municipal solid waste combusted.

(ii) *Small power production units.* Units are exempt from this section if four requirements are met:

(A) The unit qualifies as a small power production facility under section 3 (17)(C) of the Federal Power Act (16 U.S.C. 796 (17)(C)).

(B) The unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity.

(C) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(D) The owner or operator submits documentation to the permitting authority that the unit qualifies for the exemption.

(iii) *Cogeneration units.* Units are exempt from this section if four requirements are met:

(A) The unit qualifies as a small power production facility under section 3 (18)(C) of the Federal Power Act (16 U.S.C. 796 (18)(C)).

(B) The unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(C) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(D) The owner or operator submits documentation to the permitting authority that the unit qualifies for the exemption.

(iv) *Municipal waste combustion units that combust only tires.*

Units are exempt from this section if three requirements are met:

(A) The municipal waste combustion unit combusts a single-item waste stream of tires and no other municipal waste (the unit can co-fire coal, fuel oil, natural gas, or other nonmunicipal solid waste).

(B) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(C) The owner or operator submits documentation to the permitting authority that the unit qualifies for the exemption.

(v) *Hazardous waste combustion units.* Units are exempt from this section if the units have received a permit under section 3005 of the Solid Waste Disposal Act.

(vi) *Materials recovery units.* Units are exempt from this section if the units combust waste mainly to recover metals. Primary and secondary smelters may qualify for the exemption.

(vii) *Cofired units.* Units are exempt from this section if four requirements are met:

(A) The unit has a federally enforceable order or order of approval limiting municipal solid waste combustion to no more than 30 percent of total fuel input by weight.

(B) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(C) The owner or operator submits a copy of the federally enforceable order or order of approval to the permitting authority.

(D) The owner or operator records the weights, each quarter, of municipal solid waste and of all other fuels combusted.

(viii) *Plastics/rubber recycling units.* Units are exempt from this section if four requirements are met:

(A) The pyrolysis/combustion unit is an integrated part of a plastics/rubber recycling unit as defined in 40 C.F.R. 60.1940 (in effect on the date in WAC 173-400-025).

(B) The owner or operator of the unit records the weight, each quarter, of plastics, rubber, and rubber tires processed.

(C) The owner or operator of the unit records the weight, each quarter, of feed stocks produced and marketed from chemical plants and petroleum refineries.

(D) The owner or operator of the unit keeps the name and address of the purchaser of the feed stocks.

(ix) *Units that combust fuels made from products of plastics/rubber recycling plants.* Units are exempt from this section if two requirements are met:

(A) The unit combusts gasoline, diesel fuel, jet fuel, fuel oils, residual oil, refinery gas, petroleum coke, liquefied petroleum gas, propane, or butane produced by chemical plants or petroleum refineries that use feed stocks produced by plastics/rubber recycling units.

(B) The unit does not combust any other municipal solid waste.

(x) *Cement kilns.* Cement kilns that combust municipal solid waste are exempt.

(xi) *Air curtain incinerators.* If an air curtain incinerator as defined under 40 C.F.R. 60.1910 combusts 100 percent yard waste, then those units must only meet the requirements under 40 C.F.R. 60.1910 through 60.1930 (in effect on the date in WAC 173-400-025).

(d) Exceptions.

(i) Physical or operational changes to an existing municipal waste combustion unit made primarily to comply with this section do not qualify as a modification or reconstruction, as those terms are

defined in 40 C.F.R. 60.1940 (in effect on the date in WAC 173-400-025).

(ii) Changes to an existing municipal waste combustion unit made on or after June 6, 2001, that meet the definition of modification or reconstruction, as those terms are defined in 40 C.F.R. 60.1940 (in effect on the date in WAC 173-400-025), mean the unit is considered a new unit and subject to WAC 173-400-115, which adopts 40 C.F.R. Part 60, Subpart AAAAA (in effect on the date in WAC 173-400-025).

(e) Municipal waste combustion units are divided into two subcategories based on the aggregate capacity of the municipal waste combustion plant as follows:

(i) Class I units. Class I units are small municipal waste combustion units that are located at municipal waste combustion plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. See the definition of "municipal waste combustion plant capacity" in 40 C.F.R. 60.1940 (in effect on the date in WAC 173-400-025) for the specification of which units are included in the aggregate capacity calculation.

(ii) Class II units. Class II units are small municipal waste combustion units that are located at municipal waste combustion plants with an aggregate plant combustion capacity less than or equal to 250 tons per day of municipal solid waste. See the definition of "municipal waste combustion plant capacity" in 40 C.F.R. 60.1940 (in effect on the date in WAC 173-400-025) for the specification of which units are included in the aggregate capacity calculation.

(f) Compliance option 1.

(i) A municipal solid waste combustion unit may choose to reduce, by the final compliance date of June 1, 2005, the maximum combustion capacity of the unit to less than 35 tons per day of municipal solid waste. The owner or operator must submit a final control plan and the notifications of achievement of increments of progress as specified in 40 C.F.R. 60.1610 (in effect on the date in WAC 173-400-025).

(ii) The final control plan must, at a minimum, include two items:

(A) A description of the physical changes that will be made to accomplish the reduction.

(B) Calculations of the current maximum combustion capacity and the planned maximum combustion capacity after the reduction. Use the equations specified in 40 C.F.R. 60.1935 (d) and (e) (in effect on the date in WAC 173-400-025) to calculate the combustion capacity of a municipal waste combustion unit.

(iii) An order or order of approval containing a restriction or a change in the method of operation does not qualify as a reduction in capacity. Use the equations specified in 40 C.F.R. 60.1935 (d) and (e) (in effect on the date in WAC 173-400-025) to calculate the combustion capacity of a municipal waste combustion unit.

(g) Compliance option 2. The municipal waste combustion unit must comply with 40 C.F.R. 60.1585 through 60.1905, and 60.1935 (in effect on the date in WAC 173-400-025).

(i) The rule contains these major components:

(A) Increments of progress towards compliance in 60.1585 through 60.1640;

(B) Good combustion practices - Operator training in 60.1645 through 60.1670;

(C) Good combustion practices - Operator certification in 60.1675 through 60.1685;

- (D) Good combustion practices - Operating requirements in 60.1690 through 60.1695;
- (E) Emission limits in 60.1700 through 60.1710;
- (F) Continuous emission monitoring in 60.1715 through 60.1770;
- (G) Stack testing in 60.1775 through 60.1800;
- (H) Other monitoring requirements in 60.1805 through 60.1825;
- (I) Recordkeeping reporting in 60.1830 through 60.1855;
- (J) Reporting in 60.1860 through 60.1905;
- (K) Equations in 60.1935;
- (L) Tables 2 through 8.

(ii) Exception to adopting the federal rule. For purposes of this section, each reference to the following is amended in the following manner:

- (A) "State plan" in the federal rule means WAC 173-400-050(5).
- (B) "You" in the federal rule means the owner or operator.
- (C) "Administrator" includes the permitting authority.
- (D) "The effective date of the state plan approval" in the federal rule means December 6, 2002.
- (h) Compliance schedule.
- (i) Small municipal waste combustion units must achieve final compliance or cease operation not later than December 1, 2005.
- (ii) Small municipal waste combustion units must achieve compliance by May 6, 2005, for all Class II units, and by November 6, 2005, for all Class I units.

(iii) Class I units must comply with these additional requirements:

(A) The owner or operator must submit the dioxins/furans stack test results for at least one test conducted during or after 1990. The stack test must have been conducted according to the procedures specified under 40 C.F.R. 60.1790 (in effect on the date in WAC 173-400-025).

(B) Class I units that commenced construction after June 26, 1987, must comply with the dioxins/furans and mercury limits specified in Tables 2 and 3 in 40 C.F.R. Part 60, Subpart BBBB (in effect on the date in WAC 173-400-025) by the later of two dates:

- (I) December 6, 2003; or
- (II) One year following the issuance of an order of approval (revised construction approval or operation permit) if an order or order of approval or operation modification is required.

(i) Air operating permit. Applicability to chapter 173-401 WAC, the air operating permit regulation, begins on July 1, 2002. See WAC 173-401-500 for the permit application requirements and deadlines.

(6) **Hazardous/medical/infectious waste incinerators** constructed on or before December 1, 2008. Hospital/medical/infectious waste incinerators constructed on or before December 1, 2008, must comply with the requirements in 40 C.F.R. Part 62, Subpart HHH (in effect on the date in WAC 173-400-025).

AMENDATORY SECTION (Amending WSR 18-22-006, filed 10/25/18, effective 11/25/18)

**WAC 173-400-060 Emission standards for general process units.**

General process units are required to meet all applicable provisions of WAC 173-400-040 and, no person shall cause or allow the emission of particulate material from any general process operation in excess of

0.23 grams per dry cubic meter at standard conditions (0.1 grain/dscf) of exhaust gas. Test methods from 40 C.F.R. Parts 51, 60, 61, and 63 (in effect on the date in WAC 173-400-025) (~~and any other approved test procedures in ecology's "Source Test Manual - Procedures For Compliance Testing" as of September 20, 2004,~~) must be used to determine compliance.

AMENDATORY SECTION (Amending WSR 18-22-006, filed 10/25/18, effective 11/25/18)

**WAC 173-400-105 Records, monitoring, and reporting.** The owner or operator of a source must upon notification by ecology, maintain records on the type and quantity of emissions from the source and other information deemed necessary to determine whether the source is in compliance with applicable emission limitations and control measures.

(1) **Emission inventory.** The owner and operator of an air contaminant source must submit an inventory of emissions from the source each year. The inventory must include stack and fugitive emissions of particulate matter, PM-10, PM-2.5, sulfur dioxide, oxides of nitrogen, carbon monoxide, total reduced sulfur compounds (TRS), fluorides, lead, VOCs, ammonia, and other contaminants. Sources must provide registration information in a manner prescribed by the permitting authority for the submittal of these inventories. When the permitting authority requests emission inventory information for a calendar year, the owner or operator must submit the emissions inventory no later than April 15th after the end of the calendar year for which the emissions inventory was requested. If April 15th falls on a weekend, then the deadline to file shall be the next business day. The owner and operator must maintain records of information necessary to substantiate any reported emissions, consistent with the averaging times for the applicable standards. The owner or operator may base emission estimates used in the inventory on the most recent published EPA emission factors for a source category, or other information available to the owner and operator, whichever is the better estimate.

(2) **Monitoring.** Ecology must conduct a continuous surveillance program to monitor the quality of the ambient atmosphere as to concentrations and movements of air contaminants. As a part of this program, the director of ecology or an authorized representative may require any source under the jurisdiction of ecology to conduct stack and/or ambient air monitoring and to report the results to ecology.

(3) **Investigation of conditions.** Upon presentation of appropriate credentials, for the purpose of investigating conditions specific to the control, recovery, or release of air contaminants into the atmosphere, personnel from ecology or an authority must have the power to enter at reasonable times upon any private or public property, excepting nonmultiple unit private dwellings housing one or two families.

(4) **Source testing.** To demonstrate compliance, the permitting authority may conduct or require that the owner or operator of a source conduct a test using approved test methods from 40 C.F.R. Parts 51, 60, 61, 62, 63, 75 and 1065, as applicable (in effect on the date in WAC 173-400-025) or procedures contained in "Source Test Manual - Procedures for Compliance Testing," state of Washington, department of ecology, as of (~~September 20, 2004~~) February 12, 2025, on file at ecology. The permitting authority may require the operator of a source to provide the necessary platform and sampling ports for ecology per-

sonnel or others to perform a test of an emissions unit. The source owner or operator must allow the permitting authority to obtain a sample from any emissions unit. The permitting authority shall give the operator of the source an opportunity to observe the sampling and to obtain a sample at the same time.

(5) **Continuous monitoring and recording.** Owners and operators of the following categories of sources must install, calibrate, maintain and operate equipment for continuously monitoring and recording those emissions specified.

(a) Fossil fuel-fired steam generators.

(i) Opacity, except where:

(A) Steam generator capacity is less than (~~two hundred fifty million~~) 250,000,000 BTU per hour heat input; or

(B) Only gaseous fuel is burned.

(ii) Sulfur dioxide, except where steam generator capacity is less than (~~two hundred fifty million~~) 250,000,000 BTU per hour heat input or if sulfur dioxide control equipment is not required.

(iii) Percent oxygen or carbon dioxide where such measurements are necessary for the conversion of sulfur dioxide continuous emission monitoring data.

(iv) General exception. These requirements do not apply to a fossil fuel-fired steam generator with an annual average capacity factor of less than (~~thirty~~) 30 percent, as reported to the Federal Power Commission for calendar year 1974, or as otherwise demonstrated to ecology or the authority by the owner(s) or operator(s).

(b) **Sulfuric acid plants.** Sulfur dioxide where production capacity is more than (~~three hundred~~) 300 tons per day, expressed as (~~one hundred~~) 100 percent acid, except for those facilities where conversion to sulfuric acid is used primarily as a means of preventing emissions to the atmosphere of sulfur dioxide or other sulfur compounds.

(c) Fluid bed catalytic cracking units catalyst regenerators at petroleum refineries. Opacity where fresh feed capacity is more than (~~twenty thousand~~) 20,000 barrels per day.

(d) Wood residue fuel-fired steam generators.

(i) Opacity, except where steam generator capacity is less than (~~one hundred million~~) 100,000,000 BTU per hour heat input.

(ii) Continuous monitoring equipment. The requirements of (e) of this subsection do not apply to wood residue fuel-fired steam generators, but continuous monitoring equipment required by (d) of this subsection must be subject to approval by ecology.

(e) Owners and operators of those sources required to install continuous monitoring equipment under this subsection must demonstrate to ecology or the authority, compliance with the equipment and performance specifications and observe the reporting requirements contained in 40 C.F.R. Part 51, Appendix P, Sections 3, 4 and 5 (in effect on the date in WAC 173-400-025).

(f) Special considerations. If for reason of physical plant limitations or extreme economic situations, ecology determines that continuous monitoring is not a reasonable requirement, the permitting authority will establish alternative monitoring and reporting procedures on an individual basis. These will generally take the form of stack tests conducted at a frequency sufficient to establish the emission levels over time and to monitor deviations in these levels.

(g) Exemptions. This subsection (5) does not apply to any emission unit which is:

(i) Required to continuously monitor emissions due to a standard or requirement contained in 40 C.F.R. Parts 60, 61, 62, 63, or 75 (all



in effect on the date in WAC 173-400-025) or a permitting authority's adoption by reference of the federal standards. Emission units and sources subject to those standards must comply with the data collection requirements that apply to those standards.

(ii) Not subject to an applicable emission standard.

(6) No person shall make any false material statement, representation or certification in any form, notice or report required under chapter ((70.94)) 70A.15 or ((70.120)) 70A.25 RCW, or any ordinance, resolution, regulation, permit or order in force pursuant thereto.

(7) Continuous emission monitoring system operating requirements. All continuous emission monitoring systems (CEMS) required by 40 C.F.R. Parts 60, 61, 62, 63, or 75 (all in effect on the date in WAC 173-400-025), or a permitting authority's adoption of those federal standards must meet the continuous emission monitoring systems (CEMS) performance specifications and data recovery requirements imposed by those standards. All CEMS required under an order, PSD permit, or regulation issued by a permitting authority and not subject to CEMS performance specifications and data recovery requirements imposed by 40 C.F.R. Parts 60, 61, 62, 63, or 75 must follow the continuous emission monitoring rule of the permitting authority, or if the permitting authority does not have a continuous emission monitoring rule, must meet the following requirements:

(a) The owner or operator must recover valid hourly monitoring data for at least ((~~ninety-five~~)) 95 percent of the hours that the equipment (required to be monitored) is operated during each calendar month except for periods of monitoring system downtime, provided that the owner or operator demonstrated that the downtime was not a result of inadequate design, operation, or maintenance, or any other reasonably preventable condition, and the source conducts any necessary repairs to the monitoring system in a timely manner.

Note: This means that a continuous emissions monitor (CEM) must provide valid data for all but ((~~thirty-six~~)) 36 hours for each month (((~~ninety-five~~)) 95 percent standard).

(b) The owner or operator must install a continuous emission monitoring system that meets the performance specification in 40 C.F.R. Part 60, Appendix B in effect at the time of its installation, and must operate this monitoring system in accordance with the quality assurance procedures in Appendix F of 40 C.F.R. Part 60 (in effect on the date in WAC 173-400-025), and EPA's "Recommended Quality Assurance Procedures for Opacity Continuous Monitoring Systems" (EPA) 340/1-86-010.

(c) An owner or operator must reduce monitoring data commencing on the clock hour and containing at least ((~~forty-five~~)) 45 minutes of monitoring data to one hour averages. An owner or operator must reduce monitoring data for opacity six minute block averages unless otherwise specified in the order of approval or permit. An owner or operator must include all monitoring data in these averages except for data collected during calibration drift tests and cylinder gas audits, and for data collected subsequent to a failed quality assurance test or audit. After a failed quality assurance test or audit, a source must collect no valid data until the monitoring system passes a quality assurance test or audit.

(d) An owner or operator must maintain continuous operation of all continuous monitoring systems except for instances of system breakdowns, repairs, calibration checks, and zero and span adjustments required under (a) of this subsection.

(i) Continuous monitoring systems for measuring opacity shall complete a minimum of one cycle of sampling and analyzing for each

successive (~~ten~~) 10 second period and one cycle of data recording for each successive six minute period.

(ii) Continuous monitoring systems for measuring emissions other than opacity must complete a minimum of one cycle of sampling, analyzing, and recording for each successive (~~fifteen~~) 15 minute period.

(e) The owner or operator must retain all monitoring data averages for at least five years, including copies of all reports submitted to the permitting authority and records of all repairs, adjustments, and maintenance performed on the monitoring system.

(f) The owner or operator must submit a monthly report (or other frequency as directed by terms of an order, air operating permit or regulation) to the permitting authority within (~~thirty~~) 30 days after the end of the month (or other specified reporting period) in which the owner or operator recorded the data. The owner or operator may combine the report required by this section with any excess emission report required by WAC 173-400-108. This report must include:

(i) The number of hours that the monitored emission unit operated each month and the number of valid hours of monitoring data that the monitoring system recovered each month;

(ii) The date, time period, and cause of each failure to meet the data recovery requirements of (a) of this subsection and any actions taken to ensure adequate collection of such data;

(iii) The date, time period, and cause of each failure to recover valid hourly monitoring data for at least (~~ninety~~) 90 percent of the hours that the equipment (required to be monitored) was operated each day;

Note: A continuous emissions monitor (CEM) must provide valid data for all but two hours per day (~~ninety~~) 90 percent standard).

(iv) The results of all cylinder gas audits conducted during the month; and

(v) A certification of truth, accuracy, and completeness signed by an authorized representative of the owner or operator.

(8) No person shall render inaccurate any monitoring device or method required under chapter (~~70.94~~) 70A.15 or (~~70.120~~) 70A.25 RCW, or any ordinance, resolution, regulation, permit, or order in force pursuant thereto.

## OTS-5721.1

AMENDATORY SECTION (Amending WSR 16-05-003, filed 2/3/16, effective 3/5/16)

**WAC 173-401-200 Definitions.** The definitions of terms contained in chapter 173-400 WAC are incorporated by reference, unless otherwise defined here. Unless a different meaning is clearly required by context, the following words and phrases, as used in this chapter, shall have the following meanings:

(1) **"Affected source"** means a source that includes one or more affected units.

(2) **"Affected states"** are the states or federally recognized Tribal Nations:

(a) Whose air quality may be affected when a chapter 401 permit, permit modification, or permit renewal is being proposed; or

(b) That are within (~~(fifty)~~) 50 miles of the permitted source.

(3) **"Affected unit"** means a fossil-fuel fired combustion device or a source that opts-in under 40 C.F.R. part 74, that is subject to any emission reduction requirement or limitation under the Acid Rain Program.

(4) **"Applicable requirement"** means all of the following as they apply to emissions units in a chapter 401 source (including requirements that have been promulgated or approved by EPA, ecology or a local authority through rule making at the time of permit issuance but have future-effective compliance dates):

(a) The following provisions of the Federal Clean Air Act (FCAA):

(i) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rule making under Title I of the FCAA (Air Pollution Prevention and Control) that implements the relevant requirements of the FCAA, including any revisions to that plan promulgated in 40 C.F.R. 52;

(ii) Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rule making under Title I, including parts C (Prevention of Significant Deterioration) or D (Plan Requirements for Nonattainment Areas), of the FCAA;

(iii) Any standard or other requirement under section 111 (New Source Performance Standards) of the FCAA, including section 111(d);

(iv) Any standard or other requirement under section 112 (Hazardous Air Pollutants) of the FCAA, including any requirement concerning accident prevention under section 112 (r) (7) of the FCAA;

(v) Any standard or other requirement of the acid rain program under Title IV of the FCAA (Acid Deposition Control) or the regulations promulgated thereunder;

(vi) Any requirements established pursuant to section 504(b) or section 114 (a) (3) of the FCAA;

(vii) Any standard or other requirement governing solid waste incineration, under section 129 of the FCAA;

(viii) Any standard or other requirement for consumer and commercial products, under section 183(e) of the FCAA;

(ix) Any standard or other requirement for tank vessels, under section 183(f) of the FCAA;

(x) Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under section 328 of the FCAA;

(xi) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the FCAA, unless the administrator has determined that such requirements need not be contained in a Title V permit; and

(xii) Any national ambient air quality standard or increment or visibility requirement under part C of Title I of the FCAA, but only as it would apply to temporary sources permitted pursuant to WAC 173-401-635.

(b) Chapter (~~(70-94)~~) 70A.15 RCW and rules adopted thereunder. This includes requirements in regulatory orders issued by the permitting authority.

(c) In permits issued by local air pollution control authorities, the requirements of any order or regulation adopted by the authority.

(d) Chapter (~~(70-98)~~) 70A.388 RCW and rules adopted thereunder.

(e) Chapter 80.50 RCW and rules adopted thereunder.

(5) **"Chapter 401 permit"** or **"permit"** means any permit or group of permits covering a chapter 401 source that is issued, renewed, amended, or revised pursuant to this chapter.

- (6) "**Chapter 401 source**" means any source subject to the permitting requirements of this chapter.
- (7) "**Continuous compliance**" means collection of all monitoring data required by the permit under the data collection frequency required by the permit, with no deviations, and no other information that indicates deviations, except for unavoidable excess emissions or other operating conditions during which compliance is not required. Monitoring data includes information from instrumental (e.g., CEMS, COMS, or parameter monitors) and noninstrumental (e.g., visual observation, inspection, recordkeeping) forms of monitoring.
- (8) "**Delegated authority**" means an air pollution control authority that has been delegated the permit program pursuant to RCW (~~(70.94.161)~~) 70A.15.2260 (2) (b).
- (9) "**Designated representative**" shall have the meaning given to it in section 402(26) of the FCAA and the regulations promulgated thereunder and in effect on April 7, 1993.
- (10) "**Draft permit**" means the version of a permit for which the permitting authority offers public participation or affected state review.
- (11) "**Emissions allowable under the permit**" means an enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or an enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.
- (12) "**Emissions unit**" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under section 112(b) of the FCAA. This term is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the FCAA.
- (13) The "**EPA**" or the "**administrator**" means the administrator of the U.S. Environmental Protection Agency or her/his designee.
- (14) "**Federal Clean Air Act**" or "**FCAA**" means the Federal Clean Air Act, also known as Public Law 88-206, 77 Stat. 392. December 17, 1963, 42 U.S.C. 7401 et seq., as last amended by the Clean Air Act Amendments of 1990, P.L. 101-549, November 15, 1990.
- (15) "**Final permit**" means the version of a chapter 401 permit issued by the permitting authority that has completed all review procedures required by this chapter and 40 C.F.R. §§ 70.7 and 70.8.
- (16) "**General permit**" means a permit which covers multiple similar sources or emissions units in lieu of individual permits being issued to each source.
- (17) "**Insignificant activity**" or "**insignificant emissions unit**" means any activity or emissions unit located at a chapter 401 source which qualifies as insignificant under the criteria listed in WAC 173-401-530. These units and activities are exempt from permit program requirements except as provided in WAC 173-401-530.
- (18) "**Intermittent compliance**" means any form of compliance other than continuous compliance. A certification of intermittent compliance under WAC 173-401-630(5) shall be filed where the monitoring data or other information available to the permittee shows either there are periods of noncompliance, or periods of time during which the monitoring required by the permit was not performed or recorded.
- (19) "**Major source**" means any stationary source (or any group of stationary sources) that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control) belonging to a single major industrial

grouping and that are described in (a), (b), or (c) of this subsection. For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same major group (i.e., all have the same two-digit code) as described in the *Standard Industrial Classification Manual*, 1987.

(a) A major source under section 112 of the FCAA, which is defined as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, (~~ten~~) 10 tons per year (tpy) or more of any hazardous air pollutant which has been listed pursuant to section 112(b) of the FCAA, or (~~twenty-five~~) 25 tpy or more of any combination of such hazardous air pollutants. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or

(b) A major stationary source of air pollutants, as defined in section 302 of the FCAA, that directly emits or has the potential to emit, (~~one hundred~~) 100 tpy or more of any air pollutant subject to regulation (including any major source of fugitive emissions of any such pollutant). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of this section, unless the source belongs to one of the following categories of stationary source:

- (i) Coal cleaning plants (with thermal dryers);
- (ii) Kraft pulp mills;
- (iii) Portland cement plants;
- (iv) Primary zinc smelters;
- (v) Iron and steel mills;
- (vi) Primary aluminum ore reduction plants;
- (vii) Primary copper smelters;
- (viii) Municipal incinerators capable of charging more than (~~two hundred fifty~~) 250 tons of refuse per day;
- (ix) Hydrofluoric, sulfuric, or nitric acid plants;
- (x) Petroleum refineries;
- (xi) Lime plants;
- (xii) Phosphate rock processing plants;
- (xiii) Coke oven batteries;
- (xiv) Sulfur recovery plants;
- (xv) Carbon black plants (furnace process);
- (xvi) Primary lead smelters;
- (xvii) Fuel conversion plants;
- (xviii) Sintering plants;
- (xix) Secondary metal production plants;
- (xx) Chemical process plants;
- (xxi) Fossil-fuel boilers (or combination thereof) totaling more than (~~two hundred fifty million~~) 250,000,000 British thermal units per hour heat input;
- (xxii) Petroleum storage and transfer units with a total storage capacity exceeding (~~three hundred thousand~~) 300,000 barrels;
- (xxiii) Taconite ore processing plants;
- (xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil-fuel-fired steam electric plants of more than (~~two hundred fifty million~~) 250,000,000 British thermal units per hour heat input; or

(xxvii) All other stationary source categories, which as of August 7, 1980, were being regulated by a standard promulgated under section 111 or 112 of the FCAA;

(c) A major stationary source as defined in part D of Title I of the FCAA, including:

(i) For ozone nonattainment areas, sources with the potential to emit (~~one hundred~~) 100 tpy or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," (~~fifty~~) 50 tpy or more in areas classified as "serious," (~~twenty-five~~) 25 tpy or more in areas classified as "severe," and (~~ten~~) 10 tpy or more in areas classified as "extreme"; except that the references in this paragraph to (~~one hundred, fifty, twenty-five, and ten~~) 100, 50, 25, and 10 tpy of nitrogen oxides shall not apply with respect to any source for which the administrator has made a finding, under section 182 (f) (1) or (2) of the FCAA, that requirements under section 182(f) of the FCAA do not apply;

(ii) For ozone transport regions established pursuant to section 184 of the FCAA, sources with the potential to emit (~~fifty~~) 50 tpy or more of volatile organic compounds;

(iii) For carbon monoxide nonattainment areas (A) that are classified as "serious," and (B) in which stationary sources contribute significantly to carbon monoxide levels, sources with the potential to emit (~~fifty~~) 50 tpy or more of carbon monoxide; and

(iv) For particulate matter (PM-10) nonattainment areas classified as "serious," sources with the potential to emit (~~seventy~~) 70 tpy or more of PM-10.

(20) "**Permit modification**" means a revision to a chapter 401 permit that meets the requirements of WAC 173-401-725.

(21) "**Permit program costs**" means all reasonable (direct and indirect) costs required to develop and administer a permit program (whether such costs are incurred by the permitting authority or other state or local agencies that do not issue permits directly, but that support permit issuance or administration).

(22) "**Permit revision**" means any permit modification or administrative permit amendment.

(23) "**Permitting authority**" means the department of ecology, local air authority, or other agency authorized under RCW (~~70.94.161~~) 70A.15.2260 (3)(b) and approved by EPA to carry out a permit program under this chapter.

(24) "**Potential to emit**" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the administrator. This term does not alter or affect the use of this term for any other purposes under the FCAA, or the term "capacity factor" as used in Title IV of the FCAA or the regulations promulgated thereunder.

(25) "**Proposed permit**" means the version of a permit that the permitting authority proposes to issue and forwards to the administrator for review in compliance with 40 C.F.R. 70.8.

(26) **"Regulated air pollutant"** means the following:

(a) Nitrogen oxides or any volatile organic compounds;

(b) Any pollutant for which a national ambient air quality standard has been promulgated;

(c) Any pollutant that is subject to any standard promulgated under section 111 of the FCAA;

(d) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the FCAA; or

(e) Any pollutant subject to a standard promulgated under section 112 or other requirements established under section 112 of the FCAA, including sections 112 (g), (j), and (r), including the following:

(i) Any pollutant subject to requirements under section 112(j) of the FCAA. If the administrator fails to promulgate a standard by the date established pursuant to section 112(e) of the FCAA, any pollutant for which a subject source would be major shall be considered to be regulated on the date (~~eighteen~~) 18 months after the applicable date established pursuant to section 112(e) of the FCAA; and

(ii) Any pollutant for which the requirements of section 112 (g) (2) of the FCAA have been met, but only with respect to the individual source subject to section 112 (g) (2) requirement; and

(f) Any air pollutant for which numerical emission standards, operational requirements, work practices, or monitoring requirements applicable to the source have been adopted under RCW (~~70.94.331, 70.94.380, and 70.94.395~~) 70A.15.3000, 70A.15.3050, and 70A.15.3080.

(27) **"Regulated pollutant (for fee calculation),"** which is used only for purposes of WAC 173-401-900, means any "regulated air pollutant" except the following:

(a) Carbon monoxide;

(b) Any pollutant that is a regulated air pollutant solely because it is a Class I or II substance subject to a standard promulgated under or established by Title VI of the FCAA; or

(c) Any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under section 112(r) of the FCAA.

(d) Any regulated air pollutant emitted from an insignificant activity or emissions unit as determined under WAC 173-401-530.

(28) **"Renewal"** means the process by which a permit is reissued at the end of its term.

(29) **"Responsible official"** means one of the following:

(a) For a corporation: 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 a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) The facilities employ more than (~~two hundred fifty~~) 250 persons or have gross annual sales or expenditures exceeding (~~forty-three million~~) \$43,000,000 in 1992 dollars; or

(ii) The delegation of authority to such representative is approved in advance by the permitting authority;

(b) For a partnership or sole proprietorship: A general partner or the proprietor, respectively;

(c) For a municipality, state, federal, or other public agency: Either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a federal agency includes the chief executive officer having responsibility for

the overall operations of a principal geographic unit of the agency (e.g., a regional administrator of EPA); or

(d) For affected sources:

(i) The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the FCAA or the regulations promulgated thereunder and in effect on April 7, 1993 are concerned; and

(ii) The designated representative for any other purposes under 40 C.F.R. Part 70.

(30) "**Section 502 (b) (10) changes**" are changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene enforceable permit terms and conditions that are monitoring (including test methods), record-keeping, reporting, or compliance certification requirements.

(31) "**Small business stationary source**" means a stationary source that:

(a) Is owned or operated by a person that employs (~~one hundred~~) 100 or fewer individuals;

(b) Is a small business concern as defined in the Federal Small Business Act;

(c) Is not a major source;

(d) Does not emit (~~fifty~~) 50 tons or more per year of any regulated pollutant; and

(e) Emits less than (~~seventy-five~~) 75 tons per year of all regulated pollutants.

(32) "**Solid waste incineration unit**" (for purposes of this chapter) means a distinct operating unit of any facility which combusts any solid waste material from commercial or industrial establishments or the general public (including single and multiple residences, hotels, and motels). Such term does not include incinerators or other units required to have a permit under section 3005 of the Solid Waste Disposal Act (42 U.S.C. 6925). The term "solid waste incineration unit" does not include:

(a) Materials recovery facilities (including primary or secondary smelters) which combust waste for the primary purpose of recovering metals;

(b) Qualifying small power production facilities, as defined in section (3)(17)(C) of the Federal Power Act (16 U.S.C. 796 (17)(C)) or qualifying cogeneration facilities as defined in section (3)(18)(B) of the Federal Power Act (16 U.S.C. 796 (18)(B)), which burn homogeneous waste (such as units which burn tires or used oil, but not including refuse-derived fuel) for the production of electric energy or in the case of qualifying cogeneration facilities which burn homogeneous waste for the production of electric energy and steam or forms of useful energy (such as heat) which are used for industrial, commercial, heating, or cooling purposes; or

(c) Air curtain incinerators provided that such incinerators only burn wood wastes, yard wastes, and clean lumber and that such air curtain incinerators comply with opacity limitations to be established by the administrator by rule.

(33) "**State**" means any nonfederal permitting authority, including any local agency, interstate association, or statewide program.

(34) "**Stationary source**" means any building, structure, facility, or installation that emits or may emit any air contaminant. For purposes of this chapter, air contaminants include any regulated air pollutant or any pollutant listed under section 112(b) of the FCAA.



(35) **"Subject to regulation"** means, for any air pollutant, that the pollutant is subject to either a provision in the FCAA, or a nationally applicable regulation codified by EPA in subchapter C of 40 C.F.R. chapter 1 (in effect on October 6, 2010), that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

(a) Greenhouse gases (GHGs), the air pollutant defined in 40 C.F.R. 86.1818-12(a) as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation under this chapter unless, as of January 2, 2011, the GHG emissions are at a stationary source emitting or having the potential to emit 100,000 tpy CO<sub>2</sub> equivalent emissions and the source is otherwise required to have an operating permit.

(b) The term "tpy (tons per year) CO<sub>2</sub> equivalent emissions" (CO<sub>2</sub>e) shall represent an amount of GHGs emitted, and shall be computed by multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A-1 to subpart A of 40 C.F.R. part 98 - Global Warming Potentials, and summing the resultant value for each to compute a tpy CO<sub>2</sub>e. For purposes of this subsection (b), prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of nonfossilized and biodegradable organic material originating from plants, animals, or microorganisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the nonfossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of nonfossilized and biodegradable organic material).

(36) **"Title I modification"** or **"modification under any provision of Title I of the FCAA"** means any modification under Sections 111 (Standards of Performance for New Stationary Sources) or 112 (Hazardous Air Pollutants) of the FCAA and any physical change or change in the method of operations that is subject to the preconstruction review regulations promulgated under Parts C (Prevention of Significant Deterioration) and D (Plan Requirements for Nonattainment Areas) of Title I of the FCAA.

AMENDATORY SECTION (Amending WSR 16-05-003, filed 2/3/16, effective 3/5/16)

**WAC 173-401-300 Applicability.** (1) Chapter 401 sources. The provisions of this chapter apply in all areas of the state of Washington to the following sources:

(a) Any source required by the FCAA to have an operating permit. These include the following sources:

(i) Any major source as defined in WAC 173-401-200.

(ii) Any source, including an area source, subject to a standard, limitation, or other requirement under section 111 (Standards of Performance for New Stationary Sources) of the FCAA. A small municipal waste combustion unit constructed on or before August 30, 1999, and

regulated under WAC 173-400-050(5) becomes subject to this chapter on July 1, 2002.

(iii) Any source, including an area source, subject to a standard or other requirement under section 112 of the FCAA, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under section 112(r) (Prevention of Accidental Releases) of the FCAA.

(iv) Any solid waste incineration units required to obtain permits under section 129 of the FCAA.

A commercial and industrial solid waste incineration unit constructed on or before November 30, 1999, and regulated under WAC 173-400-050(4) becomes subject to this chapter on July 1, 2002.

(v) Any "affected source" regulated under Title IV (Acid Deposition Control) of the FCAA.

(vi) Any source in a source category designated by the EPA pursuant to 40 C.F.R. Part 70, as amended through April 7, 1993.

(b) Any source that the permitting authority determines may cause or contribute to air pollution in such quantity as to create a threat to the public health or welfare under RCW ((70.94.161)) 70A.15.2260(4) using the procedures in subsection (5) of this section.

(c) Any other source which chooses to apply for a permit.

(d) A municipal solid waste landfill constructed, reconstructed or modified before May 30, 1991, and regulated under WAC 173-400-070(9) becomes subject to this chapter on September 20, 2001.

Note: Under 40 C.F.R. 62.14352(e) (in effect on July 1, 2000), an affected landfill must have submitted its chapter 401 application so that by April 6, 2001, the permitting agency was able to determine that it was timely and complete. Under 40 C.F.R. 70.7(b), an affected source may not operate if it has not submitted a timely and complete application.

(2) Source category exemptions.

(a) All sources listed in subsection (1)(a) of this section that are not major sources, affected sources, or solid waste incineration units required to obtain a permit pursuant to section 129(e) of the FCAA, are exempted from the obligation to obtain a chapter 401 permit until such time that: The administrator completes a rule making to determine how the program should be structured for nonmajor sources and determines that such sources must obtain operating permits and ecology completes a rule making to adopt EPA's revised applicability criteria.

(b) Subsection (2)(a) of this section shall not apply to nonmajor sources subject to a standard or other requirement established under either section 111 or section 112 of the FCAA after July 21, 1992, if, during those rule makings, the administrator determines that such sources must obtain a permit at an earlier date and, subsequently, ecology completes a rule making to adopt EPA's applicability criteria.

(c) Any source listed in (a) of this subsection exempt from the requirement to obtain a permit under this section may opt to apply for a permit under this chapter.

(d) The following source categories are exempt from the obligation to obtain permit:

(i) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 C.F.R. Part 60, Subpart AAA - Standards of Performance for New Residential Wood Heaters; and

(ii) All sources and source categories that would be required to obtain a permit solely because they are subject to part 61, Subpart M - National Emission Standard for Hazardous Air Pollutants for Asbestos, section 61.145, Standard for Demolition and Renovation.

(3) Emissions units and chapter 401 sources.

(a) For major sources, the permitting authority shall include in the permit all applicable requirements for all relevant emissions units in the major source.

(b) For any nonmajor source, the permitting authority shall include in the permit all applicable requirements applicable to the emission units that cause the source to be subject to this chapter.

(4) Fugitive emissions. Fugitive emissions from a chapter 401 source shall be included in the permit application and the permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

(5) Process for determining threat to public health or welfare. The following criteria shall be used to identify sources that are covered pursuant to subsection (1)(b) of this section:

(a) The source may cause or contribute to air pollution in such quantity as to create a violation of any ambient air quality standard as demonstrated by a dispersion modeling analysis performed in accordance with EPA's dispersion modeling guidelines, monitoring, or other appropriate methods; or

(b) The source may cause or contribute to air pollution in such quantity as to create a significant ambient level of any toxic air pollutant contained in chapter 173-460 WAC as demonstrated by a dispersion modeling analysis done in accordance with EPA's dispersion modeling guidelines, monitoring, or other appropriate methods.

(c) Small business stationary sources otherwise covered under (a) and (b) of this subsection are exempt except when all of the following requirements are satisfied:

(i) The source is in an area that currently exceeds or has been projected by ecology to exceed within five years any federal or state air quality standard. Prior to determining that any area threatens to exceed a standard, ecology shall hold a public hearing or hearings within the threatened area.

(ii) Ecology provides justification that requiring a source to have a permit is necessary to meet or to prevent exceeding a federal or state air quality standard.

(6) Permitting authorities shall develop and maintain a list of names of chapter 401 sources within their jurisdictions. This list shall be made available to the public. A chapter 401 source inadvertently omitted from this list is not exempted from the requirement to obtain a permit under this chapter.

(7) Legally and practicably enforceable limits. Any source which is defined as a chapter 401 source solely because its potential to emit exceeds the annual tonnage thresholds defined in WAC 173-401-200 shall be exempt from the requirement to obtain an operating permit when legally and practicably enforceable conditions which limit that source's potential to emit to levels below the relevant tonnage thresholds have been established for that source.

(a) In applying for an exemption under this subsection, the owner or operator of the source shall demonstrate to the permitting authority that the source's potential to emit, taking into account any legally and practicably enforceable restrictions assumed by the source, does not exceed the tonnage thresholds defined in WAC 173-401-200. Such demonstrations shall be in accordance with WAC 173-401-520 and shall contain emissions measurement and monitoring data, location of monitoring records, and other information necessary to support the source's emission calculations.

(b) Permitting authorities may use the following approaches to establish legally and practicably enforceable limitations:

(i) Regulatory orders. At the request of the owner or operator of a source, the permitting authority may establish source-specific conditions in a regulatory order issued pursuant to WAC 173-400-091.

(ii) Notice of construction approvals. The permitting authority may establish source-specific conditions in a notice of construction approval issued pursuant to state or local regulations; or

(iii) General permits. The permitting authority may establish source-category requirements which limit a source's potential to emit through a general permit issued pursuant to RCW ((70.94.161)) 70A.15.2260(11).

(c) A source receiving a legally and practicably enforceable limit on its potential to emit shall annually certify that its potential to emit is less than that which would require the source to obtain an operating permit. Such certifications shall contain the information specified in (a) of this subsection.

(d) Notice of issuance of any order or permit which limits a source's potential to emit shall be published in the permit register pursuant to WAC 173-401-805 (2)(e).

AMENDATORY SECTION (Amending WSR 93-20-075, filed 10/4/93, effective 11/4/93)

**WAC 173-401-400 Program delegation.** (1) General. Ecology is authorized to submit the state operating permit program for approval under section 502 of the Federal Clean Air Act. Subject to federal approval, ecology may, in turn, delegate the federally approved state permit program to the local authority with jurisdiction in a given area. This section describes the procedures for delegating the federally approved state operating permit program to a local authority.

(2) Application. The board of any local air pollution control authority may apply to ecology for a delegation order authorizing that authority to administer the operating permit program for sources under that authority's jurisdiction pursuant to RCW ((70.94.161)) 70A.15.2260 (2)(b).

(3) Delegation orders. Ecology will, by order, approve such delegation if ecology finds that the authority has the technical and financial resources needed to discharge the responsibilities of a permitting authority under the FCAA. Each delegation order shall specify the terms and conditions for program delegation and define the responsibilities of the permitting authority and ecology in implementing the statewide program. All delegation orders and supporting program documentation shall be submitted to EPA for review and approval.

(4) Required information. A delegation request from the authority shall include the information specified in 40 C.F.R. 70.4 (b)(3), (b)(7), (b)(8), and (b)(11). In addition, the request shall include a description of how the authority will meet the requirement that every proposed permit be reviewed and signed prior to issuance by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the permitting authority and, with respect to the latter, signed, dated, and stamped by the supervising professional engineer.

(5) Effective date. Any delegation order issued under this section shall take effect (~~ninety~~) 90 days after the EPA authorizes the local authority to issue operating permits under the FCAA.

(6) Public notice. Ecology shall publish in the *State Register* notice of proposed decisions on program delegation and substantial program revision. The notice shall summarize the proposal and provide at least a (~~thirty~~) 30-day public comment period. EPA review of these requests may occur concurrently with the state process. Notice of approval of program delegation and substantial program revision requests shall be published in the *State Register*. Notice of approval of minor program revisions may be given by a letter from ecology to the authority.

(7) Performance review. Reviews of the implementation of the operating permit program by ecology and delegated local authorities shall be conducted as provided in WAC 173-401-920.

(8) Program revisions. Revisions to the state program, EPA approval of those revisions, and delegation to local authorities shall be implemented using the procedures in subsections (1) through (6) of this section.

AMENDATORY SECTION (Amending WSR 02-19-078, filed 9/16/02, effective 10/17/02)

**WAC 173-401-500 Permit applications.** (1) Source identification. Within (~~ninety~~) 90 days after the date that a permitting authority submits for EPA approval a permit program or partial permit program, the permitting authority shall notify each potential chapter 401 source within its jurisdiction that the source may be required to obtain a permit. Failure of the permitting authority to notify a source shall not relieve that source from the obligation to file a timely and complete application.

(2) Application distribution. No later than (~~thirty~~) 30 days after EPA grants final or interim, full or partial, approval to the state program, the responsible permitting authority shall send an application to each potential chapter 401 source within its jurisdiction, and a notice stating a deadline by which an application must be filed. Failure of the permitting authority to distribute permit or renewal applications to an individual source shall not relieve that source from the obligation to file a timely and complete application. Renewal applications shall be sent to the source as specified in WAC 173-401-710.

(3) Duty to apply. For each chapter 401 source, the owner or operator shall submit a timely and complete permit application in accordance with this section. Whenever practicable, the applicant shall utilize methods provided by the permitting authority for electronic transmission of the completed application.

(a) Existing chapter 401 sources. Chapter 401 sources in existence on the date of EPA approval of the state permit program shall submit permit applications no later than (~~one hundred eighty~~) 180 days after EPA approval of the state permitting program.

(b) Existing sources becoming chapter 401 sources due to future regulations. An existing source may become subject to the operating permit program as a result of regulations promulgated after EPA approval of the state permit program. For those sources, a complete appli-

cation must be submitted within (~~twelve~~) 12 months from the time that the source becomes subject to the permit program.

(c) New or modified sources. New or modified chapter 401 sources which commence operation after EPA approval of the state operating program shall file a complete application to obtain the chapter 401 permit or permit revision within (~~twelve~~) 12 months after commencing operation. Where an existing chapter 401 permit would prohibit such construction or change in operation, the source must obtain a permit revision before commencing operation. The applicant may elect to integrate procedures for new source review and operating permit issuance as described in subsection (10) of this section.

(d) Permit renewal. For purposes of permit renewal, a timely application is one that is submitted at the time specified in WAC 173-401-710.

(e) Applications for initial phase II acid rain permits shall be submitted to the permitting authority by January 1, 1996, for sulfur dioxide, and by January 1, 1998, for nitrogen oxides.

(4) Complete application. To be deemed complete, an application must provide all information required pursuant to WAC 173-401-510, except that applications for permit revision need supply such information only if it is related to the proposed change. Information submitted under WAC 173-401-510 must be sufficient to evaluate the subject source and its application and to determine all applicable requirements. A responsible official shall certify the submitted information consistent with WAC 173-401-520. Unless the permitting authority determines in writing that an application is not complete within (~~sixty~~) 60 days of receipt of the application, such application shall be deemed to be complete, except as otherwise provided in WAC 173-401-700(6). Any notification of incompleteness shall specify the information needed to make the application complete and prescribe a reasonable time frame for response from the applicant. Unless the permitting authority requests additional information or otherwise notifies the applicant of incompleteness within (~~sixty~~) 60 days of receipt of the supplemental information, the application shall be deemed complete. If, while processing an application that has been determined or deemed to be complete, the permitting authority determines that additional information is necessary to evaluate or take final action on that application, it may request such information in writing and set a reasonable deadline for a response. The source's ability to operate without a permit, as set forth in WAC 173-401-705(2), shall be in effect from the date the application is determined or deemed to be complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified by the permitting authority.

(5) Confidential information. In the case where a source has submitted information to the permitting authority under a claim of confidentiality, the permitting authority may also require the source to submit a copy of such information directly to the administrator.

(6) Duty to supplement or correct application. Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

(7) Completeness criteria. An application is complete when it contains the following information:

(a) All of the data described in WAC 173-401-510(2), including the required information for each emission unit (other than insignificant emission units) at the facility, along with any necessary supporting data and calculations. The use of a standard application is not required if all of the data elements required in WAC 173-401-510(2) are provided;

(b) A compliance plan that meets the criteria of WAC 173-401-630; and

(c) Certification by a responsible official of the chapter 401 source of the truth, accuracy, and completeness of the application, as provided in WAC 173-401-520.

(8) EPA notification. The permitting authority shall provide EPA with a copy of all complete permit applications and compliance plans for chapter 401 sources unless EPA waives or modifies this requirement.

(9) Public notice. Ecology shall publish a notice of all applications received under this section in the permit register as required under WAC 173-401-805.

(10) Operating permits for new sources. At the time of filing a notice of construction application under RCW (~~(70.94.152)~~) 70A.15.2210 for the construction of a new source or modification of an existing source, the owner or operator may elect in writing to integrate new source review and operating permit issuance. Procedures for integration of these two processes are as follows:

(a) Modification of existing source. The owner or operator of an existing permitted source applying to modify the source within the meaning of RCW (~~(70.94.030)~~) 70A.15.1030(14) may select integrated review by so indicating on its notice of construction application. The permitting authority shall process the notice of construction application in accordance with the procedures set forth in WAC 173-401-700. The permitting authority shall process the two applications in parallel, and consolidate all required public hearings, comment periods and EPA review periods. A proposed order of approval for the modification shall be provided to EPA for review as provided in WAC 173-401-810, along with a proposed administrative permit amendment to the source's operating permit. The administrative permit amendment shall incorporate into the operating permit the requirements contained in the order of approval. The order of approval shall include compliance requirements for the new or modified emissions units that meet the requirements of WAC 173-401-600 through 173-401-650. The permitting authority shall issue the final permit amendment and order of approval promptly upon conclusion of the EPA review period, unless EPA files a timely objection as provided in 40 C.F.R. 70.8.

(b) Construction of new source. Any person who proposes to construct a new source, within the meaning of RCW (~~(70.94.030)~~) 70A.15.1030(16), may select integrated review by concurrently filing with the permitting authority a notice of construction application and an operating permit application. The permitting authority shall process both applications in accordance with the procedures set forth in WAC 173-401-700. The permitting authority shall process the two applications in parallel, and consolidate all required public hearings, comment periods, and EPA review periods. A proposed order of approval for the new source shall be provided to EPA for review as provided in WAC 173-401-810, along with the proposed operating permit. The permitting authority shall issue the final operating permit and order of ap-

proval promptly upon conclusion of the EPA review period, unless EPA files a timely objection as provided in 40 C.F.R. 70.8.

AMENDATORY SECTION (Amending WSR 93-20-075, filed 10/4/93, effective 11/4/93)

**WAC 173-401-600 Permit content.** (1) Each permit shall contain terms and conditions that assure compliance with all applicable requirements at the time of permit issuance. Every requirement in an operating permit shall be based upon the most stringent of the following requirements:

- (a) The FCAA and rules implementing that act, including provisions of the approved state implementation plan;
  - (b) Chapter ((70.94)) 70A.15 RCW and rules implementing that chapter. This includes requirements in regulatory orders issued by the permitting authority;
  - (c) In permits issued by a local air pollution control authority, the requirements of any order or regulation adopted by that authority;
  - (d) Chapter ((70.98)) 70A.388 RCW and rules adopted thereunder;
- and
- (e) Chapter 80.50 RCW and rules adopted thereunder.

(2) Legal authority. The permit shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

(3) Acid rain. Where an applicable requirement of the FCAA is more stringent than an applicable requirement of regulations promulgated under Title IV of the FCAA, both provisions shall be incorporated into the permit and shall be enforceable by the administrator.

(4) Where an applicable requirement based on the FCAA and rules implementing that act (including the approved state implementation plan) is less stringent than an applicable requirement promulgated under state or local legal authority, both provisions shall be incorporated into the permit in accordance with WAC 173-401-625.

AMENDATORY SECTION (Amending WSR 93-20-075, filed 10/4/93, effective 11/4/93)

**WAC 173-401-620 Standard terms and conditions.** (1) Acid rain. Each permit for an affected source shall contain a condition prohibiting emissions exceeding any allowances that the source lawfully holds under Title IV of the FCAA or the regulations promulgated thereunder.

(a) No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement.

(b) No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

(c) Any such allowance shall be accounted for according to the procedures established in regulations promulgated under Title IV of the FCAA and in effect on April 7, 1993.



(2) Standard provisions. Each permit shall include the following standard provisions:

(a) Duty to comply. The permittee must comply with all conditions of this chapter 401 permit. Any permit noncompliance constitutes a violation of chapter ((70.94)) 70A.15 RCW and, for federally enforceable provisions, a violation of the FCAA. Such violations are grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

(b) Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(c) Permit actions. This permit may be modified, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(d) Property rights. This permit does not convey any property rights of any sort, or any exclusive privilege.

(e) Duty to provide information. The permittee shall furnish to the permitting authority, within a reasonable time, any information that the permitting authority may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the permitting authority copies of records required to be kept by the permit or, for information claimed to be confidential, the permittee may furnish such records directly to the administrator along with a claim of confidentiality. Permitting authorities shall maintain confidentiality of such information in accordance with RCW ((70.94.205)) 70A.15.2510.

(f) Permit fees. The permittee shall pay fees as a condition of this permit in accordance with the permitting authority's fee schedule. Failure to pay fees in a timely fashion shall subject the permittee to civil and criminal penalties as prescribed in chapter ((70.94)) 70A.15 RCW.

(g) Emissions trading. No permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading, and other similar programs or processes for changes that are provided for in this permit.

(h) Severability. If any provision of this permit is held to be invalid, all unaffected provisions of the permit shall remain in effect and be enforceable.

(i) Permit appeals. This permit or any conditions in it may be appealed only by filing an appeal with the pollution control hearings board and serving it on the permitting authority within ((thirty)) 30 days of receipt pursuant to RCW 43.21B.310. This provision for appeal in this section is separate from and additional to any federal rights to petition and review under § 505(b) of the FCAA.

(j) Permit continuation. This permit and all terms and conditions contained therein, including any permit shield provided under WAC 173-401-640, shall not expire until the renewal permit has been issued or denied if a timely and complete application has been submitted. An application shield granted pursuant to WAC 173-401-705(2) shall remain in effect until the renewal permit has been issued or denied if a timely and complete application has been submitted.

AMENDATORY SECTION (Amending WSR 93-20-075, filed 10/4/93, effective 11/4/93)

**WAC 173-401-700 Action on application.** (1) A permit, permit modification, or renewal may be issued only if all of the following conditions have been met:

(a) The permitting authority has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit under WAC 173-401-750;

(b) The permit has been reviewed and signed prior to issuance by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the permitting authority and, in the latter case, signed, dated, and stamped by the supervising professional engineer;

(c) The permitting authority has complied with the requirements for public participation under WAC 173-401-800;

(d) The permitting authority has complied with the requirements for notifying and responding to affected states under WAC 173-401-820;

(e) The conditions of the permit provide for compliance with all applicable requirements and the requirements of this chapter;

(f) The administrator has received a copy of the proposed permit and any notices required under WAC 173-401-810 and 173-401-820, and has not objected in writing to issuance of the permit within (~~forty-five~~) 45 days of receipt of the proposed permit and all necessary supporting information; and

(g) Where EPA has objected to issuance of a permit or modification, the permittee has consented in writing to the changes required by the EPA.

(2) Deadlines. Except as provided in subsections (1)(g), (3), and (4) of this section or under regulations promulgated under Title IV or Title V of the FCAA for the permitting of affected sources under the acid rain program, the permitting authority shall take final action on each permit application (including a request for permit modification or renewal) within (~~eighteen~~) 18 months of receiving a complete application.

(3) Transition plan. The permitting authority shall take final action on at least one-third of all operating permit applications received from chapter 401 sources in existence on the date on which EPA authorizes the permitting authority to issue operating permits within one year after EPA authorization. Final action shall be taken on at least one third of such applications annually over a period not to exceed three years after the effective date of EPA authorization.

(4) Early reduction submittals. The permitting authority shall take final action on a complete permit application containing an early reduction demonstration under section 112 (i)(5) of the FCAA within nine months of receiving the complete application.

(5) Notice of construction applications. Except as provided in WAC 173-401-500(10) processing of notice of construction applications received under RCW (~~70.94.152~~) 70A.15.2210 shall take priority over processing of operating permit applications.

(6) Completeness. The permitting authority shall promptly provide notice to the applicant of whether the application is complete. Unless the permitting authority requests additional information or otherwise notifies the applicant of incompleteness within (~~sixty~~) 60 days of receipt of an application, the application shall be deemed complete. For modifications processed through minor permit modification proce-

dures, such as those in WAC 173-401-725 (2)(a) and (3), the permitting authority does not have to provide a completeness determination.

(7) Draft permit. Within (~~one hundred eighty~~) 180 days of the date upon which an application is deemed to be complete, the permitting authority should generally issue either a draft permit or a notice of intent to deny the permit application. Notice of issuance of a draft permit shall be published and provided to affected states in accordance with the procedures in WAC 173-401-800 through 173-401-820. The deadline provided in this subsection shall not apply to the initial round of permit applications filed pursuant to subsection (3) of this section.

(8) Statement of basis. At the time the draft permit is issued, the permitting authority shall provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The permitting authority shall send this statement to EPA, the applicant, and to any other person who requests it.

(9) Proposed permit. Upon completion of the public comment period provided in WAC 173-401-800, the permitting authority shall issue a proposed permit, along with a response to any comments received during the comment period. The permitting authority shall transmit the proposed permit and its response to any comments to the applicant and to EPA for review, as provided in WAC 173-401-810.

(10) Preconstruction approval. The submittal of a complete application shall not affect any requirement of a source to have a preconstruction permit under Title I of the FCAA or a notice of construction approval under RCW (~~(70.94.152)~~) 70A.15.2210.

AMENDATORY SECTION (Amending WSR 02-19-078, filed 9/16/02, effective 10/17/02)

**WAC 173-401-722 Changes not requiring permit revisions. (1)**

General.

(a) A chapter 401 source is authorized to make the changes described in this section without a permit revision, providing the following conditions are met:

(i) The proposed changes are not Title I modifications;

(ii) The proposed changes do not result in emissions which exceed those allowable under the permit, whether expressed as a rate of emissions, or in total emissions;

(iii) The proposed changes do not alter permit terms that are necessary to enforce limitations on emissions from units covered by the permit; and

(iv) The facility provides the administrator and the permitting authority with written notification at least seven days prior to making the proposed changes except that written notification of a change made in response to an emergency shall be provided as soon as possible after the event.

(b) Permit attachments. The source and permitting authority shall attach each notice to their copy of the relevant permit.

(2) Section 502 (b)(10) changes. Pursuant to the conditions in subsection (1) of this section, a chapter 401 source is authorized to make section 502 (b)(10) changes (as defined in WAC 173-401-200) without a permit revision.

(a) For each such change, the written notification required under subsection (1)(a)(iv) of this section shall include a brief description of the change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change.

(b) The permit shield authorized under WAC 173-401-640 shall not apply to any change made pursuant to this paragraph.

(3) SIP authorized emissions trading. Pursuant to the conditions in subsection (1) of this section, a chapter 401 source is authorized to trade increases and decreases in emissions in the permitted facility, where the Washington state implementation plan provides for such emissions trades without requiring a permit revision. This provision is available in those cases where the permit does not already provide for such emissions trading.

(a) Under this subsection (3), the written notification required under subsection (1)(a)(iv) of this section shall include such information as may be required by the provision in the Washington state implementation plan authorizing the emissions trade, including at a minimum, when the proposed change will occur, a description of each such change, any change in emissions, the permit requirements with which the source will comply using the emissions trading provisions of the Washington state implementation plan, and the pollutants emitted subject to the emissions trade. The notice shall also refer to the provisions with which the source will comply in the applicable implementation plan and that provide for the emissions trade.

(b) The permit shield described in WAC 173-401-640 shall not extend to any change made under this paragraph. Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to requirements of the applicable implementation plan authorizing the emissions trade.

(4) Emission caps. Upon the request of the permit applicant, the permitting authority shall issue permits that contain terms and conditions, including all terms required under WAC 173-401-600 through 173-401-630 to determine compliance, allowing for the trading of emissions increases and decreases in the chapter 401 source solely for the purpose of complying with a federally enforceable emissions cap that is established in the permit independent of otherwise applicable requirements. The permit applicant shall include in its application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The emissions trading provisions shall not be applied to any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall also require compliance with all applicable requirements.

(a) Under this paragraph, the written notification required under subsection (1)(a)(iv) of this section shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

(b) The permit shield described in WAC 173-401-640 shall extend to terms and conditions that allow such increases and decreases in emissions.

(5) A source making a change under this section shall comply with applicable preconstruction review requirements established pursuant to RCW (~~70.94.152~~) 70A.15.2210.

AMENDATORY SECTION (Amending WSR 16-05-003, filed 2/3/16, effective 3/5/16)

**WAC 173-401-724 Off-permit changes.** (1) The source shall be allowed to make changes not specifically addressed or prohibited by the permit terms and conditions without requiring a permit revision, provided that the proposed changes do not weaken the enforceability of existing permit conditions. Any change that is a Title I modification or is a change subject to the acid rain requirements under Title IV of the FCAA must be submitted as a permit revision.

(2) Each such change shall meet all applicable requirements and shall not violate any existing permit term or condition.

(3) Sources must provide contemporaneous written notice to the permitting authority and EPA of each such change, except for changes that qualify as insignificant under WAC 173-401-530. Such written notice shall describe each such change, including the date, any change in emissions, pollutants emitted, and any applicable requirement that would apply as a result of the change.

(4) The change shall not qualify for the permit shield under WAC 173-401-640.

(5) The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit, and the emissions resulting from those changes.

(6) A source making a change under this section shall comply with applicable preconstruction review requirements established pursuant to RCW ((70.94.152)) 70A.15.2210.

AMENDATORY SECTION (Amending WSR 97-08-084, filed 4/2/97, effective 5/3/97)

**WAC 173-401-735 Permit appeals.** (1) A decision to issue or to deny a final permit, or the terms or conditions of such a permit, may be appealed to the pollution control hearings board under chapter 43.21B RCW and RCW ((70.94.161)) 70A.15.2260(9). Any appealable decision or determination shall be identified as such and shall contain a conspicuous notice to the recipient that it may be appealed by filing an appeal with the pollution control hearings board and serving the appeal on the permitting authority within ((thirty)) 30 days of receipt, pursuant to RCW 43.21B.310. 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 FCAA, including petitions filed pursuant to 40 C.F.R. 70.8(c) and 70.8(d).

(2) Appealing parties. Parties that may file the appeal referenced in subsection (1) of this section include any person who participated in the public participation process pursuant to WAC 173-401-800.

(3) As provided in RCW 34.05.570, a person may seek a writ of mandamus in the event that a permitting authority 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.

AMENDATORY SECTION (Amending WSR 16-05-003, filed 2/3/16, effective 3/5/16)

**WAC 173-401-900 Fee determination—Ecology.** (1) Fee determination. Ecology shall develop a fee schedule, consistent with the process outlined below, according to which it will collect fees from permit program sources under its jurisdiction. The fees shall be sufficient to cover ecology's permit administration costs and its share of ecology's development and oversight costs. The fee schedule shall also indicate the shares of ecology's development and oversight costs that are to be collected by each delegated local authority. Opportunities for public participation shall be afforded throughout the fee determination process, as provided in WAC 173-401-920(1).

(2) Fee eligible activities. The costs of the permit administration and development and oversight activities are fee eligible.

(a) Permit administration. Permit administration costs are those incurred by each permitting authority, including ecology, in administering and enforcing the operating permit program with respect to sources under its jurisdiction. Permit administration costs are those enumerated in WAC 173-401-940(1).

(b) Development and oversight. Development and oversight costs are those incurred by ecology in developing and administering the state operating permit program and in overseeing the administration of the program by the delegated local authorities. Development and oversight costs are those enumerated in WAC 173-401-940(2).

(3) Workload analysis. Ecology shall conduct a workload analysis projecting resource requirements, organized by categories of fee-eligible activities, for the purpose of preparing the budget. Ecology shall, for the two-year period corresponding to each biennium, identify the permit administration and development and oversight activities that it will perform during that biennium. The workload analysis shall include resource requirements for both the direct and indirect costs of the permit administration activities enumerated in WAC 173-401-940(1) and the development and oversight activities enumerated in WAC 173-401-940(2). Ecology shall publish a draft workload analysis together with the draft budget for the following biennium on or before February 28 of each even-numbered year and shall provide opportunity for public comment thereon in accordance with WAC 173-401-920(1). Ecology shall publish a final workload analysis together with the final budget for the following biennium on or before June 30 of each even-numbered year.

(4) Budget development. Ecology shall, for the two-year period corresponding to each biennium, prepare an operating permit program budget for that biennium. The budget shall be based on the resource requirements identified in the workload analysis for the biennium and shall take into account the projected operating permit program account balance at the start of the biennium. Ecology shall publish a draft budget for the following biennium together with the draft workload analysis on or before February 28 of each even-numbered year and shall provide opportunity for public comment thereon in accordance with WAC 173-401-920(1). The draft budget shall include data on unit costs (e.g., salary schedules and the indirect cost rate) used in preparing budget projections. Ecology shall publish a final budget together with the final workload analysis for the following biennium on or before June 30 of each even-numbered year.

(5) Allocation methodology.

(a) Development and oversight costs. Ecology shall allocate its development and oversight costs among all permitting authorities, including ecology, based upon the number of permit program sources under the jurisdiction of each permitting authority, except that extraordinary costs or other costs readily attributable to a specific permitting authority may be assessed by that authority.

(b) Permit administration costs and ecology's share of development and oversight costs.

(i) Fee allocation. Ecology shall allocate its permit administration costs and its share of ecology's development and oversight costs among the permit program sources for whom it acts as permitting authority, according to a three-tiered structure based upon:

(A) Tier 1: The number of sources under its jurisdiction;

(B) Tier 2: The complexity of the sources under its jurisdiction; and

(C) Tier 3: The size of the sources under its jurisdiction, as measured by the quantity of each regulated pollutant (for fee calculation) emitted.

(ii) Each of the three tiers shall be equally weighted.

(iii) Complexity level determination in (b)(i)(B) of this subsection.

(A) Ecology must annually assign a complexity level to each source based on ecology's operating permit related work activity.

(B) A source's complexity level determination must correspond to the relative difficulty of issuing and maintaining an operating permit and the time spent in permit related activities.

(C) Ecology must annually determine the complexity portion of the fee for each source.

(iv) Public process for complexity determination. Ecology must use the following process when determining the complexity portion of the fee:

(A) Ecology must post on ecology's website on or about October 31st of each year the basis for the complexity level determination.

(B) Ecology must provide (~~thirty~~) 30 days for public comment.

(C) Ecology has (~~thirty~~) 30 days to respond to comments after the close of the public comment period.

(D) If ecology concludes adjustments are necessary, ecology will provide revised fee statements based on updated calculations.

(v) The quantity of each regulated pollutant emitted by a source shall be determined based on the annual emissions data during the most recent calendar year for which data is available.

(c) WAC 173-401-300(7) Sources. Ecology shall allocate to permit program sources that qualify for an exemption pursuant to WAC 173-401-300(7) after the effective date of the date of the state operating permit program the portion of ecology's permit administration costs and ecology's share of its development and oversight costs that results from including such sources in the first tier of the allocation structure described in (b)(i) of this subsection. After legally and practicably enforceable limits have been established and for so long as a source continues to meet the requirements for exemption under WAC 173-401-300(7), that source shall pay registration program fees pursuant to RCW (~~70.94.015~~) 70A.15.1010(2) in lieu of paying operating permit program fees.

(6) Fee schedule. Ecology shall issue annually a fee schedule reflecting the permit administration fee and the share of the development and oversight fee to be paid by each permit program source under its jurisdiction and reflecting the development and oversight assess-

ment to be paid by each permitting authority. The fee schedule shall be based on the information contained in the final source data statements, as provided in WAC 173-401-925(3), for each year; the final source data statements shall be issued after opportunity for petition and review has been afforded in accordance with WAC 173-401-925. Ecology shall publish the fee schedule for the following year on or before October 31 of each year.

AMENDATORY SECTION (Amending WSR 94-02-041, filed 12/30/93, effective 1/30/94)

**WAC 173-401-915 Fee collection—Ecology and delegated local authorities.** (1) Collection from sources. Ecology and each delegated local authority shall collect fees sufficient to cover the costs of their respective permit administration activities and their share of ecology's development and oversight activities from the permit program sources under their respective jurisdictions.

(2) Dedicated account. All receipts from fees collected by or on behalf of ecology from permit program sources pursuant to RCW ((70.94.162)) 70A.15.2270 shall be deposited in the air operating permit account created under RCW ((70.94.015)) 70A.15.1010. All receipts from fees collected by delegated local authorities from permit program sources pursuant to RCW ((70.94.162)) 70A.15.2270 shall be deposited in their respective air operating permit accounts or other accounts dedicated exclusively to support of the operating permit program.

AMENDATORY SECTION (Amending WSR 16-05-003, filed 2/3/16, effective 3/5/16)

**WAC 173-401-920 Accountability—Ecology and delegated local authorities.** (1) Public participation during fee determination process. Ecology shall provide for public participation in the fee determination process described under WAC 173-401-900, which provision shall include, but not be limited to, the following:

(a) Ecology shall provide opportunity for public review of and comment on each biennial workload analysis and budget.

(b) Ecology shall publish in the *Permit Register* notice of issuance of its draft biennial workload analysis and draft biennial budget and issuance of its annual fee schedule.

(c) Ecology shall make available for public review, on or before February 28 of each even-numbered year, copies of its draft biennial workload analysis and draft biennial budget. Ecology shall make available for public review, on or before October 31 of each year, copies of its annual fee schedule, including information on availability of the data used for the determination. Ecology shall maintain a mailing list of persons requesting opportunity for review under this subsection or under WAC 173-401-925(1). Ecology may, from time to time, inform the public of the opportunity to be placed on the mailing list and may delete from the list persons who fail to respond to an inquiry regarding continued interest in receiving materials.

(d) Ecology shall provide at least ((sixty)) 60 days for public comment on the draft biennial workload analysis and draft biennial



budget. Such ((sixty)) 60-day period for comment shall run from the date ecology mails the draft workload analysis and draft budget as provided in (c) of this subsection.

(2) Tracking of revenues, time and expenditures.

(a) Revenues. Ecology shall track revenues on a source-specific basis.

(b) Time and expenditures. Ecology shall track time and expenditures on the basis of source categories and functional categories, except that, as part of a demonstration project undertaken pursuant to RCW ((70.94.162)) 70A.15.2270, ecology will track time and expenditures on a source-specific basis for at least three but no more than five sources.

(i) Sources will be grouped into five categories, as follows:

(A) Kraft pulping mills;

(B) Sulfite pulping mills;

(C) Metal processing and related industries;

(D) Sources located on the Hanford Reservation; and

(E) Other sources, including those sources under the jurisdiction of ecology's central and eastern regional offices.

(ii) Functions will be grouped into several categories and subcategories, as follows:

(A) Program management and support;

(B) Program development;

(C) Permit processing;

(I) Application assistance and review;

(II) Preparing draft and final permits;

(D) Permit management and compliance activities;

(E) Technical assistance; and

(F) Outreach and education.

(c) Use of information obtained from tracking revenues, time and expenditures.

(i) Ecology shall use the information obtained from tracking revenues, time and expenditures to modify its workload analysis during the biennial review provided for under WAC 173-401-900.

(ii) The information obtained from tracking revenues, time and expenditures shall not provide a basis for challenge to the amount of an individual source's fee.

(3) Fiscal audits and reports.

(a) Ecology and each delegated local authority shall contract with the state auditor to have the auditor perform a fiscal audit of ecology's and each delegated local authority's operating permit program every other year.

(b) Fiscal audits shall address the following:

(i) Determine how much operating permit fee revenue was collected each fiscal year.

(ii) Determine whether operating permit fee revenue covered all authorized program expenses.

(iii) Determine whether the fees were computed correctly.

(iv) Determine whether invoices were sent out in a timely manner.

(v) Determine whether billed fees were collected.

(vi) Determine how fee revenues and expenses were accounted for, including amounts of shortfalls and overages and an explanation for them.

(vii) Determine if there was a program budget increase or decrease over the period being audited.

(viii) Determine whether operating permit fee revenues were used only for authorized activities.

(4) Performance audits and reports. Ecology and each local authority (the agencies) shall have a performance audit at least every three years.

(a) Overview performance audit. Every three years, the agencies shall:

(i) Conduct an overview audit using data collected in previous years. Each agency shall collect and analyze their data and provide a summary to the air operating permit performance audit advisory committee (the committee).

(ii) Consider program efficiencies that could reduce costs or improve performance of the operating permit program and report any identified efficiencies to the committee.

(b) Intensive performance audit.

(i) The committee, as established in subsection (5) of this section, may recommend an agency participate in a more intensive audit.

(ii) The public may submit a request for an intensive audit to the committee. The request must identify issues of concern and explain how the overview performance audit does not address them.

(iii) An intensive audit will not take place more frequently than every six years.

(iv) Ecology shall determine final recommendations for the requirements of the overview and intensive performance audits.

(c) Performance audit elements. The following are intended to serve as a guideline for operating permit program intensive performance audits.

Intensive performance audits may include, but are not limited to, assessing the following elements:

(i) Administration of program - Review of activities such as program administration, training, data management, fee administration, and clerical support.

(ii) Permit processing - Review of activities such as review of required permit elements, adequacy of statement of basis, adequacy of technical support document, timeliness of permit processing, permit modifications, permit amendments, and permit appeals.

(iii) Permit management - Review of activities such as inspections, stack test oversight, reports, complaint investigations, administrative enforcement, and compliance.

(iv) Technical assistance - Review of the operating permit technical assistance program.

(v) Education and outreach - Review of activities such as public notification, permit register maintenance, notifications to EPA and affected states, and publications.

(d) Reports on the overview and intensive audit results.

Ecology shall publish a report for each audit. The report shall include:

(i) Recommendations from the committee members.

(ii) Ecology's final recommendations for performance audit requirements.

(iii) Audit results. Ecology shall distribute a copy of the report to the delegated local authorities and the committee members. Ecology shall also post the report on their website.

(5) Air operating permit performance audit advisory committee (the committee).

(a) Ecology shall establish the committee.

(b) The committee shall operate under a written charter. In consultation with the committee, ecology shall establish the committee charter.

- (c) The committee shall meet at least once every three years and begin the first overview performance audit no later than January 2017.
- (d) Ecology shall appoint committee members.
- (e) Committee membership shall include, at a minimum:
  - (i) Representation from ecology.
  - (ii) Representation from the regulated community.
  - (iii) Representation from a delegated local authority.
  - (iv) The following representation is desirable:
    - (A) Environmental group(s).
    - (B) General public.
- (f) The committee shall:
  - (i) Develop a timeline for the schedule of agency reviews, collecting reports, reviewing reports, and submitting recommendations to ecology.
  - (ii) Every three years, review data reports prepared by the agencies.
  - (iii) Submit to ecology:
    - (A) Recommendations for evaluating and improving program performance statewide.
    - (B) Observations from the data review, including trends analysis (identifying trends).
    - (C) Recommendations for intensive audit content if an intensive audit is recommended.
- (g) Public process. The committee meetings shall be open to the public. Ecology shall announce the public meeting and opportunity to comment on performance audit recommendations.
- (6) Conducting intensive performance audits.
  - (a) If ecology determines that an intensive performance audit is needed, ecology shall establish the intensive audit schedule.
  - (b) Ecology shall audit the delegated local authorities. A delegated local authority shall audit ecology. An independent contractor may be used to conduct a required intensive audit.
  - (c) Performance audit contractor requirements.
    - (i) If an independent contractor is used to conduct an intensive performance audit, the contractor must have experience with the operating permit program.
    - (ii) To the extent possible, the contractor shall be free of any conflicts of interest. A contractor applying to conduct the audits shall disclose any potential conflicts of interest in its application.

AMENDATORY SECTION (Amending WSR 16-05-003, filed 2/3/16, effective 3/5/16)

**WAC 173-401-940 Fee eligible activities—Ecology and delegated local authorities.** (1) Permit administration activities shall include:

- (a) Preapplication assistance and review of an application and proposed compliance plan for a permit, permit revision, or renewal;
- (b) Source inspections, testing and other data-gathering activities necessary for the development or a permit, permit revision, or renewal;
- (c) Acting on an application for a permit, permit revision, or renewal, including the costs of developing an applicable requirement as part of the processing of a permit, permit revision, or renewal,

preparing a draft permit and fact sheet, and preparing a final permit, but excluding the costs of developing BACT, LAER, BART, or RACT requirements for criteria and toxic air pollutants;

(d) Notifying and soliciting, reviewing and responding to comment from the public and contiguous states and tribes, conducting public hearings regarding the issuance of a draft permit and other costs of providing information to the public regarding operating permits and the permit issuance process;

(e) Modeling necessary to establish permit limits or to determine compliance with permit limits;

(f) Reviewing compliance certifications and emissions reports and conducting related compilation and reporting activities;

(g) Conducting compliance inspections, complaint investigations, and other activities necessary to ensure that a source is complying with permit conditions;

(h) Administrative enforcement activities and penalty assessment, excluding the costs of proceedings before the pollution control hearings board and all costs of judicial enforcement;

(i) The share attributable to permitted sources of the development and maintenance of emissions inventories;

(j) The share attributable to permitted sources of ambient air quality monitoring and associated recording and reporting activities;

(k) Training for permit administration and enforcement;

(l) Fee determination, assessment, and collection, including the costs of necessary administrative dispute resolution and penalty collection;

(m) Required fiscal audits, periodic performance audits, and reporting activities;

(n) Tracking of time, revenues and expenditures, and accounting activities;

(o) Administering the permit program including the costs of clerical support, supervision, and management;

(p) Other activities required by operating permit regulations issued by the United States Environmental Protection Agency under the Federal Clean Air Act; and

(q) Provision of assistance to small business consistent with RCW ((~~70.94.162~~)) 70A.15.2270.

(2) Development and oversight activities shall include:

(a) Review and determinations necessary for delegation of authority to administer and enforce a permit program to a local air authority under RCW ((~~70.94.161~~)) 70A.15.2260(2) and ((~~70.94.860~~)) 70A.15.6240;

(b) Conducting fiscal audits and periodic performance audits of delegated local authorities, and other oversight functions required by the operating permit program;

(c) Administering enforcement actions taken by the department on behalf of a permitting authority, including those actions taken by the department under RCW ((~~70.94.785~~)) 70A.15.6050, but excluding the costs of proceedings before the pollution control hearings board and all costs of judicial enforcement;

(d) Determination and assessment with respect to each permitting authority of the fees covering its share of the costs of development and oversight;

(e) Training and assistance for permit program administration and oversight, including training and assistance regarding technical, administrative, and data management issues;

- (f) Development of generally applicable regulations or guidance regarding the permit program or its implementation or enforcement;
- (g) State codification of federal rules or standards for inclusion in operating permits;
- (h) Preparation of delegation package and other activities associated with submittal of the state permit program to the United States Environmental Protection Agency for approval, including ongoing coordination activities;
- (i) General administration and coordination of the state permit program, related support activities, and other agency indirect costs, including necessary data management and quality assurance;
- (j) Required fiscal audits and periodic performance audits of the department, and reporting activities;
- (k) Tracking of time, revenues and expenditures, and accounting activities;
- (l) Public education and outreach related to the operating permit program, including the maintenance of a permit register;
- (m) The share attributable to permitted sources of compiling and maintaining emissions inventories;
- (n) The share attributable to permitted sources of ambient air quality monitoring, related technical support, and associated recording activities;
- (o) Provision of assistance to small business as required under Section 507 of the Federal Clean Air Act as it exists on the effective date of this act or its later enactment as adopted by reference by the director by rule;
- (p) Provision of services by the department of revenue and the office of the state attorney general and other state agencies in support of permit program administration;
- (q) A one-time revision to the state implementation plan to make those administrative changes necessary to ensure coordination of the state implementation plan and the operating permit program; and
- (r) Other activities required by operating permit regulations issued by the United States Environmental Protection Agency under the Federal Clean Air Act.

**OTS-5316.1**

AMENDATORY SECTION (Amending WSR 16-05-003, filed 2/3/16, effective 3/5/16)

**WAC 173-401-925 Source data statements and petition for review of statements—Ecology and delegated local authorities.** (1) Preliminary source data statements. Ecology shall provide to the permit program sources under its jurisdiction and to those persons on the mailing list, maintained in accordance with WAC 173-401-920 (1)(c), or to those requesting receipt of source data statements under this subsection a preliminary statement of emissions and other data from that source upon which ecology intends to base its allocation determination under WAC 173-401-900(5) as well as a preliminary statement of emissions and other data from each of the permit program sources under ecology's jurisdiction upon which ecology intends to base its alloca-

tion determination. Such preliminary statement shall be provided to the permit program sources and to other persons on the mailing list on or before July 31<sup>st</sup> of each year. Such preliminary statement shall indicate the name, address and telephone number of the person or persons to whom the source or other individual may direct inquiries and/or petitions for review under subsection (2) of this section regarding the accuracy of the data contained therein.

(2) Petition for review of statement. A permit program source or other individual may petition ecology to review for accuracy the data contained in any preliminary source data statement provided for under subsection (1) of this section. Such petition shall be lodged on or before August 31<sup>st</sup> of each year. Such petition shall be in writing, directed to the individual indicated on the statement of source data. Such petition shall indicate clearly the data to be reviewed, the specific action that the source or petitioning individual is requesting be taken and may, if the source or petitioning individual desires, be accompanied by written documentation supporting the request for review. Such petition shall, in addition, state the name, address and telephone number of the person or persons to whom ecology may direct inquiries regarding the request. Upon receipt of such a petition, ecology must issue its written response to the petitioner and any other affected party on or before September 30<sup>th</sup> of each year. Such response shall state the observations of the review and the reasons therefore, and shall contain a new preliminary source data statement, revised to reflect any changes necessitated by ecology's response.

(3) Final source data statement. Ecology shall provide to the permit program sources under its jurisdiction and to those persons on the mailing list, maintained in accordance with WAC ((~~173-491-920~~)) 173-401-920 (1)(c), or to those requesting receipt of source data statements under this subsection a final statement of emissions and other data from that source upon which ecology will base its allocation determination under WAC 173-401-900 on or before October 31<sup>st</sup> of each year. In addition, the final source data statements shall include a final statement of emissions and other data upon which ecology intends to base its allocation determination from each of the permit program sources under its jurisdiction. The final source data statement will be accompanied by a fee schedule reflecting the fee to be paid by each source. Ecology may include with the fee schedule an invoice, or a notice stating that fees listed in the fee schedule must be paid by February 28<sup>th</sup> of the following year.

(4) Delegated local authorities. Delegated local authorities shall establish procedures for administrative dispute resolution for disputes pertaining to fees.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 173-401-645          Emergency provision.

## WSR 24-19-099

## PROPOSED RULES

## HEALTH CARE AUTHORITY

[Filed September 18, 2024, 8:02 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-15-157.

Title of Rule and Other Identifying Information: WAC 182-501-0135 Patient review and coordination (PRC), 182-531-0425 Collaborative care, 182-531-1300 Foot care services for clients 21 years of age and older, 182-531-1720 Tobacco/nicotine cessation counseling, 182-534-0200 Enhanced payments for EPSDT screens for children in out-of-home placement, and 182-552-0001 Respiratory care—General.

Hearing Location(s): On October 22, 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\\_icWpKqAQTxyCXgTcltuVgA](https://us02web.zoom.us/webinar/register/WN_icWpKqAQTxyCXgTcltuVgA). If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than October 23, 2024.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, beginning September 19, 2024, 8:00 a.m., by October 22, 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](mailto:Johanna.Larson@hca.wa.gov), by October 11, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is revising these rules to remove the requirement that physician assistants work under the supervision of a physician and to make other related housekeeping changes. This amendment aligns with ESHB 2041, which authorizes physician assistants to enter into collaborative agreements with physicians to provide team-based care and enhance access to health care.

Reasons Supporting Proposal: These rules will enhance access to health care for people in Washington state.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; ESHB 1041, 68th legislature, 2024 regular session.

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: Governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1408; Implementation and Enforcement: Andrea Allen, P.O. Box 45502, Olympia, WA 98504-5502, 360-725-9805.

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.

Scope of exemption for rule proposal:

Is not exempt.

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

costs were calculated. This rule does not impose more-than-minor costs to small businesses.

September 18, 2024  
Wendy Barcus  
Rules Coordinator

## OTS-5778.2

AMENDATORY SECTION (Amending WSR 23-14-073, filed 6/29/23, effective 8/1/23)

**WAC 182-501-0135 Patient review and coordination (PRC).** (1) **Patient review and coordination (PRC)** is a health and safety program that coordinates care and ensures clients enrolled in PRC use services appropriately and in accordance with agency rules and policies.

(a) PRC applies to medical assistance fee-for-service (FFS) clients and managed care organization (MCO) enrollees.

(b) PRC is authorized under federal medicaid law by 42 U.S.C. 1396n (a)(2) and 42 C.F.R. 431.54.

(2) **Definitions.** Definitions found in chapter 182-500 WAC and WAC 182-526-0010 apply to this section. The following definitions apply to this section:

**"Agency's designee"** - See WAC 182-500-0010.

**"Appropriate use"** - Use of health care services that are safe and effective for a client's health care needs.

**"Assigned provider"** - An agency-enrolled health care provider or one participating with an agency-contracted managed care organization (MCO) who agrees to be assigned as a primary provider and coordinator of services for an FFS client or MCO enrollee in the PRC program. Assigned providers can include a primary care provider (PCP), a pharmacy, a prescriber of controlled substances, and a hospital for non-emergency services.

**"At-risk"** - A term used to describe one or more of the following:

(a) A client with a medical history of:

(i) Seeking and obtaining health care services at a frequency or amount that is not medically necessary; or  
(ii) Potential life-threatening events or life-threatening conditions that required or may require medical intervention.

(b) Behaviors or practices that could jeopardize a client's medical treatment or health including, but not limited to:

(i) Indications of forging or altering prescriptions;  
(ii) Referrals from medical personnel, social services personnel, or MCO personnel about inappropriate behaviors or practices that place the client at risk;  
(iii) Noncompliance with medical or drug and alcohol treatment;  
(iv) Paying cash for medical services that result in a controlled substance prescription or paying cash for controlled substances;  
(v) Arrests for diverting controlled substance prescriptions;  
(vi) Positive urine drug screen for illicit street drugs or non-prescribed controlled substances;  
(vii) Negative urine drug screen for prescribed controlled substances; or



(viii) Unauthorized use of a client's services card for an unauthorized purpose.

**"Care management"** - Services provided to MCO enrollees with multiple health, behavioral, and social needs to improve care coordination, client education, and client self-management skills.

**"Client"** - See WAC 182-500-0020.

**"Conflicting"** - Drugs or health care services that are incompatible or unsuitable for use together because of undesirable chemical or physiological effects.

**"Contraindicated"** - A medical treatment, procedure, or medication that is inadvisable or not recommended or warranted.

**"Duplicative"** - Applies to the use of the same or similar drugs and health care services without due medical justification. Example: A client receives health care services from two or more providers for the same or similar condition(s) in an overlapping time frame, or the client receives two or more similarly acting drugs in an overlapping time frame, which could result in a harmful drug interaction or an adverse reaction.

**"Emergency department information exchange (EDIE)"** - An internet-delivered service that enables health care providers to better identify and treat high users of the emergency department and special needs patients. When patients enter the emergency room, EDIE can proactively alert health care providers through different venues such as fax, phone, email, or integration with a facility's current electronic medical records.

**"Emergency medical condition"** - See WAC 182-500-0030.

**"Emergency services"** - See 42 C.F.R. 438.114.

**"Fee-for-service"** or **"FFS"** - See WAC 182-500-0035.

**"Fee-for-service client"** or **"FFS client"** - A client not enrolled in an agency-contracted MCO.

**"Just cause"** - A legitimate reason to justify the action taken including, but not limited to, protecting the health and safety of the client.

**"Managed care organization (MCO) enrollee"** - A medical assistance client enrolled in, and receiving health care services from, an agency-contracted managed care organization (MCO).

**"Prescriber of controlled substances"** - Any of the following health care professionals who, within their scope of professional practice, are licensed to prescribe and administer controlled substances (see chapter 69.50 RCW, Uniform Controlled Substance Act) for a legitimate medical purpose:

(a) A physician under chapter 18.71 RCW;

(b) A physician assistant under chapter 18.71A RCW;

(c) An osteopathic physician under chapter 18.57 RCW; and

(d) ~~((An osteopathic physician assistant under chapter 18.57A RCW; and~~

~~(e-))~~ An advanced registered nurse practitioner under chapter 18.79 RCW.

**"Primary care provider"** or **"PCP"** - A person licensed or certified under Title 18 RCW including, but not limited to, a physician, an advanced registered nurse practitioner (ARNP), or a physician assistant (PA) who supervises, coordinates, and provides health care services to a client, initiates referrals for specialty and ancillary care, and maintains the client's continuity of care.

(3) **Clients selected for PRC review.** The agency or agency's designee selects a client for PRC review when either or both of the following occur:

(a) An agency or MCO claims utilization review report indicates the client has not used health care services appropriately; or

(b) Medical providers, social service agencies, or other concerned parties have provided direct referrals to the agency or MCO.

(4) **Clients not selected for PRC review.** Clients are not reviewed or placed into the PRC program when they:

(a) Are in foster care;

(b) Are covered under state-only funded programs;

(c) Do not have medicaid as the primary payor; or

(d) Are covered under the alien emergency medical (AEM) program, according to WAC 182-507-0115.

(5) **Prior authorization.** When an FFS client is selected for PRC review, the prior authorization process as defined in WAC 182-500-0085 may be required:

(a) Before or during a PRC review; or

(b) When the FFS client is currently in the PRC program.

(6) **Review for placement in the PRC program.** When the agency or MCO selects a client for PRC review, the agency or MCO staff, with clinical oversight, reviews either the client's medical history or billing history, or both, to determine if the client has used health care services at a frequency or amount that is not medically necessary (42 C.F.R. 431.54(e)).

(7) **Usage guidelines for PRC placement.** Agency or MCO staff use the following usage guidelines to initiate review for PRC placement. A client may be reviewed for placement in the PRC program when the review shows the usage is not medically necessary and either the client's medical history or billing history, or both, documents any of the following:

(a) Any two or more of the following conditions occurred in a period of 90 consecutive calendar days in the previous 12 months. The client:

(i) Received services from four or more different providers, including physicians, ARNPs, and PAs not located in the same clinic or practice;

(ii) Had prescriptions filled by four or more different pharmacies;

(iii) Received 10 or more prescriptions;

(iv) Had prescriptions written by four or more different prescribers not located in the same clinic or practice;

(v) Received similar services in the same day not located in the same clinic or practice; or

(vi) Had 10 or more office visits;

(b) Any one of the following occurred within a period of 90 consecutive calendar days in the previous 12 months. The client:

(i) Made two or more emergency department visits;

(ii) Exhibits "at-risk" usage patterns;

(iii) Made repeated and documented efforts to seek health care services that are not medically necessary; or

(iv) Was counseled at least once by a health care provider, or an agency or MCO staff member with clinical oversight, about the appropriate use of health care services;

(c) The client received prescriptions for controlled substances from two or more different prescribers not located in the same clinic or practice in any one month within the 90-day review period; or

(d) The client has either a medical history or billing history, or both, that demonstrates a pattern of the following at any time in the previous 12 months:

- (i) Using health care services in a manner that is duplicative, excessive, or contraindicated; or
  - (ii) Seeking conflicting health care services, drugs, or supplies that are not within acceptable medical practice.
- (8) **PRC review results.** As a result of the PRC review, the agency or MCO may take any of the following steps:
- (a) Determine that no action is needed and close the client's file;
  - (b) Send the client and, if applicable, the client's authorized representative a one-time only written notice of concern with information on specific findings and notice of potential placement in the PRC program; or
  - (c) Determine that the usage guidelines for PRC placement establish that the client has used health care services at an amount or frequency that is not medically necessary, in which case one or more of the following actions take place:
    - (i) The MCO:
      - (A) Refers the MCO enrollee:
        - (I) For education on appropriate use of health care services; or
        - (II) To other support services or agencies; or
      - (B) Places the MCO enrollee into the PRC program for an initial placement period of no less than 24 months. For MCO enrollees younger than 18 years of age, the MCO must get agency approval before placing the MCO enrollee into the PRC program; or
    - (ii) The agency places the FFS client into the PRC program for an initial placement period of no less than 24 months.
- (9) **Initial placement in the PRC program.**
- (a) When an FFS client is initially placed in the PRC program, the agency places the FFS client for no less than 24 months with a primary care provider (PCP) for care coordination and a pharmacy for all medication prescriptions and one or more of the following types of health care providers:
    - (i) Prescriber of controlled substances if different than PCP;
    - (ii) Hospital for nonemergency services unless referred by the assigned PCP or a specialist. An FFS client may receive covered emergency services from any hospital;
    - (iii) Another qualified provider type, as determined by agency program staff on a case-by-case basis; or
    - (iv) Additional pharmacies on a case-by-case basis.
  - (b) Based on a medical necessity determination, the agency may make an exception to PRC rules when in the best interest of the client. See WAC 182-501-0165 and 182-501-0160.
  - (c) When an MCO enrollee is initially placed in the PRC program, the MCO restricts the MCO enrollee for no less than 24 months with a primary care provider (PCP) for care coordination and a primary pharmacy for all medication prescriptions and one or more of the following types of health care providers:
    - (i) Prescriber of controlled substances if different than PCP;
    - (ii) Hospital for nonemergency services unless referred by the assigned PCP or a specialist. An MCO enrollee may receive covered emergency services from any hospital;
    - (iii) Another qualified provider type, as determined by MCO program staff on a case-by-case basis; or
    - (iv) Additional pharmacies on a case-by-case basis.
- (10) **MCO enrollees changing MCOs.** MCO enrollees:
- (a) Remain in the same MCO for no less than 12 months for initial placement and whenever the enrollee changes MCOs, unless:

(i) The MCO enrollee moves to a residence outside the MCO's service area and the MCO is not available in the new location;

(ii) The MCO enrollee's assigned PCP no longer participates with the MCO and is available in another MCO, and the MCO enrollee wishes to remain with the current provider;

(iii) The MCO enrollee is in a voluntary enrollment program or a voluntary enrollment county;

(iv) The MCO enrollee is in the address confidentiality program (ACP), indicated by P.O. Box 257, Olympia, WA 98507; or

(v) The MCO enrollee is an American Indian/Alaska Native.

(b) Placed in the PRC program must remain in the PRC program for no less than 24 months regardless of whether the MCO enrollee changes MCOs or becomes an FFS client.

**(11) Notifying the client about placement in the PRC program.**

When the client is initially placed in the PRC program, the agency or the MCO sends the client and, if applicable, the client's authorized representative, a written notice that:

(a) Informs the client of the reason for the PRC program placement;

(b) Informs the client of the providers the client has been assigned to;

(c) Directs the client to respond to the agency or MCO to take the following actions if applicable:

(i) Change assigned providers, subject to agency or MCO approval;

(ii) Submit additional health care information, justifying the client's use of health care services; or

(iii) Request assistance, if needed, from agency or MCO program staff; and

(d) Informs the client of administrative hearing or appeal rights (see subsection (16) of this section).

**(12) Selection and role of assigned provider.** A client has a limited choice of providers.

(a) The following providers are not available:

(i) A provider who is being reviewed by the agency or licensing authority regarding quality of care;

(ii) A provider who has been suspended or disqualified from participating as an agency-enrolled or MCO-contracted provider; or

(iii) A provider whose business license is suspended or revoked by the licensing authority.

(b) For a client placed in the PRC program, the assigned:

(i) Provider(s) must be located in the client's local geographic area, in the client's selected MCO, and be reasonably accessible to the client.

(ii) PCP supervises and coordinates health care services for the client, including continuity of care and referrals to specialists when necessary.

(A) The PCP:

(I) Provides the plan of care for clients that have documented use of the emergency department for a reason that is not deemed to be an emergency medical condition;

(II) Files the plan of care with each emergency department that the client is using or with the emergency department information exchange; and

(III) Makes referrals to behavioral health treatment for clients who are using the emergency department for behavioral health treatment issues.

(B) The assigned PCP must be one of the following:

- (I) A physician;
  - (II) An advanced registered nurse practitioner (ARNP); or
  - (III) A licensed physician assistant (PA) (~~(, practicing with a supervising physician)~~).
- (iii) Prescriber of controlled substances prescribes all controlled substances for the client;
  - (iv) Pharmacy fills all prescriptions for the client; and
  - (v) Hospital provides all hospital nonemergency services.
- (c) A client placed in the PRC program must remain with the assigned providers for 12 months after the assignments are made, unless:
    - (i) The client moves to a residence outside the provider's geographic area;
    - (ii) The provider moves out of the client's local geographic area and is no longer reasonably accessible to the client;
    - (iii) The provider refuses to continue to serve the client;
    - (iv) The client did not select the provider. The client may request to change an assigned provider once within 30 calendar days of the assignment;
    - (v) The MCO enrollee's assigned PCP no longer participates with the MCO. In this case, the MCO enrollee may select a new provider from the list of available providers in the MCO network or follow the assigned provider to the new MCO; or
    - (vi) The client is in the address confidentiality program (ACP), indicated by P.O. Box 257, Olympia, WA 98507.
  - (d) When an assigned prescribing provider no longer contracts with the agency or the MCO:
    - (i) All prescriptions from the provider are invalid 30 calendar days following the date the contract ends; and
    - (ii) The client must choose or be assigned another provider according to the requirements in this section.
- (13) PRC placement.**
- (a) The initial PRC placement is no less than 24 consecutive months.
  - (b) The second PRC placement is no less than an additional 36 consecutive months.
  - (c) Each subsequent PRC placement is no less than 72 consecutive months.
- (14) Agency or MCO review of a PRC placement period.** The agency or MCO reviews a client's use of health care services before the end of each PRC placement period described in subsection (13) of this section using the guidelines in subsection (7) of this section.
- (a) The agency or MCO assigns the next PRC placement if the usage guidelines for PRC placement in subsection (7) of this section apply to the client.
  - (b) When the agency or MCO assigns a subsequent PRC placement, the agency or MCO sends the client and, if applicable, the client's authorized representative, a written notice informing the client:
    - (i) Of the reason for the subsequent PRC program placement;
    - (ii) Of the length of the subsequent PRC placement;
    - (iii) That the current providers assigned to the client continue to be assigned to the client during the subsequent PRC placement;
    - (iv) That all PRC program rules continue to apply;
    - (v) Of administrative hearing or appeal rights (see subsection (16) of this section); and
    - (vi) Of the rules that support the decision.
  - (c) The agency or MCO may remove a client from PRC placement if the client:

(i) Successfully completes a treatment program that is provided by a substance use disorder (SUD) service provider certified by the agency under chapter 182-538D WAC;

(ii) Submits documentation of completion of the approved treatment program to the agency; and

(iii) Maintains appropriate use of health care services within the usage guidelines described in subsection (7) of this section for six consecutive months after the date the treatment ends; or

(iv) Successfully stabilizes due to the usage of treatment medications including, but not limited to, Buprenorphine.

(d) The agency or MCO determines the appropriate placement for a client who has been placed back into the program.

(e) A client remains placed in the PRC program regardless of change in eligibility program type or change in address.

(15) **Client financial responsibility.** A client placed in the PRC program may be billed by a provider and held financially responsible for nonemergency health care services obtained from a nonpharmacy provider when the provider is not an assigned or appropriately referred provider as described in subsection (12) of this section. See WAC 182-502-0160.

(16) **Right to administrative hearing or appeal.**

(a) An FFS client who disagrees with an agency decision regarding placement or continued placement in the PRC program has the right to an administrative hearing regarding this placement. An FFS client must request an administrative hearing from the agency within 90 days of the written notice of placement or continued placement to exercise this right.

(b) An MCO enrollee who disagrees with an MCO decision regarding placement or continued placement in the PRC program has a right to appeal this decision in the same manner as an adverse benefit determination under chapter 182-538 WAC.

(c) The agency conducts an administrative hearing according to chapter 182-526 WAC.

(d) A client who requests an administrative hearing or appeal within 10 calendar days from the date of the written notice of an initial PRC placement will not be placed in the PRC program until ordered by an administrative law judge (ALJ) or review judge.

(e) A client who requests an administrative hearing or appeal more than 10 calendar days from the date of the written notice of initial PRC placement will remain placed in the PRC program until a final administrative order is entered that orders the client's removal from the program.

(f) A client who requests an administrative hearing or appeal in all other cases and who has already been assigned providers will remain placed in the PRC program unless a final administrative order is entered that orders the client's removal from the program.

(g) An ALJ may rule the client be placed in the PRC program prior to the date the record is closed and before the date the initial order is issued based on a showing of just cause.

OTS-5779.1

AMENDATORY SECTION (Amending WSR 21-20-132, filed 10/6/21, effective 11/6/21)

**WAC 182-531-0425 Collaborative care.** (1) Under the authority of RCW 74.09.497, and subject to available funds, the medicaid agency covers collaborative care provided in clinical care settings.

(2) For the purposes of this section:

(a) **Collaborative care** means a specific type of integrated care where medical providers and behavioral health providers work together to address behavioral health conditions, including mental health conditions and substance use disorders.

(b) **Collaborative care model** is a model of behavior health integration that enhances usual clinical care by adding two key services:

(i) Care management support for clients receiving behavioral health treatment; and

(ii) Regular psychiatric or board certified addiction medicine consultation with the clinical care team, particularly for clients whose conditions are not improving.

(c) **Collaborative care team** means a team of licensed behavioral health professionals operating within their scope of practice who participate on the clinical care team along with the collaborative care billing provider to provide collaborative care to eligible clients. The team must include a collaborative care billing provider, a behavioral health care manager, and a psychiatric consultant. Professionals making up this team include, but are not limited to:

(i) Advanced registered nurses;

(ii) Substance use disorder professionals (SUDP);

(iii) Substance use disorder professional trainees (SUDPT) under the supervision of a certified SUDP;

(iv) Marriage and family therapists;

(v) Marriage and family therapist associates under the supervision of a licensed marriage and family therapist or equally qualified mental health practitioner;

(vi) Mental health counselors;

(vii) Mental health counselor associates under the supervision of a licensed mental health counselor, psychiatrist, or physician;

(viii) Physicians;

(ix) Physician assistants (~~(under the supervision of a licensed physician)~~);

(x) Psychiatrists;

(xi) Psychiatric advanced registered nurses;

(xii) Psychologists;

(xiii) Registered nurses;

(xiv) Social workers;

(xv) Social worker associate-independent clinical, under the supervision of a licensed independent clinical social worker or equally qualified mental health practitioner; and

(xvi) Social worker associate-advanced, under the supervision of a licensed independent clinical social worker, advanced social worker, or equally qualified mental health practitioner.

(3) The behavioral health care manager is a designated licensed professional with formal education or specialized training in behavioral health (including social work, nursing, or psychology), working under the oversight and direction of the treating medical provider.

(4) The collaborative care billing provider must meet all of the following:

(a) Be enrolled with the agency as one of the following:

- (i) A physician licensed under Titles 18 RCW and 246 WAC;
  - (ii) An advanced registered nurse practitioner licensed under Titles 18 RCW and 246 WAC;
  - (iii) A federally qualified health center (FQHC);
  - (iv) A rural health clinic (RHC); or
  - (v) A clinic that is not an FQHC or RHC that meets the requirements of Titles 70 RCW and 247 WAC.
- (b) Complete, sign, and return the Attestation for Collaborative Care Model, form HCA 13-0017, to the agency; and
  - (c) Agree to follow the agency's guidelines for practicing a collaborative care model.
- (5) Providers of collaborative care must:
    - (a) Use a registry to track the client's clinical outcomes;
    - (b) Use at least one validated clinical rating scale;
    - (c) Ensure the registry is used in conjunction with the practice's electronic health records (EHR);
    - (d) Include a plan of care; and
    - (e) Identify outcome goals of the treatments.
  - (6) If a provider no longer meets the agreed upon requirements in the agency's Attestation for Collaborative Care Model, form HCA 13-0017, the provider must immediately notify the agency. The agency does not pay for collaborative care if a provider does not meet the agreed upon requirements.
  - (7) Providers are subject to post pay review by the agency. The agency may recoup payment if the provider is found to have not met the requirements for providing collaborative care as agreed to in the agency's Attestation for Collaborative Care Model, form HCA 13-0017.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

- WAC 182-531-1300 Foot care services for clients ((~~twenty-one~~) 21 years of age and older.** (1) This section addresses care of the lower extremities (foot and ankle) referred to as foot care and applies to clients ((~~twenty-one~~) 21 years of age and older.
- (2) The department covers the foot care services listed in this section when those services are provided by any of the following health care providers and billed to the department using procedure codes and diagnosis codes that are within their scope of practice:
- (a) Physicians or ((~~physician's assistants certified (PA-C)~~) physician assistants;
  - (b) Osteopathic physicians, surgeons, or ((~~physician's assistant-certified (PA-C)~~) physician assistants;
  - (c) Podiatric physicians and surgeons; or
  - (d) Advanced registered nurse practitioners (ARNP).
- (3) The department covers evaluation and management visits to assess and diagnose conditions of the lower extremities. Once diagnosis is made, the department covers treatment if the criteria in subsection (4) of this section are met.
- (4) The department pays for:
- (a) Treatment of the following conditions of the lower extremities only when there is an acute condition, an exacerbation of a chronic condition, or presence of a systemic condition such as metabolic, neurologic, or peripheral vascular disease and evidence that the treatment will prevent, cure or alleviate a condition in the cli-



ent that causes pain resulting in the inability to perform activities of daily living, acute disability, or threatens to cause the loss of life or limb, unless otherwise specified:

(i) Acute inflammatory processes such as, but not limited to tendonitis;

(ii) Circulatory compromise such as, but are not limited to:

(A) Lymphedema;

(B) Raynaud's disease;

(C) Thromboangiitis obliterans; and

(D) Phlebitis.

(iii) Injuries, fractures, sprains, and dislocations;

(iv) Gout;

(v) Lacerations, ulcerations, wounds, blisters;

(vi) Neuropathies (e.g., reflex sympathetic dystrophy, secondary to diabetes, charcot arthropathy);

(vii) Osteomyelitis;

(viii) Post-op complications;

(ix) Warts, corns, or calluses in the presence of an acute condition such as infection and pain effecting the client's ability to ambulate as a result of the warts, corns, or calluses and meets the criteria in subsection (4) of this section;

(x) Soft tissue conditions, such as, but are not limited to:

(A) Rashes;

(B) Infections (fungal, bacterial);

(C) Gangrene;

(D) Cellulitis of lower extremities;

(E) Soft tissue tumors; and

(F) Neuroma.

(xi) Nail bed infections (paronychia); and

(xii) Tarsal tunnel syndrome.

(b) Trimming and/or debridement of nails to treat, as applicable, conditions from the list in subsection (4) (a) of this section. The department pays for one treatment in a (~~sixty~~) 60-day period. The department covers additional treatments in this period if documented in the client's medical record as being medically necessary;

(c) A surgical procedure to treat one of the conditions in subsection (4) of this section performed on the lower extremities, and performed by a qualified provider;

(d) Impression casting to treat one of the conditions in subsection (4) of this section. The department includes (~~ninety~~) 90-day follow-up care in the reimbursement;

(e) Custom fitted and/or custom molded orthotic devices to treat one of the conditions in subsection (4) of this section.

(i) The department's fee for the orthotic device includes reimbursement for a biomechanical evaluation (an evaluation of the foot that includes various measurements and manipulations necessary for the fitting of an orthotic device); and

(ii) The department includes an evaluation and management (E&M) fee reimbursement in addition to an orthotic fee reimbursement if the E&M services are justified and well documented in the client's medical record.

(5) The department does not pay for:

(a) The following radiology services:

(i) Bilateral X-rays for a unilateral condition; or

(ii) X-rays in excess of three views; or

(iii) X-rays that are ordered before the client is examined.

(b) Podiatric physicians or surgeons for X-rays for any part of the body other than the foot or ankle.

AMENDATORY SECTION (Amending WSR 19-22-017, filed 10/25/19, effective 11/25/19)

**WAC 182-531-1720 Tobacco/nicotine cessation counseling.** (1) The medicaid agency covers tobacco/nicotine cessation counseling when:

(a) Delivered by qualified providers through an agency-approved tobacco/nicotine cessation telephone counseling service;

(b) The client is pregnant or in the postpartum period as defined in 42 C.F.R. 435.170. The agency pays for face-to-face office visits for tobacco/nicotine cessation counseling for these clients with the following limits:

(i) Counseling must be provided by qualified physicians, advanced registered nurse practitioners (ARNPs), physician assistants (~~certified (PA-Cs)~~), naturopathic physicians, pharmacists, certified nurse-midwives (CNM), licensed midwives (LM), psychologists, or dentists;

(ii) Two tobacco/nicotine cessation counseling attempts are allowed every (~~twelve~~) 12 months. An attempt is defined as up to four tobacco/nicotine cessation counseling sessions; and

(iii) The agency does not cover more than one face-to-face tobacco/nicotine cessation counseling session per client, per day. The provider must keep written documentation in the client's record for each session.

(c) Provided through screening, brief intervention, and referral to treatment (SBIRT). To receive payment for tobacco/nicotine cessation counseling through SBIRT, providers must bill the agency using the agency's published billing instructions.

(2) A provider may prescribe pharmacotherapy for tobacco/nicotine cessation when the provider considers the treatment appropriate for the client. The agency covers certain pharmacotherapy for tobacco/nicotine cessation, including prescription drugs and over-the-counter (OTC) nicotine replacement therapy (NRT), as described in chapter 182-530 WAC.

#### OTS-5780.1

AMENDATORY SECTION (Amending WSR 15-12-074, filed 5/29/15, effective 7/1/15)

**WAC 182-534-0200 Enhanced payments for EPSDT screens for children in out-of-home placement.** The medicaid agency pays providers an enhanced fee for Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) screens provided to children in out-of-home placement. See the agency's EPSDT provider guide for specific billing code requirements, and see the agency's fee schedule for the fee.

(1) For the purposes of this section, out-of-home placement means temporary, (~~twenty-four~~) 24 hour per day, substitute care for a child:

(a) Placed away from the child's parents or guardians in licensed, paid, out-of-home care; and

(b) For whom the department of social and health services or a licensed or certified child placing agency has placement and care responsibility.

(2) The agency pays an enhanced fee to the providers listed in subsection (3) of this section for EPSDT screens provided to only those children in out-of-home placement.

(3) The following providers are eligible to perform EPSDT screens and bill the enhanced rate for children in out-of-home placement:

(a) EPSDT clinics;

(b) Physicians;

(c) Advanced registered nurse practitioners (ARNPs); and

(d) Physician assistants (PAs) (~~working under a physician's guidance~~).

(4) To be paid an enhanced fee, services furnished by the providers listed in subsection (3) of this section must meet the federal requirements for EPSDT screens at 42 C.F.R. Part 441 Subpart B.

(5) The provider must retain documentation of the EPSDT screens in the client's medical file. The provider must use the agency's Well Child Exam forms or provide equivalent information. The Well Child Exam forms include the required elements for an EPSDT screen. The Well Child Exam forms are available for downloading at no charge at <http://www.hca.wa.gov/medicaid/forms/Pages/index.aspx>.

(6) The agency evaluates client files and payments made under this program. The agency may recover the enhanced payment amount when:

(a) The client was not in out-of-home placement as defined in subsection (1) of this section when the EPSDT screen was provided; or

(b) Documentation was not in the client's medical file (see subsection (5) of this section).

## OTS-5781.1

AMENDATORY SECTION (Amending WSR 19-21-087, filed 10/14/19, effective 11/14/19)

**WAC 182-552-0001 Respiratory care—General.** (1) The respiratory care, equipment, and supplies described in this chapter applies to:

(a) Medicaid clients who require respiratory care in their homes, community residential settings, and skilled nursing facilities;

(b) Providers who supply respiratory care to medicaid clients; and

(c) Licensed health care professionals whose scope of practice allows for the provision of respiratory care.

(2) The agency covers the respiratory care listed in this chapter according to the limitations and requirements in this chapter.

(3) The agency pays for respiratory care for medicaid clients when it is:

(a) Covered;

(b) Within the scope of the eligible client's medical care program;

(c) Medically necessary, as defined under chapter 182-500 WAC;

(d) Prescribed by a physician, advanced registered nurse practitioner (ARNP), or physician assistant (~~certified (PAC)~~) within the scope of (~~his or her~~) their licensure;

(e) Authorized, as required within this chapter, chapters 182-501 and 182-502 WAC, and the agency's published medicaid billing guides and provider alerts;

(f) Billed according to this chapter, chapters 182-501 and 182-502 WAC, and the agency's published medicaid billing guides and provider alerts; and

(g) Provided and used within accepted medical or respiratory care community standards of practice.

(4) The agency does not require prior authorization for requests for covered respiratory care for medicaid clients that meets the clinical criteria set forth in this chapter.

(5) The agency requires prior authorization for covered respiratory care for medicaid clients when the clinical criteria set forth in this chapter are not met, including the criteria associated with the expedited prior authorization process.

(a) The agency evaluates requests requiring prior authorization on a case-by-case basis to determine whether they are medically necessary, according to the process found in WAC 182-501-0165.

(b) Refer to WAC 182-552-1300, 182-552-1325, 182-552-1350, and 182-552-1375 for specific details regarding authorization.

(6) The agency evaluates on a case-by-case basis for medical necessity and appropriateness items, procedures, and services that do not have an established procedure code available and which are billed using miscellaneous procedure codes.

## WSR 24-19-100

## PROPOSED RULES

## DEPARTMENT OF HEALTH

[Filed September 18, 2024, 9:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-17-145.

Title of Rule and Other Identifying Information: Chapter 246-230 WAC, Security screening systems. The department of health (department) is proposing to create a new chapter that establishes radiation safety standards for the use of ionizing radiation for security purposes, while making every reasonable effort to maintain exposures to radiation as low as reasonably achievable to protect public health and safety.

Hearing Location(s): On November 20, 2024, at 11:30 a.m., at the Department of Health, Town Center 2, Room 166, 111 Israel Road S.E., Tumwater, WA 98501; or virtual. Register in advance for this webinar [https://us02web.zoom.us/webinar/register/WN\\_a4j8zh4qT26MMXez8aObDg](https://us02web.zoom.us/webinar/register/WN_a4j8zh4qT26MMXez8aObDg). After registering, you will receive a confirmation email containing information about joining the webinar. Individuals may attend the rules hearing either in person or virtually.

Date of Intended Adoption: November 27, 2024.

Submit Written Comments to: Department of Health c/o Ashlie Laydon, P.O. Box 47822, Olympia, WA 98504-7822, email [ashlie.laydon@doh.wa.gov](mailto:ashlie.laydon@doh.wa.gov), <https://fortress.wa.gov/doh/policyreview>, beginning date and time of filing, by November 20, 2024, at 11:59 p.m.

Assistance for Persons with Disabilities: Contact Ashlie Laydon, TTY 711, email [ashlie.laydon@doh.wa.gov](mailto:ashlie.laydon@doh.wa.gov), by November 5, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules outline registration requirements, authorized use, and system and operational requirements; establish dose limits; outline requirements for tracking the dose of radiation an individual receives; specify what information must be provided to an individual prior to screening; outline requirements for radiation surveys; address records maintenance and retention; and outline the process for requesting a variance. These rules are necessary to maintain exposures to radiation as low as reasonably achievable to protect public health and safety.

Reasons Supporting Proposal: 2SSB 5695, chapter 160, Laws of 2022, codified as RCW 72.09.775, required the Washington state department of corrections (corrections) to establish a comprehensive security screening pilot program, using ionizing radiation, as an effort to protect human dignity by reducing or eliminating strip searches and to increase public health and safety by reducing access to drugs and alcohol within correction facilities. Prior to the passage of 2SSB 5695, security screening systems using ionizing radiation were not authorized in Washington state. The practice of intentionally exposing a person to ionizing radiation was previously limited to healing arts purposes. 2SSB 5695 authorized the use of security screening systems using ionizing radiation at two corrections facilities.

The department is the state radiation control agency with sole responsibility for administration of regulatory, licensing, and radiation control laws. The department therefore must adopt rules to establish radiation safety standards for the use of ionizing radiation for security purposes to protect public health and safety from overexposure to radiation.

RCW 72.09.775 expired on June 30, 2024; however, during the development of these rules, the department discovered that other entities such as local and county jails and juvenile detention centers, are operating these systems. The proposed rules apply to all registrants using security screening systems using ionizing radiation and limit the use to individuals who have been committed to a correctional facility or who have been presented for confinement in a jail or detention facility.

Statutory Authority for Adoption: RCW 70A.388.040.

Statute Being Implemented: RCW 70A.388.040.

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

Name of Proponent: Governmental.

Name of Agency Personnel Responsible for Drafting: Ashlie Laydon, Rules Coordinator, 111 Israel Road S.E., Tumwater, WA 98501; Implementation and Enforcement: Christopher Haigh, Radiation Health Physicist or Richard Montemarano, Radiation Health Physicist, 111 Israel Road S.E., Tumwater, WA 98501, 253-395-6758.

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 Ashlie Laydon, P.O. Box 47822, Olympia, WA 98504-7822, TTY 711, email ashlie.laydon@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 relate only to internal governmental operations that are not subject to violation by a nongovernment party.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rules only affect internal government operations and do not affect small businesses.

Scope of exemption for rule proposal:

Is fully exempt.

September 18, 2024  
 Kristin Peterson, JD  
 Chief of Policy  
 for Umair A. Shah, MD, MPH  
 Secretary

**OTS-4503.10**

**Chapter 246-230 WAC  
 SECURITY SCREENING SYSTEMS**

NEW SECTION

**WAC 246-230-001 Authority, purpose, and scope.** The requirements of this chapter are adopted pursuant to the provisions of chapter

70A.388 RCW. This chapter establishes radiation safety standards for the use of security screening systems that emit ionizing radiation to detect contraband under clothing and within body cavities of individuals who have been committed to a correctional facility or who have been presented for confinement in a jail or detention facility.

#### NEW SECTION

**WAC 246-230-005 Relationship to other regulations.** In addition to the requirements established in this chapter, registrants shall also comply with applicable requirements including, but not limited to, the following:

- (1) Chapter 246-220 WAC;
- (2) Chapter 246-221 WAC;
- (3) Chapter 246-222 WAC; and
- (4) Chapter 246-224 WAC.

#### NEW SECTION

**WAC 246-230-010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly indicates otherwise.

(1) "ALARA" (as low as reasonably achievable or as low as is reasonably achievable) means making every reasonable effort to maintain exposures to radiation as far below the dose limits in this chapter as is practical, consistent with the purpose for which the licensed activity is undertaken, taking into account the state of technology, the economics of improvements in relation to the state of technology, the economics of improvements in relation to the benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to the utilization of nuclear energy and licensed materials in the public interest.

(2) "Correctional facility" means a facility or institution operated directly or by contract by the secretary of corrections or his or her designee for the purposes of incarcerating adults in total or partial confinement, as defined in RCW 9.94A.030.

(3) "Department" means the Washington state department of health, which has been designated as the state radiation control agency under chapter 70A.388 RCW.

(4) "Detention facility" means a county facility, paid for by the county, for the physical confinement of a juvenile alleges to have committed an offense or an adjudicated offender subject to a disposition or modification order. "Detention facility" includes county group homes, inpatient substance abuse programs, juvenile basic training camps, and electronic monitoring.

(5) "Dose record" means a record for each individual subject to screening and includes:

- (a) Name of individual;
- (b) Date and time of screening; and
- (c) Dose of radiation received at time of screening.

This record does not include images produced by the security screening system.

(6) "Engineering control" means a safety component of the security screening system designed to prevent improper operation or unintended radiation exposure.

(7) "General-use security screening system" means a security screening system that delivers an effective radiation dose equal to or less than 0.25  $\mu\text{Sv}$  (25  $\mu\text{rem}$ ) per screening.

(8) "Jail" means any holding, detention, special detention, or correctional facility as defined in RCW 70.48.020.

(9) "Limited-use security screening system" means a security screening system that is capable of delivering an effective dose greater than 0.25  $\mu\text{Sv}$  (25  $\mu\text{rem}$ ) per screening, but must not exceed an effective dose of 10  $\mu\text{Sv}$  (1 mrem) per screening.

(10) "Minor" means an individual less than 18 years of age.

(11) "Operator" means a trained employee associated with the operation of the security screening system whose responsibilities include at least one of the following:

(a) Initiating or stopping a scan;

(b) Verifying the security screening system is operating correctly;

(c) Providing information and instructions to screened individuals; or

(d) Controlling access to the radiation screening zone.

(12) "Primary beam" means the beam of radiation emanating from the security screening system intended to reach the individual being scanned. This excludes scattered radiation and radiation transmitted through shielding.

(13) "Qualified expert" means the same as in WAC 246-220-010.

(14) "Radiation screening zone" means the general area established for the purpose of limiting or controlling access to the area where screening will be performed.

(15) "Registrant" means any person who is registered by the department or is legally obligated to register with the department in accordance with these rules and the act.

(16) "Safety interlock" means a device that is intended to automatically prevent or interrupt the radiation hazard whenever safety is compromised by access to the interior of the system, unauthorized access to a radiation area, or by an operational malfunction.

(17) "Screening" means the sum of radiation exposures or scans necessary to image objects concealed on all sides of the body as intended by the system design under normal conditions. A screening consists of one scan. If more than one scan needs to be performed to determine if the individual is concealing contraband, all additional scans are considered repeat screenings.

(18) "Security screening system" means a screening system that intentionally exposes an individual to ionizing radiation for the purpose of detecting contraband hidden in an individual's body or under clothing. Security screening systems must use transmission X-ray.

(19) "Shutter" means a device attached to the tube housing assembly which can totally intercept the entire cross sectional area of the useful beam and which has a lead equivalency at least that of the tube housing assembly.

(20) "Technique factors" means the X-ray settings, including:

(a) The peak kilovoltage applied to the X-ray tube;

(b) The electric current passing through the X-ray tube; and

(c) The scan time.

(21) "Transmission X-ray" means a security screening system that uses conventional means of radiographic imaging, in which X-rays or



gamma rays pass through an individual to create shadow-grams of enclosed contraband based on their radiation attenuating properties. For the purposes of this chapter, any transmission X-ray system for which at least one dimension of the scan area is greater than 50 cm is considered a security screening system.

#### NEW SECTION

**WAC 246-230-015 Registration.** The owner or controller of the security screening system who is responsible for the safe operation of the security screening system shall register the security screening system facility and security screening system with the department in accordance with chapter 246-224 WAC.

#### NEW SECTION

**WAC 246-230-020 Security screening system requirements.** (1) A security screening system must meet the definition of a general-use security screening system unless a variance, as outlined in WAC 246-230-090, is obtained from the department to operate a limited-use security screening system. If a security screening system is capable of functioning as both a general-use security screening system and a limited-use security screening system, the limited-use function must be disabled unless a variance to operate it as a limited-use security screening system has been obtained from the department.

(2) There must be at least one indicator, clearly visible from any location, indicating when a scan is in progress.

(3) Security screening systems must have the following engineering controls in place:

(a) Power to the security screening system must be controlled by a key switch. The key must be captured (unable to be removed) whenever it is positioned to allow exposures to be initiated.

(b) A means for the operator to:

(i) Initiate the emission of radiation other than the function of an interlock or the main power control.

(ii) Terminate the emission of radiation other than the function of an interlock.

(c) Radiation emission must automatically terminate after a pre-set time or exposure.

(d) Technique factors for each mode of operation must be preset by the manufacturer and must not be alterable by the system operator. If a security screening system has more than one mode, prior to each scan, a mode indicator must be clearly visible to the operator.

(e) A warning label must be permanently affixed or inscribed on the security screening system at any location of any controls used to initiate the emission of radiation. The warning label must read "CAUTION: RADIATION PRODUCED WHEN ENERGIZED."

(4) Security screening systems must have safety interlocks in place:

(a) Failure of any single component of the security screening system must not cause failure of more than one safety interlock.

(b) A tool or key must be required to open or remove access panels. Each access panel to a radiation source must have at least one safety interlock to terminate radiation production when opened.

(c) Safety interlocks must terminate the primary beam in the event of any security screening system problem that may result in abnormal or unintended radiation emission. This includes, but is not limited to:

- (i) Unintended stoppage of beam motion;
- (ii) Abnormal or unintended radiation source output;
- (iii) Computer safety system malfunction;
- (iv) Termination malfunction; or
- (v) Shutter mechanism malfunction.

(d) Resetting a safety interlock, following any interruption of radiation production by the functioning of any safety interlock, must not result in the production of radiation.

(5) Security screening systems must employ shielding requirements so that during operation, including under maximum operating parameters, the leakage equivalent dose at any point 30 cm from any external surface of the security screening system, outside of the primary beam, must not exceed 2.5  $\mu$ Sv (0.25 mrem) in any one hour.

#### NEW SECTION

**WAC 246-230-025 Authorized use.** (1) A security screening system may only be used to screen an individual who has been committed to a correctional facility or who has been presented for confinement in a jail or detention facility, and must not be used to screen such individuals who are:

- (a) Minors;
- (b) Pregnant or suspect they may be pregnant;
- (c) Health compromised as determined by a licensed health care practitioner; or
- (d) Who have met the annual dosage limit established in WAC 246-230-040.

(2) Security screening systems may not be used for medical purposes.

#### NEW SECTION

**WAC 246-230-030 Operating requirements of security screening system.** (1) Each operator of a security screening system shall complete radiation safety training prior to performing any security screening system operations. The registrant shall develop a training program in consultation with a qualified expert and must include, at a minimum:

- (a) Radiation safety, including:
  - (i) Identification of radiation hazards associated with the use of the security screening system;
  - (ii) Operating and emergency procedures;
  - (iii) Proper procedures for reporting an actual or suspected overexposure;
  - (iv) Radiation units;
  - (v) Risk and biological effects associated with radiation;

(vi) Methods of controlling radiation dose, including:

- (A) Time;
- (B) Distance; and
- (C) Shielding;

(vii) Concept of ALARA;

- (b) Preoperational checks;
- (c) Routine maintenance;

(d) Procedures to follow if the security screening system is damaged or malfunctions; and

(e) Supervised operations of the security screening system in accordance with the manufacturer's operations manual and facility procedures.

(2) Each operator must complete an annual refresher training, fulfilling the requirements of subsection (1) of this section, not to exceed 12 months between trainings.

(3) Written operating and emergency procedures must be immediately available to each operator. Written procedures must be consistent with manufacturer standards and include, at a minimum:

(a) Operational procedures to safely use security screening system;

- (b) Warnings of potential safety hazards;
- (c) Emergency procedures;
- (d) Preoperational checks; and
- (e) Routine maintenance requirements.

(4) For security screening systems with more than one mode, operating procedures must include technique factors for each operating mode and appropriate use of each mode.

(5) The following requirements apply when screening individuals using a security screening system:

(a) The operator must follow operating procedures for use of the security screening system;

(b) The operator must have a clear view of the radiation screening area. This may be direct line-of-sight, mirror view, or real-time video of the radiation screening area;

(c) Controls must be in place to prohibit anyone from entering or reentering the screening area while radiation is being produced; and

(d) If the operator cannot determine if an individual is concealing contraband from the initial screening, additional screening may occur, consistent with a written repeat screening policy developed in consultation with a qualified expert. Records of repeat screening must be kept in accordance with WAC 246-230-080(4).

#### NEW SECTION

**WAC 246-230-040 Dose limits.** (1) The registrant shall confirm that the manufacturer of the security screening system has ensured that operating parameters are optimized for the best performance at the lowest dose.

(2) The radiation dose delivered to an individual must be ALARA while meeting the required detection performance.

(3) The total effective dose to an individual must not exceed 0.25 mSv (25 mrem) in a calendar year from security screening systems.

(4) The area outside the radiation screening zone must not exceed 20 µSv (2 mrem) in any one hour.

NEW SECTION

**WAC 246-230-050 Requirements for tracking dosage.** (1) The registrant must ensure a method is in place to track the dose of radiation an individual receives as a result of security screening. The registrant must track the dose of radiation an individual receives from security screening systems:

- (a) Per screening;
- (b) Per calendar year; and
- (c) In a lifetime.

(2) The registrant must ensure that dose records transfer with an individual between facilities.

(3) The registrant must ensure that dose records are provided to an individual upon request.

(4) The registrant must ensure that dose records are maintained for the lifetime of each individual.

NEW SECTION

**WAC 246-230-060 Information to be provided to scanned individuals.** Prior to screening, the registrant must ensure that the individual is informed:

- (1) That the security screening system emits ionizing radiation;
- (2) That the security screening system meets all requirements of this chapter; and
- (3) Of any available alternative screening options.

NEW SECTION

**WAC 246-230-070 Radiation surveys.** (1) Radiation surveys must be conducted by a qualified expert to verify:

- (a) Dose of radiation per screening and maximum allowable scans per year for any individual at stated dosage per screening;
- (b) Radiation leakage at the surface, within radiation screening zone, at operator position, and surrounding areas. If the radiation survey conducted by a qualified expert indicates the operators could receive 10 percent of the occupational worker's annual dose limit of 5 rem, a dosimetry badge shall be worn while within the radiation screening zone;
- (c) Safety interlocks are functioning properly;
- (d) Operation and emergency procedures are in place and used as appropriate;
- (e) Training program and training log are in place and used as appropriate; and
- (f) Any other parameters specified by the manufacturer.

(2) The registrant must ensure that radiation surveys are completed:

- (a) Prior to first use and upon replacement of security screening system;
- (b) Every 10 to 14 months;
- (c) Within 30 days following any maintenance that affects:
  - (i) Radiation shielding;
  - (ii) Shutter mechanism;

(iii) Radiation production components; and

(d) Within 30 days following any alteration or incident that may have damaged the system in a way that unintended radiation emission occurs.

(3) A qualified expert will provide a summary of each radiation survey to the registrant, outlining results and recommendations for corrections. Corrections must be made within 30 days of receiving the recommendations.

#### NEW SECTION

**WAC 246-230-080 Records.** The registrant must maintain the following records on-site and make them available to the department:

(1) Training records for each operator must be maintained for five years. Training records must document:

- (a) Operator's name;
- (b) Date of training; and
- (c) Training curriculum provided.

(2) Radiation surveys conducted by a qualified expert must be maintained for five years. The following information must be documented:

- (a) Security screening system make, model, serial number, and facility location;
- (b) Name of qualified expert who completed the survey;
- (c) Survey date;
- (d) Make, model, serial number, and calibration dates of instrumentation used to conduct the survey;
- (e) Results of the visual inspection of the security screening system safety interlocks;
- (f) Background measurements;
- (g) Radiation survey measurements;
- (h) Survey diagram, including:
- (i) Security screening system parameters at which measurements were made; and
- (ii) Drawings must be to scale as applicable.

(3) Maintenance logs must be maintained for the life of the security screening system. Logs must document:

- (a) Upgrades;
- (b) Modifications;
- (c) Maintenance or repairs made; and
- (d) Replacement.

(4) Repeat screening log must be maintained for five years. Repeat screening log must be completed any time an operator cannot determine if an individual is concealing contraband from the initial screening, and additional screening occurs. The following must be documented:

- (a) Name of operator conducting the screening;
- (b) Name of individual screened;
- (c) Number of repeated screens performed; and
- (d) Justification for conducting the repeat screening.

NEW SECTION

**WAC 246-230-090 Variance request.** A registrant may submit a written request to the department for a variance from WAC 246-230-020(1). The registrant shall not use a security screening system on individuals until the department approves the variance request.

(1) The written request must be addressed to: X-ray Supervisor, Office of Radiation Protection, Department of Health, P.O. Box 47827, Olympia, Washington 98504-7827, and must include:

(a) An explanation of the circumstances involved, and the reason why a limited-use security screening system must be used;

(b) A description of how using a limited-use security screening system meets the intent of this chapter and how the registrant will protect individuals and operators;

(c) A description of the limited-use security screening system to be used with supporting pictures or documents; and

(d) The time period for which the variance is requested.

(2) If necessary, the department may require the registrant to submit additional information.

(3) The department may conduct an on-site variance inspection to verify the information provided, or if it otherwise determines that an inspection is necessary.

(4) As determined by the department, variances may be permanent or temporary.

(5) The department may impose conditions that may be necessary to protect human health and safety during the term of the variance in order to approve the request.

(6) The department may, at any time, revoke a variance approval if it is determined that the terms and conditions of the variance are not being followed.