

WSR 24-22-005

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed October 23, 2024, 3:48 p.m., effective November 23, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The health care authority (agency) is removing all instances of "automated maximum allowable cost" and "AMAC" from WAC 182-530-7150 and repealing WAC 182-530-8150. The agency no longer uses AMAC as a reimbursement method.

Citation of Rules Affected by this Order: Repealing WAC 182-530-8150; and amending WAC 182-530-7150.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 24-19-032 on September 10, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: October 23, 2024.

Wendy Barcus
Rules Coordinator

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 following 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).
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WSR 24-22-006

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed October 23, 2024, 3:52 p.m., effective November 23, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The health care authority 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.

Citation of Rules Affected by this Order: Amending WAC 182-503-0535 and 182-507-0135.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: P.L. 118-50 (Ukraine Security Supplemental Appropriations Act, 2024 (Division B)).

Adopted under notice filed as WSR 24-19-064 on September 16, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 2, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: October 23, 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 24-22-007
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-09—Filed October 23, 2024, 4:29 p.m., effective November 23, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Based on the passage of 2SSB 5784 in the 2024 legislative session, the Washington department of fish and wildlife (WDFW) has amended WAC 220-440-140, 220-440-150, 220-440-180, and 220-440-230. The new rules place limits on the amounts paid to eligible farmers for damage to their commercial crops caused by damage from deer and elk. WDFW is now restricted to pay no more than \$300,000 per fiscal year from the state general fund. In addition, the maximum payment amount for a crop or livestock loss claim is increased from \$10,000 to \$30,000. The limit of a claim is now \$30,000 and not appealable for a higher payment.

The bill, and now the rules, also provide that any qualified claim for payment that is more than the available funds in the current fiscal year is eligible for payment in the next fiscal year. If additional funds are not provided by the legislature in the next fiscal year, then no further payment may be made on the claim unless the legislature specifically appropriates funds for that purpose. Under certain circumstances, the legislature may declare an emergency and may appropriate additional monies to pay WDFW for qualified crop damage claims. Furthermore, the bill requires that claims that are submitted to WDFW will be prioritized for payment based upon the highest percentage of loss, calculated by comparing agreed-upon or alternatively paid out commercial crop damages to the gross sales or harvested value of commercial crops for the previous tax year.

Citation of Rules Affected by this Order: Amending WAC 220-440-140, 220-440-150, 220-440-180, and 220-440-230.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.020.

Other Authority: RCW 77.36.080, 77.36.100, and 77.36.130.

Adopted under notice filed as WSR 24-16-038 on July 29, 2024.

Changes Other than Editing from Proposed to Adopted Version: There are two differences between the proposed rules and the adopted rules.

(1) There was an incorrect reference to RCW 77.36.180 in WAC 220-440-140 and 220-440-150. The correct reference in both sections should be RCW 77.36.130. The correction has been made in the final rule draft.

(2) Two words "must provide" were added to the second to last sentence in WAC 220-440-140(16). The sentence now reads "The claimant **must provide** records in support of the prioritization method as proscribed therein." These two words have been added to the final rule draft.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 4, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 18, 2024.

Kelly Susewind
Director

OTS-5513.5

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-440-140 Payment for commercial crop damage—Limitations.

Owners, who have worked with the department to prevent deer and elk damage, but continue to experience losses, may be eligible to file a damage claim and receive cash compensation from money appropriated by the legislature. Damages payable under this section are limited to the lost or diminished value of a commercial crop, whether growing or harvested, and will only be paid to the owner of the crop at the time of damage, without assignment. Cash compensation for claims from deer and elk damage does not include damage to other real or personal property, including other vegetation or animals, lost profits, consequential damages, or any other damages. The department is authorized to pay up to (~~ten thousand dollars to the owner per claim~~) the amount provided in RCW 77.36.130.

Claims for cash compensation will be denied when:

- (1) The claim is for a noncommercial crop;
- (2) The owner of the commercial crop does not meet the definition of "eligible farmer" in RCW 82.08.855 (4) (b) (i) through (iv);
- (3) The loss estimate is less than (~~one thousand dollars~~) \$1,000;
- (4) The owner does not have a valid damage prevention cooperative agreement signed by the owner and the department, or a waiver signed by the director, or does not provide a department approved checklist of the preventative and nonlethal means that have been employed to prevent damage;
- (5) The owner has not complied with the terms and conditions of his or her agreement(s) with the department;
- (6) An owner or lessee has accepted noncash compensation to offset crop damage in lieu of cash consistent with conditions of the damage prevention cooperative agreement with the department. Acceptance of noncash compensation will constitute full and final payment for crop damages within the growing season of the damaged crop or for the time period specified by the department in writing to the owner;
- (7) An owner or lessee has denied the department's offer of fencing as a long-term preventative measure;
- (8) The owner or lessee has denied prevention measures offered by the department. The prevention measures offered shall be applicable, legal, practical, and industry recognized;

(9) Damages to the commercial crops claimed are covered by insurance or are eligible for payment from other entities. Any portion of the actual damage not covered by others that exceeds (~~one thousand dollars~~) \$1,000 is eligible for compensation from the department;

(10) The property where the damage occurred was not open to public hunting consistent with WAC 220-440-190 for the species causing the damage, unless, as determined by the department, the property is inconsistent with hunting or hunting would not address the damage problem. This includes all properties owned or leased by the owner adjacent to, contiguous to, or in the vicinity of the property where crop damage occurred;

(11) The crop is grown or stored on public property;

(12) The owner or lessee fails to provide on-site access to the department or designee for inspection and investigation of alleged damage or to verify eligibility for a claim;

(13) The owner has not provided a completed written claim form and all other required information, or met required timelines prescribed within WAC 220-440-150;

(14) The owner fails to sign a statement affirming that the facts and supporting documents are truthful to the best of the owner's knowledge;

(15) The owner or designee harvested commercial crops prior to providing a (~~seventy-two~~) 72 hour notice to the department;

(16) The department will prioritize payment for commercial crop damage (~~in the order the claims were received or upon final adjudication of an appeal. If the department is unable to make a payment for commercial crop damage during the current fiscal year, the claim will be held over until the following fiscal year when funds become available. As funding becomes available to the department under this section, RCW 77.36.170, or any other source, the department must pay claims in the chronologic order. Claims that are carried over will take first priority and receive payment before any new claims are paid. The payment of a claim included on the list maintained by the department under this section is conditional on the availability of specific funding for this purpose and is not a guarantee of reimbursement~~) as set forth in RCW 77.36.100. The claimant must provide records in support of the prioritization method as proscribed therein. Before payment, claims in the current fiscal year will be prioritized after all crop damage claims have been received and approved, and any claim appeals have been resolved.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-440-150 Application for cash compensation for commercial crop damage—Procedure. Pursuant to this section, the department may distribute funds appropriated by the legislature to pay commercial crop damage caused by wild deer or elk in the amount of up to (~~ten thousand dollars~~) the amount provided in RCW 77.36.130 per claim (~~(7 unless following an appeal the department is ordered to pay more (see RCW 77.36.130(2)))~~). The department shall develop claim procedures and application forms consistent with this section for cash compensation of commercial crop damage. Partnerships with other public and private

organizations to assist with completion of applications, assessment of damage, and to provide funding for compensation are encouraged.

Filing a claim:

(1) Claimants who have cooperated with the department and have a valid damage prevention cooperative agreement or a department approved checklist to prevent deer or elk damage and met the requirements of WAC 220-440-140, or a waiver from the director, yet still experience loss and meet eligibility requirements, may file a claim for cash compensation.

(2) The claimant must notify the department within (~~seventy-two~~) 72 hours of discovery of crop damage and at least (~~seventy-two~~) 72 hours prior to harvest of the claimed crop.

(3) A complete written claim and completed crop assessment must be submitted to the department within (~~sixty~~) 60 days of harvest.

(4) Claimants may only file one claim per year. Multiple partners in a farming operation are considered one claimant. Operations involving multiple partners must designate a "primary grower" to receive payment from the department.

(5) The claim form declaration must be signed, affirming that the information provided is factual and truthful per the certification set out in RCW 9A.72.085, before the department will process the claim.

(6) In addition to a completed claim form, a claimant must provide:

(a) A copy of claimant's Schedule F of Form 1040, Form 1120, or other applicable forms filed with the Internal Revenue Service or other documentation indicating the claimant's gross sales or harvested value of commercial crops for the previous tax year.

(b) The assessment method used is consistent with WAC 220-440-160, valuation of property damage.

(c) Proof of ownership of claimed commercial crops or contractual lease of claimed commercial crops consistent with department procedural requirements for submission of documents.

(d) Written documentation of approved methodology used to assess and determine final crop loss and value.

(e) Records documenting average yield on claimed crop and parcel, certified yield reports, production reports and weight certificates completed at the time weighed for claimed year, and other applicable documents that support yield loss and current market price. Current market price will be determined less transportation and cleaning costs when applicable.

(f) A declaration signed under penalty of perjury as provided in RCW 9A.72.085, indicating that the claimant is eligible for the claim, meets eligibility requirements listed under this section, and that all claim evaluation and assessment information in the claim application is true and accurate to the best knowledge of the claimant.

(g) A copy of the insurance policy and payment on the commercial crop where loss is claimed.

(h) Copies of any applications for other sources of loss compensation and any payment or denial documentation.

Damage claim assessment:

(7) Completion of a damage claim assessment for the amount and value of commercial crop loss is the responsibility of the claimant. A crop damage evaluation and assessment must be conducted by a licensed crop insurance adjustor in cooperation with the claimant:

(a) The claimant must submit a damage claim assessment prepared by a crop insurance adjustor licensed by the state of Washington and certified by the federal crop insurance service.

(b) The department will provide the claimant with a list of approved adjustors. The claimant may select an adjustor from the approved list and work with the department and the adjustor to arrange for the completion of a crop damage assessment or select a state licensed adjustor of their own choosing.

(i) If the claimant selects an adjustor from the approved list, the department will provide the adjustor written authorization to proceed with an assessment and adjustor fees will be the shared responsibility of the owner and the department. The claimant portion of the assessment fees may not exceed one half or a maximum of (~~six hundred dollars~~) \$600, whichever is smaller, and will be deducted from the final payment.

(ii) If the claimant selects a state licensed adjustor of their own choosing then the claimant accepts full responsibility for the assessment fees.

(c) The department or the claimant may accept the damage claim assessment provided by the licensed adjuster or may hire a state licensed adjustor of their choosing and conduct a separate assessment or evaluation of the crop loss amount and value. The party hiring an adjustor to conduct a separate assessment or evaluation is responsible for payment of all fees.

(8) Disagreement between the claimant and the department over the crop loss value may be settled through an adjudicative proceeding pursuant to chapter 34.05 RCW, subject to the limit provided in RCW 77.36.130.

Settlement of claims:

(9) Compensation paid by the department, in addition to any other compensation received by the claimant, may not exceed the total value of the assessed crop loss.

(10) The claimant will be notified by the department upon completion of the evaluation and has (~~sixty~~) 60 days to accept or appeal the department's offer for settlement of the claim, or the claim is considered accepted and not subject to appeal.

(11) The department will prioritize payment for commercial crop damage (~~in the order the claims were received or upon final adjudication of an appeal. If the department is unable to make a payment for commercial crop damage during the current fiscal year, the claim will be held over until the following fiscal year when funds become available. As funding becomes available to the department under this section, RCW 77.36.170, or any other source, the department must pay claims in the chronologic order. Claims that are carried over will take first priority and receive payment before any new claims are paid. The payment of a claim included on the list maintained by the department under this section is conditional on the availability of specific funding for this purpose and is not a guarantee of reimbursement~~) as set forth in RCW 77.36.100.

AMENDATORY SECTION (Amending WSR 18-04-049, filed 1/31/18, effective 3/3/18)

WAC 220-440-180 Application for cash compensation for livestock damage or domestic animal—Procedure. Pursuant to this section, the department may distribute money specifically appropriated by the legislature or other funding entity to pay commercial livestock or guard

dog losses caused by wild bear, cougar, or wolves (~~(in the amount of)~~) up to (~~(ten thousand dollars per claim unless, following an appeal, the department is ordered to pay more (see RCW 77.36.130(2))~~) the amount set forth in RCW 77.36.130. The department will develop claim procedures and application forms consistent with this section for cash compensation of commercial livestock or guard dog losses. Partnerships with other public and private organizations to assist with completion of applications, assessment of losses, and to provide funding for compensation are encouraged.

Filing a claim:

(1) Claimant must notify the department within (~~(twenty-four)~~) 24 hours of discovery of livestock or other domestic animal attack or as soon as feasible.

(2) Damage claim assessment of amount and value of eligible livestock or guard dog loss is the primary responsibility of the claimant.

(3) Investigation of the loss and review and approval of the assessment will be conducted by the department:

(a) The claimant must provide access to department staff or designees to investigate the cause of death or injury to eligible livestock or guard dogs and use reasonable measures to protect evidence at the depredation site.

(b) Federal officials may be responsible for the investigation when it is suspected that the attack was by a federally listed species.

(4) To be eligible a claimant must submit a written statement, electronic or hard copy, within (~~(thirty)~~) 30 days of discovery of a loss to indicate his or her intent to file a claim.

(5) A complete claim package must be submitted to the department within (~~(ninety)~~) 90 days of a discovery of an attack on livestock or guard dogs to be eligible for compensation.

(6) A claim form declaration must be signed, affirming that the information provided is factual and truthful, per the certification set out in RCW 9A.72.085 before the department will process the claim.

(7) In addition to a completed claim form, a claimant must provide:

(a) Proof of legal ownership or contractual lease of claimed livestock.

(b) Records documenting the value of the livestock or guard dog depending upon the determination for cause of loss.

(c) Declaration signed under penalty of perjury indicating that the claimant is eligible for the claim, meets eligibility requirements listed under this chapter and in RCW 77.36.100, 77.36.110, and 77.36.120, and all claim evaluation and assessment information in the claim application is to the best knowledge of the claimant true and accurate.

(d) A copy of any insurance policy covering loss claimed.

(e) Copies of applications for other sources of loss compensation and any payment or denial documentation.

(f) The department approved checklist of preventative measures that have been deployed, or documented compliance with the terms and conditions of the claimant's agreement with the department, or the director approved waiver.

Settlement of claims:

(8) Subject to funds appropriated to pay for livestock or guard dog losses, undisputed claims will be paid up to ten thousand dollars.

(9) Valuation of the lost livestock;

(a) The department may utilize the services of an independent certified appraiser to assist in the evaluation of livestock or guard dog claims.

(b) For losses caused by wolves, the compensation value for livestock or guard dogs will be based on the value at the time the animal would normally be sold at market or the cost to replace the animal, and based on comparable types and/or weight of livestock or guard dogs, such as comparable calves, steers, cows, ewes, and lambs; except bulls will be replaced based on the actual purchase price prorated on a four-year depreciation cycle minus salvage value if applicable. The market or replacement value will be determined by an independent certified appraiser, the sales receipts from the most recent sale of comparable animals by the owner, or the sales receipts from the next sale of comparable animals by the owner.

(c) The payment amount for wolf depredations to livestock will be based on the following criteria:

(i) Where the livestock grazing site was greater than or equal to (~~one hundred~~) 100 acres, there is a rebuttable presumption that the number of commercial livestock wolf depredations that are eligible for compensation is twice the number of wolf livestock depredations documented by the department, unless all remaining livestock are accounted for. On these grazing sites, the payment for each confirmed wolf depredation will be the full market value for two commercial livestock. The payment for each probable wolf depredation will be half the full market value for two commercial livestock. Payments will be reduced by half if all the remaining livestock are accounted for.

(ii) Where the livestock grazing site was less than (~~one hundred~~) 100 acres, there is a rebuttable presumption that all the commercial livestock wolf depredations are discovered by the livestock owner. On these grazing sites, the payment for each confirmed wolf depredation will be the full market value for one commercial livestock. The payment for each probable wolf depredation will be half the full market value for one commercial livestock.

(d) For losses caused by bear or cougar, livestock value will be determined by the market value for an animal of the same breed, sex, and average weight at the time the animal is lost.

(10) Claims for higher than normal livestock losses, reduced weight gains, or reduced pregnancy rates due to harassment of livestock caused by wolves must include:

(a) At least three consecutive years of records preceding the year of the claim. Claims will be assessed for losses in excess of the preceding three-year running average;

(b) The losses must occur on large pastures or range land used for grazing, lambing, or calving where regular monitoring of livestock is impractical (and therefore discovery of carcasses infeasible) as determined by the department;

(c) Verification by the department that wolves are occupying the area;

(d) The losses cannot be reasonably explained by other causes;

(e) Compliance with the department's preventative measures checklist, or damage prevention cooperative agreement, or a waiver signed by the director.

(11) Compensation paid by the department combined with any other compensation may not exceed the total assessed value of the loss.

(12) Upon completion of an evaluation, the department will notify the claimant of its decision to either deny the claim or make a settlement offer (order). The claimant has (~~sixty~~) 60 days from the

date received to accept, sign, and mail to the department the original offer for settlement of the claim. If the claimant wishes to appeal the offer, they must request an informal resolution or adjudicative proceeding as described in WAC 220-440-230. The appeal must be in writing and may be mailed or submitted by email. If no written acceptance or request for appeal is received within (~~sixty~~) 60 days of receipt of the settlement offer, the offer is considered rejected and not subject to appeal.

(13) If the claimant accepts the department's offer, the department will provide payment to the claimant within (~~thirty~~) 30 days from receipt of the written acceptance document(s).

(14) ~~The department will prioritize payment for livestock losses ((in the order the claims were received or upon final adjudication of an appeal. If the department is unable to make a payment for livestock losses during the current fiscal year, the claim shall be held over until the following fiscal year when funds become available. As funding becomes available to the department under this section, RCW 77.36.170, or any other source, the department must pay claims in chronological order. Claims that are carried over will take first priority and receive payment before any new claims are paid. The payment of a claim included on the list maintained by the department under this section is conditional on the availability of specific funding for this purpose and is not a guarantee of reimbursement)) as set forth in RCW 77.36.100, 77.36.170, and 77.36.180.~~

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-440-230 Commercial crop or livestock damage claim—Dispute resolution. For claims where the owner has met all claim eligibility criteria and procedures, but ultimately rejects the written settlement offer (order) for crop or livestock loss and/or value assessment, the provisions of this section shall apply:

Informal resolution:

(1) If the owner rejects the property loss or value assessment and would like to discuss a negotiated settlement, he or she can request a meeting by notifying the department in writing within (~~ten~~) 10 days of receiving the settlement offer or claim denial (order).

(2) A department representative and the owner or designee(s) will meet and attempt to come to mutual resolution.

(3) A livestock appeals committee may be established with a minimum of six citizen members appointed by the director, and a representative from the department of fish and wildlife to review and recommend a settlement if requested by the claimant or the department. The citizen members must represent a variety of interests including at least: Three statewide organizations representing the interests of livestock owners; two representing wildlife advocates; and one at large.

(4) Monetary compensation or noncash compensation, mutually agreed upon by both the department and owner, shall be binding and constitute full and final payment for claim.

(5) If parties cannot agree upon damages, or the owner wishes to appeal the claim denial or the department's settlement offer (order), the owner may request an adjudicative proceeding consistent with chap-

ter 34.05 RCW within (~~sixty~~) 60 days of receiving a copy of the department's decision.

(6) The request must comply with the following:

(a) The request must be in writing, and the signed document may be mailed or submitted by fax or email;

(b) It must clearly identify the order being contested (or attach a copy of the order);

(c) It must state the grounds on which the order is being contested and include the specific facts of the order that are relevant to the appeal; and

(d) The request must identify the relief being requested from the proceeding (e.g., modifying specific provisions of the order).

(7) The proceeding may only result in the reversal or modification of an order when the preponderance of evidence shows:

(a) The order was not authorized by law or rule;

(b) A fact stated in the order is not supported by substantial evidence;

(c) The award amount offered is inconsistent with applicable procedures; or

(d) Material evidence was made available by the owner at the time of the damage assessment, but was not considered in the order.

(8) The burden of proof is on the appellant (owner) to show that he or she is eligible for a claim and that the damage assessment is reliable (see RCW 77.36.130(~~(+4)~~)) (3)).

(9) Findings of the hearings officer are subject to the annual funding (~~limits~~) appropriated by the legislature and to the limit found in RCW 77.36.130 and payment rules (WAC 220-440-150 and 220-440-180(9)) of the commission.

WSR 24-22-021

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed October 28, 2024, 7:06 a.m., effective November 28, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule-making order amends chapter 16-08 WAC, Practice and procedure, by clarifying current rule language by replacing all gender-specific pronouns with modern gender-inclusive pronouns.

Citation of Rules Affected by this Order: Amending WAC 16-08-021, 16-08-031, 16-08-091, 16-08-101, 16-08-111, 16-08-142, 16-08-148, and 16-08-161.

Statutory Authority for Adoption: RCW 43.01.160, 43.17.060.

Adopted under notice filed as WSR 24-17-083 on August 19, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 8, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 8, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 25, 2024.

Derek I. Sandison
Director

OTS-5728.1

AMENDATORY SECTION (Amending WSR 11-20-047, filed 9/29/11, effective 10/30/11)

WAC 16-08-021 Presiding officer. (1) In matters involving an adjudicative proceeding, the director will designate the presiding officer. The presiding officer may be:

- (a) An administrative law judge assigned by the office of administrative hearings under the authority of chapter 34.12 RCW; or
- (b) The deputy director; or
- (c) An assistant director; or
- (d) A staff person trained to act as a presiding officer in adjudicative proceedings.

(2) A person who has served as an investigator, prosecutor, or advocate in any stage of an adjudicative proceeding or someone who is subject to the authority or direction of such a person, may not serve as a presiding officer in the same proceeding.

(3) The presiding officer has the authority to:

- (a) Determine the order of presentation of evidence;
- (b) Administer oaths and affirmations;
- (c) Issue subpoenas;

- (d) Rule on procedural matters, objections, and motions;
- (e) Rule on offers of proof and receive relevant evidence;
- (f) Interrogate witnesses called by the parties in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter;
- (g) Call additional witnesses and request additional exhibits deemed necessary to complete the record and receive such evidence subject to full opportunity for cross-examination and rebuttal by all parties;
- (h) Take any appropriate action necessary to maintain order during the hearing;
- (i) Permit or require oral argument or briefs and determine the time limits for their submission;
- (j) Take any other action necessary and authorized by any applicable statute or rule;
- (k) Waive any requirement of these rules unless a party shows that ~~((he or she))~~ they would be prejudiced by such a waiver.

AMENDATORY SECTION (Amending WSR 11-20-047, filed 9/29/11, effective 10/30/11)

WAC 16-08-031 Request for hearing—Filing. (1) A request for hearing (application for adjudicative proceeding) must be in writing and filed with the department during regular office hours at the address designated in the notice or instructions provided by the department.

(2) A request for hearing is filed in a timely manner when the mailing is postmarked or received by the department within ~~((twenty-five))~~ 25 days of service of the proposed department action giving rise to the request for hearing.

(3) A request for hearing may be filed with the department by personal delivery, commercial delivery, fax, or first-class, registered, or certified mail. A request for hearing may be filed by electronic mail (email) only when instructions for email filings have been provided by the department.

(4) If the request for hearing is not timely filed with the department, the applicant waives ~~((his or her))~~ their right to a hearing.

AMENDATORY SECTION (Amending WSR 17-13-125, filed 6/21/17, effective 7/22/17)

WAC 16-08-091 Depositions in adjudicative proceedings—Notice. A party desiring to take the deposition of any person upon oral examination shall give reasonable notice of not less than five days in writing to the department of agriculture and all parties. The notice shall state the time and place for taking the deposition, the name and address of each person to be examined, if known, and if the name is not known, a general description sufficient to identify ~~((him or her))~~ them or the particular class or group to which ~~((he or she))~~ they belong~~((s))~~. On motion of a party upon whom the notice is served, the presiding officer may for cause shown, enlarge or shorten the time. If

the parties so stipulate in writing, depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used as other depositions.

AMENDATORY SECTION (Amending WSR 91-23-051, filed 11/15/91, effective 12/16/91)

WAC 16-08-101 Depositions and interrogatories in adjudicative proceedings—Protection of parties and deponents. After notice is served for taking a deposition, upon its own motion or upon motion reasonably made by any party or by the person to be examined and upon notice and for good cause shown, the director or (~~his/her~~) their designated presiding officer may make an order that the deposition shall not be taken, or that it may be taken only at some designated place other than that stated in the notice, or that it may be taken only on written interrogatories, or that certain matters shall not be inquired into, or that the scope of the examination shall be limited to certain matters, or that the examination shall be held with no one present except the parties to the action and their officers or counsel, or that after being sealed, the deposition shall be opened only by order of the director, or that business secrets or secret processes, developments, or research need not be disclosed, or that the parties shall simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the director, or the director may make any other order which justice requires to protect the party or witness from annoyance, embarrassment, or oppression. At any time during the taking of the deposition, on motion of any party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the director or (~~his/her~~) their designated presiding officer may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as above provided. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the agency. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order.

AMENDATORY SECTION (Amending WSR 91-23-051, filed 11/15/91, effective 12/16/91)

WAC 16-08-111 Depositions in adjudicative proceedings—Use and effect. Subject to rulings by the presiding officer upon objections, a deposition taken and filed as provided in this rule will not become a part of the record in the proceeding until received in evidence by the presiding officer upon his own motion or the motion of any party. Except by agreement of the parties or ruling of the presiding officer, a deposition will be received only in its entirety. A party does not make a party, or the privy of a party, or any hostile witness (~~his/her~~) their witness by taking (~~his/her~~) their deposition. Any

party may rebut any relevant evidence contained in a deposition whether introduced by (~~him/her~~) them or any other party.

AMENDATORY SECTION (Amending WSR 17-13-125, filed 6/21/17, effective 7/22/17)

WAC 16-08-142 Brief adjudicative proceedings—Filing. (1) A request for hearing (application for brief adjudicative proceeding) must be in writing and filed with the department during regular office hours at the address designated in the notice or instructions provided by the department. A party may request a brief adjudicative proceeding by completing the application form provided by the department, along with a written explanation of the party's view of the matter.

(2) A request for hearing is filed in a timely manner when the mailing is postmarked or received by the department within (~~twenty-five~~) 25 days of service of the proposed department action giving rise to the request for hearing.

(3) A request for hearing may be filed with the department by personal delivery, commercial delivery, fax, or first-class, registered, or certified mail. A request for hearing may be filed by electronic mail (email) only when instructions for email filings have been provided by the department.

(4) If the request for hearing is not timely filed with the department, the applicant waives (~~his or her~~) their right to a hearing.

AMENDATORY SECTION (Amending WSR 17-13-125, filed 6/21/17, effective 7/22/17)

WAC 16-08-148 Brief adjudicative proceedings—Administrative review. (1) Any party may request orally or in writing a review of the initial order issued under WAC 16-08-145. A petition for review of an initial order shall contain a written explanation of the party's view of the matter and a statement of reasons why the initial order is incorrect. Oral requests must be placed in writing.

(a) Petitions for review may be filed with the department by personal delivery, commercial delivery, fax, or first-class, registered or certified mail. A petition for review may be filed by electronic mail (email) only when instructions for email filings have been provided by the department. Petitions for review must be received by the department at the address designated in the initial order within (~~twenty-one~~) 21 days of service of the initial order.

(b) Petitions for review shall be served on all parties, and evidence of such service filed at the address designated in the initial order.

(2) A party may file a response to a petition for a review.

(a) The response shall be filed at the address designated in the initial order within (~~ten~~) 10 days of the date of service of the petition for review.

(b) Copies of the response shall be served on all other parties at the time the response is filed.

(3) (a) The department reviewing officer, upon ~~((his or her))~~ their own motion, may petition for administrative review of an initial order.

(b) The reviewing officer shall provide notice to the parties of ~~((his or her))~~ their determination to review the initial order within ~~((twenty-one))~~ 21 days of service of the initial order. The notice to the parties shall state the date by which a decision shall be made. The reviewing officer shall not take any action on review that is less favorable than the initial order without giving all parties notice and an opportunity to explain ~~((his or her))~~ their view of the matter.

(4) The reviewing officer shall enter a final order disposing of the proceeding. A final order shall be in writing and shall:

(a) Include a brief statement of the reasons for the decision;

(b) Be entered within ~~((twenty-one))~~ 21 days after the date of the initial order or of the petition for review, whichever is later.

(5) If the reviewing officer deems it necessary, ~~((he or she))~~ they may remand a matter for further proceedings.

AMENDATORY SECTION (Amending WSR 91-23-051, filed 11/15/91, effective 12/16/91)

WAC 16-08-161 Conversion of proceedings. (1) Upon application by any person or upon ~~((his or her))~~ their own motion, the presiding officer or other official responsible for the original proceeding shall consider whether the conversion of a proceeding pursuant to RCW 34.05.070 should be made.

(2) Commencement of the new proceeding shall be determined to be the time of commencement of the original proceeding, provided that all statutory and regulatory requirements for the new proceeding shall be met.

WSR 24-22-022

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed October 28, 2024, 7:07 a.m., effective November 28, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule-making order amends chapter 16-19 WAC, Custom farm slaughterers, custom slaughtering establishments, and custom meat facilities, by clarifying current rule language by replacing all gender-specific pronouns with modern gender-inclusive pronouns.

Citation of Rules Affected by this Order: Amending WAC 16-19-100, 16-19-210, and 16-19-310.

Statutory Authority for Adoption: RCW 43.01.160, 16.49.680

Adopted under notice filed as WSR 24-17-084 on August 19, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 3, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 25, 2024

Derek I. Sandison
Director

OTS-5729.1

AMENDATORY SECTION (Amending WSR 99-12-021, filed 5/24/99, effective 6/24/99)

WAC 16-19-100 Additional requirements for sanitary operations of custom farm slaughtering. Mobile custom farm slaughtering units must have:

(1) A van body completely covering the unit, but which may exclude the driver's cab and the hoist. The van body must be made of material that is nonporous and impervious to moisture. Wood may be used only as internal framing or spacing material between double nonwooden walls. The van body must be constructed so that it excludes dust, dirt and insects. The construction must be smooth, durable and easily cleanable inside and out.

(a) All vans must have the joints at junctions of internal facing surfaces and panels sealed and waterproof. Metal joints must be smooth and splatter free. If metal is used, only stainless steel, galvanized steel, aluminum in good condition or other materials approved by the director may be used. Any insulation used must be of a type that does not absorb water.

- (b) Minimum interior dimensions of the van, exclusive of room taken up by tanks and other mounted equipment must be:
- (i) Height - Six feet.
 - (ii) Length - Six feet.
 - (iii) Width - (When using single center rail for hanging carcass) four feet.
 - (iv) Width - (When using two rails for hanging carcasses) six feet.
- (2) A hoist of 2,000 pound capacity, capable of lifting a beef carcass to a height that enables the carcass to clear the ground for bleeding and evisceration. This hoist must extend outward from the truck body. If a beef spreader is included as part of the equipment it must be of suitable construction.
- (3) A sterilizing tank constructed of smooth, cleanable, impervious and durable material, large enough to allow complete sanitizing of tools used in the slaughter operation. This sterilizing unit must be filled during all slaughter operations, with potable water maintained at a temperature of at least 180°F. An approved cold sterilant may be used if sufficient hot water is available for preliminary cleaning of contaminated equipment prior to sterilizing.
- (4) A water tank built into the vehicle constructed of smooth, cleanable, impervious and durable material with a minimum capacity of (~~forty~~) 40 gallons. No slaughtering operation may be commenced unless at least (~~twenty~~) 20 gallons is available. Water must be delivered to the outlets at a pressure of at least (~~forty~~) 40 pounds per square inch. One hose connection from tank and hose with nozzle must be provided to wash down carcasses. The water system must be maintained to a sanitary condition and be used only for potable water.
- (5) Soap and paper towels must be available for washing hands and equipment.
- (6) Outer garments worn by persons handling meat must be clean.
- (7) All tools and equipment must be thoroughly washed and sanitized after each day's operation. They must be washed and sanitized if contaminated with viscera contents, abscesses, or foreign material during slaughtering operations.
- (8) Meat food animals or meat food bird carcasses must not be transported in the mobile slaughter unit unless each carcass is hung so that it does not touch the floor except for beef carcasses that are dressed with the hide on and are to be delivered to a processing plant within two hours for completion of the dressing procedure. Carcasses with the hide on must be secured and placed in the mobile unit in a manner that prevents contact of hide with bare meat surfaces. Surfaces of the mobile unit that have been contaminated by contact with the hide must be cleaned and sanitized before subsequent carcasses are hauled.
- (9) Edible offal must be transported in clean, covered, properly identified containers constructed of approved materials.
- (10) No animals other than scalded and dehaired hogs, and de-feathered meat food birds, and carcasses exempted under subsection (8) of this section may be dressed and transported with the hide on.
- (11) Viscera of all meat food animals and meat food birds must be separated from the carcass at the time of slaughter on the premises where the animal is slaughtered. Feet must be removed from all meat food animals, except hogs, when scalded, and the head shall be removed from beef on the premises where it is slaughtered. Feet and metatarsus must be removed from meat food birds.

(12) All material produced through the slaughter activity, such as inedible offal and hide that may cause the slaughter area to become insanitary, must immediately upon completion of actual slaughter of the animal, be removed from the slaughtering area and disposed of in a sanitary manner. This is the licensee's responsibility.

(13) Meat food birds may be slaughtered by a custom farm slaughterer or custom slaughter establishment but not by a licensed custom poultry processor without prior approval by the director.

(14) Inedible offal may be only transported by a mobile custom slaughtering establishment under the following conditions:

(a) In a covered, watertight trailer constructed of smooth, cleanable, nonpervious material and maintained in a sanitary condition at all times; or

(b) In approved sanitary containers, in a separate compartment, in the van body. The compartment must be metal lined. There must be no openings from this compartment to the portion of the van used to transport edible products. All inedible offal containers, such as barrels or tubs, must be tightly covered and made of smooth, cleanable and nonpervious materials.

(15) A custom farm slaughterer may slaughter (~~(his or her)~~) their own animal for (~~(his or her)~~) their own consumption on any premises, farm or ranch, owned, rented or in any way controlled by (~~(him or her)~~) themselves. No other animal may be slaughtered by the licensee on the premises, farm or ranch, owned, rented or in any way controlled by (~~(him or her)~~) themselves or by members of (~~(his or her)~~) their immediate family. Licensees under this section may slaughter more than one animal only if the animals have been in (~~(his or her)~~) their possession more than (~~(sixty)~~) 60 days.

(16) Whenever a licensee has reason to believe that a meat food animal or meat food product is unwholesome as defined in these rules, (~~(he or she)~~) they must require an examination and declaration of wholesomeness by a licensed veterinarian before proceeding with slaughter or with processing of the carcass.

(17) Meat food birds must be slaughtered in a custom farm slaughterer mobile unit unless they are delivered to a custom slaughtering establishment.

AMENDATORY SECTION (Amending WSR 99-12-021, filed 5/24/99, effective 6/24/99)

WAC 16-19-210 Requirements for assignment, stamping, recordkeeping and condemnation of meat. The operator of any custom slaughtering establishment must have in (~~(his or her)~~) their possession certificates of permit or other satisfactory proof of ownership of carcasses or parts thereof in (~~(his)~~) their establishment. Such proof of ownership must be kept on file for a period of six months after receipt of the carcass or part of the carcass.

AMENDATORY SECTION (Amending WSR 99-12-021, filed 5/24/99, effective 6/24/99)

WAC 16-19-310 Proof of ownership of uninspected carcasses or parts of carcasses. (1) The operator of any custom meat facility must

have in (~~his or her~~) their possession certificates of permit as provided by chapter (~~16-620~~) 16-610 WAC (~~(Brand)~~) Livestock Inspection) or other satisfactory proof of ownership of all uninspected carcasses or parts of carcasses received in (~~his or her~~) their establishment. Such proof of ownership must be kept on file for six months after receipt of such carcass or part of carcass.

(2) While in possession of the operator all uninspected cattle carcasses or parts of carcasses must be identified by a department-approved tagging device describing the name and address of the owner, name and address of the slaughterer, if not the owner, the slaughter date and brand, if the animal was branded, while in the possession of the operator. Such identification must conform to the requirements of chapter 16.57 RCW (Livestock identification).

(3) All uninspected meat food animal carcasses or parts of carcasses other than cattle must be identified on a tag available from the department as to name and address of owner, name and address of the slaughterer if different from the owner, and the slaughter date while in possession of the operator.

(4) The operator must give each owner of uninspected carcasses, parts of carcasses, or meat food products delivered to a custom meat facility for preparation a written record stating the gross weight received for preparation. The operator must maintain a duplicate copy of this record at (~~his or her~~) their principal place of business for six months.

(5) Operators making sales of prepackaged inspected meat to other than household users must maintain written records of all such transactions, including the buyer, type of product sold and total net weight of each exchange.

WSR 24-22-023

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed October 28, 2024, 7:08 a.m., effective November 28, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule-making order amends chapter 16-06 WAC, Public records, by clarifying current rule language by replacing all gender-specific pronouns with modern gender-inclusive pronouns and replacing the word "marijuana," found in WAC 16-06-210, with the word "cannabis" to align with SSHB [2SHB] 1210 (chapter 16, Laws of 2022).

Citation of Rules Affected by this Order: Amending WAC 16-06-210.

Statutory Authority for Adoption: RCW 43.01.160, 43.17.060, 42.56.040.

Adopted under notice filed as WSR 24-17-082 on August 19, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 25, 2024.

Derek I. Sandison
Director

OTS-5727.1

AMENDATORY SECTION (Amending WSR 20-16-011, filed 7/23/20, effective 8/23/20)

WAC 16-06-210 Exemptions. (1) The Public Records Act exempts a number of types of records from public disclosure (see chapter 42.56 RCW).

(2) Records are also exempt from disclosure if any other statute exempts or prohibits disclosure. Requestors should be aware of the following exemptions outside of the Public Records Act, which restrict the availability of some records held by the department. This list is not exhaustive and other exemptions may apply:

(a) The semiannual report required in the Commercial Feed Act (reference RCW 15.53.9018).

(b) The department has the authority to publish reports of official seed inspections, seed certifications, laboratory statistics, verified violations of this chapter, and other seed branch activities which do not reveal confidential information regarding individual company operations or production (reference RCW 15.49.370(8)).

(c) Financial statement information required under RCW 22.09.040(9) or 22.09.045(7).

(d) Privileged or confidential information or data that contains trade secrets, commercial, or financial information submitted under the Washington Pesticide Control Act (reference RCW 15.58.060 (1)(c) and 15.58.065).

(e) Information submitted by an applicant under chapter 17.24 RCW that is privileged or confidential because it contains trade secrets or commercial or financial information (reference RCW 17.24.061).

(f) Under RCW 42.56.610 and 90.64.190, information identifying the number of animals; volume of livestock nutrients generated; number of acres covered by the plan or used for land application of livestock nutrients; livestock nutrients transferred to other persons; and crop yields in plans, records, and reports obtained by state and local agencies from dairies, animal feeding operations, and concentrated animal feeding operations not required to apply for a National Pollutant Discharge Elimination System permit is disclosable in the following ranges:

(i) Number of animals: Beef cattle

1 to 19

20 to 159

160 to 299

300 to 999

1,000 to 5,999

6,000 to 10,999

11,000 to 15,999

16,000 to 20,999

21,000 to 25,999

26,000 to 31,199

31,200 to 37,439

37,440 to 44,999

45,000 and above

(ii) Number of animals: Mature dairy cattle

1 to 37

38 to 199

200 to 699

700 to 1,699

1,700 to 2,699

2,700 to 3,699

3,700 to 4,699

4,700 to 5,699

5,700 to 6,839

6,840 and above

(iii) Number of animals: Dairy heifers

1 to 49

50 to 149

150 to 299

300 to 999

1,000 to 1,999

2,000 to 2,999

3,000 to 3,999

4,000 and above

(iv) Number of animals: Swine (~~((fifty-five))~~ 55 pounds or greater)

1 to 19

20 to 159

160 to 399

400 to 749

750 to 2,499

2,500 to 4,249

4,250 to 5,999

6,000 to 7,749

7,750 and above

(v) Number of animals: Swine (less than (~~fifty-five~~) 55 pounds)

1 to 99

100 to 499

500 to 1,099

1,100 to 1,999

2,000 to 2,999

3,000 to 9,999

10,000 to 16,999

17,000 to 23,999

24,000 to 30,999

31,000 and above

(vi) Number of animals: Layers (all ages)

1 to 199

200 to 999

1,000 to 10,999

11,000 to 24,999

25,000 to 81,999

82,000 to 138,999

139,000 to 195,999

196,000 to 252,999

253,000 to 309,999

310,000 to 371,999

372,000 to 446,399

446,400 to 535,679

535,680 to 642,815

642,816 to 771,379

771,380 to 925,655

925,656 to 1,110,787

1,110,788 to 1,332,945

1,332,946 and above

(vii) Number of animals: Broilers (all ages)

1 to 199

200 to 999

1,000 to 17,999

18,000 to 37,499

37,500 to 124,999

125,000 to 212,499

212,500 to 299,999

300,000 and above

(viii) Number of animals: Horses

1 to 19

20 to 79

80 to 149

150 to 499

500 to 849

850 to 1,199

1,200 to 1,549

1,550 and above

(ix) Livestock nutrients generated or exported by volume (ft³/day)

1 to 74

75 to 134

135 to 299

300 to 449

450 to 749

750 to 1,499

1,500 to 2,499

2,500 to 4,999

5,000 to 8,499

8,500 to 11,999

12,000 to 15,999

16,000 and above

(x) Livestock nutrients generated or exported by weight (tons/
year)

1 to 5,256

5,257 to 10,512

10,513 to 21,024

21,025 to 42,048

42,049 to 84,096

84,097 to 164,184

164,185 to 262,734

262,735 to 394,200

394,201 to 558,384

558,385 to 722,634

722,635 to 919,734

919,735 to 1,051,134

1,051,135 and above

(xi) Number of acres covered by the plan or used for land appli-
cation of livestock nutrients

0 to 25

26 to 65

66 to 120

121 to 300

301 to 550

551 to 900

901 to 1,300

1,301 to 1,800

1,801 to 2,500

2,501 to 3,200

3,201 to 4,000

4,001 to 6,000

6,001 to 9,000

9,001 to 11,500

11,501 to 14,000

14,001 and above

(xii) Crop yields - tons/acre

0 to 1

1.1 to 2

2.1 to 3.5

3.6 to 5

5.1 to 7

7.1 to 9

9.1 to 12

12.1 to 14.5

14.6 to 17

17.1 to 19.5

19.6 to 22

22.1 to 26

26.1 and above

(g) A person aggrieved by a violation of chapter 17.21 RCW or the rules adopted under that chapter is entitled, on request, to have (~~his or her~~) their name protected from disclosure in any communication with persons outside the department and in any record published, released, or made available to persons outside the department except as provided in RCW 17.21.340 (1) (a) (ii).

(h) Information about (~~marijuana~~) cannabis processors otherwise exempt from public inspection and copying under chapter 42.56 RCW is also exempt from public inspection and copying if submitted to or used by the department (reference RCW 69.07.200(4)).

(i) Information about (~~marijuana~~) cannabis producers, (~~marijuana~~) cannabis processors, and (~~marijuana~~) cannabis retailers otherwise exempt from public inspection and copying under chapter 42.56 RCW is also exempt from public inspection and copying if submitted to or used by the department (reference RCW 15.125.050).

(3) A list of common record exemptions can be found on the department's website.

WSR 24-22-024

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed October 28, 2024, 7:08 a.m., effective November 28, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule-making order amends chapter 16-24 WAC, Humane slaughter of livestock, by clarifying current rule language by replacing all gender-specific pronouns with modern gender-inclusive pronouns.

Citation of Rules Affected by this Order: Amending WAC 16-24-010, 16-24-012, 16-24-020, 16-24-030, 16-24-040, and 16-24-050.

Statutory Authority for Adoption: RCW 16.50.130, 43.01.160.

Adopted under notice filed as WSR 24-17-085 on August 19, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 6, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 6, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 25, 2024.

Derek I. Sandison
Director

OTS-5730.1

AMENDATORY SECTION (Amending Order 1067, filed 9/19/67, effective 10/20/67)

WAC 16-24-010 Definitions. For the purposes of WAC 16-24-010 through 16-24-050:

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or ((his)) their duly appointed representative.

(3) "Humane method" means either:

(a) A method whereby the animal is rendered insensible to pain be mechanical, electrical, chemical or other means that is rapid and effective, before being shackled, hoisted, thrown, cast or cut; or

(b) A method in accordance with the ritual requirements of any religious faith whereby the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument.

(4) "Livestock" means cattle, calves, sheep, swine, horses, mules and goats.

(5) "Packer" means any person engaged in the business of slaughtering livestock.

(6) "Person" means a natural person, individual, firm, partnership, corporation, company, society and association and every officer, agent or employee, thereof. This term shall import either the singular or plural, as the case may be.

(7) "Slaughterer" means any person engaged in the commercial or custom slaughtering of livestock, including custom farm slaughterers.

(8) "Law" - Chapter 16.50 RCW, (chapter 31, Laws of 1967).

(9) "Carbon dioxide" - A gaseous form of the chemical formula CO₂.

(10) "Carbon dioxide concentration" - Ratio of carbon dioxide gas and atmospheric air.

(11) "Exposure time" - The period of time an animal is exposed to an anesthesia-producing carbon dioxide concentration.

(12) "Anesthesia" - Loss of sensation or feeling.

(13) "Surgical anesthesia" - A state of unconsciousness measured in conformity with accepted surgical practices.

(14) "Consciousness" - Responsiveness of the brain to the impressions made by the senses.

(15) "Captive bolt" - A stunning instrument which when activated drives a bolt out a barrel for a limited distance.

AMENDATORY SECTION (Amending Order 1067, filed 9/19/67, effective 10/20/67)

WAC 16-24-012 Slaughter by humane method—Violation. (1) No slaughterer or packer shall bleed or slaughter any livestock except by a humane method: Provided, that the director may, by administrative order, exempt a person from compliance with this order for a period of not to exceed six months if ~~((he))~~ they find~~((s))~~ that an earlier compliance would cause such person undue hardship.

(2) The use of a manually operated hammer, sledge or pole axe is declared to be an inhumane method of slaughter within the meaning of chapter 16-24 WAC.

(3) Any person violating any provision of chapter 16-24 WAC is guilty of a misdemeanor and subject to a fine of not more than ~~((two hundred fifty dollars))~~ \$250 or confinement in the county jail for not more than ~~((ninety))~~ 90 days.

(4) Nothing in chapter 16-24 WAC shall be construed to prohibit, abridge, or in any way hinder the religious freedom of any person or group. Notwithstanding any other provisions of this order, ritual slaughter and the handling or other preparation of livestock for ritual slaughter is defined as humane.

AMENDATORY SECTION (Amending Order 1067, filed 9/19/67, effective 10/20/67)

WAC 16-24-020 Chemical—Carbon dioxide. The slaughtering of calves, sheep, and swine with the use of carbon dioxide gas and the handling in connection therewith, in compliance with the provisions contained in this section, are hereby designated and approved as hu-

mane methods of slaughtering and handling of such animals under the law.

(1) Administration of gas, required effect; handling.

(a) The carbon dioxide gas shall be administered in a chamber in accordance with this section so as to produce surgical anesthesia in the animals before they are shackled, hoisted, thrown, cast, or cut. The animals shall be exposed to the carbon dioxide gas in a way that will accomplish the anesthesia quickly and calmly, with a minimum of excitement and discomfort to the animals.

(b) The driving or conveying of the animals to the carbon dioxide chamber shall be done with a minimum of excitement and discomfort to the animals. Delivery of calm animals to the anesthesia chamber is essential since the induction or early phase of anesthesia is less violent with docile animals. Among other things this requires that, in driving animals to the anesthesia chamber, electrical equipment be used as little as possible and with the lowest effective voltage.

(c) On emergence from the carbon dioxide chamber the animals shall be in a state of surgical anesthesia and shall remain in this condition throughout shackling, sticking and bleeding. Asphyxia or death from any cause shall not be produced in the animals before bleeding.

(2) Facilities and procedures.

(a) General requirements for gas chamber and auxiliary equipment; operator.

(i) The carbon dioxide gas shall be administered in a chamber which accomplishes effective exposure of the animal. Two types of chambers involving the same principle are in common use for carbon dioxide anesthesia. They are the "U" type chamber and the "straight line" type chamber. Both are based upon the principle that carbon dioxide gas has a higher specific gravity than air. The chambers open at both ends for entry and exit of animals and have a depressed central section. Anesthetizing carbon dioxide concentrations are maintained in the depressed central section of the chamber. Effective anesthetization is produced in this section. Animals are driven from holding pens through a pathway constructed of pipe or other smooth metal onto a continuous conveyor device which moves the animals through the chamber. The animals are compartmentalized on the conveyor by impellers synchronized with the conveyor or are otherwise prevented from crowding. Where impellers are used to compartmentalize the animal, a mechanically or manually operated gate will be used to move the animal onto the conveyor. Surgically anesthetized animals are moved from the chamber by the same continuous conveyor that carried them into and through the carbon dioxide gas.

(ii) Flow of animals into and through the carbon dioxide chamber is dependent on one operator. The operation or stoppage of the conveyor is entirely dependent upon this operator. It is necessary that ((he)) they be skilled, attentive, and aware of ((his)) their responsibility. Overdosages and death of animals can be brought about by carelessness of this individual.

(b) Special requirements for gas chamber and auxiliary equipment. The ability of anesthetizing equipment to perform with maximum efficiency is dependent on its proper design and efficient mechanical operation. Pathways, compartments, gas chambers, and all other equipment used must be designed to accommodate properly the species of animals being anesthetized. They shall be free from pain producing restraining devices. Injury of animals must be prevented by the elimination of sharp projections or exposed wheels or gears. There shall be no unrec-

essary holes, spaces, or openings where feet or legs of animals may be injured. Impellers or other devices designed to mechanically move or drive animals or otherwise keep them in motion or compartmentalized shall be constructed of flexible or well padded rigid material. Power activated gates designed for constant flow of animals to anesthetizing equipment shall be so fabricated that they will not cause injury. All equipment involved in anesthetizing animals shall be maintained in good repair.

(c) Gas. Maintenance of a uniform carbon dioxide concentration and distribution in the anesthesia chamber is a vital aspect of producing surgical anesthesia. This may be assured by reasonable accurate instruments which sample and analyze carbon dioxide gas concentration within the chamber throughout anesthetizing operations. Gas concentration shall be maintained uniform so that the degree of anesthesia in exposed animals will be constant. Carbon dioxide gas supplied to anesthesia chambers may be from controlled reduction of solid carbon dioxide or from a controlled liquid source. In either case, the carbon dioxide shall be supplied at a rate sufficient to anesthetize adequately and uniformly the number of animals passing through the chamber. Sampling of gas for analysis shall be made from a representative place or places within the chamber and on a continuing basis. Gas concentrations and exposure time shall be graphically recorded throughout each day's operation. Neither carbon dioxide nor atmospheric air used in the anesthesia chambers shall contain noxious or irritating gases. Each day before equipment is used for anesthetizing animals, proper care shall be taken to mix adequately the gas and air within the chamber. All gas producing and control equipment shall be maintained in good repair and all indicators, instruments, and measuring devices must be available for inspection by department inspectors during anesthetizing operations and at other times. A suitable exhaust system must be provided to eliminate possible overdosages due to mechanical or other failure of equipment.

AMENDATORY SECTION (Amending Order 1067, filed 9/19/67, effective 10/20/67)

WAC 16-24-030 Mechanical—Captive bolt. The slaughtering of cattle, calves, sheep, swine, goats, horses and mules by using captive bolt stunners and the handling in connection therewith, in compliance with the provisions contained in this section, are hereby designated and approved as humane methods of slaughtering and handling of such animals under the law.

(1) Application of stunners, required effect; handling.

(a) The captive bolt stunners shall be applied to the livestock in accordance with this section so as to produce immediate unconsciousness in the animals before they are shackled, hoisted, thrown, cast, or cut. The animals shall be stunned in such a manner that they will be rendered unconscious with a minimum of excitement and discomfort.

(b) The driving of the animals to the stunning areas shall be done with a minimum of excitement and discomfort to the animals. Delivery of calm animals to the stunning areas is essential since accurate placement of stunning equipment is difficult on nervous or injured animals. Among other things, this requires that, in driving ani-

mals to the stunning areas, electrical equipment be used as little as possible and with the lowest effective voltage.

(c) Immediately after the stunning blow is delivered the animals shall be in a state of complete unconsciousness and remain in this condition throughout shackling, sticking and bleeding.

(2) Facilities and procedures.

(a) General requirements for stunning facilities; operator.

(i) Acceptable captive bolt stunning instruments may be either skull penetrating or nonpenetrating. The latter type is also described as a concussion or mushroom type stunner. Penetrating instruments on detonation deliver bolts of varying diameters and lengths through the skull and into the brain. Unconsciousness is produced immediately by physical brain destruction and a combination of changes in intracranial pressure and acceleration concussion. Nonpenetrating or mushroom stunners on detonation deliver a bolt with a flattened circular head against the external surface of the animal's head over the brain. Diameter of the striking surface of the stunner may vary as conditions require. Unconsciousness is produced immediately by a combination of acceleration concussion and changes in intracranial pressures. A combination instrument utilizing both penetrating and nonpenetrating principles is acceptable. Energizing of instruments may be accomplished by detonation of measured charges of gunpowder or accurately controlled compressed air. Captive bolts shall be of such size and design that, when properly positioned and activated, immediate unconsciousness is produced.

(ii) To assure uniform unconsciousness with every blow, compressed air devices must be equipped to deliver the necessary constant air pressure and must have accurate constantly operating air pressure gauges. Gauges must be easily read and conveniently located for use by the stunning operator and the inspector. For purposes of protecting employees, inspectors, and others, it is desirable that any stunning device be equipped with safety features to prevent injuries from accidental discharge. Stunning instruments must be maintained in good repair.

(iii) The stunning area shall be so designed and constructed as to limit the free movements of animals sufficiently to allow the operator to locate the stunning blow with a high degree of accuracy. All chutes, alleys, gates and restraining mechanisms between and including holding pens and stunning area shall be free from pain producing features such as exposed bolt ends, loose boards, splintered or broken planking and protruding sharp metal of any kind. There shall be no unnecessary holes or other openings where feet or legs of animals may be injured. Overhead drop gates shall be suitably covered on the bottom edge to prevent injury on contact with animals. Roughened or cleated cement shall be used as flooring in chutes leading to stunning areas to reduce falls of animals. Chutes, alleys, and stunning areas shall be so designed that they will comfortably accommodate the kinds of animals to be stunned.

(iv) The stunning operation is an exacting procedure and requires a well-trained and experienced operator. ((He)) They must be able to accurately place the stunning instrument to produce immediate unconsciousness. ((He)) They must use the correct detonating charge with regard to kind, breed, size, age, and sex of the animal to produce the desired results.

(b) Special requirements: Choice of instrument and force required to produce immediate unconsciousness varies, depending on kind, breed, size, age, and sex of the animal: Young swine, lambs, and calves usu-

ally require less stunning force than mature animals of the same kind. Bulls, rams, and boars usually require skull penetration to produce immediate unconsciousness. Charges suitable for smaller kinds of livestock such as swine or for young animals are not acceptably interchanged for use on larger kinds or older livestock, respectively.

AMENDATORY SECTION (Amending Order 1067, filed 9/19/67, effective 10/20/67)

WAC 16-24-040 Mechanical—Gunshot. The slaughtering of cattle, calves, sheep, swine, goats, horses and mules by shooting with firearms and the handling in connection therewith, in compliance with the provisions contained in this section, are hereby designated and approved as humane methods of slaughtering and handling of such animals under the law.

(1) Utilization of firearms, required effect; handling.

(a) The firearms shall be employed in the delivery of a bullet or projectile into the animal in accordance with this section so as to produce immediate unconsciousness in the animal by a single shot before it is shackled, hoisted, thrown, cast, or cut. The animals shall be shot in such a manner that they will be rendered unconscious with a minimum of excitement and discomfort.

(b) The driving of the animals to the shooting areas shall be done with a minimum of excitement and discomfort to the animals. Delivery of calm animals to the shooting area is essential since accurate placement of the bullet is difficult in case of nervous or injured animals. Among other things, this requires that, in driving animals to the shooting areas, electrical equipment be used as little as possible and with the lowest effective voltage.

(c) Immediately after the firearm is discharged and the projectile is delivered, the animal shall be in a state of complete unconsciousness and remain in this condition throughout shackling, sticking and bleeding.

(2) Facilities and procedure.

(a) General requirements for shooting facilities; operator.

(i) On discharge, acceptable firearms dispatch free projectiles or bullets of varying sizes and diameters through the skull and into the brain. Unconsciousness is produced immediately by a combination of physical brain destruction and changes in intracranial pressure. Caliber of firearms shall be such that when properly aimed and discharged, the projectile produces immediate unconsciousness.

(ii) To assure uniform unconsciousness with every discharge when small-bore firearms are used, it is necessary to use one of the following type projectiles: Hollow pointed bullets, frangible iron plastic composition bullets, or powdered iron missiles. When powdered iron missiles are used, the firearms shall be in close proximity with the skull of the animal when fired. Firearms must be maintained in good repair. For purposes of protecting employees, inspectors, and others, it is desirable that all firearms be equipped with safety devices to prevent injuries from accidental discharge. Aiming and discharging of firearms should be directed away from operating areas.

(iii) The provisions contained in WAC 16-24-030 (2)(a)(iii) with respect to the stunning area also apply to the shooting area.

(iv) The shooting operation is an exacting procedure and requires a well-trained and experienced operator. ((He)) They must be able to accurately direct the projectile to produce immediate unconsciousness. ((He)) They must use the correct caliber firearm, powder charge and type of ammunition to produce the desired results.

(b) Special requirements: Choice of firearms and ammunition with respect to caliber and choice of powder charge required to produce immediate unconsciousness varies, depending on age and sex of the animal. In the case of bulls, rams, and boars, small-bore firearms may be used provided they are able to produce immediate unconsciousness of the animals. Small-bore firearms are usually effective for stunning other cattle, sheep, swine, goats, calves, horses and mules.

AMENDATORY SECTION (Amending Order 1067, filed 9/19/67, effective 10/20/67)

WAC 16-24-050 Electrical—Stunning with electric current. The slaughtering of cattle, calves, sheep, swine and goats with the use of electric current and the handling in connection therewith, in compliance with the provisions contained in this section, are hereby designated and approved as humane methods of slaughtering and handling of such animals under the law.

(1) Administration of electric current, required effect; handling.

(a) The electric current shall be administered so as to produce surgical anesthesia in the animals before they are shackled, hoisted, thrown, cast, or cut. The animals shall be exposed to the electric current in a way that will accomplish the anesthesia quickly and calmly, with a minimum of excitement and discomfort to the animals.

(b) The driving or conveying of the animals to the place of application of electric current shall be done with a minimum of excitement and discomfort to the animals. Delivery of calm animals to the place of application is essential to insure rapid and effective insensibility. Among other things this requires that, in driving animals to the place of application, electrical equipment be used as little as possible and with the lowest effective voltage.

(c) The quality and location of the electrical shock shall be such as to produce immediate insensibility to pain in the exposed animal.

(d) The stunned animal shall remain in a state of surgical anesthesia through shackling, sticking and bleeding. However, the animal shall die from loss of blood resulting from sticking and bleeding, and not from electrical shock.

(2) Facilities and procedures; operator.

(a) General requirements for operator: It is necessary that the operator of electric current application equipment be skilled, attentive, and aware of ((his)) their responsibility. Overdosages and death of animals can be brought about by carelessness of this individual.

(b) Special requirements for electric current application equipment: The ability of electric current equipment to perform with maximum efficiency is dependent on its proper design and efficient mechanical operation. Pathways, compartments, current applicators, and all other equipment used must be designed to accommodate properly the species of animals being anesthetized. They shall be free from pain pro-

ducing restraining devices. Injury of animals must be prevented by the elimination of sharp projections or exposed wheels or gears. There shall be no unnecessary holes, spaces or openings where feet or legs of animals may be injured. Impellers or other devices designed to mechanically move or drive animals or otherwise keep them in motion or compartmentalized shall be constructed of flexible or padded material. Power activated gates designed for constant flow of animals to electrical stunning equipment shall be so fabricated that they will not cause injury. All electrical stunning and auxiliary control and other equipment shall be maintained in good repair and all indicators, instruments, and measuring devices shall be available for inspection by department inspectors during stunning operations and at other times.

(c) Electric current: Each animal shall be given a sufficient application of electric current to insure unconsciousness immediately and through the bleeding operation. Suitable timing, voltage and current control devices shall be used to insure that each animal receives the necessary electrical charge to produce immediate unconsciousness. Moreover, the current shall be applied so as to avoid the production of hemorrhages or other tissue changes that would interfere with the inspection procedures of the department.

WSR 24-22-025

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed October 28, 2024, 7:08 a.m., effective November 28, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule-making order amends chapter 16-71 WAC, Equine diseases in Washington state, by clarifying current rule language by replacing all gender-specific pronouns with modern gender-inclusive pronouns.

Citation of Rules Affected by this Order: Amending WAC 16-71-010.

Statutory Authority for Adoption: RCW 43.17.060, 42.56.040, 43.01.160.

Adopted under notice filed as WSR 24-17-086 on August 19, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 25, 2024.

Derek I. Sandison
Director

OTS-5731.1

AMENDATORY SECTION (Amending WSR 10-13-056, filed 6/10/10, effective 7/11/10)

WAC 16-71-010 Definitions. "Certificate of veterinary inspection (CVI)" means a legible veterinary health inspection certificate on an official form (electronic or paper) from the state of origin or by the United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS). This certificate must be executed by a licensed and accredited veterinarian or a veterinarian approved by USDA APHIS. The certificate of veterinary inspection is also known as an "official health certificate."

"Department" means the Washington state department of agriculture.

"Director" means the director of the Washington state department of agriculture or (~~his or her~~) their authorized representative.

"Equine" means horses, donkeys, mules, ponies, zebras, and others in the Equidae family.

"Herd plan" means a written management agreement between the animal owner and the state veterinarian, with possible input from a private accredited veterinarian designated by the owner and the United

States Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) veterinary services area veterinarian-in-charge, in which each participant agrees to undertake actions specified in the herd plan to control the spread of infectious, contagious, or communicable disease within and from an infected herd and to work toward eradicating the disease in the infected herd.

"Official test" means a laboratory test by USDA-approved laboratories or by people authorized by the state of origin's animal health officials to conduct the tests.

"VS form 1-27" means a United States department of agriculture permit form for the movement of restricted or quarantined livestock.

WSR 24-22-026

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed October 28, 2024, 7:09 a.m., effective November 28, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule-making order amends chapter 16-101X WAC, De-grades, license suspensions and revocations for dairy producers and processors, by clarifying current rule language by replacing all gender-specific pronouns with modern gender-inclusive pronouns and removing the reference to RCW 15.36.411 from WAC 16-101X-050, as it was repealed in 1999.

Citation of Rules Affected by this Order: Amending WAC 16-101X-040 and 16-101X-050.

Statutory Authority for Adoption: RCW 15.36.021, 43.01.160.

Adopted under notice filed as WSR 24-17-088 on August 19, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 2, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 25, 2024.

Derek I. Sandison
Director

OTS-5733.1

AMENDATORY SECTION (Amending WSR 96-24-059, filed 11/27/96, effective 12/28/96)

WAC 16-101X-040 How can a degraded dairy farm or milk processing plant operation be regraded? A producer or processor subject to de-grade action for repeat violations must apply on an application provided by the department to have (~~his or her~~) their dairy farm or milk processing plant regraded. The application must be signed by the producer or processor and must state that all violations, both repeat violations and nonrepeat violations, cited on the inspection that caused the degrade have been corrected. Within seven days after receiving a completed application for regrade, the department will reinspect the dairy farm or milk processing plant. If the department determines that all violations, both repeat violations and nonrepeat violations, cited on the inspection that caused the degrade have been corrected and the degrade period as determined by the director has ended, the department will regrade the dairy farm or milk processing plant operation.

AMENDATORY SECTION (Amending WSR 96-24-058, filed 11/27/96, effective 12/28/96)

WAC 16-101X-050 Under what circumstances may the director initiate revocation action against the grade A license of a producer or processor? The director may initiate revocation proceedings against a dairy producer or milk processor whenever that producer or processor has had ((his or her)) their milk processing plant operation or dairy farm operation degraded for repeated violations and/or had his or her Grade A producer's license or milk processing plant license suspended and/or his or her milk degraded due to temperature violations, excessive coliform bacteria counts, total bacterial counts, or somatic cell counts, more than four times within a continuous three year period. A license may also be revoked as provided for in RCW 15.36.401 ((~~15.36.411~~)).

WSR 24-22-027

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed October 28, 2024, 7:10 a.m., effective November 28, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule-making order amends chapter 16-103 WAC, Milk processing assessments and collections, by clarifying current rule language by replacing all gender-specific pronouns with modern gender-inclusive pronouns.

Citation of Rules Affected by this Order: Amending WAC 16-103-003.

Statutory Authority for Adoption: RCW 15.36.550, 43.01.160.

Adopted under notice filed as WSR 24-17-089 on August 19, 2024.

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Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 25, 2024.

Derek I. Sandison
Director

OTS-5734.1

AMENDATORY SECTION (Amending WSR 92-20-056, filed 10/2/92, effective 11/2/92)

WAC 16-103-003 Penalties. Any due and payable assessment not paid by the milk plant operator by the (~~twentieth~~) 20th of the succeeding month shall be considered a lien on any property owned by (~~him or her~~) them. All delinquent assessments shall be filed as liens quarterly by the director with the county auditor of any county in which property owned by the milk plant operator is located. All delinquent assessments shall be collected in the manner and with the same priority over other creditors as prescribed for the collection of delinquent taxes under chapters 84.60 and 84.64 RCW.

WSR 24-22-028

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed October 28, 2024, 7:10 a.m., effective November 28, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule-making order amends chapter 16-104 WAC, Shell eggs—Standards, grades, and weight classes, by clarifying current rule language by replacing all gender-specific pronouns with modern gender-inclusive pronouns.

Citation of Rules Affected by this Order: Amending WAC 16-104-200.

Statutory Authority for Adoption: RCW 69.25.030, 43.01.160.

Adopted under notice filed as WSR 24-17-090 on August 19, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 25, 2024.

Derek I. Sandison
Director

OTS-5735.1

AMENDATORY SECTION (Amending WSR 87-16-075, filed 8/4/87)

WAC 16-104-200 Grades. (1) Washington consumer grade AA (at origin) shall consist of eggs which are at least 87 percent AA quality. The maximum tolerance of 13 percent which may be below AA quality may consist of A or B quality in any combination, except that within the tolerance for B quality, not more than ((1)) one percent may be B quality due to air cells over 3/4 inch, blood spots (aggregating not more than 1/8 inch in diameter), or serious yolk defects. Not more than ((5)) five percent ((7)) seven percent for jumbo size) checks are permitted and not more than 0.50 percent leakers, dirties, or loss (due to meat or blood spots) in any combination, except that such loss may not exceed 0.30 percent. Other types of loss are not permitted.

(2) Washington consumer grade AA (destination) shall consist of eggs which are at least 72 percent AA quality. The remaining tolerance of 28 percent shall consist of at least 10 percent A quality, and the remainder shall be B quality, except that within the tolerance for B quality not more than ((1)) one percent may be B quality due to air cells over 3/8 inch, blood spots (aggregating not more than 1/8 inch in diameter), or serious yolk defects. Not more than ((7)) seven per-

cent ((9)) nine percent for jumbo size) checks are permitted and not more than 1 percent leakers, dirties, or loss (due to meat or blood spots) in any combination, except that such loss may not exceed 0.30 percent. Other types of loss are not permitted.

(a) Washington consumer grade A (A) Washington consumer grade A (at origin) shall consist of eggs which are at least 87 percent A quality or better. Within the maximum tolerance of 13 percent which may be below A quality, not more than ((4)) one percent may be B quality due to air cells over 3/8 inch, blood spots (aggregating not more than 1/8 inch in diameter), or serious yolk defects. Not more than ((5)) five percent ((7)) seven percent for jumbo size) checks are permitted and not more than 0.50 percent leakers, dirties, or loss (due to meat or blood spots) in any combination, except that such loss may exceed 0.30 percent. Other types of loss are not permitted.

(b) Washington consumer grade A (destination) shall consist of eggs which are at least 82 percent A quality or better. Within the maximum tolerance of 18 percent which may be below A quality, not more than ((4)) one percent may be B quality due to air cells over 3/8 inch, blood spots (aggregating not more than 1/8 inch in diameter), or serious yolk defects. Not more than ((7)) seven percent ((9)) nine percent for jumbo size) checks are permitted and not more than ((4)) one percent leakers, dirties, or loss (due to meat or blood spots) in any combination, except that such loss may not exceed 0.30 percent. Other types of loss are not permitted.

(3) Washington consumer grade B.

(a) Washington consumer grade B (at origin) shall consist of eggs which are at least 90 percent B quality or better, not more than 10 percent may be checks, and not more than 0.50 percent leakers, dirties, or loss (due to meat or blood spots) in any combination, except that such loss may not exceed 0.30 percent. Other types of loss are not permitted.

(b) Washington consumer grade B (destination) shall consist of eggs which are at least 90 percent B quality or better, not more than 10 percent may be checks and not more than ((4)) one percent leakers, dirties, or loss (due to meat or blood spots) in any combination, except that such loss may not exceed 0.30 percent. Other types of loss are not permitted.

"Exemption." A licensed wholesale shell egg dealer may sell a consumer grade check on the premises where ((~~he packages~~)) they pack-
age eggs, directly to household consumers for use by such consumer and members of ((~~his~~)) their household and ((~~his~~)) their nonpaying guests and employees. This consumer grade check shall consist of eggs which at least 99 percent are checks or better. Checks may not exceed ((1%)) one percent dirties, leakers, and loss in any combination (due to meat or blood spots). Loss other than meat or blood spots is not permitted.

(4) Additional tolerances:

(a) In lots of two or more cases:

(i) For grade AA - No individual case may exceed 10 percent less AA quality eggs than the minimum permitted for the lot average.

(ii) For grade A - No individual case may exceed 10 percent less A quality eggs than the minimum permitted for the lot average.

(iii) For grade B - No individual case may exceed 10 percent less B quality eggs than the minimum permitted for the lot average.

(b) For grade AA, A, and B, no lot shall be rejected or downgraded due to the quality of a single egg except for loss other than blood or meat spots.

WSR 24-22-029

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed October 28, 2024, 7:12 a.m., effective November 28, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule-making order amends chapter 16-108 WAC, Washington state egg seals and assessments, by clarifying current rule language by replacing all gender-specific pronouns with modern gender-inclusive pronouns.

Citation of Rules Affected by this Order: Amending WAC 16-108-050.

Statutory Authority for Adoption: RCW 69.25.030, 43.01.160.

Adopted under notice filed as WSR 24-17-091 on August 19, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 25, 2024.

Derek I. Sandison
Director

OTS-5736.1

AMENDATORY SECTION (Amending Order 1489, filed 1/31/77, effective 3/7/77)

WAC 16-108-050 Regulation. In conformance with the authority set forth in RCW 69.25.170(1) egg seals shall not be required in the sale of eggs by:

(1) Any poultry producer from ((his)) their own flocks directly to a household consumer exclusively for use by such consumer and members of ((his)) their household and ((his)) their nonpaying guests and employees; and

(2) Shell egg packers on their own premises directly to household consumers for use by such consumer and members of ((his)) their household and ((his)) their nonpaying guests and employees.

WSR 24-22-030

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed October 28, 2024, 7:13 a.m., effective November 28, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule-making order amends chapter 16-125 WAC, Farm milk storage tanks and bulk milk tanker—Requirements, by clarifying current rule language by replacing all gender-specific pronouns with modern gender-inclusive pronouns.

Citation of Rules Affected by this Order: Amending WAC 16-125-010, 16-125-030, 16-125-120, and 16-125-210.

Statutory Authority for Adoption: RCW 15.36.020, 43.01.160.

Adopted under notice filed as WSR 24-17-092 on August 19, 2024.

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Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 4, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 4, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 25, 2024.

Derek I. Sandison
Director

OTS-5737.1

AMENDATORY SECTION (Amending WSR 99-18-032, filed 8/25/99, effective 9/25/99)

WAC 16-125-010 Definitions. (1) "Director" means the director of the department of agriculture, or (~~his/her~~) their duly authorized representative.

(2) "Bulk milk hauler" means the licensed dairy technician who has primary responsibility for the measuring, weighing, or grading of milk and the collection of samples at the farm.

(3) "Bulk milk hauling" means the transportation of milk or milk products from the producer to a milk processing plant or between milk processing plants, by vehicles belonging to an individual or corporation operating under a bulk milk hauler's license.

(4) "3A standards" means current sanitary standards for dairy equipment and accepted practices as published in the *Dairy Food and Environmental Sanitation* magazine of the International Association of Milk, Food and Environmental Sanitarians (IAMFES).

AMENDATORY SECTION (Amending WSR 99-18-032, filed 8/25/99, effective 9/25/99)

WAC 16-125-030 Installation. Before any person installs a new tank or relocates a used tank, (~~he or she~~) they must file drawings and detailed information about where and how the milk storage tank is to be installed with the director. There must be a minimum of two feet clearance between the sides of the tank and the walls of the milkhouse or other permanent equipment and a minimum of three feet on the working side of the tank and at the outlet valve. Adequate additional space necessary for normal milkhouse operations must be provided. There must be at least 30 inches clearance between the top of the pouring tank lip and the ceiling. Adequate space must be provided above the tank to accommodate the measuring rod.

Provisions of the National Bureau of Standards' Handbook 44 Code on Farm Milk Tanks as adopted under chapter 19.94 RCW applicable to installation and use shall be applicable.

AMENDATORY SECTION (Amending WSR 20-17-020, filed 8/6/20, effective 9/6/20)

WAC 16-125-120 Bulk milk tanker requirements. All bulk milk tankers operating in the state of Washington must comply with the provisions of 3A standard 05-14. Additional requirements are:

- (1) Trucks and trailers with remote pumps, mounted on tractor or front trailer, and a system of external hoses and/or piping may be used: Provided, that
 - (a) External flexible hoses meet the following requirements:
 - (i) Hoses are the thick walled rubber type and meet 3A standards 18-01, 62-01 and 63-01 except for pump box hoses.
 - (ii) Hoses are capped with a sanitary cap when not in use.
 - (b) Piping along the length of the trailer is of the fixed type and meets the following requirements:
 - (i) The pipe is stainless steel and meets the requirements of 3A standards 63-02 and 33-01. Other materials may be used if they are approved by the Milk Safety Branch of the Food and Drug Administration.
 - (ii) The sanitary piping is enclosed in an insulated holder and both the sanitary piping and the holder are capped with a dust tight cap when disconnected.
 - (c) Sanitary air that meets the requirements of 3A standard 64-04 may be used to remove residual milk from the external piping system.
 - (d) Any milk in the external piping system that exceeds (~~forty-five~~) 45 degrees Fahrenheit is discarded.
 - (e) Adequate facilities must be provided at all receiving stations for the proper cleaning and sanitizing of tankers including the external lines and valves.
- (2) All external valves on a tanker must be provided with a means of protection against dust, dirt, and road debris.
 - (a) Outlet valves must be protected by dust tight covers that will comply with 3A standard 05-14.
 - (b) Inlet valves and valves with attached hoses must be protected by a relatively dust tight cover. This cover may be:
 - (i) Stainless steel with an opening for the connection of hoses that is sealed with a flexible material that will prevent the entrance of dust, dirt, or road debris.

(ii) A flexible mounting made of rubber or other approved material that is close fitting, smooth, impervious, and easily removable for cleaning.

(iii) Any other cover for which plans have been submitted to and approved by the director.

(c) All valves not connected to hoses must have a sanitary cap and an approved dust cover on them.

(3) Markings on each truck or trailer must be sufficient to identify the owner of the truck or trailer.

(4) Cleaning and bactericidal treatment of all product contact surfaces including valves, hoses, covers, connections, appurtenances, pumps, and pump compartment of each tanker, when used, must be accomplished at least once every (~~twenty-four~~) 24 hours after first use. If the tanker is not used for hauling milk for (~~seventy-two~~) 72 hours after cleaning and sanitizing it must be sanitized again before it may be used for hauling milk. After sanitization each tanker must be tagged to show the date washed, place washed, and initials or signature of the person who washed the tanker. This wash tag must not be removed until the tanker is rewashed. It shall be the responsibility of the bulk milk hauler to ensure that the wash tag is present and that the tank is in fact clean prior to commencing (~~his~~) their route.

(5) Bulk milk tankers must meet the requirements under chapter 15.130 RCW and the rules adopted thereunder for transportation of food.

AMENDATORY SECTION (Amending WSR 99-18-032, filed 8/25/99, effective 9/25/99)

WAC 16-125-210 Recording thermometer—Operation. (1) Milk and milk products for consumption in the raw state or for pasteurization must be cooled to (~~forty~~) 40 degrees F or lower within two hours after completion of milking and maintained at that temperature until picked up: Provided, that the blend temperature after the first and subsequent milkings may not exceed (~~fifty~~) 50 degrees F.

(2) In making a milk pick-up, the licensed grader and sampler must:

(a) Remove the chart from the recorder before the chart has lapsed;

(b) Mark the date and time of pick-up;

(c) Sign the chart;

(d) Date and install a new chart, if necessary;

(e) File the completed charts under protected conditions, provided for by the producer, unless they are taken to the purchaser's premises for (~~his~~) their review.

(f) If the charts are taken from the dairy farm, they must be returned within (~~ten~~) 10 days from the date they were taken: Provided, that subject to the approval of its members and the department, a pooling agent, processing plant, receiving plant or regular place of business may file the recording thermometer charts at its place of business.

(g) The official milk temperature must be taken with an accurate, properly calibrated thermometer.

(3) The temperature recording charts may be used for more than one pick-up: Provided, that all the pick-ups occur within the maximum time interval of the chart. When the chart is used for more than one pick-up, the licensed grader and sampler must identify each lot of milk with the date, time of pick-up and ~~((his/her))~~ their signature.

(4) Before removing milk from a farm bulk tank, the licensed grader and sampler must check the recording chart. If the licensed grader and sampler finds milk temperature variations extending beyond the legal limits, ~~((he/she))~~ they must immediately notify the producer, or in the absence of the producer, an employee, and the producer's marketing agent. The licensed grader and sampler must sign the chart noting the date, time, stick reading and indicate that a temperature infraction has occurred. The producer's marketing agent must notify the department of agriculture of temperature standard violations detected through the official milk quality testing program. Temperature standard violations reported to the department will become part of the producer's official record.

(5) Except as otherwise provided in subsection (2) of this section, recorder charts must be held at the dairy farm for ~~((ninety))~~ 90 days and be made available to the director.

WSR 24-22-031

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed October 28, 2024, 7:13 a.m., effective November 28, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule-making order amends chapter 16-233 WAC, Worker protection standard, by clarifying current rule language by replacing all gender-specific pronouns with modern gender-inclusive pronouns.

Citation of Rules Affected by this Order: Amending WAC 16-233-021 and 16-233-031.

Statutory Authority for Adoption: RCW 15.58.040, 43.01.160.

Adopted under notice filed as WSR 24-17-097 on August 19, 2024.

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Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 2, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 25, 2024.

Derek I. Sandison
Director

OTS-5742.1

AMENDATORY SECTION (Amending WSR 22-23-063, filed 11/9/22, effective 12/10/22)

WAC 16-233-021 Agricultural employer duties—40 C.F.R., § 170.309. Agricultural employers must:

(1) Ensure that any pesticide is used in a manner consistent with the pesticide product labeling, including the requirements of this chapter, when applied on the agricultural establishment.

(2) Ensure that each worker and handler subject to this chapter receives the protections required by this chapter.

(3) Ensure that any handler and any early entry worker is at least 18 years old.

(4) Provide to each person, including labor contractors, who supervises any workers or handlers, information and directions sufficient to ensure that each worker and handler receives the protections required by this chapter. Such information and directions must specify the tasks for which the supervisor is responsible in order to comply with the provisions of this chapter.

(5) Require each person, including labor contractors, who supervises any workers or handlers, to provide sufficient information and

directions to each worker and handler to ensure that they can comply with the provisions of this chapter.

(6) Provide emergency assistance in accordance with this subsection. If there is reason to believe that a worker or handler has experienced a potential pesticide exposure during (~~his or her~~) their employment on the agricultural establishment or shows symptoms similar to those associated with acute exposure to pesticides during or within 72 hours after (~~his or her~~) their employment on the agricultural establishment, and needs emergency medical treatment, the agricultural employer must do all of the following promptly after learning of the possible poisoning or injury:

(a) Make available to that person prompt transportation from the agricultural establishment, including any worker housing area on the establishment, to an operating medical care facility capable of providing emergency medical treatment to a person exposed to pesticides.

(b) Provide all of the following information to the treating medical personnel, and upon request to the worker or handler:

(i) Copies of the applicable SDS and the product name(s), EPA registration number(s) and active ingredient(s) for each pesticide product to which the person may have been exposed.

(ii) The circumstances of application or use of the pesticide on the agricultural establishment.

(iii) The circumstances that could have resulted in exposure to the pesticide.

(iv) Antidote, first aid and other medical information from the product labeling.

(7) Ensure that workers or other persons employed or supervised by the agricultural establishment do not clean, repair, or adjust pesticide application equipment, unless trained as a handler under WAC 16-233-201. Before allowing any person not directly employed or supervised by the agricultural establishment to clean, repair, or adjust equipment that has been used to mix, load, transfer, or apply pesticides, the agricultural employer shall assure that pesticide residues have been removed from the equipment if feasible and must provide all of the following information to such person:

(a) Pesticide application equipment may be contaminated with pesticides.

(b) The potentially harmful effects of exposure to pesticides.

(c) Procedures for handling pesticide application equipment and for limiting exposure to pesticide residues.

(d) Personal hygiene practices and decontamination procedures for preventing pesticide exposures and removing pesticide residues.

(8) Display, maintain, and provide access to pesticide safety information and pesticide application and hazard information in accordance with WAC 16-233-026 if workers or handlers are on the establishment and within the last 30 days a pesticide product has been used or a restricted-entry interval for such pesticide has been in effect on the establishment.

(9) Ensure that before a handler uses any equipment for mixing, loading, transferring, or applying pesticides, the handler is instructed in the safe operation of such equipment.

(10) Ensure that before each day of use, equipment used for mixing, loading, transferring, or applying pesticides is inspected for leaks, clogging, and worn or damaged parts, and any damaged equipment is repaired or replaced.

(11) The agricultural employer must notify a commercial pesticide handler employer (CPHER) of specific locations and descriptions of

those treated areas and any restrictions on entering the treated areas with restricted-entry intervals (REIs) in effect whenever:

(a) A handler employed by a CHER will be on the agricultural establishment; and

(b) The CHER handler may be in or may walk within 1/4 mile of any pesticide treated area with restricted-entry interval (REI) in effect.

(12) Ensure that workers do not enter any area on the agricultural establishment where a pesticide has been applied until the applicable pesticide application and hazard information for each pesticide product applied to that area is displayed in accordance with WAC 16-233-026(2), and until after the restricted-entry interval has expired and all treated area warning signs have been removed or covered, except for entry permitted by WAC 16-233-306.

(13) Provide any records or other information required by this section for inspection and copying upon request by an employee of EPA, or any duly authorized representative of the Washington state department of agriculture or department of labor and industries.

(14) Pesticide safety, application, and hazard information must remain legible at all times when the information is required to be displayed. This information must be in accordance with WAC 16-233-026.

AMENDATORY SECTION (Amending WSR 22-23-063, filed 11/9/22, effective 12/10/22)

WAC 16-233-031 Commercial pesticide handler employer duties—40 C.F.R., § 170.313. Commercial pesticide handler employers must:

(1) Ensure that any pesticide is used in a manner consistent with the pesticide product labeling, including the requirements of this chapter, when applied on an agricultural establishment by a handler employed by the commercial pesticide handling establishment.

(2) Ensure each handler employed by the commercial pesticide handling establishment and subject to this chapter receives the protections required by this chapter.

(3) Ensure that any handler employed by the commercial pesticide handling establishment is at least 18 years old.

(4) Provide to each person, including labor contractors, who supervises any handlers employed by the commercial pesticide handling establishment, information and directions sufficient to ensure that each handler receives the protections required by this chapter. Such information and directions must specify the tasks for which the supervisor is responsible in order to comply with the provisions of this chapter.

(5) Require each person, including labor contractors, who supervises any handlers employed by the commercial pesticide handling establishment, to provide sufficient information and directions to each handler to ensure that the handler can comply with the provisions of this chapter.

(6) Ensure that before any handler employed by the commercial pesticide handling establishment uses any equipment for mixing, loading, transferring, or applying pesticides, the handler is instructed in the safe operation of such equipment.

(7) Ensure that, before each day of use, equipment used by their employees for mixing, loading, transferring, or applying pesticides is

inspected for leaks, obstructions, and worn or damaged parts, and any damaged equipment is repaired or is replaced.

(8) Ensure that whenever a handler who is employed by a commercial pesticide handling establishment will be on an agricultural establishment, the handler is provided information about, or is aware of, the specific location and description of any treated areas where a restricted-entry interval is in effect, and the restrictions on entering those areas.

(9) Provide the agricultural employer all of the following information before the application of any pesticide on an agricultural establishment:

(a) Specific location(s) and description of the area(s) to be treated.

(b) The date(s) and start and estimated end times of application.

(c) Product name, EPA registration number, and active ingredient(s).

(d) The labeling-specified restricted-entry interval applicable for the application.

(e) Whether posting, oral notification or both are required under WAC 16-233-121.

(f) Any restrictions or use directions on the pesticide product labeling that must be followed for protection of workers, handlers, or other persons during or after application.

(10) If there are any changes to the information provided in subsection (9) (a), (d), (e), and (f) of this section or if the start time for the application will be earlier than originally forecasted or scheduled, ensure that the agricultural employer is provided updated information prior to the application. If there are any changes to any other information provided pursuant to subsection (9) of this section, the commercial pesticide handler employer must provide updated information to the agricultural employer within two hours after completing the application. Changes to the estimated application end time of less than one hour need not be reported to the agricultural employer.

(11) Provide emergency assistance in accordance with this subsection. If there is reason to believe that a handler employed by the commercial pesticide handling establishment has experienced a potential pesticide exposure during (~~his or her~~) their employment by the commercial pesticide handling establishment or shows symptoms similar to those associated with acute exposure to pesticides during or within 72 hours after (~~his or her~~) their employment by the commercial pesticide handling establishment, and needs emergency medical treatment, the commercial pesticide handler employer must do all of the following promptly after learning of the possible poisoning or injury:

(a) Make available to that person prompt transportation from the commercial pesticide handling establishment, or any agricultural establishment on which that handler may be working on behalf of the commercial pesticide handling establishment, to an operating medical care facility capable of providing emergency medical treatment to a person exposed to pesticides.

(b) Provide all of the following information to the treating medical personnel:

(i) Copies of the applicable safety data sheet(s) (SDS) and the product name(s), EPA registration number(s) and active ingredient(s) for each pesticide product to which the person may have been exposed.

(ii) The circumstances of application or use of the pesticide.

(iii) The circumstances that could have resulted in exposure to the pesticide.

(iv) Antidote, first aid and other medical information from the product labeling.

(12) Ensure that persons directly employed by the commercial pesticide handling establishment do not clean, repair, or adjust pesticide application equipment, unless trained as a handler under WAC 16-233-201. Before allowing any person not directly employed by the commercial pesticide handling establishment to clean, repair, or adjust equipment that has been used to mix, load, transfer, or apply pesticides, the commercial pesticide handler employer shall assure that pesticide residues have been removed from the equipment if feasible and must provide all of the following information to such persons:

(a) Notice that the pesticide application equipment may be contaminated with pesticides.

(b) The potentially harmful effects of exposure to pesticides.

(c) Procedures for handling pesticide application equipment and for limiting exposure to pesticide residues.

(d) Personal hygiene practices and decontamination procedures for preventing pesticide exposures and removing pesticide residues.

(13) Provide any records or other information required by this chapter for inspection and copying upon request by an employee of EPA or any duly authorized representative of the Washington state department of agriculture or the department of labor and industries.

WSR 24-22-032

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed October 28, 2024, 7:14 a.m., effective November 28, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule-making order amends chapter 16-157 WAC, Organic food standards and certification, by clarifying current rule language by replacing all gender-specific pronouns with modern gender-inclusive pronouns.

Citation of Rules Affected by this Order: Amending WAC 16-157-030.

Statutory Authority for Adoption: RCW 15.86.020, 43.01.160.

Adopted under notice filed as WSR 24-17-093 on August 19, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 25, 2024.

Derek I. Sandison
Director

OTS-5738.1

AMENDATORY SECTION (Amending WSR 19-01-062, filed 12/14/18, effective 1/14/19)

WAC 16-157-030 Definitions. As used in this chapter:

"Department" means the Washington state department of agriculture.

"Director" means the director of the department of agriculture or (~~his or her~~) their duly authorized representative.

"Facility" includes, but is not limited to, any premises, plant, establishment, facility and associated appurtenances where organic products are prepared, handled, or processed in any manner for resale or distribution to retail outlets, restaurants, and any other such facility selling or distributing to consumers.

"Gross annual income" means the total monetary value received during the previous calendar year.

"Handler" means any person engaged in the business of handling agricultural products, including producers who handle crops or livestock of their own production.

"Handling operation" means any operation or portion of an operation that receives or otherwise acquires agricultural products and processes, packages, or stores such products.

"New applicant" means any person who applies for organic certification for the first time, or any person who has surrendered an organic certification or had an organic certification suspended or revoked.

"Person" means any individual, partnership, limited liability company, association, cooperative, or other entity.

"Processor" means any handler engaged in the canning, freezing, drying, dehydrating, cooking, pressing, powdering, packaging, baking, heating, mixing, grinding, churning, separating, extracting, cutting, fermenting, eviscerating, preserving, jarring, slaughtering or otherwise processing organic products.

"Producer" means a person who engages in the business of growing or producing food, fiber, feed, and other agricultural-based consumer products.

"Production operation" means a farm, ranch, or other business that grows, gathers, or raises crops, wild crops, or livestock.

"Renewal applicant" means any person that has received organic certification from the department in the previous year.

"Retailer" means any handler that sells organic food products directly to consumers.

"Sale" means selling, offering for sale, holding for sale, preparing for sale, trading, bartering, offering a gift as an inducement for sale of, and advertising for sale in any media.

"Site" means a contiguous defined field, orchard, block, pasture, paddock, garden, circle, plot or other designated area under the same management practices (e.g., organic, transitional).

"Transitional product" means any agricultural product that (a) is marketed using the term transitional in its labeling and advertising and (b) satisfies all of the requirements of organic except that it has had no applications of prohibited substances within one year prior to the harvest of the crop.

WSR 24-22-033

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed October 28, 2024, 7:14 a.m., effective November 28, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule-making order amends chapter 16-167 WAC, Intra-state commerce in foods, by clarifying current rule language by replacing all gender-specific pronouns with modern gender-inclusive pronouns.

Citation of Rules Affected by this Order: Amending WAC 16-167-010.

Statutory Authority for Adoption: RCW 15.130.120, 43.01.160.

Adopted under notice filed as WSR 24-17-094 on August 19, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 25, 2024.

Derek I. Sandison
Director

OTS-5739.1

AMENDATORY SECTION (Amending WSR 20-17-020, filed 8/6/20, effective 9/6/20)

WAC 16-167-010 General. (1) Consistent with the concept of uniformity where possible with the federal regulations adopted under the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 301 et seq., this chapter adopts the version of the referenced federal rule current at the time this rule becomes effective.

(2) To promote continued uniformity with federal rules; amendments to the federal rules referenced in this chapter are hereby incorporated and enforceable under this chapter upon the effective date of the federal amendment provided:

(a) The director of the Washington state department of agriculture or (~~his or her~~) their authorized representative (director) gives notice of the federal rule amendment at the time it is published as a final rule in the Federal Register;

(b) The notice is published, at a minimum, in the state register and on the agency's website; and

(c) The director has not otherwise determined that the amendment should not be adopted as provided in subsection (3) of this section.

(3) If the director determines that a proposed amendment to a federal rule referenced in this chapter should not be adopted, the director shall initiate rule making under chapter 34.05 RCW to amend this chapter to reflect the version of the federal rule, if any, effective under this chapter.

WSR 24-22-034

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed October 28, 2024, 7:14 a.m., effective November 28, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule-making order amends chapter 16-168 WAC, Approved independent sanitation consultants for food storage warehouses, by clarifying current rule language by replacing all gender-specific pronouns with modern gender-inclusive pronouns.

Citation of Rules Affected by this Order: Amending WAC 16-168-060.

Statutory Authority for Adoption: RCW 15.130.120, 43.01.160.

Adopted under notice filed as WSR 24-17-095 on August 19, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 25, 2024.

Derek I. Sandison
Director

OTS-5740.1

AMENDATORY SECTION (Amending WSR 20-17-020, filed 8/6/20, effective 9/6/20)

WAC 16-168-060 Applying for approval as an independent sanitation consultant. The steps in applying for approval as an independent sanitation consultant are:

- (1) Obtain an application from the department.
- (2) Complete the application, listing your qualifications.
- (3) Each applicant must sign the application and have their signature notarized.
- (4) Return the application to the address on the application.

WSR 24-22-035

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed October 28, 2024, 7:14 a.m., effective November 28, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule-making order amends chapter 16-74 WAC, Live-stock testing—Duties of owners, by clarifying current rule language by replacing all gender-specific pronouns with modern gender-inclusive pronouns.

Citation of Rules Affected by this Order: Amending 16-74-005 and 16-74-010 [16-74-020].

Statutory Authority for Adoption: RCW 16.36.040, 43.01.160.

Adopted under notice filed as WSR 24-17-087 on August 19, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 2, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 25, 2024.

Derek I. Sandison
Director

OTS-5732.1

AMENDATORY SECTION (Amending WSR 00-06-065, filed 3/1/00, effective 4/1/00)

WAC 16-74-005 Definitions. (1) "Communicable disease" means a disease due to a specific infectious agent or its toxic products transmitted from an infected person, animal or inanimate reservoir to a susceptible host, either directly or indirectly through an intermediate plant or animal host, vector or the environment.

(2) "Contagious disease" means a communicable disease that is capable of being easily transmitted from one animal to another animal or a human.

(3) "Director" means the director of agriculture of the state of Washington or (~~his or her~~) their authorized representative.

(4) "Department" means the department of agriculture of the state of Washington.

(5) "Infectious disease" means a clinical disease of humans or animals resulting from an infection with an infectious agent that may or may not be communicable or contagious.

(6) "Livestock" means horses, mules, donkeys, cattle, bison, sheep, goats, swine, rabbits, llamas, alpacas, ratites, poultry, wa-

terfowl, game birds and other species designated by statute. "Live-stock" does not mean free ranging wildlife as defined in Title 77 RCW.

AMENDATORY SECTION (Amending WSR 00-06-065, filed 3/1/00, effective 4/1/00)

WAC 16-74-020 Facilities. Owners must furnish adequate facilities to assure convenient and safe procedures in conducting all tests. The required facilities may include corrals, chutes, stanchions and/or squeeze chutes as deemed necessary by the director or ((his)) their duly authorized representative.

WSR 24-22-036

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed October 28, 2024, 7:15 a.m., effective November 28, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule-making order amends chapter 16-229 WAC, Secondary and operational area containment for bulk pesticides, by clarifying current rule language by replacing all gender-specific pronouns with modern gender-inclusive pronouns.

Citation of Rules Affected by this Order: Amending WAC 16-229-010.

Statutory Authority for Adoption: RCW 17.21.030, 43.01.160.

Adopted under notice filed as WSR 24-17-096 on August 19, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 25, 2024.

Derek I. Sandison
Director

OTS-5741.1

AMENDATORY SECTION (Amending WSR 05-05-036, filed 2/11/05, effective 3/14/05)

WAC 16-229-010 Definitions. The definitions set forth in this section shall apply throughout this chapter unless the context otherwise requires:

(1) "**Approved air gap**" means a physical separation between the free-flowing end of a water supply pipeline and the overflow rim of an open or nonpressurized receiving vessel. To be an approved air gap, the separation must be at least:

(a) Twice the diameter of the supply piping measured vertically from the overflow rim of the receiving vessel, and in no case be less than one inch, when unaffected by vertical surfaces (sidewalls); or

(b) Three times the diameter of the supply piping, if the horizontal distance between the supply pipe and a vertical surface (sidewall) is less than or equal to three times the diameter of the supply pipe, or if the horizontal distance between the supply pipe and intersecting vertical surfaces (sidewalls) is less than or equal to four times the diameter of the supply pipe and in no case less than one and one-half inches.

- (2) **"Approved reduced pressure principle backflow prevention assembly (RPBA)"** means an RPBA of a make, model and size that is approved by the Washington state department of health.
- (3) **"Appurtenances"** means all valves, pumps, fittings, pipes, hoses, metering devices, and mechanical devices which are connected to a storage container, or which are used to transfer a material into or out of such container.
- (4) **"Bulk pesticide"** means any registered pesticide which is transported or held in an individual container in undivided quantities of greater than (~~(fifty-five)~~) 55 U.S. gallons liquid measure or (~~(one hundred)~~) 100 pounds net dry weight.
- (5) **"Certified engineer"** means a licensed professional engineer, registered in the state of Washington in the discipline in which (~~(he/she is)~~) they are practicing.
- (6) **"Department"** means the Washington state department of agriculture.
- (7) **"Discharge"** means a spill, leak, or release, accidental or otherwise, from a storage container, container or appurtenance. It does not include a fully contained transfer of pesticide which is made pursuant to sale, storage, distribution or use.
- (8) **"Dry pesticide"** means pesticide which is in solid form prior to any application or mixing for application, and includes formulations such as dusts, wettable powders, dry flowable powders, granules, and water dispersible granules.
- (9) **"Liquid pesticide"** means pesticide in liquid form, and includes solutions, emulsions, suspensions, slurries, and pesticide rinsates.
- (10) **"Mini bulk pesticide"** means an amount of liquid pesticide greater than (~~(fifty-five)~~) 55 gallons but not exceeding (~~(five hundred)~~) 500 gallons which is held in a single container designed for ready handling and transport, which has been filled by the original pesticide manufacturer or repackager, and to which no substance has been added by any person.
- (11) **"Not technically feasible"** means compliance is not physically or technically possible or feasible, and/or compliance cannot be achieved without compromising operational safety, and/or significantly compromising operational access. Monetary cost of compliance alone shall not be sufficient for the department to determine that compliance is not technically feasible.
- (12) **"Operational area"** means an area or areas where pesticides are transferred, loaded, unloaded, mixed, repackaged, refilled or where pesticides are cleaned, or rinsed from containers or application, handling, storage or transportation equipment.
- (13) **"Operational area containment"** means any structure or system designed and constructed to intercept and contain discharges, including storage container or equipment wash water, rinsates, and rainwater from the operational area(s).
- (14) **"Permanent mixing/loading site"** means a site (location) at which more than (~~(three hundred)~~) 300 gallons of liquid pesticide (formulated product) or (~~(three thousand)~~) 3,000 pounds of dry pesticide or at which a total of (~~(fifteen hundred)~~) 1,500 pounds of pesticides as active ingredients are being mixed, repackaged or transferred from one container to another within a calendar year: Provided, that wood preservative application systems already regulated by 40 C.F.R., Parts 264.570-575 and Parts 265.440-445 shall be exempt.
- (15) **"Permanent storage facility"** means a location at which liquid bulk pesticide in a single container or aggregate quantities in

excess of (~~five hundred~~) 500 U.S. gallons or dry bulk pesticide in undivided quantities in excess of (~~two thousand~~) 2,000 pounds is held in storage: Provided, that mini-bulk pesticide containers are exempt from this chapter.

(16) "**Pesticide**" means, but is not limited to:

(a) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, snail, slug, fungus, weed, and any other form of plant or animal life or virus, except virus on or in a living person or other animal which is normally considered to be a pest or which the director may declare to be a pest;

(b) Any substance or mixture of substances intended to be used as a plant regulator, defoliant or desiccant; and

(c) Any spray adjuvant.

(d) For the purpose of establishing permanent mixing/loading site threshold values petroleum oils and products containing only Kaolin clay as the active ingredient are exempt from this chapter.

(17) "**Primary containment**" means the storage of liquid or dry bulk pesticide in storage containers at a permanent storage facility.

(18) "**Rinsate**" means the liquid generated from the rinsing of any equipment or container that has come in direct contact with any pesticide, including: Recovered sedimentation, washwater, contaminated precipitation, or other contaminated debris.

(19) "**Secondary containment**" means a device or structure designed, constructed, and maintained to hold or confine a discharge of a liquid pesticide from a permanent storage facility.

(20) "**Storage container**" means a container, including a rail car, nurse tank or other mobile container, that is used or intended for the storage of bulk liquid or dry pesticide. It does not include a mobile container at a storage facility for less than (~~fifteen~~) 15 days if this storage is incidental to the loading or unloading of a storage container at the bulk pesticide storage facility. Storage container does not include underground storage containers or surface impoundments such as lined ponds or pits.

(21) "**Substantially similar protection**" means alternative containment and management practices that prevent or control releases to the environment to the same or similar degree as the protections afforded by full compliance with this chapter.

(22) "**Temporary field storage**" means a storage container with the capacity to store (~~two thousand five hundred~~) 2,500 gallons or less of bulk liquid pesticide that remains in the same location for no more than (~~fourteen~~) 14 consecutive days in any six-month period. Provided, that temporary field storage containers used to store soil fumigants shall be allowed a maximum capacity of (~~ten thousand~~) 10,000 gallons or less. Containers must be chemically compatible with the material, which is being stored. Such containers can remain in the same location for no more than (~~fourteen~~) 14 consecutive days in any six-month period. Liquid bulk pesticide application tanks directly attached to an apparatus for the purpose of chemigation are exempt from this chapter.

(23) "**Washwater**" means the liquid generated from the rinsing of the exterior of any equipment, containers or secondary containment or operational areas which have or may have come in direct contact with any pesticide.

WSR 24-22-037

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed October 28, 2024, 7:15 a.m., effective November 28, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule-making order amends chapter 16-256 WAC, Commercial feed rules—Processed animal waste, by clarifying current rule language by replacing all gender-specific pronouns with modern gender-inclusive pronouns.

Citation of Rules Affected by this Order: Amending WAC 16-256-060.

Statutory Authority for Adoption: RCW 15.53.9012, 43.01.160.

Adopted under notice filed as WSR 24-17-101 on August 19, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 25, 2024.

Derek I. Sandison
Director

OTS-5745.1

AMENDATORY SECTION (Amending WSR 03-23-131, filed 11/19/03, effective 7/1/04)

WAC 16-256-060 Procedures for denying or revoking a commercial feed license for a processed animal waste product facility. (1) A commercial feed license for a processed animal waste product facility will be denied or revoked if the:

(a) Applicant or the processed animal waste product is determined to be in violation of any Washington state statute or Washington state agency rule or regulation affecting or relating to the distribution of commercial feeds in this state.

(b) Processed animal waste product does not meet the quality standards in WAC 16-256-070.

(c) Processed animal waste product label does not comply with the requirements of chapter 15.53 RCW and WAC 16-256-030.

(d) Processed waste product is not labeled in compliance with law and agency rules and regulations, including WAC 16-256-030 of these rules.

(e) Applicant or licensee fails to perform the testing as specified in WAC (~~(16-256-256)~~) 16-256-040 or to accurately maintain and

make available to the director or ((his)) their designee for inspection and copying, upon demand, the records required in WAC 16-256-080.

(2) (a) When an animal waste product or labeling, or other material required to be submitted with an application fails to comply with the requirements of these rules, the director must notify the applicant why the application does not comply so the applicant can make the necessary corrections.

(b) If, upon receipt of such a notice, the applicant does not make the necessary corrections, the director must deny the license application for the processed animal waste product facility. The applicant may then request a hearing under chapter 34.05 RCW.

(3) After determining that an animal waste product or its labeling does not comply with the provisions of chapter 15.53 RCW or WAC 16-256-030, the department may revoke the facility's license. If aggrieved by the decision, the licensee may request a hearing as authorized under chapter 34.05 RCW.

WSR 24-22-038

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed October 28, 2024, 7:15 a.m., effective November 28, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule-making order amends chapter 16-306 WAC, Hemp program, by clarifying current rule language by replacing all gender-specific pronouns with modern gender-inclusive pronouns.

Citation of Rules Affected by this Order: Amending WAC 16-306-130.

Statutory Authority for Adoption: RCW 15.140.030, 43.01.160.

Adopted under notice filed as WSR 24-17-105 on August 19, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 25, 2024.

Derek I. Sandison
Director

OTS-5746.1

AMENDATORY SECTION (Amending WSR 22-01-137, filed 12/14/21, effective 1/14/22)

WAC 16-306-130 Transporting hemp. (1) Hemp produced under this chapter may not be transported from a registered land area as identified on the hemp producer license until THC certification by the department as specified in WAC 16-306-120 is obtained by the applicable licensee prior to transport. During transport of hemp off a producer's registered land area, including to a processor, the person in possession of the hemp during transport must have in (~~his or her~~) their possession either:

(a) Copies of the hemp producer license and department-issued THC certification, as required by this chapter; or

(b) A bill of lading or other proper documentation demonstrating that the hemp was legally imported or is otherwise legally present in the state of Washington under applicable state and federal laws relating to hemp.

(2) Any hemp from a licensed Washington producer that is found in Washington state at any location off the premises of a registered land area of a licensee without department-issued THC certification as specified in WAC 16-306-120 is deemed to be contraband and subject to

seizure by the Washington state patrol or any law enforcement officer. Any such contraband material is subject to destruction at the licensee's expense, and may result in suspension or revocation of the hemp producer license.

WSR 24-22-039

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed October 28, 2024, 7:16 a.m., effective November 28, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule-making order amends chapter 16-236 WAC, SEPA procedures, by clarifying current rule language by replacing all gender-specific pronouns with modern gender-inclusive pronouns.

Citation of Rules Affected by this Order: Amending WAC 16-236-050, 16-236-060, and 16-236-100.

Statutory Authority for Adoption: RCW 43.21C.120, 43.01.160.

Adopted under notice filed as WSR 24-17-099 on August 19, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 3, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 25, 2024.

Derek I. Sandison
Director

OTS-5743.1

AMENDATORY SECTION (Amending WSR 84-24-033, filed 11/30/84)

WAC 16-236-050 Designation of responsible official. Within the department of agriculture the ultimate responsible official is the director. The responsible official for a specific proposal shall be the assistant to the director in charge of environmental affairs or ((his/her)) their designee.

AMENDATORY SECTION (Amending WSR 84-24-033, filed 11/30/84)

WAC 16-236-060 EIS preparation. (1) Preparation of draft and final EISs and SEISs is the responsibility of the assistant to the director in charge of environmental affairs or ((his/her)) their designee. The responsible official shall be satisfied that all EISs and SEISs issued by the department are in compliance with these rules and chapter 197-11 WAC.

(2) Any draft or final EIS or SEIS shall be prepared by the department, the applicant, or by a consultant mutually agreed upon by the department and applicant.

(3) Whenever someone other than the department prepares a draft or final EIS or SEIS, the responsible official shall:

(a) Coordinate scoping to ensure that the individual preparing the document receives all substantive information submitted by any agency or person.

(b) Direct the areas of research and study to be undertaken and the content and organization of the document.

(c) Assist in obtaining information on file with another agency that is needed by the person preparing the document.

(d) Allow the person preparing the document access to department records relating to the document, as prescribed in chapter 16-06 WAC, Public records.

(4) Nothing herein shall be construed to prohibit the department from charging any fee of an applicant that the department is otherwise authorized to charge (see WAC 197-11-914). A performance bond in amount specified by the department may be required of the applicant to ensure payment of department expenses in preparing, in whole or in part, a draft or final EIS or SEIS.

AMENDATORY SECTION (Amending WSR 84-24-033, filed 11/30/84)

WAC 16-236-100 Public notice requirements. (1) When these rules require notice of environmental document preparation or availability, as a lead agency and taking into consideration the geographic area affected by the proposal, the size and complexity of the proposal, the public notice requirements for the permit or approval required from the department, public interest expressed in the proposal, and whether the proposal is a project or regulation, the department shall give public notice by using at least one of the following methods:

(a) Posting the property, for site-specific proposals;

(b) Publishing notice in a newspaper of general circulation in the county, city, or general area where the proposal is located;

(c) Notifying public or private groups which have expressed interest in a certain proposal or in the type of proposal being considered;

(d) Notifying the news media; and/or

(e) Publishing notice in a department newsletter.

(2) Whenever possible, the department shall integrate these public notice requirements with existing notice procedures for any department permits or approvals required for the proposal.

(3) The department may require an applicant to complete the public notice requirements for the applicant's proposal at their expense.

WSR 24-22-040

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed October 28, 2024, 7:16 a.m., effective November 28, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule-making order amends chapter 16-324 WAC, Certification of seed potatoes, by clarifying current rule language by replacing all gender-specific pronouns with modern gender-inclusive pronouns.

Citation of Rules Affected by this Order: Amending WAC 16-324-361 and 16-324-385.

Statutory Authority for Adoption: RCW 15.14.015, 43.01.160.

Adopted under notice filed as WSR 24-17-104 on August 19, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 2, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 25, 2024.

Derek I. Sandison
Director

OTS-5748.1

AMENDATORY SECTION (Amending WSR 15-01-042, filed 12/9/14, effective 1/9/15)

WAC 16-324-361 Definitions. "Certification" means that the lot of seed potatoes was inspected and meets the requirements of this chapter.

"Cull" means any lot of potatoes rejected for certification for any reason.

"Department" means the department of agriculture of the state of Washington.

"Director" means the director of the department of agriculture or ((his/her)) their duly appointed representative.

"Disease tested" means tested for and found free of all of the following diseases: Potato virus A (PVA), potato virus M (PVM), potato virus S (PVS), potato virus X (PVX), potato virus Y (PVY), potato leafroll virus (PLRV), potato mop top virus (PMTV), potato spindle tuber viroid (spindle tuber), *Erwinia carotovora* ssp. *carotovora* (soft rot), *Erwinia carotovora* ssp. *atroseptica* (black leg) and *Clavibacter michiganense* ssp. *sepedonicus* (ring rot).

"ELISA testing" means laboratory testing by enzyme-linked immunosorbant assay or other equivalent methodologies.

"Micropropagated" means potato stock propagated using aseptic laboratory techniques and culture media to promote plant tissue growth.

"Microtubers" means tubers produced in vitro by a micropropagated plant or plantlet.

"Minitubers" means tubers produced under controlled greenhouse conditions.

"Nematode" means plant parasitic nematodes capable of infesting potatoes, including but not limited to the genus *Meloidogyne*.

"Nuclear stock" means plantlets, microtubers, minitubers, or seed potatoes produced from prenuclear stock, and grown in the field for the first time.

"Plot" means a seed potato planting that is 0.25 acre or less in size.

"Powdery scab" means the disease caused by the fungus *Spongospora subterranea*.

"Prenuclear" means micropropagated plants or tubers and plants or minitubers produced in a greenhouse.

"Quarantine pest" means a pest of potential economic importance and not yet present in the state, or present but not widely distributed and being officially controlled.

"Recertification" means the process of certifying a seed lot that was certified the previous year.

"Rogue" means removing diseased or undesirable plants, including all associated plant parts, from a seed potato field.

"Seed lot" means a field, in whole or in part, or a group of fields producing seed potatoes, or the potato tubers harvested from a seed potato field.

"Seed potato farm" means a separate seed potato enterprise, including all land, equipment, storages and all facilities used to produce only certified seed potatoes.

"Seed potatoes" means vegetatively propagated tubers used for potato production.

"Seed source" means seed potatoes produced by an individual seed potato farm within a particular seed production area.

"Trace" means a barely perceivable indication of plant disease that amounts to less than 0.001 percent of sample.

"Tolerance" means the maximum acceptable percentage of potato plants or tubers that is diseased, infected by plant pests, defective or off-type based on visual inspection or laboratory testing by the director or other authorized person.

"Unit method" means a method of planting in which cut seed pieces from one tuber are dropped consecutively in a row, or in which all tubers from one plant are dropped consecutively in a row.

AMENDATORY SECTION (Amending WSR 13-12-014, filed 5/24/13, effective 6/24/13)

WAC 16-324-385 Production requirements. (1) A grower may not recertify any seed lots, except nuclear, if ring rot has been detected on (~~his or her~~) their seed potato farm during the previous two years. Nuclear seed potatoes may be recertified by the original grower

if laboratory testing of the seed by a laboratory approved by the department shows negative results for ring rot.

(2) Prenuclear class.

(a) Prenuclear seed lots must be derived from disease tested micropropagated plants. All testing methods and laboratories must be approved by the department.

(b) A minimum of one percent (and not less than (~~twenty~~) 20 samples) of prenuclear seed produced in a greenhouse must be tested and found free of potato virus X (PVX), potato virus Y (PVY), potato virus S (PVS), potato leafroll virus (PLRV), *Erwinia carotovora* ssp. *carotovora* (soft rot), *Erwinia carotovora* ssp. *atroseptica* (black leg), and *Clavibacter michiganense* ssp. *sepedonicus* (ring rot).

(c) The department will inspect all facilities used in the production of prenuclear class seed potatoes on a periodic basis. Department approval is necessary in order to utilize these facilities.

(3) Nuclear class.

(a) Nuclear class seed potatoes must be propagated entirely from prenuclear plants.

(b) Each nuclear class seed lot must be distinctly separated in storage and in the field.

(c) If a ground rig is used for spraying, wide enough spacing between rows must be left, so that tires will not touch plants during the growing season.

(d) Growers must plant cut seed and single drop seed separately, with single drop seed identified.

(4) Generations 1, 2, 3, 4 and 5.

(a) Growers must leave a distinct separation between lots of seed potatoes from different classes. The same separation must be left between different varieties, unless the varieties are readily distinguishable by visual observation. The separation must consist of one of the following:

(i) A strip of land at least six feet in width, that is unplanted or planted with another crop; or

(ii) Visible markers such as flags in every corner of the lot, and also at intervals not to exceed (~~one hundred~~) 100 yards.

(b) When more than one lot of seed potatoes is planted in the same field, growers must stake or mark the identity of each lot.

WSR 24-22-041

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed October 28, 2024, 7:17 a.m., effective November 28, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule-making order amends chapter 16-237 WAC, Commodity storage warehouses and grain dealers, by clarifying current rule language by replacing all gender-specific pronouns with modern gender-inclusive pronouns.

Citation of Rules Affected by this Order: Amending WAC 16-237-170.

Statutory Authority for Adoption: RCW 22.09.020, 43.01.160.

Adopted under notice filed as WSR 24-17-098 on August 19, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 25, 2024.

Derek I. Sandison
Director

OTS-5744.1

AMENDATORY SECTION (Amending WSR 03-19-013, filed 9/5/03, effective 10/6/03)

WAC 16-237-170 Emergency storage situation. If the director determines that an emergency storage situation exists, a warehouse operator may forward warehouse receipted grain to other licensed warehouses for storage without canceling the depositor's warehouse receipt under the following conditions:

(1) The warehouse operator must:

(a) Obtain written permission from the depositor and/or the holder of the warehouse receipt before the grain is shipped.

(b) Notify the department before the grain is shipped.

(c) Have a warehouse receipt issued in ((his/her)) their name from the receiving warehouse.

(d) Be back in compliance with the requirements described in RCW 22.09.250 within ((one hundred twenty)) 120 days from the date of the first grain shipment.

(2) An extension of the ((one hundred twenty)) 120-day requirement in subsection (1)(d) of this section may be granted for government owned commodities.

WSR 24-22-042

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed October 28, 2024, 7:17 a.m., effective November 28, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule-making order amends chapter 16-674 WAC, Weights and measures—Exemptions, weighmasters and device registration, by clarifying current rule language by replacing all gender-specific pronouns with modern gender-inclusive pronouns.

Citation of Rules Affected by this Order: Amending WAC 16-674-030 and 16-674-055.

Statutory Authority for Adoption: RCW 19.94.010, 43.01.160.

Adopted under notice filed as WSR 24-17-106 on August 19, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 2, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 25, 2024.

Derek I. Sandison
Director

OTS-5750.1

AMENDATORY SECTION (Amending WSR 08-20-070, filed 9/25/08, effective 10/26/08)

WAC 16-674-030 Weighmaster license issuance, expiration and fees. (1) Weighmaster licenses issued under RCW 15.80.460 shall expire on June 30th following the date of issuance.

(2) Upon expiration, suspension or revocation of the license, the weighmaster must surrender their impression seal to the director or ~~((his/her))~~ the director's representative within ~~((ten))~~ 10 days if they do not renew their license, if their license is suspended or if their license is revoked. The seal may be surrendered by sending the seal to the department or by surrendering the seal to the director or ~~((his/her))~~ the director's duly appointed representative.

(3) Businesses or individuals applying to renew their license or applying for their initial license with the department must have a current bond in the amount specified in RCW 15.80.480 and that bond must remain in force and effect for not less than the entire licensing period.

(4) Weighing and measuring devices used by weighmasters are considered to be in commercial use and must be registered. Registrations

are accomplished through the department of licensing as part of the master license service under chapter 19.02 RCW.

(5) Proof of a scale test within the last (~~twelve~~) 12 months must be submitted with the application.

(6) Applications must be submitted with the proper fees as specified in chapter 15.80 RCW.

(7) Applications received without subsections (3), (4), (5) and (6) of this section will be considered incomplete applications and will be returned to the applicant.

AMENDATORY SECTION (Amending WSR 08-20-070, filed 9/25/08, effective 10/26/08)

WAC 16-674-055 Weighing and measuring devices. (1) Weighing and measuring devices used by weighmasters must meet all legal requirements for commercial weighing and measuring devices.

(2) Weighmaster scales must be tested not less than every (~~twelve~~) 12 months and must conform to the tolerances and specifications in the edition of NIST Handbook 44, "*Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices*," adopted by the department in chapter 16-662 WAC. Inspections must be performed by either service agents registered with the department or by the department. The department is under no obligation to provide this inspection service.

(3) A legible copy of the current scale inspection and current master business license must be maintained at the same site as the scale and must be immediately made available to the director or (~~his~~) the director's representative upon request.

WSR 24-22-043

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed October 28, 2024, 7:18 a.m., effective November 28, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule-making order amends chapter 16-319 WAC, Forest tree seed certification, by clarifying current rule language by replacing all gender-specific pronouns with modern gender-inclusive pronouns.

Citation of Rules Affected by this Order: Amending WAC 16-319-030, 16-319-051, and 16-319-101.

Statutory Authority for Adoption: RCW 15.49.005, 43.01.160.

Adopted under notice filed as WSR 24-17-102 on August 19, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 3, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 25, 2024.

Derek I. Sandison
Director

OTS-5747.1

AMENDATORY SECTION (Amending WSR 14-10-047, filed 5/1/14, effective 6/1/14)

WAC 16-319-030 Classes of reproductive material. (1) "Tested class" means that forest reproductive material came from tree(s) which have been tested for specific character(s) as determined by progeny or other applicable tests and under specified conditions. Further, such forest reproductive material is produced and processed in a manner assuring genetic identity common with the tested material, and, for nursery stock, that it was produced from tested reproductive material. Said forest reproductive material shall be labeled with a blue label stating "tested." Certifying agency shall examine trees and reproductive material; exercise field, plant, and warehouse inspection, and audit all pertinent records involved.

(2) "Selected class" means that reproductive material came from trees that were selected for specific character(s). Two subclasses are recognized:

Subclass A: Reproductive material is obtained from selected trees and, in addition for tree seed, the male parent(s) is also selected.

Subclass B: Applies to tree seed when only one parent is selected.

Both subclasses shall be labeled with a green label stating "selected" and the subclass. Certifying agency shall examine trees and reproductive material; exercise field, plant, and warehouse inspection, and audit all pertinent records involved.

(a) "Selected subclass A" means that the donor or parents of the reproductive material are selected, known, and of record, but have no test results of record, and, for nursery stock, that it was produced from selected subclass A or better reproductive material.

(b) "Selected subclass B" means that only one parent of the tree seed is selected, known, and of record and reproductive material has not been tested, and, for nursery stock, that it was produced from selected subclass B or better reproductive material.

(3) "Source identified class" means that the reproductive material came from within a seed zone(s) or portion thereof (as defined by legal description) and from within a 500-foot elevation increment(s) or breeding zone(s) or code(s).

Subclass A: Personally supervised production.

Subclass B: Procedurally supervised production.

Both classes of said reproductive material shall be labeled with a yellow label stating "source identified" and the subclass. Certifying agency shall exercise field inspection, plant/warehouse inspection, and audit.

(a) "Subclass A source identified" means that applicant and certifying agency personally know beyond a reasonable doubt the seed zone(s) or portion thereof and 500-foot elevation increment(s) within which cones and/or reproductive material were collected; and, for nursery stock, that it was produced from subclass A source identified or better reproductive material. Certifying agency knows location from applicant's prior written plan of (~~his~~) their reproductive material collecting and/or producing activities. For source identified subzone collections, a representative of the producer, whose major responsibility is observation of picker location, shall make daily observations within the collection area.

(b) "Subclass B source identified" means that applicant and certifying agency know reproductive material is identified as collected from within a seed zone(s) and from within a 500-foot elevation increment(s), and for nursery stock, that it was produced from subclass B source identified or better reproductive material.

(4) "Audit class" means that the applicant's records of procurement, processing, storage, and distribution state that the reproductive material was collected from within stated seed zone(s) or described portions thereof and from within 500-foot elevation increment(s), and, for nursery stock, certifying agency knows that it was produced from audit class or better reproductive material. Containers of said reproductive material shall carry a serially numbered brown and white label stating "audit certificate." All records of the applicant for this class of reproductive material are subject to audit.

AMENDATORY SECTION (Amending WSR 87-12-006, filed 5/22/87)

WAC 16-319-051 Forest reproductive material—Field standards.

(1) Tested and selected classes. Applicant shall maintain continuous

record(s) satisfactory to certifying agency which maintains the identity of the reproductive material through all stages of production, collection, processing, storage, and disbursement from stores, and, in addition, such records as needed to trace the pedigree and document the performance of the reproductive material. The records shall include but are not limited to those involving:

- (a) Selection, location, and origin of the parent trees.
- (b) Pollen, seed, scions, etc., collection, processing, inventory, storage, and use in tree improvement and breeding programs.
- (c) Design, establishment and management of test(s) and the collection, analysis and interpretation of test data.
- (d) Nursery stock production.

Certifying agency shall inspect all phases of the field operation including periodic checks of parent trees, pollen and scion collections; pollinations; cone harvest, storage, processing and inventory; and tests, together with appropriate records.

(2) Source identified reproductive material. Applicant shall develop and make correct use of collector and buyer labels, collector registration, and transportation records, and for nursery stock, labels and records identifying the stock as originating from source identified or better reproductive material.

(a) Subclass A.

(i) Control of collectors shall be such that applicant and certifying agency personally know beyond a reasonable doubt the seed zone or breeding zone or code or portions thereof (as delineated by legal description), and 500-foot elevation increment or specified elevation increment for breeding zone(s) or code(s) within which reproductive material was collected. Control of producers of nursery stock shall be such that applicant and certifying agency personally know beyond a reasonable doubt that the nursery stock was produced from source identified subclass A or better reproductive material.

(ii) Applicant shall provide certifying agency with a written reproductive material collection and/or nursery stock production plan (not later than three days) prior to collection of reproduction material or production of nursery stock.

(iii) Further, all following requirements of subclass B shall be met.

(b) Subclass B.

(i) All collectors shall be supervised sufficiently so that either buyers know where reproductive material was collected, or buyers shall purchase all reproductive material that collectors present for sale without differential of acceptance stated or implied, as to source, location, seed zone, or elevation.

(ii) Buyer shall require collector to sign collector's registration record prior to collection of reproductive material. ((He)) Buyer shall also issue collector's labels, and direct collector to complete them and place them in or attach them to each container of reproductive material before it is transported from point of collection. Coincident with purchase of reproductive material, ((he)) collector shall complete description on labels including species, source by seed zone, breeding zone or code, elevation increment, special collection area if any, certification class, date of purchase and ((his)) signature or initials.

(iii) Buyer shall maintain a buyer record on a form for all reproductive material received, listing species, seed zone, elevation

increment, units of reproductive material, date of purchase, collector's name and buyer's name.

(iv) Buyer shall maintain transportation record showing species, seed zone, elevation increment, units of reproductive material, and date shipped.

(v) Producers of nursery stock shall be supervised sufficiently so that applicant knows that the stock was produced from source identified subclass B or better reproductive material.

(vi) The certifying agency shall advise the applicant of problems or conditions that affect competent verification or execution of these standards by certifying agency and applicant.

(vii) Unless other arrangements are made, the certification class shown by the producer on all containers of reproductive material shall be verified by the certifying agency before being transported from the receiving station. The producer is responsible for evidence of verification of the certification class applied for.

(3) Audit class reproductive material.

(a) Buyer shall require collector to sign collector's registration record and to complete collector's labels prior to purchase of reproductive material.

(b) Buyer shall maintain a buyer record on a form for all reproductive material received, listing species, seed zone, elevation increment, units of reproductive material, date of purchase, collector's name and buyer.

(c) Buyer or other shipper of reproductive material shall maintain a transportation record showing species, seed zone, elevation increment, units of reproductive material and date shipped.

(d) Producers of nursery stock shall maintain auditable records identifying the stock as being produced from audit class or better reproductive material.

AMENDATORY SECTION (Amending WSR 87-12-006, filed 5/22/87)

WAC 16-319-101 Forest reproductive material—Rejection of certification. Any lot may be rejected if certifying agency determines that said lot fails to meet these standards. The privilege of certification may be withdrawn by certifying agency for a definite period of time in case of flagrant violations of field or processing standards. If applicant believes an erroneous decision has been rendered, (~~he~~) they may make written appeal to certifying agency for review by its governing body.

WSR 24-22-044

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed October 28, 2024, 7:19 a.m., effective November 28, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule-making order amends chapter 16-663 WAC, Service agents—Reporting, test procedures, standards and calibration of weighing and measuring devices, by clarifying current rule language by replacing all gender-specific pronouns with modern gender-inclusive pronouns.

Citation of Rules Affected by this Order: Amending WAC 16-663-140, 16-663-150, and 16-663-170.

Statutory Authority for Adoption: RCW 19.94.010, 43.01.160.

Adopted under notice filed as WSR 24-17-103 on August 19, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 3, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 0.

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Date Adopted: October 25, 2024.

Derek I. Sandison
Director

OTS-5749.1

AMENDATORY SECTION (Amending WSR 08-20-069, filed 9/25/08, effective 10/26/08)

WAC 16-663-140 Identification of work—Labels and seals. (1)

Each registered service agent and serviceperson shall identify (~~his/her~~) their work on commercially used weighing and measuring devices by:

(a) Applying an adhesive tag or label in a conspicuous location on the device; or

(b) Using a distinctive security seal or seal press impression.

(2) The adhesive tag or label shall legibly show at least the serviceperson registration number, business telephone number and date of service.

(3) Any security seal or seal press used to comply with subsection (1) of this section shall identify the individual registered serviceperson applying the seal.

(4) The registered service agent or serviceperson shall submit a copy of the tag or label, seal or seal press identification mark to the department at time of registration.

AMENDATORY SECTION (Amending WSR 00-22-072, filed 10/30/00, effective 11/30/00)

- WAC 16-663-150 Reports and responsibilities of service agents and servicepersons.** (1) Any person installing a new or used weighing or measuring device that is being put in use for the first time at that location must provide a notice of installation to the department. The notice shall state the date placed in service, type of device, capacity, business' name and site address, and name and address of the service company installing the device. The report shall also indicate whether the device is new or used.
- (2) After correcting a rejected device, registered service agents or servicepersons must return the reject report issued by the weights and measures official to the address indicated on the form within seven days from completion of work. All discrepancies noted on the department's rejection report must be corrected before returning the device to service. The form must be signed and dated by the registered serviceperson returning the device to service. The form must also legibly indicate (~~his/her~~) the service agent's or serviceperson's registration number and show the number or identifying mark of security seals that were removed and applied to affect the correction.
- (3) A registered service agent or serviceperson will submit a copy of (~~his/her~~) their test report showing the as-found and as-corrected readings with the reject report when putting a rejected device back into service.
- (4) Commercially used weighing or measuring devices put into service or returned to service must be correct and meet all applicable specifications and requirements set forth in the edition of National Institute of Standards and Technology Handbook 44 currently adopted by the director. The device must also meet current (NTEP) requirements in effect for the device.
- (5) Devices must be installed in accordance with manufacturer's instructions.
- (6) A device installed in a fixed location must be installed so that its operation or performance will not be adversely affected by any characteristic of the foundation, supports, or any other detail of the installation.
- (7) Equipment must be installed in such a manner that all required markings are readily observable.
- (8) A device must be installed so that it will be correct and it meets all performance requirements when associated or nonassociated equipment is operated in its usual and customary manner.
- (9) Faulty installation conditions must be corrected, and any defective parts must be renewed or suitably repaired, before adjustments are made.
- (10) When equipment is adjusted, the adjustment must be made so that performance errors are as close as practicable to zero value.
- (11) Equipment put into service, repaired, adjusted, calibrated or refurbished must be sealed with an appropriate security seal and the seal number recorded on the inspection test report. Any security seal removed prior to servicing the device will be noted on the test

report and will include the number or identifying mark of the security seal.

(12) Equipment must be assembled and installed so that it does not facilitate the perpetration of fraud.

AMENDATORY SECTION (Amending WSR 00-22-072, filed 10/30/00, effective 11/30/00)

WAC 16-663-170 Unlawful practices—Penalties. Any person who, by ~~((himself or herself, by his or her))~~ themselves, by their agent or employee, or as the agent or employee of another person, violates the provisions of this rule is subject to a civil penalty of up to ~~((five thousand dollars))~~ \$5,000 as specified in RCW 19.94.510.

WSR 24-22-045

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed October 28, 2024, 7:20 a.m., effective November 28, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule-making order amends chapter 16-675 WAC, Calibration services, special inspection and testing fees, by clarifying current rule language by replacing all gender-specific pronouns with modern gender-inclusive pronouns.

Citation of Rules Affected by this Order: Amending WAC 16-675-055.

Statutory Authority for Adoption: RCW 19.94.010, 43.01.160.

Adopted under notice filed as WSR 24-17-107 on August 19, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 25, 2024.

Derek I. Sandison
Director

OTS-5751.1

AMENDATORY SECTION (Amending WSR 07-13-051, filed 6/14/07, effective 7/15/07)

WAC 16-675-055 What fees are charged when the inspecting and testing of a weighing or measuring device is specifically requested by the device's owner? The fees in the following table apply to inspecting and testing weighing or measuring devices when the inspection or test is:

(1) Specifically requested by the device's owner or ~~((his/her))~~ their representative; or

(2) Performed on devices used by an agency or institution that receives money from the legislature or the federal government.

Weighing and Measuring Device	Inspection and/or Testing Fee
Small scales "zero to ((four hundred)) <u>400</u> pounds capacity"	\$16.80 per scale

Weighing and Measuring Device	Inspection and/or Testing Fee
Intermediate scales " ((four hundred pounds to five thousand)) <u>400 pounds to 5,000 pounds capacity</u> "	\$56.10 per scale
Large scales "over ((five thousand)) <u>5,000 pounds capacity</u> "	\$140.30 per scale
Large scales with supplemental devices	\$168.40 per scale
Railroad track scales	\$1,123.00 per scale
Liquid fuel meters with flows of less than ((twenty)) <u>20</u> gallons per minute	\$16.80 per meter
Liquid fuel meters with flows of at least ((twenty)) <u>20</u> but not more than ((one hundred fifty)) <u>150</u> gallons per minute	\$56.10 per meter
Fuel meters with flows over ((one hundred fifty)) <u>150</u> gallons per minute	\$168.40 per meter
Liquid petroleum gas meters with one-inch diameter or smaller dispensers	\$56.10 per meter
Liquid petroleum gas meters with greater than one-inch diameter dispensers	\$168.40 per meter
Inspection services not covered by the above special inspection fees	\$37.80 per hour for labor and travel time (minimum one hour charge)

WSR 24-22-046

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed October 28, 2024, 7:20 a.m., effective November 28, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule-making order amends chapter 16-695 WAC, Rules relating to ginseng management, by clarifying current rule language by replacing all gender-specific pronouns with modern gender-inclusive pronouns.

Citation of Rules Affected by this Order: Amending WAC 16-695-010.

Statutory Authority for Adoption: RCW 15.17.030(1), 43.01.160.

Adopted under notice filed as WSR 24-17-108 on August 19, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 25, 2024.

Derek I. Sandison
Director

OTS-5752.1

AMENDATORY SECTION (Amending WSR 97-23-059, filed 11/18/97, effective 12/19/97)

WAC 16-695-010 Definitions. The following definitions shall apply:

(1) "Cultivated ginseng" means any part of a ginseng plant that is growing or grown in managed beds under artificial or natural shade and cultivated according to recognized ginseng horticultural practices. Cultivated ginseng includes woodsgrown ginseng.

(2) "Dealer" means anyone who buys ginseng for resale, or grows and sells it for export. This definition does not apply to persons who buy ginseng solely for the purpose of final retail sale to consumers in the United States.

(3) "Dealer registration" means an annual registration issued by the department authorizing a dealer to buy, collect, or otherwise acquire ginseng for resale or export.

(4) "Department" means the Washington state department of agriculture.

(5) "Director" means the director of the department or their ~~(his)~~ duly appointed representative.

(6) "Dry weight" means the weight in pounds and ounces of harvested or collected ginseng root that is dried and is no longer viable.

(7) "Export" means export outside the boundaries of the United States.

(8) "Out-of-state ginseng" means ginseng that is grown or originated outside the state of Washington.

(9) "Ginseng" means any and all parts of the plant known as American ginseng (*Panax quinquefolius* L.) including, but not limited to: Plants, whole roots, essentially intact roots, root chunks, slices, seeds, and tissue.

(10) "Green ginseng" means a ginseng root from which the moisture has not been removed by drying.

(11) "Green weight" means the weight in pounds and ounces of freshly harvested or collected ginseng root that is not dried and is still viable.

(12) "Grower" means a person who grows "cultivated," "wild simulated" and or "woodsgrown" ginseng, and sells it to a dealer.

(13) "Grower registration" means an annual registration issued by the department which enables a grower to sell cultivated ginseng that the grower has produced.

(14) "Person" means any individual, firm, partnership, corporation, company, society, association or other business entity, and every officer, agent or employee thereof, agency or organized group of persons whether or not incorporated.

(15) "Wild ginseng" means ginseng growing naturally within its native range.

(16) "Wild simulated ginseng" means cultivated ginseng grown in a wooded site where wild ginseng is not established.

(17) "Woodsgrown ginseng" means ginseng grown in managed beds under natural shade.

WSR 24-22-047

PERMANENT RULES

EASTERN WASHINGTON UNIVERSITY

[Filed October 28, 2024, 9:07 a.m., effective November 28, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To comply with new Title IX regulations that are effective August 1, 2024, Eastern Washington University (EWU) has designed an updated process for receiving and responding to concerns about students engaging in discrimination, discriminatory harassment, sexual violence, or interpersonal violence (chapter 172-125 WAC). EWU's previous procedures were contained in chapter 172-121 WAC, Student conduct code. To make the regulation more accessible for students and to provide greater support to students throughout the process, the procedures for handling complaints involving discrimination, discriminatory harassment, sexual violence, and interpersonal violence have been moved from the student conduct code to this new code. Procedures and standards that were incorporated into the student conduct code that were specific to Title IX and discrimination are being removed. As identified in chapter 172-108 WAC, EWU declines to adopt the model rules of procedure issued by the office of administrative hearings. Instead, these rules are designed to emphasize the educational nature of the university community and to provide a prompt and equitable process for resolving concerns.

Citation of Rules Affected by this Order: New WAC 172-121-021; repealing WAC 172-121-303 and 172-121-304; and amending WAC 172-121-010, 172-121-020, 172-121-030, 172-121-070, 172-121-080, 172-121-100, 172-121-105, 172-121-110, 172-121-118, 172-121-121, 172-121-122, 172-121-130, 172-121-140, 172-121-300, 172-121-302, 172-121-306, and 172-121-400.

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

Adopted under notice filed as WSR 24-17-113 on August 19, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 17, Repealed 2.

Number of Sections Adopted using Negotiated Rule Making: New 1, Amended 17, Repealed 2; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 25, 2024.

Annika Scharosch
Associate Vice President for Civil Rights
Compliance and Business Services

OTS-5549.1

AMENDATORY SECTION (Amending WSR 19-01-047, filed 12/13/18, effective 1/13/19)

WAC 172-121-010 Introduction. Eastern Washington University (EWU) is an academic community dedicated to ~~((providing))~~ instruction ~~((in higher education))~~, advancing knowledge through scholarship and research, and ~~((providing related services to))~~ servicing the ~~((community))~~ region.

As a public institution of higher education, ~~((the university))~~ EWU has a special responsibility to create and maintain an academic environment that promotes freedom of inquiry and expression while protecting the rights, opportunities and welfare of students, faculty, staff and guests. To achieve this, ~~((the university))~~ EWU establishes rules, regulations, procedures, policies, and standards of conduct.

Through the student conduct code as well as other ~~((university))~~ EWU policies and directives, ~~((the university))~~ EWU sets forth specific behavioral and academic expectations for students and student organizations. It is the responsibility of each student to clearly understand and comply with ~~((those))~~ outlined expectations.

The board of trustees of Eastern Washington University, acting under the authority granted by RCW 28B.35.120, has established the following regulations for student conduct and discipline. The responsibility for enforcement of the student conduct code rests with ~~((the university))~~ EWU president and is further delegated to the vice president for student affairs or designee.

These provisions are not intended to protect any person or class of persons from injury or harm.

EWU's standards of conduct for students with respect to discrimination, discriminatory harassment, interpersonal violence, sexual assault, sexual misconduct, and retaliation are contained in chapter 172-125 WAC. If a report is received that a student has engaged in such conduct, EWU will follow the process set forth in chapter 172-125 WAC. If a report includes potential violations of this code and chapter 172-125 WAC arising out of the same facts and circumstances, the report will be investigated and adjudicated in accordance with chapter 172-125 WAC. In no case will this code be used to investigate and adjudicate violations of chapter 172-125 WAC.

AMENDATORY SECTION (Amending WSR 23-01-027, filed 12/9/22, effective 1/9/23)

WAC 172-121-020 Definitions. For purposes of the student conduct code, chapter 172-121 WAC, the definitions in this section apply.

"Appeal authority" refers to the conduct review official presiding over an appeal under WAC 172-121-130.

"Appellant" refers to any respondent or complainant who appeals the decisions or sanctions of a hearing authority under WAC 172-121-130.

~~((("Brief hearing" refers to a brief conduct review hearing before a conduct review officer for allegations that, if substantiated by a preponderance of evidence, would result in a sanction less than a suspension or expulsion, do not involve a Title IX complaint, and that do not involve felony-level crimes.))~~

"Business days" refers to the days and hours ~~((the university))~~ EWU is open for business. Business days are Monday through Friday,

from 8:00 a.m. to 5:00 p.m., excluding holidays as set forth in ((the university)) EWU holiday schedule.

"Complainant" means the person who was subjected to the alleged misconduct. The complainant may or may not be the reporting party. If the person who was subjected to the alleged misconduct does not wish to pursue a student conduct case, ((the university)) EWU may initiate the student conduct process on its own behalf.

"Conduct review meeting" refers to a meeting before a conduct review officer for allegations that, if substantiated by a preponderance of evidence, would result in a sanction less than a suspension or expulsion and that do not involve felony-level crimes.

"Conduct review officer" or "CRO" refers to the person designated to serve as the decision maker for a ((brief hearing)) conduct review meeting or the presiding officer for a full hearing.

"Council" or "the council" refers to the student disciplinary council as described in WAC 172-121-070.

"Council hearing" refers to a full conduct review hearing before the student disciplinary council.

"Dean of students" refers to the dean of students or designee.

"Director of SRR" or "director" refers to the director of student rights and responsibilities or designee.

"EWU" means Eastern Washington University.

"EWU official" includes any person employed or contracted by EWU, performing assigned administrative or professional responsibilities.

"EWU premises" means buildings and/or property (including adjacent streets and sidewalks) which are owned, leased, rented, or operated by EWU.

"EWU president" refers to EWU president or designee.

"Filing" means to actually deliver documents. Documents required to be filed with a specific person under these rules shall be deemed filed upon actual receipt during office hours at EWU. Papers may be filed by delivering them to the student rights and responsibilities office, sending them via United States mail, properly addressed, postage prepaid, to 129 Showalter Hall, or emailing them to srr@ewu.edu.

"Full hearing" refers to a full conduct reviewing hearing before the council for allegations that, if substantiated by a preponderance of the evidence, could result in a sanction of a suspension or expulsion ((, involve a Title IX complaint,)) or that could constitute felony-level crimes.

"Hearing authority" refers to the decision-maker in a conduct review hearing.

~~(("Interpersonal violence" encompasses domestic violence, dating violence, and stalking.))~~

"Notify" means to provide notice to a person. A person may be notified in person, by telephone, by sending notice to the person's ((university)) EWU email account, by leaving a message on their personal telephone, or by sending the notice in the United States mail, properly addressed, postage prepaid, to the person's last known address.

"Off-campus" refers to any location or facility that is not owned, leased, rented, or operated by Eastern Washington University.

"Party/parties" refers to the complainant, respondent, and/or ((the university)) EWU.

"Policies" or "((university)) EWU policy" refers to the written regulations of ((the university)) EWU, including the standards of conduct for students, residence life handbook, housing contract, ((uni-

versity)) EWU policies, and graduate/undergraduate catalogs and handbooks.

"Recognized student organizations" refers to clubs, organizations, societies or similarly organized groups recognized by ((the university)) EWU or the associated students of Eastern Washington University (ASEWU).

"Reporting party" means the person who notifies student rights and responsibilities of alleged misconduct by a student or student organization. The reporting party may also be the complainant, but need not be the complainant.

"Respondent" refers to any student or student organization accused of violating the student conduct code under this chapter.

~~"Serve" means to ((post a document in the United States mail, properly addressed, postage prepaid, to a person's last known address, personal service, or electronic service to the person's university email account. Service by mail is complete upon deposit in the United States mail))~~ send a document through electronic mail addressed to the party's EWU-issued email address or, if the party does not have an EWU-issued email address, to the email address on record with EWU. Service is complete when the email is sent to the email address. Service may also be accomplished by personal delivery or regular U.S. mail. Notifications via regular U.S. mail are sent to the party's last known address or the address on file with the EWU registrar, and service is complete on the date the notice is placed in the mail. The student is responsible for maintaining an updated mailing address on file with the registrar. Recognized or registered student organizations are responsible for updating their mailing address with their designated EWU office.

"Session council" refers to the student disciplinary council members selected for a specific hearing or appeal.

~~(("Sexual misconduct" encompasses sexual harassment or sexual assault, as defined in WAC 172-121-200.))~~

"Student" includes all of the following:

(a) Any applicant who becomes enrolled, for violations of the code committed as part of the application process or committed following the applicant's submission of the application until the time of official enrollment;

(b) Any person who is enrolled or has been enrolled at ((the university)) EWU for up to 12 months from the last date they were enrolled;

(c) Nonmatriculated, international students attending institutes or foreign study programs through ((the university)) EWU; and

(d) Any person who was previously enrolled at ((the university)) EWU for violations of the code committed while enrolled regardless of when they were enrolled. A person who engaged in conduct in violation of the student conduct code while a student remains subject to action under this code even if the person has graduated, withdrawn, or is not currently enrolled for any reason.

~~(("Title IX complaint" means a formal signed complaint from a current student, applicant, employee, or person participating in or seeking to participate in a university program or activity, or by the Title IX coordinator, alleging sexual harassment, sexual assault, domestic violence, dating violence, or stalking for the conduct that occurred on university premises, during a university program or activity within the United States, or at a building owned or controlled by a student organization that is officially recognized by the university. A complaint of sexual misconduct or interpersonal violence will only~~

~~be considered a Title IX complaint under this code if it meets this definition. Sexual misconduct or interpersonal violence may still be addressed under this code if it does not meet the definition of a Title IX complaint.))~~

"Title IX coordinator" refers to the Title IX coordinator or designee.

~~(("University" means Eastern Washington University.~~

~~"University official" includes any person employed or contracted by the university, performing assigned administrative or professional responsibilities.~~

~~"University premises" means buildings and/or property (including adjacent streets and sidewalks) which are owned, leased, rented or operated by the university, to include all satellite campuses affiliated with the university.~~

~~"University president" refers to the university president or designee.))~~

"Vice president for student affairs" refers to the vice president for student affairs or designee.

NEW SECTION

WAC 172-121-021 Calculation of time periods. In calculating any of the time periods identified in this code, the day of any act or service of notice is not included in calculating the deadlines. For example, if a student is served with an order on a Monday and the student has 10 calendar days to appeal the order, the date of service (Monday) does not count towards the time period, the next day (Tuesday) does count toward the time period, and the appeal would be due by 5:00 p.m. on the following Thursday.

If the last day of a time period ends on a Saturday or Sunday, the deadline is extended to 5:00 p.m. on Monday. If the last day of a time period ends on an EWU holiday, the deadline is extended to 5:00 p.m. on the next weekday following the holiday.

AMENDATORY SECTION (Amending WSR 21-12-037, filed 5/25/21, effective 6/25/21)

WAC 172-121-030 Rights of students. Any student or student organization charged with any violation of the student conduct code ~~((and the complainant in the case of an allegation of sexual misconduct or interpersonal violence, have))~~ has the following rights where applicable:

- (1) ~~((The))~~ Right to a fair and impartial conduct review process;
- (2) ~~((The right to prior))~~ Right to receive written notice prior to ~~((attend))~~ a prehearing conference or hearing;
- (3) ~~((The))~~ Right to remain silent during any conduct review hearing;
- (4) ~~((The))~~ Right to know who filed the complaint against them as described in WAC 172-121-110;
- (5) ~~((The))~~ Right to speak on their own behalf in all proceedings;
- (6) ~~((The))~~ Right to hear all information and view all material presented against ~~((him or her))~~ them;

- (7) The right to call witnesses for a full hearing as described in WAC 172-121-122;
- (8) The right to ask or submit questions to be asked of witnesses for a full hearing, in a method determined by the conduct review officer, as described in WAC 172-121-122;
- (9) The right to consult an advisor as described in WAC 172-121-105(3);
- (10) The right to be presumed not responsible;
- (11) ~~((Complainants have the right to opt out of participating in the student conduct process;~~
- ~~(12))~~ The right to appeal as provided in WAC 172-121-130; and
- ~~((13))~~ (12) The right to be subjected to ~~((university))~~ EWU disciplinary action only one time for the same conduct.

AMENDATORY SECTION (Amending WSR 23-01-027, filed 12/9/22, effective 1/9/23)

WAC 172-121-070 Conduct review officials. (1) **The director of SRR** or designee shall:

- (a) Serve as the primary point of contact for all matters relating to student conduct code violations and proceedings;
- (b) Manage the proceedings as described in this chapter;
- (c) Maintain all records of conduct review proceedings as described in WAC 172-121-080;
- (d) Ensure complaints are promptly investigated and resolved as required by federal and state laws; and
- (e) Review off-campus incidents of alleged misconduct and make determinations as to whether the conduct involved adversely affects ~~((the university))~~ EWU or ~~((university))~~ the EWU community and whether the conduct process should be initiated.

(2) **Conduct review officer (CRO):** The ~~((university))~~ EWU president delegates to the vice president of student affairs the authority to designate one or more CRO(s). The director of SRR, dean of students, or any other qualified individual may be designated as a CRO. The CRO(s) shall preside over ~~((brief hearings))~~ conduct review meetings and full conduct hearings under this chapter. For ~~((brief hearings))~~ conduct review meetings, the CRO shall serve as the decision maker. For full hearings, the CRO shall serve as the presiding officer.

As the presiding officer~~((r))~~ in full hearings, the CRO has authority to:

- (a) Determine the order of presentation of evidence;
- (b) Administer oaths and affirmations;
- (c) Issue subpoenas pursuant to RCW 34.05.446;
- (d) Rule on procedural matters, objections, and motions;
- (e) Rule on motions for summary judgment;
- (f) Rule on offers of proof and receive relevant evidence;
- (g) Pursuant to RCW 34.05.449(5), close parts of a hearing to public observation or order the exclusion of witnesses upon a showing of good cause;
- (h) Question witnesses in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter;
- (i) Call additional witnesses and request additional exhibits deemed necessary to complete the record and receive such evidence subject to each party's opportunity for cross-examination and rebuttal;

- (j) Take official notice of facts pursuant to RCW 34.05.452(5);
- (k) Regulate the course of the hearing and take any appropriate action necessary to maintain order during the hearing;
- (l) Permit or require oral argument or briefs and determine the time limits for submission thereof;
- (m) Issue an order of default;
- (n) Hold prehearing conferences; and
- (o) Take any other action necessary and authorized by any applicable statute or rule.

(3) **Student disciplinary council:** The council serves as the decision maker for full hearings with respect to a finding of responsibility. The CRO in full hearings serves as the decision maker with respect to determining appropriate sanction(s) and remedies, upon a finding of responsibility.

(a) Council pool: For each academic year, a pool of council members shall be established. All members of the council pool are appointed by the vice president for student affairs. (~~Appointment of council pool members is as follows:~~)

(i) (~~Faculty and staff members are appointed for three-year terms. Student members are appointed for one-year terms;~~) Councilmembers must meet the requirements of the role to serve on the hearing board. Councilmember appointments may be revoked;

(ii) Council chair (conduct review officer): Designated CRO who chairs council proceedings;

(iii) Vacancies: Council pool shall be filled as needed through appointment by the vice president for student affairs.

(b) Session council: When a student disciplinary council is needed for a full hearing, the director or designee, shall identify available members from the council pool to serve as the session council. Each session council must include three members. The council may consist of students, staff, or faculty members. Full hearings are determined by a majority vote of the council.

(4) **Investigator:** (~~For all Title IX, sexual misconduct, and interpersonal violence complaints, and certain other cases at the director's discretion, the director may assign a complaint to~~) An EWU investigator may be assigned to conduct an investigation. If an EWU investigator is assigned outside of student rights and responsibilities, the investigator will provide a written investigative report to the director of student rights and responsibilities.

(5) **Presenter in cases of a full hearing:** In full hearings, a person will present a case against the respondent on behalf of (the university) EWU. The presenter will call witnesses, ask questions, and offer evidence during the hearing. The presenter may be the director of SRR, designee, or an assistant attorney general appearing on behalf of (~~the university~~) EWU.

AMENDATORY SECTION (Amending WSR 20-19-046, filed 9/10/20, effective 10/11/20)

WAC 172-121-080 Administration and records. (1) Student conduct code.

(a) Interpretation: Any questions regarding the interpretation or application of this student conduct code are referred to the vice president for student affairs for final determination.

(b) Review: This student conduct code shall be reviewed at least every three years under the direction of the vice president for student affairs.

(2) Records of conduct review proceedings.

(a) Records of conduct review proceedings under this chapter shall be prepared by the conduct review official(s) involved and maintained by the director of SRR. As much as possible, records should include:

(i) ~~((A summary of the proceedings during))~~ An audio recording of a prehearing conference;

(ii) An audio recording of conduct review hearings;

(iii) All letters, statements, memoranda, decisions, orders, notices, and other documents related to conduct review proceedings;

(iv) Any images, articles, recordings, or other materials presented as evidence in a conduct review proceeding;

(v) A statement of matters officially noticed or considered by the council or conduct review officer (CRO);

(vi) Evidence submitted, whether or not accepted, any objections and rulings, any cross-examination questions submitted to the council and rulings on such questions;

(vii) Proposed findings, requested orders, and exceptions;

(viii) Recording of the hearing and subsequent transcript, if any;

(ix) Any staff memorandum to the extent required by RCW 34.05.476;

(x) ~~((For Title IX complaints, and remedies provided to the complainant designed to restore or preserve equal access to the university's programs or activities; and~~

~~(xi))~~ Matters placed on the record after any ex parte communication. "Ex parte" means when a member of the student ~~((discipline))~~ disciplinary council or CRO communicates with a party about a nonprocedural matter regarding the hearing when the other party is not present.

(b) The director of SRR shall keep records of conduct review proceedings for seven years.

(c) Records of conduct review proceedings are the property of ~~((the university))~~ EWU and are confidential to the extent provided in applicable law.

(d) Prior to the final disposition of a case, the respondent may review the records relative to their case. The respondent shall request to review the case records by contacting the CRO. The CRO shall make every reasonable effort to support the respondent's request.

(3) Student disciplinary records.

(a) Student disciplinary records are confidential and shall be treated consistently with the requirements of the Family Educational Rights and Privacy Act (FERPA) and applicable law. Disciplinary records shall be maintained in accordance with ~~((the university's))~~ EWU's records retention schedule.

(b) Release of student disciplinary records. ~~((The university))~~ EWU shall not communicate a student's disciplinary record to any person or agency outside ~~((the university))~~ EWU without the prior written consent of the student, except as required or permitted by law. Exceptions include, but are not limited to:

(i) The student's parents or legal guardians may review these records as permitted by FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99).

(ii) Release to another educational institution, upon request, where the student seeks or intends to enroll, as allowed by FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99).

(iii) In response to a judicial order or a lawfully issued subpoena.

(iv) ~~((The university))~~ EWU shall release information related to disciplinary records to complainants or other persons as required by Title IX of the Education Amendments of 1972, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, and other state and federal laws.

(v) Disciplinary records will be made available to hearing councils and ~~((university))~~ EWU personnel as needed for legitimate educational purposes.

(vi) A student may authorize release of their own disciplinary record to a third party in compliance with FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99) by providing a written consent to student rights and responsibilities.

(vii) Any student may review ~~((his/her))~~ their own disciplinary records by contacting student rights and responsibilities.

(viii) A student may obtain a copy of their disciplinary record by making a written request to student rights and responsibilities. Student rights and responsibilities may charge the student a reasonable amount to cover copying expenses.

(ix) ~~((The university))~~ EWU may disclose to a student's parents a violation of any federal, state, or local law, or of any ~~((university))~~ EWU policy or rules regarding use or possession of alcohol or a controlled substance so long as the student is under the age of twenty-one at the time of the disclosure to the parent.

(c) When disciplinary records are released, personally identifiable information may be redacted to protect the privacy of others as permitted by law.

~~((d) Supportive measures. The university will keep any supportive measures provided to the complainant or respondent in sexual misconduct or interpersonal violence cases confidential to the extent that maintaining such confidentiality will not impair the ability of the university to provide the supportive measures.))~~

(4) Holds:

(a) Types of holds. Holds placed on a student's academic records may prevent admission, registration, graduation, or other academic or EWU activities. ~~((Holds may also restrict access to transcripts, grades, or other academic records.))~~

(b) Discretionary holds: The CRO may place a hold on a ~~((student's academic records))~~ student in either of the following situations:

(i) Pending the student's satisfactory completion of any sanctions imposed by a conduct review hearing; or

(ii) If the student fails to respond to any properly delivered notice from the CRO.

(c) Required holds: The CRO shall place a hold on a student's ~~((academic))~~ EWU record if the student is the respondent to a violation of the conduct code and has withdrawn from ~~((the university))~~ EWU, or if the student withdraws from ~~((the university))~~ EWU after a complaint is filed against the student. A hold is also required if a student is subject to a pending student conduct complaint at the time of graduation. This hold shall remain in place until the allegation or complaint is resolved.

AMENDATORY SECTION (Amending WSR 24-01-030, filed 12/8/23, effective 1/8/24)

WAC 172-121-100 Complaints. (1) Filing of complaints.

(a) Any person or ~~((the university))~~ EWU may file a complaint against a student or student organization for violation of the student conduct code. Complaints must be submitted in good faith.

(b) A person wishing to file a complaint under the student conduct code must submit the complaint, in writing, to one of the following:

(i) Student rights and responsibilities (www.inside.ewu.edu/srr); or

(ii) Title IX coordinator (www.inside.ewu.edu/titleix).

(c) Filing a complaint under the student conduct code does not prohibit or limit a person's right to file complaints or charges with other civil and/or criminal authorities for violations of local, county, state, or federal law.

(d) All student conduct code complaints will be forwarded to the director of SRR for further review and action.

(e) In cases where ~~((the university))~~ EWU is pursuing a student conduct case on its own behalf, an EWU employee shall initiate the complaint. ~~((For Title IX complaints, a complaint must either be filed by the person subject to the alleged misconduct or by the Title IX coordinator. If a complaint is filed by the Title IX coordinator, the Title IX coordinator will not be considered a complainant for the purposes of participating in the investigation and hearing process.))~~

(2) **Complaint review.** Upon receipt of a complaint, the director of SRR shall review the complaint to determine whether it ~~((includes allegations of sexual misconduct or interpersonal violence,))~~ may lead to suspension or expulsion and/or involves felony level criminal conduct to determine which student conduct process applies and if appropriate law enforcement or other authorities should be notified. If a complaint falls within such categories, it shall be referred to a hearing under WAC 172-121-122. If the director of SRR receives a complaint that involves potential violations of chapter 172-125 WAC, the director will refer the complaint to the Title IX coordinator within 24 hours to handle under the procedures contained in chapter 172-125 WAC. For all other complaints, the director may determine whether or not to dismiss the complaint, refer the matter to adaptable dispute resolution under WAC 172-121-102, or refer the matter for a ~~((brief))~~ conduct review meeting or full hearing.

~~((3) **Sexual misconduct and interpersonal violence proceedings.** Except where specifically stated, this section applies to all allegations the university receives of sexual misconduct or interpersonal violence regardless of the possible level of sanction or whether there is a formal Title IX complaint.~~

~~(a) Report to Title IX coordinator. The director of SRR shall report all complaints which may constitute any form of sexual misconduct or interpersonal violence to the university Title IX coordinator within 24 hours.~~

~~(b) Title IX complaints. The Title IX coordinator will determine whether or not the allegation of sexual misconduct or interpersonal violence constitutes a Title IX complaint under this code. Solely in cases of Title IX complaints, the university will not move forward with initiating a Title IX investigation or student conduct hearing unless a formal complaint from the person alleged to have been subjected to sexual misconduct or interpersonal violence or a complaint from~~

the Title IX coordinator requesting initiation of the student conduct process has been received.

The Title IX coordinator is responsible for determining whether or not the allegations constitute a formal Title IX complaint. If allegations include sexual misconduct or interpersonal violence but do not meet the definition of a Title IX complaint, the Title IX coordinator will inform the complainant and the respondent that the complaint is not considered a Title IX complaint and the reasons it does not fit within the required elements of a formal Title IX complaint. If the complainant or respondent disagrees with the Title IX coordinator's decision, the party may file an appeal with the dean of students within three calendar days of the Title IX coordinator's decision. The dean of students can affirm, reverse, or remand the Title IX coordinator's decision and such decision must be communicated in writing simultaneously to the parties.

SRR may proceed, however, with pursuing a student conduct case against the respondent for misconduct outside of Title IX including, but not limited to, sexual misconduct or interpersonal violence that does not fit the definition of a Title IX complaint.

(c) Prompt resolution. The university shall investigate any complaint alleging sexual misconduct or interpersonal violence when it is legally required to do so. The university's goal is to have complaints of sexual misconduct or interpersonal violence resolved within 90 days. If the university needs additional time, the investigator or director of SRR should provide written notice to the complainant and respondent of the delay and the reasons for the delay. Delays and extensions beyond the 90 days must be based on good cause.

(d) Investigations.

(i) Sexual misconduct and interpersonal violence. The university will investigate complaints of sexual misconduct and interpersonal violence, including Title IX complaints, and may, at its discretion, ask for an investigation of other alleged misconduct. During the investigation, the investigator is responsible for gathering evidence relating to the complaint. The investigator will contact the complainant, respondent, and other witnesses to ask questions and gather relevant evidence. Parties may be assisted by an advisor during the investigative process. During the investigation, parties will be provided with an equal opportunity to identify witnesses and other evidence that supports their position. Prior to any investigatory interview regarding a Title IX complaint, the investigator will provide written notice of the meeting with the date, time, location, participants, and purpose with sufficient time for the person to prepare to participate in the interview.

Prior to the completion of the investigative report for a Title IX complaint, the investigator will send to each party the evidence obtained during the investigation that is directly related to the allegations raised, including the evidence upon which the university does not intend to rely in reaching a determination regarding responsibility and inculpatory and exculpatory evidence. Each party will then have at least 10 calendar days to submit a written response for a Title IX complaint. The investigator will consider the written response prior to the completion of the investigative report. At the conclusion of the investigation, the investigator will prepare a final written report that fairly summarizes the relevant evidence. The investigative report, along with any evidence collected during the investigation, shall then be transmitted to the director of SRR at least 10 days prior to any hearing or other determination of responsibility.

~~In cases of sexual misconduct or interpersonal violence, a copy of the report must also be provided to the parties for their review and written response.~~

~~(ii) Other types of conduct. The director may request an investigation for other types of alleged misconduct. During the investigation, the investigator is responsible for gathering evidence relating to the complaint. An investigation may be completed by a single investigator or team of investigators. The investigator will contact the complainant, if applicable, respondent, and other witnesses to ask questions and gather relevant evidence. During the investigation, parties will be provided with an equal opportunity to identify witnesses and other evidence that supports their position. At the conclusion of the investigation, the investigator will prepare a final written report that fairly summarizes the relevant evidence gathered during the investigation. The investigative report, along with any evidence collected during the investigation, shall then be transmitted to the director of SRR.~~

~~(e)) (a) Investigations. The director may initiate an investigation for other forms of alleged misconduct. During the investigation, the investigator is responsible for collecting evidence related to the complaint. The investigation can be conducted by either a single investigator or a team of investigators. The investigator(s) will reach out to the complainant (if applicable), respondent, and other witnesses to ask questions and gather relevant evidence.~~

~~Throughout the investigation, all parties will have an equal opportunity to present witnesses and other evidence that supports their positions. At the conclusion of the investigation, the investigator will compile a final written report that fairly summarizes the relevant evidence gathered. This investigative report, along with any collected evidence, will be forwarded to the director of SRR if the investigation was conducted externally.~~

~~As part of the investigatory process, EWU may collaborate with outside organizations or entities, such as Sorority and Fraternity National Headquarters, when necessary to conduct the investigation into the alleged misconduct of student organizations.~~

~~(b) Confidentiality. To facilitate the investigative process and protect the privacy of those involved, all information will be maintained in a confidential manner to the fullest extent permissible by law. During an investigation, complaint information will be disseminated on a need-to-know basis. If the complainant wishes to remain anonymous, ((the university)) EWU will take all reasonable steps to investigate the allegation without disclosing the name of the complainant to the extent allowed by state and federal law. If the complainant wishes to remain anonymous, ((the university)) EWU shall inform them that its ability to investigate and respond to the allegation will be limited. ((The university)) EWU cannot ensure confidentiality, as its legal obligations under federal or state law may require investigation of the allegation and possible disclosure of the complainant's name. Reports of crimes to the campus community shall not include the names of the complainants. Files subject to public disclosure will be released to the extent required by law.~~

~~((f)) (c) Right to file a criminal report. Once the university is notified of an allegation ((of sexual)) misconduct ((or interpersonal violence)) that could constitute a crime, it will notify the potential complainant of their right to file a criminal complaint with campus or local law enforcement. If the complainant in such circumstances wishes to report the conduct to local law enforcement, ((the~~

university)) EWU will assist them in doing so. (~~The university~~) EWU will also notify the complainant that they are not required to file a report with local law enforcement. (~~The university~~) EWU will report allegations of (~~sexual~~) misconduct (~~or interpersonal violence~~) to law enforcement or other authorities when it is required to do so under federal, state, and local law.

~~((4))~~ **(3) Supportive measures and interim restrictions.** During the complaint review, the director or designee of SRR (~~or Title IX coordinator~~) will review whether any supportive measures or interim restrictions are needed. Supportive measures and interim restrictions are addressed in WAC 172-121-140.

~~((5))~~ **(4) SRR will follow up with the parties as described below.** ~~((a))~~ The director of SRR will contact the respondent (~~, and the complainant in cases of sexual misconduct or interpersonal violence~~) and complainant, where applicable, and provide them with the following information:

~~((i))~~ (a) The respondent's and complainant's rights under the student conduct code;

~~((ii))~~ (b) A summary of the allegations the complainant has against the respondent;

~~((iii))~~ (c) The potential conduct code violations related to the allegations; and

~~((iv))~~ (d) How to report any subsequent problems or retaliation, including intimidation, threats, coercion, or discrimination.

~~((b) In all cases alleging sexual misconduct or interpersonal violence)~~ Where applicable and based on the alleged misconduct, the director of SRR or designee will, in addition to the information specified under ~~((a) of)~~ this subsection, provide ~~((both))~~ parties with written information that will include, at a minimum:

(i) The student's rights and options, including options to avoid contact with the other party; a list of available university and community resources for counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other academic and housing services at the university and in the community; and options for, available assistance in, and how to request changes to academic, living, transportation, and working situations or protective measures;

(ii) The importance of preserving evidence of the alleged incident and procedures to follow to preserve evidence of the alleged incident;

(iii) Who will receive a report of the allegation;

(iv) Their right to file or not file a criminal complaint as detailed above and the ability to be assisted by campus authorities in notifying law enforcement authorities if the complainant wishes to do so;

(v) A list of resources for obtaining protective, no contact, restraining, or similar orders, if applicable;

(vi) The procedures the university will follow when determining if discipline is appropriate;

(vii) Steps the university will take to ensure confidentiality of complainants and other necessary parties and the limits this may place on the university's ability to investigate and respond, as set forth above; and

(viii) Information regarding the university's policy against retaliation, steps the university will take to prevent and respond to any retaliation, and how the student should report retaliation or new incidents.

~~((+6))~~ (5) **Following the complaint review, the director of SRR will either dismiss the matter, refer it to adaptable dispute resolution, or arrange a prehearing conference.**

(a) Dismiss the matter. If the director of SRR determines the allegations, even if true, would not rise to the level of a conduct violation, they may dismiss the matter. In such cases, the director of SRR or designee will prepare a written record of the dismissal. The director of SRR or designee will also notify the complainant of their decision, if such notification is permissible under FERPA. The dismissal letter, along with the original complaint and any other related documents, will be maintained as described in WAC 172-121-080. ~~((In cases of sexual misconduct or interpersonal violence or for a Title IX complaint, the complainant may request a review of the dismissal by the dean of students by filing a request for review with the director of SRR within seven business days of receiving notice of the dismissal.))~~

(b) Adaptable dispute resolution. The director may refer the complaint to the adaptable dispute resolution process contained in WAC 172-121-102.

(c) Prehearing conference. If the director of SRR does not dismiss the matter they will arrange a prehearing conference as described in WAC 172-121-110 unless a respondent is opting to admit responsibility under WAC 172-121-118.

AMENDATORY SECTION (Amending WSR 21-01-102, filed 12/11/20, effective 1/11/21)

WAC 172-121-105 Conduct review proceedings. (1) General provisions:

(a) Conduct review proceedings in which the allegations do not involve ~~((a Title IX complaint,))~~ felony level crimes, or the potential sanction is less than suspension or expulsion, are brief ~~((hearings))~~ adjudicative proceedings in accordance with WAC 172-108-050(3) and the Administrative Procedure Act. Conduct review proceedings in which the allegations involve ~~((a Title IX complaint,))~~ felony level crimes, or the potential sanction is suspension or expulsion, are considered full hearings under the Administrative Procedure Act.

(b) Nonjudicial proceedings: Formal rules of process, procedure, and/or technical rules, such as are applied in criminal or civil courts, do not apply in student conduct code proceedings. ~~((All Title IX complaints shall follow the regulations prescribed under 34 C.F.R. Part 106.))~~

(2) Notification for student organizations: When a charge is directed towards a student organization, the CRO will communicate all matters relative to conduct review proceedings with the president of the organization or their designee.

(3) Advisors: The complainant and the respondent may be assisted by one advisor of their choice, subject to the following provisions:

(a) Any fees or expenses associated with the services of an advisor are the responsibility of the complainant or the respondent that employed the advisor;

(b) The advisor may be an attorney or any other person of the student's choosing;

(c) The advisor must provide the CRO with a FERPA release signed by the student they are assisting;

(d) If a complainant or the respondent is represented by an attorney, the attorney shall provide the CRO and other parties with the attorney's name, address, telephone number, and email address. The attorney must file a notice of appearance when hired to represent a person and a notice of withdrawal upon withdrawal of representation. A notice of appearance must be filed at least two business days prior to any conduct review proceeding;

~~(e) ((If a complainant or respondent wishes to have an advisor for a Title IX complaint and is not able to identify one, the student may contact SRR for assistance in finding an advisor;~~

~~(f))~~ In addition to an advisor, a complainant or respondent may bring a certified therapy animal with a handler for the hearing. The handler is not allowed to participate in the hearing process.

(4) Review of evidence:

(a) In ~~((brief hearings))~~ conduct review meetings, the respondent ~~((, and, in cases of sexual misconduct or interpersonal violence, the complainant))~~ may request to view material related to their case prior to a scheduled hearing by contacting the CRO. To facilitate this process, the party should contact the CRO as early as possible prior to the scheduled hearing. The CRO shall make a reasonable effort to support the request to the extent allowable by state and federal law.

(b) In full hearings, the respondent ~~((, and, in cases of sexual misconduct or interpersonal violence, the complainant))~~ may request to view material related to the case prior to the scheduled hearing by contacting the director of SRR. To facilitate this process, the party should contact the director as early as possible prior to the scheduled hearing. The director of SRR shall make a reasonable effort to support the request to the extent allowable by state and federal law.

(5) Continuances: Continuances, extensions of time, and adjournments may be ordered by the CRO. A party may file a timely request for a continuance if the party shows good cause for the continuance. A request for a continuance may be oral or written. Before granting a motion for a continuance, the CRO shall allow any other party to object to the request. The CRO will make a decision on the request and will communicate ~~((his/her))~~ their decision in writing to the parties along with the reasons for granting or denying the request.

AMENDATORY SECTION (Amending WSR 23-11-109, filed 5/19/23, effective 6/19/23)

WAC 172-121-110 Notice of allegations and initial scheduling.

(1) Notice of investigation. If the director of SRR refers a complaint to an investigation, the director shall provide the respondent with a notice of investigation that meets the following requirements:

(a) Is made in writing;

(b) Includes a written list of the allegations against the respondent with sufficient details of the allegations based on current information including, if known, date and time of the incident, description of the conduct, and the specific sections of this code allegedly violated;

(c) Indicates that the complaint has been assigned to a ~~((university))~~ EWU investigator and provide the contact information for the investigator;

(d) Provides notice that the respondent is presumed not responsible for the alleged conduct and a determination of responsibility will be made at the end of the hearing;

(e) Provides a reminder that the person may have an advisor of their choice throughout the student conduct process;

(f) A statement that students are prohibited from knowingly furnishing false information during the student conduct process; and

(g) Where applicable, information about supportive measures and resources available to the respondent as well as information about ~~((the university's))~~ EWU's prohibition on retaliation.

(2) Notice of allegations: If the director of SRR decides to send the case to hearing, following a review of the investigative report if any, the director of SRR shall appoint a CRO to the case and notify the respondent of the CRO and the date of a prehearing conference.

~~((In cases alleging sexual misconduct or interpersonal violence, the CRO and session council assigned must have completed training on issues relating to sexual misconduct and interpersonal violence, the Violence Against Women Reauthorization Act, and Title IX requirements.))~~
Notification of the allegations to the respondent must:

(a) Be made in writing;

(b) Include a written list of the allegations against the respondent with sufficient details of the allegations based on current information, including, if known, date and time of the incident, description of the conduct, and the specific sections of this code allegedly violated;

(c) Provide notice that the respondent is presumed not responsible for the alleged conduct and a determination of responsibility will be made at the end of the hearing;

(d) Provide a reminder that the person may have an advisor of their choice and, for Title IX complaints, that ~~((the university))~~ EWU will provide them with an advisor upon requests for the purposes of conducting cross-examination;

(e) Provide information about how to review the evidence gathered prior to the hearing;

(f) Provide a statement that students are prohibited from knowingly furnishing false information during the student conduct process;

(g) Inform them of the option to admit responsibility under WAC 172-121-118; and

(h) Include a date, time, and location of the prehearing conference.

(3) Follow up with complainant. ~~((In all cases alleging sexual misconduct or interpersonal violence, the SRR office shall notify the complainant(s) of the date, time, and location of the prehearing conference and of their right to attend the conference. The director may, at their discretion, conduct a separate prehearing conference with each party.))~~ The SRR office shall also follow up with the complainant(s) and respondent(s) to inform them of the process of reporting any retaliation or new incidents. If the complainant or respondent engages in retaliatory behavior, ~~((the university))~~ EWU shall take immediate steps to protect the complainant or respondent from further harassment or retaliation. ~~((The complainant will also be notified that they have a right to an advisor during the hearing process, and, for Title IX complaints, that the university will provide an advisor upon request for the purposes of conducting cross-examination.))~~

(4) If additional information is learned during the investigation that may rise to additional allegations, ~~((the university))~~ EWU must provide the respondent with an updated notice of allegations.

(5) The procedures for the prehearing conference for ~~((brief hearings is))~~ conduct review meetings are contained in WAC 172-121-121. The procedures for the prehearing conference for full hearings is contained in WAC 172-121-122.

AMENDATORY SECTION (Amending WSR 23-01-027, filed 12/9/22, effective 1/9/23)

WAC 172-121-118 Admission of responsibility. ~~((The university))~~ EWU encourages respondents to acknowledge harm and accept responsibility for repairing harm, to the extent possible, experienced as a result of a student's conduct. An investigator, CRO, or presiding officer may offer to the respondent at any time the opportunity to admit responsibility for the alleged misconduct. If the respondent decides to admit responsibility, the respondent will sign a document drafted by SRR taking responsibility. The CRO and/or presiding officer, depending on the type of conduct, will schedule a recorded meeting for the respondent to take responsibility on the record and for the CRO and/or presiding officer to determine the appropriate sanctions under WAC 172-121-400. ~~((If the alleged misconduct includes sexual misconduct or interpersonal violence, both parties must consent to this alternative process in writing and the complainant will be notified of the meeting and will have an opportunity to provide a statement about the conduct and its impacts prior to any sanctioning determination.))~~

AMENDATORY SECTION (Amending WSR 23-01-027, filed 12/9/22, effective 1/9/23)

WAC 172-121-121 ((Brief hearing)) Conduct review meeting procedures. (1) Applicability: The conduct review officer (CRO) may hold a ~~((brief hearing))~~ conduct review meeting with the respondent if the proposed sanction is less than a suspension and the allegations do not involve ~~((a Title IX complaint, or))~~ felony level criminal behavior.

(2) General provisions.

(a) Hearing authority: The CRO exercises control over hearing proceedings. All procedural questions are subject to the final decision of the CRO.

(b) Closing hearings: All conduct review hearings will be closed. Admission of any person to a conduct review hearing shall be at the discretion of the CRO.

(c) Consolidation of hearings: In the event that one or more students are charged with the same misconduct arising from the same occurrence, the hearing authority may conduct separate hearings for each student or consolidate the hearings as practical, as long as consolidation does not impinge on the rights of any student.

(3) Appearance.

(a) Failure to appear: In cases where proper notice has been given but the respondent fails to attend a conduct review hearing, the hearing authority shall decide the case based on the information available, without the respondent's input.

(b) Appearance: The respondent ~~((, and complainant in cases of sexual misconduct or interpersonal violence,))~~ will be provided options for reasonable alternative arrangements if they do not wish to

be present in the same room as the other student during the hearing. People may appear at the conduct review hearing in person, through telephone conference, or through any other practical means of communication, subject to the limits set forth below in (e) of this subsection. If a person does not appear at the hearing, the hearing authority will decide the case based on the information available.

(c) Advisors: The ~~((complainant and the))~~ respondent may be assisted by one advisor during conduct review hearings as described in WAC 172-121-105. In ~~((brief hearings))~~ conduct review meetings, the advisor is limited to advising the student and cannot speak on behalf of the student.

(d) Disruption of proceedings: Any person, including the respondent or advisor, who disrupts a hearing, may be excluded from the proceedings.

(e) Electronic appearance. In the interest of fairness and expedience, the CRO may permit any person to appear by telephone, audio ~~((tape))~~ recording, written statement, or other means, as appropriate, if the rights of the parties will not be substantially prejudiced by an electronic appearance as determined by the CRO.

(4) Standard of proof. The hearing authority shall determine whether the respondent violated the student conduct code, as charged, based on a preponderance of the evidence. A preponderance means, based on the evidence admitted, whether it is more probable than not that the respondent violated the student conduct code.

(5) Prehearing conference. The SRR office will schedule a prehearing conference with the respondent. Only the respondent and the respondent's advisor may appear at the prehearing conference ~~((, unless the case involves alleged sexual misconduct or interpersonal violence. In cases alleging sexual misconduct or interpersonal violence, the respondent and the complainant, along with their advisors, if they choose to have an advisor, may appear at the same or separate prehearing conferences))~~. The purpose of the prehearing conference is to advise the parties regarding the student conduct process. During the prehearing conference, the CRO will:

- (a) Review the written list of allegations with the respondent;
- (b) Inform the respondent who is bringing the complaint against them;
- (c) Provide the respondent with a copy of the student conduct code and any other relevant ~~((university))~~ EWU policies;
- (d) Explain the respondent's rights under the student code;
- (e) Explain the conduct review procedures;
- (f) Where applicable, explain the respondent's and complainant's rights and responsibilities in the conduct review process;
- (g) Review the option for admitting responsibility under WAC 172-121-118; and
- (h) Explain possible penalties under the student conduct code.

At the end of the prehearing conference, the CRO will either conduct or schedule a ~~((brief hearing))~~ conduct review meeting with the respondent as set forth in this subsection or arrange for a meeting to take an admission of responsibility under WAC 172-121-118. If proper notice was given of the prehearing conference and the respondent fails to attend the conference, the CRO may either proceed with the ~~((brief hearing))~~ conduct review meeting and decide the case based on the information available, or place a hold on the respondent's academic records as described in WAC 172-121-080 until the respondent cooperates with the student conduct process.

(6) Scheduling. A ~~((brief hearing))~~ conduct review meeting may take place immediately following the prehearing conference or it may be scheduled for a later date or time ~~((, except that, in cases of sexual misconduct or interpersonal violence, a brief hearing cannot take place without first notifying the complainant/respondent of the hearing))~~. If the ~~((brief hearing))~~ conduct review meeting will be held at a later date or time, the CRO shall schedule the hearing and ~~((notify))~~ serve the respondent ~~((and, in the case of sexual misconduct or interpersonal violence, the complainant))~~ with a notice of the date, time, and place of the hearing. The CRO may coordinate with the parties to facilitate scheduling, but is not required to do so. The CRO has sole discretion as to whether to call witnesses.

(7) If the respondent fails to appear at the ~~((brief hearing))~~ conduct review meeting, the CRO may conduct the hearing without the respondent present. The CRO may also place a hold on the respondent's academic records under WAC 172-121-080 until the respondent cooperates with the student conduct process.

(8) Deliberation. After the hearing, the CRO shall decide whether the respondent violated the student conduct code based on a preponderance of the evidence and issue a decision within seven business days.

(a) If the CRO determines that there is not sufficient information to establish a violation by a preponderance of evidence, the CRO shall dismiss the complaint.

(b) If the CRO determines that the respondent violated the student conduct code, the CRO shall impose any number of sanctions as described in WAC 172-121-210, except suspension or expulsion.

(9) Sanctions. In determining what sanctions shall be imposed, the CRO may consider the evidence presented at the hearing as well as any information contained in the student's disciplinary and academic records. If a student fails to appear for a hearing, then the CRO authority shall review the evidence provided and may consider information available from the student's disciplinary and academic records in determining what sanction should be imposed. In addition to sanctions under this code, if the student is also an employee of ~~((the university))~~ EWU, the CRO's decision may be forwarded to the student's supervisor to determine whether any employment actions outside of this code should be taken in accordance with ~~((university))~~ EWU policy.

(10) Notification. The CRO shall serve the respondent with a decision including its findings, conclusions, and rationale. The decision shall address credibility issues if credibility or witness demeanor was a substantial factor in the CRO's decision. Credibility determinations may not be based on a person's status as a complainant, respondent, or witness. ~~((a))~~ The findings shall be based exclusively on the evidence provided at the hearing. The decision must also include:

~~((i))~~ (a) Identification of the section of the code alleged to have been violated;

~~((ii))~~ (b) A description of the procedural steps taken from the receipt of the complaint through the determination, including any notifications to the parties, interviews, methods to gather evidence, and hearings;

~~((iii))~~ (c) Findings of fact supporting the determination;

~~((iv))~~ (d) Conclusions regarding the application of the code to the facts along with the rationale for each determination;

~~((v))~~ (e) Sanctions ~~((and remedies))~~;

~~((vi))~~ (f) Respondent's right to appeal.

~~((b) In cases of sexual misconduct or interpersonal violence)~~
 Where applicable and to the extent permitted by law, the complainant shall be provided with written notice of(†

~~(i) The university's determination as to whether such sexual misconduct or interpersonal violence occurred;~~

~~(ii))~~ substantiated violations:

(i) The complainant's right to appeal, if any;

~~((iii))~~ (ii) Any change to the results that occurs prior to the time that such results become final; and when such results become final (20 U.S.C. 1092(f)).

~~((e))~~ (g) Information regarding the discipline of the respondent will not be released unless:

(i) The information contained in the record directly relates to the complainant, such as an order requiring the respondent to not contact the complainant; or

(ii) The misconduct involves a crime of violence or other crime as defined in 42 U.S.C. Sec. 13925(a).

(11) Finality. The CRO's decision becomes final at either the conclusion or the appeal process under this code, if an appeal is filed, or, if an appeal is not filed, the date on which an appeal would no longer be timely.

AMENDATORY SECTION (Amending WSR 23-11-109, filed 5/19/23, effective 6/19/23)

WAC 172-121-122 Full hearing procedures. (1) Scheduling and notification. Full hearings are used for allegations which, if substantiated by a preponderance of the evidence, could be a felony-level crime(~~(, involve a Title IX complaint,)~~) or could result in a sanction of suspension or expulsion. Following provision of the notice of allegations to the respondent, as set forth in WAC 172-121-110, the SRR office shall arrange for a prehearing conference unless the respondent has admitted responsibility under WAC 172-121-118.

(2) General provisions.

(a) Hearing authority: The CRO exercises control over hearing proceedings. All procedural questions are subject to the final decision of the CRO. The CRO chairs the disciplinary council.

(b) Closed hearings: All conduct review hearings will be closed. Admission of any person to a conduct review hearing shall be at the discretion of the CRO.

(c) Consolidation of hearings: In the event that one or more students are charged with the same misconduct arising from the same occurrence, the council may conduct separate hearings for each student or consolidate the hearings as practical, as long as consolidation does not impinge on the rights of any student.

(3) Appearance.

(a) Failure to appear: In cases where proper notice has been given but the respondent fails to attend a conduct review hearing, the council shall decide the case based on the information available, without the respondent's input. The council may not make an inference about the determination regarding responsibility based solely on a party's or witness's failure to appear at the hearing. However, nonappearance by a party may impact the evidence available for the council to make a decision.

(b) Appearance: The parties will be provided options for reasonable alternative arrangements if they do not wish to be present in the same room as the other student during the hearing. The parties may appear at the conduct review hearing in person via a method that allows the council to hear the parties and physically observe them while testifying, subject to the limits set forth below in (e) of this subsection. If a party does not appear at the hearing, the council will decide the case based on the information available. The council cannot draw an inference regarding responsibility based on the failure to appear or refusal to answer cross-examination or other questions.

(c) Advisors: The complainant and the respondent may be assisted by one advisor during conduct review hearings as described in WAC 172-121-105. ~~((For Title IX complaints, the university will provide an advisor to a party upon request for the purposes of conducting cross-examination.))~~

(d) Disruption of proceedings: Any person, including the respondent or advisor, who disrupts a hearing, may be excluded from the proceedings.

(e) Remote appearance. In the interest of fairness and expedience, the CRO may permit any person to appear by a method that allows the person to be seen and heard by the council.

(4) Standard of evidence. The council shall determine whether the respondent violated the student conduct code, as charged, based on a preponderance of the evidence. A preponderance means, based on the evidence admitted, whether it is more probable than not that the respondent violated the student conduct code.

(5) Prehearing conference. The SRR office or designee will arrange for a prehearing conference with the parties to advise them about the student conduct process. During the prehearing conference, the SRR office or designee will:

(a) Review the written list of allegations;

(b) Inform the respondent who is bringing the complaint against them;

(c) Provide the respondent and, where applicable, complainant with a copy of the student conduct code and any other relevant ~~((university))~~ EWU policies;

(d) Explain the respondent's and, where applicable, complainant's rights and responsibilities under the student code;

(e) Explain the conduct review procedures;

(f) Explain possible penalties under the student conduct code;

(g) Review the option for admitting responsibility under WAC 172-121-118;

(h) Schedule a date for the full hearing; and

(i) Address any preliminary matters or motions.

(6) Notice of hearing. Following the prehearing conference, the SRR director or designee shall schedule the hearing and ~~((notify))~~ serve the respondent and, where applicable, complainant with notice of the date, time, location, participants, and purpose of the hearing. At the discretion of the hearing officer, and where the rights of the parties will not be prejudiced thereby, all or part of any hearing may be conducted by telephone or other electronic means. Each party in the hearing must have an opportunity to participate effectively in, to hear, and if technically and economically feasible, to see the entire proceeding while it is taking place. The notices will include information about how to request accommodations or interpreters for any parties or witnesses. Any request for the presence of an emotional support animal or any other accommodation must be directed to disability

support services and approved as a reasonable accommodation in advance of the hearing. A person may bring a certified therapy animal with a handler to a hearing. The notice of hearing must be served on the respondent and complainant at least seven business days prior to the hearing. The director may coordinate with the parties to facilitate scheduling, but is not required to do so.

(7) Evidence.

(a) Evidence: Pertinent records, exhibits and written statements may be accepted as information for consideration by the council in accordance with RCW 34.05.452. Council may review proposed exhibits prior to the hearing. Any investigation conducted by ~~((the university))~~ EWU will be admitted into evidence as long as the investigator testifies at the hearing. Evidence, including hearsay evidence, is admissible if in the judgment of the CRO it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The CRO shall exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized by Washington courts. The CRO may exclude irrelevant material. If not inconsistent with this section, the CRO shall refer to the Washington rules of evidence as guidelines for evidentiary rulings. Prior or subsequent conduct of the respondent may be considered in determining opportunity, intent, preparation, plan, identity, a pattern of conduct, credibility, or absence of mistake or lack of knowledge. ~~((For Title IX complaints, prior to allowing a question to be answered during cross-examination, the CRO must determine that the question is relevant, and, if excluded, the CRO must explain on the record the reason for the exclusion.))~~

(b) The respondent ~~((and complainant have))~~ has the right to view all material presented during the course of the hearing. ~~((If a respondent's disciplinary history is considered solely for sanctioning purposes, the complainant does not have a right to review the history.))~~

(c) All testimony of parties and witnesses shall be made under oath or affirmation. Any interpreter shall be proscribed the oath set forth in WAC 10-08-160.

(d) Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

(e) Official notice may be taken of (i) any easily verifiable facts such as dates or weather conditions, (ii) technical or scientific facts within EWU's specialized knowledge, such as enrollment status or class schedules, and (iii) codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association. Parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material so noticed and the sources thereof, including any staff memoranda and data, and they shall be afforded an opportunity to contest the facts and material so noticed. A party proposing that official notice be taken may be required to produce a copy of the material to be noticed.

(f) All rulings upon objections to the admissibility of evidence shall be made in accordance with the provisions of RCW 34.05.452 ~~((, except for the additional restrictions on the admission of evidence required by Title IX))~~.

(8) Discovery. Discovery is not permitted under the code, except for requests for documentary information from ~~((the university))~~ EWU. Either party may request ~~((the university))~~ EWU to produce relevant documents in ~~((the university's))~~ EWU's possession as long as such re-

quest is submitted at least five business days prior to the hearing, absent extenuating circumstances. If the CRO determines the request is not relevant to the present allegation, the CRO may deny the request. ((The university)) EWU will provide the requested information prior to the hearing to the extent permitted by state and federal law.

(9) Subpoenas.

(a) Subpoenas may be issued by the presiding officer or an attorney consistent with RCW 34.05.446. However, for the protection of both parties, a party cannot subpoena the other party. A party may request an exemption from this rule by filing a written request with the presiding officer at least 10 days prior to the hearing. The presiding officer will provide a copy of the request to the other party and give them three days to respond. The presiding officer will then decide whether or not sufficient cause exists to grant an exemption to this rule and will inform the parties of the decision. Any subpoena issued must conform to EWU's subpoena form. Every subpoena shall identify the party causing issuance of the subpoena and shall state EWU's name and the title of the proceeding and shall direct the person to whom it is directed to attend and give testimony or produce designated books, documents, or things under their control.

A subpoena to a person to provide testimony at a hearing shall specify the time and place set for hearing.

(b) A subpoena may be served by any suitable person over 18 years of age, by exhibiting and reading it to the witness, or by giving them a copy thereof, or by leaving such copy at the place of their abode. When service is made by any other person than an officer authorized to serve process, proof of service shall be made by affidavit or declaration under penalty of perjury.

(c) The CRO, upon motion by a party or at their own discretion, may quash or modify the subpoena if it is unreasonable or oppressive. Subpoenas may not be used to threaten or intimidate parties or witnesses.

(10) Summary judgment. A motion for summary judgment may be granted and an order issued if the written record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. ((A motion for summary judgment is not permitted for Title IX complaints.))

(11) Witnesses.

(a) The complainant, respondent, and ((the university's)) EWU's presenter may call witnesses at full hearings.

(b) The person who wishes to call a witness is responsible for ensuring that the witness is available and present at the time of the hearing. An attorney may subpoena a witness to appear at the hearing. Nonattorneys may request the CRO to subpoena witnesses in accordance with subsection (4) of this section. The CRO has the discretion to deny a request to issue a subpoena or to quash a subpoena issued by an attorney if the subpoena is unreasonable, oppressive, or does not conform to EWU's subpoena form.

(c) The CRO may exclude witnesses from the hearing room when they are not testifying. The CRO is not required to take the testimony of all witnesses called by the parties if such testimony may be irrelevant. ((For Title IX complaints, any decision to exclude a witness shall be explained on the record.))

(d) All parties have the right to hear all testimony provided by witnesses during the hearing.

(e) The parties should inform the CRO of any possible need for an interpreter or any accommodation requests at least five business days prior to the hearing. The CRO will comply with WAC 10-08-150.

(12) Questioning:

(a) ~~((The complainant's advisor))~~ Through the CRO, the respondent's advisor, and ~~((the university's))~~ EWU's presenter may ask questions of any witness, or party, including cross-examination questions. ~~((For cases that do not involve Title IX complaints, if the student does))~~ If the parties do not have an advisor, ~~((the complainant and respondent))~~ they may submit questions in writing to the CRO and the CRO may ask the questions. ~~((For Title IX complaints, if a party does not have an advisor, the university will provide the party with an advisor aligned with that party for the purposes of conducting cross-examination as long as the party requests such an advisor at least five business days in advance of the hearing.))~~ The CRO may also ask questions, but is not required to do so. The CRO may preclude any questions which they consider irrelevant ~~(, and for Title IX cases such decision must be explained on the record. The CRO must exclude and the council shall not consider any questions or evidence pertaining to the complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. The CRO will explain to the parties the reason for rejecting any questions and will maintain a record of the questions submitted and rulings made))~~.

(b) The council may ask their own questions of any witness or party called before them.

(13) Remote appearance. The CRO may accommodate concerns for personal safety, well-being, or fears of confrontation of any person appearing at the hearing by providing separate facilities, or by permitting participation by video conferencing, or other means that allows the council and parties to see and hear the party answering questions, as determined appropriate, subject to subsection (3)(b) of this section.

(14) Deliberations and sanctions. Following the hearing, the council will determine in closed session whether, by a preponderance of the evidence, the respondent violated the student conduct code based on the evidence presented at the hearing. If a student fails to appear, the council shall make a decision based on the information available. The council shall make its decisions based on a majority vote. If the council determines the respondent violated the student conduct code, the CRO shall then decide what sanctions and remedies shall be imposed. The CRO may review the respondent's previous disciplinary history for purposes of determining the appropriate sanction. In addition to sanctions under this code, if the student is also an employee of ~~((the university))~~ EWU, the CRO's decision may be forwarded to the student's supervisor to determine whether any employment actions outside of this code should be taken in accordance with ~~((university))~~ EWU policy.

The council shall issue a decision including their findings, conclusions, and rationale. The decision shall address credibility issues if credibility or witness demeanor was a substantial factor in the council's decision. Credibility determinations may not be based on a person's status as a complainant, respondent, or witness. The find-

ings shall be based exclusively on the evidence provided at the hearing. If the council finds the respondent violated the code, the CRO shall add the decision regarding sanctions and remedies to the council's decision. Such decisions should be issued within 10 business days from the date of the hearing. The written decision shall also:

(a) Be correctly captioned identifying EWU and the name of the proceeding;

(b) Designate all parties and representatives participating in the proceeding;

(c) Identify the allegations at issue;

(d) A description of the procedural steps taken, including notifications to the parties, interviews with the parties and witnesses, site visits, methods used to gather other evidence, and hearings held;

(e) Contain appropriate numbered findings of fact meeting the requirements in RCW 34.05.461;

(f) Contain appropriately numbered conclusions regarding the application of ~~((university))~~ EWU policies and this code to the facts;

(g) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility ~~((,))~~ and any disciplinary sanctions imposed ~~((, and if any remedies are necessary to provide to the complainant in a Title IX complaint to restore or preserve equal access to the university's educational programs or activities))~~;

(h) Contain a statement describing rights to appeal and the procedures for appealing.

(15) Finality. The council's and CRO's decision becomes final at either the conclusion or the appeal process under this code, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be timely.

(16) Notification to the respondent. The CRO shall serve the respondent with a copy of the decision and notice of the right to appeal.

(17) Notification to the complainant. ~~((In cases of sexual misconduct or interpersonal violence))~~ Where applicable and to the extent permitted by law, simultaneous with notification of the decision to the respondent, the complainant shall be provided with written notice of:

(a) The university's determination as to whether ~~((sexual))~~ misconduct ~~((or interpersonal violence))~~ occurred;

(b) The complainant's right to appeal, if any;

(c) Any change to the results that occurs prior to the time that such results become final and when such results become final (20 U.S.C. 1092(f));

(d) Information regarding the discipline of the respondent will not be released unless:

(i) The information contained in the record directly relates to the complainant, such as ~~((an order requiring the student harasser to not contact))~~ a no contact order with the complainant; or

(ii) ~~((The misconduct involves a crime of violence or a sexual assault, including rape, dating violence, domestic violence or stalking as defined in 42 U.S.C. Sec. 13925(a)).~~

~~((e))~~ Any remedies provided to the complainant. ~~((For Title IX complaints, the complainant shall receive a copy of the decision provided to the respondent under subsection (14) of this section.~~

~~(18) **Notification to Title IX coordinator.** For Title IX complaints, the Title IX coordinator must be provided with notice of the~~

~~decision as the Title IX coordinator is responsible for effective implementation of any remedies.))~~

AMENDATORY SECTION (Amending WSR 23-01-027, filed 12/9/22, effective 1/9/23)

WAC 172-121-130 Appeals. (1) Basis: Appeals following a ~~((brief hearing))~~ conduct review meeting or full hearing may be filed by the respondent under this section. ~~((In cases of sexual misconduct, interpersonal violence, or a Title IX complaint, the complainant may also file an appeal following dismissal of a complaint or a full hearing.))~~ Appeals of interim restrictions are governed by WAC 172-121-140. Appeals may be filed for one or more of the following reasons:

(a) To determine whether the hearing was conducted according to established procedures that affected the outcome of the matter.

(b) The hearing authority misinterpreted the student conduct code.

(c) To determine whether the decision reached by the hearing authority, or the director of SRR's decision to not proceed with a hearing, was based on the information presented and that information was sufficient to reasonably establish that a violation of the conduct code did or did not occur based on a preponderance of the evidence.

(d) To determine whether the sanction(s) imposed were reasonable and appropriate for the associated conduct code violation(s).

(e) To consider newly discovered, material information that was not reasonably available at the time the determination finding responsibility or dismissal was made that could affect the outcome of the matter. It is the party's obligation to present all evidence at the time of the original hearing. ~~((The university))~~ EWU is not obligated to grant an appeal and conduct a new hearing when parties do not take reasonable efforts to prepare their cases for the original hearing.

(f) The ~~((Title IX coordinator,))~~ investigator~~((,))~~ or hearing authorities had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

(2) Filing: Appeals may be filed following a ~~((brief hearing))~~ conduct review meeting, full hearing, or dismissal of a complaint, subject to the following provisions:

(a) The appeal must be submitted by 5:00 p.m. PST to the director of student rights and responsibilities or designee within 10 ~~((business))~~ calendar days from service of the council's decision following a full hearing or dismissal of a complaint, or within 21 calendar days from service of a decision from a ~~((brief hearing))~~ conduct review meeting conducted by the CRO;

(b) The appeal shall be in writing and shall include:

(i) The ~~((appellant's))~~ student's name;

(ii) The nature of the decision and sanctions reached by the hearing official;

(iii) The basis, as described in subsection (1) of this section, for the appeal; and

(iv) What remedy the ~~((appellant))~~ student is seeking.

~~((c) In cases of sexual misconduct or interpersonal violence, the other party must be given a copy of the appeal and provided with an opportunity to provide his/her own written response to the appeal within three business days.))~~

(3) Stay of sanctions: Sanctions go into effect immediately after the hearing decision is issued. If the respondent wishes to have a sanction stayed during the appeal process, a request for a stay must be filed with SRR within five calendar days of the decision. The request for the stay will be reviewed by the CRO or presiding officer who presided over the hearing. The stay may be granted in part or in its entirety, at the discretion of the CRO/presiding officer. The decision will be communicated to the respondent (~~and, for sexual misconduct and interpersonal cases, the complainant~~). This decision is not subject to appeal.

(4) Appeal authorities:

(a) For dismissal of a complaint, appeals are determined by the dean of students or designee.

(b) For (~~brief hearings~~) conduct review meetings, appeals are determined by the dean of students or designee.

(c) For full hearings, appeals are determined by the vice president for student affairs or designee.

(5) Forwarding of appeals: The director of SRR shall forward the appeal to the appropriate appeal authority. The submitted appeal will include, at a minimum, the appellant's written appeal and the written report of the case. The director of SRR may also forward any other written records related to the case.

(6) Review of appeals:

(a) Before rendering a decision, the appeal authority may request additional information or explanation from any of the parties to the proceedings.

(b) Except as required to explain the basis of new information, an appeal shall be limited to a review of the verbatim record of the conduct review hearing and supporting documents.

(c) In making its decision, the appeal authority will only consider the written record before it in relation to the basis for appeal, the appellant's notice of appeal, where applicable, the other party's response, and other information and/or explanation it has requested from the parties to the proceedings.

(7) Decisions: After reviewing the appeal, the appeal authority may affirm, reverse, modify, or remand the decision(s) of the hearing authority. The appeal decision shall include an explanation of the appeal authority's decision and rationale. The appeal decision must be issued within 30 calendar days of the appeal authority receiving all necessary documentation.

(8) Remanded cases: In cases where the appeal authority remands the decision or sanction(s) of the hearing authority, the case will be returned to the hearing authority for reconsideration or other action as specified by the appeal authority. Following such reconsideration, the hearing authority will return the case to the appeal authority for further review/action. The appeal authority will then complete the appeal process or remand the case again. No appeal may, however, be remanded more than two times. After a case has been remanded twice, the appeal authority must affirm or reverse the decision and affirm, reverse, or modify the sanctions.

(9) Sanctions: The appeal authority may affirm, reverse, remand, or modify the sanctions assigned to the respondent. When determining sanctions, the appeal authority may consider the complete record of the respondent's prior conduct and academic performance in addition to all other information associated with the case.

(10) Notification: Once the appeal authority has made a final decision to affirm or reverse and/or to modify the sanctions assigned,

the appeal authority shall forward the decision to the director of SRR. The director of SRR or designee shall serve the respondent, and, ~~((in cases of sexual misconduct or interpersonal violence, notify))~~ where applicable, the complainant, with a brief written statement setting forth the outcome of the appeal. The notification shall also inform the recipient that judicial review of the decision may be available under chapter 34.05 RCW.

(11) Further proceedings. The appeal authority's decision is final and no further appeals may be made under the student conduct code. Judicial review of ~~((the university's))~~ EWU's decision may be available under chapter 34.05 RCW.

(12) Appeals standards:

(a) Appeal authorities must weigh all pertinent information presented to them in determining whether sufficient evidence exists to support reversal or modification of decisions or sanctions.

(b) For appeals based on a deviation from established procedures, such deviations will not be a basis for sustaining an appeal unless the alleged deviation materially changed the outcome of the case or the sanctions imposed.

AMENDATORY SECTION (Amending WSR 24-01-030, filed 12/8/23, effective 1/8/24)

WAC 172-121-140 Supportive measures and interim restrictions.

(1) Supportive measures. During the complaint review, the director of SRR or designee, ~~((Title IX coordinator, or designee))~~ will evaluate the circumstances and determine if any supportive measures to assist or protect the parties during the conduct code process are needed. ~~((For sexual misconduct and interpersonal violence cases,))~~ Supportive measures ((are)) may be available before or after the filing of a complaint or where no formal complaint is filed. Supportive measures are provided to students free of charge and may include, but are not limited to, safety planning with the university, mutual restrictions on contact between the parties, academic or workplace modifications, providing counseling for the complainant and/or respondent, or campus housing modifications. The purpose of a supportive measure is to provide an equitable process for both students that minimizes the possibility of a hostile environment on campus. ~~((For Title IX complaints,))~~ Supportive measures are designed to restore or preserve equal access to the university's educational programs or activities without unreasonably burdening either party, including protecting the safety of all parties and the university's educational environment, or deterring ((sexual)) harassment. ((Supportive measures in cases of sexual misconduct and interpersonal violence are coordinated by the Title IX coordinator or designee.))

(2) Interim restrictions. ~~((For Title IX complaints, in situations where there is cause to believe that a student or a student organization poses an immediate threat to the physical health or safety of any student or other individual, including themselves, the Title IX coordinator in conjunction with the director of SRR may take immediate action(s) against the student or student organization after conducting an individualized safety and risk analysis without prior notice or hearing.~~

~~Simultaneous with such action(s), the director of SRR will refer the allegations to the conduct review officer, who will process such~~

~~allegations in accordance with the provisions of this student conduct code.~~

~~For all non-Title IX cases,))~~ The SRR director or designee may take immediate action(s) against ~~((the))~~ a student or student organization after conducting an individualized safety and risk analysis without prior notice or hearing. Simultaneously, the director shall refer the allegations to the conduct review officer. ~~((For non-Title IX cases,))~~ Interim restrictions ~~((is))~~ are subject to the following:

(a) Interim restriction actions may only be imposed in the following situations:

(i) When a student or student organization poses an immediate threat to:

(A) The physical health or safety of any student or any other individual;

(B) The student's own physical safety and well-being; or

(C) Any property of the ~~((university))~~ EWU community; or

(ii) When it is believed that the student's or student organization's continued attendance or presence may cause disorder, substantially interfere with or impede the lawful activities of others, or imperil the physical or mental health and safety of members of the ~~((university))~~ EWU community.

(b) During the interim restriction period, a student may be restricted by any or all of the following means:

(i) Denial of access including, but not limited to: Assignment to alternate ~~((university))~~ EWU housing or removal from ~~((university))~~ EWU housing, limitation of access to ~~((university))~~ EWU facilities, or restriction of communication with specific individuals or groups;

(ii) Interim suspension, including temporary total removal from ~~((the university))~~ EWU or restriction of access to campus ~~((. For Title IX complaints, a student may only be placed on interim suspension if, after conducting an individualized safety and risk analysis, the director determines the person poses an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual misconduct or interpersonal violence))~~;

(iii) Mandatory medical/psychological assessment of the student's capability to remain ~~((in the university))~~ enrolled at EWU.

(3) The director of SRR or designee will determine what restriction(s) will be placed on a student.

(4) The director of SRR or designee will prepare a brief memorandum for record containing the reasons for the interim restriction. The director will serve the memorandum on the restricted student and notify all other persons or offices bound by it. At a minimum, the memorandum will state:

(a) The alleged act(s) or behavior(s) of the student or student organization which prompted the interim restriction;

(b) How those alleged act(s) or behavior(s) could constitute a violation of the student conduct code;

(c) How the circumstances of the case necessitated the interim restriction action(s); and

(d) An explanation of the process for emergency appeal reviews.

(5) ~~((Notice to complainant. In cases alleging sexual misconduct or interpersonal violence, the complainant will be provided with notice of any interim restrictions that relate directly to the complainant. If the respondent appeals such interim restrictions, the complainant will be given notice of the respondent's appeal and an opportunity to submit a statement within five business days of the notice as to why the interim restriction should or should not be modified.~~

~~(6-))~~ Emergency appeal review.

(a) If a student has been suspended on an interim basis, the student will automatically receive an emergency appeal review with the vice president for student affairs, or designee. If the interim restriction is something less than a suspension, the student or student organization subject to the interim restriction must file a written appeal with the vice president for student affairs or designee within five business days after service of the interim restriction. In all cases, the student must submit any information the student wishes the vice president to consider submitted within 10 business days after service of the interim restriction. The appealing party should outline the desired modification(s) to the interim restriction as well as the specific challenge(s) to the interim restriction decision. Challenges to interim restriction decisions are limited to the criteria identified in WAC 172-121-140(1) upon which the interim restriction was imposed (threat to health or safety of the ~~((university))~~ EWU community, potential for creating campus disorder, impeding the lawful activity of others, etc.). Appealing parties are limited to submitting their own written statements. Any other evidence should be submitted to the investigator or provided to the CRO under the regular hearing process.

(b) The vice president for student affairs, or designee, will conduct an emergency appeal review after receiving the respondent's review and complainant's response, if any. Emergency appeal reviews will address only the interim restriction decision of the director and the basis on which the restriction modification or termination is requested by the appealing party. The emergency appeal review does not replace the regular hearing process. In the emergency appeal review, the vice president will only review materials available to and information considered by the director and/or dean of students at the time the interim restriction was imposed, written statements by the ~~((two parties))~~ appellant, and information that becomes available as a part of ~~((the university's))~~ EWU's investigation that the vice president deems relevant.

~~(c) ((In cases alleging sexual misconduct or interpersonal violence, if a complainant believes the interim restriction does not adequately protect their health and safety, the complainant may appeal the interim restriction using the process outlined in this subsection. If the complainant files an appeal, all parties shall be given notice of the appeal and shall be provided the opportunity to submit a written statement to the vice president within five business days of receiving notice of the complainant's appeal.~~

~~(d-))~~ During the emergency appeal review, the vice president for student affairs or designee will review available materials and statements. The vice president for student affairs will issue a written decision upholding, modifying, or terminating the interim restriction action. The written decision shall include a rationale for the basis of the decision and be issued within 15 business days of the date of service of an interim restriction.

~~((e-))~~ (d) The interim restriction does not replace the regular hearing process, which will proceed as quickly as feasible consistent with this chapter.

~~((f-))~~ (e) Duration. An interim restriction will remain in effect until terminated, in writing, by the student disciplinary council, CRO, or the vice president for student affairs.

AMENDATORY SECTION (Amending WSR 23-01-027, filed 12/9/22, effective 1/9/23)

WAC 172-121-300 Violations. (~~(The university)~~) EWU prohibits students from engaging in the conduct described in this section, WAC 172-121-301 through 172-121-324, chapters 172-125 and 172-90 WAC, and relevant (~~(university)~~) EWU policies. Clubs, organizations, societies, or similarly organized groups in or recognized by (~~(the university)~~) EWU and/or the associated students of Eastern Washington University are also subject to all of these standards. Violations of these rules and policy may subject a student or student group to disciplinary action by (~~(the university)~~) EWU. Groups may also be subject to disciplinary action for knowingly failing to exercise preventive measures relative to violations of this code by their members.

AMENDATORY SECTION (Amending WSR 24-01-030, filed 12/8/23, effective 1/8/24)

WAC 172-121-302 Abuse, threats, bullying, and harassment. (1) Abuse. Assault and other forms of physical abuse. Assault is intentionally touching or striking another person in a harmful or offensive way.

(2) Threats. A threat is any conduct and/or speech that, when viewed objectively, threatens bodily harm to another person or that endangers the health or safety of another person. If the threat primarily involves speech, the speaker also must have consciously disregarded a substantial, unjustifiable risk that the communications could be viewed as threatening violence.

(3) Bullying. Bullying is behavior that is:

(a) Intentional;

(b) Targeted at an individual or group; and

(c) Creates an intimidating and/or threatening environment that is so severe or pervasive, and objectively offensive, that it substantially interferes with another's ability to work, study, participate in, or benefit from (~~(the university's)~~) EWU's programs and activities.

~~((4) Discriminatory harassment. Physical, verbal, electronic, or other conduct based on an individual's race, color, religion, national origin, sex, age, pregnancy, marital status, sexual orientation, gender identity or expression, citizenship or immigration status, disability, or veteran status when one of the conditions outlined in subsection (3) (a) or (b) of this section are present:~~

~~(a) Submission to, or rejection of such conduct is made implicitly or explicitly a term or condition of a person's instruction, academic standing, employment, or participation in any university program, activity, or benefit, or is used as a basis for evaluation in making academic or personnel decisions; or~~

~~(b) Such conduct creates a hostile environment. A hostile environment is created when the conduct is sufficiently severe or pervasive, and objectively offensive, that it unreasonably interferes with an individual's academic or work performance, ability to participate in or benefit from the university's programs, services, opportunities, or activities. Unreasonable interference is viewed from both a subjective and objective standard.))~~

AMENDATORY SECTION (Amending WSR 23-01-027, filed 12/9/22, effective 1/9/23)

WAC 172-121-306 Unauthorized use of electronic or other devices.

Making an audio or video recording of any person while on (~~(university)~~) EWU premises without the person's prior knowledge or without their effective consent, when such a recording is of a private conversation or of images taken of a person(s) at a time and place where the person would reasonably expect privacy and where such recordings are likely to cause injury or distress. The act of storing, sharing, publishing, or in any way disseminating such recordings or images through any medium is strictly prohibited. This includes, but is not limited to, surreptitiously taking pictures of another person in a gym, locker room, or restroom, but does not include taking pictures of persons in areas which are considered by the reasonable person to be open to public view.

AMENDATORY SECTION (Amending WSR 23-01-027, filed 12/9/22, effective 1/9/23)

WAC 172-121-400 Sanctions (~~(and remedies)~~).

If any student or student organization is found to have committed any of the offenses described in WAC 172-121-300 through 172-121-324, one or more of the sanctions described in this section may be imposed against the student or student organization. Imposed sanctions are effective as of the date the CRO or council issues its decision unless the decision specifically identifies an alternative date. Failure to comply with any imposed sanction may result in additional sanctions. In addition to the sanction imposed by this code, if a student is also an employee of (~~(the university, the university)~~) EWU, EWU may impose additional discipline in accordance with its policies and procedures pertaining to employees.

(1) **Individual student sanctions:**

(a) Admonition: An oral statement to a student that they have violated (~~(university)~~) EWU rules and regulations.

(b) Warning: A notice to the student or student organization that they have violated the standards for student conduct and that any repeated or continuing violation of the same standard, within a specified period of time, may result in more severe disciplinary action. A warning may be verbal or written.

(c) Censure: A written reprimand for violation of specified regulations. A censure will also state that more severe disciplinary sanctions may be imposed if the student or student organization is found in violation of any regulation within a stated period of time.

(d) Disciplinary probation: A formal action which places one or more conditions, for a specified period of time, on the student's continued attendance. Disciplinary probation sanctions will be executed in writing and will specify the probationary conditions and the period of the probation. A disciplinary probation notice will also inform the student that any further misconduct will automatically involve consideration of suspension. Probationary conditions may include, but are not limited to:

(i) Restricting the student's (~~(university)~~) EWU-related privileges;

- (ii) Limiting the student's participation in extra-curricular activities; and/or
- (iii) Enforcing a "no contact" order which would prohibit direct or indirect physical and/or verbal contact with specific individuals or groups.
- (e) Restitution: Reimbursement to (~~the university~~) EWU or others for damage, destruction, or other loss of property suffered as a result of theft or negligence. Restitution also includes reimbursement for medical expenses incurred due to conduct code violations. Restitution may take the form of appropriate service or other compensation. Failure to fulfill restitution requirements will result in cancellation of the student's registration and will prevent the student from future registration until restitution conditions are satisfied.
- (f) Fines: The (~~university~~) EWU conduct review officer and the student disciplinary council may assess monetary fines up to a maximum of \$400 against individual students for violation of (~~university~~) EWU rules or regulations or for failure to comply with (~~university~~) EWU standards of conduct. Failure to promptly pay such fines will prevent the student from future registration. Failure to pay may also result in additional sanctions.
- (g) Discretionary sanctions: Work assignments, service to (~~the university~~) EWU community or other related discretionary assignments for a specified period of time as directed by the hearing authority.
- (h) Loss of financial aid: In accordance with RCW 28B.10.902, a person who participates in the hazing of another forfeits entitlement to state-funded grants, scholarships or awards for a specified period of time determined by (~~the university~~) EWU.
- (i) Assessment: Referral for drug/alcohol or psychological assessment may be required. Results of the assessment may lead to the determination that conditions of treatment and further assessment apply to either continued attendance or return after a period of suspension.
- (j) Suspension: Exclusion from classes and other privileges or activities for a specified period of time. Suspensions will be executed through a written order of suspension and will state all restrictions imposed by the suspension, as well as the suspension period and what conditions of readmission, if any, are ordered. Suspensions may be noted on the student's transcript during the period of time the suspension is in effect.
- (k) Expulsion: Permanent separation of the student from (~~the university~~) EWU with no promise (implied or otherwise) that the student may return at any future time. The student will also be barred from (~~university~~) EWU premises. Expulsions may be noted on the student's transcript.
- (l) Loss of institutional, financial aid funds: Formal withholding of all or a part of institutional funds currently being received by the student or promised for future disbursement to the student for a specified period of time. Loss of financial aid is subject to the processes outlined in this chapter except any such loss must be approved by the dean of students and the vice president for student affairs before such sanction is imposed.
- (m) Revocation of degree: A degree awarded by (~~the university~~) EWU may be revoked for fraud, misrepresentation, or other violation of law or (~~university~~) EWU standards. Revocation of a degree is subject to processes outlined in this chapter except that revocation of a degree must also be approved by the (~~university~~) EWU president.

(n) Education: Requirement to successfully complete an educational project designed to create an awareness of the respondent's misconduct.

(o) EWU housing restrictions: Separation of the respondent from a residence hall or halls for a definite period of time, after which the respondent may be eligible to return, or permanent restriction. Conditions for readmission may be specified.

(2) **Student organizations and/or group sanctions:** Any of the above sanctions may be imposed in addition to those listed below:

(a) Probation: Formal action placing conditions on the group's continued recognition by or permission to function at ~~((the university))~~ EWU. The probationary conditions will apply for a specified period of time. Violation of the conditions of probation or additional violations while under probation may result in more severe sanctions;

(b) Social probation: Prohibition of the group from sponsoring any organized social activity, party or function, or from obtaining a permission for the use of alcoholic beverages at social functions for a specified period of time;

(c) Restriction: The temporary withdrawal of ~~((university))~~ EWU or ASEWU recognition for a group, club, society or other organization. Restriction is subject to the processes outlined in this chapter except any restriction must also be approved by the dean of students and the vice president of student affairs before such sanction is imposed;

(d) Revocation: The permanent withdrawal of ~~((university))~~ EWU or ASEWU recognition for a group, club, society or other organization. Per RCW 28B.10.902, any organization, association, or student living group that knowingly permits hazing to be conducted by its members or by others subject to its direction or control shall be deprived of recognition by ~~((the university))~~ EWU;

(e) Additional sanctions: In addition to or separately from the above, any one or a combination of the following may be concurrently imposed on the group:

(i) Exclusion from intramural competition as a group;

(ii) Denial of use of ~~((university))~~ EWU facilities for meetings, events, etc.;

(iii) Restitution; and/or

(iv) Fines.

~~((3) Remedies. For Title IX complaints, if the respondent is found responsible for violating the code, the university may provide remedies to the complainant designed to restore or preserve equal access to the university's educational programs or activities.))~~

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 172-121-303	Domestic violence, dating violence, and stalking.
WAC 172-121-304	Sexual misconduct.

WSR 24-22-048

PERMANENT RULES

EASTERN WASHINGTON UNIVERSITY

[Filed October 28, 2024, 9:16 a.m., effective November 28, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: These changes are being made to make the student conduct process more understandable for students, provide greater support to students who are experiencing discrimination, and comply with updated regulations issued by the United States Department of Education. Provisions regarding complaints of discrimination and Title IX violations by students (including sexual harassment, sexual assault, interpersonal violence, and stalking) are removed from the student conduct code, chapter 172-121 WAC, and placed in their own chapter. This chapter is intended to comply with relevant federal laws, such as Title VI, Title IX, and the Americans with Disabilities Act. It is also intended to provide a more comprehensive and succinct description of how these situations are handled. As identified in chapter 172-108 WAC, Eastern Washington University declines to adopt the model rules of procedure issued by the office of administrative hearings. Instead, these rules are designed to emphasize the educational nature of the university community and to provide a prompt and equitable process for resolving concerns consistent with the requirements of Title VI and Title IX.

Citation of Rules Affected by this Order: New WAC 172-125-010, 172-125-020, 172-125-030, 172-125-040, 172-125-200, 172-125-210, 172-125-220, 172-125-230, 172-125-240, 172-125-250, 172-125-300, 172-125-301, 172-125-302, and 172-125-305.

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

Other Authority: Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq.; Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.; Section 504 of the Rehabilitation Act of 1973; Americans with Disability Act of 1990, 42 U.S.C. § 12101 et seq.; chapter 28B.112 RCW (campus sexual violence).

Adopted under notice filed as WSR 24-17-112 on August 19, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 14, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 12, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 25, 2024.

Annika Scharosch
Associate Vice President for Civil Rights
Compliance and Business Services

OTS-5550.1

Chapter 172-125 WAC
DISCRIMINATION AND TITLE IX VIOLATIONS BY STUDENTS

PART I: COMMITMENT TO NONDISCRIMINATION

NEW SECTION

WAC 172-125-010 Commitment to nondiscrimination and standards of conduct for students. Eastern Washington University (EWU) is committed to equity and justice, and respect for the rights and dignity of all people. EWU is committed to providing a learning, living, and working environment free from discrimination and harassment. To fulfill these commitments, this code prohibits students and student organizations from engaging in discrimination, discriminatory harassment, interpersonal violence, sexual assault, sexual misconduct, or retaliation. This code sets forth the expectations for EWU student and student organization behavior and the process for addressing potential violations of the following standards of conduct. More specifically, students and student organizations are prohibited from engaging in:

(1) **Discrimination.** Adverse treatment of another individual because of the person's protected status or perception of a person's protected status. "Protected status" includes race, color, creed, religion, national origin, citizenship or immigration status, sex, pregnancy, sexual orientation, gender identity/expression, genetic information, age, marital status, families with children, protected veteran or military status, HIV or hepatitis C, status as a mother breastfeeding her child, or the presence of any sensory, mental, or physical disability or the use of a trained guide dog or service animal by a person with a disability. Individuals and student organizations may be treated differently on the basis of sex only to the extent permitted by Title IX and the Washington Law Against Discrimination.

(2) **Discriminatory harassment.** Physical or verbal conduct that:

(a) Denigrates or shows hostility toward an individual because of their protected status (as defined above) or perceived protected status;

(b) Is subjectively and objectively offensive; and

(c) Is sufficiently severe or pervasive as to unreasonably interfere with an individual's academic or work performance, or ability to participate in or benefit from the university's programs and activities.

(3) **Interpersonal violence.** Interpersonal violence encompasses domestic violence, dating violence, and stalking. These terms are defined as:

(a) **Domestic violence:** Any act of violence or threatened act of violence that occurs between individuals who are involved or have been involved in a sexual relationship, are current or former family members, or adult persons who presently reside together. This includes, but is not limited to, physical abuse, threats of bodily harm or safe-

ty, or coercive control. Coercive control is: (i) A pattern of behavior used to cause another to suffer physical, emotional, or psychological harm; (ii) and is intended to or has the effect of unreasonably interfering with a person's free will and personal liberty. Examples of coercive control are identified in RCW 7.105.010(4).

(b) **Dating violence:** Is domestic violence as defined above except the acts are committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. In determining whether such a relationship exists, the following factors are considered:

(i) The length of time the relationship has existed;

(ii) The type of relationship; and

(iii) The frequency of interaction between the parties involved in the relationship.

(c) **Stalking:** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(i) Fear for their health and/or safety or the health/safety of others; or

(ii) Suffer substantial emotional distress.

(4) **Sex-based harassment.** Harassment on the basis of a person's sex, sex stereotypes, sex characteristics, sexual orientation, gender identity/expression, or pregnancy or related conditions, that meets one of the following standards:

(a) **Hostile environment:** Unwelcome sex-based conduct that, based on the totality of the circumstances, is:

(i) Subjectively and objectively offensive; and

(ii) So severe or pervasive that it created a hostile environment by limiting or denying a person's ability to participate in or benefit from the university's programs or activities.

In determining whether or not such an environment exists, the university will consider: (A) The degree to which the conduct affected the complainant's ability to access university's programs or activities; (B) the type, frequency, and duration of the conduct; (C) the parties' ages, roles within the university, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct; (D) the location of the conduct and the context in which the conduct occurred; and (E) other sex-based harassment in the university's programs or activities. These are factors for consideration; each factor does not need to be met for a hostile environment to exist.

(b) **Quid pro quo harassment:** If a student is working as a university employee or otherwise has the authority to offer benefits or service to students, sex-based harassment exists if the respondent explicitly or impliedly conditioned the provision of such benefit or service on the complainant's participation in unwelcome sexual conduct.

(5) **Sexual assault.** Any sexual act directed against another person, without a person's consent, including instances where a person is not capable of giving consent. Consent means actual words or conduct indicating freely given agreement to the sexual act. Consent cannot be inferred from silence, passivity, or lack of active resistance. There is no consent where there is a threat of force or violence, any form of coercion, or physical or psychological intimidation. Sexual activity is nonconsensual when one person is incapable of consent by reason of mental incapacity, drug/alcohol use, illness, unconsciousness, age, or physical condition. Incapacitation due to drugs or alcohol refers to an individual who is in a state of intoxication such that the indi-

vidual is incapable of making rational, reasonable decisions because the person lacks the capacity to give knowing consent.

Sexual assault includes:

(a) **Rape:** The penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without a person's consent.

(b) **Fondling:** The touching of the private body parts of another person for the purpose of sexual gratification, without the person's consent. Private body parts include, but are not limited to, breasts, genitalia, thighs, and buttocks.

(c) **Sodomy:** Oral or anal sexual intercourse with another person, without the complainant's consent.

(d) **Incest:** Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by state law.

(e) **Statutory rape:** Sexual intercourse with a person who is under the age of consent as defined by state law.

(6) **Sexual misconduct.** Other forms of inappropriate sexual misconduct include indecent liberties; indecent exposure; sexual exhibitionism; prostitution or the solicitation of a prostitute; peeping or other voyeurism; sexual misconduct with a minor; sharing nude images of another without their permission; sextortion; or going beyond the boundaries of consent, such as allowing others to view consensual sex or the nonconsensual recording of sexual activity.

(7) **Retaliation.** Any intimidation, threat, coercion, or discrimination against a person for the purpose of interfering with a person's rights or privileges under this code, or because a person has reported information, made a complaint, testified, assisted, participated or refused to participate in any manner in an investigation, proceeding, informal resolution, or hearing under this code is prohibited. Any actual or threatened retaliation is prohibited and is a separate violation of this code. If the complainant or respondent engages in retaliatory behavior, the university shall take immediate steps to protect the complainant or respondent from further harassment or retaliation.

Additional standards for student conduct are contained in the student conduct code, chapter 172-121 WAC, and the academic integrity code, chapter 172-90 WAC. Standards for employees are contained in university policy.

NEW SECTION

WAC 172-125-020 Scope and jurisdiction. EWU shall have jurisdiction over student behavior which occurs on EWU premises or during an EWU-sponsored program or activity. EWU may also exercise jurisdiction over student conduct which occurs at off-campus locations if the behavior adversely affects EWU or an EWU community member. EWU has sole discretion in determining what conduct adversely impacts EWU or an EWU community member.

This code shall apply to conduct without regard to a student's academic status at the time the conduct took place. It applies to all conduct occurring on or after August 1, 2024. This includes all periods from the time of application for admission through the actual awarding of a degree, including times between academic periods, breaks in enrollment, or outside of normal business hours. The university may

continue a student conduct process even after a student withdraws or graduates. The term "student" is further defined in WAC 172-125-300.

NEW SECTION

WAC 172-125-030 Reporting, resources, and supportive measures.

(1) **Reporting.** Individuals who believe a student or student organization has engaged in discrimination, harassment, sexual assault, sexual misconduct, or retaliation may report such concerns to any of the following offices:

- (a) Civil rights office (www.inside.ewu.edu/civilrights);
- (b) Title IX coordinator (www.inside.ewu.edu/titleix); or
- (c) Student rights and responsibilities (www.inside.ewu.edu/srr).

This code refers to people who were directly negatively impacted by conduct in violation of this code as "complainants" regardless of whether or not they file a formal complaint with EWU.

(2) **Initial meeting.** After receiving a report, the Title IX coordinator, student accommodations and support services, or their designees will promptly reach out to the complainant, which may or may not be the same as the reporting party, to provide information about EWU's process, their rights, reporting options, resources, and available supportive measures. This will include information about:

(a) **Reporting options:** EWU encourages people to report incidents of discrimination, discriminatory harassment, interpersonal violence, sexual assault, sexual misconduct or retaliation. Complainants have the choice as to whether or not they would like to file a complaint with EWU and/or law enforcement. People can file a complaint, with the help of the Title IX coordinator upon request, with EWU or with local law enforcement, or both, using one of the following options:

(i) EWU process: Complaints may be filed with the Title IX coordinator. This includes complaints against EWU students, employees, contractors, vendors, volunteers, and visitors.

(ii) Criminal: Criminal complaints can be filed with the EWU police department or any law enforcement agency that has jurisdiction over the location where the incident occurred.

(iii) Both: A complainant may report an incident to both EWU and law enforcement.

(b) **Resources:** Complainants will be provided with information about university and community resources relevant to the particular concern, including:

(i) A list of resources for obtaining protective, no contact, restraining, or similar orders;

(ii) How to seek medical treatment, the importance of preserving evidence relevant to the alleged conduct or that may be helpful in obtaining a protective order, and procedures to follow to preserve such evidence; and

(iii) A list of existing on and off campus counseling, health care services, mental health services, victim advocacy, financial aid, legal assistance, visa and immigration assistance, and other services for complainants and respondents;

(c) **Overview of EWU's discrimination and Title IX processes:** Information will also be provided about EWU's process for responding to complaints under this code, including:

(i) Importance of preserving evidence that may assist in investigation of the incident or that may be helpful in obtaining a protection order;

(ii) EWU's policies regarding the confidentiality of complaints;

(iii) How to request supportive measures;

(iv) EWU's investigative and hearing process, including who will receive a copy of the investigative report;

(v) Options for informal resolution; and

(vi) EWU's prohibition against retaliation and how to report retaliation.

(3) **Supportive measures.** After receiving a report of discrimination, the Title IX coordinator or designee will review the complaint and determine whether or not supportive measures or interim restrictions are needed. Supportive measures are available for all students and employees regardless of whether someone wants to file a complaint. Requests for supportive measures may be directed to student accommodations and support services or the Title IX coordinator. Supportive measures may be in place before a complaint is filed, during the investigation and decision-making process, informal resolution process, and/or after the final determination of responsibility. Supportive measures are also available for both complainants and respondents.

Supportive measures are provided by EWU free of charge and may include, but are not limited to, safety planning with EWU, mutual restrictions on contact between the parties, academic or workplace modifications, leaves of absence, increased security, counseling options on campus, or campus housing modifications. Supportive measures are designed to restore or preserve equal access to EWU's educational programs or activities without unreasonably burdening either party, including protecting the safety of all parties and EWU's educational environment, or deterring sexual misconduct or discrimination. Supportive measures may be provided for a specific period of time or throughout the remainder of a student's time at EWU.

If a complainant or respondent disagrees with the supportive measures determination, they may file a written appeal with the dean of students within 10 calendar days of the determination by emailing dos@ewu.edu. The dean of students, or designee, may affirm, modify, or reverse the supportive measures determination. Such decision shall be served on the appealing party in writing. If a student's circumstances change materially, they may request new or additional supportive measures.

Supportive measures are confidential and will only be shared with those people who need to know such information to enable EWU to provide the supportive measures. The Title IX coordinator or designee is responsible for coordinating the effective implementation of supportive measures. All supportive measures should be documented and retained for seven years. If supportive measures are not provided, EWU must document the reasons why such measures were not needed.

(4) **Confidentiality.** Information gathered during an investigation and adjudication of a complaint under this code will be maintained in a confidential manner to the extent permitted by law. During an investigation, complaint information will be disseminated only on a need-to-know basis. If the complainant wishes to remain anonymous, the university will take all reasonable steps to investigate the allegation without disclosing the name of the complainant to the extent allowed by state and federal law. If the complainant wishes to remain anonymous, the university shall inform them that its ability to investigate and respond to the allegation will be limited. The university cannot

ensure confidentiality, as its legal obligations under federal or state law may require investigation of the allegation and possible disclosure of the complainant's name. Reports of crime to the campus community, timely warnings, and EWU's annual security report shall not include the names of the complainants or victims. Files subject to public disclosure will be released to the extent required by law.

The university will not require a complainant or respondent to abide by a nondisclosure agreement that would prevent the redisclosure of information related to an investigation or disciplinary action under this policy.

NEW SECTION

WAC 172-125-040 Complaints. (1) Filing of complaints.

(a) **Who can file a complaint.** Complaints can be filed by anyone who has been directly impacted by conduct that violates this code or by such person's authorized legal representatives, such as a minor's parent or legal guardian. The Title IX coordinator can also file a complaint against a student or student organization on behalf of the university. If a complaint is filed by the Title IX coordinator, the Title IX coordinator will not be considered a complainant for the purposes of participating in the investigation and hearing process.

(b) **How to file a complaint.** To initiate a complaint, a person must submit a request for the university to investigate their concerns either verbally or in writing to the Title IX coordinator or designee. Complaints must be filed in good faith.

(c) **Other complaint options.** Filing a complaint under this code does not prohibit or limit a person's right to file complaints or charges with other civil and/or criminal authorities for violations of local, county, state, or federal law.

(d) **Student conduct code violations.** All complaints against students that do not fall within the scope of this code will be forwarded to student rights and responsibilities for further review and action under the student conduct code, chapter 172-121 WAC.

(2) **Complaint review and dismissal/referral.** Upon receipt of a complaint, the Title IX coordinator shall review the complaint to determine whether it includes allegations of violations of this code and to determine which process applies within 14 calendar days of receiving such complaint. This time may be extended if the Title IX coordinator needs additional information to make such determination or if there is an active criminal investigation. If a complaint falls within the scope of this code, it shall be addressed in accordance with the procedures below and the Title IX coordinator shall determine whether or not the Level One Process or Level Two Process applies. If the complainant or respondent has requested informal resolution, the Title IX coordinator will determine whether or not informal resolution is appropriate and, if so, refer the matter to the person designated to handle informal resolutions. If the complaint falls outside of the scope of this code, it shall be referred to the office of student rights and responsibilities for review under the student conduct code, chapter 172-121 WAC.

Additionally, even if a complaint falls within the scope of this code, the Title IX coordinator may dismiss the complaint if:

(a) EWU is unable to identify the respondent after taking reasonable steps to do so;

(b) The respondent is not a student or student organization. Complaints against university employees, volunteers, contractors, and program participants are handled under EWU policy and are outside of the scope of this code;

(c) The complainant voluntarily withdraws any or all of the allegations in the complaint in writing, the Title IX coordinator declines to initiate a complaint on behalf of the university, and, without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not meet the definition of discrimination, discriminatory harassment, sexual assault, sexual misconduct, interpersonal violence, or retaliation under this code even if proven; or

(d) The conduct alleged in the complaint, even if substantiated by a preponderance of the evidence, would not constitute a violation of this code. Prior to making this determination, the Title IX coordinator or investigator must make reasonable efforts to clarify the allegations with the complainant.

The Title IX coordinator will inform the complainant in writing of the reason for dismissing the complaint. If the respondent has already received a notice of investigation, the respondent will also be simultaneously served with notice of the dismissal and the reasons for the dismissal.

Even if a complaint is dismissed, the complainant will be offered supportive measures. If the respondent has already been notified, the respondent will also be offered supportive measures. The Title IX coordinator will also take other appropriate prompt and effective steps to ensure that discrimination does not continue or recur within EWU programs or activities.

The Title IX coordinator may consolidate complaints under this code when the allegations of discrimination, harassment, interpersonal violence, sexual assault, sexual misconduct, or retaliation arise out of the same facts or circumstances. When more than one complaint is involved, all references to the "complainant" throughout this code include all individuals who have filed a complaint against the respondent that are consolidated into one investigation.

(3) **Informal resolution.** If a complainant and respondent are both interested in informal resolution and the Title IX coordinator determines informal resolution is appropriate, EWU will follow the process identified in WAC 172-125-200.

(4) **Appeal of dismissal.** If the complainant or respondent disagrees with the Title IX coordinator's decision to dismiss a complaint, the party may file an appeal with the dean of students within three calendar days of the Title IX coordinator's decision by emailing such appeal to dos@ewu.edu. Appeals may be filed for one or more of the following reasons:

(a) Procedural irregularity that would change the outcome of the Title IX coordinator's decision;

(b) New evidence that would change the Title IX coordinator's decision that was not reasonably available when the dismissal was made; or

(c) The Title IX coordinator or designee had a conflict of interest or bias for or against complainants or respondents generally or the individual parties that would change the outcome.

If the respondent has not been notified of the complaint prior to the dismissal, the respondent will not be notified of the dismissal or appeal. If the respondent has been notified of the complaint, the respondent will also be provided with notice of the dismissal and given

the same opportunity to appeal the determination. They will also receive notice if the complainant appeals. If one party appeals and the other party is entitled to notice, the other party will be given notice of the appeal and three calendar days to provide a response to the appeal. The dean of students or designee can affirm, reverse, or remand the Title IX coordinator's decision and such decision must be served in writing simultaneously to the parties who participated in the appeal.

(5) **Interim restrictions.** The Title IX coordinator or designee will also determine whether or not interim restrictions are needed after conducting an individualized safety and risk determination in conjunction with other EWU officials. Interim restrictions must be in place in situations where there is cause to believe that a student or a student organization poses an imminent and serious threat to the health or safety of any student or other individual arising from the alleged misconduct, including themselves. After interim restrictions are imposed, the complaint will be referred for investigation under this code.

(a) Interim restrictions may include, but are not limited to:

(i) Denial of access to certain areas, assignment to alternate university housing or removal from university housing, limitation of access to university facilities, limitations on engaging in certain activities, or restriction of communication with specific individuals or groups;

(ii) Interim suspension, including temporary total removal from the university or restriction of access to campus;

(iii) Mandatory medical/psychological assessment of the student's capability to remain in the university; or

(iv) Administrative leave for student employees.

(b) The Title IX coordinator or investigator will issue a notice identifying the interim restrictions that will be served on the restricted student. At minimum, the notice will include:

(i) The alleged act(s) or behavior(s) of the student or student organization which prompted the interim restriction;

(ii) How those alleged act(s) or behavior(s) could constitute a violation of this code;

(iii) How the circumstances of the case necessitated the interim restriction action(s); and

(iv) An explanation of the process for emergency appeal reviews.

(c) The complainant will also be provided with notice of any interim restrictions that relate directly to the complainant. If the respondent appeals such interim restrictions, the complainant will be given notice of the respondent's appeal and an opportunity to submit a statement within five calendar days of the notice as to why the interim restriction should or should not be modified.

(d) Emergency appeal review.

(i) If a student has been suspended on an interim basis, the student will automatically receive an emergency appeal review with the vice president for student affairs, or designee. If the interim restriction is something less than a suspension, the student or student organization subject to the interim restriction must file a written appeal with the vice president for student affairs within five calendar days after service of the interim restriction. In all cases, the student must submit any information the student wishes the vice president to consider submitted within five calendar days after service of the interim restriction. The appealing party should outline the desired modification(s) to the interim restriction as well as the spe-

cific challenge(s) to the interim restriction decision. Challenges to interim restriction decisions are limited to whether or not there is adequate cause to believe a student or a student organization poses an imminent and serious threat to the health or safety of any student or other individual. Appealing parties are limited to submitting their own written statements. Any other evidence should be submitted to the investigator during the investigative process.

(ii) The vice president for student affairs, or designee, will conduct an emergency appeal review after receiving the respondent's review and complainant's response, if any. Emergency appeal reviews will address only the interim restriction decision of the Title IX coordinator and the basis on which the restriction modification or termination is requested by the appealing party. The emergency appeal review does not replace the regular investigative process. In the emergency appeal review, the vice president will only review materials available to and information considered by the Title IX coordinator at the time the interim restriction was imposed, written statements by the two parties, and information that becomes available as a part of the university's investigation that the vice president deems relevant.

(iii) If a complainant believes the interim restriction does not adequately protect their health and safety, the complainant may appeal the interim restriction using the process outlined in this subsection. If the complainant files an appeal, all parties shall be given notice of the appeal and shall be provided the opportunity to submit a written statement to the vice president within five calendar days of receiving notice of the complainant's appeal.

(iv) During the emergency appeal review, the vice president for student affairs will review available materials and statements. The vice president for student affairs will issue a written decision upholding, modifying, or terminating the interim restriction decision. The written decision shall include a rationale for the basis of the decision and be served within 14 calendar days of the date all appeal materials were submitted.

(v) The interim restriction does not replace the regular investigative process, which will proceed as quickly as feasible consistent with this code.

(e) Duration. An interim restriction will remain in effect until terminated, in writing, by a decision-maker following the Level One or Level Two processes outlined in this code or following a timely appeal of the restriction.

PART II: RESOLUTION OPTIONS AND GRIEVANCE PROCEDURES

NEW SECTION

WAC 172-125-200 Informal resolution. (1) **Referral.** The Title IX coordinator or investigator may refer any report or complaint to the informal resolution process. It is not necessary that a formal complaint be filed for a report to be referred to this process. A report/

complaint may be referred to the informal resolution process at any time prior to the completion of an investigation. The Title IX coordinator may determine informal resolution is not appropriate, even if requested by both parties, if the alleged conduct could present a future risk of harm to others.

(2) **Voluntary participation.** Informal resolution processes may include a variety of voluntary processes that are structured to facilitate dialogue between impacted parties while balancing support and accountability. The various types of informal resolution options available at EWU and procedures for resolution are available on the EWU Title IX website. In all cases, the impacted parties must agree in writing to participate in the informal process and EWU will not require or pressure a party to participate in the informal process. A party is not required to waive the right to an investigation and/or hearing to participate in this process.

(3) **Informal resolution officer.** Informal resolutions will be handled by an EWU employee who is trained to facilitate such processes. In no case will the informal resolution officer be the same person as the investigator or any EWU employee who will make a decision regarding the complaint if informal resolution is not successful. The informal resolution officer must also not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

(4) **Written information about the process.** Before beginning the informal resolution process, EWU will provide both parties with the following information in writing:

- (a) Summary of the alleged conduct;
- (b) The requirements of the informal resolution process;
- (c) Notice that, prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and to initiate or resume the investigative process;
- (d) That the parties' agreement to a resolution at the conclusion of the informal resolution process will preclude the parties from initiating or resuming a formal complaint process arising from the same allegations;
- (e) The potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding only on the parties; and
- (f) What information EWU will maintain and whether and how EWU might use such information if the formal complaint process is initiated or resumed.

(5) **Options for resolution.** Potential terms that may be included in an informal resolution agreement include, but are not limited to:

- (a) Restrictions on contact;
- (b) Restrictions on the respondent's participation in university programs or activities or attendance at specific events;
- (c) Training; or
- (d) Any other terms the parties agree upon that the informal resolution officer deems appropriate.

(6) **Written agreement.** Any informal resolution agreement must be in writing and signed by the parties and the informal resolution officer. In the agreement, the parties must be advised in writing that:

- (a) The agreement is final, and they are waiving any right to a formal complaint process, including any right to appeal; and
- (b) If a student does not successfully complete all aspects of an agreement, they may be charged with failure to comply under the student conduct code, chapter 172-121 WAC, and/or any possible violation

of this code for the conduct that was the basis for the informal resolution.

(7) **Referral back to the formal complaint process.** If any party decides to leave the informal resolution process or the informal resolution officer determines the process is no longer appropriate, then the matter shall be referred back to the Title IX coordinator to determine the next steps under this code.

NEW SECTION

WAC 172-125-210 Level one process. (1) **Applicability.** The Level One Process applies to all violations of this code that do not involve felony-level crimes or that would not result in the suspension or expulsion of a student. If the alleged misconduct could constitute a felony-level crime or result in a student's suspension or expulsion, it must be referred to the Level Two Process outlined in WAC 172-125-220. The Level One Process is considered a brief adjudicative proceeding pursuant to RCW 34.05.482.

If the alleged conduct could constitute a violation of this code and the student conduct code, chapter 172-121 WAC, and the alleged violations arise out of the same facts or circumstances, the Level One Process outlined in this code may be used to determine violations of this code and the student conduct code in lieu of having two separate proceedings. The investigator will determine whether or not to include violations of either code as documented in the notice of investigation and allegations.

(2) **Notice of investigation and allegations.** If the Title IX coordinator refers a complaint to investigation, the Title IX coordinator will assign an investigator to conduct an investigation. The investigator will serve the respondent and complainant with a notice of investigation and allegations that meets the following requirements:

- (a) Is made in writing;
- (b) Includes a written list of the allegations against the respondent with sufficient details of the allegations based on current information including, if known, date and time of the incident, description of the conduct, and the specific sections of this code and the student conduct code allegedly violated;
- (c) Contact information for the investigator;
- (d) Parties' rights during the process, including:
 - (i) Right to a fair and equitable process.
 - (ii) Right to have investigators and decision-makers that do not have a conflict of interest or bias against the parties.
 - (iii) Right to remain silent during the investigation.
 - (iv) Right to have an advisor of their choice, at their cost, during the process. The advisor may be, but is not required to be, an attorney. During the investigative process, the advisor may be present and advise the party, but may not answer questions on the party's behalf.
 - (v) Right to request the investigator ask questions of the other party (cross-examination).
 - (vi) Right to be presumed not responsible and that a conclusion of responsibility is not made until the conclusion of the investigative process.
 - (vii) Right to request an accommodation or interpreter for the process.

(e) Information about the investigative process and, if applicable, informal resolution;

(f) A statement that complainants, respondents, and witnesses are prohibited from knowingly making false statements or furnishing false information during the process. A person will not be disciplined for making a false statement based solely on whether or not EWU determines a complaint under this code is substantiated.

(g) EWU's prohibition on retaliation and how to report acts of retaliation;

(h) Information about how the parties will be provided an equal opportunity to access relevant information gathered during the investigation; and

(i) Information about supportive measures and resources available to both parties.

(3) **Investigative process.** During the investigation, the investigator is responsible for gathering sufficient evidence to determine whether or not this code has been violated. The investigator has discretion in determining the formality, scope, and process of the investigation. If additional allegations are discovered during the course of the investigation, the investigator shall issue an updated notice of investigation. Before scheduling an interview with a complainant or respondent, the investigator must provide the party with written notice of the date, time, location, participants, and purpose of the meeting with sufficient time for the party to prepare. The investigative process must include:

(a) Contacting the complainant to review the complaint, gather more information, and to identify relevant witnesses and relevant evidence (emails, social media posts, photos, etc.). If necessary, the investigator may contact the complainant on more than one occasion during the course of the investigation to obtain additional information and clarification. If the investigator is not able to obtain sufficient information or if the complainant withdraws the complaint during the investigative process, the investigator may refer the complaint back to the Title IX coordinator to determine whether or not dismissal is appropriate.

(b) Contacting the respondent to review the complaint, gather more information, and to identify relevant witnesses and relevant evidence (emails, social media posts, photos, etc.).

(c) Conducting interviews with witnesses who have knowledge of the alleged behavior and gathering relevant evidence. Witnesses may be contacted once or numerous times as necessary to gather the relevant information.

(d) Parties may identify fact witnesses, expert witnesses, and other inculpatory and exculpatory evidence. If a party wishes to provide information from an expert witness, the party is responsible for any costs associated with the expert witness.

(e) The investigator must have the ability to question parties and witnesses to assess their credibility to the extent credibility is both in dispute and relevant. The investigator may ask questions during individual meetings with a party or witness. The investigator must also allow each party to propose questions that the party wants asked of any party or witness. The investigator will then ask those questions of the party/witness, subject to the limits below, during an individual meeting and will provide each party with an audio or audiovisual recording or transcript of the investigative interview with enough time for the party to have a reasonable opportunity to propose follow-up questions. The investigator may determine a proposed ques-

tion is not relevant or is otherwise impermissible and must explain their decision to exclude a question in the investigative report. If the party's proposed question is relevant and not otherwise impermissible, then the question must be asked unless the question is unclear or harasses the party or witnesses being questioned. If the investigator believes the question is unclear or harassing, they must give the proposing party an opportunity to clarify or revise the question.

(f) The investigator may choose to place less or no weight upon statements by a party or witness who refuses to respond to the investigator's questions. The investigator, however, must not draw an inference about whether or not this code was violated based solely on a party's or witness's refusal to respond to the investigator's questions.

(g) After gathering the relevant evidence, the investigator must provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is relevant to the allegations raised in the complaint and not otherwise impermissible. The investigator must take reasonable steps to prevent and address the parties' and their advisors' unauthorized disclosure of information and evidence obtained solely through the Level One Process.

(h) The investigation shall not include evidence nor shall any information provided be disclosed to another person if such information:

(i) Is evidence protected under a legal privilege recognized by federal or state law, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;

(ii) Records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless EWU obtains that party's or witness's voluntary, written consent for use of the information in the investigation;

(iii) Information about the complainant's sexual predisposition or prior sexual behavior, unless the evidence is relevant to demonstrate that someone other than the respondent committed the conduct alleged by the complainant, or the evidence concerns specific incidents of the complainant's prior sexual behavior with respect to the respondent and is relevant to the question of consent. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent in the incident under investigation.

(4) Investigative report and determinations of responsibility.

(a) After gathering the relevant evidence, the investigator must objectively evaluate the information gathered and determine the credibility of the parties. Credibility determinations must not be based on a person's status as a complainant, respondent, or witness. The investigator will prepare an investigative report that accurately summarizes the information gathered and makes determinations on whether or not this code or the student conduct code has been violated based on a preponderance of the evidence, meaning it is more probable than not that an act occurred.

(b) If the investigator determines the respondent has not violated this code or any provision of the student conduct code, the investigator will simultaneously serve the investigative report on the complainant and respondent along with information about how to appeal the investigator's decision.

(c) If the investigator determines the respondent has violated this code or any provision of the student conduct code, the investigator will send the investigative report to the director of student rights and responsibilities. The director or director's designee will then determine the appropriate sanction for the misconduct substantiated by the investigator within seven calendar days of receiving the investigative report. The director will also determine whether or not remedies for the complainant or other impacted students are appropriate. Remedies must be provided to the complainant or other impacted students if needed to restore or preserve equal access to the university's educational programs or activities. The director or designee will add an additional section to the investigative report setting forth their decision as to the appropriate sanction and the reasons for their decision. The director or designee will then simultaneously serve the full investigative report and sanctioning decision on the complainant and respondent along with information about how to appeal the investigator and director's decisions. In addition to sanctions under this code, if the student is also an employee of the university, the director's decision may be forwarded to the student's supervisor to determine whether any employment actions outside of this code should be taken in accordance with the university policy.

(5) **Timelines and extensions.** EWU must respond to complaints under this code in a prompt and equitable manner. To assist EWU in reaching this goal, this code includes various timelines. EWU's goal is to complete investigations within 90 days. If EWU needs additional time, the investigator must provide written notice to the complainant and respondent of the delay and reasons for the delay. Delays and extensions beyond 90 days must be based on good cause.

(6) **Appeals.**

(a) **Timeline.** Either party may file an appeal from the investigator's decision regarding responsibility or the director's decision regarding the sanction. Appeals must be submitted in writing by 5:00 p.m. PST within 21 calendar days from the date the investigative report is sent to the parties. Appeals must be submitted via email to srr@ewu.edu. The appeal must include the party's name and why they believe the investigator or director's decision was incorrect based on the bases for appeal outlined below. If no appeal is timely filed, the investigator/director's decisions are final.

(b) **Basis for appeal.** Appeals may be filed for one or more of the following reasons:

(i) Procedural irregularity that would change the outcome of the investigator or director's decisions;

(ii) New evidence that would change the investigator's decision that was not reasonably available when the investigative report was finalized; or

(iii) The investigator or director had a conflict of interest or bias for or against complainants or respondents generally or the individual parties that would change the outcome of the investigation.

(c) Once an appeal is filed, the office of student rights and responsibilities will serve the other party with a copy of the appeal. The other party will be given five calendar days to provide a written response to the appeal.

(d) **Stay of sanctions.** Sanctions go into effect immediately after the director's decision is issued. If the respondent wishes to have a sanction stayed during the appeal process, a request for a stay must be filed along with the notice of appeal. The request for the stay will be reviewed by the director or designee. The stay may be granted

in part or in its entirety, at the discretion of the director. The decision will be served on the respondent and the complainant. This decision is not subject to appeal.

(e) Appeals will be determined by the dean of students or designee. The director will provide the appeal authority with the notice of appeal, any responses to the appeal, and the investigative report. Before rendering a decision, the appeal authority may request additional information or explanation from the parties. However, except as required to explain the basis of new information, an appeal shall be limited to a review of the investigative report.

(f) After reviewing the appeal, the appeal authority may affirm, reverse, modify, or remand the decision(s) of the investigator and/or director. The appeal decision shall include an explanation of the appeal authority's decision and rationale. The appeal decision must be served on the complainant and respondent within 30 calendar days of the appeal authority receiving all necessary documentation. In cases where the appeal authority remands the decision or sanction, the case will be returned to either the investigator or director for reconsideration or other action as specified by the appeal authority. With respect to sanctions, the appeal authority may affirm, reverse, remand, or modify the sanctions assigned to the respondent. When determining sanctions, the appeal authority may consider the complete record of the respondent's prior conduct and academic performance in addition to all other information associated with the case.

(g) Notification. Once the appeal authority has made a final decision to affirm or reverse and/or to modify the sanctions assigned, the appeal authority shall draft a brief written statement setting forth the outcome of the appeal and the basis for their decision. This is then forwarded to the director. The director shall serve the written statement on the complainant and respondent. The notice will also inform the parties that the appeal authority's decision is final and no further appeals may be made within the university. Judicial review of the university's decision may be available under chapter 34.05 RCW.

NEW SECTION

WAC 172-125-220 Level two process. (1) **Applicability.** The Level Two Process applies to all violations of this code that involve felony-level crimes or that may result in the suspension or expulsion of a student. If any of the alleged misconduct could constitute a felony-level crime or result in a student's suspension or expulsion, it must be referred to the Level Two Process outlined in this section. The Level Two Process is considered a full adjudicative proceeding pursuant to chapter 34.05 RCW.

If the alleged conduct could constitute a violation of this code and a violation of the student conduct code, chapter 172-121 WAC, and the alleged violations arise out of the same facts or circumstances, the Level Two Process outlined in this code may be used to determine violations of this code and the student conduct code in lieu of having two separate proceedings. The investigator will determine whether or not to include violations of either code as documented in the notice of investigation and allegations.

(2) **Notice of investigation and allegations.** If the Title IX coordinator refers a complaint to investigation under the Level Two Process, the Title IX coordinator will assign an investigator to con-

duct an investigation. The investigator will serve the respondent and complainant with a notice of investigation and allegations that meets the following requirements:

- (a) Is made in writing;
- (b) Includes a written list of the allegations against the respondent with sufficient details of the allegations based on current information including, if known, date and time of the incident, description of the conduct, and the specific sections of this code and the student conduct code allegedly violated;
- (c) Contact information for the investigator;
- (d) Parties' rights during the process, including:
 - (i) Right to a fair and equitable process.
 - (ii) Right to have investigators and decision-makers that do not have a conflict of interest or bias against the parties.
 - (iii) Right to remain silent during the investigation.
 - (iv) Right to have an advisor of their choice, at their cost, during the process. The advisor may be, but is not required to be, an attorney. During the investigative process, the advisor may be present and advise the party, but may not answer questions on the party's behalf.
 - (v) Right to request the investigator ask questions of the other party (cross-examination).
 - (vi) Right to be presumed not responsible and that a conclusion of responsibility is not made until the conclusion of the investigative process.
 - (vii) Right to request an accommodation or interpreter for the process.
- (e) Information about the investigative process and, if applicable, informal resolution;
- (f) A statement that complainants, respondents, and witnesses are prohibited from knowingly making false statements or furnishing false information during the process. A person will not be disciplined for making a false statement based solely on whether or not EWU determines a complaint under this code is substantiated;
- (g) EWU's prohibition on retaliation and how to report acts of retaliation;
- (h) Information about how the parties will be provided an equal opportunity to access relevant information gathered during the investigation; and
- (i) Information about supportive measures and resources available to both parties.

(3) **Investigative process.** During the investigation, the investigator is responsible for gathering sufficient evidence to determine whether or not this code has been violated. The investigator has discretion in determining the formality, scope, and process of the investigation. If additional allegations are discovered during the course of the investigation, the investigator shall issue an updated notice of investigation. Before scheduling an interview with a complainant or respondent, the investigator must provide the party with written notice of the date, time, location, participants, and purpose of the meeting with sufficient time for the party to prepare. The investigative process must include:

- (a) Contacting the complainant to review the complaint, gather more information, and identify relevant witnesses and relevant evidence (emails, social media posts, photos, etc.). If necessary, the investigator may contact the complainant on more than one occasion during the course of the investigation to obtain additional informa-

tion and clarification. If the investigator is not able to obtain sufficient information or if the complainant withdraws in writing the complaint during the investigative process, the investigator may refer the complaint back to the Title IX coordinator to determine whether or not dismissal is appropriate. Any withdrawal must be in writing.

(b) Contacting the respondent to review the complaint, gather more information, and to identify relevant witnesses and relevant evidence (emails, social media posts, photos, etc.).

(c) Conducting interviews with witnesses who have knowledge of the alleged behavior and gathering relevant evidence. Parties and witnesses may be contacted once or numerous times as necessary to gather the relevant information.

(d) Parties may present fact witnesses, expert witnesses, and other inculpatory and exculpatory evidence. If a party wishes to present information from an expert witness, the party is responsible for any costs associated with the expert witness.

(e) The investigator must have the ability to question parties and witnesses to assess their credibility to the extent credibility is both in dispute and relevant. The investigator may ask questions during individual meetings with a party or witness. The investigator must also allow each party to propose questions that the party wants asked of any party or witness. The investigator will then ask those questions of the party/witness, subject to the limits below, during an individual meeting and will provide each party with an audio or audiovisual recording or transcript of the investigative interview with enough time for the party to have a reasonable opportunity to propose follow-up questions. The investigator may determine a proposed question is not relevant or is otherwise impermissible and must explain such decision to exclude a question in the investigative report. If the party's proposed question is relevant and not otherwise impermissible, then the question must be asked unless the question is unclear or harasses the party or witnesses being questioned. If the investigator believes the question is unclear or harassing, they must give the proposing party an opportunity to clarify or revise the question.

(f) The investigator may choose to place less or no weight upon statements by a party or witness who refuses to respond to the investigator's questions. The investigator, however, must not draw an inference about whether or not this code was violated based solely on a party's or witness's refusal to respond to the investigator's questions.

(g) After gathering the relevant evidence, the investigator must provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is relevant to the allegations raise in the complaint and not otherwise impermissible. The investigator must take reasonable steps to prevent and address the parties' and their advisors' unauthorized disclosure of information and evidence obtained solely through the Level Two Process.

(h) The investigation shall not include evidence nor shall any information provided be disclosed to another person if such information:

(i) Is evidence protected under a legal privilege recognized by federal or state law, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;

(ii) Records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or

witness, unless EWU obtains that party's or witness's voluntary, written consent for use of the information in the investigation;

(iii) Information about the complainant's sexual predisposition or prior sexual behavior, unless the evidence is relevant to demonstrate that someone other than the respondent committed the conduct alleged by the complainant, or the evidence concerns specific incidents of the complainant's prior sexual behavior with respect to the respondent and is relevant to the question of consent. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent in the incident under investigation.

(4) Investigative report and determinations of responsibility.

(a) After gathering the relevant evidence, the investigator must objectively evaluate the information gathered and determine the credibility of the parties. Credibility determinations must not be based on a person's status as a complainant, respondent, or witness. The investigator will prepare an investigative report that accurately summarizes the information gathered and makes determinations on whether or not this code or the student conduct code has been violated based on a preponderance of the evidence.

(b) If the investigator determines the respondent has not violated this code or any provision of the student conduct code, the investigator will simultaneously serve the complainant and respondent with the investigative report along with information about how to appeal the investigator's decision.

(c) If the investigator determines the respondent has violated this code or any provision of the student conduct code, the investigator will send the investigative report to student rights and responsibilities. The director or director's designee will then determine the appropriate sanction for the misconduct substantiated by the investigator within seven calendar days of receiving the investigative report. The director will also determine whether or not remedies for the complainant or other impacted students are appropriate. Remedies must be provided to the complainant or other impacted students if needed to restore or preserve equal access to the university's educational programs or activities. The director or designee will add an additional section to the investigative report setting forth their decision as to the appropriate sanction and the reasons for their decision. The director or designee will then simultaneously serve the complainant and respondent with the full investigative report and sanctioning decision, along with information about how to appeal the investigator and director's decisions. In addition to sanctions under this code, if the student is also an employee of the university, the director's decision may be forwarded to the student's supervisor to determine whether any employment actions outside of this code should be taken in accordance with university policy.

(5) Timelines and extensions. EWU must respond to complaints under this code in a prompt and equitable manner. To assist EWU in reaching this goal, this code includes various timelines. EWU's goal is to have investigations completed within 90 days. If the university needs additional time, the investigator must provide written notice to the complainant and respondent of the delay and reasons for the delay. Delays and extensions beyond 90 days must be based on good cause.

(6) Initial appeal to student disciplinary council. If either party disagrees with the decision of the investigator or director, they may request a full de novo hearing by filing a request for hearing with the office of student rights and responsibilities. The re-

quest for hearing must be sent in writing to srr@ewu.edu by 5:00 p.m. PST within 21 calendar days from the date the investigative report is sent to the parties. If a timely request for hearing is received, the director will refer the case to a full hearing before the student disciplinary council under WAC 172-125-230.

NEW SECTION

WAC 172-125-230 Full hearings before the student disciplinary council. (1) **Appointment of council.** When a student disciplinary council is needed for a full hearing following a request for a full hearing under the Level Two Process, the Title IX coordinator or dean of students shall appoint a presiding officer and members to serve on the council consistent with the procedures for appointing a council under the student conduct code, chapter 172-121 WAC. Full hearings are determined by a majority vote of the council and are conducted de novo.

(2) **Prehearing.** Following receipt of a timely request for a full hearing, the director or designee will notify both parties of the date, time, and location of the prehearing. The purpose of the prehearing is to explain the hearing procedures to the parties, schedule a date for the full hearing, and to address any preliminary matters or motions. A full hearing must be scheduled within 30 calendar days of the date of the request for a hearing from a party, absent good cause for an extension.

(3) **Notice of hearing.** Following the prehearing conference, the director shall schedule the hearing and serve the respondent and complainant with notice of the date, time, location, participants, and purpose of the hearing. At the discretion of the presiding officer, and where the rights of the parties will not be prejudiced thereby, all or part of any hearing may be conducted by telephone or other electronic means. Each party in the hearing must have an opportunity to participate effectively in the hearing. This may include remote participation via audiovisual means. The notices will include information about how to request accommodations or interpreters for any parties or witnesses. Any request for the presence of an emotional support animal or any other accommodation must be directed to student accommodation and support services and approved as a reasonable accommodation in advance of the hearing. A person may bring a certified therapy animal with a handler to a hearing. The notice of hearing must be served on the respondent and complainant at least seven calendar days prior to the hearing. The director may coordinate with the parties to facilitate scheduling, but is not required to do so.

(4) **General hearing procedures.**

(a) **Hearing authority.** The presiding officer exercises control over hearing proceedings. All procedural questions are subject to the final decision of the presiding officer. The presiding officer chairs the disciplinary council.

(b) **Closed hearings.** All conduct review hearings will be closed. Admission of any person to a conduct review hearing shall be at the discretion of the presiding officer.

(c) **Appearance.**

(i) Failure to appear. In cases where proper notice has been given but the respondent fails to attend the hearing, the council shall decide the case based on the information available, without the re-

spondent's input. The council may not make an inference about the de-termination regarding responsibility based solely on a party's or witness's failure to appear at the hearing. However, nonappearance by a party may impact the evidence available for the council to make a decision.

(ii) **Options for appearing.** The parties will be provided options for reasonable alternative arrangements if they do not wish to be present in the same room as the other student during the hearing. The parties may appear at the conduct review hearing in person via a method that allows the council to hear the parties and physically observe them while testifying, subject to the limits set forth in (e) of this subsection. If a party does not appear at the hearing, the council will decide the case based on the information available. The council cannot draw an inference regarding responsibility based on the failure to appear or refusal to answer cross-examination or other questions.

(d) **Advisors.** The complainant and the respondent may be assisted by one advisor during conduct review hearings. The advisor is there to provide guidance and advice to the party, but is not allowed to speak on behalf of the party, answer questions on the parties behalf, or question the other party or witnesses.

(e) **Disruption of proceedings.** Any person, including a party or advisor, who disrupts a hearing or does not follow the standards of decorum set by the presiding officer, may be excluded from the proceedings.

(f) **Remote appearance.** In the interest of fairness and expedience, the presiding officer may permit any person to appear by a method that allows the person to be seen and heard by the council.

(g) **Standard of evidence.** The council shall determine whether the respondent violated this code and the student conduct code, as charged in the notice of allegations sent by the investigator, based on a preponderance of the evidence. A preponderance means, based on the evidence admitted, whether it is more probable than not that the respondent violated this code or the student conduct code.

(h) **Evidence.** The council will be provided with a copy of the investigative report and all associated exhibits. The investigative report and exhibits will be admitted into evidence. If the parties wish the council to consider additional documentary evidence, such evidence should be provided to the director in advance of the hearing. Council may review proposed exhibits prior to the hearing.

(i) Evidence, including hearsay evidence, is admissible if in the judgment of the presiding officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The presiding officer shall exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized by Washington courts. The presiding officer may exclude irrelevant material. If not inconsistent with this section, the presiding officer shall refer to the Washington rules of evidence as guidelines for evidentiary rulings. Prior or subsequent conduct of the respondent may be considered in determining opportunity, intent, preparation, plan, identity, a pattern of conduct, credibility, or absence of mistake or lack of knowledge. Prior to allowing a question to be answered during a hearing, the presiding officer must determine whether the question is relevant and, if excluded, the presiding officer must explain the basis for their decision.

(ii) The respondent and complainant have the right to view all material presented during the course of the hearing. If a respondent's

disciplinary history is considered solely for sanctioning purposes, the complainant does not have a right to review the history.

(iii) All testimony of parties and witnesses shall be made under oath or affirmation. Any interpreter shall be proscribed the oath set forth in WAC 10-08-160.

(iv) Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

(v) Official notice may be taken of (A) any easily verifiable facts such as dates or weather conditions, (B) technical or scientific facts within EWU's specialized knowledge, such as enrollment status or class schedules, and (C) codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association. Parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material so noticed and the sources thereof, including any staff memoranda and data, and they shall be afforded an opportunity to contest the facts and material so noticed. A party proposing that official notice be taken may be required to produce a copy of the material to be noticed.

(vi) All rulings upon objections to the admissibility of evidence shall be made in accordance with the provisions of RCW 34.05.452, except for the additional restrictions on the admission of evidence required by Title IX.

(i) **Discovery.** Discovery is not permitted under the code, except for requests for documentary information from the university. Either party may request the university to produce relevant documents in the university's possession as long as such request is submitted at least seven calendar days prior to the hearing, absent extenuating circumstances. If the presiding officer determines the request is not relevant to the present allegation, the presiding officer may deny the request. The university will provide the requested information prior to the hearing to the extent feasible and permitted by state and federal law.

(j) **Subpoenas.** Subpoenas may be issued by the presiding officer or an attorney consistent with RCW 34.05.446. However, for the protection of both parties, a party cannot subpoena the other party. A party may request an exemption from this rule by filing a written request with the presiding officer at least 10 calendar days prior to the hearing. The presiding officer will provide a copy of the request to the other party and give them three days to respond. The presiding officer will then decide whether or not sufficient cause exists to grant an exemption to this rule and will inform the parties of the decision. Any subpoena issued must conform to EWU's subpoena form. Every subpoena shall identify the party causing issuance of the subpoena and shall state EWU's name and the title of the proceeding and shall direct the person to whom it is directed to attend and give testimony or produce designated books, documents, or things under their control.

A subpoena to a person to provide testimony at a hearing shall specify the time and place set for hearing. A subpoena may be served by any suitable person over 18 years of age, by exhibiting and reading it to the witness, or by giving them a copy thereof, or by leaving such copy at the place of their abode. When service is made by any other person than an officer authorized to serve process, proof of service shall be made by affidavit or declaration under penalty of perjury. The presiding officer, upon motion by a party or at their own discretion, may quash or modify the subpoena if it is unreasonable or

oppressive. Subpoenas may not be used to threaten or intimidate parties or witnesses.

(k) **Motions.** Motions for summary judgment and motions to dismiss are not permitted under this process.

(l) **Witnesses.**

(i) The complainant, respondent, and the university's presenter may call witnesses at full hearings.

(ii) The person who wishes to call a witness is responsible for ensuring that the witness is available and present at the time of the hearing. An attorney may subpoena a witness to appear at the hearing. Nonattorneys may request the presiding officer to subpoena witnesses. The presiding officer has the discretion to deny a request to issue a subpoena or to quash a subpoena issued by an attorney if the subpoena is unreasonable, oppressive, or does not conform to EWU's subpoena form.

(iii) The presiding officer may exclude witnesses from the hearing room when they are not testifying. The presiding officer is not required to take the testimony of all witnesses called by the parties if such testimony may be irrelevant. Any decision to exclude a witness shall be explained on the record.

(iv) All parties have the right to hear all testimony provided by witnesses during the hearing.

(v) The parties should inform the presiding officer of any possible need for an interpreter or any accommodation requests at least 10 calendar days prior to the hearing. The presiding officer will comply with WAC 10-08-150.

(m) **Questioning.** The university presenter, presiding officer, or the council may ask questions of any witnesses or the parties. The complainant and respondent will both be given the opportunity to submit questions in writing to the presiding officer for each party/witness. The presiding officer will ask the questions of the party/witness proposed by the complainant or respondent as long as the questions are relevant and not otherwise impermissible. The presiding officer will not ask proposed questions that are unclear or that harass the party or witness being questioned. If the presiding officer believes the question is unclear or harassing, the proposing party must be given an opportunity to clarify or revise the question. In no case will the complainant, respondent, or their advisors question witnesses or parties directly.

The presiding officer must exclude and the council shall not consider any questions or evidence pertaining to the complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. The presiding officer will explain to the parties the reason for rejecting any questions and will maintain a record of the questions submitted and rulings made.

(n) **Remote appearance.** The presiding officer may accommodate concerns for personal safety, well-being, or fears of confrontation of any person appearing at the hearing by providing separate facilities, or by permitting participation by video conferencing, or other means that allows the council and parties to see and hear the party answering questions, as determined appropriate.

(o) **Role of the presiding officer.** The presiding officer has authority to take actions related to the hearing process including, but not limited to:

- (i) Determine the order of presentation of evidence;
- (ii) Administer oaths and affirmations;
- (iii) Issue subpoenas pursuant to RCW 34.05.446;
- (iv) Rule on procedural matters, objections, and motions;
- (v) Rule on offers of proof and receive relevant evidence;
- (vi) Pursuant to RCW 34.05.449(5), close parts of a hearing to public observation or order the exclusion of witnesses upon a showing of good cause;
- (vii) Question witnesses in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter;
- (viii) Call additional witnesses and request additional exhibits deemed necessary to complete the record and receive such evidence subject to each party's opportunity for cross-examination and rebuttal;
- (ix) Take official notice of facts pursuant to RCW 34.05.452(5);
- (x) Regulate the course of the hearing and take any appropriate action necessary to maintain order during the hearing;
- (xi) Permit or require oral argument or briefs and determine the time limits for submission thereof; and
- (xii) Take any other action necessary and authorized by any applicable statute or rule.

(p) **Role of the presenter.** A person will present a case explaining the basis for the investigator and director's initial decisions on behalf of the university. The presenter will call witnesses, ask questions, and offer evidence during the hearing. The presenter may be the director of SRR or designee, investigator, or an assistant attorney general appearing on behalf of the university.

(q) **Deliberations and sanctions.** Following the hearing, the council will determine in closed session whether, by a preponderance of the evidence, the respondent violated this code or the student conduct code based on the evidence presented at the hearing. If a student fails to appear, the council shall make a decision based on the information available. The council shall make its decisions based on a majority vote. If the council determines the respondent violated this code or the student conduct code, the presiding officer shall then decide what sanctions and remedies shall be imposed. The presiding officer may review the respondent's previous disciplinary history for purposes of determining the appropriate sanction. In addition to sanctions under this code, if the student is also an employee of the university, the presiding officer's decision may be forwarded to the student's supervisor to determine whether any employment actions outside of this code should be taken in accordance with university policy.

The council shall issue a decision including their findings, conclusions, and rationale. The decision shall address credibility issues if credibility or witness demeanor was a substantial factor in the council's decision. Credibility determinations may not be based on a person's status as a complainant, respondent, or witness. The findings shall be based exclusively on the evidence provided at the hearing. If the council finds the respondent violated the code, the presiding officer shall add the decision regarding sanctions and remedies to the council's decision. Such decisions should be served on the complainant and respondent within 14 calendar days from the date of the hearing. The written decision shall also:

- (i) Be correctly captioned identifying EWU and the name of the proceeding;

- (ii) Designate all parties and representatives participating in the proceeding;
- (iii) Identify the allegations at issue;
- (iv) A description of the procedural steps taken, including notifications to the parties, interviews with the parties and witnesses, methods used to gather other evidence, and hearings held;
- (v) Contain appropriate numbered findings of fact meeting the requirements in RCW 34.05.461;
- (vi) Contain appropriately numbered conclusions regarding the application of university policies and this code to the facts;
- (vii) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed, and if any remedies are necessary to provide to the complainant or any other impacted student to restore or preserve equal access to the EWU's educational programs or activities;
- (viii) Contain a statement describing rights to appeal and the procedures for appealing.
- (r) **Finality.** The council's and presiding officer's decision becomes final at the conclusion of this process if an appeal is not timely filed.
- (s) **Notice of decision.** The presiding officer shall serve the complainant and respondent with a copy of the decision and notice of the right to appeal. The Title IX coordinator must also be provided with a copy of the decision as the Title IX coordinator is responsible for effective implementation of any remedies.

NEW SECTION

- WAC 172-125-240 Appeals of student disciplinary council decisions.**
- (1) **Timeline.** Either party may file an appeal from the student disciplinary council's decision. Appeals must be submitted in writing by 5:00 p.m. PST within seven calendar days from the date the student disciplinary council's decision is sent to the parties. Appeals must be submitted via email to srr@ewu.edu. The appeal must include the party's name and why they believe the student disciplinary council's was incorrect based on the bases for appeal outlined below.
 - (2) **Basis for appeal.** Appeals may be filed for one or more of the following reasons:
 - (a) Procedural irregularity that would change the outcome of the student disciplinary council's decision;
 - (b) New evidence that would change the student disciplinary council's decision that was not reasonably available when the investigative report was finalized; or
 - (c) A member of the student disciplinary council or the presiding officer had a conflict of interest or bias for or against complainants or respondents generally or the individual parties that would change the outcome of the investigation.
 - (3) **Response.** Once an appeal is filed, the office of student rights and responsibilities will serve the other party with a copy of the appeal. The other party will be given five calendar days to provide a written response to the appeal.
 - (4) **Stay of sanctions.** Sanctions go into effect immediately after the council's decision is issued. If the respondent wishes to have a sanction stayed during the appeal process, a request for a stay must be filed along with the notice of appeal. The request for the stay

will be reviewed by the director or designee. The stay may be granted in part or in its entirety, at the discretion of the director. The decision will be served on the respondent and the complainant. This decision is not subject to appeal.

(5) **Appeal authority.** Appeals will be determined by the vice president for student affairs or designee. The director will provide the appeal authority with the notice of appeal, any responses to the appeal, and the complete record of the student disciplinary council hearing. Before rendering a decision, the appeal authority may request additional information or explanation from the parties. However, except as required to explain the basis of new information, an appeal shall be limited to a review of the evidence presented to the student disciplinary council.

(6) **Decisions.** After reviewing the appeal, the appeal authority may affirm, reverse, modify, or remand the decision(s) of the student disciplinary council. The appeal decision shall include an explanation of the appeal authority's decision and rationale. The appeal decision must be issued within 30 calendar days of the appeal authority receiving all necessary documentation. In cases where the appeal authority remands the decision or sanction, the case will be returned to the student disciplinary council or presiding officer for reconsideration or other action as specified by the appeal authority. With respect to sanctions, the appeal authority may affirm, reverse, remand, or modify the sanctions assigned to the respondent. When determining sanctions, the appeal authority may consider the complete record of the respondent's prior conduct and academic performance in addition to all other information associated with the case.

(7) **Notification.** Once the appeal authority has made a final decision to affirm or reverse and/or to modify the sanctions assigned, the appeal authority shall draft a brief written statement setting forth the outcome of the appeal and the basis for their decision. The written statement is then forwarded to the director. The director shall serve the complainant and respondent with the written statement. The notice will also inform the parties that the appeal authority's decision is final and no further appeals may be made within the university. Judicial review of the university's decision may be available under chapter 34.05 RCW.

NEW SECTION

WAC 172-125-250 Sanctions and remedies. If any student or student organization is found to have committed a violation of WAC 172-125-010, one or more of the sanctions described in this section may be imposed against the student or student organization. Imposed sanctions are effective as of the date the director or student disciplinary council issues its decision unless the decision specifically identifies an alternative date. Failure to comply with any imposed sanction may result in additional sanctions. In addition to the sanction imposed by this code, if a student is also an employee of the university, the university may impose additional discipline in accordance with its policies and procedures pertaining to employees.

(1) **Individual student sanctions.**

(a) **Admonition:** An oral statement to a student that they have violated university rules and regulations.

(b) Warning: A notice to the student or student organization that they have violated the standards for students and that any repeated or continuing violation of the same standard, within a specified period of time, may result in more severe disciplinary action. A warning may be verbal or written.

(c) Censure: A written reprimand for violation of specified regulations. A censure will also state that more severe disciplinary sanctions may be imposed if the student or student organization is found in violation of any university policy or regulation within a stated period of time.

(d) Disciplinary probation: A formal action which places one or more conditions, for a specified period of time, on the student's continued attendance. Disciplinary probation sanctions will be executed in writing and will specify the probationary conditions and the period of the probation. A disciplinary probation notice will also inform the student that any further misconduct will automatically involve consideration of suspension. Probationary conditions may include, but are not limited to:

(i) Restricting the student's university-related privileges;

(ii) Limiting the student's participation in extracurricular activities; and/or

(iii) Enforcing a "no contact" order which would prohibit direct or indirect physical and/or verbal contact with specific individuals or groups.

(e) Restitution: Reimbursement to the university or others for damage, destruction, or other loss of property. Restitution also includes reimbursement for medical expenses incurred due to code violations. Restitution may take the form of appropriate service or other compensation. Failure to fulfill restitution requirements may result in a hold on a student's ability to register and may prevent the student from future registration until restitution conditions are satisfied.

(f) Fines: Monetary fines up to a maximum of \$500 against individual students for violation of university rules or regulations or for failure to comply with university standards of conduct may be imposed. Failure to promptly pay such fines may prevent the student from future registration. Failure to pay may also result in additional sanctions.

(g) Discretionary sanctions: Work assignments, service to the university community or other related discretionary assignments for a specified period of time as directed by the hearing authority.

(h) Loss of financial aid: In accordance with RCW 28B.10.902, a person who participates in the hazing of another forfeits entitlement to state-funded grants, scholarships or awards for a specified period of time determined by the university.

(i) Assessment: Referral for drug/alcohol or psychological assessment may be required. Results of the assessment may lead to the determination that conditions of treatment and further assessment apply to either continued attendance or return after a period of suspension.

(j) Suspension: Exclusion from classes and other privileges or activities for a specified period of time. Suspensions will be executed through a written order of suspension and will state all restrictions imposed by the suspension, as well as the suspension period and what conditions of readmission, if any, are ordered. Suspensions may be noted on the student's transcript during the period of time the suspension is in effect.

(k) **Expulsion:** Permanent separation of the student from the university with no promise (implied or otherwise) that the student may return at any future time. The student will also be barred from university premises. Expulsions may be noted on the student's transcript.

(l) **Loss of institutional, financial aid funds:** Formal withholding of all or a part of institutional funds currently being received by the student or promised for future disbursement to the student for a specified period of time. Loss of financial aid is subject to the processes outlined in this chapter except any such loss must be approved by the dean of students and the vice president for student affairs before such sanction is imposed.

(m) **Revocation of degree:** A degree awarded by the university may be revoked for fraud, misrepresentation, or other violation of law or university standards. Revocation of a degree is subject to processes outlined in this chapter except that revocation of a degree must also be approved by the university president.

(2) **Student organizations and/or group sanctions.** Any of the above sanctions may be imposed in addition to those listed below:

(a) **Probation:** Formal action placing conditions on the group's continued recognition by or permission to function at the university. The probationary conditions will apply for a specified period of time. Violation of the conditions of probation or additional violations while under probation may result in more severe sanctions;

(b) **Social probation:** Prohibition of the group from sponsoring any organized social activity, party or function, or from obtaining a permission for the use of alcoholic beverages at social functions for a specified period of time;

(c) **Restriction:** The temporary withdrawal of university or ASEWU recognition for a group, club, society or other organization. Restriction is subject to the processes outlined in this chapter except any restriction must also be approved by the dean of students and the vice president of student affairs before such sanction is imposed;

(d) **Revocation:** The permanent withdrawal of university or ASEWU recognition for a group, club, society or other organization. Per RCW 28B.10.902, any organization, association, or student living group that knowingly permits hazing to be conducted by its members or by others subject to its direction or control shall be deprived of recognition by the university;

(e) **Additional sanctions:** In addition to or separately from the above, any one or a combination of the following may be concurrently imposed on the group:

(i) Exclusion from intramural competition as a group;

(ii) Denial of use of university facilities for meetings, events, etc.;

(iii) Restitution; and/or

(iv) Fines.

(3) **Remedies.** For violations of this code, the university may provide remedies to the complainant and other students impacted by the discriminatory conduct designed to restore or preserve equal access to the university's educational programs or activities.

PART III: DEFINITIONS AND ADMINISTRATIONNEW SECTION

WAC 172-125-300 Definitions. For purposes of this code, chapter 172-125 WAC, the definitions in this section apply.

"Appeal authority" refers to the university official presiding over an appeal.

"Appellant" refers to any respondent or complainant who appeals a decision.

"Complainant" means the person who was subjected to the alleged misconduct. The complainant may or may not be the reporting party. If the person who was subjected to the alleged misconduct does not wish to pursue a complaint under this code, the university may initiate the student conduct process on its own behalf.

"Complaint" means an oral or written request to the university to investigate a report of discrimination.

"Council" or "the council" refers to the student disciplinary council.

"Council hearing" refers to a full conduct review hearing before the student disciplinary council.

"Dean of students" refers to the dean of students or designee.

"Director of SRR" or "director" refers to the director of student rights and responsibilities or designee.

"File" or "filing" means to actually deliver documents. Documents required to be filed with a specific person at EWU under these rules shall be deemed filed upon actual receipt during office hours at EWU. Papers may be filed by delivering them to the student rights and responsibilities office, sending them via United States mail, properly addressed, postage prepaid, to 129 Showalter Hall, or emailing them to srr@ewu.edu.

"Interpersonal violence" encompasses domestic violence, dating violence, and stalking.

"Level One Process" refers to the grievance procedures used to investigate and make determinations of responsibility for violations of this code that, if substantiated by a preponderance of evidence, would result in a sanction less than a suspension or expulsion, and do not involve felony-level crimes.

"Level Two Process" refers to the grievance procedures used to investigate and make determinations of responsibility for violations of this code that, if substantiated by a preponderance of evidence, may result in a sanction of suspension or expulsion, or involve felony-level crimes.

"Off-campus" refers to any location or facility that is not owned, leased, rented, or operated by Eastern Washington University.

"Party/parties" refers to the complainant, respondent, and/or the university.

"Policies" or "university policy" refers to the written regulations of the university, including the standards of conduct for students, residence life handbook, housing contract, university policies, and graduate/undergraduate catalogs and handbooks.

"Presiding officer" refers to the university official who is assigned to preside over a student disciplinary council hearing.

"Recognized student organizations" refers to clubs, organizations, societies or similarly organized groups recognized by the university or the Associated Students of Eastern Washington University (ASEWU).

"Reporting party" means the person who notifies the university of alleged misconduct by a student or student organization. The reporting party may also be the complainant, but need not be the complainant.

"Respondent" refers to any student or student organization accused of violating the student conduct code under this chapter.

"Serve" means to send a document through electronic mail addressed to the party's university-issued email address or, if the party does not have a university-issued email address, to the email address on record with the university. Service is complete when the email is sent to the email address. Service may also be accomplished by personal delivery or regular U.S. mail. Notifications via regular U.S. mail are sent to the party's last known address or the address on file with the university registrar, and service is complete on the date the notice is placed in the mail. The student is responsible for maintaining an updated mailing address on file with the registrar. Recognized or registered student organizations are responsible for updating their mailing address with their designated university office.

"Student" includes all of the following:

(a) Any applicant who becomes enrolled, for violations of the code committed as part of the application process or committed following the applicant's submission of the application until the time of official enrollment;

(b) Any person who is enrolled or has been enrolled at the university for up to 12 months from the last date they were enrolled;

(c) Nonmatriculated, international students attending institutes or foreign study programs through the university; and

(d) Any person who was previously enrolled at the university for violations of the code committed while enrolled regardless of when they were enrolled. A person who engaged in conduct in violation of this code while a student remains subject to action under this code even if the person has graduated, withdrawn, or is not currently enrolled for any reason.

"Title IX coordinator" refers to the Title IX coordinator or designee.

"University" means Eastern Washington University.

"University official" includes any person employed or contracted by the university, performing assigned administrative or professional responsibilities.

"University premises" means buildings and/or property (including adjacent streets and sidewalks) which are owned, leased, rented, or operated by the university.

"University president" refers to the university president or designee.

"Vice president for student affairs" refers to the vice president for student affairs or designee.

NEW SECTION

WAC 172-125-301 Calculation of time periods. In calculating any of the time periods identified in this code, the day of any act or service of notice is not included in calculating the deadlines. For example, if an order is served on a student on a Monday and the student has 10 calendar days to appeal the order, the date of service (Monday) does not count towards the time period, the next day (Tuesday) does count toward the time period, and the appeal would be due by 5:00 p.m. on the following Thursday.

If the last day of a time period ends on a Saturday or Sunday, the deadline is extended to 5:00 p.m. on Monday. If the last day of a time period ends on a university holiday, the deadline is extended to 5:00 p.m. on the next weekday following the holiday.

NEW SECTION

WAC 172-125-302 Conflicts of interest and bias. (1) Individuals who play a role in investigating, presiding over, and making decisions pertaining to individual cases under this code including, but not limited to, the Title IX coordinator, dean of students, investigator, presiding officer, council, and appeal authority, shall not have any conflict of interest in the process or a bias for or against complainants or respondents generally or an individual complainant or respondent. A conflict of interest exists if the investigator, presiding officer or decision maker is the respondent, complainant, or a witness; if the respondent, complainant, or witness is a family member or friend; if the individual has a personal interest or bias; or if the individual has previously served in an advisory capacity for any of the parties or witnesses. In the event such a conflict arises in the process, the person shall disclose such interest to the parties. Parties to the complaint who believe a university official involved in the process has a conflict of interest may report such concerns to the Title IX coordinator within three calendar days of becoming aware of the potential conflict. The Title IX coordinator or designee shall determine whether a conflict of interest exists and take appropriate action. If the Title IX coordinator is the person alleged to have a conflict of interest or bias, the party may report such concerns to the dean of students, and the dean of students shall determine whether a conflict of interest exists and take appropriate action.

(2) Challenges to council membership. Members of the student disciplinary council and the presiding officer are subject to the conflict of interest limitations set forth in subsection (1) of this section.

(a) If a member has such a conflict, the person shall recuse themselves from further involvement in the case. In the event such a conflict arises after the council has been selected or during a proceeding, the member shall disclose the conflict to the parties.

(b) A council member's or the presiding officer's eligibility to participate in a case may be challenged by parties to the case or by other council members at any time by submitting a motion to disqualify to the presiding officer. When such a challenge is made, the session council, excluding the person alleged to have a conflict of interest, shall make a decision on the challenge.

(c) If a member is disqualified or disqualifies him/herself from a case, the presiding officer will appoint a replacement.

NEW SECTION

WAC 172-125-305 Administration and records. (1) **Authority and interpretation.** The board of trustees of Eastern Washington University, acting under the authority granted by RCW 28B.35.120, has established this code for addressing concerns of discrimination by students. The responsibility for enforcement of this code rests with the university president and is further delegated to the vice president for student affairs and Title IX coordinator. Any questions regarding the interpretation or application of this code are referred to the Title IX coordinator for final determination. This code is not intended to protect any person or class of persons from injury or harm.

(2) **Records of resolution and grievance procedures.** Records relating to complaints, supportive measures, informal resolutions, investigations, conduct proceedings, sanctions, and remedies under this chapter shall be kept by the Title IX office for seven years from conclusion of a proceeding. Records pertaining to sanctions must also be maintained by the office of student rights and responsibilities for seven years from the conclusion of a proceeding.

(3) **Confidentiality of student disciplinary records.**

(a) Student disciplinary records are confidential and shall be treated consistently with the requirements of the Family Educational Rights and Privacy Act (FERPA) and applicable law. Disciplinary records shall be maintained in accordance with the university's records retention schedule.

(b) Release of student disciplinary records. The university shall not communicate a student's disciplinary record to any person or agency outside the university without the prior written consent of the student, except as required or permitted by law. Exceptions include, but are not limited to:

(i) The student's parents or legal guardians may review these records as permitted by FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99).

(ii) Release to another educational institution, upon request, where the student seeks or intends to enroll, as allowed by FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99).

(iii) In response to a judicial order or a lawfully issued subpoena.

(iv) The university shall release information related to disciplinary records to complainants or other persons as required by Title IX of the Education Amendments of 1972, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, and other state and federal laws.

(v) Disciplinary records will be made available to hearing councils and university personnel as needed for legitimate educational purposes.

(vi) A student may authorize release of their own disciplinary record to a third party in compliance with FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99) by providing a written consent to student rights and responsibilities.

(vii) Any student may review his/her own disciplinary records by contacting student rights and responsibilities.

(viii) A student may obtain a copy of their disciplinary record by making a written request to student rights and responsibilities. The university may charge the student a reasonable amount to cover copying expenses.

(ix) The university may disclose to a student's parents a violation of any federal, state, or local law, or of any university policy or rules regarding use or possession of alcohol or a controlled substance so long as the student is under the age of 21 at the time of the disclosure to the parent.

(c) When disciplinary records are released, personally identifiable information may be redacted to protect the privacy of others as permitted by law.

(d) Supportive measures. The university will keep any supportive measures provided to the complainant or respondent confidential to the extent that maintaining such confidentiality will not impair the ability of the university to provide the supportive measures.

(4) **Holds.**

(a) Types of holds. Holds placed on a student's academic records may prevent admission, registration, graduation, or other academic activities. Holds may also restrict access to transcripts, grades, or other academic records.

(b) Discretionary holds: The director or presiding officer may place a hold on a student's academic records in either of the following situations:

(i) Pending the student's satisfactory completion of any sanctions imposed under this code; or

(ii) If the student fails to respond to any properly delivered notice under this code.

(c) Required holds: The director shall place a hold on a student's academic record if the student is the respondent to a violation of the conduct code and has withdrawn from the university, or if the student withdraws from the university after a complaint is filed against the student. A hold is also required if a student is subject to a pending student conduct complaint at the time of graduation. This hold shall remain in place until the allegation or complaint is resolved.

WSR 24-22-049
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed October 28, 2024, 9:48 a.m., effective November 28, 2024]

Effective Date of Rule: Thirty-one days after filing.

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

Citation of Rules Affected by this Order: Amending WAC 392-123-060.

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

Adopted under notice filed as WSR 24-17-029 on August 12, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 28, 2024.

Chris P.S. Reykdal
State Superintendent of Public Instruction

OTS-5283.1

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

WAC 392-123-060 Petition to budget receivables collectible in future fiscal periods. When a school district or charter school is unable to prepare a budget or a budget extension in which the estimated revenues for the budgeted fiscal period plus the estimated fund balance or actual fund balance in case of a budget extension, at the beginning of the budgeted fiscal period less the ending reserved fund balance for the budgeted fiscal year do not at least equal the estimated expenditures for the budgeted fiscal period, the school district board of directors or charter school board may deliver a petition in writing at least (~~twenty~~) 20 days before the budget or budget extension is scheduled for adoption to the superintendent of public in-

struction requesting permission to include receivables collectible in future periods beyond the fiscal period being budgeted in order to balance the budget or budget extension for the fiscal period being budgeted. Said petition shall include a resolution of the school board requesting permission to budget receivables collectible in future fiscal periods and other such information as the superintendent of public instruction shall deem as necessary.

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

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

WSR 24-22-050
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed October 28, 2024, 9:48 a.m., effective November 28, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The office of superintendent of public instruction is adopting rule making to reflect changes under HB 2739 (2020) in order to align shared leave provisions for school district and educational service district employees with those for state employees. Additionally, rule changes to the employee attendance incentive program for school district and educational service district employees will be adopted to ensure consistency with those for state employees.

Citation of Rules Affected by this Order: Amending WAC 392-136-015, 392-136-020, 392-136A-030, and 392-136A-045.

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

Adopted under notice filed as WSR 24-17-030 on August 12, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 4, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 28, 2024.

Chris P.S. Reykdal
State Superintendent of Public Instruction

OTS-5761.1

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Eligible school district employees who qualify under an attendance incentive program established by the school district board of directors pursuant to WAC 392-136-065 and who have previously separated from a school district due to retirement may cash out subsequent earned sick leave under the following exceptions:

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

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

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

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

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

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

OTS-5762.1

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

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

- (1) The employee:
 - (a) Suffers from, or has a relative or household member suffering from, an illness, injury, impairment, or physical or mental condition which is of an extraordinary or severe nature;
 - (b) Has been called to service in the uniformed services;
 - (c) A state of emergency has been declared anywhere within the United States by the federal or any state government and the employee has the needed skills to assist in responding to the emergency or its aftermath and volunteers his or her services to either a governmental agency or to a nonprofit organization engaged in humanitarian relief in the devastated area, and the governmental agency or nonprofit organization accepts the employee's offer of volunteer services;
 - (d) Is a victim of domestic violence, sexual assault, or stalking;
 - (e) Is a current member of the uniformed services or is a veteran as defined under RCW 41.04.005, and is attending medical appointments or treatments for a service connected injury or disability;
 - (f) Is a spouse of a current member of the uniformed services or a veteran as defined under RCW 41.04.005, who is attending medical appointments or treatments for a service connected injury or disability and requires assistance while attending appointment or treatment;
 - (g) Needs the time for parental leave; or
 - (h) Is sick or temporarily disabled because of pregnancy disability.
- (2) The condition(s) listed in subsection (1) of this section has caused, or is likely to cause, the employee to go on leave without pay or terminate district employment.
- (3) The employee's absence and the use of shared leave are justified.
- (4) The employee has depleted or will shortly deplete leave in accordance with WAC 392-136A-040.
- (5) The employee has abided by district policies regarding:
 - (a) Sick leave use if the employee qualifies under subsection (1)(a), (d), (g), or (h) of this section; or
 - (b) Military leave use if the employee qualifies under subsection (1)(b) of this section.
- (6) ~~((If the illness or injury is work-related, the employee has diligently pursued and been found to be ineligible for benefits under chapter 51.32 RCW.~~
- ~~(7))~~ The employee's job is one in which annual leave, sick leave, military leave, or personal holiday can be used and accrued.

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

WAC 392-136A-045 Maximum amount. (1) The district determines the amount of shared leave, if any, which a leave recipient may receive. However, a leave recipient must not receive more than 522 days

of shared leave during total district employment. The district may authorize shared leave in excess of 522 days in extraordinary circumstances for a leave recipient qualifying for shared leave because they are suffering from an illness, injury, impairment, or physical or mental condition which is of an extraordinary or severe nature.

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

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

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

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

WSR 24-22-051
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed October 28, 2024, 9:50 a.m., effective November 28, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The office of superintendent of public instruction is adopting rule making to extend the apportionment advance request and payout periods for school districts and charter schools, and to establish requirements for repayment assurance and apportionment advance repayment schedules for funds received. As a result of enrollment declines, expiring access to federal COVID[-19] relief, unanticipated rise in uncontrollable costs, and other unforeseen events, many districts have experienced unprecedented financial difficulties. Extending the apportionment request, payout, and repayment periods would allow districts to access funds that are essential for the continuity of operations, maintenance, and other education services.

Citation of Rules Affected by this Order: Amending WAC 392-121-436, 392-121-438, and 392-121-443.

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

Adopted under notice filed as WSR 24-17-031 on August 12, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 28, 2024.

Chris P.S. Reykdal
State Superintendent of Public Instruction

OTS-5363.1

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

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

- (1) The nature of the unforeseen condition requiring the advance;
- (2) The amount requested to be advanced;

(3) The net cash and investment balance of the general fund as of the date of the resolution;

(4) A forecast of the general fund receipts, disbursements, and net cash and investment balance for each month remaining in the fiscal year; ~~((and))~~

(5) A disclosure of any existing or planned general fund revenue anticipation notes ~~((-))~~;

(6) A disclosure of any existing or planned general fund loan to or from another fund of the school district or charter school; and

(7) A written acknowledgment that funds advanced will be repaid in accordance with WAC 392-121-443, subject to approval by the superintendent of public instruction.

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

WAC 392-121-438 Emergency advance payments—Approval criteria.

The superintendent of public instruction shall approve requests for an emergency advance if the following conditions are met:

(1) The unforeseen condition causing the need for the emergency advance could not have been anticipated by a reasonably prudent person.

(2) It is probable that if the emergency advance is not made that the school district or charter school will be on:

(a) An interest-bearing, warrant-issuing basis within two months following the receipt of the resolution; and

(b) Warrant interest for at least three months from September through June.

(3) The school district or charter school shall not have:

(a) Cash investments of the general fund during the months it estimates that it would pay warrant interest except for the emergency advance; or

(b) Inter-fund loans from the general fund to any other funds during the months it estimates that it would pay warrant interest; or

(c) Any existing or anticipated general fund revenue anticipated notes.

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

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

WAC 392-121-443 Emergency advance payments—Repayment of advances. Repayments of advances will be accomplished by a reduction in the school district's or charter school's apportionment payments ~~((on))~~. Under RCW 28A.510.250, all apportionment advances must be re-

paid during the apportionment year in which the funds are advanced.

The repayment requirements are defined as follows:

(1) For advances received before June, at least 50 percent of the amount advanced must be repaid in or before June ((in)) of the current school year, with the remaining balance repaid no later than August of the current school year.

(2) For advances received in June, at least 50 percent of the amount advanced must be repaid in July of the current school year, with the remaining balance paid in August of the current school year.

(3) For advances received in July, the full balance must be repaid in August of the current school year.

(4) In no instance can an apportionment advance be repaid and re-approved in the subsequent month.

WSR 24-22-058
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed October 28, 2024, 2:47 p.m., effective November 28, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department of social and health services is adopting amendments to WAC 388-492-0070 How are my WASHCAP food benefits calculated?

These amendments maintain alignment between Washington combined application project (WASHCAP) rules and federal requirements. As a means of maintaining cost neutrality, the United States Department of Agriculture's Food and Nutrition Service periodically adjusts WASHCAP program standards.

Citation of Rules Affected by this Order: Amending WAC 388-492-0070.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090.

Adopted under notice filed as WSR 24-18-090 on August 30, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 1, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: October 28, 2024.

Katherine I. Vasquez
Rules Coordinator

SHS-5046.1

AMENDATORY SECTION (Amending WSR 19-03-023, filed 1/4/19, effective 2/4/19)

WAC 388-492-0070 How are my WASHCAP food benefits calculated?

We calculate your Washington state combined application project (WASHCAP) food benefits as follows:

- (1) We begin with your gross income.
- (2) We subtract the current standard deduction for one person under WAC 388-450-0185 from your gross income to get your countable income.
- (3) We figure your shelter cost based on information we receive from the Social Security Administration (SSA) unless you report a change as described under WAC 388-492-0080.

(a) If you pay more than (~~three hundred twenty dollars~~) \$320 a month for shelter, we use (~~four hundred twenty five dollars~~) \$460 as your shelter cost.

(b) If you pay (~~three hundred twenty dollars~~) \$320 or less a month for shelter, we use (~~two hundred ten dollars~~) \$210 as your shelter cost.

(c) We add the current standard utility allowance under WAC 388-450-0195 to the shelter cost we use under either (a) or (b) of this subsection to determine your total shelter cost.

(4) We figure your shelter deduction by subtracting one half of your countable income from your total shelter cost under subsection (3)(c) of this section.

(5) We figure your net income by subtracting your shelter deduction from your countable income and rounding the resulting figure up from (~~fifty~~) 50 cents and down from (~~forty-nine~~) 49 cents to the nearest whole dollar.

(6) We figure your WASHCAP food benefits (allotment) by:

(a) Multiplying your net income by (~~thirty~~) 30 percent and rounding up to the next whole dollar; and

(b) Subtracting the result from the maximum allotment under WAC 388-478-0060.

(7) If you are eligible for WASHCAP, you will get at least the minimum monthly benefit for basic food under WAC 388-412-0015.

WSR 24-22-069

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed October 29, 2024, 1:48 p.m., effective November 29, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department of revenue is implementing HB 2044 (2024) by removing now obsolete requirements which addressed the supplanting of existing funds.

Citation of Rules Affected by this Order: Amending WAC 458-19-045 Removal of limit (lid lift).

Statutory Authority for Adoption: RCW 84.08.010, 84.08.070, 84.55.060.

Other Authority: RCW 84.55.050.

Adopted under notice filed as WSR 24-17-138 on August 21, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 29, 2024.

Brenton Madison
Rules Coordinator

OTS-5792.1

AMENDATORY SECTION (Amending WSR 21-23-063, filed 11/12/21, effective 12/13/21)

WAC 458-19-045 Levy limit—Removal of limit (lid lift). (1) **Introduction.** This rule explains the procedures for implementing a lid lift ballot measure when a taxing district wants to ask its voters for the authority to exceed the levy limit.

(2) **Definitions.** The definitions in WAC 458-19-005 apply to this rule.

(3) **Lid lift - Purpose.** The purpose of a lid lift is to allow additional property taxes to be collected at a time when the levy limit in chapter 84.55 RCW is the effective legal constraint to increasing property taxes. A levy limit may be exceeded when authorized by a majority of the voters voting on a proposition to "lift the lid" of the levy limit as described in RCW 84.55.050. This "lid lift" is intended to allow the levy limit to be exceeded for the levy made immediately following the vote on the proposition. Lid lifts may result in increasing the limit factor, as defined in WAC 458-19-005, for one year or up to six consecutive years. The result of the limit factor in-

crease can temporarily or permanently impact subsequent levy limit calculations.

(4) **Election for approval of lid lift proposition - When held.**

The election to approve a lid lift proposition must be held within the taxing district and may be held at the time of a general election, or at a special election called by the governing body of the taxing district for that purpose. The election must not be held more than ~~((twelve))~~ 12 months prior to the date the proposed levy is to be made. For purposes of this rule, a levy is "made" when the taxing district's budget is certified. The ballot title and measure proposing the lid lift are prepared by the county prosecutor or city attorney, as applicable, in accordance with RCW 29A.36.071. RCW 29A.36.071 requires a ballot title to include a concise description of the measure, not to exceed 75 words. The requirements for the text of a ballot title and measure differ depending on whether the levy limit will be exceeded for a single year or multiple years, up to six consecutive years. A simple majority vote is required for approval of a lid lift.

(5) **Single year lid lift.** A single year lid lift allows a taxing district to increase its levy by more than one percent over its highest lawful levy since 1985 for 1986 collection, for one year.

(6) **Ballot title and measure - Single year lid lift.** The text of a ballot title and measure for a single year lid lift must contain the following:

(a) The dollar rate of the proposed levy so that it reflects the total dollar rate for the taxing district, which may be less than the maximum statutory dollar rate allowed for the particular class of taxing district; and

(b) Any of the following conditions that are applicable:

(i) The number of years the increased levy is to be made by the taxing district; however, if one of the purposes of the increased levy is to make redemption payments on bonds of the taxing district, the duration of the increased levy cannot exceed nine years, except for taxes levied for collection in 2018 and thereafter in Thurston County, the period for which the increased levies are made may not exceed 25 years;

(ii) The purpose or purposes of the increased levy;

(iii) Whether the dollar amount of the increased levy will be used for the purpose of computing the limitations for subsequent levies and thereby permanently increase the taxing district's levy base; and

(iv) Whether the increase in regular property taxes by a county or city resulting from the approval of the lid lift will not apply to property exempt under the senior citizens and disabled persons property tax exemption in RCW 84.36.381.

(7) **Multiple year lid lift.** A multiple year lid lift allows a taxing district to increase its levy by more than one percent over its highest lawful levy since 1985 for 1986 collection, for up to six consecutive years.

~~((a) Ballot title and measure.)~~ The text of a ballot title and measure for a multiple year lid lift must contain the following:

~~((i))~~ (a) The dollar rate of the first year's proposed levy so that it reflects the total dollar rate for the taxing district, which may be less than the maximum statutory dollar rate allowed for the particular class of taxing district;

~~((ii))~~ (b) The limit factor, or specific index used to determine the limit factor (such as the consumer price index), which is not required to be the same for all years, by which the regular tax levy

for the district may be increased in each of the subsequent consecutive years;

~~((iii))~~ (c) The limited purposes for which the proposed annual increases will be used; and

~~((iv))~~ (d) Any of the following conditions that are applicable:

~~((A))~~ (i) The number of years the increased levy is to be made by the taxing district; however, if one of the purposes of the increased levy is to make redemption payments on bonds of the taxing district, the duration of the increased levy cannot exceed nine years, except for taxes levied for collection in 2018 and thereafter in Thurston County, the period for which the increased levies are made may not exceed 25 years;

~~((B))~~ (ii) The purpose or purposes of the increased levy;

~~((C))~~ (iii) Whether the dollar amount of the increased levy will be used for the purpose of computing the limitations for subsequent levies and thereby permanently increase the taxing district's levy base; and

~~((D))~~ (iv) Whether the increase in regular property taxes by a county or city resulting from the approval of the lid lift will not apply to property exempt under the senior citizens and disabled persons property tax exemption in RCW 84.36.381.

~~((b) Supplanting of existing funds.~~

~~(i) Except as otherwise provided in (b) of this subsection, funds raised by a levy under this rule may not supplant existing funds used for the limited purpose specified in the ballot title. For purposes of (b) of this subsection, existing funds means the actual operating expenditures for the calendar year in which the ballot measure is approved by voters. Actual operating expenditures excludes:~~

~~(A) Lost federal funds;~~

~~(B) Lost or expired state grants or loans;~~

~~(C) Extraordinary events not likely to reoccur;~~

~~(D) Changes in contract provisions beyond the control of the taxing district receiving the services; and~~

~~(E) Major nonrecurring capital expenditures.~~

~~(ii) In counties with a population of less than \$1,500,000, funds raised through a lid lift can be used to supplant existing funds beginning with levies submitted and approved by the voters after July 26, 2009.~~

~~(iii) In counties with a population of 1,500,000 or more, funds raised through a lid lift can be used to supplant existing funds if the levy was approved by the voters after July 26, 2009, and in one of the following calendar years; 2009, 2010, 2011, 2015, 2016, 2017, 2018, 2019, 2020, 2021, and 2022.)~~

(8) **Permanent lid lift.** A permanent lid lift occurs when the ballot title and measure expressly state that the levy will be used for the purpose of computing the limitations for subsequent levies as provided in subsections (6)(b)(iii) and (7)~~((a)(iv)(C))~~ (d)(iii) of this rule. Approval of a permanent lid lift permanently increases the base used to calculate the levy limit.

(a) First levy after voter approval. The first regular levy of a taxing district made after voter approval of a permanent lid lift proposition is calculated on the basis of the dollar rate stated in the ballot title. The dollar rate is subject to the constitutional one percent limit, the statutory aggregate dollar rate limit, and any applicable prorationing.

(b) Subsequent levies. The levy limit on regular levies of a taxing district made subsequent to the first regular levy made after vot-

er approval of a permanent lid lift proposition is calculated by multiplying the highest amount that could have been lawfully levied since 1985 for 1986 collection, including the dollar amount of the regular levy calculated in (a) of this subsection, by the limit factor.

(9) **Temporary lid lift.** If the ballot title and measure do not expressly indicate that the final levy will be used for the purpose of computing subsequent levies, the levy increase is temporary.

(a) First levy after voter approval. The first regular levy of a taxing district made after voter approval of a temporary lid lift proposition is calculated on the basis of the dollar rate stated in the ballot title. The dollar rate is subject to the constitutional one percent limit, the statutory aggregate dollar rate limit, and any applicable prorationing.

(b) Subsequent levies. The levy limit on regular levies of a taxing district made subsequent to the first regular levy made after voter approval of a temporary lid lift proposition is calculated by multiplying the highest amount that could have been lawfully levied since 1985 for 1986 collection, including the dollar amount of the regular levy calculated in (a) of this subsection, by the limit factor.

WSR 24-22-070

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed October 29, 2024, 1:56 p.m., effective November 29, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department of revenue (department) is amending WAC 458-16-560 to incorporate changes enacted pursuant to SSB 5386 (2023) and SHB 2012 (2024). Specifically, the department is updating subsections (4)(iii)-(iv) to update statutory citations and adding a new subsection (4)(vi) to the rule.

Citation of Rules Affected by this Order: WAC 458-16-560 Housing for qualifying households.

Statutory Authority for Adoption: RCW 82.01.060, 82.32.300.

Adopted under notice filed as WSR 24-17-136 on August 21, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 29, 2024.

Brenton Madison
Rules Coordinator

OTS-5770.1

AMENDATORY SECTION (Amending WSR 21-01-063, filed 12/9/20, effective 1/9/21)

WAC 458-16-560 Housing for qualifying households. (1)(a) **Introduction.** This rule explains the real and personal property tax exemption that may be claimed by nonprofit entities providing rental housing or lots for mobile homes within a mobile home park, mobile home park cooperative, or manufactured housing cooperative for occupancy by qualifying households in accordance with RCW 84.36.560.

(b) **Examples.** This rule includes examples that identify a number of facts and then state a conclusion. These examples should only be used as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances.

(2) **Definitions.** For the purposes of this rule, the following definitions apply:

(a) "Group home" means a single-family dwelling financed, in whole or in part, by one or more of the sources listed in subsection (4)(d) of this rule. A "group home" has multiple units occupied on a (~~(twenty-four)~~) 24-hour basis by persons who are not related by birth

or marriage and who are not dependent upon each other financially. Residents of a "group home" typically receive financial assistance from the federal or state government, such as Social Security benefits or supplementary security insurance.

(b) "Mobile home lot" or "mobile home park" means the same as these terms are defined in RCW 59.20.030.

(c) "Nonprofit entity" means a:

(i) Nonprofit as defined in RCW 84.36.800 that is exempt from income tax under section 501(c) of the federal Internal Revenue Code, as amended;

(ii) Limited partnership in which a general partner is a nonprofit as defined in RCW 84.36.800 that is exempt from income tax under section 501(c) of the federal Internal Revenue Code, as amended, a public corporation established under RCW 35.21.660, 35.21.670, or 35.21.730, a housing authority created under RCW 35.82.030 or 35.82.300, or a housing authority meeting the definition in RCW 35.82.210 (2) (a);

(iii) Limited liability company in which a managing member is a nonprofit as defined in RCW 84.36.800 that is exempt from income tax under section 501(c) of the federal Internal Revenue Code, as amended, a public corporation established under RCW 35.21.660, 35.21.670, or 35.21.730, a housing authority established under RCW 35.82.030 or 35.82.300, or a housing authority meeting the definition in RCW 35.82.210 (2) (a); or

(iv) Mobile home park cooperative or a manufactured housing cooperative, as defined in RCW 59.20.030. A "mobile home park cooperative" and a "manufactured housing cooperative" are defined as real property consisting of common areas and two or more lots held out for placement of mobile homes, manufactured homes, or park models in which both the individual lots and the common areas are owned by an association of shareholders which leases or otherwise extends the right to occupy individual lots to its own members.

(d) "Occupied dwelling unit" means a living unit that is occupied by an individual or household as of December 31st of the first assessment year the rental housing or mobile home park becomes operational or is occupied by an individual or household on January 1st of each subsequent assessment year in which the claim for exemption is submitted.

(e) "Qualifying household" means:

(i) Until June 30, 2021, a single person, family, or unrelated persons living together whose income is at or below (~~fifty~~) 50 percent of the median income adjusted for family size as most recently determined by the federal Department of Housing and Urban Development for the county in which the rental housing or mobile home park is located. The median income level is that which is in effect as of January 1st of the year the application for exemption is submitted.

(ii) Beginning July 1, 2021, a single person, family, or unrelated persons living together whose income is at or below (~~sixty~~) 60 percent of the median income adjusted for family size as most recently determined by the federal Department of Housing and Urban Development for the county in which the rental housing or mobile home park is located. The median income level is that which is in effect as of January 1st of the year the application for exemption is submitted.

(f) "Rental housing" means a residential housing facility or group home that is occupied, but not owned, by qualifying households.

(3) **Initial application and renewal declaration.**

(a) Initial application. An initial application for exemption must be filed with the department on or before March 31st to exempt property from taxes due in the following year. However, an initial application may be filed after March 31st if the property is acquired or converted to an exempt use after that date, if the property may qualify for an exemption under chapter 84.36 RCW.

(b) Renewal declaration. In order to requalify for exempt status, a nonprofit entity receiving this exemption must file a renewal declaration on or before March 31st of every third year following initial qualification for exemption.

(c) Additional information about the application and renewal requirements for this exemption can be found in WAC 458-16-110 Initial application and renewal declaration.

(4) **Full exemption.** Real and personal property is exempt from property taxes if:

(a) The property is owned or used by a nonprofit entity, as defined in subsection (2) of this rule, in providing rental housing for qualifying households or used to provide a lot of land upon which a mobile home for a qualifying household will be placed in a mobile home park;

(b) The benefit of the exemption is received by the nonprofit entity. That is, if the property is leased to or used by, but not owned by, a nonprofit entity, the reduction in property taxes due to the exemption is passed on to the nonprofit user either through a reduction in rent, reimbursement of rent, or property tax paid;

(c) At least (~~seventy-five~~) 75 percent of the occupied dwelling units in the rental housing or lots in the mobile home park are occupied by qualifying households; and

(d) The rental housing or lots in the mobile home park are insured, financed, or assisted, in whole or in part, through one or more of the following sources:

(i) A federal or state housing program administered by the department of commerce;

(ii) A federal housing program administered by a city or county government;

(iii) An affordable housing levy authorized under RCW 84.52.105 or 84.55.050;

(iv) The surcharges authorized by RCW (~~36.22.178 and 36.22.179~~) 36.22.250 and any of the surcharges authorized in chapter 43.185C RCW; (~~or~~)

(v) The Washington state housing finance commission, provided that the financing is for a mobile home park cooperative or a manufactured housing cooperative, as defined in RCW 59.20.030, or a nonprofit entity; or

(vi) City or county funds designated for affordable housing.

(5) **Partial exemption.** If less than (~~seventy-five~~) 75 percent of the occupied dwelling units within the rental housing or lots in the mobile home park are occupied by qualifying households, the rental housing or mobile home park is eligible for a partial exemption on the real property and a total exemption on the housing's or park's personal property. The property must be owned or used by a nonprofit entity in providing rental housing for qualifying households or used to provide a lot upon which a mobile home for a qualifying household will be placed in a mobile home park.

(a) A partial exemption will be allowed for each dwelling unit in the rental housing or for each lot in the mobile home park occupied by a qualifying household; and

(b) The amount of the real property exemption will be calculated by multiplying the assessed value of the property reasonably necessary to provide the rental housing or to operate the mobile home park by a fraction. The formula for determining the fraction is as follows:

(i) The numerator of the fraction is the number of dwelling units or lots occupied by qualifying households as of December 31st of the first assessment year in which the rental housing facility or mobile home park becomes operational, or on January 1st of each subsequent assessment year in which the claim for exemption is submitted; and

(ii) The denominator of the fraction is the total number of dwelling units or lots occupied as of December 31st of the first assessment year in which the rental housing facility or mobile home park becomes operational, or on January 1st of each subsequent assessment year in which the claim for exemption is submitted.

(6) **Exempt facility with three or fewer units or a mobile home park with three or fewer lots with vacancy on January 1st.** If the rental housing or mobile home park is comprised of three or fewer dwelling units or lots and there are any unoccupied dwelling units or lots on January 1st, the department will determine the size of the exemption based on the number of occupied dwelling units or lots as of December 31st of the first assessment year the rental housing becomes operational, and on May 1st of each subsequent assessment year in which a claim for exemption is submitted. For example, if one-half of an exempt duplex is vacant on January 1st and it is the duplex's third year of operation, the department will determine the size of the exemption based on the number of occupied units on May 1st of that assessment year.

(7) **Allowance for income growth.** Because the occupants of rental housing and mobile home parks granted an exemption under RCW 84.36.560 are generally attempting to improve their financial situation, the income of the household is likely to fluctuate during the time they occupy the rental housing unit or lot in the mobile home park.

(a) In an attempt to assist these households in improving their circumstances, the exemption will continue for specific rental housing units or mobile home lots if the rental housing or mobile home park continues to meet the certification requirements in subsection (4)(d) of this rule, and if the household's income rises above the applicable "qualifying household" threshold in subsection (2)(e) of this rule, but remains at or below (~~eighty~~) 80 percent of the median income adjusted for family size as most recently determined by the federal Department of Housing and Urban Development for the county in which the rental housing or mobile home park is located; and

(b) If a rental housing unit or mobile home lot receiving an exemption under the exception in (a) of this subsection becomes vacant and is subsequently rereanted, the income of the household moving into the rental unit or onto the mobile home lot must meet the applicable median income requirements for a qualifying household as described in subsection (2)(e) of this rule to remain exempt from property tax.

(c) Example. If a rental unit is occupied by a qualifying household whose income rises up to (~~seventy~~) 70 percent of median income, the unit will retain its exempt status as long as the household continues to occupy the rental unit and the household's income remains below (~~eighty~~) 80 percent of median income. If the residents of the rental unit move out on June 1st and the unit is subsequently rented to a qualifying household whose income is at or below the median income threshold in subsection (2)(e) of this rule, the unit will retain its exempt status. Conversely, if the rental unit is rented to a

household whose income is above the median income threshold in subsection (2)(e) of this rule, the unit becomes ineligible for exemption as of January 1st of the following year.

(8) **Group homes - Income of residents.** The income of the individual residents of a group home, as defined in subsection (2) of this rule, will not be combined so as to constitute the income of a single household. Each resident will be considered an independent household occupying a separate dwelling unit. In other words, the income of the residents of a group home will not be aggregated when the department determines the size of the exemption the group home is entitled to receive. For example, if there are six residents in a group home, the department will process the application for exemption as if there were six separate dwelling units and determine the size of the exemption on that basis. If three of the residents have income at or below the median income threshold in subsection (2)(e) of this rule, the group home will receive a (~~fifty~~) 50 percent reduction in the property taxes due on the group home.

(9) **Eligibility of property unoccupied at the time of initial application or at any time after the exemption is granted.** Property that is unoccupied at the time of initial application or on January 1st of any subsequent year is still eligible for exemption if certain conditions are met. If the property is currently taxable, it may receive exempt status as of the assessment year in which the claim for exemption is submitted. If the property is currently exempt but the exempt use will cease or will be reduced because of renovations or repairs, the exempt status of the property may be continued for taxes payable the next year. The following conditions must be satisfied to receive an exemption under either of these circumstances:

(a) The rental housing or mobile home park will be used for the exempt purpose stated in RCW 84.36.560 within two assessment years;

(b) The nonprofit entity applying for or receiving the exemption has obtained a commitment for financing, in whole or in part, to acquire, construct, remodel, renovate, or otherwise convert the property to provide housing for qualifying households from one or more of the sources listed in subsection (4)(d) of this rule;

(c) The nonprofit entity has manifested its intent in writing to construct, remodel, renovate, or otherwise convert the rental housing or mobile home park to housing for qualifying households; and

(d) If less than the entire facility or mobile home park will be used to provide rental housing or mobile home lots for qualifying households, only that portion is entitled to an exemption under this rule.

(10) **Exclusive use required.** To be exempt under RCW 84.36.560, the property must be exclusively used to provide rental housing or mobile home lots for qualifying households, except as provided in RCW 84.36.805.

(11) **Payments in-lieu of property tax will be accepted.** Any nonprofit entity that qualifies for a property tax exemption under RCW 84.36.560 may agree to make payments to the city, county, or other political subdivision for the improvements, services, and facilities furnished by the city, county, or political subdivision for the benefit of the exempt rental housing facility or mobile home lots. However, these payments may not exceed the amount of property tax last levied as the annual tax by the city, county, or political subdivision on the property prior to the time the exemption was effective.

WSR 24-22-084
PERMANENT RULES
COUNTY ROAD
ADMINISTRATION BOARD

[Filed October 31, 2024, 9:47 a.m., effective December 1, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Amending WAC 136-60-040 and 136-60-050 to make changes to the standards of good practice. Creating WAC 136-60-070 to make changes to the standards of good practice. Amending WAC 136-161-040 to make changes to the rural arterial program.

Citation of Rules Affected by this Order: New WAC 136-60-070; and amending WAC 136-60-040, 136-50-050, and 136-161-040.

Statutory Authority for Adoption: RCW 36.78.070.

Adopted under notice filed as WSR 24-19-016 on September 6, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 3, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 24, 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 24-22-096
PERMANENT RULES
DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed November 1, 2024, 9:13 a.m., effective December 2, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The early learning division (ELD) is revising the infant enhancement rate and nonstandard hours bonus rate to align with requirements in ESSB 5950. These WAC revisions are necessary to comply with the July 1, 2024, legislative requirements.

Citation of Rules Affected by this Order: Amending WAC 110-15-0215 and 110-15-0249.

Statutory Authority for Adoption: Chapter 34.05 RCW; RCW 43.216.020, 43.216.065; ESSB 5950.

Adopted under notice filed as WSR 24-17-110 on August 19, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: November 1, 2024.

Brenda Villarreal
Rules Coordinator

OTS-5517.1

AMENDATORY SECTION (Amending WSR 22-12-072, filed 5/27/22, effective 7/1/22)

WAC 110-15-0215 Infant enhanced rate. Licensed and certified child care providers accepting state subsidy may receive an infant enhancement payment of (~~(\$90)~~) \$300 per month for each infant who is enrolled in their child care and attends at least one day per month.

AMENDATORY SECTION (Amending WSR 23-23-083, filed 11/13/23, effective 12/14/23)

WAC 110-15-0249 Nonstandard hours bonus. (1) Consumers' providers may receive a nonstandard hours bonus (NSHB) payment(~~((\$))~~) per child per month for care provided if:

(a) The providers are licensed or certified;

(b) They provide at least 30 hours of nonstandard hours care during one month; and

(c) The total cost of the state's NSHB payments do not exceed the amount appropriated for this purpose by the legislature for the current fiscal year.

(2) Nonstandard hours are defined as:

(a) Before 6 a.m. or after 6 p.m.;

(b) Any hours on Saturdays and Sundays; and

(c) Any hours on legal holidays, as defined in RCW 1.16.050.

(3) NSHB amounts are:

(a) One hundred (~~(thirty-five)~~) fifty dollars for family homes;

and

(b) One hundred (~~(thirty-five)~~) fifty dollars for centers.

WSR 24-22-110

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed November 5, 2024, 8:01 a.m., effective December 6, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department of revenue is amending WAC 458-19-070 and 458-19-075 to incorporate 2024 legislation, SHB 2348. This legislation created a stand-alone hospital levy in addition to the county's general levy. The stand-alone hospital levy only applies to counties with a population greater than 2,000,000.

Citation of Rules Affected by this Order: Amending WAC 458-19-070 Five dollars and ninety cents statutory aggregate dollar rate limit calculation and 458-19-075 Constitutional one percent limit calculation.

Statutory Authority for Adoption: RCW 84.08.010, 84.08.070.

Adopted under notice filed as WSR 24-18-043 on August 27, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 5, 2024.

Brenton Madison
Rules Coordinator

OTS-5773.2

AMENDATORY SECTION (Amending WSR 24-02-017, filed 12/21/23, effective 1/21/24)

WAC 458-19-070 Five dollars and ninety cents statutory aggregate dollar rate limit calculation. (1) **Introduction.** This rule describes the process used to reduce or eliminate a levy rate when the assessor finds the statutory aggregate dollar rate limit exceeds \$5.90. The aggregate of all regular levy rates of junior taxing districts and senior taxing districts, other than the state and other specifically identified districts, cannot exceed \$5.90 per \$1,000 of assessed value in accordance with RCW 84.52.043. When the county assessor finds that this limit has been exceeded, the assessor recalculates the levy rates and establishes a new consolidated levy rate as described in RCW 84.52.010. The \$5.90 statutory aggregate dollar rate limit is reviewed before the constitutional one percent limit.

(2) **Levies not subject to statutory aggregate dollar rate limit.**

The following levies are not subject to the statutory aggregate dollar rate limit of \$5.90 per \$1,000 of assessed value:

- (a) Levies by the state;
- (b) Levies by or for port or public utility districts;
- (c) Excess property tax levies authorized in Article VII, section 2 of the state Constitution;
- (d) Levies by or for county ferry districts under RCW 36.54.130;
- (e) Levies for acquiring conservation futures under RCW 84.34.230;
- (f) Levies for emergency medical care or emergency medical services under RCW 84.52.069;
- (g) Levies for financing affordable housing under RCW 84.52.105;
- (h) The portion of metropolitan park district levies protected under RCW 84.52.120;
- (i) The portions of levies by fire protection districts and regional fire protection service authorities protected under RCW 84.52.125;
- (j) Levies for criminal justice purposes under RCW 84.52.135;
- (k) Levies for transit-related purposes by a county under RCW 84.52.140;
- (l) The protected portion of the levies imposed under RCW 84.52.816 by flood control zone districts;
- (m) Levies imposed by a regional transit authority under RCW 81.104.175;
- (n) Levies imposed under RCW 36.69.145, by a park and recreation district located on an island and within a county with a population exceeding 2,000,000, for collection in calendar years 2022 through 2026; ((and))
- (o) The portion of any levy resulting from the correction of a levy error under RCW 84.52.085(3); and
- (p) Levies for county hospital purposes under RCW 36.62.090.

(3) **Consolidated levy rate limitation.** RCW 84.52.010 explains the order in which the regular levies of taxing districts will be reduced or eliminated by the assessor to comply with the statutory aggregate dollar rate limit of \$5.90 per \$1,000 of assessed value. The order in the statute lists which taxing districts are the first to either reduce or eliminate their levy rate. Taxing districts that are at the same level are grouped together in tiers. Reductions or eliminations in levy rates are made on a pro rata basis within each tier of taxing district levies until the consolidated levy rate no longer exceeds the statutory aggregate dollar rate limit of \$5.90.

As opposed to the order in RCW 84.52.010, which lists the taxing districts that are the first to have their levy rates reduced or eliminated, this rule is written in reverse order; that is, it lists the taxing districts that must be first either fully or partially funded. If the statutory aggregate dollar rate is exceeded, then the levy rates for taxing districts within a particular tier must be reduced or eliminated on a pro rata basis. The proration factor, which is multiplied by each levy rate within the tier, is obtained by dividing the dollar rate remaining available to the taxing districts in that tier as a group by the sum of the levy rates originally certified by or for all of the taxing districts within the tier.

(a) Step one: Total the aggregate regular levy rates requested by all affected taxing districts in the tax code area. If this total is less than \$5.90 per \$1,000 of assessed value, no levy rate reduction or elimination is necessary. If this total levy rate is more than

\$5.90, the assessor must proceed through the following steps until the aggregate dollar rate is brought within that limit.

(b) Step two: Subtract from \$5.90 the levy rates of the county, including the rate of any separate property tax levy as described in RCW 84.55.135, and the county road district if the tax code area includes an unincorporated portion of the county, or the levy rates of the county and the city or town if the tax code area includes an incorporated area, as applicable.

(c) Step three: Subtract from the remaining levy capacity the levy rates, if any, for fire protection districts under RCW 52.16.130, regional fire protection service authorities under RCW 52.26.140

(1) (a), library districts under RCW 27.12.050 and 27.12.150, the first 50 cents per \$1,000 of assessed value for metropolitan park districts created before January 1, 2002, under RCW 35.61.210, and the first 50 cents per \$1,000 of assessed value for public hospital districts under RCW 70.44.060 (6).

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step four.

(d) Step four: Subtract from the remaining levy capacity the levy rates, if any, for fire protection districts under RCW 52.16.140 and 52.16.160, and regional fire protection service authorities under RCW 52.26.140 (1) (b) and (c). However, under RCW 84.52.125, a fire protection district or regional fire protection service authority may protect up to 25 cents per \$1,000 of assessed value of the total levies made under RCW 52.16.140 and 52.16.160, or 52.26.140 (1) (b) and (c) from reduction or elimination.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. It is at this point that the provisions of RCW 84.52.125 come into play; that is, a fire protection district or regional fire protection service authority may protect up to 25 cents per \$1,000 of assessed value of the total levies made under RCW 52.16.140 and 52.16.160, or 52.26.140 (1) (b) and (c) from reduction or elimination under RCW 84.52.043 (2), if the total levies would otherwise be reduced or eliminated under RCW 84.52.010 (3) (a) (iii) with respect to the \$5.90 per \$1,000 of assessed value limit. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step five.

(e) Step five: Subtract from the remaining levy capacity the levy rate, if any, for the first 50 cents per \$1,000 of assessed value of metropolitan park districts created on or after January 1, 2002, under RCW 35.61.210.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step six.

(f) Step six: Subtract from the remaining levy capacity the 25 cent per \$1,000 of assessed value levy rate for metropolitan park districts if it is not protected under RCW 84.52.120, the 25 cent per \$1,000 of assessed value levy rate for public hospital districts under RCW 70.44.060(6), and the levy rates, if any, for cemetery districts under RCW 68.52.310 and all other junior taxing districts if those levies are not listed in steps three through five or seven or eight of this subsection.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step seven.

(g) Step seven: Subtract from the remaining levy capacity the levy rate, if any, for flood control zone districts other than the portion of a levy protected under RCW 84.52.816.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step eight.

(h) Step eight: Subtract from the remaining levy capacity the levy rates, if any, for city transportation authorities under RCW 35.95A.100, park and recreation service areas under RCW 36.68.525, park and recreation districts under RCW 36.69.145, except a park and recreation district described in subsection (2)(n) of this rule, and cultural arts, stadium, and convention districts under RCW 67.38.130.

(i) If the balance is zero, there is no remaining levy capacity for other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any

other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step nine.

(i) Step nine: Subtract from the remaining levy capacity the levy imposed, if any, for cultural access programs under RCW 36.160.080 until the remaining levy capacity equals zero.

(4) **Example.**

DISTRICT	ORIGINAL LEVY RATE	PRORATION FACTOR	FINAL LEVY RATE	REMAINING LEVY CAPACITY
County	1.8000	NONE	1.8000	1.850
County Road	2.2500	NONE	2.2500	
Library	.5000	NONE	.5000	.350
Fire	.5000	NONE	.5000	
Hospital	.5000	NONE	.5000	
Fire	.2000	NONE	.2000	.150
Cemetery	.1125	.4138	.0466	
Hospital	.2500	.4138	.1034	
Totals	6.1125		5.90	

(a) Beginning with the limit of \$5.90, subtract the original certified levy rates for the county and county road taxing districts leaving \$1.85 available for the remaining districts.

(b) Subtract the total of the levy rates for each district within the next tier: The library's \$.50, the fire district's \$.50 and the hospital's \$.50 = \$1.50, which leaves \$.35 available for the remaining districts.

(c) Subtract the fire district's additional \$.20 levy rate, which leaves \$.15 available for the remaining districts.

(d) The remaining \$.15 must be shared by the cemetery and the hospital districts within the next tier of levies. The cemetery district originally sought to levy \$.1125 and the hospital district sought to levy \$.25. The proration factor is arrived at by dividing the amount available (\$.15) by the original levy rates (\$.3625) requested within that tier resulting in a proration factor of .4138. Finally, the original levy rates in this tier of \$.1125 and \$.25 for the cemetery and hospital, respectively, are multiplied by the proration factor.

AMENDATORY SECTION (Amending WSR 24-02-017, filed 12/21/23, effective 1/21/24)

WAC 458-19-075 Constitutional one percent limit calculation.

(1) **Introduction.** This rule explains how to determine if the constitutional one percent limit is being exceeded and the sequence in which levy rates will be reduced or eliminated in accordance with RCW 84.52.010 if the constitutional one percent limit is exceeded. The constitutional one percent calculation is made after the assessor ensures that the \$5.90 statutory aggregate dollar rate limit is not exceeded. The total amount of all regular property tax levies that can be applied against taxable property is limited to one percent of the true and fair value of the property in money. The one percent limit is stated in Article VII, section 2 of the state Constitution and the en-

abling statute, RCW 84.52.050. The constitutional one percent limit is based on the amount of taxes actually levied on the true and fair value of the property, not the dollar rate used in calculating property taxes.

(2) **Preliminary calculations.** After reducing or eliminating the levy rates under RCW 84.52.043 (the \$5.90 statutory aggregate dollar rate limit) has occurred, make the following calculations to determine if the constitutional one percent limit is being exceeded:

(a) First, add together all regular levy rates in the tax code area, including the rates for the state levy, but not the rates for port and public utility districts, to arrive at a combined levy rate for that tax code area. "Regular levy rates" in this context means the levy rates that remain after reduction or elimination under RCW 84.52.043 has occurred. The levy rates for port and public utility districts are not included in this calculation because they are not subject to the constitutional one percent limit.

(b) Second, divide \$10 by the higher of the real or personal property ratio of the county for the assessment year in which the levy is made to determine the maximum effective levy rate. If the combined levy rate exceeds the maximum effective levy rate, then the individual levy rates must be reduced or eliminated until the combined levy rate is equal to the maximum effective levy rate.

(3) **Constitutional one percent limit.** RCW 84.52.010 provides the order in which levy rates are to be reduced or eliminated when the constitutional one percent limit is exceeded.

As opposed to the order in RCW 84.52.010, which lists the taxing districts that are the first to have their levy rates reduced or eliminated, this rule is written in reverse order; that is, it lists the taxing districts that must be first either fully or partially funded. If the constitutional one percent limit is exceeded, then the levy rates for taxing districts within a particular tier must be reduced or eliminated on a pro rata basis.

If the constitutional one percent limit is exceeded after performing the preliminary calculations described in subsection (2) of this rule, the following levies must be reduced or eliminated until the combined levy rate no longer exceeds the maximum effective levy rate:

(a) Step one: Subtract the aggregate levy rate calculated for the state for the support of common schools from the effective rate limit.

(b) Step two: Subtract the levy rates for the county, including the rate of any separate property tax levy as described in RCW 84.55.135, county road district, regional transit authority, and for city or town purposes.

(c) Step three: Subtract from the remaining levy capacity the levy rates for fire protection districts under RCW 52.16.130, regional fire protection service authorities under RCW 52.26.140 (1)(a), library districts under RCW 27.12.050 and 27.12.150, the first 50 cents per \$1,000 of assessed value for metropolitan park districts created before January 1, 2002, under RCW 35.61.210, and the first 50 cents per \$1,000 of assessed value for public hospital districts under RCW 70.44.060(6).

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis from the remaining balance in step two until the balance is zero. After prorationing, there

is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step four.

(d) Step four: Subtract from the remaining levy capacity the levy rates for fire protection districts under RCW 52.16.140 and 52.16.160, and regional fire protection service authorities under RCW 52.26.140 (1)(b) and (c).

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis from the remaining balance in step three until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step five.

(e) Step five: Subtract from the remaining levy capacity the levy rate for the first 50 cents per \$1,000 of assessed value of metropolitan park districts created on or after January 1, 2002, under RCW 35.61.210.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levy is reduced to the remaining balance in step four. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step six.

(f) Step six: Subtract from the remaining levy capacity the levy rates for all other junior taxing districts if those levies are not listed in steps three through five or steps seven through 18 of this subsection.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis to the remaining balance in step five until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step seven.

(g) Step seven: Subtract from the remaining levy capacity the levy rate for flood control zone districts other than the portion of a levy protected under RCW 84.52.816.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levy is reduced to the remaining balance in step six. There is no remaining levy ca-

capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step eight.

(h) Step eight: Subtract from the remaining levy capacity the levy rates for city transportation authorities under RCW 35.95A.100, park and recreation service areas under RCW 36.68.525, park and recreation districts under RCW 36.69.145, except a park and recreation district located on an island and within a county with a population exceeding 2,000,000, and cultural arts, stadium, and convention districts under RCW 67.38.130.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis from the remaining balance in step seven until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step nine.

(i) Step nine: Subtract from the remaining levy capacity the levy imposed, if any, for cultural access programs under RCW 36.160.080.

(i) If the balance is zero, there is no remaining levy capacity from any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, the levy is reduced to the remaining balance in step eight. There is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed to step 10.

(j) Step 10: Subtract from the remaining levy capacity the levy rate for the first 30 cents per \$1,000 for emergency medical care or emergency medical services under RCW 84.52.069.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levy is reduced to the remaining balance in step nine. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step 11.

(k) Step 11: Subtract from the remaining levy capacity the levy rates for levies used for acquiring conservation futures under RCW 84.34.230, financing affordable housing under RCW 84.52.105, funding for county hospital purposes under RCW 36.62.090, and any portion of a levy rate for emergency medical care or emergency medical services under RCW 84.52.069 in excess of 30 cents per \$1,000 of assessed value.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis from the remaining balance in step 10 until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step 12.

(l) Step 12: Subtract from the remaining levy capacity the levies imposed under RCW 36.69.145 for a park and recreation district located on an island and within a county with a population exceeding 2,000,000.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the portion of the levy within this tier must be reduced to the remaining balance in step 11. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step 13.

(m) Step 13: Subtract from the remaining levy capacity the portion of the levy by a metropolitan park district with a population of 150,000 or more that is protected under RCW 84.52.120.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the portion of the levy within this tier must be reduced to the remaining balance in step 12. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step 14.

(n) Step 14: Subtract from the remaining levy capacity the levy rates for county ferry districts under RCW 36.54.130.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levy is reduced to the remaining balance in step 13. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step 15.

(o) Step 15: Subtract from the remaining levy capacity the levy rate for criminal justice purposes imposed under RCW 84.52.135.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levy is reduced to the remaining balance in step 14. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step 16.

(p) Step 16: Subtract from the remaining levy capacity the levy rate for a fire protection district or regional fire protection service authority protected under RCW 84.52.125.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the portion of the levy within this tier must be reduced to the remaining balance in step 15. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step 17.

(q) Step 17: Subtract from the remaining levy capacity the levy rate for transit-related purposes by a county under RCW 84.52.140.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levy is reduced to the remaining balance in step 16. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step 18.

(r) Step 18: Subtract from the remaining levy capacity the protected portion of the levy imposed under RCW 84.52.816 by a flood control zone district until the remaining levy capacity equals zero.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levy is reduced to the remaining balance in step 17. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step 19.

(s) Step 19: Subtract from the remaining levy capacity any portion of a levy resulting from the correction of a levy error under RCW 84.52.085(3) until the remaining levy capacity equals zero.

WSR 24-22-111

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed November 5, 2024, 8:08 a.m., effective December 6, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department of revenue intends to amend WAC 458-57-135 to recognize 2024 legislation (HB 1867), which eliminates the estate tax filing requirement for certain estates involving a qualifying familial residence.

Citation of Rules Affected by this Order: Amending WAC 458-57-135.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060(2).

Adopted under notice filed as WSR 24-18-045 on August 27, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 5, 2024.

Brenton Madison
Rules Coordinator

OTS-5784.2

AMENDATORY SECTION (Amending WSR 20-14-063, filed 6/26/20, effective 7/27/20)

WAC 458-57-135 Washington estate tax return to be filed—Penalty for late filing—Interest on late payments—Waiver or cancellation of penalty—Application of payment. (1) **Introduction.** This rule applies to deaths occurring on or after May 17, 2005, and discusses the due date for filing of Washington's estate tax return and payment of the tax due. It explains that a penalty is imposed on the taxes due with the state return when the return is not filed on or before the due date, and that interest is imposed when the tax due is not paid by the due date. The rule also discusses the limited circumstances under which the law allows the department of revenue to cancel or waive the penalty, and the procedure for requesting that cancellation or waiver. The estate tax rule on the estate tax return etc., for deaths occurring on or before May 16, 2005, can be found in WAC 458-57-035.

(2) **Estate tax return.** The Washington state estate and transfer tax return and the instructions for completing the return can be found

on the department's website at <https://www.dor.wa.gov>. They may also be requested by emailing estates@dor.wa.gov.

(3) Filing the state return—Payment of the tax due.

(a) ~~((The))~~ Except as provided in subsection (9) of this rule, a Washington estate tax return (state return) must be filed ~~((with the Washington state department of revenue (department))~~) if the gross estate ~~((of a decedent))~~ equals or exceeds the applicable exclusion amount described in RCW 83.100.020(1) and WAC 458-57-105 (3)(b). The state return and payment ~~((is))~~ are due nine months after the date of the decedent's death. A granted extension of time to file will extend the time to file the return, but the payment is still due nine months after the date of the decedent's death. The state return must be signed by the person required to file. The following items must accompany the state return:

(i) All applicable state return schedules and addendums, if any;

(ii) If the person required to file the state return is also required to file a federal return or has filed a federal return, a copy of the filed federal tax return (Form 706, Form 706-NA, or Form 706-QDT), signed by the person required to file, including all applicable schedules and statements;

(iii) One copy of all supporting documentation for completed state return schedules. If federal return schedules differ from state return schedules, provide an explanation for differences;

(iv) A copy of any previously filed extension request(s). If a federal Form 4768 extension request has been filed, provide an Internal Revenue Service approved copy;

(v) A copy of the decedent's death certificate;

(vi) A copy of the letters testamentary or the letters of administration, if any;

(vii) A copy of the decedent's will, if any, and a copy of all trust agreements that pertain to the decedent, if any;

(viii) A copy of state estate or inheritance return(s) filed with any other state, and proof of payment of the estate or inheritance tax owed to another state(s), if any; and

(ix) Payment of the Washington estate tax due, if any.

(b) A state return must be filed with the department on or before the date that the federal return is required or would have been required to be filed. That date is typically nine months after the date of the decedent's death, as specified in section 6075 of the Internal Revenue Code (IRC). The due date for filing the state return may be extended, as described in subsection (3)(c) of this ((subsection)) rule.

(c) Extensions to file or extensions for payment of tax.

(i) Section 6081 of the IRC permits the granting of a reasonable extension of time for filing the federal return, generally not to exceed six months from the original due date. If a federal extension of the time to file is granted, the personal representative is required to file a true copy of that extension or installment approval with the department on or before the original due date, or within ~~((thirty))~~ 30 days of the issuance of the federal extension or installment approval, whichever is later. RCW 83.100.050. If the personal representative fails to do so, the department may deny the extension request.

(ii) When the personal representative obtains an extension of time for payment of the federal tax, or elects to pay that tax in installments, the personal representative may choose to pay the state estate tax over the same time period and in the same manner as the

federal tax. The personal representative is required to file a true copy of that extension with the department on or before the original due date, or within (~~thirty~~) 30 days of the issuance of the federal extension, whichever is later. RCW 83.100.060(2). If the personal representative fails to do so, the department may require the personal representative to pay the state tax immediately.

(iii) **Extensions to file for estates that are not required to file a federal estate tax return.** For those estates that are not required to file a federal return, the personal representative may request a one-time automatic six-month extension to file. The request must be in writing and acknowledge that interest will begin to accrue from the original due date of the state return on any outstanding tax. The written request for the extension must be made prior to the date the state return is due.

(iv) **Extension to pay tax owed for estates that are not required to file a federal estate tax return.** For those estates that are not required to file a federal return, the personal representative may request an extension of time for paying the tax owed when payment of the tax would cause an undue hardship upon the estate or for a payment plan for closely held businesses. The granting of an extension of time to pay the tax owed or for a payment plan for closely held business will not operate to prevent the running of interest. RCW 83.100.070.

(v) **Hardship extensions to pay.**

(A) In any case in which the department finds that payment, on the due date prescribed, or any part of a deficiency would impose undue hardship upon the estate, the department may extend the time for payment for a period or periods not to exceed one year for any one period and for all periods not to exceed four years from the original due date of payment.

(B) The extension will not be granted upon a general statement of hardship. The term "undue hardship" means more than an inconvenience to the estate. It must appear that a substantial financial loss, for example, due to the sale of property at a sacrifice price, will result to the estate from making payment of the tax owed at the date payment is due. If a market exists, a sale of property at the current market price is not ordinarily considered as resulting in an undue hardship. No extension will be granted if the deficiency is due to negligence or intentional disregard of rules and regulations or to fraud with intent to evade the tax. During a state of emergency declared under RCW 43.06.010(12), the department, on a case-by-case basis, may evaluate whether the emergency imposes on an estate an undue hardship as described above.

(C) An application for such an extension must be in writing and must contain, or be supported by, information in a written declaration made under penalties of perjury showing the undue hardship that would result to the estate if the extension were refused. The application, with the supporting information, must be filed with the department. When received, it will be examined, and, if possible, within (~~thirty~~) 30 days will be denied, granted, or tentatively granted subject to certain conditions of which the personal representative will be notified. The department will not consider an application for such an extension unless it is applied for on or before the due date for payment. If the personal representative desires to obtain an additional extension, it must be applied for on or before the date of the expiration of the previous extension.

(D) The amount of tax owed for which an extension is granted, along with interest as determined by RCW 83.100.070, shall be paid on

or before the expiration of the period of extension without the necessity of notice and demand from the department.

(vi) **Payment plans for closely held businesses.** The department will apply the provisions of section 6166 of the 2005 IRC for the granting of payment plans for closely held businesses. For estates with an approved payment plan with the Internal Revenue Service, the department will follow the same terms as granted with the federal return.

(4) **The late filing penalty.** If the state return is not filed by the due date, or any extension of the state return's due date, the person required to file the return may be subject to a late filing penalty.

(a) **When does the penalty apply?** The late filing penalty applies if the person required to file the return has not timely filed the state return with the department prior to being notified by the department, in writing, of the necessity to file the state return.

(b) **How is the penalty computed?** The late filing penalty is equal to five percent of the tax due for each month during which the state return has not been filed, inclusive of the filing date, and not to exceed the lesser of (~~twenty-five~~) 25 percent of the tax or (~~one thousand five hundred dollars~~) \$1,500. RCW 83.100.070. The penalty is calculated on a daily basis for periods less than a month by first taking the five percent monthly rate and dividing it by the total number of days for that month. For instance, in a common (nonleap) year, the five percent monthly rate must be divided by (~~twenty-eight~~) 28 to arrive at a daily rate of 1.7857 percent for the month of February. After arriving at this daily rate, it is multiplied by the number of delinquent days, inclusive of the filing date.

(i) **Example.** The following example identifies a number of facts and then states a conclusion. This example should be used only as a general guide. The tax results of other situations must be determined after a review of all facts and circumstances.

A state return is due on February 3rd, in a common (nonleap) year, but is not filed until April 20th of the same year. The state return is delinquent starting with February 4th. The amount of tax due with the state return is \$10,000.

(ii) The penalty is computed as follows:

Feb 4-Feb 28	\$10,000 tax at 0.17857% × 25 days	\$446.43
Mar 1-Mar 31	\$10,000 tax at 5% per month	\$500.00
Apr 1-Apr 20	\$10,000 tax at 0.1667% × 20 days	\$333.40
Total delinquent penalty due on April 20th filing date		\$1,279.83

In this example, the first month (February) is a partial month. Since February would have (~~twenty-eight~~) 28 days, the five percent monthly rate is divided by (~~twenty-eight~~) 28 days to arrive at a daily rate of 0.0017857 (or 0.17857 percent). The daily rate is then multiplied by the (~~twenty-five~~) 25 days of penalty accrual to arrive at the total percentage of penalty due for that portion of a month (0.0017857 x 25 days = .044643 or 4.4643 percent). The second calendar month (March) is complete and incurs the full five percent penalty. Since April has (~~thirty~~) 30 days total, the five percent monthly rate is divided by the (~~thirty~~) 30 days in April to arrive at a daily rate of .001667 (or 0.1667 percent). The daily rate is then multiplied by the (~~twenty~~) 20 days of penalty accrual to arrive at the total percentage of penalty due for that portion of a month (0.001667 x 20 days = .03334 or 3.334 percent).

(5) **Interest is imposed on late payment.** The department is required by law to impose interest on the tax due with the state return if payment of the tax is not made on or before the due date. RCW 83.100.070. Interest applies to the delinquent tax only, and is calculated from the due date until the date of payment. Interest imposed for periods after January 1, 1997, will be computed at the annual variable interest rate described in RCW 82.32.050(2). Interest imposed for periods prior to January 2, 1997, will be computed at the rate of (~~twelve~~) 12 percent per annum.

(6) **Waiver or cancellation of penalties.** RCW 83.100.070(3) authorizes the department to waive or cancel the penalty for late filing of the state return under limited circumstances.

(a) **Claiming the waiver.** A request for a waiver or cancellation of penalties should contain all pertinent facts and be accompanied by such proof as may be available. The request must be made in the form of a letter and submitted to the department. The person responsible bears the burden of establishing that the circumstances were beyond their control and directly caused the late filing. The department will cancel or waive the late filing penalty imposed on the state return when the delinquent filing is the result of circumstances beyond the control of the person responsible for filing of the state return. The person responsible for filing the state return is the same person who is responsible for filing the federal return.

(b) **Circumstances eligible for waiver.** In order to qualify for a waiver of penalty the circumstances beyond the control of the person responsible for filing the state return must directly cause the late filing of the return. These circumstances are generally immediate, unexpected, or in the nature of an emergency. Such circumstances result in the person not having reasonable time or opportunity to obtain an extension of their due date (see subsection (3)(a) of this rule) or to otherwise timely file the state return. Circumstances beyond the control include, but are not necessarily limited to, the following:

(i) The delinquency was caused by the death or serious illness of the person responsible for filing the state return or a member of the immediate family. In order to qualify for penalty waiver, the death or serious illness must directly prevent them from having reasonable time or opportunity to arrange for timely filing of the state return. Generally, the death or serious illness must have occurred within (~~sixty~~) 60 days prior to the due date, provided that a valid state return is filed within (~~sixty~~) 60 days of the due date.

(ii) The delinquency was caused by an unexpected and unavoidable absence of the person responsible. Generally, this absence must be within (~~sixty~~) 60 days prior to the due date, provided that a valid state return is filed within (~~sixty~~) 60 days of the due date. "Unavoidable absence of the person responsible" does not include absences because of business trips, vacations, personnel turnover, or personnel terminations.

(iii) The delinquency was caused by the destruction by fire or other casualty of estate records necessary for completion of the state return.

(iv) An estate tax return was timely filed, but was filed incorrectly with another state due to an issue of the decedent's domicile.

(v) A Washington estate tax return was properly prepared and timely filed, but was sent to the location for filing of the federal estate tax return.

(7) **Waiver or cancellation of interest.** Title 83 RCW (Estate taxation) does not provide any circumstances that allow for waiver of the

interest, even though penalty may be waived under limited circumstances (see subsection (6) of this ~~(section)~~ rule).

(8) **Application of payment towards liability.** The department will apply taxpayer payments first to interest, next to penalties, and then to the tax, without regard to any direction of the taxpayer.

(9) Estate tax return filing exemption—Qualifying family residence.

(a) A Washington return is not required to be filed for a decedent's estate if:

(i) The estate is not otherwise required to file an estate tax return to claim a specific election;

(ii) The decedent was survived by a spouse, and the decedent's qualifying family residence included in the decedent's gross estate passed from the decedent to the spouse, consistent with section 2056 of the Internal Revenue Code;

(iii) The value of the decedent's gross estate less the value of the decedent's interest in a qualifying family residence that is included in the value of the decedent's gross estate is less than the applicable exclusion amount; and

(iv) The decedent died on or after January 1, 2025.

(b) The following definitions apply to subsection (9) of this rule:

(i) "Principal place of residence" means:

(A) A residence that has been occupied by both the decedent and the decedent's spouse or domestic partner for more than six months of the 12 months immediately preceding the decedent's date of death; or

(B) A residence of the decedent and the decedent's spouse or domestic partner when, during the six-month period immediately preceding the decedent's date of death, the decedent, the decedent's spouse or domestic partner, or both the decedent and decedent's spouse or domestic partner, were confined to a hospital, nursing home, assisted living facility, adult family home, or home of a relative of the decedent or decedent's spouse or domestic partner for purposes of long-term care, if the decedent and the decedent's spouse or domestic partner did not occupy any other residence for more than six months of the 12 months immediately preceding the decedent's date of death, and during the six-month period immediately preceding the decedent's date of death:

(I) The residence was temporarily unoccupied;

(II) The residence was occupied by either or both the decedent's spouse or domestic partner; or a person financially dependent on the decedent or the decedent's spouse or domestic partner for support; or

(III) The residence or portion of the residence was rented for the purposes of paying costs related to the care of the decedent or the decedent's spouse or domestic partner in a nursing home, hospital, assisted living facility, or adult family home.

(ii) "Qualifying family residence" means the principal place of residence of the marital community or domestic partnership at the decedent's date of death.

(iii) "Relative" has the same meaning as "member of the family" in RCW 83.100.046.

(iv) "Residence" means a single-family dwelling unit, whether such unit is separate or part of a multiunit dwelling, including the land on which such dwelling stands, regardless of whether ownership of the single-family dwelling unit and land on which the dwelling unit stands is vested in the same person. "Residence" includes:

(A) A single-family dwelling unit in a cooperative housing association, corporation, or partnership, when the decedent has an ownership share in such entity;

(B) A single-family dwelling unit situated upon lands the fee of which is vested in or held in trust by the United States or any of its instrumentalities, a federally recognized Indian tribe, a state of the United States or any of its political subdivisions, or a municipal corporation;

(C) A single-family dwelling unit consisting of a manufactured/mobile home or park model that has substantially lost its identity as a mobile unit by virtue of it being fixed in location and placed on a foundation with fixed pipe connections with sewer, water, or other utilities; and

(D) A single-family dwelling unit consisting of a floating home as defined in RCW 82.45.032.

(c) The tax preference performance statement described in RCW 82.32.808 is not required for purposes of eligibility for the exemption described in this subsection.

WSR 24-22-112

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed November 5, 2024, 8:10 a.m., effective December 6, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department of revenue is amending WAC 458-02-200 Business licensing service—Applications, licenses, renewals—Fees, to replace the term "city's license endorsement" with "local government's business license endorsement" to reflect the changes from SB 5897, chapter 270, Laws of 2024, as codified under RCW 19.02.075 (1)(b)(ii).

Citation of Rules Affected by this Order: Amending WAC 458-02-200 Business licensing service—Applications, licenses, renewals—Fees.

Statutory Authority for Adoption: RCW 19.02.030.

Adopted under notice filed as WSR 24-18-097 on September 3, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 5, 2024.

Brenton Madison
Rules Coordinator

OTS-5837.1

AMENDATORY SECTION (Amending WSR 24-04-006, filed 1/24/24, effective 2/24/24)

WAC 458-02-200 Business licensing service—Applications, licenses, renewals—Fees. (1) **Introduction.** This rule provides information about business license application handling fees, renewal application handling fees, and late filing delinquency fees as described in chapter 19.02 RCW. Information about individual licenses may be obtained from the business licensing service (BLS) of the department of revenue (department) and is available online at dor.wa.gov.

(2) **Definitions.** The definitions in RCW 19.02.020 apply to this rule.

(3) **What fee do I need to pay when applying for or renewing a license?** Individual license fees vary depending on the license(s) for which you are applying or renewing. The fee payable is the total amount of all applicable individual license fees, business license application handling fees, renewal application handling fees, late fil-

ing delinquency fees, and other penalty fees. The method of payment may result in additional charges for credit or debit card processing.

(4) **What does the department do with the fees?** The department will distribute the fees received for individual licenses to the respective regulatory agencies. The application and renewal handling fees and the late filing delinquency fees support the operation of the BLS. Credit or debit card payment processing fees are charged and retained by a third-party payment processor.

(5) **When do I get my business license?** A business license will not be issued until the total fees due are collected and all required information has been submitted. Some individual licenses require review and approval by the regulating authorities, and the business license will not be issued until the regulating authorities have approved them.

(6) **Can I get a refund?** The business license application handling fee and renewal application handling fee collected under RCW 19.02.075 are not refundable. The late filing delinquency fee under RCW 19.02.085 may not be waived or refunded unless:

(a) The department determines that the licensee failed to renew a license by the business license expiration date due to an undisputable error or failure by the department that caused the late filing; or

(b) The licensee requests the waiver and has timely renewed all business licenses and paid the applicable business license fees for a period of 24 months immediately preceding the period covered by the renewal application for which the licensee is requesting the waiver.

When a license is denied or when an applicant withdraws an application, a refund of any other refundable portion of the total payment will be made in accordance with the applicable licensing laws.

(7) **What are the fees?** The business license application handling fee, renewal application handling fee, late renewal filing delinquency fee, and individual license fee amounts are as follows:

Type of fee:	Fee amount:
Business license application handling fee to open the first business location of a new business, or to reopen a closed business:	\$50.00
Business license application handling fee for an existing business adding a new business location or requesting a ((city's)) local government's business license endorsement for a nonresident business:	\$0
Business license application handling fee for any other purpose(s):	\$10.00
Business license renewal application handling fee:	\$5.00
Late renewal filing delinquency fee:	Up to \$150.00 per business location. See subsection (9)(b) of this rule.
Individual license fee:	Varies depending on type of license.

(8) **What should I do with my business license?** The business license document must be displayed in a conspicuous place at the business location for which the license is issued.

(9) **Do I need to renew my business license?**

(a) The various licenses endorsed and displayed on the business license may each have a requirement to be renewed periodically. The department may prorate the terms of individual licenses and associated fees as needed so that all requested licenses on the account are due for renewal at the same time.

(b) Licenses requiring renewal must be renewed by the expiration date or the department will assess a delinquency fee. The delinquency fee is calculated according to RCW 19.02.085 and must be paid by the licensee before a business license is renewed. Other regulatory agencies may also assess delinquency fees and/or penalties for late renewal, and may cancel the individual licenses for nonrenewal. Reissuance of individual licenses canceled for nonrenewal may require the filing of a new business license application.

WSR 24-22-113

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed November 5, 2024, 8:17 a.m., effective December 6, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department of revenue is amending the expiration date for the exemption for certain agricultural crop protection products in RCW 82.21.040 (5)(a), as required per HB 2454 (2024).

Citation of Rules Affected by this Order: Amending WAC 458-20-252 Hazardous substance tax.

Statutory Authority for Adoption: RCW 82.01.060, 82.32.300.

Adopted under notice filed as WSR 24-17-137 on August 21, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 5, 2024.

Brent Madison
Rules Coordinator

OTS-5725.1

AMENDATORY SECTION (Amending WSR 24-12-037, filed 5/30/24, effective 6/30/24)

WAC 458-20-252 Hazardous substance tax. (1) Introduction. Under chapter 82.21 RCW (referred to in this rule as the "law"), a hazardous substance tax is imposed upon the wholesale value of certain substances and products, with specific credits and exemptions provided. The tax is an excise tax upon the privilege of possessing hazardous substances in this state.

Before July 1, 2019, the tax was imposed upon the wholesale value of the hazardous substance. Starting July 1, 2019, the tax is imposed in one of two ways:

Upon the wholesale value of certain hazardous substances ("value-based tax"); or

Upon the volume of certain hazardous substances ("volumetric tax").

The volumetric tax applies to petroleum products that are easily measured on a per barrel basis. The value-based tax applies to all other hazardous substances, including petroleum products that are not easily measured on a per barrel basis.

(a) Chapter 82.21 RCW defines certain specific substances as being hazardous and includes other substances by reference to federal legislation governing such things. It also provides authority to the director of the state department of ecology to designate by rule any other substance or product as hazardous that could present a threat to human health or the environment. (Chapter 173-342 WAC.)

(b) Chapter 82.21 RCW is administered exclusively under this rule. The law relates exclusively to the possession of hazardous substances and products. The law does not relate to waste, releases or spills of any materials, cleanup, compensation, or liability for such things, nor does tax liability under the law depend upon such factors. The incidence or privilege that incurs tax liability is simply the possession of the hazardous substance or product, whether or not such possession actually causes any hazardous or dangerous circumstance.

(c) The hazardous substance tax is imposed upon any possession of a hazardous substance or product in this state by any person who is not expressly exempt of the tax. However, it is the intent of the law that the economic burden of the tax should fall upon the first such possession in this state. Therefore, the law provides that if the tax has not been paid upon any hazardous substance or product the department of revenue may collect the tax from any person who has had possession. The amount of tax paid then constitutes a debt owed by the first person having had taxable possession to the person who pays the tax.

(2) Definitions. For purposes of this rule the following definitions apply.

(a) "Barrel" means a container that holds 42 billed gallons of a petroleum product, as defined in this rule. Starting July 1, 2019, it is the tax measure or base for petroleum products that are easily measured on a per barrel basis.

(b) "Billed gallon" means a U.S. gallon of petroleum product, whether net or gross as billed to the purchaser.

(c) "Gross gallon" means a U.S. gallon of petroleum product of 231 cubic inches as measured at the terminal rack.

(d) "Hazardous substance" means:

(i) Any substance that, on March 1, 2002, is a hazardous substance under section 101(14) of the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. Sec. 9601(14), as amended by Public Law 99-499 on October 17, 1986, except that hazardous substance does not include the following noncompound metals when in solid form in a particle larger than 100 micrometers (0.004 inches) in diameter: Antimony, arsenic, beryllium, cadmium, chromium, copper, lead, nickel, selenium, silver, thallium, or zinc. These substances consist of chemicals and elements in their purest form. A CERCLA substance that contains water is still considered pure. Combinations of CERCLA substances as ingredients together with nonhazardous substances will not be taxable unless the end product is specifically designated as a hazardous substance by the department of ecology;

(ii) Petroleum products (further defined below);

(iii) Pesticide products required to be registered under section 136a of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. Sec. 136 et seq., as amended by Public Law 104-170 on August 3, 1996; and

(iv) Anything else enumerated as a hazardous substance in chapter 173-342 WAC by the department of ecology.

(e) "Net gallon" means a U.S. gallon of petroleum product of 231 cubic inches at 60 degrees Fahrenheit and a pressure of 14.7 pounds per square inch (1 atmosphere).

(f) "Person" means any natural or artificial person, including a business organization of any kind, and has the further meaning defined in RCW 82.04.030.

The term "natural person," for purposes of the tax exemption in subsection (4)(b) of this rule regarding substances used for personal or domestic purposes, means human beings in a private, as opposed to a business sense.

(g) "Petroleum product" means any plant condensate, lubricating oil, crankcase motor oil, gasoline, aviation fuel, kerosene, diesel motor fuel, benzol, fuel oil, residual fuel, asphalt base, liquefied or liquefiable gases, such as butane, ethane and propane, and every other product derived from the refining of crude oil, but the term does not include crude oil.

The term "derived from the refining of crude oil" as used herein, means produced because of and during petroleum processing. "Petroleum processing" includes all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to crude oil or any byproduct of crude oil so that as a result thereof a fuel or lubricant is produced for sale or commercial or industrial use. "Fuel" includes all combustible gases and liquids suitable for the generation of energy. The term "derived from the refining of crude oil" does not mean petroleum products that are manufactured from refined oil derivatives, such as petroleum jellies, cleaning solvents, asphalt paving, etc. Such further manufactured products become hazardous substances only when expressly so designated by the director of the department of ecology in chapter 173-342 WAC.

(h) "Possession" means control of a hazardous substance located within this state and includes both actual and constructive possession.

(i) "Control" means the power to sell or use a hazardous substance or to authorize the sale or use by another.

(ii) "Actual possession" occurs when the person with control has physical possession.

(iii) "Constructive possession" occurs when the person with control does not have physical possession.

(i) "Previously taxed hazardous substance" means a hazardous substance upon which the tax has been paid and which has not been remanufactured or reprocessed in any manner.

(i) Remanufacturing or reprocessing does not include the mere repackaging or recycling for beneficial reuse. Rather, these terms embrace activities of a commercial or industrial nature involving the application of skill or labor by hand or machinery so that as a result, a new or different substance or product is produced.

(ii) "Recycling for beneficial reuse" means the recapturing of any used substance or product, for the sole purpose of extending the useful life of the original substance or product in its previously taxed form, without adding any new, different, or additional ingredient or component.

(iii) Example: Used motor oil drained from a crankcase, filtered, and containerized for reuse is not remanufactured or reprocessed. If the tax was paid on possession of the oil before use, the used oil is a previously taxed substance.

(iv) Possessions of used hazardous substances by persons who merely operate recycling centers or collection stations and who do not

reprocess or remanufacture the used substances are not taxable possessions.

(j) "Product" means any item containing a combination of ingredients, some of which are hazardous substances and some of which are not hazardous substances.

(k) "Selling price" means consideration of any kind expressed in terms of money paid or delivered by a buyer to a seller, without any deductions for any costs whatsoever. Bona fide discounts actually granted to a buyer result in reductions in the selling price rather than deductions.

(l) "State," for purposes of the credit provisions of the hazardous substance tax, means:

(i) The state of Washington.

(ii) States of the United States or any political subdivisions of such other states.

(iii) The District of Columbia.

(iv) Territories and possessions of the United States.

(v) Any foreign country or political subdivision thereof.

(m) Except as otherwise expressly defined in this rule, the definitions of terms provided in chapters 82.04, 82.08, and 82.12 RCW apply equally for this rule. Other terms not expressly defined in these chapters or this rule are to be given their common and ordinary meanings.

(n) "Tax" means the hazardous substance tax imposed under chapter 82.21 RCW.

(o) "Wholesale value" means the fair market value determined by the wholesale selling price.

In cases where no sale has occurred, wholesale value means the fair market wholesale value, determined as nearly as possible according to the wholesale selling price at the place of use of similar substances of like quality and character. In such cases the wholesale value shall be the "value of the products" as determined under the alternate methods set forth in WAC 458-20-112.

Before July 1, 2019, the wholesale value was the tax measure or base for all hazardous substances. Starting July 1, 2019, the wholesale value is the tax measure or base for all hazardous substances other than petroleum products that are easily measured on a per barrel basis.

(3) Tax rate and measure. The tax is imposed upon the privilege of possessing a hazardous substance in this state.

(a) For value-based tax. The value-based tax rate is seven tenths of one percent (.007). The value-based tax measure or base is the wholesale value of the substance, as defined in this rule. Before July 1, 2019, the value-based tax applied to all hazardous substances. Starting July 1, 2019, the value-based tax rate applies to all hazardous substances other than petroleum products that are easily measured on a per barrel basis.

(b) For volumetric tax. Starting July 1, 2019, the volumetric tax rate is \$1.09 per barrel and applies to petroleum products that are easily measured on a per barrel basis. Starting July 1, 2020, the volumetric tax rate on petroleum products will be adjusted to reflect the percentage change in the implicit price deflator for nonresidential structures as published by the United States Department of Commerce, Bureau of Economic Analysis for the most recent 12-month period ending December 31st of the prior year.

(i) Density adjustments. For petroleum products that are easily measured on a per barrel basis, taxpayers will determine the amount of

tax due based on billed gallons. Billed gallons may be calculated by using either gross gallons or net gallons. However, for contracts that adjust the formula for calculating billed gallons throughout the year to reduce the quantity of reported barrels, the department may employ the net gallons standard.

(ii) Example. Barrels are measured and reported to the department as billed gallons. However, to calculate billed gallons, Company A has negotiated a contract to employ the gross gallons standard during the winter in a location where average temperatures are 40 degrees Fahrenheit, while adjusting to the net gallons standard at the same location during the summer where average temperatures are 70 degrees Fahrenheit. Company A's seasonal formula for calculating billed gallons would ordinarily result in reducing the measured quantity of barrels throughout the year versus choosing a single formula to measure billed gallons. Therefore, the department may employ the net gallons standard for the entirety of the contract to measure the quantity of barrels.

(c) The department of revenue maintains lists of petroleum products that are easily measured, and petroleum products that are not easily measured, on a per barrel basis, on its website at dor.wa.gov. Petroleum products that remain in a liquid state at 77 degrees Fahrenheit and a pressure of 14.7 pounds per square inch (1 atmosphere) are subject to hazardous substance tax on a per barrel basis. These lists are not exclusive. If additional petroleum products are identified in the future, the department will add them to the applicable list. Products added to the lists will be subject to hazardous substance tax for all periods that the tax applies, even if the product was not on a list at the time.

(4) Exemptions. The following are expressly exempt from the tax:

(a) Any successive possessions of any previously taxed hazardous substances are tax exempt.

(i) Any person who possesses a hazardous substance that has been acquired from any other person who is registered with the department of revenue and doing business in this state may take a written statement certifying that the tax has been previously paid. Such certifications must be taken in good faith and must be in the form provided in subsection (14) of this rule. Blanket certifications may be taken, as appropriate, which must be renewed at intervals not to exceed four years. These certifications may be used for any single hazardous substance or any broad classification of hazardous substances, e.g., "all chemicals."

(ii) In the absence of taking such certifications, the person who possesses any hazardous substance must retain proofs that it purchased or otherwise acquired the substance from a previous possessor in this state. It is not necessary for subsequent possessors to obtain certificates of previously taxed hazardous substances in order to perfect their tax exemption. Documentation that establishes any evidence of previous tax payment by another person will suffice. This includes invoices or billings from in-state suppliers that reflect their payment of the tax or simple bills of lading or delivery documents revealing an in-state source of the hazardous substances.

(iii) This exemption for taxes previously paid is available for any person in successive possession of a taxed hazardous substance even though the previous payment may have been satisfied by the use of credits or offsets available to the previous person in possession.

(iv) Example. Company A brings a substance into this state upon which it has paid a similar hazardous substance tax in another state. Company A takes a credit against its Washington tax liability in the

amount of the other state's tax paid. It then sells the substance to Company B, and provides Company B with a certificate of previously taxed substance. Company B's possession is tax exempt even though Company A has not directly paid Washington's tax but has used a credit against its Washington liability.

(b) Any possession of a hazardous substance by a natural person for use of a personal or domestic nature, rather than a business nature, is tax exempt.

(i) This exemption extends to relatives, as well as other natural persons who reside with the person possessing the substance, and also to regular employees of that person who use the substance for the benefit of that person.

(ii) This exemption does not extend to possessions by any independent contractors hired by natural persons, which contractors themselves provide the hazardous substance.

(iii) Examples: Possessions of spray materials by an employee-gardener or soaps and cleaning solvents by an employee-domestic servant, when such substances are provided by the natural person for whose domestic benefit such things are used, are tax exempt. Also, possessions of fuel by private persons for use in privately owned vehicles are tax exempt.

(c) Any possession of any hazardous substance, other than pesticides or petroleum products, possessed by a retailer for making sales to consumers, in an amount that is determined to be "minimal" by the department of ecology. That department has determined that the term "minimal" means less than \$1,000.00 worth of such hazardous substances measured by their wholesale value, possessed during any calendar month.

(d) Possessions of alumina or natural gas are tax exempt.

(e) Persons or activities that the state is prohibited from taxing under the United States Constitution are tax exempt.

(i) This exemption extends to the U.S. government, its agencies and instrumentalities, and to any possession the taxation of which has been expressly reserved or preempted under the laws of the United States.

(ii) The tax will not apply with respect to any possession of any hazardous substance purchased, extracted, produced or manufactured outside this state that is shipped or delivered into this state until the interstate transportation of such substance has finally ended in this state. Thus, out-of-state sellers or producers need not pay the tax on substances shipped directly to customers in this state. The customers must pay the tax upon their first possession unless otherwise expressly exempt.

(iii) Out-of-state sellers or producers will be subject to tax upon substances shipped or delivered to warehouses or other in-state facilities owned, leased, or otherwise controlled by them.

(iv) However, the tax will not apply with respect to possessions of substances that are only temporarily stored or possessed in this state in connection with through, interstate movement of the substances from points of origin to points of destination both of which are outside of this state.

(f) The former exemption for petroleum products for export sale or use outside this state as fuel was effectively repealed by I-97 (1988). There are no exemptions under the law for any possessions of hazardous substances in this state simply because such substances may later be sold or used outside this state.

(g) Until January 1, 2028, any possession of an agricultural crop protection product that is solely for use by a farmer or certified applicator as an agricultural crop protection product and is warehoused in this state or transported to or from this state is tax exempt, provided that the person possessing the product does not use, manufacture, package for sale, or sell the product in this state. The following definitions apply throughout this subsection unless the context clearly requires otherwise.

(i) "Agricultural crop protection product" means a chemical regulated under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Sec. 136 as amended as of September 1, 2015, when used to prevent, destroy, repel, mitigate, or control predators, diseases, weeds, or other pests.

(ii) "Certified applicator" has the same meaning as provided in RCW 17.21.020.

(iii) "Farmer" has the same meaning as in RCW 82.04.213.

(iv) "Manufacturing" includes mixing or combining agricultural crop protection products with other chemicals or other agricultural crop protection products.

(v) "Package for sale" includes transferring agricultural crop protection products from one container to another, including the transfer of fumigants and other liquid or gaseous chemicals from one tank to another.

(vi) "Use" has the same meaning as in RCW 82.12.010.

(5) Credits. There are three distinct kinds of tax credits against liability that are available under the law.

(a) A credit may be taken by any manufacturer or processor of a hazardous substance produced from ingredients or components that are themselves hazardous substances, and upon which the hazardous substance tax has been paid by the same person or is due for payment by the same person.

(i) Example. A manufacturer possesses hazardous chemicals that it combines to produce an acid, which is also designated as a hazardous substance or product. When it reports the tax upon the wholesale value of the acid it may use a credit to offset the tax by the amount of tax it has already paid or reported upon the hazardous chemical ingredients or components. In this manner the intent of the law to tax hazardous substances only once is fulfilled.

(ii) Under circumstances where the hazardous ingredient and the hazardous end product are both possessed by the same person during the same tax reporting period, the tax on the respective substances must be computed and the former must be offset against the latter so that the tax return reflects the tax liability after the credit adjustment.

(iii) This credit may be taken only by manufacturers who have the first possession in this state of both the hazardous ingredients and the hazardous end product.

(b) A credit may be taken in the amount of the hazardous substance tax upon the value of fuel that is carried from this state in the fuel tank of any airplane, ship, truck, or other vehicle.

(i) The credit may be claimed only for the amount of tax reported or actually due to be paid on the fuel, not the amount representing the value of the fuel.

(ii) The purpose of this credit is to exclude from taxation any possessions of fuel that remains in the fuel tanks of any carrier vehicles powered by such fuel when they leave this state, regardless of where or from whom such fuel-in-tanks was acquired.

(iii) The nature of this credit is such that it generally has application only for interstate and foreign private or common carriers that carry fuel into this state or purchase fuel in this state. The intent is that the tax will apply only to so much of such fuel as is actually consumed by such carriers within this state.

(iv) In order to equitably and efficiently administer this tax credit, any fuel that is brought into this state in carrier vehicle fuel tanks must be accounted for separately from fuel that is purchased in this state for use in such fuel tanks. Formulas approved by the department of revenue for reporting the amount of fuel consumed in this state for purposes of this tax or other excise tax purposes will satisfy the separate accounting required under this subsection.

(v) Fuel-in-tanks brought into this state must be fully reported for tax and then the credit must be taken in the amount of such fuel that is taken back out of this state. This is to be done on the same periodic excise tax return so that the net effect is that the tax is actually paid only upon the portion of fuel consumed here.

(vi) The credit for fuel-in-tanks purchased in this state must be accounted for by using a fuel-in-tanks credit certificate in substantially the following form:

**Certificate of Credit for Fuel Carried
from this State in Fuel Tanks**

I hereby certify that the petroleum products specified herein, purchased by or transferred to the undersigned, from (name of seller or transferor), are entitled to the credit for fuel that is carried from this state in the fuel tank of any airplane, ship, truck, or other vehicle operated by a private or common carrier in interstate or foreign commerce. I will become liable for and pay the taxes due upon all or any part of such fuel that is not so carried from this state. This certification is given with full knowledge of, and subject to the legally prescribed penalties for fraud and tax evasion.

Registration No.
(if applicable)

Type of Business

Firm Name

Business Address

Registered Name

(if different)

Tax Reporting Agent

(if applicable)

Authorized Signature

Title

Identity of Fuel

(kind and amount by volume)

Date:.....

(vii) This certificate may be executed and provided to any possessor of fuel in this state, throughout the chain of distribution, with respect to fuel that ultimately will be sold and delivered into any carrier's fuel tanks in this state. Thus, refiners or manufacturers will take such certificates directly from carriers or from their wholesale purchasers who will sell to such carriers. Similarly, fuel dealers and distributors will take such certificates from carriers to whom they sell such fuel. These certificates must be retained as a permanent part of such seller's business records.

(viii) Persons who execute and provide these credit certificates to their fuel suppliers must retain suitable purchase and sales re-

cords as may be necessary to determine the amount of tax for which such persons may be liable.

(ix) Blanket certificates may be used to cover recurrent purchases of fuel by the same purchaser. Such blanket certificates must be renewed every two years.

(c) A credit may be taken against the tax owed in this state in the amount of any other state's hazardous substance tax that has been paid by the same person measured by the wholesale value of the same hazardous substance.

(i) In order for this credit to apply, the other state's tax must be significantly similar to Washington's tax in all its various respects. The taxable incident must be possessing the substance; the tax purpose must be that the substance is hazardous; and the tax measure must be stated in terms of the wholesale value, or volume, of the substance, without deductions for costs of doing business, such that the other state's tax does not constitute an income tax or added value tax.

(ii) This credit may be taken for the amount of any other state's qualifying tax that has actually been paid before Washington state's tax is incurred because the substance was previously possessed by the same person in another taxing jurisdiction.

(iii) The amount of credit is limited to the amount of tax paid in this state upon possession of the same hazardous substance in this state. Also, the credit may not be applied against any tax paid or owed in this state other than the hazardous substance tax imposed under chapter 82.21 RCW.

(iv) Exchange agreements under which hazardous substances or products possessed in this state are exchanged through any accounts crediting system with like substances possessed in other states do not qualify for this credit. The substance taxed in another state, and for which this credit is sought, must be actually, physically possessed in this state.

(v) Persons claiming this credit must maintain records necessary to verify that the credit taking qualifications have been met. Additional information regarding recordkeeping requirements is provided in WAC 458-20-19301.

(6) Newly defined hazardous substances. Under chapter 82.21 RCW the director of the department of ecology may identify and designate other substances or products as being hazardous substances for purposes of the tax. The director of the department of ecology may also delete substances or products previously designated as hazardous substances. Such actions are done by amending chapter 173-342 WAC.

(a) The law allows the addition or deletion of substances or products as hazardous substances by rule amendments, no more often than twice in any calendar year.

(b) When such additions or deletions are made, they do not take effect for tax purposes until the first day of the following month that is at least 30 days after the effective date of rule amendment by the department of ecology.

(i) Example. The department of ecology amends chapter 173-342 WAC by adding a new substance and the effective date of the amendment is June 15th. Possession of the substance does not become taxable until August 1st.

(ii) The tax is owed by any person who has possession of the newly designated hazardous substance upon the tax effective date as explained herein. It is immaterial that the person in possession on that

date was not the first person in possession of the substance in this state before it was designated as hazardous.

(7) Recurrent tax liability. It is the intent of the law that all hazardous substances possessed in this state should incur this tax liability only once unless they are expressly exempt. This is true of hazardous ingredients of products as well as the manufactured end product itself, if designated as a hazardous substance. The exemption for previously taxed hazardous substances does not apply to "products" that have been manufactured or remanufactured simply because an ingredient or ingredients of that product may have already been taxed when possessed by the manufacturer. Instead of an exemption, manufacturers in possession of both the hazardous ingredient and end product should use the credit provision explained at subsection (5)(a) of this rule.

(a) However, the term "product" is defined to mean only an item or items that contain a combination of both hazardous substances and nonhazardous substances. The term does not include combinations of only hazardous substances. Thus, possessions of substances produced by combining other hazardous substances upon all of which the tax has previously been paid will not again be taxable.

(b) When any hazardous substance is first produced during and because of any physical combination or chemical reaction that occurs in a manufacturing or processing activity, the intermediate possession of such substance within the manufacturing or processing plant is not considered a taxable possession if the substance becomes a component or ingredient of the product being manufactured or processed or is otherwise consumed during the manufacturing or processing activity.

However, when any intermediate hazardous substance is first produced during a manufacturing or processing activity and is withdrawn for sale or transfer outside of the manufacturing or processing plant, a taxable first possession occurs.

(c) Concentrations or dilutions for shipment or storage. The mere addition or withdrawal of water or other nonhazardous substances to or from hazardous substances designated under CERCLA or FIFRA for the sole purpose of transportation, storage, or the later manufacturing use of such substances does not result in any new hazardous product.

(8) How and when to pay tax. The tax must be reported on a special line of the combined excise tax return designated "hazardous substances." It is due for payment together with the timely filing of the return upon which it is reported, covering the tax reporting period during which the hazardous substance is first possessed within this state. Any person who is not expressly exempt of the tax and who possesses any hazardous substance in this state, without having proof that the tax has previously been paid on that substance, must report and pay the tax.

(a) It may be that the person who purchases a hazardous substance will not have billing information from which to determine the wholesale value of the substance when the tax return for the period of possession is due. In such cases the tax is due for payment no later than the next regular reporting due date following the reporting period in which the substance is first possessed.

(b) The taxable incident or event is the possession of the substance. Tax is due for payment by the purchaser of any hazardous substance whether or not the purchase price has been paid in part or in full.

(c) Special provision for manufacturers, refiners, and processors. Manufacturers, refiners, and processors who possess hazardous substances are required to report the tax and take any available ex-

emptions and credits only at the time that such hazardous substances are withdrawn from storage for purposes of their sale, transfer, remanufacture, or consumption.

(9) How and when to claim credits. Credits should be claimed and offset against tax liability reported on the same excise tax return when possible. The tax return form provides a line for reporting tax on hazardous substances and a line for taking credits as an offset against the tax reported. It is not required that any documents or other evidence of entitlement to credits be submitted with the report. Such proofs must be retained in permanent records for the purpose of verification of credits taken.

(10) Special provision for consumer as first possessor. Under circumstances where the consumer is the first person in possession of any nonexempt hazardous substance (e.g., substances imported by the consumer), or where the consumer is the person who must pay the tax upon substances previously possessed in this state (fuel purchased for export in fuel tanks) the consumer's tax measure will be the wholesale value determined as nearly as possible according to the wholesale selling price at the place of use of similar substances of like quality and character.

(11) Hazardous substances or products on consignment. Consignees who possess hazardous substances or products in this state with the power to sell such things, in their own name or on behalf of a disclosed or undisclosed consignor are liable for payment of the tax. The exemption for previously taxed substances is available for such consignees only if the consignors have paid the tax and the consignee has retained the certification or other proof of previous tax payment referred to in subsection (4) (a) (i) and (ii) of this rule. Possession of consigned hazardous substances by a consignee does not constitute constructive possession by the consignor.

(12) Hazardous substances untraceable to source. Various circumstances may arise whereby a person will possess hazardous substances in this state, some of which have been previously taxed in this or other states and some of which may not. In such cases formulary tax reporting may be used upon a special ruling by the department of revenue.

Example. Fungible petroleum products from sources both within and outside this state are commingled in common storage facilities. Formulary reporting is appropriate based upon volume percentages reflecting the ratio of in-state production to out-of-state production or other form of acquisition.

(13) Administrative provisions. The provisions of chapter 82.32 RCW regarding due dates, reporting periods, tax return requirements, interest and penalties, tax audits and limitations, disputes and appeals, and all such general administrative provisions apply equally to the hazardous substance tax. Taxpayers may request, from the department, tax rulings covering unique circumstances not addressed in this rule.

(14) Certification of previously taxed hazardous substance. Certification that the hazardous substance tax has already been paid by a person previously in possession of the substance may be taken in substantially the following form:

I hereby certify that this purchase -
all purchases of
(omit one)
..... by
(identify substances purchased) (name of purchaser)

who possesses registration no. ,
(buyer's number, if registered)

consists of the purchase of a hazardous substance or product upon which the hazardous substance tax has been paid in full by a person previously in possession of the substance or product in this state. This certificate is given with full knowledge of, and subject to the legally prescribed penalties for fraud and tax evasion, and with the full knowledge and agreement that the undersigned hereby assumes any liability for hazardous substance tax which has not been previously paid because of possession of the hazardous substance or product identified herein.

..... The registered seller named below personally paid the tax upon possession of the hazardous substances.

..... A person in possession of the hazardous substances prior to the possession of the registered seller named below paid the tax.

(Check the appropriate line.)

Name of registered seller Registration No.
Firm name Address
Type of business
Authorized signature Title
Date

WSR 24-22-115

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed November 5, 2024, 8:31 a.m., effective December 6, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department of revenue is amending these rules to incorporate 2024 legislation, HB 2375. This legislation expanded the senior citizens, persons with disabilities, and veterans with disabilities exemption and deferral under chapters 84.36 and 84.38 RCW, respectively, and the limited income deferral under chapter 84.37 RCW, by modifying the definition of "residence" to include an accessory dwelling unit.

Citation of Rules Affected by this Order: Amending WAC 458-16A-100 Senior citizen, persons with disabilities, and veterans with disabilities exemption—Definitions, 458-16A-120 Senior citizen, persons with disabilities, and veterans with disabilities exemption—Determining combined disposable income, 458-18-010 Deferral of special assessments and/or property taxes—Definitions, and 458-18A-010 Deferral of special assessments and/or property taxes—Definitions.

Statutory Authority for Adoption: RCW 84.08.010, 84.08.070.

Adopted under notice filed as WSR 24-18-104 on September 3, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 4, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 5, 2024.

Brenton Madison
Rules Coordinator

OTS-5834.1

AMENDATORY SECTION (Amending WSR 24-03-003, filed 1/3/24, effective 2/3/24)

WAC 458-16A-100 Senior citizen, persons with disabilities, and veterans with disabilities exemption—Definitions. (1) **Introduction.** This rule contains definitions of the terms used for the senior citizen, persons with disabilities, and veterans with disabilities property tax exemption described in RCW 84.36.381 through 84.36.389.

(2) **Accessory dwelling unit.** "Accessory dwelling unit" means a separate, autonomous residential dwelling unit that provides complete independent living facilities for one or more persons and includes

permanent provisions for living, sleeping, eating, cooking, and sanitation.

~~((3))~~ **(3) Annuity.** "Annuity" means a series of long-term periodic payments, under a contract or agreement. It does not include payments for the care of dependent children. For purposes of this rule, "long-term" means a period of more than one full year from the annuity starting date.

Annuity distributions must be included in "disposable income," as that term is defined in subsection ~~((12))~~ **(13)** of this rule, regardless of whether the distributions are taxable under federal law. A one-time, lump sum, total distribution is not an "annuity" for purposes of this rule, and only the taxable portion that would be included in federal adjusted gross income should be included in disposable income.

~~((3))~~ **(4) Assessment year.** "Assessment year" means the year the assessor lists and values the principal residence for property taxes. The assessment year is the calendar year prior to the year the taxes are due and payable. The assessment year is the year before the claimant receives the reduction in their property taxes because of the senior citizen, persons with disabilities, and veterans with disabilities exemption.

~~((4))~~ **(5) Capital gain.** "Capital gain" means the amount the seller receives for property, other than inventory, over that seller's adjusted basis in the property. The seller's initial basis in the property is the property's cost plus taxes, freight charges, and installation fees. In determining the capital gain, the seller's costs of transferring the property to a new owner are also added onto the adjusted basis of the property. If the property is acquired in some other manner than by purchase, the seller's initial basis in the property is determined by the way the seller received the property (e.g., property exchange, payment for services, gift, or inheritance). The seller increases and decreases the initial basis of the property for events occurring between the time the property is acquired and when it is sold (e.g., increased by the cost of improvements made later to the property).

~~((5))~~ **(6) Claimant.** "Claimant" means a person claiming the senior citizen, persons with disabilities, and veterans with disabilities exemption by filing an application with the assessor in the county where the property is located.

~~((6))~~ **(7) Combined disposable income.** "Combined disposable income" means the annual disposable income of the claimant, the claimant's spouse or domestic partner, and any cotenant occupying the residence for the assessment year, reduced by amounts paid by the claimant or the claimant's spouse or domestic partner for their:

- (a) Legally prescribed drugs;
- (b) Home health care as defined in subsection ~~((18))~~ **(19)** of this rule;
- (c) Nursing home, boarding home, assisted living facility, or adult family home expenses;
- (d) Health care insurance premiums for medicare under Title XVIII of the Social Security Act;
- (e) Costs related to medicare supplemental policies as defined in Title 42 U.S.C. Sec. 1395ss;
- (f) Durable medical equipment, mobility enhancing equipment, medically prescribed oxygen, and prosthetic devices as defined in RCW 82.08.0283 (see also WAC 458-20-18801);
- (g) Long-term care insurance as defined in RCW 48.84.020;

- (h) Cost-sharing amounts as defined in RCW 48.43.005;
- (i) Nebulizers as defined in RCW 82.08.803;
- (j) Medicines of mineral, animal, and botanical origin prescribed, administered, dispensed, or used in the treatment of an individual by a person licensed under chapter 18.36A RCW;
- (k) Ostomic items as defined in RCW 82.08.804;
- (l) Insulin for human use;
- (m) Kidney dialysis devices; and
- (n) Disposable devices used to deliver drugs for human use, as defined in RCW 82.08.935.

Disposable income is not reduced by any of the amounts in this subsection (~~((6))~~) (7) if payments are reimbursed by insurance or a government program (e.g., medicare or medicaid). When the application is made, the combined disposable income is calculated for the assessment year.

~~((7))~~ (8) **Cotenant.** "Cotenant" means a person who resides with the claimant and who has an ownership interest in the residence.

~~((8))~~ (9) **County median household income.** "County median household income" means the median household income estimates for the state of Washington by county of the legal address of the principal place of residence, as published by the office of financial management.

~~((9))~~ (10) **Department.** "Department" means the state department of revenue.

~~((10))~~ (11) **Depreciation.** "Depreciation" means the annual deduction allowed to recover the cost of business or investment property having a useful life of more than one year. In limited circumstances, this cost, or a part of this cost, may be taken as a section 179 expense on the federal income tax return in the year business property is purchased.

~~((11))~~ (12) **Disability.** "Disability" means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. RCW 84.36.383; 42 U.S.C. Sec. 423 (d) (1) (A).

~~((12))~~ (13) **Disposable income.** "Disposable income" means the adjusted gross income as defined in the Federal Internal Revenue Code of 2001, and as amended after that date, plus all items described below to the extent they are not included in or have been deducted from adjusted gross income:

(a) Capital gains, other than gain excluded from the sale of a principal residence that is reinvested prior to the sale or within the same calendar year in a different principal residence;

(b) Amounts deducted for loss;

(c) Amounts deducted for depreciation;

(d) Pension and annuity receipts;

(e) Military pay and benefits other than attendant-care and medical-aid payments. Attendant-care and medical-aid payments are any payments for medical care, home health care, health insurance coverage, hospital benefits, or nursing home benefits provided by the military;

(f) Veterans benefits other than:

(i) Attendant-care payments and medical-aid payments, defined as any payments for medical care, home health care, health insurance coverage, hospital benefits, or nursing home benefits provided by the VA;

(ii) Disability compensation, defined as payments made by the VA to a veteran because of a service-connected disability; and

(iii) Dependency and indemnity compensation, defined as payments made by the VA to a surviving spouse, child, or parent because of a service-connected death;

(g) Federal Social Security Act and railroad retirement benefits;

(h) Dividend receipts; and

(i) Interest received on state and municipal bonds.

~~((13))~~ (14) **Domestic partner.** "Domestic partner" means a person registered under chapter 26.60 RCW or a partner in a legal union of two persons, other than a marriage, that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership under chapter 26.60 RCW.

~~((14))~~ (15) **Domestic partnership.** "Domestic partnership" means a partnership registered under chapter 26.60 RCW or a legal union of two persons, other than a marriage, that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership under chapter 26.60 RCW.

~~((15))~~ (16) **Excess levies.** "Excess levies" has the same meaning as provided in WAC 458-19-005 for "excess property tax levy."

~~((16))~~ (17) **Excluded military pay or benefits.** "Excluded military pay or benefits" means military pay or benefits excluded from a person's federal gross income, other than those amounts excluded from that person's federal gross income for attendant-care and medical-aid payments. Members of the armed forces receive many different types of pay and allowances. Some payments or allowances are included in their gross income for federal income tax purposes while others are excluded. Excluded military pay or benefits include:

(a) Compensation for active service while in a combat zone or a qualified hazardous duty area;

(b) Death allowances for burial services, gratuity payment to a survivor, or travel of dependents to the burial site;

(c) Moving allowances;

(d) Travel allowances;

(e) Uniform allowances;

(f) Group term life insurance payments made by the military on behalf of the claimant, the claimant's spouse or domestic partner, or the cotenant; and

(g) Survivor and retirement protection plan premiums paid by the military on behalf of the claimant, the claimant's spouse or domestic partner, or the cotenant.

~~((17))~~ (18) **Family dwelling unit.** "Family dwelling unit" means the dwelling unit occupied by a single person, any number of related persons, or a group not exceeding a total of eight related and unrelated nontransient persons living as a single noncommercial housekeeping unit. The term does not include a boarding or rooming house.

~~((18))~~ (19) **Home health care.** "Home health care" means the treatment or care of either the claimant or the claimant's spouse or domestic partner received in the home. It must be similar to the type of care provided in the normal course of treatment or care in a nursing home, although the person providing the home health care services need not be specially licensed. The treatment and care must meet at least one of the following criteria. It must be for:

(a) Medical treatment or care received in the home;

(b) Physical therapy received in the home;

(c) Food, oxygen, lawful substances taken internally or applied externally, necessary medical supplies, or special needs furniture or equipment (such as wheel chairs, hospital beds, or therapy equipment), brought into the home as part of a necessary or appropriate in-home

service that is being rendered (such as a meals on wheels type program); or

(d) Attendant care to assist the claimant, or the claimant's spouse or domestic partner, with household tasks, and such personal care tasks as meal preparation, eating, dressing, personal hygiene, specialized body care, transfer, positioning, ambulation, bathing, toileting, self-medication a person provides for himself or herself, or such other tasks as may be necessary to maintain a person in their own home, but does not include improvements or repair of the home itself.

~~((19))~~ (20) **Income threshold 1.** "Income threshold 1" means:

(a) For taxes levied for collection in calendar years prior to 2020, a combined disposable income equal to \$30,000;

(b) For taxes levied for collection in calendar years 2020 through 2023, a combined disposable income equal to the greater of "income threshold 1" for the previous year or 45 percent of the county median household income; and

(c) For taxes levied for collection in calendar year 2024 and thereafter, a combined disposable income equal to the greater of "income threshold 1" for the previous year or 50 percent of the county median household income, adjusted every three years beginning August 1, 2023, and by March 1st every third year thereafter, as provided in RCW 84.36.385(8).

~~((20))~~ (21) **Income threshold 2.** "Income threshold 2" means:

(a) For taxes levied for collection in calendar years prior to 2020, a combined disposable income equal to \$35,000;

(b) For taxes levied for collection in calendar years 2020 through 2023, a combined disposable income equal to the greater of "income threshold 2" for the previous year or 55 percent of the county median household income; and

(c) For taxes levied for collection in calendar year 2024 and thereafter, a combined disposable income equal to the greater of "income threshold 2" for the previous year or 60 percent of the county median household income, adjusted every three years beginning August 1, 2023, and by March 1st every third year thereafter, as provided in RCW 84.36.385(8).

~~((21))~~ (22) **Income threshold 3.** "Income threshold 3" means:

(a) For taxes levied for collection in calendar years prior to 2020, a combined disposable income equal to \$40,000;

(b) For taxes levied for collection in calendar years 2020 through 2023, a combined disposable income equal to the greater of "income threshold 3" for the previous year or 65 percent of the county median household income; and

(c) For taxes levied for collection in calendar year 2024 and thereafter, a combined disposable income equal to the greater of "income threshold 3" for the previous year or 70 percent of the county median household income, adjusted every three years beginning August 1, 2023, and by March 1st every third year thereafter, as provided in RCW 84.36.385(8).

~~((22))~~ (23) **Lease for life.** "Lease for life" means a lease that terminates upon the death of the lessee.

~~((23))~~ (24) **Legally prescribed drugs.** "Legally prescribed drugs" means drugs supplied by prescription of a medical practitioner authorized to issue prescriptions by the laws of this state or another jurisdiction.

~~((24))~~ (25) **Life estate.** "Life estate" means an estate whose duration is limited to the life of the party holding it or of some other person.

(a) Reservation of a life estate upon a principal residence placed in trust or transferred to another is a life estate.

(b) Beneficial interest in a trust is considered a life estate for the settlor of a revocable or irrevocable trust who grants to themselves the beneficial interest directly in their principal residence, or the part of the trust containing their personal residence, for at least the period of their life.

(c) Beneficial interest in an irrevocable trust is considered a life estate, or a lease for life, for the beneficiary who is granted the beneficial interest representing their principal residence held in an irrevocable trust, if the beneficial interest is granted under the trust instrument for a period that is not less than the beneficiary's life.

~~((25))~~ (26) **Owned.** "Owned" includes "contract purchase" as well as "in fee," a "life estate," and any "lease for life." A residence owned by a marital community or domestic partnership or owned by cotenants is deemed to be owned by each spouse or each domestic partner or each cotenant.

~~((26))~~ (27) **Ownership by a marital community or domestic partnership.** "Ownership by a marital community or domestic partnership" means property owned in common by both spouses or domestic partners. Property held in separate ownership by one spouse or domestic partner is not owned by the marital community or domestic partnership. The person claiming the exemption must own the property for which the exemption is claimed. For example, a person qualifying for the exemption by virtue of age, disability, or disabled veteran status may not claim this exemption on a residence owned by the person's spouse or domestic partner as a separate estate outside the marital community or domestic partnership unless the claimant has a life estate in that separate estate.

~~((27))~~ (28) **Pension.** "Pension" generally means an arrangement providing for payments, not wages, to a person or to that person's family, who has fulfilled certain conditions of service or reached a certain age. Pension distributions may be triggered by separation from service, attainment of a specific age, disability, death, or other events. A pension may allow payment of all or a part of the entire pension benefit, in lieu of regular periodic payments.

~~((28))~~ (29) **Principal residence.** "Principal residence" means the claimant owns and occupies the residence as their principal or main residence. It does not include a residence used merely as a vacation home. For purposes of this exemption:

(a) Principal or main residence means the claimant occupies the residence for more than six months each calendar year.

(b) Confinement of the claimant to a hospital, nursing home, assisted living facility, adult family home, or home of a relative for the purpose of long-term care, does not disqualify the claim for exemption if:

(i) The residence is temporarily unoccupied;

(ii) The residence is occupied by the claimant's spouse or domestic partner or a person financially dependent on the claimant for support;

(iii) The residence is occupied by a caretaker who is not paid for watching the house;

(iv) The residence is rented for the purpose of paying nursing home, hospital, boarding home, or adult family home costs.

(c) For purposes of this subsection, "relative" means any individual related to the claimant by blood, marriage, or adoption.

~~((29))~~ **(30) Regular gainful employment.** "Regular gainful employment" means consistent or habitual labor or service which results in an increase in wealth or earnings.

~~((30))~~ **(31) Regular property tax levies.** "Regular property tax levies" has the same meaning as provided in WAC 458-19-005 for "regular property tax levy."

~~((31))~~ **(32) Replacement residence.** "Replacement residence" means a residence that qualifies for the senior citizen, persons with disabilities, and veterans with disabilities exemption and replaces the prior residence of the person receiving the exemption.

~~((32))~~ **(33) Residence.** "Residence" means a single-family dwelling unit whether the unit is separate or part of a multiunit dwelling, may include one accessory dwelling unit and includes up to one acre of the parcel of land on which the dwellings stand(~~s~~). A residence also includes any additional property up to a total of five acres that comprises the residential parcel if land use regulations require this larger parcel size. The term also includes:

(a) A share ownership in a cooperative housing association, corporation, or partnership if the person claiming exemption can establish that his or her share represents the specific unit or portion of the structure in which they reside.

(b) A single-family dwelling situated on leased lands and on lands the fee of which is vested in the United States, any instrumentality thereof including an Indian tribe, the state of Washington, or its political subdivisions.

(c) A mobile home which has substantially lost its identity as a mobile unit by being fixed in location on land owned or rented by the owner of the mobile home and placed on a foundation, posts, or blocks with fixed pipe connections for sewer, water or other utilities even though it may be listed and assessed by the county assessor as personal property. It includes up to one acre of the parcel of land on which the mobile home is located if both the land and mobile home are owned by the same qualified claimant. It also includes any additional property up to a total of five acres that comprises the residential parcel if land use regulations require this larger parcel size.

~~((33))~~ **(34) Veteran.** "Veteran" means a veteran of the armed forces of the United States.

~~((34))~~ **(35) Veteran with disabilities.** "Veteran with disabilities" means a veteran of the armed forces of the United States entitled to and receiving compensation from the United States Department of Veterans Affairs (VA) at:

(a) A combined service-connected evaluation rating of 80 percent or higher; or

(b) A total disability rating for a service-connected disability without regard to evaluation percent.

~~((35))~~ **(36) Veterans benefits.** "Veterans benefits" means benefits paid or provided under any law, regulation, or administrative practice administered by the VA. Federal law excludes from gross income any veterans' benefits payments, paid under any law, regulation, or administrative practice administered by the VA.

AMENDATORY SECTION (Amending WSR 24-03-003, filed 1/3/24, effective 2/3/24)

WAC 458-16A-120 Senior citizen, persons with disabilities, and veterans with disabilities exemption—Determining combined disposable income. (1) **Introduction.** This rule describes how an assessor determines a claimant's combined disposable income.

Examples. This rule includes examples that identify a set of facts and then state a conclusion. These examples should only be used as a general guide.

(2) **Begin by calculating disposable income.** The assessor must determine the disposable income of the claimant, the claimant's spouse or domestic partner, and all cotenants. The assessor begins by obtaining a copy of the claimant's, the claimant's spouse's or domestic partner's, and any cotenant's federal income tax return. If the federal income tax returns are not provided, the assessor must calculate disposable income from copies of other income documents (e.g., W-2, 1099-R, 1099-INT, etc.). If the federal income tax returns are provided, adjusted gross income is found on the front pages of Form 1040. Even if a federal income tax return is provided, an assessor may request copies of supporting documents to verify the amount of the claimant's combined disposable income.

(a) **Absent spouse or domestic partner.** When a spouse or domestic partner has been absent for over a year and the claimant has no knowledge of their spouse's or domestic partner's location or whether the spouse or domestic partner has income, and the claimant has not received anything of value from the spouse or domestic partner or anyone acting on behalf of the spouse or domestic partner, the disposable income of the spouse or domestic partner is deemed to be zero for purposes of this exemption. The claimant must submit with the application a dated statement signed under the penalty of perjury. This statement must state that more than one year prior to filing the exemption application:

- (i) The claimant's spouse or domestic partner was absent;
- (ii) The claimant has not and does not know the location of their spouse or domestic partner;
- (iii) The claimant has not had any communication with their spouse or domestic partner; and
- (iv) The claimant has not received anything of value from their spouse or domestic partner or anyone acting on behalf of their spouse or domestic partner.

The statement must also agree to provide this income information if the claimant is able to obtain it anytime within the next six years.

(b) **Form 1040.** If a claimant provides a copy of the Form 1040, the assessor will calculate the disposable income for the person or couple filing the return by adding to the reported adjusted gross income all of the items described below, but only to the extent these items were excluded or deducted from gross income.

(i) **Gain from a sold residence.** The excluded capital gain from selling a principal residence to the extent that excluded gain was not reinvested in a new principal residence is added onto the seller's adjusted gross income to determine the seller's disposable income.

(ii) **Capital gains.** If the federal income tax return shows capital gains or losses, the assessor examines a copy of the schedule or forms, if any, that were filed with the return. The assessor should

examine the capital gains reported on Schedule D (Capital Gains and Losses) and on Forms 4684 (Casualty and Thefts), 4797 (Sales of Business Property), and 8829 (Business Use of Home).

The assessor adds to adjusted gross income, any amount of capital gains reduced by losses or deductions on the schedules or forms listed above to determine the total capital gains. The amount of capital gains that were excluded or deducted from adjusted gross income must be added to the adjusted gross income to determine disposable income.

(iii) **Losses.** Amounts deducted for losses are added to adjusted gross income to determine disposable income. Most losses are reported on the federal income tax return in parentheses to reflect that these loss amounts are to be deducted. Net losses are reported on Form 1040 as business losses, capital losses, other losses, rental or partnership-type losses, or as farm losses. The assessor adds these amounts to the adjusted gross income. Additionally, the assessor adds to adjusted gross income the amount reported as a penalty on early withdrawal of savings because the amount represents a loss under section 62 of the Internal Revenue Code.

(A) The claimant only reports the net amount of these losses on the front page of the Form 1040 federal income tax return. A loss may be used on other schedules or forms to reduce income before being transferred to the front page of the tax return to calculate adjusted gross income. The assessor adds to the adjusted gross income the amount of losses used to reduce income on these other schedules and forms. The amount of losses that were used to reduce adjusted gross income must be added to the adjusted gross income to determine disposable income.

For example, a claimant reports a \$5,000 capital loss on the front page of the 1040. On the Schedule D, the claimant reports \$2,000 in long-term capital gains from the sale of Company X stock and \$7,000 in long-term capital losses from the sale of an interest in the Y limited partnership. The assessor has already added the \$5,000 loss from the net capital loss reported on the front page of the tax return. The assessor would add onto adjusted gross income only the additional \$2,000 in losses from the Schedule D that was used to offset the capital gain the claimant earned from the sale of Company X stock.

(B) The assessor should examine losses reported on Schedules C (Profit or Loss from Business), D (Capital Gains and Losses), E (Supplemental Income and Loss), F (Profit or Loss from Farming), and K-1 (Shareholder's Share of Income, Credits, Deductions, etc.), and on Forms 4684 (Casualty and Thefts), 4797 (Sales of Business Property), 8582 (Passive Activity Loss Limitations), and 8829 (Business Use of Home) to determine the total amount of losses claimed.

(iv) **Depreciation.** Amounts deducted for the depreciation, depletion, or amortization of an asset's costs are added onto the adjusted gross income to determine the disposable income. This includes section 179 expenses, as an expense in lieu of depreciation. Amounts deducted for depreciation, depletion, amortization, and 179 expenses may be found on Schedules C, C-EZ, E, F, K and K-1, and on Form 4835 (Farm Rental Income and Expenses). If the schedule or form results in a loss transferred to the front of the Form 1040 federal income tax return, the depreciation deduction to the extent it is represented in that loss amount should not be added onto the adjusted gross income, as this would result in it being added back twice;

(v) **Pension and annuity receipts.** Any nontaxable pension and annuity amounts are added to the recipient's adjusted gross income amount to determine the recipient's disposable income. The nontaxable

pension and annuity amounts are the difference between the total pension and annuity amounts reported and the taxable amounts reported. If the total pension and annuity amounts are not reported on the tax return, the assessor may use a copy of the Form 1099-R (Distributions from Pensions, Annuities, Retirement or Profit Sharing Plans, IRAs, Insurance Contracts, etc.) issued to the claimant, the claimant's spouse or domestic partner, or the cotenant to determine the total pension and annuity amounts received. Pension and annuity amounts do not include distributions made from a traditional individual retirement account.

(vi) **Federal Social Security Act and railroad retirement benefits.** Any nontaxable Social Security benefit or equivalent railroad retirement amount reported on the Form 1040 federal income tax return is added to the adjusted gross income of the person receiving these benefits to determine that person's disposable income. The nontaxable Social Security benefit or equivalent railroad retirement amount is the difference between the total Social Security benefits or equivalent railroad retirement amounts reported and the taxable amounts reported. If the total amount of the Social Security benefit or equivalent railroad retirement amount is not reported on the tax return, the assessor may use a copy of the Form SSA-1099 or Form RRB-1099 issued to the claimant, the claimant's spouse or domestic partner, or the cotenant to determine the Social Security benefits or the railroad retirement benefits received.

(vii) **Excluded military pay and benefits.** Military pay and benefits excluded from federal adjusted gross income, other than military pay and benefits for attendant care or medical aid, are added to the adjusted gross income of the military personnel receiving the military pay or benefits to determine that person's disposable income. Excluded military pay and benefits are not reported on the Form 1040. Excluded military pay and benefits such as pay earned in a combat zone, basic allowance for subsistence (BAS), basic allowance for housing (BAH), and certain in-kind allowances, are reported on Form W-2. The claimant should disclose when excluded military pay and benefits were received and provide copies of the Form W-2 or other documents that verify the amounts received.

(viii) **Veterans benefits.** Federal law excludes from gross income any veterans benefit payments paid under any law, regulation, or administrative practice administered by the VA. The following veterans benefits are not added to a veteran's adjusted gross income:

(A) Attendant-care payments and medical-aid payments, defined as any payments for medical care, home health care, health insurance coverage, hospital benefits, or nursing home benefits provided by the VA;

(B) Disability compensation, defined as payments made by the VA to a veteran because of a service-connected disability; and

(C) Dependency and indemnity compensation, defined as payments made by the VA to a surviving spouse, child, or parent.

VA benefits are not reported on the Form 1040. The claimant should disclose when excluded veterans benefits were received and provide copies of documents that verify the amount received.

(ix) **Dividend receipts.** Exempt-interest dividends received from a regulated investment company (mutual fund) are reported on the tax-exempt interest line of the Form 1040 and added to the recipient's adjusted gross income to determine that recipient's disposable income.

(A) The assessor may ask a claimant whether the claimant, the claimant's spouse or domestic partner, or any cotenants have received exempt-interest dividends.

(B) Generally, the mutual fund owner will receive a notice from the mutual fund telling them the amount of the exempt-interest dividends received. These exempt-interest dividends are not shown on Form 1099-DIV or Form 1099-INT. Although exempt-interest dividends are not taxable, the owner must report them on the Form 1040 tax return if they have to file; and

(x) **Interest received on state and municipal bonds.** Interest received on state or local government bonds is generally not subject to federal income tax. The tax-exempt interest is reported on the Form 1040 and added to the bond owner's adjusted gross income to determine the bond owner's disposable income.

(3) **Calculate the combined disposable income.** Once the assessor has calculated the disposable income for the claimant, the claimant's spouse or domestic partner, and any cotenants, the assessor will add the disposable incomes together. To calculate the combined disposable income for the claimant, the assessor will subtract from the sum of the disposable income, the amounts paid by the claimant or the claimant's spouse or domestic partner during that calendar year for the deductible amounts listed in WAC 458-16A-100((+6)) (7).

OTS-5835.1

AMENDATORY SECTION (Amending WSR 24-03-004, filed 1/3/24, effective 2/3/24)

WAC 458-18-010 Deferral of special assessments and(~~/or~~) property taxes—Definitions. (1) **Introduction.** This rule provides definitions of the terms used to administer the deferral program in chapter 84.38 RCW and this section through WAC 458-18-100 for special assessments and(~~/or~~) property taxes on residential housing.

(2) **"Boarding house"** means a residence in which lodging and meals are provided. Each resident of a boarding house is charged a lump sum to cover the costs of lodging and meals with no separate accounting for the fair selling price of the meals.

(3) **"Claimant"** means a person who either elects under chapter 84.38 RCW or is required under RCW 84.64.050, to defer payment of special assessments and(~~/or~~) real property taxes accrued on their residence by filing a declaration to defer as allowed under chapter 84.38 RCW. Only one individual per household may file a declaration to defer.

(4) **"Cooperative housing"** means any existing structure, including surrounding land and improvements, which contains one or more dwelling units and is owned by:

(a) An association with resident shareholders who are granted renewable leasehold interests in dwelling units in the building. Unlike owners of a condominium, the resident shareholders who hold a renewable leasehold interest do not own their dwelling units; or

(b) An association organized under the Cooperative Association Act (chapter 23.86 RCW).

(5) **"Department"** means the state department of revenue.

- (6) **"Devisee"** has the same meaning as provided in RCW 21.35.005 (~~(: Any person designated in a will to receive a disposition of real or personal property)~~).
- (7) **"Domestic partner"** means a person registered under chapter 26.60 RCW or a partner in a legal union of two persons, other than a marriage, that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership under chapter 26.60 RCW.
- (8) **"Domestic partnership"** means a partnership registered under chapter 26.60 RCW or a legal union of two persons, other than a marriage, that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership under chapter 26.60 RCW.
- (9) **"Equity value"** means the amount by which the true and fair value of a residence exceeds the total amount of all liens, obligations, and encumbrances against the property, excluding deferral liens. As used in this context, the "true and fair value" of a residence is the value shown on the county tax rolls maintained by the assessor for the assessment year in which the deferral claim is made.
- (10) **"Fire and casualty insurance"** means a policy with an insurer that is authorized by the (~~state insurance commission~~) Washington state office of the insurance commissioner to insure property in this state.
- (11) **"Heir"** has the same meaning as provided in RCW 21.35.005 (~~(: Any person, including the surviving spouse, who is entitled under the statutes of intestate succession to the property of a decedent)~~).
- (12) **"Income threshold"** means:
- (a) For taxes levied for collection in calendar years prior to 2020, a combined disposable income equal to \$45,000; and
 - (b) For taxes levied for collection in calendar year 2020 and thereafter, a combined disposable income equal to the greater of the income threshold for the previous year, or 75 percent of the county median household income, adjusted every three years beginning August 1, 2023, as provided in RCW 84.36.385(8).
 - (i) Beginning with the adjustment made by August 1, 2023, as provided in RCW 84.36.385(8), if the income threshold in a county is not adjusted based on percentage of county median income, then the income threshold must be adjusted based on the growth of the consumer price index for all urban consumers (CPI-U) for the prior 12-month period as published by the United States Bureau of Labor Statistics.
 - (ii) In no case may the adjustment be greater than one percent and if the income threshold adjustment is negative, the income threshold for the prior year continues to apply. The adjusted threshold must be rounded to the nearest one dollar.
- (13) **"Irrevocable trust"** means a trust that may not be revoked after its creation by the trustor.
- (14) **"Lease for life"** means a lease that terminates upon the death of the lessee.
- (15) **"Lien"** means any interest in property given to secure payment of a debt or performance of an obligation, including a deed of trust. A lien includes the total amount of special assessments and(~~or~~) property taxes deferred and the interest. It also may include any other outstanding balances owed to local governments for special assessments.
- (16) **"Life estate"** means an estate that consists of total rights to use, occupy, and control real property but is limited to the life-

time of a designated party; this party is often called a "life tenant."

(17) **"Local government"** means any city, town, county, water-sewer district, public utility district, port district, irrigation district, flood control district, or any other municipal corporation, quasi municipal corporation, or other political subdivision authorized to levy special assessments.

(18) **"Perjury"** means the willful assertion as to a matter of fact, opinion, belief, or knowledge made by a claimant upon the declaration to defer that the claimant knows to be false.

(19) **"Real property taxes"** means ad valorem property taxes levied on a residence in this state. The term includes foreclosure costs, interest, and penalties accrued as of the date the declaration to defer is filed.

(20) **"Residence"** has the same ((definition)) meaning as provided in RCW 84.36.383 ((and is defined as:

~~(a) A single-family dwelling unit whether the unit is separate or part of a multiunit dwelling and includes up to one acre of the parcel of land on which the dwelling stands. Residence also includes any additional property up to a total of five acres that comprises the residential parcel if local land use regulations require this larger parcel size;~~

~~(b) A share ownership in a cooperative housing association, corporation, or partnership if the person claiming exemption can establish that their share represents the specific unit or portion of such structure in which they reside; or~~

~~(c) A single-family dwelling situated upon lands the fee of which is vested in the United States or any instrumentality of the United States, including an Indian tribe, or in the state of Washington, notwithstanding the provisions of RCW 84.04.080 and 84.04.090, such a residence is deemed real property).~~

(21) **"Revocable trust"** means an agreement that entitles the trustor to have the full right to use the real property and to revoke the trust and retake complete ownership of the property at any time during their lifetime. The trustee of a revocable trust holds only bare legal title to the real property. Full equitable title to the property remains with the trustor; the original property owner.

(22) **"Rooming house"** means a residence where persons may rent rooms.

(23) **"Special assessment"** means the charge or obligation imposed by a local government upon real property specially benefited by improvements.

OTS-5836.1

AMENDATORY SECTION (Amending WSR 13-08-030, filed 3/27/13, effective 4/27/13)

WAC 458-18A-010 Deferral of special assessments and((/or)) property taxes—Definitions. Introduction. This ((section)) rule is intended to provide definitions of the terms most frequently used to administer the deferral program for special assessments and((/or)) prop-

erty taxes on residential housing created by chapter 84.37 RCW. Unless a different meaning is plainly required by the context, the words and phrases used in this chapter have the following meanings:

(1) "Boarding house" means a residence in which lodging and meals are provided. Each resident of a boarding house is charged a lump sum to cover the costs of lodging and meals with no separate accounting for the fair selling price of the meals.

(2) "Claimant" means a person who elects under chapter 84.37 RCW to defer payment of special assessments and ~~((/or))~~ real property taxes accrued on his or her residence by filing a declaration to defer as allowed under chapter 84.37 RCW. If more than one individual in a household wishes to defer special assessments and ~~((/or))~~ taxes, only one may file a declaration to defer; in other words, only one claimant per household is allowed.

(3) "Cooperative housing" means any existing structure, including surrounding land and improvements, that contains one or more dwelling units and is owned by:

(a) An association with resident shareholders who are granted renewable leasehold interests in dwelling units in the building. Unlike owners of a condominium, the resident shareholders who hold a renewable leasehold interest do not own their dwelling units; or

(b) An association organized under the Cooperative Association Act (chapter 23.86 RCW).

(4) "Department" means the state department of revenue.

(5) "Domestic partner" means a person registered under chapter 26.60 RCW or a partner in a legal union of two persons, other than a marriage, that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership under chapter 26.60 RCW.

(6) "Domestic partnership" means a partnership registered under chapter 26.60 RCW or a legal union of two persons, other than a marriage, that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership under chapter 26.60 RCW.

(7) "Equity value" means the amount by which the true and fair value of a residence exceeds the total amount of all liens, obligations, and encumbrances against the property excluding the deferral liens. As used in this context, the "true and fair value" of a residence is the value shown on the county tax rolls maintained by the assessor for the assessment year in which the deferral claim is made.

(8) "Fire and casualty insurance" means a policy with an insurer that is authorized by the ~~((state insurance commission))~~ Washington state office of the insurance commissioner to insure property in this state.

(9) "Good cause" means factors peculiar to each claimant. At a minimum, the applicant must be able to demonstrate that factors outside of his or her control were the cause for missing the statutory deadline. This includes factors which would effectively prevent a reasonable person facing similar circumstances from filing a timely application, such as acting or failing to act based on authoritative written advice received directly from persons upon which a reasonable person would normally rely, severe weather conditions preventing safe travel to the point of filing, incapacity due to illness or injury, and other factors of similar gravity. Inadvertence or oversight is not a basis for a "good cause" extension of the filing deadline.

(10) "Irrevocable trust" means a trust that may not be revoked after its creation by the trustor.

(11) "Lease for life" means a lease that terminates upon the death of the lessee.

(12) "Lien" means any interest in property given to secure payment of a debt or performance of an obligation, including a deed of trust. A lien includes the total amount of special assessments and ~~((/or))~~ property taxes deferred and the interest thereon. It also may include any other outstanding balance owed to local government for special assessments.

(13) "Life estate" means an estate that consists of total rights to use, occupy, and control real property, but is limited to the lifetime of a designated party; this party is often called a "life tenant."

(14) "Local government" means any city, town, county, water-sewer district, public utility district, port district, irrigation district, flood control district, or any other municipal corporation, quasi municipal corporation, or other political subdivision authorized to levy special assessments.

(15) "Perjury" means the willful assertion as to a matter of fact, opinion, belief, or knowledge made by a claimant upon the declaration to defer that the claimant knows to be false.

(16) "Real property taxes" means ad valorem property taxes levied on a residence in this state. The term includes foreclosure costs, interest, and penalties accrued as of the date the declaration to defer is filed.

(17) "Residence" has the same meaning given in RCW 84.36.383(~~(+ it means a single-family dwelling unit whether the unit is separate or part of a multiunit dwelling and includes up to one acre of the parcel of land on which the dwelling stands, and it includes any additional property up to a total of five acres that comprises the residential parcel if local land use regulations require this larger parcel size)~~)).

(18) "Revocable trust" means an agreement that entitles the trustor to have the full right to use the real property and to revoke the trust and retake complete ownership of the property at any time during his or her lifetime. The trustee of a revocable trust holds only bare legal title to the real property. Full equitable title to the property remains with the trustor; the original property owner.

(19) "Rooming house" means a residence where persons may rent rooms.

(20) "Special assessment" means the charge or obligation imposed by local government upon real property specially benefited by improvements.