

WSR 24-21-076
PROPOSED RULES
SOUTHWEST CLEAN
AIR AGENCY

[Filed October 15, 2024, 9:39 a.m.]

Original Notice.

Proposal is exempt under RCW 70A.15.2040(1).

Title of Rule and Other Identifying Information: Southwest clean air agency (SWCAA) 400-025 Adoption of Federal Rules, existing rule section establishing an adoption by reference date for federal regulations cited in other sections of SWCAA 400.

SWCAA 400-030 Definitions, existing rule section containing definitions for words and phrases used throughout SWCAA 400.

SWCAA 400-045 Permit Application for Nonroad Engines, existing rule section identifying requirements for nonroad engine permit applications.

SWCAA 400-046 Application Review Process for Nonroad Engines, existing rule section identifying requirements for the processing and approval of nonroad engine permit applications.

SWCAA 400-070 General Requirements for Certain Source Categories, existing rule section containing minimum air emission standards and work practices for selected source categories.

SWCAA 400-072 Small Unit Notification for Selected Source Categories, existing rule section containing air emission standards, work practices, and monitoring/reporting requirements that may be used in lieu of new source review for selected small source categories.

SWCAA 400-075 Emission Standards for Stationary Sources Emitting Hazardous Air Pollutants, existing rule section adopting by reference federal standards relating to hazardous air pollutant standards contained in 40 C.F.R. Parts 61, 63, and 65.

SWCAA 400-099 Per Capita Fees, existing rule section identifying the authority for, method of determination, and amount of SWCAA's per capita fee assessment for supplemental income.

SWCAA 400-100 Registration Requirements, existing rule section identifying requirements for registration and inspection of air contaminant sources.

SWCAA 400-105 Records, Monitoring and Reporting, existing rule section identifying requirements for emission monitoring, emission sampling and reporting, and submission of emission inventories.

SWCAA 400-115 Standards of Performance for New Sources, existing rule section adopting by reference federal standards for new sources contained in 40 C.F.R. Part 60.

SWCAA 400-171 Public Involvement, existing section identifying requirements for public notice of SWCAA actions, and the process by which public involvement is to be administered. This section also identifies those documents that are subject to a formal public notice and those that are not subject to a formal public notice.

SWCAA 400-200 Vertical Dispersion Requirement, Creditable Stack Height and Dispersion Techniques, existing rule section identifying presumptive requirements for new exhaust stack installations, and describes the procedure by which the maximum creditable stack height is to be determined.

SWCAA 400 Appendix C—Federal Standards Adopted by Reference, existing rule section containing informational lists of all federal regulations adopted by reference pursuant to SWCAA 400-075 and 400-115.

Hearing Location(s): On December 30, 2024, at 6:00 p.m., virtual online hearing. Contact SWCAA to register for online hearing.

Date of Intended Adoption: January 2, 2025.

Submit Written Comments to: Wess Safford, 5101 N.E. 82nd Avenue, Suite 102, Vancouver, WA 98662, email wess@swcleanair.org, fax 360-576-0925, by December 30, 2024.

Assistance for Persons with Disabilities: Contact Tina Hallock, phone 360-574-3058 ext. 110, fax 360-576-0925, TTY 360-574-3058, email tina@swcleanair.org, by December 20, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SWCAA 400-025 Adoption of Federal Rules, the proposed rule changes update the adoption by reference date for federal regulations cited in other sections of SWCAA 400.

SWCAA 400-030 Definitions, the proposed rule changes add a definition for "hazardous air pollutant" and revise the definition for "nonroad engine."

SWCAA 400-045 Permit Application for Nonroad Engines, the proposed rule changes revise stationary engine exceptions.

SWCAA 400-046 Application Review Process for Nonroad Engines, the proposed rule changes remove the 40 C.F.R. 89 reference in SWCAA 400-046 (2)(c) and recordkeeping requirements for engine location in SWCAA 400-046(7).

SWCAA 400-070 General Requirements for Certain Source Categories, the proposed rule changes update the federal regulation citation in SWCAA 400-070 (6)(c).

SWCAA 400-072 Emission Standards for Selected Small Source Categories, the proposed rule changes revise complaint reporting sections for consistency (business vs. calendar days), clarify the definition of heater in SWCAA 400-072 (5)(b), add a maximum combined horsepower limit to SWCAA 400-072 (5)(c), modify emergency use recordkeeping requirement in SWCAA 400-072 (5)(c), remove setback requirement from SWCAA 400-072 (5)(d), and make administrative edits.

SWCAA 400-075 Emission Standards for Stationary Sources Emitting Hazardous Air Pollutants, the proposed rule changes add a reference to the Administrator of the Environmental Protection Agency (EPA) in SWCAA 400-075 (5)(b).

SWCAA 400-099 Per Capita Fees, the proposed rule changes revise RCW citations from 70.94 to 70A.15.

SWCAA 400-100 Registration Requirements, the proposed rule changes clarify the applicability of registration requirements.

SWCAA 400-105 Records, Monitoring and Reporting, the proposed rule changes add "hazardous air pollutants" to the list of pollutants in SWCAA 400-105(1) and remove the Federal Clean Air Act Section 112 citation.

SWCAA 400-115 Standards of Performance for New Sources, the proposed rule changes update the list of new source performance standards adoption exceptions.

SWCAA 400-171 Public Involvement, the proposed rule changes clarify synthetic minor applicability and website publication of public notice.

SWCAA 400-200 Vertical Dispersion Requirement, Creditable Stack Height and Dispersion Techniques, the proposed rule changes revise SWCAA 400-200(1) applicability to exclude domestic hot water units.

SWCAA 400 Appendix C—Federal Standards Adopted by Reference, the proposed rule changes update the informational list of adopted federal regulations.

Reasons Supporting Proposal: The proposed changes are necessary to support SWCAA's implementation of the Washington State Clean Air Act and associated federal standards.

Statutory Authority for Adoption: RCW 70A.15.2040(1).

Statute Being Implemented: RCW 70A.15.2040(1).

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

Name of Proponent: SWCAA, governmental.

Name of Agency Personnel Responsible for Drafting: Wess Safford, 5101 N.E. 82nd Avenue, Suite 102, Vancouver, WA 98662, 360-574-3058 ext. 126; Implementation: Clint Lamoreaux, 5101 N.E., 82nd Avenue, Suite 102, Vancouver, WA 98662, 360-574-3058 ext. 131; and Enforcement: Bryan Smith, 5101 N.E. 82nd Avenue, Suite 102, Vancouver, WA 98662, 360-574-3058 ext. 122.

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

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 70A.15.2040(1), section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. SWCAA is not voluntarily invoking section 201, chapter 403, Laws of 1995, for this action.

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

Is exempt under RCW 70A.15.2040(1).

Explanation of exemptions: Pursuant to RCW 70A.15.2040(1), air pollution control authorities are authorized to adopt and amend rules and regulations in accordance with chapter 42.30 RCW and selected portions of chapter 34.05 RCW. SWCAA is not deemed a state agency and is not required to comply with the provisions of chapter 19.85 RCW.

October 15, 2024

Uri Papish

Executive Director

AMENDATORY SECTION (Amending WSR 23-03-057 filed 1/11/23, effective 2/11/23)

SWCAA 400-025 Adoption of Federal Rules

Federal rules cited in this rule are adopted by reference as in effect on September 1, ((2022)) 2024.

AMENDATORY SECTION (Amending WSR 23-03-057 filed 1/11/23, effective 2/11/23)

SWCAA 400-030 Definitions

Except as provided elsewhere in this regulation the following definitions apply throughout the regulation:

(1) "**Actual emissions**" means the actual rate of emissions of a pollutant from an "emission unit", as determined in accordance with (a) through (c) of this subsection.

(a) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the "emission unit" actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal "source" operation. The Agency shall allow the use of a different time period upon a determination that it is more representative of normal "source"

operation. Actual emissions shall be calculated using the "emission unit's" actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(b) The Agency may presume that "source" specific allowable emissions for the unit are equivalent to the actual emissions of the "emission unit".

(c) For any "emission unit" that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the "emission unit" on that date.

(2) **"Adverse impact on visibility"** means visibility impairment that interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of a Federal Class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of visibility impairment, and how these factors correlate with:

(a) times of visitor use of the Federal Class I area and (b) the frequency and timing of natural conditions that reduce visibility.

(3) **"Agency"** means the Southwest Clean Air Agency (SWCAA).

(4) **"Air contaminant"** or **"air pollutant"** means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof. For the purposes of regulation under the Washington SIP, "air contaminant" means only:

(a) Those air contaminants for which EPA has established National Ambient Air Quality Standards (NAAQS) and precursors to such NAAQS pollutants as determined by EPA for the applicable geographic area; and

(b) Any additional air contaminants that are required to be regulated under Part C of Title I of the Federal Clean Air Act, but only for the purpose of meeting the requirements of Part C or to the extent those additional air contaminants are regulated in order to avoid such requirements.

(5) **"Air discharge permit"** means the same as "Order of Approval." This term does not apply to any permitting action conducted pursuant to 40 CFR Part 70 or Chapter 173-401 WAC.

(6) **"Air discharge permit application"** means the same as "Notice of Construction application." This term does not apply to any permitting action conducted pursuant to 40 CFR Part 70 or Chapter 173-401 WAC.

(7) **"Air pollution"** means the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities, and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interferes with enjoyment of life and property. For the purposes of this regulation, air pollution shall not include air contaminants emitted in compliance with Chapter 17.21 RCW, the Washington Pesticide Application Act, which regulates the application and control of various pesticides.

(8) **"Allowable emissions"** means the emission rate of a "stationary source" calculated using the maximum rated capacity of the "stationary source" (unless the "stationary source" is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(a) The applicable standards in 40 CFR Parts 60, 61, 62, or 63;

(b) Any applicable State Implementation Plan (SIP) emission limitation including those with a future compliance date;

(c) The emission rate specified as a federally enforceable permit condition, including those with a future compliance date; or

(d) The emission rate specified by a federally enforceable regulatory order.

(9) "**Alteration**" means the act of altering, which means to change or make different. Alteration includes, but is not limited to, any enlargement, replacement, or change in the design, operation, capacity, or arrangement of a process; any increase in the connected loading of process or control equipment; and any change in fuels, method of operation or hours of operation not previously approved by the Agency.

(10) "**Ambient air**" means the surrounding outside air.

(11) "**Ambient air quality standard**" (AAQS) means an established concentration, exposure time, and frequency of occurrence of an air contaminant or multiple air contaminants in the ambient air that shall not be exceeded.

(12) "**Attainment area**" means a geographic area designated by EPA at 40 CFR Part 81 as having attained the National Ambient Air Quality Standard for a given criteria pollutant.

(13) "**Authority**" means any air pollution control agency whose jurisdictional boundaries are coextensive with the boundaries of one or more counties.

(14) "**Begin actual construction**" means, in general, initiation of physical on-site construction activities on an "emission unit", which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipe work and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than preparatory activities that mark the initiation of the change.

(15) "**Best available control technology**" (BACT) means an emission limitation (including a visible emission standard) based on the maximum degree of reduction for each air pollutant subject to regulation under Chapter 70A.15 RCW which would be emitted from or which results from any new or modified "stationary source," which the Agency, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such "stationary source" or modification through application of production processes and available methods, systems, and techniques, including fuel cleaning or treatment, clean fuels, or innovative fuel combustion techniques for control of each such pollutant. In no event shall application of "best available control technology" result in emissions of any air pollutants which will exceed the emissions allowed by any applicable standard under 40 CFR Parts 60, 61, 62 and 63. Emissions from any "stationary source" utilizing clean fuels, or any other means, to comply with this paragraph shall not be allowed to increase above levels that would have been required under the definition of BACT in the Federal Clean Air Act as it existed prior to enactment of the Clean Air Act Amendments of 1990.

(16) "**Best available retrofit technology**" (BART) means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant that is emitted by an existing stationary facility. The emission limitation must be established, on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and non-air quality environmental impacts of compliance, any pollution control equipment in use or in existence at the "stationary source," the remaining useful life of the "stationary source," and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.

(17) "**Board**" means the Board of Directors of the Southwest Clean Air Agency.

(18) "**Bubble**" means a set of emission limits which allows an increase in emissions from a given "emission unit" in exchange for a decrease in emissions from another "emission unit", pursuant to RCW 70A.15.2240 and SWCAA 400-120.

(19) "**Capacity factor**" means the ratio of the average load on a machine or piece of equipment to the manufacturer's capacity rating of the machine or equipment for the period of time considered.

(20) "**Class I area**" means any area designated pursuant to Sections 162 or 164 of the Federal Clean Air Act as a Class I area. The following areas are the Class I areas located within Washington state:

- (a) Alpine Lakes Wilderness;
- (b) Glacier Peak Wilderness;
- (c) Goat Rocks Wilderness;
- (d) Mount Adams Wilderness;
- (e) Mount Rainier National Park;
- (f) North Cascades National Park;
- (g) Olympic National Park;
- (h) Pasayten Wilderness; and
- (i) Spokane Indian Reservation.

(21) "**Climate change**" means any long-term significant change over durations ranging from decades to millions of years in the "average weather" of a region or the earth as a whole.

(22) "**Combustion and incineration units**" means emission units using combustion for waste disposal, steam production, chemical recovery or other process requirements, but excludes open or outdoor burning.

(23) "**Commenced**" as applied to construction, means that an owner or operator has all the necessary preconstruction approvals or permits and either has:

(a) Begun, or caused to begin, a continuous program of actual on-site construction of the "stationary source," to be completed within a reasonable time; or

(b) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the "stationary source" to be completed within a reasonable time.

(c) For the purposes of this definition, "necessary preconstruction approvals" means those permits or orders of approval required under federal air quality control laws and regulations, including state, local, and federal regulations and orders contained in the Washington SIP.

(24) "**Composting**" means the biological degradation and transformation of organic solid waste under controlled conditions designed to promote aerobic decomposition. Natural decay of organic solid waste under uncontrolled conditions is not composting.

(25) "**Concealment**" means any action taken to reduce the observed or measured concentrations of a pollutant in a gaseous effluent while, in fact, not reducing the total amount of pollutant discharged.

(26) "**Construction**" means any physical change or change in method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions. (ref. 40 CFR 52.21)

(27) "**Continuous emission monitoring system**" (**CEMS**) means all of the equipment that may be required to meet the data acquisition and availability requirements of this section, to sample, condition (if

applicable), analyze, and provide a record of emissions on a continuous basis. (ref. 40 CFR 51.166 (b) (43))

(28) "**Continuous emission rate monitoring system**" (CERMS) means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time). (ref. 40 CFR 51.166 (b) (46))

(29) "**Continuous parameter monitoring system**" (CPMS) means all of the equipment necessary to meet the data acquisition and availability requirements of this section, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂ or CO₂ concentrations), and to record average operational parameter value(s) on a continuous basis. (ref. 40 CFR 51.166 (b) (45))

(30) "**Criteria pollutant**" or "**criteria air pollutant**" means an air pollutant for which a criteria document has been prepared by EPA and has a primary or secondary ambient air quality standard. These pollutants are identified in 40 CFR Part 50 and include sulfur oxides (measured as sulfur dioxide), particulate matter, carbon monoxide, ozone, oxides of nitrogen (measured as nitrogen dioxide), and lead. Although volatile organic compounds are no longer identified as a criteria pollutant category, they are regulated together with oxides of nitrogen as a precursor to ozone.

(31) "**Control Officer**" means the Executive Director of the Southwest Clean Air Agency.

(32) "**Deviation from permit requirements**" means an instance when any permit requirement is not met, including, but not limited to, conditions that establish emission limitations, emission standards, control equipment requirements, work practices, parameter ranges, and those designed to assure compliance with such requirements, such as monitoring, recordkeeping, and reporting. A deviation does not necessarily constitute a violation.

(33) "**Diesel**" means fuel oil that complies with the specifications for diesel fuel oil numbers 1 or 2, as defined by the American Society for Testing and Materials in ASTM D975.

(34) "**Director**" means the director of the Washington State Department of Ecology or duly authorized representative.

(35) "**Dispersion technique**" means a method that attempts to affect the concentration of a pollutant in the ambient air other than by the use of pollution abatement equipment or integral process pollution controls.

(36) "**Distillate oil**" means fuel oil that complies with the specifications for fuel oil numbers 1 or 2, as defined by the American Society for Testing and Materials in ASTM D396, diesel fuel oil numbers 1 or 2, as defined by the American Society for Testing and Materials in ASTM D975, kerosene, as defined by the American Society of Testing and Materials in ASTM D3699, biodiesel as defined by the American Society of Testing and Materials in ASTM D6751, or biodiesel blends as defined by the American Society of Testing and Materials in ASTM D7467.

(37) "**Ecology**" means the Washington State Department of Ecology.

(38) "**Emergency service**" means operation that is limited solely to emergency situations and required testing and maintenance. Emergency situations are those which occur without significant warning and are beyond the control of the permittee, owner or operator.

(39) "**Emission**" means a release of air contaminants into the ambient air.

(40) "**Emission control technology**" means emission control equipment integral or in addition to the "emission unit" or other technology, device, component or control parameter that is integral to the basic design of an "emission unit" (i.e., low NO_x burner for a boiler or turbine).

(41) "**Emission reduction credit**" (ERC) means a credit granted pursuant to SWCAA 400-131. This is a voluntary reduction in emissions beyond required levels of control.

(42) "**Emission standard**" and "**emission limitation**" mean a requirement established under the Federal Clean Air Act, Chapter 70A.15 RCW or a local regulation that limits the quantity, rate, or concentration of air contaminant emissions on a continuous basis, including any requirement relating to the operation or maintenance of a "stationary source" to assure continuous emission reduction and any design, equipment, work practice, or operational standard adopted under the Federal Clean Air Act or Chapter 70A.15 RCW.

(43) "**Emission unit**" means any part of a "stationary source" that emits or would have the potential to emit any air pollutant subject to regulation under the Federal Clean Air Act, Chapter 70A.15 RCW, or Chapter 70.98 RCW.

(44) "**Excess emissions**" means emissions of an air pollutant in excess of any applicable emission standard or emission limit.

(45) "**Excess stack height**" means that portion of a stack which exceeds the greater of sixty-five meters (213.25 feet) or the calculated stack height described in 400-200(3).

(46) "**Executive Director**" means the Control Officer of the Southwest Clean Air Agency.

(47) "**Existing stationary facility**" means a "stationary source" that meets all of the following conditions:

(a) The "stationary source" was not in operation prior to August 7, 1962, and was in existence on August 7, 1977;

(b) The "stationary source" is one of the following:

(i) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input,

(ii) Coal cleaning plants (thermal dryers),

(iii) Kraft pulp mills,

(iv) Portland cement plants,

(v) Primary zinc smelters,

(vi) Iron and steel mills,

(vii) Primary aluminum ore reduction plants,

(viii) Primary copper smelters,

(ix) Municipal incinerators capable of charging more than 250 tons of refuse per day,

(x) Hydrofluoric, sulfuric, or nitric acid plants,

(xi) Petroleum refineries,

(xii) Lime plants,

(xiii) Phosphate rock processing plants,

(xiv) Coke oven batteries,

(xv) Sulfur recovery plants,

(xvi) Carbon black plants (furnace process),

(xvii) Primary lead smelters,

(xviii) Fuel conversion plants,

(xix) Sintering plants,

(xx) Secondary metal production plants,

(xxi) Chemical process plants,

(xxii) Fossil-fuel boilers of more than 250 million British thermal units per hour heat input,

(xxiii) Petroleum storage and transfer units with a total capacity exceeding 300,000 barrels,

(xxiv) Taconite ore processing plants,

(xxv) Glass fiber processing plants,

(xxvi) Charcoal production plants; and

(c) The "stationary source" has the potential to emit 250 tons per year or more of any air contaminant. Fugitive emissions, to the extent quantifiable, must be counted in determining the potential to emit.

(d) For purposes of determining whether a stationary source is an existing stationary facility the term "building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant emitting activities shall be considered as part of the same major group (i.e., which have the same two digit code) as described in the *Standard Industrial Classification Manual (1972)*, as amended by the 1977 supplement.

(48) "**Federal Clean Air Act**" (FCAA) means the Federal Clean Air Act, also known as Public Law 88-206, 77 Stat. 392, December 17, 1963, 42 U.S.C. 7401 et seq., as last amended by the Clean Air Act Amendments of 1990, P.L. 101-549, November 15, 1990.

(49) "**Federal Class I area**" means any federal land that is classified or reclassified as Class I. The Federal Class I areas in Washington State are as follows:

(a) Alpine Lakes Wilderness;

(b) Glacier Peak Wilderness;

(c) Goat Rocks Wilderness;

(d) Mount Adams Wilderness;

(e) Mount Rainier National Park;

(f) North Cascades National Park;

(g) Olympic National Park; and

(h) Pasayten Wilderness.

(50) "**Federal land manager**" means the secretary of the department with authority over federal lands in the United States. This includes, but is not limited to, the U.S. Department of the Interior—National Park Service, the U.S. Department of Agriculture—Forest Service, and/or the U.S. Department of the Interior—Bureau of Land Management.

(51) "**Federally enforceable**" means all limitations and conditions which are enforceable by the EPA, including those requirements developed under 40 CFR Parts 60, 61, 62 and 63, requirements within the Washington SIP, requirements within any permit established under 40 CFR 52.21 or any order of approval established under a SIP approved new source review regulation, or any voluntary limits on emissions pursuant to WAC 173-400-091 or SWCAA 400-091.

(52) "**Fossil fuel-fired steam generator**" means a device, furnace, or boiler used in the process of burning fossil fuel for the primary purpose of producing steam by heat transfer.

(53) "**Fugitive dust**" means a type of particulate emission made airborne by forces of wind, human activity, or both. Unpaved roads, construction sites, and tilled land are examples of areas that originate fugitive dust. Fugitive dust is a type of fugitive emission.

(54) "**Fugitive emissions**" means emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(55) "**General process unit**" means an "emission unit" using a procedure or a combination of procedures for the purpose of causing a change in material by either chemical or physical means, excluding combustion.

(56) "**Good agricultural practices**" means economically feasible practices that are customary among or appropriate to farms and ranches of a similar nature in the local area.

(57) "**Good engineering practice**" (GEP) refers to a calculated stack height based on the equation specified in SWCAA 400-200 (2) (a) (ii).

(58) "**Greenhouse gas**" means, for the purpose of these regulations, any or all of the following gases: carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), sulfur hexafluoride (SF₆), hydrofluorocarbons (HFCs), and perfluorocarbons (PFCs).

(59) "**Hazardous air pollutant**" means any air pollutant listed in or pursuant to section 112(b) of the FCAA as modified by 40 CFR 63, Subpart C.

~~((59))~~ (60) "**Incinerator**" means a furnace used primarily for the thermal destruction of waste.

~~((60))~~ (61) "**In operation**" means engaged in activity related to the primary design function of a "stationary source."

~~((61))~~ (62) "**Installation**" means the act of installing, placing, assembling or constructing process equipment or control equipment at the premises where the equipment will be used. Installation includes all preparatory work at such premises.

~~((62))~~ (63) "**Lowest achievable emission rate**" (LAER) means for any "stationary source" that rate of emissions which reflects the more stringent of:

(a) The most stringent emission limitation which is contained in the implementation plan of any state for such class or category of "stationary source," unless the owner or operator of the proposed new or modified "stationary source" demonstrates that such limitations are not achievable; or

(b) The most stringent emission limitation which is achieved in practice by such class or category of "stationary source." In no event shall the application of this term permit a proposed new or modified "stationary source" to emit any pollutant in excess of the amount allowable under applicable new source performance standards.

~~((63))~~ (64) "**Maintenance Area**" or "**Maintenance Plan Area**" means a geographical area within the jurisdiction of SWCAA which was formerly designated as a nonattainment area and which has been redesignated as an attainment area as provided under Section 107(d) of the Federal Clean Air Act. The maintenance area designation shall be in effect as long as there is a federal or state requirement to have a maintenance plan in effect.

~~((64))~~ (65) "**Maintenance pollutant**" means a pollutant for which a maintenance plan area was formerly designated as a nonattainment area.

~~((65))~~ (66) (a) "**Major modification**," as it applies to "stationary sources" subject to requirements for "new sources" in nonattainment areas means the same as the definition found in SWCAA 400-810.

(b) "**Major modification**," as it applies to "stationary sources" subject to requirements for "new sources" in maintenance plan, attain-

ment, or unclassified areas, means the same as the definition found in WAC 173-400-710.

~~((66))~~ (67) (a) "**Major stationary source**," as it applies to "stationary sources" subject to requirements for "new sources" in non-attainment areas, means the same as the definition found in SWCAA 400-810.

(b) "**Major stationary source**," as it applies to "stationary sources" subject to requirements for "new sources" in maintenance plan, attainment or unclassified areas, means the same as the definition found in WAC 173-400-710.

~~((67))~~ (68) "**Malfunction**" means any sudden, infrequent, and not reasonably preventable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner which causes, or has the potential to cause, the emission limitations in an applicable standard to be exceeded. Failures that are caused in part by poor maintenance or careless operation are not considered to be malfunctions.

~~((68))~~ (69) "**Mandatory Class I federal area**" means any area defined in Section 162(a) of the Federal Clean Air Act. The mandatory Class I federal areas potentially affected by emissions from "sources" within SWCAA jurisdiction include the following:

- (a) Alpine Lakes Wilderness;
- (b) Glacier Peak Wilderness;
- (c) Goat Rocks Wilderness;
- (d) Mount Adams Wilderness;
- (e) Mount Rainier National Park;
- (f) Mt. Hood Wilderness Area;
- (g) Mt. Jefferson Wilderness Area;
- (h) North Cascades National Park;
- (i) Olympic National Park; and
- (j) Pasayten Wilderness.

~~((69))~~ (70) "**Masking**" means the mixing of a chemically nonreactive control agent with a malodorous gaseous effluent to change the perceived odor.

~~((70))~~ (71) "**Materials handling**" means the handling, transporting, loading, unloading, storage, and transfer of materials with no significant alteration of the chemical or physical properties of the material.

~~((71))~~ (72) "**Modification**" means any physical change in, or change in the method of operation of, a "stationary source" that increases the amount of any air contaminant emitted by such "stationary source" or that results in the emissions of any air contaminant not previously emitted. The term modification shall be construed consistent with the definitions of modification in Section 7411, Title 42, United States Code, and with rules implementing that section.

~~((72))~~ (73) "**Motor vehicle**" means any vehicle which is self-propelled and capable of transporting a person or persons or any material or any permanently or temporarily affixed apparatus shall be deemed a motor vehicle, unless any one or more of the criteria set forth below are met, in which case the vehicle shall be deemed not a motor vehicle:

(1) The vehicle cannot exceed a maximum speed of 25 miles per hour over level, paved surfaces; or

(2) The vehicle lacks features customarily associated with safe and practical street or highway use, such features including, but not being limited to, a reverse gear (except in the case of motorcycles),

a differential, or safety features required by state and/or federal law; or

(3) The vehicle exhibits features which render its use on a street or highway unsafe, impractical, or highly unlikely, such features including, but not being limited to, tracked road contact means, an inordinate size, or features ordinarily associated with military combat or tactical vehicles such as armor and/or weaponry.

~~((73))~~ (74) "**National Ambient Air Quality Standard**" (NAAQS) means an ambient air quality standard set forth in 40 CFR Part 50, which includes standards for carbon monoxide (CO), particulate matter (PM₁₀, PM_{2.5}), ozone (O₃), sulfur dioxide (SO₂), lead (Pb), and nitrogen dioxide (NO₂).

~~((74))~~ (75) "**National Emission Standards for Hazardous Air Pollutants**" (NESHAPS) means the federal rules in 40 CFR Part 61.

~~((75))~~ (76) "**National Emission Standards for Hazardous Air Pollutants for Source Categories**" means the federal rules in 40 CFR Part 63. These rules are commonly referred to as Maximum Available Control Technology (MACT) standards.

~~((76))~~ (77) "**Natural conditions**" means naturally occurring phenomena that reduce visibility as measured in terms of light extinction, visual range, contrast, or coloration.

~~((77))~~ (78) (a) "**Net emissions increase**," as it applies to "stationary sources" subject to requirements for "new sources" in nonattainment areas, means the same as the definition found in SWCAA 400-810.

(b) "**Net emissions increase**," as it applies to "stationary sources" subject to requirements for "new sources" in maintenance plan, attainment or unclassified areas, means the same as the definition found in WAC 173-400-710.

~~((78))~~ (79) "**New source**" means one or more of the following:

(a) The construction or modification of a "stationary source" that increases the amount of any air contaminant emitted by such "stationary source" or that results in the emission of any air contaminant not previously emitted;

(b) Any other project that constitutes a "new source" under the Federal Clean Air Act;

(c) Restart of a "stationary source" after permanent shutdown;

(d) The installation or construction of a new "emission unit";

(e) Relocation of a "stationary source" to a new location, except in the case of portable sources operating under a valid portable source permit as provided in SWCAA 400-036 and 400-110(6);

(f) Replacement or modification of the burner(s) in a combustion source;

(g) Nonroutine replacement or modification of a boiler shell and/or tubes without replacement of the associated burner(s); or

(h) Modification of a combustion source to fire a fuel that the source was not previously capable of firing.

~~((79))~~ (80) "**New Source Performance Standards**" (NSPS) means the federal rules in 40 CFR Part 60.

~~((80))~~ (81) "**Nonattainment area**" means a geographic area designated by EPA in 40 CFR Part 81 as exceeding a National Ambient Air Quality Standard (NAAQS) for a given criteria air pollutant. An area is nonattainment only for the pollutants for which the area has been designated nonattainment.

~~((81))~~ (82) "**Nonroad engine**" means:

(a) Except as discussed in (b) of this subsection, a nonroad engine is any internal combustion engine:

(i) In or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers); or

(ii) In or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers); or

(iii) That, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indications of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

(b) An internal combustion engine is not a nonroad engine if:

(i) The engine is used to propel a motor vehicle, an aircraft, or a vehicle used solely for competition (~~(, or is subject to standards promulgated under Section 202 of the Federal Clean Air Act)~~); or

(ii) The engine is regulated under 40 CFR Part 60, (or otherwise regulated by a federal New Source Performance Standard promulgated under Section 111 of the Federal Clean Air Act). Note that this criterion does not apply for engines meeting any of the criteria of paragraph (1) of this definition that are voluntarily certified under 40 CFR part 60; or

(iii) The engine otherwise included in (a)(iii) of this subsection remains or will remain at a location for more than twelve consecutive months or a shorter period of time for an engine located at a seasonal source. A location is any single site at a building, structure, facility, or installation. ~~((Any engine(s) that replace(s) an engine at a location and that is intended to perform the same or similar function as the engine(s) replaced will be included in calculating the consecutive time period.))~~ For any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced, include the time period of both engines in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a "stationary source" that remains in a single location on a permanent basis (i.e., ~~((two seasons or more))~~ at least two years) and that operates at that single location approximately three months (or more) each year. ~~((This paragraph does not apply to an engine after the engine is removed from the location.))~~ See 40 CFR 1068.31 for provisions that apply if the engine is removed from the location. (ref. 40 CFR ~~((89.2))~~ 1068.30)

~~((82))~~ (83) **"Nonroad engine permit"** means a regulatory order issued by the Agency to approve the installation, replacement or alteration of a nonroad engine. This term does not apply to any permitting action conducted pursuant to SWCAA 400-110 or Chapter 173-401 WAC.

~~((83))~~ (84) **"Nonroad engine permit application"** means a written application for installation, replacement or alteration of a nonroad engine. This term does not apply to any permitting action conducted pursuant to SWCAA 400-110 or Chapter 173-401 WAC.

~~((84))~~ (85) **"Notice of Construction application"** (NOC) means a written application requesting approval for installation, replacement, modification, or other alteration of an "emission unit" at an air contaminant source or replacement or substantial alteration of control

technology at an existing "stationary source." Affected activities include, but are not limited to, equipment modifications or alterations, changes to process or control equipment, establishment of emission limits, installation of "new sources," control technology determinations, PSD determinations, and other items specified by the Agency. "Notice of Construction application" means the same as "air discharge permit application." (For more information refer to SWCAA 400-109)

~~((85))~~ (86) "**Opacity**" means the degree to which an object seen through a plume is obscured, stated as a percentage.

~~((86))~~ (87) "**Open burning**" or "**outdoor burning**" means the combustion of material in an open fire or in an outdoor container, without providing for the control of combustion or the control of the emissions from the combustion. Open burning includes all forms of outdoor burning except those listed as exempt in SWCAA 425-020. Wood waste disposal in wigwam burners is not considered open or outdoor burning.

~~((87))~~ (88) "**Operating permit**" means a permit issued pursuant to 40 CFR Part 70 or Chapter 173-401 WAC.

~~((88))~~ (89) "**Operating permit application**" means the same as "application" as described in WAC 173-401-500 and -510.

~~((89))~~ (90) "**Order**" means any regulatory order issued by the Agency or Ecology pursuant to Chapter 70A.15 RCW, including, but not limited to RCW 70A.15.3010, 70A.15.2220, 70A.15.2210 and 70A.15.2040(3), and includes, where used in the generic sense, the terms order, corrective action order, order of approval, air discharge permit, nonroad engine permit, compliance schedule order, consent order, order of denial, order of violation, order of prevention, order of discontinuance, administrative order, and regulatory order.

~~((90))~~ (91) "**Order of Approval**" means a regulatory order issued by the Agency or Ecology to approve a Notice of Construction or air discharge permit application. "Order of Approval" means the same as "air discharge permit." Note: For more information refer to SWCAA 400-230.

~~((91))~~ (92) "**Ozone depleting substance**" means any substance listed in Appendices A and B to Subpart A of 40 CFR Part 82.

~~((92))~~ (93) "**Particulate matter**" (PM) means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.

~~((93))~~ (94) "**Particulate matter emissions**" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in Title 40, Chapter I of the Code of Federal Regulations or by a test method specified in the Washington SIP.

~~((94))~~ (95) "**Parts per million by volume**" (ppmv) means parts of a contaminant per million parts of gas or carrier medium, by volume, exclusive of water or particulates.

~~((95))~~ (96) "**Permanent shutdown**" means permanently stopping or terminating the operation of a "stationary source" or "emission unit." Except as provided in subsections (a), (b) and (c), whether a shutdown is permanent depends on the intention of the owner or operator at the time of the shutdown as determined from all facts and circumstances, including the cause of the shutdown and the payment status of registration fees.

(a) A shutdown is permanent if the owner or operator files a report of shutdown, as provided in SWCAA 400-100(5). Failure to file such a report does not mean that a shutdown was not permanent.

(b) Failure to pay registration fees for greater than two consecutive years is presumed to constitute a permanent shutdown.

(c) Any actual shutdown lasting two or more years is presumed to be permanent.

~~((96))~~ (97) "**Permitting agency**" means ecology or the local air pollution control agency with jurisdiction over a "source."

~~((97))~~ (98) "**Person**" means an individual, firm, public or private corporation, owner, owner's agent, operator, contractor, association, partnership, political subdivision, municipality, or government agency.

~~((98))~~ (99) "**Pipeline quality natural gas**" means natural gas fuel with a total fuel sulfur content of 0.5 grains per 100 standard cubic feet or less.

~~((99))~~ (100) "**PM₁₀**" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on 40 CFR Part 50 Appendix J and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53.

~~((100))~~ (101) "**PM₁₀ emissions**" means finely divided solid or liquid material, including condensable particulate matter, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate method, specified in Appendix M of 40 CFR Part 51 or by a test method specified in the Washington SIP.

~~((101))~~ (102) "**PM_{2.5}**" means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by a reference method based on 40 CFR Part 50 Appendix L and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53.

~~((102))~~ (103) "**PM_{2.5} emissions**" means finely divided solid or liquid material, including condensable particulate matter, with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate method, specified in 40 CFR Part 51 or by a test method specified in the Washington SIP.

~~((103))~~ (104) "**Pollutant**" means the same as air contaminant, air pollutant and air pollution. (Refer to definitions (4) and (7))

~~((104))~~ (105) "**Portable source**" means a "stationary source" consisting of one or more "emission units" that is portable or transportable and capable of being operated at multiple locations. Portable source includes, but is not limited to, rock crushers, portable asphalt plants, soil/water remediation plants, and portable concrete mixing plants (Portland cement).

~~((105))~~ (106) "**Potential to emit**" means the maximum capacity (i.e., design capacity) of a "stationary source" to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the "stationary source" to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a "stationary source."

~~((106))~~ (107) "**Predictive emissions monitoring system**" (PEMS) means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary

voltages and electric currents) and other information (for example, gas flow rate, O₂ or CO₂ concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis. (ref 40 CFR 51.166 (b) (44))

~~((107))~~ (108) "**Prevention of Significant Deterioration**" (PSD) means the program set forth in WAC 173-400-700 through WAC 173-400-750.

~~((108))~~ (109) "**Projected width**" means that dimension of a structure determined from the frontal area of the structure, projected onto a plane perpendicular to a line between the center of the stack and the center of the building.

~~((109))~~ (110) "**Reasonably attributable**" means attributable by visual observation or any other technique the Agency deems appropriate.

~~((110))~~ (111) "**Reasonably available control technology**" (RACT) means the lowest emission limit that a particular "stationary source" or source category is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. RACT is determined on a case-by-case basis for an individual "stationary source" or source category taking into account the impact of the "stationary source" upon air quality, the availability of additional controls, the emission reduction to be achieved by additional controls, the impact of additional controls on air quality, and the capital and operating costs of the additional controls. RACT requirements for any "stationary source" or source category shall be adopted only after public notice and opportunity for comment are afforded. RACT shall apply to existing "stationary sources."

~~((111))~~ (112) "**Regulatory order**" means an order issued by the Agency or Ecology to an air contaminant source to achieve compliance with any applicable provision of Chapter 70A.15 RCW, rules adopted thereunder, or the regulations of the Agency. Note: For further clarification, refer to the definitions of "Order," "Order of Approval," "air discharge permit," "nonroad engine permit," and SWCAA 400-230.

~~((112))~~ (113) "**Residual Oil**" means crude oil, fuel oil that does not comply with the specifications for "distillate oil," and all fuel oil numbers 4, 5, and 6 as defined by the American Society for Testing and Materials in ASTM D396-01.

~~((113))~~ (114) "**Secondary emissions**" means emissions which would occur as a result of the construction or operation of a "major stationary source" or "major modification," but do not come from the "major stationary source" or "major modification" itself. Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the "major stationary source" or "major modification" which causes the secondary emissions. Secondary emissions include emissions from any off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the "major stationary source" or "major modification." Secondary emissions do not include any emissions that come directly from a mobile source, such as tailpipe emissions from a motor vehicle, train, or vessel.

~~((114))~~ (115) "**Shutdown**" means the cessation of operation of an affected source or portion of an affected source for any purpose.

~~((115))~~ (116) (a) "**Significant**," as it applies to "stationary sources" subject to requirements for "new sources" in nonattainment areas, means the same as the definition found in SWCAA 400-810.

(b) "**Significant**," as it applies to "stationary sources" subject to requirements for "new sources" in maintenance plan, attainment, or unclassified areas, means the same as the definition found in WAC 173-400-710.

((116)) (117) "**SIP**" means the same as "State Implementation Plan".

((117)) (118) "**Source**" means all of the "emission units" (including quantifiable fugitive emissions) that are located on one or more contiguous and adjacent properties, and are under the control of the same person (or persons under common control), whose activities are ancillary to the production of a single product or functionally related groups of products. Activities shall be considered ancillary to the production of a single product or functionally related group of products if they belong to the same major group (i.e., which have the same two-digit code) as described in the *Standard Industrial Classification Manual (1972)*, as amended by the 1977 supplement.

((118)) (119) "**Source category**" means all "sources" or "stationary sources" of the same type or classification as described in the *Standard Industrial Classification Manual 1972*, as amended by the 1977 supplement.

((119)) (120) "**Southwest Clean Air Agency**" (SWCAA) means the local clean air agency empowered to enforce and implement the Federal Clean Air Act 42 U.S.C. 7401, et seq.) and the Clean Air Washington Act Chapter 70A.15 RCW) in Clark, Cowlitz, Lewis, Skamania, and Wahkiakum Counties of Washington State.

((120)) (121) "**Stack**" means any emission point in a "stationary source" designed to emit solids, liquids, or gases into the air, including a pipe or duct.

((121)) (122) "**Stack height**" means the height of an emission point measured from the round-level elevation at the base of the stack.

((122)) (123) "**Standard conditions**" means a temperature of 20 degrees C (68 degrees F) and a pressure of 29.92 inches (760 mm) of mercury.

((123)) (124) "**Startup**" means the setting in operation of an affected source or portion of an affected source for any purpose.

((124)) (125) "**State Implementation Plan**" or "**Washington SIP**" means the Washington SIP in 40 CFR Part 52, Subpart WW. The SIP contains federal, state and local regulations and orders, the state plan and compliance schedules approved and promulgated by EPA, for the purpose of implementing, maintaining, and enforcing the National Ambient Air Quality Standards.

((125)) (126) "**Stationary source**" means any building, structure, facility, or installation that emits or may emit any air contaminant. This term does not include emissions resulting directly from an internal combustion engine for transportation purposes or from a ((non-road)) nonroad engine or ((non-road)) nonroad vehicle as defined in Section 216(11) of the Federal Clean Air Act.

((126)) (127) "**Sulfuric acid plant**" means any facility producing sulfuric acid by the contact process by burning elemental sulfur, alkylation acid, hydrogen sulfide, or acid sludge.

((127)) (128) "**Synthetic minor**" means any "stationary source" whose potential to emit has been limited below applicable air operating permit program (40 CFR Part 70) thresholds by means of a federally enforceable order, rule or permit condition.

((128)) (129) "**Total reduced sulfur**" (TRS) means the sum of the sulfur compounds hydrogen sulfide, mercaptans, dimethyl sulfide, di-

methyl disulfide, and any other organic sulfides emitted and measured by EPA Method 16 in 40 CFR Part 60, Appendix A or an EPA approved equivalent method and expressed as hydrogen sulfide.

~~((129))~~ (130) "**Total suspended particulate**" (TSP) means particulate matter as measured by the method described in 40 CFR Part 50 Appendix B.

~~((130))~~ (131) "**Toxic air pollutant**" (TAP) means any Class A or B toxic air pollutant listed in WAC 173-460-150 or -160 as in effect on August 21, 1998. The term toxic air pollutant may include particulate matter and volatile organic compounds if an individual substance or a group of substances within either of these classes is listed in WAC 173-460-150 or -160. The term toxic air pollutant does not include particulate matter and volatile organic compounds as generic classes of compounds.

~~((131))~~ (132) "**Unclassifiable area**" means an area that cannot be designated attainment or nonattainment on the basis of available information as meeting or not meeting the National Ambient Air Quality Standard for the criteria pollutant and that is listed by EPA in 40 CFR Part 81.

~~((132))~~ (133) "**United States Environmental Protection Agency**" (USEPA) means the federal agency empowered to enforce and implement the Federal Clean Air Act (42 CFR 7401, et seq.) and shall be referred to as EPA.

~~((133))~~ (134) "**Upgraded**" is defined only for gasoline dispensing facilities and means the modification of a gasoline storage tank or piping to add cathodic protection, tank lining or spill and overfill protection that involves removal of ground or ground cover above a portion of the product piping.

~~((134))~~ (135) "**Upset condition**" means a failure, breakdown, or malfunction of any piece of process equipment or pollution control equipment that causes, or has the potential to cause, excess emissions.

~~((135))~~ (136) "**Visibility impairment**" means any humanly perceptible change in visibility (light extinction, visual range, contrast, or coloration) from that which would have existed under natural conditions.

~~((136))~~ (137) "**Visibility impairment of Class I areas**" means visibility impairment within the Class I area and visibility impairment of any formally designated integral vista associated with the Class I area.

~~((137))~~ (138) "**Volatile organic compound**" (VOC) means:

(a) Any carbon compound that participates in atmospheric photochemical reactions. Exceptions: The following compounds are not a VOC: acetone; ammonium carbonate; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates; ethane; methane; methyl acetate; t-butyl acetate; methylene chloride (dichloromethane); methyl formate; dimethyl carbonate; propylene carbonate; 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro 1,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,2-dichloro 1,1,2,2 tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1,-dichloro 1-fluoroethane (HCFC-141b); 1-chloro 1,1-difluoroethane (HCFC-142b); 2-chloro 1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTF); cy-

clic, branched, or linear completely methylated siloxanes; perchloroethylene (tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC-43-10mee); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1-chloro-1-fluoroethane (HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (C₄F₉OCH₃); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CFCH₂OCH₃); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C₄F₉OC₂H₅); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CFCH₂OC₂H₅); 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane (HFE-7000); 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE-7500); 1,1,1,2,3,3,3-heptafluoropropane (HFC-227ea); 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300); trans 1-chloro-3,3,3-trifluoroprop-1-ene; 2,3,3,3-tetrafluoropropene; 2-amino-2-methyl-1-propanol; 1,1,2,2-Tetrafluoro-1-(2,2,2-trifluoroethoxy) ethane (HFE-347pcf2); cis-1,1,1,4,4,4-hexafluorobut-2-ene (HFO-1336mzz-Z) and perfluorocarbon compounds that fall into these classes:

- (i) Cyclic, branched, or linear, completely fluorinated alkanes;
- (ii) Cyclic, branched, or linear, completely fluorinated ethers with no saturations;
- (iii) Cyclic, branched, or linear, completely fluorinated tertiary amines with no saturations; and
- (iv) Sulfur containing perfluorocarbons with no saturations and with sulfur bonds only to carbon and fluorine.

(b) For the purpose of determining compliance with emission limits, VOCs will be measured by the appropriate methods in 40 CFR Part 60 Appendix A. Where the method also measures compounds with negligible photochemical reactivity, these negligibly-reactive compounds may be excluded as VOC if the amount of the compounds is accurately quantified, and the exclusion is approved by the Agency or EPA.

(c) As a precondition to excluding negligibly-reactive compounds as VOC, or at any time thereafter, the Agency may require an owner or operator to provide monitoring or testing methods and results demonstrating to the satisfaction of the Agency or EPA the amount of negligibly-reactive compounds in the "source's" emissions.

(d) The following compound(s) are VOC for purposes of all record-keeping, emissions reporting, photochemical dispersion modeling and inventory requirements which apply to VOC and shall be uniquely identified in emission reports, but are not VOC for purposes of VOC emissions limitations or VOC content requirements:

- (i) Tertiary butyl acetate.

AMENDATORY SECTION (Amending WSR 23-03-057 filed 1/11/23, effective 2/11/23)

SWCAA 400-045 Permit Application for Nonroad Engines

(1) **Purpose.** A nonroad engine permit application is the document used by the Agency to record and track requests to approve the installation, replacement, or other alteration of a nonroad engine.

(2) **Applicability.** The requirements of this section apply to all nonroad engines as defined in SWCAA 400-030 except for those identified in section (3) below.

(3) Exemptions

(a) Engines operating in SWCAA jurisdiction prior to November 9, 2003;

(b) Nonroad engine installations with an aggregate power rating less than 500 horsepower not associated with stationary sources;

(c) Individual nonroad engines with a power rating less than 50 horsepower;

(d) Small/residential water well drilling rigs;

(e) Portable firefighting equipment;

(f) Mobile cranes and pile drivers;

(g) Engines used for emergency flood control;

(h) Engines used to power carnival or amusement rides;

(i) Engines used to power portable equipment (sign boards, lights, compressors, etc.) operating in support of short term construction or maintenance projects (< 1 year in duration);

(j) Engines used to replace utility power or utility powered equipment on a temporary basis (< 30 days in duration) provided that such engines are EPA Tier certified and use fuel with a maximum sulfur content of 0.0015% by weight; or

(k) Engines used in, or on, a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (e.g., mobile cranes, bulldozers, forklifts, etc.), not including engines that could functionally be replaced by a stationary engine (e.g., mobile crushers, screens, or grinders). (~~+~~
~~or~~

~~(l) Engines integral to a stationary source (e.g., portable power units dedicated to supporting sources such as rock crushers, asphalt plants, rock screens, etc.). These engines are subject to permitting under SWCAA 400-109.)~~

(4) **Application Submittal.** The owner or operator shall submit a complete nonroad engine permit application for each new installation, replacement, or other alteration of a nonroad engine.

(5) **Fees.** Before the Agency may review a permit application or issue a permit, the applicant must submit all applicable fees as detailed in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098.

(6) **Agency actions.** Each acceptable and complete nonroad engine permit application shall result in the issuance of a nonroad engine permit or other regulatory order by the Agency in accordance with SWCAA 400-046. The requirements of SEPA (State Environmental Policy Act) shall be complied with for each application.

(7) **Withdrawn or exempt applications.**

(a) An applicant may withdraw an application at any time prior to issuance of a final nonroad engine permit. The applicant must provide a written and signed request to the Agency indicating their desire to withdraw the application and certification that the proposed equipment or alteration will not be installed or operated without prior review and approval from the Agency. The Agency shall provide written response to acknowledge withdrawal of the application.

(b) After review by the Agency, an application may be determined to be exempt from the requirements of SWCAA 400-046 and 400-100. The Agency shall provide written notification to the applicant for all applications that are determined to be exempt. Exemption status shall not take effect until confirmed in writing.

(c) For withdrawn or exempt applications, filing fees will not be refunded to the applicant. Review fees may be refunded upon request, provided that substantial time has not been expended by the Agency for review of the application.

Reviser's note: The typographical error in the material above occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 21-17-054 filed 8/10/21, effective 9/10/21)

SWCAA 400-046 Application Review Process for Nonroad Engines

(1) Applicability.

(a) All nonroad engine permit applications submitted to the Agency pursuant to SWCAA 400-045 shall be reviewed and processed as described in this section.

(b) Review of a permit application shall be limited to the nonroad engine proposed to be installed, replaced or altered and the air contaminants whose emissions would increase as a result.

(c) The requirements of this section do not apply to "stationary sources" as defined in SWCAA 400-030(~~((+115))~~). Permit applications for "stationary sources" are reviewed and processed in accordance with SWCAA 400-110.

(2) Requirements.

(a) Provided that all review requirements are met, a nonroad engine permit shall be issued by the Agency prior to the installation, replacement or alteration of any nonroad engine subject to the requirements of SWCAA 400-045 and this section.

(b) A completed environmental checklist or a completed determination, as provided in Chapter 197-11 WAC, shall be submitted with each application.

(c) Each nonroad engine permit application shall demonstrate that the proposed nonroad engine complies with applicable ambient air quality standards. (~~(Regulation of nonroad engines pursuant to this section shall be consistent with Appendix A of 40 CFR 89 Subpart A (as in effect on the date cited in SWCAA 400-025).)~~) If the ambient impact of a proposed project could potentially exceed an applicable ambient air standard, the Agency may require that the applicant demonstrate compliance with applicable Ambient Air Quality Standards (AAQS) using a modeling technique consistent with 40 CFR Part 51, Appendix W (as in effect on the date cited in SWCAA 400-025). Monitoring of existing ambient air quality may be required if data sufficient to characterize background air quality are not available.

(3) **Application processing/completeness determination.** Within 30 calendar days of receipt of a nonroad engine permit application, the Agency shall either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application.

(4) Final determination.

(a) Within 60 calendar days of receipt of a complete nonroad engine permit application, the Agency shall either issue a final decision on the application or initiate public notice on a proposed deci-

sion, followed as promptly as possible by a final decision. All actions taken under this subsection must meet the public involvement requirements of SWCAA 400-171(1). An owner or operator seeking approval of a project involving applications pursuant to both SWCAA 400-045 and 400-109 may elect to combine the applications into a single permit.

(b) Nonroad engine permits issued under this section shall be reviewed and signed prior to issuance by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the Agency.

(c) Nonroad engine permits issued under this section become effective on the date of issuance unless otherwise specified.

(d) If an applicant fails to respond to Agency information requests within 60 calendar days, the Agency may presume the nonroad engine permit application is being withdrawn. The Agency will issue written notice of application withdrawal. No fees will be refunded if an application is withdrawn.

(5) **Appeals.** A nonroad engine permit, any conditions contained in a nonroad engine permit, the denial of a nonroad engine permit application, or any other regulatory order issued pursuant to this section, may be appealed to the Pollution Control Hearings Board within 30 calendar days of receipt as provided in Chapter 43.21B RCW and Chapter 371-08 WAC. The Agency shall promptly mail copies of each nonroad engine permit or order to the applicant and any other party who submitted timely comments on the application, along with a notice advising the parties of their rights of appeal to the Pollution Control Hearings Board.

(6) **Compliance.** Noncompliance with any term or condition identified in a nonroad engine permit issued pursuant to this section shall be considered a violation of this section.

(7) **Expiration.** Nonroad engine permits issued pursuant to this section shall become invalid if installation or alteration does not occur within eighteen months after the date of issuance of a permit or if installation or alteration is discontinued for a period of eighteen months or more. The Agency may extend the eighteen-month period upon a satisfactory demonstration that an extension is justified. The Agency may specify an earlier date for installation or alteration in a nonroad engine permit.

~~((If a nonroad engine remains in use at the same location for more than 12 months, approval under this section expires and the nonroad engine becomes a stationary source subject to the provisions of SWCAA 400-109 and 400-110. The owner or operator shall maintain records of the length of use at each location for the purpose of documenting compliance with this requirement.))~~

(8) **Change of conditions.**

(a) The owner or operator may request, at any time, a change in conditions of an existing nonroad engine permit. The request may be approved provided the Agency finds that:

(i) No ambient air quality standard will be exceeded as a result of the change;

(ii) The change will not adversely impact the ability of the Agency to determine compliance with an applicable permit term or condition; and

(iii) The revised permit meets the requirements of SWCAA 400-046.

(b) A request to change existing approval conditions shall be filed as a nonroad engine permit application. The application shall demonstrate compliance with the requirements of subsection (2) of this section, and be acted upon according to the timelines in subsections

(3) and (4) of this section. The current Consolidated Fee Schedule established in accordance with SWCAA 400-098 shall apply to these requests.

(c) Actions taken under this subsection may be subject to the public involvement provisions of SWCAA 400-171.

(9) **Engine registration.** The owner or operator of nonroad engines approved pursuant to this section shall notify the Agency within 10 calendar days of engine installation. Subsequent to notification, each permitted unit shall be registered with the Agency and the owner or operator shall pay a registration fee as provided in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098. Registration expires after a period of 12 consecutive months. If a permitted unit is still operating after its registration expires, it shall be reregistered and a second registration fee must be paid.

AMENDATORY SECTION (Amending WSR 23-03-057 filed 1/11/23, effective 2/11/23)

SWCAA 400-070 General Requirements for Certain Source Categories

(1) **Wigwam burners.** The use of wigwam ("tee-pee", "conical", or equivalent type) burners is prohibited effective January 1, 1994.

(2) **Hog fuel boilers.**

(a) Hog fuel boilers must meet all provisions of SWCAA 400-040 and 400-050(1).

(b) All hog fuel boilers must utilize RACT and be operated and maintained to minimize emissions.

(3) **Orchard heating.**

(a) Burning of rubber materials, asphaltic products, crankcase oil or petroleum wastes, plastic, or garbage is prohibited.

(b) It is unlawful to burn any material or operate any orchard-heating device that causes a visible emission exceeding twenty percent opacity, except during the first thirty minutes after such device or material is ignited.

(4) **Catalytic cracking units.** All new catalytic cracking units must install BACT and meet all requirements applicable to a new "stationary source." As of January 1, 2002, there are no existing catalytic cracking units in SWCAA's jurisdiction.

(5) **Sulfuric acid plants.** No person shall cause to be discharged into the atmosphere from a sulfuric acid plant, any gases which contain acid mist, expressed as H₂SO₄, in excess of 0.15 pounds per ton of acid produced. Sulfuric acid production must be expressed as one hundred percent H₂SO₄.

(6) **Gasoline dispensing facilities.**

(a) All gasoline dispensing facilities must meet all the provisions of SWCAA 491 "Emission Standards and Controls for Sources Emitting Gasoline Vapors."

(b) Methyl tertiary-butyl ether (MTBE) may not be intentionally added to any gasoline, motor fuel, or clean fuel produced for sale or use in the state of Washington after December 31, 2003, and in no event may MTBE be knowingly mixed in gasoline above six-tenths of one percent by volume. [RCW 19.112.100]

(c) Each nozzle from which gasoline is dispensed must have a maximum fuel flow rate not to exceed 10 gallons per minute. [40 CFR (~~80.22(j)~~) 1090.1550(b)]

(7) **Perchloroethylene dry cleaners.**

(a) New installations prohibited. Effective July 1, 2010, the installation of new perchloroethylene dry cleaning systems or reinstallation of existing perchloroethylene dry cleaning systems is prohibited.

(b) Applicability.

(i) This section applies to all dry cleaning systems that use perchloroethylene (PCE). Table 1 divides dry cleaning facilities into 3 source categories by the type of equipment they use and the volume of PCE purchased.

TABLE 1. PCE Dry Cleaner Source Categories

Dry cleaning facilities with:	Small area source purchases less than:	Large area source purchases between:	Major source purchases more than:
(1) Only Dry-to-Dry Machines	140 gallons PCE/yr	140-2,100 gallons PCE/yr	2,100 gallons PCE/yr
(2) Only Transfer Machines	200 gallons PCE/yr	200-1,800 gallons PCE/yr	1,800 gallons PCE/yr
(3) Both Dry-to-Dry and Transfer Machines	140 gallons PCE/yr	140-1,800 gallons PCE/yr	1,800 gallons PCE/yr

(ii) Major sources. In addition to the requirements in this section, a dry cleaning system that is considered a major source according to Table 1 must follow the federal requirements for major sources in 40 CFR Part 63, Subpart M (in effect on July 1, 2002).

(c) Operations and maintenance record.

(i) Each dry cleaning facility must keep an operations and maintenance record that is available upon request.

(ii) The information in the operations and maintenance record must be kept on-site for five years.

(iii) The operations and maintenance record must contain the following information:

(A) Inspection. The date and result of each inspection of the dry cleaning system. The inspection must note the condition of the system and the time any leaks were observed;

(B) Repair. The date, time, and result of each repair of the dry cleaning system;

(C) Refrigerated condenser information. If a refrigerated condenser is being used, record the following information:

(I) The air temperature at the inlet of the refrigerated condenser,

(II) The air temperature at the outlet of the refrigerated condenser,

(III) The difference between the inlet and outlet temperature readings, and

(IV) The date the temperature was taken;

(D) Carbon adsorber information. If a carbon adsorber is being used, record the following information:

(I) The concentration of PCE in the exhaust of the carbon adsorber, and

(II) The date the concentration was measured;

(E) A record of the volume of PCE purchased each month must be entered by the first of the following month;

(F) A record of the total amount of PCE purchased over the previous twelve months must be entered by the first of each month;

(G) All receipts of PCE purchases; and

(H) A record of any pollution prevention activities that have been accomplished.

(d) General operations and maintenance requirements:

- (i) Drain cartridge filters in their housing or other sealed container for at least twenty-four hours before discarding the cartridges.
- (ii) Close the door of each dry cleaning machine except when transferring articles to or from the machine.
- (iii) Store all PCE, and wastes containing PCE, in a closed container with no perceptible leaks.
- (iv) Operate and maintain the dry cleaning system according to the manufacturer's specifications and recommendations.
- (v) Keep a copy on-site of the design specifications and operating manuals for all dry cleaning equipment.
- (vi) Keep a copy on-site of the design specifications and operating manuals for all emissions control devices.
- (vii) Route the PCE gas-vapor stream from the dry cleaning system through the applicable equipment in Table 2:

TABLE 2. Minimum PCE Vapor Vent Control Requirements

Small area source	Large area source	Major source
Refrigerated condenser for all machines installed after September 21, 1993.	Refrigerated condenser for all machines.	Refrigerated condenser with a carbon adsorber for all machines installed after September 21, 1993.

(e) Inspection.

(i) The owner or operator must inspect the dry cleaning system at a minimum following the requirements in Table 3:

TABLE 3. Minimum Inspection Frequency

Small area source	Large area source	Major source
Once every 2 weeks.	Once every week.	Once every week.

- (ii) An inspection must include an examination of these components for condition and perceptible leaks:
 - (A) Hose and pipe connections, fittings, couplings, and valves;
 - (B) Door gaskets and seatings;
 - (C) Filter gaskets and seatings;
 - (D) Pumps;
 - (E) Solvent tanks and containers;
 - (F) Water separators;
 - (G) Muck cookers;
 - (H) Stills;
 - (I) Exhaust dampers; and
 - (J) Cartridge filter housings.
- (iii) The dry cleaning system must be inspected while it is operating.
- (iv) The date and result of each inspection must be entered in the operations and maintenance record at the time of the inspection.
- (f) Repair requirements:
 - (i) Leaks must be repaired within twenty-four hours of detection if repair parts are available.
 - (ii) If repair parts are unavailable, they must be ordered within 2 business days of detecting the leak.
 - (iii) Repair parts must be installed as soon as possible, and no later than 5 business days after arrival.
 - (iv) The date and time each leak was discovered must be entered in the operations and maintenance record.
 - (v) The date, time, and result of each repair must be entered in the operations and maintenance record at the time of the repair.

(g) Requirements for systems with refrigerated condensers. A dry cleaning system using a refrigerated condenser must meet all of the following requirements:

(i) Outlet air temperature requirements:

(A) Each week the air temperature sensor at the outlet of the refrigerated condenser must be checked.

(B) The air temperature at the outlet of the refrigerated condenser must be less than or equal to 45°F (7.2°C) during the cool-down period.

(C) The air temperature must be entered in the operations and maintenance record manual at the time it is checked.

(D) The air temperature sensor must meet these requirements:

(I) An air temperature sensor must be permanently installed on a dry-to-dry machine, dryer or reclaimer at the outlet of the refrigerated condenser. The air temperature sensor must be installed by September 23, 1996, if the dry cleaning system was constructed before December 9, 1991;

(II) The air temperature sensor must be accurate to within 2°F (1.1°C);

(III) The air temperature sensor must be designed to measure at least a temperature range from 32°F (0°C) to 120°F (48.9°C); and

(IV) The air temperature sensor must be labeled "RC outlet."

(ii) Inlet air temperature requirements:

(A) Each week the air temperature sensor at the inlet of the refrigerated condenser installed on a washer must be checked.

(B) The inlet air temperature must be entered in the operations and maintenance record at the time it is checked.

(C) The air temperature sensor must meet these requirements:

(I) An air temperature sensor must be permanently installed on a washer at the inlet of the refrigerated condenser. The air temperature sensor must be installed by September 23, 1996, if the dry cleaning system was constructed before December 9, 1991;

(II) The air temperature sensor must be accurate to within 2°F (1.1°C);

(III) The air temperature sensor must be designed to measure at least a temperature range from 32°F (0°C) to 120°F (48.9°C); and

(IV) The air temperature sensor must be labeled "RC inlet."

(iii) For a refrigerated condenser used on the washer unit of a transfer system, the following are additional requirements:

(A) Each week the difference between the air temperature at the inlet and outlet of the refrigerated condenser must be calculated.

(B) The difference between the air temperature at the inlet and outlet of a refrigerated condenser installed on a washer must be greater than or equal to 20°F (11.1°C).

(C) The difference between the inlet and outlet air temperature must be entered in the operations and maintenance record each time it is checked.

(iv) A converted machine with a refrigerated condenser must be operated with a diverter valve that prevents air drawn into the dry cleaning machine from passing through the refrigerated condenser when the door of the machine is open;

(v) The refrigerated condenser must not vent the air-PCE gas-vapor stream while the dry cleaning machine drum is rotating or, if installed on a washer, until the washer door is opened; and

(vi) The refrigerated condenser in a transfer machine may not be coupled with any other equipment.

(h) Requirements for systems with carbon adsorbers. A dry cleaning system using a carbon adsorber must meet all of the following requirements:

(i) Each week the concentration of PCE in the exhaust of the carbon adsorber must be measured at the outlet of the carbon adsorber using a colorimetric detector tube.

(ii) The concentration of PCE must be recorded in the operations and maintenance record each time the concentration is checked.

(iii) If the dry cleaning system was constructed before December 9, 1991, monitoring must begin by September 23, 1996.

(iv) The colorimetric tube must meet these requirements:

(A) The colorimetric tube must be able to measure a concentration of 100 parts per million of PCE in air.

(B) The colorimetric tube must be accurate to within 25 parts per million.

(C) The concentration of PCE in the exhaust of the carbon adsorber must not exceed 100 ppm while the dry cleaning machine is venting to the carbon adsorber at the end of the last dry cleaning cycle prior to desorption of the carbon adsorber.

(v) If the dry cleaning system does not have a permanently fixed colorimetric tube, a sampling port must be provided within the exhaust outlet of the carbon adsorber. The sampling port must meet all of these requirements:

(A) The sampling port must be easily accessible.

(B) The sampling port must be located eight stack or duct diameters downstream from a bend, expansion, contraction or outlet.

(C) The sampling port must be two stack or duct diameters upstream from a bend, expansion, contraction, inlet or outlet.

(8) Abrasive blasting.

(a) Abrasive blasting must be performed inside a fully enclosed booth or structure designed to capture the blast grit, overspray, and removed material. Outdoor blasting of structures or items too large to be reasonably handled indoors must employ control measures such as curtailment during windy periods, wet blasting, and/or enclosure of the area being blasted with tarps. Blasting operations must comply with the general regulations found in SWCAA 400-040 at all times.

(b) Outdoor blasting must be performed with either steel shot, wet blasting methods, or an abrasive material containing less than one percent (by mass) of material that would pass through a No. 200 sieve.

(c) All abrasive blasting of materials that contain, or have a coating that may contain, a substance that is identified as a toxic air pollutant in Chapter 173-460 WAC or a hazardous substance must be analyzed prior to blast operations. If a toxic or hazardous material is present in the blast media or removed media, all material must be handled and disposed of in accordance with applicable regulations.

(9) Sewage sludge incinerators.

(a) Standards for the incineration of sewage sludge found in 40 CFR 503, Subparts A (General Provisions) and E (Incineration) are adopted by reference (as in effect on the date cited in SWCAA 400-025).

(b) The federal plan found under 40 CFR 62 Subpart LLL is adopted by reference (as in effect on the date cited in SWCAA 400-025).

(10) Municipal solid waste landfills constructed, reconstructed, or modified before May 30, 1991. A municipal solid waste landfill (MSW landfill) is an entire disposal facility in a contiguous geographical space where household waste is placed in or on the land. A MSW landfill may also receive other types of waste regulated under Subtitle D

of the Federal Recourse Conservation and Recovery Act including the following: Commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be either publicly or privately owned. An MSW landfill may be a new MSW landfill, an existing MSW landfill, or a lateral expansion. All references in this subsection to 40 CFR Part 60 rules mean those rules in effect on the date cited in SWCAA 400-025.

(a) Applicability. These rules apply to each MSW landfill constructed, reconstructed, or modified before May 30, 1991; and the MSW landfill accepted waste at any time since November 8, 1987 or the landfill has additional capacity for future waste deposition. (See SWCAA 400-115(1) for the requirements for MSW landfills constructed, reconstructed, or modified on or after May 30, 1991.) Terms in this subsection have the meaning given them in 40 CFR 60.751, except that every use of the word "administrator" in the federal rules referred to in this subsection includes the Agency.

(b) Exceptions. Any physical or operational change to an MSW landfill made solely to comply with these rules is not considered a modification or rebuilding.

(c) Standards for MSW landfill emissions:

(i) An MSW landfill having a design capacity less than 2.5 million megagrams or 2.5 million cubic meters must comply with the requirements of 40 CFR 60.752(a) in addition to the applicable requirements specified in this section.

(ii) An MSW landfill having design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters must comply with the requirements of 40 CFR 60.752(b) in addition to the applicable requirements specified in this section.

(d) Recordkeeping and reporting. An MSW landfill must follow the recordkeeping and reporting requirements in 40 CFR 60.757 (submittal of an initial design capacity report) and 40 CFR 60.758 (recordkeeping requirements), as applicable, except as provided for under (d)(i) and (ii).

(i) The initial design capacity report for the facility is due before September 20, 2001.

(ii) The initial nonmethane organic compound (NMOC) emissions rate report is due before September 20, 2001.

(e) Test methods and procedures:

(i) An MSW landfill having a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters must calculate the landfill nonmethane organic compound emission rates following the procedures listed in 40 CFR 60.754, as applicable, to determine whether the rate equals or exceeds 50 megagrams per year.

(ii) Gas collection and control systems must meet the requirements in 40 CFR 60.752 (b) (2) (ii) through the following procedures:

(A) The systems must follow the operational standards in 40 CFR 60.753.

(B) The systems must follow the compliance provisions in 40 CFR 60.755 (a) (1) through (a) (6) to determine whether the system is in compliance with 40 CFR 60.752 (b) (2) (ii).

(C) The system must follow the applicable monitoring provisions in 40 CFR 60.756.

(f) Conditions. Existing MSW landfills that meet the following conditions must install a gas collection and control system:

(i) The landfill accepted waste at any time since November 8, 1987, or the landfill has additional design capacity available for future waste deposition;

(ii) The landfill has a design capacity greater than or equal to 2.5 million megagrams or 2.5 million cubic meters. The landfill may calculate design capacity in either megagrams or cubic meters for comparison with the exception values. Any density conversions must be documented and submitted with the report; and

(iii) The landfill has an NMOC emission rate of 50 megagrams per year or greater.

(g) Change in conditions. After the adoption date of this rule, a landfill that meets all three conditions in (e) of this subsection must comply with all the requirements of this section within thirty months of the date when the conditions were met. This change will usually occur because the NMOC emission rate equaled or exceeded the rate of 50 megagrams per year.

(h) Gas collection and control systems:

(i) Gas collection and control systems must meet the requirements in 40 CFR 60.752 (b) (2) (ii).

(ii) The design plans must be prepared by a licensed professional engineer and submitted to the Agency within one year after the adoption date of this section.

(iii) The system must be installed within eighteen months after the submittal of the design plans.

(iv) The system must be operational within thirty months after the adoption date of this section.

(v) The emissions that are collected must be controlled in one of three ways:

(A) An open flare designed and operated according to 40 CFR 60.18;

(B) A control system designed and operated to reduce NMOC by 98 percent by weight; or

(C) An enclosed combustor designed and operated to reduce the outlet NMOC concentration to 20 parts per million as hexane by volume, dry basis corrected to three percent oxygen or less.

(i) Air operating permit:

(i) An MSW landfill that has a design capacity less than 2.5 million megagrams or 2.5 million cubic meters on January 7, 2000, is not subject to the air operating permit regulation, unless the landfill is subject to WAC 173-401 for some other reason. If the design capacity of an exempted MSW landfill subsequently increases to equal or exceed 2.5 million megagrams or 2.5 million cubic meters by a change that is not a modification or reconstruction, the landfill is subject to Chapter 173-401 WAC on the date the amended design capacity report is due.

(ii) An MSW landfill that has a design capacity equal to or greater than 2.5 million megagrams or 2.5 million cubic meters on January 7, 2000, is subject to Chapter 173-401 WAC beginning on the effective date of this section. (Note: Under 40 CFR 62.14352(e), an applicable MSW landfill must have submitted its application so that by April 6, 2001, the permitting agency was able to determine that it was timely and complete. Under 40 CFR 70.7(b), no "source" may operate after the time that it is required to submit a timely and complete application.)

(iii) When an MSW landfill is closed, the owner or operator is no longer subject to the requirement to maintain an operating permit for the landfill if the landfill is not subject to Chapter 173-401 WAC for some other reason and if either of the following conditions are met:

(A) The landfill was never subject to the requirement for a control system under 40 CFR 62.14353; or

(B) The landfill meets the conditions for control system removal specified in 40 CFR 60.752 (b) (2) (v).

(11) **Used oil burners.**

(a) Applicability. The requirements of this section apply to all combustion sources except the following:

(i) Facilities operating in accordance with an air discharge permit or other regulatory order issued by the Agency;

(ii) Used oil burned in used oil fired space heaters (40 CFR 279.23) provided that:

(a) The space heater burns only used oil that the owner or operator generates or used oil received from household do-it-yourself used oil generators,

(b) The space heater is designed to have a maximum heat output of not more than 0.5 million Btu per hour, and

(c) Combustion gases from the space heater are vented to the ambient air;

(iii) Ocean-going vessels (40 CFR 279.20 (a) (2)); and

(iv) Mixtures of used oil and diesel fuel mixed by the generator of the used oil for use in the generator's own vehicles (40 CFR 279.20 (a) (3)).

(b) Requirements. Used oil burned as fuel must not exceed any of the following specification levels:

(i) Arsenic - 5 ppm maximum;

(ii) Ash - 0.1 percent maximum;

(iii) Cadmium - 2 ppm maximum;

(iv) Chromium - 10 ppm maximum;

(v) Lead - 100 ppm maximum;

(vi) Polychlorinated biphenyls (PCB's) - 2 ppm maximum;

(vii) Sulfur - 1.0 percent maximum;

(viii) Flash point - 100°F minimum; and

(ix) Total halogens - 1,000 ppm maximum.

(12) **Coffee roasters.** Batch coffee roasters with a capacity of 10 pounds or greater of green coffee beans per batch must install and operate an afterburner or equivalent control device that treats all roasting exhaust streams prior to discharge to the ambient air.

(13) **Natural gas fired water heaters.**

(a) Applicability. The requirements of this section apply to all natural gas fired water heaters with a rated heat input less than 400,000 Btu/hr. For the purposes of this subsection, the term "water heater" means a closed vessel in which water is heated by combustion of gaseous fuel and is withdrawn for use external to the vessel at pressures not exceeding 160 psig, including the apparatus by which heat is generated and all controls and devices necessary to prevent water temperatures from exceeding 210°F.

(b) Requirements.

(i) On or after January 1, 2010, no person shall offer for sale, or install, a water heater that emits NO_x at levels in excess of 55 ppmv at 3% O₂, dry (0.067 lb per million Btu of heat input).

(ii) On or after January 1, 2013, no person shall offer for sale, or install, a water heater (excluding pool heaters) that emits NO_x at levels in excess of 20 ppmv at 3% O₂, dry (0.024 lb per million Btu of heat input).

(14) **Rendering plants.**

(a) **Applicability.** The requirements of this section apply to any equipment or process used for the reduction of animal matter. For the purpose of this section, reduction is defined as any heated process (i.e., rendering, cooking, drying, dehydration, digesting, evaporating or protein concentrating). The requirements of this section do not apply to any equipment or process used exclusively for the processing of food for human consumption.

(b) **Requirements.** All gases, vapors, and gas-entrained effluents emitted by reduction operations must be captured and:

(i) Incinerated at temperatures of not less than 1,400 degrees F for a period of not less than 0.5 seconds; or

(ii) Processed in a manner determined by the Agency to be equal to or more effective than the method specified in section (i) above.

(15) Outdoor wood-fired boilers.

(a) **Applicability.** For the purposes of this subsection, the term "outdoor wood-fired boiler" means an outdoor wood-fired hydronic heater or outdoor wood-fired furnace that is an accessory outdoor structure, designed and intended, through the burning of wood, to heat the principal structure or any other site, building, or structure on the premises. The requirements of this subsection apply to units with rated heat inputs of 1,000,000 Btu/hr or less.

(b) No person shall sell, install, or operate an outdoor wood-fired boiler unless the affected unit meets the applicable requirements of WAC 173-433.

(c) Outdoor wood-fired boilers must only be installed:

(i) For use outside urban growth areas as defined in chapter 36.70A RCW;

(ii) A minimum of fifty feet from the residence it is serving;

(iii) A minimum of two hundred feet from the nearest residence or commercial establishment that is not located on the same property as the outdoor wood-fired boiler; and

(iv) With a minimum chimney height of fifteen feet. If there is a residence that is not located on the same property within five hundred feet of the outdoor wood-fired boiler, the chimney must extend at least as high as the roof height of all such residences.

(d) Outdoor wood-fired boilers must only be fired on clean dry wood, wood pellets made from clean wood, or fuels recommended by the manufacturer of the outdoor wood-fired boiler. The owner or operator of an outdoor wood-fired boiler must follow manufacturer-recommended fuel loading times and amounts. An outdoor wood-fired boiler must not be fired on any prohibited fuel cited in WAC 173-433.

(16) Cyclonic Burn Barrel Type Incinerators. Use of cyclonic burn barrel type incinerators is prohibited effective January 1, 2022 except for special circumstances approved in advance by SWCAA.

(17) Municipal Solid Waste Landfills. The federal plan found under 40 CFR 62 Subpart 000 is adopted by reference (as in effect on the date cited in SWCAA 400-025).

AMENDATORY SECTION (Amending WSR 23-03-057 filed 1/11/23, effective 2/11/23)

SWCAA 400-072 Small Unit Notification for Selected Source Categories

Purpose. The standards and requirements contained in this section are intended to be representative of BACT for the affected source categories. Submission of a small unit notification (SUN) pursuant to SWCAA 400-072(2) is intended to take the place of an air discharge

permit application in regards to approval of new "emission units". An air discharge permit application as described in SWCAA 400-109 is not required for an affected "emission unit" if the owner or operator submits proper notification to the Agency and maintains compliance with the emission standards and other requirements specified for the applicable source category. No SUN is required if a source is exempt under SWCAA 400-109. "Emission units" subject to the provisions of this section may be incorporated into a facility's Air Discharge Permit during subsequent permitting actions.

The provisions of this section do not apply to emission units that are subject to major New Source Review.

Registration. All "emission units" subject to the provisions of this section are also subject to registration pursuant to SWCAA 400-100 and periodic inspection by Agency representatives.

(1) **Exceptions.**

(a) The owner or operator of an "emission unit" meeting any of the applicability criteria listed below may voluntarily elect to file an air discharge permit application pursuant to SWCAA 400-109.

(b) If an "emission unit" subject to the provisions of this section is located at a "stationary source" that is otherwise required to be permitted pursuant to SWCAA 400-109, the Agency may require that the emission unit be included in the permit for the affected "stationary source".

(c) SWCAA may require any "emission unit" that fails to maintain ongoing compliance with the applicable requirements of this section to submit an air discharge permit application pursuant to SWCAA 400-109.

(2) **Agency notification.** An owner or operator who wishes to install and operate a new "emission unit" under the provisions of this section must file a formal notification with the Agency for each "emission unit". Notification must be performed using forms developed by the Agency for that purpose. The notification must include documentation sufficient to positively identify the affected "emission unit", establish applicability under this section, and demonstrate compliance with applicable requirements.

A complete notification includes, but is not limited to, the following:

(a) Location of installation and/or operation;

(b) Identification of responsible party (owner or operator);

(c) Applicable processing fee;

(d) Purpose of installation and/or operation (e.g., replace an existing unit, expansion of facility, new facility, etc.). If intended as a replacement for an existing unit, the existing unit must be clearly identified in the notification to allow SWCAA to make necessary changes in the registration program;

(e) Equipment specifications (equipment type, make, model number, serial number, year of manufacture, rated capacity, exhaust stack configuration, fuel type, etc.);

(f) Control equipment specifications;

(g) Vendor performance guarantees; and

(h) Operational information (hours of operation, maximum product throughput, fuel type, fuel consumption, etc.).

(3) **Processing fee.** Each notification must be accompanied by the payment of a processing fee as provided in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098 for each piece of equipment subject to notification.

(4) **Effective date.** "Emission units" subject to the provisions of this section must not be installed or operated until the Agency pro-

vides written confirmation that the affected "emission units" are capable of complying with applicable requirements.

(5) **Source categories.**

(a) **Coffee roasters.**

(i) **Applicability.** The provisions of this section apply to batch configuration coffee roasters with a capacity of less than 100 pounds of green coffee beans per batch.

(ii) **Emission limits and standards.**

(A) Visible emissions from the coffee roaster exhaust stack must not exceed five percent opacity for more than 3 minutes in any one hour period as determined in accordance with SWCAA Method 9 (SWCAA 400, Appendix A).

(B) Operations that cause or contribute to odors that could unreasonably interfere with any other property owner's use and enjoyment of their property must use recognized good practice and procedures to reduce those odors to a reasonable minimum, consistent with the requirements of SWCAA 400-040(4).

(iii) **General requirements.**

(A) Each coffee roaster must be equipped with an afterburner designed for a minimum residence time of 0.5 seconds, and capable of maintaining an operating temperature of not less than 1,200°F.

(B) Each coffee roaster must have an operable temperature gauge capable of monitoring afterburner operating temperature on a continual basis.

(C) Each coffee roaster must be exhausted to the afterburner whenever smoke or odors are generated by roasting and cooling activities.

(D) Afterburners must be operated whenever the associated coffee roaster is in operation. The afterburner must be operated and maintained in accordance with the manufacturer's specifications. Furthermore, the afterburner must be operated in a manner that minimizes emissions.

(E) The exhaust point for each coffee roaster must be a minimum of 200 feet from the nearest residential structure.

(F) Each coffee roaster and afterburner must only be fired on natural gas or propane.

(G) Afterburner exhaust must be discharged vertically at least four feet above the roof peak of the building containing the afterburner, and at a point higher than surrounding buildings. Any device that obstructs or prevents vertical discharge is prohibited.

(iv) **Recordkeeping requirements.** The information listed below must be recorded at the specified intervals, and maintained in a readily accessible form for a minimum of 3 years. With the exception of data logged by a computerized data acquisition system, each required record must include the date and the name of the person making the record entry.

(A) Afterburner operating temperature must be recorded weekly;

(B) Quantity of coffee roasted must be recorded weekly;

(C) Upset conditions that cause excess emissions must be recorded for each occurrence; and

(D) All air quality related complaints, including odor complaints, received by the permittee and the results of any subsequent investigation or corrective action must be recorded promptly after each occurrence.

(v) **Emission monitoring requirements.** None.

(vi) **Reporting requirements.**

(A) The owner or operator of an affected "emission unit" must provide written notification of initial operation to SWCAA within 10 days of occurrence.

(B) All air quality related complaints, including odor complaints, received by the owner or operator must be reported to SWCAA within (~~3-business~~) three calendar days of receipt.

(C) The owner or operator of an affected coffee roaster must report the following information to the Agency no later than March 15th for the preceding calendar year:

(I) Quantity of natural gas consumed by the roaster and after-burner;

(II) Quantity of coffee roasted; and

(III) Air emissions of criteria air pollutants, VOCs, and toxic air pollutants (TAPs).

(b) **Small gas fired boilers(~~/~~) and heaters.**

(i) **Applicability.** The provisions of this section apply to gas fired (natural gas(~~/~~), propane(~~/~~), or LPG) boilers and heaters with individual rated heat inputs equal to or greater than 0.4 MMBtu/hr and equal to or less than 2.0 MMBtu/hr. For the purposes of this subsection, the term "boiler" means any combustion equipment designed to produce steam or to heat water that is not used exclusively to produce electricity for sale. For the purposes of this subsection, the term "heater" means any combustion device used to heat a gas or liquid other than water.

(ii) **Emission limits and standards.**

(A) Visible emissions from the boiler(~~/~~) or heater exhaust stack must not exceed zero percent opacity for more than 3 minutes in any one hour period as determined in accordance with SWCAA Method 9. (SWCAA 400, Appendix A)

(B) Each boiler(~~/~~) or heater must be equipped with combustion technology capable of maintaining NO_x and CO emissions at, or below, 30 ppmv and 50 ppmv, respectively (corrected to 3% O₂, dry, 1-hr avg). EPA test methods from 40 CFR 60, or equivalent, must be used to determine compliance.

(iii) **General requirements.**

(A) Each boiler(~~/~~) or heater must only be fired on natural gas, propane, or LPG.

(iv) **Recordkeeping requirements.** The information listed below must be recorded at the specified intervals and maintained in a readily accessible form for a minimum of 3 years. With the exception of data logged by a computerized data acquisition system, each required record must include the date and the name of the person making the record entry.

(A) Quantity of fuel consumed by the boiler(~~/~~) or heater must be recorded for each calendar month;

(B) Maintenance activities for the boiler(~~/~~) or heater must be logged for each occurrence;

(C) Upset conditions that cause excess emissions must be recorded for each occurrence; and

(D) All air quality related complaints received by the permittee and the results of any subsequent investigation or corrective action must be recorded promptly after each occurrence.

(v) **Emission monitoring requirements.**

(A) Each boiler(~~/~~) or heater must undergo emission monitoring no later than 60 calendar days after commencing initial operation. Subsequent monitoring must be conducted annually thereafter no later

than the end of the month in which the original monitoring was conducted. All emission monitoring must be conducted in accordance with the requirements of SWCAA 400-106(2).

(B) If emission monitoring results for a boiler(~~/~~) or heater indicate that emission concentrations may exceed 30 ppmvd NO_x or 50 ppmvd CO, corrected to 3% O₂, the owner or operator must either perform 60 minutes of additional monitoring to more accurately quantify CO and NO_x emissions, or initiate corrective action. Corrective action must be initiated as soon as practical but no later than 3 business days after the potential exceedance is identified. Corrective action includes burner tuning, maintenance by service personnel, limitation of unit load, or other action taken to lower emission concentrations. Corrective action must be pursued until observed emission concentrations no longer exceed 30 ppmvd NO_x or 50 ppmvd CO, corrected to 3% O₂.

(vi) **Reporting requirements.**

(A) The owner or operator of an affected "emission unit" must provide written notification of initial operation to SWCAA within 10 days of occurrence.

(B) All air quality related complaints received by the owner or operator must be reported to the Agency within (~~3 business~~) three calendar days of receipt.

(C) Emission monitoring results for each boiler(~~/~~) or heater must be reported to the Agency within 15 calendar days of completion on forms provided by the Agency unless otherwise approved by the Agency.

(D) The owner or operator of an affected boiler(~~/~~) or heater must report the following information to the Agency no later than March 15th for the preceding calendar year:

(I) Quantity of fuel consumed; and

(II) Air emissions of criteria air pollutants, VOCs, and toxic air pollutants (TAPs).

(c) **Emergency service internal combustion engines.**

(i) **Applicability.** The provisions of this section apply to individual emergency service internal combustion engines with a rating of 50 or more, but less than 1,000 horsepower (e.g., emergency generators, fire pumps, sewer lift stations, etc.). The combined power rating of all emergency service internal combustion engines installed as part of a single project must not exceed 2,000 horsepower.

(ii) **Emission limits and standards.**

(A) Visible emissions from diesel fired engine exhaust stacks must not exceed ten percent opacity for more than 3 minutes in any one hour period as determined in accordance with SWCAA Method 9 (See SWCAA 400, Appendix A). This limitation does not apply during periods of cold startup.

(iii) **General requirements.**

(A) Liquid fueled engines must only be fired on gasoline, #2 diesel, or biodiesel. Fuel sulfur content of liquid fuels must not exceed 0.0015 percent by weight (15 ppmw). A fuel certification from the fuel supplier may be used to demonstrate compliance with this requirement.

(B) Gaseous fueled engines must only be fired on natural gas or propane.

(C) Each compression ignition engine must be EPA Tier certified and manufactured no earlier than January 1, 2008.

(D) Each spark ignition engine must ((be)) comply with the provisions of 40 CFR 60 Subpart JJJJ (as in effect on the date cited in SWCAA 400-025).

(E) Engine operation must be limited to maintenance checks, readiness testing, and actual emergency use.

(F) Engine operation for maintenance checks and readiness testing must not exceed 100 hours per year. Actual emergency use is unrestricted.

(G) Each engine must be equipped with a nonresettable hourmeter for the purpose of documenting hours of operation.

(H) Engine exhaust must be discharged vertically. Any device that obstructs or prevents vertical discharge is prohibited.

(iv) **Recordkeeping requirements.** The information listed below must be recorded at the specified intervals and maintained in a readily accessible form for a minimum of 3 years. With the exception of data logged by a computerized data acquisition system, each required record must include the date and the name of the person making the record entry.

(A) Total hours of operation for each engine must be recorded annually;

(B) Hours of emergency use for each engine must be recorded annually for any year in which total operation exceeds 100 hours;

(C) Fuel sulfur certifications must be recorded for each shipment of liquid fuel;

(D) Maintenance activities must be recorded for each occurrence consistent with the provisions of 40 CFR 60.4214;

(E) Upset conditions that cause excess emissions must be recorded for each occurrence; and

(F) All air quality related complaints received by the permittee and the results of any subsequent investigation or corrective action must be recorded promptly after each occurrence.

(v) **Emission monitoring requirements.** None.

(vi) **Reporting requirements.**

(A) The owner or operator of an affected "emission unit" must provide written notification of initial operation to SWCAA within 10 days of occurrence.

(B) All air quality related complaints received by the owner or operator must be reported to SWCAA within three calendar days of receipt.

(C) The owner or operator of an affected emergency engine must report the following information to the Agency no later than March 15th for the preceding calendar year:

(I) Hours of engine operation; and

(II) Air emissions of criteria air pollutants, VOCs, and toxic air pollutants (TAPs).

(d) **Non-perchloroethylene dry cleaners.**

(i) **Applicability.** The provisions of this section apply to dry cleaning facilities that use a solvent other than perchloroethylene and have a total manufacturer's rated dryer capacity less than 38 kilograms (84 pounds). The total manufacturers' rated dryer capacity is the sum of the manufacturers' rated dryer capacity for each existing and proposed petroleum solvent dryer at the facility.

(ii) **Emission limits and standards.**

(A) VOC emissions from each dry cleaning facility must not exceed 1.0 ton per year. Emissions must be calculated using a mass balance approach assuming that all cleaning fluid utilized at the facility is emitted to the ambient air. Documented quantities of cleaning fluid

shipped offsite as waste may be deducted from the amount of cleaning fluid purchased to calculate actual emissions.

(B) Operations which cause or contribute to odors that unreasonably interfere with any other property owner's use and enjoyment of their property must use recognized good practice and procedures to reduce these odors to a reasonable minimum, consistent with the requirements of SWCAA 400-040(4).

(iii) **General requirements.**

(A) Each dry cleaning facility must be operated in a business space zoned for commercial activity(~~(, located a minimum of 200 feet from the nearest residential structure)~~).

(B) Dry cleaning machines must use DF-2000 cleaning fluid or an equivalent solvent.

(C) Solvent or waste containing solvent must be stored in closed solvent tanks or containers with no perceptible leaks.

(D) All cartridge filters must be drained in their sealed housing or other enclosed container for 24 hours prior to disposal.

(E) Perceptible leaks must be repaired within twenty-four hours unless repair parts must be ordered. If parts must be ordered to repair a leak, the parts must be ordered within 2 business days of detecting the leak and repair parts must be installed within 5 business days after receipt.

(F) Pollution control devices associated with each piece of dry cleaning equipment must be operated whenever the equipment served by that control device is in operation. Control devices must be operated and maintained in accordance with the manufacturer's specifications.

(iv) **Recordkeeping requirements.** The information listed below must be recorded at the specified intervals and maintained in a readily accessible form for a minimum of 3 years. Each required record must include the date and the name of the person making the record entry.

(A) Each dry cleaning machine must be visually inspected at least once per week for perceptible leaks. The results of each inspection must be recorded in an inspection log and maintained on-site. The inspection must include, but not be limited to the following:

(I) Hose connections, unions, couplings and valves;

(II) Machine door gaskets and seating;

(III) Filter gaskets and seating;

(IV) Pumps;

(V) Solvent tanks and containers;

(VI) Water separators;

(VII) Distillation units;

(VIII) Diverter valves; and

(IX) Filter housings.

(B) The amount of cleaning fluid (e.g., DF-2000) purchased, used, and disposed of must be recorded monthly.

(C) Upset conditions that cause excess emissions must be recorded for each occurrence; and

(D) All air quality related complaints, including odor complaints, received by the owner or operator and the results of any subsequent investigation or corrective action must be recorded promptly after each occurrence.

(v) **Emission monitoring requirements.** None.

(vi) **Reporting requirements.**

(A) The owner or operator of an affected "emission unit" must provide written notification of initial operation to SWCAA within 10 days of occurrence.

(B) All air quality related complaints, including odor complaints, received by the permittee must be reported to SWCAA within ~~(3)~~ three calendar days of receipt.

(C) The owner or operator of an affected petroleum dry cleaner must report the following information to the Agency no later than March 15th for the preceding calendar year:

(I) Quantity of cleaning fluid (e.g., DF-2000) consumed; and

(II) Air emissions of criteria air pollutants, VOCs, and toxic air pollutants (TAPs).

(e) **Rock Crushing Operations.**

(i) **Applicability.** The provisions of this section apply to individual rock crushers and aggregate screens proposed for installation at existing rock crushing operations subject to ~~((facilitywide))~~ facility-wide emission limits established by SWCAA. The affected rock crushing operation, including the new rock crusher and/or aggregate screen, must continue to comply with existing emission and/or process limits subsequent to installation.

The provisions of this section do not apply to internal combustion engines associated with proposed rock crushers or aggregate screens. Such engines are subject to the requirements of SWCAA 400-045 or 400-109, as applicable.

(ii) **Emission limits and standards.**

(A) Visible emissions from rock crushing operations must not exceed 0 percent opacity for more than three (3) minutes in any one hour period as determined in accordance with SWCAA Method 9 (SWCAA 400, Appendix A).

(iii) **General requirements.**

(A) Each rock crusher and aggregate screen must be equipped with a high pressure water spray system for the control of fugitive PM emissions. Operating pressure in each spray system must be maintained at 80 psig or greater. A functional pressure gauge must be maintained onsite with a connection point provided for the purpose of demonstrating compliance with the minimum pressure requirement.

(B) Spray/fog nozzles in the high pressure water spray system must be visually inspected a minimum of once per week when in operation to ensure proper function. Clogged or defective nozzles must be replaced or repaired prior to subsequent operation.

(C) Material handling points including, but not limited to, conveyor transfer points, aggregate storage piles, and haul roads must be watered at reasonable intervals as necessary to control fugitive dust emissions.

(D) Additional wet suppression measures must be employed, as necessary, to control fugitive dust from haul roads, rock crushing, and material handling equipment in the event that process changes or weather patterns result in insufficient water application to control fugitive dust from plant operations.

(E) Each rock crusher and/or aggregate screen subject to 40 CFR 60, Subpart 000 "Standards of Performance for Nonmetallic Mineral Processing Plants" must comply with the applicable requirements of that regulation (as in effect on the date cited in SWCAA 400-025).

(F) For portable rock crushing operations, the owner or operator must notify the Agency in advance of relocating approved equipment and submit operational information (such as production quantities, hours of operation, location of nearest neighbor, etc.) sufficient to demonstrate that proposed operation will comply with the emission standards for a new source, and will not cause a violation of applicable ambient

air quality standards, and if in a nonattainment area, will not interfere with scheduled attainment of ambient standards.

(iv) **Recordkeeping requirements.** The information listed below must be recorded at the specified intervals and maintained in a readily accessible form for a minimum of 3 years. Each required record must include the date and the name of the person making the record entry.

(A) Visual inspection of spray/fog nozzles must be recorded weekly;

(B) Maintenance, repair, or replacement of affected equipment must be recorded for each occurrence;

(C) Quantity and size of crushed/screened material must be recorded monthly;

(D) Relocation of rock crushing equipment must be recorded for each occurrence.

(E) Upset conditions that cause excess emissions must be recorded for each occurrence; and

(F) All air quality related complaints received by the owner or operator and the results of any subsequent investigation or corrective action must be recorded promptly after each occurrence.

(v) **Emission monitoring requirements.** An initial emissions test must be conducted for each rock crusher and/or aggregate screen subject to 40 CFR 60, Subpart 000 "Standards of Performance for Nonmetallic Mineral Processing Plants" that has not previously been tested. Testing must be conducted within 90 calendar days of commencing operation. All emission testing must be conducted in accordance with the requirements of that regulation (as in effect on the date cited in SWCAA 400-025).

(vi) **Reporting requirements.**

(A) The owner or operator of an affected "emission unit" must provide written notification of initial operation to SWCAA within 10 days of occurrence.

(B) All air quality related complaints received by the owner or operator must be reported to SWCAA within (~~3-business~~) three calendar days of receipt.

(C) The owner or operator of an affected rock crusher or aggregate screen must report the following information to the Agency no later than March 15th for the preceding calendar year:

(I) Quantity and size of crushed/screened material throughput;

(II) Air emissions of criteria air pollutants.

(D) Emission testing results for each rock crusher and/or aggregate screen subject to 40 CFR 60, Subpart 000 must be reported to the Agency within 45 calendar days of test completion.

AMENDATORY SECTION (Amending WSR 21-17-054 filed 8/10/21, effective 9/10/21)

SWCAA 400-075 Emission Standards for Stationary Sources Emitting Hazardous Air Pollutants

(1) National emission standards for hazardous air pollutants have been promulgated by EPA.

(a) 40 CFR Part 61 and appendices are hereby adopted by reference (as in effect on the date cited in SWCAA 400-025). A list of adopted standards is provided in SWCAA 400, Appendix C for informational purposes.

(b) Exceptions to 40 CFR Part 61 adoption by reference.

(i) The term "Administrator" in 40 CFR Part 61 shall mean the Administrator of EPA and the Executive Director of the Agency.

(ii) The following subparts of 40 CFR Part 61 are not adopted by reference:

(A) Subpart B, Radon Emissions from Underground Uranium Mines;

(B) Subpart H, Radionuclides other than Radon from Department of Energy Facilities;

(C) Subpart I, Radionuclide Emissions from Federal Facilities other than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H;

(D) Subpart K, Radionuclide Emissions from Elemental Phosphorus Plants;

(E) Subpart Q, Radon Emissions from Department of Energy Facilities;

(F) Subpart R, Radon Emissions from Phosphogypsum Stacks;

(G) Subpart T, Radon Emissions from the Disposal of Uranium Mill Tailings; and

(H) Subpart W, Radon Emissions from Operating Mill Tailings.

(2) The Agency may require that emission tests be conducted and require access to records, books, files, and other information specific to the control, recovery, or release of those pollutants regulated under 40 CFR Part 61, Part 62, Part 63, or Part 65, as applicable, in order to determine the status of compliance of sources of these contaminants and to carry out its enforcement responsibilities.

(3) Emission testing, monitoring, and analytical methods for sources of hazardous air pollutants shall conform with the requirements of 40 CFR Part 51, Part 60, Part 61, Part 63 and/or Part 65 (as in effect on the date cited in SWCAA 400-025).

(4) This section shall not apply to any "stationary source" operating pursuant to a waiver granted by EPA or an exemption granted by the President of the United States during the effective life of such waiver or exemption.

(5) Specific standards of performance referred to as Maximum Achievable Control Technology (MACT) have been promulgated by EPA.

(a) 40 CFR Part 63 and appendices are hereby adopted by reference (as in effect on the date cited in SWCAA 400-025). A list of adopted standards is provided in SWCAA 400, Appendix C for informational purposes.

(b) Exceptions to 40 CFR Part 63 adoption by reference.

(i) The term "administrator" in 40 CFR Part 63 (~~((includes))~~) shall mean the Administrator of EPA and the Executive Director of the Agency.

(ii) The following subparts of 40 CFR Part 63 are not adopted by reference:

(A) Subpart B, Requirements for Control Technology Determinations for Major Sources in Accordance with Clean Air Act Sections, Sections 112(g) and 112(j);

(B) Subpart C, List of Hazardous Air Pollutants, Petition Process, Lesser Quantity Designations, Source Category List;

(C) Subpart D, Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants;

(D) Subpart E, Approval of State Programs and Delegation of Federal Authorities;

(E) Subpart M, National Perchloroethylene Emission Standards for Dry Cleaning Facilities - as it applies to non-Title V sources;

(F) Subpart LL, Primary Aluminum Reduction Plants NESHP;

(G) Subpart ZZZZ, Stationary Reciprocating Internal Combustion Engines - as it applies to non-Title V sources;

(H) Subpart HHHHHH, Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources - as it applies to non-Title V sources;

(I) Subpart JJJJJJ, Industrial, Commercial, and Institutional Boilers Area Sources - as it applies to non-Title V sources; and

(J) Subpart XXXXXX, Area Source Standards for Nine Metal Fabrication and Finishing Source Categories - as it applies to non-Title V sources.

(6) **Consolidated requirements for the synthetic organic chemical manufacturing industry.** (SOCMI) 40 CFR Part 65 is hereby adopted by reference (as in effect on the date cited in SWCAA 400-025).

AMENDATORY SECTION (Amending 17-11-078 filed 5/18/17, effective 6/18/17)

SWCAA 400-099 Per Capita Fees

Each component city or town and county shall pay such proportion of the supplemental income to the Agency as determined by either one of two methods as provided under RCW (~~(70.94.093)~~) 70A.15.1600. The first method is based on the assessed valuation of property within such city or town and county limits bears to the total assessed valuation of taxable property within the jurisdiction of SWCAA. The second method is based on the total population of such city or town and county bears to the total population of the jurisdiction of SWCAA. In addition, a combination of the two methods is allowable provided that such combination is shared at 50 percent each. The SWCAA Board of Directors has elected to use the second method based on population (per capita). The population shall be determined by the most recent State of Washington Office of Financial Management (OFM) population estimate. The "per capita" assessment is established in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098.

AMENDATORY SECTION (Amending WSR 23-03-057 filed 1/11/23, effective 2/11/23)

SWCAA 400-100 Registration Requirements

The registration program is intended to develop and maintain a current and accurate record of air contaminant sources. Information collected through the registration program is used to evaluate the effectiveness of air pollution control strategies and to verify "source" compliance with applicable air pollution requirements.

(1) **Applicability.** All "sources" or "emission units" must be registered with the Agency in accordance with this section as set forth in RCW 70A.15.2200. When an Air Discharge Permit is required, a "source" or "emission unit" is subject to registration from the time it is approved by the Agency until the time at which it permanently ceases operation. When an Air Discharge Permit is not required, a "source" or "emission unit" is subject to registration from the time it is installed until the time at which it permanently ceases operation. "Emission units" that are part of a portable stationary source must register upon initiation of operation within the Agency's jurisdiction and every year thereafter.

(a) Registration requirements are not applicable to the following:

(i) "Emission units" or activities exempted under SWCAA 400-101; and

(ii) "Stationary sources" required to apply for, or to maintain, an operating permit under chapter 173-401 WAC.

(b) Regardless of the exemptions provided above, the following "sources" must be registered with the Agency:

(i) Gasoline stations in Clark County with an annual throughput ~~((of))~~ greater than 200,000 gallons ~~((or more))~~ (highest annual throughput in last ~~((3))~~ three calendar years);

(ii) Gasoline stations in Cowlitz, Lewis, Skamania, and Wahkiakum Counties with an annual throughput greater than 360,000 gallons (highest annual throughput in last three calendar years);

(iii) Gasoline loading terminals, bulk gasoline plants, and gasoline dispensing facilities for which registration is required by SWCAA 491-030; and

~~((iii))~~ (iv) Perchloroethylene dry cleaners ~~((with VOC or TAP emissions))~~.

(2) **General requirements.**

(a) The owner or operator of a "source" for which registration is required must initially register affected "emission units" with the Agency. A unique identification number will be assigned to each "source" and a separate registration fee will be provided for each "emission unit"; provided that, an owner may request to register a process with a detailed inventory of air contaminant sources and emissions related to the process as a single unit. A registration fee will not be collected for exempt "emission units" identified in SWCAA 400-101.

(b) The owner or operator of a registered "source" must submit annual reports to the Agency. Each report must contain information as may be required by the Agency concerning location, size and height of contaminant outlets, processes employed, nature and quantity of the air contaminant emission and such other information as is relevant to air pollution and available or reasonably capable of being assembled. Relevant information may include air pollution requirements established by rule, regulatory order, air discharge permit or ordinance pursuant to Chapter 70A.15 RCW. The owner, operator, or their designated representative must sign the annual report for each "source," and be responsible for the accuracy, completeness, and timely submittal of all required information.

(3) **Registration fees.** An annual registration fee must be paid before the Agency may register any "emission unit". Annual registration fees are typically based on the number of registered "emission units" and the quantity of "source" emissions during the previous calendar year, but may vary based on source category. Collected registration fees are used by the Agency in the next fiscal year (July 1 through June 30). "Sources" or "emission units" that permanently shut down prior to January 1 of the current registration period are not liable for registration fees. This provision does not apply to "temporary sources" or portable sources. Operation of equipment subject to registration without payment of applicable registration fees will be considered a violation of this section. Annual registration fees must be paid according to the current Consolidated Fee Schedule established in accordance with SWCAA 400-098.

Exceptions:

(a) An annual registration fee will be charged to each gasoline transport tank as provided in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098.

(b) The registration fee for a source may be waived or reduced provided sufficient demonstration of circumstances is presented, subject to the discretion of the Executive Director.

(c) "Stationary sources" subject to the Operating Permit Program, as defined in RCW 70A.15.1030(17), are not subject to Registration and must pay an operating permit fee in accordance with SWCAA 400-103.

(4) **Delinquent registration fees.** Annual registration fees that are unpaid after June 30 for the effective year will be considered delinquent. Pursuant to RCW 70A.15.3160(7), "sources" with delinquent registration fees may be subject to a penalty equal to three times the amount of the original fee owed. If registration fees for an "emission unit" are delinquent for two consecutive years or more, the Agency may revoke the affected "emission unit's" air discharge permit or Order of Approval.

(5) **Reporting requirements for transfer or permanent shutdown of registered emission units.**

(a) The registered owner or operator must report the transfer of ownership or permanent shutdown of registered "emission units" to the Agency within 90 calendar days of shutdown or transfer. The report must contain the following information:

(i) Legal name of the registered owner or operator;

(ii) Effective date of the shutdown or transfer;

(iii) Comprehensive description of the affected "emission units";

and

(iv) Name and telephone number of the registered owner's or operator's authorized representative.

(b) Any party that assumes ownership and/or operational control of registered "emission units" must file a written report with the Agency within 90 calendar days of completing transfer of ownership and/or assuming operational control. The report must contain the following information:

(i) Legal name of the company or individual involved in the transfer;

(ii) Effective date of the transfer;

(iii) Description of the affected "emission units"; and

(iv) Name and telephone number of the owner's or operator's authorized representative.

(c) In the case of a permanent shutdown, affected process and air pollution control equipment may remain in place and on site, but must be configured such that the equipment or processes are incapable of generating emissions to the atmosphere (e.g.; disconnection of power to equipment, mechanical positioning that inhibits processing, placing of padlocks on equipment to prevent operation).

(6) **Inspections.**

(a) Periodic onsite inspections of "emission units" and "sources" must be allowed to verify compliance with applicable requirements, regulations, orders or rules governing the processes, equipment, or emissions from a "source" as set forth in RCW 70A.15.2500.

(b) Agency personnel or representatives have the authority to enter at reasonable times upon any private or public property excepting non-multiple unit private dwellings housing two families or less for the purpose of investigating conditions specific to the control, recovery, or release of air contaminants to the atmosphere.

(c) No person may refuse entry or access to Agency personnel who present appropriate credentials and request entry for the purpose of inspection.

(d) No person may obstruct, hamper or interfere with any such inspection.

AMENDATORY SECTION (Amending WSR 23-03-057 filed 1/11/23, effective 2/11/23)

SWCAA 400-105 Records, Monitoring and Reporting

The owner or operator of each registered or Title V "stationary source" shall maintain records of the type and quantity of emissions from the "stationary source" and other information deemed necessary to determine whether the "stationary source" is in compliance with applicable emission limitations, operating limitations, and control measures. "Stationary sources" that are not subject to the registration requirements of SWCAA 400-100 because they are exempt under SWCAA 400-101 shall maintain records and other information necessary and sufficient to substantiate that their small quantity emissions are less than the applicable thresholds.

(1) **Emission inventory.** The owner(s) or operator(s) of all registered and Title V "stationary sources" shall submit an inventory of emissions from the "stationary source" each year to the Agency. The inventory shall include stack and fugitive emissions of particulate matter PM₁₀, PM_{2.5}, sulfur dioxide, oxides of nitrogen, carbon monoxide, total reduced sulfur (TRS), ammonia, sulfuric acid mist, hydrogen sulfide, reduced sulfur compounds, fluorides, lead, VOCs, hazardous air pollutants, and toxic air pollutants identified in WAC 173-460. The owner(s) or operator(s) shall maintain records of information necessary to substantiate any reported emissions, consistent with the averaging times for the applicable standards.

(a) Gasoline Stations. Emission reports shall be submitted to the Agency no later than January 31 of each year for the previous calendar year. Upon written request, the Executive Director may allow an extension of the January 31 emission submittal deadline on a case-by-case basis. Extension of the emission submittal deadline shall not exceed a maximum period of 60 calendar days.

(b) Small "stationary sources." Emission reports shall be submitted to the Agency no later than March 15 of each year for the previous calendar year. Upon written request, the Executive Director may allow an extension of the March 15 emission submittal deadline on a case-by-case basis. Extension of the emission submittal deadline shall not exceed a maximum period of 60 calendar days.

(c) Large "stationary sources." At a minimum, "stationary sources" satisfying the criteria of 40 CFR 51, Subpart A will be submitted to EPA by the Agency for inclusion in the national emission database. Emission reports shall be submitted to the Agency no later than March 15 of each year for the previous calendar year. Upon request, the "stationary sources" described below shall complete and return the emission inventory form supplied by the Agency for this purpose by March 15. An extension of the March 15 emission submittal deadline may be allowed by the Executive Director on a case-by-case basis provided the affected "stationary source" makes a written request. Extension of the emission submittal deadline shall not exceed a maximum period of 60 calendar days.

(i) "Stationary sources" with the potential to emit over 100 tons of criteria pollutants per year, 10 tons of a single hazardous air pollutant per year or 25 tons of combined hazardous air pollutants per

year are required to submit an emissions inventory. (~~Only the hazardous air pollutants listed in Section 112 of the FCAA are considered for the purpose of determining those "stationary sources" required to submit an emissions inventory under this section.~~)

(ii) In ozone nonattainment or maintenance plan areas, those "stationary sources" with the potential to emit over 10.0 tons of VOCs per year or over 25.0 tons per year of NO_x are also required to submit emission inventories. "Stationary sources" subject to this section are also required to submit average daily emissions or process throughput data for NO_x and VOCs for ozone season in preparation for the SIP update.

(iii) "Stationary sources" with the potential to emit greater than 50 percent of the Title V permit thresholds as identified in (i) above.

(iv) "Synthetic minor" or Title V opt out "stationary sources."

(d) Greenhouse gases. The Agency may require that "stationary sources" submit an inventory of greenhouse gas emissions. Affected "stationary sources" shall be notified of the inventory requirement and submittal deadline in writing.

(2) **Monitoring.** The Agency shall conduct a continuous surveillance program to monitor the quality of the ambient atmosphere as to concentrations and movements of air contaminants. As a part of this program, the Executive Director or an authorized representative may require any "stationary source" under the jurisdiction of the Agency to conduct stack and/or ambient air monitoring and to report the results to the Agency.

(3) **Investigation of conditions.** Upon presentation of appropriate credentials, for the purpose of investigating conditions specific to the control, recovery, or release of air contaminants into the atmosphere, personnel from the Agency shall have the power to enter at reasonable times upon any private or public property, excepting non-multiple unit private dwellings housing one or two families.

(4) **Continuous monitoring and recording.** Owners and operators of the following "source categories" shall install, calibrate, maintain and operate equipment for continuously monitoring and recording those emissions specified.

(a) Fossil fuel-fired steam generators:

(i) Opacity, except where:

(A) Steam generator capacity is less than two hundred fifty million Btu per hour heat input; or

(B) Only gaseous fuel is burned.

(ii) Sulfur dioxide, except where steam generator capacity is less than two hundred fifty million Btu per hour heat input or if sulfur dioxide control equipment is not required.

(iii) Percent oxygen or carbon dioxide where such measurements are necessary for the conversion of sulfur dioxide continuous emission monitoring data.

(iv) General exception. These requirements do not apply to a fossil fuel-fired steam generator with an annual average capacity factor of less than thirty percent, as reported to the Federal Power Commission for calendar year 1974, or as otherwise demonstrated to the Agency by the owner(s) or operator(s).

(b) Sulfuric acid plants. Sulfur dioxide where production capacity is more than three hundred tons per day, expressed as one hundred percent acid, except for those facilities where conversion to sulfuric

acid is utilized primarily as a means of preventing emissions to the atmosphere of sulfur dioxide or other sulfur compounds.

(c) Fluidized bed catalytic cracking units catalyst regenerators at petroleum refineries. Opacity where fresh feed capacity is more than twenty thousand barrels per day.

(d) Wood residue fired steam generators:

(i) Opacity, except where steam generator capacity is less than one hundred million Btu per hour heat input.

(ii) Continuous monitoring equipment. The requirements of SWCAA 400-105 (4) (e) do not apply to wood residue fired steam generators, but continuous monitoring equipment required by SWCAA 400-105 (4) (d) shall be subject to approval by the Agency.

(e) Owners and operators of those "stationary sources" required to install continuous monitoring equipment under this section shall demonstrate to the Agency, compliance with the equipment and performance specifications and observe the reporting requirements contained in 40 CFR Part 51, Appendix P, Sections 3, 4 and 5 (as in effect on the date cited in SWCAA 400-025), and 40 CFR Part 60, Appendices B through F, as appropriate, as adopted by reference in SWCAA 400-115.

(f) Special considerations. If for reason of physical plant limitations or extreme economic situations, the Agency determines that continuous monitoring is not a reasonable requirement, alternative monitoring and reporting procedures shall be established on an individual basis. Alternative monitoring and reporting procedures may include continuous monitoring of process/operational parameters as a surrogate to continuous emissions monitoring and/or stack tests conducted at a frequency sufficient to determine compliance with applicable regulations and permit requirements as well as to quantify emissions.

(g) Exemptions. This subsection (SWCAA 400-105(4)) does not apply to any "stationary source" pollutant emission that is:

(i) Required to be continuously monitored due to a standard or requirement contained in 40 CFR Parts 60, 61, 62, 63 or 75.

(ii) Not subject to an applicable emission standard.

(5) **Misrepresentation.** No person shall make any false material statement, representation or certification in any form, notice, or report required under Chapter 70A.15 RCW, or any ordinance, resolution, regulation, permit or order in force pursuant thereto.

(6) **Tampering.** No person shall render inaccurate any monitoring device or method required under Chapter 70A.15 RCW, or any ordinance, resolution, regulation, permit, or order in force pursuant thereto.

(7) **Requirements for Continuous Emission Monitoring Systems.** The Agency may require any continuous emission monitoring system (CEMS) installed pursuant to an air discharge permit, PSD permit, or Agency regulation, and not subject to CEMS requirements imposed by 40 CFR Parts 60, 61, 62, 63, or 75, to meet the following requirements:

(a) Quality Assurance. The owner or operator shall install a continuous emission monitoring system that meets the performance specification in 40 CFR Part 60, Appendix B in effect at the time of its installation, and shall operate this monitoring system in accordance with the quality assurance procedures in Appendix F of 40 CFR Part 60 (as in effect on the date cited in SWCAA 400-025), and the U.S. Environmental Protection Agency's "Recommended Quality Assurance Procedures for Opacity Continuous Monitoring Systems" (EPA) 340/1-86-010.

(b) Data Availability. Except for system breakdowns, repairs, calibration checks, and zero and span adjustments, continuous monitor-

ing systems shall be in operation whenever the associated generating equipment is in operation.

(i) Continuous monitoring systems for measuring opacity shall complete a minimum of one cycle of sampling and analyzing for each successive ten second period and one cycle of data recording for each successive six minute period.

(ii) Continuous monitoring systems for measuring emissions other than opacity shall complete a minimum of one cycle of sampling, analyzing, and recording for each successive fifteen minute period.

(c) Data Recovery. The owner or operator shall recover valid hourly monitoring data for at least 95 percent of the hours that the associated generating equipment is operated during each calendar month except for periods of monitoring system downtime, provided that the owner or operator demonstrates that the downtime was not a result of inadequate design, operation, or maintenance, or any other reasonable preventable condition, and any necessary repairs to the monitoring system are conducted in a timely manner.

(d) Data Recording. Monitoring data commencing on the clock hour and containing at least forty-five minutes of monitoring data must be reduced to one hour averages. Monitoring data for opacity is to be reduced to six minute block averages unless otherwise specified in the order of approval, permit, or regulation. All monitoring data will be included in these averages except for data collected during calibration drift tests and cylinder gas audits, and for data collected subsequent to a failed quality assurance test or audit. After a failed quality assurance test or audit, no valid data is collected until the monitoring system passes a quality assurance test or audit.

(e) Data Retention. The owner or operator shall retain all monitoring data averages for at least five years, including copies of all reports submitted to the permitting authority and records of all repairs, adjustments, and maintenance performed on the monitoring system.

(f) Data Reporting. The owner or operator shall submit a report to SWCAA within thirty days after the end of each month in which data were recorded or as otherwise directed by the terms of the applicable air discharge permit, PSD permit, or regulation. The report required by this section may be combined with an excess emission report required by SWCAA 400-107. The report shall include the following information:

(i) The number of hours that the monitored "emission unit" operated during the month and the number of valid hours of monitoring data that the monitoring system recovered during the month;

(ii) The date, time period, and cause of each failure to meet the data recovery requirements of section (c) above and any actions taken to ensure adequate collection of such data;

(iii) The date, time period, and cause of each failure to recover valid hourly monitoring data for at least 90 percent of the hours that the associated generating equipment was operated each day;

(iv) The results of all cylinder gas audits (CGA) and relative accuracy test audits (RATA) conducted during the month; and

(v) A certification of truth, accuracy, and completeness signed by an authorized representative of the owner or operator.

AMENDATORY SECTION (Amending WSR 23-03-057 filed 1/11/23, effective 2/11/23)

SWCAA 400-115 Standards of Performance for New Sources

(1) **Adoption by reference.** The standards of performance for "new sources" presented in 40 CFR Part 60 and appendices are hereby adopted by reference (as in effect on the date cited in SWCAA 400-025). The term "Administrator" in 40 CFR Part 60 means the Administrator of EPA and the Control Officer of the Agency. Exceptions to this adoption by reference are listed in subsection (2). A list of adopted standards is provided in SWCAA 400, Appendix C for informational purposes.

Pursuant to RCW 80.50.020(14), larger energy facilities subject to subparts D, Da, GG, J, K, Kb, Y, KKK, LLL, and QQQ are regulated by the Energy Facility Site Evaluation Council (EFSEC) under WAC 463-39-115.

(2) **Exceptions.** The following sections and subparts of 40 CFR 60 are not adopted by reference:

- (a) 40 CFR 60.5 Determination of construction or modification
- (b) 40 CFR 60.6 Review of plans
- (c) Subpart B Adoption and Submittal of State Plans for Designated Facilities (ref. 40 CFR 60.20 et seq.)
- (d) Subpart Ba Adoption and Submittal of State Plans for Designated Facilities (ref. 40 CFR 60.20a et seq.)
- (e) Subpart C Emission guidelines and compliance times (ref. 40 CFR 60.30 et seq.)
- (f) Subpart Cb Emissions guidelines and compliance times for large municipal waste combustors that are constructed on or before September 20, 1994 (ref. 40 CFR 60.30b et seq.)
- (g) Subpart Cc Emission guidelines and compliance times for municipal solid waste landfills (ref. 40 CFR 60.30c et seq.)
- (h) Subpart Cd Emissions guidelines and compliance times for sulfuric acid production units (ref. 40 CFR 60.30d et seq.)
- (i) Subpart Ce Emission guidelines and compliance times for hospital/medical/infectious waste incinerators (ref. 40 CFR 60.30e et seq.)
- (j) Subpart Cf Emission guidelines and compliance times for municipal solid waste landfills (ref. 40 CFR 60.30f et seq.)
- (k) Subpart BBBB Emission guidelines and compliance times for small municipal waste combustion units constructed on or before August 30, 1999 (ref. 40 CFR 60.1500 et seq.)

Note: These sources are regulated under SWCAA 400-050(4).

(l) Subpart DDDD Emissions guidelines and compliance times for commercial and industrial solid waste incineration units that commenced construction on or before November 30, 1999 (ref. 40 CFR 60.2500 et seq.)

Note: These sources are regulated under SWCAA 400-050(4).

(m) Subpart FFFF Emission guidelines and compliance times for other solid waste incineration units that commenced construction on or before December 9, 2004 (ref. 40 CFR 60.2980 et seq.)

(n) Subpart MMMM Emission guidelines and compliance times for existing sewage sludge incineration units (ref. 40 CFR 60.5000 et seq.)

(o) Subpart OOOOc Emission Guidelines for Greenhouse Gas Emissions from Existing Crude Oil and Natural Gas Facilities (ref. 40 CFR 60.5360c et seq.)

~~((o))~~ (p) Subpart TTTT Greenhouse Gas Emissions for Electric Generating Units (ref. 40 CFR 60.5508 et seq.) - as it applies to non-Title V sources

(q) Subpart TTTTa Greenhouse Gas Emissions for Modified Coal-Fired Steam Electric Generating Units and New Construction and Reconstruction Stationary Combustion Turbine Electric Generating Units (ref. 40 CFR 60.5508a et seq.) - as it applies to non-Title V sources

~~((p) Subpart UUUUa Greenhouse Gas Emissions and Compliance Times for Electric Utility Generating Units (ref. 40 CFR 60.5700a et seq.) will as it applies to non-Title V sources))~~

(r) Subpart UUUUb Emission Guidelines for Greenhouse Gas Emissions for Electric Utility Generating Units (ref. 40 CFR 60.5700b et seq.)

AMENDATORY SECTION (Amending WSR 21-17-054 filed 8/10/21, effective 9/10/21)

SWCAA 400-171 Public Involvement

(1) Public notice/application notice.

(a) Notice shall be published on the SWCAA Internet website announcing the receipt of air discharge permit applications, nonroad engine permit applications and other proposed actions (e.g., open for cause, permit extension, etc.). Notice shall be published for a minimum of 15 calendar days. Publication of a notice on the SWCAA website at the time of application receipt is not required for any application or proposed action that automatically requires a public comment period pursuant to subsection (2) of this section. In the event that publication on the SWCAA Internet website does not occur for the prescribed time period, notice will be published for a minimum of one (1) day in a newspaper of general circulation in the area of the proposed action. When notice is published via newspaper, the Agency shall not issue a final determination on the affected action for a minimum of 15 calendar days following the date of publication. Each notice shall, at a minimum, include the following information:

- (i) The name and address of the owner or operator and the affected facility;
- (ii) A brief description of the proposed action;
- (iii) Agency contact information;
- (iv) A statement that a public comment period will be provided upon request pursuant to SWCAA 400-171(3); and
- (v) The date by which a request for a public comment period is due.

(b) Requests for a public comment period shall be submitted to the Agency in writing via letter or fax. A request may be submitted via electronic mail provided the sender confirms receipt by the Agency via telephone or electronic receipt confirmation. A public comment period shall be provided pursuant to subsection (3) of this section for any application or proposed action that receives such a request. Any application or proposed action for which a public comment period is not provided may be processed without further public involvement.

(2) Provision of public comment period.

(a) A public comment period shall be provided pursuant to subsection (3) of this section before approving or denying any of the following:

- (i) Any use of a modified or substituted air quality model, other than a guideline model in Appendix W of 40 CFR Part 51 (as in effect on the date cited in SWCAA 400-025) as part of review under SWCAA 400-046, 400-110, or WAC 173-400-117;
- (ii) Any order or permit to determine RACT;

- (iii) Any order or permit to establish a compliance schedule pursuant to SWCAA 400-161 or a variance pursuant to SWCAA 400-180;
- (iv) Any order to demonstrate the creditable height of a stack which exceeds the GEP formula height and sixty-five meters, by means of a fluid model or a field study, for the purposes of establishing an emission limitation;
- (v) Any order or permit to authorize a bubble;
- (vi) Any order or permit used to establish a creditable emission reduction;
- (vii) An Order of Discontinuance as provided in SWCAA 400-230
- (1) (g);
- (viii) Any order or permit used to establish or modify a ~~(")~~ synthetic minor ~~(~~"~~ or modification thereof)~~ emission limit;
- (ix) Any extension of the deadline to begin actual construction of a "major stationary source" or "major modification" in a nonattainment area;
- (x) Any application or other proposed action which has received a request for public notice pursuant to subsection (1) of this section; or
- (xi) Any proposed action for which the Executive Director determines there is a substantial public interest including:
- Air discharge permit applications
 - Nonroad engine permit applications
 - Other actions of significance
- (xii) Any order or permit to approve a new or modified source if the associated increase in emissions of any toxic air pollutant is greater than the applicable acceptable source impact level specified in WAC 173-460, as in effect 8/21/98.
- (b) Any air discharge permit application designated for integrated review that includes a PSD permit application must comply with the public notice requirements of WAC 173-400-740.
- (3) **Public comment period requirements.** A public comment period shall be provided only after all information required by the Agency has been submitted and after applicable preliminary determinations, if any, have been made.
- (a) Availability for public inspection. The information submitted by the applicant, and any applicable preliminary determinations, including analyses of the effect(s) on air quality, shall be available for public inspection in at least one location near the proposed project. Exemptions from this requirement include information protected from disclosure under any applicable law, including, but not limited to, RCW 70A.15.2510 and SWCAA 400-270.
- (b) Publication of comment period notice. Notice shall be given by prominent advertisement in the area of the proposed project. Publication of notice on the SWCAA website is presumed to satisfy this requirement. Notice for a public comment period shall include the following information:
- (i) The name and address of the owner or operator and the affected facility;
- (ii) A brief description of the proposal, including a description of the processes subject to permitting;
- (iii) A description of the air pollutant emissions associated with the proposal;
- (iv) Identification of Agency staff from whom interested persons may obtain additional information;

(v) The location of the documents made available for public inspection;

(vi) Identification of a 30 calendar day period for submitting written comment to the Agency;

(vii) A statement that a public hearing may be held if the Agency determines within a 30 calendar day period that significant public interest exists;

(viii) The length of the public comment period in the event of a public hearing; and

(ix) For projects subject to special protection requirements for federal Class I areas in WAC 173-400-117 (5)(c), the comment period notice shall explain the Agency's draft decision.

(c) EPA Notification. A copy of each comment period notice shall be sent to the EPA Region 10 Regional Administrator.

(d) Consideration of public comment. The Agency shall make no final decision on any application or other action for which a public comment period has been provided until the public comment period has ended and any comments received during the public comment period have been considered.

(e) Public hearings. Any person may request a public hearing within the thirty-day public comment period. Each request shall indicate the interest of the party filing it and why a hearing is warranted. The Agency may hold a public hearing if the Executive Director determines significant public interest exists. The Agency will determine the location, date, and time of the public hearing. If a public hearing is held, a minimum of 30 days notice will be provided to the public prior to the hearing date. The public comment period for the affected action shall extend through the hearing date and thereafter for such period, if any, as the notice of public hearing may specify.

(4) **Public involvement for integrated review with an operating permit.** Any air discharge permit application designated for integrated review with an application to issue or modify an operating permit shall be processed in accordance with the operating permit program procedures and deadlines (Chapter 173-401 WAC).

(5) **Other requirements of law.** Whenever procedures permitted or mandated by law will accomplish the objectives of public notice and opportunity for comment, those procedures may be used in lieu of the provisions of this section (e.g., SEPA). This subsection does not apply to PSD permit applications processed by Ecology.

(6) **Public information.** All information is available for public inspection at the Agency, except information protected from disclosure under any applicable law, including, but not limited to, RCW 70A.15.2510 and SWCAA 400-270. Such information includes copies of Notice of Construction applications, orders of approval, regulatory orders, and modifications thereof.

AMENDATORY SECTION (Amending WSR 23-03-057 filed 1/11/23, effective 2/11/23)

SWCAA 400-200 Vertical Dispersion Requirement, Creditable Stack Height and Dispersion Techniques

(1) **Vertical Dispersion Requirement.** Effective December 14, 2006, all new exhaust stacks must be configured to discharge vertically upward to the ambient atmosphere. Stack devices, such as rain caps, that obstruct or prevent vertical discharge are prohibited. Where possible, exhaust stacks must discharge at a point higher than surrounding

buildings and/or terrain. Alternate exhaust stack configurations may be approved by SWCAA on a case-by-case basis provided the owner/operator demonstrates that the alternate configuration will not cause or contribute to a violation of increment or a NAAQS.

The following source categories are not subject to the provisions of this section:

(a) Combustion units used for space heating or domestic hot water, provided the units are fired on natural gas, propane, or ultra low sulfur diesel (≤ 15 ppmw S content) and have an individual heat input rating of 2.0 MMBtu/hr or less.

(2) **Creditable Stack Height and Dispersion Techniques - Applicability.** The provisions of subsections (3) and (4) of this section are applicable to all sources except:

(a) Stacks for which construction had commenced on or before December 31, 1970, except where pollutants are being emitted from such stacks used by sources which were constructed, or reconstructed, or for which major modifications were carried out after December 31, 1970;

(b) Coal-fired steam electric generating units subject to the provisions of Section 118 of the Federal Clean Air Act, which commenced operation before July 1, 1957, and for whose stacks construction commenced before February 8, 1974;

(c) Flares;

(d) Open or outdoor burning for agricultural or silvicultural purposes as covered under an applicable Smoke Management Plan;

(e) Residential wood combustion and open or outdoor burning for which episodic restrictions apply.

These provisions shall not be construed to limit the actual stack height.

(3) **Creditable Stack Height and Dispersion Techniques - Prohibitions.** No source may use dispersion techniques or excess stack height to meet ambient air quality standards or PSD increment limitations.

(a) Excess stack height. Excess stack height is that portion of a stack that exceeds the greater of:

(i) Sixty-five meters (213.25 feet), measured from the ground level elevation at the base of the stack; or

(ii) $H_g = H + 1.5L$ where:

H_g = "good engineering practice" (GEP) stack height, measured from the ground level elevation at the base of the stack,

H = height of nearby structure(s) measured from the ground level elevation at the base of the stack,

L = lesser dimension, height or projected width, of nearby structure(s), subject to the provisions below.

"Nearby," as used in this subsection for purposes of applying the GEP formula means that distance up to five times the lesser of the height or the width dimension of a structure, but not greater than 0.8 kilometer (1/2 mile).

(b) Dispersion techniques. Dispersion techniques include increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise. This does not include:

(i) The reheating of a gas stream, following the use of a pollution control system, for the purpose of returning the gas to the tem-

perature at which it was originally discharged from the facility generating the gas stream;

(ii) The merging of gas streams where:

(A) The source was originally designed and constructed with such merged gas streams, as demonstrated by the source owner(s) or operator(s).

(B) Such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion applies only to the emission limitation for the pollutant affected by such change in operation.

(C) Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons, and not primarily motivated by an intent to gain emissions credit for greater dispersion.

(4) **Creditable Stack Height - Exception.** The Agency may require the use of a field study or fluid model to verify the creditable stack height for the source. This also applies to a source seeking credit after the effective date of this rule for an increase in existing stack height up to that established by the GEP formula. A fluid model or field study must be performed according to the procedures described in the *EPA Guideline for Determination of Good Engineering Practice Height* (Technical Support Document of the Stack Height Regulations). The creditable height demonstrated by a fluid model or field study must ensure that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features.

(a) "Nearby," as used in this subsection for conducting a field study or fluid model, means not greater than 0.8 km, except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to ten times the maximum height of the feature, not to exceed two miles if such feature achieves a height 0.8 km from the stack that is at least forty percent of the GEP stack height or twenty-six meters, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base of the stack.

(b) "Excessive concentration" is defined for the purpose of determining creditable stack height under this subsection and means a maximum ground-level concentration owing to a significant downwash effect which contributes to excursion over an ambient air quality standard. For sources subject to PSD review (WAC 173-400-720 and 40 CFR 52.21) an excessive concentration alternatively means a maximum ground-level concentration owing to a significant downwash effect that contributes to excursion over a PSD increment. The emission rate used in this demonstration must be the emission rate specified in the State Implementation Plan, or in the absence of such, the actual emission rate of the source. "Significant downwash effect" means a maximum ground-level concentration due to emissions from a stack due in whole or in part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least forty percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

AMENDATORY SECTION (Amending WSR 23-03-057 filed 1/11/23, effective 2/11/23)

**APPENDIX C
FEDERAL STANDARDS ADOPTED BY REFERENCE**

The following lists of affected subparts are provided for informational purposes only.

**STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES
(NSPS) 40 CFR 60**

Subpart A General Provisions (rel105f. 40 CFR 60.1 et seq.)

Subpart D Fossil Fuel-fired Steam Generators (ref. 40 CFR 60.40 et seq.)

Subpart Da Electric Utility Steam Generating Units (ref. 40 CFR 60.40a et seq.)

Subpart Db Industrial-Commercial-Institutional Steam Generating Units (ref. 40 CFR 60.40b et seq.)

Subpart Dc Small Industrial-Commercial-Institutional Steam Generating Units (ref. 40 CFR 60.40c et seq.)

Subpart E Incinerators (ref. 40 CFR 60.50 et seq.)

Subpart Ea Municipal Waste Combustors for Which Construction Commenced After December 20, 1989 and on or Before September 20, 1994 (ref. 40 CFR 60.50a et seq.)

Subpart Eb Large Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994 or for Which Modification of Reconstruction is Commenced After June 19, 1996 (ref. 40 CFR 60.50b et seq.)

Subpart Ec Hospital/Medical/Infectious Waste Incinerators (ref. 40 CFR 60.50c et seq.)

Subpart F Portland Cement Plants (ref. 40 CFR 60.60 et seq.)

Subpart G Nitric Acid Plants (ref. 40 CFR 60.70 et seq.)

Subpart Ga Nitric Acid Plants for Which Construction, Reconstruction, or Modification Commenced After October 14, 2011 (ref. 40 CFR 60.70a et seq.)

Subpart H Sulfuric Acid Plants (ref. 40 CFR 60.80 et seq.)

Subpart I Hotmix Asphalt Facilities (ref. 40 CFR 60.90 et seq.)

Subpart J Petroleum Refineries (ref. 40 CFR 60.100 et seq.)

Subpart Ja Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007 (ref. 40 CFR 60.100a et seq.)

Subpart K Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978 (ref. 40 CFR 60.110 et seq.)

Subpart Ka Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction or Modification Commenced After May 18, 1978, and Prior to July 23, 1984 (ref. 40 CFR 60.110a et seq.)

Subpart Kb Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984 (ref. 40 CFR 60.110b et seq.)

Subpart L Secondary Lead Smelters (ref. 40 CFR 60.120 et seq.)

Subpart M Secondary Brass and Bronze Production Plants (ref. 40 CFR 60.130 et seq.)

Subpart N Primary Emissions From Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973 (ref. 40 CFR 60.140 et seq.)

Subpart Na Secondary Emissions From Basic Oxygen Process Steel-making Facilities for Which Construction is Commenced After January 20, 1983 (ref. 40 CFR 60.140 et seq.)

Subpart O Sewage Treatment Plants (ref. 40 CFR 60.150 et seq.)

Subpart P Primary Copper Smelters (ref. 40 CFR 60.160 et seq.)

Subpart Q Primary Zinc Smelters (ref. 40 CFR 60.170 et seq.)

Subpart R Primary Lead Smelters (ref. 40 CFR 60.180 et seq.)

Subpart S Primary Aluminum Reduction Plants (ref. 40 CFR 60.190 et seq.)

Subpart T Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants (ref. 40 CFR 60.200 et seq.)

Subpart U Phosphate Fertilizer Industry: Superphosphoric Acid Plants (ref. 40 CFR 60.210 et seq.)

Subpart V Phosphate Fertilizer Industry: Diammonium Phosphate Plants (ref. 40 CFR 60.220 et seq.)

Subpart W Phosphate Fertilizer Industry: Triple Superphosphate Plants (ref. 40 CFR 60.230 et seq.)

Subpart X Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities (ref. 40 CFR 60.240 et seq.)

Subpart Y Coal Preparation and Processing Plants (ref. 40 CFR 60.250 et seq.)

Subpart Z Ferroalloy Production Facilities (ref. 40 CFR 60.260 et seq.)

Subpart AA Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974, and on or Before August 17, 1983 (ref. 40 CFR 60.270 et seq.)

Subpart AAa Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 17, 1983, and on or Before May 16, 2022 (ref. 40 CFR 60.270a et seq.)

Subpart AAb Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After May 16, 2022 (ref. 40 CFR 60.270b et seq.)

Subpart BB Kraft Pulp Mills (ref. 40 CFR 60.280 et seq.)

Subpart BBa Kraft Pulp Mill Affected Sources for Which Construction, Reconstruction, or Modification Commenced After May 23, 2013 (ref. 40 CFR 60.280a et seq.)

Subpart CC Glass Manufacturing Plants (ref. 40 CFR 60.290 et seq.)

Subpart DD Grain Elevators (ref. 40 CFR 60.300 et seq.)

Subpart EE Surface Coating of Metal Furniture (ref. 40 CFR 60.310 et seq.)

Subpart GG Stationary Gas Turbines (ref. 40 CFR 60.330 et seq.)

Subpart HH Lime Manufacturing Plants (ref. 40 CFR 60.340 et seq.)

Subpart KK Lead-Acid Battery Manufacturing Plants for Which Construction, Reconstruction, or Modification Commenced After January 14, 1980, and On or Before February 23, 2022 (ref. 40 CFR 60.370 et seq.)

Subpart KKa Lead Acid Battery Manufacturing Plants for Which Construction, Modification or Reconstruction Commenced After February 23, 2022 (ref. 40 CFR 60.370a et seq.)

Subpart LL Metallic Mineral Processing Plants (ref. 40 CFR 60.380 et seq.)

Subpart MM Automobile and Light Duty Truck Surface Coating Operations for which Construction, Modification or Reconstruction Commenced

After October 5, 1979, and On or Before May 18, 2022 (ref. 40 CFR 60.390 et seq.)

Subpart MMA Automobile and Light Duty Truck Surface Coating Operations for which Construction, Modification or Reconstruction Commenced After May 18, 2022 (ref. 40 CFR 60.390 et seq.)

Subpart NN Phosphate Rock Plants (ref. 40 CFR 60.400 et seq.)

Subpart PP Ammonium Sulfate Manufacture (ref. 40 CFR 60.420 et seq.)

Subpart QQ Graphic Arts Industry: Publication Rotogravure Printing (ref. 40 CFR 60.430 et seq.)

Subpart RR Pressure Sensitive Tape and Label Surface Coating Operations (ref. 40 CFR 60.440 et seq.)

Subpart SS Industrial Surface Coating: Large Appliances (ref. 40 CFR 60.450 et seq.)

Subpart TT Metal Coil Surface Coating (ref. 40 CFR 60.460 et seq.)

Subpart UU Asphalt Processing and Asphalt Roofing Manufacture (ref. 40 CFR 60.470 et seq.)

Subpart VV Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After January 5, 1981, and on or before November 7, 2006 (ref. 40 CFR 60.480 et seq.)

Subpart VVa Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006, and on or Before April 25, 2023 (ref. 40 CFR 60.480a et seq.)

Subpart VVb Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After April 25, 2023 (ref. 40 CFR 60.480b et seq.)

Subpart WW Beverage Can Surface Coating Industry (ref. 40 CFR 60.490 et seq.)

Subpart XX Bulk Gasoline Terminals That Commenced Construction, Modification, or Reconstruction After December 17, 1980, and On or Before June 10, 2022 (ref. 40 CFR 60.500 et seq.)

Subpart XXa Bulk Gasoline Terminals That Commenced Construction, Modification, or Reconstruction After June 10, 2022 (ref. 40 CFR 60.500a et seq.)

Subpart AAA New Residential Wood Heaters (ref. 40 CFR 60.530 et seq.)

Subpart BBB Rubber Tire Manufacturing Industry (ref. 40 CFR 60.540 et seq.)

Subpart DDD VOC Emissions From the Polymer Manufacturing Industry (ref. 40 CFR 60.560 et seq.)

Subpart FFF Flexible Vinyl and Urethane Coating and Printing (ref. 40 CFR 60.580 et seq.)

Subpart GGG Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After January 4, 1983, and on or before November 7, 2006 (ref. 40 CFR 60.590 et seq.)

Subpart GGGa Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006 (ref. 40 CFR 60.590a et seq.)

Subpart HHH Synthetic Fiber Production Facilities (ref. 40 CFR 60.600 et seq.)

Subpart III VOC Emissions From Synthetic Organic Chemical Manufacturing Industry Air Oxidation Unit Processes After October 21, 1983, and on or Before April 25, 2023 (ref. 40 CFR 60.610 et seq.)

Subpart IIIa VOC Emissions From the Synthetic Organic Chemical Manufacturing Industry Air Oxidation Unit Processes for Which Construction, Reconstruction, or Modification Commenced After April 25, 2023 (ref. 40 CFR 60.610a et seq.)

Subpart JJJ Petroleum Dry Cleaners (ref. 40 CFR 60.620 et seq.)

Subpart KKK Equipment Leaks of VOC From Onshore Natural Gas Processing Plants for Which Construction, Reconstruction, or Modification Commenced After January 20, 1984, and on or Before August 23, 2011 (ref. 40 CFR 60.630 et seq.)

Subpart LLL SO₂ Emissions From Onshore Natural Gas Processing for Which Construction, Reconstruction, or Modification Commenced After January 20, 1984, and on or Before August 23, 2011 (ref. 40 CFR 60.640 et seq.)

Subpart NNN VOC Emissions From Synthetic Organic Chemical Manufacturing Industry Distillation Operations After December 30, 1983, and on or Before April 25, 2023 (ref. 40 CFR 60.660 et seq.)

Subpart NNNa VOC Emissions From Synthetic Organic Chemical Manufacturing Industry Distillation Operations for Which Construction, Reconstruction, or Modification Commenced After April 25, 2023 (ref. 40 CFR 60.660a et seq.)

Subpart OOO Nonmetallic Mineral Processing Plants (ref. 40 CFR 60.670 et seq.)

Subpart PPP Wool Fiberglass Insulation Manufacturing Plants (ref. 40 CFR 60.680 et seq.)

Subpart QQQ VOC Emissions From Petroleum Refinery Wastewater (~~(Emissions)~~) Systems (ref. 40 CFR 60.690 et seq.)

Subpart RRR VOC Emissions From Synthetic Organic Chemical Manufacturing Industry Reactor Processes After June 29, 1990, and on or Before April 25, 2023 (ref. 40 CFR 60.700 et seq.)

Subpart RRRa VOC Emissions From Synthetic Organic Chemical Manufacturing Industry Reactor Processes for Which Construction, Reconstruction, or Modification Commenced After April 25, 2023 (ref. 40 CFR 60.700a et seq.)

Subpart SSS Magnetic Tape Coating Facilities (ref. 40 CFR 60.710 et seq.)

Subpart TTT Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines (ref. 40 CFR 60.720 et seq.)

Subpart TTTa Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines for Which Construction, Reconstruction, or Modification Commenced After June 21, 2022 (ref. 40 CFR 60.720a et seq.)

Subpart UUU Calciners and Dryers in Mineral Industries (ref. 40 CFR 60.730 et seq.)

Subpart VVV Polymeric Coating of Supporting Substrates Facilities (ref. 40 CFR 60.740 et seq.)

Subpart WWW Municipal Solid Waste Landfills that Commenced Construction, Reconstruction or Modification on or After May 30, 1991, but Before July 18, 2014 (ref. 40 CFR 60.750 et seq.)

(See SWCAA 400-070(8) for rules regulating MSW landfills constructed or modified before May 30, 1991)

Subpart XXX Municipal Solid Waste Landfills that Commenced Construction, Reconstruction, or Modification After July 17, 2014 (ref. 40 CFR 60.760 et seq.)

Subpart AAAA Small Municipal Waste Combustion Units for Which Construction is Commenced After August 30, 1999, or for Which Modification or Reconstruction is Commenced After June 6, 2001 (ref. 40 CFR 60.1000 et seq.)

(See SWCAA 400-050(5) for rules regulating small municipal waste combustion units constructed on or before August 30, 1999)

Subpart CCCC Commercial and Industrial Solid Waste Incineration Units (ref. 40 CFR 60.2000 et seq.)

(See SWCAA 400-050(4) for Rules Regulating Commercial and Industrial Solid Waste Incinerators Constructed on or Before November 30, 1999)

Subpart EEEE Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006 (ref. 40 CFR 60.2880 et seq.)

Subpart IIII Stationary Compression Ignition Internal Combustion Engines (ref. 40 CFR 60.4200 et seq.)

Subpart JJJJ Stationary Spark Ignition Internal Combustion Engines (ref. 40 CFR 60.4230 et seq.) (~~Title V Sources Only~~)

Subpart KKKK Stationary Combustion Turbines (ref. 40 CFR 60.4300 et seq.)

Subpart LLLL New Sewage Sludge Incineration Units (ref. 40 CFR 60.4760 et seq.)

Subpart OOOO Crude Oil and Natural Gas Production, Transmission and Distribution for Which Construction, Modification or Reconstruction Commenced After August 23, 2011, and on or Before September 18, 2015 (ref. 40 CFR 60.5360 et seq.)

Subpart OOOOa Crude Oil and Natural Gas Facilities for Which Construction, Modification or Reconstruction Commenced After September 18, 2015, and On or Before December 6, 2022 (ref. 40 CFR 60.5360a et seq.)

Subpart OOOOb Crude Oil and Natural Gas Facilities for Which Construction, Modification or Reconstruction Commenced After December 6, 2022 (ref. 40 CFR 60.5360b et seq.)

Subpart QQQQ New Residential Hydronic Heaters and Forced-air Furnaces (ref. 40 CFR 60.5472 et seq.)

Subpart TTTT Greenhouse Gas Emissions for Electric Generating Units (ref. 40 CFR 60.5508 et seq.) *Title V Sources Only*

Subpart TTTTa Greenhouse Gas Emissions for Modified Coal-Fired Steam Electric Generating Units and New Construction and Reconstruction Stationary Combustion Turbine Electric Generating Units (ref. 40 CFR 60.5508a et seq.) *Title V Sources Only*

~~((Subpart UUUUa Greenhouse Gas Emissions From Existing Electric Utility Generating Units (ref. 40 CFR 60.5700a et seq.) Title V Sources Only))~~

Appendix A Test Methods (ref. 40 CFR 60, Appendix A)

B) Appendix B Performance Specifications (ref. 40 CFR 60, Appendix B)

Appendix C Determination of Emission Rate Change (ref. 40 CFR 60, Appendix C)

Appendix D Required Emission Inventory Information (ref. 40 CFR 60, Appendix D)

F) Appendix F Quality Assurance Procedures (ref. 40 CFR 60, Appendix F)

Appendix I Removable Label and Owner's Manual (ref. 40 CFR 60, Appendix I)

**NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS
(NESHAPS) 40 CFR 61**

- Subpart A General Provisions (ref. 40 CFR 61.01 et seq.)
- Subpart C Beryllium (ref. 40 CFR 61.30 et seq.)
- Subpart D Beryllium Rocket Motor Firing (ref. 40 CFR 61.40 et seq.)
- Subpart E Mercury (ref. 40 CFR 61.50 et seq.)
- Subpart F Vinyl Chloride (ref. 40 CFR 61.60 et seq.)
- Subpart J Equipment Leaks (Fugitive Emission Sources) of Benzene (ref. 40 CFR 61.110 et seq.)
- Subpart L Benzene Emissions from Coke by Product Recovery Plants (ref. 40 CFR 61.130 et seq.)
- Subpart M Asbestos (ref. 40 CFR 61.140 et seq.)
- Subpart N Inorganic Arsenic Emissions from Glass Manufacturing Plants (ref. 40 CFR 61.160 et seq.)
- Subpart O Inorganic Arsenic Emissions from Primary Copper Smelters (ref. 40 CFR 61.170 et seq.)
- Subpart P Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic Production Facilities (ref. 40 CFR 61.180 et seq.)
- Subpart V Equipment Leaks (Fugitive Emission Sources) (ref. 40 CFR 61.240 et seq.)
- Subpart Y Benzene Emissions from Benzene Storage Vessels (ref. 40 CFR 61.270 et seq.)
- Subpart BB Benzene Emissions from Benzene Transfer Operations (ref. 40 CFR 61.300 et seq.)
- Subpart FF Benzene Waste Operations (ref. 40 CFR 61.340 et seq.)
- Appendix A Compliance Status Information (ref. 40 CFR 61, Appendix A)
- Appendix B Test Methods (ref. 40 CFR 61, Appendix B)
- Appendix C Quality Assurance Procedures (ref. 40 CFR 61, Appendix C)
- Appendix D Methods for Estimating Radionuclide Emissions (ref. 40 CFR 61, Appendix D)
- Appendix E Compliance Procedures Methods for Determining Compliance With Subpart I (ref. 40 CFR 61, Appendix E)

**NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES
(MACT) 40 CFR 63**

- Subpart A General Provisions (ref. 40 CFR 63.1 et seq.)
- Subpart F Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry (ref. 40 CFR 63.100 et seq.)
- Subpart G Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater (ref. 40 CFR 63.110 et seq.)
- Subpart H Organic Hazardous Air Pollutants for Equipment Leaks (ref. 40 CFR 63.160 et seq.)
- Subpart I Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks (ref. 40 CFR 60.190 et seq.)
- Subpart J Polyvinyl Chloride and Copolymers Production (ref. 40 CFR 60.210 et seq.)
- Subpart L Coke Oven Batteries (ref. 40 CFR 63.300 et seq.)
- Subpart M Perchloroethylene Dry Cleaning Facilities (ref. 40 CFR 63.320 et seq.)

Title V Sources Only

Subpart N Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks (ref. 40 CFR 63.340 et seq.)

Subpart O Ethylene Oxide Emissions Standards for Sterilization Facilities (ref. 40 CFR 63.360 et seq.)

Subpart Q Industrial Process Cooling Towers (ref. 40 CFR 63.400 et seq.)

Subpart R Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations) (ref. 40 CFR 63.420 et seq.)

Subpart S Pulp and Paper Industry (ref. 40 CFR 63.440 et seq.)

Subpart T Halogenated Solvent Cleaning (ref. 40 CFR 63.460 et seq.)

Subpart U Group I Polymers and Resins (ref. 40 CFR 63.480 et seq.)

Subpart W Epoxy Resins Production and Non-Nylon Polyamides Production (ref. 40 CFR 63.520 et seq.)

Subpart X Secondary Lead Smelting (ref. 40 CFR 63.541 et seq.)

Subpart Y Marine Tank Vessel Loading Operations (ref. 40 CFR 63.560 et seq.)

Subpart AA Phosphoric Acid Manufacturing Plants (ref. 40 CFR 63.600 et seq.)

Subpart BB Phosphate Fertilizers Production Plants (ref. 40 CFR 63.620 et seq.)

Subpart CC Petroleum Refineries (ref. 40 CFR 63.640 et seq.)

Subpart DD Off-Site Waste and Recovery Operations (ref. 40 CFR 63.680 et seq.)

Subpart EE Magnetic Tape Manufacturing Operations (ref. 40 CFR 63.701 et seq.)

Subpart GG Aerospace Manufacturing and Rework Facilities (ref. 40 CFR 63.741 et seq.)

Subpart HH Oil and Natural Gas Production Facilities (ref. 40 CFR 63.760 et seq.)

Subpart II Shipbuilding and Ship Repair (Surface Coating) (ref. 40 CFR 63.780 et seq.)

Subpart JJ Wood Furniture Manufacturing Operations (ref. 40 CFR 63.800 et seq.)

Subpart KK Printing and Publishing Industry (ref. 40 CFR 63.820 et seq.)

Subpart MM Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-alone Semichemical Pulp Mills (ref. 40 CFR 63.860 et seq.)

Subpart NN Wool Fiberglass Manufacturing at Area Sources (ref. 40 CFR 63.880 et seq.)

Subpart OO Tanks - Level 1 (ref. 40 CFR 63.900 et seq.)

Subpart PP Containers (ref. 40 CFR 63.920 et seq.)

Subpart QQ Surface Impoundments (ref. 40 CFR 63.940 et seq.)

Subpart RR Individual Drain Systems (ref. 40 CFR 63.960 et seq.)

Subpart SS Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process (ref. 40 CFR 63.980 et seq.)

Subpart TT Equipment Leaks - Control Level 1 (ref. 40 CFR 63.1000 et seq.)

Subpart UU Equipment Leaks - Control Level 2 (ref. 40 CFR 63.1019 et seq.)

Subpart VV Oil-Water Separators and Organic-Water Separators (ref. 40 CFR 63.1040 et seq.)

Subpart WW Storage Vessels (Tanks) - Control Level 2 (ref. 40 CFR 63.1060 et seq.)

Subpart XX Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations (ref. 40 CFR 63.1080 et seq.)

Subpart YY Generic Maximum Achievable Control Technology Standards (ref. 40 CFR 63.1100 et seq.)

Subpart CCC Steel Pickling - HCL Process Facilities and Hydrochloric Acid Regeneration Plants (ref. 40 CFR 63.1155 et seq.)

Subpart DDD Mineral Wool Production (ref. 40 CFR 63.1175 et seq.)

Subpart EEE Hazardous Waste Combustors (ref. 40 CFR 63.1200 et seq.)

Subpart GGG Pharmaceuticals Production (ref. 40 CFR 63.1250 et seq.)

Subpart HHH Natural Gas Transmission and Storage Facilities (ref. 40 CFR 63.1270 et seq.)

Subpart III Flexible Polyurethane Foam Production (ref. 40 CFR 63.1290 et seq.)

Subpart JJJ Group IV Polymers and Resins (ref. 40 CFR 63.1310 et seq.)

Subpart LLL Portland Cement Manufacturing Industry (ref. 40 CFR 63.1340 et seq.)

Subpart MMM Pesticide Active Ingredient Production (ref. 40 CFR 63.1360 et seq.)

Subpart NNN Wool Fiberglass Manufacturing (ref. 40 CFR 63.1380 et seq.)

Subpart OOO Manufacture of Amino/Phenolic Resins (ref. 40 CFR 63.1400 et seq.)

Subpart PPP Polyether Polyols Production (ref. 40 CFR 63.1420 et seq.)

Subpart QQQ Primary Copper Smelting (ref. 40 CFR 63.1440 et seq.)

Subpart RRR Secondary Aluminum Production (ref. 40 CFR 63.1500 et seq.)

Subpart TTT Primary Lead Smelting (ref. 40 CFR 63.1541 et seq.)

Subpart UUU Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units (ref. 40 CFR 63.1560 et seq.)

Subpart VVV Publicly Owned Treatment Works (ref. 40 CFR 63.1580 et seq.)

Subpart XXX Ferroalloys Production: Ferromanganese and Silicomanganese (ref. 40 CFR 63.1650 et seq.)

Subpart AAAA Municipal Solid Waste Landfills (ref. 40 CFR 63.1930 et seq.)

Subpart CCCC Manufacturing of Nutritional Yeast (ref. 40 CFR 63.2130 et seq.)

Subpart DDDD Plywood and Composite Wood Products (ref. 40 CFR 63.2230 et seq.)

Subpart EEEE Organic Liquids Distribution (Non-Gasoline) (ref. 40 CFR 63.2330 et seq.)

Subpart FFFF Miscellaneous Organic Chemical Manufacturing (ref. 40 CFR 63.2430 et seq.)

Subpart GGGG Solvent Extraction for Vegetable Oil Production (ref. 40 CFR 63.2830 et seq.)

Subpart HHHH Wet-Formed Fiberglass Mat Production (ref. 40 CFR 63.2980 et seq.)

Subpart IIII Surface Coating of Automobiles and Light-Duty Trucks (ref. 40 CFR 63.3080 et seq.)

Subpart JJJJ Paper and Other Web Coating (ref. 40 CFR 63.3280 et seq.)

Subpart KKKK Surface Coating of Metal Cans (ref. 40 CFR 63.3480 et seq.)

Subpart MMMM Surface Coating of Miscellaneous Metal Parts and Products (ref. 40 CFR 63.3880 et seq.)

Subpart NNNN Surface Coating of Large Appliances (ref. 40 CFR 63.4080 et seq.)

Subpart OOOO Printing, Coating, and Dyeing of Fabrics and Other Textiles (ref. 40 CFR 63.4280 et seq.)

Subpart PPPP Surface Coating of Plastic Parts and Products (ref. 40 CFR 63.4480 et seq.)

Subpart QQQQ Surface Coating of Wood Building Products (ref. 40 CFR 63.4680 et seq.)

Subpart RRRR Surface Coating of Metal Furniture (ref. 40 CFR 63.4880 et seq.)

Subpart SSSS Surface Coating of Metal Coil (ref. 40 CFR 63.5080 et seq.)

Subpart TTTT Leather Finishing Operations (ref. 40 CFR 63.5280 et seq.)

Subpart UUUU Cellulose Products Manufacturing (ref. 40 CFR 63.5480 et seq.)

Subpart VVVV Boat Manufacturing (ref. 40 CFR 63.5680 et seq.)

Subpart WWWW Reinforced Plastic Composites Production (ref. 40 CFR 63.5780 et seq.)

Subpart XXXX Rubber Tire Manufacturing (ref. 40 CFR 63.5980 et seq.)

Subpart YYYY Stationary Combustion Turbines (ref. 40 CFR 63.6080 et seq.)

Subpart ZZZZ Stationary Reciprocating Internal Combustion Engines (ref. 40 CFR 63.6580 et seq.)

Title V Sources Only

Subpart AAAAA Lime Manufacturing Plants (ref. 40 CFR 63.7080 et seq.)

Subpart BBBBB Semiconductor Manufacturing (ref. 40 CFR 63.7180 et seq.)

Subpart CCCCC Coke Ovens: Pushing, Quenching, and Battery Stacks (ref. 40 CFR 63.7280 et seq.)

Subpart DDDDD Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters (ref. 40 CFR 63.7480 et seq.)

Subpart EEEEE Iron and Steel Foundries (ref. 40 CFR 63.7680 et seq.)

Subpart FFFFF Integrated Iron and Steel Manufacturing Facilities (ref. 40 CFR 63.7780 et seq.)

Subpart GGGGG Site Remediation (ref. 40 CFR 63.7880 et seq.)

Subpart HHHHH Miscellaneous Coating Manufacturing (ref. 40 CFR 63.7980 et seq.)

Subpart IIIII Mercury Emissions from Mercury Cell Chlor-Alkali Plants (ref. 40 CFR 63.8180 et seq.)

Subpart JJJJJ Brick and Structural Clay Products Manufacturing (ref. 40 CFR 63.8380 et seq.)

Subpart KKKKK Clay Ceramics Manufacturing (ref. 40 CFR 63.8530 et seq.)

Subpart LLLLL Asphalt Processing and Asphalt Roofing Manufacturing (ref. 40 CFR 63.8680 et seq.)

Subpart MMMMM Flexible Polyurethane Foam Fabrication Operations (ref. 40 CFR 63.8780 et seq.)

Subpart NNNNN Hydrochloric Acid Production (ref. 40 CFR 63.8980 et seq.)

Subpart PTTTT Engine Test Cells/Stands (ref. 40 CFR 63.9280 et seq.)

Subpart QQQQQ Friction Materials Manufacturing Facilities (ref. 40 CFR 63.9480 et seq.)

Subpart RRRRR Taconite Iron Ore Processing (ref. 40 CFR 63.9580 et seq.)

Subpart SSSSS Refractory Products Manufacturing (ref. 40 CFR 63.9780 et seq.)

Subpart TTTTT Primary Magnesium Refining (ref. 40 CFR 63.9880 et seq.)

Subpart UUUUU Coal and Oil Fired Electric Utility Steam Generating Units (ref. 40 CFR 63.9980 et seq.)

Subpart WWWW Hospital Ethylene Oxide Sterilizers (ref. 40 CFR 63.10382 et seq.)

Subpart YYYYY Area Sources: Electric Arc Furnace Steelmaking Facilities (ref. 40 CFR 63.10680 et seq.)

Subpart ZZZZ Iron and Steel Foundries Area Sources (ref. 40 CFR 63.10880 et seq.)

Subpart BBBB Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities (ref. 40 CFR 63.11080 et seq.)

Subpart CCCCC Gasoline Dispensing Facilities (ref. 40 CFR 63.11110 et seq.)

Subpart DDDDD Polyvinyl Chloride and Copolymers Production Area Sources (ref. 40 CFR 63.11140 et seq.)

Subpart EEEEE Primary Copper Smelting Area Sources (ref. 40 CFR 63.11146 et seq.)

Subpart FFFFF Secondary Copper Smelting Area Sources (ref. 40 CFR 63.11153 et seq.)

Subpart GGGGG Primary Nonferrous Metals Area Sources - Zinc, Cadmium, and Beryllium (ref. 40 CFR 63.11160 et seq.)

Subpart HHHHH Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources (ref. 40 CFR 63.11169 et seq.)

Title V Sources Only

Subpart JJJJJ Industrial, Commercial, and Institutional Boilers Area Sources (ref. 40 CFR 63.11193 et seq.)

Title V Sources Only

Subpart LLLLL Acrylic and Modacrylic Fibers Production Area Sources (ref. 40 CFR 63.11393 et seq.)

Subpart MMMMM Carbon Black Production Area Sources (ref. 40 CFR 63.11400 et seq.)

Subpart NNNNN Chemical Manufacturing Area Sources: Chromium Compounds (ref. 40 CFR 63.11407 et seq.)

Subpart OOOOO Flexible Polyurethane Foam Production and Fabrication Area Sources (ref. 40 CFR 63.11414 et seq.)

Subpart PTTTT Lead Acid Battery Manufacturing Area Sources (ref. 40 CFR 63.11421 et seq.)

Subpart QQQQQ Wood Preserving Area Sources (ref. 40 CFR 63.11428 et seq.)

Subpart RRRRR Clay Ceramics Manufacturing Area Sources (ref. 40 CFR 63.11435 et seq.)

Subpart SSSSS Glass Manufacturing Area Sources (ref. 40 CFR 63.11448 et seq.)

Subpart TTTTT Secondary Nonferrous Metals Processing Area Sources (ref. 40 CFR 63.11462 et seq.)

Subpart VVVVVV Chemical Manufacturing Area Sources (ref. 40 CFR 63.11494 et seq.)

Subpart WWWWWW Area Source Standards for Plating and Polishing Operations (ref. 40 CFR 63.11504 et seq.)

Subpart XXXXXX Area Source Standards for Nine Metal Fabrication and Finishing Source Categories (ref. 40 CFR 63.11514 et seq.)

Title V Sources Only

Subpart YYYYYY Area Sources: Ferroalloys Production Facilities (ref. 40 CFR 63.11524 et seq.)

Subpart ZZZZZZ Area Source Standards for Aluminum, Copper, and Other Nonferrous Foundries (ref. 40 CFR 63.11544 et seq.)

Subpart AAAAAA Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing (ref. 40 CFR 63.11559 et seq.)

Subpart BBBBBB Area Sources: Chemical Preparations Industry (ref. 40 CFR 63.11579 et seq.)

Subpart CCCCCC Area Sources: Paints and Allied Products Manufacturing (ref. 40 CFR 63.11599 et seq.)

Subpart DDDDDD Area Sources: Prepared Feeds Manufacturing (ref. 40 CFR 63.11619 et seq.)

Subpart EEEEEEE Gold Mine Ore Processing and Production Area Source Category (ref. 40 CFR 63.11640 et seq.)

Subpart HHHHHH Polyvinyl Chloride and Copolymers Production (ref. 40 CFR 63.11860 et seq.)

Appendix A Test Methods (ref. 40 CFR 63, Appendix A)

Appendix B Sources Defined for Early Reduction Provisions (ref. 40 CFR 63, Appendix B)

Appendix C Determination of the Fraction Biodegraded in a Biological Treatment Unit (ref. 40 CFR 63, Appendix C)

Appendix D Alternative Validation procedure for EPA Waste and Wastewater Methods (ref. 40 CFR 63, Appendix D)

Appendix E Monitoring Procedures for Nonthoroughly Mixed Open Biological Treatment Systems at Kraft Pulp Mills Under Unsafe Sampling Conditions (ref. 40 CFR 63, Appendix E)

WSR 24-23-001
PROPOSED RULES
DEPARTMENT OF
NATURAL RESOURCES

[Filed November 6, 2024, 12:02 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-17-037.

Title of Rule and Other Identifying Information: WAC 332-130-050 and 332-130-055, survey map auditor's checklist.

Hearing Location(s): On December 13, 2024, at 10:00 a.m., at the Department of Natural Resources (DNR), Tumwater Compound, Black Hills, 801 88th Avenue S.E., Conference Room, Tumwater, WA 9854 [98504]-7019; and online with Teams.

Date of Intended Adoption: December 20, 2024.

Submit Written Comments to: Patrick J. Beehler, PLS, 1111 Washington Street S.E., Mailstop 47030, email Pat.Beehler@DNR.WA.Gov, fax 360-902-1778, 360-902-1181, beginning November 20, 2024, by December 13, 2024.

Assistance for Persons with Disabilities: Contact David Icenhower, PLS, phone 360-905-1190, email David.Icenhower@DNR.WA.Gov, by December 2, 2024.

Reasons Supporting Proposal: Revision to make the current auditor's checklist clear and concise without ambiguity.

Statutory Authority for Adoption: RCW 58.09.110 Duties of county auditor.

Statute Being Implemented: RCW 58.09.110.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Proposed revisions were developed by DNR with cooperation and input from Washington Association of County Auditors.

Name of Proponent: DNR, governmental.

Name of Agency Personnel Responsible for Drafting: Patrick J. Beehler, PLS, 1111 Washington Street S.E., Olympia, WA 98504-7030, 360-902-1181; Implementation and Enforcement: David Icenhower, PLS, 801 88th Avenue S.E., Tumwater, WA 98504-7019, 360-902-1190.

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

A cost-benefit analysis is not required under RCW 34.05.328. No additional cost is anticipated due to the revision of the checklist.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of exemptions: The proposed rule corrects language that caused some misunderstanding and confusion. It also clarifies ambiguous wording.

Scope of exemption for rule proposal:

Is fully exempt.

November 6, 2024
Todd Welker
Deputy Supervisor
State Lands

OTS-5927.2

AMENDATORY SECTION (Amending WSR 22-04-049, filed 1/27/22, effective 2/27/22)

WAC 332-130-050 Survey map requirements. The following requirements apply to ~~((land boundary))~~ survey maps and plans ~~((, records of surveys, plats, short plats, boundary line adjustments, and binding site plans))~~ required by law to be filed or recorded with the county.

(1) All such documents filed or recorded ~~((shall))~~ must conform to the following:

(a) They ~~((shall))~~ must display ~~((a county recording official's))~~ information blocks which ~~((shall))~~ must be located along the bottom or right edge of the document unless there is a local requirement specifying this information to be displayed in a different format. The ~~((county recording official's))~~ required information blocks ~~((shall contain))~~ must include:

(i) The title block, which ~~((shall))~~ must be on all sheets of maps, plats or plans, and ~~((shall))~~ must identify the business name, phone number, and address of the firm and/or land surveyor that performed the survey. For documents not requiring the surveyor's certificate required by RCW 58.09.080, the title block ~~((shall))~~ must show the firm name, phone number, and business address of the preparer and the date prepared. Every sheet of multiple sheets ~~((shall))~~ must have a sheet identification number, such as "sheet 1 of 5";

(ii) The auditor's certificate, where applicable, which ~~((shall))~~ must be on the first sheet of multiple sheets; however, the county recording official ~~((shall))~~ must enter the appropriate ~~((volume))~~ book and page and/or the ~~((auditor's))~~ county recording official's file number on each sheet of multiple sheets;

(iii) The surveyor's certificate, where applicable, which ~~((shall))~~ must be on the first sheet of multiple sheets and ~~((shall))~~ must show the name, license number, signed seal of the land surveyor who had responsible charge of the survey portrayed, and the date the land surveyor approved the map or plat. Every sheet of multiple sheets ~~((shall))~~ must have the signed seal of the land surveyor and the date signed;

(iv) The following indexing information must be written out, either full text or abbreviated, on the first sheet of multiple sheets:

(A) The section-township-range and quarter-quarter(s) of the section in which the surveyed parcel lies, except that if the parcel lies in a portion of the section officially identified by terminology other than aliquot parts, such as government lot, donation land claim, homestead entry survey, townsite, tract, and Indian or military reservation, then also identify that official subdivisional tract and call out the corresponding approximate quarter-quarter(s) based on projections of the aliquot parts. Where the section is incapable of being described by projected aliquot parts, such as the Port Angeles townsite, or elongated sections with excess tiers of government lots, then it is acceptable to provide only the official GLO designation;

(B) Additionally, if appropriate, the lot(s) and block(s) and the name and/or number of the filed or recorded subdivision plat or short plat with the related recording data;

(b) They ~~((shall))~~ must contain:

(i) A north arrow;

(ii) The vertical datum when topography or elevations are shown;

(iii) The basis for bearings, angle relationships or azimuths shown. The description of the directional reference system, along with the method and location of obtaining it, (~~shall~~) must be clearly given (such as "North by Polaris observation at the SE corner of section 6"; "Grid north from azimuth mark at station Kellogg"; "North by compass using twenty-one degrees variation"; "None"; or "Assumed bearing based on..."). If the basis of direction differs from record title, that difference should be noted;

(iv) Bearings, angles, or azimuths in degrees, minutes and seconds;

(v) Distances in feet and decimals of feet;

(vi) Curve data showing the controlling elements (~~(-)~~);

(vii) A legend containing line types and symbols that are not otherwise identified by notations.

(c) They (~~shall~~) must show the scale for all portions of the map, plat, or plan provided that details not drawn to scale (~~shall~~) must be so identified. A graphic scale for the main body of the drawing, shown in feet, (~~shall~~) must be included. The scale of the main body of the drawing and any enlargement detail (~~shall~~) must be large enough to clearly portray all of the drafting detail, both on the original and reproductions;

(d) The document filed or recorded and all copies required to be submitted with the filed or recorded document (~~shall~~) must, for legibility purposes:

(i) Have a uniform contrast suitable for scanning or microfilming;

(ii) Be without any form of cross-hatching, shading, or any other highlighting technique that to any degree diminishes the legibility of the drafting detail or text;

(iii) Contain dimensioning and lettering no smaller than 0.08 inches, vertically, and line widths not less than (~~(0.008)~~) 0.01 inches (equivalent to pen tip 000). This provision does not apply to vicinity maps, land surveyors' seals and (~~certificates~~) logos.

(e) They (~~shall~~) must not have any adhesive material affixed to the surface;

(f) For the intelligent interpretation of the various items shown, including the location of points, lines and areas, they (~~shall~~) must:

(i) Reference record survey documents that identify different corner positions;

(ii) Show deed calls that are at variance with the measured distances and directions of the surveyed parcel;

(iii) Identify all corners used to control the survey whether they were calculated from a previous survey of record or found, established, or reestablished;

(iv) Give the physical description of any monuments shown, found, established or reestablished, including type, size, and date visited;

(v) Show the record land description of the parcel or boundary surveyed (~~(or)~~) with a reference to (~~(an)~~) the instrument of record;

(vi) Identify any ambiguities, hiatuses, and/or overlapping boundaries;

(vii) Give the location and identification of any visible physical appurtenances such as fences or structures which may indicate encroachment, lines of possession, or conflict of title.

(2) All signatures and writing (~~shall~~) must be made with permanent black ink or ink capable of being imaged.

(3) The following criteria (~~(shall)~~) must be adhered to when altering, amending, changing, or correcting survey information on previously filed or recorded maps(~~(, plats, or plans)~~):

(a) Such maps(~~(, plats, or plans)~~) filed or recorded (~~(shall)~~) must comply with the applicable local requirements and/or the recording statute under which the original map(~~(, plat, or plan)~~) was filed or recorded;

(b) Alterations, amendments, changes, or corrections to a previously filed or recorded map(~~(, plat, or plan shall)~~) must only be made by filing or recording a new map(~~(, plat, or plan)~~);

(c) All such maps(~~(, plats, or plans)~~) filed or recorded (~~(shall)~~) must contain the following information:

(i) A title or heading identifying the map(~~(, plat, or plan)~~) as an alteration, amendment, change, or correction to a previously filed or recorded map(~~(, plat, or plan)~~) along with, when applicable, a cross-reference to the (~~(volume)~~) book and page (~~(and auditor's)~~) and/or county recording official's file number of the (~~(altered map, plat, or plan)~~) original map;

(ii) Indexing data as required by subsection (1)(a)(iv) of this section;

(iii) A prominent note itemizing the change(s) to the original map(~~(, plat, or plan)~~). Each item (~~(shall)~~) must explicitly state what the change is and where the change is located on the original;

(d) The county recording official (~~(shall)~~) must file, index, and cross-reference all such maps(~~(, plats, or plans)~~) received in a manner sufficient to provide adequate notice of the existence of the new map(~~(, plat, or plan)~~) to anyone researching the county records for survey information;

(e) The county recording official (~~(shall)~~) must send to the department of natural resources, as per RCW 58.09.050(3), a legible (~~(copy)~~) image of any map(~~(, plat, or plan)~~) filed or recorded which alters, amends, changes, or corrects survey information on any map(~~(, plat, or plan)~~) that has been previously filed or recorded pursuant to the Survey Recording Act.

(4) Survey maps(~~(, plats and plans)~~) filed with the county (~~(shall)~~) must be an original that is legibly drawn in black ink and is suitable for producing legible prints through scanning, microfilming or other standard copying procedures. The following are allowable formats for the original that may be used in lieu of the format stipulated above:

(a) Any standard material as long as the format is compatible with the auditor's recording process and records storage system. Provided, that records of survey filed pursuant to chapter 58.09 RCW are subject to the restrictions stipulated in RCW 58.09.110(5);

(b) An electronic version of the original if the county has the capability to accept a digital signature issued by a licensed certification authority under chapter 19.34 RCW or a certification authority under the rules adopted by the Washington state board of registration for professional engineers and land surveyors, and can import electronic files into an imaging system. The electronic version (~~(shall)~~) must be a standard raster file format acceptable to the county(~~(-)~~);

~~((5) The following checklist is the only checklist that may be used to determine the recordability of records of survey filed pursuant to chapter 58.09 RCW. There are other requirements to meet legal standards. This checklist also applies to maps filed pursuant to the other survey map recording statutes, but for these maps there may be additional sources for determining recordability.~~

~~CHECKLIST FOR SURVEY MAPS BEING RECORDED
(Adopted in WAC 332-130)~~

~~The following checklist applies to land boundary survey maps and plans, records of surveys, plats, short plats, boundary line adjustments, and binding site plans required by law to be filed or recorded with the county. There are other requirements to meet legal standards. Records of survey filed pursuant to chapter 58.09 RCW, that comply with this checklist, shall be recorded; no other checklist is authorized for determining their recordability.~~

~~ACCEPTABLE MEDIA:~~

- ~~• Acceptable media are:~~
 - ~~[] Any standard material compatible with county processes; or, an electronic version of the original.~~
 - ~~[] All signatures must be made with black ink.~~
 - ~~[] The media submitted for filing must not have any material on it that is affixed by adhesive.~~

~~LEGIBILITY:~~

- ~~• [] The documents submitted, including paper copies, must have a uniform contrast throughout the document.~~
- ~~• [] The documents submitted must be legible and reproducible by the auditor's recording system regardless of media used for recording.~~
- ~~• [] No information, on either the original or the copies, should be obscured or illegible due to cross-hatching, shading, or as a result of poor drafting technique such as lines drawn through text or improper pen size selection (letters or number filled in such that 3's, 6's or 8's are indistinguishable).~~
- ~~• [] Signatures, date, and seals must be legible on the prints or the party placing the seal must be otherwise identified.~~
- ~~• [] Text must be 0.08 inches or larger; line widths shall not be less than 0.008 inches (vicinity maps, land surveyor's seals and certificates are excluded).~~

~~INDEXING:~~

- ~~• [] The recording officer's information block must be on the bottom or right edge of the map.~~
 - ~~[] A title block (shows the name of the preparer and is on each sheet of multiple sheets).~~
 - ~~[] An auditor's certificate (on the first sheet of multiple sheets, although Vol./Pg. and/or AF# must be entered by the recording officer on each sheet).~~
 - ~~[] A surveyor's certificate (on the first sheet of multiple sheets; seal, date, and signature on multiple sheets).~~
- ~~• The map filed must provide the following indexing data:~~
 - ~~[] S-T-R and the quarter-quarter(s) or approximate quarter-quarter(s) of the section in which the surveyed parcel lies.~~

~~MISCELLANEOUS:~~

- ~~• If the function of the document submitted is to change a previously filed record, it must also have:~~
 - ~~[] A title identifying it as a correction, amendment, alteration or change to a previously filed record.~~
 - ~~[] A note itemizing the changes.~~

~~• For records of survey:~~

~~[] The sheet size must be 18" x 24".~~

~~[] The margins must be 2" on the left and 1/2" for the others, when viewed in landscape orientation.~~

~~[] In addition to the map being filed there must be two prints included in the submittal; except that, in counties using imaging systems fewer prints, as determined by the auditor, may be allowed.)~~

(c) Maps cannot include: Any lines, cross-hatching, shading, un-conventional font, "grayscale" text or lines, or any other drafting conventions, that obscures information and/or would be difficult to be legibly reproduced from a scanned or microfilmed version of the original map. Also, any line width less than 0.08 inches.

NEW SECTION

WAC 332-130-055 County recording official's checklist. The following checklist is the only checklist that may be used to determine the recordability of records of survey filed pursuant to chapter 58.09 RCW. There may be additional requirements for other maps to meet legal standards. This checklist also applies to maps filed pursuant to the other survey map recording statutes, but for these maps there may be additional sources for determining recordability.

No other checklist is authorized for determining their recordability.

Recording Map Checklist (chapter 332-130 WAC)

Acceptable media:

Acceptable media are:

- Any standard material compatible with county processes; or electronic version of the original.

- All signatures must be made with black ink or ink capable of being imaged.

- The media submitted for filing must not have any material on it that is affixed by adhesive.

Legibility:

All maps must meet the following requirements:

- Uniform contrast throughout the document.

- Symbols and line types that appear to be illegible must be identified in a legend at a drawing scale.

- Fully reproducible by the auditor's recording system regardless of the media used for recording.

- Legible signatures, date, and seals. If seals are not legible, they must be otherwise clarified.

- Text 0.08 inches or larger (vicinity maps, land surveyors' seals; and certificates are excluded).

Indexing:

Maps must include:

- The county recording official's information block must be on the bottom or right edge of the map and must include a space for a recording date, official and deputy official signature, book and page and/or county recording official's file number.

- A title block (shows the name of the preparer, phone number and address, and is on each sheet of multiple sheets).
- Surveyor's certificate must be on the first page, if multiple sheets; seal, date, and signature on each additional sheet.
- The map must provide the following indexing data: Section, township, range and the quarter-quarter(s) or approximate quarter-quarter(s) of the section in which the surveyed parcel lies in written format. A graphical representation may also be used but not in lieu thereof.

Miscellaneous:

If the function of the document submitted is to change a previously filed record, it must also have:

- A title identifying it as a correction, amendment, alteration, or change to a previously filed record.
- A note itemizing the changes.
- Reference number to original recording.

For all maps:

- The sheet must be 18" × 24" unless otherwise designated by the recording official's county code.
- The margins must be 2 inches on the left and 1/2 inch for the others when viewed in landscape orientation.
- In addition to the map being filed there must be two prints included in the submittal; except that, in counties using imaging systems, then fewer prints, as determined by the county recording official, may be allowed.

WSR 24-23-031

PROPOSED RULES

YAKIMA VALLEY COLLEGE

[Filed November 13, 2024, 11:14 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR [24-20-091].

Title of Rule and Other Identifying Information: Repealing some of chapter 132P-33 WAC and adding WAC to comply with Supplemental Title IX Student Conduct Procedures.

Hearing Location(s): On December 30, 2024, at 10:00 - 11:00 a.m. at Yakima Valley College, Hopf Union Building, MLK Room, Yakima Campus, South 16th Avenue and Nob Hill Boulevard, Yakima, WA 98902.

Date of Intended Adoption: February 11, 2025.

Submit Written Comments to: Ms. Jocelyn Sheehan, P.O. Box 22520, Yakima, WA 98907, email jsheehan@yvcc.edu, by December 29, 2024.

Assistance for Persons with Disabilities: Contact disabilities support services, phone 509-574-4677, TTY 509-574-4961, by December 29, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To comply with new Title IX regulations.

Reasons Supporting Proposal: Repeal WAC 132P-33-010, 132P-33-020, 132P-33-030, 132P-33-065, 132P-33-400, 132P-33-410, 132P-33-420, 132P-33-430, 132P-33-440, 132P-33-445, 132P-33-460, 132P-33-470, 132P-33-480, 132P-33-490, 132P-33-500, 132P-33-510, 132P-33-520 and 132P-33-540; and updating to new Supplemental Title IX Student Conduct Procedures: WAC 132P-121-010, 132P-121-020, 132P-121-030, 132P-121-065, 132P-121-440, 132P-121-445, 132P-121-448, 132P-121-460, 132P-121-462, 132P-121-465, 132P-121-470, 132P-121-480, 132P-121-490, 132P-121-500, 132P-121-510, 132P-121-520, and 132P-121-540.

Statutory Authority for Adoption: United States Department of Education released a final rule on Title IX, for higher education institutions to comply with RCW 28B.50.140(7).

Rule is necessary because of federal law, Office for Civil Rights and Department of Education, 34 C.F.R. Part 106.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: On April 19, 2024, the United States Department of Education released its final rule under Title IX. This rule requires institutions of higher education to adopt student disciplinary procedures addressing sex discrimination, including sex-based harassment. If the rule is not adopted it could have an adverse effect regarding receipt of federal funding.

Name of Proponent: Yakima Valley College, public.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Leslie Blackaby, Deccio Higher Education Center, 1000 South 12th Avenue, Yakima, WA 98902, 509-574-4867.

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

A cost-benefit analysis is not required under RCW 34.05.328. No economic impact.

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

November 12, 2024
Jocelyn Sheehan
Rules Coordinator

OTS-5719.1

STUDENT RIGHTS AND RESPONSIBILITIESNEW SECTION

WAC 132P-121-010 Authority. The Yakima Valley College board of trustees, acting pursuant to RCW 28B.50.140(14), delegates to the president of the college the authority to administer student disciplinary action. The president is authorized to delegate or reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary. Administration of the disciplinary procedures is the responsibility of the vice president of instruction and student services or their designee. Except in cases involving allegations of sex discrimination, including sex-based harassment, the student conduct officer, or delegate, shall serve as the principal investigator and administrator for alleged violations of this code.

NEW SECTION

WAC 132P-121-020 Definitions. The following definitions shall apply for purpose of this student conduct code:

- (1) "**Business day**" means a weekday, excluding weekends and college holidays.
- (2) "**College premises**" shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.
- (3) "**Complainant**" means the following individuals who are alleged to have been subjected to conduct that would constitute sex discrimination:
 - (a) A student or employee; or
 - (b) A person other than a student or employee who was participating or attempting to participate in the college's education program or activity at the time of the alleged discrimination.
- (4) "**Conduct review officer**" is a college administrator designated by the president who is responsible for reviewing or referring appeals of student disciplinary actions as specified in this code.
- (5) "**Disciplinary action**" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code. A written or verbal warning is not disciplinary action.
- (6) "**Disciplinary appeal**" is the process by which an aggrieved party can appeal the discipline imposed or recommended by the student conduct officer. Disciplinary appeals from a suspension in excess of 10 instructional days or a dismissal from the college are heard by the student conduct committee. Appeals of all other disciplinary action

shall be reviewed by a conduct review officer through brief adjudicative proceedings.

(7) "**Filing**" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified college official or college official's assistant; or

(b) By sending the document by email and first-class mail to the specified college official's office and college email address.

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

(8) "**Pregnancy or related conditions**" means:

(a) Pregnancy, childbirth, termination of pregnancy, or lactation;

(b) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or

(c) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

(9) "**President**" is the president of the college. The president is authorized to:

(a) Delegate any of their responsibilities as set forth in this chapter as may be reasonably necessary; and

(b) Reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary.

(10) "**Program**" or "**programs and activities**" means all operations of the college.

(11) "**Relevant**" means related to the allegations of sex discrimination under investigation. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decision maker in determining whether the alleged sex discrimination occurred.

(12) "**Remedies**" means measures provided to a complainant or other person whose equal access to the college's educational programs and activities has been limited or denied by sex discrimination. These measures are intended to restore or preserve that person's access to educational programs and activities after a determination that sex discrimination has occurred.

(13) "**Respondent**" is a student who is alleged to have violated the student conduct code.

(14) "**Service**" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:

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

(b) By sending the document by email and by certified mail or first-class mail to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date that the document is emailed and deposited in the mail, whichever is first.

(15) "**Student**" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for particular term but who have a continuing relationship with the college, or who have been notified of

their acceptance for admission are considered a "student" for purposes of this chapter.

(16) **"Student conduct officer"** is a college administrator designated by the president to be responsible for implementing and enforcing the student conduct code.

(17) **"Student employee"** means an individual who is both a student and an employee of the college. When a complainant or respondent is a student employee, the college must make a fact-specific inquiry to determine whether the individual's primary relationship with the college is to receive an education and whether any alleged student conduct code violation including, but not limited to, sex-based harassment, occurred while the individual was performing employment-related work.

(18) **"Student group"** is a student organization, athletic team, or living group including, but not limited to, student clubs and organizations, members of a class or student cohort, student performance groups, and student living groups within student housing.

(19) **"Supportive measures"** means reasonably available, individualized and appropriate, nonpunitive and nondisciplinary measures offered by the college to the complainant or respondent without unreasonably burdening either party, and without fee or charge for purposes of:

(a) Restoring or preserving a party's access to the college's educational program or activity, including measures that are designed to protect the safety of the parties or the college's educational environment; or providing support during the college's investigation and disciplinary procedures, or during any informal resolution process; or

(b) Supportive measures may include, but are not limited to: Counseling; extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of campus; restriction on contact applied to one or more parties; a leave of absence; change in class, work, housing, or extra-curricular or any other activity, regardless of whether there is or is not a comparable alternative; and training and education programs related to sex-based harassment.

(20) **"Title IX coordinator"** is the administrator responsible for processing complaints of sex discrimination, including sex-based harassment, overseeing investigations and informal resolution processes, and coordinating supportive measures, in accordance with college policy.

NEW SECTION

WAC 132P-121-030 Statement of jurisdiction. (1) The student conduct code shall apply to conduct by students or student groups that occurs:

(a) On college premises;

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

(c) Off college premises, if in the judgment of the college, the conduct has an adverse impact on the college community, the pursuit of its objectives, or the ability of a student or staff to participate in the college's programs and activities.

(2) Jurisdiction extends to locations in which students are engaged in college programs or activities including, but not limited to, college-sponsored housing, foreign or domestic travel, activities funded by the students, student government, student clubs or organiza-

tions, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences or any other college-sanctioned social or club activities.

(3) Students are responsible for their conduct from the time they gain admission to the college through the last day of enrollment or award of any degree or certificate, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of enrollment.

(4) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending.

(5) The college has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct by students or student groups that occurs off campus.

(6) In addition to initiating disciplinary proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college reserves the right to pursue student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

NEW SECTION

WAC 132P-121-065 Statement of student rights. As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

The following enumerated rights are guaranteed to each student within the limitations of statutory law and college policy, which are deemed necessary to achieve the educational goals of the college:

(1) Academic freedom.

(a) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public.

(b) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and student affairs, subject to the limitations of RCW 28B.50.090 (3)(b).

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

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

(2) Due process.

(a) The rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures is guaranteed.

(b) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(c) A student accused of violating this code of student conduct is entitled, upon request, to procedural due process as set forth in this chapter.

STUDENT CONDUCT CODE PROCEDURES

NEW SECTION

WAC 132P-121-440 Prohibited student conduct. The college may impose disciplinary sanctions against a student or a college-sponsored student organization, athletic team or living group, who commits, attempts to commit, aids, abets, incites, encourages or assists another person to commit, an act(s) of misconduct, which include, but are not limited to, the following:

(1) **Abuse of others.** Assault, physical abuse, verbal abuse, threat(s), intimidation, or other conduct that harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property unless otherwise protected by law.

(2) **Abuse in later life.**

(a) Neglect, abandonment, economic abuse, or willful harm of an adult aged 50 or older by an individual in an ongoing relationship of trust with the victim; or

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

(c) Does not include self-neglect.

(3) **Academic dishonesty.** Any act of academic dishonesty, including:

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

(b) Plagiarism - Taking and using as one's own, without proper attribution, the ideas, writings, work of another person, or artificial intelligence, in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) Fabrication - Falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

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

(4) **Acts of dishonesty.** Acts of dishonesty include, but are not limited to:

(a) Forgery, alteration, and/or submission of falsified documents or misuse of any college document, record, or instrument of identification;

(b) Furnishing false information, or failing to furnish correct information, in response to the request or requirement of a college officer or employee;

(c) Knowingly making a false statement or submitting false information in relation, or in response, to a college academic or disciplinary investigation or process.

(5) **Alcohol.** The use, possession, manufacture, or distribution of alcoholic beverages or paraphernalia (except as expressly permitted by college policies, and federal, state, and local laws), or public intoxication on college premises or at college-sponsored events. Alcoholic beverages may not, in any circumstance, be used by, possessed by, or distributed to any person not of legal age.

(6) **Cannabis, drug, and tobacco violations.**

(a) **Cannabis.** The use, possession, growing, delivery, sale, or being visibly under the influence of cannabis or the psychoactive compounds found in cannabis and intended for human consumption, regardless of form, or the possession of cannabis paraphernalia on college premises or college-sponsored events. While state law permits the recreational use of cannabis, federal law prohibits such use on college premises or in connection with college activities.

(b) **Drugs.** The use, possession, production, delivery, sale, or being observably under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

(c) **Tobacco, electronic cigarettes, and related products.** The use of tobacco, electronic cigarettes, and related products in any building owned, leased or operated by the college or in any location where such use is prohibited, including 25 feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased, or operated by the college. The use of tobacco, electronic cigarettes, and related products on the college campus is restricted to designated smoking areas. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, vaporizers, and snuff.

(7) **Cyber misconduct.** Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, applications (apps), and social media sites, to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(8) **Disruption or obstruction.** Disruption or obstruction of instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college premises or at a college activity, or any activity that is authorized to occur on college premises, whether or not actually conducted or sponsored by the college.

(9) **Discriminatory harassment.**

(a) Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, not otherwise protected by law, that is directed

at a person because of such person's protected status and that is sufficiently severe, persistent, or pervasive so as to:

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

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

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

(b) Protected status includes a person's race; color; creed/religion; national origin; presence of any sensory, mental or physical disability; use of a trained service animal; sex, including pregnancy; marital status; age; genetic information; sexual orientation; gender identity or expression; veteran or military status; HIV/AIDS and hepatitis C status; or membership in any other group protected by federal, state, or local law.

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

(10) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

(11) **Failure to comply with directive.** Failure to comply with the direction of a college officer or employee who is acting in the legitimate performance of their duties, including failure to properly identify oneself to such a person when requested to do so.

(12) **Harassment or bullying.** Conduct unrelated to a protected class that is unwelcome and sufficiently severe, persistent, or pervasive such that it could reasonably be expected to create an intimidating, hostile, or offensive environment, or has the purpose or effect of unreasonably interfering with a person's academic or work performance, or a person's ability to participate in or benefit from the college's programs, services, opportunities, or activities.

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

(b) For purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior not otherwise protected by law when a reasonable person would feel humiliated, harmed, or intimidated.

(c) For purposes of this code, "intimidation" is an implied threat. Intimidation exists when a reasonable person would feel threatened or coerced even though an explicit threat or display of physical force has not been made. Intimidation is evaluated based on the intensity, frequency, context, and duration of the comments or actions.

(13) **Hazing.** Hazing is any act committed as part of a person's recruitment, initiation, pledging, admission into, or affiliation with a college-sponsored student organization, athletic team, or living group, or any pastime or amusement engaged in with respect to such an organization, athletic team, or living group that causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student, including causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm, regardless of the person's willingness to participate. "Hazing" does not include customary athletic events or other similar contests or compet-

itions. Consent is not a valid defense against hazing. Examples of hazing include, but are not limited to:

(a) Causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm;

(b) Humiliation by ritual act;

(c) Striking another person with an object or body part;

(d) Causing someone to experience excessive fatigue, or physical and/or psychological shock; or

(e) Causing someone to engage in degrading or humiliating games or activities that create a risk of serious psychological, emotional, and/or physical harm.

(14) **Indecent exposure.** The intentional or knowing exposure of a person's genitals or other private body parts when done in a place or manner in which such exposure is likely to cause affront or alarm. Breastfeeding or expressing breast milk is not indecent exposure.

(15) **Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

(a) Unauthorized use of such resources or opening of a file, message, or other item;

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

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

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

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

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

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

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

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

(16) **Property violation.** Damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging or destruction of college property or the property of another person. Property for purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.

(17) **Retaliation.** Harming, threatening, intimidating, coercing, or other adverse action taken against any individual for reporting, providing information, exercising one's rights or responsibilities, participating, or refusing to participate, in the process of responding to, investigating, or addressing allegations or violations of federal, state, or local law, or college policies.

(18) **Safety violations.** Nonaccidental, reckless, or unsafe conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(19) **Sex discrimination.** The term "sex discrimination" includes sex-based harassment, and may occur when a respondent causes more than

de minimis harm to an individual by treating them different from a similarly situated individual on the basis of: Sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. Conduct that prevents an individual from participating in an education program or activity consistent with the person's gender identity subjects a person to more than de minimis (insignificant) harm on the basis of sex.

(a) **Sex-based harassment.** "Sex-based harassment" is a form of sex discrimination and means sexual harassment or other harassment on the basis of sex, including the following conduct:

(i) **Quid pro quo harassment.** A student, employee, agent, or other person authorized by the college to provide an aid, benefit, or service under the college's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.

(ii) **Hostile environment.** Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

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

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

(C) The parties' ages, roles within the college's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;

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

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

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

(A) **Nonconsensual sexual intercourse** is any sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(B) **Nonconsensual sexual contact (fondling)** is any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(C) **Incest** is sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of 18.

(D) **Statutory rape (rape of a child)** is nonforcible sexual intercourse with a person who is under the statutory age of consent.

(E) **Domestic violence** is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual as-

sault, coercive control, damage or destruction of personal property, stalking or any other conduct prohibited under RCW 10.99.020, committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington.

(F) **Dating violence** is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:

(I) The length of the relationship;

(II) The type of relationship; and

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

(G) **Stalking** means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or to suffer substantial emotional distress.

(b) **Consent**. For purposes of this code, "consent" means knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity.

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

(ii) For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

(iii) A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

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

(c) **Title IX retaliation** means intimidation, threats, coercion, or discrimination against any person by a student, for the purpose of interfering with any right or privilege secured by Title IX, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in a sex discrimination investigation, proceeding, or hearing including during an informal resolution process, during a Title IX investigation, or during any disciplinary proceeding involving allegations of sex discrimination.

(20) **Unauthorized access**. Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

(21) **Violation of other laws or policies**. Violation of any federal, state, or local law, rule, or regulation, or other college rules or policies, including college housing, traffic, and parking rules.

(22) **Weapons**. Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife, or other cutting or

stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons during college programming and activities, subject to the following:

(a) Commissioned law enforcement personnel or legally authorized military personnel are permitted to weapons while in performance of their official duties.

(b) Students with legally issued weapons permits may store their weapons in their vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view.

(c) The president may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission.

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

NEW SECTION

WAC 132P-121-445 Corrective action, disciplinary sanctions, terms and conditions. (1) One or more of the following corrective actions or disciplinary sanctions may be imposed upon a student or upon college-sponsored student organizations, athletic teams, or living groups found responsible for violating the student conduct code.

(a) **Warning.** A verbal or written statement to a student that there is a violation and that continued violation may be cause for disciplinary action. Warnings are corrective actions, not disciplinary, and may not be appealed.

(b) **Written reprimand.** Notice in writing that the student has violated one or more terms of this code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action.

(c) **Disciplinary probation.** Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation and which may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction, which may include, but is not limited to, a suspension or a dismissal from the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance at the college.

(d) **Disciplinary suspension.** Dismissal from the college and from student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the suspension is imposed.

(e) **Dismissal.** The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the dismissal is imposed.

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

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

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

(c) **Not in good standing.** A student deemed "not in good standing" with the college shall be subject to the following restrictions:

(i) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.

(ii) Ineligible to represent the college to anyone outside the college community in any way, including representing the college at any official function, or any forms of intercollegiate competition or representation.

(d) **No contact directive.** An order directing a student to have no contact with a specified student, college employee, a member of the college community, or a particular college facility.

(e) **Professional evaluation.** Referral for drug, alcohol, psychological, or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(f) **Restitution.** Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.

(g) **Trespass or restriction.** A student may be restricted from any or all college premises and/or college-sponsored activities based on the violation.

(h) **Residence hall suspension or termination.** Removal from a residence hall for a specified period or permanently. Conditions may be imposed before a student is permitted to return to a residence hall.

(3) More than one of the disciplinary terms and conditions listed above may be imposed for any single violation.

(4) If a student withdraws from the college or fails to reenroll before completing a disciplinary sanction or condition, the disciplinary sanction or condition must be completed either prior to or upon the student's reenrollment, depending on the nature of the sanction, condition, and/or the underlying violation. Completion of disciplinary sanctions and conditions may be considered in petitions for readmission to the college.

NEW SECTION

WAC 132P-121-448 Hazing sanctions. (1) Any student group that knowingly permits hazing is strictly liable for harm caused to persons or property resulting from hazing. If the organization, association, or student living group is a corporation, whether for profit or non-profit, the individual directors of the corporation may be held individually liable for damages.

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

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

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

NEW SECTION

WAC 132P-121-460 Initiation of disciplinary action. (1) Any member of the college community may file a complaint against a student or student group for possible violations of the student conduct code.

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

(a) **Sex discrimination, including sex-based harassment.** The college's Title IX coordinator or designee shall review, process, and, if applicable, investigate complaints or other reports of sex discrimination, including sex-based harassment. Allegations of sex discrimination, including sex-based harassment, by a student shall be addressed through the student conduct code. Allegations involving employees or third parties associated with the college will be handled in accordance with college policies.

(b) **Hazing by student groups.** A student conduct officer, or designee, may review and investigate any complaint or allegation of hazing by a student group. A student group will be notified through its named officer(s) and address on file with the college. A student group may designate one representative who may speak on behalf of a student group during any investigation and/or disciplinary proceeding. A student group will have the rights of a respondent as set forth below.

(3) Investigations will be completed in a timely manner and the results of the investigation shall be referred to the student conduct officer for disciplinary action.

(4) If a student conduct officer determines that a complaint appears to state a violation of the student conduct code, the student conduct officer will consider whether the matter might be resolved through agreement with the respondent or through alternative dispute

resolution proceedings involving the complainant and the reporting party.

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

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

(5) If the student conduct officer has determined that a complaint has merit and if the matter is not resolved through agreement or informal dispute resolution, the student conduct officer may initiate disciplinary action against the respondent.

(6) Both the respondent and the complainant in cases involving allegations of sex discrimination shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the disciplinary process and to appeal any disciplinary decision.

(7) All disciplinary actions will be initiated by the student conduct officer. If that officer is the subject of a complaint, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complaint.

(8) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing him or her to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specify the time and location of the meeting.

(9) At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting after proper service of notice the student conduct officer may take disciplinary action based upon the available information.

(10) Within 10 calendar days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting their decision, the specific student conduct code provisions found to have been violated, the discipline imposed (if any), and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal. This period may be extended at the sole discretion of the student conduct officer, if additional information is necessary to reach a determination. The student conduct officer will notify the parties of any extension period and the reason therefore.

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

(a) Exonerate the respondent and terminate the proceedings.

(b) Impose a disciplinary sanction(s), with or without conditions, as described in WAC 132P-121-445; or

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

(12) In cases involving allegations of sex discrimination, the student conduct officer shall review the investigation report provided by the Title IX coordinator, and determine whether, by a preponderance of the evidence, there was a violation of the student conduct code; and if so, what disciplinary sanction(s) and/or remedies will be recommended. The student conduct officer shall, within five business days of receiving the investigation report, serve respondent, complainant, and the Title IX coordinator with a written recommendation, setting forth the facts and conclusions supporting their recommendation. The time for serving a written recommendation may be extended by the student conduct officer for good cause.

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

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

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

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

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

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

(ii) Respondent is not participating in the college's educational programs or activities;

(iii) The complainant has voluntarily withdrawn any or all of the allegations in the complaint, and the Title IX coordinator has declined to initiate their own complaint;

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

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

(f) In cases involving allegations of sex-based harassment, the college must obtain the complainant's voluntary withdrawal in writing before the matter can be dismissed.

(g) If no request for a full hearing is provided to the student conduct officer, the student conduct officer's written recommendation shall be final and implemented immediately following the expiration of 21 calendar days from the date of the written recommendation.

(h) Upon receipt of the student conduct officer's written recommendation, the Title IX coordinator or their designee shall review all supportive measures and, within five business days, provide written direction to the complainant and respondent as to any supportive measures that will be implemented, continued, modified, or terminated. If either party is dissatisfied with the supportive measures, the party may seek review in accordance with the college's Title IX investigation procedure.

(i) If the respondent is found responsible for engaging in sex discrimination, the Title IX coordinator shall also take prompt steps to coordinate and implement any necessary remedies to ensure that sex discrimination does not recur and that complainant has equal access to the college's programs and activities.

NEW SECTION

WAC 132P-121-462 Brief adjudicative proceedings—Initial hearing. (1) Brief adjudicative proceedings shall be conducted by a conduct review officer. The conduct review officer shall not participate in any case in which they are a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(2) The parties to a brief adjudicative proceeding are the respondent and the student conduct officer. Before taking action, the conduct review officer shall conduct an informal hearing and provide each party:

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

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

(3) The conduct review officer shall serve an initial decision upon the respondent and the student conduct officer within 10 calendar days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within 21 calendar days of service of the initial decision, the initial decision shall be deemed the final decision.

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

NEW SECTION

WAC 132P-121-465 Brief adjudicative proceedings—Review of an initial decision. (1) An initial decision is subject to review by the president, provided a party files a written request for review with the conduct review officer within 21 calendar days of service of the initial decision.

(2) The president shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(3) During the review, the president shall give all parties an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the student conduct committee for a formal adjudicative hearing.

(4) The decision on review must be in writing and must include a brief statement of the reasons for the decision and must be served on the parties within 20 calendar days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the president does not make a disposition of the matter within 20 calendar days after the request is submitted.

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

NEW SECTION

WAC 132P-121-470 Appeal from disciplinary action. (1) Except as specified for cases involving allegations of sex discrimination, as set forth in WAC 132P-121-460(12), the respondent may appeal a disciplinary action by filing a written notice of appeal with the student conduct officer within 21 calendar days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

(2) The notice of appeal must include a brief statement explaining why the respondent is seeking review.

(3) The parties to an appeal shall be the respondent, complainant if any, and the student conduct officer.

(4) A respondent, who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

(5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.

(6) Imposition of disciplinary action for violation of the student conduct code shall be stayed pending appeal, unless respondent has been summarily suspended.

(7) A conduct review officer shall conduct a brief adjudicative proceeding for appeals of:

(a) Suspensions of 10 instructional days or less;

(b) Disciplinary probation; and

(c) Written reprimands; and

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

(8) The student conduct committee shall hear appeals from:

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

(b) Dismissals;

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

(d) Disciplinary cases referred to the committee by the student conduct officer, a conduct review officer, or the president.

NEW SECTION

WAC 132P-121-480 Student conduct committee. (1) The student conduct committee shall consist of five members:

(a) Two full-time students appointed by the student government;

(b) Two faculty members appointed by the president;

(c) One faculty member or administrator (other than an administrator serving as a student conduct or conduct review officer) appointed by the president at the beginning of the academic year.

(2) The faculty member or administrator appointed on a yearly basis shall serve as the chair of the committee and may take action on preliminary hearing matters prior to convening the committee.

(3) Hearings may be heard by a quorum of three members of the committee so long as the chair, one faculty member, and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness, in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity. Any party may petition the committee for disqualification of a committee member.

(5) For cases involving allegations of sex discrimination, including sex-based harassment, members of the student conduct committee must receive training on serving impartially, avoiding prejudgment of facts at issue, conflicts of interest, and bias. The chair must also receive training on the student conduct process for sex discrimination cases, as well as the meaning and application of the term "relevant" in relation to questions and evidence, and the types of evidence that are impermissible, regardless of relevance in accordance with 34 C.F.R. §§ 106.45 and 106.46.

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

NEW SECTION

WAC 132P-121-490 Student conduct committee—Prehearing. (1)

Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW.

(2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven calendar days in advance of the hearing date. The chair may shorten this notice period if both parties agree, and also may continue the hearing to a later time for good cause shown. The notice must include:

- (a) A copy of the student conduct code;
- (b) The basis for jurisdiction;
- (c) The alleged violation(s);
- (d) A summary of facts underlying the allegations;
- (e) The range of possible sanctions that may be imposed; and
- (f) A statement that retaliation is prohibited.

(3) The chair is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

(4) Upon request filed at least five calendar days before the hearing by any party or at the direction of the chair, the parties shall exchange, no later than the third day prior to the hearing, lists of potential witnesses and copies of potential exhibits that

they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(5) The chair may provide to the committee members in advance of the hearing copies of:

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

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

(6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the committee chair may provide copies of these admissible exhibits to the committee members before the hearing.

(7) The student conduct officer shall provide reasonable assistance to the respondent and complainant in procuring the presence of college students, employees, staff, and volunteers to appear at a hearing, provided the respondent and complainant provide a witness list to the student conduct officer no less than three business days in advance of the hearing. The student conduct officer shall notify the respondent and complainant no later than 24 hours in advance of the hearing if they have been unable to contact any prospective witnesses to procure their appearance at the hearing. The committee chair will determine how to handle the absence of a witness and shall describe on the record their rationale for any decision.

(8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

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

(10) For any matters involving a disciplinary sanction of suspension of more than one quarter, dismissal, or sex-based harassment, the college shall provide an advisor to the respondent and any complainant, if they have not otherwise identified an advisor to assist them during the hearing. The committee will ordinarily be advised by an assistant attorney general or their designee. If the respondent and/or the complainant is represented by an attorney, the student conduct officer may be represented by an assistant attorney general.

(11) Attorneys for students must file a notice of appearance with the committee chair at least four business days before the hearing. Failure to do so may, at the discretion of the committee chair, result in a waiver of the attorney's ability to represent the student at the hearing, although an attorney may still serve as an advisor to the student.

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

(a) **Notice.** The college must provide a notice that includes all information required in subsection (2) of this section, and a statement that the parties are entitled to an equal opportunity to access

relevant and permissible evidence, or a description of the evidence upon request.

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

(c) **Extensions of time.** The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date, in accordance with the procedures set forth in subsection (13)(b) of this section.

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

(e) **Confidentiality.** The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but are not limited to, directives by the student conduct officer or chair pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

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

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

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

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

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

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

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

(b) **Extensions of time.** The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date. The party requesting an extension must do so no later than 48 hours before any date specified in the notice of hearing or by the chair in any prehearing conference. The written request must be served simultaneously by email to all parties and the chair. Any party may respond and object to the request for an extension of time no later than 24 hours after service of the request for an extension. The chair will serve a written decision upon all parties, to include the reasons for granting or denying any request. The chair's decision shall be final. In exceptional circumstances, for good cause shown, the chair may, in their sole discretion, grant extensions of time that are made less than 48 hours before any deadline.

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

(d) **Evidence.** In advance of the hearing, the student conduct officer shall provide reasonable assistance to the respondent and com-

plainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the college's control.

(e) **Confidentiality.** The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but are not limited to, directives by the student conduct officer or chair issuing directives pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

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

(g) **Withdrawal of complaint.** If a complainant wants to voluntarily withdraw a complaint, they must provide notice to the college in writing before a case can be dismissed.

NEW SECTION

WAC 132P-121-500 Student conduct committee—Presentation of evidence. (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

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

(b) Serve a decision of default in accordance with RCW 34.05.440.

(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(3) The chair shall cause the hearing to be recorded by a method that they select, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chair shall ensure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted, in accordance with WAC 10-08-190.

(4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.

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

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

(7) In cases involving allegations of sex-based harassment, the complainant and respondent may not directly question one another or other witnesses. In such circumstances, the chair will determine whether questions will be submitted to the chair, who will then ask questions of the parties and witnesses, or allow questions to be asked directly of any party or witness by a party's attorney or advisor. The committee chair may revise this process if, in the chair's determination, the questioning by any party, attorney, or advisor, becomes contentious or harassing.

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

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

(c) The chair shall exclude and the committee shall not consider legally privileged information unless the individual holding the privilege has waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(i) Spousal/domestic partner privilege;

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

(iii) Clergy privileges;

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

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

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

(d) The chair shall exclude and the committee shall not consider questions or evidence that relate to the complainant's sexual interests or prior sexual conduct, unless such question or evidence is offered to prove someone other than the respondent committed the alleged conduct, or is evidence of specific instances of prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

(e) The committee may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible. The committee must not draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond to such questions.

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

NEW SECTION

WAC 132P-121-510 Student conduct committee—Initial decision.

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

(2) Within 20 calendar days following the later of the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue a decision in accordance with RCW 34.05.461 and

WAC 10-08-210. The decision shall include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified and explained.

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

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

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

NEW SECTION

WAC 132P-121-520 Student conduct committee—Review of initial decision. (1) Any party, including a complainant in sex-based harassment cases, may appeal the committee's decision to the president by filing a written appeal with the president's office within 21 calendar days of service of the committee's decision. Failure to file a timely appeal constitutes a waiver of the right and the decision shall be deemed final.

(2) The written appeal must identify the specific findings of fact and/or conclusions of law in the decision that are challenged and must contain argument why the appeal should be granted. Appeals may be based upon, but are not limited to:

(a) Procedural irregularity that would change the outcome;

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

(c) The investigator, decision maker, or Title IX coordinator had a conflict of interest or bias for or against a respondent or complainant individually or respondents or complainants generally.

(3) Upon receiving a timely appeal, the president or a designee will promptly serve a copy of the appeal on all nonappealing parties, who will have 10 business days from the date of service to submit a written response addressing the issues raised in the appeal to the president or a designee, and serve it on all parties. Failure to file a timely response constitutes a waiver of the right to participate in the appeal.

(4) If necessary to aid review, the president may ask for additional briefing from the parties on issues raised on appeal. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the appeal.

(5) The president shall serve a written decision on all parties and their attorneys, if any, within 20 calendar days after receipt of the appeal. The president's decision shall be final and subject to judicial review pursuant to chapter 34.05 RCW, Part V.

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

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

NEW SECTION

WAC 132P-121-540 Summary suspension. (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

(2) The vice president of instruction and student services may impose a summary suspension if there is probable cause to believe that the respondent:

(a) Has violated any provision of the code of conduct; and

(b) Presents an immediate danger to the health, safety, or welfare of members of the college community; or

(c) Poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.

(3) Notice. Any respondent who has been summarily suspended shall be served with oral or written notice of the summary suspension. If oral notice is given, a written notification shall be served on the respondent within two calendar days of the oral notice.

(4) The written notification shall be entitled "notice of summary suspension" and shall include:

(a) The reasons for imposing the summary suspension, including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student conduct code or the law(s) allegedly violated;

(b) The date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and

(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included warning respondent that their privilege to enter into or remain on college premises has been withdrawn, and that the respondent shall be considered trespassing and subject to arrest for criminal trespass if they enter the college campus other than to meet with the student conduct officer or conduct review officer, or to attend a disciplinary hearing.

(5) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.

(a) During the summary suspension hearing, the issue before the conduct review officer is whether there is probable cause to believe that the summary suspension should be continued pending the conclusion of disciplinary proceedings and/or whether the summary suspension should be less restrictive in scope.

(b) The respondent shall be afforded an opportunity to explain why summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope.

(c) If the respondent fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.

(d) As soon as practicable following the hearing, the conduct review officer shall issue a written decision which shall include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal.

(e) To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or offices who may be bound or protected by it.

(6) In cases involving allegations of sex discrimination, the complainant shall be notified that a summary suspension has been imposed on the same day that the summary suspension notice is served on the respondent. The college will also provide the complainant with timely notice of any subsequent changes to the summary suspension order.

WSR 24-23-041
PROPOSED RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed November 14, 2024, 2:22 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-17-144.

Title of Rule and Other Identifying Information: Invoicing law enforcement officers' and firefighters' (LEOFF) Plan 2 employers for benefit overpayments directly related to erroneous reporting of member information.

Hearing Location(s): On January 2, 2025, at 1:00 p.m., through Microsoft Teams, <https://www.drs.wa.gov/sitemap/rules/#proposed-rule-hearings>, Meeting ID 286 016 251 59, Passcode JJQymH; or phone 833-322-1218, Code 364 394 432#.

Date of Intended Adoption: January 6, 2025.

Submit Written Comments to: Bianca Stoner, Department of Retirement Systems (DRS), P.O. Box 48380, Olympia, WA 98504-8380, email drs.rules@drs.wa.gov, beginning December 11, 2024, 8:00 a.m., by December 31, 2024, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Bianca Stoner, phone 360-664-7291, TTY 711, email drs.rules@drs.wa.gov, by December 24, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Revising WAC 415-02-075 to clarify when repaying overpaid LEOFF Plan 2 benefits is the employer's responsibility versus the retiree's responsibility.

Reasons Supporting Proposal: The revisions will bring these WAC into alignment with the requirements of sections 301 through 303, chapter 304, Laws of 2024.

Statutory Authority for Adoption: RCW 41.50.050 and sections 301 through 303, chapter 304, Laws of 2024.

Statute Being Implemented: Sections 301 through 303, chapter 304, Laws of 2024.

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

Name of Proponent: DRS, governmental.

Name of Agency Personnel Responsible for Enforcement: Mike Ricchio, DRS, P.O. Box 48380, Olympia, WA 98504-8380, 360-664-7227.

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

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

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

Is exempt under RCW 19.85.025(4).

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

Scope of exemption for rule proposal:

Is fully exempt.

November 14, 2024
Bianca Stoner
Rules Coordinator

OTS-5908.1

AMENDATORY SECTION (Amending WSR 23-07-043, filed 3/8/23, effective 4/8/23)

WAC 415-02-075 Is my retirement account subject to correction after retirement or separation from service? (1) When can the department correct a member's record? The department can correct your retirement account at any time when an error has been discovered.

(2) What will happen if I have been underpaid?

(a) If the underpayment is related to an on-going monthly benefit, the department will correct all future payments and compute the additional amount due from prior payments and pay you in a lump sum.

Example 1:

Chris retired September 1st and Chris' monthly retirement benefit was initially determined to be \$2,500. In November, Chris' former employer reported additional earnings. The department used that additional reporting to recalculate Chris' benefit, which is now set at \$2,525 per month. Chris will receive the new amount for the November and future monthly benefits. Chris will also receive a payment of \$50 to cover the additional \$25 amount for September and October.

(b) If the underpayment is related to a one-time payment, the additional amount will be paid once identified.

Example 2:

When separating from employment, Sandy chose to withdraw all retirement contributions instead of receiving an on-going benefit at retirement age. After the withdrawal, Sandy's employer submitted \$130 of additional retirement contributions that had been deducted from Sandy's paycheck. The department will pay that \$130 to Sandy.

(3) What will happen if I have been overpaid?

(a) If the overpayment is related to an on-going monthly benefit, the department will correct the payment amount for all future months. Except for overpayments caused by incorrect employer reporting in LE-OFF Plan 2, an invoice will be created for the amount of the overpayment and you will normally have at least 90 days to return the amount of the overpayment to the department. If you cannot make payment in full within those 90 days, you can contact the department to discuss a payment plan which would allow deductions from your monthly benefit. Or you may choose to have your benefit permanently, actuarially reduced to pay the overpayment. Repayment options will be provided on the invoice you receive. If you do not establish a payment plan (which will include interest) or make payment in full by the invoice due date, the department will apply the actuarial reduction and permanently reduce your monthly benefit.

If you or the department identify that your full monthly benefit payment was in error (for example you were not eligible to retire), the department may ask your bank to reverse the payment (depending on the timing and banking rules) and return the funds to pay your invoice.

Example 3:

Pat retired July 1st, with a calculated retirement benefit of \$3,000 per month. However, Pat used vacation leave until August 15th, and so, Pat was not separated from employment and eligible to retire until September 1st. Once Pat's employer provided the department with

their final reporting on Pat, the department invoiced Pat for \$6,000 representing the July and August pension payments (2 x \$3,000).

(b) If the overpayment is not related to an on-going monthly benefit payment, the department will invoice you and expect payment in full within 90 days and will apply interest to any balance outstanding after those 90 days have elapsed.

(c) In the event of a LEOFF Plan 2 overpayment caused by an employer's incorrect reporting, the employer will be liable for the overpayment.

(4) What will happen if an overpayment is received by someone other than a member or beneficiary? The overpayment will be a debt from the person or entity to the department and the department will invoice accordingly, unless the overpayment was caused by incorrect reporting by an employer in LEOFF Plan 2, in which case the employer will be invoiced.

Example 4:

J. Smith passed on June 3rd, but with no knowledge of the death, the department deposited the on-going benefit into J. Smith's bank account on the last business day of June. When notified of the death during July, the department requested J. Smith's bank return the June deposit. Banking rules require the department request the deposit amount in full regardless of how much may be ultimately due to an estate.

The department will invoice J. Smith's estate for the June payment and any deductions taken from that payment (such as medical payments) but will apply any amounts received back from the bank or deduction vendors against that invoice. The department will calculate the amount owed to the estate for the month of death and pay J. Smith's estate for those days (three days of 30 for the month of June). Since J. Smith's June payment was \$5,000, the estate will be entitled to \$500 after all other amounts have been collected back by the department. Any amounts the department cannot collect will be a debt of the estate.

(5) Is there any limit on how much of an overpayment the department may collect?

(a) The department will calculate the total overpayment amount but may only collect three years back from the point of discovery of an error, unless the overpayment was caused by incorrect reporting from an employer in LEOFF Plan 2, which reduces the collection period to one year prior to discovery.

(b) In cases of fraud, the department may collect the entire overpayment amount.

Example 5:

Jordan retired April 1, 2018. In October 2021, the department discovered their former employer removed erroneous earnings from Jordan's account, causing the department to recalculate Jordan's monthly benefit. After adjusting Jordan's benefit to the correct amount, the monthly overpayment amount was determined to be \$57 per month for 42 months for a total of \$2,394. The department will only invoice Jordan for three years back from the date of discovery in October 2021 for a total of \$2,052 (36 months x \$57).

(6) How much can the department reduce my benefit to collect an overpayment?

(a) Your monthly benefit cannot be reduced by more than half of the corrected benefit.

(b) If half of your corrected monthly benefit is less than the full actuarial reduction necessary to recover the overpayment you received, the department will reduce your benefit by half((~~r~~)) and may put a claim against your estate.

WSR 24-23-057

PROPOSED RULES

GAMBLING COMMISSION

[Filed November 15, 2024, 2:27 p.m.]

Supplemental Notice to WSR 24-13-056.

Preproposal statement of inquiry was filed as WSR 24-07-075.

Title of Rule and Other Identifying Information: WAC 230-15-050 Minimum cash on hand requirements; new WAC 230-15-190 Paying out odds-based and fixed based prizes and 230-15-195 Keeping funds to pay fixed-based prizes.

Hearing Location(s): On August 8, 2024, at 9:30 a.m., at the Washington State Liquor and Cannabis Board, 1025 Union Avenue S.E., Olympia, WA 98501. The meeting time and location are tentative. Visit our website at www.wsgc.wa.gov approximately seven days prior to the meeting and select "About Us" and then, "Upcoming commission meetings" to confirm the hearing date, location, start time, and agenda items.

Date of Intended Adoption: January 9, 2025.

Submit Written Comments to: Adam Amorine, P.O. Box 42400, Olympia, WA 98504-2400, email rules.coordinator@wsgc.wa.gov, www.wsgc.wa.gov, beginning November 15, 12:00 p.m., by January 8, 2025, 4:00 p.m.

Assistance for Persons with Disabilities: Contact Julie Anderson, phone 360-486-3453, TTY 360-486-3637, email julie.anderson@wsgc.wa.gov, www.wsgc.wa.gov, by January 8, 2025, 4:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules require card game licensees to exchange chips for cash unless the player requests payment by check; change the formula for determining the minimum amount of cash required to be in the cage, safe, and/or vault for house-banked card rooms; allow for specific prizes to be paid by check; and require house-banked card room licensees to have sufficient funds to pay fixed-based prizes offered.

Reasons Supporting Proposal: Currently, our rules require house-banked card game licensees to have sufficient cash on hand to redeem all chips issued for play and pay out all prizes. Staff has found that this existing formula may not be adequate for all house-banked card game licensees. Additionally, the new rules would allow for checks to be issued to certain winning players, which aims to mitigate potential safety concerns associated with a patron physically possessing a large amount of cash after winning a large prize.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: RCW 9.46.070.

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

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Adam Amorine, Legal Manager, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3473; Implementation: Tina Griffin, Director, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3546; and Enforcement: Gary Drumheller, Deputy Director, 4565 7th Avenue S.E., Lacey, WA 98503, 509-325-7904.

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

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required as this agency is not listed un-

der RCW 34.05.328 (5) (a) (i). Further, the gambling commission does not voluntarily make that section applicable to the adoption of this rule pursuant to the subsection (5) (a) (ii) and, to date, the joint administrative rules review committee has not made the section applicable to the adoption of this rule.

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

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. This rule changes the formula for determining how much cash a card game licensee must have on hand and allows for licensees to write checks to winning patrons for prizes exceeding \$5,000 from general game play. Current rules already allow for checks to be written for certain prizes, such as player supported jackpots. Therefore, associated costs to small business would revolve around issuing additional checks to patrons who won over \$5,000 from general game play, which is not expected to exceed three tenths of one percent of the business's annual revenue or income.

A copy of the detailed cost calculations may be obtained by contacting Adam Amorine, 4565 7th Avenue S.E., Lacey, WA 98503, phone 360-486-3473, email rules.coordinator@wsgc.wa.gov.

November 15, 2024
Adam Amorine
Legal Manager

OTS-5382.6

AMENDATORY SECTION (Amending WSR 22-01-182, filed 12/20/21, effective 1/20/22)

WAC 230-15-050 Minimum cash on hand requirements. (1) Card game licensees must have sufficient cash on hand to redeem all chips issued for play (~~and pay out all prizes~~). Licensees must exchange chips brought to the cashier's cage by players for cash. However, in the event a player requests a check instead of cash for player gambling winnings over \$5,000, licensees must issue the player a check within 24 hours.

(2) Within three hours of opening for the business day, at a time included in the internal controls, house-banked card game licensees must have at least the following minimum amount of cash on premises in their cage, safe, and/or vault combined:

(a) (~~One~~) Two thousand dollars for each house-banked table on the gambling floor; plus

(b) (~~The amount of the largest single prize available excluding progressive jackpot, player supported jackpot, and house jackpot prizes.~~) One percent times card room gross gambling receipts from the previous calendar year according to quarterly license reports submitted to the commission; however, a new house-banked card room who has not yet submitted a full calendar year of quarterly license reports must have at least \$30,000 for the purpose of this subsection.

For example: If a house-banked card room has 15 house-banked tables and ~~((a largest single prize of \$23,000, before opening, the cage))~~ their gross receipts were \$4,000,000 in their previous calendar year, they must have at least (((\$38,000)) \$70,000 cash on hand: 15 tables × (((\$1,000)) \$2,000 = (((\$15,000)) \$30,000 + ((largest single prize of \$23,000 = \$38,000)) 1% × \$4,000,000 = \$40,000.

(3) ~~((Except for the restrictions on player-supported jackpot pay outs in WAC 230-15-405 and progressive jackpot pay outs in WAC 230-15-690,))~~ Licensees may pay specific prizes by check if sufficient funds are available on deposit and they meet the restrictions in the rules below:

(a) WAC 230-15-405 - Player-supported jackpot prizes.

(b) WAC 230-15-690 - Progressive jackpot prizes.

(c) WAC 230-15-673 - House jackpot prizes.

(d) WAC 230-15-190 - Odds-based and fixed-based prizes.

(4) Failure to keep funds to cash in chips, pay prizes, or redeem gambling related checks is prima facie evidence of fraud. Meeting the minimum cage cash amount does not relieve the licensee from the requirement to have sufficient funds available to redeem all chips and pay out all prizes.

NEW SECTION

WAC 230-15-186 Paying out odds-based and fixed-based prizes.

(1) House-banked card room licensees must immediately pay out all individual odds-based and fixed-based prizes of \$5,000 or less.

(2) For individual odds-based and fixed-based prizes over \$5,000, licensees must immediately pay out a minimum of \$5,000 and pay the remaining balance within 24 hours by check. The player may request that the licensee pay up to the entire prize balance by check. Licensees must then issue a check for the entire prize balance within 24 hours.

NEW SECTION

WAC 230-15-187 Keeping funds to pay fixed-based prizes. House-banked card room licensees must maintain at least the amount of the single largest fixed-based prize offered in a bank, mutual savings bank, or credit union location in Washington. Alternatively, licensees may maintain the amount of the single largest fixed-based prize in cash on the licensed premises.

WSR 24-23-063

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed November 17, 2024, 11:29 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-16-037.

Title of Rule and Other Identifying Information: Certified peer specialists and certified peer specialist trainees; establishing certification standards in chapter 246-929 WAC.

The department of health (department) is proposing certification standards for the new, voluntary certified peer specialist and trainee credentials created by 2SSB 5555 (chapter 469, Laws of 2023). The proposed rules establish requirements including: the application process; education and examination requirements; supervised experience requirements; approved supervisor requirements; professional standards; continuing education requirements; and fees.

Hearing Location(s): On January 7, 2025, at 2:00 p.m., virtual. Register in advance for this webinar https://us02web.zoom.us/join/register/WN_SlQCiJBjTdmxrHaCUQhtzA. After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: January 14, 2025.

Submit Written Comments to: Ted Dale, Office of Health Professions, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview/>, ted.dale@doh.wa.gov, beginning the date and time of this filing, by January 7, 2025, at 11:59 p.m.

Assistance for Persons with Disabilities: Contact Ted Dale, phone 360-236-2991, TTY 711, email ted.dale@doh.wa.gov, by December 20, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: During the 2023 legislative session, the legislature passed 2SSB 5555 to create the new, voluntary certified peer specialist and certified peer specialist trainee credentials, establish their requirements, and direct the department to adopt rules implementing the profession by July 1, 2025. 2SSB 5555 also authorized the secretary of health to adopt any rules necessary to implement the new credentials, fees, forms and procedures, certifications, examinations, continuing education, and appeal procedures. The department invited extensive community engagement throughout the rule-drafting process as the new credentials were being developed. The proposed rules establish the new credentials, establish necessary regulatory processes, and set clear professional standards.

The new credentials are not required for an individual to work as a peer in Washington state but will be required for a peer to bill medicaid or private insurance or to work as a peer in a licensed behavioral health agency.

Reasons Supporting Proposal: In addition to fulfilling the intent of 2SSB 5555, the proposed rules for this profession will allow the department to consistently uphold standards that protect public safety.

Statutory Authority for Adoption: RCW 18.420.020.

Statute Being Implemented: Chapter 18.420 RCW, 2SSB 5555 (chapter 469, Laws of 2023).

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Ted Dale, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2991.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Ted Dale, Office of Health Professions, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-2991, TTY 711, email ted.dale@doh.wa.gov.

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rules impact only individual behavioral health providers or applicants, not businesses.

Scope of exemption for rule proposal:

Is fully exempt.

November 17, 2024
Kristen Peterson, JD
Chief of Policy
for Umair A. Shah, MD, MPH
Secretary of Health

OTS-5869.4

Chapter 246-929 WAC
CERTIFIED PEER SPECIALISTS AND CERTIFIED PEER SPECIALIST TRAINEES

DEFINITIONS

NEW SECTION

WAC 246-929-010 Definitions. The definitions in RCW 18.420.010 and in this section apply throughout this chapter unless the context clearly states otherwise.

(1) "Approved supervisor" means a credentialed behavioral health provider or peer specialist who meets the requirements in this chapter.

(2) "Behavioral health provider" has the same definition as in RCW 71.24.025 and includes physicians and physician assistants, osteopathic physicians, psychologists, licensed counselors, substance use disorder professionals, registered nurses, and advanced practice registered nurses.

(3) "Clinical services" means treatment provided by a behavioral health provider with a credential that allows them to provide mental health treatment, substance use disorder treatment, or co-occurring disorder treatment.

(4) "Distance supervision" means supervision provided when the approved supervisor is not at the same location as the peer specialist trainee.

(5) "Group supervision" means a supervision meeting between the approved supervisor and no more than six peer specialist trainees.

(6) "Individual supervision" means a supervision meeting between the approved supervisor and one peer specialist trainee.

(7) "Institution of higher learning" means a college or university that is nationally, regionally, or state accredited.

(8) "Joint supervision" means an approved supervisor and a peer specialist supervisor candidate working in conjunction to provide supervision to certified peer specialist trainees.

(9) "Out-of-state" means any state or territory of the United States other than Washington.

(10) "Participant" means an individual who is receiving services from a certified peer specialist or certified peer specialist trainee and substitutes for more clinical terms such as client. In practice, peers may refer to the participant as a member, peer, individual, or other inclusive term. A participant is still a patient or client and recipient of health care services under relevant laws regulating the practice of health care.

(11) "Peer specialist supervisor candidate" means a certified peer specialist working under an approved supervisor and providing joint supervision to trainees to obtain the experience necessary to become an approved supervisor.

(12) "Recovery" means a process of change through which individuals improve their health and wellness, live self-directed lives, and strive to reach their full potential. Recovery often involves achieving remission from an active substance use disorder or mental health condition.

NEW SECTION

WAC 246-929-020 Sexual misconduct. (1) The definitions and prohibitions on sexual misconduct described in chapter 246-16 WAC apply to certified peer specialists and certified peer specialist trainees except WAC 246-16-100 (4) and (5).

(2) A certified peer specialist and a certified peer specialist trainee shall never engage, or attempt to engage, in the activities listed in WAC 246-16-100 (1), (2), and (3) with a former patient, former participant, or former key party.

NEW SECTION

WAC 246-929-030 Voluntary credential and title protection. (1) Individuals who practice peer counseling or provide peer support services are not required to obtain the peer specialist certification to provide peer services in the state of Washington.

(2) The titles of certified peer specialist and certified peer specialist trainee are protected and shall only be used by an individual who has an active certification under chapter 18.420 RCW and this chapter.

NEW SECTION

WAC 246-929-040 Scope of practice and limits for certified peer specialists and certified peer specialist trainees. Certified peer specialists and certified peer specialist trainees can practice peer support services as defined in RCW 18.420.010. This consists of providing interventions through the use of shared experiences to assist the participant in acquiring and exercising skills needed to support their recovery.

(1) Interventions include activities to assist participants in accessing or engaging in treatment, symptom management, social connection, recovery, and self-advocacy. This incorporates guidance and development of natural community supports, improving basic daily living skills, and supporting participants in achieving and maintaining their health and wellness goals. These interventions may be achieved through various means, including working with participants outside of an office or agency setting, connecting participants with resources, case management services, and other nonclinical treatments to assist participants in their recovery.

(2) Peer specialists and trainees are not clinical providers and may not provide clinical services. They cannot assess or diagnose identifiable mental health conditions or substance use disorders, and they may not provide mental health or substance use disorder counseling. Peer specialists and trainees may work with their participants to connect them with clinical behavioral health providers, if desired by the participant.

NEW SECTION

WAC 246-929-050 Expired credential. If a certified peer specialist certification is expired, the individual must meet the requirements of WAC 246-12-040 to return the credential to active status.

CERTIFICATION REQUIREMENTS

NEW SECTION

WAC 246-929-100 Certification of a peer specialist. An applicant for a peer specialist certificate shall submit to the department:

- (1) An application on forms provided by the department;
- (2) An attestation that the applicant self-identifies as:
 - (a) Having one or more years in recovery from a mental health condition, substance use disorder, or both; or
 - (b) The parent or legal guardian of a youth who is receiving or has received behavioral health services;
- (3) Official certificate(s) of completion of a peer training course or an approved apprenticeship program as outlined in WAC 246-929-130;
- (4) Verification of meeting the supervised experience requirements under WAC 246-929-150 on forms provided by the department; and
- (5) The fee(s) required under WAC 246-929-990.

NEW SECTION

WAC 246-929-110 Certification of a peer specialist trainee. (1)

An applicant for a peer specialist trainee certificate shall submit to the department:

- (a) An application on forms provided by the department;
 - (b) An attestation that the applicant self-identifies as:
 - (i) Having one or more years in recovery from a mental health condition, substance use disorder, or both; or
 - (ii) The parent or legal guardian of a youth who is receiving or has received behavioral health services;
 - (c) Official certificate(s) of completion of a peer training course as outlined in WAC 246-929-130 or proof of acceptance into an approved apprenticeship program; and
 - (d) An attestation the applicant is working to meet the supervised experience requirements under WAC 246-929-150.
- (2) The peer specialist trainee certification may only be renewed four times.
- (3) There is no fee for certification as a peer specialist trainee.

NEW SECTION

WAC 246-929-130 Education and examination requirements. (1) Except as specified under subsections (2) and (3) of this section, an applicant for certification as a peer specialist or trainee must meet one of the following requirements:

- (a) Successful completion of an 80-hour peer services training course and the examinations developed by the health care authority under RCW 71.24.920; or
 - (b) Successful completion of an apprenticeship program reviewed and approved by the department and registered with the department of labor and industries.
- (2) An applicant for certification as a peer specialist or a trainee who has previously completed the health care authority's 40-hour peer counselor training must complete the health care authority's gap training provided under RCW 71.24.920.
- (3) An applicant for certification as a peer specialist or a trainee who obtained their training in another state must provide:
- (a) One of the following:

- (i) A certificate of completion from their out-of-state peer training provider; or
 - (ii) A copy of the out-of-state peer specialist or peer counselor credential; and
- (b) Proof of completing the health care authority's peer counselor prerequisite training course and the gap training required in subsection (2) of this section.

NEW SECTION

WAC 246-929-150 Supervised experience requirements. (1) A certified peer specialist trainee shall complete at least 1,000 hours of supervised experience providing volunteer or paid peer support services to participants under the supervision of an approved supervisor who meets the requirements under WAC 246-929-170, including at least 12 hours of supervision meetings.

(a) Supervised experience and supervision meetings may be provided through distance supervision or in-person supervision.

(b) Supervision meetings may be either individual or group supervision.

(c) A trainee may have multiple approved supervisors at the same time.

(d) Supervision obtained prior to July 1, 2025, or out-of-state, is not required to meet requirements for formal supervision as outlined in subsection (2) of this section.

(2) The trainee and the approved supervisor must meet for supervision meetings every other week unless the trainee has had no participant contact since the last supervision meeting.

(3) The trainee's supervised experience and supervision meetings shall be reported on forms provided by the department with a signed attestation from the approved supervisor.

NEW SECTION

WAC 246-929-160 Supervised experience hours. (1) An applicant for the certified peer specialist credential must show they have obtained the required supervised experience hours in one of the following ways:

(a) For experience obtained on or after July 1, 2025, an applicant must complete at least 1,000 hours of volunteer or paid practice of peer support services under an approved supervisor as defined in WAC 246-929-170, including at least 12 hours of supervision meetings.

(b) For experience obtained prior to July 1, 2025, an applicant must provide:

(i) An attestation, on a form provided by the department, that documents at least 1,000 hours worked as a peer counselor, signed by an employer or a supervisor credentialed as a behavioral health provider; or

(ii) Documentation the applicant held an agency affiliated counselor registration and was working as a peer counselor in an agency for at least one year.

(c) For experience obtained out-of-state, an applicant must show they have held an equivalent credential in good standing for at least

one year, or hold an acceptable national certification as defined in WAC 246-929-190.

(2) For experience obtained under multiple options in subsection (1) of this section, a separate form must be provided for each type of experience and must total at least 1,000 hours.

NEW SECTION

WAC 246-929-170 Approved supervisor requirements. (1) Except as specified in subsection (2) of this section, an approved supervisor who is eligible to supervise certified peer specialist trainees must be either:

(a) Until July 1, 2028, a behavioral health provider, as defined in RCW 71.24.025, with two years of experience working in a behavioral health practice that employs peer specialists as a part of their treatment teams; or

(b) A certified peer specialist who has completed:

(i) At least 1,500 hours of work as a fully certified peer specialist actively engaged in the practice of peer support services;

(ii) At least 500 hours of joint supervision of peers in conjunction with an approved supervisor; and

(iii) The peer specialist supervisor training course provided by the health care authority under RCW 71.24.920.

(2) Individual peers who supervised peers prior to the creation of the certified peer specialist credential may qualify as an approved supervisor if they:

(a) Hold an active certified peer specialist credential;

(b) Provided supervision to peers for at least one year prior to July 1, 2025; and

(c) Completed the peer specialist supervisor training provided by the health care authority under RCW 71.24.920.

(3) The approved supervisor or designee shall respond to a request for assistance with emergencies or situations with a significant impact on a participant within 48 hours of the request from a trainee or supervisor candidate. The designee must be a certified peer specialist or, until July 1, 2028, a behavioral health provider.

NEW SECTION

WAC 246-929-180 Joint supervision. (1) A certified peer specialist shall meet the following before becoming a peer specialist supervisor candidate:

(a) Hold an active peer specialist certification;

(b) Complete at least 1,000 hours of experience after becoming a certified peer specialist; and

(c) Complete the peer specialist supervisor training course provided by the health care authority under RCW 71.24.920.

(2) Peers who were supervisors prior to July 1, 2025, may qualify without joint supervision experience if they meet the conditions of WAC 246-929-170(2).

(3) Joint supervision is when an approved supervisor works together with a peer specialist supervisor candidate who is obtaining experience to become an approved supervisor. The peer specialist must

obtain at least 500 hours of joint supervision experience to be eligible to be an approved supervisor.

(4) When providing joint supervision, the approved supervisor is the primary supervisor and may delegate tasks to the peer specialist supervisor candidate according to their skills and abilities. This includes, but is not limited to:

- (a) Mentoring and advising trainees;
- (b) Supervision of nontrainee peers while providing services;
- (c) Addressing concerns around participant treatment or issues requiring immediate actions;
- (d) Leading group supervision meetings under the observation of the approved supervisor;
- (e) Shadowing an approved supervisor; and
- (f) Other tasks preapproved by the approved supervisor.

(5) The supervisor candidate may not be the primary supervisor for a peer specialist trainee, may not approve or modify documentation for the participant's recovery plan or treatment plan, may not hold individual supervision meetings, and shall not sign off on any documentation as the trainee's supervisor.

(6) The approved supervisor and peer specialist supervisor candidate must meet at least once a month to discuss the ongoing supervision of trainees working with the peer specialist supervisor candidate.

(7) The approved supervisor must provide, on forms provided by the department, an attestation that the supervisor candidate obtained at least 500 hours of joint supervision experience under their supervision.

NEW SECTION

WAC 246-929-190 National and international certifications. An applicant who obtains one of the following national or international certifications shall be considered to meet the education, training, and experience requirements to receive certification as a certified peer specialist:

- (1) National Association of Alcoholism and Drug Addiction Counselor's (NAADAC) certification as a National Certified Peer Recovery Support Specialist (NCPRSS);
- (2) National Federation of Families certification as a Family Peer Specialist;
- (3) International Certification and Reciprocity Consortium (IC&RC) Peer Recovery credential; or
- (4) Recovery Innovation's International Peer Training certification.

ETHICS AND DISCLOSURE INFORMATION

NEW SECTION

WAC 246-929-200 Disclosure statements. (1) Certified peer specialists and trainees are required to provide a disclosure statement to each participant prior to starting services.

(2) The disclosure statement must contain the following information:

- (a) The name of the certified peer specialist or trainee and the name of their agency or business, if applicable;
- (b) The peer specialist or trainee's credential number;
- (c) The peer specialist or trainee's business address, email, and telephone number;
- (d) The type of peer services to be provided, including an explanation of the differences between peer services and clinical services and how they work together;
- (e) The goals and expected duration of the peer services; and
- (f) Fee information, including billing practices.

(3) Peer specialist trainees must also include information for their approved supervisor, including the supervisor's name, credential number, and contact information.

(4) The disclosure statement must state that the participant has been provided a copy of the disclosure statement and that the participant has read and understands the information provided. The participant and peer specialist must both sign and date the form.

(5) If a participant is in acute crisis or is otherwise unable to read, understand, and sign the disclosure statement, it can be completed at a later session.

NEW SECTION

WAC 246-929-210 Ethical practice of peer support services. (1) The practice of peer support services includes interventions provided by a certified peer specialist or trainee with a similar lived experience as the participant. Interventions may include:

- (a) Activities that assist participants in accessing or engaging in treatment and symptom management;
- (b) Activities that promote social connection, recovery, and self-advocacy;
- (c) Providing guidance in the development of natural community supports and basic daily living skills; and
- (d) Supporting participants in engagement, motivation, and maintenance related to achieving and maintaining health and wellness goals.

(2) The practice of peer support services is not required to be held in a clinical setting. Peer specialists meet their participants where they are and engage in a different manner than clinical providers do. They may also interact with the participant's family or friends while providing interventions.

(3) Certified peer specialists and trainees shall provide services with a trauma-informed, person-centered approach. Their methodology must be recovery-oriented and relationship-focused, working only with participants who are voluntarily seeking services.

NEW SECTION

WAC 246-929-220 Mandatory reporting. Individuals and other entities must report unprofessional conduct in compliance with the Uniform Disciplinary Act in chapter 18.130 RCW and the standards of professional conduct in chapter 246-16 WAC.

CONTINUING EDUCATION REQUIREMENTSNEW SECTION

WAC 246-929-300 Continuing competency program requirements. (1) A certified peer specialist is required to complete a continuing competency program of 30 hours of continuing education or other educational activities every two years.

(a) At least 14 hours must be specific to providing peer support services as defined in RCW 18.420.010;

(b) At least two hours are required in professional law and ethics; and

(c) The remaining 14 hours may be related to other aspects of mental health or substance use disorder treatment, coaching, professional development, or employer-sponsored trainings. This also includes the required trainings listed in subsections (2) through (5) of this section.

(2) At least once every six years a certified peer specialist must complete three hours of training in suicide prevention, including screening and referral, as specified in WAC 246-929-320.

(3) At least once every four years a certified peer specialist must complete two hours of health equity training as specified in WAC 246-929-330.

(4) A certified peer specialist who is practicing as an approved supervisor must complete six hours of supervisory continuing education every two years.

(5) A certified peer specialist who provides telehealth services must take the telehealth training as specified in WAC 246-929-340.

(6) A certified peer specialist must complete the continuing competency program requirements every two years. A certified peer specialist must develop and implement the plan upon their first full two-year certification, and every two years thereafter.

(7) The peer specialist must obtain a certificate of completion for each course, which includes the attendee's name, the date of the course, and the number of hours of education provided. The certificate must also list the name of the organization that approved the course for continuing education credit. Transcripts from a recognized educational institution will also be accepted.

(8) A certified peer specialist trainee is not required to complete a continuing competency program.

CE hours required every 2-year cycle	Continuing Education (CE) Content
14 hours	CE specific to providing peer support services.
2 hours	Professional law and ethics.
14 hours	CE topics which could include mental health, substance use disorder treatment, coaching, professional development, and employer-sponsored training. Any statutorily required trainings, including: <ul style="list-style-type: none"> • Every 6 years, 3 hours of suicide prevention, including screening and referral; • Every 4 years, 2 hours of health equity training; • Prior to providing telehealth, the 1-hour telehealth training; • For peer specialists who are approved supervisors, 6 hours of supervisory CE each cycle.
30 hours total	

NEW SECTION

WAC 246-929-310 Acceptable continuing education programs. (1) A continuing education program or course must be relevant to peer support services, counseling, or coaching and must contribute to the advancement or enhancement of the professional competence of the credential holder. Courses or workshops primarily designed to increase practice income or office efficiency are not eligible for CE credit.

(2) Continuing education courses, seminars, workshops, training programs, and institutes must be approved by an industry-recognized professional organization or institutions of higher learning as identified in WAC 246-929-315 that is directly related to peer support services, peer counseling, mental health, or substance use disorder treatment.

(3) Distance learning programs approved by an industry-recognized professional organization or educational organization may meet these requirements. Distance learning courses must require a test of comprehension upon completion to qualify as continuing education.

(4) Credit hours for a continuing education course are determined by the amount of time the training takes to complete.

(5) A certified peer specialist who prepares and presents lectures or education that contributes to the professional competence of other peers or behavioral health providers may accumulate the same number of hours obtained by attendees. The hours for presenting a lecture or education on a specific topic may only be used for continuing education credit once during each reporting period.

(6) Other learning experiences, such as serving on a panel, board or council, professional research, peer consultation, or publishing articles for professional publications are acceptable if the experience contributes to the advancement or enhancement of the professional competence of the certified peer specialist. The experience is limited to six hours per reporting period.

NEW SECTION

WAC 246-929-315 Industry-recognized local, state, national and international organizations, or institutions of higher learning. Industry-recognized local, state, national and international organiza-

tions, and institutions of higher learning include, but are not limited to, the following:

- (1) Peer Washington;
- (2) Wellness recovery action plan;
- (3) National Association of Peer Supporters;
- (4) The Copeland Center;
- (5) Holding the Hope;
- (6) SPARK Peer Learning Center;
- (7) Coach Approach Training;
- (8) Washington State Community Connectors;
- (9) Intentional Peer Support;
- (10) Mental Health America;
- (11) Connecticut Community for Addiction Recovery (CCAR);
- (12) National Association of Social Workers;
- (13) National Board of Certified Counselors;
- (14) American Mental Health Counselors Association;
- (15) National Association of Alcohol and Drug Addiction Counselors;
- (16) American Psychological Association;
- (17) Institutions of higher learning that are accredited by a state, national, or regional accrediting body;
- (18) State and federal government agencies; and
- (19) Tribal training organizations.

NEW SECTION

WAC 246-929-320 Suicide prevention continuing education. (1) A certified peer specialist must complete training in suicide prevention, including screening and referral, every six years. The training must:

- (a) Be provided by a single provider;
 - (b) Be at least three hours in length, which may be provided in one or more sessions; and
 - (c) Be listed on the department's suicide prevention for health professionals model list for training programs in suicide screening and referral, which was developed in accordance with RCW 43.70.442 and chapter 246-12 WAC.
- (2) The first training must be completed during the first full CE reporting period after initial certification unless an applicant can demonstrate completion of a three-hour training in suicide prevention, screening, and referral that:
- (a) Was completed no more than six years prior to the application for initial certification; and
 - (b) Meets the requirements of this section.
- (3) A certified peer specialist who is a state or local government employee, an employee of a community mental health agency licensed under chapter 71.24 RCW, or a substance use disorder program certified under chapter 71.24 RCW may be exempt if they receive eligible training from their employer pursuant to RCW 43.70.442.

NEW SECTION

WAC 246-929-330 Health equity continuing education. A certified peer specialist must complete training in health equity as part of their continuing education. The certified peer specialist must complete at least two hours of health equity training every four years. The training may be in-person or virtual but must meet the course requirements in WAC 246-12-830, including strategies to reduce implicit bias and assess the provider's ability to apply health equity concepts into practice.

NEW SECTION

WAC 246-929-340 Telehealth training requirements. A certified peer specialist who provides peer services through telemedicine must complete a one-time telemedicine training that complies with RCW 43.70.495.

FEES

NEW SECTION

WAC 246-929-990 Certified peer specialist and trainee fees and renewal cycle. (1) A certified peer specialist shall renew their credential every two years on the practitioner's birthday.

(2) A certified peer specialist trainee shall renew their credential every year to correspond with the issuance date. This credential may only be renewed four times.

(3) Certified peer specialist trainees do not have a fee for their credential.

(4) Pursuant to RCW 43.70.110 and 43.70.250, the following nonrefundable fees will be charged:

Title of Fee	Fee
Certified peer specialist	
Application and certification	\$100.00
Renewal	100.00
Late renewal penalty	50.00
Expired certification reissuance	50.00
Duplicate certification	10.00
Verification of certification	25.00
Certified peer specialist trainee	
Application and certification	0.00
Renewal	0.00
Late renewal penalty	0.00

Title of Fee	Fee
Expired certification reissuance	0.00
Duplicate certification	10.00
Verification of certification	25.00

WSR 24-23-071
PROPOSED RULES
EDMONDS COLLEGE

[Filed November 18, 2024, 12:20 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-20-108 [24-20-108].

Title of Rule and Other Identifying Information: Chapter 132Y-125 WAC.

Hearing Location(s): On January 9, 2025, at 2:00-3:00 [p.m.] Pacific Time (US and Canada), at the Gateway Hall, Room 202, 6600 196th Street S.W., Lynnwood, WA 98036.

Date of Intended Adoption: February 13, 2025.

Submit Written Comments to: Suzanne Moreau, 7030 196th Street S.W., Lynnwood, WA 98036, email titleix@edmonds.edu, fax 425-640-1195, beginning January 2, 2025, by January 9, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Final Title IX regulations provide greater clarity regarding: the definition of "sex-based harassment"; the scope of sex discrimination, including schools' obligations not to discriminate based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity; and schools' obligations to provide an educational environment free from discrimination based on sex.

Reasons Supporting Proposal: On April 19, 2024, the United States Department of Education released its final rule to fully effectuate Title IX's promise that no person experiences sex discrimination in federally funded education. Before issuing the proposed regulations, the department received feedback on its Title IX regulations, as amended in 2020, from a wide variety of stakeholders. The final regulations strengthen several major provisions from the current regulations and provide schools with information to meet their Title IX obligations while providing appropriate discretion and flexibility to account for variations in school size, student populations, and administrative structures. The final regulations are effective on August 1, 2024, and apply to complaints of sex discrimination regarding alleged conduct that occurs on or after that date. Existing policies and procedures will remain in place for complaints of alleged conduct that occurs prior to August 1, 2024.

Statutory Authority for Adoption: Chapter 34.05 RCW and RCW 28B.50.140.

Statute Being Implemented: RCW 34.05.020.

Rule is necessary because of federal law, [no information supplied by agency].

Name of Proponent: Edmonds College, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: M. Durkee or K. Smith, Edmonds College, 425-640-1459.

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

A cost-benefit analysis is not required under RCW 34.05.328. Edmonds College is not one of the enumerated agencies required to conduct cost-benefit analyses under RCW 34.05.328(5).

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: [No information supplied by agency].

Scope of exemption for rule proposal:
Is fully exempt.

November 18, 2024
Suzanne Moreau
Vice President for Human Resources

OTS-5695.3

AMENDATORY SECTION (Amending WSR 20-24-034, filed 11/20/20, effective 12/21/20)

WAC 132Y-125-001 Student code of conduct. (1) **Authority.** The Edmonds College board of trustees, acting pursuant to RCW 28B.50.140(13), delegates to the president of the college the authority to administer disciplinary action. The president is authorized to delegate or reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary. Administration of the disciplinary procedures is the responsibility of the vice president for student services or their designee. Except in cases involving allegations of sex discrimination, including sex-based harassment, the student conduct officer or delegee shall serve as the principal investigator and administrator for alleged violations of this code.

(2) **Statement of student rights.** As members of the Edmonds College academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

The following rights are guaranteed to each student within the limitations of statutory law and college policies necessary to achieve the educational goals of the college:

(a) **Academic freedom.**

(i) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public.

(ii) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services, subject to the limitations of RCW 28B.50.090 (3)(b).

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

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

(b) **Due process.**

(i) The rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures is guaranteed.

(ii) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(iii) A student accused of violating this code of student conduct is entitled, upon request, to procedural due process as set forth in the student conduct hearing procedures.

(3) **Prohibited student ((misconduct)) conduct.** The college may impose disciplinary sanctions against a student or a college-sponsored student organization, athletic team, or living group, who commits, attempts to commit, aids, abets, incites, encourages, or assists another person to commit((r)) an act(s) of misconduct which includes, but is not limited to, any of the following:

(a) ~~((Academic dishonesty.~~ Any act of academic dishonesty including, but not limited to:

~~(i) Cheating: Includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment, intentional use or attempted use of unauthorized material, information, or study aids, misrepresentation of invention or any information such as falsifying research, inventing or exaggerating data, or listing incorrect or fictitious references.~~

~~(ii) Plagiarism including, but not limited to, presenting or submitting another person's, entities', and/or sources' ideas, words, or other works in an instructional course without assigning proper credit.~~

~~(iii) Unauthorized collaboration including, but not limited to, intentionally sharing or working together in an academic exercise when such actions are not approved by the course instructor.~~

~~(iv) Academic dishonesty including, but not limited to, presenting or submitting in an instructional course either information that is known to be false (while concealing that falsity) or work that is substantially the same as that previously submitted in another course (without the current instructor's approval).~~

(b) **Other dishonesty.** Any other acts of dishonesty. Such acts include, but are not limited to:

~~(i) Forgery, alteration, submission of falsified documents or misuse of any college document, record, or instrument of identification;~~

~~(ii) Tampering with an election conducted by or for college students; or~~

~~(iii) Knowingly furnishing false information, or failing to furnish accurate and honest information, in response to the request or requirement of a college officer or employee.~~

(c) **Obstruction or disruptive conduct.** Conduct, not otherwise protected by law, that interferes with, impedes, or otherwise hinders:

~~(i) Any instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or~~

~~(ii) Any operation of the college, including the infringement on the rights of another member(s) of the college community; or~~

~~(iii) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.~~

~~(d) **Assault, intimidation, harassment.** Unwanted touching, assault, battery, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, stalking, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this subsection:~~

~~(i) Bullying is defined as repeated or aggressive unwanted behavior, not otherwise protected by law that intentionally humiliates, harms, or intimidates the victim.~~

~~(ii) Stalking is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.~~

~~(e) **Cyber misconduct.** Cyberstalking, cyberbullying or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, text and image messaging, electronic bulletin boards, and social media sites to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email and/or social media identity, non-consensual recording of sexual activity, and/or nonconsensual distribution of a recording of sexual activity.~~

~~(f) **Property violation.** Attempted or actual damage to, or theft or misuse of, real or personal property, or money of:~~

~~(i) The college or state;~~

~~(ii) Any student, college official, employee, or college affiliated or sponsored organization; or~~

~~(iii) Any other member of the college community, or organization; or~~

~~(iv) Possession of such property or money after it has been stolen.~~

~~(g) **Failure to comply with directive.** Failure to comply with the direction of a college official or employee who is acting in the legitimate performance of their duties, including refusal to properly identify oneself to such a person when requested to do so.~~

~~(h) **Weapons.** Possession of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm, unless previously authorized in writing by the president or designee.~~

~~(i) **Hazing.** Hazing includes, but is not limited to, any initiation into or affiliation with a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student.~~

~~(j) **Tobacco violation.** Violation of the college's Tobacco and Smoke-Free Policy HR 8.0.~~

~~(k) **Alcohol.** The use, possession, delivery, sale, or being observably under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.~~

~~(l) **Marijuana.** The use, possession, delivery, sale, or being observably under the influence of marijuana or the psychoactive com-~~

pounds found in marijuana and intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

~~(m) **Drugs.** The use, possession, delivery, sale, or being observably under the influence of any legend drug, narcotic drug, or controlled substance as defined in chapters 69.41 and 69.50 RCW except in accordance with a lawful prescription for that student by a licensed health care professional.~~

~~(n) **Lewd conduct.** Conduct which is lewd, or obscene.~~

~~(o) **Discrimination.** Conduct which harms or adversely affects any member of the college community because of their race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy, marital status; age (40+); religion; creed; genetic information; sexual orientation; gender identity and expression; veteran's status; any other legally protected classification; or any violation of the college's nondiscrimination policy.~~

~~(p) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX is defined in the supplemental procedures to this code. See WAC 132Y-125-130. (prohibited conduct under Title IX).~~

~~(i) **Sexual harassment.** The term "sexual harassment" means unwelcome sexual or gender-based conduct including unwelcome sexual advances, requests for sexual favors, quid pro quo harassment, and other verbal, nonverbal, or physical conduct of a sexual or a gendered nature that is sufficiently severe, persistent, or pervasive as to:~~

~~(A) Deny or limit the ability of a student to participate in or benefit from the college's educational program;~~

~~(B) Alter the terms or conditions of employment for a college employee(s); and/or~~

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

~~(ii) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.~~

~~(iii) **Sexual violence.** "Sexual violence" is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.~~

~~(A) Nonconsensual sexual intercourse. Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.~~

~~(B) Nonconsensual sexual contact. Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.~~

~~(C) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately, as an ancestor, descendant, brother, or sister or either wholly or half related. De-~~

~~scendant includes stepchildren, and adopted children under the age of eighteen.~~

~~(D) Statutory rape. Consensual intercourse between a person who is eighteen years of age or older, and a person who is under the age of sixteen.~~

~~(E) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person cohabitating with or has cohabitated with the victim, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from the person's act under the domestic or family violence laws of the state of Washington, RCW 26.50.010.~~

~~(F) Dating violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:~~

~~(I) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and~~

~~(II) Where the existence of such a relationship shall be determined based on a consideration of the following factors:~~

~~(aa) The length of the relationship;~~

~~(bb) The type of relationship; and~~

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

~~(G) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:~~

~~(I) Fear for their safety or the safety of others; or~~

~~(II) Suffer substantial emotional distress.~~

~~For the purposes of this code, "consent" means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.~~

~~A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.~~

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

~~(q) **Harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy, marital status; age; religion; creed; genetic information; sexual orientation; gender identity and expression; veteran's status; or any other legally protected classification. See "sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is~~

not limited to, physical conduct, verbal, written, social media, and electronic communications.

~~(r) **Retaliation.** Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such a person reported an alleged violation of this code or college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.~~

~~(s) **Misuse of electronic resources.** Theft of or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:~~

~~(i) Unauthorized use of such resources or opening of a file, message, or other item;~~

~~(ii) Unauthorized duplication, transfer, download, upload, or distribution of a computer program, file, message, or other item;~~

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

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

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

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

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

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

~~(ix) Failure to comply with the college's regulation on appropriate use of college information technology resources or the electronic use policies as established by the college.~~

~~(t) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.~~

~~(u) **Safety violation.** Safety violation includes any nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.~~

~~(v) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college traffic and parking rules.~~

~~(w) **Abuse or misuse of hearing procedures.** Abuse or misuse of any of the procedures relating to student complaints or misconduct including, but not limited to:~~

~~(i) Falsification or misrepresentation of information;~~

~~(ii) Disruption, or interference with the orderly conduct of a proceeding;~~

~~(iii) Interfering with someone else's proper participation in a proceeding;~~

~~(iv) Destroying or altering potential evidence, or attempting to intimidate or otherwise improperly pressure a witness or potential witness, including retaliation;~~

~~(v) Attempting to influence the impartiality of, or harassing or intimidating a student conduct committee member; or~~

~~(vi) Failure to comply with any disciplinary sanction(s) imposed under Edmonds College's student conduct code.~~

~~(x) **Ethical violation.** The breach of any generally recognized and/or published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or program.)~~ **Abuse of others**, as defined in WAC 132Y-125-010.

(b) Abuse in later life.

(i) Neglect, abandonment, economic abuse, or willful harm of an adult aged 60 or older by an individual in an ongoing relationship of trust with the victim; or

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

(iii) Does not include self-neglect.

(c) Academic dishonesty. Any act of academic dishonesty, including:

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

(ii) Plagiarism - Taking and using as one's own, without proper attribution, the ideas, writings, work of another person, or artificial intelligence, in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(iii) Fabrication - Falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

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

(d) Acts of dishonesty. Acts of dishonesty include, but are not limited to:

(i) Forgery, alteration, and/or submission of falsified documents or misuse of any college document, record, or instrument of identification;

(ii) Furnishing false information, or failing to furnish correct information, in response to the request or requirement of a college officer or employee;

(iii) Knowingly making a false statement or submitting false information in relation or in response to a college academic or disciplinary investigation or process.

(e) Alcohol. Use, possession, manufacture, or distribution of alcoholic beverages or paraphernalia (except as expressly permitted by college policies, and federal, state, and local laws), or public intoxication on college premises or at college-sponsored events. Alcoholic beverages may not, in any circumstance, be used by, possessed by, or distributed to any person not of legal age.

(f) Cannabis, drug, and tobacco violations.

(i) Cannabis. The use, possession, growing, delivery, sale, or being visibly under the influence of cannabis or the psychoactive compounds found in cannabis and intended for human consumption, regardless of form, or the possession of cannabis paraphernalia on college premises or at college-sponsored events. While state law permits the recreational use of cannabis, federal law prohibits such use on college premises or in connection with college activities.

(ii) Drugs. The use, possession, production, delivery, sale, or being observably under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter

69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

(iii) Tobacco, electronic cigarettes, and related products. The use, distribution, or sale of tobacco, electronic cigarettes, and related products is prohibited on and within all college owned, leased, or managed property. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, vaporizers, and snuff.

(g) **Cyber misconduct.** Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, applications (apps), and social media sites, to harass, abuse, bully, or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(h) **Disruption or obstruction.** Disruption or obstruction of instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college premises or at a college activity, or any activity that is authorized to occur on college premises, whether or not actually conducted or sponsored by the college.

(i) **Discriminatory harassment,** as defined in WAC 132Y-125-010.

(j) **Ethical violation,** as defined in WAC 132Y-125-010.

(k) **Failure to comply with directive.** Failure to comply with the direction of a college officer or employee who is acting in the legitimate performance of their duties, including failure to properly identify oneself to such a person when requested to do so.

(l) **Harassment or bullying,** as defined in WAC 132Y-125-010.

(m) **Hazing,** as defined in WAC 132Y-125-010.

(n) **Indecent exposure,** as defined in WAC 132Y-125-010.

(o) **Lewd conduct,** as defined in WAC 132Y-125-010.

(p) **Misuse of electronic resources,** as defined in WAC 132Y-125-010.

(q) **Property violation,** as defined in WAC 132Y-125-010.

(r) **Retaliation,** as defined in WAC 132Y-125-010.

(s) **Safety violations,** as defined in WAC 132Y-125-010.

(t) **Sex discrimination,** as defined in WAC 132Y-125-010.

(u) **Title IX retaliation,** as defined in WAC 132Y-125-010.

(v) **Unauthorized access,** as defined in WAC 132Y-125-010.

(w) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation, or other college rules or policies, including college housing, traffic, and parking rules.

(x) **Weapons.** Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife, or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus and during college programming and activities, subject to the following exceptions:

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

(ii) Students with legally issued weapons permits may store their weapons in their vehicle parked on campus in accordance with RCW

9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view.

(iii) The president may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission.

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

In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal investigation or prosecution.

(4) **Corrective action, disciplinary sanctions, terms and conditions.** Disciplinary actions include, but are not limited to, the following sanctions that may be imposed upon students (~~(according to the student code of conduct hearing procedures)~~) or college-sponsored student organizations, athletic teams, or living groups found responsible for violating this code.

(a) **Warning.** A verbal or written statement to a student that there is a violation and that continued violation may be cause for further disciplinary action. Warnings are corrective actions, not disciplinary, and may not be appealed.

(b) **Written reprimand.** Notice in writing that the student has violated one or more terms of (~~the college's student conduct~~) this code and that continuation of the same or similar behavior may result in more severe disciplinary action.

(c) **Disciplinary probation.** Formal action placing specific conditions and restrictions upon the student's continued attendance and/or enrollment, and/or participation in college programs or activities, depending upon the seriousness of the violation and which may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction which may include, but is not limited to, a suspension or (~~a dismissal~~) an expulsion from the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance and/or enrollment at the college.

(d) **Disciplinary suspension.** (~~Dismissal~~) Expulsion from the college and from the student status for a stated period of time. There (~~may~~) will be no refund of tuition or fees for the quarter in which the action is (~~taken~~) imposed.

(e) (~~Dismissal~~) **Expulsion.** The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the sanction is taken.

(~~(5) Terms and conditions.~~) (f) **Hazing sanctions.**

(i) Any student group that knowingly permits hazing is strictly liable for harm caused to persons or property resulting from hazing. If the organization, association, or student living group is a corporation, whether for profit or nonprofit, the individual directors of the corporation may be held individually liable for damages.

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

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

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

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

(a) ~~((**Restitution.** Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.~~

~~(b) **Professional evaluation.** Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as approved by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation. A student may not return to campus if the evaluation indicates that the student is not capable of functioning within the college community, or if the evaluation lacks information for the college to make reasonable accommodations, or until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.~~

~~(c) **No contact/trespass order.** An order directing a student to have no contact with a specified student, college employee, a member of the college community, or a particular college facility for a stated period of time.) **Education.** Participation in or successful completion of an educational assignment designed to create an awareness of the student's misconduct.~~

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

~~(c) **Not in good standing.** A student deemed "not in good standing" with the college shall be subject to the following restrictions:~~

~~(i) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college;~~

~~(ii) Ineligible to represent the college to anyone outside the college community in any way, including representing the college at any official function, or any forms of intercollegiate competition or representation.~~

~~(d) **No contact directive.** An order directing a student to have no contact with a specified student, college employee, a member of the college community, or a particular college facility.~~

(e) **Professional evaluation.** Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as approved by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation. A student may not return to campus if the evaluation indicates that the student is not capable of functioning within the college community, or if the evaluation lacks information for the college to make reasonable accommodations, or until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(f) **Restitution.** Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.

(g) **Residence hall suspension or termination.** Removal from a residence hall for a specified period or permanently. Conditions may be imposed before a student is permitted to return to a residence hall. There will be no refund of housing payments for the quarter in which removal occurred.

(h) **Trespass or restriction.** A student may be restricted from any or all college premises and/or college-sponsored activities based on a violation.

More than one of the disciplinary terms and conditions listed above may be imposed for any single violation.

If a student withdraws from the college or fails to reenroll before completing a disciplinary sanction or condition, the disciplinary sanction or condition must be completed either prior to or upon the student's reenrollment, depending on the nature of the sanction, condition, and/or the underlying violation. Completion of disciplinary sanctions and conditions may be considered in petitions for readmission to the college.

AMENDATORY SECTION (Amending WSR 20-24-034, filed 11/20/20, effective 12/21/20)

WAC 132Y-125-005 Statement of jurisdiction. (1) The student conduct code shall apply to conduct by students or student ~~((conduct))~~ groups that occurs:

- (a) On college premises;
- (b) At or in connection with college ~~((sponsored))~~ programs or activities; or
- (c) ~~((To off-campus conduct that,))~~ Off college premises, if in the judgment of the college, ~~((adversely affects))~~ the conduct has an adverse impact on the college community ~~((or)),~~ the pursuit of its objectives, or the ability of a student or staff member to participate in the college's programs and activities.

(2) Jurisdiction extends to ~~((, but is not limited to,))~~ locations in which students are engaged in ~~((official))~~ college programs or activities including, but not limited to, college-sponsored housing, foreign or domestic travel, activities funded by the ~~((associated))~~

students, student government, student clubs or organizations, athletic events, training internships, cooperative and distance education, on-line education, practicums, supervised work experiences, or any other college-sanctioned social or club activities.

(3) Students are responsible for their conduct from the time (~~of application for~~) they gain admission to the college through the (~~actual receipt~~) last day of enrollment or award of ((a)) any degree or certificate, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of (~~actual~~) enrollment.

(4) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending.

(5) The (~~student conduct officer~~) college has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct by students or student groups that occurs off-campus.

(6) In addition to initiating disciplinary proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college reserves the right to pursue student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

AMENDATORY SECTION (Amending WSR 20-24-034, filed 11/20/20, effective 12/21/20)

WAC 132Y-125-010 Definitions. The following definitions shall apply for purposes of this student conduct code:

(1) "Abuse of others" means assault, physical abuse, verbal abuse, threat(s), intimidation, or other conduct that harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property unless otherwise protected by law.

(2) "Business day" means a weekday, excluding weekends and college holidays and/or college closures.

~~((2))~~ (3) "College premises" includes all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

~~((3))~~ (4) "Complainant" means individuals who are alleged to have been subjected to prohibited conduct, including a student or employee, or a person other than a student or employee who was participating or attempting to participate in the college's education program or activity at the time of the alleged discrimination.

(5) "Complaint" means a written or oral request that can be objectively understood as a request for the college to investigate and make a determination about prohibited conduct.

(6) "Conduct review officer" is the (~~vice president for student services or other~~) college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions, in accordance with the procedures of this code.

~~((4))~~ (7) "Confidential employee" means a college employee whose communications are privileged and confidential under federal or

state law. An employee's status as a confidential employee only applies when they are functioning within the scope of duties to which the privilege or confidentiality applies.

(8) "Consent" means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when they know, or reasonably should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual sexual conduct.

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

(9) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code. A written or verbal warning is not disciplinary action.

((+5)) (10) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ((ten)) 10 instructional days or an expulsion are heard by the student conduct ((appeals board)) committee. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

((+6)) (11) "Disciplinary sanction" means consequences imposed on a respondent following a determination that the respondent violated the college's policy prohibiting sex discrimination.

(12) "Discriminatory harassment" means:

(a) Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, not otherwise protected by law, that is directed at a person because of such person's protected status and that is sufficiently severe, persistent, or pervasive so as to:

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

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

(b) Protected status includes a person's race; color; creed/religion; national origin; presence of any sensory, mental, or physical disability; use of a trained service animal; sex, including pregnancy; marital status; age; genetic information; sexual orientation; gender identity or expression; honorably discharged veteran or military status; HIV/AIDS and hepatitis C status; or membership in any other group protected by federal, state, or local law.

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

(13) "Ethical violation" means the breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

(14) "Filing" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified college official or college official's assistant; or

(b) By sending the document by email and first-class mail to the specified college official's office and college email address.

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

~~((7))~~ (15) "Harassment, bullying, or intimidation" means the conduct unrelated to a protected class that is unwelcome and sufficiently severe, persistent, or pervasive such that it could reasonably be expected to create an intimidating, hostile, or offensive environment, or has the purpose or effect of unreasonably interfering with a person's academic or work performance, or a person's ability to participate in or benefit from the college's programs, services, opportunities, or activities.

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

(b) For purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior not otherwise protected by law when a reasonable person would feel humiliated, harmed, or intimidated.

(c) For purposes of this code, "intimidation" is an implied threat. Intimidation exists when a reasonable person would feel threatened or coerced even though an explicit threat or display of physical force has not been made. Intimidation is evaluated based on the intensity, frequency, context, and/or duration of the comments or actions.

(16) "Hazing" means any act committed as part of a person's recruitment, initiation, pledging, admission into, or affiliation with a college-sponsored student organization, athletic team, or living group, or any pastime or amusement engaged in with respect to such an organization, athletic team, or living group that causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student, including causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm, regardless of the person's willingness to participate. Hazing does not include customary athletic events or other similar contests or competitions. Consent is not a valid defense against hazing.

(17) "Indecent exposure" means the intentional or knowing exposure of a person's genitals or other private body parts when done in a place or manner in which such exposure is likely to cause affront or alarm. Breastfeeding or expressing breast milk is not indecent exposure.

(18) "Investigation procedure" is the process the college uses to initiate, informally resolve, and/or investigate allegations that an individual has violated college policies prohibiting sex discrimination or sex-based harassment.

(19) "Lewd conduct" means conduct which is lewd, or obscene.

(20) "Mandatory reporters" are all college employees, excluding confidential employees. Mandatory reporters are required to report conduct that could reasonably constitute sex discrimination to the Title IX coordinator.

(21) "Misuse of electronic resources" means the theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

(a) Unauthorized use of such resources or opening of a file, message, or other item;

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

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

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

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

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

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

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

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

(22) "Peer retaliation" means retaliation by a student against another student.

(23) "Pregnancy or related conditions" means:

(a) Pregnancy, childbirth, termination of pregnancy, or lactation;

(b) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or

(c) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

(24) "Preponderance of the evidence" means on a more probable than not basis.

(25) "President" is the president of Edmonds ((Community)) College. The president is authorized to delegate any of their responsibilities as set forth in this chapter, and as may be reasonably necessary; and reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary.

~~((8) "Complainant" is an alleged victim of sexual misconduct.~~

~~(9))~~ (26) "Program" or "programs and activities" means all operations of the college.

(27) "Property violation" means damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging or destruction of college property or the property of another person. Property for purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.

(28) "Relevant" means related to the allegations of sex discrimination under investigation. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decision maker in determining whether the alleged sex discrimination occurred.

(29) "Remedies" means measures provided to a complainant or other person whose equal access to the college's educational programs and activities has been limited or denied by sex discrimination. These measures are intended to restore or preserve that person's access to

educational programs and activities after a determination that sex discrimination has occurred.

(30) "Respondent" is ((the student against whom disciplinary action is initiated)) an individual who has been alleged to have violated the student conduct code or college's policy prohibiting sex discrimination.

(31) "Retaliation" means harming, threatening, intimidating, coercing, or other adverse action taken against any individual for reporting, providing information, exercising one's rights or responsibilities, participating, or refusing to participate, in the process of responding to, investigating, or addressing allegations or violations of federal, state, or local law, or college policies.

((+10)) (32) "Safety violations" include nonaccidental, reckless, or unsafe conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(33) "Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:

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

(b) Sending the document by email and by certified mail or first-class mail to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is emailed and deposited in the mail, whichever is first.

((+11)) (34) "Sex discrimination" includes sex-based harassment, and may occur when a respondent causes more than de minimis harm to an individual by treating them different from a similarly situated individual on the basis of: Sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. Conduct that prevents an individual from participating in an education program or activity consistent with the person's gender identity subjects a person to more than de minimis harm on the basis of sex.

Sex-based harassment. "Sex-based harassment" is a form of sex discrimination and means sexual harassment or other harassment on the basis of sex, including the following conduct:

(a) Quid pro quo harassment. A student, employee, agent, or other person authorized by the college to provide an aid, benefit, or service under the college's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.

(b) Hostile environment. Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

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

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

(iii) The parties' ages, roles within the college's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;

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

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

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

(i) Nonconsensual sexual intercourse is any sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(ii) Nonconsensual sexual contact (fondling) is any actual or attempted intentional sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(iii) Incest is sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of 18.

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

(v) Domestic violence is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, coercive control, damage or destruction of personal property, or stalking or any other conduct prohibited under RCW 10.99.020, committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington.

(vi) Dating violence is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:

(A) The length of the relationship;

(B) The type of relationship; and

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

(35) "Stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or to suffer substantial emotional distress.

(36) "Student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of

their acceptance for admission are considered "students((-))" for the purposes of this code.

~~((12))~~ (37) "Student conduct officer" is a college administrator designated by the president to be responsible for implementing and enforcing the student conduct code.

~~((13) "Sexual misconduct" has the meaning ascribed to this term in WAC 132Y-125-001.)~~ (38) "Student employee" means an individual who is both a student and an employee of the college. When a complainant or respondent is a student employee, the college must make a fact-specific inquiry to determine whether the individual's primary relationship with the college is to receive an education; and whether any alleged student conduct code violation including, but not limited to, sex-based harassment, occurred while the individual was performing employment-related work.

(39) "Student group" is a student organization, athletic team, or living group including, but not limited to, student clubs and organizations, members of a class or student cohort, student performance groups, and student living groups within student housing.

(40) "Summary suspension" means an emergency suspension of a student respondent pending investigation and resolution of disciplinary proceedings pursuant to the procedure and standards set forth in WAC 132Y-125-060.

(41) "Supportive measures" means the reasonably available, individualized and appropriate, nonpunitive and nondisciplinary measures offered by the college to the complainant or respondent without unreasonably burdening either party, and without fee or charge for purposes of restoring or preserving a party's access to the college's educational program or activity, including measures that are designed to protect the safety of the parties or the college's educational environment; or providing support during the college's investigation and disciplinary procedures, or during any informal resolution process. Supportive measures may include, but are not limited to:

- (a) Counseling;
- (b) Extensions of deadlines and other course-related adjustments;
- (c) Campus security escort services;
- (d) Increased security and monitoring of certain areas of campus;
- (e) Restriction on contact applied to one or more parties;
- (f) A leave of absence;
- (g) Change in class, college employment, college housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative; and
- (h) Training and education programs related to sex-based harassment.

(42) "Title IX coordinator" is the administrator responsible for processing complaints of sex discrimination, including sex-based harassment, overseeing investigations and informal resolution processes, and coordinating supportive measures, in accordance with college policy. "Title IX coordinator" is the individual responsible for processing Title IX complaints and conducting or overseeing formal investigations and informal resolution processes.

(43) "Title IX personnel" includes the Title IX coordinator and designees, investigators, student conduct officers, and decision makers at both the hearing and appeal level, responsible for administering the college's sex discrimination investigation and disciplinary procedures; facilitators of the informal sex discrimination resolution process; and any other employees who are responsible for implementing the college's sex discrimination investigation or sex discrimination

disciplinary procedures for students or have the authority to modify or terminate supportive measures.

(44) "Title IX retaliation" means intimidation, threats, coercion, or discrimination against any person by the college, a student, or an employee or other person authorized by the college to provide aid, benefit, or service under the college's education program or activity, for the purpose of interfering with any right or privilege secured by college policies and procedures prohibiting sex discrimination, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part, including in an informal resolution process, in these investigation procedures, and any disciplinary proceeding for sex discrimination. Nothing in this definition precludes the college from requiring an employee to provide aid, benefit, or service under the college's education program or activity to participate as a witness in, or otherwise assist with, an investigation, proceeding, or hearing.

(45) "Unauthorized access" means the unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

AMENDATORY SECTION (Amending WSR 20-24-034, filed 11/20/20, effective 12/21/20)

WAC 132Y-125-015 Initiation of disciplinary action. (~~((1) All~~ disciplinary actions will be initiated by the student conduct officer. If that officer is the subject of a complaint initiated by the respondent, the vice president for student services shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.

~~(2) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing him or her to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and shall also specify the time and location of the meeting. At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting after proper service of notice, the student conduct officer may take disciplinary action based upon the available information.~~

~~(3) Within ten days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting his or her decision, the specific student conduct code provisions found to have been violated, the discipline imposed, if any, and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal.~~

~~(4) The student conduct officer may take any of the following disciplinary actions:~~

~~(a) Exonerate the respondent and terminate the proceedings; or~~

~~(b) Impose a disciplinary sanction(s), as described in WAC 132Y-125-001 (4) and (5).~~

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

~~(5) In cases involving allegations of sexual misconduct, the student conduct officer, on the same date that a disciplinary decision is served on the respondent, will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure prompt notice of the protective disciplinary sanctions and/or conditions.)~~ (1) Any member of the college community may file a complaint against a student or student group for possible violations of the student conduct code.

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

(a) Sex discrimination, including sex-based harassment. The college's Title IX coordinator or designee shall review, process, and, if applicable, investigate complaints or other reports of sex discrimination, including sex-based harassment. Allegations of sex discrimination, including sex-based harassment, by a student shall be addressed through the student conduct code. Allegations involving employees or third parties associated with the college will be handled in accordance with college policies.

(b) Hazing by student groups. A student conduct officer, or designee, may review and investigate any complaint or allegation of hazing by a student group. A student group will be notified through its named officer(s) and address on file with the college. A student group may designate one representative who may speak on behalf of a student group during any investigation and/or disciplinary proceeding. A student group will have the rights of a respondent as set forth below.

(3) Investigations will be completed in a timely manner and the results of the investigation shall be referred to the student conduct officer for disciplinary action.

(4) If a student conduct officer determines that a complaint appears to state a violation of the student conduct code, the student conduct officer will consider whether the matter might be resolved through agreement with the respondent or through alternative dispute resolution proceedings involving the complainant and the respondent.

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

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

(5) If the student conduct officer has determined that a complaint has merit and if the matter is not resolved through agreement or informal dispute resolution, the student conduct officer may initiate disciplinary action against the respondent.

(6) In cases involving allegations of sex discrimination, both the respondent and the complainant shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the disciplinary process and to appeal any disciplinary decision.

(7) All disciplinary actions will be initiated by the student conduct officer. If that officer is the subject of a complaint, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complaint.

(8) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing him or her to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specify the time and location of the meeting.

(9) At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting after proper service of notice, the student conduct officer may take disciplinary action based upon the available information.

(10) Within 10 calendar days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting their decision, the specific student conduct code provisions found to have been violated, the discipline imposed (if any), and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal. This period may be extended at the sole discretion of the student conduct officer, if additional information is necessary to reach a determination. The student conduct officer will notify the parties of any extension period and the reason therefore.

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

(a) Exonerate the respondent and terminate the proceedings;

(b) Impose a disciplinary sanction(s), with or without conditions, as described in WAC 132Y-125-001; or

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

(12) In cases involving allegations of sex discrimination, the student conduct officer shall review the investigation report provided by the Title IX coordinator, and determine whether, by a preponderance of the evidence, there was a violation of the student conduct code; and if so, what disciplinary sanction(s) and/or remedies will be recommended. The student conduct officer shall, within five business days of receiving the investigation report, serve respondent, complainant, and the Title IX coordinator with a written recommendation, setting forth the facts and conclusions supporting their recommendation. The time for serving a written recommendation may be extended by the student conduct officer for good cause.

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

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

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

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

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

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

(ii) Respondent is not participating in the college's educational programs or activities;

(iii) The complainant has voluntarily withdrawn any or all of the allegations in the complaint, and the Title IX coordinator has declined to initiate their own complaint;

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

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

(f) In cases involving allegations of sex-based harassment, the college must obtain the complainant's voluntary withdrawal in writing before the matter can be dismissed.

(g) If no request for a full hearing is provided to the student conduct officer, the student conduct officer's written recommendation shall be final and implemented immediately following the expiration of 21 calendar days from the date of the written recommendation.

(h) Upon receipt of the student conduct officer's written recommendation, the Title IX coordinator or their designee shall review all supportive measures and, within five business days, provide written direction to the complainant and respondent as to any supportive measures that will be implemented, continued, modified, or terminated. If either party is dissatisfied with the supportive measures, the party may seek review in accordance with the college's Title IX investigation procedure.

(i) If the respondent is found responsible for engaging in sex discrimination, the Title IX coordinator shall also take prompt steps to coordinate and implement any necessary remedies to ensure that sex discrimination does not recur and that complainant has equal access to the college's programs and activities.

AMENDATORY SECTION (Amending WSR 20-24-034, filed 11/20/20, effective 12/21/20)

WAC 132Y-125-020 Appeal from disciplinary action. (1) Except as specified for cases involving allegations of sex discrimination, as set forth in WAC 132Y-125-015, the respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within (~~twenty-one~~) 21 calendar days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

(2) The notice of appeal must include a brief statement explaining why the respondent is seeking review.

(3) The parties to an appeal shall be the respondent, complainant, if any, and the conduct review officer.

(4) A respondent, who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

(5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.

(6) Imposition of disciplinary action for violation of the student conduct code shall be stayed pending appeal, unless respondent has been summarily suspended.

(7) The student conduct committee shall hear appeals from:

(a) The imposition of disciplinary suspensions in excess of ~~((ten))~~ 10 instructional days;

(b) ~~((Dismissals; and))~~ Expulsions;

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

(d) Disciplinary cases referred to the committee by the student conduct officer, the conduct review officer, or the president.

(8) Student conduct appeals of the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:

(a) Suspensions of ~~((ten))~~ 10 instructional days or less;

(b) Disciplinary probation;

(c) Written reprimands; and

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

~~((9) Except as provided elsewhere in these rules, disciplinary verbal warnings and dismissals of disciplinary actions are final action and are not subject to appeal.~~

~~(10) In cases involving allegations of sexual misconduct, the complainant has the right to appeal the following actions by the student conduct officer following the same procedures as set forth above for the respondent:~~

~~(a) The dismissal of a sexual misconduct complaint; or~~

~~(b) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary warning.~~

~~(11) If the respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college shall notify the complainant of the appeal and provide the complainant an opportunity to intervene as a party to the appeal.~~

~~(12) Except as otherwise specified in this chapter, a complainant who timely appeals a disciplinary decision or who intervenes as a party to respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as are afforded the respondent.))~~

AMENDATORY SECTION (Amending WSR 20-24-034, filed 11/20/20, effective 12/21/20)

WAC 132Y-125-025 Brief adjudicative proceedings—Initial hearing. (1) Brief adjudicative proceedings shall be conducted by a con-

duct review officer. The conduct review officer shall not participate in any case in which they are a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(2) The parties to a brief adjudicative proceeding are the respondent ~~((7))~~ and the student conduct officer ~~((, and in cases involving sexual misconduct, the complainant))~~. Before taking action, the conduct review officer shall conduct an informal hearing and provide each party:

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

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

(3) The conduct review officer shall serve an initial decision upon the respondent and the student conduct officer within ~~((ten))~~ 10 calendar days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within ~~((ten))~~ 21 calendar days of service of the initial decision, the initial decision shall be deemed the final decision.

~~(4) ((In cases involving allegations of sexual misconduct, the conduct review officer, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection. The notice will also inform the complainant of their appeal rights.~~

~~(5))~~ If the conduct review officer, upon review, determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ~~((ten))~~ 10 instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

AMENDATORY SECTION (Amending WSR 20-24-034, filed 11/20/20, effective 12/21/20)

WAC 132Y-125-030 Brief adjudicative proceedings—Review of an initial decision. (1) An initial decision is subject to review by the president, provided the respondent files a written request for review with the conduct review officer within ~~((ten))~~ 21 calendar days of service of the initial decision.

(2) The president shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(3) During the review, the president shall give each party an opportunity to file written responses explaining their views of the matter and shall make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the student conduct committee for a formal adjudicative hearing.

(4) The decision on review must be in writing and must include a brief statement of the reasons for the decision and must be served on

the parties within ~~((twenty))~~ 20 calendar days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the president does not make a disposition of the matter within ~~((twenty))~~ 20 calendar days after the request is submitted.

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

~~((6) In cases involving allegations of sexual misconduct, the president, on the same date as the final decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights.))~~

AMENDATORY SECTION (Amending WSR 15-12-068, filed 5/29/15, effective 6/29/15)

WAC 132Y-125-035 Student conduct committee. (1) The student conduct committee shall consist of five members:

(a) Two full-time students appointed by the student government;
 (b) Two faculty members appointed by the president;
 (c) One faculty member or administrator (other than an administrator serving as a student conduct or conduct review officer) appointed by the president at the beginning of the academic year.

(2) The ~~((administrative staff member))~~ faculty member or administrator appointed on a yearly basis shall serve as the chair of the committee and may take action on preliminary hearing matters prior to convening the committee. The chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.

(3) Hearings may be heard by a quorum of three members of the committee so long as one faculty member and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness; in which they have direct or personal interest, prejudice, or bias; or in which they have acted previously in an advisory capacity. Any party may petition for disqualification of a committee member ~~((pursuant to RCW 34.05.425(4)))~~.

(5) For cases involving allegations of sex discrimination, including sex-based harassment, members of the student conduct committee must receive training on serving impartially, avoiding prejudgment of facts at issue, conflicts of interest, and bias. The chair must also receive training on the student conduct process for sex discrimination cases, as well as the meaning and application of the term "relevant," in relations to questions and evidence, and the types of evidence that are impermissible, regardless of relevance in accordance with 34 C.F.R. §§ 106.45 and 106.46.

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

AMENDATORY SECTION (Amending WSR 15-12-068, filed 5/29/15, effective 6/29/15)

- WAC 132Y-125-040 ((~~Appeal~~))Student conduct committee—Prehear-
ing.** (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW ((~~and by the Model Rules of Procedure, chapter 10-08 WAC. To the extent there is a conflict between these rules and chapter 10-08 WAC, these rules shall control~~)).
- (2) The student conduct committee chair shall serve all parties with written notice of any hearing not less than seven calendar days in advance of the hearing date ((~~, as further specified in RCW 34.05.434 and WAC 10-08-040 and 10-08-045~~)). The chair may shorten this notice period if both parties agree, and may continue the hearing to a later time for good cause shown. The notice must include:
- (a) A copy of the student conduct code;
 - (b) The basis for jurisdiction;
 - (c) The alleged violation(s);
 - (d) A summary of facts underlying the allegations;
 - (e) The range of possible sanctions that may be imposed; and
 - (f) A statement that retaliation is prohibited.
- (3) The committee chair is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.
- (4) Upon request filed at least five calendar days before the hearing by any party or at the direction of the committee chair, the parties shall exchange, no later than the third day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.
- (5) The committee chair may provide to the committee members in advance of the hearing copies of:
- (a) The conduct officer's notification of imposition of discipline (or referral to the committee); and
 - (b) The notice of appeal (or any response to referral) by the respondent. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.
- (6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the committee chair may provide copies of these admissible exhibits to the committee members before the hearing.
- (7) The student conduct officer, upon request, shall provide reasonable assistance to the respondent and complainant in obtaining relevant and admissible evidence that is within the college's control.
- (8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than proce-

dural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate. Any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(9) Each party may be accompanied at the hearing by ~~((a nonattorney assistant of his/her choice. A respondent may elect to be represented by an attorney at his or her own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer))~~ an advisor of their choice, which may be an attorney retained at the party's expense. The committee will ordinarily be advised by an assistant attorney general or their designee. If the respondent and/or the complainant is represented by an attorney, the student conduct officer may also be represented by ~~((a second appropriately screened))~~ an assistant attorney general.

(10) Attorneys for students must file a notice of appearance with the committee chair at least four business days before the hearing. Failure to do so may, at the discretion of the committee chair, result in a waiver of the attorney's ability to represent the student at the hearing, although an attorney may still serve as an advisor to the student.

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

(a) Notice. The college must provide a notice that includes all information required in subsection (2) of this section, and a statement that the parties are entitled to an equal opportunity to access relevant and permissible evidence, or a description of the evidence upon request.

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

(c) Extensions of time. The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date, in accordance with the procedures set forth in this section.

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

(e) Confidentiality. The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but are not limited to, directives by the student conduct officer or chair pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

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

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

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

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

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

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

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

(b) Extensions of time. The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date. The party requesting an extension must do so no later than 48 hours before any date specified in the notice of hearing or by the chair in any prehearing conference. The written request must be served simultaneously by email to all parties and the chair. Any party may respond and object to the request for an extension of time no later than 24 hours after service of the request for an extension. The chair will serve a written decision upon all parties, to include the reasons for granting or denying any request. The chair's decision shall be final. In exceptional circumstances, for good cause shown, the chair may, in their sole discretion, grant extensions of time that are made less than 48 hours before any deadline.

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

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

(e) Confidentiality. The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but are not limited to, directives by the student conduct officer or chair issuing directives pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

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

(g) Withdrawal of complaint. If a complainant wants to voluntarily withdraw a complaint, they must provide notice to the college in writing before a case can be dismissed.

AMENDATORY SECTION (Amending WSR 15-12-068, filed 5/29/15, effective 6/29/15)

WAC 132Y-125-045 Student conduct committee ((hearings))—Presentation((s)) of evidence. (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

- (a) Proceed with the hearing and issuance of its decision; or
- (b) Serve a decision of default in accordance with RCW 34.05.440.

(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(3) The chair shall cause the hearing to be recorded by a method that ~~((he/she))~~ they select ~~((s))~~, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other re-recording shall also be permitted, in accordance with WAC 10-08-190.

(4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.

(5) The student conduct officer, unless represented by an assistant attorney general, shall present the college's case ~~((for imposing disciplinary sanctions))~~.

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

(7) In cases involving allegations of sex-based harassment, the complainant and respondent may not directly question one another or other witnesses. In such circumstances, the chair will determine whether questions will be submitted to the chair, who will then ask questions of the parties and witnesses, or allow questions to be asked directly of any party or witness by a party's attorney or advisor. The committee chair may revise this process if, in the chair's determination, the questioning by any party, attorney, or advisor, becomes contentious or harassing.

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

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

(c) The chair shall exclude and the committee shall not consider legally privileged information unless the individual holding the privilege has waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(i) Spousal/domestic partner privilege;

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

(iii) Clergy privileges;

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

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

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

(d) The chair shall exclude and the committee shall not consider questions or evidence that relate to the complainant's sexual interests or prior sexual conduct, unless such question or evidence is offered to prove someone other than the respondent committed the alleged

conduct, or is evidence of specific instances of prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

(e) The committee may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible. The committee must not draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond to such questions.

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

AMENDATORY SECTION (Amending WSR 15-12-068, filed 5/29/15, effective 6/29/15)

WAC 132Y-125-050 Student conduct committee—Initial decision.

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

(2) Within ~~((twenty))~~ 20 calendar days following the later of the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.

(3) The committee's initial order shall also include a determination on appropriate ~~((discipline))~~ sanctions, if any. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanction(s) or conditions, if any, as authorized in the student code. If the matter is an appeal by ~~((the respondent))~~ a party, the committee may affirm, reverse, or modify the disciplinary sanction and/or conditions imposed by the student conduct officer and/or impose additional disciplinary sanction(s) or conditions as authorized herein.

(4) The committee chair shall cause copies of the initial decision to be served on the parties and their ~~((legal counsel of record))~~ attorney, if any. The notice will inform all parties of their appeal rights. The committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the president.

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

AMENDATORY SECTION (Amending WSR 15-12-068, filed 5/29/15, effective 6/29/15)

WAC 132Y-125-055 (~~(Appeal from student conduct committee initial decision.)~~) **Student conduct committee—Review of initial decision.**

(1) (~~(A respondent who is aggrieved by the findings or conclusions issued by the student conduct committee)~~) Any party, including a complainant in sex-based harassment cases, may appeal the committee's initial decision to the president by filing a notice of appeal with the president's office within (~~(twenty-one)~~) 21 calendar days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

(2) The (~~(notice of)~~) written appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain argument why the appeal should be granted. (~~(If necessary to aid review, the president may ask for additional briefing from the parties on issues raised on appeal. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the notice of appeal.)~~) Appeals may be based upon, but are not limited to:

(a) Procedural irregularity that would change the outcome;

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

(c) The investigator, decision maker, or Title IX coordinator had a conflict of interest or bias for or against a respondent or complainant individually or respondents or complainants generally.

(3) (~~(The president shall provide a written decision to all parties within forty-five days after receipt of the notice of appeal. The president's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.~~

~~(4))~~ Upon receiving a timely appeal, the president or designee will promptly serve a copy of the appeal on all nonappealing parties, who will have 10 business days from the date of service to submit a written response addressing the issues raised in the appeal to the president or a designee, and serve it on all parties. Failure to file a timely response constitutes a waiver of the right to participate in the appeal.

(4) If necessary to aid review, the president may ask for additional briefing from the parties on issues raised on appeal. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the notice of appeal.

(5) The president shall serve a written decision on all parties and their attorneys, if any, within 20 calendar days after receipt of the appeal. The president's decision shall be final and subject to judicial review pursuant to chapter 34.05 RCW, Part V.

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

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

AMENDATORY SECTION (Amending WSR 20-24-034, filed 11/20/20, effective 12/21/20)

WAC 132Y-125-060 Summary suspension. (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

(2) The student conduct officer may impose a summary suspension if there is probable cause to believe that the respondent:

(a) Has violated any provision of the code of conduct; and

(b) Presents an immediate danger to the health, safety, or welfare of members of the college community; or

(c) Poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.

(3) Notice. Any respondent who has been summarily suspended shall be served with oral or written notice of the summary suspension. If oral notice is given, a written notification shall be served on the respondent within two (~~business~~) calendar days of the oral notice.

(4) The written notification shall be entitled "Notice of Summary Suspension" and shall include:

(a) The reasons for imposing the summary suspension, including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student conduct code or the law allegedly violated;

(b) The date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and

(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included that warns the student that his or her privilege to enter into or remain on college premises has been withdrawn, that the respondent shall be considered trespassing and subject to arrest for criminal trespass if the respondent enters the college campus other than to meet with the student conduct officer or conduct review officer, or to attend a disciplinary hearing.

(5) (~~If the respondent chooses to appeal the summary suspension,~~) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.

(a) During the summary suspension hearing, the issue before the conduct review officer is whether there is probable cause to believe that the summary suspension should be continued pending the conclusion of disciplinary proceedings and/or whether the summary suspension should be less restrictive in scope;

(b) The respondent shall be afforded an opportunity to explain why summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope;

(c) If the student fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings;

(d) As soon as practicable following the hearing, the conduct review officer shall issue a written decision, which shall include a

brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal; and

(e) To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or offices, who may be bound or protected by it.

(6) In cases involving allegations of sexual misconduct, the complainant shall be notified that a summary suspension has been imposed on the same day that the summary suspension notice is served on the respondent. The college will also provide the complainant with timely notice of any subsequent changes to the summary suspension order.

((DISCIPLINE)) PROCEDURES FOR CASES INVOLVING ALLEGATIONS OF SEXUAL MISCONDUCT

AMENDATORY SECTION (Amending WSR 20-24-034, filed 11/20/20, effective 12/21/20)

WAC 132Y-125-125 ((Order of precedence.)) Procedures for cases involving allegations of sexual misconduct. ((This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with the Edmonds College's standard disciplinary procedures, WAC 132Y-125-005 through 132Y-125-060, these supplemental procedures shall take precedence.)) The college recognizes its responsibility to investigate, resolve, implement supportive and corrective measures, and monitor the educational environment and workplace to promptly and effectively stop, remediate, and prevent discrimination on the basis of sex, as required by Title IX of the Educational Amendments of 1972, Title VII of the Civil Rights Act of 1964, the Violence Against Women Reauthorization Act, and Washington state's law against discrimination, and their implementing regulations. To this end, the college has enacted and adopted the following Title IX sex discrimination investigation procedure (procedure) for purposes of receiving and investigating allegations of sex discrimination arising within the college's educational programs and activities. Any individual found responsible for engaging in sex discrimination in violation of college policy may be subject to disciplinary action up to and including dismissal from the college's educational programs and activities.

Application of this procedure is restricted to allegations of sex discrimination, which includes, but is not limited to, allegations of sex-based harassment, as those terms are defined within this code. Nothing in this procedure limits or otherwise restricts the college's ability to investigate alleged misconduct and pursue discipline based on violations of other federal, state, and local laws, their implementing regulations, and other college policies prohibiting gender discrimination through processes set forth in the college's code of student conduct.

AMENDATORY SECTION (Amending WSR 20-24-034, filed 11/20/20, effective 12/21/20)

WAC 132Y-125-130 Prohibited conduct under Title IX. Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, Edmonds College may impose disciplinary sanctions against a student or a college-sponsored student organization, athletic team, or living group, who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of ("~~sexual harassment.~~")

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

~~(1) Quid pro quo harassment. An Edmonds College student employee conditioning the provision of an aid, benefit, or service of the college on an individual's participation in unwelcome sexual conduct.~~

~~(2) Hostile environment. Unwelcome conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to Edmonds College's educational programs or activities, or employment.~~

~~(3) Sexual assault. Sexual assault includes the following conduct:~~

~~(a) Nonconsensual sexual intercourse. Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.~~

~~(b) Nonconsensual sexual contact. Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.~~

~~(c) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of eighteen.~~

~~(d) Statutory rape. Consensual sexual intercourse between someone who is eighteen years of age or older and someone who is under the age of sixteen.~~

~~(4) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.~~

~~(5) Dating violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:~~

~~(a) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and~~

~~(b) Where the existence of such a relationship shall be determined based on a consideration of the following factors:~~

~~(i) The length of the relationship;~~
~~(ii) The type of relationship; and~~
~~(iii) The frequency of interaction between the persons involved in the relationship.~~

~~(6) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress)) sex-based harassment, as defined in WAC 132Y-125-010.~~

AMENDATORY SECTION (Amending WSR 20-24-034, filed 11/20/20, effective 12/21/20)

WAC 132Y-125-135 Title IX ((jurisdiction)) investigation procedure. ~~((1) This supplemental procedure applies only if the alleged misconduct:~~

~~(a) Occurred in the United States;~~

~~(b) Occurred during a college educational program or activity;~~
and

~~(c) Meets the definition of sexual harassment as that term is defined in this supplemental procedure.~~

~~(2) For purposes of this supplemental procedure, an "educational program or activity" is defined as locations, events, or circumstances over which Edmonds College exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by the college.~~

~~(3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Dismissal under this supplemental procedure does not prohibit Edmonds College from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the Edmonds College's student conduct code, WAC 132Y-125-001.~~

~~(4) If the student conduct officer determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the student conduct officer will issue a notice of dismissal in whole or part to both parties explaining why some or all of the Title IX claims have been dismissed.))~~

~~(1) **Title IX coordinator investigation duties.** During an investigation, the Title IX coordinator or delegee is responsible for:~~

~~(a) Accepting, evaluating, and processing all sex discrimination and sex-based harassment complaints, reports, or referrals;~~

~~(b) Conducting an intake meeting with the complainant and, at that time, notifying the complainant, or the individual who reported the conduct if the complainant is unknown, of the college's Title IX investigation and disciplinary procedures, as well as the informal resolution process, if appropriate and available. After providing this information, the Title IX coordinator will ascertain whether the complainant would like the college to proceed with an investigation of the sex discrimination complaint, and, if so, will initiate a complaint subject to the procedure and factors set forth in this procedure.~~

~~(c) Addressing and resolving, if possible, questions regarding confidentiality raised by parties and witnesses;~~

(d) Determining whether a complaint should be dismissed during the investigation phase, and if so, notifying the complainant or the parties (if respondent has been notified of the complaint) of the reasons for the dismissal, and providing the complainant or parties with information about the procedure for filing an appeal of the dismissal;

(e) When a party is a student employee and the allegations involve sex-based harassment, making a fact-specific inquiry into whether the party's primary relationship with the college is to receive an education and whether alleged sex-based harassment occurred while the party was performing employment-related work and, based on this inquiry, determine whether the party should be treated as a student or an employee under this investigation procedure and related disciplinary procedures;

(f) Maintaining accurate records of all complaints, reports, and referrals;

(g) Retaining investigation files, complaints, reports, and referrals in compliance with applicable records retention periods or federal or state law, whichever is longer;

(h) Conducting an impartial investigation of a complaint or assigning the investigation to an impartial investigator and overseeing the investigation;

(i) Engaging in an interactive process with both parties to identify and provide supportive measures that ensure during the investigation and disciplinary processes, that the parties have equitable access to education programs and activities and are protected from further discrimination or retaliation, and making revisions to supportive measures as circumstances may require;

(j) Upon completion of an investigation, issuing or overseeing the issuance of a final investigation report to the parties and to the appropriate disciplinary authority in compliance with this investigation procedure; and

(k) Recommending nondisciplinary corrective measures to stop, remediate, and/or prevent recurrence of discriminatory conduct to college disciplinary authorities and administrators.

(2) **Filing a complaint.** Any employee, student, applicant, or visitor who believes that they have been the subject of sex discrimination in violation of college policies, should report the incident or incidents to the Title IX coordinator. The complaint can be in writing or oral. If the complaint is against the Title IX coordinator, the complainant should report the matter to the president's office for referral to an alternate designee.

(3) **Title IX coordinator-initiated complaint.** In the absence or withdrawal of any or all allegations in a complaint, the Title IX coordinator may file a complaint based on their evaluation of the following factors:

(a) A complainant's request not to proceed with initiation of a complaint;

(b) A complainant's reasonable safety concerns regarding initiation of a complaint;

(c) The risk additional acts of sex discrimination would occur if the complaint is not initiated;

(d) The severity of the alleged sex discrimination, including whether the discrimination if established, would require the removal of the respondent from campus or imposition of other disciplinary sanction(s) to end the discrimination and prevent its recurrence;

(e) The age and relationship of the parties;

(f) The scope of the alleged sex discrimination, including information suggesting a pattern, ongoing sex discrimination, or sex discrimination alleged to have impacted multiple individuals;

(g) The availability of evidence to assist a decision maker with determining whether sex discrimination occurred; and

(h) Whether the college could end the alleged sex discrimination and prevent its recurrence without initiating an investigation and disciplinary procedure.

If, upon evaluating these and any other relevant factors, the Title IX coordinator determines that the alleged conduct poses an imminent threat to the health or safety of the complainant, or to other members of the college community, or that the alleged conduct prevents the college from ensuring equal access on the basis of sex to its educational programs and activities, then the Title IX coordinator may initiate a complaint.

When initiating a complaint, the Title IX coordinator will provide the complainant with advance notice of this decision and an opportunity to appropriately address reasonable concerns about the complainant's safety or the safety of others, including the provision of supportive measures.

Regardless of whether a complaint is initiated under this section, the Title IX coordinator must take other prompt and effective steps, in addition to those steps necessary to implement remedies for the individual complainant, to ensure that sex discrimination does not continue or recur within the college's educational programs and activities.

The analysis set forth above need not be performed if the Title IX coordinator reasonably determines that the alleged conduct could not constitute sex discrimination.

(4) Principles of investigation applicable to sex discrimination complaints. The college shall provide an adequate, reliable, and impartial investigation of complaints of sex discrimination by:

(a) Treating complainants and respondents equitably;

(b) Presuming that the respondent is not responsible for the alleged misconduct unless or until a determination of responsibility is reached after completion of the investigation and disciplinary processes;

(c) Having the investigation conducted by a neutral and unbiased investigator without a conflict of interest or bias for or against complainants or respondents generally, or an individual complainant or respondent;

(d) Having the investigator make findings of fact based on the preponderance of the evidence standard;

(e) Placing the burden on the college, not the parties, to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred;

(f) Objectively evaluating all evidence that is relevant and not otherwise impermissible under this code, including both inculpatory and exculpatory evidence, and provide credibility determinations that are not based solely on a person's status as a complainant, respondent, or witness;

(g) Providing an equal opportunity for parties to present fact witnesses and other inculpatory or exculpatory evidence that is relevant and not otherwise impermissible;

(h) Providing 10 calendar days for each party to review and submit written comments on the draft investigation report and, upon request, to review relevant and not otherwise impermissible evidence

gathered by the investigator before finalizing the investigation report; and

(i) Taking reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through the investigation procedure. Such steps shall not prevent the parties from using the information or evidence for related disciplinary proceedings or litigation related to the complaint of sex discrimination.

(5) **Confidentiality.** The college will seek to protect the privacy of the complainant to the fullest extent possible, consistent with the legal obligation to investigate, offer appropriate supportive measures and/or take disciplinary action, and comply with the federal and state law, as well as college policies and procedures. Although the college will attempt to honor complainant requests for confidentiality, it cannot guarantee complete confidentiality. Determinations regarding how to handle requests for confidentiality will be made by the Title IX coordinator.

Confidential employees, when acting in their confidential capacity, will maintain confidentiality of information shared by a complainant and are not required to report conduct that may reasonably constitute sex discrimination to the Title IX coordinator. When a confidential employee learns of conduct that reasonably may constitute sex discrimination, the confidential employee must explain:

(a) Their status as a confidential employee, including the circumstances under which they are not required to notify the Title IX coordinator about the possible sex discrimination;

(b) How the complainant can contact the Title IX coordinator to make a complaint about the possible sex discrimination; and

(c) That the Title IX coordinator may offer and coordinate supportive measures, as well as initiate an informal resolution process or investigation pursuant to these investigation procedures.

The Title IX coordinator will inform the complainant about the college's sex discrimination investigation and disciplinary processes and attempt to obtain consent from the complainant before commencing an investigation of alleged sex-based harassment. If a complainant asks that their name not be revealed to the respondent, or that the college not investigate the allegation, the Title IX coordinator will inform the complainant that maintaining confidentiality may limit the college's ability to fully respond to the allegations and that retaliation by the respondent and/or others is prohibited. If the complainant still insists that their name not be disclosed, or that the college not investigate, the Title IX coordinator will determine whether the college can honor the request and, at the same time, maintain a safe and nondiscriminatory environment for all members of the college community, including the complainant.

If the college is unable to honor a complainant's request for confidentiality, the Title IX coordinator will notify the complainant of the decision and disclose the complainant's identity only to the extent reasonably necessary to effectively conduct and complete the investigation in compliance with this investigation procedure.

If the college decides not to conduct an investigation or take disciplinary action because of a request for confidentiality, the Title IX coordinator will evaluate whether other measures are available to address the circumstances giving rise to the complaint and prevent their recurrence, and implement such measures if reasonably feasible.

(6) **Notice of investigation and other notice requirements.** Upon receiving a complaint of sex discrimination, the Title IX coordinator

will initiate the investigation by serving the respondent and the complainant with a notice of investigation in advance of their initial interviews. This notice will be served sufficiently in advance to allow the parties adequate time to prepare for their initial interviews.

If a complaint includes allegations of sex-based harassment, and the college has reasonable concerns for the safety of any person as a result of providing a notice of investigation, service of the notice may be reasonably delayed in order to address the safety concern appropriately. Reasonable concerns must be based on individualized safety and risk analysis and not on mere speculation or stereotypes.

The notice of investigation must include:

(a) A description of the college's sex discrimination investigation and disciplinary procedures, including descriptions of procedures applicable to sex-based harassment and informal resolution processes, if applicable;

(b) Sufficient information for the parties to respond to the allegations, including the identities of the parties, a description of the alleged discriminatory conduct, and the time and location of the alleged incident, to the extent this information is available to the college;

(c) A statement that retaliation is prohibited;

(d) Information that the parties are entitled to have an advisor of their choice, and at their own expense, available during the investigation and any disciplinary proceedings and that the advisor may be, but is not required to be, an attorney, and that during the investigation, the advisor's role will be limited to attending meetings or interviews with the party and providing advice to the party; and

(e) A statement that the parties are entitled to an equal opportunity to access a description of the relevant, not otherwise impermissible evidence and that both parties shall have an equal opportunity to review such evidence upon request.

In cases involving allegations of sex-based harassment, the notice of investigation shall also inform the parties that:

(i) The respondent is presumed not responsible for the alleged sex-based harassment until a determination is made at the conclusion of the applicable disciplinary procedure and prior to such a determination, the parties will have the opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial decision maker;

(ii) A statement that the parties are entitled to an equal opportunity to access the investigative report describing the relevant, not otherwise impermissible evidence, and that both parties shall have an equal opportunity to review this evidence upon request; and

(iii) A notice that the college's student code of conduct prohibits its students from knowingly making false statements or knowingly submitting false information during an investigation or disciplinary proceeding.

Amended notice of investigation. If, during the course of the investigation, the college decides to investigate sex discrimination allegations against a party that are not included in the original notice of investigation, the college will issue an amended notice of investigation to both parties that includes this additional information and complies with the applicable notice requirements set forth above.

Notice of meetings and interviews. In cases involving allegations of sex-based harassment, the college shall provide written notice to parties whose participation is invited or expected of the date, time,

location, participants, and purposes of all meetings or proceedings with sufficient time for the party to prepare to participate.

(7) Investigative process. During the investigation, the investigator:

(a) Will provide the parties with equal opportunity to present relevant statements, and other evidence in the form of fact or expert witnesses and inculpatory or exculpatory evidence;

(b) Will not restrict the ability of either party to discuss the allegations under investigation or gather and present relevant evidence, except when a no contact order has been imposed based on an individualized and fact-specific determination that a party poses a threat to the health, safety, or welfare of another party and/or witnesses or when contact with a party and/or witness is prohibited by court order. A college-imposed no contact order shall be no broader than is necessary to protect the threatened party or witness, and must provide the party or their advisor with alternative means of gathering and presenting relevant evidence from the protected witness or party; and

(c) Will allow each party to be accompanied by an advisor of their choosing, who may be an attorney, to any investigation related meeting or interview. Advisors' roles during the investigation meetings or interviews will be limited to providing support and advice to the party. Advisors will not represent or otherwise advocate on behalf of the parties during the investigation process. An attorney advising a party must enter a notice of appearance with the Title IX coordinator and the investigator at least five business days before the initial interview or meeting they plan to attend, so the college can secure its own legal representation, if necessary.

(d) In cases involving allegations of sex-based harassment, the investigator will provide both parties and their respective advisors with an equal opportunity to review the draft investigation report and to inspect and review relevant and not otherwise impermissible evidence upon request. After disclosure of the report, each party will receive 10 calendar days in which to submit a written response, which the investigator will consider prior to completion of the investigation report. If a party fails to submit a written response within 10 calendar days, the party will be deemed to have waived their right to respond and the investigator will finalize the report without this information.

(e) During sex discrimination and sex-based harassment investigations under this procedure, the investigator may not require, allow, rely upon, or otherwise use questions or evidence that seeks disclosure of privileged communications, unless the privilege has been effectively waived by the holder. This provision applies, but is not limited to, information subject to:

(i) Spousal/domestic partner privilege;

(ii) Attorney-client and attorney work product privileges;

(iii) Privileges applicable to members of the clergy and priests;

(iv) Privileges applicable to medical providers, mental health therapists, and counselors;

(v) Privileges applicable to sexual assault and domestic violence advocates; or

(vi) Other legal privileges identified in RCW 5.60.060.

(f) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:

(i) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or

(ii) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.

(g) Upon completion of the investigation, the Title IX coordinator will distribute the final investigation report to the parties. The Title IX coordinator will also provide the investigation report and the evidence gathered during the investigation to the student conduct officer, who is responsible for determining whether pursuing disciplinary action is warranted.

(8) Dismissal of complaint during investigation - Right to appeal. During an investigation, a sex discrimination complaint may be dismissed, in whole or in part, for the following reasons:

(a) The respondent cannot be identified, after the college has taken reasonable steps to do so;

(b) The respondent is not participating in the college's educational programs or activities;

(c) The complainant has voluntarily withdrawn any or all of the allegations in the complaint, and the Title IX coordinator has declined to initiate their own complaint, and any remaining allegations would not constitute sex discrimination, even if proven. In cases involving allegations of sex-based harassment, the college must obtain the complainant's withdrawal in writing before dismissal.

(d) The conduct alleged by the complainant, even if proven, would not constitute sex discrimination; or

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

The complainant and the respondent (if the respondent has been notified of the complaint) may appeal the dismissal of a complaint pursuant to the appeal process outlined in this code.

If the dismissal occurs during the investigation, the Title IX coordinator will provide the complainant or the complainant and the respondent (if the respondent has been notified of the complaint) written notice explaining:

(i) Why dismissal was necessary or desirable;

(ii) The right to appeal the dismissal and a description of the procedure for appealing the dismissal; and

(iii) If applicable, notice that the complaint is being referred to an appropriate disciplinary authority for proceedings outside the jurisdiction of Title IX.

If the dismissal involves an allegation of sex-based harassment and the parties have both been notified of the investigation, the notice of dismissal will be served on the parties simultaneously.

When a complaint is dismissed, the Title IX coordinator will, at a minimum:

(A) Offer supportive measures to the complainant as appropriate;

(B) If the respondent has been notified of the allegations, offer supportive measures to the respondent as appropriate; and

(C) Take other prompt and effective steps, as appropriate, to ensure that sex discrimination does not continue or recur within the college's education program or activity.

Dismissal of a sex discrimination complaint does not preclude the college from investigating and pursuing discipline based on allegations that a respondent violated other federal or state laws and regulations, college conduct policies, and/or other codes and contractual provisions governing student and employee conduct.

(9) **Supportive measures.** The Title IX coordinator must offer and coordinate supportive measures to both the complainant and the respondent. Supportive measures may vary depending on the circumstances and what the college may determine to be reasonably available. Supportive measures may include, but are not limited to:

- (a) Counseling;
- (b) Extensions of deadlines and other course-related adjustments;
- (c) Campus security escort services;
- (d) Increased security and monitoring of certain areas of the campus;
- (e) Restrictions on contact applied to one or more parties;
- (f) Leaves of absence;
- (g) Changes in class, college work, college housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative; and
- (h) Training and education programs related to sex-based harassment.

Supportive measures may not be imposed for punitive or disciplinary purposes and must not unreasonably burden either party. Supportive measures must be designed to protect the safety of the parties and/or the college's educational environment, or to provide support to the parties during the formal or informal resolution processes.

The Title IX coordinator may modify or terminate supportive measures during or after formal or informal resolution procedures are completed, as the parties' and/or the college's circumstances change.

If, at any point during the sex discrimination investigation or disciplinary proceeding, a party becomes dissatisfied with their supportive measures, or undergoes a change of circumstances that warrants revisions to their supportive measures, the party may submit a request to revise their supportive measures to the Title IX coordinator. The Title IX coordinator will respond to such a request within 10 calendar days. If the party disagrees with the Title IX coordinator's decision, they may submit a written appeal to the vice president for human resources, or their designee, within five calendar days of receiving the Title IX coordinator's decision. Review of the appeal shall be performed by an impartial employee with authority to modify or reverse the Title IX coordinator's decision to provide, deny, modify or terminate supportive measures applicable to the party seeking review. Challenged supportive measures will be reviewed to determine whether they are meeting the purposes set forth above.

In cases involving allegations of sex discrimination other than sex-based harassment and retaliation, the college is not required to alter the alleged discriminatory practice(s) for the purpose of providing a supportive measure.

(10) **Emergency removal.** If a respondent poses an immediate threat to the health and safety of the college community, or an immediate threat of significant disruption to college operations, the college's student conduct officer, after consulting with the Title IX coordinator, may summarily suspend the student respondent pursuant to WAC 132Y-125-060. The summary suspension shall remain in place pending completion of the investigation and final resolution of any resulting disciplinary proceedings.

(11) **Complaint resolution and consolidation.** Complaints submitted to the Title IX coordinator may be resolved through either informal or formal resolution processes.

(a) Informal resolution. Under appropriate circumstances and only if the complainant and the respondent voluntarily agree, the parties

may pursue informal resolution during the investigation of a concern. Informal resolution is not appropriate when the allegation involves:

- (i) A complainant who is a minor or a vulnerable adult; or
- (ii) A respondent poses an immediate threat to the health, safety, or welfare of a member of the college community;

If informal resolution is appropriate, the parties may explore resolution through:

- (A) Guided conversations or communications conducted by the Title IX coordinator, the vice president for enrollment and student services, or some other mutually agreed upon third party;
- (B) A structured resolution process conducted by a trained mediator; or
- (C) Voluntary agreement between the parties to alter either or both parties' college work or class schedules and/or college student housing arrangements.

A proposal to engage in informal resolution should be provided to the parties in the notice of investigation or after the notice of investigation has been served on both parties.

Before engaging in informal resolution, the college must provide written notification to the parties of their rights and responsibilities. This notice shall explain:

- (I) The allegations;
- (II) The requirements of the informal resolution process;
- (III) That, prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and initiate or resume the formal resolution process;
- (IV) That the parties' agreement to a resolution at the conclusion of the informal resolution process will prevent the parties from initiating or resuming the formal resolution process;
- (V) That the potential terms of any informal resolution agreement will only be binding on the parties to the agreement; and
- (VI) What information the college will retain from the informal resolution process, and how that information will be used if the process is not successful and the formal resolution process is initiated or resumed.

Because the informal resolution process is voluntary, either party may withdraw from the process at any time, at which point the formal resolution process will resume.

If the parties voluntarily resolve a complaint, the college will record the terms of the resolution in a written agreement signed by both parties and provide written notice to both parties that the complaint has been closed.

If the parties agree to an informal resolution process, the college will commence informal resolution within 10 calendar days after the parties agree to this option and conclude within 21 calendar days of beginning that process; subject to reasonable delays and extensions for good cause shown.

(b) Formal resolution. Formal resolution means that the complainant's allegations of sex discrimination will be subjected to a formal investigation by an impartial and unbiased investigator. The investigation may be conducted by the Title IX coordinator. The results of the investigator's report will be shared with the parties, the Title IX coordinator, as well as the appropriate disciplinary authority who is responsible for determining whether disciplinary proceedings are warranted.

(12) **Consolidation of complaints.** Complaints of sex discrimination may be consolidated when the complaints are against more than one

respondent, or by more than one complainant against one or more respondents, or by one party against another party, when the allegations of sex discrimination arise out of the same facts or circumstances.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132Y-125-140	Initiation of discipline.
WAC 132Y-125-145	Prehearing procedure.
WAC 132Y-125-150	Rights of parties.
WAC 132Y-125-155	Evidence.
WAC 132Y-125-160	Initial order.
WAC 132Y-125-165	Appeals.

OTS-5696.3

AMENDATORY SECTION (Amending WSR 20-24-034, filed 11/20/20, effective 12/21/20)

WAC 132Y-300-005 Statement of policy. Edmonds ((Community)) College provides equal opportunity in education and employment and does not discriminate on the basis of protected classes as required by state and federal law. Prohibited discrimination and/or harassment of protected classes includes ((sexual)), but is not limited to, sex discrimination and sex-based harassment.

AMENDATORY SECTION (Amending WSR 20-24-034, filed 11/20/20, effective 12/21/20)

WAC 132Y-300-010 Procedures. (1) **Introduction.** Edmonds College, hereinafter referred to as "the college," recognizes its responsibility for investigating and resolving incidents; implementing corrective measures; monitoring the educational environment and workplace; and implementing regulations to stop, remediate, and prevent discrimination and harassment based on an individual's association with protected classes as required by law. To this end, the college has enacted a policy prohibiting discrimination against and harassment of members of these protected classes and procedures that deal with complaints and violations of the policy. Any individual found to be in violation of the policy will be subject to disciplinary action up to, and including ((expulsion from the college or dismissal from)), termination of employment.

Any employee, student, or visitor who is the alleged subject of discrimination or harassment should report the incident or incidents to the ((EO/AA office,)) Title IX coordinator ((identified below)). If

the complaint is against (~~that officer~~) the Title IX coordinator, the complainant should report the matter to the president's office for referral to an alternate designee.

Civil Rights: Equal Opportunity/Affirmative Action (EO/AA).

Title IX: (~~Gender Discrimination, Sexual Harassment, and Sexual Violence~~) Sex discrimination, Sex-based harassment.

Title: (~~EO/AA Office~~) Human Resources, Title IX Coordinator

Office: Edmonds (~~Community~~) College

20000 - 68th Ave. W.

Clearview Building, Room 122

Lynnwood, WA 98036

(2) (~~Filing a complaint. The college encourages the timely reporting of any incidents of alleged discrimination or harassment. Any employee of, student of, or visitor to the college may file a complaint. Complaints must be submitted in writing.~~) **Definitions.** For purposes of this procedure, the following definitions apply:

(a) "Business day" means a weekday, excluding weekends and college holidays and/or college closures.

(b) "Complainant" means individuals who are alleged to have been subjected to prohibited conduct, including a student or employee, or a person other than a student or employee who was participating or attempting to participate in a college education program or activity at the time of the alleged discrimination.

(c) "Complaint" means a written or oral request that can be objectively understood as a request for the college to investigate and make a determination about prohibited conduct.

(d) "Confidential employee" means a college employee whose communications are privileged and confidential under federal or state law. An employee's status as a confidential employee only applies when they are functioning within the scope of duties to which the privilege or confidentiality applies.

(e) "Consent" means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

(i) A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs.

(ii) An individual who engages in sexual activity when they know, or reasonably should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual sexual conduct.

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

(f) "Disciplinary action" is the process by which discipline is imposed for a violation of college policy or procedure.

(g) "Disciplinary appeal" is the process by which an aggrieved party can appeal discipline imposed.

(h) "Disciplinary sanction" means consequences imposed on a respondent following a determination that the respondent violated the college's policies prohibiting discrimination and harassment.

(i) "Discriminatory harassment" means unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, not otherwise protected by law, that is directed at a person because of such person's protected status and that is sufficiently severe, persistent,

or pervasive so as to create an intimidating, hostile, or offensive environment for other campus community members. Discriminatory harassment may include written, social media, and electronic communications not otherwise protected by law.

(j) "Employee" includes any individual employed by Edmonds College.

(k) "Harassment, bullying, or intimidation" means the conduct unrelated to a protected class that is unwelcome and sufficiently severe, persistent, or pervasive such that it could reasonably be expected to create an intimidating, hostile, or offensive environment, or has the purpose or effect of unreasonably interfering with a person's academic or work performance, or a person's ability to participate in or benefit from the college's programs, services, opportunities, or activities.

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

(ii) For purposes of this procedure, "bullying" is defined as repeated or aggressive unwanted behavior not otherwise protected by law when a reasonable person would feel humiliated, harmed, or intimidated.

(iii) For purposes of this procedure, "intimidation" is an implied threat. Intimidation exists when a reasonable person would feel threatened or coerced even though an explicit threat or display of physical force has not been made. Intimidation is evaluated based on the intensity, frequency, context, and/or duration of the comments or actions.

(l) "Investigation procedure" is the process the college uses to initiate, informally resolve, and/or investigate allegations that an individual has violated college policies prohibiting discrimination or harassment.

(m) "Mandatory reporters" are all college employees, excluding confidential employees. Mandatory reporters are required to report conduct that could reasonably constitute discrimination or harassment.

(n) "Pregnancy or related conditions" means:

(i) Pregnancy, childbirth, termination of pregnancy, or lactation;

(ii) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or

(iii) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

(o) "President" is the president of Edmonds College. The president is authorized to delegate any of their responsibilities as set forth in this procedure, and as may be reasonably necessary; and reassign any and all duties and responsibilities as set forth in this procedure as may be reasonably necessary.

(p) "Program" or "programs and activities" means all operations of the college.

(q) "Protected status" includes a person's race; color; creed/religion; national origin; presence of any sensory, mental, or physical disability; use of a trained service animal; sex, including pregnancy; marital status; age; genetic information; sexual orientation; gender identity or expression; honorably discharged veteran or military status; HIV/AIDS and hepatitis C status; or membership in any other group protected by federal, state, or local law.

(r) "Relevant" means related to the allegations of discrimination and harassment under investigation. Questions are relevant when they

seek evidence that may aid in showing whether the alleged discrimination or harassment occurred, and evidence is relevant when it may aid a decision maker in determining whether the alleged sex discrimination or harassment occurred.

(s) "Remedies" means measures provided to a complainant or other person whose equal access to the college's programs and activities has been limited or denied by sex discrimination. These measures are intended to restore or preserve that person's access to programs and activities after a determination that discrimination or harassment has occurred.

(t) "Respondent" is an individual who has been alleged to have violated college policies or procedures prohibiting discrimination and harassment.

(u) "Retaliation" means intimidation, threats, coercion, or discrimination against any person by the college, a student, or an employee or other person authorized by the college to provide aid, benefit, or service under the college's education program or activity, for the purpose of interfering with any right or privilege secured by college policies and procedures prohibiting discrimination or harassment, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part, including in an informal resolution process, in these investigation procedures, and any disciplinary proceeding for discrimination or harassment. Nothing in this definition precludes the college from requiring an employee to provide aid, benefit, or service under the college's education program or activity to participate as a witness in, or otherwise assist with, an investigation, proceeding, or hearing.

(v) "Sex discrimination" which includes sex-based harassment, occurs when a respondent causes more than de minimis (insignificant) harm to an individual by treating them differently from an otherwise similarly situated individual based on:

- (i) Sex stereotypes;
- (ii) Pregnancy or related conditions;
- (iii) Sexual orientation; and
- (iv) Gender identity.

Preventing a person from participating in a program or activity consistent with their gender identity constitutes more than de minimis harm and is prohibited.

(w) "Sex-based harassment." For purposes of this procedure, sex-based harassment is a type of discrimination that occurs when a respondent engages in the following discriminatory conduct on the basis of sex:

(i) Quid pro quo harassment. An employee, agent, or other person authorized by the college to provide an aid, benefit, or service under the college's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.

(ii) Hostile environment. Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

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

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

(C) The parties' ages, roles within the recipient's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;

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

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

(iii) Sexual violence. Sexual violence includes the following conduct:

(A) Nonconsensual sexual intercourse. Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(B) Nonconsensual sexual contact (fondling). Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(C) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister either wholly or half related. Descendant includes stepchildren and adopted children under the age of 18.

(D) Statutory rape (rape of a child). Nonforcible sexual intercourse with a person who is under the statutory age of consent.

(E) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, coercive control, damage or destruction of personal property, or stalking, or any other conduct prohibited under RCW 10.99.020, committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(F) Dating violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(I) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(II) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

• The length of the relationship;

• The type of relationship; and

• The frequency of interaction between the persons involved in the relationship.

(x) "Stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or to suffer substantial emotional distress.

(y) "Student employee" means an individual who is both a student and an employee of the college. When a complainant or respondent is a student employee, the college must make a fact-specific inquiry to determine whether the individual's primary relationship with the college is to receive an education; and whether any alleged sex discrimination or sex-based harassment occurred while the individual was performing employment-related work.

(z) "Supportive measures" means the reasonably available, individualized and appropriate, nonpunitive and nondisciplinary measures offered by the college to the complainant or respondent without unreasonably burdening either party, and without fee or charge for purposes of:

(i) Restoring or preserving a party's access to college programs or activities, including measures that are designed to protect the safety of the parties or the college's educational environment; or

(ii) Providing support during the college's investigation and disciplinary procedures, or during any informal resolution process.

(iii) Supportive measures may include, but are not limited to: Counseling; extensions of deadlines and other course-related adjustments; campus security escort services; increased security and monitoring of certain areas of campus; restriction on contact applied to one or more parties; a leave of absence; changes in class, college work, college housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative; and training and education programs related to sex-based harassment.

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

(bb) "Title IX personnel" includes the Title IX coordinator and designees, investigators, and decision makers responsible for administering the college's sex discrimination investigation and disciplinary procedures; facilitators of the informal sex discrimination resolution process; and any other employees who are responsible for implementing the college's sex discrimination investigation or sex discrimination disciplinary procedures for employees or have the authority to modify or terminate supportive measures.

(cc) "Title IX retaliation" means intimidation, threats, coercion, or discrimination against any person by the college, a student, or an employee or other person authorized by the college to provide aid, benefit, or service under the college's education program or activity, for the purpose of interfering with any right or privilege secured by college policies and procedures prohibiting sex discrimination, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part, including in an informal resolution process, in these investigation procedures, and any disciplinary proceeding for sex discrimination. Nothing in this definition precludes the college from requiring an employee to provide aid, benefit, or service under the college's education program or activity to participate as a witness in, or otherwise assist with, an investigation, proceeding, or hearing.

(3) Training requirements.

(a) All employees shall undergo training on the following topics:

(i) The definition and scope of sex discrimination and sex-based harassment under this procedure;

(ii) The college's obligation to address sex discrimination in its education programs and activities;

(iii) Employee responsibility, upon learning of a student's pregnancy or related condition, to provide the student with the Title IX coordinator's contact information and information about available assistance; and

(iv) Employee obligations to notify the Title IX coordinator about conduct that may reasonably be sex discrimination.

(b) Title IX personnel - In addition to the required training for all employees, Title IX personnel shall undergo training on the following topics:

(i) The college's procedures for sex discrimination and sex-based harassment involving a student;

(ii) How to conduct an investigation;

(iii) How to serve impartially without prejudgment of facts, conflicts of interest, or bias;

(iv) Use of technology during an investigation or hearing;

(v) The definition of relevance as used for purposes of evaluating evidence and questions for purposes of this investigation procedure;

(vi) Effective report writing; and

(vii) For informal resolution facilitators: Procedures for the college's informal resolution process.

(c) Title IX coordinator and designees.

In addition to the required training for all employees and for Title IX personnel, the Title IX coordinator and any designees shall undergo training on the following topics:

(i) How to ensure the college's compliance with its Title IX obligations;

(ii) How to offer and coordinate supportive measures;

(iii) Specific actions to prevent discrimination and ensure equal access upon learning of a student's pregnancy or related conditions; and

(iv) The college's recordkeeping system and requirements.

All sex discrimination training materials will be made available for review upon request.

(4) **Title IX coordinator investigation duties.** During an investigation, the Title IX coordinator, or a delegee, is responsible for the following:

(a) Accepting, evaluating, and processing all discrimination and harassment complaints, reports, or referrals;

(b) Conducting an intake meeting with the complainant and, at that time, notifying the complainant, or the individual who reported the conduct if the complainant is unknown, of the college's sex discrimination investigation and disciplinary procedures, as well as the informal resolution process, if appropriate and available. After providing this information, the Title IX coordinator will ascertain whether the complainant would like the college to proceed with an investigation of the discrimination or harassment complaint;

(c) Initiating a complaint subject to factors set forth in this procedure;

(d) When a party is a student employee and the allegations involve sex-based harassment, making a fact-specific inquiry into whether the party's primary relationship with the college is to receive an education and whether alleged sex-based harassment occurred while the party was performing employment-related work and, based on this inquiry, determine whether the party should be treated as a student or an

employee under this investigation procedure and related disciplinary procedures;

(e) Addressing and resolving, if possible, questions regarding confidentiality raised by parties and witnesses;

(f) Determining whether a complaint should be dismissed during the investigation phase, and if so, notifying the complainant or the parties (if respondent has been notified of the complaint) of the reasons for the dismissal, and providing the complainant or parties with information about the procedure for filing an appeal of the dismissal;

(g) Maintaining accurate records of all complaints, reports, and referrals;

(h) Retaining investigation files, complaints, reports, and referrals in compliance with applicable records retention periods or federal or state law, whichever is longer;

(i) Either conducting an impartial investigation of a complaint or assigning the investigation to an impartial investigator and overseeing the investigation;

(j) Engaging in an interactive process with both parties to identify and provide supportive measures that ensure during the investigation and disciplinary processes that the parties have equitable access to education programs and activities and are protected from further discrimination or retaliation and making revisions to supportive measures as circumstances may require;

(k) Upon completion of an investigation, issuing or overseeing the issuance of a final investigation report to the parties and to the appropriate disciplinary authority in compliance with this procedure; and

(l) Recommending nondisciplinary corrective measures to stop, remediate, and/or prevent recurrence of discriminatory conduct to college disciplinary authorities and administrators.

(5) **Filing a complaint.** Any employee, student, applicant, or visitor who believes that they have been the subject of discrimination or harassment in violation of college policies, should report the incident or incidents to the college's Title IX coordinator.

(a) The complaint can be in writing or oral.

(b) If the complaint is against the Title IX coordinator, the complainant should report the matter to the vice president for human resources for referral to an alternate designee.

(c) For complainants who wish to submit a written complaint, a formal complaint form is available online at ((www.edcc.edu/titleix/)) https://cm.maxient.com/reportingform.php?EdmondsCC&layout_id=6.

(d) ~~Hardcopies of the complaint form are available at the ((following locations on campus:))~~ human resources office ((and vice president for student services office. Any person submitting a discrimination or harassment complaint shall be provided with a written copy of the college's nondiscrimination and harassment policy and procedures.

~~The proposed content is designed to assist you with filing a discrimination and/or harassment complaint. Please write clearly and focus on the alleged discriminatory and/or harassing conduct. The complaint should include as much information regarding the incident(s) giving rise to the complaint as possible, including the location, date, and time of the alleged incident(s); the name of the individual or group whom the complaint is against, if known; a description of the incident(s); and the remedy sought.~~

~~You may attach additional documents if needed. Please include your contact information (phone, email, mailing address), sign, and return your complaint to the EO/AA office, Title IX coordinator or~~

designee. A link to an online reporting form is located at <http://www.edcc.edu/titleix/>.

~~(3) **Confidentiality and right to privacy.** The college will seek to protect the privacy of the complainant to the fullest extent possible, consistent with the legal obligation to investigate, take appropriate remedial and/or disciplinary action, comply with the state and federal laws, as well as the college's policy and procedures.~~

~~Although the college will attempt to honor complainants' requests for confidentiality, it cannot guarantee complete confidentiality. Determinations regarding how to handle requests for confidentiality will be made by the Title IX coordinator.~~

~~(a) The Title IX coordinator will inform and attempt to obtain consent from the complainant before commencing an investigation of alleged discrimination or sexual harassment. If a complainant asks that their name not be revealed to the respondent or that the college not investigate the allegation, the Title IX coordinator will inform the complainant that maintaining confidentiality may limit the college's ability to fully respond to the allegations and that retaliation by the respondent and/or others is prohibited. If the complainant still insists that their name not be disclosed or that the college not investigate, the Title IX coordinator will determine whether the college can honor the request and at the same time maintain a safe and nondiscriminatory environment for all members of the college community, including the complainant. Factors to be weighed during this determination may include, but are not limited to:~~

~~(i) The seriousness of the alleged sexual harassment;~~

~~(ii) The age of the complainant;~~

~~(iii) Whether the sexual harassment was perpetrated with a weapon;~~

~~(iv) Whether the respondent has a history of committing acts of sexual harassment or violence or has been the subject of other sexual harassment or violence complaints or findings;~~

~~(v) Whether the respondent threatened to commit additional acts of sexual harassment or violence against the complainant or others; and~~

~~(vi) Whether relevant evidence about the alleged incident can be obtained through other means (e.g., security cameras, other witnesses, physical evidence).~~

~~(b) If the college is unable to honor a complainant's request for confidentiality, the Title IX coordinator will notify the complainant of the decision and ensure that complainant's identity is disclosed only to the extent reasonably necessary to effectively conduct and complete the investigation in compliance with this grievance procedure.~~

~~(c) If the college decides not to conduct an investigation or take disciplinary action because of a request for confidentiality, the Title IX coordinator will evaluate whether other measures are available to address the circumstances giving rise to the complaint and prevent their recurrence, and implement such measures if reasonably feasible).~~

~~((4)) (6) **Title IX coordinator-initiated complaint.** In the absence or withdrawal of any or all allegations in a complaint, the Title IX coordinator may file a complaint based on their evaluation of the following factors:~~

~~(a) A complainant's request not to proceed with initiation of a complaint;~~

(b) A complainant's reasonable safety concerns regarding initiation of a complaint;

(c) The risk additional acts of discrimination or harassment would occur if the complaint is not initiated;

(d) The severity of the alleged sex discrimination or harassment, including whether the discrimination if established, would require the removal of the respondent from campus or imposition of other disciplinary sanction(s) to end the discrimination or harassment and prevent its recurrence;

(e) The age and relationship of the parties, including whether the respondent is a college employee;

(f) The scope of the alleged discrimination or harassment, including information suggesting a pattern, ongoing discrimination or harassment, or discrimination or harassment alleged to have impacted multiple individuals;

(g) The availability of evidence to assist a decision maker with determining whether discrimination occurred; and

(h) Whether the college could end the alleged discrimination or harassment and prevent its recurrence without initiating an investigation and disciplinary procedure.

If, upon evaluating these and any other relevant factors, the Title IX coordinator determines that the alleged conduct poses an imminent threat to the health or safety of the complainant or to other members of the college community, or that the alleged conduct prevents the college from ensuring equal access on the basis of sex to its programs and activities, then the Title IX coordinator may initiate a complaint.

When initiating a complaint, the Title IX coordinator will provide the complainant with advance notice of this decision and an opportunity to appropriately address reasonable concerns about the complainant's safety or the safety of others, including the provision of supportive measures.

Regardless of whether a complaint is initiated under this section, the Title IX coordinator must take other prompt and effective steps, in addition to those steps necessary to implement remedies for the individual complainant, to ensure that discrimination or harassment does not continue or recur within the college's programs and activities.

The analysis set forth above need not be performed if the Title IX coordinator reasonably determines that the alleged conduct could not constitute discrimination or harassment.

(7) Principles of investigation applicable to sex discrimination complaints. The college shall provide an adequate, reliable, and impartial investigation of complaints of sex discrimination by:

(a) Treating complainants and respondents equitably;

(b) Presuming that the respondent is not responsible for the alleged misconduct unless or until a determination of responsibility is reached after completion of the investigation and disciplinary processes;

(c) Having the investigation conducted by a neutral and unbiased investigator without a conflict of interest or bias for or against complainants or respondents generally, or an individual complainant or respondent;

(d) Having the investigator make findings of fact based on the preponderance of the evidence standard;

(e) Placing the burden on the college, not the parties, to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred;

(f) Objectively evaluating all evidence that is relevant and not otherwise impermissible under this code, including both inculpatory and exculpatory evidence, and provide credibility determinations that are not based solely on a person's status as a complainant, respondent, or witness;

(g) Providing an equal opportunity for parties to present fact witnesses and other inculpatory or exculpatory evidence that is relevant and not otherwise impermissible;

(h) Providing 10 calendar days for each party to review and submit written comments on the draft investigation report and, upon request, to review relevant and not otherwise impermissible evidence gathered by the investigator before finalizing the investigation report; and

(i) Taking reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through the investigation procedure. Such steps shall not prevent the parties from using the information or evidence for related disciplinary proceedings or litigation related to the complaint of sex discrimination.

(8) **Confidentiality.** The college will seek to protect the privacy of the complainant to the fullest extent possible, consistent with the legal obligation to investigate, offer appropriate supportive measures and/or take disciplinary action, and comply with the federal and state law, as well as college policies and procedures.

(a) Although the college will attempt to honor complainant requests for confidentiality, it cannot guarantee complete confidentiality.

(b) Determinations regarding how to handle requests for confidentiality will be made by the Title IX coordinator.

(c) Confidential employees, when acting in their confidential capacity, will maintain confidentiality of information shared by a complainant and are not required to report conduct that may reasonably constitute discrimination or harassment. When a confidential employee learns of conduct that reasonably may constitute discrimination or harassment, the confidential employee must explain:

(i) Their status as a confidential employee, including the circumstances under which they are not required to notify the Title IX coordinator about the possible sex discrimination;

(ii) How the complainant can contact the Title IX coordinator to make a complaint about the possible discrimination; and

(iii) That the Title IX coordinator may offer and coordinate supportive measures, as well as initiate an informal resolution process or investigation pursuant to this procedure.

(d) The Title IX coordinator will inform the complainant about the college's discrimination and harassment investigation and disciplinary processes and attempt to obtain consent from the complainant before commencing an investigation.

(i) If a complainant asks that their name not be revealed to the respondent or that the college not investigate the allegation, the Title IX coordinator will inform the complainant that maintaining confidentiality may limit the college's ability to fully respond to the allegations and that retaliation by the respondent and/or others is prohibited.

(ii) If the complainant still insists that their name not be disclosed or that the college not investigate, the Title IX coordinator will determine whether the college can honor the request and at the same time maintain a safe and nondiscriminatory environment for all members of the college community, including the complainant.

(e) If the college is unable to honor a complainant's request for confidentiality, the Title IX coordinator will notify the complainant of the decision and disclose the complainant's identity only to the extent reasonably necessary to effectively conduct and complete the investigation in compliance with this procedure.

(f) If the college decides not to conduct an investigation or take disciplinary action because of a request for confidentiality, the Title IX coordinator will evaluate whether other measures are available to address the circumstances giving rise to the complaint and prevent their recurrence, and implement such measures if reasonably feasible.

(9) Notice of investigation and other notice requirements.

Notice of investigation. Upon receiving a complaint of discrimination or harassment, the Title IX coordinator will initiate the investigation by serving the respondent and the complainant with a "Notice of Investigation" in advance of their initial interviews. This notice will be served sufficiently in advance to allow the parties adequate time to prepare for their initial interviews.

If a complaint includes allegations of sex-based harassment and the college has reasonable concerns for the safety of any person as a result of providing a notice of investigation, service of the notice may be reasonably delayed in order to address the safety concern appropriately. Reasonable concerns must be based on individualized safety and risk analysis and not on mere speculation or stereotypes.

The notice of investigation must include:

(a) A description of the college's discrimination and harassment investigation and disciplinary procedures, including descriptions of procedures applicable to sex-based harassment and informal resolution processes, if applicable;

(b) Sufficient information for the parties to respond to the allegations, including the identities of the parties, a description of the alleged discriminatory conduct, and the time and location of the alleged incident, to the extent this information is available to the college;

(c) A statement that retaliation is prohibited;

(d) Information that the parties are entitled to have a representative of their choice and at their own expense, available during the investigation and any disciplinary proceedings and that the representative may be, but is not required to be an attorney, and that during the investigation, the representative's role will be limited to attending meetings or interviews with the party and providing advice to the party; and

(e) A statement that the parties are entitled to an equal opportunity to access a description of the relevant, not otherwise impermissible evidence and that both parties shall have an equal opportunity to review such evidence upon request.

In cases involving allegations of sex-based harassment, the notice of investigation shall also inform the parties that:

(i) The respondent is presumed not responsible for the alleged sex-based harassment until a determination is made at the conclusion of the applicable disciplinary procedure, and prior to such a determination, the parties will have the opportunity to present relevant and

not otherwise impermissible evidence to a trained, impartial decision maker;

(ii) A statement that the parties are entitled to an equal opportunity to access the investigative report describing the relevant, not otherwise impermissible evidence, and that both parties shall have an equal opportunity to review this evidence upon request; and

(iii) Notice that the college's employment policies prohibit employees from knowingly making false statements or knowingly submitting false information during an investigation or disciplinary proceeding.

Amended notice of investigation. If during the course of the investigation, the college decides to investigate discrimination or harassment allegations against a party that are not included in the original investigation notice, the college will issue an amended notice of investigation to both parties that includes this additional information and complies with the applicable notice requirements set forth above.

Notice of meetings and interview. In cases involving allegations of sex-based harassment, the college shall provide written notice to parties whose participation is invited or expected of the date, time, location, participants, and purposes of all meetings or proceedings with sufficient time for the parties to prepare to participate.

(10) **Investigative process.** During the investigation, the investigator:

(a) Will provide the parties with equal opportunity to present relevant statements, and other evidence in the form of fact or expert witnesses and inculpatory or exculpatory evidence.

(b) Will not restrict the ability of either party to discuss the allegations under investigation or gather and present relevant evidence, except when a no contact order has been imposed based on an individualized and fact-specific determination that a party poses a threat to the health, safety, or welfare of another party and/or witnesses or when contact with a party and/or witness is prohibited by court order. A college-imposed no contact order shall be no broader than is necessary to protect the threatened party or witness and must provide the party or their advisor with alternative means of gathering and presenting relevant evidence from the protected witness or party.

(c) Will allow each party to be accompanied by a representative of their choosing, who may be an attorney, to any investigation related meeting or interview.

(i) Representatives' roles during the investigation meetings or interviews will be limited to providing support and advice to the party.

(ii) Representatives will not represent or otherwise advocate on behalf of the parties during the investigation process.

(iii) An attorney advising a party must enter a notice of appearance with the Title IX coordinator and/or the investigator at least five business days before the initial interview or meeting they plan to attend, so the college can secure its own legal representation, if necessary.

(d) Will, in cases involving allegations of sex-based harassment, provide both parties and their respective representatives with an equal opportunity to review the draft investigation report and to inspect and review relevant and not otherwise impermissible evidence upon request.

(i) After disclosure of the report, each party will have 10 calendar days in which to submit a written response, which the investigator will consider prior to completion of the investigation report.

(ii) If a written response is not received by a party within 10 calendar days, the party will be deemed to have waived their right to respond and the investigator will finalize the report without this information.

(e) During sex discrimination and sex-based harassment investigations under this procedure, the investigator may not require, allow, rely upon, or otherwise use questions or evidence that seeks disclosure of privileged communications, unless the privilege has been effectively waived by the holder. This provision applies, but is not limited to, information subject to the following:

(i) Spousal/domestic partner privilege;

(ii) Attorney-client and attorney work product privileges;

(iii) Privileges applicable to members of the clergy and priests;

(iv) Privileges applicable to medical providers, mental health therapists, and counselors;

(v) Privileges applicable to sexual assault and domestic violence advocates; or

(vi) Other legal privileges identified in RCW 5.60.060.

(f) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:

(i) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or

(ii) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.

(g) Upon completion of the investigation, the Title IX coordinator will distribute the final investigation report to the parties. The Title IX coordinator will also provide the investigation report and the evidence gathered during the investigation to the vice president for human resources, who is responsible for determining whether pursuing disciplinary action is warranted.

(11) Dismissal of complaint during investigation - Right to appeal. During an investigation, a discrimination or harassment complaint may be dismissed, in whole or in part, for the following reasons:

(a) The respondent cannot be identified, after the college has taken reasonable steps to do so;

(b) The respondent is not participating in the college's programs or activities and is not employed by the college. The college's discretion to dismiss a sex-based harassment complaint lodged against a former employee may be limited by RCW 28B.112.070, which requires the college to complete investigations into allegations of sexual misconduct by employees directed at student complainants unless the complainant requests otherwise;

(c) The complainant has voluntarily withdrawn any or all of the allegations in the complaint, and the Title IX coordinator has declined to initiate their own complaint, and any remaining allegations would not constitute discrimination or harassment, even if proven. In cases involving allegations of sex-based harassment, the college must obtain the complainant's withdrawal in writing before dismissal;

(d) The conduct alleged by the complainant, even if proven, would not constitute discrimination or harassment; or

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

(f) The complainant and the respondent (if the respondent has been notified of the complaint) may appeal the dismissal of a complaint.

(g) If the dismissal occurs during the investigation, the Title IX coordinator will provide the complainant or the complainant and the respondent (if the respondent has been notified of the complaint) written notice explaining:

(i) Why dismissal was necessary or desirable;

(ii) The right to appeal the dismissal and a description of the procedure for appealing the dismissal; and

(iii) If applicable, notice that the complaint is being referred to an appropriate disciplinary authority.

(h) If the dismissal involves an allegation of sex-based harassment and the parties have both been notified of the investigation, the notice of dismissal will be served on the parties simultaneously.

(i) When a complaint is dismissed, the Title IX coordinator will, at a minimum:

(i) Offer supportive measures to the complainant as appropriate;

(ii) Offer supportive measures to the respondent, if notified and as appropriate; and

(iii) Take other prompt and effective steps, as appropriate, to ensure that sex discrimination does not continue or recur within the college's programs or activities.

(j) Dismissal of a discrimination or harassment complaint does not preclude the college from investigating and pursuing discipline based on allegations that a respondent violated other federal or state laws and regulations, college conduct policies, and/or other codes and contractual provisions governing employee conduct.

(12) **Supportive measures.** In cases involving allegations of sex-based harassment, the Title IX coordinator must offer and coordinate supportive measures to both the complainant and the respondent. Supportive measures may vary depending on the circumstances and what the college may determine to be reasonably available. Supportive measures may include, but are not limited to:

(a) Counseling;

(b) Extensions of deadlines and other work-related adjustments;

(c) Campus security escort services;

(d) Increased security and monitoring of certain areas of the campus;

(e) Restrictions on contact applied to one or more parties;

(f) Leaves of absence;

(g) Changes in work-related activity, regardless of whether there is or is not a comparable alternative; and

(h) Training and education programs related to sex-based harassment.

Supportive measures may not be imposed for punitive or disciplinary purposes.

Supportive measures must not unreasonably burden either party and must be designed to protect the safety of the parties and/or the college's educational environment, or to provide support to the parties during the formal or informal resolution processes.

The Title IX coordinator may modify or terminate supportive measures during or after formal or informal resolution procedures are completed, as the parties' and/or the college's circumstances change.

If, at any point during the sex discrimination investigation or disciplinary proceeding, a party becomes dissatisfied with their supportive measures or undergoes a change of circumstances that warrants

revisions to their supportive measures, the party may submit a request to revise their supportive measures to the Title IX coordinator. The Title IX coordinator will respond to such a request within 10 calendar days. If the party disagrees with the Title IX coordinator's decision, they may submit a written appeal to the vice president of human resources or their designee within five calendar days of receiving the Title IX coordinator's decision. Review of the appeal shall be performed by an impartial employee with authority to modify or reverse the Title IX coordinator's decision to provide, deny, modify, or terminate supportive measures applicable to the party seeking review. Challenged supportive measures will be reviewed to determine whether they are meeting the purposes set forth above.

In cases involving allegations of sex discrimination other than sex-based harassment and retaliation, the college is not required to alter the alleged discriminatory practice(s) for the purpose of providing a supportive measure.

(13) **Emergency removal.** If an employee respondent poses an immediate threat to the health and safety of the college community or an immediate threat of significant disruption to college operations, the president or designee, after consulting with the Title IX coordinator, may place an employee on administrative leave. The administrative leave shall remain in place pending completion of the investigation and final resolution of any resulting disciplinary proceedings.

(14) **Complaint resolution and consolidation.** Complaints submitted to the Title IX coordinator may be resolved through either informal or formal resolution processes.

(a) Informal resolution. Under appropriate circumstances, and only if the complainant and the respondent voluntarily agree, the parties may pursue informal resolution during the investigation of a concern. Informal resolution is not appropriate when the allegation involves:

(i) A complainant who is a minor or a vulnerable adult;

(ii) A respondent poses an immediate threat to the health, safety, or welfare of a member of the college community;

(iii) An employee, who is alleged to have engaged in sex-based harassment of a student complainant.

If informal resolution is appropriate, the parties may explore resolution through:

(A) Guided conversations or communications conducted by the Title IX coordinator, a human resource representative, or some other mutually agreed upon third party;

(B) A structured resolution process conducted by a trained mediator; or

(C) Voluntary agreement between the parties to alter either or both parties' college work.

A proposal to engage in informal resolution should be provided to the parties in the notice of investigation or after the notice of investigation has been served on both parties.

Before engaging in informal resolution, the college must provide written notification to the parties of their rights and responsibilities. This notice shall explain:

(I) The allegations;

(II) The requirements of the informal resolution process;

(III) That, prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and initiate or resume the formal resolution process;

(IV) That the parties' agreement to a resolution at the conclusion of the informal resolution process will prevent the parties from initiating or resuming the formal resolution process;

(V) That the potential terms of any informal resolution agreement will only be binding on the parties to the agreement; and

(VI) What information the college will retain from the informal resolution process and how that information will be used, if the process is not successful and the formal resolution process is initiated or resumed.

Because the informal resolution process is voluntary, either party may withdraw from the informal resolution process at any time, at which point the formal investigation process will resume.

If the parties voluntarily resolve a complaint, the college will record the terms of the resolution in a written agreement signed by both parties and provide written notice to both parties that the complaint has been closed.

If the parties agree to an informal resolution process, the college will commence informal resolution within 10 calendar days after the parties agree to this option and conclude within 21 calendar days of beginning that process; subject to reasonable delays and extensions for good cause shown.

(b) Formal resolution. Formal resolution means that the complainant's allegations of discrimination or harassment will be subjected to a formal investigation by an impartial and unbiased investigator. The investigation may be conducted by the Title IX coordinator. The results of the investigator's report will be shared with the parties, the Title IX coordinator, as well as the appropriate disciplinary authority who is responsible for determining whether disciplinary proceedings are warranted.

(15) **Consolidation of complaints.** Complaints of discrimination and harassment may be consolidated when the complaints are against more than one respondent, or by more than one complainant against one or more respondents, or by one party against another party, when the allegations of discrimination or harassment arise out of the same facts or circumstances.

(16) **Publication of nondiscrimination and harassment policy and procedures.** The policy and procedures regarding complaints of discrimination and harassment shall be published and distributed as determined by the president or designee. Individuals who believe they have been subjected to discrimination or harassment will be provided a copy of the policy and procedures.

~~((5))~~ (17) **Limits to authority.** Nothing in these procedures shall prevent the president or designee from taking immediate disciplinary action in accordance with the college's policies and procedures, and federal, state, and/or municipal rules and regulations.

~~((6))~~ (18) **Retaliation, intimidation, and coercion.** Retaliation by, for, or against any participant (including complainant, respondent, witness, investigator, or EO/AA office, Title IX coordinator or designee) is expressly prohibited. Retaliatory action of any kind taken against a participant who is seeking redress under the nondiscrimination and harassment policy and using these procedures is prohibited and is subject to discipline. Individuals who think they have been retaliated against, intimidated, or coerced should contact the EO/AA office, Title IX coordinator or designee immediately.

AMENDATORY SECTION (Amending WSR 15-12-069, filed 5/29/15, effective 6/29/15)

WAC 132Y-300-015 Other remedies. (1) **Criminal complaints.** Discriminatory or harassing conduct may also be, or occur in conjunction with, criminal conduct. Criminal complaints may be filed with the following law enforcement authorities:

~~((City of Edmonds Police Department
<http://www.edmondswa.gov/government/departments/police.html>)~~)

City of Lynnwood Police Department

~~((<http://www.ci.lynnwood.wa.us/Public-Safety/Police-Department>)~~)
<https://www.lynnwoodwa.gov/Government/Departments/Police-Department>

Snohomish County Sheriff's Department

<http://snohomishcountywa.gov/210/Sheriff>

The college will proceed with an investigation of harassment and discrimination complaints regardless of whether the underlying conduct is subject to civil or criminal prosecution.

(2) **Other discrimination complaint options.** Discrimination and harassment complaints may also be filed with the following federal and state agencies:

Washington State Human Rights Commission

~~((www.hum.wa.gov/index.html)~~) <https://www.hum.wa.gov/>

U.S. Department of Education Office for Civil Rights

<http://www2.ed.gov/about/offices/list/ocr/index.html>

Equal Employment Opportunity Commission

www.eeoc.gov

WSR 24-23-100
PROPOSED RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES
[Filed November 20, 2024, 8:57 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-08-010.

Title of Rule and Other Identifying Information: The licensing division is amending WAC 110-301-0331 Prohibited behavior, discipline, and physical removal of children and 110-302-0331 Prohibited behavior, discipline, and physical removal of children.

Hearing Location(s): On December 24, 2024, telephonic. Comments can be made by calling 360-972-5385 and leaving a voicemail that includes the comment, emailing rules coordinator, or mailing comments to the department of children, youth, and families' (DCYF) physical mailing address. All comments must be received by the date and time listed below.

Date of Intended Adoption: December 25, 2024.

Submit Written Comments to: DCYF rules coordinator, email dcyf.rulescoordinator@dcyf.wa.gov, <https://dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/online>, beginning December 4, 2024, 8:00 a.m., by December 24, 2024, 11:59 p.m.

Assistance for Persons with Disabilities: Contact DCYF rules coordinator, phone 360-522-3691, email dcyf.rulescoordinator@dcyf.wa.gov, by December 20, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DCYF is refileing the following proposed draft rules in WSR 24-22-108 as additional changes are being made in WAC 110-301-0331 and 110-302-0331, informing providers how to prevent harm to children; and WAC 110-301-0331 and 110-302-0331, mirror subsection (1) proposed language to match WAC 110-300-0331.

The substantial changes being made from the recently filed proposed rules in WSR 24-22-108 include revising subsection (1) to state a "provider is prohibited from using the following behaviors" instead of "must take steps to prevent, and once aware of, must not tolerate."

Reasons Supporting Proposal: For WAC 110-301-0331 and 110-302-0331, the language of the WAC does not clearly forbid child care providers from harming children. This rule requires an immediate and permanent change to the WAC chapters to protect children from harm.

Statutory Authority for Adoption: Chapter 42.56 RCW, RCW 43.215.070, 43.215.201, 43.216.055, 43.216.065, and 43.216.742.

Statute Being Implemented: Chapter 42.56 RCW, RCW 43.215.070, 43.215.201, 43.216.055.

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

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Ann Radcliffe, 253-341-2325; Implementation and Enforcement: DCYF, statewide.

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

A cost-benefit analysis is not required under RCW 34.05.328. DCYF is not among the agencies listed as required to comply with RCW 34.05.328 (5)[(a)](i). Further, DCYF does not voluntarily make that section applicable to the adoption of this rule.

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

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

November 19, 2024
Brenda Villarreal
Rules Coordinator

OTS-5990.1

AMENDATORY SECTION (Amending WSR 21-10-035, filed 4/27/21, effective 6/1/21)

WAC 110-301-0331 Prohibited behavior(~~(7)~~) and discipline, and physical (~~(removal)~~) separation of children. (1) A school-age provider (~~(must take steps to prevent and, once aware of, must not tolerate)~~) is prohibited from using the following behaviors and discipline of children:

- (a) Profanity, obscene language, "put downs," or cultural or racial slurs;
- (b) Angry or hostile interactions;
- (c) Threats of physical harm or inappropriate discipline such as, but not limited to, spanking, biting, jerking, kicking, hitting, slapping, grabbing, shaking, pulling hair, pushing, shoving, throwing a child, or inflicting pain or humiliation as a punishment;
- (d) Intimidation, gestures, or verbal abuse including sarcasm, name calling, shaming, humiliation, teasing, derogatory remarks about a child or the child's family;
- (e) Emotional abuse including victimizing, bullying, rejecting, terrorizing, extensive ignoring, or corrupting a child;
- (f) (~~(Prevent)~~) Sexual abuse, pursuant to RCW 26.44.020;
- (g) Preventing a child from or (~~(punish)~~) punishing a child for exercising religious rights; (~~(or~~
- ~~(g) Anyone to:~~
- ~~(i) Restrict)~~) (h) Restricting a child's breathing;
- (~~(ii) Bind or restrict)~~) (i) Binding or restricting a child's movement unless permitted under WAC 110-301-0335;
- (~~(iii) Tape)~~) (j) Taping a child's nose, mouth, or other body part;
- (~~(iv) Deprive)~~) (k) Depriving a child of sleep, food, clothing, shelter, physical activity, first aid, or regular or emergency medical or dental care;
- (~~(v) Force)~~) (l) Forcing a child to ingest something as punishment such as hot sauce or soap;
- (~~(vi) Interfere)~~) (m) Interfering with a child's ability to take care of their own hygiene and toileting needs;

~~((vii) Withhold)~~ (n) Withholding hygiene care, toileting care, or diaper changing from any child unable to provide such care for themselves;

~~((viii) Expose)~~ (o) Exposing a child to extreme temperatures as punishment;

~~((ix) Demand)~~ (p) Demanding excessive physical exercise or strenuous postures. Excessive physical exercise includes, but is not limited to, running laps around the yard until overly tired, an extensive number of push-ups, standing on one foot for an uncomfortable amount of time, or holding out one's arms until tired or painful;

~~((x) Place)~~ (q) Placing the separated child in a closet, bathroom, locked room, outside, or in an unlicensed space; and

~~((xi) Use)~~ (r) Using a confining space or equipment to punish a child or restrict movement.

(2) A school-age provider must supervise to protect children from the harmful acts of other children. A provider must immediately intervene when they become aware that a child or children are teasing, fighting, bullying, intimidating, or becoming physically or sexually aggressive.

(3) A school-age provider may separate a child from other children when that child needs to regain control of themselves.

(a) During separation time, the child must remain under the appropriate level of supervision of a licensee, program director, site director, lead teacher or an assistant teacher.

(b) Separation time should be minimized and appropriate to the needs of the individual child.

(4) If a child is separated from other children, a school-age provider must:

(a) Consider the child's developmental level, language skills, individual and special needs, and ability to understand the consequences of their actions; and

(b) Communicate to the child the reason for being separated from the other children.

(5) If a school-age provider follows all strategies in this section, and a child continues to behave in an unsafe manner, only a licensee, program director, site director, lead teacher, or an assistant teacher may ~~((physically remove))~~ separate the child to a less stimulating environment. Staff must remain calm and use a calm voice when directing or removing the child.

OTS-5958.2

AMENDATORY SECTION (Amending WSR 23-10-059, filed 5/1/23, effective 6/1/23)

WAC 110-302-0331 Prohibited behavior~~((7))~~ and discipline, and physical ~~((removal))~~ separation of children. (1) ONB providers ~~((must take steps to prevent and, once aware of, must not tolerate))~~ are prohibited from using the following behaviors and discipline of children:

(a) Profanity, obscene language, "put downs," or cultural or racial slurs;

(b) Angry or hostile interactions;

(c) Threats of physical harm or inappropriate discipline such as, but not limited to, spanking, biting, jerking, kicking, hitting, slapping, grabbing, shaking, pulling hair, pushing, shoving, throwing a child, or inflicting pain or humiliation as a punishment;

(d) Intimidation, gestures, or verbal abuse including sarcasm, name calling, shaming, humiliation, teasing, derogatory remarks about a child or the child's family;

(e) Emotional abuse including victimizing, bullying, rejecting, terrorizing, extensive ignoring, or corrupting a child;

(f) ~~((Prevent))~~ Sexual abuse, pursuant to RCW 26.44.020;

~~((g) Preventing a child from or ((punish))~~ punishing a child for exercising religious rights; ~~((or~~

~~((g) Anyone to:~~

~~((i) Restrict))~~ (h) Restricting a child's breathing;

~~((ii) Bind or restrict))~~ (i) Binding or restricting a child's movement unless permitted under WAC 110-302-0335;

~~((iii) Tape))~~ (j) Taping a child's nose, mouth, or other body part;

~~((iv) Deprive))~~ (k) Depriving a child of sleep, food, clothing, shelter, physical activity, first aid, or regular or emergency medical or dental care;

~~((v) Force))~~ (l) Forcing a child to ingest something as punishment such as hot sauce or soap;

~~((vi) Interfere))~~ (m) Interfering with a child's ability to take care of their own hygiene and toileting needs;

~~((vii) Use))~~ (n) Using toilet learning or training methods that punish, demean, or humiliate a child;

~~((viii) Withhold))~~ (o) Withholding hygiene care, toileting care, or diaper changing from any child unable to provide such care for themselves;

~~((ix) Expose))~~ (p) Exposing a child to extreme temperatures as punishment;

~~((x) Demand))~~ (q) Demanding excessive physical exercise or strenuous postures. Excessive physical exercise includes, but is not limited to, running laps around the yard until overly tired, an extensive number of push-ups, having a child rest more than the child's development requires, standing on one foot for an uncomfortable amount of time, or holding out one's arms until tired or painful;

~~((xi) Place))~~ (r) Placing the separated child in a closet, bathroom, locked room, out of visual range in an approved tent, cabin, yurt or other structure; or in an unlicensed space; and

~~((xii) Use))~~ (s) Using confining space or equipment to punish a child or restrict movement.

(2) ONB providers must supervise to protect children from the harmful acts of other children. ONB providers must immediately intervene when they become aware that a child or children are teasing, fighting, bullying, intimidating, or becoming physically or sexually aggressive.

(3) ONB providers may separate a child from other children when that child needs to regain control of themselves.

(a) During separation time, the child must remain under the appropriate level of supervision of a licensee, director, program director, assistant director, site director, program supervisor, lead teacher or an assistant teacher.

(b) Separation time should be minimized and appropriate to the needs of the individual child.

(4) If a child is separated from other children, ONB providers must:

(a) Consider the child's developmental level, language skills, individual and special needs, and ability to understand the consequences of their actions; and

(b) Communicate to the child the reason for being separated from the other children.

(5) If ONB providers follow all strategies in this section, and a child continues to behave in an unsafe manner, only a licensee, director, program director, assistant director, site director, program supervisor, lead teacher, or an assistant teacher may physically remove the child to a less stimulating environment. Staff must remain calm and use a calm voice when directing or removing the child. Physical (~~removal~~) separation of a child is determined by that child's ability to walk:

(a) If the child is willing and able to walk, staff may hold the child's hand and walk them away from the situation.

(b) If the child is not willing or able to walk, staff may pick the child up and (~~remove~~) separate them to a quiet place where the child cannot hurt themselves or others.

**WSR 24-23-103
PROPOSED RULES****DEPARTMENT OF LICENSING**

[Filed November 20, 2024, 10:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-20-140.

Title of Rule and Other Identifying Information: Repealing WAC 308-101-230(4) Final orders.

Hearing Location(s): On January 6, 2025, at 11:00 a.m., via Microsoft Teams, Meeting ID 213 753 764 625, Passcode CR4660; or dial in by phone +1 564-999-2000,,768700343# United States, Olympia, 833-322-1218,,768700343# United States (toll-free), phone conference ID 768 700 343#. For organizers, [contact agency for links]. Please note that there is both an in-person and a virtual option. If you are not able to sign in using Teams, your only option may be phone. Please plan on attending in person if the call-in option is not a preferred method of participating.

Date of Intended Adoption: January 7, 2025.

Submit Written Comments to: Ellis Starrett, 1125 Washington Street S.E., Olympia, WA 98504, email rulescoordinator@dol.wa.gov, by January 6, 2025.

Assistance for Persons with Disabilities: Contact Ellis Starrett, phone 360-902-3846, email rulescoordinator@dol.wa.gov, by December 30, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: After analysis of our commercial driver's license (CDL) disqualification procedures, the department of licensing is proposing to repeal WAC 308-101-230(4) to allow for these CDL disqualifications to be addressed within the personal driver's license hearing procedures pursuant to RCW 46.20.308 Implied consent—Test refusal—Procedures.

Reasons Supporting Proposal: Repeal of WAC 308-101-230(4) will provide clarity and alignment with statute by allowing for these CDL disqualifications to be addressed within the personal driver's license hearing procedures pursuant to RCW 46.20.308 Implied consent—Test refusal—Procedures.

Statutory Authority for Adoption: RCW 46.01.110 Rule-making authority.

Statute Being Implemented: RCW 46.20.308 Implied consent—Test refusal—Procedures.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Colton Myers, 1125 Washington Street S.E., Olympia, WA 98504, 564-464-5716; Implementation and Enforcement: Marta Reinhold, 1125 Washington Street S.E., Olympia, WA 98504, 360-664-1488.

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

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

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to

agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.
Scope of exemption for rule proposal:
Is fully exempt.

November 20, 2024
Ellis Starrett
Rules and Policy Manager

OTS-5952.1

AMENDATORY SECTION (Amending WSR 23-23-087, filed 11/13/23, effective 12/14/23)

WAC 308-101-230 Final orders. (1) Every decision and final order shall:

(a) Be correctly captioned as to the name of the department of licensing and name of the proceeding;

(b) Designate all parties and representatives participating in the proceeding;

(c) Contain a final order disposing of all contested issues; and

(d) Contain a statement describing the right to appeal.

(2) In the event the original hearings examiner is unavailable, the department may assign a case to another hearings examiner to either hear the case if the record has not closed, or in a case where the record is closed, make a determination as to the findings of fact and conclusions of law based on the record submitted.

(3) At any stage prior to commencement of the hearing the department may reassign a matter to a different hearings examiner.

~~((4) Pursuant to RCW 46.20.308, any commercial driver's license (CDL) holder that requests an administrative hearing to contest a suspension or revocation of their personal driver's license (PDL) and that hearing results in a verdict sustaining the suspension or revocation of the PDL, shall also receive an administrative review of the CDL disqualification under RCW 46.25.090. The administrative review shall be conducted no later than five business days after the final order is entered resolving the administrative sanction on the PDL. The sanctions, suspension, revocation, and/or disqualification of both the PDL and CDL for the same incident shall run concurrently.))~~