WSR 26-15-011
PROPOSED RULES
DEPARTMENT OF ECOLOGY
[Order 24-02—Filed July 6, 2026, 7:39 a.m.]

Continuance of WSR 26-12-055.

Preproposal statement of inquiry was filed as WSR 25-08-057.

Title of Rule and Other Identifying Information: Chapter 173-441 WAC, Reporting of emissions of greenhouse gases; and chapter 173-446 WAC, Climate Commitment Act program rule—Cap and invest program updates and linkage.

For more information on this rule making visit https://ecology.wa.gov/regulations-permits/laws-rules-rulemaking/rulemaking/wac-173-441-446-cap-and-invest-program-updates-and-linkage.

Hearing Location(s): On July 7, 2026, at 1:00 p.m., via webinar. Join online and see instructions at https://waecy-wa-gov.zoom.us/meeting/register/8Z8ESjwxSSSnnkoHp9tvmw. Presentation, question and answer session, followed by the hearing. We are holding this hearing via webinar. This is an online meeting that you can attend from any computer using internet access.

For audio call U.S. toll number 1-253-215-8782 and enter access code 873 6303 9529#. Or to receive a free call back, provide your phone number when you join the event; and

On July 13, 2026, at 9:00 a.m., via webinar. Join online and see instructions at https://waecy-wa-gov.zoom.us/meeting/register/iyLZMsz1TlOFJ0JOclN5ZQ. Presentation, question and answer session, followed by the hearing. We are holding this hearing via webinar. This is an online meeting that you can attend from any computer using internet access.

For audio call U.S. toll number 1-253-215-8782 and enter access code 812 9061 0429#. Or to receive a free call back, provide your phone number when you join the event.

Date of Intended Adoption: September 23, 2026.

Submit Written Comments to: Surabhi Subedi, Department of Ecology (Ecology), Climate Pollution Reduction Program, P.O. Box 47600, Olympia, WA 98504-7600; or send parcel delivery services to Department of Ecology, Climate Pollution Reduction Program, 300 Desmond Drive S.E., Lacey, WA 98503, email CPRRulemaking@ecy.wa.gov, online comments can be submitted at https://ecology.commentinput.com?id=frD53sZtA beginning June 1, 2026, at 12:00 a.m., by July 22, 2026, at 11:59 p.m.

Assistance for Persons with Disabilities: Contact Surabhi Subedi, phone 564-999-3611, TTY 877-833-6341, Washington relay service 711, email CPRRulemaking@ecy.wa.gov, by June 30, 2026.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Ecology is proposing amendments to chapters 173-446 and 173-441 WAC to improve the implementation of the cap and invest program, facilitate the linkage of Washington's carbon market with the California-Québec carbon market, and make other necessary updates consistent with amendments to the Climate Commitment Act (CCA).

The proposed amendments allow for the option to link Washington's carbon market with the California-Québec carbon market, creating a unified carbon market across the three jurisdictions. In a linked market, allowances issued by California and Québec could be used by Washington entities to cover their emissions, and vice versa. Linkage would also allow for joint allowance auctions, a common allowance price, and trading of allowances across jurisdictions. The rule amend-

ments will not directly establish linkage. This rule making sets the stage for potential future action to link with California and Québec by aligning certain aspects of the cap and invest program rules with those jurisdictions, including compliance period, allowance price containment provisions, registration requirements, corporate association requirements, and auction processes. The rule includes provisions that would become effective upon linkage with another jurisdiction. The rule also establishes processes for announcing a linkage effective date and adds provisions for ecology to suspend or revoke linkage with another jurisdiction.

The proposed amendments set the allowance budgets for future compliance periods (2027-2050) and adjust 2023 through 2026 budgets consistent with statutory direction, ensuring that emissions reductions align with Washington's 2030, 2040, and 2050 greenhouse gas emissions limits. This rule also facilitates the entry of additional sectors, waste-to-energy, and railroads, to coverage under the cap and invest program in future compliance periods, as required by statute.

Ecology is proposing modifications to address topics associated with imported electricity and centralized electricity markets, as well as amendments relevant to allowance allocation to electric utilities and natural gas utilities.

The proposal also implements sections of legislation, including SB [E2SSB] 6058 (2024) to facilitate linkage; HB [2SHB] 1975 (2025), which modifies auction price containment mechanisms, allowance supply, and ceiling prices; HB [E2SHB] 1912 (2025), which addresses the exemption for fuels used for agricultural purposes; and HB [E2SHB] 2416 (2026), which concerns the treatment of waste-to-energy facilities.

In addition, the proposed rule includes amendments to enhance clarity, strengthen enforcement, and ensure that the market remains effective. These amendments are based on implementation experience from start of the cap and invest program (2023) to date.

Overall, ecology anticipates that these amendments will improve program implementation, facilitate potential future linkage, and ultimately strengthen market stability and confidence, as well as ensure the rule aligns with changes to statute.

Reasons Supporting Proposal: The proposed amendments add linkage related provisions and align certain aspects of Washington's cap and invest program with California and Québec to enable potential future linkage, as directed by CCA (chapter 70A.65 RCW).

Ecology is required under RCW 70A.65.070 to adopt the allowance budgets for the second compliance period (2027-2030), ensuring that emissions reductions align with Washington's 2030, 2040, and 2050 greenhouse gas emissions limits. Ecology is updating allowance allocation to natural gas utilities to be consistent with the updated budgets. Additionally, given the complexity and evolving nature of electricity markets in the Pacific Northwest, ecology must further develop imported electricity reporting rules to ensure consistent and complete coverage of the sector.

Ecology is also making amendments relevant to allowance allocation to electric utilities, to improve certainty, strengthen decarbonization incentives, and support market functionality.

The rule making implements elements of recently enacted legislation including SB [E2SHB] 6058 (2024), HB [E2SHB] 1912 (2025), HB [2SHB] 1975 (2025), and HB [E2SHB] 2416 (2026). In addition, ecology is proposing amendments to the rules for clarity and efficiency to improve program implementation and enforcement.

Statutory Authority for Adoption: Chapter 70A.65 RCW, Greenhouse gas emissions—Cap and invest program.

Statute Being Implemented: Chapter 70A.65 RCW, Greenhouse gas emissions—Cap and invest program; and RCW 70A.15.2200 Washington Clean Air Act.

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: Ecology will conduct an environmental justice assessment in accordance with RCW 70A.02.060 as a part of this rule making.

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Eli Levitt, Lacey, Washington, 360-280-2016; Implementation: Andrew Hayes, Lacey, Washington, 360-489-4621; and Enforcement: Derek Nixon, Lacey, Washington, 360-485-7594.

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 Surabhi Subedi, Department of Ecology, Climate Pollution Reduction Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 564-999-3611, TTY 711, visit Ecology.wa.gov/ADA for more accessibility information, email CPRRulemaking@ecy.wa.gov.

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

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

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: Ecology baselines are typically complex, consisting of multiple requirements fully or partially specified by existing rules, statutes, or federal laws. Where the proposed rule differs from this baseline of existing requirements, it is typically subject to (i.e., not exempt from) analysis required under the Regulatory Fairness Act (RFA) (chapter 19.85 RCW) based on meeting criteria referenced in RCW 19.85.025(3) as defined by the Administrative Procedure Act in RCW 34.05.310. The small business economic impact statement (SBEIS) below includes a summary of the baseline for this rule making, and whether or how the proposed rule differs from the baseline.

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

SBEIS

This SBEIS presents the:

- Compliance requirements of the proposed rule.
- Results of the analysis of relative compliance cost burden.
- Consideration of lost sales or revenue.
- Cost-mitigating action taken by ecology, if required.
- Small business and local government consultation.

- Industries likely impacted by the proposed rule.
- Expected net impact on jobs statewide.

A small business is defined by RFA as having 50 or fewer employees. Estimated costs are determined as compared to the existing regulatory environment, the regulations in the absence of the rule. The SBEIS only considers costs to "businesses in an industry" in Washington state. This means that impacts, for this document, are not evaluated for government agencies.

The existing regulatory environment is called the "baseline" in this document. It includes only existing laws and rules at federal and state levels.

This information is excerpted from ecology's complete set of regulatory analyses for this rule making. **For complete discussion of the likely costs, benefits, minimum compliance burden, and relative burden on small businesses, see the associated regulatory analyses document (ecology publication no. 26-14-045, June 2026).**

COMPLIANCE REQUIREMENTS OF THE PROPOSED RULE, INCLUDING PROFESSIONAL SERVICES: The regulatory baseline for our analyses generally consists of existing statutes and rules. This is what allows us to make a consistent comparison between the state of the world with and without the proposed rule amendments.

For this rule making, the regulatory baseline includes:

- Chapter 173-446 WAC, Climate Commitment Act program rule (the existing CCA rule).
- Chapter 173-441 WAC, Reporting of emissions of greenhouse gases (the existing reporting rule).
- Chapter 70A.65 RCW, Greenhouse gas emissions—Cap and invest program (the CCA statute).
- Chapter 70A.45 RCW, Limiting greenhouse gas emissions (including emissions limits referenced by the CCA statute, and an authorizing statute for the reporting rule).
- Chapter 70A.15 RCW, Washington Clean Air Act (including reporting referenced by the CCA statute, and an authorizing statute for the reporting rule).
- Recently enacted bills amending the CCA statute and Washington Clean Air Act:
  - Carbon Market Linkage - California-Québec Carbon Market, chapter 352, Laws of 2024 (E2SHB 6058 passed in 2024; amended the CCA statute and Washington Clean Air Act).
  - Climate Commitment Act - Modification, chapter 320, Laws of 2025 (2SHB 1975 passed in 2025; amended the CCA statute and Washington Clean Air Act).
  - Agricultural Fuel Use - Climate Commitment Act Exemptions, chapter 282, Laws of 2025 (E2SHB 1912 passed in 2025; amended the CCA statute).
  - Waste-to-energy Facilities - Climate Commitment Act, chapter 216, Laws of 2026 (E2SHB 2416 passed in 2026; amended the CCA statute).
- Chapter 19.405 RCW, Clean Energy Transformation Act (2019), which commits Washington to an electricity supply free of greenhouse gases.
- Chapter 70A.535 RCW, Transportation fuel—Clean fuels program, most recently updated in 2025, which requires transportation fuels to reduce their carbon intensity over time.

SUMMARY OF THE PROPOSED RULE AMENDMENTS: **Proposed changes to the reporting rule:** The proposed rule amendments to the greenhouse gas reporting rule would:

- Clarify and add definitions to facilitate linkage and support program efficiency and stability.
- Clarify program applicability and exit conditions, facilitate linkage, and align with statutory changes.
- Update reporting methodologies to align with statutory changes, facilitate linkage, and ensure accurate and consistent reporting.
- Update monitoring, reporting, recordkeeping, and verification to facilitate linkage and improve clarity.
- Update verification requirements to facilitate linkage and improve program efficiency and stability.
- Change calculation methods.

Proposed changes to the CCA rule: The proposed rule amendments to the CCA rule would:

- Add or amend definitions for clarity or to support alignment with statutory changes, facilitate linkage, and support program efficiency and stability.
- Update program coverage and compliance periods.
- Change registration requirements to support program efficiency and stability.
- Add exchange clearinghouse registration requirements to facilitate linkage and to support program efficiency and stability.
- Clarify use of future vintage allowances for compliance obligations.
- Add linkage processes and timing requirements to facilitate linkage.
- Update program accounts to facilitate linkage.
- Change corporate association requirements.
- Update corporate disclosure requirements to facilitate linkage, increase transparency for market participants, and prevent unequal market advantage.
- Change account representative and viewing agent designation requirements.
- Update accounts and limits to facilitate linkage and support program efficiency and stability.
- Update allowance supply and allocation procedures to update total program baseline to reflect sectors entering the program in second and third compliance periods, establish allowance budgets for future years, and update no-cost allowance provisions to emissions-intensive, trade-exposed industries, electric utilities, natural gas utilities and waste-to-energy facilities to align with statutory requirements.
- Reorganize voluntary renewable electricity reserve account requirements for clarity.
- Update allowance removal and retirement attestations to support program efficiency and stability and to facilitate linkage.
- Reorganize allowance distribution dates with other sections for clarity.
- Change auction requirements.
- Change allowance reserve requirements and price control mechanisms.
- Change transaction and transfer requirements.

- Establish clearinghouse transaction processes to facilitate linkage and to support program efficiency and stability.
- Update compliance obligation requirements for clarity, to facilitate linkage, and align with statutory changes related to offsets.
- Add and clarify enforcement requirements to support program efficiency and stability, facilitate linkage, and align with statutory changes.
- Update contact information to reflect current information.

CHANGES DIFFERING FROM REGULATORY BASELINE: We identified that proposed rule amendments affecting allowance supply or demand interact to result in impacts to compliance costs via the carbon market in a linked market scenario, compared to the regulatory baseline. We do not expect these impacts to occur under an amended and aligned but unlinked market. These impacts to compliance costs are described below.

We also identified that other proposed amendments are likely to independently result in impacts to compliance costs that were not modeled through carbon market impacts, while the remaining amendments are not likely to impact compliance costs because they align with the regulatory baseline. Amendments likely to result in impacts to compliance costs are:

- Reporting rule: Program applicability and exit conditions.
- Reporting rule: Calculation methods.
- CCA rule: Definitions—Compliance period changes.
- CCA rule: Registration requirements.
- CCA rule: Designation requirements.
- CCA rule: Transaction and transfer requirements.
- CCA rule: Enforcement requirements.

COSTS OF COMPLIANCE: EQUIPMENT, SUPPLIES, PROFESSIONAL SERVICES: Compliance with the proposed rule, compared to the regulatory baseline, is not likely to impose additional costs of equipment, supplies, or professional services.

COSTS OF COMPLIANCE: LABOR: Many of these proposed amendments would result in additional information being provided to ecology about consultants, associations, or other business or structural relationships of which the cap and invest program is not currently aware under the regulatory baseline. As such, we could not confidently assume the degree to which any given entity would have to make additional effort under the proposed rule amendments. Some entities may have little or no additional information that would need to be provided, while others may have large amounts of additional disclosures and information to submit.

Considering the scope of additional procedural and administrative changes that would be required under the proposed rule amendments, as compared to the regulatory baseline, we assumed each affected entity would incur costs of two weeks of attorney time, for two attorneys, to implement these changes. We used an hourly attorney wage rate of $107.66 and applied this cost across each of 275 likely impacted entities. We also assumed this cost would be incurred immediately. This resulted in a **one-time total cost of approximately $4.7 million in 2027**. This reflects costs associated with:

- CCA rule: Registration requirements.
- CCA rule: Designation requirements.
- CCA rule: Transaction and transfer requirements.

Additional costs to labor may result for some entities:

- **Reporting rule: Calculation methods:** We expect these changes to produce relatively minor increases to labor and reporting costs. These would fall on a limited number of biomass derived fuel suppliers using landfill gas or anaerobic digestion. There are currently four natural gas suppliers reporting natural gas derived from biomass. These entities can also report biogas using reporting requirements related to pipeline injected biogas and delivery points in Washington. Approximately 80 percent of 75 existing fuel suppliers also reported biomass derived fuels (primarily ethanol, biodiesel, and renewable diesel).

Entities covered by or participating in the state's clean fuels program could potentially use information and methodologies they already use for lifecycle assessment to generate clean fuel credits. In discussion with clean fuels program staff, we identified that while for some reporters these proposed amendments may require an extra step, the actual amount of reported biomass derived fuels is not likely to change (it is likely to already meet statutory goals of how much their fuels reduce greenhouse gas emissions compared to petroleum-based fuels).

Additionally, we expect minor costs for market purchasers reporting total electricity purchased from each centralized electricity market, and total retail electricity sales of each load-serving entity in their territories. These data are a standard part of doing business and are likely very minor additions to the existing reporting burden.

COSTS OF COMPLIANCE: ADMINISTRATIVE COSTS: Where applicable, ecology estimates administrative costs (overhead) as part of the cost of labor and professional services, above.

COSTS OF COMPLIANCE: OTHER: We estimated the following impacts to compliance costs under the proposed rule amendments, as compared to the regulatory baseline.

- Using a carbon market model, we estimated the impacts to compliance costs below, under a linked market. These are changes in the **cost of purchasing compliance instruments to comply with the amended rule under a linked market, compared to the regulatory baseline, over the analytic time frame of 2027-2037.**

Cost Category	1.50% Discount Rate	2% Discount Rate	2.50% Discount Rate
Total Costs	-$2.23 billion	-$2.34 billion	-$2.45 billion

- **Reporting rule: Program applicability and exit conditions:** We expect minor reporting costs for importers of electricity with associated emissions below 10,000 metric tons of carbon dioxide equivalent (MT CO_2e). The threshold for reporting CO_2e amounts is reduced to zero in 2027, from the current 10,000 MT CO_2e. This impact is largely driven by the statutory requirement to cover electricity importers who import any unspecified electricity. We expect this change would affect a relatively small number of entities, but as this information is not currently reported, we cannot confidently quantify the number of affected entities. If entities report other emissions, we do not expect these proposed amendments to significantly impact reporting effort. Entities that do not report other emissions (these could be, e.g., small utilities) would also see costs mitigated by a federal power mar-

keting administration's (FPMA) participation in the program if they take on compliance obligations for imported electricity.

- **CCA rule: Definitions, compliance period changes:** The proposed rule amendments change the compliance period length from four years to a combination of two-year and three-year compliance periods. The compliance period change would only go into effect in a linked market. We expect a change in the length of compliance periods to affect how covered and opt-in entities in the cap and invest program plan their compliance. Depending on how entities choose to optimize compliance choices (when and how many allowances or offset credits to purchase, what emissions abatement to undertake and when, associated supply chain changes, banking compliance instruments, consignment to auction), the proposed rule amendments may reduce the time frame over which they are able to optimize. This reduced flexibility would not be reflected in the market model and our quantified results in previous sections, as the market model is not able to account for compliance periods. However, shorter compliance periods may redistribute compliance costs over time, potentially smoothing market demand compared to longer compliance periods and reducing price variability.
- **CCA rule: Enforcement requirements:** (WAC 173-446-610; see chapter 2, section 2.3.23).

The proposed changes would clarify existing enforcement processes and are not expected to add significant costs as they represent a clarification of enforcement language and not a change in the enforcement processes themselves.

COMPARISON OF COMPLIANCE COST FOR SMALL VERSUS LARGE BUSINESSES: The impacts of the proposed rule would differ significantly across sectors and over time. To scale sectoral compliance costs to the individual business level, we identified specific small businesses and the largest 10 percent of businesses in each sector and estimated their average share of their sector's emissions. Based on this step, we identified that the proposed rule is not likely to result in compliance cost changes for small businesses in the electricity and natural gas sectors, as despite being identified in ecology's database, the small businesses we identified represent zero percent of covered emissions in their respective sectors. They may report other emissions, but these are not covered emissions under CCA.

The table below shows the median employment at the business level by sector.

Sector	Small Businesses	Largest 10% of Businesses
Fuel suppliers (transportation)	16	8,812
Facilities (industrial)	23	1,487

Since they are the sectors for which we identified small businesses with a nonzero share of emissions, we focused this analysis on the fuel supplier (transportation) and facility (industrial) sectors. Based on relative shares of emissions and cumulative cost estimates in chapter 3 over the analytic time frame of 2027-2037, we estimated the following compliance costs impacts per employee, under the proposed rule as compared to the regulatory baseline, under a linked carbon market.

Business Size and Sector	Compliance Cost Impact Per Employee
Small, fuels (transportation)	-$0.05
Largest fuels (transportation)	-$0.01
Small facilities (industrial)	-$0.53
Largest (industrial)	-$0.01

Because we estimated net cumulative cost savings under the proposed rule amendments in a linked market, both sectors would experience net cost savings per employee. In both sectors, small businesses would receive a disproportionately larger amount of cost savings than the largest 10 percent of businesses. We note that the level of disproportion depends on relative number of employees and relative cost impact under the proposed rule amendments. In our employment data, we believe employment numbers may be underestimated for small businesses, particularly in the industrial sector, as our data does not capture use of contractors and their employees. If these small businesses have higher employment than found in our data, it would serve to mitigate disproportionate impacts above, and the disproportion reflected in Table 7 is overestimated.

We also separately estimated legal services costs of meeting multiple proposed requirements for additional information to be provided to ecology. On a per-entity basis, these costs were approximately $9,000 and would be incurred by all entities participating in the cap and invest program, including general market participants. As this is a point estimate, if we divide it by the employment at a small general market participant, compliance costs per employee will inherently be larger than for the largest general market participants. The median employment for general market participants with fewer than 50 employees was six employees. The median employment at the largest 10 percent of general market participants was 203. This means compliance costs per employee would be $1,500 at small businesses and $180 at the largest businesses. We note, however, that small businesses under the RFA definition in this case include large financial businesses and investment funds that may not have the same employment structure and responsiveness to compliance costs that a typical "mom and pop" small business (e.g., a store) would have.

In the scenario of an amended, aligned rule, but with an unlinked carbon market, the proposed rule amendments would not result in any of the impacts estimated using the market model. Only costs related to impacts independently resulting from other amendments would apply.

We concluded that the proposed rule amendments are likely to have disproportionate impacts on small businesses, even if both small and large businesses would experience cumulative net cost savings. Therefore, ecology has included elements in the proposed rule amendments to mitigate this disproportion, as far as it is legal and feasible.

MITIGATION OF DISPROPORTIONATE IMPACT: RFA, at RCW 19.85.030(2), states that:

Based upon the extent of disproportionate impact on small businesses identified in the statement prepared under RCW 19.85.040, the agency shall, where legal and feasible in meeting the stated objectives of the statutes upon which the rule is based, reduce the costs imposed by the rule on small businesses. The agency must consider,

without limitation, each of the following methods of reducing the impact of the proposed rule on small businesses:

(a) Reducing, modifying, or eliminating substantive regulatory requirements;
(b) Simplifying, reducing, or eliminating recordkeeping and reporting requirements;
(c) Reducing the frequency of inspections;
(d) Delaying compliance timetables;
(e) Reducing or modifying fine schedules for noncompliance; or
(f) Any other mitigation techniques including those suggested by small businesses or small business advocates.

We considered all the above options, and the goals and objectives of the authorizing statutes (see chapter 6). We limited compliance cost-reduction methods to those that:

- Are legal and feasible.
- Meet the goals and objectives of the authorizing statute.

While our ability to modify substantive regulatory requirements of the proposed rule amendments can be limited, as they are often dictated to a large degree by statutes, we note that elements of statutory requirements already serve to reduce the burden of the cap and invest program in general on small businesses. Additional cost to comply with the proposed rule amendments may disproportionately impact small businesses that are covered entities under the cap and invest program. However, these rule amendments facilitate linkage with the California-Québec market. If Washington links, we expect those small businesses, covered entities, would benefit from lower overall costs to comply with the cap and invest program.

While we did not find disproportionate compliance cost impacts to small electricity businesses, we note that elements of statutory requirements already serve to reduce disproportionate burden. In line with statutory requirements, the proposed amendments would allow small electricity importers to use existing qualifying reports to comply with the reporting rule, reducing duplicative work effort in recordkeeping and reporting. The proposed rule amendments also create an expedited exit from reporting rule requirements for electric power entities that have zero imported electricity because an FPMA has opted into the cap and invest program. The proposed rule amendments also enable a utility that has no compliance obligation and elects to transfer all their no-cost allowances to an FPMA to not have to register in the cap and invest program. Together these amendments could help reduce or eliminate administrative costs for some small utilities, if an FPMA opts into the cap and invest program.

SMALL BUSINESS AND LOCAL GOVERNMENT CONSULTATION: We involved small businesses and local governments in development of the proposed rule amendments, using:

- Email listservs.
- GovDelivery messages to all rule making and cap and invest subscribers.
- July 2024 linkage informational session and draft language overview meeting.
- July 2024 environmental justice forum and listening session.
- November 2024 electricity public workshop.
- March 2025 electricity public workshop.

- April 2025 cap and invest informational session and draft language overview meeting.
- April 2025 electricity public workshop.
- May 2025 community forum on cap and invest topics.
- June 2025 electricity public workshop.
- July 2025 electricity public workshop.
- August 2025 cap and invest informational session and draft language overview meeting.
- August 2025 combined community forum on cap and invest topics.
- October 2025 public workshop on HB [2SHB] 1975.
- November 2025 electricity public workshop.
- Shared rule language for centralized electricity markets and electricity imports.

Representatives of small businesses, local governments, and tribal governments were present at and participated in these public workshops, listening sessions, and community forums.

NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (NAICS) CODES OF INDUSTRIES IMPACTED BY THE PROPOSED RULE: The proposed rule amendments likely impact the following industries, with associated NAICS codes. NAICS definitions and industry hierarchies are discussed at https://www.census.gov/naics/.

- 1121 Cattle Ranching and Farming
- 1151 Support Activities for Crop Production
- 2111 Oil and Gas Extraction
- 2121 Coal Mining
- 2131 Support Activities for Mining
- 2211 Electric Power Generation, Transmission and Distribution
- 2212 Natural Gas Distribution
- 2213 Water, Sewage and Other Systems
- 2382 Building Equipment Contractors
- 3112 Grain and Oilseed Milling
- 3114 Fruit and Vegetable Preserving and Specialty Food Manufacturing
- 3115 Dairy Product Manufacturing
- 3116 Animal Slaughtering and Processing
- 3119 Other Food Manufacturing
- 3211 Sawmills and Wood Preservation
- 3212 Veneer, Plywood, and Engineered Wood Product Manufacturing
- 3219 Other Wood Product Manufacturing
- 3221 Pulp, Paper, and Paperboard Mills
- 3222 Converted Paper Product Manufacturing
- 3241 Petroleum and Coal Products Manufacturing
- 3251 Basic Chemical Manufacturing
- 3253 Pesticide, Fertilizer, and Other Agricultural Chemical Manufacturing
- 3271 Clay Product and Refractory Manufacturing
- 3272 Glass and Glass Product Manufacturing
- 3273 Cement and Concrete Product Manufacturing
- 3274 Lime and Gypsum Product Manufacturing
- 3279 Other Nonmetallic Mineral Product Manufacturing
- 3313 Alumina and Aluminum Production and Processing
- 3314 Nonferrous Metal (except Aluminum) Production and Processing
- 3315 Foundries
- 3344 Semiconductor and Other Electronic Component Manufacturing
- 3359 Other Electrical Equipment and Component Manufacturing
- 3363 Motor Vehicle Parts Manufacturing
- 3364 Aerospace Product and Parts Manufacturing

- 4231 Motor Vehicle and Motor Vehicle Parts and Supplies Merchant Wholesalers
- 4233 Lumber and Other Construction Materials Merchant Wholesalers
- 4238 Machinery, Equipment, and Supplies Merchant Wholesalers
- 4244 Grocery and Related Product Merchant Wholesalers
- 4245 Farm Product Raw Material Merchant Wholesalers
- 4247 Petroleum and Petroleum Products Merchant Wholesalers
- 4249 Miscellaneous Nondurable Goods Merchant Wholesalers
- 4451 Grocery and Convenience Retailers
- 4552 Warehouse Clubs, Supercenters, and Other General Merchandise Retailers
- 4571 Gasoline Stations
- 4572 Fuel Dealers
- 4592 Book Retailers and News Dealers
- 4821 Rail Transportation
- 4832 Inland Water Transportation
- 4841 General Freight Trucking
- 4842 Specialized Freight Trucking
- 4862 Pipeline Transportation of Natural Gas
- 4869 Other Pipeline Transportation
- 5223 Activities Related to Credit Intermediation
- 5231 Securities and Commodity Contracts Intermediation and Brokerage
- 5239 Other Financial Investment Activities
- 5416 Management, Scientific, and Technical Consulting Services
- 5417 Scientific Research and Development Services
- 5511 Management of Companies and Enterprises
- 5611 Office Administrative Services
- 5614 Business Support Services
- 5621 Waste Collection
- 5622 Waste Treatment and Disposal
- 5629 Remediation and Other Waste Management Services
- 6111 Elementary and Secondary Schools
- 6113 Colleges, Universities, and Professional Schools
- 6221 General Medical and Surgical Hospitals
- 6239 Other Residential Care Facilities
- 7211 Traveler Accommodation
- 7225 Restaurants and Other Eating Places
- 9211 Executive, Legislative, and Other General Government Support
- 9261 Administration of Economic Programs
- 9281 National Security and International Affairs

CONSIDERATION OF LOST SALES OR REVENUE, IMPACT ON JOBS: Businesses that would incur costs could experience reduced sales or revenues if the proposed rule amendments significantly affect the prices of the goods they sell. The degree to which this could happen is strongly related to each business's production and pricing model (whether additional lump-sum costs would significantly affect marginal costs). It is also related to the specific attributes of the markets in which they sell goods, including the degree of influence each firm has on market prices, as well as the relative responsiveness of market demand to price changes. Finally, overall shifts in economic activity in the state, including competition within markets and attributes of the labor market simultaneously adjust in response to changes in compliance costs.

Similarly, employment within directly impacted industries, other industries in Washington, the labor market within and outside of the

state, and in the state as a whole will also adjust in response to a change in costs.

We used the REMI E3+ model, version 3.3.0 for Washington state to estimate the impact of the proposed rule amendments on directly affected markets, accounting for dynamic adjustments throughout the economy. The model accounts for variables including, but not limited to: Interindustry impacts; price, wage, interstate and international trade, and population or labor market changes; and dynamic adjustment of all economic variables over time.

To be able to use the model, we disaggregated costs and benefits into electricity, natural gas, transportation, and industrial sectors based on their estimated emissions in the market model and assumed no-cost allowance allocation over time. To balance the model, transfers across sectors must be captured on the spender and receiver sides. In model inputs, we assumed:

- Sectoral spending on allowances would be spent by each sector and would be received by the state and sectors consigning no-cost allowances.
- Sectoral spending on offset credits would be spent by each sector and would be received by offset developers. The offset market is still developing in Washington, as the cap and invest program rule is revised over time to better allow for and regulate additional types of offsets, including updated regulation of forestry offset credit generation. Although limited forestry offsets have been issued in Washington so far, we assume under a linked market the use of forestry offset credits would be greater (as in other jurisdictions). For this REMI modeling, we made the simplifying assumption that revenues would be received by the forestry sector.
- Consignment revenues would go to the electricity and natural gas sectors, with spending on consigned allowances happening in proportion to sectoral shares of the emissions difference between the amended rule under a linked market and the regulatory baseline.
- Social cost of carbon (SCC) impacts would be captured as a perceived amenity value, that is reflected as changes to relative in-state wages in the model and changes the labor market mix attracted to the state. We ran multiple simulations, using the set of four SCC value trajectories used in our benefits estimates (chapter 4).

It is not always straightforward to identify a perfect-fit variable in the model to reflect all types of changes and spending. It is important to note that actual spending of state revenues is determined through appropriation by the state legislature, and this rule making does not affect how funds are spent. In the case of this rule making, there is both uncertainty and likely variability in how state revenues will be spent (under the amended rule or regulatory baseline). Spending of CCA revenues to date reflects a broad range of transportation, electrification, incentives for transit mode switching, energy assistance, heat pump installation, habitat restoration, wildfire resiliency, and other projects.

We ran multiple simulations to better understand the contribution of CCA revenue spending assumptions and SCC assumptions on employment and output impact estimates, including:

- Excluding SCC.

- 1.5 Percent SCC.
- 1.5 Percent SCC excluding state spending impacts.
- 1.5 Percent SCC applying spending changes to the construction and related professional trades (electricians and electrification infrastructure development, landscape construction, remodeling) instead of government spending.
- Two Percent SCC.
- 2.5 Percent SCC.
- Double two percent SCC.

We found the following modeled employment and output impacts of the proposed rule under a linked carbon market, as compared to the regulatory baseline, over the 10-year analytic time frame. We note that the REMI model did not identify significant impacts to either employment or output under a comparison of the amended rule without linkage, as costs we were able to quantify for this scenario are small compared to overall economic activity. Across our sensitivity scenarios using different spending and SCC assumptions, the model results estimated the following cumulative impacts over the analytic time frame of 2027-2037:

- Cumulative employment gains of approximately 2,500 to 12,600 jobs. Compared to the regulatory baseline, this is a gain of between 0.05 percent and 0.27 percent of statewide employment.
- Cumulative output gains of approximately $5.2 billion to $7.6 billion. Compared to the regulatory baseline, this is a gain of between 0.36 percent and 0.47 percent of statewide output.

We note that employment impacts are highly sensitive to inclusion of how state revenue from the carbon market is spent. Estimated employment impacts are aggregations of changes to employment across all sectors in the state, in terms of full-time employee equivalents within each year and should not be interpreted as numbers of individuals losing or gaining jobs.

A copy of the statement may be obtained by contacting Surabhi Subedi, Department of Ecology, Climate Pollution Reduction Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 564-999-3611, TTY 711, visit Ecology.wa.gov/ADA for more accessibility information, email CPRRulemaking@ecy.wa.gov.

July 6, 2026
Heather R. Bartlett
Deputy Director

WSR 26-15-013
PROPOSED RULES
SPOKANE REGIONAL
CLEAN AIR AGENCY
[Filed July 6, 2026, 9:07 a.m.]

Original Notice.

Proposal is exempt under RCW 70A.15.2040.

Title of Rule and Other Identifying Information: Amend sections in Spokane Regional Clean Air Agency (SRCAA) Regulation I, Article II, IV, V, and VI.

Hearing Location(s): On Thursday, September 3, 2026, at 9:30 a.m., at 1610 South Technology Boulevard, #101, Spokane, WA 99224; or an online Zoom link will be provided in the board meeting agenda. Comment period begins August 2, 2026, and ends at the close of the public hearing on September 3, 2026.

Date of Intended Adoption: September 3, 2026.

Submit Written Comments to: Margee Chambers, 1610 South Technology Boulevard, #101, Spokane, WA 99224, email mchambers@spokanecleanair.org, fax 509-477-6828, beginning August 2, 2026, 8:00 a.m., by September 1, 2026, 9:30 a.m.

Assistance for Persons with Disabilities: Contact Cali Maki, phone 509-477-4727 ext. 119, fax 509-477-6828, email cmaki@spokanecleanair.org, by August 31, 2026.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SRCAA is proposing administrative amendments to Regulation I, Articles II, IV, V, and VI. If adopted, the proposed changes will:

- Improve readability and add clarity;
- Provide accurate citations;
- Remove outdated references;
- Align local regulations with WAC; and
- Provide consistency for operation and maintenance requirements among all sources.

Reasons Supporting Proposal: The proposed administrative amendments support SRCAA's implementation of local, state, and federal air quality regulations. The amendments will not change fees or add new requirements for businesses to meet.

Statutory Authority for Adoption: Chapter 70A.15 RCW.

Statute Being Implemented: Chapter 70A.15 RCW.

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

Name of Proponent: SRCAA, governmental.

Name of Agency Personnel Responsible for Drafting: Margee Chambers, SRCAA, 509-477-4727 ext. 114; Implementation: April Westby, SRCAA, 509-477-4727 ext. 105; and Enforcement: Derek Aubrey, SRCAA, 509-477-4727 ext. 102.

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 under RCW 34.05.328 does not apply to local air pollution control agencies per RCW 70A.15.2040.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal: Is exempt under RCW 70A.15.2040.

Explanation of exemptions: Chapter 19.85 RCW applies to state agencies. Under RCW 70A.15.2040, local air pollution control agencies are not state agencies. SRCAA is a local air pollution control agency.

Scope of exemption for rule proposal:

Is fully exempt.

July 6, 2026
Margee Chambers
Air Resource Specialist

[AMENDATORY SECTIONS]

SRCAA REGULATION I, ARTICLE II, SECTIONS 2.13, 2.14

SECTION 2.13 FEDERAL AND STATE REGULATION REFERENCE DATE

(A) Federal Adoption by Reference. Federal rules in SRCAA Regulation I are adopted as they exist on January 1, ((~~2023~~)) 2026.

(1) The term "Administrator" means the Administrator of EPA or the Control Officer of the Agency.

(2) Where EPA has delegated to the Agency the authority to receive reports, the affected facility will submit reports to the Agency, unless otherwise instructed.

(B) State Adoption by Reference. State rules in Regulation I are adopted as they exist on January 1, ((~~2023~~)) 2026, or as amended.

SECTION 2.14 WASHINGTON ADMINISTRATIVE CODES (WACS)

(A) The Agency adopts by reference the following WACs:

(1) Chapter 173-400 WAC, including sections:

020 - Applicability.

030 - Definitions.

(a) The following definitions are adopted by reference: Adverse Impact on Visibility; Alternative Emission Limit; Capacity Factor; Class I Area; Dispersion Technique; Emission Threshold; Excess Stack Height; Existing Stationary Facility; Federal Class I Area; Federal Land Manager; Fossil Fuel-fired Steam Generator; General Process Unit; Greenhouse Gases; Hog Fuel; Industrial Furnace; Mandatory Class I Federal Area; Natural Conditions; Projected Width; Reasonably Attributable; Sulfuric Acid Plant; Transient Mode of Operation; Useful Thermal Energy; Wigwam/Silo Burner; Wood-fired Boiler; and Wood Waste.

040 - General standards for maximum emissions.

(a) Exceptions. The following subsections are not adopted by reference: 040(2), 040(6) and 040(8). 040(2) is replaced by Article VI, Section 6.02, 040(6) is replaced by ((~~Article VI~~)) Section 6.04(C), and 040(8) is replaced by ((~~Article VI~~)) Section 6.07.

050 - Emission standards for combustion and incineration units.

(a) Exceptions. The following subsections are not adopted by reference: 050 (4)(c)(ix) and 050 (5)(c)(xi).

060 - Emission standards for general process units.

070 - Emission standards for certain source categories.

075(8) - Emission standards for perchloroethylene dry cleaners.

081 - Emission limits during startup and shutdown.

082 - Alternative emission limit that exceeds an emission standard in the SIP.

091 - Voluntary limits on emissions.

105 - Records, monitoring, and reporting.

(a) Exceptions. The following subsections are not adopted by reference: 105 (3, 4, 6, and 8)

((~~107 - Excess emissions.~~))

108 - Excess emission reporting.

109 - Unavoidable excess emissions.

112 - Requirements for new sources in nonattainment areas - Review for compliance with regulations.

113 - New sources in attainment or unclassifiable areas - Review for compliance with regulations.

114 - Requirements for replacement or substantial alteration of emission control technology at an existing stationary source.

116 - Increment protection.

117 - Special protection requirements for federal Class I areas.

118 - Designation of Class I, II, and III areas.

120 - Bubble rules.

131 - Issuance of emission reduction credits.

136 - Use of emission reduction credits (ERC).

151 - Retrofit requirements for visibility protection.

161 - Compliance schedules.

175 - Public information.

180 - Variance.

190 - Requirements for nonattainment areas.

200 - Creditable stack height and dispersion techniques.

205 - Adjustment for atmospheric conditions.

210 - Emission requirements of prior jurisdictions.

220 - Requirements for board members.

240 - Criminal penalties.

260 - Conflict of interest.

560 - General order of approval.

700 - Review of major stationary sources of air pollution.

710 - Definitions.

720 - Prevention of significant deterioration (PSD).

(a) Ecology and EFSEC are the EPA-approved permitting agencies for the PSD program for Washington under the SIP. The Agency enforces PSD permits.

730 - Prevention of significant deterioration application processing procedures.

740 - PSD permitting public involvement requirements.

750 - Revisions to PSD permits.

800 - Major stationary source and major modification in a nonattainment area.

810 - Major stationary source and major modification definitions.

(a) Exceptions. The following definition is not adopted by reference: (13) lowest achievable emission rate.

820 - Determining if a new stationary source or modification to a stationary source is subject to these requirements.

830 - Permitting requirements.

840 - Emission offset requirements.

850 - Actual emissions plant wide applicability limitation (PAL).

860 - Public involvement procedures.

(2) Chapter 173-401 WAC - Operating permit regulation.

(3) Chapter 173-425 WAC - Outdoor burning.

(4) Chapter 173-430 WAC - Agricultural burning.

(5) Chapter 173-433 WAC - Solid fuel burning devices.

(6) Chapter 173-434 WAC - Solid waste incinerator facilities.

(7) Chapter 173-435 WAC - Emergency episode plan.

(8) Chapter 173-460 WAC - Controls for new sources of toxic air pollutants.

(9) Chapter 173-476 WAC - Ambient air quality standards.

(10) Chapter 173-490 WAC - Emission standards and controls for sources emitting volatile organic compounds (VOC).

(11) Chapter 173-491 WAC - Emission standards and controls for sources emitting gasoline vapors.

(12) Chapter 197-11 WAC - SEPA Rules

Reviser's note: The bracketed text preceding the material above was supplied by the code reviser's office.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Spokane Regional Clear Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

[AMENDATORY SECTIONS]

SRCAA REGULATION I, ARTICLE IV, SECTIONS 4.02, 4.03, 4.04

SECTION 4.02 GENERAL REQUIREMENTS FOR REGISTRATION

(A) Registration Required. The owner or operator of a stationary source must register the stationary source with the Agency annually. The owner or operator is responsible for timely submission of accurate and complete registration information and fees, except those stationary sources exempted under Section 4.03.

(B) Registration Information. The owner or operator is responsible for notifying the Agency of the existence of the source. The owner or operator must register each emissions unit located at the stationary source, including quantifiable fugitive air emissions. The owner or operator must provide information as may be required by the Agency, concerning location, size, and height of air contaminant outlets, processes employed, nature of the air contaminant emission, and such other information, as is relevant to air pollution. The owner or operator must submit updated registration information at least annually as required by the Agency, using Agency prepared and furnished forms, unless the Agency approves in writing an alternative format or method of reporting. Submission must be received within forty-five (45) days of the issue date or request, unless the Agency specifies otherwise.

(C) Signature. The owner or operator must sign each registration submission verifying the information on the form is complete and accurate.

(D) Fees. The owner or operator must submit registration fees according to SRCAA Regulation I, Article X.

(E) Reporting Requirements for Transfer, Business Name Change, or Change of Ownership.

(1) An owner or operator that changes the business name of a registered stationary source, assumes ownership of a registered stationary source, and/or assumes operational control of a registered stationary source, must report the changes to the Agency, on Agency prepared and furnished forms, within ninety (90) days of the change.

(2) Any liability for fee payment, including payment of delinquent fees and other penalties will survive any transfer of ownership and become the legal obligation of the new owner or operator.

(F) Operation and Maintenance Plan. Emissions units and control equipment at registered stationary sources must be operated as designed and kept in good operating condition.

(1) Stationary sources and portable sources must have an operation and maintenance plan for the emissions units and control equipment. The plan must include written operating instructions and maintenance schedules which follow manufacturer recommendations or good industrial practice. The plan must be available on-site within ninety (90) days of initial registration. ((~~or within twelve (12) months from~~

~~the effective date of Section 4.02 revisions (09/01/2020), whichever is later.~~)) The plan must be provided to the Agency upon request.

(2) Records demonstrating compliance with the plan must be kept for the most recent twenty-four (24) months. Records must be provided to the Agency upon request.

(3) Equipment with operation and maintenance requirements specified in a written Order of Approval from the Agency are exempt from the requirements of Section 4.02(F) if the Order of Approval includes all requirements listed in Section 4.02 (F)(1) and (2).

SECTION 4.03 REGISTRATION EXEMPTIONS

(A) Exemptions.

(1) Air Operating Permit Sources (AOP). Stationary sources subject to Chapter 173-401 WAC (air operating permit sources) and that meet requirements in SRCAA Regulation I, Article V are exempt from the registration requirements of Article IV, Section 4.02, except Section 4.02(F) Operation and Maintenance Plan.

(2) Grain Handling Facilities:

(a) That handle less than or equal to ten (10) million bushels of grain annually. If registration has been made under the registration requirements in Section 4.02, and a registration fee paid, these facilities do not need to pay ongoing annual registration fees or meet other registration requirements as long as the stationary source continues to meet the criteria listed below (1.-3.). The stationary source is subject to all other applicable requirements of Regulation I.

1. Is properly classified as a grain warehouse or grain elevator (includes grain cleaning) under SIC code 5153/NAICS 424510;

2. Is licensed by the Department of Agriculture under Chapter 22.09 RCW or by the federal government for purposes similar to those of licensure under Chapter 22.09 RCW; and

3. Handles less than or equal to ten (10) million bushels of grain annually.

(b) That handles greater than ten (10) million bushels annually. If the licensed capacity increases to greater than ten (10) million bushels of grain annually, registration under Section 4.02 must be completed, and annual registration fee paid, prior to receiving grain from the first harvest season after the date of the increase in its licensed capacity. In addition, if required under Article V, a NOC Application must be filed and an Order of Approval issued by the Agency prior to increasing the licensed capacity of the stationary source to greater than ten (10) million bushels of grain annually.

(3) Portable Sources. Portable sources that locate temporarily at a site in Spokane County and have received an approved Permission to Operate under Article V, Section 5.08 are exempt from registration requirements under Section 4.02, except Section 4.02(F) Operation and Maintenance Plan.

(B) Exemption Documentation. The owner or operator of any source exempted from registration under Article IV must maintain documentation in order to verify that the source remains entitled to the exemption status and must present said documentation to an Agency authorized representative upon request. The owner or operator of any source that is exempted from registration must immediately:

(1) Notify the Agency of the exceedance and register the facility upon discovery of exceeding de minimis levels given in Section 4.04; and

(2) Submit a NOC Application and receive an Order of Approval from the Agency per Article V.

(C) Compliance with SRCAA Regulation I. A source with an exemption from registration under Article IV will not be construed as an exemption from any other provision of Regulation I.

SECTION 4.04 STATIONARY SOURCES AND SOURCE CATEGORIES SUBJECT TO REGISTRATION

(A) Subject to Registration. The following stationary sources and source categories are subject to registration. Emission rates in SRCAA Regulation I, Article IV, Section 4.04 are based on uncontrolled PTE emissions, unless otherwise noted.

(1) Stationary sources or source categories subject to state requirements:

(a) Any stationary source that qualifies as a new major stationary source, or a major modification (173-400-820 WAC).

(b) Any modification to a stationary source that requires an increase either in a facility-wide emission limit or a unit specific emission limit.

(c) Any stationary source with significant emissions as defined in WAC 173-400-810.

(d) Any stationary source where the owner or operator has elected to avoid one or more requirements of the operating permit program established in Chapter 173-401 WAC, by limiting its PTE (synthetic minor) through an order issued by the Agency.

(2) Any stationary sources or source categories:

(a) Required to obtain an Order of Approval under Regulation I, Article V.

(b) Subject to General Order of Approval (GOA) under Article V and WAC 173-400-560.

(c) For which the Control Officer determines that emissions of the stationary source, including fugitive emissions, are likely to be injurious to human health, plant or animal life, or property, or which unreasonably interferes with enjoyment of life and property.

(3) Stationary sources with the following operations:

(a) Abrasive blasting operations, except portable blasting operations operating at a construction site, or at a site for less than thirty (30) days in any running twelve (12) month period and abrasive blasting operations that do not exhaust or release fugitive emissions to the ambient air.

(b) Acid production plants, including all acids listed in Chapter 173-460 WAC.

(c) Agricultural chemical((~~s,~~)) facilities engaging in the manufacturing of liquid or dry((~~, mixing, packaging or other related air contaminant emitting operations (~~))fertilizers or ((~~concentrates,~~)) pesticides((~~, etc.)~~)).

(d) Agricultural drying and dehydrating operations.

(e) Alumina processing operations.

(f) Ammonium sulfate manufacturing plants.

(g) Asphalt and asphalt products production operations (asphalt roofing and application equipment excluded).

(h) Brick and clay products manufacturing operations (tiles, ceramics, etc). Noncommercial operations are exempt.

(i) Cattle feedlots with an inventory of one thousand or more cattle in operation between June 1 and October 1, where vegetation

forage growth is not sustained over the majority of the lot during the normal growing season.

(j) Chemical manufacturing operations.

(k) Coffee roasting operations, except batch coffee roasters with a maximum rated capacity of five (5) kg per batch or less, unless air pollution controls are required because of documented nuisance odors or emissions.

(l) Composting operations except noncommercial agricultural and noncommercial residential composting activities.

(m) Concrete production operations and ready mix plants.

(n) Flexible polyurethane foam, polyester resin, and styrene production operations.

(o) Flexible vinyl operations and urethane coating operations.

(p) Fuel refining operations, blending operations, production operations, including alternative commercial fuel production facilities (e.g. ethanol, bio-diesel, etc.)

(q) Gasoline and aviation gas storage and dispensing, including:

1. Gasoline dispensing facilities, subject to Chapter 173-491 WAC, and aviation gas dispensing facilities with total gasoline storage capacities greater than 10,000 gallons; and

2. Bulk gasoline, and aviation gas terminals, bulk gasoline and aviation gas plants, and gasoline and aviation gas loading terminals.

(r) Grain handling; seed, pea, and lentil processing facilities. Registration shall be in accordance with Article IV, Section 4.03.

(s) Hay cubing or pelletizing operations established at a dedicated collection and processing site.

(t) Insulation manufacturing operations.

(u) Metal casting facilities and foundries, ferrous.

(v) Metal casting facilities and foundries, nonferrous.

(w) Metal plating and anodizing operations.

(x) Metallurgical processing operations.

(y) Mills; grain, seed, feed and flour production, and related operations.

(z) Mills; lumber, plywood, shake, shingle, woodchip, veneer operations, dry kilns, pulpwood insulating board, grass/stubble pressboard, pelletizing, or any combination thereof.

(aa) Mills; wood products manufacturing operations (including, but not limited to, cabinet works, casket works, furniture, and wood by-products).

(bb) Mineral processing (metallic and nonmetallic), including, but not limited to, rock crushing, sand and gravel mixing operations, except stand-alone rock, soil, or wood screening/conveying operations and blasting operations.

(cc) Mineralogical processing operations.

(dd) Natural gas transmission and distribution (SIC 4923/NAICS 486210 and 221210, respectively).

(ee) Paper manufacturing operations, except Kraft and sulfite pulp mills.

(ff) Perchloroethylene dry cleaning operations.

(gg) Pharmaceuticals production operations.

(hh) Plastics and fiberglass fabrication, including gelcoat, polyester resin, or vinylester coating operations using more than 55 gals/yr of all materials containing volatile organic compounds or toxic air pollutants.

(ii) Portland Cement production facilities.

(jj) Refuse systems (SIC 4953/NAICS 562213, 562212, 562211, and 562219, respectively), including municipal waste combustors; landfills

with gas collection systems or flares; hazardous waste treatment, storage, and disposal facilities; and wastewater treatment plants other than POTWs.

(kk) Rendering operations.

(ll) Semiconductor manufacturing operations.

(mm) Sewerage systems, POTWs with a rated capacity of more than one million gallons per day (SIC 4952/NAICS 221320).

(nn) Stump and wood grinding established at a dedicated collection and processing site.

(oo) Surface coating, adhesive, and ink manufacturing operations.

(pp) Surface coating operations that utilize spray applications, as defined in Article VI, Section 6.13(C), including:

1. All motor vehicle or motor vehicle component surface coating operations, except for a residential hobbyist as defined in Section 6.13(C); and

2. General surface coating operations with PTE emissions greater than 100 lbs/yr or with PTE toxic air pollutant emissions that exceed any SQER listed in Chapter 173-460 WAC.

(qq) Synthetic fiber production operations.

(rr) Synthetic organic chemical manufacturing operations.

(ss) Tire recapping operations.

(tt) Wholesale meat/fish/poultry slaughter and packing plants.

(4) Stationary sources with the following equipment:

(a) Fuel burning equipment, including but not limited to boilers, building and process heating units (external combustion) with per unit heat inputs greater than or equal to:

1. 500,000 Btu/hr using coal or other solid fuels with less than or equal to 0.5% sulfur;

2. 500,000 Btu/hr using used/waste oil, per the requirements of RCW 70A.15.4510;

3. 1,000,000 Btu/hr using kerosene, #1, #2 fuel oil, or other liquid fuel, including alternative liquid fuels (i.e., biodiesel, biofuels, etc) except used/waste oil;

4. 4,000,000 Btu/hr using gaseous fuels, such as, natural gas, propane, methane, LPG, or butane, including but not limited to, boilers, dryers, heat treat ovens and deep fat fryers; or

5. 400,000 Btu/hr, wood, wood waste.

(b) Incinerators, including human and pet crematories, burn-out ovens, and other solid, liquid, and gaseous waste incinerators.

(c) Internal combustion engines

1. Used for standby, back-up operations only, and rated at or above 500 bhp.

2. Stationary internal combustion engines, other than those used for standby or back-up operations, rated at 100 bhp or more and are integral to powering a stationary source. This includes but is not limited to, rock crushing, stump and woodwaste grinding, and hay cubing operations.

(d) ((~~Particulate control at m~~))Materials handling ((~~and transfer facilities~~)) equipment that generates fine particulate and exhausts more than 1,000 acfm to the ambient air. ((~~This may include cyclones, baghouses, or industrial housekeeping vacuuming systems.~~))

(e) Storage tanks within commercial or industrial facilities, with capacities greater than 20,000 gallons and storing organic liquids with a vapor pressure equal to or greater than 1.5 psia at 68°F.

(5) Any stationary source or stationary source category not otherwise identified above, with uncontrolled emissions rates above those listed in (a)-(d):

(a) Any single criteria pollutant, or its precursors, as defined in 40 CFR 51.165, exceeding emission rates of 0.5 tons/yr, or in the case of lead, emissions rates greater than or equal to 0.005 tons/yr;

(b) TAPs with emission rates exceeding the SQER established in Chapter 173-460 WAC;

(c) Combined air contaminants (criteria pollutants, VOCs, or TAPs) in excess of one (1.0) ton/yr; or

(d) Combined TAPs and VOC emissions greater than 0.5 tons/yr.

(e) The criteria in Section 4.04 (A)(5)(a)-(d) applies to, but is not limited to the following stationary source categories:

1. Bakeries;

2. Bed lining or undercoating production or application operations;

3. Degreasers/solvent cleaners, not subject to 40 CFR Part 63, Subpart T (Halogenated Solvent Cleaners); including, but not limited to, vapor, cold, open top, and conveyorized cleaner;

4. Distilleries;

5. Dry cleaning non-perchloroethylene operations;

6. Evaporators;

7. ((~~General surface~~)) Surface coating operations that only use non-spray application methods, as defined in Article VI, Section 6.13(C) (e.g., roller coat, brush coat, flow coat, or pre-packaged aerosol can);

8. Graphic art systems including, but not limited to, lithographic and screen printing operations;

9. Organic vapor collection systems within commercial or industrial facilities, including fume hoods;

10. Ovens, furnaces, kilns and curing with emissions other than combustion emissions;

11. Plasma or laser cutters;

12. Soil and groundwater remediation operations;

13. Sterilizing operations, including, but not limited to EtO and hydrogen peroxide, and other sterilizing operations;

14. Utilities, combination electric and gas, and other utility services (SIC 493/NAICS 221111 through 221210, not in order given);

15. Welding, brazing, or soldering operations; or

16. Wood furniture stripping and treatment operations (commercial only).

Reviser's note: The bracketed text preceding the material above was supplied by the code reviser's office.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Spokane Regional Clear Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

[AMENDATORY SECTIONS]

SRCAA REGULATION I, ARTICLE V, SECTIONS 5.02, 5.04, 5.05

SECTION 5.02 NEW SOURCE REVIEW APPLICABILITY AND WHEN REQUIRED

(A) Purpose. SRCAA Regulation I, Article V contains the new source review requirements for stationary and portable sources in Spokane County.

(B) Applicability. Article V applies to all stationary sources, portable sources and source categories listed in Article IV, Section 4.04, unless specifically exempted Article V, Section 5.02(I).

(C) NOC Required for New or Modified Stationary Sources. A NOC application must be filed by the owner or operator and an Order of Ap-

proval issued by the Agency prior to the establishment of any of the following stationary source or source categories:

(1) New stationary sources and source categories subject to the applicability criteria in Article IV, Section 4.04;

(2) Establishment of a new major stationary source as defined in WAC 173-400-710 and 173-400-810;

(3) Modifications to an existing stationary source which results in an increase in actual emissions or that requires an increase in either a facility-wide or a unit specific emission limit;

(4) A major modification to an existing major stationary source as defined in WAC 173-400-710 and 173-400-810;

(5) Any stationary source with emissions that exceed the SQER in Chapter 173-460 WAC;

(6) Like-kind replacement of existing emissions unit(s);

(7) Existing stationary source replacement or substantial alteration of control equipment;

(8) A stationary source or emission unit(s) resuming operation after it has been closed per Article IV, Section 4.05;

(9) An existing stationary source that is relocated;

(10) A stationary source that applies for coverage under a GOA issued by the Agency under WAC 173-400-560 in lieu of filing a NOC application under Article V, Section 5.02; or

(11) Any stationary source the Agency determines must file a NOC application and obtain an Order of Approval in order to reduce the potential impact of air emissions on human health and safety, prevent injury to plant, animal life, and property, or which unreasonably interferes with enjoyment of life and property.

(D) PSP Required for New or Modified Portable Sources. A PSP application must be filed by the owner or operator and a Permission to Operate issued by the Agency prior to the establishment of any portable sources subject to the applicability criteria in Article IV, Section 4.04, which locate temporarily at locations in Spokane County, unless specifically exempted in 5.08(D).

(E) Modification Review. New source review of a modification is limited to the emissions unit(s) proposed to be added or modified at an existing stationary source and the air contaminants whose emissions would increase as a result of the modification. Review of a major modification must comply with WAC 173-400-700 through 173-400-750 or 173-400-800 through 173-400-860, as applicable.

(F) AOP Integrated Review. An owner or operator seeking approval to construct or modify an air operating permit source, may elect to integrate review of the air operating permit application or amendment, required under RCW 70A.15.2260, and the NOC application required by Article V. A NOC application designated for integrated review must be processed in accordance with the provisions in Chapter 173-401 WAC.

(G) New Major Stationary Source or Major Modification in Nonattainment Areas. The proposed project is subject to the permitting requirements of WAC 173-400-800 through 173-400-860 if:

(1) It is a new major stationary source or major modification, located in a designated nonattainment area;

(2) The project emits the air pollutant or its precursors for which the area is designated nonattainment; and

(3) The project meets the applicability criteria in WAC 173-400-820.

(H) PSD Permitting with New Major Stationary Source or Major Modification. If the proposed project is a new major stationary source or a major modification that meets the applicability criteria of WAC

173-400-720, the project is subject to the PSD permitting requirements of WAC 173-400-700 through 173-400-750.

(I) Stationary Sources Exempt from Article V.

(1) The following stationary sources are exempt from the requirement to file a NOC application and obtain an Order of Approval, provided that the source has registered with the Agency per Article IV, prior to placing the source in operation:

((~~(a) Batch coffee roasters with a maximum rated capacity of five (5) kg per batch or less, unless air pollution controls are required because of documented nuisance odors or emissions.~~

~~(b)~~)) (a) Motor vehicle or motor vehicle component surface coating operations with PTE emissions less than one hundred (100) lbs/yr and with PTE toxic air pollutant emissions that do not exceed any SQER listed in Chapter 173-460 WAC, and residential hobbyists as defined in Article VI, Section 6.13(C).

((~~(c)~~)) (b) General surface coating operations that only use non-spray application methods (e.g., roller coat, brush coat, flow coat, or pre-packaged aerosol can) with PTE emissions above the thresholds listed in Article IV, Section 4.04 (A)(3)(pp)2., but below thresholds presented in Sections 4.04 (A)(5)(a-d).

(2) Exemption documentation. The owner or operator of any stationary source exempted under Article V must maintain documentation in order to verify the stationary source remains entitled to the exemption status and must present said documentation to an authorized Agency representative upon request. If an owner or operator of any source that is exempt from new source review under Article V as a result of the exemption in Section 5.02 (I)(1) exceeds the emission thresholds in those exemptions, the owner or operator must immediately notify the Agency of the exceedance and submit and NOC application and receive an Order of Approval from the Agency.

(3) Compliance with SRCAA Regulation I. An exemption from new source review under Section 5.02 (I)(1) is not an exemption from registration under Article IV or any other provision of Regulation I.

SECTION 5.04 INFORMATION REQUIRED

(A) NOC and PSP Information. Each NOC application or PSP application must be accompanied by appropriate documentation that provides a detailed description of the stationary source or portable source to enable the Agency to determine that the source or emissions unit will comply with Chapter 70A.15 RCW, the rules and regulations adopted thereunder, and the Agency's regulation(s). Information must be submitted on Agency prepared and furnished forms. Such information must include:

(1) The new or modified stationary source, portable source, emissions unit, or control equipment;

(2) Any equipment connected to, serving, or served by the new or modified stationary source or portable source;

(3) A plot plan, including the distance to, length, width, and height of; buildings within two hundred (200) feet, or other distance specified by the Agency, from the place where the new or modified stationary source or portable source will be installed;

(4) The proposed means for the prevention or control of the emissions of air contaminants;

(5) Estimated emissions resulting from the proposal and the basis for the estimates, or sufficient information for the Agency to determine the expected emissions;

(6) Any additional information required by the Agency to show that the proposed new or modified stationary source or portable source will meet the applicable air quality requirements of Chapter 70A.15 RCW, the rules and regulations adopted thereunder, and the Agency's regulation(s);

(7) Any additional information required under WAC 173-400-112 or WAC 173-400-113; or WAC 173-400-114; and

(8) The owner or operator must provide documentation that the requirements of Chapter 197-11 WAC, State Environmental Policy have been met. If the Agency is the lead agency for review of an Environmental Checklist (SEPA) or EIS related to the NOC or PSP application being submitted, then the owner or operator filing the SEPA must pay a SEPA review fee according to SRCAA Regulation I, Article X, Section 10.07. This fee must be paid without regard to the final SEPA determination. The cost of publishing any required public notice must be paid by the owner or operator.

(B) Signature. Each NOC or PSP application must be signed by the owner or operator of the new or modified stationary source or portable source.

SECTION 5.05 PUBLIC INVOLVEMENT

(A) Public Notice and Opportunity for Public Comment.

(1) SRCAA Regulation I, Article V, Section 5.05 specifies the requirements for notifying the public about air quality actions and provides opportunities of the public to participate in those actions.

(2) Applicability to Prevention of Significant Deterioration (PSD). This Section does not apply to a NOC designated for integrated review with actions regulated by WAC 173-400-700 through 173-400-750. In such cases, compliance with the public notification of WAC 173-400-740 is required.

(B) Public Notice of Application.

(1) A notice must be published on the Agency's web site announcing the receipt of NOC applications and PSP applications. Notice will be published for a minimum fifteen (15) consecutive days. Duration does not require uninterrupted web site access. Each notice will include the following information:

(a) Notice of the receipt of the application;

(b) The type of proposed action; and

(c) A statement that the public may request a public comment period on the proposed action per Article V, Section 5.05 (B)(2).

(2) Requests for a thirty (30) day public comment period concerning applications, orders, proposed projects, or actions must be submitted to the Agency in writing via letter, fax, or electronic means within fifteen (15) days of the posting date on the Agency's web site.

(a) A thirty (30) day public comment period must be provided per Article V, Section 5.05(D) for any application or proposed action that receives such a request.

(b) Any application or proposed action for which a thirty (30) day public comment period is not requested may be processed without further public involvement at the end of the fifteen (15) day comment period referenced in Section 5.05 (B)(1).

(3) If state or federal regulations require public notice, the public notice must occur in a manner that complies with Section 5.05 and those sections of the state or federal regulations that are applicable.

(C) Mandatory Public Comment Period. A thirty (30) day public comment period must be provided per Article V, Section 5.05(D) before approving or denying any of the following:

(1) An application, order, or proposed action for which a public comment period is requested in compliance with Section 5.05 (B)(2);

(2) An order for a new stationary source or modification of an approved stationary source that increases the annual allowable emissions of the approved source to ten (10) tons or more of any air contaminant, criteria pollutant, or toxic air pollutant;

(3) A NOC or PSP application for a new or modified source if there is an increase in emissions of any air pollutant at a rate above the emission threshold rate (defined in WAC 173-400-030), or any increase in emissions of a toxic air pollutant above the acceptable source impact level for that toxic air pollutant as regulated under Chapter 173-460 WAC;

(4) Use of a modified or substituted air quality model, other than a guideline model in Appendix W of 40 CFR Part 51, as part of review under Article V, Sections 5.02 and 5.08, WAC 173-400-112, WAC 173-400-113, or WAC 173-400-117;

(5) An order to determine RACT, <u>other than orders issued under WAC 173-400-114</u>;

(6) An order to establish a compliance schedule or a variance. A variance shall be in accordance with Regulation I, Article III;

(7) An order to demonstrate the creditable height of a stack which exceeds the GEP formula height and sixty-five (65) meters, by means of a fluid model or a field study, for the purposes of establishing an emission limitation;

(8) An order to authorize a bubble, under RCW 70A.15.2240 and WAC 173-400-120;

(9) An action to discount the value of an ERC, issued to a source per WAC 173-400-136;

(10) A regulatory order to establish BART for an existing stationary facility;

(11) A NOC application or regulatory order used to establish a creditable emission reduction;

(12) An order issued under WAC 173-400-091 that establishes limitations on PTE;

(13) An extension of the deadline to begin actual construction of a major stationary source or major modification in a nonattainment area;

(14) The original issuance and the issuance of all revisions to a GOA issued under WAC 173-400-560;

(15) An order issued under WAC 173-400-081(4) or 173-400-082 that establishes an emission limitation that exceeds a standard in the SIP; or

(16) An NOC application or other proposed action for which the Agency determines there is a significant public interest.

(D) Public Comment Period.

(1) After all information required by the Agency has been submitted and applicable preliminary determinations, if any, have been made, a public comment period on actions listed under Section 5.05(C) must be provided for a minimum of thirty (30) days following the date the notice is first published on the Agency web site. If a public hearing is held, the comment period must extend through the hearing date.

(2) Availability for public inspection.

(a) Administrative record. The information submitted by the owner or operator, and any applicable preliminary determinations, including

analyses of the effect(s) on air quality, must be available for public inspection in at least one (1) location near the proposed project or on the Agency web site for the duration of the public comment period. Duration does not require uninterrupted web site access.

(b) The Agency must post the following information on their web site for the duration of the public comment period. Duration does not require uninterrupted web site access.

1. Public notice must include the information described in Section 5.05 (D)(4);

2. Draft permit, order, or action; and

3. Information on how to access the administrative record.

(3) Publication of comment period notice.

(a) Public notice of all applications, orders, hearings, or actions listed in Article V, Section 5.05(C) must be posted on the Agency's web site for the duration of the public comment period. Duration does not require uninterrupted web site access.

(b) The Agency may supplement Agency web site notification by advertising in a newspaper of general circulation in the area of the proposed action or by other methods appropriate to notify the local community.

(4) Notice for a public comment period must include the following information:

(a) Date the public notice is posted;

(b) The name and address of the owner or operator and the affected facility;

(c) A brief description of the proposal and the type of facility, including a description of the facility's processes subject to the permit;

(d) A description of the air contaminant emissions including the type of pollutants and quantity of emissions that would increase under the proposal;

(e) The location where those documents made available for public inspection may be reviewed;

(f) Start date and end date for the thirty (30) day public comment period;

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

(h) The name, address, telephone number, and e-mail address of a person at the Agency where interested persons may obtain additional information, including copies of the permit draft, application, relevant supporting materials, compliance plan, permit, monitoring, compliance certification report, and all other materials available to the Agency that are relevant to the permit decision;

(i) For projects subject to special protection requirements for federal Class I areas in WAC 173-400-117, the public notice must explain the Agency's decision; and

(j) Any other information required under state or federal laws or regulations.

(5) The cost of publishing any public notice required by Article V, Section 5.05 must be paid by the owner or operator.

(6) EPA notification. The Agency must send a copy of the notice for all actions subject to a mandatory public comment period to the EPA Region 10 regional administrator.

(7) Consideration of public comment. The Agency must make a final decision after the public comment period has ended and comments timely received have been considered.

(8) Public hearings.

(a) The owner or operator, any interested governmental entity, group, or person may request a public hearing within the thirty (30) day public comment period. All hearing requests must be submitted to the Agency in writing via letter, fax, or electronic means. A request must indicate the interest of the entity filing it and why a hearing is warranted.

(b) The Agency may hold a public hearing if it determines significant public interest exists. The Agency will determine the location, date, and time of the public hearing. If a public hearing is held, the public comment period will extend through the hearing date and thereafter for such period, if any, as the notice of public hearing may specify.

(c) Notice of public hearings. At least thirty (30) days prior to the public hearing, the Agency must provide notice of the hearing as follows:

1. Post a public hearing notice on the Agency's web site as directed by Section 5.05 (D)(4) for the duration of the public comment period. Duration does not require uninterrupted web site access.

2. Distribute by electronic means or postal service the notice of public hearing to any person who submitted written comments on the application or requested a public hearing, and in the case of a permit action, to the owner or operator.

3. The notice must include the date, time, and location of the public hearing.

4. The Agency may supplement Agency web site notification by advertising in a newspaper of general circulation in the area of the proposed action or by other methods appropriate to notify the local community.

(E) Public Involvement for Integrated Review with an Air Operating Permit. Any NOC application designated for integrated review with an application to issue or modify an operating permit must be processed in accordance with the operating permit program procedures and deadlines (Chapter 173-401 WAC), as adopted by reference.

(F) 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).

(G) Information for Public Review. All information must be made available for public inspection at the Agency, including copies of NOC applications, Orders of Approval, regulatory orders, and modifications thereof. Exemptions from this requirement include information protected from disclosure under any applicable law, including, but not limited to, RCW 70A.15.2510 and Regulation I, Article II, Section 2.03.

Reviser's note: The bracketed text preceding the material above was supplied by the code reviser's office.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Spokane Regional Clear Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

[AMENDATORY SECTIONS]

SRCAA REGULATION I, ARTICLE VI, SECTIONS 6.02, 6.11, 6.13

SECTION 6.02 VISIBLE EMISSIONS

(A) Opacity Limit. It shall be unlawful for any person to cause or allow the emission of air contaminant from any emission point which

((~~equals or~~)) exceeds 20% opacity for an aggregate of more than three (3) minutes in any one (1) hour period except:

(1) When the emissions occur due to soot blowing/grate cleaning and the operator can demonstrate that the emissions will not ((~~equal or~~)) exceed 20% opacity for more than fifteen (15) minutes in any eight (8) consecutive hours. The intent of this provision is to permit the soot blowing and grate cleaning necessary to the operation of boiler facilities. As such, this practice, except for testing and ((~~trouble shooting~~)) troubleshooting, is to be scheduled for the same approximate times each day and the Agency shall be advised of the schedule. The operator must maintain records sufficient to demonstrate compliance including date, start time and stop time of each episode and the results of opacity reading conducted during this time.

(2) When the owner or operator of a source supplies valid data to show that the presence of uncombined water is the only reason for the opacity to exceed 20% or an alternative opacity standard established in this section. ((~~When the presence of uncombined water is the only reason for the failure of an emission to meet the requirements of this section. The burden of proof to establish the quantity of uncombined water in the emission shall lie with the owner or operator who is seeking to bring the emission from his equipment or process within the requirements of SRCAA Regulation I, Article VI, Section 6.02(A).~~))

(3) When otherwise specifically permitted by Article VIII, Section 8.05 (i.e., solid fuel burning devices).

(4) When the emissions occur during curing of a furnace refractory in a lime kiln or boiler, visible emissions shall not exceed 40% opacity for more than three (3) minutes in any one (1) hour period. For this provision to apply, the owner or operator must meet the following requirements:

(a) The total duration of refractory curing shall not exceed thirty-six (36) hours;

(b) Use only clean fuel identified in 5.b. in Table 3 in 40 CFR Part 63, Subpart DDDDD;

(c) The owner or operator provides a copy of the manufacturer's instructions on curing refractory to the SRCAA;

(d) The manufacturer's instructions on curing refractory must be followed, including all instructions on temperature increase rates and holding temperatures and time;

(e) The emissions controls must be engaged as soon as possible during the curing process; and

(f) SRCAA must be notified at least one working day prior to the start of the refractory curing process.

(5) When the emissions occur during visible emissions certification testing from a smoke generator. Testing must follow testing and certification requirements in 40 CFR Part 60, Appendix A, Test Method 9.

(6) When the emissions occur during military training exercises provided they do not leave the military training site.

(7) When the emissions occur during firefighter training from fixed and mobile firefighter training facilities.

(8) When emissions occur from bin vents during the filling of grain silos, opacity shall not exceed 40% opacity on a six (6) minute average. This provision only applies when filling the grain silos.

(B) Opacity Measurement. The opacity of an air contaminant shall be measured at the point of its emission, except when the point of emission cannot be readily observed, it may be measured at an observable point on the plume nearest the point of emission.

(C) Test Method and Procedures. Visible emissions shall be determined by using Ecology Test Method 9A in Source Test Manual - Procedures for Compliance Testing, WA State Department of Ecology, as of February 12, 2025.

(D) Emission Point. The emission limits of this section shall apply to each emission point regardless of the number of emissions units connected to a common stack.

SECTION 6.11 AGRICULTURAL BURNING

(A) Adoption by Reference. In addition to SRCAA Regulation I, Article VI, Section 6.11, the Agency adopts by reference Chapter 173-430 WAC. The more stringent requirement in Chapter 173-430 or Section 6.11 supersedes the lesser.

(B) Purpose. The primary purpose of Section 6.11 is to establish specific requirements for agricultural burning in Spokane County, consistent with Chapter 173-430 WAC.

(C) Applicability. Section 6.11 applies to agricultural burning in all areas of Spokane County unless specifically exempted. Section 6.11 does not apply to Silvicultural Burning (see Chapter 332-24 WAC) or to Outdoor Burning (see Chapter 173-425 WAC).

(D) Statement of Authority. The Spokane Regional Clean Air Agency is empowered, pursuant to Chapter 70A.15 RCW, to administer the agricultural burning program in Spokane County. Included is the authority to:

(1) Issue and deny burning permits;

(2) Establish conditions on burning permits to ensure that the public interest in air, water, and land pollution, and safety to life and property is fully considered;

(3) Determine if a request to burn is consistent with best management practices, pursuant to WAC 173-430-050; or qualifies for a waiver, pursuant to WAC 173-430-045;

(4) Delegate local administration of permit and enforcement programs to certain political subdivisions;

(5) Declare burn days and no-burn days, based on meteorological, geographical, population, air quality, and other pertinent criteria; and

(6) Restrict the hours of burning, as necessary to protect air quality.

(E) Definitions. Unless a different meaning is clearly required by context, words and phrases used in Section 6.11 shall have the following meaning:

(1) *Agricultural Burning* means burning of vegetative debris from an agricultural operation necessary for disease or pest control, necessary for crop propagation and/or crop rotation, necessary to destroy weeds or crop residue along farm fence rows, irrigation ditches, or farm drainage ditches, or where identified as a best management practice by the agricultural burning practices and research task force established in RCW 70A.15.5090 or other authoritative source on agricultural practices.

(2) *Authority* means the Spokane Regional Clean Air Agency (SRCAA or Agency).

(3) *Episode* means a period when a forecast, alert, warning, or emergency air pollution stage is declared, as provided in Chapter 173-435 WAC.

(4) *Extreme Conditions* means conditions, usually associated with a natural disaster, that prevent the delivery and placement of mechan-

ical residue management equipment on the field and applies only to the growing of field and turf grasses for seed, for which a waiver is requested.

(5) *Impaired Air Quality*, for purposes of agricultural burning, means a condition declared by the Agency when meteorological conditions are conducive to an accumulation of air contaminants, concurrent with at least one of the following criteria:

((~~(a) Particulates that are ten (10) microns or smaller in diameter (PM_{10}) are measured at any location inside Spokane County at or above an ambient level of sixty (60) micrograms per cubic meter of air, measured on a 24-hour average, by a method which has been determined by Ecology or the Agency to have a reliable correlation to the federal reference method, 40 CFR Part 50 Appendix J, or equivalent.~~

~~(b) Carbon monoxide is measured at any location inside Spokane County at or above an ambient level of eight (8) parts of contaminant per million parts of air by volume (ppm), measured on an eight (8) hour average by a method which has been determined by Ecology or the Agency to have a reliable correlation to the federal reference method, 40 CFR Part 50 Appendix C, or equivalent.~~

~~(c)~~)) (a) Particulates that are two and one-half (2.5) microns or smaller in diameter ($PM_{2.5}$) are measured at any location inside Spokane County at or above an ambient level of ((~~fifteen (15)~~)) sixteen (16) micrograms per cubic meter of air, measured on a twenty-four (24) hour average, by a method which has been determined by Ecology or the Agency to have a reliable correlation to the federal reference method, 40 CFR Part 50 Appendix L, or equivalent.

((~~(d)~~)) (b) Air contaminant levels reach or exceed other limits, established by Ecology pursuant to RCW 70A.15.3000.

(6) *Nuisance* means an emission of smoke or other emissions from agricultural burning that unreasonably interferes with the use and enjoyment of property or public areas.

(7) *Permitting Authority* means the Spokane Regional Clean Air Agency (Agency), or one or more of the following entities, whenever the Agency has delegated administration of the permitting program, pursuant to RCW 70A.15.5100, to one or more of the referenced entities, provided such delegation of authority has not been withdrawn: Spokane County, the Spokane County Conservation District, or any fire protection agency within Spokane County.

(8) *Pest* means weeds, disease, or insects infesting agricultural lands, crops, or residue.

(9) *Prohibited Materials* means garbage, dead animals, asphalt, petroleum products, paints, rubber products, plastics, paper (other than what is necessary to start a fire), cardboard, treated wood, construction debris, demolition debris, metal or any substance (other than natural vegetation) that releases toxic emissions, dense smoke or obnoxious odors, when burned.

(10) *Responsible Person* means any person who has applied for and received a permit for agricultural burning, or any person allowing, igniting or attending to agricultural burning, or any person who owns or controls property on which agricultural burning occurs.

(F) Requirements. No person shall practice or permit the practice of Agricultural Burning, other than incidental agricultural burning pursuant to RCW 70A.15.5070(7), unless the applicant demonstrates to the satisfaction of the Agency or permitting authority that burning, as requested:

(1) Is reasonably necessary to successfully carry out the enterprise in which the applicant is engaged; or

(2) Constitutes a best management practice and no practical alternative is reasonably available.

(G) Prohibitions. No person shall practice or permit the practice of agricultural burning in any of the following circumstances:

(1) Where there is a practice, program, technique, or device, that Ecology has certified as a practical alternative to burning.

(2) When the materials to be burned include any prohibited materials.

(3) During an episode, as declared by Ecology, or during Impaired Air Quality, as declared by Ecology or the Agency for a defined geographical area.

(4) Where burning causes a nuisance or when the Agency or permitting authority determines that the creation of a nuisance would likely result from burning.

(5) Without a written permit, issued by the permitting authority, except for incidental agricultural burning, as provided in RCW 70A.15.5070(7).

(6) When the materials to be burned include any material other than natural vegetation generated on the property, which is the burning site, or was transported to the burning site by wind or water.

(7) In the case of growing of field or turf grasses for seed, unless the request to burn qualifies for a waiver for slope or extreme conditions pursuant to WAC 173-430-045(4).

(8) When a no-burn day is declared by the Agency or the permitting authority.

(H) General Conditions. Considering population density and local conditions affecting air quality, the Agency or permitting authority shall establish conditions for all permits to minimize air pollution as much as practical. Such conditions may be general (applying to all permits) or specific (applying to individual permits). Conditions may address permissible hours of burning, maximum daily burn acreage or volume of material to be burned, requirements for good combustion practice, burning under specified weather conditions, pre and post-burn reporting, and other criteria, determined by the permitting authority, as necessary to minimize air pollution. Any person who practices or permits the practice of agricultural burning shall, in addition to any specific permit conditions imposed, comply with the general agricultural burning permit conditions and criteria in WAC 173-430-070 and all of the following conditions:

(1) Whenever an episode or Impaired Air Quality is declared, or other meteorological condition occurs that the permitting authority determines is likely to contribute to a nuisance, all fires shall be extinguished by withholding new fuel or ceasing further ignition, as appropriate to allow the fire to burn down in the most expeditious manner. In no case shall a fire be allowed to burn longer than three (3) hours after declaration of an episode or Impaired Air Quality, or determination of the specific meteorological condition.

(2) Until extinguished, the fire shall be attended by a person who is responsible for the same, capable of extinguishing the fire, and has the permit or a copy of the permit in his or her immediate possession.

(3) Burning shall occur only during daylight hours, or a more restrictive period as determined by the Agency or the permitting authority.

(4) Permission from the landowner, or the landowner's designated representative, must be obtained before starting the fire.

(5) The fire district having jurisdiction shall be notified by the responsible person, prior to igniting a fire.

(6) If it becomes apparent at any time to the Agency or permitting authority that limitations need to be imposed to reduce smoke, prevent air pollution and/or protect property and the health, safety and comfort of persons from the effects of burning, the Agency or permitting authority shall notify the permittee or responsible person and any limitation so imposed shall become a condition under which the permit is issued.

(7) Follow the smoke management guidelines of the permitting authority.

(I) Administrative Requirements.

(1) All applicants for agricultural burning permits must submit their requests to burn, on forms or in a format provided by the permitting authority.

(2) The permitting authority may require additional information from the applicant, as necessary to determine if agricultural burning is reasonably necessary to carry out the enterprise, to determine how best to minimize air pollution, and as necessary to compile information for the annual program summary [Section 6.11 (K)(10)].

(3) The permitting authority may deny an application or revoke a previously issued permit if it is determined by the permitting authority that the application contained inaccurate information, or failed to contain pertinent information, which information is deemed by the permitting authority to be significant enough to have a bearing on the permitting authority's decision to grant a permit.

(4) All applicants for agricultural burning permits shall pay a fee at the time of application, according to the Consolidated Fee Schedule, established by resolution of the permitting authority. When the permitting authority is SRCAA, the fee shall be according to the schedule in Regulation I, Article X.

(5) No permit for agricultural burning shall be granted on the basis of a previous permit history.

(6) The permitting authority may waive or reduce the sixty (60) and thirty (30) day advance requirements for submitting and completing a waiver request, made pursuant to WAC 173-430-045(5), if the permitting authority determines that an alternate advance period will suffice for evaluating the request.

(J) Responsibilities of Farmers. In order to make the required showing, referenced in Section 6.11(F), a farmer, as defined in WAC 173-430-030(7), is responsible for providing the following to the permitting authority, if applicable:

(1) Advance notice of the potential need to burn, including documentation of pest problems, which if possible, shall be given prior to crop maturity.

(2) For pest management burning requests, a plan establishing how a recurring pest problem will be addressed through non-burning management practices by the following year, if possible, but by no later than three (3) years.

(3) An evaluation of alternatives to burning, including those successfully and customarily used by other farmers in similar circumstances, with particular attention to alternatives customarily used in Spokane County, which evaluation shall include an explanation as to why the alternatives are unreasonable and burning is necessary.

(4) A showing as to how burning will meet the applicable crop-specific or general Best Management Practices, established pursuant to RCW 70A.15.5090.

(5) For residue management burn requests, a showing that the residue level meets the permitting authority's criteria for consideration of a residue management burn.

(6) For residue management burn requests, a showing that non-burning alternatives would limit attaining the desired level of water infiltration/retention, soil erodibility, seed/soil contact, seeding establishment or other desirable agronomic qualities.

(7) Field access to representatives of the permitting authority.

(K) Responsibilities of Permitting Authorities. Permitting authorities are responsible for performing the following activities:

(1) Evaluation of individual permit applications to determine whether the applicant has made the required showing, referenced in Section 6.11(F).

(2) Consultation with a trained agronomist on individual permit applications, as necessary, to evaluate the need to burn and non-burning alternatives.

(3) Field inspection, as necessary to verify the following:

(a) Accuracy of information in permit and waiver applications,

(b) Compliance with permit conditions and applicable laws and regulations, and

(c) Acreage and materials burned.

(4) Taking final action on permit applications within seven (7) days of the date the application is deemed complete.

(5) Incorporation of appropriate permit conditions, both general and specific, as referenced in Section 6.11(H) in order to achieve the following:

(a) Minimizing air pollution and emissions of air pollutants, and

(b) Ensuring that the public interest in air, water, and land pollution, and safety to life and property has been fully considered, in accordance with RCW 70A.15.5090.

(6) Enforcement and compliance efforts, with the goal of assuring compliance with all applicable laws, regulations, and permit conditions, and ensuring that timely and appropriate enforcement actions are commenced, when violations are discovered.

(7) Complaint logging and appropriate level of response.

(8) Collection of fees.

(9) Declaration of burn days and no-burn days, taking into consideration, at a minimum, the following criteria:

(a) Local air quality and meteorological conditions;

(b) Time of year when agricultural burning is expected to occur;

(c) Acreage/volume of material expected to be burned per day and by geographical location;

(d) Proximity of burn locations to roads, homes, population centers, and public areas;

(e) Public interest and safety; and

(f) Risk of escape of fire onto adjacent lands, during periods of high fire danger.

(10) Development of smoke management guidelines, that include procedures to minimize the occurrence of nuisance, and to facilitate making burn/no burn decisions.

(11) Dissemination of burn decisions, as necessary to inform responsible persons and the public.

(12) Compilation of an annual program summary, which at a minimum, includes the following:

(a) Permits and acres approved for burning;
(b) Permit/waiver requests and acres denied;
(c) Number and dates of complaints received; and
(d) Number of documented violations.

(L) Compliance. The responsible person is expected to comply with all applicable laws and regulations. Compliance with Section 6.11 does not ensure that agricultural burning complies with other applicable laws and regulations implemented by any other authority or entity.

SECTION 6.13 SURFACE COATING

(A) Purpose. SRCAA Regulation I, Article VI, Section 6.13 establishes controls on surface coating operations in Spokane County to:
(1) Reduce particulate emissions from coating overspray;
(2) Reduce public exposure to Toxic Air Pollutants as listed in Chapter 173-460 WAC;
(3) Reduce emissions of precursors to the formation of tropospheric ozone and other photochemical oxidants; and
(4) Encourage pollution prevention.

(B) Applicability. Section 6.13 applies to all ((~~commercial~~)) general surface coating operations and motor vehicle and motor vehicle component surface coating operations in Spokane County. Section 6.13 includes all surface preparation, surface coating, cleanup, and disposal associated with ((~~commercial~~)) surface coating operations in Spokane County, unless specifically exempted in Section 6.13(F).

(C) Definitions. Unless a different meaning is clearly required by context, words, and phrases used in Section 6.13, the following definitions apply to Section 6.13:

(1) *Airless Spray* means a spraying system that uses hydraulic atomization instead of air atomization. The coating is supplied to the gun under high fluid pressure between 1,000 and 3,000 psig and the coating is forced through a small orifice.

(2) *Air-Assisted Airless Spray* means a spraying system that combines air and airless features. An airless type fluid tip atomizes the paint and shapes the fan pattern at fluid pressures between 300 and 1,000 psig. Lower pressure air from 10 to 30 psig combines at the spray cap to adjust the fan shape to eliminate heavy edges (tails).

(3) *Automated* means the technique, method, or system of operating or controlling a process by mechanical, electrical, hydraulic, or electronic means independent of human intervention.

(4) *Brush Coat Application* means manual application of coatings by use of a paint brush.

(5) *Coating* means a material or formulation of materials that is applied to or impregnated into a surface in order to beautify, protect, enhance the function, or otherwise cover the surface.

((~~(6) Commercial Surface Coating means surface coaters related to or engaged in commerce; excluding non-commercial hobbyist surface coaters where coating is performed by either the owner or current household members on their own property or residence, coating an object they own, e.g. cabinet, motor vehicle, motor vehicle components.~~))

((~~7~~)) 6 *Container* means the individual receptacle that holds a coating or coating component for storage and distribution.

((~~8~~)) 7 *Dip Coat Application* means application of coatings in which the surface to be coated is immersed in a solution (or dispersion) containing the coating material and withdrawn.

((~~9~~)) 8 *Electrostatic Application* means application of coatings where an electrostatic potential is created between the part to be coated and the paint particles.

((~~10~~)) 9 *Exempt Solvent* means a solvent, or solvent component, that is not a volatile organic compound (VOC).

((~~11~~)) 10 *Flow Coat Application* means application of coatings by flowing the coating over the surface to be coated and draining the excess coating to a collection system.

((~~12~~)) 11 *General Surface Coating* means any application of coatings to substrates, other than motor vehicle and/or motor vehicle component surface coating.

((~~13~~)) 12 *High Volume, Low Pressure (HVLP) or Low Volume, Low Pressure (LVLP) coating system* means equipment used to apply coatings by means of a spray gun which operates between 0.1 and 10.0 psig air pressure measured at the nozzle and that exhibits a minimum transfer efficiency of 65%, as applied.

((~~14~~)) 13 *Light Duty Vehicle* means a passenger car, truck, van, or other motor vehicle which has a gross vehicle weight of eight thousand-five hundred (8,500) pounds or less, or components thereof.

((~~15~~)) 14 *Motor Vehicle and Motor Vehicle Component Surface Coating* means the application of coatings to assembled motor vehicles, motor vehicle parts and components, and mobile equipment, including but not limited to any device that may be towed or driven on a roadway: light duty vehicles, golf carts, vans, motorcycles, heavy-duty trucks, truck trailers, fleet delivery trucks, buses, mobile cranes, bulldozers, construction equipment, agricultural equipment, street cleaners, motor homes, and other recreational vehicles (including camping trailers and fifth wheels).

((~~16~~)) 15 *Multi-Coat System* means a coating system where more than one product or coat is sequentially applied to the same surface and generally consists of a pigmented base coat, one or more semi-transparent mid-coats, and a transparent clear coat. The VOC content for a multi-coat system shall be calculated as follows:

$$VOC_{TM} = \frac{VOC_{BC} + VOC_{X1} + VOC_{X2} + \ldots + VOC_{Xn} + 2VOC_{CC}}{n+3}$$

where:

VOC_{TM} is the average sum of the VOC content, as applied to the surface, in a multi-coat system;

VOC_{BC} is the VOC content, as applied to the surface, of the base coat;

VOC_X is the VOC content, as applied to the surface, of each sequentially applied mid-coat;

VOC_{CC} is the VOC content, as applied to the surface, of the clear coat (Two coats are applied); and

n is the total number of coats applied to the primer coat(s) surface.

((~~17~~)) 16 *Non-Spray Application* means coatings that are applied using an application method other than spray application, including, but not limited to, flow coat, roll coat, dip coat, and brush coat methods.

((~~18~~)) 17 *Portable Surface Coating* means an operation that travels with coating equipment and moves between customer locations to apply coatings to motor vehicles, motor vehicle components, and mobile

equipment. The site where the coating takes place is not used by the coating operator as a fixed operating location.

((~~19~~)) 18 *Potential-to-Emit (PTE)* means the maximum 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 enforceable. Secondary emissions are not included in determining the PTE of a stationary source.

((~~20~~)) 19 *Pre-packaged Aerosol Can Application* means application of coatings from cans which are sold by the coating supplier as non-reusable, hand-held pressurized containers. The coating is expelled as a finely divided spray when a valve on the container is depressed.

((~~21~~)) 20 *Primer* means any coating that is applied to a surface to enhance corrosion resistance, protection from the environment, functional fluid resistance, and adhesion of subsequently applied coatings.

((~~22~~)) 21 *Reducer* means any solvent added to a coating which has the effect of reducing the viscosity of the coating or shortening the drying time.

((~~23~~)) 22 *Refinishing* means reapplying coating to a surface to repair, restore, or alter the finish.

(23) *Residential Hobbyist* means non-commercial surface coating that is performed by either the owner or current household members on their own property or residence, coating an object they own (e.g. cabinet, motor vehicle, motor vehicle component). Surface coating shall not exceed two (2) objects per calendar year.

(24) *Roll Coat Application* means manual application of coatings by the use of a paint roller.

(25) *Solvent Consumption* means the volume of solvent purchased or otherwise procured, less the volume recycled or disposed. In the absence of records which document the transfer of solvent to an authorized recycler or waste hauler, solvent consumption means the volume of solvent purchased or otherwise procured.

(26) *Spray Application* means coatings that are applied using a device that creates an atomized mist of coating and deposits the coating on a substrate, excluding Section 6.13(C) Pre-packaged Aerosol Can Application.

(27) *Standard Engineering Practices* means that accepted, peer reviewed sets of criteria are used in designing equipment (i.e. Uniform Building, Electrical, and Fire Codes, recommendations of the American Conference of Governmental Industrial Hygienists, guidelines of the Department of Labor and Industry, etc.).

(28) *Surface Coating* means the application of coating to a surface.

(29) *VOC Content* means pounds of VOC per gallon of coating (Lb/Gal) or grams of VOC per liter of coating (G/L), minus water and exempt solvents. The VOC content is calculated as follows:

$$VOC_{CT} = \frac{W_V}{V_M - V_W - V_{ES}}$$

where:

VOC_{CT} is the VOC content of the coating, as applied to the surface; and

W_V is the weight of VOC per unit volume of coating, as applied to the surface;

V_M is the unit volume of coating, as applied to the surface;

V_W is the volume of water per unit volume of coating, as applied to the surface; and

V_{ES} is the volume of exempt solvents per unit volume of coating, as applied to the surface.

(30) *Wash Solvent* means any solution, solvent, suspension, compound, or other material, excluding water, which is used to clean spray equipment, spray equipment lines, containers, and any other equipment associated with the application of coatings.

(31) *Wipe-Down Agent* means any solution, solvent, suspension, compound, or other material that is applied to a surface exclusively for cleaning the surface or preparing the surface for coating.

(D) Prohibitions on Emissions.

(1) No person shall cause or allow the application of any coating which contains greater than 0.1% by weight of one or more compounds of lead or hexavalent chromium.

(2) Light duty vehicle refinishing - prohibitions on VOC content. No person shall cause or allow the application of any coating or other agent to any light duty vehicle or motor vehicle components, with a VOC content in excess of the limits listed in 40 CFR Part 59, Subpart B, Table 1 - EPA National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings, except as provided in Section 6.13(F).

(E) Requirements. All persons subject to the requirements of Section 6.13 must comply with all of the following, unless exempted under Section 6.13(F).

(1) Enclosure and controls. Spray application must be conducted in a booth or area which is vented to a properly operating particulate control system. The particulate control system, including filtration, ducting, and fan must be installed and sized according to standard engineering practices and operated and maintained according to the manufacturer's recommendations and operating manuals.

(a) Acceptable filtration methods include:

1. Filter banks supplied with filter media designed for spray booth applications.

2. Water baths where the inlet air flow to the water bath is submerged.

3. Water wall systems that form a continuous water curtain through which the particulate flow stream must pass.

4. Other filtration methods that have received the prior written approval of the Control Officer.

(b) The control system must be equipped with a fan which is capable of capturing all visible overspray.

(c) Emissions must be vented to the atmosphere through a vertical stack. The top of the exhaust stack must be at least six (6) feet above the penetration point of the roof, or if the exhaust stack exits horizontally out the side of the building, then the exhaust stack must vent vertically at least six (6) feet above the eaves of the roof. A higher stack may be required if the Agency determines that it is necessary for compliance with Article VI, Section 6.04. Flow obstructions (elbows, tees, or stack caps) are prohibited inside of, or at the top

of, the stack that will impede upward vertical flow of the exhausted air.

(d) It is the owner and operator's responsibility to comply with other applicable federal, state, and local regulations for the stack.

(2) Visible emissions. Visible emissions from the stack must not exceed 10% opacity averaged over any six (6) minute period, as determined by EPA Method 9.

(3) Application methods. Except as provided in Section 6.13(F), no person shall cause or allow the application of any coating or other agent containing VOC unless the coating or agent is applied by one of the following methods:

(a) High Volume, Low Pressure coating system;

(b) Low Volume, Low Pressure coating system;

(c) Wet or Dry electrostatic application;

(d) Flow coat application;

(e) Dip coat application;

(f) Brush coat application;

(g) Pre-packaged aerosol can application;

(h) Roll coat application;

(i) A spraying technique that when tested, using the methodology presented in ASTM Standard D 5327-92, or when test documentation, provided to and approved by the Agency, exhibits that the spraying technique has a transfer efficiency of at least 65%; or

(j) Alternate application methods that have received the written approval of the Control Officer. Such alternate methods may be used, provided that the owner or operator makes a written request to use an alternate method and the Control Officer grants written approval. These methods include but are not limited to the following application methods and circumstances:

1. Airless and Air-Assisted Airless Spray systems may be used under any of the following circumstances:

a. When the volatile organic compound (VOC) emissions are determined by the Control Officer to be no more than VOC emissions that would be generated by a spray application with a transfer efficiency of 65%;

b. When the spraying operation is automated;

c. When spray painting structural steel members where the coating, as formulated by the coating manufacturer, does not require addition of reducers to spray, and is delivered under high pressure (greater than 1,000 psig for airless, or greater than 300 psig for air-assisted airless) to the application system; or

d. Where the Control Officer has determined that the coating cannot be feasibly applied with a method that has a minimum transfer efficiency of 65%.

(4) Cleanup.

(a) Spray guns and paint equipment must be cleaned in an enclosed gun cleaner/washer; or if not using an enclosed gun cleaner, after wash solvent has made contact with the equipment being cleaned, the wash solvent must be immediately drained into a container that is kept closed.

(b) All containers of coatings, wipe-down agents, wash solvents, reducers, and waste materials containing VOC must be kept closed, except when materials are being added, mixed, or removed. Empty containers as defined in WAC 173-303-160 are exempt.

(c) Spills must be cleaned up upon discovery. The cleaned up materials and collected waste must be stored in closed metal containers.

(d) All disposable materials which contain VOCs associated with wipe-down or application of coatings and other agents, must be stored in closed metal containers for disposal.

(5) Recordkeeping. All persons subject to Section 6.13 must maintain the following records for the previous twenty-four (24) month period at the place of business where surface coating is performed:

(a) The most current safety data sheets (SDS) or other data sheets which clearly indicate the VOC content of the product and of any multi-coat system;

(b) Records of purchases or usage, including but not limited to primers, top coats, clear coats, coating additives, reducers, wipe-down agents, wash solvents, and other materials containing volatile organic compounds or volatile toxic air pollutants; and

(c) Waste materials disposal records, including volume of waste solvents and coatings transferred in sealed containers to authorized waste haulers.

(F) Exemptions. Exceptions to all or parts of Article VI, Section 6.13:

(1) ((~~Coating process exemptions.~~)) Nothing in Section 6.13 applies to the following coating processes:

(a) The application of architectural coatings to stationary structures and their appurtenances, to mobile homes, to pavements, or to curbs;

(b) Fiberglass resin application operations;

(c) Gel coating operations;

(d) The application of asphaltic or plastic liners, including undercoating, sound deadening coating, and spray on bed lining for trucks;

(e) Spray plasma plating operations;

(f) Application of coatings to farming equipment; and

(g) Powder coating operations that do not exhaust outside.

(h) Residential hobbyist that meets the definition in 6.13(C).

(2) Low usage exemption. Section 6.13 (E)(1) does not apply to low usage surface coating operations with PTE emissions less than one hundred (100) pounds per year, except as follows:

(a) If the Agency documents nuisance odors or emissions from a spray coating operation; or

(b) If total PTE toxic air pollutant emissions from the surface coating operation exceed any small quantity emission rate (SQER) given in Chapter 173-460 WAC.

(3) Large object exemption. Section 6.13 (E)(1) does not apply to the infrequent outdoor surface coating of large objects, where the Control Officer determines that it is impractical to totally enclose the object inside a booth or vented area. The request for this exemption must be made in writing to the Control Officer and the approval must be in writing. Infrequent means outdoor spray surface coating that amounts to 10% or less of the total annual gallons of paint applied at the facility in the previous twelve (12) months. Annual records must be kept of the number of gallons of paint that are sprayed outdoors. In such case, a temporary enclosure (tarps) must be maintained around the object during the surface coating operation, sufficient at all times to prevent overspray from remaining airborne beyond the property line of the facility.

(4) Stack exemption. The stack requirements in Section 6.13 (E)(1) does not apply to surface coating operations where the owner or operator can demonstrate to the satisfaction of the Control Officer that emissions of Toxic Air Pollutants (TAP) will not exceed the Ac-

ceptable Source Impact Levels (ASIL) as defined in WAC 173-460-150 & 160 and emissions will not create a nuisance.

(5) Application exemption. Section 6.13 (E)(1) does not apply to the non-spray and pre-packaged aerosol can application of any coating.

(6) Enclosure and/or particulate control exemption. Section 6.13 (E)(1) does not apply to:

(a) A portable surface coating operation that has obtained a General Order of Approval (GOA) from the Agency and complies with GOA conditions; or

(b) A surface coating operation where the Control Officer determines that such requirements would be ineffective or unreasonable in capturing or controlling particulate or volatile organic compound emissions from the facility.

(7) Low VOC content exemption. Section 6.13 (E)(3) does not apply to the application of coatings where the VOC content does not exceed 2.1 Lb/Gal or 250 G/L.

(8) Wash solvent exemption. Section 6.13 (E)(4) does not apply to surface coating operations that:

(a) Use wash solvents with composite vapor pressure of organic compounds less than 45 mm Hg at 20^{o}C as determined by ASTM Method D-2306-81; or

(b) Have wash solvent operations with a total wash solvent consumption of ten (10) gallons or less per year.

(9) Lead or hexavalent chrome exemption. The prohibition in Section 6.13 (D)(1) does not apply to a surface coating operation where the Control Officer determines that no practical alternative coating is available.

(G) Compliance with Other Laws and Regulations. Compliance with Section 6.13 or qualifying for an exemption in Section 6.13(F) does not constitute an exemption from compliance with SRCAA Regulation I, or other federal, state, or local laws or regulations.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Spokane Regional Clear Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

WSR 26-15-014
PROPOSED RULES
DEPARTMENT OF HEALTH
[Filed July 6, 2026, 9:43 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 26-08-008.

Title of Rule and Other Identifying Information: Veterinarian, veterinary technician, veterinary medication clerk, and humane society licensing fees.

The department of health (department), in consultation with the veterinary board of governors (board), is proposing amendments to WAC 246-933-590, 246-933-990, 246-935-990, and 246-937-990. The proposed amendments include removing the jurisprudence (JP) exam fee for veterinarians and veterinary technicians, adding the Washington physicians health program (WPHP) impaired practitioner surcharge to initial licensure for veterinarians, updating licensing fees to cover program's operating costs, and correcting language and formatting for uniformity.

Hearing Location(s): On August 25, 2026, at 10:00 a.m. Register in advance for this webinar at https://us02web.zoom.us/webinar/register/WN_RZRft7WTSJCVu1bnYgmFBw. After registering, you will receive a confirmation email containing information about joining the webinar. The department will be offering a virtual webinar hearing only. Individuals may attend virtually or submit comments in writing.

Date of Intended Adoption: August 28, 2026.

Submit Written Comments to: Poppy Budrow, P.O. Box 47852, Olympia, WA 98504-7852, email HSQAFeeRules@doh.wa.gov, web https://fortress.wa.gov/doh/policyreview/, beginning the date and time of this filing, by August 25, 2026, at 11:59 p.m.

Assistance for Persons with Disabilities: Contact Poppy Budrow, phone 564-669-0026, TTY 711, email poppy.budrow@doh.wa.gov or veterinary@doh.wa.gov, by August 11, 2026.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments are necessary for the following reasons:

Elimination of JP exam fee: In June 2025, in response to 2SHB 1724 (chapter 425, Laws of 2023), the board adopted amendments to WAC 246-933-250 and 246-935-070 removing the JP exam as a requirement for initial licensure for veterinarians and veterinary technicians. To align with the board's recent rule changes, the department is proposing to remove the JP exam fee in WAC 246-933-990 and 246-935-990.

Impaired practitioner surcharge: As required by RCW 18.92.047, the board contracts with WPHP to implement and operate an impaired practitioner program. Contracts with WPHP are financed by a surcharge applied to the veterinarian's license. Currently, WAC 246-933-990 only provides for collection of the WPHP surcharge on license renewal. To adequately fund the board's contract with WPHP, the department is proposing to add the surcharge to initial licensure as allowed by RCW 18.92.047.

Licensing fees: RCW 43.70.250 requires that licensing fees cover regulatory program expenses which necessitates the program to be self-funding. An update to licensing fees is needed to adequately fund the program's operating expenses.

In addition to the fee changes, language and formatting have also been corrected for uniformity among the rules.

Reasons Supporting Proposal: RCW 43.70.250 authorizes the department to establish fees associated with the licensing and regulation of professions. The purpose of amendments are to align the fees with the board's recent rule changes related to the veterinary and veterinary technician JP exam requirements; update the licensing fees to adequately fund the program's operating expenses; as part of veterinarian initial licensure, establish the impaired practitioner fee to adequately fund the board's contract with WPHP; and correct language and formatting for uniformity.

Statutory Authority for Adoption: RCW 18.92.047, 43.70.110, 43.70.250, and 43.70.280.

Statute Being Implemented: RCW 18.92.047, 43.70.110, 43.70.250, and 43.70.280.

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: Poppy Budrow, 111 Israel Road S.E., Tumwater, WA 98501, 564-669-0026.

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 is exempt from analysis according to RCW 34.05.328 (5)(b)(iv) and (vi) because it clarifies language without changing its effect and sets or adjusts fees pursuant to legislative standards.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

Explanation of exemptions: The proposed amendments correct language and formatting for uniformity among the fee rules under RCW 34.05.310 (4)(d), and set and adjust fees for veterinarians, veterinary technicians, and veterinary medication clerks under RCW 34.05.310 (4)(f).

Scope of exemption for rule proposal:

Is fully exempt.

July 6, 2026
Todd Mountin, PMP
Deputy Chief of Policy
for Dennis E. Worsham
Secretary of Health

RDS-7219.2

AMENDATORY SECTION (Amending WSR 11-20-092, filed 10/4/11, effective 12/1/11)

WAC 246-933-590 Humane society and animal care and control agency (entity) fees and renewal cycle. (1) Registrations must be renewed every year on August 1 as provided in ((~~chapter 246-12 WAC, Part 3~~)) WAC 246-12-060 through 246-12-080.

(2) The following nonrefundable fees ((~~are~~)) will be charged:

Title of Fee	Fee
Entity registration	$120.00
Entity renewal	100.00
Late renewal penalty	80.00
Expired registration reissuance	80.00

AMENDATORY SECTION (Amending WSR 25-07-080, filed 3/17/25, effective 4/17/25)

WAC 246-933-990 Veterinarian fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in ((~~chapter 246-12 WAC, Part 2~~)) WAC 246-12-020 through 246-12-051.

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
Initial state license	
((~~State jurisprudence examination (initial or retake)~~	~~$210.00~~))
Application	((~~145.00~~)) $230.00
Impaired veterinarian assessment	35.00
UW online access surcharge (HEAL-WA)	16.00
Initial specialty license	
Application	((~~140.00~~)) 230.00
Impaired veterinarian assessment	35.00
UW online access surcharge (HEAL-WA)	16.00
Temporary permit	((~~215.00~~)) 230.00
State or specialty license renewal	
Renewal	((~~160.00~~)) 255.00
Impaired veterinarian assessment	35.00
UW online access surcharge (HEAL-WA)	16.00
Late renewal penalty	((~~80.00~~)) 125.00
Expired license reissuance	((~~90.00~~)) 125.00
Retired active license and renewal	
Renewal	((~~70.00~~)) 110.00

Title of Fee	Fee
Impaired veterinarian assessment	35.00
UW online access surcharge (HEAL-WA)	16.00
Late renewal penalty	((~~50.00~~)) 55.00
Duplicate license	10.00
Verification of license	25.00

RDS-7220.1

AMENDATORY SECTION (Amending WSR 20-08-066, filed 3/26/20, effective 7/1/20)

WAC 246-935-990 Veterinary technician fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in ((~~chapter 246-12 WAC, Part 2~~)) WAC 246-12-020 through 246-12-051.

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
Initial state license	
((~~State jurisprudence examination (initial or retake)~~	~~$160.00~~))
Application	((~~110.00~~)) $100.00
UW online access surcharge (HEAL-WA)	16.00
License renewal	
Renewal	((~~75.00~~)) 85.00
UW online access surcharge (HEAL-WA)	16.00
Late renewal penalty	((~~80.00~~)) 50.00
Expired license reissuance	((~~80.00~~)) 50.00
Duplicate license	10.00
Verification of license	25.00

RDS-7221.1

AMENDATORY SECTION (Amending WSR 11-20-092, filed 10/4/11, effective 12/1/11)

WAC 246-937-990 Veterinary medication clerk fees and renewal cycle. (1) Registrations must be renewed every year on the practition-

er's birthday as provided in ((~~chapter 246-12 WAC, Part 2~~)) WAC 246-12-020 through 246-12-051.

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
Initial registration	((~~$65.00~~)) $55.00
Renewal	55.00
Late renewal penalty	55.00
Expired registration reissuance	60.00
Duplicate registration	30.00

WSR 26-15-018
PROPOSED RULES
DEPARTMENT OF AGRICULTURE
[Filed July 7, 2026, 8:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 26-11-004.

Title of Rule and Other Identifying Information: Chapter 16-414 WAC, Washington standards for cherries.

Hearing Location(s): On August 25, 2026, at 1:00 p.m., via Microsoft Teams at https://teams.microsoft.com/meet/25039400178020?p=ir8sih5mfPWuv9CMkW, Meeting ID 250 394 001 780 20, Passcode vR7ot9Kz; or dial by phone +1 594-999-2000,,63857368# United States, Olympia.

Date of Intended Adoption: January 1, 2027.

Submit Written Comments to: Gloriann Robinson, Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, email wsdarulescomments@agr.wa.gov, fax 360-902-2092, beginning July 7, 2026, 8:00 a.m., by August 25, 2026, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Timothy Estes, division operations analyst, phone 360-902-1931, fax 360-902-2085, TTY 800-833-6388, email timothy.estes@agr.wa.gov, by August 18, 2026, 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of agriculture (department) provides accurate, unbiased inspection of fruits and vegetables; conducts phytosanitary certification, shipping point inspections, third-party grading of fresh products for processing, and export certification; and licenses controlled-atmosphere storage facilities in Washington state. The department received informal and formal requests from stakeholders and the Washington state cherry marketing committee to amend chapter 16-414 WAC to align with proposed updates to United States Department of Agriculture (USDA) Agricultural Marketing Service (AMS) Marketing Order 923. USDA AMS filed the proposed rule on March 9, 2026, with its public comment period concluding on April 8, 2026.

The department is considering amending this chapter to align with USDA AMS Marketing Order 923 by:

- Adding row count/row size 7 cherries, minimum diameter in inches 92/64;
- Adding row count/row size 7 1/2 cherries, minimum diameter in inches 88/64; and
- Removing row count/row size 12 cherries as an approved row count.

The department is also considering amending this chapter to create greater clarity in language by:

- Revising and updating definitions;
- Relocating size and tolerance-related provisions; and
- Making clerical corrections, typographical adjustments, measurement standardizations, permissive wording adjustments (e.g., "must" to "may"), and updates to cross-references to eliminate inaccuracies.

Reasons Supporting Proposal: Washington's cherry industry is currently ineligible for crop insurance for row count/row size 12 cherries, as well as commanding a lower market price. Removing row count/row size 12 from its designation in chapter 16-414 WAC. To avoid

contradiction for Washington cherry industry requirements, the department is amending the rule language so that it [aligns with] the requirements under USDA AMS Marketing Order 923. Alignment and adoption of standards that are consistent with AMS Marketing Order 923 prevents regulatory conflict, preserves interstate/export market access, maintains the department's inspection program integrity, and is categorized as direct conformity with 7 C.F.R. Part 923.

Statutory Authority for Adoption: RCW 15.17.030, [15.17].050, and [15.17].060.

Statute Being Implemented: Chapters 15.17 and 34.05 RCW.

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

Name of Proponent: Washington state department of agriculture, governmental.

Name of Agency Personnel Responsible for Drafting: Timothy Estes, 1111 Washington Street S.E., Olympia, WA 98504, 360-902-1931; Implementation and Enforcement: Maria Valle, 21 North 1st Avenue, Suite 226, Yakima, WA 98902, 509-480-2265.

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

A cost-benefit analysis is not required under RCW 34.05.328. The department is not a listed agency under RCW 34.05.328 (5)(a)(i).

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

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of exemptions: RCW 34.05.310 (4)(c): The proposed revisions to chapter 16-414 WAC incorporate standards by aligning with USDA AMS Marketing Order 923.

RCW 34.05.310 (4)(d): The proposed revisions to chapter 16-414 WAC definitions exclusively clarify longstanding terminology to eliminate ambiguity while preserving all substantive grading criteria. Amendments across chapter 16-414 WAC reorganize and consolidate scattered tolerance language for enhanced readability without modifying any numerical limits or substantive requirements. Making numerous clerical, typographical, measurement, and formatting corrections across the proposed rule to eliminate inaccuracies and modernize presentation without affecting grading standards or compliance obligations.

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: RCW 34.05.310 (4)(c): Alignment with USDA Marketing Order 923 and clarifying changes, such as clarifying longstanding terminology to eliminate ambiguity, qualifies for the exemption under RCW 19.85.025(3) as the rule adopts without material change federal regulation.

RCW 34.05.310 (4)(d): Revising definitions/terminology, relocating size and tolerance language, and refining language wording such as clerical corrections, typographical errors, and permissive word changes for improved clarity of rule language.

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. A full small business economic impact statement (SBEIS) is not required for the proposed amendments to chapter 16-414 WAC. The proposed amendment to align row count sizes with USDA Marketing Order 923 qualifies for exemption from the requirements of chapter 19.85 RCW under RCW 19.85.061, as it is being adopted solely for the purpose of conformity with federal regulations without material change. The proposed amendments to the definitions and other clarifying changes throughout the rule qualify for exemption from the requirements of chapter 19.85 RCW under RCW 19.85.025(3)/34.05.310 (4)(d) as typographical corrections, language clarification, and organizational improvements that change no substantive requirements, thresholds, or obligations. Analysis of potential compliance costs directly imposed by the rule language yielded an estimation of $0-$125 per business, representing an amount significantly less than the minor cost thresholds for each North American Industry Classification System code. No increases in equipment, fees, reporting, professional services, or staff hours are required. Row 12 removal only affects 1.4 percent of 2025's entire production and is already largely abandoned by shippers, while premium rows 7 and 7.5 afford the industry strong revenue potential.

In sum, the department determines the proposed rule imposes no more-than-minor costs and qualifies for full SBEIS exemption under RCW 19.85.025 and 19.85.061.

The public may obtain a copy of the SBEIS or the detailed cost calculations by contacting Gloriann Robinson, Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, phone 360-902-1802, fax 360-902-2092, TTY 800-833-6388, email wsdarulescomments@agr.wa.gov.

July 7, 2026
Robert Newell
Interim Assistant Director

RDS-7073.1

AMENDATORY SECTION (Amending WSR 07-12-076, filed 6/5/07, effective 7/6/07)

WAC 16-414-005 Definitions. **"Blemish"** means any defects or combination of defects that materially affects the appearance of the cherry including, but not limited to, limb rubs, scars, russeting or any other surface discoloration.

"Clean" means cherries are practically free from dirt, dust, spray residue, or other foreign material. ((~~For example, clean means the product is practically free from leaves, fruit spurs, bark, twigs, dirt or foreign material.~~))

"Condition defects" means defects that may develop or change during shipment or storage. Condition defects include, but are not limited to, decayed or soft cherries and such other factors as pitting, shriveling, sunken areas, brown discoloration and bruising that, because of its location appears to have occurred after packing.

"Container" as defined in RCW 15.17.020, means any container or subcontainer used to prepackage cherries. This does not include containers that may be used by a retailer to package cherries sold from a bulk display to a consumer, such as open catch bags or similar.

"Damage" means any injury or specific defect described in WAC 16-414-045 or any equally objectionable variation of those defects, any other defect, or any combination of defects, which materially detracts from the appearance, or the edible quality or marketing quality of the fruit.

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

"Diameter" means the greatest dimension measured at right angles to a line from the stem to the blossom end of the cherry.

"Director" means the director of the Washington state department of agriculture or the director's designee.

((**"Face packed"** means the cherries in the top layer of any container are placed so the stem ends are pointing downward toward the bottom of the container.))

"Fairly well colored" means that at least ((ninety-five)) 95 percent of the surface of the cherry shows characteristic color for mature cherries of the variety.

"Firm" means the cherries:

((~~(1)~~)) (a) Possess a firm, fleshy texture;

((~~(2)~~)) (b) Retain their approximate original shape;

((~~(3)~~)) (c) Are not shriveled; and

((~~(4)~~)) (d) Do not show more than slight collapsed areas of flesh.

"Mature" means cherries have reached the stage of growth that will ((~~insure~~)) ensure the proper completion of the ripening process. Rainier cherries or other varieties of "light colored sweet cherries" shall meet a minimum of ((~~seventeen~~)) 17 percent soluble solids as determined from a composite sample by refractometer prior to packing, at time of packing, or at time of shipment; provided that individual lots shall not be combined with other lots to meet soluble solids requirements.

((**"Permanent defects"** means defects that are not subject to change during shipping or storage. Permanent defects include, but are not limited to, factors of shape, scarring, skin breaks, injury caused by hail or insects, and mechanical injury that, because of its location, appears to have occurred before shipment.))

"Off-size" means a cherry whose diameter fails to meet a designated size when measured at right angles to a line from its stem to its blossom end.

"Permanent defects" means defects that are not subject to change during shipping or storage. Permanent defects include, but are not limited to, factors of shape, scarring, skin breaks, injury caused by hail or insects, and mechanical injury that, because of its location, appears to have occurred before shipment.

"Serious damage" means any specific defect described in WAC 16-414-065 or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects that serious-

ly detracts from the appearance, edible quality or marketing quality of cherries.

"Shipping point" means:

((~~(1)~~)) (a) The point of origin of the shipment in the producing area or at the port of loading; or

((~~(2)~~)) (b) The port of entry into the United States in the case of shipments from outside the continental United States.

"Similar varietal characteristics" means the cherries in any container are similar in color and shape.

"Well formed" means a cherry has the normal shape characteristic of the variety. Mature well-developed doubles are considered well formed if the halves are approximately evenly formed with a variation of no more than 2/64 of an inch.

AMENDATORY SECTION (Amending WSR 07-12-076, filed 6/5/07, effective 7/6/07)

WAC 16-414-010 Washington No. 1 grade and Northwest No. 1 grade sweet cherry requirements. ((~~(1)~~)) Washington No. 1 grade and Northwest No. 1 grade sweet cherries are cherries with similar varietal characteristics that are:

((~~(a)~~)) (1) Mature;

((~~(b)~~)) (2) Not soft, overripe or shriveled;

((~~(c)~~)) (3) Fairly well colored;

((~~(d)~~)) (4) Well formed;

((~~(e)~~)) (5) Clean;

((~~(f)~~)) (6) Free from underdeveloped doubles, decay, or sunscald;

((~~(g)~~)) (7) Free from insect larvae or insect holes; and

((~~(h)~~)) (8) Free from damage by any other cause.

((~~(2) Northwest No. 1 grade sweet cherries must meet the size requirements listed in WAC 16-414-011.~~))

AMENDATORY SECTION (Amending WSR 07-12-076, filed 6/5/07, effective 7/6/07)

WAC 16-414-011 Size requirements—Sweet cherries. (1) The minimum diameter of each cherry must be at least ((~~54/64~~)) 57/64 inch.

(2) The maximum diameter of the cherries in any lot may be specified according to the facts.

(3) For the Rainier variety and similar varieties commonly referred to as "light colored sweet cherries," at least ((~~ninety~~)) 90 percent, by count, of the cherries in any lot shall measure not less than 61/64 inch in diameter and not more than five percent, by count, may be less than 57/64 inch in diameter.

(4) When containers of cherries are marked with a row count/row size designation, the row count/row size marked must comply with the corresponding minimum diameter size as shown in the following table:

Row count/Row size	Minimum diameter in inches
7	92/64
7 1/2	88/64

Row count/Row size	Minimum diameter in inches
8	84/64
8 1/2	79/64
9	75/64
9 1/2	71/64
10	67/64
10 1/2	64/64
11	61/64
11 1/2	57/64
((~~12~~	~~54/64~~))

AMENDATORY SECTION (Amending WSR 07-12-076, filed 6/5/07, effective 7/6/07)

WAC 16-414-012 Tolerances for Washington No. 1 and Northwest No. 1 grade sweet cherries. (1) **Washington No. 1:**

(a) To allow for variations incident to proper grading and handling at the shipping point, the following tolerances, by count, are established:

(i) Eight percent of cherries that fail to meet the requirements of the grade are allowed.

(ii) Of the total tolerance of eight percent, no more than four percent is allowed for defects causing serious damage.

(iii) Of the four percent tolerance for serious damage defects, no more than one-half of one percent is allowed for cherries affected by decay.

(b) To allow for variations incident to proper grading and handling en route or at destination, the following tolerances, by count, are established:

(i) Twenty-four percent of cherries in any lot may fail to meet the requirements of the grade.

(ii) Of the total tolerance of ((~~twenty-four~~)) 24 percent, no more than eight percent is allowed for cherries that fail to meet the grade requirements because of permanent defects.

(iii) Of the total tolerance of ((~~twenty-four~~)) 24 percent, no more than six percent is allowed for cherries that are seriously damaged, including no more than four percent of cherries seriously damaged by permanent defects and two percent for cherries affected by decay.

(2) **Northwest No. 1:**

(a) To allow for variations incident to proper grading and handling at the shipping point, the following tolerances are established:

(i) Ten percent of cherries in any inspection lot that fail to meet the requirements of the grade are allowed.

(ii) Of the total tolerance of ((~~ten~~)) 10 percent, no more than five percent is allowed for defects causing serious damage.

(iii) Of the five percent tolerance for serious damage defects, no more than one percent is allowed for cherries affected by decay.

((~~(iv) The contents of individual samples or containers in any lot must not be limited to the percentage of grade defects discussed in WAC 16-414-020.~~))

(b) To allow for variations incident to proper grading and handling en route or at destination, the following tolerances, by count, are established:

(i) Twenty-four percent of cherries in any lot may fail to meet the requirements of the grade.

(ii) Of the total tolerance of ((~~twenty-four~~)) 24 percent, no more than ((~~ten~~)) 10 percent, by count, is allowed for cherries that fail to meet the grade requirements because of permanent defects.

(iii) Of the total tolerance of ((~~twenty-four~~)) 24 percent, no more than seven percent, by count, is allowed for cherries that are seriously damaged, including no more than five percent for cherries seriously damaged by permanent defects and two percent for cherries affected by decay.

AMENDATORY SECTION (Amending WSR 07-12-076, filed 6/5/07, effective 7/6/07)

WAC 16-414-014 Tolerances for "off-size" sweet cherries. To allow for variations in size incident to proper grading and handling, the following tolerances, by count, are established for off-size grade sweet cherries:

(1) No more than ((~~ten~~)) 10 percent of the cherries in any inspection lot ((~~must~~)) may measure less than ((~~54/64~~)) 57/64 inches in diameter.

(2) Ten percent ((~~for~~)) of cherries ((~~that~~)) in any inspection lot may fail to meet any specified maximum diameter when that maximum diameter is marked on the container or specified in terms of fractions of inches.

(3) When containers are marked with row count/row size or a lot is specified by row count/row size, no more than ((~~ten~~)) 10 percent of the cherries in any inspection lot may fail to meet the corresponding diameter size listed in the table in WAC 16-414-011((~~(3)~~)) (4).

(4) When containers are marked with a "minimum diameter," no more than five percent of the cherries in the container may fail to meet the corresponding diameter.

AMENDATORY SECTION (Amending WSR 07-12-076, filed 6/5/07, effective 7/6/07)

WAC 16-414-020 Washington No. 1 and Northwest No. 1 grade sweet cherries—Individual sample tolerances. Tolerances are applied to Washington No. 1 and Northwest No. 1 sweet cherries as follows:

(1) For cartons marked or certified to meet Washington No. 1 grade, individual samples must have no more than double the tolerances specified. However, if the averages for the entire lot are within the tolerances specified for the grade, at least two defective and two off-size specimens may be allowed in any sample.

(2) For cartons marked or certified to meet Northwest No. 1 grade, individual samples are not limited to percentage of defects. However, the entire lot must be within the tolerances specified for the grade.

(3) When containers are marked with row count/row size or when a lot is specified by row count/row size, the individual samples or containers must not be limited by the percentage of cherries that are smaller than the diameter corresponding to the particular row count/row size. However, no more than ((~~twenty~~)) 20 percent, by count, of the cherries in any sample or container ((~~must~~)) may measure less than ((~~54/64~~)) 57/64 inches in diameter.

((~~(3)~~)) (4) When marked with minimum size, individual samples may have no more than double the tolerances specified.

AMENDATORY SECTION (Amending WSR 07-12-076, filed 6/5/07, effective 7/6/07)

WAC 16-414-045 Damage to fresh, sweet cherries—Specific defects. The following defects are considered damage to fresh, sweet cherries:

(1) Cracks within the stem cavity when they are deep or not well healed, or when the cherry's appearance is affected to a greater extent than a cherry that has a superficial well healed crack 1/16 inch in width and extending one-half the greatest circumference of the stem cavity.

(2) Cracks outside the stem cavity when they are deep or not well healed, or when they materially affect the cherry's appearance, or when the crack has weakened the cherry to the extent that it is likely to split or break in the process of proper grading, packing and handling.

(3) Hail marks when they are deep or not well healed, or when the aggregate area exceeds 3/16 inch in diameter.

(4) Evidence of insects when scale is present, or when any insect materially affects the cherry's appearance.

(5) ((~~Limb rubs when they affect the cherry's appearance more than the amount of scarring that is allowed.~~

~~(6) Pulled stems when the skin or flesh is slightly torn.~~

~~(7) Russeting when it affects the cherry's appearance more than the amount of scarring that is allowed.~~

~~(8) Blemishes including bird pecks, sunburn, other blemishes or combinations of blemishes that materially affect the appearance of the cherry, or any materially discolored flesh.~~

~~(9) Scars~~)) Blemishes when excessively deep or rough or dark colored and when the aggregate area exceeds 3/16 inch in diameter, or when smooth or fairly smooth, light colored, superficial, and the aggregate area exceeds 1/4 inch in diameter.

((~~(10)~~)) (6) Skin breaks when they are not well healed, or when the cherry's appearance is materially affected.

((~~(11)~~)) (7) Sutures when they are excessively deep or cause the cherry's shape to be less than well formed.

(8) Bruises when they affect an aggregate of more than 1/4 inch in diameter.

AMENDATORY SECTION (Amending WSR 07-12-076, filed 6/5/07, effective 7/6/07)

WAC 16-414-065 Serious damage to fresh, sweet cherries—Specific defects. The following defects are considered serious damage to fresh, sweet cherries:

(1) Cracks when they are not well healed;

(2) Insect larvae or insect holes;

(3) Pulled stems if they ((~~cause more than a slight~~)) tear ((~~in~~)) the cherry skin or flesh, or when they cause the cherry to leak;

(4) Skin breaks when they are not well healed; ((~~and~~))

(5) Blemishes when excessively deep or rough or dark colored and when the aggregate area exceeds 3/8 inch in diameter, or when smooth or fairly smooth, light colored, superficial, and the aggregate area exceeds 1/2 inch in diameter;

(6) Bruises when they affect an aggregate of more than 3/8 inch in diameter; and

(7) Decay.

AMENDATORY SECTION (Amending WSR 07-12-076, filed 6/5/07, effective 7/6/07)

WAC 16-414-090 Sweet cherry container marking requirements. (1) Containers must be conspicuously and legibly stamped with the:

(a) Name and the address of the grower, packer or shipper;

(b) Net weight; and

(c) True variety name or "sweet cherries."

(2) The containers may be marked with the grade name Washington No. 1, U.S. No. 1, or Northwest No. 1.

(3) Sealed consumer units must meet all container marking requirements as well as including the quantity in terms of weight or dry volume.

WSR 26-15-023
PROPOSED RULES
HEALTH CARE AUTHORITY
[Filed July 7, 2026, 10:51 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 26-11-029.

Title of Rule and Other Identifying Information: WAC 182-526-0280 Continuing a hearing when an appellant is an applicant or recipient.

Hearing Location(s): On August 25, 2026, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. Virtual public hearings are held via Microsoft Teams webinar. To attend, you must register in advance at https://events.gcc.teams.microsoft.com/event/27ed979a-4c6f-43e9-939b-c2369338eb7a@11d0e217-264e-400a-8ba0-57dcc127d72d. After registering, you will receive a confirmation email containing information about joining the public hearing. You will be able to join the public hearing through most standard internet browsers; you do not need to install Microsoft Teams.

Date of Intended Adoption: Not sooner than August 26, 2026.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, beginning July 8, 2026, 8:00 a.m., by August 25, 2026, 11:59 p.m.

Assistance for Persons with Disabilities: Contact Jessica Nguyen, phone 360-725-1174, fax 360-586-9727, telecommunication relay service 711, email arc@hca.wa.gov, by August 7, 2026.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending the rule to add to the factors an administrative law judge is to consider when determining whether to grant a hearing continuance and to add expectations regarding the timing of the administrative law judge's initial decision.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021 and 41.05.160.

Statute Being Implemented: RCW 41.05.021 and 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Jensen, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0815; Implementation and Enforcement: Kerry Breen, P.O. Box 42700, Olympia, WA 98504-2700, 1-844-728-5212.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

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

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Explanation of exemptions: This rule proposal relates to agency hearings.

Scope of exemption for rule proposal:

Is fully exempt.

July 7, 2026

Wendy Barcus
Rules Coordinator

RDS-7222.1

AMENDATORY SECTION (Amending WSR 17-24-103, filed 12/5/17, effective 1/5/18)

WAC 182-526-0280 Continuing a hearing when an appellant is an applicant or recipient. (1) Any party may request a continuance under this section either orally or in writing.

(2) Before contacting the office of administrative hearings (OAH) to request a continuance, the party seeking the continuance must make a good faith effort to contact the other parties to find out if they agree to a continuance. The party making the request for a continuance must let OAH know whether the other parties agreed to the continuance.

(3) **Standard when less than ((~~sixty~~)) 60 days.** When a continuance request is made less than ((~~sixty~~)) 60 days from the date OAH received the hearing request:

(a) If all parties agree to the continuance, the ALJ must grant the request unless the ALJ holds a status conference, prehearing conference, or a hearing and finds that good cause for a continuance does not exist under WAC 182-526-0020.

(b) If the parties do not agree to the continuance, the ALJ must schedule a status conference, prehearing conference, or a hearing and determine if good cause for a continuance exists under WAC 182-526-0020 and under the following factors:

(i) Why the party is requesting a continuance;

(ii) Why the other party or parties are objecting to the request;

(iii) Whether a continuance in the case has previously been granted at the request of the same party who is now requesting the continuance and, if so, whether it was for the same reason;

(iv) The extent to which the requesting or objecting parties could have prevented the need for delay;

(v) The number and duration of previous continuances in the case and who requested them;

(vi) The legal or factual complexity of the case;

(vii) The relative harm to the parties if the continuance is granted or denied, including:

(A) The risk of harm to the appellant if ((~~he or she~~)) the appellant is not receiving continued benefits; and

(B) The prejudice to the nonrequesting party, including whether that party prepared for the hearing, reserved time in anticipation of the hearing, or designated witnesses ready for the hearing, and the extent to which granting a continuance would waste the resources expended by the nonrequesting party in preparing for the hearing;

(viii) The impact of a continuance on the parties' ability to adequately prepare and present their cases;

(ix) How close to the scheduled hearing date the request was made and whether the requesting party had sufficient opportunity to raise the need for a continuance at an earlier time;

(x) Any need to provide accommodation, translation, or interpreter services; ((~~and~~

~~(x)~~)) (xi) The impact of a continuance on the ability of OAH to issue a timely initial decision; ((~~or~~

~~(xi)~~)) (xii) Whether the requesting party has a pattern of seeking continuances before OAH, and whether that pattern suggests an intent to delay rather than a genuine need for additional time; and

(xiii) Other relevant factors.

(c) If a party requests a continuance because of illness, medical need, or a medical appointment, the ALJ will consider:

(i) Whether the party has submitted supporting medical documentation; and

(ii) Whether the medical appointment was scheduled before or after the notice of hearing was issued.

The absence of supporting medical documentation weighs against granting the continuance.

(4) **Standard when ((~~sixty~~)) 60 days or greater.** When a continuance request is made ((~~sixty~~)) 60 days or more from the date OAH received the hearing request:

(a) The ALJ must not only consider whether there is good cause to continue the hearing but also must find a compelling reason for the continuance.

(b) Compelling reasons include:

(i) Medical evidence is required;

(ii) Extraordinary circumstances exist, such as the sudden unforeseen onset of an illness or adverse event that was beyond the party's ability to prevent;

(iii) The hearing format changes or the ALJ finds a compelling reason to change the way a witness appears at the hearing according to WAC 182-526-0360;

(iv) The appellant needs more time to prepare or present evidence or argument because the agency issued an amended notice under WAC 182-526-0260;

(v) The need for more time was caused by another party's action or inaction, considering the relative capacity and resources of the parties;

(vi) The need to provide accommodation, translation, or interpreter services;

(vii) A party received notice of the date or deadline ((~~thirty~~)) 30 days or more after OAH received the hearing request;

(viii) Whether the continuance is needed to allow for effective assistance of counsel of record; or

(ix) Other compelling reasons.

(c) If the same party has requested and received a continuance more than twice, that weighs against finding a compelling reason for an additional continuance request by the same party.

(5) The ALJ must notify all parties whether a continuance was granted or denied orally on the record, or must do so in writing within five business days of the status conference, prehearing conference, or hearing. If the ALJ grants a contested continuance request, the ALJ must issue an order detailing the grounds for the continuance.

(6) If the ALJ grants a continuance, OAH must serve a new notice of hearing on the parties at least ((~~fourteen~~)) 14 calendar days before the new hearing date, unless the parties agree to a shorter time period.

(7) Subject to the good cause and compelling reasons in this section, an ALJ must ordinarily issue a hearing decision no later than 90 days after:

(i) The date the enrollee filed an MCO appeal, not including the number of days the enrollee took to subsequently file for a state administrative hearing; or

(ii) For all other administrative hearings, the date the agency or OAH receives a request for an administrative hearing.

WSR 26-15-024
PROPOSED RULES
HEALTH CARE AUTHORITY
[Filed July 7, 2026, 11:17 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 26-06-035 and 26-09-003.

Title of Rule and Other Identifying Information: WAC 182-503-0070 Washington apple health—When coverage begins, 182-504-0005 Washington apple health—Retroactive certification period, 182-504-0015 Washington apple health—Certification periods for categorically needy programs, 182-504-0020 Certification periods for the noninstitutional medically needy program, 182-504-0025 Medicare savings program certification periods, 182-504-0035 Washington apple health—Renewals, 182-505-0250 Washington apple health—MAGI-based adult medical, 182-511-1100 Apple health for workers with disabilities (HWD)—Retroactive coverage, 182-512-0150, SSI-related medical—Medically needy (MN) medical eligibility, 182-513-1350 Defining the resource standard and determining resource eligibility for SSI-related long-term care (LTC) services, and 182-519-0110 Spenddown of excess income for the medically needy program.

Hearing Location(s): On August 25, 2026, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. Virtual public hearings are held via Microsoft Teams webinar. To attend, you must register in advance at https://events.gcc.teams.microsoft.com/event/27ed979a-4c6f-43e9-939b-c2369338eb7a@11d0e217-264e-400a-8ba0-57dcc127d72d. After registering, you will receive a confirmation email containing information about joining the public hearing. You will be able to join the public hearing through most standard internet browsers; you do not need to install Microsoft Teams.

Date of Intended Adoption: Not sooner than August 26, 2026.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, beginning July 8, 2026, 8:00 a.m., by August 25, 2026, 11:59 p.m.

Assistance for Persons with Disabilities: Contact Jessica Nguyen, phone 360-725-1174, fax 360-586-9727, telecommunication relay service 711, email arc@hca.wa.gov, by August 7, 2026.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Effective January 1, 2027, federal law (42 U.S.C. Sec. 1396a (e)(14)(L)) requires that states conduct eligibility redeterminations for certain federally funded medical assistance every six months. Also effective January 1, 2027, federal law (P.L. 119-21, Section 71112) shortens the retroactive coverage period for federally funded medical assistance. HCA is amending its rules to comply with these changes in federal law.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021 and 41.05.160.

Statute Being Implemented: RCW 41.05.021 and 41.05.160.

Rule is necessary because of federal law, P.L. 119-21, Sections 71107 and 71112.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Jensen, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0815; Implementation and Enforcement: Heather Chrzan, P.O. Box 42722, Olympia, WA 98504-2722, 360-725-1513.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rules pertain to client program eligibility and do not impose costs on businesses.

Scope of exemption for rule proposal:

Is fully exempt.

July 7, 2026
Wendy Barcus
Rules Coordinator

RDS-7077.1

AMENDATORY SECTION (Amending WSR 25-11-007, filed 5/8/25, effective 7/1/25)

WAC 182-503-0070 Washington apple health—When coverage begins. (1) Your Washington apple health coverage starts on the first day of the month you applied for and we decided you are eligible to receive coverage, unless one of the exceptions in subsection (4) of this section applies to you.

(2) Sometimes we can start your coverage up to ((~~three~~)) two months before the month you applied (see WAC 182-504-0005).

(3) If you are confined or incarcerated as described in WAC 182-503-0010, your coverage cannot start before the day you are discharged, except when:

(a) You are hospitalized during your confinement and the hospital requires you to stay overnight; or

(b) You are determined to be eligible for prerelease reentry services.

(4) Your apple health coverage may not begin on the first day of the month if:

(a) Subsection (3) of this section applies to you. In that case, your coverage would start on:

(i) The first day of your hospital stay; or

(ii) When you are determined to be eligible for prerelease reentry services;

(b) You must meet a medically needy spenddown liability (see WAC 182-519-0110). In that case, your coverage would start on the day your spenddown is met; or

(c) You are eligible under the apple health alien emergency medical program (see WAC 182-507-0115). In that case, your coverage would start on the day your ((~~emergent~~)) emergency hospital stay begins.

(5) For long-term care, the date your services start is described in WAC 388-106-0045.

RDS-7078.1

AMENDATORY SECTION (Amending WSR 22-21-086, filed 10/14/22, effective 11/14/22)

WAC 182-504-0005 Washington apple health—Retroactive certification period. (1) The medicaid agency approves a retroactive Washington apple health (((~~WAH~~)) medicaid) certification period ((~~for the three months immediately before the month of application~~)) when an individual:

(a) Requests retroactive ((~~WAH on his or her~~)) apple health on their application, within the certification period following the retroactive period, or before the determination of benefits and any appeal process is final;

(b) Would have been eligible for ((~~WAH~~)) apple health for any or all of the ((~~three~~)) months if ((~~he or she~~)) they had applied during the retroactive period; and

(c) The individual received covered medical services as described in WAC 182-501-0060 and 182-501-0065.

(2) A retroactive apple health certification period is:

(a) One month when the individual is eligible for apple health for adults; or

(b) Two months for all other apple health programs.

(3) When an individual is eligible only during the ((~~three-month~~)) retroactive certification period, that period is the only period of certification, except when:

(a) A pregnant individual is eligible in one of the ((~~three~~)) two months immediately before the month of application, but no earlier than the month of conception. Eligibility continues as described in WAC 182-504-0015(3).

(b) An individual who is applying within 12 months of their last pregnancy end date is eligible for after-pregnancy coverage in any of the ((~~three~~)) two months immediately before the month of application. Continuous eligibility begins from the earliest month the individual is found eligible as described in WAC 182-504-0015 (3) and (4).

(c) A child is eligible for categorically needy (CN) ((~~WAH~~)) apple health as described in WAC 182-505-0210 (1) through (5) and (7) in at least one of the ((~~three~~)) two months immediately before the month of application. Eligibility after the retroactive period continues as described in WAC 182-504-0015(11).

((~~(3)~~)) (4) An individual applying for the medically needy (MN) spenddown program may be eligible for a retroactive certification period as described in WAC 182-504-0020.

((~~(4)~~)) (5) An individual applying for a medicare savings program may be eligible for a retroactive certification period as described in WAC 182-504-0025.

AMENDATORY SECTION (Amending WSR 15-13-053, filed 6/10/15, effective 7/11/15)

WAC 182-504-0020 Certification periods for the noninstitutional medically needy program. (1) The certification period for the nonin-

stitutional medically needy (MN) program for clients with countable income equal to or below the medically needy income level (MNIL):

(a) Begins on the first day of the month in which eligibility is established; and

(b) Is approved for ((~~twelve~~)) 12 calendar months.

(2) The certification period for the noninstitutional MN program for clients with countable income above the MNIL:

(a) Begins on the day that spenddown is met; and

(b) Continues through the last day of the final month of the base period as described in WAC 182-519-0110.

(3) A retroactive MN certification period may be established for up to ((~~three~~)) two months preceding the month of application.

(4) Expenses used to meet the spenddown liability for the current or the retroactive certification periods are the responsibility of the client. The agency is not responsible for paying any expense or portion of an expense which has been used to meet the spenddown liability. See WAC 182-519-0110.

(5) A new application must be submitted for each subsequent certification period for which medically needy coverage is requested.

AMENDATORY SECTION (Amending WSR 11-24-018, filed 11/29/11, effective 12/1/11)

WAC 182-504-0025 Medicare savings program certification periods. Certification periods for the different kinds of medicare savings programs are not all the same. The chart below explains the differences.

Medicare Savings Program	Certification Period	Start Date
QMB (qualified medicare beneficiary) S03	12 months	On the first day of the month following QMB eligibility determination
SLMB (Special low income medicare beneficiary) S05	12 months	Up to ((~~three~~)) two months prior to the certification period if on the first day of the first month of certification, the person: • Is or has been enrolled in medicare Part B; and • Meets SLMB eligibility requirements.
QDWI (Qualified disabled working individual) S04	12 months	Up to ((~~three~~)) two months prior to the certification period if on the first day of the first month of certification, the person: • Is or has been enrolled in medicare Part A; and • Meets QDWI eligibility requirements.

Medicare Savings Program	Certification Period	Start Date
QI-1 (Qualified individual) S06	Thru the end of the calendar year following QI-1 eligibility determination	Up to ((~~three~~)) two months prior to the certification period if on the first day of the first month of certification, the person: • Is or has been enrolled in medicare Part B; and • Meets QI-1 eligibility requirements.

RDS-7121.2

AMENDATORY SECTION (Amending WSR 25-16-101, filed 8/6/25, effective 9/6/25)

WAC 182-504-0015 Washington apple health—Certification periods for categorically needy programs. (1) A certification period is the period of time we determine that you are eligible for a categorically needy (CN) Washington apple health program. Unless otherwise stated in this section, the certification period begins on the first day of the month of application and continues through the end of the last month of the certification period.

(2) Newborn coverage begins on the child's date of birth and continues through the end of the month of the child's first birthday.

(3) If you are eligible for apple health based on pregnancy, the certification period continues through the last day of the month the pregnancy ends. After-pregnancy coverage begins the first day of the month, following the end of the pregnancy, and ends the last day of the 12th month from the time after-pregnancy coverage began.

(4) If you are newly eligible for apple health coverage and had a pregnancy end within the last 12 months, your certification period for after-pregnancy coverage:

(a) Begins the first day of the month you are eligible; and

(b) Ends the last day of the 12th month following the end of your pregnancy.

(5) If you are eligible for the refugee program, the certification period ends at the end of the fourth month following your date of entry to the United States.

(6) If you are a child under age six receiving apple health for kids, with or without premiums, your certification period ends the last day of the month of your sixth birthday.

(7) If you are eligible for newborn coverage, your coverage continues through the last day of the month of your first birthday. Apple health for kids coverage begins automatically on the first day of the month after your newborn coverage ends and the certification period ends the last day of the month of your sixth birthday.

(8) If you are eligible for apple health for adults under WAC 182-505-0250, the certification period begins the first day of the month of application and continues for six months. If you are American Indian or Alaska native and eligible for apple health for adults under

WAC 182-505-0250, the certification period begins the first day of the month of application and continues for 12 months.

(9) For all other CN coverage, the certification period is 12 months.

((~~(9)~~)) (10) If you are a child, eligibility is continuous throughout the certification period regardless of a change in circumstances, unless you:

(a) Turn age 19;

(b) Move out-of-state; or

(c) Die.

((~~(10)~~)) (11) When you turn 19, the certification period ends after the redetermination process described in WAC 182-504-0125 is completed, even if the 12-month period is not over, unless:

(a) You are receiving inpatient services (described in WAC 182-514-0230) on the last day of the month you turn 19;

(b) The inpatient stay continues into the following month or months; and

(c) You remain eligible except for turning age 19.

((~~(11)~~)) (12) A retroactive certification period is described in WAC 182-504-0005.

((~~(12)~~)) (13) Coverage under premium-based programs included in apple health for kids as described in chapter 182-505 WAC begins no sooner than the month after creditable coverage ends.

AMENDATORY SECTION (Amending WSR 25-16-101, filed 8/6/25, effective 9/6/25)

WAC 182-504-0035 Washington apple health—Renewals. (1) For all Washington apple health programs, the following applies:

(a) You are required to complete a renewal of eligibility at least every 12 months with the following exceptions:

(i) If you are eligible for apple health medically needy with spenddown, then you must complete a new application at the end of each three- or six-month base period;

(ii) If you are eligible for apple health alien emergency medical, then you are certified for a specific period of time to cover emergency inpatient hospitalization costs only (see WAC 182-507-0115(8));

(iii) If you are eligible for apple health refugee coverage, you must complete a renewal of eligibility after four months; ((~~or~~))

(iv) If you are a child under age six on apple health for kids, with or without premiums, your first renewal is due the month of your sixth birthday; or

(v) If you are eligible for apple health for adults under WAC 182-505-0250, you must complete a renewal of eligibility every six months. If you are American Indian or Alaska native and eligible for apple health for adults under WAC 182-505-0250, you must complete a renewal of eligibility every 12 months.

(b) You may complete renewals online, by phone, or by paper application that you mail or fax to us (the agency or the agency's designee).

(c) If your apple health is renewed, we decide the certification period according to WAC 182-504-0015.

(d) We review all eligibility factors subject to change during the renewal process.

(e) We redetermine eligibility as described in WAC 182-504-0125 and send you written notice as described in WAC 182-518-0005 before apple health is terminated.

(f) If you need help meeting the requirements of this section, we provide equal access services as described in WAC 182-503-0120.

(2) For programs based on modified adjusted gross income (MAGI) as described in WAC 182-503-0510:

(a) Sixty days prior to the end of the certification period:

(i) When information from electronic sources shows income is reasonably compatible (as defined in WAC 182-500-0095), we administratively renew your coverage (as defined in WAC 182-500-0010) for a new certification period and send you a notice of renewal with the information used. You are required to inform us if any of the information we used is wrong.

(ii) If we are unable to complete an administrative renewal (as defined in WAC 182-500-0010), you must give us a signed renewal in order for us to decide if you will continue to get apple health coverage beyond the current certification period.

(iii) We follow the requirements described in WAC 182-518-0015 to request any additional information needed to complete the renewal process or to terminate coverage for failure to renew.

(b) If your apple health coverage is terminated because you did not renew, you have 90 days from the termination date to give us a completed renewal without requiring a new application. ((~~If we decide you are still eligible to get apple health coverage, we will restore your apple health without a gap in coverage.~~))

(3) For non-MAGI based programs (as described in WAC 182-503-0510):

(a) Forty-five days prior to the end of the certification period, we send notice with a renewal form. You must renew before the end of the certification period by either calling the department of social and health services at the number listed on the form to renew by telephone, renew online at www.washingtonconnection.org, or mailing or delivering to the department of social and health services a signed renewal form with the information required by WAC 182-503-0005.

(b) We follow the requirements in WAC 182-518-0015 to request any additional information needed to complete the renewal process or to terminate coverage for failure to renew.

(c) To complete your renewal, you must give us all the other information requested on the application that is needed to determine your eligibility.

(d) If you are terminated for failure to renew, you have 30 days from the termination date to submit a completed renewal. If still eligible, we will restore your apple health without a gap in coverage.

(4) If we determine that you are not eligible for renewal of your apple health coverage, we:

(a) Consider your eligibility for all other apple health programs before ending your apple health coverage; and

(b) Coordinate with the health benefit exchange any request for information that is necessary to determine your eligibility for:

(i) Other apple health programs; and

(ii) With respect to qualified health plans, health insurance premium tax credits (as defined in WAC 182-500-0045) and cost-sharing reductions (as defined in WAC 182-500-0020).

(5) We reconsider our decision that you are not eligible for apple health coverage without a new application from you when:

(a) We receive the information that we need to decide if you are eligible within 30 days of the date on the termination notice; or

(b) You request a hearing within 90 days of the date on the renewal denial letter and an administrative law judge (ALJ) or HCA review judge decides our decision was wrong (per chapter 182-526 WAC).

(6) If you disagree with our decision, you can ask for a hearing. If we decided that you are not eligible for renewal because we do not have enough information, the ALJ will consider the information we already have and anymore information you give us. The ALJ does not consider the previous absence of information or failure to respond in determining if you are eligible.

RDS-7122.1

AMENDATORY SECTION (Amending WSR 14-16-052, filed 7/29/14, effective 8/29/14)

WAC 182-505-0250 Washington apple health—MAGI-based adult medical. (1) Effective on or after January 1, 2014, a person is eligible for Washington apple health ((~~(WAH)~~)) modified adjusted gross income (MAGI)-based adult coverage when ((~~he or she~~)) the person meets the following requirements:

(a) Is age ((~~nineteen~~)) 19 or older and under the age of ((~~sixty-five~~)) 65;

(b) Is not entitled to, or enrolled in, medicare benefits under Part A or B of Title XVIII of the Social Security Act;

(c) Is not otherwise eligible for and enrolled in mandatory coverage under one of the following programs:

(i) ((~~WAH~~)) Apple health SSI-related categorically needy (CN);

(ii) ((~~WAH~~)) Apple health foster care program; or

(iii) ((~~WAH~~)) Apple health adoption support program;

(d) Meets citizenship and immigration status requirements described in WAC 182-503-0535;

(e) Meets general eligibility requirements described in WAC 182-503-0505; and

(f) Has net countable income that is at or below ((~~one hundred thirty-three~~)) 133 percent of the federal poverty level for a household of the applicable size.

(2) Parents or caretaker relatives of an eligible dependent child as described in WAC 182-503-0565 are first considered for ((~~WAH~~)) apple health for families as described in WAC 182-505-0240. A person whose countable income exceeds the standard to qualify for family coverage is considered for coverage under this section.

(3) Persons who are eligible under this section are eligible for ((~~WAH~~)) apple health alternative benefit plan as defined in WAC 182-500-0010 coverage. A person described in this section is not eligible for medically needy ((~~WAH~~)) apple health.

(4) For persons eligible under this section, a certification period begins the first day of the month of application and continues for six months. For American Indians or Alaska natives eligible under

this section, a certification period begins the first day of the month of application and continues for 12 months.

(5) Other coverage options for adults not eligible under this section are described in WAC 182-508-0001.

RDS-7079.1

AMENDATORY SECTION (Amending WSR 19-23-063, filed 11/15/19, effective 1/1/20)

WAC 182-511-1100 Apple health for workers with disabilities (HWD)—Retroactive coverage. This section describes requirements for retroactive coverage provided under the apple health for workers with disabilities (HWD) program.

(1) Retroactive coverage refers to the period of up to ((~~three~~)) two months before the month in which a person applies for the HWD program.

(2) To qualify for retroactive coverage under the HWD program, a person must first:

(a) Meet all program requirements described in WAC 182-511-1050 for each month of the retroactive period; and

(b) Pay the premium amount for each month requested within ((~~one hundred twenty~~)) 120 days of being billed for such coverage.

(3) Payment must be received for each month of requested ((~~of~~)) retroactive coverage before such coverage is approved.

RDS-7080.1

AMENDATORY SECTION (Amending WSR 22-12-056, filed 5/26/22, effective 6/26/22)

WAC 182-512-0150 SSI-related medical—Medically needy (MN) medical eligibility. (1) Washington apple health (((~~WAH~~)) medicaid) medically needy (MN) health care coverage is available for any of the following:

(a) A person who is SSI-related and not eligible for ((~~WAH~~)) apple health categorically needy (CN) medical coverage because the person has countable income that is above the ((~~WAH~~)) apple health CN income level (CNIL) (or for long-term care (LTC) recipients, above the special income limit (SIL)):

(i) The person's countable income is at or below ((~~WAH~~)) apple health MN standards, leaving no spenddown requirement; or

(ii) The person's countable income is above ((~~WAH~~)) apple health MN standards requiring the person to spenddown their excess income (see subsection (4) of this section). See WAC 182-512-0500 through 182-512-0800 for rules on determining countable income, and WAC 182-519-0050 for program standards or chapter 182-513 WAC for institutional standards.

(b) An SSI-related ineligible spouse of an SSI recipient;

(c) A person who meets SSI program criteria but is not eligible for the SSI cash grant due to immigration status or sponsor deeming. See WAC 182-503-0535 for limits on eligibility for aliens;

(d) A person who meets the ((~~WAH~~)) apple health MN LTC services requirements of chapter 182-513 WAC;

(e) A person who lives in an alternate living facility and meets the requirements of WAC 182-513-1205; or

(f) A person who meets resource requirements as described in chapter 182-512 WAC, elects and is certified for hospice services per chapter 182-551 WAC.

(2) A person whose countable resources are above the SSI resource standards is not eligible for ((~~WAH~~)) apple health MN noninstitutional health care coverage. See WAC 182-512-0200 through 182-512-0550 to determine countable resources.

(3) A person who qualifies for services under ((~~WAH~~)) apple health long-term care programs has different criteria and may spend down excess resources to become eligible for ((~~WAH~~)) apple health LTC institutional or waiver health care coverage. Refer to WAC 182-513-1315 and 182-513-1395.

(4) A person with income over the effective ((~~WAH~~)) apple health MN income limit (MNIL) described in WAC 182-519-0050 may become eligible for ((~~WAH~~)) apple health MN coverage when the person has incurred medical expenses that are equal to the excess income. This is the process of meeting spenddown. Refer to chapter 182-519 WAC for spenddown information.

(5) A person may be eligible for health care coverage for any or all of the ((~~three~~)) two months immediately prior to the month of application, if the person has:

(a) Met all eligibility requirements for the months being considered; and

(b) Received medical services covered by medicaid during that time.

(6) A person who is eligible for ((~~WAH~~)) apple health MN without a spenddown is certified for up to 12 months. For a person who must meet a spenddown, refer to WAC 182-519-0110. For a person who is eligible for a ((~~WAH~~)) apple health long-term care MN program, refer to WAC 182-513-1395 and 182-513-1315.

(7) A person must reapply for each certification period. There is no continuous eligibility for ((~~WAH~~)) apple health MN.

RDS-7094.1

AMENDATORY SECTION (Amending WSR 26-06-050, filed 2/25/26, effective 3/28/26)

WAC 182-513-1350 Defining the resource standard and determining resource eligibility for SSI-related long-term care (LTC) services.

(1) General information.

(a) This section describes how the agency or the agency's designee defines the resource standard and countable or excluded resources when determining a person's eligibility for SSI-related long-term care (LTC) services.

(b) "Resource standard" means the maximum amount of resources a person can have and still be resource eligible for program benefits.

(c) For a person not SSI-related, the agency applies program specific resource rules to determine eligibility.

(2) Resource standards.

(a) The resource standard for the following people is $2000:

(i) A single person; or

(ii) An institutionalized spouse.

(b) The resource standard for a legally married couple is $3000, unless subsection (3)(b)(ii) of this section applies.

(c) The resource standard for a person with a qualified long-term care partnership policy under WAC 182-513-1400 may be higher based on the dollar amount paid out by a partnership policy.

(d) Determining the amount of resources that can be allocated to the community spouse when determining resource eligibility is under WAC 182-513-1355.

(3) Availability of resources.

(a) General. The agency or the agency's designee applies the following rules when determining available resources for LTC services:

(i) WAC 182-512-0300 SSI-related medical—Resources eligibility;

(ii) WAC 182-512-0250 SSI-related medical—Ownership and availability of resources; and

(iii) WAC 182-512-0260 SSI-related medical—How to count a sponsor's resources.

(b) Married couples.

(i) When both spouses apply for LTC services, the resources of both spouses are available to each other through the month in which the spouses stopped living together.

(ii) When both spouses are institutionalized, the agency or the agency's designee determines the eligibility of each spouse as a single person the month following the month of separation.

(iii) If the agency or the agency's designee has already established eligibility and authorized services for one spouse, and the community spouse needs LTC services in the same month, but after eligibility has been established and services authorized for the institutionalized spouse, then the agency applies the standard under subsection (2)(a) of this section to each spouse. If doing this would make one of the spouses ineligible, then the agency applies subsection (2)(b) of this section for the couple.

(iv) The resources of the community spouse are unavailable to the institutionalized spouse the month after eligibility for LTC services is established, unless (v) or (vi) of this subsection applies.

(v) When a single institutionalized individual marries, the agency or the agency's designee redetermines eligibility applying the resource and income rules for a legally married couple.

(vi) A redetermination of the couple's resources under this section is required if:

(A) The institutionalized spouse has a break of at least 30 consecutive days in a period of institutional status;

(B) The institutionalized spouse's countable resources exceed the standard under subsection (2)(a) of this section, and WAC 182-513-1355 (2)(b) applies; or

(C) The institutionalized spouse does not transfer the amount, under WAC 182-513-1355 (3) or (5), to the community spouse by either:

(I) The end of the month of the first regularly scheduled eligibility review; or

(II) A reasonable amount of time necessary to obtain a court order for the support of the community spouse.

(4) Countable resources.

(a) The agency or the agency's designee determines countable resources using the following sections:

(i) WAC 182-512-0200 SSI-related medical—Definition of resources.

(ii) WAC 182-512-0250 SSI-related medical—Ownership and availability of resources.

(iii) WAC 182-512-0260 SSI-related medical—How to count a sponsor's resources.

(iv) WAC 182-512-0300 SSI-related medical—Resources eligibility.

(v) WAC 182-512-0350 SSI-related medical—Property and contracts excluded as resources;

(vi) WAC 182-512-0400 SSI-related medical—Vehicles excluded as resources;

(vii) WAC 182-512-0450 SSI-related medical—Life insurance excluded as a resource; and

(viii) WAC 182-512-0500 SSI-related medical—Burial funds, contracts and spaces excluded as resources.

(ix) Chapter 182-516 WAC, Trusts, annuities, life estates, and promissory notes—Effect on medical programs.

(b) The agency or the agency's designee determines excluded resources based on federal law and WAC 182-512-0550, except:

(i) For institutional and HCB waiver programs, pension funds owned by a nonapplying spouse are counted toward the resource standard.

(ii) For institutional and HCB waiver programs, one home is excluded only if it meets the home equity limits of subsection (8) of this section. See WAC 182-512-0350 (1)(b).

(c) The agency or the agency's designee adds together the countable resources of both spouses if subsections (3)(b)(i) and (iv) apply, but not if subsection (3)(b)(ii) or (iii) apply. For a person with a community spouse, see WAC 182-513-1355.

(5) Excess resources.

(a) For LTC programs, a person may reduce excess resources by deducting incurred medical expenses under subsection (6) of this section;

(b) The amount of excess resources is limited to the following amounts:

(i) For LTC services provided under the categorically needy (CN) program:

(A) In a medical institution, excess resources and available income must be under the state medicaid rate based on the number of days the person spent in the medical institution in the month.

(B) For HCB waiver eligibility, incurred medical expenses must reduce resources within allowable resource standards. The cost of care for the HCB waiver services cannot be allowed as a projected expense.

(ii) For LTC services provided under the medically needy (MN) program, see:

(A) WAC 182-513-1395 for LTC programs; and

(B) WAC 182-513-1245 for hospice.

(c) Excess resources not otherwise applied to medical expenses will be applied to the projected cost of care for services in a medical institution under WAC 182-513-1380.

(6) Allowable medical expenses.

(a) The following incurred medical expenses may be used to reduce excess resources:

(i) Premiums, deductibles, coinsurance, or copayment charges for health insurance and medicare;

(ii) Medically necessary care defined under WAC 182-500-0070, but not covered under the state's medicaid plan. Information regarding covered services is under chapter 182-501 WAC;

(iii) Medically necessary care defined under WAC 182-500-0070 incurred prior to medicaid eligibility. Expenses for nursing facility care are reduced at the state rate for the specific facility that provided the services.

(b) To be allowed, the medical expense must:

(i) Have been incurred no more than ((~~three~~)) two months before the month of the medicaid application;

(ii) Not be subject to third-party payment or reimbursement;

(iii) Not have been used to satisfy a previous spenddown liability;

(iv) Not have been previously used to reduce excess resources;

(v) Not have been used to reduce participation;

(vi) Not have been incurred during a transfer of asset penalty under WAC 182-513-1363; and

(vii) Be an amount for which the person remains liable.

(7) Nonallowable expenses. The following expenses are not allowed to reduce excess resources:

(a) Unpaid adult family home (AFH) or assisted living facility expenses incurred prior to medicaid eligibility;

(b) Personal care cost more than approved hours determined by the CARE assessment under chapter 388-106 WAC; and

(c) Expenses excluded by federal law.

(8) Excess home equity.

(a) A person with an equity interest in a primary residence more than the home equity limit is ineligible for institutional and HCB waiver programs, unless one of the following persons lawfully resides in the home:

(i) That person's spouse; or

(ii) That person's dependent child under age 21, blind child, or disabled child.

(b) The home equity provision applies to all applications for LTSS received on or after May 1, 2006.

(c) The excess home equity limit is the federal maximum allowed. On January 1st of each year, this standard may change by the percentage in the consumer price index for all consumers (CPI-U). The current maximum home equity limit is posted by the Centers for Medicare and Medicaid Services. (See subsection (9) of this section for institutional resource standards.)

(d) A person who is denied or terminated LTC services due to excess home equity may apply for an undue hardship waiver under WAC 182-513-1367.

(9) Institutional resource standards are found at: www.hca.wa.gov/free-or-low-cost-health-care/i-help-others-apply-and-access-apple-health/program-standard-income-and-resources

RDS-7081.1

AMENDATORY SECTION (Amending WSR 19-02-046, filed 12/27/18, effective 1/27/19)

WAC 182-519-0110 Spenddown of excess income for the medically needy program. (1) A person who applies for Washington apple health (((~~WAH~~)) medicaid) and is eligible for medically needy (MN) coverage with a spenddown may choose a three-month or a six-month base period. A base period is a time period used to compute the spenddown liability amount. The months must be consecutive calendar months, unless a condition in subsection (4) of this section applies.

(2) A base period begins on the first day of the month a person applies for ((~~WAH~~)) apple health, unless a condition in subsection (4) of this section applies.

(3) A person may request a separate base period to cover up to ((~~three~~)) two calendar months immediately before the month of application. This is called a retroactive base period.

(4) A base period may vary from the terms in subsection((~~s~~)) (1), (2), or (3) of this section if:

(a) A ((~~three~~)) two-month base period would overlap a previous eligibility period;

(b) The person has countable resources over the applicable standard for any part of the required base period;

(c) The person is not or will not be able to meet the temporary assistance to needy families (TANF)-related or supplemental security income (SSI)-related requirement for the required base period;

(d) The person is eligible for categorically needy (CN) coverage for part of the required base period; or

(e) The person was not otherwise eligible for MN coverage for each month of the retroactive base period.

(5) The medicaid agency or ((~~its~~)) the agency's designee calculates a person's spenddown liability. The MN countable income from each month of the base period is compared to the effective medically needy income level (MNIL) under WAC 182-519-0050. Income over the effective MNIL standard (based on the person's household size) in each month in the base period is added together to determine the total spenddown amount.

(6) If household income varies and a person's MN countable income falls below the effective MNIL for one or more months, the difference offsets the excess income in other months of the base period. See WAC 182-519-0100(7) if a spenddown amount results in zero dollars and cents.

(7) If a person's income decreases, the agency or ((~~its~~)) the agency's designee approves CN coverage for each month in the base period when the person's countable income and resources are equal to or below the applicable CN standards. Children age eighteen and younger and pregnant women who become CN eligible in any month of the base period are continuously eligible for CN coverage for the remainder of the certification, even if there is a subsequent increase in income.

(8) Once a person's spenddown amount is determined, qualifying medical expenses are deducted. A qualifying medical expense must:

(a) Be an expense for which the person is financially liable;

(b) Not have been used to meet another spenddown;

(c) Not be the confirmed responsibility of a third party. The agency or ((~~its~~)) the agency's designee allows the entire expense if a third party has not confirmed its coverage of the expense within:

(i) Forty-five days of the date of service; or

(ii) Thirty days after the base period ends.

(d) Be an incurred expense for the person:

(i) The person's spouse;

(ii) A family member residing in the person's home for whom the person is financially responsible; or

(iii) A relative residing in the person's home who is financially responsible for the person.

(e) Meet one of the following conditions:

(i) Be an unpaid liability at the beginning of the base period;

(ii) Be for paid or unpaid medical services incurred during the base period;

(iii) Be for medical services incurred and paid during the ((~~three~~)) two-month retroactive base period if eligibility for ((~~WAH~~)) apple health was not established in that base period. Paid expenses that meet this requirement may be applied towards the current base period; or

(iv) Be for medical services incurred during a previous base period, either unpaid or paid, if it was necessary for the person to make a payment due to delays in the certification for that base period.

(9) An exception to subsection (8) of this section exists for qualifying medical expenses paid on the person's behalf by a publicly administered program during the current or the retroactive base period. The agency or ((~~its~~)) the agency's designee uses the qualifying medical expenses to meet the spenddown liability. To qualify for this exception, the program must:

(a) Not be federally funded or make payments from federally matched funds;

(b) Not pay the expenses before the first day of the retroactive base period; and

(c) Provide proof of the expenses paid on the person's behalf.

(10) Once the agency or ((~~its~~)) the agency's designee determines the expenses are a qualified medical expense under subsection (8) or (9) of this section, the expenses are subtracted from the spenddown liability to determine the date the person's eligibility for medical coverage begins. Qualifying medical expenses are deducted in the following order:

(a) First, medicare and other health insurance deductibles, coinsurance charges, enrollment fees, copayments, and premiums that are the person's responsibility under medicare Part A through Part D. (Health insurance premiums are income deductions under WAC 182-519-0100(5));

(b) Second, medical expenses incurred and paid by the person during the ((~~three~~)) two-month retroactive base period if eligibility for ((~~WAH~~)) apple health was not established in that base period;

(c) Third, current payments on, or unpaid balance of, medical expenses incurred before the current base period that were not used to establish eligibility for medical coverage in another base period. The agency or ((~~its~~)) the agency's designee sets no limit on the age of an unpaid expense; however, the expense must be a current liability and be unpaid at the beginning of the base period;

(d) Fourth, other medical expenses that are not covered by the agency's or ((~~its~~)) the agency's designee's medical programs, minus any third-party payments that apply to the charges. A licensed health care provider must provide or prescribe the items or services allowed as a medical expense;

(e) Fifth, other medical expenses incurred by the person during the base period that are potentially payable by the MN program (minus

any confirmed third-party payments that apply to the charges). This deduction is allowed even if payment is denied for these services because they exceed the agency's or ((~~its~~)) the agency's designee's limits on amount, duration, or scope of care. Scope of care is described in WAC 182-501-0060 and 182-501-0065; and

(f) Sixth, other medical expenses incurred by the person during the base period that are potentially payable by the MN program (minus any confirmed third-party payments that apply to the charges) and that are within the agency's or ((~~its~~)) the agency's designee's limits on amount, duration, or scope of care.

(11) If a person submits verification of qualifying medical expenses with his or her application that meet or exceed the spenddown liability, the person is eligible for MN medical coverage for the remainder of the base period unless their circumstances change. See WAC 182-504-0105 to determine which changes must be reported to the agency or ((~~its~~)) the agency's designee. The beginning of eligibility is determined under WAC 182-504-0020.

(12) If a person cannot meet the spenddown amount when the application is submitted, the person is not eligible until ((~~he or she~~)) the person provides proof of additional qualifying expenses that meet the spenddown liability.

(13) Each dollar of a qualifying medical expense may count once against a spenddown period that leads to eligibility for MN coverage. However, medical expenses may be used more than once if:

(a) The person did not meet ((~~his or her~~)) the person's total spenddown liability and become eligible in a previous base period and the bill remains unpaid; or

(b) The medical expense was incurred and paid within ((~~three~~)) two months of the current application, and the agency or ((~~its~~)) the agency's designee could not establish ((~~WAH~~)) apple health eligibility for the person in the retroactive base period.

(14) The person must provide the proof of qualifying medical expense information to the agency or ((~~its~~)) the agency's designee within ((~~thirty~~)) 30 days after the base period ends, unless there is a good reason for delay.

(15) Once a person meets the spenddown requirement and the certification begin date is established, newly identified expenses are not considered toward that spenddown unless:

(a) There is a good reason for the delay in submitting the expense; or

(b) The agency or ((~~its~~)) the agency's designee made an error when determining the correct begin date.

(16) Good reasons for delay in providing medical expense information to the agency or ((~~its~~)) the agency's designee include, but are not limited to:

(a) The person did not receive a timely bill from ((~~his or her~~)) the person's medical provider or insurance company;

(b) The person has medical issues that prevent ((~~him or her~~)) the person from submitting proof on time; or

(c) The person meets the criteria for needing equal access under WAC 182-503-0120.

(17) The agency or ((~~its~~)) the agency's designee does not pay for any expense or portion of an expense used to meet a person's spenddown liability.

(18) If an expense is potentially payable under the MN program, and only a portion of the medical expense is assigned to meet spenddown, the medical provider must not:

(a) Bill the person for more than the amount assigned to the remaining spenddown liability; or

(b) Accept or retain any additional amount for the covered service from the person. Any additional amount may be billed to the agency or ((~~its~~)) the agency's designee. See WAC 182-502-0160, Billing a client.

(19) The agency or ((~~its~~)) the agency's designee determines whether any payment is due to the medical provider on medical expenses partially assigned to meet a spenddown liability under WAC 182-502-0100.

(20) If the medical expense assigned to spenddown was incurred outside of a period of MN eligibility, or if the expense is not covered by ((~~WAH~~)) apple health, the agency or ((~~its~~)) the agency's designee does not pay any portion of the bill.

WSR 26-15-045
PROPOSED RULES
DEPARTMENT OF HEALTH
(Dental Quality Assurance Commission)
[Filed July 9, 2026, 7:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 26-07-017.

Title of Rule and Other Identifying Information: Updating dentist licensure fees in WAC 246-817-990 to add surcharge for impaired practitioner program.

The department of health (department), in consultation with the dental quality assurance commission (commission), is proposing rule amendments to WAC 246-817-990 to add the Washington physicians health program (WPHP) impaired practitioner surcharge to initial licensure for dentists. Other general housekeeping is proposed, removing outdated information concerning fees that expired in 2025.

Hearing Location(s): On August 25, 2026, at 9:00 a.m. Register in advance for this webinar at https://us02web.zoom.us/webinar/register/WN_Bq1N4BVNTgOQ1Z2gEISbLQ. After registering, you will receive a confirmation email containing information about joining the webinar. The department will be offering a virtual webinar hearing only. Individuals may attend virtually or submit comments in writing.

Date of Intended Adoption: September 1, 2026.

Submit Written Comments to: Heather Cantrell, P.O. Box 47850, Olympia, WA 98504-7850, email HSQAfeerules@doh.wa.gov, web https://fortress.wa.gov/doh/policyreview, beginning the date and time of this filing, by August 25, 2026, at 11:59 p.m.

Assistance for Persons with Disabilities: Contact Heather Cantrell, TTY 711, email HSQAfeerules@doh.wa.gov, by August 18, 2026.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department, in consultation with the commission, is proposing amendments to WAC 246-817-990 regarding the WPHP surcharge. The proposed rule will be updated to add the WPHP surcharge for initial license applications. The amendment is needed to ensure that all licensees are eligible for WPHP services and to align with statute.

The proposed rule also removes outdated information concerning fees that expired in 2025.

Reasons Supporting Proposal: The Washington legislature passed HB 1972 (chapter 15, Laws of 2024), which increased the WPHP surcharge and allows a surcharge of up to $70 per year to be collected. WAC 246-817-990 only provides for collection of the WPHP surcharge on license renewal. When the WPHP surcharge was originally implemented, the phrase "each license issuance or renewal" was interpreted by some professions to exclude the initial license, while other professions included it. The commission reviewed the WPHP charge in 2025 and decided to include the initial license to ensure all licensees are fully included and eligible for WPHP services.

Housekeeping changes are necessary to eliminate outdated fees that sunset December 31, 2025.

Statutory Authority for Adoption: RCW 18.32.534, 43.70.110, 43.70.250, and 43.70.280.

Statute Being Implemented: RCW 18.32.534.

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: Heather Cantrell, 111 Israel Road S.E., Tumwater, WA 98501; Implementation and Enforcement: Debbie Gardner, 111 Israel Road S.E., Tumwater, WA 98501.

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 is exempt from analysis according to RCW 34.05.328 (5)(b)(vi) because it is a rule that sets or adjusts fees pursuant to legislative standards.

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

Is exempt under RCW 19.85.025(3) as the rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

Explanation of exemptions: The proposed rules set and adjust fees for dentists under RCW 34.05.310 (4)(f).

Scope of exemption for rule proposal:

Is fully exempt.

July 6, 2026
Todd Mountin, PMP
Deputy Chief of Policy
for Dennis E. Worsham
Secretary of Health

RDS-6701.3

AMENDATORY SECTION (Amending WSR 25-07-080, filed 3/17/25, effective 4/17/25)

WAC 246-817-990 Dentist fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, except faculty and resident licenses.

(2) Faculty and resident licenses must be renewed every year on July 1 as provided in chapter 246-12 WAC.

(3) The following nonrefundable fees will be charged:

Title of Fee	((~~Fee through December 31, 2025~~))	Fee ((~~on and after January 1, 2026~~))
Original application by examination*		
Initial application	((~~$500.00~~))	$500.00
Surcharge - Impaired dentist		70.00
Original application - Without examination		
Initial application	((~~500.00~~))	500.00
Surcharge - Impaired dentist		70.00
Initial license	((~~500.00~~))	500.00
Faculty license application	((~~500.00~~))	500.00
Resident license application	((~~115.00~~))	115.00
Active license renewal		
Renewal	((~~365.00~~))	365.00
Surcharge - Impaired dentist	((~~50.00~~))	70.00

Title of Fee	((~~Fee through December 31, 2025~~))	Fee ((~~on and after January 1, 2026~~))
Late renewal penalty	((~~185.00~~))	185.00
Expired license reissuance	((~~300.00~~))	300.00
Inactive license renewal		
Renewal	((~~125.00~~))	125.00
Surcharge - Impaired dentist	((~~50.00~~))	70.00
Late renewal penalty	((~~50.00~~))	50.00
Retired active license renewal		
Renewal	((~~150.00~~))	150.00
Surcharge - Impaired dentist	((~~50.00~~))	70.00
Late renewal penalty	((~~75.00~~))	75.00
Duplicate license	((~~15.00~~))	15.00
Certification of license	((~~25.00~~))	25.00
Anesthesia permit		
Initial application	((~~150.00~~))	150.00
Renewal - (Three-year renewal cycle)	((~~160.00~~))	160.00
Late renewal penalty	((~~80.00~~))	80.00
Expired permit reissuance	((~~50.00~~))	50.00
On-site inspection fee	((~~To be determined by future rule adoption.~~))	To be determined by future rule adoption.

* In addition to the initial application fee above, applicants for licensure via examination will be required to submit a separate application and examination fee directly to the dental testing agency accepted by the dental quality assurance commission.

WSR 26-15-060
PROPOSED RULES
DEPARTMENT OF HEALTH
(Veterinary Board of Governors)
[Filed July 14, 2026, 8:54 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 25-21-093.

Title of Rule and Other Identifying Information: Eligibility for examination as a veterinary technician; qualifications for on-the-job experience for out-of-state applicants.

The veterinary board of governors (board) is proposing amendments to WAC 246-935-060 regarding direct experience in the veterinary technician's scope of practice for out-of-state applicants. The board is proposing that out-of-state applicants applying under the requirements of WAC 246-935-060 must have 6,000 hours of experience in no more than five years as a credentialed animal health or veterinary technician.

Hearing Location(s): On September 11, 2026, at 9:05 a.m., at the Department of Health, 111 Israel Road S.E., Room 153, Tumwater, WA 98501; or virtually via Teams at https://teams.microsoft.com/meet/23814281044120?p=BsUqM0Sj5F0okad9LF, Meeting ID 238 142 810 441 20, Passcode Rw3RC3hL; or phone 564-999-2000, Toll-free 833-322-1218, Phone Conference ID 173 473 462#.

Date of Intended Adoption: September 11, 2026.

Submit Written Comments to: Poppy Budrow, P.O. Box 47852, Olympia, WA 98504-7852, email veterinary@doh.wa.gov, web https://fortress.wa.gov/doh/policyreview/, beginning the date and time of this filing, by September 3, 2026, at 11:59 p.m.

Assistance for Persons with Disabilities: Contact Poppy Budrow, phone 564-669-0026, TTY 711, email poppy.budrow@doh.wa.gov, web veterinary@doh.wa.gov, by August 28, 2026.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The current requirement in WAC 246-935-060(4) allows an unlicensed person to work for 36 months under the supervision of a licensed veterinarian, obtain licensure in another state, and then apply for a Washington state veterinary technician license with little to no experience in the veterinary technician scope of practice.

The purpose of the proposed amendments is to ensure the safe practice of animal care by a veterinary technician by requiring out-of-state applicants to have an extended period of time obtaining direct experience in the veterinary technician scope of practice before being allowed to be licensed in Washington state and perform health care tasks under indirect supervision. The proposed rule requires an out-of-state applicant to be credentialed as an animal health or veterinary technician in one or more states while completing the 6,000 hours of work experience in five years or less.

Reasons Supporting Proposal: It has come to the board's attention that there are veterinary businesses in Washington state encouraging their unregistered staff who have been employed for 36 months, yet have no experience in the veterinary technician scope of practice, to take advantage of this licensing loophole.

To ensure animal patient safety, the proposed amendments are the least burdensome approach to maintaining a pathway for out-of-state veterinary technician applicants applying under the requirements of WAC 246-935-060(4) to qualify for a Washington state license, while ensuring that they have direct experience in the veterinary technician

scope of practice before making clinical decisions when treating animals. Without this amendment, applicants may obtain a Washington license without any demonstrated experience performing veterinary technician duties, creating measurable risk to animal patient safety.

Statutory Authority for Adoption: RCW 18.92.030.

Statute Being Implemented: RCW 18.92.030 and 18.92.128.

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

Name of Proponent: Veterinary board of governors, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Poppy Budrow, 111 Israel Road S.E., Tumwater, WA 98501, 564-669-0026.

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 Poppy Budrow, P.O. Box 47852, Olympia, WA 98504-7852, phone 564-669-0026, TTY 711, email poppy.budrow@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: Although many licensees may practice within small businesses, the proposed rules regulate only individual professional standards and do not impose requirements on business operations, staffing, equipment, or reporting.

Scope of exemption for rule proposal:

Is fully exempt.

July 14, 2026
Amber Freeberg
Executive Director
Veterinary Board of Governors

RDS-6889.3

AMENDATORY SECTION (Amending WSR 24-09-036, filed 4/11/24, effective 5/12/24)

WAC 246-935-060 Eligibility for examination as veterinary technician. Applicants must meet one of the following criteria to be eligible for the examination.

(1) Completion of an approved postsecondary educational program for animal or veterinary technology.

(a) Completion of a program for animal or veterinary technology approved by the Committee on Veterinary Technician Education and Activities (CVTEA) of the American Veterinary Medical Association (AVMA). The board approves all institutions accredited by, and in good standing with, the AVMA.

(b) Completion of a program for animal or veterinary technology approved by the Animal Health Technologist/Veterinary Technician Program Accreditation Committee (AHT/VTPAC) of the Canadian Veterinary Medical Association (CVMA). The board approves all institutions accredited by, and in good standing with, the CVMA.

(c) Completion of a Washington state apprenticeship program registered in accordance with chapters 296-05 WAC and 49.04 RCW.

(d) Other institutions applying for board approval must meet the accreditation standards of the CVTEA. It is the responsibility of the institution to apply for approval and of a student to ascertain whether or not a school has been approved by the board.

(e) The examination may be taken no sooner than six months before graduation from the approved course of instruction.

(2) Graduation from a two-year curriculum in animal health or veterinary technology which is not accredited by the CVTEA or AHT/VTPAC plus a minimum of 36 months of full-time experience under the supervision of a licensed veterinarian(s) who must attest to the completion of that experience.

(3) Award of a D.V.M. or V.M.D. degree or equivalent from an American Veterinary Medical Association accredited or listed college of veterinary medicine.

(4) Registration, certification, or licensure as an animal health or veterinary technician in one or more states and ((~~36 months of full-time experience~~)) 6,000 hours worked in five years or less as a credentialed veterinary technician in another state under the supervision of a licensed veterinarian(s).

(5) Completion of a course in veterinary technician education as a member of the United States military and completion of a tour of active duty as a veterinary technician or specialist.

WSR 26-15-061
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Order 25-20—Filed July 14, 2026, 9:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 25-16-098.

Title of Rule and Other Identifying Information: Electrical rules: Electrical vehicle supply equipment and competency examinations; chapter 296-46B WAC, Electrical safety standards, administration, and installation.

Hearing Location(s): On August 26, 2026, at 9:00 a.m., at the Department of Labor and Industries (L&I), 7273 Linderson Way S.W., Tumwater, WA 98501; or join electronically via Zoom at https://lni-wa-gov.zoom.us/j/89313287537?pwd=qwvNT9PdeNlESHxjJDgll4K59cmFe1.1, Passcode Electric@1; or join by phone (audio only) 253-215-8782, Meeting ID 893 1328 7537, Passcode 7592631469. The in-person and virtual/telephonic hearing starts at 9:00 a.m. and will continue until all oral comments are received.

Date of Intended Adoption: October 20, 2026.

Submit Written Comments to: Meagan Edwards, L&I, Customer Service, Compliance, and Public Safety Division, P.O. Box 44400, Olympia, WA 98504-4400, email CSCPSRules@Lni.wa.gov, fax 360-704-1980, beginning July 15, 2026, at 8:00 a.m., by August 26, 2026, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Meagan Edwards, phone 360-522-0125, fax 360-704-1980, email Meagan.Edwards@Lni.wa.gov, by August 12, 2026.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments to chapter 296-46B WAC would affect requirements for installing electric vehicle supply equipment and electrician and administrator competency examinations.

The amendments are needed to implement SSB 5528 (chapter 233, Laws of 2025), concerning the installation of transportation electrification infrastructure.

The legislation enacted additional certification requirements for electricians installing electric vehicle supply equipment on public works projects that took effect January 1, 2026. Provisions of the bill include:

- Persons installing electric vehicle supply equipment on all public works, as defined in RCW 39.4.010 [39.04.010], must be certified by the electric vehicle infrastructure training program (EVITP) or a similar nationally recognized training program;
- If EVITP or a similar nationally recognized program is not open to all general journey level electricians, EVITP certification is no longer required; and
- Certification is required only for work on the electrical components during the installation and maintenance of electric vehicle supply equipment.

The requirements of the bill do not apply to certain apprentices when the supervising journey level electrician is certified by a training program and for installation projects under contract as of January 1, 2026.

The legislature provided L&I authority to adopt rules to implement the requirements.

The proposed amendments are also needed to streamline requirements for electrician and administrator competency examinations and for updates, clarification, housekeeping, and other changes.

Proposed amendments to this chapter are as follows:

New Section:

WAC 296-46B-941 Electric vehicle supply equipment installation—Certification. Creates a new section to implement the provisions of SSB 5528. The amendments address:

- Certification requirements for the installation and maintenance of electric vehicle supply equipment on all public works projects.
- Failing to comply with certification requirements, violations, and civil penalties.
- Requirements for similar nationally recognized programs.
- Defining the meaning of terms applicable to the section.

Amended Sections:

WAC 296-46B-935 Administrator certificate.

- Adds language to clarify the existing scope of work that electrical administrators can perform.
- Clarifies the renewal requirements for administrator certificates and inactive status.
- Clarifies the process of unassignment and suspension for electrical contractors and electrical administrators.
- Clarifies the rule without changing its effect. These include:
  - Clarifying L&I's approval process for taking the administrator certification examination.
  - Clarifying that testing agencies for examinations must be designated by L&I.
  - Updating the rule for general housekeeping, such as renumbering, formatting, replacing written numbers with numerals, etc.

WAC 296-46B-942 Training certificate required.

- Amends a reference due to renumbering.

WAC 296-46B-960 Administrator and electrician certificate of competency examinations.

- Updates testing accommodation requirement to align with other state and federal regulations and identifies the point of contact for requests.
- Amends language to extend the time frame from one year to two years to complete the examination.
- Amends the waiting period between attempts for completion of examinations from 90 days to 60 days.
- Clarifies the application and approval process for the administrator and electrician certificate of competency examinations.
- Adds new language to clarify the fees and payment process for examinations administered by an L&I-designated testing agency.
- Adds new language that explains the application, payment, and approval process for L&I-administered examinations.
- Adds new language that requires apprentices and individuals learning the electrical construction trade to have in their possession proof of approved apprenticeship or training program registration to align with statute.

- Clarifies the rule without changing its effect. These include:
  - Clarifying the waiting period for eligibility to retest for examination.
  - Clarifying that L&I approval is not required to take the administrator certificate examination.
  - Clarifying that testing agencies for examinations must be designated by L&I.
  - Updating the rule for general housekeeping, such as renumbering, formatting, grammar, relocating existing language, etc.

Reasons Supporting Proposal: Rules are required for consistency with SSB 5528 that took effect January 1, 2026. Additional amendments under this rule making are also necessary to streamline requirements for electrician and administrator competency examinations.

Statutory Authority for Adoption: SSB 5528, chapter 233, Laws of 2025; and chapter 19.28 RCW, Electricians and electrical installations, including RCW 19.28.031 and 19.28.251.

Statute Being Implemented: SSB 5528, chapter 233, Laws of 2025; and chapter 19.28 RCW, Electricians and electrical installations, including RCW 19.28.031 and 19.28.251.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Randy Barnes, Program Manager, Tumwater, Washington, 509-735-0931; Implementation and Enforcement: Jennifer Williams, Assistant Director, Tumwater, Washington, 360-902-6348.

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 Meagan Edwards, L&I, Customer Service, Compliance, and Public Safety, P.O. Box 44400, Olympia, WA 98504-4400, phone 360-522-0125, fax 360-704-1980, email CSCPSRules@Lni.wa.gov.

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

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045; 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 partially exempt:
Explanation of partial exemptions:

	Proposed WAC Sections and Title	This proposed rule section is *not exempt* - Analysis is required	This proposed rule section *is exempt.* Provide RCW to support this exemption.
1.	WAC 296-46B-935 Administrator certificate.	☐	This section is exempt under RCW 34.05.310 (4)(d) - Adopts changes that clarify language of a rule without changing the effect. RCW 34.05.328 (5)(c)(i) - A procedural rule that adopts, amends, or repeals any filing or related process requirement for making application to an agency for a license or permit. RCW 34.05.328 (5)(c)(ii) - An interpretative rule that does not independently impose a penalty or sanction on a person or entity.
2.	WAC 296-46B-941 Electric vehicle equipment installation—Certification.	X	
3.	WAC 296-46B-942 Training certificate required.	☐	This section is exempt under RCW 34.05.310 (4)(d) - Adopts changes that clarify language of a rule without changing the effect.
4.	WAC 296-46B-960 Administrator and electrician certificate of competency examinations.	X	

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. According to the Regulatory Fairness Act under RCW 19.85.030, an agency shall prepare a small business economic impact statement (SBEIS): (i) If the proposed rule will impose more-than-minor costs on businesses in an industry; or (ii) if requested to do so by a majority vote of the joint administrative rules review committee within forty-five days of receiving the notice of proposed rule making under RCW 34.05.320. The proposed rule does not impose additional costs on affected entities and individuals. As such, L&I is exempt from conducting an SBEIS for this rule making.

July 14, 2026
Joel Sacks
Director

RDS-6715.8

AMENDATORY SECTION (Amending WSR 20-11-053 and 20-14-083, filed 5/19/20 and 6/30/20, effective 10/29/20)

WAC 296-46B-935 Administrator certificate.

General.

(1) The department will deny application, renewal, change of assignment, reinstatement, or issuance of an administrator or master electrician certificate if an individual owes money as a result of an outstanding final judgment(s) under chapter 19.28 RCW.

(2) ((~~For special accommodation see WAC 296-46B-960.~~

~~(3)~~)) An applicant will not be issued a specialty administrator certificate that is a subspecialty of a certificate the applicant currently holds (i.e., the applicant is not eligible to take the domestic ((~~well~~)) pump (03A) administrator examination if the applicant currently possesses a pump and irrigation (03) administrator certificate).

Qualifying for examination.

((~~(4)~~)) (3) There are no qualification requirements for taking an administrator certificate examination, no department approval is required. ((~~Applicants~~)) To arrange for examination, individuals should contact the testing agency designated by the department directly. For testing accommodations see WAC 296-46B-960.

Original - Administrator certificates.

((~~(5)~~)) (4) The scope of work for ((~~electrical~~)) administrators is described in WAC 296-46B-920. Except for exempt telecommunications work under RCW 19.28.511, administrators are not exempt from requirements under RCW 19.28.161 when they are performing work in the electrical construction trade unless exempt from certification requirements under RCW 19.28.261. The department will issue an original administrator certificate to a general administrator, or specialty administrator who:

(a) Successfully completes the appropriate administrator examination; and

(b) Submits the appropriate examination passing report from the testing agency designated by the department with the applicant's: Date of birth, full legal name, mailing address, and Social Security number; and

(c) Pays all appropriate fees as listed in WAC 296-46B-909.

For an examination report to be considered, all the above must be submitted within ((~~ninety~~)) 90 days after the completion of the examination. After ((~~ninety~~)) 90 days, the applicant will be required to successfully retake the complete examination. An individual's original administrator certificate will expire on their birth date at least one year, and not more than three years, from the date of original issue.

Combination - Specialty administrator certificate.

((~~(6)~~)) (5) The department may issue a combination specialty administrator certificate to an individual who qualifies for more than one specialty administrators' certificate. The combination specialty administrators' certificate will plainly indicate the specialty administrator's certificate(s) the holder has qualified for. Telecommunications cannot be issued a combination because the renewal requirements are different from those required for electrical administrators.

Renewal - Administrator certificate.

((~~(7)~~)) (6) An individual must apply for renewal of their administrator certificate on or before the expiration date of the certificate. The individual may not apply for renewal more than ((~~ninety~~)) 90 days prior to the expiration date. Renewed electrical administrator certificates are valid for three years((~~, with the exception of~~)). Renewed telecommunications ((~~administrators, who will be renewed~~)) administrator certificates are valid for two years. An assigned administrator will be automatically unassigned by the department if they fail to renew their administrator certificate on or before their certifi-

cate expiration date. Further effects and actions related to unassignment are described in subsection (10)(c) through (f) of this section.

((~~(8)~~)) (7) An individual may renew their administrator certificate within ((~~ninety~~)) 90 days after the expiration date of the certificate without reexamination if the individual applies for renewal and pays the late renewal fee listed in WAC 296-46B-909. If the certificate is not renewed on or before the expiration date, the individual shall pay twice the usual fee.

((~~(9)~~)) (8) All renewals received more than ((~~ninety~~)) 90 days after the expiration date of the certificate will be denied. The administrator will be required to pass the appropriate administrator examination before being recertified.

((~~(10)~~)) (9) All applicants for certificate renewal must:

(a) Submit a complete renewal application;

(b) Pay all appropriate fees as listed in WAC 296-46B-909; and

(c) Complete the continuing education requirements described in WAC 296-46B-970. Continuing education classes are only valid when all the requirements of WAC 296-46B-970 are completed.

Telecommunications administrators are not required to provide continuing education information.

Continuing education for pump and irrigation **(03)** and domestic pump **(03A)** administrators may be comprised of ((~~fifty~~)) 50 percent electrical and ((~~fifty~~)) 50 percent plumbing instruction.

((~~(11)~~)) (10)(a) An individual who has not completed the required hours of continuing education can renew an electrical administrator's certificate if ((~~the individual applies for renewal on or before the certificate expires~~)) their application for renewal is received by the department no later than 90 days after the expiration date of their certificate and pays the appropriate renewal fee listed in WAC 296-46B-909. However, the certificate will be placed in an inactive status. If the certificate is not renewed on or before the expiration date, the individual shall pay twice the usual fee. To maintain inactive status, the certificate must be renewed no later than 90 days after the expiration date of the certificate.

An unexpired inactive certificate will be returned to active status upon validation, by the department, of the required continuing education requirements.

(b) When the certificate is placed in inactive status, an assigned electrical administrator will be automatically unassigned from the electrical contractor.

(c) The department must notify the electrical contractor ((~~will be notified~~)) of the unassignment ((~~and has ninety days to replace the administrator. An assignment fee will then be required per WAC 296-46B-909.~~

~~The inactive certificate will be returned to current status upon validation, by the department, of the required continuing education requirements. If the certificate renewal date occurs during the inactive period, the certificate must be renewed on or before the renewal date to allow the return to current status~~)).

((~~(12)~~)) (d) Upon the unassignment of a designated administrator, the contractor's license is automatically suspended if they do not have an administrator or master electrician designated by assignment within 90 days, or within 180 days as allowed under RCW 19.28.061(1) and 19.28.430(1), as applicable.

(e) Restoring assignment designation requires a completed assignment request prescribed by the department and payment of an assignment

of administrator or master electrician fee required under WAC 296-46B-909.

(f) To reinstate a contractor license suspended under (d) of this subsection, contractors must designate an administrator or master electrician as described in (e) of this subsection, apply for reinstatement as prescribed by the department, and pay a reinstatement fee required under WAC 296-46B-909.

(11) An individual may renew a suspended administrator's certificate by submitting a complete renewal application including obtaining and submitting the continuing education required for renewal. However, the certificate will remain in a suspended status for the duration of the suspension period. Before the suspended administrator's certificate can be activated, the holder must pass the appropriate administrator examination in accordance with RCW 19.28.061 (2)(a).

((~~(13)~~)) (12) An individual may not renew a revoked administrator's certificate.

NEW SECTION

WAC 296-46B-941 Electric vehicle equipment installation—Certification. (1) Effective January 1, 2026, in addition to department certifications required under RCW 19.28.161 and issued under RCW 19.28.211, installation and maintenance of electric vehicle supply equipment (EVSE) on all public works as defined in RCW 39.04.010 must be performed by:

(a) Persons certified by the electric vehicle infrastructure training program (EVITP™) or a similar nationally recognized program; or

(b) Apprentices meeting the criteria of RCW 19.28.161 (2)(a)(i) when the supervising journey level electrician is certified pursuant to (a) of this subsection.

(2) The certification required by subsection (1) of this section is only in effect so long as EVITP™ or a similarly recognized program are open to all journey level electricians.

(3) The certification required by subsection (1) of this section does not apply to the installation of EVSE that is under contract before January 1, 2026.

(4) Failing to be certified by the EVITP™ or a department approved similar nationally recognized program when required by this section is a violation of this chapter. Violators are subject to civil penalties pursuant to WAC 296-46B-915(14).

(5) Employing a person to install or maintain EVSE who is not certified by the EVITP™ or a department approved similar nationally recognized program when required by this section is a violation of this chapter. Violators are subject to civil penalties pursuant to WAC 296-46B-915(14).

(6) Failure of the designated master electrician or administrator to ensure that all persons installing EVSE are certified by the EVITP™ or a department approved similar nationally recognized program when required by this section is a violation of this chapter. Violators are subject to civil penalties pursuant to WAC 296-46B-915 (12)(d).

(7) A similar nationally recognized program must be approved by the department, and all of the following requirements apply. Programs must:

(a) Apply to the department. Application for initial approval or renewal must be made using a form prescribed by the department. Program approval begins on the date of department approval and is not applicable before that date. Department approval expires every three years.

(b) Pay initial program review and renewal fees to the department equal to fees in WAC 296-46B-909(6) at the time of initial application and program renewal.

(c) Consist of curriculum that is substantially similar to the electric vehicle infrastructure training program curriculum. Program curriculum must be developed in collaboration with industry partners and stakeholders representing parties similar to those collaborating with the EVITP™.

(d) Provide upon program completion, verifiable certification that certifies the holder to install and maintain all EVSE. Nothing in this subsection restricts a manufacturer's ability to require additional training beyond what is required by this section.

(8) For the purposes of this section:

(a) "Certified by the EVITP™ or a similar nationally recognized program" means having proof of valid unexpired certification issued by the EVITP™ or a similar nationally recognized program.

(b) "Electric vehicle infrastructure training program" means Electric Vehicle Infrastructure Training Program (EVITP™).

(c) "Similar nationally recognized program" means a program approved by the department.

(d) "Electric vehicle supply equipment (EVSE)" means equipment for plug-in charging, including the ungrounded, grounded, and equipment grounding conductors, and the electric vehicle connectors, attachment plugs, personal protection system, and all other fittings, devices, power outlets, or apparatus installed specifically for the purpose of transferring energy between the premises wiring system and the electric vehicle.

AMENDATORY SECTION (Amending WSR 25-23-069, filed 11/18/25, effective 12/19/25)

WAC 296-46B-942 Training certificate required.

General.

(1) To work in the electrical construction trade as an electrical trainee, an individual must possess, wear, and visibly display a current valid electrical training certificate, learning the trade in the proper ratio, per RCW 19.28.161, under the supervision of a certified master journey level electrician, journey level electrician, master specialty electrician working in their specialty, or specialty electrician working in their specialty.

The trainee must meet all the requirements of WAC 296-46B-940 related to visibly displaying a current certificate and having a valid photo identification on his/her person.

Unless working in a specialty, apprentices and individuals learning the electrical construction trade must have in their possession proof of apprenticeship or journey level training program registration. They must show their apprenticeship or training program registration documents to an authorized representative of the department at the representative's request.

(2) An active training certificate is required for all individuals throughout the individual's enrollment and matriculation in an approved construction electrician training school program described in RCW 19.28.191. A training certificate is required to work in the electrical construction trade if an individual does not:

(a) Possess a current journey level certificate of competency issued by the department;

(b) Possess a current specialty electrician certificate of competency issued by the department while working in that specialty's scope of work; or

(c) Is not working in exempt status as allowed by chapter 19.28 RCW.

(3) Trainees who have had their training certificates revoked or suspended (during the duration of the revocation or suspension) will not be issued a training certificate.

Original training certificates.

(4) The department will issue an original training certificate when the trainee applicant submits a complete training certificate application including:

(a) Date of birth, mailing address, Social Security number; and

(b) All appropriate fees as listed in WAC 296-46B-909.

All applicants for an electrical training certificate must be at least 16 years of age. The original training certificate will be valid for two years. If an individual has previously held an electrical training certificate, then that individual is not eligible for a subsequent original training certificate.

Specialty specific - Zero percent and 75 percent supervision modified training certificates.

(5) For specialties as allowed in Table 945-1 (i.e., specialties with 720 minimum hours of work experience required to be eligible for examination):

(a) The department will approve the trainee to take the appropriate specialty competency examination necessary to qualify for a zero percent supervision modified training certificate. To qualify, the trainee applicant must submit a complete zero percent supervision modified training certificate application including:

(i) Date of birth, mailing address, Social Security number;

(ii) Affidavit of experience fulfilling the minimum work experience hours required to qualify for the specialty examination described in Table 945-1; and

(iii) All appropriate fees as listed in WAC 296-46B-909.

Upon successful completion of the appropriate examination, the trainee will be issued a nonrenewable zero percent supervision modified training certificate for the appropriate specialty. The zero percent supervision modified training certificate will be restricted in duration to the time allowed in Table 945-1, note 2.

(b) Prior to the expiration of the zero percent supervision modified training certificate, the individual must submit a complete application for a 75 percent supervision modified training certificate for the appropriate specialty including:

(i) Seventy-five percent supervision training certificate application including: Date of birth, mailing address, Social Security number; and

(ii) All appropriate fees as listed in WAC 296-46B-909.

(c) A trainee may possess multiple (i.e., in different specialties) modified supervision training certificates for specialties where

reduced supervision is allowed in Table 945-1. Combination training certificates will not be issued.

Renewal of training certificates.

(6) An individual must apply for renewal of their training certificate on or before the expiration date of the certificate. The individual may not apply for renewal more than 90 days prior to the expiration date. Renewed certificates are valid for two years.

(7) An individual may renew their training certificate after the expiration date if the individual pays the late renewal fee listed in WAC 296-46B-909.

(8) All applicants for training certificate renewal must:

(a) Submit a complete renewal application;

(b) Pay all appropriate fees; and

(c) Complete the approved basic trainee classes required by WAC 296-46B-970. Basic trainee classes are only valid when all the requirements of WAC 296-46B-970 are completed.

(d)(i) Deadline for affidavits of experience for hours worked by an individual while not registered in a department-approved apprenticeship program:

(A) Affidavits of experience for the prior two years must be received by the department within 180 days after every electrical training certificate expiration date.

(B) Affidavits must be complete, signed, and notarized.

(C) Hours claimed from affidavits of experience received after the 180 day deadline described in (d)(i)(A) of this subsection, shall not count towards hours required to qualify for electrician certification examinations or unsupervised electrical training certificates unless otherwise allowed by the chief electrical inspector due to unforeseeable circumstances.

Employers are required to provide the necessary documentation and signed affidavit of experience to the trainee within 20 days after the trainee requests the affidavit. See WAC 296-46B-942(12). See WAC 296-46B-985(4) for the penalty for providing a false or inaccurate affidavit of experience. If the individual is enrolled in a department approved apprenticeship program, the program may submit the required affidavit(s) of experience upon the individual's completion of the required experience hours without cost to the individual. The affidavit of experience must accurately attest to:

(ii) The electrical installation work performed for each employer the individual worked for in the electrical trade during the previous period;

(iii) The correct electrical category the individual worked in; and

(iv) The actual number of hours worked in each category under the proper supervision of a Washington certified, master journey level electrician, journey level electrician or appropriate master specialty electrician or specialty electrician under that specific training certificate. If a trainee possesses multiple training certificates, an affidavit must be submitted for each training certificate for the hours worked under that specific training certificate.

If the individual is enrolled in a department approved apprenticeship program, the program may submit the required affidavit(s) of experience upon the individual's completion of the required experience hours without cost to the individual.

(9) An individual may not renew a training certificate until the required hours of basic classroom education have been completed.

(10) An individual may renew a suspended training certificate by submitting a complete renewal application including obtaining and submitting the basic trainee class education required for renewal. However, the certificate will remain in a suspended status for the duration of the suspension period.

(11) An individual will not be issued a renewed or reinstated training certificate if the individual owes the department money as a result of an outstanding final judgment under chapter 19.28 RCW.

(12) The individual should ask each employer and/or apprenticeship training director for an accurately completed, signed, and notarized affidavit of experience for the previous certification period. The employer(s) or apprenticeship training director(s) must provide the previous period's affidavit of experience to the individual within 20 days of the request. If an individual is enrolled in an approved electrical construction trade apprenticeship program under chapter 49.04 RCW, the individual and their apprenticeship training director and/or each employer must give the department an accurately completed, signed, and notarized affidavit of experience accurately attesting to:

(a) The electrical installation work the individual performed in the electrical trade during the previous certification period;

(b) The correct electrical category the individual worked in; and

(c) The actual number of hours worked in each category under the proper supervision of a Washington certified master journey level electrician, journey level electrician or appropriate master specialty or specialty electrician for each employer. For apprentices enrolled in a registered apprenticeship program, the training director or their designated authorized signer are the only authorized signatures the department will accept on affidavits of experience.

(13) The employer(s) and/or apprenticeship training director(s) or their designated authorized signer must sign and have notarized the affidavit of experience attesting to the accuracy of all information contained in the affidavit.

(14) The trainee, supervising electrician, contractor, and assigned administrator or master electrician are responsible for ensuring compliance with subsection (13) of this section. See WAC 296-46B-985 and 296-46B-990 (3)(c) and (f) for information about failing to submit or submitting false/fraudulent documents. Falsifying documents may be considered perjury and might result in criminal prosecution, civil penalty, or certificate revocation or suspension.

Trainees without supervision present on the job site.

(15) When the supervising electrician is found to not be present on the job site, the trainee may be given a form by the inspector that must be fully completed and returned or postmarked within 24 hours to the inspector. The supervising electrician must sign the statement for the trainee if appropriate supervision was provided. If the supervising electrician fails or refuses to assist the trainee in completing the form, the trainee must return the form with a signed and dated statement stating the supervising electrician's name and saying that the supervising electrician refused to assist.

Trainees seeking a journey level electrician certificate - Working with no supervision.

(16) Trainee seeking a general **(01)** journey level electrician certificate of competency. After review by the department, a trainee may be issued a six-month, nonrenewable unsupervised electrical training certificate that will allow the individual to work without supervision if the trainee:

(a) Has submitted a complete application for an unsupervised electrical training certificate;

(b) Has worked over 7,000 hours properly supervised not to include more than 4,000 of specialty experience;

(c) Has successfully completed or is currently enrolled in an approved apprenticeship program or an electrical construction trade program in a school approved by the board of community and technical colleges;

(d) Has paid all appropriate training certificate fees listed in WAC 296-46B-909;

(e) Is currently working for and continues to work for a licensed electrical contractor that employs at least one certified journey level or specialty electrician in the appropriate specialty; and

(f) Has not previously failed a journey level electrician certificate of competency examination (see WAC 296-46B-960((~~(11)~~)) (9)).

Trainees seeking certain specialty electrician certificates - Working with reduced or no supervision.

(17) After review by the department, a trainee may be issued a nonrenewable zero percent supervision training certificate that will allow the individual to work without supervision if the trainee meets the requirements in subsection (5) of this section.

(18) Electrical trainees may work unsupervised when installing HVAC/R thermostat cable when the HVAC/R system consists of a single thermostat in one- and two-family dwelling units where line voltage power has not been connected to the dwelling's electrical system.

AMENDATORY SECTION (Amending WSR 24-05-085, filed 2/21/24, effective 4/1/24)

WAC 296-46B-960 Administrator and electrician certificate of competency examinations.

General.

(1)(a) The minimum passing score on any examination or examination section is 70 percent. ((~~If examination is requested to be administered by the department, an application is required and the examination must be successfully completed within one year of application or the individual must submit a new application for exam including all appropriate fees.~~))

(b) For approval for all electrician examinations, individuals must submit an application as prescribed by the department and pay all appropriate fees listed under WAC 296-46B-909. The department shall notify applicants of approval or denial of their application. After approval, the department shall provide the candidate with a unique candidate identification number and instructions for arranging for examination. If the individual does not successfully complete the examination within two years of the date of department approval, they must submit a new application for examination approval to the department and pay all appropriate fees listed under WAC 296-46B-909.

(c) For all administrator examinations, there are no qualification requirements and no department approval is required. When a candidate fails to successfully complete an administrator examination within two years of the date of their first attempt, the candidate must begin a new two-year examination period. Candidates must attempt all sections each time they begin a new two-year examination period.

Scores from previous examination periods are not applicable to new examination periods.

(d) For examinations administered by a department designated testing agency, examination fees are set by the testing agency. Candidates must contact the testing agency directly to arrange for payment.

(e) When the department has a contract with a testing agency to administer examinations, department-administered examinations are not available unless allowed at the department's discretion. For department-administered examinations, an application for a department-administered examination is required. Applications must be made as prescribed by the department. Applicants must pay all appropriate examination fees listed under WAC 296-46B-909. If the individual does not successfully complete the examination within two years of the date of department approval, they must submit a new application for examination approval to the department and pay all appropriate fees listed under WAC 296-46B-909.

(2) All examinations are open book.

(a) Candidates may use:

(i) Any original copyrighted material;

(ii) A silent, nonprinting, nonprogrammable calculator that is not designed for preprogrammed electrical calculations;

(iii) Copies of chapter 19.28 RCW and this chapter; or

(iv) A ((~~foreign~~)) language translation dictionary ((~~that does not contain definitions~~)).

(b) Candidates may not use:

(i) Copies of copyrighted material;

(ii) Copies of internet publications, except for RCWs or WACs;

(iii) Personal notes; or

(iv) A personal computing device of any type other than the calculator in (a)(ii) of this subsection.

(3)(a) Administrator, master electrician, and electrician examinations may consist of multiple sections.

(b) For all administrator examinations, all sections must be successfully completed within a ((~~one-year~~)) two-year examination period ((~~after~~)) beginning ((~~the examination~~)) on the date of first attempt and ending two years later. Within their two-year examination period, candidates do not have to retake any sections successfully completed within the two-year examination period. If all sections are not successfully completed within the two-year examination period, the candidate must begin a new two-year examination period. Candidates must attempt all sections each time they begin a new two-year examination period. Scores from previous examination periods are not applicable to new examination periods.

(c) For all master electrician and electrician examinations, all sections must be successfully completed within a ((~~one-year~~)) two-year examination period beginning with the date of the examination approval. Within the ((~~one-year~~)) two-year examination period, the candidate does not have to retake any sections successfully completed within the two-year examination period. If all sections are not successfully completed within the ((~~one-year~~)) two-year examination period, the candidate must reapply for examination approval and begin a new two-year examination period ((~~and retake all sections~~)). Candidates must attempt all sections each time they begin a new two-year examination period. Scores from previous examination periods are not applicable to new examination periods.

((**~~Special accommodations for examination.~~**

~~(4) An applicant for an examination who, due to a specific physical, mental, sensory impairment, requires special accommodation in examination procedures, may submit a written request to the chief electrical inspector for the specific accommodation needed.~~

~~(a) The applicant must submit an individualized written opinion from a physician or other appropriate specialist:~~

~~(i) Verifying the existence of a specific physical, mental, sensory impairment;~~

~~(ii) Stating whether special accommodation is needed for a specific examination;~~

~~(iii) Stating what special accommodation is necessary; and~~

~~(iv) Stating if extra time for an examination is necessary and if so, how much time is required. The maximum allowance for extra time is double the normal time allowed.~~

~~(b) The written request for special accommodation and individualized written opinion should be submitted to the department only after the applicant has made application and received an examination approval from the department.~~

~~(5) An applicant for an examination who, due to limited English proficiency, requires special accommodation in examination procedures, including requesting extra time for examination, may submit a written request to the chief electrical inspector. The maximum allowance for extra time is double the normal time allowed. The written request should be submitted to the department after the applicant has made application and received an examination approval from the department.~~))

Testing accommodations.

(4)(a) Testing accommodations are available for candidates with disabilities or limited-English proficiency in accordance with federal regulations.

(b) Candidates must arrange for accommodations prior to scheduling an examination by contacting the department's designated testing agency, or the department if they are administering the examination.

Failed examination appeal procedures.

((~~(6)~~)) (5) Any candidate who takes an examination and does not pass the examination may request a review of the examination.

(a) The department will not modify examination results unless the candidate presents clear and convincing evidence of error in the grading of the examination.

(b) The department will not consider any challenge to examination grading unless the total of the potentially revised score would result in a passing score.

((~~(7)~~)) (6) The procedure for requesting an informal review of examination results is as follows:

(a) The request must be made in writing to the chief electrical inspector and must be received within 20 days of the date of the examination and must request a rescore of the examination. The written request must include the appropriate fees for examination review described in WAC 296-46B-909.

(b) The following procedures apply to a review of the results of the examination:

(i) The candidate will be allowed one hour to review their examination.

(ii) The candidate must identify the challenged questions of the examination and must state the specific reason(s) why the results should be modified with multiple published reference material supporting the candidate's position.

(iii) Within 15 days of the candidate's review, the department will review the examination and candidate's justification and notify the candidate in writing of the department's decision.

Failing an administrator certificate exam or electrician certificate of competency examination.

((~~(8)~~)) (7) Anyone failing an administrator or electrician competency examination may retake the examination by making arrangements with the department-designated testing agency and paying the retesting fee.

((~~(9)~~)) (8) If the individual makes a failing score within a two-year examination period described in subsection (3)(b) and (c) of this section, the individual must wait ((~~two weeks~~)) 14 days before being eligible to retest unless subsection (9) of this section requires a 60-day waiting period between attempts.

((~~(10)~~)) (9) If the individual fails ((~~a part~~)) one or more sections of an electrician, administrator, or master electrician examination three times within a ((~~one-year~~)) two-year examination period described in subsection (3)(b) and (c) of this section, the individual must wait ((~~three months~~)) 60 days to retake ((~~the failed portion of the examination~~)) any section. The 60-day interval between attempts applies until the individual successfully completes the examination.

((~~(11)~~)) (10) Anyone failing an electrician competency examination may continue to work in the electrical trade if they have a valid electrical training certificate and work under the direct supervision of a certified journey level or specialty electrician in the proper ratio, ((~~per~~)) required under RCW 19.28.161. In addition, unless working in a specialty, apprentices and individuals learning the electrical construction trade must also have in their possession proof of department approved apprenticeship or training program registration.

Cheating on an examination.

((~~(12)~~)) (11) Anyone found cheating on an examination, attempting to bribe a proctor or other agent involved in administering an examination, or using inappropriate materials/equipment during an examination will be required to wait at least 11 months before being allowed to reexamine. All such reexaminations will be administered by the department in Tumwater, Washington and the candidate will be required to apply and schedule for the examination with the chief electrical inspector. The department may also file a civil penalty action under chapter 19.28 RCW.

Examination confidentiality.

((~~(13)~~)) (12) All examination questions are confidential. Examination candidates and persons who have taken an examination are not allowed to copy or otherwise make note of or share examination content, in any manner, outside the individual's examination environment. Examination candidates must agree, prior to beginning an examination, to keep all examination content confidential. The department may also file a civil penalty action under chapter 19.28 RCW.

WSR 26-15-065
PROPOSED RULES
HEALTH CARE AUTHORITY
[Filed July 14, 2026, 2:49 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 25-14-114.

Title of Rule and Other Identifying Information: Chapter 182-565 WAC, Health-related social needs, Subchapter V - Nutrition supports, caregiver respite services, and home accessibility, remediation, and adaptation devices.

Hearing Location(s): On August 25, 2026, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. Virtual public hearings are held via Microsoft Teams webinar. To attend, you must register in advance at https://events.gcc.teams.microsoft.com/event/27ed979a-4c6f-43e9-939b-c2369338eb7a@11d0e217-264e-400a-8ba0-57dcc127d72d. After registering, you will receive a confirmation email containing information about joining the public hearing. You will be able to join the public hearing through most standard internet browsers; you do not need to install Microsoft Teams.

Date of Intended Adoption: Not sooner than August 26, 2026.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, beginning July 15, 2026, 8:00 a.m., by August 25, 2026, 11:59 p.m.

Assistance for Persons with Disabilities: Contact Jessica Nguyen, phone 360-725-1174, fax 360-586-9727, telecommunication relay service 711, email arc@hca.wa.gov, by August 7, 2026.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is developing rules for the health-related social needs (HRSN) program. HCA has coordinated with the department of social and health services (DSHS) on this subchapter, as DSHS is also developing an HRSN WAC chapter for these services. This program allows qualifying medicaid enrollees to receive evidence-based, nonmedical services to address unmet, adverse social conditions that contribute to poor health. The rules will implement nutritional supports, caregiver respite services, and environmental accessibility, remediation, and adaptation services.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 41.05.021 and 41.05.160.

Statute Being Implemented: RCW 41.05.021 and 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1408; Implementation and Enforcement: Cassidy Farrow, P.O. Box 42732, Olympia, WA 98504-2732, 360-725-9548.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

Scope of exemption for rule proposal 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. HCA has allocated HRSN funds to DSHS to administer services through its existing partnerships with the area agencies on aging and other DSHS-contracted providers who have experience providing HRSN services. This allows the state to minimize cost impacts on providers. The state also has allocated infrastructure funding to DSHS and its contracted partners to offset any start-up costs associated with administering these HRSN services.

HCA has worked within the limits of the HRSN program and funding to make it the least burdensome to all organizations, including any smaller agencies, that will be providing the HRSN navigation services. HCA concludes that the probable benefits of the proposed rule amendments outweigh the probable cost. The rules do not impose more-than-minor costs on small businesses.

July 14, 2026
Wendy Barcus
Rules Coordinator

RDS-7263.2

SUBCHAPTER V – NUTRITION SUPPORTS, CAREGIVER RESPITE SERVICES, AND HOME ACCESSIBILITY, REMEDIATION, AND ADAPTATION DEVICES

NEW SECTION

WAC 182-565-0500 Nutrition supports. (1) The health-related social needs (HRSN) nutrition supports program assists people who:

(a) Are experiencing chronic conditions as defined in WAC 388-106H-0020;

(b) Post-discharge from a hospital, institutional, or congregate setting who screen positive for food insecurity; or

(c) Report being unable to meet or maintain medically-recommended nutrition goals without assistance.

(2) For eligibility, services, and other provisions of the HRSN nutrition supports program, see chapter 388-106H WAC.

(3) Nutrition support services are subject to available funds.

NEW SECTION

WAC 182-565-0525 Caregiver respite services. (1) Caregiver respite services provide intermittent temporary supervision of a client receiving health-related social needs (HRSN) services on a short-term basis.

(2) Caregiver respite services are available when it is useful and necessary to care for a client in their own home and to prevent caregiver burnout.

(3) For eligibility, services, and other provisions of HRSN caregiver respite, see chapter 388-106H WAC.

(4) Caregiver respite services are subject to available funds.

NEW SECTION

WAC 182-565-0550 Home accessibility, remediation, and adaptation devices. (1) Home accessibility, remediation, and adaptation devices furnished through the health-related social needs (HRSN) program provide physical changes to a home that are necessary to:

(a) Ensure the health, welfare, and safety of the client; or

(b) Enable the client to function with greater independence in the home.

(2) For eligibility, services, and other provisions of HRSN home accessibility, remediation, and adaptation devices, see chapter 388-106H WAC.

(3) Home accessibility, remediation, and adaptation devices are subject to available funds.

NEW SECTION

WAC 182-565-0575 Grievances and appeals. Grievances and appeals related to home accessibility, remediation, and adaptation devices follow the process described in WAC 182-565-0170.

WSR 26-15-068
PROPOSED RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS
(Securities Division)
[Filed July 15, 2026, 11:12 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 25-09-059.

Title of Rule and Other Identifying Information: Investment advisers, chapter 460-24A WAC.

Hearing Location(s): On August 26, 2026, at 11 a.m., at the Department of Financial Institutions (DFI), 150 Israel Road S.W., Tumwater, WA 98501. Teams option available. Information will be posted on DFI's rule making docket web page at https://dfi.wa.gov/rulemaking/investment-adviser-rulemaking.

Date of Intended Adoption: August 27, 2026.

Submit Written Comments to: Jill Vallely, P.O. Box 41200, Olympia, WA 98504-1200, email jill.vallely@dfi.wa.gov, beginning July 22, 2026, by August 25, 2026.

Assistance for Persons with Disabilities: Contact Keera Earskine, phone 360-902-8760, TTY 1-800-833-6384, email keera.earskine@dfi.wa.gov, by August 25, 2026.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The securities division proposes to amend the investment adviser rules in chapter 460-24A WAC to make changes consistent with federal law and North American Securities Administrators Association (NASAA) model rules, and to add protections for the investing public who use the services of investment advisers. The proposed rules would make the following changes:

- Revise WAC 460-24A-005 to add new definitions used in NASAA model rules to be adopted in other sections;
- Revise the examination requirements in WAC 460-24A-050 to adopt the NASAA investment adviser representative (IAR) examination validity extension program model rule and to reflect recent amendments to the NASAA examination requirements model rule;
- Revise WAC 460-24A-050(6) to require the filing of an investment adviser's business continuity plan with an application for registration, and revise WAC 460-24A-205 to require filing of any material amendments to the business continuity plan;
- Add a new rule at WAC 460-24A-051 to adopt a requirement for investment advisers to maintain an error and omissions insurance policy, and revise WAC 460-24A-205 to require annual proof of errors and omissions insurance;
- Add a new rule at WAC 460-24A-056 to adopt the NASAA IAR continuing education (CE) model rule;
- Revise WAC 460-24A-057(2) to increase delinquency fee from $50 to $100. This increase would conform to the delinquency fee applicable to broker-dealers under WAC 460-20C-050(3);
- Revise the private fund adviser exemption at WAC 460-24A-071 to make corrections and update references to federal rules;
- Revise the venture capital fund adviser exemption at WAC 460-24A-072 to update references to federal rules;
- Revise the advertising rule at WAC 460-24A-100 to adopt the provisions of the Securities and Exchange Commission (SEC) marketing rule, Rule 206(4)-1;

- Revise the custody rules at WAC 460-24A-106, 460-24A-107, and 460-24A-109 to make clarifications, and repeal the custody rule at WAC 460-24A-108;
- Add a new rule at WAC 460-24A-121 to specify the required content of the investment adviser's written physical and cybersecurity policies and procedures;
- Revise the material nonpublic information policies and procedures rule at WAC 460-24A-122 to add a requirement for the investment adviser to deliver a privacy policy to each client;
- Add a new rule at WAC 460-24A-123 to specify the required content of the investment adviser's code of ethics;
- Revise the proxy voting policies and procedures requirement at WAC 460-24A-125 to require that the investment adviser conduct an annual review of the policy;
- Revise the performance compensation rule at WAC 460-24A-150 to adopt the latest definition of "qualified client" promulgated by SEC, and to add a provision to allow the securities administrator to update the definition by order to conform to the periodic inflation adjustments promulgated by SEC;
- Revise the books and records rule at WAC 460-24A-200 to add a requirement to retain documentation of due diligence of third-party vendors, and to conform recordkeeping requirements to the SEC marketing rule and the NASAA model rule for investment adviser written policies and procedures;
- Revise the notice of changes rule at WAC 460-24A-205 to require the filing of amendments to Form BR if it has become incomplete or inaccurate, to require filing of amendments to the business continuity plan, and to clarify that an investment adviser may not use new or amended advisory contracts or offering materials until cleared by the securities administrator;
- Revise the unethical practices rule at WAC 460-24A-220 to revise subsections (6) and (7) to allow borrowing from or lending to relatives, and add new subsections (27) to (29) to address unpaid arbitration awards; and
- Make other clarifications and corrections.

Reasons Supporting Proposal: The investment adviser rules in chapter 460-24A WAC were last updated in 2019. Since that time, there have been updates to federal law and NASAA model rules. The proposed amendments will promote uniformity by making Washington's rules consistent with federal law and NASAA model rules. By adopting the provisions of the SEC marketing rule, the proposed amendments will promote equity by allowing state-registered investment advisers to advertise in the same manner as federal covered advisers. The proposed amendments will increase investor protection by requiring IARs to complete CE. In addition, the proposed amendments will increase investor protection by requiring state-registered investment advisers to maintain an errors and omissions insurance policy. The proposed amendments will make necessary updates, clarifications, and corrections.

Statutory Authority for Adoption: RCW 21.20.450.

Statute Being Implemented: Chapter 21.20 RCW.

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

Name of Proponent: DFI, governmental.

Name of Agency Personnel Responsible for Drafting: Jill Vallely, 150 Israel Road S.W., Tumwater, WA 98501, 360-902-8760; Implementation: Mark Kissler, 150 Israel Road S.W., Tumwater, WA 98501,

360-902-8760; and Enforcement: Faith Anderson, 150 Israel Road S.W., Tumwater, WA 98501, 360-902-8760.

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. DFI is not one of the agencies listed in RCW 34.05.328(5).

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

Is not exempt.

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

Small Business Economic Impact Statement (SBEIS)

Chapter 460-24A WAC
Investment Advisers
July 6, 2026

SECTION 1:

Description of the proposed rule amendments: DFI, securities division has prepared this SBEIS in support of proposed amendments to the investment adviser rules in chapter 460-24A WAC.

Prior to preparing this SBEIS, the securities division prepared a preliminary draft of amendments to chapter 460-24A WAC and conducted a survey to assess the economic impact of the potential rule amendments. The results of the survey are discussed in sections 3 through 6 of this SBEIS. The preliminary rules draft amended 25 sections, added four new sections, and repealed one section. The preliminary rules draft included the following substantive changes:

- Revised WAC 460-24A-005 to add new definitions used in NASAA model rules to be adopted in other sections.
- Revised the examination requirements in WAC 460-24A-050 to adopt the NASAA IAR examination validity extension program model rule and to reflect recent amendments to the NASAA examination requirements model rule.
- Revised WAC 460-24A-050(6) to require the filing of an investment adviser's business continuity plan with an application for registration, and revised WAC 460-24A-205 to require filing of any material amendments to the business continuity plan.
- Added a new rule at WAC 460-24A-051 to adopt a requirement for investment advisers to maintain an error and omissions insurance policy, and revised WAC 460-24A-205 to require annual proof of errors and omissions insurance.
- Added a new rule at WAC 460-24A-056 to adopt the NASAA IAR CE model rule.
- Revised WAC 460-24A-057(2) to increase delinquency fee from $50 to $100. This increase would conform to the delinquency fee applicable to broker-dealers under WAC 460-20C-050(3).
- Revised the private fund adviser exemption at WAC 460-24A-071 to make corrections and update references to federal rules.
- Revised the venture capital fund adviser exemption at WAC 460-24A-072 to update references to federal rules.
- Revised the advertising rule at WAC 460-24A-100 to adopt the provisions of the SEC marketing rule, SEC Rule 206(4)-1.
- Revised the custody rules at WAC 460-24A-106, 460-24A-107, and 460-24A-109 to make clarifications, and repealed the custody rule at WAC 460-24A-108.

- Added a new rule at WAC 460-24A-121 to specify the required content of the investment adviser's written physical and cybersecurity policies and procedures.
- Revised the material nonpublic information policies and procedures rule at WAC 460-24A-122 to add a requirement for the investment adviser to deliver a privacy policy to each client.
- Added a new rule at WAC 460-24A-123 to specify the required content of the investment adviser's code of ethics.
- Revised the proxy voting policies and procedures requirement at WAC 460-24A-125 to require that the investment adviser conduct an annual review of the policy.
- Revised the advisory agreement rule at WAC 460-24A-130 to require that advisory agreements state the physical and mailing address of the investment adviser's place of business.*
- Revised the performance compensation rule at WAC 460-24A-150 to adopt the latest definition of "qualified client" promulgated by SEC, and to add a provision to allow the securities administrator to update the definition by order to conform to the periodic inflation adjustments promulgated by SEC.
- Revised the books and records rule at WAC 460-24A-200 to add a requirement to retain documentation of due diligence of third-party vendors, to add a requirement to retain a trusted contact person for clients,* to add a requirement to keep a hard copy of the business continuity plan,* and to conform recordkeeping requirements to the SEC marketing rule and the NASAA model rule for investment adviser written policies and procedures.
- Revised the notice of changes rule at WAC 460-24A-205 to require the filing of amendments to Form BR if it has become incomplete or inaccurate, and to clarify that an investment adviser may not use new or amended advisory contracts or offering materials until cleared by the securities administrator.
- Revised the unethical practices rule at WAC 460-24A-220 to revise subsections (6) and (7) to allow borrowing from or lending to relatives, add new subsections (27) to (29) to address unpaid arbitration awards, and add a new subsection (30) to state that it is an unethical practice to fail to keep a copy of the written advisory contract.*

* The securities division eliminated these provisions upon review of the economic impact survey results, as described in section 6 below.

SECTION 2:

Identify which businesses must comply with the proposed rule using the North American Industry Classification System (NAICS) codes and the minor cost thresholds: All investment advisers registered or required to be registered in Washington under RCW 21.20.040(3) will be required to comply with the proposed rules. In addition, all IARs who are registered or required to be registered in Washington under RCW 21.20.040(3) will be required to comply with the proposed rules that pertain to IARs, including the unethical practices rule and the draft rule to adopt a CE requirement. Federal covered advisers must comply with the rules regarding unethical practices, and their IARs who are registered or required to be registered in Washington under RCW 21.20.040(3) must comply with the rules pertaining to IARs. Exempt reporting advisers must comply with the private fund adviser exemption rule or the venture capital fund adviser rule, as applicable.

The NAICS code for investment advisers is 523940. The minor cost threshold that applies to this rule making under the Regulatory Fairness Act (RFA), chapter 19.85 RCW, is a cost per business of less than

three-tenths of one percent of annual revenue or income, or $100, whichever is greater, or one percent of annual payroll.

SECTION 3:

Analyze the probable cost of compliance: In drafting the proposed rules, the securities division attempted to balance the business concerns of investment advisers with the securities division's mission to protect the investing public and to promote confidence in the capital markets. We anticipate that compliance with certain proposed rules may increase compliance costs for some investment advisers. While the proposed rules may increase costs to investment advisers, the securities division believes the proposed rules will increase investor protection. Further, as described in section 6, the securities division made certain revisions to the initial rules draft to reduce costs.

Survey of Investment Advisers: For the preparation of an SBEIS, RCW 19.85.040 provides that an agency may survey a representative sample of affected businesses to assist in the accurate assessment of the costs of proposed rules. To that end, the securities division conducted a survey to gather information from its registered investment advisers, its exempt reporting advisers, and its notice-filed federal covered advisers with a principal place of business in Washington.

The securities division prepared an online survey designed to determine the economic impact of the draft amendments on small businesses. On February 27, 2026, the securities division sent an email containing a link to the online survey to the investment adviser registration depository contact person for all Washington-registered investment advisers, all Washington-filed exempt reporting advisers, and all notice-filed federal covered advisers with principal places of business in Washington. The email explained the reasons for conducting the survey and requested that each investment adviser's chief compliance officer or other appropriate representative complete the online survey. The email also provided links to the draft rules and a PDF copy of the survey questions.

The survey consisted of 25 questions. Each substantive question in the survey focused on amendments in the draft rules by topic and provided a background statement briefly explaining the draft amendments. The survey asked whether the draft amendments would increase costs. If a respondent answered "yes," the survey requested information on the additional costs of compliance with that rule in the categories of professional services, equipment, supplies, labor, and administrative costs. Each question also provided a free-form section for survey respondents to make comments or provide additional information. The survey requested that responding investment advisers provide their number of employees. The survey also queried whether the rule making would cause a loss of revenue or the loss or addition of any jobs.

The survey period lasted from February 27, 2026, until March 20, 2026. The securities division received 36 unique responses, although some respondents did not complete all the questions in the survey. All 36 respondents were small businesses as defined by RCW 19.85.020(3) of RFA (business with 50 or fewer employees).

The following table provides the responses to the survey question regarding whether compliance with the proposed changes to each rule section would create any additional costs:

Whether Rule Amendments Would Create Additional Costs		
	Yes	No

WAC 460-24A-050: Examination Requirements	19%	81%
WAC 460-24A-050(6): File the Business Continuity Plan	33%	67%
New WAC 460-24A-051: Errors and Omissions Insurance	40%	60%
New WAC 460-24A-056: Adopt IAR Continuing Education Model Rule	70%	30%
WAC 460-24A-057(2): Increase Delinquency Fee	3%	97%
WAC 460-24A-071: Private Fund Adviser Exemption	3%	97%
WAC 460-24A-072: Venture Capital Fund Adviser Exemption	3%	97%
WAC 460-24A-100: Adopt SEC Marketing Rule	23%	77%
WAC 460-24A-106, -107, -108, and -109: Revise Custody Rules	10%	90%
New WAC 460-24A-121: NASAA Cybersecurity Model Rule	60%	40%
WAC 460-24A-122: Privacy Policy Requirement	27%	73%
New WAC 460-24A-123: NASAA Code of Ethics Model Rule	67%	33%
WAC 460-24A-125: Conform Proxy Policy to NASAA model rule	43%	57%
WAC 460-24A-130: Require Investment Advisory (IA) Address in Advisory Contracts	37%	63%
WAC 460-24A-150: Update Qualified Client Definition	13%	87%
WAC 460-24A-200: Books and Records	79%	21%
WAC 460-24A-205: Notice of Changes	66%	34%
WAC 460-24A-220: Unethical Business Practices	37%	63%
Will the rules result in lost sales or revenue?	34%	66%
Will the rules cause your business to eliminate jobs?	17%	83%
Will the rules cause your business to add jobs?	7%	93%

The securities division used the survey data to calculate the increased costs per employee for the survey respondents in the categories of professional services, equipment, supplies, labor, and administrative costs for the draft amendments. The following table provides the average cost increase per employee for the draft amendments for all survey respondents:

Average Cost Increase Per Employee (All Respondents)					
Rule Provision	**Professional Services**	**Equipment**	**Supplies**	**Labor**	**Admin**
WAC 460-24A-050: Examination Requirements	$419.94	$161.29	$96.77	$667.74	$79.03
WAC 460-24A-050(6): File the Business Continuity Plan	$732.72	$ -	$0.53	$214.44	$467.78
New WAC 460-24A-051: Errors and Omissions Insurance	$319.17	$ -	$ -	$25.83	$116.67
New WAC 460-24A-056: Adopt IAR Continuing Education Model Rule	$931.16	$ -	$15.56	$871.57	$347.83
WAC 460-24A-057(2): Increase Delinquency Fee	$1.67	$ -	$ -	$ -	$ -
WAC 460-24A-071: Private Fund Adviser Exemption	$ -	$ -	$ -	$ -	$ -
WAC 460-24A-072: Venture Capital Fund Adviser Exemption	$ -	$ -	$ -	$ -	$ -
WAC 460-24A-100: Adopt SEC Marketing Rule	$110.00	$ -	$ -	$126.67	$141.67

WAC 460-24A-106, -107, -108, and -109: Revise Custody Rules					
	$10.00	$ -	$ -	$20.00	
New WAC 460-24A-121: NASAA Cybersecurity Model Rule					
	$493.06	$ -	$1.67	$284.17	$308.89
WAC 460-24A-122: Privacy Policy Requirement					
	$20.00	$ -	$ -	$66.67	$33.33
New WAC 460-24A-123: NASAA Code of Ethics Model Rule					
	$528.61	$ -	$ -	$366.39	$325.56
WAC 460-24A-125: Conform Proxy Policy to Model Rule					
	$299.17	$ -	$ -	$139.44	$170.83
WAC 460-24A-130: Require IA Address in Advisory Contracts					
	$568.33	$ -	$ -	$176.70	$5,058.33
WAC 460-24A-150: Update Qualified Client Definition					
	$83.33	$ -	$16.67	$16.67	$33.33
WAC 460-24A-200: Books and Records					
	$2,377.01	$68.97	$22.41	$778.16	$1,824.71
WAC 460-24A-205: Notice of Changes					
	$247.70	$ -	$ -	$100.57	$157.47
WAC 460-24A-220: Unethical Business Practices					
	$17.27	$ -	$ -	$44.83	$34.54

The following table provides the average cost increase per employee only for those survey respondents who indicated that a particular rule change would create additional costs:

Average Cost Increase Per Employee (Responses Greater than $0)					
Rule Provision	**Professional Services**	**Equipment**	**Supplies**	**Labor**	**Admin**
WAC 460-24A-050: Examination Requirements					
	$2,603.60	$5,000.00	$3,000.00	$6,900.00	$816.67
WAC 460-24A-050(6): File the Business Continuity Plan					
	$2,198.17	$ -	$7.92	$919.05	$2,004.76
New WAC 460-24A-051: Errors and Omissions Insurance					
	$736.54	$ -	$ -	$193.75	$437.50
New WAC 460-24A-056: Adopt IAR Continuing Education Model Rule					
	$1,471.25	$ -	$233.33	$2,377.00	$948.64
WAC 460-24A-057(2): Increase Delinquency Fee					
	$50.00	$ -	$ -	$ -	$ -
WAC 460-24A-071: Private Fund Adviser Exemption					
	$ -	$ -	$ -	$ -	$ -
WAC 460-24A-072: Venture Capital Fund Adviser Exemption					
	$ -	$ -	$ -	$ -	$ -
WAC 460-24A-100: Adopt SEC Marketing Rule					
	$1,100.00	$ -	$ -	$950.00	$2,125.00
WAC 460-24A-106, -107, -108, and -109: Revise Custody Rules					
	$300.00	$ -	$ -	$600.00	
New WAC 460-24A-121: NASAA Cybersecurity Model Rule					
	$1,137.82	$ -	$50.00	$775.00	$1,158.33

WAC 460-24A-122: Privacy Policy Requirement					
	$600.00	$ -	$ -	$500.00	$500.00
New WAC 460-24A-123: NASAA Code of Ethics Model Rule					
	$1,219.87	$ -	$ -	$999.24	$1,627.78
WAC 460-24A-125: Conform Proxy Policy to Model Rule					
	$997.22	$ -	$ -	$464.81	$854.17
WAC 460-24A-130: Require IA Address in Advisory Contracts					
	$2,481.67	$ -	$ -	$1,325.00	$37,937.50
WAC 460-24A-150: Update Qualified Client Definition					
	$833.33	$ -	$500.00	$500.00	$500.00
WAC 460-24A-200: Books and Records					
	$4,308.33	$2,000.00	$216.67	$1,880.56	$4,810.61
WAC 460-24A-205: Notice of Changes					
	$98.15	$ -	$ -	$416.67	$570.83
WAC 460-24A-220: Unethical Business Practices					
	$500.00	$ -	$ -	$433.33	$333.89

The following table presents the survey results for the lost sales or revenue anticipated to be caused by the draft rules as a whole:

Amount of Lost Sales or Revenue Caused by the Rules (Per Employee)	
Average of All Survey Respondents	$4,365.52
Average of Responses Greater than $0	$15,825.00

Discussion of Survey Results: The survey results indicated that certain draft rule amendments would be likely to increase costs and that those costs would exceed more-than-minor costs. These included the draft rule amendments regarding submission of business continuity plans (33 percent indicating increased costs), errors and omissions insurance (40 percent indicating increased costs), IAR CE (70 percent indicating increased costs), cybersecurity policies and procedures (60 percent indicating increased costs), code of ethics (67 percent indicating increased costs), proxy policies and procedures (43 percent indicating increased costs), advisory contracts (37 percent indicating increased costs), books and records (79 percent indicating increased costs), notice of changes (66 percent indicating increased costs), and unethical business practices (37 percent indicating increased costs). We discuss the survey results in further detail below.

WAC 460-24A-050(6): File the Business Continuity Plan: The draft amendments would revise WAC 460-24A-050(6) to require the filing of an investment adviser's business continuity plan upon its application for registration. Currently, WAC 460-24A-126 requires investment advisers registered in Washington to maintain a business continuity plan. However, the securities division does not currently require advisers to file a copy of it. Investment advisers may incur professional services, labor, or administrative expenses in reviewing and filing the business continuity plan.

The survey results indicated that approximately 33 percent of survey respondents believed that the draft rule at WAC 460-24A-050(6) would increase costs. For all survey respondents, these costs included an average of $732.72 per employee for professional services, $0.53 for supplies, $214.44 for labor, and $467.78 for administrative costs.

New WAC 460-24A-051: Errors and Omissions Insurance: The draft rule amendments would create a new rule, WAC 460-24A-051, that would require registered investment advisers to maintain an errors and omissions insurance policy of $1 million or more. Draft amendments to WAC 460-24A-205 would also require investment advisers to file annual proof of insurance with the securities division. This would represent a new substantive requirement. While 87 percent of the survey respondents indicated that they already maintained errors and omissions insurance of $1 million or more, 40 percent of the respondents expected the draft rule to increase their costs. Respondents expressed that the need to file annual proof of insurance and to obtain coverage or verify that their current coverage would meet the state's requirements would increase costs. For all survey respondents, these costs included an average of $319.17 per employee for professional services, $25.83 for labor, and $116.67 for administrative costs.

The survey also asked respondents who currently maintain errors and omissions insurance to state their annual cost of coverage. The average cost of coverage per investment adviser was $12,596.69. However, one adviser reported an annual cost of $120,000, which was $106,000 more than any of the other 25 responses. Disregarding this outlier, the average annual cost of coverage per adviser was $3,646.42.

New WAC 460-24A-056: Adopt IAR CE Model Rule: The draft rule WAC 460-24A-056 would create a CE requirement for IARs. Under the draft rule, an IAR would be required to complete annually six credits of ethics and professional responsibility content and six credits of products and practice content. If an IAR is out of compliance at the end of one annual period, and fails to make up the missing credits by the end of the next annual period, the securities division would have a basis to not renew the IAR's registration. IARs, or their investment adviser firms, will likely incur tuition expenses to attend CE classes. IARs will also spend time attending classes and engaging in administrative tasks such as reporting and tracking credits. The time an IAR must spend on CE may reduce the time available for revenue-generating activities.

The survey results indicated that approximately 70 percent of survey respondents believed that the draft CE rule would increase costs. For all survey respondents, these costs included an average of $931.16 per employee for professional services, $15.56 for supplies, $871.57 for labor, and $347.83 for administrative costs.

New WAC 460-24A-121: NASAA Cybersecurity Model Rule: The draft amendments would create a new rule at WAC 460-24A-121 to adopt the provisions of the NASAA model rule for investment adviser written policies and procedures that specify the content of the investment adviser's physical and cybersecurity policies and procedures. Currently, registered investment advisers must maintain written physical and cybersecurity policies and procedures pursuant to WAC 460-24A-200 (1)(bb). Regardless, the draft rule may increase professional services, labor, or administrative expenses related to reviewing and revising existing physical and cybersecurity policies and procedures to ensure compliance with the provisions of the NASAA model rule for investment adviser written policies and procedures. Some investment advisers may hire third-party consultants to assist them with this task. The survey results indicated that approximately 60 percent of survey respondents believed that the draft cybersecurity rule would increase costs. For all survey respondents, these costs included an average of

$493.06 per employee for professional services, $1.67 for supplies, $284.17 for labor, and $308.89 for administrative costs.

New WAC 460-24A-123: NASAA Code of Ethics Model Rule: The draft amendments would create a new rule at WAC 460-24A-123 to adopt the provisions of the NASAA model rule for investment adviser written policies and procedures that specify the content of the investment adviser's code of ethics. Currently, registered investment advisers must maintain a written code of ethics pursuant to WAC 460-24A-200 (1)(aa). Regardless, the draft rule may increase professional services, labor, or administrative expenses related to reviewing or revising the existing code of ethics to ensure compliance with the provisions of the NASAA model rule for investment adviser written policies and procedures. Some investment advisers may hire third-party consultants to assist them with this task. Implementing a code of ethics that meets the requirements of the NASAA model rule may also increase recordkeeping and other administrative expenses. The survey results indicated that approximately 67 percent of survey respondents believed that the draft code of ethics rule would increase costs. For all survey respondents, these costs included an average of $528.61 per employee for professional services, $366.39 for labor, and $325.56 for administrative costs.

WAC 460-24A-125: Conform Proxy Policy to NASAA Model Rule: The draft rule amendments would revise the proxy policies and procedures rule at WAC 460-24A-125 to conform its language to the NASAA model rule for investment adviser written policies and procedures. The draft amendment would require the adviser, consistent with the NASAA model rule, to conduct an annual review of its proxy voting policy. The draft rule amendment may increase professional services, labor, or administrative expenses related to the adviser's annual review of the proxy voting policies and procedures. Some investment advisers may hire third-party consultants to assist them with the annual review. The survey results indicated that approximately 43 percent of survey respondents believed that the draft amendments to the proxy voting rule would increase costs. For all survey respondents, these costs included an average of $299.17 per employee for professional services, $139.44 for labor, and $170.83 for administrative costs.

WAC 460-24A-130: Require IA Address in Advisory Contracts: The draft amendments would revise the advisory agreement rule at WAC 460-24A-130 to add a requirement that the advisory agreement state the physical and mailing address of the investment adviser's principal place of business. The draft amendment may increase professional services, labor, or administrative expenses related to the revision of advisory agreement to include its physical and mailing addresses. Certain advisers indicated in response to the survey that they work solely from home and object to providing a physical address for safety and privacy reasons. Certain advisers stated they may incur significant expenses by renting an office to avoid disclosing their home address.

The survey results indicated that approximately 37 percent of survey respondents believed that the requirement to include a physical and mailing address on the advisory contract would increase costs. For all survey respondents, these costs included an average of $568.33 per employee for professional services, $176.70 for labor, and $5,058.33 for administrative costs. After reviewing the survey results, the securities division removed this draft provision to reduce costs, as described in section 6.

WAC 460-24A-200: Books and Records: The draft amendments to the books and records rule at WAC 460-24A-200 would make revisions requiring the retention of records related to the adoption of the SEC mar-

keting rule, and would update internal references to include new rule sections. The amendments would also accomplish the following:

- Revise subsection (1)(r) to add net worth, liquid net worth, and annual income to the written client suitability information that advisers must keep.
- Revise subsection (1)(y) to require evidence of annual review of business continuity plan, and add a requirement to store a hard copy.
- Specify that the documentation required under subsection (1)(dd) must be made within 10 business days.
- Add new subsection (1)(ff) to require advisers to keep documentation of their due diligence regarding third-party vendors.
- Add new subsection (1)(gg) to require advisers to keep a record of a trusted contact person for clients.
- Revise subsection (5)(c) to change the retention period from five years to six years. This change is consistent with the retention period in subsection (5)(a).

The draft amendments may increase professional services, labor, or administrative expenses related to the implementation of the new recordkeeping requirements. Advisers may incur professional services, labor, or administrative expenses to amend compliance policies to reflect the new recordkeeping requirements. There may also be storage expenses incurred from the need to retain additional records. The survey results indicated that approximately 79 percent of survey respondents believed that the amendments to the books and records rule would increase costs. For all survey respondents, these costs included an average of $2,377.01 per employee for professional services, $68.97 for equipment, $22.41 for supplies, $778.16 for labor, and $1,824.71 for administrative costs. After reviewing the survey results, the securities division removed certain amendments to reduce costs, as described in section 6.

WAC 460-24A-205: Notice of Changes: The draft amendments to the notice of changes rule at WAC 460-24A-205 would clarify that an investment adviser may not use new or amended advisory contracts or offering materials until the director has cleared them for use. The draft amendments would also require the investment adviser to promptly file an amendment to Form BR if the information on the form has become incomplete or inaccurate. This includes the opening, closing, relocation, or acquisition of a branch office in Washington, or the engagement of a new person in charge of a branch office in Washington. The draft amendments may increase professional services, labor, or administrative expenses related to the requirement to file amendments to Form BR. Survey respondents expressed concern regarding the amount of time they may be required to wait for approval of contracts and offering materials from the securities division before they could begin using the revised documents. The survey results indicated that approximately 66 percent of survey respondents believed that the amendments to the notice of changes rule would increase costs. For all survey respondents, these costs included an average of $247.70 per employee for professional services, $100.57 for labor, and $157.47 for administrative costs.

WAC 460-24A-220: Unethical Business Practices: The draft amendments to the unethical practice rule at WAC 460-24A-220 including revising subsections (6) and (7) to allow borrowing or lending to relatives as defined in RCW 21.20.005(13); adding provisions to address unpaid arbitration awards from the NASAA unethical practices of in-

vestment advisers model rule; and adding a new subsection to make it an unethical practice to fail to keep a copy of the written advisory contracts required by WAC 460-24A-130 and 460-24A-200 (1)(j). Advisers may incur professional services, labor, or administrative expenses to amend compliance policies to reflect the amendments to the unethical business practices rule. The survey results indicated that approximately 37 percent of survey respondents believed that the amendments to the unethical business practices rule would increase costs. For all survey respondents, these costs included an average of $17.24 per employee for professional services, $44.83 for labor, and $34.54 for administrative costs. After reviewing the survey results, the securities division removed certain amendments to reduce costs, as described in section 6.

Lost Sales or Revenue: The survey revealed that 34 percent of respondents believed that compliance with the draft rule changes would result in lost sales or revenue. For all survey respondents, the estimated lost revenue per employee was $4,365.52. The 34 percent who believed the changes would lead to lost sales or revenue estimated they would lose an average of $15,825.00 in revenue per employee.

The survey requested a free-form response to identify which provisions in the draft rules would cause lost sales or revenue. The responses stated that IAR CE would reduce time available to serve clients and generate revenue. The responses also expressed that investment advisers would spend time on legal and compliance matters, including updating books and records procedures and reviewing compliance policies. Many Washington-registered investment advisers have one employee, who is also the chief compliance officer. The time spent reviewing and implementing rule changes may decrease the time available to spend on revenue-generating activities. Certain investment advisers may hire outside consultants or incur additional costs to assist with these tasks. Funds spent on compliance would not be available to spend on other activities, such as advertising, that might potentially increase revenue.

SECTION 4:

Analyze whether the proposed rule may impose more-than-minor costs on businesses in the industry: RCW 19.85.030 provides that an agency must prepare an SBEIS if the agency proposes rules that would impose more-than-minor costs on businesses in an industry. RCW 19.85.020 defines a "minor cost" as a cost per business that is less than three-tenths of one percent of annual revenue or income, or $100, whatever is greater; or one percent of annual payroll.

The securities division has determined, based on the results of the survey described in section 3, that at least some of the rule amendments may impose more-than-minor costs on investment advisers because such costs may exceed $100.

SECTION 5:

Determine whether the proposed rule may have a disproportionate impact on small businesses as compared to the 10 percent of businesses that are the largest businesses required to comply with the proposed rule. Also, consider, based on input received, whether compliance with the rule will cause businesses to lose sales or revenue: RCW 19.85.040 requires that the securities division determine whether compliance with the proposed rules would have a disproportionate impact on small businesses by comparing the cost of compliance for small business with the cost of compliance for the 10 percent of businesses that are the largest businesses required to comply with the proposed rules.

The securities division categorized each survey response based on whether it came from a small business or whether it represented the 10 percent of businesses that were the largest businesses that responded. Small businesses are defined by RCW 19.85.020(3) as 50 or fewer employees. We likewise determined the largest 10 percent of businesses by the number of employees. We then compared the two categories to each other. Certain businesses were in both categories, because all respondents met the definition of a small business.

The survey results demonstrated that the increased costs per employee of small businesses were generally greater than the increased costs per employee of the largest 10 percent of businesses.

The following table compares the average cost increase associated with the draft rules for small businesses and the largest 10 percent of businesses required to comply:

Average Cost Increase - Comparison of Small Business and Largest 10% of Businesses					
	Professional Services	**Equipment**	**Supplies**	**Labor**	**Admin**
WAC 460-24A-050: Examination Requirements					
Small Businesses	$419.94	$161.29	$96.77	$667.74	$79.03
Largest 10%	$100.00	$ -	$ -	$50.00	$50.00
WAC 460-24A-050(6): File the Business Continuity Plan					
Small Businesses	$732.72	$ -	$0.53	$214.44	$467.78
Largest 10%	$541.67	$ -	$0.21	$533.33	$8.33
New WAC 460-24A-051: Errors and Omissions Insurance					
Small Businesses	$319.17	$ -	$ -	$25.83	$116.67
Largest 10%	$75.00	$ -	$ -	$ -	$75.00
New WAC 460-24A-056: Adopt IAR Continuing Education Model Rule					
Small Businesses	$931.16	$ -	$15.56	$871.57	$347.83
Largest 10%	$538.83	$ -	$ -	$536.75	$2.08
WAC 460-24A-057(2): Increase Delinquency Fee					
Small Businesses	$1.67	$ -	$ -	$ -	$ -
Largest 10%	$ -	$ -	$ -	$ -	$ -
WAC 460-24A-071: Private Fund Adviser Exemption					
Small Businesses	$ -	$ -	$ -	$ -	$ -
Largest 10%	$ -	$ -	$ -	$ -	$ -
WAC 460-24A-072: Venture Capital Fund Adviser Exemption					
Small Businesses	$ -	$ -	$ -	$ -	$ -
Largest 10%	$ -	$ -	$ -	$ -	$ -
WAC 460-24A-100: Adopt SEC Marketing Rule					
Small Businesses	$110.00	$ -	$ -	$126.67	$141.67
Largest 10%	$ -	$ -	$ -	$ -	$ -
WAC 460-24A-106, -107, -108, and -109: Revise Custody Rules					
Small Businesses	$10.00	$ -	$ -	$20.00	
Largest 10%	$ -	$ -	$ -	$ -	$ -
New WAC 460-24A-121: NASAA Cybersecurity Model Rule					
Small Businesses	$493.06	$ -	$1.67	$284.17	$308.89
Largest 10%	$41.67	$ -	$ -	$37.50	$4.17
WAC 460-24A-122: Privacy Policy Requirement					
Small Businesses	$20.00	$ -	$ -	$66.67	$33.33
Largest 10%	$150.00	$ -	$ -	$150.00	$ -

Average Cost Increase - Comparison of Small Business and Largest 10% of Businesses					
	Professional Services	**Equipment**	**Supplies**	**Labor**	**Admin**
New WAC 460-24A-123: NASAA Code of Ethics Model Rule					
Small Businesses	$528.61	$ -	$ -	$366.39	$325.56
Largest 10%	$583.33	$ -	$ -	$579.17	$4.17
WAC 460-24A-125: Conform Proxy Policy to NASAA Model Rule					
Small Businesses	$299.17	$ -	$ -	$139.44	$170.83
Largest 10%	$150.00	$ -	$ -	$158.33	$ -
WAC 460-24A-130: Require IA Address in Advisory Contracts					
Small Businesses	$568.33	$ -	$ -	$176.70	$5,058.33
Largest 10%	$125.00	$ -	$ -	$125.00	$ -
WAC 460-24A-150: Update Qualified Client Definition					
Small Businesses	$83.33	$ -	$16.67	$16.67	$33.33
Largest 10%	$125.00	$ -	$ -	$125.00	$ -
WAC 460-24A-200: Books and Records					
Small Businesses	$2,377.01	$68.97	$22.41	$778.16	$1,824.71
Largest 10%	$1,708.33	$500.00	$ -	$604.17	$604.17
WAC 460-24A-205: Notice of Changes					
Small Businesses	$247.70	$ -	$ -	$100.57	$157.47
Largest 10%	$833.33	$ -	$ -	$204.17	$629.17
WAC 460-24A-220: Unethical Business Practices					
Small Businesses	$17.27	$ -	$ -	$44.83	$34.54
Largest 10%	$ -	$ -	$ -	$ -	$0.42

Comparison of Lost Sales or Revenue: The largest 10 percent of businesses indicated in their survey responses that they would not lose any revenue. The small businesses estimated that they would lose an average of $4,365.52 in revenue per employee, with 10 small businesses reporting that they expected to lose revenue because of the rule changes (although only eight provided an estimate of anticipated lost sales or revenue).

Comparison of Addition or Elimination of Jobs: Approximately seven percent of survey respondents indicated that the rule changes would cause them to add jobs. This represented two small businesses, none of which were among the 10 percent of the largest businesses required to comply with the rule amendments. Therefore, the rule changes may disproportionately cause small businesses to create jobs.

Approximately 17 percent of survey respondents indicated that the rule changes would cause them to eliminate jobs. This figure represented five small businesses, two of which were the 10 percent of the largest businesses required to comply with the rule changes. This figure represented 17 percent of small businesses and 50 percent of the largest 10 percent of businesses required to comply. Therefore, the rule changes will not disproportionately cause small businesses to eliminate jobs as compared to the largest 10 percent of businesses required to comply with the rules.

SECTION 6:

If the proposed rule is likely to impose a disproportionate impact on small businesses, identify the steps taken to reduce the costs of the rule on small businesses: As a result of feedback received from affected businesses, the securities division made certain revisions to the initial rules draft to reduce the cost of compliance for small

businesses. We detail these revisions below. The securities division also outlines additional mitigation steps we intend to take to reduce the burden of compliance. The securities division does not believe that it can reduce costs further and still accomplish the investor protection purpose of the rule making.

Reducing, Modifying, or Eliminating Substantive Regulatory Requirements: The securities division removed the provision in its draft rules at WAC 460-24A-130(11) that would have required investment advisers to add their physical and mailing address to all advisory contracts. This will reduce administrative expenses for investment advisers. The securities division also removed the provision in its draft rules at WAC 460-24A-220(30) that would have made it an unethical practice to fail to keep a written advisory contract for each client.

Simplifying, Reducing, or Eliminating Recordkeeping and Reporting Requirements: The securities division revised the draft rules at WAC 460-24A-200 (1)(y) to remove the provision that would have required investment advisers to keep a hard copy of the business continuity plan. In addition, the securities division revised the draft rules to remove WAC 460-24A-200 (1)(gg), which would have required investment advisers to keep a record of a trusted contact person for each client. These changes will reduce recordkeeping requirements and any associated administrative expenses.

Reducing the Frequency of Inspections: The securities division does not believe that reducing the frequency of inspections or examinations would be in the interest of the investing public. Therefore, we have not made any changes to the draft rules that would reduce the frequency of inspections or examinations.

Delaying Compliance Timetables: The securities division will allow investment advisers adequate time to implement the rule changes through existing processes. Through the exam and deficiency letter process, the securities division will provide reasonable time for investment advisers to fix any deficiencies related to the new rules that the staff identifies during its routine examinations of investment advisers.

Further, the draft CE rule at WAC 460-24A-056 provides one year of registration in "CE inactive" status for IARs who fail to complete all credits in the prior year. Only after failure to complete credits at the end of the CE inactive year would an IAR become ineligible to renew a license. Accordingly, the draft CE rule by its terms will provide reasonable time for investment advisers to achieve compliance with the CE requirement.

Reducing or Modifying Fine Schedules for Noncompliance: The securities division does not believe that reducing or modifying fine schedules for noncompliance would be in the interest of the investing public. Therefore, we have not made any changes to the draft rules that would reduce or modify fine schedules for noncompliance.

Any Other Mitigation Techniques, Including those Suggested by Small Businesses or Small Business Advocates: Upon adoption of the rules, to facilitate compliance with new requirements, the securities division intends to hold outreach events to provide information to its registered investment advisers regarding the amended rules. In addition, the securities division will fulfill reasonable requests received from investment advisers in Washington to provide training or technical assistance visits regarding compliance with the amended rules. In addition, the securities division undertakes to provide a sample code of ethics that advisers may adopt to comply with the amended code of ethics requirements. The securities division will also

provide links on its website to NASAA resources regarding CE and cybersecurity policies.

SECTION 7:

Describe how small businesses were involved in the development of the proposed rule: Throughout the rule-making process, the securities division has involved its registered investment advisers, exempt reporting advisers, and notice-filed federal covered advisers. Many of these investment advisers are small businesses with fewer than 50 employees.

The securities division filed a CR-101 preproposal statement of inquiry with the code reviser's office (CRO) on April 14, 2025, stating that the securities division was considering amending the rules in chapter 460-24A WAC. On May 5, 2025, the securities division electronically mailed the CR-101 to its securities rule-making interested persons list. On May 9, 2025, the securities division electronically mailed the CR-101 to all its registered investment advisers, exempt reporting advisers, and notice-filed federal covered advisers to solicit comments. The securities division received five comment letters on the CR-101, and incorporated the suggestions into the preparation of an initial draft of possible amendments to chapter 460-24A WAC.

On February 27, 2026, the securities division posted the draft amendments on our website. In addition, the securities division conducted a survey to determine the costs associated with the draft rule amendments. The survey was emailed to all investment advisers registered in Washington, all exempt reporting advisers filed in Washington, and all notice-filed federal covered advisers with a principal place of business in Washington. The survey period remained open until March 20, 2026. All the respondents to the survey were small businesses. Following the completion of the survey, the securities division revised the draft rules in response to feedback received in the survey, as detailed in section 6.

The securities division now intends to proceed with the rule making by formally proposing amendments to chapter 460-24A WAC in a CR-102 filing with CRO. Investment advisers and all interested members of the public will have an opportunity to submit comments on the proposed rule and participate in the rule-making hearing.

SECTION 8:

Identify the estimated number of jobs that will be created or lost as the result of compliance with the proposed rule: The results of the survey indicated that 17 percent of survey respondents may eliminate jobs as a result of compliance with the draft rule amendments. This represented an average of 0.068 jobs eliminated per survey respondent.

The results of the survey indicated that seven percent of survey respondents thought they may add jobs as a result of compliance with the draft rule amendments. This represented an average of 0.078 jobs added per survey respondent.

SECTION 9:

Summarize the results of the analysis, including the determination if costs are disproportionate: As discussed in section 5 above, the survey indicated that several of the rules may impose disproportionate costs on small businesses as compared to the largest 10 percent of businesses required to comply with the rules. To mitigate this, the securities division revised its draft rules to lower costs as detailed in section 6. While the potential rule changes may increase costs to licensees, the securities division believes the in-

creased investor protection outweighs the concerns regarding cost increases.

A copy of the statement may be obtained by contacting Jill Vallely, P.O. Box 41200, Olympia, WA 98504-1200, phone 360-902-8760, TTY 1-800-833-6384, email jill.vallely@dfi.wa.gov.

July 14, 2026
Charlie Clark
Director

RDS-6957.2

AMENDATORY SECTION (Amending WSR 19-03-133, filed 1/18/19, effective 2/18/19)

WAC 460-24A-005 Definitions. For purposes of this chapter:

(1) **"Access person"** means:

(a) Any of the investment adviser's supervised persons:

(i) Who has access to nonpublic information regarding any client's purchase or sale of securities, or nonpublic information regarding the portfolio holdings of any reportable fund; or

(ii) Who is involved in making securities recommendations to clients or who has access to such recommendations that are nonpublic.

(b) If providing investment advice is the investment adviser's primary business, all of its directors, officers, and partners are presumed to be access persons.

(2) **"Advertisement"** means: ((~~any business card, notice, circular, letter or other written communication addressed to more than one person, or any notice or other announcement in any publication or by electronic means, including online, or by radio or television, which offers:~~

~~(a) Any analysis, report, or publication concerning securities, or which is to be used in making any determination as to when to buy or sell any security, or which security to buy or sell;~~

~~(b) Any graph, chart, formula or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell; or~~

~~(c) Any other investment advisory service with regard to securities.~~

~~(2)~~)) (a) Any direct or indirect communication an investment adviser makes to more than one person, or to one or more persons if the communication includes hypothetical performance, that offers the investment adviser's investment advisory services with regard to securities to prospective clients (including prospective investors in a private fund advised by the investment adviser), but does not include:

(i) Extemporaneous, live, oral communications;

(ii) Information contained in a statutory or regulatory notice, filing, or other required communication, provided that such information is reasonably designed to satisfy the requirements of such notice, filing, or other required communication; or

(iii) A communication that includes hypothetical performance that is provided:

(A) In response to an unsolicited request for such information from a prospective or current client, including an investor in a private fund advised by the investment adviser; or

(B) To a prospective or current investor in a private fund advised by the investment adviser in a one-on-one communication; and

(b) Any endorsement or testimonial for which an investment adviser provides compensation, directly or indirectly, but does not include any information contained in a statutory or regulatory notice, filing, or other required communication, provided that such information is reasonably designed to satisfy the requirements of such notice, filing, or other required communication.

(3) **"Approved investment adviser continuing education content"** means the materials, written, oral, or otherwise that have been approved by NASAA or its designee and which make up the educational program provided to an investment adviser representative in compliance with WAC 460-24A-056.

(4) **"Assignment"** means any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but if the investment adviser is a partnership, no assignment of an investment advisory contract will be deemed to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after such admission, will be only a minority of the members and will have only a minority interest in the business. An "assignment" does not include a transaction which does not result in a change of actual control or management of the investment adviser.

((~~(3)~~)) (5) **"Authorized provider"** means a person that NASAA or its designee has authorized to provide continuing education content.

(6) **"Beneficial ownership"** is interpreted in a manner consistent with 17 C.F.R. 240.16a-1 (as amended effective November 21, 2011) for purposes of determining whether a person has beneficial ownership of a security under section 16 of the Securities Exchange Act of 1934 (15 U.S.C. 78p) and the rules and regulations thereunder. Any report required by 17 C.F.R. 275.204A-1(b) (as amended effective May 22, 2017) may contain a statement that the report will not be construed as an admission that the person making the report has any direct or indirect beneficial ownership in the security for which the report relates.

(7) **"Branch office"** means any location identified by any means to the public or clients as a location at which one or more investment adviser representatives conduct business for the investment adviser.

(8) **"Central Registration Depository"** or **"CRD"** means the electronic filing system operated by FINRA for the registration of broker-dealers, broker-dealer representatives, and investment adviser representatives.

((~~(4)~~)) (9) **"Chief compliance officer"** means a supervised person with the authority and resources to develop and enforce the investment adviser's policies and procedures. The individual designated to serve as chief compliance officer must be registered as an investment adviser representative and must have the background and skills appropriate for fulfilling the responsibilities of the position.

((~~(5)~~)) (10) **"Complaint"** means any grievance regarding the activities of the investment adviser or supervised person of the investment adviser in connection with the provision of investment advice.

(11) **"Control"** means the power, directly or indirectly, to direct the management or policies of a person whether through ownership of securities, by contract, or otherwise. The following persons are presumed to have control:

(a) Each of the investment adviser's officers, partners, or directors exercising executive responsibility (or persons having similar status or functions); and

(b) A person who:

(i) Directly or indirectly has the right to vote ((~~twenty-five~~)) 25 percent or more of a class of the voting securities of a corporation or limited liability company;

(ii) Has the power to sell or direct the sale of ((~~twenty-five~~)) 25 percent or more of a class of the voting securities of a corporation or limited liability company;

(iii) Has the right to receive, upon dissolution, or that has contributed, ((~~twenty-five~~)) 25 percent or more of the capital of a partnership or limited liability company; or

(iv) Is the manager of a limited liability company or the trustee or managing agent of a trust.

((~~(6)~~)) (12) **"Credit"** means a unit that has been designated by NASAA or its designee as at least 50 minutes of educational instruction.

(13) **"Custody"** means holding, directly or indirectly, client funds or securities, or having any authority to obtain possession of them or the ability to appropriate them. An investment adviser has custody if a related person holds, directly or indirectly, client funds or securities, or has any authority to obtain possession of them, in connection with advisory services the investment adviser provides to clients.

(a) "Custody" includes:

(i) Possession of client funds or securities unless received inadvertently and returned to the sender promptly, but in any case within three business days of receiving them;

(ii) Any arrangement (including a general power of attorney) under which an investment adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian upon an investment adviser's instruction to the custodian;

(iii) Any capacity (such as general partner of a limited partnership, managing member of a limited liability company or a comparable position for another type of pooled investment vehicle, or trustee of a trust) that gives an investment adviser or its supervised person legal ownership of or access to client funds or securities; or

(iv) Any arrangement where the investment adviser requires the payment of advisory fees six months or more in advance and in excess of ((~~five hundred dollars~~)) $500 per client.

(b) Receipt of checks drawn by clients and made payable to unrelated third parties will not meet the definition of custody if forwarded to the third party within three business days of receipt and the adviser maintains a ledger or other listing of all securities or funds held or obtained inadvertently as set forth in WAC 460-24A-200.

((~~(7)~~)) (14) **"De minimis compensation"** means compensation paid to a person for providing a testimonial or endorsement of a total of $1,000 or less (or the equivalent value in noncash compensation) during the preceding 12 months.

(15) **"Discretionary authority"** means the authority, directly or indirectly, to:

(a) Determine what securities or other property will be purchased or sold by or on behalf of a client;

(b) Make decisions as to what securities or other property will be purchased or sold by or for the benefit of a client even though some other person may have responsibility for such investment decisions; or

(c) Make decisions as to what investment advisers to retain on behalf of a client.

((~~(8)~~)) (16) **"Disqualifying action"** means an order of the director, the securities administrator of any state, the U.S. Securities and Exchange Commission, or any self-regulatory organization entered after notice and opportunity for hearing if such order bars, denies, suspends, or revokes the person's registration as a broker-dealer, securities salesperson, investment adviser, or investment adviser representative, or bars the person from acting in any capacity within the securities industry or investment advisory industry.

(17) **"Disqualifying event"** means:

(a) Any of the following events that occurred within 10 years prior to the person disseminating an endorsement or testimonial:

(i) A conviction by a court of competent jurisdiction within the United States of any felony or misdemeanor involving conduct described in section 203 (e)(2)(A) through (D) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3 (e)(2)(A) through (D));

(ii) A conviction by a court of competent jurisdiction within the United States of engaging in any of the conduct specified in section 203 (e)(1), (5), or (6) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3 (e)(1), (5), or (6));

(iii) The entry of any final order by any entity described in section 203 (e)(9) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3 (e)(9)), or by the U.S. Commodity Futures Trading Commission or a self-regulatory organization, of the type described in section 203 (e)(9) of the Investment Advisers Act of 1940;

(iv) The entry of an order, judgment, or decree described in section 203 (e)(4) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3 (e)(4), and still in effect, by any court of competent jurisdiction within the United States;

(v) An order by the U.S. Securities and Exchange Commission or the securities or other financial services regulator of any state that requires a person to cease and desist from committing or causing a violation or future violation of:

(A) Any scienter based anti-fraud provision of federal securities laws, including without limitation section 17 (a)(1) of the Securities Act of 1933 (15 U.S.C. 77q (a)(1)), section 10(b) of the Securities Exchange Act of 1934 (15 U.S.S. 78j(b)) and SEC Rule 10b-5 (17 C.F.R. 240.10b-5) adopted thereunder as amended August 11, 1951, section 15 (c)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78o (c)(1)), and section 206(1) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-6(1)), or any other rule or regulation thereunder;

(B) Section 5 of the Securities Act of 1933 (15 U.S.C. 77e); or

(C) Any anti-fraud or securities registration provision under state securities laws.

(b) A "disqualifying event" does not include an event described in (a)(i) through (v) of this subsection with respect to a person that is also subject to (1) an order pursuant to section 9(c) of the Investment Company Act of 1940 (15 U.S.C. 80a-9(c)) with respect to such event, or (2) an opinion or order of the U.S. Securities and Exchange Commission with respect to such event that is not a disqualifying ac-

tion; provided that for each applicable action described in this subsection (17)(b):

(i) The person is in compliance with the terms of the order or opinion including, but not limited to, the payment of disgorgement, prejudgment interest, civil or administrative penalties, or fines; and

(ii) For a period of 10 years following the date of each order or opinion, the advertisement containing the testimonial or endorsement must include a statement that the person providing the testimonial or endorsement is subject to an order or opinion regarding one or more disciplinary action(s), and include the order or opinion or a link to the order or opinion on the U.S. Securities and Exchange Commission's website.

(18) **"Endorsement"** means any statement by a person other than a current client, including a client in a private fund advised by the investment adviser, that:

(a) Indicates approval, support, or recommendation of the investment adviser or its supervised persons or describes that person's experience with the investment adviser or its supervised persons;

(b) Directly or indirectly solicits any current or prospective client of the investment adviser, including a current or prospective investor in a private fund advised by the investment adviser; or

(c) Refers any current or prospective client or investor to be a client of the investment adviser (which includes being an investor in a private fund advised by the investment adviser).

(19) **"Extracted performance"** means the performance results of a subset of investments extracted from a portfolio.

(20) **"FINRA"** means the Financial Industry Regulatory Authority, Inc., the self-regulatory organization for broker-dealers and broker-dealer representatives that is registered as a national securities association with the U.S. Securities and Exchange Commission under Section 15A of the Securities Exchange Act of 1934, 15 U.S.C. Sec. 78o-3.

((~~(9)~~)) (21) **"Gross performance"** means the performance results of a portfolio (or portions of a portfolio that are included in extracted performance, if applicable) before the deduction of all fees and expenses that a client or investor has paid or would have paid in connection with the investment adviser's investment advisory services to the relevant portfolio.

(22) **"Home state"** means the state in which the investment adviser representative has its principal officer and place of business.

(23) **"Hypothetical performance"** means the performance results that were not actually achieved by any portfolio of the investment adviser.

(a) Hypothetical performance includes, but is not limited to:

(i) Performance derived from model portfolios;

(ii) Performance that is backtested by the application of a strategy to data from prior time periods when the strategy was not actually used during those time periods; and

(iii) Targeted or projected performance returns with respect to any portfolio or to the investment advisory services with regard to securities offered in the advertisement;

(b) Notwithstanding (a) of this subsection, hypothetical performance does not include:

(i) An interactive tool where a client or investor, or prospective client or investor, uses the tool to produce simulations and statistical analyses that present the likelihood of various investment outcomes if certain investments are made or certain investment strategies or styles are undertaken, thereby serving as an additional re-

source to investors in the evaluation of the potential risks and returns of investment choices; provided that the investment adviser:

(A) Provides a description of the criteria and methodology used, including the investment analysis tool's limitations and key assumptions;

(B) Explains that the results may vary with each use and over time;

(C) If applicable, describes the universe of investments considered in the analysis, explains how the tool determines which investments to select, discloses if the tool favors certain investments and, if so, explains the reason for the selectivity, and states that other investments not considered may have characteristics similar or superior to those being analyzed; and

(D) Discloses that the tool generates outcomes that are hypothetical in nature; or

(ii) Predecessor performance that is displayed in compliance with WAC 460-24A-100(4).

(24) **"IAR ethics and professional responsibility content"** means approved investment adviser continuing education content that addresses an investment adviser representative's ethical and regulatory obligations.

(25) **"IAR products and practice content"** means approved investment adviser continuing education content that addresses an investment adviser representative's continuing skills and knowledge regarding financial products, investment features, and practices in the investment advisory industry.

(26) **"Independent certified public accountant"** means a certified public accountant that meets the standards of independence described in Securities and Exchange Commission Rule 2-01 (b) and (c) of Regulation S-X, 17 C.F.R. 210.2-01 (b) and (c), as amended effective ((~~March 8, 2005~~)) June 9, 2021.

((~~(10)~~)) (27) **"Independent party"** means a person who:

(a) Is engaged by an investment adviser to act as a gatekeeper for the payment of fees, expenses, and capital withdrawals from a pooled investment;

(b) Does not control and is not controlled by and is not under common control with the investment adviser;

(c) Does not have, and has not had within the past two years, a material business relationship, including acting as an independent representative on behalf of a client of the investment adviser, with the investment adviser;

(d) Must not negotiate or agree to have material business relations with an investment adviser, or relationships with entities under common control with an investment adviser, for a period of two years after serving as the person engaged in an independent party agreement; and

(e) Is required to act in the best interest of the limited partners, members, or other beneficial owners.

((~~(11)~~)) (28) **"Independent representative"** means a person who:

(a) Acts as an agent for an advisory client, including in the case of a pooled investment vehicle, for limited partners of a limited partnership, members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle and by law or contract is obliged to act in the best interest of the advisory client or the limited partners or members, or other beneficial owners;

(b) Does not control, is not controlled by, and is not under common control with the investment adviser;

(c) Does not have, and has not had within the past two years, a material business relationship, including acting as an independent party, with the investment adviser.

((~~(12)~~)) (29) **"Ineligible person"** means a person who is subject to a disqualifying event as defined in subsection (17) of this section, and the following persons with respect to the ineligible person:

(a) Any employee, officer, or director of the ineligible person and any other individuals with similar status or functions within the scope of association with the ineligible person;

(b) If the ineligible person is a partnership, all general partners; and

(c) If the ineligible person is a limited liability company managed by elected managers, all elected managers.

(30) **"Initial public offering"** means an offering of securities registered under the Securities Act of 1933 (15 U.S.C. 77a et seq.), the issuer of which, immediately before the registration, was not subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)).

(31) **"Investment Adviser Registration Depository"** or **"IARD"** means the electronic filing system operated by FINRA for the registration of investment advisers and submission of filings by exempt reporting advisers.

((~~(13) **"Private fund adviser"** means an investment adviser who provides advice solely to one or more qualifying private funds.~~

~~(14)~~)) (32) **"Limited offering"** means an offering that is exempt from registration under the Securities Act of 1933 pursuant to section 4 (a)(2) or 4 (a)(5) (15 U.S.C. 77d (a)(2) or 77d(a)(5)) or pursuant to 17 C.F.R. 230.504, as amended effective March 15, 2021, or 17 C.F.R. 230.506, as amended effective January 14, 2021.

(33) **"NASAA"** means the North American Securities Administrators Association or a committee designated by its board of directors.

(34) **"Net performance"** means the performance results of a portfolio (or portions of a portfolio that are included in extracted performance, if applicable) after the deduction of all fees and expenses that a client or investor has paid or would have paid in connection with the investment adviser's investment advisory services to the relevant portfolio including, if applicable, advisory fees, advisory fees paid to the underlying investment vehicles, and payments by the investment adviser for which the client or investor reimburses the investment adviser. For purposes of WAC 460-24A-100, net performance:

(a) May reflect the exclusion of custodian fees paid to a bank or other third-party organization for safekeeping funds and securities; and

(b) If using a model fee, must reflect one of the following:

(i) The deduction of a model fee when doing so would result in performance figures that are no higher than if the actual fee had been deducted; or

(ii) The deduction of a model fee that is equal to the highest fee charged to the intended audience to whom the advertisement is disseminated.

(35) **"Portfolio"** means a group of investments managed by the investment adviser. A portfolio may be an account or a private fund and includes, but is not limited to, a portfolio for the account of the investment adviser or its affiliate.

(36) **"Predecessor performance"** means investment performance achieved by a group of investments consisting of an account or a private

fund that was not advised at all times during the period shown by the investment adviser advertising the performance.

(37) **"Private fund"** means an issuer that would be an investment company as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3), but for section 3 (c)(1) or 3 (c)(7) of that act.

(38) **"Qualified custodian"** means the following independent institutions or entities:

(a) A bank, including a trust company, as defined in section 202 (a)(2) of the Advisers Act, 15 U.S.C. 80b-2 (a)(2), or a savings association as defined in section 3 (b)(1) of the Federal Deposit Insurance Act, 12 U.S.C. 1813 (b)(1), that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act, 12 U.S.C. 1811;

(b) A broker-dealer registered in this state and under section 15 (b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78o (b)(1), holding the client assets in customer accounts;

(c) A futures commission merchant registered under section 4f(a) of the Commodity Exchange Act, 7 U.S.C. 6f(a), holding the client assets in customer accounts, but only with respect to clients' funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon;

(d) A foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets; and

(e) The transfer agent for an open-end company as defined in section 5 (a)(1) of the Investment Company Act of 1940, 15 U.S.C. 80a-5 (a)(1), only with respect to shares of the open-end company.

((~~(15) **"Qualifying private fund"** means a private fund that:~~

~~(a) Qualifies for the exclusion from the definition of "investment company" provided in section 3 (c)(7) of the Investment Company Act of 1940, 15 U.S.C. 80a-3 (c)(7);~~

~~(b) Is not registered under section 8 of the Investment Company Act of 1940, 15 U.S.C. 80a-8; and~~

~~(c) Has not elected to be treated as a business development company pursuant to section 54 of Investment Company Act of 1940, 15 U.S.C. 80a-53.~~

~~(16)~~)) (39) **"Related performance"** means the performance results of one or more related portfolios, either on a portfolio-by-portfolio basis or as a composite aggregation of all portfolios falling within stated criteria.

(40) **"Related person"** means any person, directly or indirectly, controlling or controlled by the investment adviser, and any person that is under common control with the investment adviser.

((~~(17)~~)) (41) **"Related portfolio"** means a portfolio with substantially similar investment policies, objectives, and strategies as those of the services being offered in the advertisement.

(42) **"Reportable fund"** means:

(a) Any investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 to 80a-64) and advised by the investment adviser; or

(b) Any investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 to 80a-64) whose investment adviser or principal underwriter controls, is controlled by, or is under common control with the investment adviser.

(43) **"Reportable security"** means a security as defined in RCW 21.20.005(17) or section 202 (a)(18) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2 (a)(18)), except that it does not include:

(a) Direct obligations of the government of the United States;

(b) Bankers' acceptances, bank certificates of deposit, commercial paper, and high-quality short-term debt instruments, including repurchase agreements;

(c) Shares issued by money market funds;

(d) Shares issued by open-end funds other than reportable funds; and

(e) Shares issued by unit investment trusts that are invested exclusively in one or more open-end funds, none of which are reportable funds.

(44) **"Reporting period"** means one calendar year starting on January 1st and ending on December 31st. An investment adviser representative's initial reporting period in this state will commence on January 1st of the year after the investment adviser representative is registered or required to be registered in this state, except that the initial reporting period will begin on January 1, 2027, and end on December 31, 2027, for any investment adviser representative who is registered in this state on January 1, 2027.

(45) **"Supervised person"** means any partner, officer, director (or other person occupying a similar status or performing similar functions), or employee of an investment adviser, or other person who provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the investment adviser. The definition includes investment adviser representatives, employees, independent contractors, or other associated persons and supervised personnel, or other persons acting on behalf of the investment adviser.

(46) **"Testimonial"** means any statement by a current client, including an investor in a private fund advised by the investment adviser:

(a) About the client's experience with the investment adviser or its supervised persons;

(b) That directly or indirectly solicits any current or prospective client or investor to be a client of the investment adviser (which includes being an investor in a private fund advised by the investment adviser); or

(c) That refers any current or prospective client or investor to be a client of the investment adviser (which includes being an investor in a private fund advised by the investment adviser).

(47) **"Third-party rating"** means a rating or ranking of an investment adviser provided by a person who is not an affiliate of the investment adviser nor a person that is under common control with the investment adviser, and such person provides such rating or rankings in the ordinary course of its business.

AMENDATORY SECTION (Amending WSR 14-13-068, filed 6/12/14, effective 7/13/14)

WAC 460-24A-020 Investment adviser representatives employed by federal covered advisers. If you are an individual employed by or associated with a federal covered adviser you are an "investment adviser representative," as defined under RCW 21.20.005, if you have a "place

of business" in this state, as that term is defined under section 203A of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3a), and:

(1) You are an "investment adviser representative" as that term is defined in rules or regulations promulgated under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.) by the U.S. Securities and Exchange Commission; or

(2) You solicit, offer, or negotiate for the sale of or sell investment advisory services on behalf of a federal covered adviser, but are not a "supervised person" as that term is defined under section 202 (a)(25) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2 (a)(25)).

AMENDATORY SECTION (Amending WSR 19-03-133, filed 1/18/19, effective 2/18/19)

WAC 460-24A-030 Use of the term "investment counsel" is prohibited. If you are an investment adviser or investment adviser representative, you must not use the title "investment counsel" in the conduct of your business nor represent that you are an "investment counsel" nor use the term "investment counsel" as descriptive of your business where such use is prohibited under the provisions of the ((~~Federal~~)) Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.), as amended.

AMENDATORY SECTION (Amending WSR 19-03-133, filed 1/18/19, effective 2/18/19)

WAC 460-24A-040 Use of certain terms deemed similar to "financial planner" or "investment counselor." (1) For the purposes of RCW 21.20.040(4), use of any term, or abbreviation for a term, including the word "financial planner" or the word "investment counselor" is considered the same as the use of either of those terms alone.

(2) For the purposes of RCW 21.20.040(4), terms that are deemed similar to "financial planner" and "investment counselor" include, but are not limited to, the following:

(a) Financial consultant;

(b) Investment consultant;

(c) Money manager;

(d) Investment manager;

(e) Wealth manager;

(f) Investment planner;

((~~(f)~~)) (g) Chartered financial consultant or its abbreviation ChFC;

((~~(g)~~)) (h) Certified financial planner or its abbreviation CFP®; or

((~~(h)~~)) (i) Any combination of terms similar to the above if used in a manner that implies to the general public that the individual or entity using the terms is in the business of providing investment advisory or financial planning services.

AMENDATORY SECTION (Amending WSR 19-03-133, filed 1/18/19, effective 2/18/19)

WAC 460-24A-047 Electronic filing. (1) Designation. Pursuant to RCW 21.20.050, the director designates the Investment Adviser Registration Depository (IARD) and the Central Registration Depository (CRD) operated by Financial Industry Regulatory Authority (FINRA) to receive and store filings and collect related fees from investment advisers, federal covered advisers, and investment adviser representatives on behalf of the director.

(2) Use of IARD and CRD. Unless otherwise provided, all investment adviser, federal covered adviser, and investment adviser representative applications, amendments, reports, notices, related filings, and fees required to be filed with the director pursuant to the rules promulgated under this chapter, must be filed electronically with and transmitted to IARD or CRD. The following additional conditions relate to such electronic filings:

(a) Electronic signature. When a signature or signatures are required by the particular instructions of any filing to be made through IARD or CRD, a duly authorized officer of the applicant or the applicant him or herself, as required, must affix his or her electronic signature to the filing by typing his or her name in the appropriate fields and submitting the filing to IARD or CRD. Submission of a filing in this manner will constitute irrefutable evidence of legal signature by any individuals whose names are typed on the filing.

(b) When filed. Solely for purposes of a filing made through IARD or CRD, a document is considered filed with the director when all fees are received and the filing is accepted by IARD or CRD on behalf of the state.

(3) Electronic filing. Notwithstanding subsection (2) of this section, you are not required to file any particular document or pay processing fees using the IARD or CRD system until such time as IARD or CRD provides for receipt of such filings and fees and ((~~thirty~~)) 30 days' notice is provided by the director. Any documents or fees required to be filed with the director that are not permitted to be filed with or cannot be accepted electronically by IARD or CRD must be filed directly with the director((~~. The director may establish a proprietary online filing system~~)) by email or through the electronic financial information filing system (eFin) established by the director for the purpose of accepting such filings electronically.

(4) Hardship exemptions. Notwithstanding subsection (2) of this section, electronic filing is not required under the following circumstances:

(a) Temporary hardship exemption.

(i) Investment advisers registered or required to be registered under RCW 21.20.040, who experience unanticipated technical difficulties that prevent submission of an electronic filing to IARD or CRD, may request a temporary hardship exemption from the requirements to file electronically.

(ii) To request a temporary hardship exemption, the investment adviser must:

(A) File Form ADV-H in paper format with the appropriate regulatory authority in the state where the investment adviser's principal place of business is located, no later than one business day after the filing, that is the subject of the Form ADV-H, was due. If the state where the investment adviser's principal place of business is located has not mandated the use of IARD or CRD, the investment adviser should

file the Form ADV-H with the appropriate regulatory authority in the first state that mandates the use of IARD or CRD by the investment adviser; and

(B) Submit the filing that is the subject of the Form ADV-H in electronic format to IARD or CRD no later than seven business days after the filing was due.

(iii) Effective date - Upon filing. The temporary hardship exemption will be deemed effective by the director upon receipt of the complete Form ADV-H by appropriate regulatory authority noted in (a)(ii)(A) of this subsection. Multiple temporary hardship exemption requests within the same calendar year may be disallowed by the director.

(b) Continuing hardship exemption.

(i) Criteria for exemption. A continuing hardship exemption will be granted only if the investment adviser is able to demonstrate that the electronic filing requirements of this section are prohibitively burdensome.

(ii) To apply for a continuing hardship exemption, the investment adviser must:

(A) File Form ADV-H in paper format with the director at least ((~~twenty~~)) 20 business days before a filing is due; and

(B) If a filing is due to more than one state, the Form ADV-H must be filed with the appropriate regulatory authority in the state where the investment adviser's principal place of business is located. If the state where the investment adviser's principal place of business is located has not mandated the use of IARD or CRD, the investment adviser should file the Form ADV-H with the appropriate regulatory authority in the first state that mandates the use of IARD or CRD by the investment adviser. Any applications received by the director will be granted or denied within ((~~ten~~)) 10 business days after the filing of Form ADV-H.

(iii) Effective date - Upon approval. The exemption is effective upon approval by the director. The time period of the exemption may be no longer than one year after the date on which the Form ADV-H is filed. If the director approves the application, the investment adviser must, no later than five business days after the exemption approval date, submit filings in paper format (along with the appropriate processing fees) for the period of time for which the exemption is granted.

(c) Recognition of exemption. The decision to grant or deny a request for a hardship exemption will be made by the appropriate regulatory authority in the state where the investment adviser's principal place of business is located. If the state where the investment adviser's principal place of business is located has not mandated the use of IARD or CRD, the decision to grant or deny a request for a hardship exemption will be made by appropriate regulatory authority in the first state that mandates the use of IARD or CRD by the investment adviser. The decision will be followed by the director if the investment adviser is registered in this state.

AMENDATORY SECTION (Amending WSR 19-03-133, filed 1/18/19, effective 2/18/19)

WAC 460-24A-050 Registration and examination requirements. (1) **Examination requirements.** If you are applying to be registered as an

investment adviser or investment adviser representative under RCW 21.20.040, you must provide the director with proof that you have obtained a passing score within the two-year period immediately preceding the date of your application on the following examinations:

(a) The Uniform Investment Adviser Law Examination (Series 65 examination);

(b) If you apply prior to October 1, 2018, the General Securities Representative Examination (Series 7 examination) and the Uniform Combined State Law Examination (Series 66 examination); or

(c) If you apply on or after October 1, 2018, the Securities Industry Essentials Examination (SIE examination), the General Securities Representative Examination (Series 7 examination), and the Uniform Combined State Law Examination (Series 66 examination).

(2) **Exceptions from examination requirements.**

(a) If you were registered as an investment adviser or investment adviser representative in any jurisdiction in the United States on January 1, 2000, and there has been no period longer than two years since that date in which you were not registered as an investment adviser or investment adviser representative, the director will not require you to satisfy the examination requirements for initial or continued registration, provided that the director may require additional examinations if you are found to have violated the Securities Act of Washington, chapter 21.20 RCW, or ((~~the Uniform Securities Act~~)) state or federal securities laws.

(b) If you were registered as an investment adviser or investment adviser representative in any state requiring the licensing, registration, or qualification of investment advisers or investment adviser representatives within the two-year period immediately preceding the date of filing of an application, the director will not require you to comply with the examination requirement set forth in subsection (1) of this section provided that you previously met the examination requirement in subsection (1) of this section.

(c) If you passed the Uniform Investment Adviser State Law Examination (Series 65 examination) within two years prior to the date you filed your application with the director, the director will not require you to take and pass the Uniform Investment Adviser State Law Examination (Series 65 examination) again.

(d) If you are an applicant who is an agent for a broker-dealer/investment adviser and your home jurisdiction does not require you to make a separate filing on CRD as an investment adviser representative, and you previously met the examination requirement in subsection (1) of this section, the director will not require you to take and pass the Uniform Investment Adviser State Law Examination (Series 65 examination) or the Uniform Combined State Law Examination (Series 66 examination) again.

(e) If you passed the General Securities Representative Examination (Series 7 examination) prior to October 1, 2018, the director will not require you to take and pass the Securities Industry Essentials Examination (SIE examination) if:

(i) You are currently registered as an investment adviser or investment adviser representative in at least one state that requires the registration of investment advisers or investment adviser representatives; or

(ii) You were registered in a state that requires the registration of investment advisers or investment adviser representatives within the two-year period immediately preceding the date you filed

your application for registration as an investment adviser or investment adviser representative with the director.

(f) If you passed the Securities Industry Essentials Examination (SIE examination) within the four-year period immediately preceding the date you filed your application with the director for registration as an investment adviser or investment adviser representative, the director will not require you to take and pass the SIE examination again.

(g) If you were previously registered as an investment adviser representative in any state but have not been registered as an investment adviser representative in any state for more than two years but fewer than five years, and you have elected to participate in the FINRA Maintaining Qualifications Program pursuant to FINRA Rule 1240(c), and your appropriate FINRA qualifying examinations remain valid pursuant to effective participation in the FINRA Maintaining Qualifications Program, the director will not require you to retake the appropriate FINRA qualifying examinations to comply with the examination requirements of subsection (1) of this section; provided, however, that successful participation in the FINRA Maintaining Qualifications Program does not extend to the Uniform Investment Adviser Law Examination (Series 65) or the Uniform Combined State Law Examination (Series 66) for purposes of investment adviser representative registration.

(3) **Examination waivers.** You are not required to take the examinations set forth in subsection (1) of this section if you currently hold one of the following professional designations and are in good standing with the certifying organization:

(a) Certified Financial Planner (CFP®) ((~~issued~~)) awarded by the Certified Financial Planner Board of Standards, Inc.;

(b) Chartered Financial Consultant (ChFC) awarded by The American College((~~, Bryn Mawr, Pennsylvania~~)) of Financial Services;

(c) Personal Financial Specialist (PFS) ((~~administered~~)) awarded by the American Institute of Certified Public Accountants;

(d) Chartered Financial Analyst (CFA) ((~~granted~~)) awarded by the CFA Institute;

(e) ((~~Chartered Investment Counselor (CIC) granted by the Investment Adviser Association~~)) Certified Investment Management Analyst (CIMA) awarded by the Investment and Wealth Institute; or

(f) Such other professional designation as the director may by order recognize.

(4) If you are applying for registration as an investment adviser and you are any entity other than a sole proprietor, an officer, general partner, managing member, or other equivalent person of authority in the entity may take the examination on behalf of the entity. The person taking the exam on behalf of the entity must be a person who is or will be registered as an investment adviser representative of the investment adviser. If the person that took the examination ceases to be a person of authority in the entity, then you must notify the director of a substitute person of authority who has registered with the director as an investment adviser representative.

(5) **Examination validity extension program.** Notwithstanding subsection (1) of this section, if you terminate your registration as an investment adviser representative, you may maintain the validity of your Uniform Investment Adviser Law Examination (Series 65) or the investment adviser representative portion of the Uniform Combined State Law Examination (Series 66) without being employed by or associated with an investment adviser or federal covered adviser for a maximum of five years following the termination of the effectiveness of the in-

vestment adviser representative registration if you meet all of the following requirements:

(a) You previously took and passed the examination for which you seek to maintain validity under this subsection;

(b) You were registered as an investment adviser representative for at least one year immediately preceding the termination of your investment adviser representative registration;

(c) You were not subject to a statutory disqualification as defined in section 3 (a)(39) of the Securities Exchange Act of 1934 (15 U.S.C. 78c (a)(39)) while registered as an investment adviser representative or at any period after termination of the registration;

(d) You elect to participate in the exam validity extension program under this subsection (5) within two years from the effective date of the termination of the investment adviser representative registration;

(e) You do not have a deficiency under the investment adviser representative continuing education program under WAC 460-24A-056 at the time your investment adviser representative registration becomes ineffective;

(f) You complete annually on or before December 31st of each calendar year in which you participate in the exam validity extension program:

(i) Six credits of IAR ethics and professional responsibility content offered by an authorized provider, including at least three hours covering the topic of ethics; and

(ii) Six credits of IAR products and practice content offered by an authorized provider.

(g) If you elect to participate in the exam validity extension program, you are required to complete credits required by (f) of this subsection for each calendar year that elapses after your investment adviser representative registration became ineffective regardless of when you elect to participate in the exam validity extension program; and

(h) If you comply with the FINRA Maintaining Qualification Program under FINRA Rule 1240(c), you will be considered in compliance with (f)(ii) of this subsection.

(6) **Registration requirements.**

(a) To apply for initial registration as an investment adviser, you must file the following in the manner specified:

(i) You must file the following through IARD or CRD:

(A) A completed Form ADV;

(B) Proof of complying with the examination or waiver requirements specified in subsections (1) through (4) of this section;

(C) The application fee specified in RCW 21.20.340;

(D) A completed Form BR; and

(E) Such other documents as the director may require that are accepted for filing through IARD or CRD.

(ii) You must file the following directly with the director by email or through ((~~a proprietary~~)) the electronic financial information filing system (eFin) established by the director for the purpose of accepting such filings:

(A) Such financial statements as are set forth in WAC 460-24A-060, including a copy of the balance sheet for the last fiscal year, and if such balance sheet is a date more than ((~~ninety~~)) 90 days from the date of filing the application, an unaudited balance sheet prepared as set forth in WAC 460-24A-060, if necessary. The financial

statements must be prepared in accordance with generally accepted accounting principles in the United States;

(B) A copy of the surety bond required by WAC 460-24A-170, if applicable; ((~~and~~))

(C) If you advise one or more pooled investment vehicles, then you must also submit to the director as part of your application, copies of the following documents:

(I) Account agreement with each qualified custodian for each pooled investment vehicle pursuant to WAC 460-24A-105;

(II) Engagement letter with an independent certified public accountant or agreement with an independent party for each pooled investment vehicle pursuant to WAC 460-24A-107;

(III) Private placement memorandum or other offering circular used to solicit investors to purchase interests in each pooled investment vehicle;

(IV) Subscription agreement for each pooled investment vehicle;

(V) Limited partnership agreement or other operating agreement for each pooled investment vehicle; ((~~and~~))

(D) If you provide supervisory or management services to securities portfolios, then you must submit a list of the custodians that hold the client funds or securities that you supervise or manage. You may satisfy this requirement by disclosing these custodians in Schedule D to Form ADV Part 1A, regardless of the percentage of your regulatory assets under management held with the custodian;

(E) A copy of a current business continuity and succession plan that meets the requirements of WAC 460-24A-126;

(F) Prior to the date of registration, proof that you maintain an errors and omissions insurance policy in accordance with WAC 460-24A-051. You may demonstrate proof of insurance by submitting a policy declaration page or a certificate of liability coverage specifying errors and omissions coverage; and

(G) Such other documents as the director may require in order to complete the application.

(b) To apply for initial registration as an investment adviser representative, you must file a completed Form U4 with CRD along with the following:

(i) Proof of complying with the examination or waiver requirements specified in subsections (1) through (4) above;

(ii) The application fee specified in RCW 21.20.340; and

(iii) Such other documents as the director may require.

NEW SECTION

WAC 460-24A-051 Errors and omissions coverage. If you are an investment adviser registered or required to be registered under RCW 21.20.040, you must maintain an errors and omissions insurance policy that meets the requirements of this section:

(1) Your errors and omissions insurance policy must be in the amount of at least $1,000,000 per claim from an insurer authorized to transact insurance in this state or from any other insurer approved by the director in accordance with the requirements in this section;

(2) Your errors and omissions insurance policy may not contain exclusions for investment management and advisory services performed in this state by you or your investment adviser representatives unless you and your investment adviser representatives refrain from perform-

ing the excluded investment management and advisory services in this state and disclose these limitations in your Form ADV Part 2A;

(3) You may fulfill the requirements of this section by maintaining a policy provided through membership in a professional association so long as the requirements are otherwise met, or at the discretion of the administrator;

(4) You may fulfill the requirements of subsection (1) of this section by maintaining the policies of one or more insurance carriers which policies together meet such requirements;

(5) For purposes of this section, policies written by admitted or authorized insurers, registered surplus lines insurers, and registered risk retention and purchasing groups will satisfy the errors and omissions insurance policy requirement of this section; and

(6) You must comply with this section by January 1, 2027.

NEW SECTION

WAC 460-24A-056 Investment adviser representative continuing education. (1) **Investment adviser representative continuing education.** If you are an investment adviser representative registered or required to be registered under RCW 21.20.040, you must complete the following continuing education requirements each reporting period as defined in WAC 460-24A-005:

(a) **Ethics and professional responsibility requirement.** You must complete six credits of IAR ethics and professional responsibility content offered by an authorized provider, with at least three hours covering the topic of ethics; and

(b) **Products and practice requirement.** You must complete six credits of IAR products and practice content offered by an authorized provider.

(2) **Salesperson of FINRA-member broker-dealer compliance.** If you are registered as a salesperson of a FINRA-member broker-dealer in addition to being registered as an investment adviser representative under RCW 21.20.040, and you comply with FINRA's continuing education requirements, you are considered to be in compliance with the products and practice requirement under subsection (1)(b) of this section for each applicable reporting period so long as FINRA continuing education content meets all of the following baseline criteria as determined by NASAA:

(a) The continuing education content focuses on compliance, regulatory, ethical, and sales practices standards;

(b) The continuing education content is derived from state and federal investment advisory statutes, rules, and regulations; securities industry rules and regulations; and accepted standards and practices in the financial services industry; and

(c) The continuing education content requires that its participants demonstrate proficiency in the subject matter of the educational materials.

(3) **Credentialing organization continuing education compliance.** If you are an investment adviser representative registered or required to be registered under RCW 21.20.040, and you were awarded and currently hold a credential that qualifies for an examination waiver under WAC 460-24A-050(3), the credits of continuing education that you complete will comply with subsection (1)(a) and (b) of this section provided that all of the following are true:

(a) You complete the credits of continuing education as a condition of maintaining the credential for the relevant reporting period;

(b) The credits of continuing education you completed during the relevant reporting period are mandatory to maintain the credential; and

(c) The continuing education content provided by the credentialing organization during the relevant reporting period is approved investment adviser representative continuing education content as defined in WAC 460-24A-005.

(4) **Investment adviser representative continuing education reporting.** If you are an investment adviser representative registered or required to be registered under RCW 21.20.040, you are responsible for ensuring that authorized providers report your completion of the applicable investment adviser representative continuing education requirements.

(5) **No carry-forward.** If you are an investment adviser representative registered or required to be registered under RCW 21.20.040 and you complete credits of continuing education in excess of the amount required for the reporting period, you may not carry forward excess credits to a subsequent reporting period.

(6) **Failure to complete or report.** If you are an investment adviser representative registered or required to be registered under RCW 21.20.040 and you fail to comply with the continuing education requirement in subsection (1) of this section by the end of a reporting period, the director will renew your registration as "CE inactive" at the close of the calendar year in this state until you complete and report all required investment adviser representative continuing education credits for all reporting periods as required by this section. If you are CE inactive at the close of the next calendar year, you are not eligible for investment adviser representative registration or renewal under RCW 21.20.040(3).

(7) **Home state.** If you are an investment adviser representative registered or required to be registered under RCW 21.20.040 and you are registered as an investment adviser representative in your home state, you are considered to be in compliance with this section provided that both of the following are true:

(a) Your home state has continuing education requirements that are the same as the requirements in subsection (1) of this section; and

(b) You are in compliance with your home state's investment adviser continuing education requirements.

(8) **Unregistered periods.** If you were previously registered as an investment adviser representative under RCW 21.20.040(3) and became unregistered, you must complete investment adviser continuing education for all reporting periods that occurred between the time that you became unregistered and when you became registered again under RCW 21.20.040(3), unless you take and pass the examination(s) required by WAC 460-24A-050(1) or receive an examination waiver under WAC 460-24A-050(3) in connection with your subsequent application for registration.

AMENDATORY SECTION (Amending WSR 19-03-133, filed 1/18/19, effective 2/18/19)

WAC 460-24A-057 Renewal of investment adviser and investment adviser representative registration—Delinquency fees. (1) **Application for renewal.** You may renew your registration as an investment adviser or investment adviser representative by filing the following with IARD or CRD no later than the renewal application deadline set by FINRA:

(a) Any renewal application required by IARD;

(b) The renewal fee required by RCW 21.20.340; and

(c) An electronically submitted Form U4, unless:

(i) The Form U4 has been previously submitted to IARD electronically; or

(ii) The investment adviser, filing on behalf of the investment adviser representative, has been granted a hardship exemption under WAC 460-24A-047(4).

(2) **Delinquency fees.** For any renewal application received by IARD or CRD after the expiration date set forth in WAC 460-24A-055, but on or before March 1st of the following year, the registrant must pay a delinquency fee in addition to the renewal fee. The delinquency fee for investment advisers is ((~~one hundred dollars~~)) $100. The delinquency fee for investment adviser representatives is ((~~fifty dollars~~)) $100.

The director will not accept renewal applications after March 1st. After March 1st, an investment adviser or investment adviser representative must reapply for initial registration by complying with WAC 460-24A-050.

AMENDATORY SECTION (Amending WSR 19-03-133, filed 1/18/19, effective 2/18/19)

WAC 460-24A-060 Financial reporting requirements for investment advisers. (1) If you are an investment adviser registered or required to be registered under RCW 21.20.040 who has custody of client funds or securities, you must file with the director an audited balance sheet as of the end of your fiscal year. You must file the audited balance sheet in electronic format by email or through ((~~a proprietary~~)) the electronic financial information filing system ((~~to be~~)) (eFin) established by the director for the purposes of accepting such filings. Each balance sheet filed pursuant to this subsection must be:

(a) Prepared in conformity with generally accepted accounting principles (GAAP) in the United States and audited in accordance with generally accepted auditing standards (GAAS) in the United States by an independent certified public accountant; and

(b) Accompanied by an audit opinion of the accountant on the audit of the balance sheet.

(2) If you are an investment adviser registered or required to be registered under RCW 21.20.040 that has custody as defined in WAC 460-24A-005 ((~~(6)~~)) (13)(a)(iii) and you have notified the director on Form ADV that you will comply with the requirements in WAC 460-24A-107 (1)(b), you must file with the director a copy of the audited financial statements of each pooled investment vehicle for which you are a general partner (or managing member, trustee, or other comparable position).

(3) If you are an investment adviser registered or required to be registered under RCW 21.20.040 and are not subject to the financial statement reporting requirements in subsection (1) or (2) of this section, you must file with the director a balance sheet, which need not be audited, but which must be prepared in accordance with generally accepted accounting principles in the United States and represented by you or the person who prepared the statement as true and accurate, as of the end of your fiscal year.

(4) The financial statements required by this section must be filed with the director within ((~~one hundred twenty~~)) 120 days following the end of your fiscal year, except for the audited financial statements of pooled investment vehicles you obtain and distribute pursuant to WAC 460-24A-107(1), which must be filed with the director within ((~~one hundred twenty~~)) 120 days following the end of each pooled investment vehicle's fiscal year.

(5) If you are an investment adviser that has its principal place of business in a state other than this state, you must file only such reports with the director as required by the state in which you maintain your principal place of business, provided that you are registered in such state and are in compliance with such state's financial reporting requirements.

AMENDATORY SECTION (Amending WSR 19-03-133, filed 1/18/19, effective 2/18/19)

WAC 460-24A-071 Registration exemption for investment advisers to certain private funds. (1) **Exemption for investment adviser to certain private funds ((~~advisers~~)).** Except as provided in subsection (2) of this section, you are exempt from the registration requirements for investment advisers in RCW 21.20.040 if ((~~you are a private fund adviser as defined in WAC 460-24A-005 and~~)) you satisfy each of the following conditions:

(a) You provide advice solely to one or more funds that:

(i) Qualifies for the exclusion from the definition of "investment company" provided in section 3 (c)(7) of the Investment Company Act of 1940 (15 U.S.C. 80a-3 (c)(7));

(ii) Is not registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8); and

(iii) Has not elected to be treated as a business development company pursuant to section 53 of Investment Company Act of 1940 (15 U.S.C. 80a-53); and

(b) Neither you nor any of your advisory affiliates are subject to a disqualification as described in Securities and Exchange Commission Rule 506(d), 17 C.F.R. Sec. 230.506(d), as amended effective ((~~September 23, 2013~~)) January 14, 2021; and

((~~(b)~~)) (c) You file with the director each report and amendment thereto that an exempt reporting adviser is required to file with the U.S. Securities and Exchange Commission pursuant to Securities and Exchange Commission Rule 204-4, 17 C.F.R. 275.204-4, as amended effective September 19, 2011.

(2) **Federal covered investment advisers.** If you are ((~~a private fund~~)) an investment adviser that is registered with the U.S. Securities and Exchange Commission, you are not eligible for the exemption provided in subsection (1) of this section and you must comply with

the state notice filing requirements applicable to federal covered investment advisers in WAC 460-24A-070.

(3) **Investment adviser representatives.** You are exempt from the registration requirements for investment adviser representatives set forth in RCW 21.20.040 if you are employed by or associated with an investment adviser that is exempt from registration in this state pursuant to subsection (1) of this section and you do not otherwise act as an investment adviser representative.

(4) **Electronic filing.** You must make the report filings described in subsection (1)((~~(b)~~)) (c) of this section electronically through IARD. A report will be deemed filed when the report is filed and accepted by the IARD on the state's behalf.

(5) **Transition.** If you become ineligible for the exemption provided in subsection (1) of this section, you must comply with all applicable laws and rules requiring registration or notice filing within ((~~ninety~~)) 90 days from the date your eligibility for this exemption ceases.

(6) **Waiver authority with respect to statutory disqualification.** Subsection (1)((~~(a)~~)) (b) of this section will not apply upon a showing of good cause and without prejudice to any other action of the securities division, if the director determines that it is not necessary under the circumstances that an exemption be denied.

AMENDATORY SECTION (Amending WSR 19-03-133, filed 1/18/19, effective 2/18/19)

WAC 460-24A-072 Registration exemption for investment advisers to venture capital funds. (1) **Exemption for venture capital fund advisers.** You are exempt from the registration requirements for investment advisers in RCW 21.20.040 if you are exempt from registration under Section 203(l) of the Investment Advisers Act of 1940, 15 U.S.C. 80b-3(l), and Securities and Exchange Commission Rule 203 (l)-1, 17 C.F.R. 275.203 (l)-1, as adopted effective ((~~July 21, 2011~~)) March 12, 2018, provided you satisfy each of the following conditions:

(a) Neither you nor any of your advisory affiliates are subject to a disqualification as described in Securities and Exchange Commission Rule 506(d), 17 C.F.R. Sec. 230.506(d), as amended effective ((~~September 23, 2013~~)) January 14, 2021; ((~~and~~))

(b) You file with the director each report and amendment thereto that an exempt reporting adviser is required to file with the U.S. Securities and Exchange Commission pursuant to Securities and Exchange Commission Rule 204-4, 17 C.F.R. 275.204-4, as adopted effective September 19, 2011.

(2) **Federal covered investment advisers.** If you are a venture capital fund adviser that is registered with the U.S. Securities and Exchange Commission, you are not eligible for the exemption provided in subsection (1) of this section and you must comply with the state notice filing requirements applicable to federal covered investment advisers in WAC 460-24A-070.

(3) **Investment adviser representatives.** You are exempt from the registration requirements for investment adviser representatives set forth in RCW 21.20.040 if you are employed by or associated with an investment adviser that is exempt from registration in this state pursuant to subsection (1) of this section and you do not otherwise act as an investment adviser representative.

(4) **Electronic filing.** You must make the report filings described in subsection (1)(b) of this section electronically through IARD. A report will be deemed filed when the report is filed and accepted by the IARD on the state's behalf.

(5) **Transition.** If you become ineligible for the exemption provided in subsection (1) of this section, you must comply with all applicable laws and rules requiring registration or notice filing within ((~~ninety~~)) 90 days from the date your eligibility for this exemption ceases.

(6) **Waiver authority with respect to statutory disqualification.** Subsection (1)(a) of this section will not apply upon a showing of good cause and without prejudice to any other action of the securities division, if the director determines that it is not necessary under the circumstances that an exemption be denied.

AMENDATORY SECTION (Amending WSR 19-03-133, filed 1/18/19, effective 2/18/19)

WAC 460-24A-100 Advertisements and written client communications by investment advisers. If you are an investment adviser or investment adviser representative, it is an "act, practice, or course of business" which operates or would operate as a fraud within the meaning of RCW 21.20.020 for you, directly or indirectly, to ((~~publish, circulate or distribute~~)) disseminate any advertisement or written client communication (including advertisements and written communications directed to prospective clients) ((~~if the advertisement or written client communication~~)), as applicable, that violates any of the following:

(1) ((~~Refers, directly or indirectly, to any testimonial of any kind concerning you or concerning any advice, analysis, report or other service rendered by you;~~

~~(2) Refers, directly or indirectly, to any past specific recommendations you made which were or would have been profitable to any person: Provided, however, That this clause under this subsection (2) does not prohibit you from setting out or offering to furnish a list of all recommendations you made within the immediately preceding period of not less than one year if such advertisement or written client communication, and such list if it is furnished separately:~~

~~(a) States the name of each such security recommended, the date and nature of each such recommendation (e.g., whether to buy, sell or hold), the market price at that time, the price at which the recommendation was to be acted upon, and the market price of each such security as of the most recent practicable date; and~~

~~(b) Contains the following cautionary legend on the first page thereof in print or type as large as the largest print or type used in the body or text thereof: "It should not be assumed that recommendations made in the future will be profitable or will equal the performance of the securities in this list".~~

~~(3) Represents, directly or indirectly, that any graph, chart, formula or other device being offered can in and of itself be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula or other device being offered will assist any person in making his own decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in such ad-~~

~~vertisement or written client communication the limitations thereof and the difficulties with respect to its use;~~

~~(4) Contains any statement to the effect that any report, analysis, or other service will be furnished free or without charge, unless such report, analysis or other service actually is or will be furnished entirely free and without any condition or obligation, directly or indirectly;~~

~~(5) Contains past performance data, unless the advertisement or written client communication is accurate and discloses all material facts necessary to ensure that the advertisement or written client communication is not misleading. An advertisement or written client communication containing past performance data must adhere to the following standards:~~

~~(a) The advertisement or written client communication must disclose the following:~~

~~(i) The effect of material market or economic conditions on portrayed results;~~

~~(ii) The effect on performance of fees, commissions, or other client paid expenses;~~

~~(iii) The effect of dividends and earnings on the results portrayed;~~

~~(iv) The potential for both profit and loss;~~

~~(v) Any material conditions, objectives, or investment strategies used to obtain the performance result; and~~

~~(vi) Any additional information reasonably necessary to ensure that the data is not misleading;~~

~~(b) The advertisement or written client communication must include the most recently available results computed using an appropriate time frame;~~

~~(c) Where the performance results are only for a selected group of clients, the advertisement or written communication must disclose the basis on which an objective selection was made; and~~

~~(d) This subsection (5) does not apply to client-specific account past performance data in an account statement that an unaffiliated qualified custodian generates and sends directly to the client;~~

~~(6) Compares past performance results to an index or other portfolio, unless the comparison index or other portfolio is a relevant comparison and the advertisement or written client communication includes full disclosure of the material facts regarding the comparison;~~

~~(7) Contains "backtested" or "hypothetical model" performance figures. Backtesting involves developing a strategy or model then applying the strategy or model to past historical performance. Hypothetical modeling involves creating a hypothetical portfolio and then monitoring it based upon forward-looking strategies and measuring it as if it constitutes a real portfolio;~~

~~(8) Fails to include the full legal name of the investment adviser;~~

~~(9) Includes~~)) **General prohibitions.** An advertisement or written client communication may not:

(a) Include any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it was made, not misleading;

(b) Include a material statement of fact that the adviser does not have a reasonable basis for believing it will be able to substantiate upon demand by the director;

(c) Include information that would reasonably be likely to cause an untrue or misleading implication or inference to be drawn concerning a material fact relating to the investment adviser;

(d) Discuss any potential benefits to clients or investors connected with or resulting from the investment adviser's services or methods of operation without providing fair and balanced treatment of any material risks or material limitations associated with the potential benefits;

(e) Include a reference to specific investment advice provided by the investment adviser where such investment advice is not presented in a manner that is fair and balanced;

(f) Include or exclude performance results, or present performance time periods, in a manner that is not fair and balanced; or

(g) Otherwise be materially misleading.

(2) **Testimonials and endorsements.** An advertisement may not include any testimonial or endorsement, and an investment adviser may not provide compensation, directly or indirectly, for a testimonial or endorsement, unless the investment adviser complies with the conditions in (a) through (c) of this subsection, subject to the exemptions in (d) of this subsection.

(a) **Required disclosures.** At the time the testimonial or endorsement is disseminated, the investment adviser must disclose, or reasonably believe that the person giving the testimonial or endorsement has disclosed, the following:

(i) Clearly and prominently:

(A) That the testimonial was given by a current client or investor, and the endorsement was given by a person other than a current client or investor, as applicable;

(B) That cash or noncash compensation was provided for the testimonial or endorsement, if applicable; and

(C) A brief statement of any material conflicts of interest on the part of the person giving the testimonial or endorsement resulting from the investment adviser's relationship with such person;

(ii) The material terms of any compensation arrangement, including a description of the compensation provided or to be provided, directly or indirectly, to the person for the testimonial or endorsement; and

(iii) A description of any material conflicts of interest on the part of the person giving the testimonial or endorsement resulting from the investment adviser's relationship with such person and/or any compensation arrangement.

(b) **Adviser oversight and compliance.** The investment adviser must have:

(i) A reasonable basis for believing that the testimonial or endorsement complies with the requirements of this section; and

(ii) A written agreement with any person giving a testimonial or endorsement that describes the scope of the agreed-upon activities and the terms of compensation for those activities.

(c) **Disqualification.** An investment adviser may not compensate a person, directly or indirectly, for a testimonial or endorsement if the adviser knows, or in the exercise of reasonable care should know, that the person giving the testimonial or endorsement is an ineligible person at the time the testimonial or endorsement is disseminated.

(d) **Exemptions.**

(i) A testimonial or endorsement disseminated for no compensation or de minimis compensation is not required to comply with (b)(ii) and (c) of this subsection;

(ii) A testimonial or endorsement by the investment adviser's partners, officers, directors, or employees, or a person who controls, is controlled by, or is under common control with the investment adviser, or is a partner, officer, director, or supervised person of such person is not required to comply with (a) and (b)(ii) of this subsection, provided that the affiliation between the investment adviser and such person is readily apparent to or is disclosed to the client or investor at the time the testimonial or endorsement is disseminated and the investment adviser documents such person's status at the time the testimonial or endorsement is disseminated;

(iii) A testimonial or endorsement by a broker or dealer registered with the U.S. Securities and Exchange Commission under section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)) is not required to comply with:

(A) Subsection (2)(a) of this section if the testimonial or endorsement is a recommendation subject to Regulation Best Interest, 17 C.F.R. 240.15l-1, effective September 10, 2019;

(B) Subsection (2)(a)(ii) and (iii) of this section if the testimonial or endorsement is provided to a person that is not a retail customer (as that term is defined in Regulation Best Interest, 17 C.F.R. 240.15l-1, effective September 10, 2019; or

(C) Subsection (2)(c) of this section if the broker-dealer is not subject to statutory disqualification, as defined under section 3 (a)(39) of the Securities Exchange Act of 1934 (15 U.S.C. 78c (a)(39)).

(iv) A testimonial or endorsement by a person that is covered by Securities and Exchange Commission Rule 506(d) of Regulation D under the Securities Act of 1933 (17 C.F.R. 230.506(d) effective March 15, 2021) with respect to a Rule 506 securities offering, and whose involvement would not disqualify the offering under Rule 506, is not required to comply with (c) of this subsection.

(3) **Third party ratings.** An advertisement may not include any third-party rating, unless the investment adviser:

(a) Has a reasonable basis for believing that any questionnaire or survey used in the preparation of the third-party rating is structured to make it equally easy for a participant to provide favorable and unfavorable responses, and is not designed or prepared to produce any predetermined result; and

(b) Clearly and prominently discloses, or the investment adviser reasonably believes that the third-party rating clearly and prominently discloses:

(i) The date on which the rating was given and the period of time upon which the rating was based;

(ii) The identity of the third party that created and tabulated the rating; and

(iii) If applicable, that compensation has been provided directly or indirectly by the adviser in connection with obtaining or using the third-party rating.

(4) **Performance.** An investment adviser may not include in any advertisement:

(a) Any presentation of gross performance, unless the advertisement also presents net performance:

(i) With at least equal prominence to, and in a format designed to facilitate comparison with, the gross performance; and

(ii) Calculated over the same time period, and using the same type of return and methodology, as the gross performance.

(b) Any performance results, of any portfolio or any composite aggregation of related portfolios, in each case other than any private fund, unless the advertisement includes performance results of the same portfolio or composite aggregation for one-, five-, and 10-year periods, each presented with equal prominence and ending on a date that is no less recent than the most recent calendar year-end; except that if the relevant portfolio did not exist for a particular prescribed period, then the life of the portfolio must be substituted for that period.

(c) Any statement, express or implied, that the calculation or presentation of performance results in the advertisement has been approved or reviewed by the director.

(d) Any related performance, unless it includes all related portfolios; provided that related performance may exclude any related portfolios if:

(i) The advertised performance results are not materially higher than if all related portfolios had been included; and

(ii) The exclusion of any related portfolio does not alter the presentation of any applicable time periods prescribed by (b) of this subsection.

(e) Any extracted performance, unless the advertisement provides, or offers to provide promptly, the performance results of the total portfolio from which the performance was extracted.

(f) Any hypothetical performance unless the investment adviser:

(i) Adopts and implements policies and procedures reasonably designed to ensure that the hypothetical performance is relevant to the likely financial situation and investment objectives of the intended audience of the advertisement;

(ii) Provides sufficient information to enable the intended audience to understand the criteria used and assumptions made in calculating such hypothetical performance; and

(iii) Provides (or, if the intended audience is an investor in a private fund, provides, or offers to provide promptly) sufficient information to enable the intended audience to understand the risks and limitations of using such hypothetical performance in making investment decisions; provided that the investment adviser need not comply with the other condition on performance in (b), (d), and (e) of this subsection.

(g) Any predecessor performance unless:

(i) The person or persons who were primarily responsible for achieving the prior performance results manage accounts at the advertising adviser;

(ii) The accounts managed at the predecessor investment adviser are sufficiently similar to the accounts managed at the advertising investment adviser that the performance results would provide relevant information to clients or investors;

(iii) All accounts that were managed in a substantially similar manner are advertised unless the exclusion of any such account would not result in materially higher performance and the exclusion of any account does not alter the presentation of any applicable time periods prescribed in (b) of this subsection; and

(iv) The advertisement clearly and prominently includes all relevant disclosures, including that the performance results were from accounts managed at another entity.

(5) An advertisement or written client communication may not include information inconsistent with the information disclosed by an

investment adviser on Form ADV or by an investment adviser representative on Form U4;

((~~(10) Uses the acronyms "IA," "IAR," or "RIA" unless they are defined;~~

~~(11) Uses~~)) (6) An advertisement or written client communication may not use senior-specific certifications or professional designations in a manner inconsistent with chapter 460-25A WAC; or

((~~(12) Fails to~~)) (7) An advertisement or written client communication must provide a citation or attribution for any data or other information presented from outside sources((~~; or~~

~~(13) Contains any omission or untrue statement of a material fact, or which is otherwise false or misleading~~)).

AMENDATORY SECTION (Amending WSR 19-03-133, filed 1/18/19, effective 2/18/19)

WAC 460-24A-106 Additional custody requirements for an investment adviser that directly deducts fees from client accounts. (1) If you are an investment adviser registered or required to be registered under RCW 21.20.040 who has custody as defined in WAC 460-24A-005((~~(6)~~)) because you have the authority to directly deduct fees from client accounts, you must comply with the requirements in WAC 460-24A-105 and the following additional safeguards:

(a) **You must have your client's written authorization.** You must have written authorization from your client to deduct advisory fees from the account held with the qualified custodian.

(b) **You must provide notice to the qualified custodian and an itemized invoice to your client.** Each time a fee is directly deducted from your client's account, you must concurrently:

(i) Send the qualified custodian notice of the amount of the fee to be deducted from your client's account; and

(ii) Send your client an invoice itemizing the fee. Itemization includes the formula used to calculate the fee (in either a textual expression or sample mathematical equation), the fee calculation itself, the amount of assets under management the fee is based on, the time period covered by the fee, and if you charge performance compensation, the client's cumulative net investment gain (or loss), and the amount of cumulative net investment gain above which you will receive performance compensation. You must include the name of the custodian(s) on the fee invoice.

(c) **You must notify the director that you will comply with these requirements.** You must notify the director on Form ADV that you will comply with the requirements set forth in this section.

(2) **Waiver of net worth and bonding requirements.** If you have custody as defined in WAC 460-24A-005((~~(6)~~)) solely because you have the authority to have fees directly deducted from client accounts and you comply with the requirements set forth in this section, you are not required to comply with the net worth and bonding requirements for an investment adviser that has custody set forth in WAC 460-24A-170.

(3) **Waiver of audited balance sheet requirement.** If you have custody as defined in WAC 460-24A-005((~~(6)~~)) solely because you have the authority to directly deduct fees from client accounts, you are not required to comply with the requirement to file an audited balance sheet as set forth in WAC 460-24A-060(1) if you comply with WAC

460-24A-060(3), requirements in WAC 460-24A-105, and subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 19-03-133, filed 1/18/19, effective 2/18/19)

WAC 460-24A-107 Additional custody requirements for an investment adviser that manages a pooled investment vehicle or trust. (1) If you are an investment adviser registered or required to be registered under RCW 21.20.040 that has custody as defined in WAC 460-24A-005 ((~~(6)~~)) (13)(a)(iii), you must, in addition to complying with the requirements set forth in WAC 460-24A-105, either:

(a) **Engage an independent party to authorize withdrawals from the ((~~pooled~~)) accounts of the pooled investment vehicle or trust.**

(i) You must enter into a written agreement with an independent party to review all fees, expenses, and capital withdrawals from the ((~~pooled~~)) accounts of the pooled investment vehicle or trust;

(ii) You must send all invoices or receipts to the independent party, detailing the amount of the fee, expenses, or capital withdrawal and the method of calculation such that the independent party can:

(A) Determine that the payment is in accordance with the pooled investment vehicle standards (generally the partnership agreement or membership agreement); and

(B) Forward, to the qualified custodian, approval for payment of the invoice with a copy to the investment adviser; and

(iii) You must notify the director on Form ADV that you will comply with the safekeeping requirements in (a) of this subsection; or

(b) **Provide audited financial statements of the pooled investment vehicle or trust to all limited partners or members or beneficial owners.**

(i) You must cause the financial statements of the limited partnership (or limited liability company, trust or another type of pooled investment vehicle) for which you are a general partner (or managing member, trustee, or other comparable position) to be subject to audit, at least annually, by an independent certified public accountant to be conducted in accordance with generally accepted auditing standards. The financial statements must be prepared in accordance with generally accepted accounting principles in the Unites States;

(ii) You must distribute the audited financial statements to all limited partners (or members or other beneficial owners), or the independent representative where one has been designated, within ((~~one hundred twenty~~)) 120 days of the end of the pooled investment vehicle's fiscal year. If the limited partners (or members or other beneficial owners) are themselves limited partnerships (or limited liability companies, or another type of pooled investment vehicle) that are related persons to you, you must distribute the audited financial statements to each beneficial owner that is unrelated to you;

(iii) You must distribute, upon liquidation, the fund's or trust's final audited financial statements prepared in accordance with generally accepted accounting principles in the United States to all limited partners (or members or other beneficial owners), or the independent representative where one has been designated, and the director promptly after the completion of such audit;

(iv) You must enter into a written agreement with the independent certified public accountant who will audit the financial statements of

the pooled investment vehicle or trust. The written agreement with the independent certified public accountant must require the independent certified public accountant to, upon resignation or dismissal from, or other termination of, the engagement, or upon removing itself or being removed from consideration for being reappointed, notify the director within four business days accompanied by a statement that includes:

(A) The date of such resignation, dismissal, removal, or other termination, and the name, address, and contact information of the independent certified public accountant; and

(B) An explanation of any problems relating to audit scope or procedure that contributed to such resignation, dismissal, removal, or other termination; and

(v) You must notify the director on Form ADV that you will comply with the requirements in (b)(i) and (ii) of this subsection;

(2) **You must deliver account statements to each limited partner (or member or other beneficial owner).** If you are an investment adviser registered or required to be registered under RCW 21.20.040 and you are an investment adviser to a limited partnership (or managing member of a limited liability company, or hold a comparable position for another type of pooled investment vehicle or trust), you must:

(a) Send the account statements required under WAC 460-24A-105 to each limited partner (or member or other beneficial owner). If the limited partners (or members or other beneficial owners) are themselves limited partnerships (or limited liability companies, or another type of pooled investment vehicle) that are your related persons, you must send the account statements required under WAC 460-24A-105 to each beneficial owner of the fund that is unrelated to you; and

(b) Include the following information in the account statements, which will satisfy the requirements under WAC 460-24A-105 (4)(a) and (b)(i):

(i) The total amount of all additions to and withdrawals from the ((~~fund~~)) pooled investment vehicle or trust as a whole as well as the opening and closing net asset value of the ((~~fund~~)) pooled investment vehicle or trust at the end of the quarter based on the ((~~fund's~~)) pooled investment vehicle's or trust's governing documents;

(ii) A listing of the ((~~fund's~~)) pooled investment vehicle's or trust's long and short positions, including cash equivalent positions, on the closing date of the statement in a form and to the extent required by FASB Rule ASC 946-210-50; and

(iii) The total amount of additions to and withdrawals from the ((~~fund~~)) pooled investment vehicle or trust by the investor or beneficial owner as well as the total value of the investor's or beneficial owner's interest in the ((~~fund~~)) pooled investment vehicle or trust at the end of the quarter.

(3) **If you engage an independent party, you are not required to comply with the net worth and bonding requirements for an investment adviser that has custody.** If you have custody solely as defined in WAC 460-24A-005 ((~~(6)~~)) (13)(a)(iii) and you comply with the safekeeping requirements in WAC 460-24A-105 and subsection (1)(a) of this section, you are not required to comply with the net worth and bonding requirements for an investment adviser that has custody set forth in WAC 460-24A-170.

(4) **If you distribute audited financial statements of the pooled investment vehicle or trust to all beneficial owners, you are not required to comply with the surprise examination requirements.** You are not required to comply with the surprise examination requirements set forth in WAC 460-24A-105 (4)(b)(ii) with respect to the account of a

limited partnership (or limited liability company, or another type of pooled investment vehicle or trust) that is subject to audit if you otherwise comply with the safekeeping requirements in WAC 460-24A-105 and subsection (1)(b) of this section.

(5) **If you distribute audited financial statements of the pooled investment vehicle or trust to all beneficial owners, you are not required to file an audited balance sheet.** If you have custody solely as defined in WAC 460-24A-005 ((~~(6)~~)) (13)(a)(iii), you are not required to comply with the requirement to file an audited balance sheet as set forth in WAC 460-24A-060(1) if you comply with WAC 460-24A-060(3), the safekeeping requirements in WAC 460-24A-105, and subsections (1)(b) and (2) of this section.

AMENDATORY SECTION (Amending WSR 19-03-133, filed 1/18/19, effective 2/18/19)

WAC 460-24A-109 Exceptions from custody requirements. Exceptions from the custody requirements for investment advisers that are registered or required to be registered under RCW 21.20.040 are available in the following circumstances:

(1)(a) **You are not required to engage a qualified custodian to hold certain privately offered securities.** You are not required to comply with WAC 460-24A-105(2) with respect to securities that are:

(i) Acquired from the issuer in a transaction or chain of transactions not involving any public offering;

(ii) Uncertificated, and ownership thereof is recorded only on books of the issuer or its transfer agent in the name of the client; and

(iii) Transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

(b) Notwithstanding (a) of this subsection, the provisions of this subsection (1) are available with respect to securities held for the account of a limited partnership (or limited liability company, or other type of pooled investment vehicle) only if you comply with the requirements in WAC 460-24A-107 (1)(b).

(2) **You are not required to comply with the custody requirements with respect to the account of a registered investment company.** You are not required to comply with WAC 460-24A-105 through ((~~460-24A-108~~)) 460-24A-107 with respect to the account of an investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 to 80a-64.

(3) **You are not required to comply with the custody requirements with respect to a trust for the benefit of ((~~your~~)) a relative.** You are not required to comply with the requirements of WAC 460-24A-105 through ((~~460-24A-108~~)) 460-24A-107 or the net worth and bonding requirements for an investment adviser that has custody set forth in WAC 460-24A-170 if you have custody solely because you or one of your representatives, ((~~employees~~)) supervised persons, directors, or owners is a trustee for a beneficial trust, if all of the following conditions are met for each trust:

(a) The beneficial owner of the trust is ((~~your~~)) a parent, a grandparent, a spouse or domestic partner, a sibling, a child, a grandchild, an aunt, an uncle, a niece, a nephew, or a first cousin of the person serving as trustee. These relationships include "step" relationships.

(b) For each account under (a) of this subsection, you comply with the following:

(i) You provide a written statement to each beneficial owner of the account setting forth a description of the requirements of WAC 460-24A-105 through ((~~460-24A-108~~)) 460-24A-107 and WAC 460-24A-170 and the reasons why you will not be complying with those requirements;

(ii) You obtain from each beneficial owner a signed and dated statement acknowledging the receipt of the written statement required under (b)(i) of this subsection; and

(iii) You maintain a copy of both documents described in (b)(i) and (ii) of this subsection until the account is closed or you are no longer trustee.

AMENDATORY SECTION (Amending WSR 19-03-133, filed 1/18/19, effective 2/18/19)

WAC 460-24A-120 Compliance and supervisory policies, procedures, and practices. If you are an investment adviser registered or required to be registered under RCW 21.20.040, and have more than one ((~~employee~~)) supervised person, it is unlawful under RCW 21.20.020 for you to provide investment advice to clients unless you comply with the following requirements:

(1) **Policies and procedures.** You must establish, maintain, and enforce written compliance policies and procedures and written supervisory policies and procedures reasonably designed to prevent violation, by you and your supervised persons, of the Securities Act of Washington, chapter 21.20 RCW, and the rules adopted thereunder, and ((~~the~~)) federal securities laws;

(2) **Annual review of policies and procedures.** You must review, no less frequently than annually, the adequacy of the policies and procedures established pursuant to this section and the effectiveness of their implementation;

(3) **Chief compliance officer.** You must designate an individual responsible for administering the policies and procedures that you adopt under subsection (1) of this section and under WAC 460-24A-121, 460-24A-122, 460-24A-123, 460-24A-125, and 460-24A-126((~~, 460-24A-200 (1)(t), (aa), and (bb)~~)); and

(4) You must tailor the policies and procedures required by this section to the facts and circumstances of your business model, taking into account the size of your firm, the type(s) of services you provide, and the number of locations that you have.

NEW SECTION

WAC 460-24A-121 Physical security and cyber security policies and procedures. If you are an investment adviser registered or required to be registered under RCW 21.20.040, it is unlawful under RCW 21.20.020 for you to provide investment advice to clients unless you establish, implement, update, and enforce written physical security and cyber security policies and procedures reasonably designed to ensure the confidentiality, integrity, and availability of physical and electronic records. You must comply with the following requirements:

(1) You must tailor the physical security and cyber security policies and procedures to your business model, taking into account the size of your firm, type(s) of services you provide, and the number of locations you have.

(2) Your physical security and cyber security policies and procedures must:

(a) Protect against reasonably anticipated threats or hazards to the security or integrity of client records or information;

(b) Ensure the safeguarding of confidential client records and information;

(c) Protect any records and information the release of which could result in harm or inconvenience to any client; and

(d) Cover at least the following five functions:

(i) Identify. Develop the organizational understanding to manage information security risk to systems, assets, data, and capabilities;

(ii) Protect. Develop and implement the appropriate safeguards to ensure delivery of critical infrastructure services;

(iii) Detect. Develop and implement the appropriate activities to take action regarding a detected information security event;

(iv) Respond. Develop and implement the appropriate activities to maintain plans for resilience and to restore any capabilities or services that were impaired due to an information security event; and

(v) Recover. Develop and implement the appropriate activities to maintain plans for resilience and to restore any capabilities or services that were impaired due to an information security event.

(3) You must review, no less frequently than annually, the adequacy of the policies and procedures established pursuant to this section and the effectiveness of their implementation.

AMENDATORY SECTION (Amending WSR 19-03-133, filed 1/18/19, effective 2/18/19)

WAC 460-24A-122 Material nonpublic information policies and procedures. If you are an investment adviser registered or required to be registered under RCW 21.20.040, it is unlawful under RCW 21.20.020 for you to provide investment advice to clients unless you comply with the following requirements:

(1) You must establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, nonpublic information by you or any person associated with you;

(2) You must review, no less frequently than annually, the adequacy of the policies and procedures established pursuant to this section and the effectiveness of its implementation; ((~~and~~))

(3) You must tailor the policies and procedures required by this section to the facts and circumstances of your business model, taking into account the size of your firm, the type(s) of services you provide, and the number of locations that you have; and

(4) You must deliver a privacy policy to each client upon your engagement by the client and on an annual basis thereafter. The privacy policy must be reasonably designed to aid in the client's understanding of how you collect and share, to the extent permitted by state and federal law, nonpublic personal information. You must promptly update and deliver to each client an amended privacy policy if any of the information in the policy becomes inaccurate.

NEW SECTION

WAC 460-24A-123 Code of ethics. If you are an investment adviser registered or required to be registered under RCW 21.20.040, it is unlawful under RCW 21.20.020 for you to provide investment advice to clients unless you comply with the following requirements:

(1) You must establish, maintain, and enforce a written code of ethics that, at a minimum, includes the following:

(a) A standard (or standards) of business conduct that you require of your supervised persons, which must reflect your fiduciary obligations and those of your supervised persons;

(b) Provisions requiring your supervised persons to comply with applicable state and federal securities laws;

(c) Provisions requiring all your access persons to report, and you to review, their personal securities transactions periodically as provided in subsection (2) of this section;

(d) Provisions requiring your supervised persons to report any violations of the code of ethics promptly to your chief compliance officer or, provided that your chief compliance officer also receives reports of all violations, to other persons designated in the code of ethics; and

(e) Provisions requiring you to provide each of your supervised persons with a copy of your code of ethics and any amendments, and requiring your supervised persons to provide you with a written acknowledgment of their receipt of the code of ethics and any amendments.

(2) Reporting requirements.

(a) Holdings reports. Your code of ethics must require your access persons to submit to your chief compliance officer or other person designated in the code of ethics a report of the access person's current securities holdings that meets the following requirements:

(i) Content of holdings reports. Each holdings report must contain, at a minimum, the following:

(A) The title and type of security, and as applicable, the exchange ticker symbol or CUSIP number, number of shares, and principal amount of each reportable security in which the access person has any direct or indirect beneficial ownership;

(B) The name of any broker-dealer or bank with which the access person maintains an account in which any securities are held for the access person's direct or indirect benefit; and

(C) The date the access person submits the report.

(ii) Timing of holdings reports. Your access persons must each submit a holdings report as follows:

(A) No later than 10 days after the person becomes an access person. The information must be current as of a date no more than 45 days prior to the date the person becomes an access person; and

(B) At least once each 12-month period thereafter on a date selected by you. The information must be current as of a date no more than 45 days prior to the date the report was submitted.

(b) Transactions reports. Your code of ethics must require your access persons to submit to your chief compliance officer or other persons designated in your code of ethics quarterly securities transactions reports that meet the following requirements:

(i) Content of transaction reports. Each transaction report must contain, at minimum, the following information about each transaction involving a reportable security in which the access person had, or as a result of the transaction acquired, any direct or indirect beneficial ownership:

(A) The date of the transaction, the title, and as applicable, the exchange ticker symbol or CUSIP number, interest rate and maturity date, number of shares, and principal amount of each reportable security involved;

(B) The nature of the transaction (i.e., purchase, sale, or any other type of acquisition or disposition);

(C) The price of the security at which the transaction was effected;

(D) The name of the broker-dealer or bank with or through which the transaction was effected; and

(E) The date the access person submits the report.

(ii) Timing of transaction reports. Each access person must submit a transaction report no later than 30 days after the end of each calendar quarter, which report must cover, at a minimum, all transactions during the quarter.

(c) Exceptions from reporting requirements. Your code of ethics does not need to require an access person to submit the following:

(i) Any report with respect to securities held in accounts over which the access person has no direct or indirect influence or control;

(ii) A transaction report with respect to transactions effected pursuant to an automatic investment plan in which regular periodic purchases or withdrawals are made automatically in or from investment accounts in accordance with a predetermined schedule and allocation, including a dividend reinvestment plan;

(iii) A transaction report if the report would duplicate information contained in broker trade confirmations or account statements no later than 30 days after the end of the applicable calendar quarter.

(d) Preapproval of certain investments. Your code of ethics must require your access persons to obtain your approval before they directly or indirectly acquire beneficial ownership in any security in an initial public offering or in a limited offering.

(e) Small advisers. If you are an investment adviser with only one access person, the access person is not required to submit reports or to obtain approval for investments in any security in an initial public offering or in a limited offering, provided the access person maintains records of all of the access person's holdings and transactions that this section would otherwise require the access person to report.

(3) You must tailor the code of ethics required by this section to the facts and circumstances of your business model, taking into account the size of your firm, the type(s) of services you provide, and the number of locations you have.

(4) You must review, no less frequently than annually, the adequacy of the code of ethics established pursuant to this section and the effectiveness of its implementation.

AMENDATORY SECTION (Amending WSR 19-03-133, filed 1/18/19, effective 2/18/19)

WAC 460-24A-125 Proxy voting. If you are an investment adviser registered or required to be registered under RCW 21.20.040, it is unlawful under RCW 21.20.020 for you to have or to exercise voting authority with respect to client securities, unless you comply with the following requirements:

(1) You must establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure that you vote client securities in the best interest of clients, which procedures must include how you address material conflicts that may arise between your interests and those of your clients;

(2) You must disclose to clients how they may obtain information from you about how you voted with respect to their securities. If you do not have the authority to vote client securities, you must disclose your lack of voting authority to clients; ((~~and~~))

(3) You must describe to clients your proxy voting policies and procedures and, upon request, furnish a copy of the policies and procedures to the requesting client; and

(4) You must review, no less frequently than annually, the adequacy of the policies and procedures established pursuant to this section and the effectiveness of their implementation.

AMENDATORY SECTION (Amending WSR 19-03-133, filed 1/18/19, effective 2/18/19)

WAC 460-24A-126 Business continuity and succession plan. If you are an investment adviser registered or required to be registered pursuant to RCW 21.20.040, it is unlawful under RCW 21.20.020 for you to provide investment advice to clients unless you comply with the following requirements:

(1) You must establish, maintain, and enforce written procedures relating to a business continuity and succession plan. The business continuity and succession plan must provide for at least the following:

(a) The protection, backup, and recovery of books and records;

(b) Alternate means of communications with customers, key personnel, ((~~employees~~)) supervised persons, vendors, service providers (including third-party custodians), and regulators including, but not limited to, providing notice of a significant business interruption or the death or unavailability of key personnel or other disruptions or cessation of business activities;

(c) Office relocation in the event of temporary or permanent loss of a principal place of business;

(d) Assignment of duties to qualified responsible persons in the event of the death or unavailability of key personnel; and

(e) Otherwise minimizing service disruption and client harm that could result from a sudden, significant business interruption.

(2) You must review, no less frequently than annually, the adequacy of the business continuity and succession plan established pursuant to this section and the effectiveness of its implementation.

(3) You must tailor the business continuity and succession plan required by this section to the facts and circumstances of your business model, taking into account the size of your firm, the type(s) of services you provide, and the number of locations that you have.

AMENDATORY SECTION (Amending WSR 19-03-133, filed 1/18/19, effective 2/18/19)

WAC 460-24A-130 Contents of investment advisory contract. If you are an investment adviser registered or required to be registered under RCW 21.20.040, it is unlawful under RCW 21.20.020 and 21.20.030 for you to provide investment advice unless you have a written investment advisory contract with the person you are advising. Further, it is unlawful under RCW 21.20.020 and 21.20.030 for you to enter into, extend, or renew any investment advisory contract unless the contract provides in writing:

(1) The services to be provided, the term of the contract, the investment advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of termination or nonperformance of the contract, and whether and the extent to which the contract grants discretionary authority to you and any limits on such authority. The contract must describe these items with specificity;

(2) A statement that you will make no direct or indirect assignment or transfer of the contract without the written consent of the client or other party to the contract. You may not assign a contract through implied or negative consent;

(3) A statement that you will not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client except as permitted under WAC 460-24A-150;

(4) A statement that if you are a partnership, you must notify the client or other party to the investment contract of any change in the membership of the partnership within a reasonable time after the change;

(5) A statement that if you are an investment adviser who has custody as a consequence of your authority to make withdrawals from client accounts to pay your advisory fee, the contract gives you the authority to deduct your advisory fees from the account held with the qualified custodian;

(6) The nature and extent to which you are granted proxy voting authority with respect to client securities;

(7) The terms for termination of the contract;

(8) The nature and extent to which you may deliver electronically the documents specified in WAC 460-24A-145, account statements, fee invoices, and other documents and the extent and manner in which a client may opt out of receiving documents electronically;

(9) A statement that you must deliver the brochure required by WAC ((~~460-24A-150~~)) 460-24A-145 to an advisory client or prospective advisory client not less than ((~~forty-eight~~)) 48 hours prior to entering into any investment advisory contract with such client or prospective client. Alternately, if you will provide the brochure at the time of entering into any such contract, the investment advisory contract must provide that the advisory client has a right to terminate the contract without penalty within five business days after entering into the contract;

(10) A statement that the investment adviser must obtain the client's written consent in order to revise any material terms of the investment advisory contract;

(11) The full legal name of the investment adviser, the contact information for the investment adviser, and an indication of the preferred method for clients to contact the investment adviser;

(12) A statement that the investment adviser owes the client a fiduciary duty; and if the investment adviser manages a pooled investment vehicle, a statement that each investor in the pooled investment vehicle is a client of the investment adviser; and

(13) For clients residing in Washington, the advisory contract must not waive or limit compliance with, or require indemnification for any violations of, any provision of the Securities Act of Washington, chapter 21.20 RCW, or the rules adopted thereunder.

AMENDATORY SECTION (Amending WSR 19-03-133, filed 1/18/19, effective 2/18/19)

WAC 460-24A-135 Dissemination of advisory fee billing information for advisers who do not directly deduct fees. (1) If you are an investment adviser registered or required to be registered pursuant to RCW 21.20.040, it is unlawful under RCW 21.20.020 for you to provide investment advice to clients unless you deliver written billing information to your advisory clients each time you charge an advisory fee. The written billing information must include the fee(s) charged, the formula used to calculate the fee(s) (in either a verbal expression or sample mathematical equation), the fee calculation itself, the amount of assets under management the fee is based on, ((~~and~~)) the time period covered by the fee(s), and a statement of the services provided to the client during the billing period. If you charge performance compensation, the written billing information must also include the client's cumulative net investment gain (or loss) and the amount of cumulative net investment gain over which you will receive performance compensation. You must include the name of the custodian(s) on the fee invoice.

(2) The provision of invoices in accordance with WAC 460-24A-106 (1)(b) will satisfy the requirements of this section.

AMENDATORY SECTION (Amending WSR 19-03-133, filed 1/18/19, effective 2/18/19)

WAC 460-24A-145 Investment adviser brochure rule. (1) **General requirements.** Unless otherwise provided in this rule, if you are an investment adviser registered or required to be registered pursuant to RCW 21.20.040, you must, in accordance with the provisions of this section, deliver to each advisory client and prospective advisory client:

(a) A brochure which may be a copy of Part 2A of your Form ADV or written documents containing the information required by Part 2A of Form ADV. The brochure must comply with the language, organizational format and filing requirements specified in the Instructions to Form ADV Part 2;

(b) A copy of your Part 2B brochure supplement for each individual:

(i) Providing investment advice and having direct contact with clients in this state; or

(ii) Exercising discretion over assets of clients in this state, even if no direct contact is involved;

(c) A copy of your Part 2A Appendix 1 wrap fee brochure if you sponsor or participate in a wrap fee account;

(d) A summary of material changes, which may be included in Form ADV Part 2 or given as a separate document; and

(e) Such other information as the director may require.

(2) **Delivery.**

(a) **Initial delivery.** Except as provided in (c) of this subsection, you must deliver the materials required by this section to an advisory client or prospective advisory client (i) not less than ((~~forty-eight~~)) 48 hours prior to entering into any investment advisory contract with such client or prospective client, or (ii) at the time of entering into any such contract, if the advisory client has a right to terminate the contract without penalty within five business days after entering into the contract.

(b) **Annual delivery.** Except as provided in (d) of this subsection, if there have been any material changes that have taken place since the last summary and brochure delivery to your clients, you must:

(i) Deliver within ((~~one hundred twenty~~)) 120 days of the end of your fiscal year a free, updated brochure and related brochure supplements which include or are accompanied by a summary of the material changes; or

(ii) Deliver a summary of material changes that includes an offer to provide a copy of the updated brochure and supplements and information on how the client may obtain a copy of the brochure and supplements. You must mail or deliver any materials requested by the client pursuant to such an offer within seven days of the receipt of the request.

(c) **Other-than-annual delivery.** If the instructions to Form ADV require you to file an other-than-annual amendment, and if the amendment adds disclosure of an event or materially revises information already disclosed about an event in response to Item 9 of Part 2A of Form ADV, or Item 3 of Part 2B of Form ADV, you must promptly deliver the following to each client:

(i) The amended brochure or brochure supplement, along with a statement describing the material change in disciplinary information; or

(ii) A statement describing the material change in disciplinary information and an offer to deliver the amended brochure.

(d) **Exception for certain clients.** You are not required to deliver the materials set forth in (1) of this section to:

(i) Clients receiving advisory services solely pursuant to a contract for impersonal advisory services requiring a payment of less than ((~~two hundred dollars~~)) $200;

(ii) An investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 to 80a-64); or

(iii) A business development company as defined in the Investment Company Act of 1940 and whose advisory contract meets the requirements of section 15(c) of that act (15 U.S.C. 80a-15(c)).

(3) **Electronic delivery.** You may deliver the materials required by this section electronically if you:

(a) In the case of an initial delivery to a potential client, obtain a verification that readable copies of the materials were received by the client;

(b) In the case of deliveries other than initial deliveries, obtain each client's prior consent to provide the materials electronically;

(c) In the case of deliveries through a passive delivery system such as a website or portal, you notify the client when the materials become available on the system;

(d) Prepare the electronically delivered materials in the format prescribed in subsection (1) of this section and the instructions to Form ADV Part 2;

(e) Deliver the materials in a format that can be retained by the client in either electronic or paper form; and

(f) Establish procedures to supervise personnel transmitting the materials and prevent violations of this rule.

(4) **Delivery to limited partners.** If you are the adviser to a limited partnership, a limited liability company, or a trust, then you must treat each of the partnership's limited partners, the company's members, or the trust's beneficial owners, as a client. For purposes of this section, a limited liability partnership or limited liability limited partnership is a "limited partnership."

(5) **Omission of inapplicable information.** If you render substantially different types of investment advisory services to different advisory clients, you may provide them with different disclosure materials, provided that each client receives all applicable information about services and fees. The disclosure delivered to a client may omit any information required by Part 2 of Form ADV if such information is applicable only to a type of investment advisory service or fee which is not rendered or charged, or proposed to be rendered or charged, to that client or prospective client.

(6) **Other disclosure obligations.** Nothing in this section relieves you from any obligation to disclose any information to your advisory clients or prospective advisory clients not specifically required by this rule under chapter 21.20 RCW, the rules and regulations thereunder, or any other federal or state law.

(7) **Definitions.** For the purposes of this rule:

(a) "Contract for impersonal advisory services" means any contract relating solely to the provision of investment advisory services:

(i) By means of written material or oral statements which do not purport to meet the objectives or needs of specific individuals or accounts;

(ii) Through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security; or

(iii) Any combination of the foregoing services.

(b) "Entering into," in reference to an investment advisory contract, does not include an extension or renewal without material change of any such contract which is in effect immediately prior to such extension or renewal.

AMENDATORY SECTION (Amending WSR 19-03-133, filed 1/18/19, effective 2/18/19)

WAC 460-24A-150 Performance compensation arrangements. (1) **General.** If you are an investment adviser you may, without violating RCW 21.20.030(1), enter into, extend, or renew an investment advisory contract which provides for compensation to you on the basis of a share of capital gains upon or capital appreciation of the funds, or any portion of the funds, of the client if:

(a) You are an investment adviser who is not registered and is not required to be registered under RCW 21.20.040; or

(b) The client is a "qualified client" as defined in subsection (2) of this section (subject to periodic inflation adjustments pursuant to subsection (10) of this section), and the conditions of subsections (3) through (8) of this section are met.

(2) **Definitions.** For the purposes of this section:

(a) The term "qualified client" means:

(i) A natural person who, or a company that, immediately after entering into the contract has at least ((~~one million dollars~~)) $1,400,000 under the management of the investment adviser;

(ii) A natural person who, or a company that, the investment adviser entering into the contract (and any person acting on his or her behalf) reasonably believes, immediately prior to entering into the contract, either:

(A) Has a net worth (together, in the case of a natural person, with assets held jointly with a spouse) of more than ((~~2.1 million dollars~~)) $2,700,000. For purposes of calculating a natural person's net worth:

(I) The person's primary residence must not be included as an asset;

(II) Indebtedness secured by the person's primary residence, up to the estimated fair market value of the primary residence at the time the investment advisory contract is entered into may not be included as a liability (except that if the amount of such indebtedness outstanding at the time of calculation exceeds the amount outstanding ((~~sixty~~)) 60 days before such time, other than as a result of the acquisition of the primary residence, the amount of such excess must be included as a liability); and

(III) Indebtedness that is secured by the person's primary residence in excess of the estimated fair market value of the residence must be included as a liability; or

(B) Is a qualified purchaser as defined in section 2 (a)(51)(A) of the Investment Company Act of 1940 (15 U.S.C. 80a-2 (a)(51)(A)) at the time the contract is entered into; or

(iii) A natural person who immediately prior to entering into the contract is:

(A) An executive officer, director, trustee, general partner, or person serving in a similar capacity, of the investment adviser; or

(B) An employee of the investment adviser (other than an employee performing solely clerical, secretarial, or administrative functions with regard to the investment adviser) who, in connection with his or her regular functions or duties, participates in the investment activities of such investment adviser, provided that such employee has been performing such functions and duties for or on behalf of the investment adviser, or substantially similar functions or duties for or on behalf of another company for at least ((~~twelve~~)) 12 months.

(b) The term "company" has the same meaning as in section 202 (a)(5) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2 (a)(5)), but does not include a company that is required to be registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 to 80a-64) but is not registered.

(c) The term "private investment company" means a company that would be defined as an investment company under section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(a)) but for the exception provided from that definition by section 3 (c)(1) of such Act (15 U.S.C. 80a-3 (c)(1)).

(d) The term "executive officer" means the president, any vice president in charge of a principal business unit, division or function (such as sales, administration, or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions, for the investment adviser.

(3) **Compensation formula.** The compensation paid to you with respect to the performance of any securities over a given period must be based on a formula with the following characteristics:

(a) In the case of securities for which market quotations are readily available within the meaning of Securities and Exchange Commission Rule 2a-4 (a)(1) under the Investment Company Act of 1940 (Definition of "Current Net Asset Value" for Use in Computing Periodically the Current Price of Redeemable Security), 17 C.F.R. 270.2a-4 (a)(1), as amended effective ((~~February 7, 2014~~)) June 27, 2024, the formula must include the realized capital losses and unrealized capital depreciation of the securities over the period;

(b) In the case of securities for which market quotations are not readily available within the meaning of Securities and Exchange Commission Rule 2a-4 (a)(1) under the Investment Company Act of 1940, 17 C.F.R. 270.2a-4 (a)(1), as amended effective ((~~February 7, 2014~~)) June 27, 2024, the formula must include:

(i) The realized capital losses of securities over the period;

(ii) If the unrealized capital appreciation of the securities over the period is included, the unrealized capital depreciation of the securities over the period;

(c) The formula must provide that any compensation paid to you under this section is based on the gains less the losses (computed in accordance with (a) and (b) of this subsection) in the client's account over a specified period. The formula must not calculate the compensation more frequently than once per calendar quarter. However, if your client invests mid-period in a private fund that you manage, you may apply the compensation formula to that client for the partial period in order to keep the client on the same schedule as the other clients who invest in the private fund; and

(d) The formula must reflect that you will only receive performance compensation on the client's cumulative net investment gain, and only upon the amount of the client's cumulative net investment gain for which you have not previously received a performance fee.

(4) **Client disclosure.** To the extent not otherwise disclosed on Form ADV Part 2, you must disclose in writing to the client all material information concerning the proposed advisory arrangement, including the following:

(a) That the fee arrangement may create an incentive for the investment adviser to make investments that are riskier or more speculative than would be the case in the absence of a performance fee;

(b) Where relevant, that the investment adviser may receive increased compensation with regard to unrealized appreciation as well as realized gains in the client's account;

(c) The period which will be used to measure investment performance throughout the contract and their significance in the computation of the fee;

(d) The nature of any index which will be used as a comparative measure of investment performance, the significance of the index, and the reason the investment adviser believes that the index is appropriate; and

(e) Where your compensation is based in part on the unrealized appreciation of securities for which market quotations are not readily

available within the meaning of Securities and Exchange Commission Rule 2a-4 (a)(1) under the Investment Company Act of 1940, 17 C.F.R. 270.2a-4 (a)(1), as amended effective ((~~February 7, 2014~~)) June 27, 2024, how the securities will be valued and the extent to which the valuation will be independently determined.

(5) **Equity owners.** In the case of a private investment company, as defined in subsection (2)(c) of this rule, an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 to 80a-64), or a business development company, as defined in section 202 (a)(22) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2 (a)(22)), each equity owner of any such company (except for the investment adviser entering into the contract and any other equity owners not charged a fee on the basis of a share of capital gains or capital appreciation) will be considered a client for the purposes of subsection (1) of this ((~~rule~~)) section.

(6) **Informed consent.** You or any of your investment adviser representatives that enter into a contract under this rule, must reasonably believe, immediately before entering into the contract that the contract represents an arm's length arrangement between the parties and that the client, alone or together with the client's independent agent, understands the proposed method of compensation and its risks.

(7) **Nonexclusive.** Any person entering into or performing an investment advisory contract under this section is not relieved of any obligations under RCW 21.20.020 or any other applicable provision of the Securities Act of Washington, chapter 21.20 RCW, or any rule or order thereunder.

(8) **Obligations of independent representative.** Nothing in this section relieves a client's independent representative from any obligation to the client under applicable law.

(9) **Transition rules.**

(a) **Registered investment advisers.** If you are a registered investment adviser that entered into a contract and satisfied the conditions of this section that were in effect when the contract was entered into, you will be considered to satisfy the conditions of this section. If a natural person or company who was not a party to the contract becomes a party (including an equity owner of a private investment company advised by the adviser), however, the conditions of this section in effect at that time will apply with regard to that person or company.

(b) **Registered investment advisers that were previously not registered.** This section does not apply to an advisory contract entered into when you were not required to register and were not registered. If a natural person or a company who was not a party to the contract becomes a party (including an equity owner of a private investment company advised by the adviser) when you are registered or required to register, however, the conditions of this section in effect at that time will apply with regard to that person or company.

(c) **Certain transfers of interest.** Solely for purposes of (a) and (b) of this subsection, a transfer of an equity ownership interest in a private investment company by gift or bequest, or pursuant to an agreement related to a legal separation or divorce, will not cause the transferee to "become a party" to the contract and will not cause this section to apply to such transferee.

(10) The director may issue an order pursuant to RCW 21.20.450 to update the definition of "qualified client" in subsection (2)(a) of this section to conform to the periodic inflation adjustments of the dollar amount thresholds established by the U.S. Securities and Ex-

change Commission, as described in Securities and Exchange Commission Rule 205-3(e), 17 C.F.R. 275.205-3(e), as amended effective November 10, 2021.

AMENDATORY SECTION (Amending WSR 19-03-133, filed 1/18/19, effective 2/18/19)

WAC 460-24A-200 Books and records to be maintained by investment advisers. (1) If you are an investment adviser registered or required to be registered pursuant to RCW 21.20.040, you must make and keep true, accurate, and current the following books, ledgers, and records:

(a) A journal or journals, including cash receipts and disbursement records, and any other records of original entry forming the basis of entries in any ledger.

(b) General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts.

(c) A memorandum of each order given by you for the purchase or sale of any security, of any instruction received by you from a client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. The memoranda must show the terms and conditions of the order, instruction, modification or cancellation; must identify the person connected with you who recommended the transaction to the client and the person who placed the order; and must show the account for which entered, the date of entry, and the bank or broker-dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of a power of attorney must be so designated.

(d) All check books, bank statements, canceled checks and cash reconciliations of the investment adviser.

(e) All bills or statements (or copies thereof), paid or unpaid, relating to your business.

(f) All trial balances, financial statements, and internal audit working papers or other supporting financial records relating to your business as an investment adviser. For purposes of this subsection, "financial statements" means a balance sheet prepared in accordance with generally accepted accounting principles in the United States, an income statement, a cash flow statement, and a net worth computation, if applicable, as required by WAC 460-24A-170.

(g) Physical or electronic copies of all written communications received and copies of all written communications sent by you relating to your investment advisory business including, but not limited to:

(i) Any recommendation made or proposed to be made and any advice given or proposed to be given;

(ii) Any receipt, disbursement or delivery of funds or securities; ((~~and~~))

(iii) The placing or execution of any order to purchase or sell any security((~~.~~)); and

(iv) Predecessor performance (as defined in WAC 460-24A-005) and the performance or rate of return of any or all managed accounts, portfolios (as defined in WAC 460-24A-005), or securities recommendations.

Provided, however, That you will not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for you: And provided, That if

you send any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than ((~~ten~~)) 10 persons, you will not be required to keep a record of the names and addresses of the persons to whom it was sent, except that if such notice, circular or advertisement is distributed to persons named on any list, you must retain with the copy of such notice, circular or advertisement a memorandum describing the list and the source thereof.

(h) A list or other record of all accounts in which you are vested with any discretionary authority over the funds, securities or transactions of any client.

(i) A copy of all powers of attorney and other evidences of the granting of any discretionary authority by any client to you.

(j) A written copy of each signed agreement entered into by you with any client and all other written agreements otherwise relating to your business as an investment adviser.

(k)(i) A file containing a copy of each:

(A) Advertisement (as defined in WAC 460-24A-005) that the investment adviser disseminates, directly or indirectly, except:

(I) For oral advertisements, you may instead retain a copy of any written or recorded materials used by you in connection with the oral advertisement; and

(II) For compensated oral testimonials and endorsements (as defined in WAC 460-24A-005), you may instead make and keep a record of the disclosures provided to clients or investors pursuant to WAC 460-24A-100 (2)(a);

(B) Notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication, including by electronic media, and all amendments thereto, that you circulate or distribute, directly or indirectly, to two or more persons (other than persons connected with you), and if such communication recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, a memorandum by you indicating the reasons for the recommendation.

(ii) A copy of any questionnaire or survey used in the preparation of a third-party rating included or appearing in any advertisement, in the event you obtain a copy of the questionnaire or survey.

(l)(i) A record of every transaction in a security in which you or any of your advisory representatives has, or by reason of such transaction acquires, any direct or indirect beneficial ownership, except:

(A) Transactions effected in any account over which neither you nor any of your advisory representatives has any direct or indirect influence or control; and

(B) Transactions in securities which are direct obligations of the United States.

The record must state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any such transaction will not be construed as an admission that you or your advisory representative has any direct or indirect beneficial ownership in the security. You must record each transaction not later than ((~~ten~~)) 10 days after the end of the calendar quarter in which the transaction was effected.

(ii) For the purposes of this subsection (1)(l), the following definitions will apply:

(A) "Advisory representative" means any of your partners, officers or directors; any employee who participates in any way in the determination of which recommendations will be made, or whose functions or duties relate to the determination of which recommendation will be made; any employee who, in connection with his or her duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by you prior to the effective dissemination of the recommendations:

(I) Any person in a control relationship to you;

(II) Any affiliated person of a controlling person; and

(III) Any affiliated person of an affiliated person.

(B) "Control" means the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than ((~~twenty-five~~)) 25 percent of the voting securities of a company will be presumed to control such company.

(iii) You will not be deemed to have violated the provisions of this subsection (1) because of the failure to record securities transactions of any supervised person if you establish that you instituted adequate procedures, and used reasonable diligence to obtain promptly, reports of all transactions required to be recorded.

(m)(i) Notwithstanding the provisions of (l) of this subsection, if you are primarily engaged in a business or businesses other than advising investment advisory clients, you must maintain a record of every transaction in a security in which you or any of your advisory representatives (as hereinafter defined) has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except:

(A) Transactions effected in any account over which neither you nor any of your advisory representatives has any direct or indirect influence or control; and

(B) Transactions in securities which are direct obligations of the United States.

The record must state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale, or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that you or any of your advisory representatives has any direct or indirect beneficial ownership in the security. You must record a transaction not later than ((~~ten~~)) 10 days after the end of the calendar quarter in which the transaction was effected.

(ii) You are "primarily engaged in a business or businesses other than advising investment advisory clients" if, for each of your most recent three fiscal years or for the period of time since organization, whichever is lesser, you derived, on an unconsolidated basis, more than ((~~fifty~~)) 50 percent of:

(A) Your total sales and revenues; and

(B) Your income (or loss) before income taxes and extraordinary items, from such other business or businesses.

(iii) For purposes of this subsection (1)(m) of this section the following definitions will apply:

(A) "Advisory representative," when used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients, means any partner, officer, director, or employee of the investment adviser who participates in any way in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations or of the information concerning the recommendations:

(I) Any person in a control relationship to the investment adviser;

(II) Any affiliated person of a controlling person; and

(III) Any affiliated person of an affiliated person.

(B) "Control" means the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than ((~~twenty-five~~)) 25 percent of the voting securities of a company will be presumed to control such company.

(iv) You will not be deemed to have violated the provisions of this subsection (1)(m) because of your failure to record securities transactions of any advisory representative if you establish that you instituted adequate procedures, and used reasonable diligence to obtain promptly, reports of all transactions required to be recorded.

(n) The following items related to WAC 460-24A-145 and Part 2 of Form ADV:

(i) A copy of each written statement, and each amendment or revision, given or sent to any of your clients or prospective clients as required by WAC 460-24A-145;

(ii) Any summary of material changes that is required by Part 2 of Form ADV that is not included in the written statement; and

(iii) A record of the dates that each written statement, each amendment or revision thereto, and each summary of material changes was given or offered to any client or prospective client who subsequently becomes a client.

(o) ((~~For each client that you obtained by means of a solicitor to whom you paid a cash fee:~~

~~(i) Evidence of a written agreement to which you are a party related to the payment of such fee;~~

~~(ii) A signed and dated acknowledgment of receipt from the client evidencing the client's receipt of your disclosure statement and a written disclosure statement of the solicitor; and~~

~~(iii) A copy of the solicitor's written disclosure statement. The written agreement, acknowledgment, and solicitor disclosure statement will be considered to be in compliance if such documents are in compliance with Rule 275.206 (4)-3 of the Investment Advisers Act of 1940.~~

~~For purposes of this subsection, the term "solicitor" means any person or entity who, for compensation, acts as an agent of an investment adviser in referring potential clients.~~)) (i) If not included in the advertisement, a record of the disclosures provided to clients or investors pursuant to WAC 460-24A-100 (2)(a) and (3)(b);

(ii) Documentation substantiating your reasonable basis for believing that a testimonial or endorsement (as defined in WAC 460-24A-005) complies with WAC 460-24A-100(2) and that the third-party rating (as defined in WAC 460-24A-005) complies with WAC 460-24A-100(3); and

(iii) A record of the names of all persons who are your partners, officers, directors, or employees, or a person that controls, is controlled by, or is under common control with you, or is a partner, officer, director, or employee of such a person, as needed for the purpose of documenting compliance with the exemption in WAC 460-24A-100 (2)(d)(ii).

(p) All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of all managed accounts, portfolios (as defined in WAC 460-24A-005), or securities recommendations in any notice, circular, advertisement (as defined in WAC 460-24A-100), newspaper article, investment letter, bulletin, or other communication including, but not limited to, electronic media that you circulate or distribute, directly or indirectly, to two or more persons (other than persons connected with you), including copies of all information provided or offered pursuant to WAC 460-24A-100 (4)(d); provided however, that, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts will be deemed to satisfy the requirements of this subsection.

(q) A file containing a copy of all written communications received or sent regarding any litigation involving you or any investment adviser representative or ((~~employee~~)) supervised person, and regarding any written customer or client complaint.

(r) Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to such client. The written information about the investment advisory client must include, but is not limited to, the client's age, other investments, financial situation and needs, net worth, liquid net worth, annual income, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the client may disclose to the investment adviser in connection with such recommendation or investment advice. On an annual basis, the investment adviser must ((~~make~~)) document a reasonable effort to confirm or update the written information about each investment advisory client.

(s) Written information about each security that you recommended a client buy or sell that is the basis for making any recommendation or providing any investment advice to such client.

(t) Written procedures to supervise the activities of ((~~employees and investment adviser representatives~~)) your supervised persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, as required by WAC 460-24A-120.

(u) A file containing a copy of each document (other than any notices of general dissemination) that was filed with or received from any state or federal agency or self regulatory organization and that pertains to you or your advisory representatives as that term is defined in (m)(iii)(A) of this subsection, which file should contain,

but is not limited to, all applications, amendments, renewal filings, and correspondence.

(v) If you inadvertently held or obtained a client's securities or funds and returned them to the client within three business days or forwarded third-party checks within three business days, you must keep the following records relating to the inadvertent custody:

(i) Issuer;

(ii) Type of security and series;

(iii) Date of issue;

(iv) For debt instruments, the denomination, interest rate and maturity date;

(v) Certificate number, including alphabetical prefix or suffix;

(vi) Name in which registered;

(vii) Date given to the adviser;

(viii) Date sent to client or sender;

(ix) Form of delivery to client or sender, or copy of the form of delivery to client or sender; and

(x) Mail confirmation number, if applicable, or confirmation by client or sender of the fund's or security's return.

(w) Copies, with signatures of your appropriate signatory and the investment adviser representative, of each initial Form U4 and each amendment to Disclosure Reporting Pages (DRPs) must be retained by you (filing on behalf of the investment adviser representative) and must be made available for inspection upon regulatory request.

(x) If you obtain possession of securities that are acquired from the issuer in a transaction or chain of transactions not involving any public offering that comply with the exception from custody under WAC 460-24A-109(1), you must keep the following records:

(i) A record showing the issuer or current transfer agent's name, address, phone number, and other applicable contact information pertaining to the party responsible for recording client interests in the securities; and

(ii) A copy of any legend, shareholder agreement or other agreement showing that those securities are transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

(y) A copy of a current written business continuity and succession plan adopted in accordance with WAC 460-24A-126, and evidence of the annual review of the business continuity and succession plan.

(z) Written policies and procedures required to be established pursuant to WAC 460-24A-120, 460-24A-121, 460-24A-122, 460-24A-123, and 460-24A-125, and any records required to be created or maintained thereunder including, but not limited to, evidence of the annual review of policies and procedures, and a record of any violation of the provisions of the policies and procedures and any action taken as a result of the violation.

(aa) A copy of a written code of ethics as required by WAC 460-24A-123 that establishes standards of business conduct which reflect your fiduciary obligations and those of your supervised persons.

(bb) Written physical and cyber security policies and procedures as required by WAC 460-24A-121 that are reasonably designed to ensure the security and integrity of your physical and electronic records. In addition to the recordkeeping requirements pursuant to subsections (5) and (7) of this section, you must maintain a current copy of the physical and cyber security policies and procedures either in hard copy in a separate location or stored on electronic storage media that is separate from and not dependent upon access to your computers or network.

(cc) A copy of the written advisory fee billing information provided clients in accordance with WAC 460-24A-135, and a written record of the services provided to each client during the billing period.

(dd) Documentation of client's authorization for each nondiscretionary securities transaction within 10 business days of the transaction.

(ee) A record of who the "intended audience" is for an advertisement pursuant to WAC 460-24A-100(4).

(ff) Documentation of the due diligence you have conducted regarding the ability of your third-party vendors to perform the activities and functions that you have outsourced to them.

(2)(a) If you are subject to subsection (1) of this section and have custody or possession of securities or funds of any client, the records required to be made and kept under subsection (1) of this section must include:

(i) A copy of any and all documents executed by the client (including a limited power of attorney) under which the adviser is authorized or permitted to withdraw a client's funds or securities maintained with a custodian upon the adviser's instruction to the custodian.

(ii) A journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for all accounts and all other debits and credits to the accounts.

(iii) A separate ledger account for each such client showing all purchases, sales, receipts and deliveries of securities, the date and price of each purchase or sale, and all debits and credits.

(iv) Copies of confirmations of all transactions effected by or for the account of any client.

(v) A record for each security in which any client has a position, which record must show the name of each client having any interest in each security, the amount of interest of each client, and the location of each security.

(vi) A copy of each of the client's quarterly account statements, as generated and delivered by the qualified custodian. If you also generate a statement that is delivered to the client, you must also maintain copies of such statements along with the date such statements were sent to the clients.

(vii) If applicable to your situation, a copy of the special examination report verifying the completion of the examination by an independent certified public accountant and describing the nature and extent of the examination.

(viii) A record of any finding by the independent certified public accountant of any material discrepancies found during the examination.

(ix) If applicable, evidence of the client's designation of an independent representative.

(b) If you have custody because you advise a pooled investment vehicle, as defined in WAC 460-24A-005 ((~~(6)~~)) (13)(a)(iii), you must also keep the following records:

(i) True, accurate and current account statements;

(ii) Where you comply with WAC 460-24A-107 (1)(b) the records required to be made and kept must include:

(A) The date of the audit;

(B) A copy of the audited financial statements; and

(C) Evidence of the mailing of the audited financial statements to all limited partners, members or other beneficial owners within ((~~one hundred twenty~~)) 120 days of the end of its fiscal year.

(iii) Where you comply with WAC 460-24A-107 (1)(a) the records required to be made and kept must include:

(A) A copy of the written agreement with the independent party reviewing all fees and expenses, indicating the responsibilities of the independent party; and

(B) Copies of all invoices and receipts showing the approval by the independent party for payment through the qualified custodian.

(c) If you have custody because you are acting as the trustee for a beneficial trust as it is described in WAC 460-24A-109(3), you must also keep the following records until the account is closed or the adviser is no longer acting as trustee:

(i) A copy of the written statement given to each beneficial owner setting forth a description of the requirements of WAC 460-24A-105 and the reason why you will not be complying with those requirements; and

(ii) A written acknowledgment signed and dated by each beneficial owner, and evidencing receipt of the statement required under WAC 460-24A-109 (3)(b).

(3) If you are subject to subsection (1) of this section and you render any investment supervisory or management service to any client, you must, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by you, make and keep true, accurate and current:

(a) Records showing separately for each client the securities purchased and sold, and the date, amount and price of each purchase or sale.

(b) For each security in which any client has a current position, information from which you can promptly furnish the name of each client, and the current amount or the interest of the client.

(4) Any books or records required by this section may be maintained by you in such manner that the identity of any client to whom you render investment supervisory services is indicated by numerical or alphabetical code or some similar designation.

(5) If you are subject to subsection (1) of this section, you must preserve the following records in the manner prescribed:

(a) All books and records required to be made under the provisions of subsections (1) to (3), inclusive, of this section except for books and records required to be made pursuant to subsection (1)(k) and (p) of this section must be maintained and preserved in an easily accessible place for at least six years from the date the last entry was made on the record, the first two years in your principal office.

(b) Your partnership articles and any amendments, articles of incorporation, charter documents, minute books and stock certificate books of you and any of your predecessors, must be maintained in your principal office and preserved until at least three years after termination of the enterprise.

(c) Books and records required to be made pursuant to subsection (1)(k) and (p) of this section must be maintained and preserved in an easily accessible place for a period of not less than ((~~five~~)) six years, the first two years in your principal office, from the end of the fiscal year during which you last published or otherwise disseminated, directly or indirectly, including by electronic media, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication.

(d) Notwithstanding other record preservation requirements of this section, you must maintain the following records or copies at

your business location from which the customer or client is being provided or has been provided with investment advisory services:

(i) Records required to be preserved under subsections (1)(c), (g) through (j), (l), (m), (n), (o), and (q) through (dd), (2), and (3) of this section must be maintained for the period prescribed in (a) of this subsection; and

(ii) Records or copies required pursuant to subsection (1)(k) and (p) of this section which records or related records identify the name of the investment adviser representative providing investment advice from that business location, or which identify the business locations' physical address, mailing address, electronic mailing address, or telephone number must be maintained for the period prescribed in (c) of this subsection.

(6) If you are an investment adviser subject to subsection (1) of this section, you must, before ceasing to conduct or discontinuing business as an investment adviser, arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this section for the remainder of the period specified in this section, and must notify the director in writing of the exact address where the books and records will be maintained during the period.

(7)(a) The records required to be maintained and preserved pursuant to this section may be immediately produced or reproduced, and maintained and preserved for the required time, by an investment adviser on:

(i) Paper or hard copy form, as those records are kept in their original form;

(ii) Micrographic media, including microfilm, microfiche, or any similar medium; or

(iii) Electronic storage media, including any digital storage medium or system that meets the terms of this section.

(b) If you are an investment adviser required to maintain and preserve records pursuant to this section, you must:

(i) Arrange and index the records in a way that permits easy location, access, and retrieval of any particular record;

(ii) Provide promptly any of the following that the director may request:

(A) A legible, true, and complete copy of the record in the medium and format in which it is stored;

(B) A legible, true, and complete printout of the record; and

(C) Means to access, view, and print the records; and

(iii) Separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by this section.

(c) If the records that the investment adviser is required to maintain and preserve pursuant to this section are created or maintained on electronic storage media, the investment adviser must establish and maintain procedures:

(i) To maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction;

(ii) To limit access to the records to properly authorized personnel and the director; and

(iii) To reasonably ensure that any reproduction of a nonelectronic original record on electronic storage media is complete, true, and legible when retrieved.

(8) As used in this section, "investment supervisory services" means the giving of continuous advice as to the investment of funds on

the basis of the individual needs of each client; and "discretionary authority" does not include discretion as to the price at which, or the time when, a transaction is or is to be effected, if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security.

(9) Any book or other record made, kept, maintained, and preserved in compliance with Rules 17a-3 and 17a-4 under the Securities Exchange Act of 1934, which is substantially the same as the book or other record required to be made, kept, maintained, and preserved under this section, will be deemed to be made, kept, maintained, and preserved in compliance with this section.

(10) If you are an investment adviser registered or required to be registered in this state and have your principal place of business in a state other than this state, you are exempt from the requirements of this section, provided you are registered in the state where you have your principal place of business and are in compliance with that state's recordkeeping requirements.

(11) If you are an investment adviser registered or required to be registered under RCW 21.20.040, you must make the records required to be maintained under this section easily accessible for inspection by the director or the director's representatives. In the conduct of an examination authorized by RCW 21.20.100(4), you must honor all requests by the director or the director's representatives to have physical access to all areas of the office that is the subject of the examination. Upon request, you must permit the director or the director's representatives to access, copy, scan, image, and examine all records and electronic data that you are required to retain under this section.

AMENDATORY SECTION (Amending WSR 19-03-133, filed 1/18/19, effective 2/18/19)

WAC 460-24A-205 Notice of changes by investment advisers and investment adviser representatives. (1) If you are an investment adviser registered or required to be registered pursuant to RCW 21.20.040, you must:

(a) Promptly file with IARD, in accordance with the instructions to Form ADV, any amendments to your Form ADV. An amendment will be considered promptly filed if it is filed within ((~~thirty~~)) 30 days of the event that requires the filing of the amendment;

(b) File an annual updating amendment to the Form ADV with IARD within ((~~ninety~~)) 90 days after the end of your fiscal year;

(c) File with the director by email ((~~thirty~~)) 30 days prior to intended use any amendments to your advisory contracts or offering materials for any pooled investment vehicles that you advise. This includes the advisory contracts or offering materials that you intend to use in connection with any newly formed pooled investment vehicles to which you will provide investment advice. You may not use the new or amended advisory contracts or offering materials until the director has cleared them for use; ((~~and~~))

(d) Promptly file with the director by email any amendment to your list of the custodians that hold the client funds or securities that you supervise or manage. If you disclose this information on Schedule D of Form ADV Part 1A, and you file an amendment to Form ADV

pursuant to (a) of this subsection, you will have satisfied this requirement. The director will consider an amendment to be filed promptly if it is filed within ((~~thirty~~)) 30 days of the event that requires the filing of the amendment; and

(e) Promptly file an amendment to Form BR with IARD to correct any information contained on the Form BR that has become inaccurate or incomplete. You must promptly notify the director on Form BR if you open a branch office in Washington, engage a new person in charge at a branch office in Washington, acquire a branch office of another investment adviser in Washington, or relocate or close a branch office to Washington;

(f) Promptly notify the director by email if the errors and omissions insurance policy that you maintain to comply with WAC 460-24A-051 is canceled, terminated, or substantially modified;

(g) File with the director by email proof of the annual renewal of the errors and omissions insurance policy that you maintain to comply with WAC 460-24A-051 no later than 30 days after the renewal of the policy; and

(h) Promptly file with the director by email any material amendments to your business continuity plan.

(2) If you are an investment adviser representative registered or required to be registered pursuant to RCW 21.20.040, you have a continuing obligation to update the information required by Form U4 as changes occur and you must promptly file with IARD any amendments to your Form U4. An amendment will be considered promptly filed if it is filed within ((~~thirty~~)) 30 days of the event that requires the filing of the amendment.

AMENDATORY SECTION (Amending WSR 19-03-133, filed 1/18/19, effective 2/18/19)

WAC 460-24A-220 Unethical business practices—Investment advisers and federal covered advisers. If you are an investment adviser, investment adviser representative, or a federal covered adviser, you are a fiduciary and have a duty to act primarily for the benefit of your clients. If you are a federal covered adviser, the provisions of this subsection apply to the extent that the conduct alleged is fraudulent, deceptive, or as otherwise permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290). While the extent and nature of this duty varies according to the nature of the relationship with the client and the circumstances of each case, in accordance with RCW 21.20.020 (1)(c) and 21.20.110 (1)(g) you must not engage in dishonest or unethical business practices including, but not limited to, the following:

(1) Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser, investment adviser representative, or federal covered investment adviser.

(2) Exercising any discretion in placing an order for the purchase or sale of securities for a client without obtaining written

discretionary authority from the client within ((~~ten~~)) 10 business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretion relates solely to the price at which, or the time when, an order involving a definite amount of a specified security must be executed, or both.

(3) Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account in light of the fact that an investment adviser, investment adviser representative, or federal covered adviser in such situations can directly benefit from the number of securities transactions effected in a client's account. The rule appropriately forbids an excessive number of transaction orders to be induced by an adviser for a "customer's account."

(4) Placing an order to purchase or sell a security for the account of a client without authority to do so.

(5) Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client.

(6) Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser, ((~~or~~)) a financial institution engaged in the business of loaning funds, or a relative as defined in RCW 21.20.005.

(7) Loaning money or securities to a client unless you are a financial institution engaged in the business of loaning funds ((~~or~~)), the client is an affiliate of the investment adviser, or the client is a relative as defined in RCW 21.20.005.

(8) Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment adviser, investment adviser representative, federal covered adviser, or any employee, or person affiliated with the investment adviser, or misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or to omit to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading.

(9) Providing a report or recommendation to any advisory client prepared by someone other than you without disclosing that fact. (This prohibition does not apply to a situation where you use published research reports or statistical analyses to render advice or where you order such a report in the normal course of providing service.)

(10) Charging a client an unreasonable advisory fee.

(11) Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment adviser, investment adviser representative, federal covered adviser, or any employees or affiliated persons thereof which could reasonably be expected to impair the rendering of unbiased and objective advice including, but not limited to:

(a) Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services;

(b) Charging a client an advisory fee for rendering advice when compensation for effecting securities transactions pursuant to such advice will be received by the investment adviser, investment adviser representative, federal covered investment adviser, or employees or affiliated persons thereof; and

(c) Serving as an officer, director, or similar capacity of any outside company or other entity.

(12) Guaranteeing a client that a specific result will be achieved (gain or no loss) with advice which will be rendered.

(13) Publishing, circulating or distributing any advertisement which does not comply with ((~~Rule 206(4)-1 under the Investment Advisers Act of 1940~~)) WAC 260-24A-100.

(14) Disclosing the identity, investments, or other financial information of any client or former client unless required by law to do so, or unless consented to by the client.

(15) Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where you have custody or possession of such securities or funds when the action of the investment adviser, federal covered adviser, or investment adviser representative or employee is subject to and does not comply with applicable custody requirements.

(16) Entering into, extending or renewing any investment advisory contract that does not comply with the requirements set forth in WAC 460-24A-130.

(17) Failing to establish, maintain, and enforce written policies and procedures pursuant to WAC 460-24A-120, 460-24A-121, 460-24A-122, 460-24A-123, 460-24A-125, or 460-24A-126((~~, 460-24A-200 (1)(t), (aa), or (bb)~~)).

(18) Entering into, extending, or renewing any advisory contract contrary to the provisions of section 205 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-5). This provision will apply to all advisers and investment adviser representatives registered or required to be registered under the Securities Act of Washington, chapter 21.20 RCW, notwithstanding whether you would be exempt from federal registration pursuant to section 203(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(b)).

(19) To indicate or require by contract or otherwise, any condition, stipulation, or provisions binding any person to waive or limit compliance with, or require indemnification for any violations of, any provision of the Securities Act of Washington, chapter 21.20 RCW, or the rules adopted thereunder, or of the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.), or any other practice contrary to the provisions of section 215 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-15).

(20) Engaging in any act, practice, or course of business which is fraudulent, deceptive, manipulative or unethical.

(21) Engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of the Securities Act of Washington, chapter 21.20 RCW, or any rule or regulation thereunder.

(22) Using any term or abbreviation thereof in a manner that misleadingly states or implies that a person has special expertise, certification, or training in financial planning, including, but not limited to, the misleading use of a senior-specific certification or designation as set forth in WAC 460-25A-020.

(23) Making, in the solicitation of clients, any untrue statement of fact, or omitting to state a material fact necessary in order to make the statement made, in light of the circumstances under which they are made, not misleading.

(24) Failing to provide advisory fee billing information to advisory clients pursuant to WAC 460-24A-135.

(25) Failing to provide training regarding the financial exploitation of vulnerable adults pursuant to WAC 460-24A-190.

(26) Accessing a client's account by using the client's own unique identifying information (such as username and password).

(27) Failing to pay and fully satisfy any final judgment or arbitration award resulting from an investment-related, client- initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to between the client and the investment adviser or investment adviser representative, in writing, and the investment adviser or investment adviser representative complies with the terms of the alternative payment arrangement.

(28) Attempting to avoid payment of any final judgment or arbitration award resulting from an investment-related, client-initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to between the client and the investment adviser or the investment adviser representative, in writing, and the investment adviser or investment adviser representative complies with the terms of the alternative payment arrangements.

(29) Failing to pay and fully satisfy any fine, civil penalty, order of restitution, order of disgorgement, or similar monetary payment obligation imposed upon the investment adviser or investment adviser representative by the Securities and Exchange Commission, the securities or other financial services regulator of any state or province, or any self-regulatory organization.

The conduct set forth above is not ((~~inclusive~~)) exclusive. Engaging in other conduct such as nondisclosure, incomplete disclosure, or deceptive practices will be deemed an unethical business practice. The federal statutory and regulatory provisions referenced herein will apply to investment advisers, investment adviser representatives, and federal covered advisers, to the extent permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290).

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 460-24A-108	Additional custody requirements for an investment adviser that acts as trustee and investment adviser to a trust.

WSR 26-15-071
PROPOSED RULES
DEPARTMENT OF
RETIREMENT SYSTEMS
[Filed July 15, 2026, 2:04 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 26-09-107.

Title of Rule and Other Identifying Information: Port worker public employees' retirement system (PERS) membership.

Hearing Location(s): On August 26, 2026, at 2:00 p.m., online via Microsoft Teams link at https://www.drs.wa.gov/sitemap/rules/#proposed-rule-hearings, Meeting ID 243 191 325 241 19, Passcode xo7ZA9bi; or via phone 833-322-1218, code 294 976 209#.

Date of Intended Adoption: September 2, 2026.

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 July 29, 2026, 8:00 a.m., by August 26, 2026, 2:00 p.m.

Assistance for Persons with Disabilities: Contact Bianca Stoner, phone 360-664-7291, TTY 711, email drs.rules@drs.wa.gov, by August 24, 2026.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Implementing chapter 133, Laws of 2026, which exempts port workers from membership in PERS under certain situations.

Reasons Supporting Proposal: Clarifying that port district employees who participate in a pension plan operated wholly or in part by the port on or after January 1, 1965, are exempt from participation in PERS for periods of service covered by that plan.

Statutory Authority for Adoption: RCW 41.50.050 and chapter 133, Laws of 2026.

Statute Being Implemented: Chapter 133, Laws of 2026.

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

Name of Proponent: DRS, governmental.

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

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

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

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

Is exempt under RCW 19.85.025(4).

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

Scope of exemption for rule proposal:

Is fully exempt.

July 15, 2026
Bianca Stoner
Rules Coordinator

RDS-7248.1

NEW SECTION

WAC 415-108-521 Membership exemption—Port employees participating in a union pension plan. Consistent with RCW 53.08.170 and as reaffirmed by chapter 133, Laws of 2026, port district employees who participate in a pension plan operated wholly or in part by the port, such as a Taft-Hartley defined benefit plan, on or after January 1, 1965, are exempt from participation in the public employees' retirement system for periods of service covered by that plan.

WSR 26-15-095
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE
[Order 26-15—Filed July 20, 2026, 10:58 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: This rule seeks to amend WAC 220-312-030(56) so that the open fishing season for Mineral Lake would extend through October 31 annually. This rule amendment was initiated by rule petition and granted by the director.

Hearing Location(s): On August 26, 2026, at 6:00 p.m., at the Washington state department of fish and wildlife (WDFW) Field Office, 110 Main Avenue, Morton, WA. If attending online, please register in advance at https://us06web.zoom.us/webinar/register/WN_Kvj5RnKsSOaatd5UwZr5pg. After registering, you will receive a confirmation email containing information about joining the meeting.

Date of Intended Adoption: August 28, 2026.

Submit Written Comments to: Rules Coordinator, P.O. Box 43200, Olympia, WA 98501, email minerallakeseasonchange@publicinput.com, 855-925-2801, project code 9623, website https://engage.wadfw.wa.gov/minerallakeseasonchange, beginning July 22, 2026, at 1:00 p.m., by August 27, 2026, 12:01 p.m.

Assistance for Persons with Disabilities: Contact VI/ADA compliance coordinator, phone 360-902-2349, TTY 711, email Title6@dfw.wa.gov, web https://wdfw.wa.gov/accessibility/requestsaccomodation, by August 19, 2026.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to provide one month of additional fishing opportunity annually for the public on Mineral Lake. The proposal is anticipated to provide additional fishing opportunities while ensuring the success of WDFW's fishery management and hatchery program goals. Mineral Lake is an extremely popular opening day lake (central to the Seattle and Vancouver/Portland metropolitan areas); therefore, this proposal is anticipated to result in additional shoulder season angling trips.

Reasons Supporting Proposal: On September 15, 2025, WDFW received a petition from Shawn Seeger for WAC 220-312-030(56) to change the opening fishing season for Mineral Lake, extending the season through October 31 annually. In addition to the petitioner, the petition identified nine individuals supporting the season extension; three letters of support of the petition were also submitted to WDFW. The director approved the petition on November 14, 2025.

Reasons for the amendment include adding fishing opportunities while catch rates are anecdotally on an increasing trajectory, and the economic stimulus generated from local travel and recreational-associated purchases. This proposal supports WDFW's mission of maximizing recreational fishing opportunities for the public.

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

Statute Being Implemented: RCW 77.04.012, 77.04.055, and 77.12.047.

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

Name of Proponent: Shawn Seeger, private.

Name of Agency Personnel Responsible for Drafting: Matt Gardner, Ridgefield, 360-906-6746; Implementation: Kelly Cunningham, Olympia, 360-902-2325; and Enforcement: Chief Michael Jewell, Olympia, 360-338-2895.

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

A cost-benefit analysis is not required under RCW 34.05.328. Under RCW 34.05.328(5), a cost-benefit analysis is not required for this rule as WDFW is not implementing chapter 77.55 RCW with this rule.

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

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

July 20, 2026
Scott Bird
Rules Coordinator

RDS-7316.1

AMENDATORY SECTION (Amending WSR 26-13-052, filed 6/11/26, effective 7/12/26)

WAC 220-312-030 Freshwater exceptions to statewide rules—Southwest. (1) **Abernathy Creek and tributaries (Cowlitz County):**

(a) From 200 feet above Abernathy Falls to posted markers 500 feet downstream from the Abernathy Fish Technology Center: Closed waters.

(b) Open the Saturday before Memorial Day through August 31 and November 1 through March 15.

(c) Selective gear rules, except: Use of barbed hooks is allowed.

(d) Game fish: Statewide minimum length/daily limit, except:

(i) Trout: Daily limit 2; minimum length 14 inches.

(ii) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(e) Salmon:

(i) Open November 1 through December 31.

(ii) Daily limit 6; up to 2 may be adults.

(iii) Only hatchery Chinook and hatchery coho may be retained.

(2) **Beaver Creek (Wahkiakum County):** Closed waters.

(3) **Blue Creek (Lewis County), from the mouth to Spencer Road:**

(a) From posted sign above rearing pond outlet to Spencer Road: Closed waters.

(b) Anti-snagging rule.

(c) Night closure.

(d) Open Saturday before Memorial Day through April 15.

(e) Game fish: Statewide minimum length/daily limit, except:

(i) Trout: Daily limit 5; minimum length 8 inches.

(ii) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(f) Salmon:

(i) Open August 1 through December 31.

(ii) Daily limit 6; up to 2 may be adults.

(iii) Only hatchery Chinook and hatchery coho may be retained.

(4) **Blue Lake (Cowlitz County):**

(a) Open the fourth Saturday in April through October 31.

(b) Selective gear rules.

(c) Release all fish.

(5) **Blue Lake Creek (Lewis County):** Selective gear rules.

(6) **Butter Creek (Lewis County):** Selective gear rules.

(7) **Canyon Creek (Clark County):** Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 5.

(8) **Carlisle Lake (Lewis County):**

(a) Open year-round.

(b) Landlocked salmon rules.

(9) **Cedar Creek and tributaries (tributary of N.F. Lewis) (Clark County):**

(a) From the Grist Mill Bridge to 100 feet upstream of the falls: Closed waters.

(b) Selective gear rules, except: Use of barbed hooks is allowed.

(c) Open the Saturday before Memorial Day through August 31 and November 1 through March 15.

(d) Game fish: Statewide minimum length/daily limit, except:

(i) Trout: Daily limit 2; minimum length 14 inches.

(ii) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(e) Salmon:

(i) Open November 1 through December 31.

(ii) Daily limit 6; up to 3 adults, of which 2 may be Chinook.

(iii) Release all salmon except hatchery Chinook and hatchery coho.

(10) **Chinook River (Pacific County):** From the Highway 101 Bridge upstream:

(a) Selective gear rules.

(b) Game fish: Statewide minimum length/daily limit, except: Release cutthroat trout and wild rainbow trout.

(11) **Cispus River (Lewis County):** From the mouth to the falls, not including the North Fork:

(a) Open year-round, except closed to all angling within posted "Closed Waters" signs around the adult fish release site.

(b) Game fish: Statewide minimum length/daily limit, except: Release wild rainbow and wild cutthroat trout.

(c) Salmon:

(i) Daily limit 6; up to 2 may be adults.

(ii) Only hatchery Chinook and hatchery coho may be retained.

(12) **Cispus River, North Fork (Lewis County):** Selective gear rules.

(13) **Coal Creek (Cowlitz County):**

(a) From the mouth to 400 feet below the falls:

(i) Open the Saturday before Memorial Day through August 31 and November 1 through March 15.

(ii) Selective gear rules, except: Use of barbed hooks is allowed.

(iii) Game fish: Statewide minimum length/daily limit, except:

(A) Trout: Daily limit 2; minimum length 14 inches.

(B) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(iv) Salmon:

(A) Open November 1 through December 31.

(B) Daily limit 6; up to 2 may be adults.

(C) Only hatchery Chinook and hatchery coho may be retained.

(b) From 400 feet below the falls to the falls: Closed waters.

(14) **Coldwater Lake (Cowlitz County):**

(a) The Coldwater Lake inlet and outlet streams: Closed waters.

(b) Selective gear rules.

(c) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 1; minimum length 18 inches.

(15) **Cougar Creek (tributary to Yale Reservoir) (Cowlitz County):**

(a) Selective gear rules.

(b) Open the Saturday before Memorial Day through August 31.

(16) **Coweeman River and tributaries (Cowlitz County):**

(a) Open the Saturday before Memorial Day through August 31 and November 1 through March 15.

(b) Game fish: Statewide minimum length/daily limit, except:

(i) Trout: Daily limit 2; minimum length 14 inches.

(ii) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(c) Salmon:

(i) Open November 1 through December 31.

(ii) Daily limit 6; up to 2 may be adults.

(iii) Only hatchery Chinook and hatchery coho may be retained.

(17) **Cowlitz Falls Reservoir (Lake Scanewa) (Lewis County):**

(a) The upstream boundary of the reservoir in the Cowlitz arm is at the posted Lewis County PUD sign on Peters Road.

(b) The upstream boundary of the reservoir in the Cispus arm is at the posted markers at the Lewis County PUD kayak launch, approximately 1.5 miles upstream from the confluence of the Cowlitz and Cispus arm.

(c) Game fish: Statewide minimum length/daily limit, except:

(i) Release wild rainbow and wild cutthroat trout.

(ii) Trout: Daily limit 10; minimum length 8 inches.

(iii) Largemouth bass: Daily limit 10; no minimum length; only largemouth bass under 12 inches may be retained, except 1 over 17 inches may be retained.

(iv) Smallmouth bass: Daily limit 15; no minimum length; only 1 smallmouth bass over 14 inches may be retained.

(v) Channel catfish: Daily limit 10; no size restriction.

(vi) Walleye: Daily limit 16; only 1 walleye over 22 inches may be retained.

(d) Salmon:

(i) Daily limit 6; minimum length 12 inches.

(ii) Up to 2 may be adults.

(iii) Only hatchery Chinook and hatchery coho may be retained.

(18) **Cowlitz River (Lewis/Cowlitz counties):**

(a) From the boundary markers at the mouth to Lexington Bridge:

(i) Game fish:

(A) Trout:

(I) Open the Saturday before Memorial Day through March 31: Daily limit 5; minimum length 8 inches. Release wild rainbow and wild cutthroat trout.

(II) Open April 1 through the Friday before Memorial Day: Statewide minimum length/daily limit, except: Release wild rainbow and wild cutthroat trout.

(B) Steelhead: Open year-round: Daily limit 3 hatchery steelhead, minimum length 20 inches.

(C) Other game fish: Open year-round, statewide minimum size/daily limit.

(ii) Salmon:

(A) Open January 1 through July 31.

(I) Daily limit 6; up to 2 may be adults.

(II) Only hatchery Chinook and hatchery coho may be retained.

(B) Open August 1 through December 31.

(I) Daily limit 6; up to 3 may be adults.

(II) Release all salmon other than hatchery coho.

(b) From the Lexington Bridge to the mouth of Mill Creek:

(i) Within a 100 foot radius of the new Cowlitz Trout Hatchery outfall structure, except open to anglers with disabilities who permanently use a wheelchair and possess a designated harvester companion card within posted markers when adjacent waters are open: Closed waters.

(ii) Game fish:

(A) Trout:

(I) Open the Saturday before Memorial Day through March 31: Daily limit 5; minimum length 8 inches. Release wild rainbow and wild cutthroat trout.

(II) Open April 1 through the Friday before Memorial Day: Statewide minimum length/daily limit, except: Release wild rainbow and wild cutthroat trout.

(B) Steelhead: Open year-round; daily limit 3 hatchery steelhead; minimum length 20 inches.

(C) Other game fish: Open year-round, statewide minimum size/daily limit.

(iii) Salmon:

(A) Open January 1 through July 31.

(I) Daily limit 6; up to 2 may be adults.

(II) Only hatchery Chinook and hatchery coho may be retained.

(B) Open August 1 through December 31.

(I) Daily limit 6; up to 3 may be adults.

(II) Release all salmon other than hatchery coho.

(c) From the mouth of Mill Creek to 1,700 feet upstream of the Cowlitz Salmon Hatchery barrier dam:

(i) From 400 feet or posted markers below Cowlitz Salmon Hatchery barrier dam to boundary markers near the Cowlitz Salmon Hatchery water intake approximately 1,700 feet upstream of the Cowlitz Salmon Hatchery barrier dam: Closed waters.

(ii) Within a 100 foot radius of the Cowlitz Salmon Hatchery wheelchair ramp (within the posted fishing boundary) except for anglers with disabilities **and** who have a designated harvester companion card: Closed waters.

(iii) It is unlawful to fish from a floating device.

(iv) April 1 through November 30:

(A) Anti-snagging rule.

(B) Night closure.

(v) May 1 through June 15: It is unlawful to fish from the south side of the river.

(vi) Game fish:

(A) Trout:

(I) Open the Saturday before Memorial Day through March 31: Daily limit 5; minimum length 8 inches. Release wild rainbow and wild cutthroat trout.

(II) Open April 1 through the Friday before Memorial Day: Statewide minimum length/daily limit, except: Release wild rainbow and wild cutthroat trout.

(B) Steelhead: Open year-round; daily limit 3 hatchery steelhead; minimum length 20 inches.

(C) Other game fish: Open year-round, statewide minimum size/daily limit.

(vii) Salmon:

(A) Open January 1 through July 31.

(I) Daily limit 6; up to 2 may be adults.

(II) Only hatchery Chinook and hatchery coho may be retained.

(B) Open August 1 through December 31.

(I) Daily limit 6; up to 3 may be adults.

(II) Release all salmon other than hatchery coho.

(d) From 1,700 feet upstream of the Cowlitz Salmon Hatchery barrier dam to Mayfield Dam.

(i) From 400 feet below the Mayfield powerhouse upstream to Mayfield Dam: Closed waters.

(ii) Game fish:

(A) Trout:

(I) Open the Saturday before Memorial Day through March 31: Daily limit 5; minimum length 8 inches. Release wild rainbow and wild cutthroat trout.

(II) Open April 1 through the Friday before Memorial Day: Statewide minimum length/daily limit, except: Release wild rainbow and wild cutthroat trout.

(B) Steelhead: Open year-round; daily limit 3 hatchery steelhead; minimum length 20 inches.

(C) Other game fish: Open year-round, statewide minimum size/daily limit.

(iii) Salmon:

(A) Open January 1 through July 31.

(I) Daily limit 6; up to 2 may be adults.

(II) Only hatchery Chinook and hatchery coho may be retained.

(B) Open August 1 through December 31.

(I) Daily limit 6; up to 3 may be adults.

(II) Release all salmon other than hatchery coho.

(e) From the posted PUD sign on Peters Road to the Forest Road 1270 (old Jody's Bridge):

(i) Closed to all angling within posted "Closed Waters" signs around the adult fish release site.

(ii) September 1 through October 31: Anti-snagging rule and night closure.

(iii) Open year-round.

(iv) Game fish: Statewide minimum length/daily limit, except: Release wild rainbow and wild cutthroat trout.

(v) Salmon:

(A) Open year-round.

(B) Daily limit 6; up to 2 may be adults.

(C) Only hatchery Chinook and hatchery coho may be retained.

(f) From Forest Road 1270 (old Jody's Bridge) upstream and tributaries.

(i) Selective gear rules.

(ii) Game fish: Statewide minimum length/daily limit, except: Release wild rainbow and wild cutthroat trout.

(19) **Deep River (Wahkiakum County):**

(a) Open year-round.

(b) Game fish: Statewide minimum length/daily limit, except:

(i) Trout: Daily limit 2; minimum length 14 inches.

(ii) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(c) Salmon:

(i) Daily limit 6; up to 2 may be adults.

(ii) Only hatchery Chinook and hatchery coho may be retained.

(20) **Delameter Creek (Cowlitz County):**

(a) From 400 feet below to 200 feet above the temporary weir while the weir is installed in the creek: Closed waters.

(b) Selective gear rules, except: Use of barbed hooks is allowed.

(c) Game fish: Statewide minimum length/daily limit, except:

(i) Trout: Daily limit 2; minimum length 14 inches.

(ii) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(d) Salmon:

(i) Open August 1 through October 31.

(ii) Daily limit 6; up to 2 may be adults.

(iii) Only hatchery Chinook and hatchery coho may be retained.

(21) **Drano Lake (Skamania County):** In the waters downstream of markers on point of land downstream and across from Little White Salmon National Fish Hatchery and upstream of the Highway 14 Bridge:

(a) Closed on Wednesdays beginning the second Wednesday in April through June 30.

(b) Closed from 6 p.m. Tuesdays through 6 p.m. Wednesdays during the month of October.

(c) March 16 through October 31: Night closure.

(d) August 1 through December 31: Anti-snagging rule.

(e) May 1 through June 30 and October 1 through December 31:

(i) Each angler aboard a vessel may deploy salmon/steelhead angling gear until the salmon/steelhead limit for all anglers aboard has been achieved.

(ii) Two-pole fishing for salmon/steelhead is permissible so long as the angler possesses a two-pole endorsement.

(f) April 16 through June 30: The area west of a line projected from the easternmost pillar of the Highway 14 Bridge to a posted marker on the north shore is open only to bank fishing.

(g) Open year-round.

(i) Game fish: Statewide minimum length/daily limit, except:

(A) Bass: No limit and no size restriction.

(B) Channel catfish: No limit.

(C) Walleye: No limit and no size restriction.

(D) Release trout.

(E) Steelhead: From January 1 through March 15; daily limit 2 hatchery steelhead; minimum length 20 inches.

(ii) Salmon and steelhead: Open March 16 through December 31:

(A) March 16 through June 30: Daily limit 2 hatchery steelhead or 2 hatchery Chinook, or one of each. Release all other salmon.

(B) July 1 through July 31:

(I) Daily limit 2 hatchery Chinook. Closed to fishing for or retaining steelhead.

(II) Release all other salmon.

(C) August 1 through October 31: Daily limit 6; no more than 1 adult salmon. Closed to fishing for or retaining steelhead.

(D) November 1 through December 31: Daily limit 6; up to 1 may be an adult salmon or hatchery steelhead.

(22) **Elochoman River (Wahkiakum County):**

(a) From the mouth to Foster (Risk) Road Bridge:
(i) August 1 through October 31:
(A) Anti-snagging rule.
(B) Night closure.
(C) Stationary gear restriction.
(ii) Open the Saturday before Memorial Day through March 15.
(iii) Game fish: Statewide minimum length/daily limit, except:
(A) Trout: Daily limit 2; minimum length 14 inches.
(B) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.
(iv) Salmon: Open the Saturday before Memorial Day through March 15.
(A) Daily limit 6; up to 2 may be adults.
(B) Only hatchery Chinook and hatchery coho may be retained.
(C) All Chinook must be adipose and/or ventral fin clipped to be retained.
(v) Salmon and steelhead: Open April 16 through the Friday before Memorial Day: Daily limit 6; of which 3 may be adult hatchery Chinook or hatchery steelhead. Release wild Chinook.
(b) From Foster (Risk) Road Bridge upstream to 200 feet above the WDFW temporary weir:
(i) From Foster (Risk) Road Bridge to 200 feet above the WDFW temporary weir while the weir is installed in the river: Closed waters.
(ii) August 1 through October 31:
(A) Anti-snagging rule.
(B) Night closure.
(C) Stationary gear restriction.
(iii) Open the Saturday before Memorial Day through March 15.
(iv) Game fish: Statewide minimum length/daily limit, except:
(A) Trout: Daily limit 2; minimum length 14 inches.
(B) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.
(v) Salmon: Open the Saturday before Memorial Day through March 15.
(A) Daily limit 6; up to 2 may be adults.
(B) Only hatchery Chinook and hatchery coho may be retained.
(C) All Chinook must be adipose and/or ventral fin clipped to be retained.
(vi) Salmon and steelhead: Open April 16 through the Friday before Memorial Day: Daily limit 6; of which 3 may be adult hatchery Chinook or hatchery steelhead. Release wild Chinook.
(c) From 200 feet above the WDFW temporary weir to the Beaver Creek Road Bridge:
(i) August 1 through October 31:
(A) Anti-snagging rule.
(B) Night closure.
(C) Stationary gear restriction.
(ii) Open the Saturday before Memorial Day through March 15.
(iii) Game fish: Statewide minimum length/daily limit, except:
(A) Trout: Daily limit 2; minimum length 14 inches.
(B) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.
(iv) Salmon: Open the Saturday before Memorial Day through March 15.
(A) Daily limit 6; up to 2 may be adults.
(B) Only hatchery Chinook and hatchery coho may be retained.

(C) All Chinook must be adipose and/or ventral fin clipped to be retained.

(v) Salmon and steelhead:

(A) Open April 16 through the Friday before Memorial Day.

(B) Daily limit 6; up to 3 may be adult hatchery Chinook or hatchery steelhead. Release wild Chinook.

(d) From the Beaver Creek Road Bridge to the Elochoman Hatchery Bridge:

(i) August 1 through October 31:

(A) Anti-snagging rule.

(B) Night closure.

(C) Stationary gear restriction.

(ii) Open the Saturday before Memorial Day through March 15.

(iii) Game fish: Statewide minimum length/daily limit, except:

(A) Trout: Daily limit 2; minimum length 14 inches.

(B) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(iv) Salmon: Open the Saturday before Memorial Day through March 15.

(A) Daily limit 6; up to 2 may be adults.

(B) Only hatchery Chinook and hatchery coho may be retained.

(C) All Chinook must be adipose and/or ventral fin clipped to be retained.

(v) Salmon and steelhead:

(A) Open April 16 through the Friday before Memorial Day.

(B) Daily limit 6; up to 3 may be adult hatchery Chinook or hatchery steelhead. Release wild Chinook.

(e) Elochoman Hatchery Bridge to West Fork:

(i) August 1 through October 31:

(A) Anti-snagging rule.

(B) Night closure.

(C) Stationary gear restriction.

(ii) Open the Saturday before Memorial Day through March 15.

(iii) Game fish: Statewide minimum length/daily limit, except:

(A) Trout: Daily limit 2; minimum length 14 inches.

(B) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(iv) Salmon: Open the Saturday before Memorial Day through March 15.

(A) Daily limit 6; up to 2 may be adults.

(B) Only hatchery Chinook and hatchery coho may be retained.

(C) All Chinook must be adipose and/or ventral fin clipped to be retained.

(f) From West Fork upstream:

(i) Game fish: Statewide minimum length/daily limit, except: Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(ii) Salmon:

(A) Daily limit 6; up to 2 may be adults.

(B) Only hatchery Chinook and hatchery coho may be retained.

(C) All Chinook must be adipose and/or ventral fin clipped to be retained.

(23) **Franz Lake (Skamania County):** Closed waters.

(24) **Germany Creek (Cowlitz County) and all tributaries:**

(a) Open the Saturday before Memorial Day through August 31 and November 1 through March 15.

(b) Selective gear rules, except: Use of barbed hooks is allowed.

(c) From 200 feet below to 200 feet above the temporary weir while the weir is installed in the river: Closed waters.

(d) Game fish: Statewide minimum length/daily limit, except:

(i) Trout: Daily limit 2; minimum length 14 inches.

(ii) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(e) Salmon:

(i) Open November 1 through December 31.

(ii) Daily limit 6; up to 2 may be adults.

(iii) Only hatchery Chinook and hatchery coho may be retained.

(25) **Grays River (Wahkiakum County):** From the mouth to South Fork:

(a) From mouth to Barr Road Bridge:

(i) August 1 through November 15:

(A) Anti-snagging rule.

(B) Night closure.

(C) Stationary gear restriction.

(ii) January 1 through March 15: Selective gear rules, except: Use of barbed hooks is allowed.

(iii) Open Saturday before Memorial Day through March 15.

(iv) Game fish: Statewide minimum length/daily limit, except: Release cutthroat trout and wild rainbow trout.

(v) Salmon:

(A) Open Saturday before Memorial Day through July 31:

(I) Daily limit 6; up to 2 may be adults.

(II) Only hatchery Chinook may be retained.

(B) Open August 1 through December 31:

(I) Daily limit 6; up to 2 may be adults.

(II) Only hatchery coho and hatchery Chinook may be retained.

(III) All Chinook must be adipose and/or ventral fin clipped to be retained.

(b) From Barr Road Bridge to Highway 4 Bridge:

(i) August 1 through November 15:

(A) Anti-snagging rule.

(B) Night closure.

(C) Stationary gear restriction.

(ii) January 1 through March 15: Selective gear rules, except: Use of barbed hooks is allowed.

(iii) Open Saturday before Memorial Day through March 15.

(iv) Game fish: Statewide minimum length/daily limit, except: Release cutthroat trout and wild rainbow trout.

(v) Salmon:

(A) Open Saturday before Memorial Day through July 31:

(I) Daily limit 6; up to 2 may be adults.

(II) Only hatchery Chinook may be retained.

(B) Open August 1 through December 31:

(I) Daily limit 6; up to 2 may be adults.

(II) Only hatchery coho and hatchery Chinook may be retained.

(III) All Chinook must be adipose and/or ventral fin clipped to be retained.

(c) From the Highway 4 Bridge to the mouth of South Fork:

(i) From 400 feet below to 200 feet above the temporary weir while the weir is installed in the river: Closed waters.

(ii) August 1 through November 15:

(A) Anti-snagging rule.

(B) Night closure.

(C) Stationary gear restriction.

(iii) January 1 through March 15: Selective gear rules, except: Use of barbed hooks is allowed.

(iv) Open Saturday before Memorial Day through March 15.

(v) Game fish: Statewide minimum length/daily limit, except: Release cutthroat trout and wild rainbow trout.

(vi) Salmon:

(A) Open Saturday before Memorial Day through July 31:

(I) Daily limit 6; up to 2 may be adults.

(II) Only hatchery Chinook may be retained.

(B) Open August 1 through December 31:

(I) Daily limit 6; up to 2 may be adults.

(II) Only hatchery Chinook and hatchery coho may be retained.

(III) All Chinook must be adipose and/or ventral fin clipped to be retained.

(d) From South Fork upstream:

(i) Selective gear rules, except: Use of barbed hooks is allowed.

(ii) Open the Saturday before Memorial Day through March 15.

(iii) Game fish: Statewide minimum length/daily limit, except: Release cutthroat trout and wild rainbow trout.

(iv) Salmon:

(A) Open the Saturday before Memorial Day through December 31.

(B) Daily limit 6; minimum length 12 inches. Up to 2 adults may be retained.

(C) Only hatchery Chinook and hatchery coho may be retained. All Chinook must be adipose and/or ventral fin clipped to be retained.

(26) **Grays River tributaries (unless otherwise listed) (Wahkiakum County):**

(a) Selective gear rules.

(b) Game fish: Statewide minimum length/daily limit, except: Release cutthroat trout and wild rainbow trout.

(27) **Grays River, East Fork (Wahkiakum County):**

(a) Selective gear rules, except: Use of barbed hooks is allowed.

(b) Open the Saturday before Memorial Day through October 31.

(c) Game fish: Statewide minimum length/daily limit, except: Release cutthroat trout and wild rainbow trout.

(d) Salmon:

(i) Open the Saturday before Memorial Day through October 31.

(ii) Daily limit 6; up to 2 may be adults.

(iii) Only hatchery Chinook and hatchery coho may be retained.

(iv) Effective August 1, all Chinook must be adipose and/or ventral fin clipped to be kept.

(28) **Grays River, East Fork tributaries (unless otherwise listed) (Wahkiakum County):**

(a) Selective gear rules.

(b) Game fish: Statewide minimum length/daily limit, except: Release cutthroat trout and wild rainbow trout.

(29) **Grays River, South Fork (Wahkiakum County):**

(a) Selective gear rules, except: Use of barbed hooks is allowed.

(b) Open the Saturday before Memorial Day through October 31.

(c) Game fish: Statewide minimum length/daily limit, except: Release cutthroat trout and wild rainbow trout.

(d) Salmon:

(i) Open the Saturday before Memorial Day through October 31.

(ii) Daily limit 6; up to 2 may be adults.

(iii) Only hatchery Chinook and hatchery coho may be retained; all Chinook must be adipose and/or ventral fin clipped to be kept.

(30) **Grays River, South Fork tributaries (unless otherwise listed) (Wahkiakum County):**

(a) Selective gear rules.

(b) Game fish: Statewide minimum length/daily limit, except: Release cutthroat trout and wild rainbow trout.

(31) **Grays River, West Fork (Wahkiakum County):**

(a) Open the Saturday before Memorial Day through December 31.

(b) August 1 through November 15: Anti-snagging rule, night closure and stationary gear restriction.

(c) Game fish: Statewide minimum length/daily limit, except: Release cutthroat trout and wild rainbow trout.

(d) Salmon: Open the Saturday before Memorial Day through December 31.

(i) Daily limit 6; up to 2 may be adults.

(ii) Only hatchery Chinook and hatchery coho may be retained; all Chinook must be adipose and/or ventral fin clipped to be kept.

(32) **Grays River, West Fork tributaries (unless otherwise listed) (Wahkiakum County):**

(a) Selective gear rules.

(b) Game fish: Statewide minimum length/daily limit, except: Release cutthroat trout and wild rainbow trout.

(33) **Green River (Cowlitz County):**

(a) From the mouth to Miner's Creek:

(i) From 400 feet above and 400 feet below the salmon hatchery rack (or from the posted signs above and below the salmon hatchery rack) when the rack is installed in the river: Closed waters.

(ii) From 400 feet below to 400 feet above the water intake at the upper end of the hatchery grounds from September 1 through November 30: Closed waters.

(iii) September 1 through October 31: Anti-snagging rule applies and night closure in effect from the mouth to 400 feet below the salmon hatchery rack.

(iv) Selective gear rules, except: Use of barbed hooks is allowed from the Saturday before Memorial Day through July 31 and December 1 through March 15.

(v) Open the Saturday before Memorial Day through March 15. Game fish: Statewide minimum length/daily limit, except: Release cutthroat trout and wild rainbow trout.

(vi) Salmon:

(A) From mouth to 400 feet or posted markers below Toutle Hatchery rack site:

(I) Open August 1 through November 30.

(II) Daily limit 6; up to 3 may be adults.

(III) Only hatchery coho may be retained.

(B) From 400 feet or posted markers below Toutle Hatchery rack site to Miner's Creek:

(I) Open August 1 through November 30.

(II) Daily limit 6; up to 3 may be adults, of which 1 may be a Chinook.

(III) Only hatchery Chinook and hatchery coho may be retained.

(b) From Miner's Creek upstream:

(i) Selective gear rules, except: Use of barbed hooks is allowed.

(ii) Game fish: Statewide minimum length/daily limit, except: Release cutthroat trout and wild rainbow trout.

(34) **Green River tributaries (Cowlitz County):**

(a) Selective gear rules.

(b) Game fish: Statewide minimum length/daily limit, except: Release cutthroat trout and wild rainbow trout.

(35) **Grizzly Lake (Skamania County):** Closed waters.

(36) **Hamilton Creek (Skamania County):**

(a) Tributaries downstream from the Highway 14 Bridge: Closed waters.

(b) Selective gear rules, except: Use of barbed hooks is allowed.

(c) Game fish: Statewide minimum length/daily limit, except:

(i) Trout: Daily limit 2; minimum length 14 inches.

(ii) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(d) Salmon:

(i) Open August 1 through October 31.

(ii) Daily limit 6; up to 2 may be adults.

(iii) Only hatchery Chinook and hatchery coho may be retained.

(37) **Horsethief Lake (Klickitat County):** Open the fourth Saturday in April through October 31.

(38) **Indian Heaven Wilderness Lakes (Skamania County):** Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 2; minimum length 8 inches.

(39) **Johnson Creek (Lewis County) (Cowlitz River tributary):** Selective gear rules.

(40) **Kalama River (Cowlitz County):**

(a) From the mouth to the railroad bridge below Interstate 5:

(i) Game fish: Open year-round.

(A) Statewide minimum length/daily limit, except:

(B) Trout: Daily limit 2; minimum length 14 inches.

(ii) Steelhead: Open year-round: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(iii) Salmon:

(A) Open January 1 through July 31:

(I) Daily limit 6; up to 2 may be adults.

(II) Only hatchery Chinook and hatchery coho may be retained.

(B) Open August 1 through December 31:

(I) Daily limit 6; up to 3 may be adults.

(II) Only hatchery Chinook and hatchery coho may be retained.

(b) From the railroad bridge below Interstate 5 to Modrow Bridge:

(i) From Modrow Bridge downstream to the markers approximately 1,000 feet below the temporary rack when the rack is installed below Modrow Bridge: Closed waters.

(ii) April 1 through October 31:

(A) Night closure.

(B) Anti-snagging rule.

(iii) Game fish: Open year-round.

(A) Statewide minimum length/daily limit, except:

(B) Trout: Daily limit 2; minimum length 14 inches.

(C) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(iv) Salmon:

(A) Open January 1 through July 31:

(I) Daily limit 6; up to 2 may be adults.

(II) Only hatchery Chinook and hatchery coho may be retained.

(B) Open August 1 through December 31:

(I) Daily limit 6; up to 3 may be adults.

(II) Only hatchery Chinook and hatchery coho may be retained.

(c) From the Modrow Bridge to the natural gas pipeline crossing:

(i) It is unlawful to fish from a floating device equipped with an internal combustion motor.
(ii) April 1 through October 31:
(A) Night closure.
(B) Anti-snagging rule.
(iii) Game fish: Open year-round.
(A) Statewide minimum length/daily limit, except:
(B) Trout: Daily limit 2; minimum length 14 inches.
(C) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.
(iv) Salmon:
(A) Open January 1 through July 31:
(I) Daily limit 6; up to 2 may be adults.
(II) Only hatchery Chinook and hatchery coho may be retained.
(B) Open August 1 through December 31:
(I) Daily limit 6; up to 3 may be adults.
(II) Only hatchery Chinook and hatchery coho may be retained.
(d) From the natural gas pipeline crossing to the deadline at the intake to the lower salmon hatchery:
(i) It is unlawful to fish from a floating device equipped with an internal combustion motor.
(ii) April 1 through October 31:
(A) Night closure.
(B) Anti-snagging rule.
(iii) Open September 1 through October 31 for fly fishing only, except: Use of barbed hooks is allowed.
(iv) Game fish: Open year-round.
(A) Statewide minimum length/daily limit, except:
(B) Trout: Daily limit 2; minimum length 14 inches.
(C) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.
(v) Salmon:
(A) Open January 1 through July 31:
(I) Daily limit 6; up to 2 may be adults.
(II) Only hatchery Chinook and hatchery coho may be retained.
(B) Open August 1 through December 31:
(I) Daily limit 6; up to 3 may be adults.
(II) Only hatchery Chinook and hatchery coho may be retained.
(e) From the Fallert Creek hatchery intake to posted markers approximately 1,400 feet below fishway entrance at the Kalama Falls hatchery:
(i) It is unlawful to fish from a floating device equipped with an internal combustion motor.
(ii) Game fish: Open year-round.
(A) Statewide minimum length/daily limit, except:
(B) Trout: Daily limit 2; minimum length 14 inches.
(C) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.
(iii) Salmon:
(A) Open January 1 through July 31:
(I) Daily limit 6; up to 2 may be adults.
(II) Only hatchery Chinook and hatchery coho may be retained.
(B) Open August 1 through December 31:
(I) Daily limit 6; up to 3 may be adults.
(II) Only hatchery Chinook and hatchery coho may be retained.

(f) From the posted markers approximately 1,400 feet below the fishway entrance at Kalama Falls hatchery to 1,000 feet above the fishway: Closed waters.

(g) From 1,000 feet above the fishway at the Kalama Falls hatchery, upstream to Summers Creek:

(i) Open year-round.

(ii) Selective gear rules, except: Use of barbed hooks is allowed.

(iii) Game fish: Statewide minimum length/daily limit, except:

(A) Trout: Daily limit 2; minimum length 14 inches.

(B) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(h) From Summers Creek upstream to the intersection of 6000 and 6420 roads: Open year-round:

(i) Fly fishing only, except: Use of barbed hooks is allowed.

(ii) Game fish: Statewide minimum length/daily limit, except:

(A) Trout: Daily limit 2; minimum length 14 inches.

(B) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(i) From the intersection of 6000 and 6420 roads to the 6600 road bridge immediately downstream of Jacks Creek:

(i) Selective gear rules, except: Use of barbed hooks is allowed.

(ii) Open the Saturday before Memorial Day through November 30.

(iii) Game fish: Statewide minimum length/daily limit, except:

(A) Trout: Daily limit 2; minimum length 14 inches.

(B) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(j) From the 6600 road bridge immediately downstream of Jacks Creek to Kalama Falls and tributaries: Closed waters.

(41) **Klickitat River (Klickitat County):**

(a) From the mouth (Burlington Northern Railroad Bridge) to Fisher Hill Bridge:

(i) April 1 through the Friday before Memorial Day:

(A) Anti-snagging rule.

(B) Night closure.

(ii) July 1 through July 31: Night closure.

(iii) August 1 through January 31:

(A) Anti-snagging rule.

(B) Night closure.

(iv) Game fish:

(A) Open Saturday before Memorial Day through January 31.

(B) Statewide minimum length/daily limit, except:

(C) Trout: Daily limit 2; minimum length 14 inches.

(v) Steelhead:

(A) Open Saturday before Memorial Day through June 30: Daily limit 3 hatchery steelhead, minimum length 20 inches.

(B) July 1 through October 31: Closed.

(C) Open November 1 through January 31: Daily limit 3 hatchery steelhead, minimum length 20 inches.

(vi) Salmon:

(A) Open Saturday before Memorial Day through July 31: Daily limit 6; up to 2 adults may be retained. Release wild Chinook.

(B) Open August 1 through January 31: Daily limit 6; up to 2 adults may be retained.

(vii) Salmon and steelhead: Open April 1 to the Friday before Memorial Day for salmon and steelhead on Mondays, Wednesdays, and Saturdays only:

(A) Daily limit 2; no more than 2 hatchery steelhead, or 2 salmon, or one of each, may be retained.

(B) Release wild Chinook.

(b) From Fisher Hill Bridge to the boundary markers above Klickitat Salmon Hatchery, the following waters are closed: From Fisher Hill Bridge to 400 feet above #5 fishway (Lyle Falls fishway), tributaries except Bird, Blockhouse, Bowman, Spring, Outlet creeks and the Little Klickitat River, and the waters from the boundary markers above Klickitat Salmon Hatchery to the boundary markers below the hatchery.

(c) From 400 feet above #5 (Lyle Falls fishway) fishway to the boundary markers below Klickitat Salmon Hatchery:

(i) Open the Saturday before Memorial Day through November 30:

(A) Game fish: Statewide minimum length/daily limit, except:

(B) Trout: Daily limit 2; minimum length 14 inches.

(C) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(ii) Whitefish:

(A) Open December 1 through the last day in February for Whitefish only.

(B) Whitefish gear rules.

(iii) Salmon:

(A) Saturday before Memorial Day through July 31:

(I) Daily limit 6 fish; no more than 2 adults may be retained.

(II) Release wild Chinook.

(B) August 1 through November 30: Daily limit 6 fish; no more than 2 may be adults.

(d) From the boundary markers above Klickitat Salmon Hatchery to the Yakama Indian Reservation boundary:

(i) Game fish open the Saturday before Memorial Day through November 30.

(ii) Game fish: Statewide minimum length/daily limit, except:

(A) Trout: Daily limit 2; minimum length 14 inches.

(B) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(iii) Whitefish:

(A) Open December 1 through the last day in February for whitefish only.

(B) Whitefish gear rules.

(42) **Lacamas Creek (Clark County):**

(a) From the mouth to the footbridge at the lower falls:

(i) Open the Saturday before Memorial Day through August 31.

(ii) Selective gear rules, except: Use of barbed hooks is allowed.

(iii) Game fish: Statewide minimum length/daily limit, except:

(A) Trout: Daily limit 2; minimum length 14 inches.

(B) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(b) From the footbridge at the lower falls upstream: It is permissible to fish up to the base of Lacamas Lake Dam.

(43) **Lacamas Creek, tributary of Cowlitz River (Lewis County):**

(a) Selective gear rules, except: Use of barbed hooks is allowed.

(b) Game fish: Statewide minimum length/daily limit, except:

(i) Trout: Daily limit 2; minimum length 14 inches.

(ii) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(c) Salmon:

(i) Open August 1 through October 31.

(ii) Daily limit 6; up to 2 may be adults.
(iii) Only hatchery Chinook and hatchery coho may be retained.
(44) **Lake River (Clark County):**
(a) Open year-round.
(b) Chumming is permissible.
(c) Game fish: Statewide minimum length/daily limit, except:
(i) Trout: Daily limit 2; minimum length 14 inches.
(ii) Largemouth bass: Daily limit 10; no minimum length; only largemouth bass under 12 inches may be retained, except 1 over 17 inches may be retained.
(iii) Smallmouth bass: Daily limit 15; no minimum length; only 1 smallmouth bass over 14 inches may be retained.
(iv) Channel catfish: Daily limit 10; no size restriction.
(v) Walleye: Daily limit 16; only 1 walleye over 22 inches may be retained.
(45) **Lewis River (Clark County):**
(a) From the mouth to the mouth of the East Fork Lewis River:
(i) Game fish:
(A) Open year-round.
(B) Statewide minimum length/daily limit, except:
(I) Trout: Daily limit 2; minimum length 14 inches.
(II) Steelhead: Daily limit 3 steelhead; minimum length 20 inches.
(ii) Salmon:
(A) Open January 1 through April 30: Daily limit 6 hatchery Chinook; up to 1 may be an adult.
(B) Open August 1 through September 30:
(I) Daily limit 6; up to 3 adults.
(II) Only hatchery Chinook and hatchery coho may be retained.
(C) Open October 1 through December 31:
(I) Daily limit 6; up to 3 adults, of which 1 may be a Chinook.
(II) Only Chinook and hatchery coho may be retained.
(b) From the mouth of the East Fork Lewis River to Johnson Creek.
(i) Game fish:
(A) Open year-round.
(B) Statewide minimum length/daily limit, except:
(I) Trout: Daily limit 2; minimum length 14 inches.
(II) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.
(ii) Salmon:
(A) Open January 1 through April 30: Daily limit 6 hatchery Chinook; up to 1 may be an adult.
(B) Open August 1 through September 30:
(I) Daily limit 6; up to 3 adults.
(II) Only hatchery Chinook and hatchery coho may be retained.
(C) Open October 1 through December 31:
(I) Daily limit 6; up to 3 adults, of which 1 may be a Chinook.
(II) Only Chinook and hatchery coho may be retained.
(c) From Johnson Creek to Colvin Creek:
(i) May 1 through May 31: Closed waters.
(ii) Those waters shoreward of the cable buoy and corkline at the mouth of the Lewis River Salmon Hatchery fish ladder: Closed waters.
(iii) June 1 through November 30 and April 1 through April 30: Anti-snagging rule and night closure.
(iv) Game fish:
(A) Open June 1 through April 30.
(B) Statewide minimum length/daily limit, except:

(I) Trout: Daily limit 2; minimum length 14 inches.

(II) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(v) Salmon:

(A) Open January 1 through April 30: Daily limit 6 hatchery Chinook; up to 1 may be an adult.

(B) Open August 1 through September 30:

(I) Daily limit 6; up to 3 adults.

(II) Only hatchery Chinook and hatchery coho may be retained.

(C) Open October 1 through December 31:

(I) Daily limit 6; up to 3 adults, of which 1 may be a Chinook.

(II) Only Chinook and hatchery coho may be retained.

(d) From the mouth of Colvin Creek to the overhead powerlines at Merwin Dam:

(i) Open June 1 through October 31 and December 16 through April 30.

(ii) Anti-snagging rule and night closure April 1 through April 30 and June 1 through October 31.

(iii) Game fish: Statewide minimum length/daily limit, except:

(A) Trout: Daily limit 2; minimum length 14 inches.

(B) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(iv) Salmon:

(A) Open January 1 through April 30: Daily limit 6 hatchery Chinook; up to 1 may be an adult.

(B) Open August 1 through September 30:

(I) Daily limit 6; up to 3 adults.

(II) Only hatchery Chinook and hatchery coho may be retained.

(C) Open October 1 through October 31:

(I) Daily limit 6; up to 3 adults, of which 1 may be a Chinook.

(II) Only Chinook and hatchery coho may be retained.

(D) Open December 16 through December 31:

(I) Daily limit 6; up to 3 adults, of which 1 may be a Chinook.

(II) Only Chinook and hatchery coho may be retained.

(e) From the overhead powerlines below Merwin Dam to Merwin Dam: Closed waters.

(f) From the cable crossing 1,300 yards below Yale Dam to Yale Dam: Closed waters.

(g) From the old Lewis River streambed between Swift No. 1 Powerhouse and Swift No. 2 Powerhouse: Closed waters.

(h) Lewis River Power Canal:

(i) Open the fourth Saturday in April through October 31.

(ii) It is unlawful to fish from a floating device.

(iii) Game fish: Statewide minimum length/daily limit, except:

(iv) Trout: Daily limit 5; no minimum length.

(i) From Eagle Cliff Bridge to Muddy River, including all tributaries except Muddy River:

(i) Selective gear rules.

(ii) Open the Saturday before Memorial Day through July 15.

(iii) Game fish: Statewide minimum length/daily limit, except:

(A) Trout: Daily limit 10; minimum length 8 inches.

(B) Release wild trout.

(j) From the Muddy River to the lower falls and tributaries (including the Muddy River):

(i) Selective gear rules.

(ii) Release all fish.

(46) **Lewis River, East Fork (Clark/Skamania counties):**

(a) From the posted markers at the lower end of Big Eddy to 100 feet above Lucia Falls: Closed waters.

(b) From 400 feet below to 400 feet above Moulton Falls: Closed waters.

(c) From 400 feet below Horseshoe Falls upstream, including tributaries above Horseshoe Falls: Closed waters.

(d) From the mouth to 400 feet below Horseshoe Falls:

(i) Open the Saturday before Memorial Day through July 15 and September 16 through March 15.

(ii) Selective gear rules, except: Use of barbed hooks is allowed.

(iii) Game fish: Statewide minimum length/daily limit, except: Release cutthroat trout and wild rainbow trout.

(iv) Salmon:

(A) Open September 16 through December 31.

(B) Daily limit 6; up to 2 may be adults.

(C) Only hatchery Chinook and hatchery coho may be retained.

(e) Tributaries from the mouth to 400 feet below Horseshoe Falls:

(i) Selective gear rules.

(ii) Game fish: Statewide minimum length/daily limit, except: Release cutthroat trout and wild rainbow trout.

(47) **Little Klickitat River (Klickitat County):** Within Goldendale city limits:

(a) Open the fourth Saturday in April through the Friday before Memorial Day to juvenile anglers, senior anglers, and anglers with a disability who possess a designated harvester companion card only.

(b) Open the Saturday before Memorial Day through October 31 to all anglers.

(c) Game fish: Statewide minimum length/daily limit, except: Trout: Limit 5; no minimum length.

(48) **Little Washougal River (Clark County):**

(a) Selective gear rules, except: Use of barbed hooks is allowed.

(b) Game fish: Statewide minimum length/daily limit, except:

(i) Trout: Daily limit 2; minimum length 14 inches.

(ii) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(c) Salmon:

(i) Open August 1 through October 31.

(ii) Daily limit 6; up to 2 may be adults.

(iii) Only hatchery Chinook and hatchery coho may be retained.

(49) **Little White Salmon River (Skamania County):**

(a) From the orange fishing boundary markers at Drano Lake upstream to the intake near the north boundary of the Little White Salmon National Fish Hatchery: Closed waters.

(b) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 5; minimum length 8 inches.

(50) **Love Lake (Clark County):** Closed waters.

(51) **Mayfield Lake (Reservoir) (Lewis County):**

(a) Open from the Mayfield Dam to Onion Rock Bridge.

(b) From the Tacoma Power safety signs at Onion Rock Bridge to Mossyrock Dam: Closed waters.

(c) Game fish: Statewide minimum length/daily limit, except:

(i) Trout: Daily limit 10; minimum length 8 inches.

(ii) Release wild rainbow trout and wild cutthroat trout.

(iii) Largemouth bass: Daily limit 10; no minimum length; only largemouth bass under 12 inches may be retained, except 1 over 17 inches may be retained.

(iv) Smallmouth bass: Daily limit 15; no minimum length; only 1 smallmouth bass over 14 inches may be retained.

(v) Channel catfish: Daily limit 10; no size restriction.

(vi) Walleye: Daily limit 16; only 1 walleye over 22 inches may be retained.

(d) Salmon:

(i) Open September 1 through December 31:

(ii) Daily limit 6; minimum length 12 inches.

(iii) Up to 2 may be adults.

(iv) Only hatchery Chinook and hatchery coho may be retained.

(52) **Merrill Lake (Cowlitz County):**

(a) Fly fishing only.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(c) Release all fish.

(53) **Merwin Lake (Reservoir) (Clark/Cowlitz counties):** Landlocked salmon rules.

(54) **Mill Creek (Cowlitz County):**

(a) Open the Saturday before Memorial Day through August 31 and November 1 through March 15.

(b) Selective gear rules, except: Use of barbed hooks is allowed.

(c) Game fish: Statewide minimum length/daily limit, except:

(i) Trout: Daily limit 2; minimum length 14 inches.

(ii) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(d) Salmon:

(i) Open November 1 through December 31.

(ii) Daily limit 6; up to 2 may be adults.

(iii) Only hatchery Chinook and hatchery coho may be retained.

(55) **Mill Creek (Lewis County):** From the mouth to the hatchery road crossing culvert.

(a) Selective gear rules, except: Use of barbed hooks is allowed.

(b) Open the Saturday before Memorial Day through October 31 and December 1 through December 31.

(c) Anti-snagging rule from December 1 through December 31.

(d) Night closure from December 1 through December 31.

(e) Game fish: Statewide minimum length/daily limit, except:

(i) Trout: Daily limit 2; minimum length 14 inches.

(ii) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(f) Salmon:

(i) Open August 1 through October 31 and December 1 through December 31.

(ii) Daily limit 6; up to 2 may be adults.

(iii) Only hatchery Chinook and hatchery coho may be retained.

(56) **Mineral Lake (Lewis County):** Open the fourth Saturday in April through ((~~September 30~~)) October 31.

(57) **Olequa Creek (Lewis/Cowlitz counties):**

(a) From 400 feet below to 200 feet above the temporary weir while the weir is installed in the creek: Closed waters.

(b) Selective gear rules, except: Use of barbed hooks is allowed.

(c) Game fish: Statewide minimum length/daily limit, except:

(i) Trout: Daily limit 2; minimum length 14 inches.

(ii) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(d) Salmon:

(i) Open August 1 through October 31.

(ii) Daily limit 6; up to 2 may be adults.
(iii) Only hatchery Chinook and hatchery coho may be retained.
(58) **Ostrander Creek (Cowlitz County):**
(a) Selective gear rules, except: Use of barbed hooks is allowed.
(b) Game fish: Statewide minimum length/daily limit, except:
(i) Trout: Daily limit 2; minimum length 14 inches.
(ii) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.
(59) **Outlet Creek (Silver Lake) (Cowlitz County):**
(a) From the Saturday before Memorial Day through November 30.
(b) Selective gear rules, except: Use of barbed hooks is allowed.
(c) Game fish: Statewide minimum length/daily limit, except:
(i) Trout: Daily limit 2; minimum length 14 inches.
(ii) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.
(d) Salmon:
(i) Open August 1 through November 30.
(ii) Daily limit 6; up to 2 may be adults.
(iii) Only hatchery Chinook and hatchery coho may be retained.
(60) **Rainey Creek (Lewis County):**
(a) From mouth to Highway 12.
(b) Game fish: Statewide minimum length/daily limit, except:
(i) Trout: Daily limit 5; minimum length 8 inches.
(ii) Release wild rainbow and cutthroat trout.
(61) **Riffe Lake (Reservoir) (Lewis County):**
(a) Open from Mossyrock Dam to Cowlitz Falls Dam:
(b) From Cowlitz Falls Dam downstream to the Lewis County PUD safety signs located approximately 800 feet below the dam: Closed waters.
(c) It is permissible to fish up to the base of Swofford Pond Dam.
(d) Landlocked salmon rules.
(62) **Rock Creek (Klickitat County):**
(a) From Army Corps of Engineers Park upstream to the source: Closed waters.
(b) Open year-round from the mouth to the Army Corps of Engineers Park. Limits, size restrictions, and gear restrictions are the same as those in the adjacent portion of the Columbia River.
(63) **Rock Creek (Skamania County):** From the mouth to the falls at approximately river mile one:
(a) Open the Saturday before Memorial Day through March 15.
(b) Game fish: Statewide minimum length/daily limit, except:
(i) Trout: Daily limit 2; minimum length 14 inches.
(ii) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.
(c) Salmon:
(i) Open August 1 through December 31.
(ii) Daily limit 6; up to 2 may be adults.
(iii) Only hatchery Chinook and hatchery coho may be retained.
(64) **Rowland Lake, North (Klickitat County):** Open the fourth Saturday in April through March 31.
(65) **Salmon Creek (Clark County):** From the mouth to 182nd Avenue Bridge:
(a) Open the Saturday before Memorial Day through March 15.
(b) Game fish: Statewide minimum length/daily limit, except:
(i) Trout: Daily limit 2; minimum length 14 inches.

(ii) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(c) Salmon:

(i) Open August 1 through December 31.

(ii) Daily limit 6; up to 2 may be adults.

(iii) Only hatchery Chinook and hatchery coho may be retained.

(66) **Salmon Creek (Lewis County):**

(a) Selective gear rules, except: Use of barbed hooks is allowed.

(b) Game fish: Statewide minimum length/daily limit, except:

(i) Trout: Daily limit 2; minimum length 14 inches.

(ii) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(c) Salmon:

(i) Open August 1 through October 31.

(ii) Daily limit 6; up to 2 may be adults.

(iii) Only hatchery Chinook or hatchery coho may be retained.

(67) **Silver Lake (Cowlitz County):** Game fish: Statewide minimum length/daily limit, except:

(a) Crappie: Daily limit 10; minimum length 9 inches.

(b) Grass carp: No limit and no minimum length.

(c) Largemouth bass: Daily limit 10; no minimum length; only largemouth bass under 12 inches may be retained, except 1 over 17 inches may be retained.

(d) Smallmouth bass: Daily limit 15; no minimum length; only 1 smallmouth bass over 14 inches may be retained.

(e) Channel catfish: Daily limit 10; no size restriction.

(f) Walleye: Daily limit 16; only 1 walleye over 22 inches may be retained.

(68) **Silver Creek (tributary to Cowlitz River) (Lewis County):** From the mouth to USFS Road 4778. Selective gear rules.

(69) **Skamokawa Creek (Wahkiakum County):**

(a) Selective gear rules, except: Use of barbed hooks is allowed.

(b) Open the Saturday before Memorial Day through August 31 and November 1 through March 15.

(c) Game fish: Statewide minimum length/daily limit, except:

(i) Trout: Daily limit 2; minimum length 14 inches.

(ii) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(d) Salmon:

(i) Open November 1 through December 31.

(ii) Daily limit 6; up to 2 may be adults.

(iii) Only hatchery Chinook and hatchery coho may be retained.

(70) **Skate Creek (tributary to Cowlitz River) (Lewis County):** Selective gear rules.

(71) **Spearfish Lake (Klickitat County):** Open the fourth Saturday in April through March 31.

(72) **Spirit Lake (Skamania County):** Closed waters.

(73) **Spring Creek (Klickitat County):** From Hill Road upstream to the Goldendale Hatchery: Game fish: Statewide minimum length/daily limit, except: Trout: Limit 5; minimum length 8 inches.

(74) **Stillwater Creek (Lewis County):**

(a) Selective gear rules, except: Use of barbed hooks is allowed.

(b) Game fish: Statewide minimum length/daily limit, except:

(i) Trout: Daily limit 2; minimum length 14 inches.

(ii) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(c) Salmon:

(i) Open August 1 through October 31.
(ii) Daily limit 6; up to 2 may be adults.
(iii) Only hatchery Chinook and hatchery coho may be retained.
(75) **Swift Reservoir (Skamania County):**
(a) From dam to posted markers approximately 3/8 mile below Eagle Cliff Bridge:
(i) Open the Saturday before Memorial Day through November 30.
(ii) Game fish: Statewide minimum length/daily limit, except:
(A) Trout: Daily limit 10; minimum length 8 inches.
(B) Release wild trout.
(C) Release all steelhead.
(iii) Salmon:
(A) Open the Saturday before Memorial Day through November 30.
(B) Salmon count toward trout daily limit.
(C) Minimum length 8 inches.
(D) Maximum length 15 inches.
(E) No catch record card required.
(b) From the posted markers approximately 3/8 mile below Eagle Cliff Bridge to the bridge:
(i) Selective gear rules.
(ii) Open the Saturday before Memorial Day through July 15.
(iii) Game fish: Statewide minimum length/daily limit, except:
(A) Trout: Daily limit 10; minimum length 8 inches.
(B) Release wild trout.
(C) Release all steelhead.
(iv) Salmon:
(A) Open the Saturday before Memorial Day through July 15.
(B) Landlocked salmon rules.
(C) Maximum length 15 inches.
(76) **Tilton River (Lewis County):** From the mouth to the West Fork:
(a) Within posted "Closed Waters" signs around the adult fish release sites: Closed waters.
(b) Anti-snagging rule from September 1 through October 31.
(c) Night closure from September 1 through October 31.
(d) Game fish: Statewide minimum length/daily limit, except: Release wild rainbow and wild cutthroat trout. Open year-round.
(e) Salmon:
(i) Open year-round.
(ii) Daily limit 6; up to 2 may be adults.
(iii) Only hatchery coho may be retained.
(77) **Tilton River, East, North, South and West Forks (Lewis County):** Selective gear rules.
(78) **Toutle River (Cowlitz County):** From the mouth to the forks:
(a) Open the Saturday before Memorial Day through March 15.
(b) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 2; minimum length 14 inches.
(c) Salmon open August 1 through November 30:
(i) Daily limit 6; up to 3 may be adults.
(ii) Only hatchery coho may be retained.
(79) **Toutle River tributaries (unless otherwise listed) (Cowlitz County):**
(a) Selective gear rules.
(b) Game fish: Statewide minimum length/daily limit, except: Release wild trout.
(80) **Toutle River, North Fork (Cowlitz County):**

(a) From the mouth to the posted deadline below the fish collection facility:

(i) Open the Saturday before Memorial Day through March 15.

(ii) September 1 through October 15: Anti-snagging rule and night closure on the North Fork from the confluence with the South Fork to the mouth of Green River.

(iii) Selective gear rules, except: Use of barbed hooks is allowed the Saturday before Memorial Day through July 31 and December 1 through March 15.

(iv) Game fish: Statewide minimum length/daily limit, except: Release cutthroat trout and wild rainbow trout.

(v) Salmon open August 1 through Nov 30:

(A) Daily limit 6; up to 3 adults.

(B) Only hatchery coho may be retained.

(b) From the posted deadline downstream of the fish collection facility upstream and tributaries: Closed waters.

(81) **Toutle River, North Fork tributaries from the mouth to the posted deadline below the fish collection facility (unless otherwise listed) (Cowlitz County):**

(a) Selective gear rules.

(b) Game fish: Statewide minimum length/daily limit, except: Release cutthroat trout and wild rainbow trout.

(82) **Toutle River, South Fork (Cowlitz County):**

(a) From the mouth to 4700 Road Bridge:

(i) Open April 16 through the Friday before Memorial Day:

(A) Selective gear rules, except: Use of barbed hooks is allowed.

(B) Game fish: Statewide minimum length/daily limit, except:

(I) Release trout.

(II) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(ii) Open the Saturday before Memorial Day through November 30: Game fish: Statewide minimum length/daily limit, except:

(A) Trout: Daily limit 2; minimum length 14 inches.

(B) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(iii) Open December 1 through March 15:

(A) Selective gear rules, except: Use of barbed hooks is allowed.

(B) Game fish: Statewide minimum length/daily limit, except:

(I) Trout: Daily limit 2; minimum length 14 inches.

(II) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(C) Salmon:

(I) Open August 1 through November 30.

(II) Daily limit 6; up to 2 may be adults.

(III) Only hatchery Chinook and hatchery coho may be retained.

(b) From 4700 Road Bridge upstream:

(i) Open the Saturday before Memorial Day through March 15.

(ii) From December 1 through March 15: Selective gear rules, except: Use of barbed hooks is allowed.

(iii) Game fish: Statewide minimum length/daily limit, except:

(A) Trout: Daily limit 2; minimum length 14 inches.

(B) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(iv) Salmon:

(A) Open August 1 through November 30.

(B) Daily limit 6; up to 2 may be adults.

(C) Only hatchery Chinook and hatchery coho may be retained.

(83) **Vancouver Lake (Clark County):**

(a) Open year-round, except Vancouver Lake shoreline 400 feet north and south of the flushing channel exit: Closed April 1 through May 31.

(b) Chumming is permissible.

(c) Game fish: Statewide minimum length/daily limit, except:

(i) Trout: Daily limit 2; minimum length 14 inches.

(ii) Largemouth bass: Daily limit 10; no minimum length; only largemouth bass under 12 inches may be retained, except 1 over 17 inches may be retained.

(iii) Smallmouth bass: Daily limit 15; no minimum length; only 1 smallmouth bass over 14 inches may be retained.

(iv) Channel catfish: Daily limit 10; no size restriction.

(v) Walleye: Daily limit 16; only 1 walleye over 22 inches may be retained.

(84) **Walupt Lake (Lewis County):** All inlet streams: Closed waters.

(85) **Washougal River (Clark County):**

(a) From the mouth to the boat ramp at the WDFW county line access site:

(i) From 1,000 feet (or posted markers) below to 200 feet above the temporary weir when the weir is installed in the river: Closed waters.

(ii) Night closure.

(iii) July 1 through October 31: Anti-snagging rule.

(iv) Open April 16 through the Friday before Memorial Day:

(A) Selective gear rules, except: Use of barbed hooks is allowed.

(B) Game fish: Statewide minimum length/daily limit, except: Release all trout.

(v) Open the Saturday before Memorial Day through March 15.

(A) Game fish: Statewide minimum length/daily limit, except:

(B) Trout: Daily limit 2; minimum length 14 inches.

(vi) March 16 through April 15: Closed.

(vii) Steelhead:

(A) Open April 16 through March 15: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(B) March 16 through April 15: Closed.

(viii) Salmon:

(A) Open August 1 through December 31.

(B) Daily limit 6; up to 3 adults may be retained, of which 2 may be Chinook.

(C) Only hatchery Chinook and hatchery coho may be retained.

(b) From the boat ramp at the WDFW county line access site to the bridge at Salmon Falls:

(i) From 1,000 feet (or posted markers) below to 200 feet above the temporary weir when the weir is installed in the river: Closed waters.

(ii) August 1 through October 31:

(A) Anti-snagging rule.

(B) Night closure.

(iii) Game fish:

(A) Open from the Saturday before Memorial Day through March 15.

(B) Game fish: Statewide minimum length/daily limit, except:

(C) Trout: Daily limit 2; minimum length 14 inches.

(D) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(iv) Salmon:

(A) Open August 1 through December 31.

(B) Daily limit 6; up to 3 adults may be retained, of which 2 may be Chinook.

(C) Only hatchery Chinook and hatchery coho may be retained.

(c) From the bridge at Salmon Falls upstream and tributaries: Closed waters.

(86) **Washougal River, West (North) Fork (Clark/Skamania counties):**

(a) From the mouth to the water intake at the department hatchery: Closed waters.

(b) From the intake at the department hatchery upstream:

(i) Open the Saturday before Memorial Day through March 15.

(ii) Game fish: Statewide minimum length/daily limit, except:

(A) Trout: Daily limit 2; minimum length 14 inches.

(B) Steelhead: Daily limit 3 hatchery steelhead; minimum length 20 inches.

(iii) Salmon:

(A) Open August 1 through December 31.

(B) Daily limit 6; up to 2 may be adults.

(C) Only hatchery Chinook and hatchery coho may be retained.

(87) **White Salmon River (Klickitat/Skamania counties):**

(a) From the mouth (Burlington Northern Railroad Bridge) to the county road bridge below the former location of the powerhouse:

(i) Open year-round.

(ii) Game fish: Statewide minimum length/daily limit, except: Release wild rainbow and wild cutthroat.

(iii) July 1 through October 31: Night closure for salmon and steelhead.

(iv) August 1 through December 31: Anti-snagging rule.

(v) Salmon and steelhead:

(A) Open April 1 through June 30:

(I) Daily limit 2; up to 2 salmon, or 2 hatchery steelhead, or one of each, may be retained.

(II) Release wild Chinook.

(B) Open July 1 through July 31:

(I) Daily limit 2; up to 2 salmon.

(II) Release wild Chinook. Closed to fishing for or retaining steelhead.

(C) Open August 1 through October 31:

(I) Daily limit 6; up to 2 adult salmon. Closed to fishing for or retaining steelhead.

(II) Only hatchery Chinook and hatchery coho may be retained.

(D) Open November 1 through March 31:

(I) Daily limit 6; up to 2 salmon, or 2 hatchery steelhead, or one of each, may be retained.

(II) Only hatchery Chinook and hatchery coho may be retained.

(b) From the county road bridge below the former location of the powerhouse upstream to Big Brother Falls (river mile 16):

(i) From Big Brother Falls downstream 400 feet: Closed waters.

(ii) Game fish: Statewide minimum length/daily limit, except: Release wild rainbow and wild cutthroat trout.

(iii) Selective gear rules, except: Use of barbed hooks is allowed.

(iv) Salmon and steelhead:

(A) Open Saturday before Memorial Day through July 31:

(I) Daily limit 2 fish, up to 2 salmon, or 2 steelhead, or one of each may be retained.

(II) Only hatchery salmon and hatchery steelhead may be retained.

(B) Open August 1 through October 31:

(I) Daily limit 6; up to 2 adult salmon, or 2 steelhead, or one of each may be retained.

(II) Only hatchery salmon and hatchery steelhead may be retained.

(88) **Wind River (Skamania County):**

(a) From the mouth to the Highway 14 Bridge:

(i) Open year-round.

(ii) March 16 through June 30: Night closure.

(iii) March 16 through June 30: Each angler aboard a vessel may deploy salmon/steelhead angling gear until the salmon/steelhead limit for all anglers aboard has been achieved.

(iv) March 16 through June 30: Two-pole fishing for salmon/steelhead is permissible so long as the angler possesses a two-pole endorsement.

(v) July 1 through October 31: Night closure for salmon and steelhead fishing.

(vi) August 1 through October 31: Anti-snagging rule applies.

(vii) Game fish: Statewide minimum length/daily limit, except:

(A) Release cutthroat trout and wild rainbow trout.

(B) Steelhead: Open November 1 through March 15; daily limit 3 hatchery steelhead; minimum length 20 inches.

(viii) Salmon and steelhead:

(A) Open March 16 through June 30: Daily limit 6; up to 2 adult salmon, or 2 hatchery steelhead, or one of each, may be retained. Release wild Chinook and wild coho.

(B) Open July 1 through September 30:

(I) Daily limit 6; up to 2 adult salmon may be retained. Closed to fishing for or retaining steelhead.

(II) Release wild Chinook and wild coho.

(C) Open October 1 through October 31:

(I) Daily limit 6; up to 2 may be adults. Closed to fishing for or retaining steelhead.

(II) Release wild coho.

(b) From the Highway 14 Bridge to 400 feet below Shipherd Falls:

(i) Open year-round.

(ii) March 16 through June 30: Night closure.

(iii) July 1 through October 31: Night closure for salmon and steelhead fishing.

(iv) Anti-snagging rule from May 1 through June 30 and August 1 through October 31.

(v) Game fish: Statewide minimum length/daily limit, except:

(A) Release cutthroat trout and wild rainbow trout.

(B) Steelhead: Open November 1 through March 15; daily limit 3 hatchery steelhead; minimum length 20 inches.

(vi) Salmon and steelhead:

(A) Open March 16 through June 30: Daily limit 6; up to 2 adult salmon, or 2 hatchery steelhead, or one of each, may be retained. Release wild Chinook and wild coho.

(B) Open July 1 through July 31:

(I) Daily limit 6; up to 2 adult salmon may be retained. Closed to fishing for or retaining steelhead.

(II) Release wild Chinook and wild coho.

(C) Open August 1 through October 31:

(I) Daily limit 6; up to 2 adult salmon may be retained. Closed to fishing for or retaining steelhead.

(II) Release wild Chinook and wild coho.

(c) From 400 feet below to 100 feet above Shipherd Falls fish ladder: Closed waters.

(d) From 100 feet above Shipherd Falls fish ladder to 400 feet below the Coffer Dam:

(i) Anti-snagging rule.

(ii) Night closure.

(iii) Open September 16 through November 30:

(A) Release all fish.

(B) Selective gear rules, except: Use of barbed hooks is allowed.

(iv) Salmon and steelhead:

(A) Open May 1 through June 30.

(B) Daily limit 6; up to 2 adult salmon, or 2 hatchery steelhead, or one of each, may be retained.

(e) From 400 feet below the Coffer Dam to 100 feet above the Coffer Dam: Closed waters.

(f) From 100 feet above the Coffer Dam to 800 yards downstream from Carson National Fish Hatchery:

(i) Anti-snagging rule.

(ii) Night closure.

(iii) Open September 16 through November 30:

(A) Release all fish.

(B) Selective gear rules, except: Use of barbed hooks is allowed.

(iv) Salmon and steelhead open May 1 through June 30: Daily limit 6; up to 2 adult salmon, or 2 hatchery steelhead, or one of each, may be retained.

(g) From 800 yards downstream from Carson National Fish Hatchery upstream to Moore Bridge:

(i) Open September 16 through November 30.

(ii) Release all fish.

(iii) Selective gear rules, except: Use of barbed hooks is allowed.

(h) From Moore Bridge upstream: Closed waters.

(89) **Wind River tributaries (Skamania County):** Closed waters.

(90) **Yale Reservoir (Cowlitz County):** Landlocked salmon rules.

(91) **Yellowjacket Creek (tributary to Cispus River) (Lewis County):** Selective gear rules.

WSR 26-15-099
PROPOSED RULES
GAMBLING COMMISSION
[Filed July 20, 2026, 1:10 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR [26-09-101].

Title of Rule and Other Identifying Information: WAC 230-15-320(4); this proposed rule change increases the prize threshold from $3,000 to $5,000 for when surveillance rooms are required to use pan-tilt-zoom cameras (PTZ) to verify winning hands, amounts of the wager, amounts of the pay out, and players who have won the prize.

Currently, house-banked card rooms are required to have a closed-circuit television system with fixed cameras over each gambling table to view gambling activities and areas including, but not limited to, cards, wagers, and the chip tray. These fixed cameras over each table provide an overview shot of the entire table and are not zoomed in on individual player faces, cards, wagers, and/or payouts. These fixed camera views must be retained for seven days.

Hearing Location(s): On August 28, [2026], at 9:00 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." Then, select "upcoming commission meetings" to confirm the hearing date, location, start time, and agenda items.

Date of Intended Adoption: August 28, 2026.

Submit Written Comments to: Tricia Gullion, 4565 7th Avenue S.E., Lacey, WA 98503, email tricia.gullion@wsgc.wa.gov, beginning July 22, 2026, by August 24, 2026.

Assistance for Persons with Disabilities: Contact Tricia Gullion, phone 360-486-3440, email askus@wsgc.wa.gov, web www.wsgc.wa.gov, by August 28, 2026.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Increasing the prize threshold from $3,000 to $5,000 will reduce the time for when surveillance rooms are required to use PTZ cameras to verify winning hands, amounts of the wager, amounts of the pay out, and players who have won the prize.

Reasons Supporting Proposal: This rule change will reduce the time surveillance observers dedicate to capturing the information required in WAC 230-15-320 and allow for more time with other duties. The increased frequency of prize payouts at the $3,000 level has also required the retaining of more surveillance video footage involving PTZs, which take up more hard drive space on digital video recorders.

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: Eugene Freer, private.

Name of Agency Personnel Responsible for Drafting: Tricia Gullion, Legislative and Rules Manager, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3473; Implementation: Jeneva Cotton, Deputy Director, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3440; and Enforcement: Tina Griffin, Director, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3440.

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 is exempt under RCW 34.05.310 (4)(d).

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.

Scope of exemption for rule proposal:

Is fully exempt.

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

July 20, 2026
Tricia Gullion
Legislative and Rules Manager

RDS-7321.1

AMENDATORY SECTION (Amending WSR 09-11-093, filed 5/18/09, effective 7/1/09)

WAC 230-15-320 Surveillance room requirements for house-banked card game licensees. House-banked card game licensees must maintain one or more surveillance rooms. They must:

(1) Control access to the surveillance room so that only surveillance department employees use the room. Owners or their approved supervisory or management personnel may also enter the surveillance room to monitor activities. Licensees may allow authorized personnel to escort any other person into the surveillance room for educational, investigative, or maintenance purposes; and

(2) Ensure that surveillance room entrances are not easily observed from the gambling floor; and

(3) Ensure that a surveillance employee is present in the room and monitoring activities using the equipment any time the card room is conducting gambling and during the count process. However, subject to subsection (4) of this section, licensees may operate the surveillance room without staff:

(a) For routine breaks that are less than ((~~thirty~~)) 30 minutes per shift; or

(b) When only nonhouse-banked card games are operated with wager limits of ((~~forty dollars~~)) $40 or less and such limits are documented in their internal controls.

(4) Ensure that any time a winning wager, a jackpot, or bonus pay out greater than ((~~three thousand dollars~~)) $5,000 is won, they use pan-tilt-zoom (PTZ) cameras to verify:

(a) Winning hands; and

(b) Amounts of the wager; and

(c) Amounts of the pay out; and

(d) Players who won the prize.

WSR 26-15-100
PROPOSED RULES
CRIMINAL JUSTICE
TRAINING COMMISSION
[Filed July 20, 2026, 1:38 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 26-07-018.

Title of Rule and Other Identifying Information: WAC 139-11-020 Requirements of training for law enforcement, 139-11-040 Curriculum review, development, and assessment, 139-11-050 Community input, and 139-11-060 Miscellaneous.

Hearing Location(s): On September 9, 2026, at 10:00 a.m., at the Washington State Criminal Justice Training Commission, Commission Room, 19010 1st Avenue South, Burien, WA 98148.

Date of Intended Adoption: September 9, 2026.

Submit Written Comments to: Lacey Ledford, 19010 1st Avenue South, Burien, WA 98148, email Lacey.Ledford@cjtc.wa.gov, beginning July 21, 2026, by September 9, 2026.

Assistance for Persons with Disabilities: Contact Lacey Ledford, phone 206-670-5813, email lacey.ledford@cjtc.wa.gov, by September 9, 2026.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Revising WAC 139-11-020, 139-11-040, 139-11-050, and 139-11-060 to add clarifying language, remove obsolete language, and [make] other applicable updates as needed.

Reasons Supporting Proposal: These WAC guide stakeholders on the Law Enforcement Training and Community Safety Act training requirements. These rules have not been updated since inception and now require the removal of outdated language and added clarifying language, as requested from the state auditor's office on behalf of our stakeholders. Other general or consistency updates may also be included.

Statutory Authority for Adoption: RCW 43.101.080 and 43.101.455.

Statute Being Implemented: RCW 43.101.080 and 43.101.455.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Alex Buijs, Burien, Washington, 206-591-7930.

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.

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

July 20, 2026.
Lacey Ledford
Rules Coordinator

RDS-7312.1

AMENDATORY SECTION (Amending WSR 19-13-011, filed 6/7/19, effective 7/8/19)

WAC 139-11-020 Requirements of training for law enforcement. This rule implements parts of Initiative Measure No. 940, passed in November 2018, and chapter 4, Laws of 2019 (SHB 1064), signed into law in February 2019. As stated in section 2 of Initiative Measure No. 940, "The intent of the people in enacting this act is to make our communities safer. This is accomplished by requiring law enforcement officers to obtain violence de-escalation and mental health training, so that officers will have greater skills to resolve conflicts without the use of physical or deadly force." While it is understood that police culture is part of the larger culture, it is critical for law enforcement training to proactively address the issue of law enforcement and its intersection with marginalized communities and contribute to changing outcomes for the better.

(1) Beginning December 7, 2019, all new general authority peace officers must complete a minimum of ((~~two hundred~~)) 200 hours of initial violence de-escalation and mental health training in the basic law enforcement academy (BLEA). Violence de-escalation and mental health training will include the following topics:

(a) Patrol tactics, actions and communication methods that de-escalate situations when appropriate to reduce the likelihood of injury to all parties involved, avoid unnecessarily escalating situations that may lead to violence, and avoid unnecessarily placing officers in situations that require or lead to deadly force by:

(i) Managing the distance between the officer and the persons involved;

(ii) Utilizing shielding to protect the officer and others from a threat;

(iii) Managing the pace of an interaction; and

(iv) Engaging in communication to increase options for resolving the incident and reduce the likelihood of injury to all parties involved.

(b) ((~~Recognizing and managing the impact of stress on the officer's perceptions and reactions;~~

~~(c)~~)) Understanding emotional intelligence and self-awareness;

((~~(d)~~)) (c) Understanding the psychology and foundational principles of procedural justice to build trust and rapport, including ((~~training on ethics~~)) responding to critical situations in an equitable manner;

((~~(e)~~)) (d) Recognizing and mitigating the impact of implicit and explicit bias on the officer's perceptions and reactions through training on emotional intelligence;

((~~(f)~~)) (e) Recognizing patterns of behavior in individuals that may be related to mental or behavioral health issue or other disability, per RCW 43.101.427(5);

((~~(g)~~)) (f) Use of techniques and communication strategies to calm persons who appear to be agitated or demonstrating unusual behavior related to a mental or behavioral health issue or other disability, per RCW 43.101.427(5);

((~~(h) Proper use of nonlethal defensive tactics to gain physical control when necessary;~~

~~(i)~~)) (g) Alternatives to the use of physical or deadly force so that de-escalation tactics, including verbal de-escalation and less lethal alternatives are part of the decision-making process leading up to the consideration of ((~~deadly~~)) force application;

((~~(j) Use of a decision-making simulator ("shoot don't shoot") and cognitive exercises to improve accurate recognition of threats and proper level of force response;~~

~~(k)~~)) (h) Understanding threat recognition and threat management techniques by identifying, prioritizing, and responding to a threat in a lawful, timely, and ethical manner;

(i) Understand the "good faith" standard as stated in RCW 9A.16.040 ((~~(4)~~)) (5)(a);

((~~(l)~~)) (j) Learning about the historical intersection of race and policing, the experience of Black Americans then and now, including: The institution of slavery through the Civil Rights Act of 1964, mass incarceration, the role and impacts of police in schools, the ongoing influence of race relations, strategies to reconcile past injustice, and the importance of fair and impartial policing. This training should be supplemented by current data and research;

((~~(m)~~)) (k) Understanding how culture and differences in experiences, histories, and social norms impacts community perceptions of law enforcement and employing cultural humility skills, with the goal of learning about respectful and effective approaches with communities of color including, but not limited to, Black Americans, African Immigrants, Latinxs, Native Americans, Asian Americans, Pacific Islanders, American Muslims, Sikhs, and Arabs;

((~~(n)~~)) (l) Learning to build more positive relationships with specific communities within areas officers serve by understanding how biases, stereotypes, and a lack of understanding about varying cultural norms negatively impacts police interactions with the public;

((~~(o)~~)) (m) Learning about the history of police interaction with the LGBTQ+ communities and learning about respectful and effective communication and interaction with these communities;

((~~(p)~~)) (n) Learning about effective communication and interaction with:

(i) Youth;

(ii) Individuals who have experienced domestic violence, sexual assault, or human trafficking;

(iii) Immigrant and refugee communities, and those with limited-English proficiency;

(iv) Persons who have barriers to hearing, understanding, or otherwise complying with law enforcement officers.

((~~(q)~~)) (o) Learning about the systemic challenges facing indigent populations, the nature of crimes and poverty, and the cycle of recidivism for those experiencing poverty;

((~~(r)~~)) (p) Examining alternatives to jail, booking, and arrest and the impacts on members of the community and public safety;

((~~(s)~~)) (q) Learning about the history of police interaction with Native American communities, including learning about tribal sovereignty, tribal culture and traditions, and how to meet the new state law requirements for notification of tribal governments when a tribal person is killed or injured;

((~~(t)~~)) (r) First-aid training on the ((~~new~~)) statewide policy, which states: "All law enforcement personnel must provide or facilitate first aid such that it is rendered at the earliest safe opportunity to injured persons at a scene controlled by law enforcement," focused on:

(i) Critical life-saving skills;

(ii) Understanding the need to balance the many essential duties of officers with "the solemn duty to preserve the life of a person with whom officers come into direct contact";

(iii) Understanding best practices for securing a scene to facilitate the safe, swift, and effective provisions for first aid to anyone injured at a scene controlled by law enforcement or as a result of law enforcement action.

(2) All peace officers certified in Washington before December 7, 2019, and lateral peace officers certified in Washington after December 7, 2019, must complete a minimum of ((~~forty~~)) 40 hours of continuing de-escalation and mental health training every three years after receiving their initial peace officer certification. It is recommended that officers complete a portion of LETCSA training annually. Incumbent peace officers must complete their first cycle of continuing de-escalation and mental health training by January 1, 2028. Continuing mental health and violence de-escalation training must include the following topics:

(a) Patrol tactics, actions and communication methods that de-escalate situations when appropriate to reduce the likelihood of injury to all parties involved, avoid unnecessarily escalating situations that may lead to violence, and avoid unnecessarily placing officers in situations that require or lead to deadly force by:

(i) Managing the distance between the officer and the persons involved;

(ii) Utilizing shielding to protect the officer and others from a threat;

(iii) Managing the pace of an interaction; and

(iv) Engaging in communication to increase options for resolving the incident and reduce the likelihood of injury to all parties involved.

(b) ((~~Recognizing and managing the impact of stress on the officer's perceptions and reactions;~~

~~(c)~~)) Understanding emotional intelligence and self-awareness;

((~~(d)~~)) (c) Understanding the psychology and foundational principles of procedural justice to build trust and rapport, including ((~~training on ethics~~)) responding to critical situations in an equitable manner;

((~~(e)~~)) (d) Recognizing and mitigating the impact of implicit and explicit bias on the officer's perceptions and reactions through training on emotional intelligence;

((~~(f)~~)) (e) Recognizing patterns of behavior in individuals that may be related to mental or behavioral health issue or other disability, per RCW 43.101.427(5);

((~~(g)~~)) (f) Use of techniques and communication strategies to calm persons who appear to be agitated or demonstrating unusual behavior related to a mental or behavioral health issue or other disability, per RCW 43.101.427(5);

((~~(h) Proper use of nonlethal defensive tactics to gain physical control when necessary;~~

~~(i)~~)) (g) Alternatives to the use of physical or deadly force so that de-escalation tactics, including verbal de-escalation and less lethal alternatives are part of the decision-making process leading up to the consideration of ((~~deadly~~)) force application;

((~~(j) Use of a decision-making simulator ("shoot don't shoot") and cognitive exercises to improve accurate recognition of threats and proper level of force response;~~

~~(k)~~)) (h) Understanding threat recognition and threat management techniques by identifying, prioritizing, and responding to a threat in a lawful, timely, and ethical manner;

(i) Understand the "good faith" standard as stated in RCW 9A.16.040 ((~~(4)~~)) (5)(a);

((~~(l)~~)) (j) Learning about the historical intersection of race and policing, the experience of Black Americans then and now, including: The institution of slavery through the Civil Rights Act of 1964, mass incarceration, the role and impacts of police in schools, the ongoing influence of race relations, strategies to reconcile past injustice, and the importance of fair and impartial policing. This training should be supplemented by current data and research;

((~~(m)~~)) (k) Understanding how culture and differences in experiences, histories, and social norms impacts community perceptions of law enforcement and employing cultural humility skills, with the goal of learning about respectful and effective approaches with communities of color including, but not limited to, Black Americans, African Immigrants, Latinxs, Native Americans, Asian Americans, Pacific Islanders, American Muslims, Sikhs, and Arabs;

((~~(n)~~)) (l) Learning to build more positive relationships with specific communities within areas officers serve by understanding how biases, stereotypes, and a lack of understanding about varying cultural norms negatively impacts police interactions with the public;

((~~(o)~~)) (m) Learning about the history of police interaction with the LGBTQ+ communities and learning about respectful and effective communication and interaction with these communities;

((~~(p)~~)) (n) Learning about effective communication and interaction with:

(i) Youth;

(ii) Individuals who have experienced domestic violence, sexual assault, or human trafficking;

(iii) Immigrant and refugee communities, and those with limited-English proficiency; and

(iv) Persons who have barriers to hearing, understanding, or otherwise complying with law enforcement officers.

((~~(q)~~)) (o) Learning about the systemic challenges facing indigent populations, the nature of crimes and poverty, and the cycle of recidivism for those experiencing poverty;

((~~(r)~~)) (p) Examining alternatives to jail, booking, and arrest and the impacts on members of the community and public safety;

((~~(s)~~)) (q) Learning about the history of police interaction with Native American communities, including learning about tribal sovereignty, tribal culture and traditions, and how to meet the new state law requirements for notification of tribal governments when a tribal person is killed or injured;

((~~(t)~~)) (r) First-aid training on the ((~~new~~)) statewide policy, which states: "All law enforcement personnel must provide or facilitate first aid such that it is rendered at the earliest safe opportunity to injured persons ((~~as~~)) at a scene controlled by law enforcement," focused on:

(i) Critical life-saving skills;

(ii) Understanding the need to balance the many essential duties of officers with "the solemn duty to preserve the life of a person with whom officers come into direct contact";

(iii) Understanding best practices for securing a scene to facilitate the safe, swift, and effective provisions for first aid to anyone injured at a scene controlled by law enforcement or as a result of law enforcement action.

AMENDATORY SECTION (Amending WSR 19-13-011, filed 6/7/19, effective 7/8/19)

WAC 139-11-040 Curriculum review, development, and assessment. (1) LETCSA training will be developed by commission staff in partnership with subject matter experts from across the state and across various related disciplines.

(2) All curricula will be reviewed and approved consistent with commission policies and procedures.

((~~(2)~~)) (3) All training and student performance will be assessed consistent with current commission policies and procedures.

((~~(3)~~)) (4) All training will utilize an effective pedagogical approach for law enforcement on sensitive issues, and the efficacy of training should be continuously assessed with before-and-after testing of officer-participant if recommended by the subject matter experts involved in developing the curriculum.

((~~(4) Continuing training will be developed by commission staff in partnership with subject matter experts from across the state and across various related disciplines.~~))

(5) The training will be delivered in a variety of local/regional venues including, but not limited to, classrooms, gymnasiums, simulators, ranges, online platforms, and community settings. A variety of educational methods will be employed including classroom lectures, mock scenarios, and physical skill development practice.

(6) When required by commission policy, the training will be delivered by a cadre comprised of commission certified instructors who have completed an ((~~eighty~~)) 80 hour, "train the trainer" course and shall use to the extent possible field training officers from local agencies, as well as other trainers with unique qualifications from outside of the law enforcement profession.

AMENDATORY SECTION (Amending WSR 19-13-011, filed 6/7/19, effective 7/8/19)

WAC 139-11-050 Community input. (1) ((~~The commission will develop a working roster of community members that includes, but is not limited to, representatives of stakeholder groups identified in RCW 43.101.455 and family members who have lost loved ones in fatal encounters with police.~~)) The commission will host an annual summit on each side of the state ((~~with the stakeholders to seek input and assistance with the development and delivery of training and the recruitment of subject matter experts~~)) to provide the community with updates on program progress and other information relevant to program activities.

(2) The commission will develop an annual report on the following topics and post those reports on their website:

(a) Updates on progress and other information as it relates to program activities;

(b) Data on training completion;

(c) Hours and learning objectives for new curriculum related to the de-escalation training topics identified in WAC 139-11-020;

((~~(b)~~)) (d) Biographies of trainers delivering training on topics identified in WAC 139-11-020; and

((~~(c)~~)) (e) Waivers granted to agencies requesting credit for training that meets the requirements of WAC 139-11-030.

((~~(3) The commission will appoint an ad hoc committee on December 6, 2019, to work with commission staff to develop a structure and format for the annual meetings. The ad hoc committee will report back to the commission at the March 2020 commission meeting.~~))

AMENDATORY SECTION (Amending WSR 19-13-011, filed 6/7/19, effective 7/8/19)

WAC 139-11-060 Miscellaneous. (1) All incumbent peace officers are required to complete ((~~forty~~)) 40 hours of violence de-escalation and mental health training once every three years. ((~~This training may substitute for the annual twenty-four hour in-service requirement under WAC 139-05-300 in the year the officer completes the forty hour violence de-escalation training~~)) Successful completion of any LETCSA training in a calendar year may count towards an officer's annual 24-hour in-service requirement under WAC 139-05-300.

(2) Beginning January 2020, the commission will retain records submitted by law enforcement agencies demonstrating compliance with WAC 139-11-020 in accordance with state records retention schedules. The commission must make this information available to the public.

WSR 26-15-101
PROPOSED RULES
CRIMINAL JUSTICE
TRAINING COMMISSION
[Filed July 20, 2026, 1:47 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 26-13-097.

Title of Rule and Other Identifying Information: WAC 139-12-010 Purpose, 139-12-020 Definitions, and 139-12-030 Independent investigations.

Hearing Location(s): On September 9, 2026, at 10:00 a.m., at the Washington State Criminal Justice Training Commission, Commission Room, 19010 1st Avenue South, Burien, WA 98148.

Date of Intended Adoption: September 9, 2026.

Submit Written Comments to: Lacey Ledford, 19010 1st Avenue South, Burien, WA 98148, email Lacey.Ledford@cjtc.wa.gov, beginning July 21, 2026, by September 9, 2026.

Assistance for Persons with Disabilities: Contact Lacey Ledford, phone 206-670-5813, email lacey.ledford@cjtc.wa.gov, by September 9, 2026.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Revising WAC 139-12-010 to add and update language. Revising WAC 139-12-020 to add and update definitions. Revising WAC 139-12-030 to add clarification, updates, and references to independent investigation criteria. Splitting up WAC 139-12-030 into new sections.

Reasons Supporting Proposal: These rule changes will provide clarity for those conducting, reviewing, or assessing independent investigations and will satisfy recommendations from the state auditor's office by aligning with the office of independent investigations' chapter 43.102 RCW.

Statutory Authority for Adoption: RCW 43.101.080 and 10.114.011.

Statute Being Implemented: RCW 43.101.080 and 10.114.011.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Alex Buijs, Burien, Washington, 206-591-7930.

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.

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

July 20, 2026
Lacey Ledford
Rules Coordinator

RDS-7175.1

AMENDATORY SECTION (Amending WSR 20-01-023 and 20-01-121, filed 12/6/19 and 12/16/19, effective 1/6/20 and 1/16/20)

WAC 139-12-010 Purpose. (1) In 2015 the U.S. Department of Justice issued a final report from the 21st Century Task Force on Policing. A core focus of that report addressed strategies for improving relationships, increasing community engagement, and fostering cooperation. The report recommended clear and comprehensive policies on the use of force, training on the importance of deescalation, crisis intervention and mental health, the provision of first aid, and recommended external and independent investigations in officer involved shootings resulting in injury or death. Initiative 940 and SHB 1064 incorporated those recommendations and these WACs implement the requirement of an independent investigation that is completely independent of the involved agency. The goal of this requirement is to enhance accountability and increase trust to improve the legitimacy of policing for an increase in safety for everyone.

(2) Ultimately, this is about the sanctity of all human life; the lives of police officers and the lives of the people they serve and protect. The preservation of life should be at the heart of American policing. RCW 9A.16.040 provides a legal justification for officers whose use of deadly force meets the "good faith" standard. RCW 10.114.011 requires that where the use of deadly force by a peace officer results in death, substantial bodily harm, or great bodily harm an independent investigation must be completed to inform any determination of whether the use of deadly force met the good faith standard established in RCW 9A.16.040 and satisfied other applicable laws and policies. The independent investigation is conducted in the same manner as a criminal investigation and state law requires an "independent investigation" completely independent of the involved agency.

(3) The Washington state office of independent investigations (OII) conducts investigations of police use of force and other incidents involving law enforcement as authorized by chapter 43.102 RCW. If OII declines to investigate a use of deadly force incident, the duty to investigate remains with the independent investigation team (IIT) or local law enforcement authority with jurisdiction over the incident. RCW 43.102.120(6).

(4) There are five principles that are fundamental to enhancing public trust in the integrity of independent investigations involving police use of deadly force:

(a) Independence;
(b) Transparency;
(c) Communication;
(d) Credible process; and
(e) Credible investigators.

RDS-7155.3

AMENDATORY SECTION (Amending WSR 20-01-023, filed 12/6/19, effective 1/6/20)

WAC 139-12-020 Definitions. (1) **Best practices** - For the purpose of this chapter, best practices are defined as methods, techni-

ques, and procedures that have consistently shown by research and experience to produce superior results and are established or proposed as a standard, suitable for widespread adoption in the law enforcement profession.

(2) **Completed investigation** - The final work product of the IIT for the purpose of informing the prosecuting attorney's charging decision. An independent investigation must be completed to inform any determination of whether the use of deadly force met the good faith standard established in RCW 9A.16.040 and satisfied other applicable laws and policies.

(3) **Criminal background information** - Has the same meaning as "criminal history record information" as set forth in RCW 10.97.030(4).

(4) **Deadly force** - Has the same meaning as "deadly force" as set forth in RCW 9A.16.010((~~, "deadly force" means the intentional application of force through the use of firearms or any other means reasonably likely to cause death or serious physical injury~~)).

(5) **Evanescent evidence** - ((~~Physical evidence that may be degraded or tainted by human or environmental factors if left unprotected or unpreserved for the arrival of the independent investigative team (IIT)~~)) Evidence that may otherwise be lost and should be protected and preserved for the benefit of the independent investigation including: Physical evidence that is at risk of being destroyed or disappearing and cannot be easily reconstructed, including evidence which may be degraded or tainted by human or environmental factors if left unprotected or unpreserved before the arrival of OII and/or the IIT; identification and contact information for witnesses to the incident; photographs and other methods of documenting the location of physical evidence and location/perspective of witnesses. RCW 43.102.120 (2)(b).

(6) **Good faith standard** - Has the same meaning as set forth in RCW 9A.16.040((~~, ""good faith" is an objective standard which shall consider all the facts, circumstances, and information known to the officer at the time to determine whether a similarly situated reasonable officer would have believed that the use of deadly force was necessary to prevent death or serious physical harm to the officer or another individual."~~)).

(7) **Great bodily harm** - Has the same meaning as set forth in RCW 9A.04.110((~~, "great bodily harm" means bodily injury which creates a probability of death, or which causes significant serious permanent disfigurement, or which causes a significant permanent loss or impairment of the function of any bodily part or organ~~)).

(8) **Independent investigative team ((~~(IIT)~~))** - A team of qualified and certified peace officer investigators, civilian crime scene specialists, and at least two nonlaw enforcement community representatives who operate completely independent of any involved agency to conduct investigations of police deadly force incidents. An IIT ((~~is created when multiple law enforcement agencies enter into a written agreement to investigate police use of deadly force incidents in their geographical regions. A single law enforcement agency may fulfill the independent investigative function~~)) may be comprised of multiple law enforcement agencies who jointly investigate police use of force incidents in their geographical regions or may be a single law enforcement agency, provided it is not the involved agency.

(9) **Initial incident response** - This is the period in time immediately following a police use of deadly force incident, and prior to the arrival of OII and/or the IIT, when involved agency personnel on scene and other first responders immediately take actions to render

the scene safe and provide or facilitate life-saving first aid to persons at the scene who have life threatening injuries.

(10) **Involved agency** - ((~~The agency that employs or supervises the officer(s) who used deadly force. There can be more than one "involved agency."~~)) Means the agency that employs or supervises the officer (or officers) who are considered an involved officer (or involved officers) as defined in this section.

(11) **Involved officer** - Has the same meaning as RCW 43.102.010 (9)(a).

(12) **Member agency** - Each of the agencies ((~~that~~)) who enter((~~s~~)) into a written agreement to investigate police use of deadly force ((~~in their geographical region~~)) as part of an IIT.

(13) **Necessary** - Has the same meaning as set forth in RCW 9A.16.010((~~, "necessary" means that no reasonably effective alternative to the use of force appeared to exist and that the amount of force used was reasonable to affect the lawful purpose intended~~)).

(14) **Office of independent investigations** - A limited-authority investigative law enforcement agency within the governor's office, established under chapter 43.102 RCW to conduct independent investigations of use of force and other incidents involving law enforcement. RCW 43.102.030.

(15) **Prosecutor's review** - The period of time when the IIT presents a completed investigation to the prosecutor, who then reviews all the facts and makes a charging decision.

(16) **Serious misconduct** - Any act or omission by a peace officer that constitutes a significant breach of public trust, professional responsibilities (to include policy violations), or law. Serious misconduct must be confirmed and documented through an investigation or disciplinary process. Agencies participating on an IIT should consider the specific facts and totality of the circumstances of the misconduct when determining the level of seriousness of the alleged misconduct. At a minimum, examples of serious misconduct include, but are not limited to:

(a) All misconduct listed under RCW 43.101.105: Denial, suspension, or revocation of peace and corrections officer certification.

(b) Discrimination of any type, based on protected classes identified under RCW 49.60.030(1).

(c) Theft, fraud, dishonesty, and abuse of authority including, but not limited to: Theft, falsifying an official police record or making a false statement, serious ACCESS (a centralized computer enforcement service system) violations, obtaining or disclosing confidential information, and excessive use of force.

(d) Dishonorable behavior including, but not limited to: Harassment, bullying, aggressive or intimidating behavior, or threats of violence, including domestic violence.

(17) **Substantial bodily harm** - Has the same meaning as set forth in RCW 9A.04.110 (4)(b)((~~, "substantial bodily harm" means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part~~)).

AMENDATORY SECTION (Amending WSR 22-02-001, filed 12/22/21, effective 1/22/22)

WAC 139-12-030 Independent investigation criteria—Independence. ((~~There are five principles that are fundamental to enhancing public trust in the integrity of independent investigations involving police use of deadly force:~~

~~• Independence;~~

~~• Transparency;~~

~~• Communication;~~

~~• Credible process; and~~

~~• Credible investigators.~~

~~Standards are necessary for the involved agency and the public to assess whether the actions taken by the IIT are independent, transparent, credible, and communicated in a manner that results in a compliant and complete investigation and builds public trust.~~

~~(1) **Independence.**~~

~~(a)~~)) (1) Independence is essential to the integrity and objectivity of the investigation. Maintaining independence is achieved through compliance with statutes, rules and regulations designed to prohibit undue influence or conflicts of interest, and the appearance of undue influence or conflicts of interest, by the involved agency in the investigation.

((~~(b) Standards for an investigation completely independent of the involved agency:~~

~~•~~)) (2) Once the involved agency personnel and/or other first responders have rendered the scene safe and provided or facilitated life-saving first aid to persons at the scene who have life-threatening injuries, the involved agency ((~~will immediately call~~)) shall immediately notify the OII and IIT.

((~~Then~~)) (3) The primary focus of the involved agency then shifts to the protection and preservation of evanescent evidence in order to maintain the integrity of the scene until OII and/or the IIT arrives. Once OII and/or the IIT arrives, and the OII and/or IIT ((~~commander has~~)) lead commander determines that the appropriate resources are on scene, the involved agency will relinquish control of the scene to OII or the IIT (whoever arrives first or is the investigating entity).

(a) If OII determines it will investigate an incident, it will thereafter be the lead investigative body in the case and have priority over any other state or local agency investigating the incident. RCW 43.102.080(6). In this scenario, the OII will identify a responding OII incident commander who will communicate and coordinate with the designated point of contact for the involved or venue agency, or on-scene incident commander, and any responding IIT incident commander as needed while en route.

(b) If OII declines to investigate a case, the authority and duty to investigate remains with the IIT or local law enforcement authority with jurisdiction over the incident. RCW 43.102.120(6).

((~~•~~)) (4) No member of the involved agency may participate in any way in the investigation of police use of deadly force conducted by OII or the IIT, with the ((~~following~~)) exception of the use of specialized equipment and where no alternatives exist. If the IIT is investigating, the following requirements apply:

((~~•~~)) (a) Specialized equipment or facilities belonging to the involved agency may ((~~not~~)) be used by the IIT ((~~unless~~)) only if the following criteria are met:

((~~1.~~)) (i) No reasonable alternative exists;

((~~2.~~)) (ii) The equipment is critical to carrying out the independent investigation; and

((~~3.~~)) (iii) The use is approved by the IIT commander.

(b) If the equipment or facility is used, the nonlaw enforcement community representatives on the IIT must be notified about:

((~~1.~~)) (i) Why it needs to be used; and

((~~2.~~)) (ii) The steps taken to appropriately limit the role of any involved agency personnel in facilitating the use of that equipment.

((~~• No~~)) (5) The IIT may not share any information about the ongoing independent investigation of police use of deadly force ((~~will be shared~~)) with any member of the involved agency((~~. The administrative investigation of the involved agency must remain separate from the independent criminal investigation~~)) except as follows:

(a) Limited briefings given to the chief, sheriff, or their designee of the involved agency about the progress of the investigation; or

(b) Information essential to protect the safety of the community or the integrity of any ongoing, urgent criminal investigation; and

(c) Sharing of the information will not impede the ongoing investigation being conducted by OII and/or the IIT.

(6) If the involved agency chief or sheriff has a formal designee attending the limited briefings in their place, this designation must be provided to the IIT in writing prior to such briefing.

(7) No information provided under subsection (5) of this section may be divulged to any involved officers or witness officers. If any information is disclosed pursuant to subsection (5)(b) of this section, the following must also occur:

(a) The IIT must document the exact information provided, to whom it was provided, and the reason it was provided;

(b) The involved agency must agree in writing that no involved officer or witness officer will have access to the information other than what is released to the general public; and

(c) The person, family, or representative of any person who is the subject of the action by the involved officer that is under investigation by the IIT must be notified by the IIT that the information was provided and, as soon as possible without jeopardizing the integrity of any investigation, be provided with the information contained in subsection (5)(a) and (b) of this section.

((~~•~~)) (8) If the chief or sheriff of the involved agency requests that the IIT release the body cam video or other investigation information of urgent public interest, the IIT commander should honor the request with the agreement of the prosecutor of jurisdiction.

((~~(2) **Transparency.**~~

~~(a) Transparency is the critical element of procedural justice that allows community members to assess whether the process of the investigation is conducted in a trustworthy manner and complies with the standards for the five listed principles.~~

~~(b) Standards for the transparency of an independent investigation:~~

~~• The policies and operating procedures of the IIT will be available to the public.~~

~~• The names of the members, supervisors, commanders, and nonlaw enforcement community representatives on the IIT will be available to the public.~~

~~• A minimum of two nonlaw enforcement community representatives from the impacted communities will be assigned to each IIT to:~~

~~a. Participate directly in the vetting, interviewing, and/or selection of IIT investigators. (Existing teams will have until January 2021 to provide necessary information about the qualifications of current IIT investigators to the nonlaw enforcement community representatives for review.)~~

~~b. Review written conflict of interest statements submitted within 72 hours of the commencement of each investigation by the investigators. Agencies may use a standard conflict of interest form developed by the Washington state criminal justice training commission. If an IIT uses their own conflict of interest form, the standards must meet or exceed the form provided by the Washington state criminal justice training commission;~~

~~c. Have access to the investigation file when it is completed;~~

~~d. Be provided a copy of all press releases and communication to the media prior to release; and~~

~~e. Review notification of equipment use of the involved agency.~~

~~– The nonlaw enforcement community representatives must sign a binding confidentiality agreement at the beginning of each police use of deadly force investigation that remains in effect until the prosecutor of jurisdiction either declines to file charges or the criminal case is concluded.~~

~~– Any nonlaw enforcement representative or law enforcement officer found to have violated the confidentiality agreement will be subject to immediate removal from the team, as well as any future independent investigation.~~

~~• The commander or other representative of the IIT will provide public updates about the investigation at a minimum of once per week, even if there is no new progress to report.~~

~~• When an independent investigation is complete the information will be made available to the public in a manner consistent with applicable state law.~~

~~(3)~~ **~~Communication.~~**

~~(a) Communication is key to enhancing the public's perception of police legitimacy and fairness. A lack of open communication leads to suspicion and damages trust.~~

~~(b) Standards for communication during an independent investigation:~~

~~• A family member of the person against whom deadly force has been used will be notified as soon as they can be located by either the involved agency or the IIT, whichever is faster.~~

~~• A member of the IIT will be assigned as a family liaison within the first 24 hours and keep the family, or a representative of the family's choice, apprised of all significant developments in the independent investigation and will give the family and the involved agency advance notice of all scheduled press releases.~~

~~• Neither the involved agency nor the IIT will provide the media with criminal background information of the person against whom deadly force has been used, unless it is specifically requested, and release of the information is required by the Public Records Act or other applicable laws.~~

~~• If the person against whom deadly force is used is, or is believed to be a member of a federally recognized tribe:~~

~~– The involved agency will notify the governor's office of Indian affairs (GOIA) in accordance with RCW 10.114.021.~~

~~- A member of the IIT will be assigned as a tribal liaison within the first 24 hours and keep the tribe (or a representative of the tribe's choice) apprised of all significant developments of the investigation.~~

~~(4)~~ **~~Credibility.~~**

~~(a) In order for investigations to be viewed as credible it is critical to demonstrate that the procedures followed are consistent, known to the public, and rooted in best practices for homicide investigations, with particular attention focused on those unique areas of evidence relevant to the officer's decision-making process. Equally important is the credibility of the investigators. Training, a history of ethical behavior, and demonstrated impartiality are critical to maintain confidence in the investigation.~~

~~(b) Standards for a credible independent investigative process:~~

~~• After life-saving first aid has been provided, members of the involved agency and other first responders at the scene will:~~

~~- Secure the incident scene and maintain its integrity until the IIT arrives.~~

~~• The perimeter must be clearly marked and protected.~~

~~• Evanescent evidence must be located and preserved, consistent with best practices published annually by the criminal justice training commission.~~

~~• The independent investigation will follow accepted best practices for homicide investigations published and annually updated by the WSCJTC.~~

~~• An involved agency conducting a timely internal administrative investigation for compliance with department policy and procedures is critical to maintaining public trust and is separate and distinct from the independent investigation required by the LETCSA. To allow the involved agency to move forward with the administrative investigation in a timely fashion, the independent investigation required by LETCSA must be conducted in a manner that does not inhibit the involved agency from doing so. To accomplish this:~~

~~• The IIT commander must create and enforce firewalls, which is a process to prevent information sharing between the IIT from the involved agency, and train all team members to observe them to ensure no member of the IIT receives any compelled statements of the involved officer(s) or any investigative content that was informed by such compelled statements.~~

~~• The firewall system and training must ensure that the involved agency is affirmatively advised not to furnish "prohibited content" to the IIT.~~

~~• If any member of the IIT receives prohibited information, the investigator receiving the prohibited information must immediately report it to their supervisor and the member must discontinue participation in the investigation. The information will be removed and/or isolated from the remaining investigation unless the prosecutor of jurisdiction deems such action unnecessary.~~

~~(c) The standards for credible investigators include:~~

~~(i) Appointed Members.~~

~~The chiefs and sheriffs who sign a written agreement to support and participate in the IIT shall appoint:~~

~~• The IIT leadership team, which may include an IIT commander, assistant commander, or co-commander.~~

~~• At least two nonlaw enforcement community representatives who have credibility with and ties to communities impacted by police use of deadly force. The chiefs, sheriffs, and community members of each~~

~~regional team shall create a transparent process for soliciting names and creating a roster of individuals willing to serve in this capacity. The IIT community representatives must be chosen from this list by the chief(s), sheriff(s), and community member(s). The Washington state criminal justice training commission will post IIT rosters on the criminal justice training commission website from each region, which will be provided by the IITs. There shall be standardized trainings for nonlaw enforcement community representatives, including training on the requirements of the mandatory nondisclosure agreements.~~

~~• All IIT leadership shall be commissioned peace officer(s), with previous experience in criminal investigations.~~

~~• The IIT supervisors shall be recommended by their agency to the IIT commander.~~

~~(ii) Selection Process for IIT Members.~~

~~The IIT leadership shall:~~

~~• Ensure all applicants meet all time, rank, and training prerequisites described in (c)(v) of this subsection.~~

~~• Ensure that qualified applicants are interviewed by a panel, which includes the nonlaw enforcement community representatives and other members of the IIT selected by the IIT commander.~~

~~• All applicants shall be interviewed using criteria pertinent for the position of an IIT investigator. The same questions should be asked of each applicant.~~

~~• At the conclusion of the panel the IIT commander shall consider the recommendations of the panel and select those best suited for the needs of the IIT.~~

~~(iii) Requirements for IIT Investigators.~~

~~• Applicants for the position of investigator must be employed by a member agency of the IIT.~~

~~• The applicant shall be a commissioned peace officer in the state of Washington with previous experience as a detective or investigator, or have special skills or experience necessary for the team.~~

~~(iv) Periodic Appointment Review.~~

~~The chief or sheriff of a member agency, and the IIT commander shall review the appointment of their IIT members who have served three years for possible rotation or replacement.~~

~~(v) Training Requirements.~~

~~The credibility of an individual assigned to an IIT is grounded in two elements: Training and experience in criminal investigations. Since some IIT members were chosen because of their experience in criminal investigations, it is important to clearly define expectations for both training and experience, and acknowledge the relationship between those two elements.~~

~~IIT members who do not meet the training requirement are eligible to participate on the IIT, but not in a lead position.~~

~~Civilian IIT members (i.e. crime scene investigators, evidence technicians, etc.) are not required to obtain the qualified lead investigator certificate, but the IIT leadership shall establish reasonable noncommissioned training requirements through their IIT protocol.~~

~~The CJTC will issue an "IIT qualified lead investigator certificate" to ensure that those who are assigned to a lead investigator role for an IIT meet the training requirements listed below by the end of 2020.~~

~~To obtain an IIT qualified lead investigator certificate, candidates must:~~

~~• Provide proof of at least three years of uninterrupted experience as a certified peace officer, crime scene investigator, or related expertise in a discipline relevant to investigations.~~

~~• Provide proof of successful completion of the prescribed training classes, (or appropriate equivalent experience), listed in this chapter.~~

~~(A) Basic training classes:~~

~~• Basic homicide investigation;~~

~~• Interviewing and interrogation;~~

~~• LETCSA Violence deescalation and mental health training.~~

~~IIT members who have two years or more of relevant, full-time criminal investigative work experience may substitute their work experience for the required basic training classes. County sheriffs, police chiefs, and IIT commanders are encouraged to promote continuing education as a best practice for all members assigned to the IIT.~~

~~(B) Advanced training classes.~~

~~A minimum of eight hours of training annually may include, but is not limited to, the following criminal investigation topics:~~

~~• Advanced homicide investigation techniques;~~

~~• Advanced interviewing and interrogation;~~

~~• Officer-involved shooting investigation;~~

~~• In-custody death investigation;~~

~~• Excited delirium and positional asphyxia;~~

~~• Bloodstain pattern analysis;~~

~~• Crime scene photography/videography and~~

~~• Other related training, seminars, and conferences or on-going training as offered by WSCJTC or other training venues on an as available basis.~~

~~(C) In-service training.~~

~~• All IIT members shall receive priority registration to LETCSA training, required homicide investigations training, and recertification every three years.~~

~~• The IIT shall train as a unit at least annually.~~

~~(vi) Demonstrated History of Honorable Behavior.~~

~~Investigators assigned to an IIT are expected to have a work history free of a sustained finding of serious misconduct and/or a pattern of sustained complaints and a personal history free of demonstrable bias or prejudice against community members that may be impacted by the police use of deadly force.~~

~~Examples of disqualifying sustained misconduct and/or personal history include, but are not limited to:~~

~~• Discrimination of any type, based on protected classes identified under RCW 49.60.030(1).~~

~~• Theft, fraud, dishonesty, and abuse of authority including, but not limited to: Theft, falsifying an official police record or making a false statement, serious ACCESS (a centralized computer enforcement service system) violations, obtaining or disclosing confidential information, and excessive use of force.~~

~~• Dishonorable behavior including, but not limited to: Harassment, bullying, aggressive or intimidating behavior, or threats of violence, including domestic violence.~~

~~(vii) Conflicts of Interest.~~

~~Within 72 hours of the commencement of each investigation, investigators and nonlaw enforcement community representatives, must complete a "conflict of interest" assessment tool regarding any connection to the officers being investigated. The assessment (created by WSCJTC) will include questions about prior interactions or relation-~~

~~ships with officers being investigated, and will address social conflict, work conflict, and bias. The conflict assessment will be reviewed and discussed by the nonlaw enforcement community representatives and the IIT commander. The conflict of interest assessments for investigators and nonlaw enforcement community representatives will be developed at the March 2020 summit and adopted by the commission at the June 2020 meeting.~~)) (9) To ensure the independence of the use of deadly force investigation, if OII has indicated its intent to investigate an incident and the IIT arrives at the scene of an incident prior to OII investigators, the IIT should assume command of the scene from the involved agency until relieved by OII for the purpose of preserving evidence, providing information to OII, and taking specific actions at OII's request.

NEW SECTION

WAC 139-12-040 Independent investigation criteria—Transparency. (1) Transparency is the critical element of procedural justice that allows community members to assess whether the process of the investigation is conducted in a trustworthy manner and complies with the standards for the five listed principles.

(2) The policies and operating procedures of the IIT will be available to the public.

(3) The names of the members, supervisors, commanders, and nonlaw enforcement community representatives on the IIT will be available to the public.

(4) A minimum of two nonlaw enforcement community representatives from the jurisdictions of the participating agencies on the IIT will be assigned to each IIT to:

(a) Participate directly in the vetting, interviewing, and/or selection of IIT investigators;

(b) Review written conflict of interest statements submitted by the investigators and nonlaw enforcement community representatives;

(c) Be present at the briefings with the involved agency(s) chief or sheriff;

(d) Have access to the investigation file when it is completed;

(e) Be provided a copy of all press releases and communication to the media prior to release; and

(f) Review notification of specialized equipment use of the involved agency.

(5) The nonlaw enforcement community representatives must sign a binding confidentiality agreement at the beginning of each police use of deadly force investigation that remains in effect until the prosecutor of jurisdiction either declines to file charges or the criminal case is concluded.

(6) Any nonlaw enforcement representative found to have violated the confidentiality agreement will be subject to immediate removal from the team, as well as any future independent investigation.

(7) The commander or other representative of the IIT will provide public updates about the investigation at a minimum of once per week, even if there is no new progress to report.

(8) When an independent investigation is complete the information will be made available to the public in a manner consistent with applicable state law.

(9) The incident specific IIT obligations required by this section do not apply once OII has assumed responsibility for conducting the investigation.

NEW SECTION

WAC 139-12-050 Independent investigation criteria—Communication. (1) Communication is key to enhancing the public's perception of police legitimacy and fairness. A lack of open communication can lead to suspicion and damaged trust.

(2) If OII has communicated its intent to investigate the incident, it will be responsible for notifying a family member of the person against whom force was used. OII may request assistance from the IIT or local law enforcement to ensure notification is made as soon as possible.

(3) If OII has assumed authority for the investigation, it will be solely responsible for communications with the person against whom force was used or their family for the remainder of the investigation. This is true even if the IIT has assisted in some capacity on the independent investigation at the request of OII or is handling a concurrent investigation.

(4) If OII declines to investigate the incident, a member of the IIT will be assigned as a family liaison within the first 24 hours and keep the family, or a representative of the family's choice, apprised of all significant developments in the independent investigation.

(5) If the IIT is lead on the investigation, the IIT and designated IIT family liaison are responsible for identifying, locating, and notifying an appropriate family member of the person against whom deadly force has been used, as soon as possible to ensure that the family:

(a) Is notified, when possible, prior to learning about the incident from the press, social media, friends, or neighbors.

(i) Family notification of a decedent should be done in consultation with the venue coroner or medical examiner.

(ii) If a certified peace officer is notifying the family in-person, they should wear clothing other than their duty uniform.

(b) Has a reliable way to communicate directly with the liaison and the IIT.

(c) Is kept informed about the investigative process, even when there is nothing new to report unless waived.

(d) Is provided advance notice of scheduled press releases and/or significant developments of the investigation.

(e) Has assistance in coordinating with a victim advocate if one is available, especially if requested by the family.

(6) The IIT will give the impacted individual, family, or representative and the involved agency advance notice of all scheduled press releases.

(7) If requested, the impacted individual, family, or representative may waive regular updates, required by subsection (5)(c) of this section, from the family liaison if no significant progress is made in the investigation. The IIT is still required to keep the family or representative apprised of significant developments or scheduled press releases in the independent investigation. The IIT must document this in writing that regular updates were waived.

(a) Before the IIT waives regular updates, the IIT will present the impacted individual, family, or representative with options such as a reduced amount and/or different methods of communication from the family liaison.

(b) Additionally, if regular updates are waived, the IIT will provide the impacted individual, family, or representative with contact information if they would like to opt-in back into receiving regular updates. This must be documented in the investigative file.

(8) Neither the involved agency nor the IIT will provide the media with criminal background information of the person against whom deadly force has been used, unless it is specifically requested, and release of the information is required by the Public Records Act or other applicable laws.

(9) If the person against whom deadly force is used is, or is believed to be a member of a federally recognized tribe:

(a) The involved agency shall ensure that notification to the governor's office of Indian affairs (GOIA) is completed within a reasonable period of time, but not more than 24 hours after they have good reason to believe the deceased person was an enrolled member of a federally recognized tribe, in accordance with RCW 10.114.021. This notification must be done by the involved agency regardless of who is conducting the independent investigation.

(b) As soon as they are made aware, a member of the IIT will be assigned as a tribal liaison and keep the tribe (or a representative of the tribe's choice) apprised of all significant developments of the investigation.

(c) If OII is the lead investigative agency, OII's tribal relations division will handle communications with the tribe (or a representative of the tribe's choice). The involved agency is still required to notify GOIA per RCW 10.114.021.

NEW SECTION

WAC 139-12-060 Independent investigation criteria—Credibility. (1) In order for investigations to be viewed as credible it is critical to demonstrate that the procedures followed are consistent, known to the public, and rooted in best practices, with particular attention focused on those unique areas of evidence relevant to the officer's decision-making process. Equally important is the credibility of the investigators. Training, a history of ethical behavior, and demonstrated impartiality are critical to maintain confidence in the investigation.

(2) After life-saving first aid has been provided, members of the involved agency and other first responders at the scene will secure the incident scene and maintain its integrity until OII and/or the IIT arrives.

(a) The perimeter must be clearly marked and protected.

(b) Evanescent evidence must be located and preserved, consistent with the best practices for independent investigations published annually by the Washington state criminal justice training commission (WSCJTC).

(3) The independent investigation shall follow the best practices for independent investigations published and annually updated by the WSCJTC.

(4) If the IIT investigation is reopened for any reason, and OII is not taking lead, the IIT shall be responsible for continuing the investigation. The IIT is required to follow all applicable requirements of the law, to include following WSCJTC's best practices for independent investigations.

(5) The involved agency shall provide OII and/or the IIT access to, and copies of, reports and information necessary or related to the use of deadly force investigation, as described in RCW 43.102.080(7) as soon as possible.

(6) Although the criminal independent investigation takes priority, an involved agency conducting a timely internal administrative investigation for compliance with department policy and procedures is critical to maintaining public trust and is separate and distinct from the independent investigation required by the LETCSA. To allow the involved agency to move forward with the administrative investigation in a timely fashion, the independent investigation required by LETCSA should be conducted in a manner that does not unreasonably inhibit the involved agency from doing so. To accomplish this, the IIT commander must create and enforce firewalls, which is a process to prevent information sharing between the IIT from the involved agency, and train all team members to observe them to ensure no member of the IIT receives any compelled statements of the involved officer(s) or any investigative content that was informed by such compelled statements.

(a) The firewall system and training must ensure that the involved agency is affirmatively advised not to furnish "prohibited content" to the IIT.

(b) If any member of the IIT receives prohibited information, the investigator receiving the prohibited information must immediately report it to their supervisor and the member must discontinue participation in the investigation. The information will be removed and/or isolated from the remaining investigation unless the prosecutor of jurisdiction deems such action unnecessary.

(7) The chiefs and sheriffs who sign a written agreement to support and participate in the IIT shall appoint:

(a) The IIT leadership team, which may include an IIT commander, assistant commander, or co-commander.

(b) At least two nonlaw enforcement community representatives who have credibility with and ties to communities impacted by police use of deadly force. The chiefs, sheriffs, and community members of each regional team shall create a transparent process for soliciting names and creating a roster of individuals willing to serve in this capacity. The IIT community representatives must be chosen from this list by the chief(s), sheriff(s), and community member(s). The WSCJTC will post IIT rosters from each region on its website, which will be provided by the IITs. There shall be standardized trainings for nonlaw enforcement community representatives, including training on the requirements of the mandatory nondisclosure agreements.

(c) All IIT leadership shall be commissioned peace officer(s), with previous experience in criminal investigations.

(d) The IIT supervisors shall be recommended by their agency to the IIT commander.

NEW SECTION

WAC 139-12-070 Selection process for IIT members. (1) The selection process for IIT members is completed by the IIT leadership in partnership with the IIT member agencies.

(2) Ensure all applicants meet all time, rank, and training prerequisites described in WAC 139-12-080.

(3) Ensure that qualified applicants are interviewed by a panel, which includes the nonlaw enforcement community representatives and other members of the IIT selected by the IIT commander.

(4) All applicants shall be interviewed using criteria pertinent for the position of an IIT investigator. The same questions should be asked of each applicant.

(5) At the conclusion of the panel the IIT commander shall consider the recommendations of the panel and select those best suited for the needs of the IIT.

(6) The chief or sheriff of a member agency and the IIT commander shall annually review the appointment of their IIT members for possible rotation or replacement.

NEW SECTION

WAC 139-12-080 Training requirements for IITs and IIT qualified lead investigators. (1) The credibility of an individual assigned to an IIT is grounded in two elements: Training and experience in criminal investigations. Since some IIT members were chosen because of their experience in criminal investigations, it is important to clearly define expectations for both training and experience.

(2) IIT members who do not meet the minimum training requirements for IIT qualified lead investigators are eligible to participate on the IIT, but not in a lead position.

(3) Civilian IIT members (i.e., crime scene investigators, evidence technicians, etc.) are not required to obtain the qualified lead investigator certificate, but the IIT leadership shall establish reasonable noncommissioned training requirements through their IIT protocol.

(4) Applicants applying for the position of an IIT qualified lead investigator must be employed by a member agency of the IIT. The applicant shall be a commissioned peace officer in the state of Washington with previous experience as a detective or investigator, or have special skills or experience necessary for the team.

(5) To obtain an IIT qualified lead investigator certificate, candidates must:

(a) Provide proof of at least three years of uninterrupted experience as a certified peace officer, crime scene investigator, or related expertise in a discipline relevant to investigations.

(b) Provide proof of successful completion of the prescribed training classes, (or appropriate equivalent experience), listed in this chapter:

(i) Basic homicide investigation;

(ii) Interviewing and interrogation; and

(iii) LETCSA violence de-escalation and mental health training.

(c) IIT members who have two years or more relevant, full-time criminal investigative work experience may substitute their work experience for the required basic training classes. County sheriffs, po-

lice chiefs, and IIT commanders are encouraged to promote continuing education as a best practice for all members assigned to the IIT.

(6) After receiving an IIT qualified lead investigator certificate, a minimum of eight hours of advanced training shall be annually completed. The advanced training may include, but is not limited to, the following criminal investigation topics:

(a) Advanced homicide investigation techniques;

(b) Advanced interviewing and interrogation;

(c) Officer-involved shooting investigation;

(d) In-custody death investigation;

(e) Acute behavioral disturbance;

(f) Bloodstain pattern analysis;

(g) Crime scene photography/videography; and

(h) Other related training, seminars, and conferences or on-going training as offered by WSCJTC or other training venues on an as available basis.

(7) All certified IIT members shall maintain compliance with LETCSA training required per chapter 139-11 WAC to be a member of an IIT and/or participate in an IIT investigation. This includes completing LETCSA training every three years within the established timelines.

(a) IIT members who are subject to the requirements of WAC 139-11-020(2) shall complete their first LETCSA training cycle by January 1, 2028, to remain eligible to serve as a member of an IIT or participate in an IIT investigation.

(b) If requested, any certified IIT member shall receive priority registration to LETCSA training hosted by WSCJTC.

(8) The IIT shall train as a unit at least annually.

NEW SECTION

WAC 139-12-090 Demonstrated history of honorable behavior. (1) Investigators assigned to an IIT are expected to have a work history free of a sustained finding of serious misconduct and/or a pattern of sustained complaints and a personal history free of demonstrable bias or prejudice against community members that may be impacted by the police use of deadly force.

(2) The IIT commander, no later than 72 hours after the investigation begins, shall determine whether each member of the IIT is free from sustained serious misconduct and/or a pattern of sustained complaints and a personal history free of demonstrable bias or prejudice against community members that may be impacted by the police use of deadly force. The IIT commander shall remove any member so affected and shall verify in the investigation file that these steps have been taken.

(3) During the IIT's annual review, the IIT commander or designee shall verify that all members of their IIT are free from any sustained serious misconduct or other disqualifying behaviors listed in WAC 139-12-020(16). If any sustained serious misconduct or other applicable behavior is discovered for an IIT member, it will result in the immediate removal from the IIT.

(a) Any sustained finding for serious misconduct that occurs between this annual review shall be immediately reported by the agency head or designee to the IIT commander.

(b) This must be documented by the IIT in accordance with their protocols and policies.

NEW SECTION

WAC 139-12-100 Conflicts of interest. (1) Immediately after the commencement of each IIT independent investigation, and no later than 72 hours after, all investigators, other IIT members, and nonlaw enforcement community representatives working on the investigation, must complete a "conflict of interest" assessment tool regarding any connection to the officers being investigated.

(2) The assessment (created by the WSCJTC) will include questions about prior interactions or relationships with officers being investigated, and will address social conflict, work conflict, and bias. The conflict assessment will be reviewed and discussed by the nonlaw enforcement community representatives and the IIT commander.

(3) If any member of the IIT, whether they are law enforcement or a nonlaw enforcement community representative, joins the investigation after the 72 hour time frame, they must complete the conflict of interest statement as soon as possible or within 72 hours after joining the investigation.

(4) Agencies may use a standard conflict of interest form developed by the WSCJTC. If an IIT uses their own conflict of interest form, the standards must meet or exceed the form provided by the WSCJTC.

(5) In order to meet the standards of the form, the IIT's conflict of interest assessment tool must ask the same questions as WSCJTC's. Exceeding the standards of WSCJTC's conflict of interest assessment tool means asking more questions about potential conflicts on an IIT's form.

NEW SECTION

WAC 139-12-110 Office of independent investigations. (1) The involved agency shall notify the OII of any incident by an involved officer in accordance with the requirements under RCW 43.102.050 and 43.102.120.

(2) Except where consistent with the requirements of chapter 43.102 RCW, the provisions of this chapter are not applicable to OII.

NEW SECTION

WAC 139-12-120 Miscellaneous. IITs shall follow any regulation or policy adopted by the WSCJTC and any relevant RCWs.

WSR 26-15-102
PROPOSED RULES
CRIMINAL JUSTICE
TRAINING COMMISSION
[Filed July 20, 2026, 1:49 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 26-12-023.

Title of Rule and Other Identifying Information: WAC 139-01-310 Definitions for Title 139 WAC.

Hearing Location(s): On September 9, 2026, at 10:00 a.m., at the Washington State Criminal Justice Training Commission (CJTC), Commission Room, 19010 1st Avenue South, Burien, WA 98148.

Date of Intended Adoption: September 9, 2026.

Submit Written Comments to: Lacey Ledford, 19010 1st Avenue South, Burien, WA 98148, email Lacey.Ledford@cjtc.wa.gov, beginning July 21, 2026, by September 9, 2026.

Assistance for Persons with Disabilities: Contact Lacey Ledford, phone 206-670-5813, email lacey.ledford@cjtc.wa.gov, by September 9, 2026.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Updating WAC 139-01-310 to include a new definition for "initial disciplinary decision"; this term is used in state law and CJTC rules, regarding when agencies must notify CJTC of officer misconduct, but is not currently defined in either state law or CJTC rules. Adding clarifying language to probationary periods/terms. Other definitions may be updated as needed.

Reasons Supporting Proposal: [Updating] definitions in WAC 139-01-310 will provide clarification for law enforcement and other impacted parties.

Statutory Authority for Adoption: RCW 43.101.080.

Statute Being Implemented: RCW 43.101.080.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kimberly Bliss, Burien, Washington, 206-835-7305.

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.

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

July 20, 2026
Lacey Ledford
Rules Coordinator

RDS-7311.1

AMENDATORY SECTION (Amending WSR 23-19-038, filed 9/13/23, effective 10/14/23)

WAC 139-01-310 Definitions for Title 139 WAC. The following definitions apply to Title 139 WAC, unless otherwise defined in a specific chapter or subchapter of this title.

(1) **Affiliation** means advocating for or providing material support or resources to extremist organizations by:

(a) Knowingly or publicly displaying, posting, or wearing associated items, symbols, costumes, insignias, slogans, tattoos, or body modifications on public property, private property, online, or digitally;

(b) Making public statements in support of an extremist group's activities including, but not limited to, online statements;

(c) Fund-raising for, or making personal contributions through donations, services, or payments of any kind to a group or organization that engages in extremist activities;

(d) Organizing or participating in the activities of an extremist organization;

(e) Recruiting or training others to engage in extremist activities;

(f) Recruiting or training others on behalf of an extremist organization;

(g) Creating, organizing, or taking a leadership role in a group or organization that engages in or advocates for extremist activities; or

(h) Actively demonstrating or rallying in support of extremist activities.

(2) **Applicant** means an individual who must satisfy the requirements of RCW 43.101.095 as a condition of employment.

(3) **Certified limited authority peace officer** means any limited authority Washington peace officer as defined in subsection (22) of this section who as a normal part of their duties has powers of arrest and carries a firearm.

(4) **Certified** ((~~**officer**, unless otherwise specified, means any full-time, general authority peace officer, certified limited authority peace officer, certified tribal police officer, and corrections officer as defined in RCW 43.101.010 (6), (10), and (12)~~)) means the officer has met the background check requirements as specified in state law; completed the appropriate academy or other training as determined by the commission; and fulfilled any other requirements adopted by the commission in rule, and has been granted a license by the commission to serve as an officer.

(5) **Certified tribal law enforcement agency** means any tribal law enforcement agency in Washington who has signed a tribal certification agreement with the commission as outlined in WAC 139-06-015 and who is currently in good standing.

(6) **Certified tribal police officer** means any police officer employed by a certified tribal law enforcement agency who has completed the requirements of certification.

(7) **Commission** means the Washington state criminal justice training commission.

(8) **Conclusion** means the final disposition issued by an employing agency after it has conducted an investigation into alleged misconduct or policy violation.

(9) **Day** means one calendar day. Computation of time does not include the day of the act or event from which the designated period of

time begins to run. The last day of the period shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next weekday that is not a legal holiday.

(10) **Denial** means a commission decision to refuse to grant certification to a prospective certified officer.

(11) **Discipline** means an oral reprimand (where a written record of the reprimand has been placed in an employee's file), written reprimand, suspension, demotion, or termination. Discipline does not include performance reviews, work plans, or corrective actions that do not include a reprimand or other adverse employment action.

(12) **Executive** means the head of a law enforcement agency, such as chiefs, sheriffs, directors, or other equivalent positions.

(13) **Expired certification** means that a certified officer has had a break in service of over 60 months and their certification is no longer valid.

(14) **Extremist organization** means an organization or persons that:

(a) Seeks to undermine the democratic process through intimidation, violence, unlawful threat, or by depriving individuals of their rights under the United States Constitution or Washington state Constitution;

(b) Promotes the changing of American government structures through undemocratic means involving violence, unlawful threat, or intimidation;

(c) Promotes hatred, intolerance, unlawful discrimination, intimidation or violence against, public marginalization, or disenfranchisement of protected classes, including on the basis of sex, sexual orientation, gender, perceived gender, or gender expression, race, color, religion, ability, or national origin and other protected classes under RCW 49.60.030 and 43.101.105 (3)(h);

(d) Espouses, advocates, or engages in using force, violence, or unlawful threat to further explicit racism, antisemitism, anti-Muslim, white supremacy or any white nationalist ideology, or any ideology that discriminates based on religion or belief; or

(e) Espouses or advocates that the powers held by local law enforcement executives, and their interpretation of the law, supersedes those of any other federal, state, or local authority.

(15) **Final disposition** means an employing agency's final decision on a misconduct investigation. The final disposition is not dependent upon any appeals brought by an officer.

(16) **Findings or findings of fact and conclusion of law** means a determination based on a preponderance of the evidence whether alleged misconduct occurred; did not occur; occurred but was consistent with law and policy; or can neither be proven or disproven.

(17) **General authority Washington law enforcement agency** means any agency, department, or division of a municipal corporation, political subdivision, or other unit of local government of this state, and any agency, department, or division of state government, having as its primary function the detection and apprehension of persons committing infractions or violating the traffic or criminal laws in general, as distinguished from a limited authority Washington law enforcement agency, and any other unit of government expressly designated by statute as a general authority Washington law enforcement agency. The Washington state patrol and the department of fish and wildlife are general authority Washington law enforcement agencies.

(18) **General authority Washington peace officer** means any ((~~full-time,~~)) fully compensated and elected, appointed, or employed officer of a general authority Washington law enforcement agency who is commissioned to enforce the criminal laws of the state of Washington generally.

(19) **Initial disciplinary decision** means a sustained, founded, or equivalent finding of misconduct at the time the agency makes such finding and prior to any grievances, arbitration, or appeals challenging such finding.

(20) **Lapsed certification** means that a certified officer has had a break in service of at least 24 months, but no more than 60 months, and that as a condition of continuing employment the officer must complete the commission's equivalency process.

((~~(20) **Law enforcement personnel** means any person elected, appointed, or employed as a general authority Washington peace officer or certified limited authority peace officer.~~))

(21) **Limited authority Washington law enforcement agency** means any agency, political subdivision, or unit of local government of this state, and any agency, department, or division of state government, having as one of its functions the apprehension or detection of persons committing infractions or violating the traffic or criminal laws relating to limited subject areas including, but not limited to, the state department of natural resources and social and health services, the state gambling commission, the state department of corrections, and the office of independent investigations.

(22) **Limited authority Washington peace officer** means any ((~~full-time~~)) fully compensated officer of a limited authority Washington law enforcement agency empowered by that agency to detect or apprehend violators of the laws in some or all of the limited subject areas for which that agency is responsible.

(23) **Peace officer** means any officer of general authority or certified limited authority as defined in subsections (18) and (22) of this section respectively.

(24) **Petitioner** means the commission's certification ((~~division~~)) bureau.

(25) **Probationary periods or probationary terms** means a determination by a hearing panel that a certified officer may ((~~work under supervision based on agreed-upon terms~~)) continue to work subject to terms and conditions specified in the panel's final order.

(26) **Recruit** means an individual registered for, selected for, accepted to, enrolled in, or required to complete a basic training academy.

(27) **Reserve officer** means any person who does not serve as a regularly employed, fully compensated peace officer of this state ((~~on a full-time basis~~)), but who, when called by an agency into active service, is fully commissioned on the same basis as ((~~full-time~~)) regularly employed, fully compensated officers to enforce the criminal laws of this state.

(28) **Respondent** means the certified officer against whom the petitioner has filed a statement of charges.

(29) **Retraining** means the teaching or reteaching of skills and conduct required to succeed as a certified officer and imposed by the commission's hearings panel in a final order pursuant to RCW 43.101.105.

(30) **Revocation** means to cancel a certified officer's certification.

(31) **Serious injury** means **substantial bodily harm** and **great bodily harm** as defined in RCW 9A.04.110 (4)(b) and (c).

(32) **Specially commissioned Washington peace officer** means any officer, whether part-time or full-time, compensated or not, commissioned by a general authority Washington law enforcement agency to enforce some or all of the criminal laws of the state of Washington, who does not qualify under as a general authority Washington peace officer for that commissioning agency, specifically including reserve peace officers, and specifically commissioned full-time, fully compensated peace officers duly commissioned by the states of Oregon and Idaho or any such peace officer commissioned by a unit of local government of Oregon or Idaho.

(33) **Surrender** means that a holder of a certificate voluntarily relinquishes their certificate. This may happen while pending potential discipline or for any other reason.

(34) **Suspension** means a determination by a hearing panel on agreed-upon terms that a certified officer's certification will be withheld and the officer will be temporarily prevented from performing the duties of a certified officer during the determined period.

(35) **Tribal police officer** means any person employed and commissioned by a tribal government to enforce the criminal laws of that government.

WSR 26-15-103
PROPOSED RULES
GAMBLING COMMISSION
[Filed July 20, 2026, 1:44 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR [26-09-102].

Title of Rule and Other Identifying Information: WAC 230-15-319 (2)(b)(ii); this proposed rule change increases the prize threshold for house-banked card rooms to retain video of jackpot payouts of $3,000 or more for 30 days to $5,000.

Currently, house-banked card rooms are required to have a closed-circuit television system with fixed cameras over each gambling table to view gambling activities and areas including, but not limited to, cards, wagers, and the chip tray. These fixed cameras over each table provide an overview shot of the entire table and are not zoomed in on individual player faces, cards, wagers, and/or payouts. These fixed camera views must be retained for seven days and recordings for jackpots of $3,000 or more must be retained for at least 30 days.

Hearing Location(s): On August 28, 2026, at 9:00 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." Then, select "upcoming commission meetings" to confirm the hearing date, location, start time, and agenda items.

Date of Intended Adoption: August 28, 2026.

Submit Written Comments to: Tricia Gullion, 4565 7th Avenue S.E., Lacey, WA 98503, email tricia.gullion@wsgc.wa.gov, beginning July 22, 2026, by August 24, 2026.

Assistance for Persons with Disabilities: Contact Tricia Gullion, phone 360-486-3440, email askus@wsgc.wa.gov, web www.wsgc.wa.gov, by August 28, 2026.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To increase the prize threshold for house-banked card rooms to retain video of jackpot payouts of $3,000 or more for 30 days to $5,000. This change will ensure consistency with WAC 230-15-320 and will reduce confusion for Washington state gambling commission staff.

Reasons Supporting Proposal: Since there are other rules in chapter 230-15 WAC that utilize a prize threshold of $5,000 as a basis for regulatory requirements, it seems prudent to align the prize thresholds within WAC 230-15-319 to make it easier for licensee compliance and regulatory consistency.

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: Tricia Gullion, Legislative and Rules Manager, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3473; Implementation: Jeneva Cotton, Deputy Director, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3440; and Enforcement: Tina Griffin, Director, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3440.

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 is exempt under RCW 34.05.310 (4)(d).

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.

Scope of exemption for rule proposal:

Is fully exempt.

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

July 20, 2026
Tricia Gullion
Legislative and Rules Manager

RDS-7322.1

AMENDATORY SECTION (Amending WSR 07-07-056, filed 3/14/07, effective 1/1/08)

WAC 230-15-319 Retaining video recordings. (1) Class F and house-banked card game licensees must label video recordings and audio recordings, as required, to identify the activities recorded.

(2) Licensees must keep:

(a) All recordings for seven gambling days, for example, Monday's gambling day recording may be recorded over on Tuesday of the following week; and

(b) Recordings documenting jackpot pay outs for at least ((~~thirty~~)) 30 days:

(i) For player supported jackpots, retain recordings of jackpots of ((~~five hundred dollars~~)) $500 or more; and

(ii) For house-banked games, retain recordings of jackpots of ((~~three thousand dollars~~)) $5,000 or more; and

(c) Recordings of evidentiary value for as long as we request.

(3) We may increase these retention requirements by notifying licensees.

WSR 26-15-104
PROPOSED RULES
UNIVERSITY OF WASHINGTON
[Filed July 20, 2026, 2:19 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 26-07-036.

Title of Rule and Other Identifying Information: Chapter 478-121 WAC, Student conduct code for the University of Washington (university).

Hearing Location(s): On August 25, 2026, at 10:00-11:00 a.m., at the University of Washington, Gerberding Hall, Room 142, Seattle, Washington.

Date of Intended Adoption: September 9, 2026.

Submit Written Comments to: Barbara Lechtanski, Director and Rules Coordinator, University Policy and Rules Office, Box 351237, Seattle, WA 98195, email rules@uw.edu, beginning August 5, 2026, 8:00 a.m. PST [PDT], by August 25, 2026, 11:00 a.m. PST [PDT].

Assistance for Persons with Disabilities: Contact disability services office, phone 206-543-6450, fax 206-685-7264, TTY 206-543-6452, email dso@uw.edu, by August 11, 2026.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The university is proposing amendments to chapter 478-121 WAC, Student conduct code for the University of Washington, to comprehensively review and update the university's student conduct regulations governing prohibited conduct, student rights and responsibilities, conduct procedures, sanctions, and appeals. The proposed amendments update the conduct code by improving its organization and readability; clarifying existing provisions; eliminating outdated language; and reorganizing sections to promote greater consistency, administrative efficiency, and usability.

The proposal also includes substantive revisions to align the conduct code with current federal and state laws; incorporate new forms of prohibited conduct and updated legal definitions; clarify jurisdiction and procedural requirements; strengthen due process protections; improve consistency with the university's general code of conduct (chapter 478-124 WAC) and related university policies; and provide clearer standards for students, employees, and university officials responsible for administering the code.

Reasons Supporting Proposal: The proposed amendments are intended to improve the effectiveness, consistency, and administration of the university's student conduct process by clarifying expectations, simplifying procedures, and updating provisions that have become outdated or no longer reflect current law, university operations, or best practices. The revisions also improve the organization of the conduct code, making it more accessible and easier for students, university officials, and decision-makers to understand and apply.

The proposal supports compliance with applicable federal and state laws and regulations; strengthens alignment with related university regulations, including the university's general code of conduct (chapter 478-124 WAC); and establishes clearer standards for addressing prohibited conduct while promoting fair, efficient, and consistent resolution of student conduct matters.

Statutory Authority for Adoption: RCW 28B.20.130.

Statute Being Implemented: RCW 28B.20.130.

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

Name of Proponent: University of Washington, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Denzil Suite, Vice President for Student Life, University of Washington, Room 101, Gerberding Hall, Seattle, Washington, 206-543-4972.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to the university, and the university has not voluntarily decided to apply it.

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

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

July 20, 2026
Barbara Lechtanski, Director
University Policy and Rules Office

RDS-7299.3

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-010 Statement of authority. Pursuant to chapter 34.05 RCW and the authority granted by RCW 28B.20.130, the board of regents of the University of Washington has established rules regarding student conduct and student discipline (code) that are set forth in chapter 478-121 WAC. ((~~The university has also developed agency-level policies and procedures regarding the code pursuant to chapter 34.05 RCW. See *Student Governance and Policies*, chapters 209 and 210.~~))

AMENDATORY SECTION (Amending WSR 21-07-047, filed 3/11/21, effective 4/11/21)

WAC 478-121-020 General application of the student conduct code. (1) This conduct code applies to all students from the time of admission through the actual conferral of a degree, including any period between terms of enrollment. When a complainant or respondent is both a student and an employee of the university, the university will make a fact-specific inquiry to determine whether the requirements of the code apply.

(2) The disciplinary sanctions specified in WAC 478-121-210, up to and including suspension or dismissal, may be imposed on any student or student organization found responsible for prohibited conduct set forth in WAC 478-121-100 through 478-121-173((~~, WAC 478-121-605,~~)) and as described in relevant university policies. Allegations of prohibited conduct involving student organizations are adjudicated

through the brief adjudication process and are not subject to the full adjudication process.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-030 Application of student conduct code to research misconduct. Research misconduct, as defined in WAC 478-121-145, is a form of prohibited conduct under this code. Federal rules and policies, however, regulate the handling of research misconduct matters when university research is supported by federal funding. These federal requirements are incorporated into the university's Executive Order No. 61, Research Misconduct Policy, which governs the handling of research misconduct allegations against students participating in research on behalf of the university, as is further explained in that executive order. The disciplinary sanction provisions of this code, WAC 478-121-210 through 478-121-213, apply if there has been a finding of research misconduct against a student under Executive Order No. 61. The ((~~administrative review~~)) appeal provisions of this code, WAC 478-121-320 through 478-121-345, apply to the extent such ((~~review~~)) appeal is permitted by Executive Order No. 61.

AMENDATORY SECTION (Amending WSR 21-07-047, filed 3/11/21, effective 4/11/21)

WAC 478-121-040 Jurisdiction of the university. (1) The scope of the university's jurisdiction includes reports that prohibited conduct occurred:

(a) On any university premises or in connection with any university-sponsored program or activity, regardless of the location of the program or activity; or

(b) Off campus (i.e., conduct that does not occur on university premises or in the context of a university-sponsored program or activity) where: The university reasonably determines that the conduct adversely affects a university interest or, has continuing adverse effects or may create a hostile environment on university premises or in the context of a university-sponsored program or activity.

(2) Nothing in this conduct code shall be construed to limit academic action that may be taken by schools, colleges, or programs against a respondent based on an established violation of this conduct code that demonstrates a failure to meet the academic and/or professional standards of the school, college, or program.

(3) If a respondent withdraws from the university (or fails to reenroll) while a conduct proceeding is pending, the university may move forward with the conduct proceeding and, if so, the respondent will be provided with a continued opportunity to participate.

(4) ((~~Under regulations established by the United States Department of Education, 34 C.F.R. Part 106, the prohibited conduct defined in WAC 478-121-605 must be addressed as provided under Part VII of this code, not as provided under Parts II through V, if, and only if: It is alleged to have occurred in a university education program or activity, and it is against a person in the United States.~~)) The conduct office will determine whether the university has jurisdiction

based on the information available through the report to the university and initial assessment.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-045 Severability. (1) If any provision or clause of this chapter 478-121 WAC, or any application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application and, to this end, the provisions of these rules are declared to be severable.

(2) These rules are additional to any others duly promulgated by the university.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-050 Definitions. For the purposes of this conduct code, the following definitions apply:

(1) **Advisor.** Advisor refers to a hearing advisor or support advisor who accompanies a party to proceedings under this code. Support advisors and hearing advisors may be referred to collectively as advisors. A hearing advisor may take an active role in proceedings, such as giving remarks or making requests. A support advisor may not actively participate in proceedings but can be present and can provide information to the relevant party. The involvement and actions of the advisor in conduct proceedings are subject to the limitations and requirements of WAC 478-121-243, as well as direction from the presiding officer.

(2) **Appeal coordinator.** An appeal coordinator is an individual who may be appointed to an appeal panel as a nonvoting member who manages the appeal process.

(3) **Appeal officers.** Appeal officers decide appeals of full or brief adjudicative proceedings under Part IV or V of this conduct code.

(4) **Appeal panel.** An appeal panel is a panel of appeal officers selected from the pool of appeal officers appointed to conduct appeals under WAC 478-121-320 through 378-121-340 and 378-121-430 through 478-121-445.

(5) **Attorney.** Attorney is a person ((~~permitted~~)) licensed to practice law ((~~in Washington state~~)).

((~~(2)~~)) (6) **Complainant.** A ((~~complainant is the~~)) person who is ((~~the subject of the prohibited~~)) alleged to have experienced conduct prohibited by this code, whether or not ((~~that person made~~)) a report has been made that a violation of the code had been committed against ((~~them~~)) the person.

((~~(3)~~)) (7) **Complaint.** An oral or written request to the university to investigate and make a determination about prohibited conduct under this code.

(8) **Conduct hold.** A conduct hold refers, collectively, to administrative ((~~notes on a student's record~~)) actions, such as registration holds, degree holds, and transcript holds, that enable the con-

duct ((~~officer~~)) office to monitor the registration and enrollment status of a student for the purpose of administering this code.

((~~(4)~~)) (9) **Conduct officer.** A conduct officer is ((~~an individual who has the authority to initiate~~)) a person designated by the university to conduct proceedings under Part IV of this code, including initiating conduct proceedings, completing ((~~fact finding~~)) investigations, and issuing initial orders. A conduct officer ((~~under this code~~)) is considered a "presiding officer" ((~~under chapter 34.05 RCW for the purpose of conducting a brief adjudicative proceeding~~)) unless and until Part IV proceeding is converted to a full adjudicative proceeding under Part V.

((~~(5)~~)) (10) **Conduct proceedings.** Conduct proceedings refer((~~s~~)) to brief adjudicative proceedings and full adjudicative proceedings, individually or collectively((~~, under chapter 34.05 RCW~~)).

((~~(6)~~)) (11) **Consent to sexual activity.** Consent to sexual activity means that at the time of and throughout the sexual activity, there are words or conduct that reasonably communicate freely given agreement to engage in that activity between or among the participants. For the purposes of determining whether consent was present:

(a) Consent cannot be inferred solely from silence, passivity, or lack of resistance to sexual contact, and relying on nonverbal communication alone may not be sufficient to establish consent;

(b) Consent cannot be inferred solely from an existing or previous dating or sexual relationship, and past consent alone is not sufficient to establish future consent;

(c) Even in the context of a relationship of a romantic or intimate nature, there must be mutual consent to engage in sexual activity;

(d) Consent given to one person does not constitute consent given to another person;

(e) Consent to one sexual act or contact does not constitute consent to other sexual acts or contacts;

(f) Consent can be withdrawn at any time, and once consent for a particular activity is withdrawn and reasonably communicated, that sexual contact and activity must stop immediately; and

(g) Consent cannot be obtained through the use of force or threat; from an individual who is incapacitated where the other person knew or reasonably should have known that the individual was incapacitated; or from a person who is under the statutory age of consent as defined under chapter 9A.44 RCW (sex offenses).

(h) As used in the definition of consent, incapacity means a complainant lacks the ability to understand the facts, nature, extent, or implications of the sexual activity for any reason including, but not limited to, being asleep, unconscious, unaware that the sexual activity is occurring, mentally or physically impaired due to an intellectual disability or other disability, or mentally or physically incapacitated due to the effects of alcohol or other intoxicants, whether consumed voluntarily or involuntarily.

(i) When assessing whether a person "knew or reasonably should have known" a complainant was incapacitated, indicators of incapacitation include, but are not limited to, stumbling, falling down, an inability to stand or walk on one's own, slurred speech or incoherent communication, an inability to focus one's eyes, confusion about what is happening around one, unusual combativeness, or emotional volatility, incontinence, or vomiting.

(j) The absence of any of these behaviors, however, does not necessarily mean that a person is capable of giving consent or is not in-

capacitated. Capacity will be determined based on all the facts and circumstances.

(k) A respondent's use of alcohol or drugs is not a valid defense to a charge of sexual assault or unwanted sexual contact. A respondent will be held to the standard of a reasonable sober person when evaluating whether the respondent knew or reasonably should have known the other person was incapacitated.

(12) **FERPA.** FERPA refers to the ((~~federal~~)) Family Educational Rights and Privacy Act (20 U.S.C. Sec. 1232g) and its implementing regulations (34 C.F.R. Part 99).

((~~(7) **Full**~~)) (13) **Hearing.** ((~~Full~~)) Hearing refers to the hearing that occurs ((~~when a matter is designated as being appropriate for a full adjudicative proceeding, consistent with WAC 478-121-400 through 478-121-427 of this code~~)) during a full adjudicative proceeding under Part V of this chapter.

((~~(8)~~)) (14) **Hearing officer.** A hearing officer is a ((~~"presiding officer" in a full hearing for the purpose of conducting a full adjudicative proceeding under chapter 34.05 RCW.~~)) person designated by the university to conduct a full adjudicative proceeding under Part V of this conduct code. A hearing officer is also considered a "presiding officer."

((~~(9)~~)) (15) **Presiding officer.** Presiding officer refers to conduct officers and hearing officers individually or collectively.

((~~(10)~~)) (16) **Relevant.** Relevant means related to the report of prohibited conduct and of assistance to the presiding officer in determining whether the reported conduct occurred.

(17) **Report.** A notification to an employee or university unit or office of an alleged occurrence of prohibited conduct.

(18) **Respondent.** A respondent is any student or student organization reported to have engaged in or charged with prohibited conduct under ((~~the~~)) this conduct code.

((~~(11) **Review coordinator.** A review coordinator is an individual who may be appointed to a review panel as a nonvoting member who manages the administrative review process.~~

~~(12) **Review panel.** Review panel is a panel of reviewing officers selected from the pool of reviewing officers appointed to conduct administrative reviews under WAC 478-121-320 through 478-121-345 and 478-121-430 through 478-121-445. The review panel may also include a "review coordinator."~~

~~(13) **Reviewing officers.** Reviewing officers are those who conduct administrative reviews for the purpose of full adjudicative proceedings or brief adjudicative proceedings under chapter 34.05 RCW.~~

~~(14)~~)) (19) **Student.** A student is any person enrolled in or taking courses at or through the university, either full-time or part-time, including credit, noncredit, online, and nondegree courses, and any person who has been notified of acceptance for admission by the university. A student who withdraws from a course or from the university, graduates, or completes courses after the date of an alleged violation, or who is not enrolled for a particular quarter or quarters, but has a continuing relationship with the university, is still considered a student for purposes of this conduct code.

((~~(15)~~)) (20) **Student organization.** Student organization is a group of students that has complied with the requirements for university recognition or ((~~who is~~)) has been otherwise granted any rights or privileges by the university as a university affiliate. Student organizations include, but are not limited to, athletic teams or clubs,

registered student organizations (RSOs), university service clubs, and sororities and fraternities.

((~~(16)~~)) (21) **Supportive measures.** Supportive measures are individualized and nonpunitive services offered to complainants and respondents as reasonable and appropriate, without fee or charge.

(22) **University community.** The university community includes all university students, employees, guests of and visitors to the University of Washington((~~, and other individuals affected by the conduct of a university student~~)).

((~~(17)~~)) (23) **University official.** University official means employees of the ((~~University of Washington~~)) university performing their assigned administrative, professional, or paraprofessional duties.

((~~(18)~~)) (24) **University premises.** University premises includes all of the ((~~University of Washington's~~)) university's campus buildings, grounds, and facilities, all of its extension and research locations, and all other university-leased, -owned, or -managed buildings, grounds, and facilities, including its global learning centers and study abroad program sites, as well as university-sponsored and/or -hosted online platforms.

AMENDATORY SECTION (Amending WSR 21-07-047, filed 3/11/21, effective 4/11/21)

WAC 478-121-100 General application. Prohibited conduct under this code includes((~~, but is not limited to,~~)) the prohibited conduct described in WAC 478-121-100 through 478-121-173, and WAC 478-121-605((~~, and relevant university policies. For additional interpretation of prohibited conduct, see *Student Governance and Policies*, chapter 209, student conduct policy for academic misconduct and behavioral misconduct, and chapter 210, student conduct policy for discriminatory and sexual harassment, intimate partner violence, sexual misconduct, stalking, and retaliation~~)).

NEW SECTION

WAC 478-121-102 Amnesty. (1) The conduct office may elect not to initiate a conduct proceeding regarding alcohol or other drug violations against a student who, while in the course of helping another student seek medical assistance, admits to the unlawful possession or use of alcohol or drugs, provided that the possession was for personal consumption and the use did not place the health or safety of any other person at risk.

(2) The university may initiate an assessment or educational discussion or impose other nondisciplinary requirements based on admission to alcohol or drug use or possession.

(3) In addition, a conduct proceeding will not be initiated against a complainant, reporting student, or witness who admits to the possession or use of alcohol or drugs in connection with a report or during the course of proceedings under this code.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-103 Abuse of others and threats. Abuse of others and threats includes making threats in a manner that causes a reasonable fear of bodily harm in another. It also includes assault and other forms of physical abuse of any person, or any conduct intended to threaten bodily harm or to endanger the health or safety of any person.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-105 Abuse of the student conduct process. (1) Abuse of the student conduct process includes:

(a) Attempting to influence the impartiality or participation of any presiding officer or any ((~~reviewing~~)) appeal officer;

(b) Influencing or attempting to influence another person to commit an abuse of the student conduct process; or

(c) Submitting or providing false or misleading information in bad faith or with a view to personal gain or intentional harm to another in the conduct process.

(2) This provision does not apply to reports made or information provided in good faith, even if the respondent is ultimately found not responsible in that conduct proceeding.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-107 Academic misconduct. Academic misconduct includes:

(1) "Cheating" which includes, but is not limited to:

(a) The use of unauthorized assistance, including assistance from another individual or the use of generative artificial intelligence, in taking quizzes, tests, or examinations, or completing assignments;

(b) The acquisition, use, or distribution of unpublished materials created by another student without the express permission of the original author(s);

(c) Using online sources((~~, such as solution manuals,~~)) without the permission of the instructor to complete assignments, exams, tests, or quizzes; or

(d) Requesting, hiring, or otherwise encouraging someone to take a course, exam, test, or complete assignments for a student.

(2) "Falsification," which is the intentional use or submission of falsified data, records, or other information including, but not limited to, records of internship or practicum experiences or attendance at any required event(s), or scholarly research.

(3) "Plagiarism," which is the submission or presentation of someone else's words, composition, research, or expressed ideas, whether published or unpublished, without attribution. Plagiarism includes, but is not limited to:

(a) The use, by paraphrase or direct quotation, of the published or unpublished work of another person without full and clear acknowledgment; or

(b) ((~~The unacknowledged use of~~)) Submission as one's own, expressly or implicitly, materials prepared by another ((~~person~~)) or acquired from ((~~an entity engaging~~)) a person or entity engaged in the selling or other distribution of ((~~term~~)) exams, papers, assignments, or other academic materials.

(4) Unauthorized collaboration.

(5) Engaging in behavior specifically prohibited by an instructor in the course of class instruction or in a course syllabus.

(6) Multiple submissions of the same work in separate courses without the express permission of the instructor(s).

(7) Taking deliberate action to destroy or damage another's academic work in order to gain an advantage for oneself or another.

(8) The recording of instructional content without the express permission of the instructor(s), unless approved as a disability accommodation, and/or the dissemination or use of such unauthorized records.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-113 Aiding, assisting, and attempting. Students may be found responsible for prohibited conduct if they:

(1) Aid or assist another ((~~student or student organization~~)) person or group of persons in the commission of prohibited conduct;

(2) Request, hire, or incite another person or group of persons to commit, or participate in the planning for another person to commit, prohibited conduct, either intending that the other person commit the prohibited conduct or with the knowledge that the other person intends to commit the prohibited conduct; or

(3) Attempt to commit prohibited conduct.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-115 Alcohol violations. ((~~The unlawful~~)) Any possession, use, distribution, or manufacture of alcohol that is unlawful or violates university policy.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-117 Computer abuses. Computer abuses include, but are not limited to:

(1) Unauthorized use of university computer resources;

(2) Use of another person's university ((~~user name~~)) username and/or password;

(3) Use of university computing facilities and resources to interfere with the work of another student, an instructor, or other university official;

(4) Use of university computing facilities or resources to send intimidating, harassing, or threatening messages;

(5) Use of a computer or software to interfere with normal operations of the university's computing systems;

(6) Use of the university's computing facilities or resources in violation of any law, including copyright laws; and

(7) Any violation of the university's computer use policies.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-120 Creating a public nuisance in neighboring communities. In furtherance of the university's interest in maintaining positive relationships with its surrounding communities, the university ((~~shall have the authority~~)) may choose to hold students accountable under this ((~~conduct~~)) code for misconduct within any residential or commercial communities adjacent to a university campus((~~. Conduct proceedings may be initiated if~~)), including where the university is made aware that a student or student organization has been contacted by ((~~a~~)) law enforcement ((~~agency~~)) regarding, and is determined to have engaged in, conduct that ((~~is in violation of a~~)) may violate state statute or municipal ordinance and ((~~has~~)) could have a direct quality of life impact on community residents or businesses, including, but not limited to, creating a public nuisance due to noise, residential disturbance, intentional or negligent destruction of property, urinating in public, ((~~or criminal~~)) trespass, or the improper disposal, abandonment, or unauthorized dumping of personal property, including furniture, appliances, mattresses, or other household items, in or around university housing, dumpsters, common areas, sidewalks, parking areas, or other university property.

NEW SECTION

WAC 478-121-121 Dating violence. Physical or sexual violence, or the threat of such violence, committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. The existence of such a relationship will be determined based on the length and type of relationship as well as the frequency of interaction between the individuals involved in the relationship. Dating violence can also include emotional abuse, including behaviors that are intended to intimidate or isolate someone.

NEW SECTION

WAC 478-121-122 Discrimination. Any differential treatment of a person compared to others in similar circumstances, that denies or limits a person's equal access to university programs or activities or adversely affects a person's employment or education at the universi-

ty, based in whole or in part on actual or perceived protected characteristics. Protected characteristics are personal characteristics protected under federal or state law that are included in the university's statement of nondiscrimination in Executive Order 81.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-123 Discriminatory harassment. ((~~Discriminatory harassment includes verbal, physical, electronic, or other conduct based on an individual's race, color, creed, religion, national origin, citizenship, sex, age, pregnancy, marital status, sexual orientation, gender identity or expression, disability, or veteran status when one of the conditions outlined in subsection (1) or (2) of this section is present:~~

~~(1) Submission to, or rejection of, such conduct is made implicitly or explicitly a term or condition of a person's instruction, academic standing, employment, or participation in any university program, activity, or benefit, or is used as a basis for evaluation in making academic or personnel decisions; or~~

~~(2) Such conduct creates a hostile environment, which is created when the conduct is sufficiently severe, persistent, or pervasive that it unreasonably interferes with an individual's academic or work performance, ability to participate in or benefit from the university's programs, services, opportunities, or activities, or the receipt of legitimately requested services when viewed through both a subjective and objective standard.~~)) Unwelcome conduct based on an individual's actual or perceived protected characteristics that is so severe, pervasive, or persistent that a reasonable person would find it limits or interferes with the individual's access to university programs or activities, or adversely affects the conditions the individual's university employment. Discriminatory harassment, as defined by this code, does not include conduct that falls under this code's definition of sexual harassment.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-125 Disruption, hindering, impeding, or obstruction. (1) Disruption, hindering, impeding, or obstruction includes:

(a) Impeding, hindering, or obstructing university officials, law enforcement, or emergency personnel in the performance of their duties.

(b) Materially and substantially ((~~obstructing~~)) hindering, impeding, or disrupting, through words or conduct, the teaching or learning environment of any university educational setting, or any university functions or activities.

(2) An instructor has the authority to exclude a student from any individual class session or other academic activity in which the student is materially disruptive or obstructive and may also make a report in accordance with this code and university policy.

NEW SECTION

WAC 478-121-126 Domestic violence. Physical or sexual violence committed by a current or former spouse or intimate partner of the complainant, by a person with whom a complainant shares a child in common, by a person cohabitating or who has cohabitated with the complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the complainant under the domestic violence laws of Washington, or by any other person against a complainant who is protected from that person's acts under the domestic or family violence laws of Washington.

NEW SECTION

WAC 478-121-1260 Doxing. (1) The unauthorized publication of another individual's personal identifying information when the following conditions are met:

(a) The person has not consented to publication of their personal identifying information;

(b) The publication is made with the intent or knowledge that the information will be used to harm the individual whose information is published, or with reckless disregard for the risk the information will be used to harm the individual whose information is published; and

(c) The publication causes the person to suffer physical injury, significant economic injury, mental anguish, fear of serious bodily injury or death for themselves or a close relation, or substation life disruption.

(2) Doxing does not include legally protected conduct that falls within one of the exceptions contained in RCW 4.24.792.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-127 Drug violations. The possession, use, distribution, or manufacture of controlled substances (as defined in chapter 69.50 RCW or 21 U.S.C. Sec. 802) on university premises or during university-sponsored activities where such possession, use, distribution, or manufacture is illegal under federal, state, or local law, or is prohibited under university policy. This includes the possession, use, distribution, or growing of marijuana in all forms during university-sponsored activities or on university premises, including in university housing.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-130 Failure to comply. Failure to comply includes, but is not limited to:

(1) Any failure to comply with the directions of ((~~any~~)) law enforcement, emergency personnel, or university officials acting in the performance of their duties;

(2) Any failure to identify oneself to university officials when requested to do so; or

(3) Any failure to comply with the rules, regulations, procedures, policies, standards of conduct, ((~~or any~~)) order, or directive of the university or any of its schools, colleges, ((~~and~~)) departments, offices, or units.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-133 Harassment or bullying. (1) Harassment or bullying is language or conduct 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 university's programs, services, opportunities, or activities, when viewed through both an objective and subjective standard. This includes harassment or bullying that occurs through electronic means, such as electronic media, the internet, social ((~~networks~~)) media platforms, blogs, ((~~cell~~)) phones, or text messages.

(2) This provision does not apply to language or conduct that is prohibited by the provisions on discriminatory harassment (WAC 478-121-123) or sexual harassment (WAC 478-121-155) of this code.

AMENDATORY SECTION (Amending WSR 20-09-105, filed 4/16/20, effective 5/17/20)

WAC 478-121-135 Hazing. All students, student organizations, athletic teams, and living groups are prohibited from participating in hazing.

(1) Hazing includes:

(a) Conduct associated with recruitment, initiation ((~~or~~)), pledging, admission into, or affiliation with a student organization, athletic team, or living group, or any pastime or amusement engaged in with respect to such an organization, athletic team, or living group, that causes, or is likely to cause, bodily danger, or physical harm, or serious psychological or emotional harm, to any student or other person. ((~~This conduct~~)) Hazing includes, but is not limited to, subjecting a person to a risk of the harms just mentioned, regardless of the person's willingness, through embarrassment, ridicule, sleep deprivation, verbal abuse, or personal humiliation, or through causing, directing, coercing, or forcing another to participate in:

(i) Humiliation by ritual act;

(ii) Striking oneself or another person whether by use of any object or any part of one's body;

(iii) Causing someone to experience excessive fatigue or physical and/or psychological shock;

(iv) Causing someone to engage in degrading or humiliating games or activities ((~~that create a risk of serious psychological, emotional, and/or physical harm~~)); or

(v) Encouraging or promoting the ((~~unlawful possession, forced or coerced use, or competitive or ritualistic consumption of~~)) excessive consumption of food, liquid, alcohol, drugs, or other substances, including competitive or ritualistic consumption.

(b) Hazing also includes conduct that is not a violation of (a) of this subsection and is associated with recruitment, initiation ((~~or~~)), pledging, admission into a student organization, athletic team, or living group, or any pastime or amusement ((~~engaged in~~)) with respect to a student organization, athletic team, or living group, such as:

(i) Subtle hazing((~~:~~)). Activities or situations created that emphasize a direct or indirect power imbalance between members. This includes, but is not limited to, physical or mental manipulation, or causing ((~~someone~~)) a person to believe that ((~~they~~)) that person may be required to participate in degrading or humiliating games or activities that create psychological, emotional, or physical harm;

(ii) Harassment hazing((~~:~~)). Activities that cause confusion, frustration, or physical discomfort that are directly or indirectly required, in order to become or remain a member of the student organization, athletic team, or living group. This includes, but is not limited to, sleep deprivation, verbal abuse, or being expected to harass others; or

(iii) Interference hazing((~~:~~)). Activities that do not allow reasonably adequate time for study or that otherwise unreasonably interfere((~~s~~)) with academic obligations.

(2) Hazing does not include customary athletic or cultural events or other similar contests or competitions.

(3) Consent is not a defense to hazing.

(4) ((~~Any student organization or living group that knowingly permits hazing as defined in subsection (1)(a) of this section shall be deprived of official recognition, approval, or registration granted by the university.~~

~~Any student organization or living group that knowingly permits hazing as defined in subsection (1)(b) of this section shall either be deprived of official recognition, approval, or registration or be placed on disciplinary probation for a period specified by the university.~~

~~(5)~~)) Students found responsible for violations of this section shall forfeit any entitlement to state funded grants, scholarships, or awards for a specified period of time determined by the university.

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

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-137 Indecent exposure. Indecent exposure includes the intentional exposure of a person's own genitals or ((~~other private body parts~~)) breasts when done in a place or manner in which such ex-

posure is likely to cause affront or alarm((~~, or is against generally accepted standards of decency~~)). Breastfeeding or expressing breast milk is not indecent exposure.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-143 Possession or use of firearms, explosives, dangerous chemicals, or other dangerous weapons. (1) Possession or use of firearms, explosives, dangerous chemicals, or other dangerous weapons includes unauthorized possession of firearms, explosives, dangerous chemicals, or other dangerous weapons or instrumentalities on university premises, unless specifically authorized by the university president or delegee.

(2) Firearms include, but are not limited to, what are commonly known as air guns or rifles, BB guns, and pellet guns, and any instrument used in the propulsion of shot, shell, bullets, or other harmful objects by the:

(a) Action of gunpowder or other explosives;

(b) Action of compressed air; or

(c) Power of springs or other forms of propulsion.

(3) ((~~This includes~~)) The exhibition or display of a replica of a dangerous weapon is prohibited under this ((~~subsection~~)) section if done in a manner and at a time or place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons.

NEW SECTION

WAC 478-121-144 On campus misconduct. On campus misconduct includes any conduct prohibited by the university's general code of conduct set forth in WAC 478-124-020.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-145 Research misconduct. ((")Research misconduct((")) is fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results, as is further set forth in the university's Executive Order No. 61.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-147 Retaliation. ((~~Retaliation includes engaging or attempting to engage in any action, directly or indirectly, including through a third party, that is intended to harass, intimidate, threaten, harm or improperly influence any person because they:~~

~~(1) Make, or intend to make, a report, complaint, grievance, or allegation of prohibited conduct under any university policy or rule, or under any law;~~

~~(2) Participate in and/or cooperate with conduct proceedings; or~~

~~(3) Appear as a witness.~~)) (1) Conduct that intimidates, threatens, coerces, harasses, or treats differently any individual for the purpose of interfering with any right or privilege secured by this code or because the person has requested an accommodation or made a report or complaint, testified, assisted, served as a witness, or participated or refused to participate in any manner in an investigation, proceeding, hearing, or related resolution process under this code and associated procedures.

(2) Nothing in this definition precludes the university from requiring university personnel to participate as a witness in, or otherwise assist with, an investigation, proceeding, or hearing pursuant to this code.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-150 Sexual assault. ((~~Sexual assault includes sexual contact with another person without, or that exceeds, that person's consent.~~

~~For the purposes of this subsection, "sexual contact" includes:~~

~~(1) Any intentional touching of the intimate parts of another person's clothed or unclothed body, including but not limited to the mouth, neck, buttocks, anus, genitalia, or breast;~~

~~(2) Causing another person to touch their own or another's body in the manner described above; or~~

~~(3) Any penetration, no matter how slight, of the vagina or anus with any body part or object, or oral-genital contact.~~

~~For the purposes of this subsection, "consent" means that at the time of and throughout the sexual contact, there are words or conduct that reasonably communicate freely given agreement between or among the parties to engage in the sexual contact. In addition:~~

~~(4) Consent cannot be obtained when force or threat is used to gain consent;~~

~~(5) Consent cannot be obtained where the respondent knew or reasonably should have known that the other person was incapacitated; or~~

~~(6) Consent cannot be given or granted by a person who is under the statutory age of consent in accordance with the criminal code of Washington, chapter 9A.44 RCW, Sex offenses.~~

~~A respondent's use of alcohol or drugs is not a valid defense to a charge of sexual assault, and a respondent will be held to the standard of a reasonable sober person in evaluating whether the respondent knew or reasonably should have known that the complainant was incapacitated.~~)) (1) The penetration, no matter how slight, of a person's genitals or anus with any body part or object without the person's consent, or mouth-to-genital, genital-to-genital, hand-to-genital, mouth-to-anus, or hand-to-anus contact between two people without the consent of one of the individuals; or causing another person to touch the person's own or another's body in the manners described without the person's consent.

(2) Sexual assault also includes:

(a) Conduct commonly referred to as statutory rape (in Washington state, rape of a child) as defined in RCW 9A.44.073, 9A.44.076, and 9A.44.079; and

(b) Incest as defined in RCW 9A.64.020.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-153 Sexual exploitation. ((~~Sexual exploitation involves taking~~)) (1) Any nonconsensual or abusive conduct that takes sexual advantage of another person for the purposes of sexual arousal or gratification, financial gain, or other personal benefit.

(2) Examples of sexual exploitation include:

((~~(1)~~)) (a) Transmitting, distributing, publishing, or threatening to transmit, distribute, or publish photos, video, or other recordings or images of a private and sexual nature, including consensual sexual activity, without the consent of the subject(s);

((~~(2)~~)) (b) Taking, making, sharing, or directly transmitting photographs, films, ((~~or~~)) digital images, or generated images of the private body parts of another person without that person's consent;

((~~(3)~~)) (c) Prostituting another person; or

((~~(4)~~)) (d) Surreptitiously watching or knowingly allowing another to surreptitiously watch otherwise consensual sexual activity.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-155 Sexual harassment. ((~~Sexual harassment is unwelcome sexual advances, requests for sexual favors or other verbal, physical, or electronic conduct of a sexual nature when one of the conditions outlined in subsection (1) or (2) of this section is present:~~

~~(1) Submission to, or rejection of, such conduct is made implicitly or explicitly a term or condition of a person's instruction, academic standing, employment, or participation in any university program, activity, or benefit, or is used as a basis for evaluation in making academic or personnel decisions; or~~

~~(2) Such conduct creates a hostile environment, which is created when the conduct is sufficiently severe, persistent, or pervasive that it unreasonably interferes with an individual's academic or work performance, ability to participate in or benefit from the university's programs, services, opportunities, or activities, or the receipt of legitimately requested services when viewed through both a subjective and objective standard.~~)) (1) Sexual harassment under this code includes both conduct that constitutes sexual harassment under federal Title IX regulations and other forms of sex-based conduct that violate university standards whether or not they fall within the jurisdictional scope of Title IX. All such conduct is prohibited and may result in university action.

(2) There are three types of sexual harassment that fall under this code:

(a) **Title IX hostile environment sexual harassment.** Unwelcome conduct determined by a reasonable person to be so severe, pervasive,

and objectively offensive that it effectively denies a person equal access to a university program or activity.

(b) **Other sexual harassment (non-Title IX).** Unwelcome conduct on the basis of sex that does not meet the Title IX definition and is objectively offensive and so severe or pervasive that it unreasonably interferes with, limits, or effectively denies a person's ability to participate in or benefit from a university program or activity, or otherwise adversely affects the terms and conditions of a person's university employment.

(c) **Quid pro quo sexual harassment.** When an employee of the university, or other person with actual or apparent authority to provide an aid, benefit, or service of the university, conditions the provision of a university aid, benefit, or service on a person's participation in unwelcome sexual conduct.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-157 Stalking. (1) Stalking means engaging in a course of conduct directed at ((~~another person~~)) a specific individual that would cause a reasonable ((~~person~~)) individual to:

(a) Fear for the ((~~person's~~)) individual's own safety or safety of others; or

(b) Suffer substantial emotional distress.

(2) Stalking may occur through use of electronic media, the internet, social networks, blogs, phones, or text messages.

(3) For the purposes of this section, "course of conduct" means two or more acts including, but not limited to, acts in which the respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property. Stalking also includes cyberstalking such as through electronic media, the internet, social networks, blogs, cell phones, or text messages.

((~~(3)~~)) (4) For the purposes of this section, "substantial emotional distress" means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-163 Unauthorized ((~~keys, entry~~)) access, presence, or use of property. Unauthorized ((~~keys, entry~~)) access to, presence within, or use of property includes, but is not limited to:

(1) Unauthorized possession, duplication, or use of keys (including conventional keys, key cards, or alphanumeric passcodes) to any university premises;

(2) Unauthorized entry upon, occupation of, presence within, or use of university premises or property; ((~~or~~))

(3) Blocking or restricting any other person's access to or from university premises or impeding any other person's movement within university premises;

(4) Providing keys to an unauthorized person or providing access to an unauthorized person; or

(5) Students and student organizations who are present in a university building or on university premises without authorization may be found in violation of the code for prohibited conduct that occurs even if they did not directly participate in the conduct if:

(a) A university official or law enforcement officer issues a lawful directive to leave the building or premises; and

(b) The student(s) choose to remain.

NEW SECTION

WAC 478-121-166 Unwanted sexual contact. The intentional touching of the clothed or unclothed body parts of another person, without consent, for the purpose of sexual degradation, sexual humiliation, or sexual gratification; or causing a person to touch any part of another person's body, without consent, for the purpose of sexual degradation, sexual humiliation, or sexual gratification.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-167 Vandalism. Vandalism includes ((~~maliciously damaging~~)) intentionally or recklessly damaging, defacing, destroying, or misusing university property, or the property of ((~~any member of the university community~~)) others.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-200 Form of adjudicative proceeding. (1) All conduct proceedings under this code shall be conducted in accordance with ((~~chapter 34.05 RCW,~~)) the Administrative Procedure Act (chapter 34.05 RCW) and constitutional due process. If there is an irresolvable conflict between this code and the Administrative Procedure Act or constitutional due process, the Administrative Procedure Act and constitutional due process shall supersede these rules.

(2) In applying this code, due consideration shall be given to the fact that the conduct process is administrative and not judicial in nature and that the rules of civil procedure only apply to the extent set forth in this code or in chapter 34.05 RCW. ((~~In formal proceedings pursuant to RCW 34.05.413 through 34.05.476, the University of Washington adopts the model rules of procedure, chapter 10-08 WAC, Model rules of procedure. In the case of a conflict between the model rules of procedure and these procedural rules, the procedural rules adopted in these rules shall govern.~~)) The presiding officer, in their discretion, may refer to or rely upon the model rules (RCW 34.05.250) in resolving any procedural question not addressed by this conduct code.

(3) Informal settlements may be conducted under the authority of RCW 34.05.060. The university offers an expedited hearing procedure as a form of informal settlement.

(4) The university has discretion to offer an informal resolution process.

NEW SECTION

WAC 478-121-201 Time frames and deadlines. (1) The university has established time frames for the completion of conduct proceedings. The time frames are intended to enhance efficiency and are not intended to adversely affect the rights or procedures available to the complainant and respondent under chapter 34.05 RCW.

(2) Time frames may be extended by the conduct office or by a hearing or appeal officer for good cause. A party to conduct proceedings may also request a postponement, continuance, extension of time, or adjournment for good cause. Such requests may be oral or written. If all parties do not agree to the delay, the presiding officer or appeal officer may meet with the parties to receive argument or may decide the request without argument.

(3) Factors that may be weighed in determining "good cause" include, without limitation:

(a) The consent of the parties;

(b) Whether additional time is necessary to ensure the integrity and completeness of the investigation;

(c) To account for university breaks or vacation; or

(d) To account for the complexities of a case, including the number of witnesses or volume of information provided.

(4) Notices of extensions, continuances, or other delays shall be provided to the parties in writing and include the reasons for the delay.

NEW SECTION

WAC 478-121-202 Privacy. (1) In accordance with FERPA and other applicable laws, and unless otherwise ordered by the presiding officer, all interviews, meetings, hearings, or reviews conducted under this code will be closed and not be open to the public. Attendance during such meetings or proceedings is limited to individuals who have a legitimate role or need to be present.

(2) The presiding officer may cause the proceeding to be recorded by a method chosen by the presiding officer. If recorded, a transcript of the proceedings may be prepared and made available to any party upon request. Documents and recordings are subject to retention and disclosure requirements under the Public Records Act, including applicable exemptions.

(3) Except as provided in subsection (2) of this section, and unless otherwise ordered by the presiding officer, no cameras or recording devices shall be permitted in any interview, meeting, hearing, or appeal.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-205 Conversion to full adjudicative proceeding. (1) Prior to the conclusion of a brief adjudicative proceeding, the conduct ((~~officer~~)) office shall make any inquiries necessary to ascertain whether the proceeding should be converted to a full adjudicative proceeding under RCW 34.05.413 through 34.05.476 of the Administrative Procedure Act. If converted, the conduct ((~~officer~~)) office will take steps necessary to initiate a ((~~full~~)) hearing and a hearing officer will be assigned.

(2) To the extent feasible, the conduct ((~~officer's~~)) office's record will be included in the record for the ((~~full~~)) hearing. Prior to the hearing, the conduct office's record is provided to the parties for review. The parties are given the opportunity, typically finalized through the prehearing meeting, to request that evidence be included or excluded from the record. The time of commencement of the ((~~full~~)) hearing shall be considered to be the time of commencement of the original conduct proceeding.

(3) If not converted by the conduct ((~~officer~~)) office and a sanction of suspension or dismissal is imposed after appeal, the parties will be given an opportunity to request a full adjudication and hearing per WAC 478-121-320 through 478-121-345.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-207 Full adjudicative proceeding. If it becomes apparent that a full adjudicative proceeding may be warranted, is necessary, is in the public interest, or is more appropriate to resolve issues affecting the participants, ((~~a full hearing will be held in accordance with WAC 478-121-400 through 478-121-427 that is in compliance with RCW 34.05.413 through 34.05.476~~)) the university may commence or provide the parties an opportunity to request a full adjudication under Part V of this code. Factors that may be considered, without limitation, as guidelines ((~~to determine~~)) in determining whether the issues and interests involved warrant the use of a full adjudicative proceeding ((~~consistent with this code will be defined in university policy, including *Student Governance and Policies*, chapters 209 and 210~~)) include whether:

(1) A respondent has been placed on emergency suspension;

(2) A respondent has been charged with hazing;

(3) A respondent has been charged with a felony offense under the Washington state criminal code related to the alleged prohibited conduct; or

(4) A respondent has multiple or prior conduct violations.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-210 ((~~Disciplinary~~)) Sanctions. (1) Sanctions are intended to provide educational opportunities and accountability while also reducing the likelihood of future prohibited conduct. Sanctions

may include administrative, educational, and restorative components. Some conduct, however, is so egregious in nature or so damaging to the educational environment that it requires more serious sanctions, including suspension or dismissal.

(2) One or more of the following ((~~disciplinary~~)) sanctions may be imposed for any violation of this ((~~conduct~~)) code:

(a) ((~~Disciplinary reprimand.~~)) Warning. A respondent may be issued a written ((~~disciplinary reprimand~~)) warning.

(b) ((~~Disciplinary~~)) Conduct probation. A respondent may be placed on ((~~disciplinary~~)) conduct probation ((~~(meaning formal conditions are imposed on the respondent's continued attendance)~~)). The time period for the ((~~disciplinary~~)) conduct probation and any conditions shall be specified. Failure to fulfill conditions of the ((~~disciplinary~~)) conduct probation in a timely manner will extend the probationary period (and the conditions) and may result in additional ((~~disciplinary~~)) conduct sanctions.

(c) Educational component. An educational component may be imposed. The time frame for completion will be specified, and failure to fulfill the educational component may result in additional sanctions. The university may put a conduct hold in place if the respondent fails to complete the educational component by the deadline date.

(d) Restitution. A respondent may be required to make restitution for ((~~damage~~)) injury to or ((~~other~~)) loss of property ((~~and for~~)), or injury to persons. The university may put a conduct hold in place if the respondent fails to pay or to make in writing university-approved arrangements to pay restitution.

((~~(d)~~)) (e) Loss of privileges. A respondent may be denied specified privileges for a designated period of time such as the privilege to participate in a particular campus activity and may be restricted from any or all university premises for a specific duration.

((~~(e)~~)) (f) Suspension. A respondent may be suspended (i.e., temporarily separated) from the university for a specified period of time. Conditions of suspension may be imposed and will be specified. Except as otherwise specified in the final order, all conditions must be fulfilled before the end of the suspension period. Failure to fulfill all conditions of suspension in a timely manner will extend the suspension period and any conditions, and may result in additional ((~~disciplinary~~)) sanctions. The university may put a conduct hold in place during the suspension period.

((~~(f)~~)) (g) Dismissal. A respondent may be dismissed (i.e., permanently separated) from the university.

((~~(g)~~)) (h) Sanctions for hazing (individual). In addition to other sanctions, a student who is found responsible for participating in hazing of another shall forfeit any entitlement to state-funded grants, scholarships, or awards for a specified period of time.

((~~(2)~~)) (3) One or more of the following sanctions may be imposed for any student organization violation of this code:

(a) Student organization warning. A reprimand should be assigned to the organization for the action of behavior, if warranted. Reprimand is used for low offenses/violations of the code. When a reprimand is assigned, the organization will be able to enjoy the benefits the university offers.

(b) Student organization probation. Probation should be assigned to the organization for the action of behavior, if warranted. Probation should be a minimum of one quarter and a maximum of one year. While on probation, the organization will be able to enjoy the bene-

fits the university offers, however this is their opportunity to reflect on their actions and make changes for the future.

(c) Student organization deferred suspension. Deferred suspension is the strictest form of probation for a student organization. It is a designated period of time during which a student organization, while continuing to be active, is given an opportunity to demonstrate the ability to abide by the code. A student organization may be placed on deferred suspension for serious misconduct or in the case of repeated misconduct. If the student organization is found responsible for any additional violation(s) of the code while the organization is on deferred suspension, then the same sanction of suspension will be the minimum sanction that will be imposed in an investigation on the subsequent misconduct. Student organizations placed on deferred suspension are also generally given developmental sanctions.

(d) Student organization interim suspension. After receiving a report of serious or repeated prohibited conduct, the university may suspend a student organization on an interim basis prior to the conclusion of the university's review of the organization's conduct. During the suspension, the organization will not be recognized by the university as a registered student organization, nor will recognition agreements for social fraternities and sororities. No one should be acting on behalf of the organization (i.e., hosting events, recruiting members). The interim suspension will remain in place until lifted or modified by a university official with authority to do so.

(e) Student organization suspension. In the case of serious or repeated misconduct by the organization, a student organization's university registration may be suspended. During the suspension time, the organization will not be recognized by the university as a registered student organization, nor will recognition agreements for social fraternities and sororities. No one should be acting on behalf of the organization (i.e., hosting events, recruiting members).

(f) Student organization revocation. The student organization's registration is revoked, and the organization is no longer recognized by the university.

(g) Sanctions for hazing (student organizations). Any organization, association, student organization, athletic team, or student living group that knowingly permits hazing to be conducted by its members or by others subject to its direction or control shall be deprived of any official university recognition or approval.

(4) In determining an appropriate sanction for a violation of this code, factors that may be considered include, but are not limited to:

(a) The seriousness, severity, persistence, or pervasiveness of the prohibited conduct;

(b) The nature or violence, if applicable, of the prohibited conduct;

(c) The impact on the complainant and/or university community;

(d) The respondent's past ((~~disciplinary~~)) record with the university;

(e) Whether the respondent has accepted responsibility for the prohibited conduct;

(f) The maintenance of a safe, nondiscriminatory and respectful environment conducive to learning; ((~~and/or~~))

(g) Whether the respondent concealed their identity for the purpose of evading or escaping discovery, recognition, or identification while engaging in prohibited conduct; and/or

(h) Any other mitigating, aggravating, or compelling factors that the presiding officer determines to be relevant and admissible.

((~~(3)~~)) (5) The use of alcohol or drugs by a respondent will not be considered a mitigating factor in imposing ((~~discipline~~)) sanctions.

((~~(4)~~)) (6) If a respondent withdraws from the university (or fails to reenroll) before completing a sanction, the sanction must be completed prior to or upon the respondent's reenrollment, depending on the nature of the sanction. Completion of ((~~disciplinary~~)) sanctions may be considered in applications for readmission to the university.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-213 Effective date of sanctions. Sanctions ((~~will be implemented when a final order becomes effective in the university's conduct proceeding. An initial order that becomes a final order because no administrative review was requested or initiated becomes effective on the day after the period for requesting review has expired~~)) are effective on the date an order becomes final and will be implemented as of the effective date unless a later date is specified in the order.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-215 Authority to initiate conduct proceedings and delegations of authority in conduct proceedings. (1) The following university officials may initiate conduct proceedings under this conduct code:

(a) The vice president for student life at University of Washington Seattle;

(b) The chancellors at University of Washington Bothell and Tacoma;

(c) With respect to academic misconduct, deans of a school or college ((~~(including the graduate school)~~)) at University of Washington Seattle. Deans of a school or college may delegate local college or school academic conduct officers; ((~~and~~))

(d) With respect to academic misconduct, deans or directors of any school or program at University of Washington Bothell or Tacoma. Deans of a school or college may delegate local college or school academic conduct officers;

(e) The Title IX coordinator, the Title VI coordinator, and the ADA coordinator; and

(f) The vice president of compliance and risk services.

(2) The above-named university officials may delegate the authority to one or more individuals to initiate and conduct proceedings((~~, engage in fact finding, hold~~)) under this code, including engaging in investigations, holding hearings, and ((~~issue~~)) issuing initial orders ((~~under this conduct code~~)). They may also establish student or student-faculty-staff hearing bodies to advise or to act for them in conduct proceedings.

((~~(3) For the purpose of completing administrative reviews under WAC 478-121-320 through 478-121-345 and 478-121-430 through 478-121-445 of this code:~~

~~(a) The chair of the faculty senate will appoint one or more faculty to be included in a pool of available reviewing officers; and~~

~~(b) The president, vice president for student life at University of Washington Seattle, or the chancellors at University of Washington Bothell and Tacoma may appoint one or more students to be included in a pool of available reviewing officers.~~

~~(4) Review panels, composed of multiple reviewing officers, may be created to complete administrative reviews under WAC 478-121-320 through 478-121-345 and 478-121-430 through 478-121-445 of this code. Review panels may also include a review coordinator.~~))

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-217 Appointment of ((~~reviewing~~)) appeal officers.

((~~Faculty and students may be appointed to the pool of available reviewing officers at any time by a university official with authority to appoint such individuals. Efforts will be made to ensure the pool includes available reviewing officers representing the University of Washington Seattle, Bothell, and Tacoma campuses. The appointment will be~~)) (1) Faculty, staff, students, and external contractors may be appointed to serve as appeal officers for appeals brought under this code. Such individuals are appointed by the university official with authority to appoint such individuals.

(a) The chair of the faculty senate will appoint one or more faculty through the same process used for membership on faculty senate councils;

(b) The president, vice president for student life at the University of Washington Seattle, or the chancellors at University of Washington Bothell and Tacoma may appoint one or more students in collaboration with student governance. To be eligible to serve on an appeal panel, students must be full-time and in good standing with the university;

(c) The vice president for human resources may appoint one or more staff members; and

(d) The vice president for compliance and risk services may appoint one or more external contractor(s).

(2) Efforts will be made to ensure the pool of appeal officers includes representation from the University of Washington Seattle, Bothell, and Tacoma campuses.

(3) Appeal officers are appointed for a specific term, which may be extended at the discretion of ((~~a~~)) the university official with authority to appoint ((~~such individuals, and will include any training and other conditions of service. See *Student Governance and Policies*, chapters 209 and 210~~)) that individual.

(4) As required or appropriate, appeal officers will receive training with respect to the conduct code and the procedures hereunder, as well as any conditions of service.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-220 Selection of ((~~review~~)) appeal officers and panels. (1) For each ((~~administrative review~~)) appeal, either a single appeal officer or an odd number of available ((~~reviewing~~)) appeal officers will be selected from the pool, based on availability, to ((~~form the review panel~~)) complete the appeal. Those selected for the panel will designate a ((~~faculty~~)) member of the panel to act as chair, with efforts made that the chair be a representative from the campus where the respondent is enrolled.

(2) Faculty, staff, external contractors, or students may be selected to serve on appeal panels, but the majority of panel members must be faculty. An appeal coordinator, who is not a decision maker, may be designated to facilitate the appeal.

(3) Only appeal panel members who are faculty, staff, or external contractors will be selected to serve on appeal panels for conduct proceedings involving sex discrimination, sexual harassment, dating violence, domestic violence, sexual assault, unwanted sexual contact, sexual exploitation, indecent exposure, stalking, or retaliation.

NEW SECTION

WAC 478-121-221 Conflict of interest or bias. (1) No presiding officer or appeal officer shall have a conflict of interest or bias for or against either party in the matter, or against complainants or respondents generally.

(2) Any person involved in the investigation or adjudication of a matter under this code shall self-recuse if this person discovers a conflict of interest, bias for or against one of the parties or against complainants or respondents generally or otherwise cannot act impartially.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-223 Disqualification and substitution of presiding officers and ((~~reviewing~~)) appeal officers. (1) Consistent with RCW 34.05.425, any presiding officer or ((~~reviewing~~)) appeal officer is subject to disqualification for bias, prejudice, interest, or any other applicable cause((~~.~~)), and any party may petition for the disqualification ((~~of an individual~~)) promptly after receipt of notice ((~~indicating that the individual will preside~~)) of such presiding officer's or appeal officer's appointment or, if later, promptly upon discovering facts establishing grounds for disqualification. The individual whose disqualification is requested shall determine whether to grant the petition, stating facts and reasons for the determination. If the petition is granted, an appropriate individual will then be substituted as a presiding officer or ((~~reviewing~~)) appeal officer. If a party requests the disqualification of a presiding officer and that request is denied, the denial of the request may be raised as a reason for seeking appeal.

(2) For matters falling under Part VII of the code (WAC 478-121-600), this provision may also apply to either an individual involved in the matter serving as the Title IX coordinator or designee and/or any individual designated by the university to facilitate an informal resolution process.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-225 Initiating conduct proceedings. (1) Conduct proceedings may be initiated when the university receives any direct or indirect report of conduct that may violate this code, which may include, but is not limited to, a police report, an incident report, a witness statement, other documentation, or a verbal or written report from a complainant, witness, or other third party.

(2) Conduct matters may be initiated under the conduct code regardless of whether or not the incident in question is the subject of criminal or civil proceedings.

(3) If the university has initiated a conduct proceeding and the conduct is also subject to a criminal investigation, the university will make reasonable efforts to work cooperatively with the law enforcement agency, but the university will not unduly delay its own process. At the request of law enforcement, the conduct office may delay the process temporarily while law enforcement is gathering evidence. The conduct office will promptly resume the process when notified that law enforcement has completed the evidence-gathering stage of its criminal investigation.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-227 Decision not to initiate a conduct proceeding. If the conduct ((~~officer~~)) office decides not to initiate a conduct proceeding when requested by a complainant who, otherwise, would be a party to the proceeding, the conduct ((~~officer~~)) office will provide the complainant with a written decision, including a brief statement of the reasons and of any other options for ((~~review~~)) appeal.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-230 Conduct hold on student record. (1) A conduct office or other designated university official may place a conduct hold on the student's record if the student is the respondent in a pending report of prohibited conduct, a pending conduct proceeding under this code, or in conjunction with a disciplinary sanction under this code. A conduct hold may restrict the student from registering for classes, ((~~requesting~~)) obtaining an official transcript, ((~~or~~)) receiving a degree ((~~from the university~~)), or participating in graduation ceremonies until the hold has been removed. If the conduct hold is put in place pending or during a conduct proceeding, the student

will be notified of the hold and be advised how to raise an objection ((~~about the hold~~)) or request that ((~~it~~)) the hold be made less restrictive. The hold will remain in place until lifted by the conduct office or other designated university official with authority to do so.

(2) Implementation of any conduct hold does not assume or imply any determination of, or create any expectation of, responsibility for prohibited conduct under this conduct code.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-233 Parties. (1) The parties to conduct proceedings are typically the university and the respondent. ((~~In accordance with *Student Governance and Policies*, chapter 210, student conduct policy for discriminatory and sexual harassment, intimate partner violence, sexual misconduct, stalking, and retaliation, in cases involving discriminatory harassment, indecent exposure, intimate partner violence, sexual assault, sexual exploitation, sexual harassment, stalking, or retaliation, the complainant is also a party.~~))

(2) For allegations of prohibited conduct that include an allegation of discrimination, discriminatory harassment, sexual harassment, sexual assault, unwanted sexual contact, sexual exploitation, stalking, indecent exposure, domestic violence, dating violence, and retaliation, the complainant is also a party.

(3) In addition, the university may designate other individuals, such as a complainant, as a party to other types of conduct proceedings, or allow individuals to intervene in conduct proceedings. ((~~For additional guidance, see *Student Governance and Policies*, chapter 209, student conduct policy for academic misconduct and behavioral misconduct.~~))

(4) Typically, faculty who refer an allegation of academic misconduct for conduct proceedings under this code would not be designated as a party.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-235 Interim protective measures. (1) Unless otherwise provided by law, after receiving a report of prohibited conduct, the university may implement interim protective measures ((~~that impact a respondent~~)) at any time prior to the conclusion of a conduct proceeding. When implemented, the ((~~respondent~~)) affected individual(s) will be notified of the interim measures and advised ((~~on~~)) as to how to raise an objection ((~~about the interim measure~~)) or request that it be made less restrictive. Interim measures will remain in place until lifted or modified by a university official with authority to do so.

(2) The purpose of interim protective measures are:

(a) Limiting contact between a respondent and a complainant or others;

(b) Preventing repetition of prohibited conduct; or

(c) Preventing retaliation against a complainant, an individual who reported, or other specified persons including, e.g., members of a student organization.

(3) The specific interim protective measure(s) implemented will vary depending on the circumstances of each report.

(4) Implementation of any interim measure does not assume any determination of, or create any expectation of, responsibility for prohibited conduct under this ((~~conduct~~)) code. A ((~~respondent~~)) student who fails to comply with any interim protective measures may, however, be charged with a "failure to comply" pursuant to WAC 478-121-130.

(5) The following are examples of interim protective measures:

(a) A no-contact directive. A no-contact directive is a university directive prohibiting the respondent from having direct or indirect contact, by any means, with a complainant, an individual who reported, other specified persons, and/or a specific student organization.

(b) Housing reassignments. In accordance with the university housing agreements, a student may be reassigned to other university housing under certain circumstances as necessary.

(c) Limiting the respondent's access to, or limiting participation in, identified university-controlled buildings, programs, or activities. University employees or others with authority over the building, program, or activity are typically consulted regarding an appropriate interim protective measure and/or may implement the interim protective measure.

(d) Changes to class schedules, assignments, or test schedules. This may include moving the respondent to a different class time or section. Efforts are made to avoid an impact on the respondent's academic progress.

(e) Emergency suspension. Authority to place a student on emergency suspension is set forth below.

(6) Certain interim protective measures may also be put in place as a condition of a sanction, and notification of the condition will be incorporated into the initial or final order.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-237 Emergency authority of the university. (1) If there is reasonable cause to believe that a student's conduct represents a threat to the health, safety, or welfare of the university or any member of the university community, or poses an ongoing threat of substantially disrupting or materially interfering with university activities or operations, the president, the president's delegate, the vice president for student life for the University of Washington Seattle or delegates, and the chancellors of the University of Washington Bothell and Tacoma campuses or delegates, may immediately suspend that student from participation in any or all university functions, privileges, or locations, provided that the university undertakes an individualized safety and risk analysis, determines that an imminent and serious threat to the health or safety of students, employees, or other persons arising from the reported conduct justifies removal, and provides the respondent with notice and opportunity to challenge the decision immediately following the removal.

(2) In such an emergency situation, the university official placing the student on emergency suspension shall issue a written order to

be served upon the student describing the terms of the emergency suspension and the reasons for the emergency suspension. The order shall advise the student how to raise an objection about the emergency suspension or request that it be made less restrictive. The university may also put a conduct hold in place during the emergency suspension period.

(3) The order shall be effective immediately. The ((~~proceeding~~)) matter shall then be referred to the appropriate conduct office and ((~~the proceeding shall~~)) proceed as quickly as feasible. The emergency suspension shall remain in effect until lifted or revised by a university official with authority to do so or until a final order is entered in the proceeding. Once a final order is entered in the proceeding, any emergency suspension shall be lifted and the sanction, if any, will be imposed.

(4) To the extent permissible under applicable law, the complainant or other member of the university community may also be provided with notice of the respondent's emergency suspension and any terms of the emergency suspension that directly relates to that individual.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-240 Service of notices, filings, and orders; and time limits. (1) Service of all university notices under this code will be sent by electronic mail (email) addressed to the party's university-issued email address. An alternative email address may be provided to the presiding officers and ((~~reviewing~~)) appeal officer(s) in writing and used in addition to the university issued email addresses. Service is complete at the moment the email is sent to the email address. If there is no email on record, service may also be accomplished by personal service or by posting it in the United States mail, properly addressed, and postage prepaid. Service by mail is complete upon deposit in the United States mail.

(2) The parties are permitted to file documents with the presiding officer or ((~~reviewing~~)) appeal officer(s) via email or other electronic means as determined by the presiding officer or ((~~reviewing~~)) appeal officer(s). Receipt of such documents will be determined by the date of the email. For documents that must be shared with other parties, the university will be responsible for service of such documents, as above.

(3) In computing any period of time under this conduct code, the day of service of any order, notice, or other document is not counted. The last day of the applicable period of time is counted. If the last day of the applicable period of time falls on a Saturday, Sunday, or official state holiday (which includes the day after Thanksgiving), the period ends on the next business day. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation.

(4) The time limit for seeking ((~~administrative review~~)) appeal of an initial order is based upon the date of service of the initial order.

(5) University students and employees have an ongoing obligation to update their physical and email addresses via MyUW. Others involved in the conduct proceeding who are not affiliated with the university

have an obligation to notify the presiding officer of any change to their physical or email addresses.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-243 Participation of advisors and attorneys. (1) The parties to conduct proceedings may((~~, at their own expense,~~)) arrange to be accompanied by ((~~an advisor of their choice, including an attorney~~)) a hearing advisor, a support advisor, or both a hearing and support advisor, throughout the conduct proceedings. In ((~~a brief adjudicative proceeding~~)) conduct proceedings, an advisor may provide support and advice, but an advisor may not speak on behalf of the student or disrupt or interfere with any aspect of the ((~~brief adjudicative~~)) proceeding, as determined by the ((~~conduct~~)) presiding officer. ((~~In a full adjudicative proceeding, including any prehearing matters,~~))

(2) If the party's hearing advisor is an attorney (as defined in WAC 478-121-050(1)), the ((~~attorney~~)) hearing advisor may advise and represent the party during the hearing process, but the hearing advisor may not disrupt or interfere with any aspect of the proceeding, as determined by the ((~~hearing~~)) presiding officer. ((~~For additional guidance, see *Student Governance and Policies*, chapters 209 and 210.~~))

(3) Advisors must make themselves reasonably available and the university will not unduly delay the conduct proceeding based on an advisor's or attorney's unavailability. Advisors may be asked to meet with a university administrator in advance of any participation in the proceeding to learn about the process and the role.

(4) One hearing advisor and one support advisor are the only persons that parties are permitted to bring with them to any part of the investigation or hearing. If a party has both a support advisor and a hearing advisor, the support advisor's ability to communicate with the hearing office and other party, and the other party's advisors at a hearing will be limited.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-245 Consolidation. If there are multiple conduct proceedings involving common issues or parties, the parties may request, or the presiding officer(s) may decide, to consolidate the proceedings. This decision is within the sole discretion of the presiding officer(s).

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-247 ((Burden)) Standard of proof. ((~~The burden of proof in conduct proceedings rests with the university.~~)) A respondent is presumed not responsible for prohibited conduct unless and until the applicable standard of proof has been met. The university uses the

"preponderance of evidence" standard, which means that in order for a respondent to be found responsible, the presiding officer must conclude, based on the evidence in the record, that it is more likely than not the respondent engaged in an act or acts of prohibited conduct.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-250 Evidence in conduct proceedings. ((~~The following evidentiary provisions apply to conduct proceedings under this code.~~)) (1) In applying this code, due consideration shall be given to the fact that the conduct process is administrative and not judicial in nature and that rules of evidence only apply to the extent set forth in this code or in chapter 34.05 RCW. The university has also developed ((~~agency~~)) university-level guidance regarding its interpretations of these rules((~~, including in *Student Governance and Policies*, chapters 209 and 210~~)).

((~~While~~)) (2) Rules of evidence do not apply in brief adjudicative proceedings ((~~do not require the application of rules of evidence~~)) although, the conduct ((~~officer~~)) office will be guided by the principles underlying the Washington state rules of evidence ((~~when they do not conflict with the code or relevant university policies~~)). Evidence in full adjudicative proceedings is governed by RCW 34.05.452.

(3) When available to the university, information provided by law enforcement, or through law enforcement records, may be considered in the university's conduct proceedings.

(4) The university will provide each party and the party's advisor, if any, with equitable access to the evidence that is relevant to the reported conduct and is not otherwise impermissible.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-253 Relevant evidence, hearsay, and character evidence. (1) Evidence, including hearsay, is admissible if, in the judgment of the presiding officer, it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. If not inconsistent with this standard, Washington state rules of evidence serve as guidelines for evidentiary rulings. Findings may be based on such evidence even if it would be inadmissible in a civil trial. In a ((~~full~~)) hearing, however, the hearing officer shall not base a finding exclusively on such ((~~inadmissible~~)) evidence unless the hearing officer determines that doing so would not unduly abridge the parties' opportunities to confront witnesses and rebut evidence. The basis for this determination shall appear in the initial order.

(2) The presiding officer will determine the admissibility and relevance of all evidence, including that offered by the parties and/or witnesses, and shall exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of this state. The presiding offi-

cer may exclude from consideration evidence that is not relevant((~~. The presiding officer may also exclude from consideration evidence that is immaterial~~)), or unduly repetitious.

(3) The presiding officer will objectively evaluate all relevant evidence, including both inculpatory and exculpatory evidence. Credibility determinations must not be based on a person's status as a complainant, respondent, or witness.

(4) In general, the presiding officer will not consider statements of personal opinion or statements as to any individual's general reputation or any character trait, unless the presiding officer considers such evidence to be relevant and admissible.

((~~(4)~~)) (5) The presiding officer may take official notice of some material that was not offered as evidence by the parties. In full adjudicative proceedings, the process for taking official notice is set forth in RCW 34.05.452.

(6) When available to the university, information provided by law enforcement, or through law enforcement records, may be considered in the university's conduct proceedings.

(7) The presiding officer may not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has voluntarily waived the privilege in writing.

(8) An individual's medical and counseling records are inadmissible unless the individual voluntarily shares or consents in writing to the disclosure and use of the records in the conduct proceeding. In such instances, the records or information from the records, if determined by the presiding officer to be relevant, may be shared with other parties or witnesses and will become part of the record.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-257 Prior sexual history. (1) The sexual history of the parties or witnesses will not be used to prove character or reputation. Evidence related to the prior sexual history of the parties or witnesses is generally not relevant to the determination of a violation of this code and will be considered only ((~~in limited circumstances.~~)) if the presiding officer ((~~will determine the relevance of this evidence~~)) determines that it is relevant.

(2) Evidence that relates to the complainant's sexual interests or prior sexual conduct will be excluded, unless evidence about the complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct or is offered to prove consent with evidence concerning specific incidents of the complainant's prior sexual conduct with the respondent. The fact of prior consensual sexual conduct between the complainant and respondent does not demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-260 Experts. (1) Consistent with RCW 34.05.452(5), presiding officers may consult medical, forensic, technological, or other experts when expertise on a topic is needed in order to achieve a fuller understanding of the issues under investigation. This information will be summarized in the initial order.

(2) Generally, results of polygraph examinations are not considered relevant, even if offered voluntarily.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-263 Self-incriminating evidence. (1) No student shall be compelled to give self-incriminating evidence and a negative inference will not be drawn from a refusal to participate at any stage of the conduct proceeding. The presiding officer may, however, continue with the conduct proceeding and reach a finding based on other available and admissible evidence.

(2) A decision maker may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and permissible. The decision maker must not draw an inference about whether prohibited conduct occurred based solely on a party's or witness's refusal to respond to such questions.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-300 Brief adjudicative proceedings—Notice of conduct proceeding ((~~and investigative interview~~)). The conduct ((~~officer~~)) office will provide notice to the parties, in writing, of the commencement of conduct proceedings, which will include information on how to petition for disqualification of the conduct officer, and schedule an initial meeting with the respondent as part of the investigatory process.

((~~The conduct officer will also schedule an investigative interview with the respondent as part of the fact-finding process.~~))

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-305 Brief adjudicative proceedings—Fact finding. (1) Before taking action in a brief adjudication proceeding, the conduct officer shall ((~~give each party an opportunity to be informed of the agency's view of the matter and to explain the party's view of the matter. This process includes, without limitation, conducting fact finding and providing the parties with the opportunity to participate in the conduct proceeding by explaining the process to the parties and allowing them to review the allegations, provide evidence,~~)) notify

the parties of their opportunity to, in whatever sequence the conduct officer reasonably determines most appropriate:

(a) Review the allegations;

(b) Meet with the conduct officer;

(c) Provide relevant information (such as documents, communications, photographs, and other evidence);

(d) Identify witnesses with relevant knowledge((~~,~~));

(e) Respond to evidence provided by others((~~, and provide the conduct officer with~~));

(f) Provide suggested questions for others ((~~(collectively, "fact finding")~~));

(g) Be informed of the university's view of the matter; and

(h) Explain the party's view of the matter.

(2) Each party will have an equitable opportunity to present relevant fact witnesses and other inculpatory and exculpatory evidence. The conduct office is responsible for gathering reasonably available evidence and information.

(3) When available to the university, information provided by law enforcement, or through law enforcement records, may be considered in the university's conduct proceedings.

(4) If a party fails to respond to notices or does not participate in the conduct proceeding at any stage of the proceeding, the university may move forward with the conduct proceeding without the participation of the party.

NEW SECTION

WAC 478-121-306 Brief adjudicative proceedings—Dismissal of a complaint. (1) Grounds. The university may dismiss a complaint for any of the following reasons:

(a) The university is unable to identify the respondent after taking reasonable steps to do so;

(b) The respondent is not participating in the university's education program or activity and is not employed by the recipient;

(c) The complainant voluntarily withdraws any or all of the allegations in the complaint, and the university determines that without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute prohibited conduct under the code even if proven; or

(d) The university determines the conduct alleged in the complaint, even if proven, would not constitute prohibited conduct under the code. Prior to dismissing the complaint under this subsection, the recipient must make reasonable efforts to clarify the allegations with the complainant.

(2) Notice. Upon a dismissal required or permitted under this section, the university will promptly send written notice of the dismissal and reason(s) therefore simultaneously to the parties.

(3) Request for appeal. If the university dismisses a complaint and the complaint involves sex discrimination or any form of sex or gender-based prohibited conduct, the parties have a right to appeal, as described in WAC 478-121-320.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-315 Brief adjudicative proceedings—Initial order. At the conclusion of the ((~~fact finding~~)) investigation, the conduct ((~~officer~~)) office will prepare an initial order. If the respondent is found responsible, the conduct ((~~officer~~)) office will impose a sanction. The conduct ((~~officer~~)) office will serve the initial order ((~~to~~)) on the parties, simultaneously and in writing. The initial order will include a ((~~brief~~)) written statement of the reasons for the decision and an explanation of how to request ((~~administrative review~~)) appeal of the initial order and the time frame to do so.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-320 Brief adjudicative proceedings—Requesting ((~~administrative review~~)) an appeal. (1) A party may request ((~~administrative review~~)) an appeal of the initial order based on the grounds as set forth in WAC 478-121-325.

(2) A request for ((~~administrative review~~)) appeal must be submitted in writing to the conduct ((~~officer~~)) office within ((~~twenty-one~~)) 21 days of the date of service of the initial order. The ((~~party requesting the review will be provided with an opportunity to explain the reasons for seeking review~~)) appeal is the party's opportunity to provide the party's position regarding why the appeal should be granted, and it must identify at least one of the grounds outlined in WAC 478-121-325. If one of the grounds is to consider newly discovered evidence, that evidence must also be provided with the ((~~request for review~~)) appeal.

(3) If an ((~~administrative review~~)) appeal is not requested within ((~~twenty-one~~)) 21 days of service of the initial order, the initial order shall become the final order.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-325 Brief adjudicative proceedings—Grounds for ((~~administrative review~~)) appeal. A party may ((~~request administrative review~~)) appeal an initial order in a brief adjudicative proceeding for any or all of the following reasons:

(1) To determine whether there was a material error that substantially affected the outcome of the fact finding or sanctioning;

(2) To consider newly discovered evidence, not reasonably available during the ((~~fact finding~~)) investigation, that could substantially impact the outcome;

(3) To determine whether the sanction(s) imposed were appropriate for the violation committed and were not excessively lenient or excessively severe; ((~~or~~))

(4) To determine whether the Title IX coordinator or investigator had a conflict of interest or bias for or against complainants or re-

spondents generally or the individual complainant or respondent that would change the outcome of the matter;

(5) If a party requests the disqualification of a presiding officer and that request is denied, the denial of the request may be raised as a reason for seeking appeal; or

(6) To determine whether the issue and interests involved warrant a ((~~full~~)) hearing.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-330 Brief adjudicative proceedings—Notice of ((~~administrative review~~)) appeal. (1) If ((~~administrative review~~)) an appeal is requested, the university will provide the parties notice, in writing, of the date the ((~~administrative review~~)) appeal will be initiated and the identities of the ((~~reviewing~~)) appeal officer(s) selected for the ((~~review~~)) appeal panel. The parties will also be provided with information on how to petition for disqualification of any ((~~reviewing~~)) appeal officer(s).

((~~Other parties will be provided with~~)) (2) A copy of the ((~~request for administrative review and notice of~~)) appeal and an explanation as to how to submit a written response will be provided with the notice of appeal. Responses must be submitted within five business days of service of the notice of ((~~administrative review~~)) appeal.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-335 Brief adjudicative proceedings—Procedures for ((~~administrative review~~)) appeal. (1) When the ((~~reviewing officer(s) conducts an administrative review, the review~~)) appeal officer(s) review an appeal, the appeal is based on:

(a) The conduct ((~~officer's record and fact finding~~)) office's record;

(b) Information submitted to the ((~~review panel in the request for review or response to request for review~~)) appeal panel with the appeal or any response to the appeal; and

(c) Newly discovered evidence, if the ((~~basis for seeking administrative review is that newly discovered evidence has become available~~)) appeal is based on newly discovered evidence; however the review of newly discovered evidence is limited to determining whether the newly discovered evidence warrants remanding the matter for further proceedings.

(2) ((~~Decisions by a panel of reviewing officers will be determined~~)) If the review has been conducted by an appeal panel, the decision will be by majority vote.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-340 Brief adjudicative proceedings—Order from ((~~administrative review~~)) appeal. (1) Within ((~~twenty days after the request is submitted, the review~~)) 20 days of receipt of all responses submitted by the parties or oral argument, if any, whichever is later, the appeal panel will issue an order, which will include the outcome, any sanction, and a brief statement of the reasons for the outcome. ((~~All parties will receive simultaneous, written notification of the outcome of the review.~~)) The notification to all parties will be issued simultaneously.

(2) The ((~~reviewing~~)) appeal officer(s) may reach one of the following results:

(a) Conclude there is no basis for remand or alteration of sanctions, and issue a final order disposing of the proceeding;

(b) Remand and return to the conduct office for further ((~~fact finding~~)) investigation or review if newly discovered evidence may have impacted the result or if the record demonstrates material error;

(c) Increase or reduce the sanction(s) and issue a final order, if the increased sanction does not warrant a ((~~full~~)) hearing; or

(d) ((~~Conclude whether~~)) Determine that the proceeding should be converted to a full adjudicative proceeding and, if so, take steps necessary to initiate ((~~a full hearing~~)) such proceeding.

(3) If the ((~~review panel~~)) appeal officer(s) does not issue an order within ((~~twenty~~)) 20 days after the ((~~request is submitted, the request for review is deemed to be~~)) receipt of all responses or oral argument, whichever is later, the appeal is denied.

(4) If, following an appeal, an initial order in a brief adjudicative proceeding is remanded or the conduct office is directed to convert the brief adjudicative proceeding to a full adjudicative proceeding, the initial order will be rescinded and the appeal officer(s) will describe, in writing, the reasons for the remand or conversion.

(5) Following remand, additional proceedings will be conducted as necessary to address the reasons for the remand and will be conducted in accordance with the relevant sections of this chapter.

PART V
FULL ADJUDICATIVE PROCEEDINGS AND ((~~FULL~~)) HEARING

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-400 Notice of ((~~full~~)) hearing. The hearing officer shall set the time and place of the ((~~full~~)) hearing and give not less than seven days advance written notice to all parties and to all persons who have filed written petitions to intervene in the matter. The

notice will include information on how to petition for disqualification of the hearing officer.

NEW SECTION

WAC 478-121-401 Conduct office record. To the extent feasible, the conduct office's record will be included in the record for the hearing. The parties will be provided an opportunity to review the conduct office record prior to the hearing and identify any evidence that the party requests be excluded from the hearing record. Such requests will be approved or denied during the prehearing meeting.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-403 Prehearing ((~~conferences~~)) meetings. (1) Hearing officers upon their own motion or upon request of a party may direct the parties or their representatives to engage in a prehearing ((~~conference or conferences~~)) meeting or meetings (also known as prehearing conferences) to consider:

(a) Simplification of issues;

(b) The necessity or desirability of amendments to the pleadings, if any;

(c) The possibility of obtaining stipulations, admissions of fact and admissions of the genuineness of documents which will avoid unnecessary proof;

(d) Limitations on the number and consolidation of the examination of witnesses;

(e) Procedural matters;

(f) Distribution of written testimony and exhibits to the parties prior to the hearing;

(g) Such other matters as may aid in the disposition or settlement of the proceeding.

(2) Prehearing ((~~conferences~~)) meetings may be held ((~~by telephone conference call or at a time and place specified by hearing officers~~)) in person or by video conference, telephone, or other electronic means.

(3) Following prehearing ((~~conferences~~)) meetings, hearing officers shall issue an order. Orders are effective when they are served. Hearing officers may, at their discretion, hold more than one prehearing ((~~conference~~)) meeting and issue orders modifying any prehearing order.

(4) In any ((~~full~~)) hearing, hearing officers may, in their discretion, conduct a ((~~conference~~)) meeting prior to the taking of testimony, or may recess the hearing for such ((~~conference~~)) meeting, for the purpose of carrying out the purpose of this rule. Hearing officers shall state on the record the results of such ((~~conference~~)) meeting.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-423 ((~~Testimony under oath or affirmation.~~)) Evidence and testimony during hearing process. (1) Before the hearing, to the extent necessary for full disclosure of all relevant facts and issues, the hearing officer shall afford to all parties the opportunity to respond to the evidence, present evidence and argument, and submit rebuttal evidence, except as restricted by a limited grant of intervention or by the hearing officer.

(2) During the hearing, the respondent and a complainant may not ask questions of each other directly, but will be allowed to submit written questions to the hearing officer, who will ask for any relevant and appropriate questions submitted by these parties. The hearing officer has the discretion to accept, reject, or rephrase any questions submitted by the respondent or a complainant.

(3) In a ((~~full~~)) hearing, all testimony of parties and witnesses shall be made under oath or affirmation.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-425 Remote participation—Transcription. At the discretion of the hearing officer, and where the rights of the parties will not be prejudiced thereby, all or part of any hearing, including the testimony of witnesses, may be conducted by ((~~telephone~~)) video conference, or other electronic means where the witness is visible to all parties. Each party in the hearing must have an opportunity to participate effectively in, to hear, and ((~~if technically and economically feasible,~~)) to see the entire proceeding while it is taking place. Such measures may be taken to accommodate concerns raised by a complainant, a respondent, or any witness. The university will have an audio or audiovisual recording, or a transcript made of any hearing and make it available to the parties for inspection and review.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-427 Initial order from ((~~full~~)) hearing. ((~~At the conclusion,~~)) (1) The hearing officer will issue an initial order, which shall include all matters required by RCW 34.05.461(3). The hearing officer will serve the initial order to the parties, simultaneously and in writing. The initial order will include an explanation of how to request ((~~administrative review~~)) an appeal of the initial order and the time frame to do so.

(2) If an ((~~administrative review~~)) appeal is not requested within ((~~twenty-one~~)) 21 days of service of the initial order, the initial order shall become the final order.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-430 Requesting ((~~administrative review from a full~~)) an appeal from an initial order after a hearing. (1) A party may request ((~~administrative review~~)) appeal of the initial order from a ((~~full~~)) hearing based on the grounds as set forth in WAC 478-121-433.

(2) A request for ((~~administrative review~~)) an appeal must be submitted in writing to the hearing officer within ((~~twenty-one~~)) 21 days of the date of the initial order. If one of the grounds is to consider newly discovered evidence, that evidence must be provided with the ((~~request for review~~)) appeal.

(3) If an ((~~administrative review~~)) appeal is not requested within ((~~twenty-one~~)) 21 days, the initial order shall become the final order.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-433 Grounds for ((~~administrative review~~)) appeal from a ((~~full~~)) hearing. A party may request ((~~administrative review~~)) appeal for any or all of the following reasons:

(1) To determine whether there was a material error that substantially affected the outcome of the ((~~fact finding~~)) investigating or sanctioning;

(2) To consider newly discovered evidence, not reasonably available during the ((~~fact finding~~)) investigation, that could substantially impact the outcome;

(3) To determine whether the sanction(s) imposed were appropriate for the violation committed and were not excessively lenient or excessively severe; ((~~or~~))

(4) To determine whether the Title IX coordinator, investigator, or decision maker had a conflict of interest or bias for or against complaints or respondents generally or the individual complainant or respondent that would change the outcome of the matter;

(5) If a party requests the disqualification of a presiding officer and that request is denied, the denial of the request may be raised as a reason for seeking appeal; or

(6) Any other grounds that would warrant modification, withdrawal, or reversal of the order.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-435 Notice of ((~~administrative review~~)) appeal from a ((~~full~~)) hearing. ((~~If administrative review is requested~~)) (1) If an initial order from a hearing is appealed, the university will provide the parties notice, in writing, of the date the ((~~administrative review~~)) appeal will be initiated and the identities of the ((~~reviewing~~)) appeal officer(s) selected for the ((~~review~~)) appeal panel. The parties will also be provided with information on how to petition for disqualification of any ((~~reviewing~~)) appeal officer(s).

((~~Other~~)) (2) The parties will be provided with a copy of the ((~~request for administrative review and notice of~~)) appeal, the request for the appeal, and information as to how to submit a written response. Responses must be submitted within five business days of service of the notice of ((~~administrative review~~)) information as to how to submit a written response.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-437 Procedures for ((~~administrative review~~)) appeal from a ((~~full~~)) hearing. (1) When the ((~~reviewing~~)) appeal officer(s) conducts an ((~~administrative review, the reviewing~~)) appeal, the appeal officer(s) shall:

(a) Personally consider the whole record or such portions of it as may be cited by the parties;

(b) Exercise all the decision-making power that the ((~~reviewing~~)) appeal officer would have had to decide and enter the final order had the ((~~reviewing~~)) appeal officer presided over the hearing, except to the extent that the issues subject to review are limited by a provision of law or by the ((~~reviewing~~)) appeal officer(s) upon notice to all the parties;

(c) Afford each party an opportunity to present written argument and may, at the appeal officer's sole discretion, afford each party an opportunity to present oral argument ((~~to explain the party's position but~~)) provided that any such argument shall not be considered as evidence;

(d) Review information submitted to the review panel ((~~in the request for review or response to request for review~~)) with the appeal or any response to the appeal; and

(e) Review newly discovered evidence, if ((~~the~~)) a basis for ((~~seeking administrative review~~)) an appeal is that newly discovered evidence has become available; however the review of newly discovered evidence is limited to determining whether the newly discovered evidence warrants remanding the matter for further proceedings.

(2) In reviewing findings of fact by presiding officers, the ((~~reviewing~~)) appeal officers shall give due regard to the presiding officers' opportunity to observe the witnesses.

(3) ((~~Decisions by a panel of reviewing officers~~)) If the review has been conducted by an appeal panel, the decision will be determined by majority vote.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-440 Communications with ((~~reviewing~~)) appeal officers. All communications with ((~~reviewing~~)) appeal officers, except for communications necessary to procedural aspects of maintaining an orderly process, must be in the presence of, or with a copy to, all other parties. Ex parte communications received by ((~~reviewing~~)) appeal officers must be placed on the record, and all other parties must be informed of the ex parte communication and given an opportunity to respond on the record.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-443 Order from ((~~administrative review~~)) appeal of a ((~~full~~)) hearing. (1) Within ((~~thirty~~)) 30 calendar days of receipt of all response(s) submitted by the parties or oral argument, if any, whichever is later, the ((~~reviewing~~)) appeal officer(s) will issue ((~~an~~)) a written order, which will include the outcome, any sanction, and a brief statement of the reasons for the outcome. All parties will receive simultaneous, written notification of the outcome of the ((~~review~~)) appeal.

(2) The ((~~reviewing~~)) appeal officer(s) may reach one of the following results:

(a) Conclude there is no basis for remand or alteration of sanctions, and issue a final order disposing of the proceeding;

(b) Remand for further ((~~fact finding~~)) investigating or review if newly discovered evidence may have impacted the result or if the record demonstrates material error with instructions to the presiding officer ((~~who entered the initial order~~));

(c) Increase or reduce the sanction(s), and issue a final order disposing of the proceeding; or

(d) ((~~Issue a final order disposing of the proceeding or~~)) Remand the matter for further proceedings on any other grounds that would warrant modification, withdrawal, or reversal of the order, with instructions to the presiding officer who entered the initial order.

(3) When issuing orders under this section, the order shall include((~~, or incorporate by reference to the initial order, all matters required by RCW 34.05.461(3)~~)) all matters required by RCW 34.05.461(3) which may be by reference to the initial order.

(4) The ((~~reviewing~~)) appeal officer(s) will serve the order ((~~to~~)) on the parties, simultaneously and in writing.

(5) Once a final order has been issued by the university, complainants or respondents may seek judicial review as set forth in chapter 34.05 RCW, the Washington state Administrative Procedure Act. The time limit for seeking judicial review or a final order is set forth in RCW 34.05.542.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-445 Process following remand from ((~~administrative review~~)) appeal of a ((~~full~~)) hearing. (1) If the proceeding is remanded after an appeal following a hearing, the initial order will be rescinded and the ((~~reviewing~~)) appeal officer(s) will describe, in writing, the reasons for the remand. ((~~Following remand, additional proceedings will be conducted as necessary to address the reasons for the remand~~)) The hearing officer will conduct additional proceedings as directed or indicated by the appeal panel.

(2) ((~~At the conclusion~~)) After conducting such proceedings, the hearing officer will issue ((~~an initial~~)) a written order, which shall include all matters required by RCW 34.05.461(3). The hearing officer will serve the initial order ((~~to~~)) on the parties, simultaneously and in writing. The initial order will include an explanation of how to request ((~~administrative review of the initial order~~)) an appeal and the time frame to do so.

(3) If an ((~~administrative review~~)) appeal is not requested within ((~~twenty-one~~)) 21 days of service of the initial order, the initial order shall become the final order.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-447 Reconsideration of final orders. (1) Within ((~~ten~~)) 10 days of the service of a final order or within ((~~ten~~)) 10 days of the date an initial order becomes a final order, any party may file a request for reconsideration. The request shall be directed to the officer(s) who issued the final order and state in writing specific reasons for the request. Upon receipt, the officer(s) shall promptly serve all other parties with a copy of the request for reconsideration.

(2) Unless the request for reconsideration is automatically deemed to have been denied under WAC 478-121-450, the request shall be disposed of by the officer(s) who issued the final order, if reasonably available. The disposition shall be in the form of a written order denying the request, granting the request and dissolving or modifying the final order, or granting the request and setting the matter for further hearing.

(3) Once a final order has been issued by the university, complainants, or respondents may seek judicial review as set forth in chapter 34.05 RCW, the Washington state Administrative Procedure Act. The time limit for seeking judicial review of a final order is set forth in RCW 34.05.542.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-450 Denial of request for reconsideration. The request for reconsideration is automatically deemed to have been denied if, within ((~~twenty~~)) 20 days from the date the request for reconsideration is timely submitted, the officer(s) who issued the final order does not either:

(1) Dispose of the request; or

(2) Serve the parties with a written notice specifying the date by which the request will be acted upon.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-500 General recordkeeping. (1) Records related to conduct proceedings shall be maintained consistent with RCW 34.05.476 and 34.05.494, university records retention policies, and other relevant policies.

(2) While the university will maintain records from all proceedings, any matter that results in a warning will only be maintained internally and will not be included in a student's reportable conduct record.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-510 Disciplinary record. (1) Any final order resulting from conduct proceedings shall become a part of the respondent's disciplinary record. Student disciplinary records are "education records" as defined by FERPA and may only be disclosed consistent with FERPA and chapter 478-140 WAC.

(2) This may include, but is not limited to, releasing to the alleged victim of a crime of violence or a nonforcible sex offense the final results of the conduct proceeding conducted by the university involving the student who is alleged to have engaged in that crime or offense.

PART VII
((~~COMPLIANCE WITH DEPARTMENT OF EDUCATION FEDERAL REGULATIONS REGARDING SEXUAL HARASSMENT~~)) PROCEDURES FOR ADDRESSING TITLE IX COMPLAINTS

AMENDATORY SECTION (Amending WSR 21-07-047, filed 3/11/21, effective 4/11/21)

WAC 478-121-600 Scope of Part VII. ((~~The United States Department of Education federal regulations, 34 C.F.R. Part 106, establish a definition of "sexual harassment" that includes all of the prohibited conduct listed under WAC 478-121-605 (Department of Education federal regulations prohibited conduct or EDFR prohibited conduct). The conduct listed under WAC 478-121-605 is prohibited conduct under this code and is subject to the procedures set forth under Part VII of this code if, and only if:~~))

(1) Part VII of this code provides the investigation and adjudication procedures for alleged Title IX hostile environment sexual harassment, quid pro quo harassment, sexual assault, unwanted sexual contact, stalking, domestic violence, and dating violence when:

(a) The ((~~EDFR~~)) prohibited conduct occurs in a university education program or activity; and

((~~(2) The EDFR~~)) (b) The prohibited conduct is against a person in the United States.

((~~EDFR prohibited conduct that does not meet both of these requirements or is reported by a person who is not eligible to file a formal complaint under WAC 478-121-625 is subject to Parts II through V of this code.~~)) (2) Prohibited conduct that does not meet both of these requirements or is reported by a person who is not eligible to file a formal complaint under WAC 478-121-625 is subject to Parts II through V of this code.

(3) For the purposes of Part VII of this code, "education program or activity" includes all the operations of the university including, but not limited to, locations, events, or circumstances over which the university exercised substantial control over both the respondent and the context in which the ((~~EDFR~~)) prohibited conduct occurred and also

includes any building owned or controlled by a recognized student organization. ((~~Part VII only applies to formal complaints made on or after August 14, 2020, and only when 34 C.F.R. Part 106 is deemed enforceable by law and/or by United States courts.~~))

(4) Unless otherwise provided for in Part VII of this code, the procedures, definitions, and provisions of Parts I through VI of this code also apply to allegations of prohibited conduct meeting the scope requirements of this provision.

AMENDATORY SECTION (Amending WSR 21-07-047, filed 3/11/21, effective 4/11/21)

WAC 478-121-625 Formal complaint. (1) Only a complainant or the university's Title IX coordinator may file a formal complaint. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in a university education program or activity. ((~~The authority to initiate conduct proceedings provisions outlined in WAC 478-121-215 (1) and (2) do not apply to Part VII of this code.~~

~~(2) A complainant may file a formal complaint with the Title IX coordinator or designee in person, by mail, or by electronic mail at the address provided on the Title IX coordinator's website.~~

~~(3) Upon receipt of a formal complaint, the university will, at a minimum, provide the following written notice to the known parties:~~

~~(a) The allegations potentially constituting EDFR prohibited conduct, including the identities of the parties involved in the incident, if known, the conduct allegedly constituting EDFR prohibited conduct, and the date and location of the alleged incident, if known;~~

~~(b) Information regarding the university's grievance process for formal complaints, including the parties' right to be accompanied by a hearing advisor and support advisor and to inspect and review evidence; and~~

~~(c) An explanation regarding presumptions regarding nonresponsibility and good-faith filing.~~

~~(4)~~)) (2) The university may consolidate formal complaints where allegations of ((~~EDFR~~)) prohibited conduct arise out of the same facts or circumstances. The university may also join or consolidate any complaint alleging prohibited conduct under Part II of this code with a formal complaint if the allegations arise out of or relate to the same facts or circumstances. Should the university consolidate a formal complaint under Part VII with allegations of prohibited conduct under Part II, the university may elect to hold one hearing to consider all allegations. During such a hearing, the university may adhere to the process described in Parts II through V to the extent feasible for allegations of prohibited conduct outlined in Part II and to the process described in Part VII for allegations of ((~~EDFR~~)) prohibited conduct. Where these processes conflict, Part VII will be followed.

AMENDATORY SECTION (Amending WSR 21-07-047, filed 3/11/21, effective 4/11/21)

WAC 478-121-630 Dismissal of a formal complaint. (1) Mandatory dismissal. ((~~In accordance with the Department of Education federal~~

~~regulations~~)) For prohibited conduct addressed by Part VII of the code under WAC 478-121-600, the university will dismiss a formal complaint for purposes of Title IX and its implementing regulations if the alleged conduct:

(a) Would not constitute ((~~EDFR~~)) prohibited conduct even if proved;

(b) Did not occur in the university's education program or activity;

(c) Did not occur against a person in the United States; or

(d) Was alleged by or in respect to a complainant who is not participating in or attempting to participate in a university education program or activity.

If dismissal occurs under this subsection (1) of this section, the university may pursue a conduct proceeding under other parts of this code.

(2) Discretionary dismissal. The university may dismiss the formal complaint, or any allegations therein, for the purposes of Title IX and its implementing regulations, if at any time during the investigation or hearing:

(a) A complainant notifies the university's Title IX coordinator in writing that the complainant would like to withdraw the formal complaint or any specific allegations in the formal complaint;

(b) The respondent is no longer an enrolled university student; or

(c) Specific circumstances prevent the university from gathering evidence sufficient to reach a determination as to the formal complaint or any allegations made in the formal complaint.

(3) Notice. Upon a dismissal required or permitted under this section, the university will promptly send written notice of the dismissal and reason(s) therefore simultaneously to the parties.

(4) Consequences of dismissal. Dismissal of a formal complaint does not preclude the university from investigating alleged misconduct under Part II or adjudicating such alleged misconduct under Parts III through V of this code.

(5) Appeal. If the university dismisses a formal complaint, the parties have a right to appeal, as described in WAC 478-121-635.

AMENDATORY SECTION (Amending WSR 21-07-047, filed 3/11/21, effective 4/11/21)

WAC 478-121-635 Appeal from a dismissal of a formal complaint. (1) A party may appeal a dismissal based on WAC 478-121-630 of a formal complaint or dismissal of any allegations in a formal complaint on any of the following bases:

(a) Procedural irregularity affected the outcome of the matter;

(b) New evidence that was not reasonably available at the time the dismissal was made; and/or

(c) A university official involved in the dismissal of the formal complaint had a conflict of interest ((~~or~~)) due to a personal relationship with a party or witness, or a bias for or against complainants or respondents generally, or the individual complainant or respondent, that affected the outcome of the matter.

If one of the grounds is to consider newly discovered evidence, that evidence must be provided with the appeal.

(2) An appeal must be submitted in writing to the investigator within five business days of the notice of dismissal of formal complaint. The appeal is the party's opportunity to provide the party's position regarding why the appeal should be granted, and it must identify at least one of the grounds outlined in subsection (1) of this section.

(3) When an appeal is received, the university will:

(a) Notify both parties in writing that the appeal was received, of the name of the individual(s) who will be deciding the outcome of the appeal, and when the nonappealing party's response is due;

(b) Provide the nonappealing party an opportunity to submit a written statement within five business days of receipt of notice of the appeal. This is the nonappealing party's opportunity to respond to the appeal;

(c) Consider the available evidence, which may include, but is not limited to, any summaries of interviews conducted by the investigator, evidence gathered by or provided to the investigator, and/or any newly discovered evidence;

(d) Issue a written decision describing the result of the appeal and rationale for such result; and

(e) Provide the written decision simultaneously to both parties.

(4) Communications with the individual(s) deciding the appeal, except for communications related to procedural aspects of maintaining an orderly process, must be made in the presence of, or with a copy to, all other parties, advisors (if any), and the investigator(s). Any communications not following such a procedure will be placed on the record, and others will be given an opportunity to respond.

(5) Appeals of a dismissal of a formal complaint may be decided by a single individual, and such appeals will be decided within five business days of the deadline for the nonappealing party's response.

AMENDATORY SECTION (Amending WSR 21-07-047, filed 3/11/21, effective 4/11/21)

WAC 478-121-640 Informal resolution. If a formal complaint has been filed and parties have received notice of the allegations, the university may facilitate an informal resolution process consistent with RCW 34.05.060. ((~~Parties will be informed of the informal resolution process, including circumstances where the parties would be precluded from resuming a formal complaint based on the same allegations.~~)) Before an informal resolution process can proceed, both parties must provide voluntary, written consent to the process. A party has the right to withdraw from an informal resolution process at any time prior to agreeing to a resolution. If a party withdraws from such informal resolution process, the investigation or adjudication process may resume((~~s~~)).

AMENDATORY SECTION (Amending WSR 21-07-047, filed 3/11/21, effective 4/11/21)

WAC 478-121-645 Emergency removal. The university may remove a respondent from the university's educational programs or activities on an emergency basis pursuant to WAC 478-121-237. For the purposes of

Part VII of the code, such emergency removal must be based on a belief the alleged ((~~EDFR~~)) prohibited conduct poses an immediate threat to the physical health, safety, or welfare of any student or other individual(s).

AMENDATORY SECTION (Amending WSR 21-07-047, filed 3/11/21, effective 4/11/21)

WAC 478-121-650 Investigation. (1) After a formal complaint is filed, the university will commence an investigation. ((~~Throughout the investigative process, including meetings with an investigator, a party may be accompanied by a hearing advisor and/or a support advisor. During the investigation, a party's hearing advisor and/or support advisor may provide advice to the party but may not speak on behalf of the party.~~)) The initial interview of a respondent will be scheduled to allow time for the respondent to prepare a response following receipt of the notice of formal complaint.

(2) During an investigation, parties may present witnesses as well as other inculpatory and exculpatory evidence for the investigator to consider. Parties will be provided an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint so that each party may meaningfully respond to the evidence prior to the conclusion of the investigation.

(3) Prior to completion of the investigative report, the university will send to each party and the party's advisors, if any, the evidence subject to inspection and review. The parties will have at least ((~~ten~~)) 10 calendar days to submit a written response, which the investigator will consider prior to completion of the investigative report.

(4) At least ((~~ten~~)) 10 calendar days prior to the hearing, the investigator will provide the parties with the final investigative report and all evidence gathered during the investigation. ((~~The final investigative report and all evidence related to the allegations will be included in the record for the hearing.~~))

(5) No later than at the conclusion of the investigation, the investigator will notify the hearing officer that it is appropriate to commence a hearing to consider the allegations contained in the formal complaint. Such notification is consistent with a conversion to full adjudicative proceeding, as described in WAC 478-121-205, and consistent with RCW 34.05.413 through 34.05.476.

AMENDATORY SECTION (Amending WSR 21-07-047, filed 3/11/21, effective 4/11/21)

WAC 478-121-655 Hearings. ((~~(1) The hearing officer, or designee, will set the time and place of the hearing and give ten or more calendar days' notice to all parties and the investigator. At the hearing officer's discretion, any or all parties, witnesses, and other participants, such as advisors and investigator(s), may appear at the hearing virtually, with technology enabling participants simultaneously to see and hear each other.~~

~~(2) Communications with the hearing officer, except for communications related to procedural aspects of maintaining an orderly process, must be made in the presence of, or with a copy to, all other parties, advisors (if any), and the investigator(s). Any communications not following such a procedure will be placed on the record, and other parties, hearing advisor(s), or investigator(s) will be given an opportunity to respond.~~

~~(3) Prior to the hearing, the hearing officer, upon a self-initiated motion or upon request of the parties, may request that the parties, advisors (if any), and the investigator(s) engage in a meeting or meetings to consider:~~

~~(a) Simplification of issues;~~

~~(b) Necessity of amending notices, if any;~~

~~(c) The possibility of obtaining stipulations;~~

~~(d) Limitations on the number of witnesses and/or which witnesses will testify at the hearing;~~

~~(e) Procedural matters; and/or~~

~~(f) Other matters that may aid in the disposition or settlement of the proceeding.~~

~~If such a prehearing meeting(s) is held, it may occur in person, by telephone conference, or by other technological means as determined by the hearing officer or designee. Further, if such a prehearing meeting(s) occurs, the hearing officer will issue, in writing, determinations regarding the issues discussed at the meeting(s). The determinations will be effective when served on the parties and advisors.~~

~~(4) At appropriate stages, the hearing officer will give parties reasonable opportunity to submit and respond to requests, such as pleadings, motions, and objections.~~

~~(5) The hearing officer has the discretion to grant postponements, continuances, extensions of time, and/or adjournment if good cause is shown.~~

~~(6) The applicable standard of proof is the "preponderance of evidence" standard. This means that, in order for a respondent to be held responsible for EDFR prohibited conduct as defined in WAC 478-121-605, the hearing officer must conclude, based on all of the evidence in the record, that it is more likely than not that the respondent engaged in an act or acts of EDFR prohibited conduct. The parties will be provided equal opportunity to present witnesses and other inculpatory and exculpatory evidence.~~

~~(7) During a hearing, all testimony of parties and witnesses shall be made under oath or affirmation.~~)) (1) Unless otherwise provided for in Part VII of this code, the procedures, definitions, and provisions pertaining to hearings in Parts I through VI of this code apply to hearings considering conduct matters meeting the scope requirements of WAC 478-121-600.

(2) The following additional provisions apply to hearings proceeding under Part VII of this code:

(a) At a hearing, a complainant and a respondent must have a hearing advisor to conduct oral cross-examination on that party's behalf. This hearing advisor may or may not be an attorney, as defined in WAC 478-121-050(1). If a party does not choose a hearing advisor prior to a hearing, the university will provide a hearing advisor of the university's choice to conduct cross-examination on behalf of the party at the hearing.

(b) The hearing officer will permit each party's hearing advisor to ask the other party and any witnesses all relevant questions and follow-up questions((~~, including those challenging credibility~~)). Such

cross-examination will be conducted directly, orally, and in real-time. Only relevant ((~~cross-examination and other questions may be asked of a party or witness~~)) questions will be allowed. Before a complainant, respondent, or witness answers a cross-examination or other question, the hearing officer will first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

(c) If a hearing advisor is disruptive or interferes with any aspect of the proceeding, as determined by the hearing officer, the hearing advisor may be removed and a new hearing advisor made available to the party.

((~~(8) The university will create an audio, audiovisual, or transcribed recording of the hearing. Upon request to the hearing office or as may otherwise be required under Part VII of this code, the university will make the recording available to the parties for inspection and review.~~

~~(9) Hearings will be conducted in accordance with the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. Sec. 1232g) and its implementing regulations (34 C.F.R. Part 99) except to the extent preempted by 34 C.F.R. Part 106.~~))

AMENDATORY SECTION (Amending WSR 21-07-047, filed 3/11/21, effective 4/11/21)

WAC 478-121-660 Determination regarding responsibility—Initial order. (1) Following a hearing, the hearing officer will ((~~apply the preponderance of the evidence standard described in WAC 478-121-655(6) and issue a written determination~~)) issue an initial order regarding responsibility in accordance with RCW 34.05.461, which will be simultaneously served on the parties. The ((~~written determination~~)) initial order will include:

(a) Identification of the allegations ((~~as defined in WAC 478-121-605~~));

(b) A description of procedural steps taken from receipt of the formal complaint through the determination;

(c) Findings of fact supporting the hearing officer's determination;

(d) Conclusions regarding ((~~the application of Part VII of this code to~~)) the facts and the rationale for those conclusions; and

(e) Directions as to any sanctions imposed on the respondent or remedies provided to the complainant.

(2) One or more of the disciplinary sanctions outlined in WAC 478-121-210 may be imposed ((~~for any violation of EDFR prohibited conduct~~)). In determining an appropriate sanction, if any, ((~~the hearing officer may consider~~)) the factors contained in WAC 478-121-210 (2) and (3), which are incorporated herein by this reference((~~. Remedies for the complainant may be the same as the individualized services that comprise supportive measures or may be effectuated via sanctions impacting the respondent~~)), may be considered.

(3) The hearing officer must provide the ((~~written determination~~)) initial order to the parties simultaneously and include the university's procedures for the parties to appeal. The determination regarding responsibility and any applicable sanction imposed becomes final and effective either on the date that the university provides

the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

AMENDATORY SECTION (Amending WSR 21-07-047, filed 3/11/21, effective 4/11/21)

WAC 478-121-665 Appeal from determination regarding responsibility. (1) A party may appeal a determination of responsibility in a conduct matter that includes allegations from Part VII of this code on any of the following bases:

(a) Procedural irregularity affected the outcome of the matter;

(b) A material error substantially affected the outcome of the fact finding or sanctioning;

(c) New evidence that was not reasonably available at the time the determination regarding responsibility and/or dismissal was made could affect the outcome of the matter; and/or

(d) A university official involved in the formal complaint investigation or adjudication had a conflict of interest ((~~or~~)) due to a personal relationship with a party or witness, or a bias for or against complainants or respondents generally, or the individual complainant or respondent, that materially affected the outcome of the matter.

((~~If one of the grounds is to consider newly discovered evidence, that evidence must be provided with the appeal.~~

~~(2) An appeal must be submitted in writing to the hearing officer within twenty-one calendar days of service of the determination of responsibility. The appeal is the party's opportunity to provide the party's position regarding why the appeal should be granted, and it must identify at least one of the grounds outlined in subsection (1) of this section.~~

~~(3) When an appeal is received, the university will:~~

~~(a) Notify both parties in writing that the appeal was received; of the name of the individual(s) who will be deciding the outcome of the appeal; and when the nonappealing party's response is due;~~

~~(b) Provide the nonappealing party an opportunity to submit a written statement within twenty-one calendar days of receipt of notice of the appeal. This is the nonappealing party's opportunity to respond to the appeal;~~

~~(c) Consider the available evidence, which may include, but is not limited to, the transcript of the hearing, any summaries of interviews conducted by the investigator, evidence gathered by or provided to the investigator, the investigative report, decisions related to the hearing, the recording of the hearing, the written determination of responsibility, the appeal and/or response to the appeal, and/or any newly discovered evidence;~~

~~(d) Issue a written decision describing the result of the appeal and rationale for such result; and~~

~~(e) Provide the written decision simultaneously to both parties.~~

~~(4) Communications with the individual(s) deciding the appeal, except for communications related to procedural aspects of maintaining an orderly process, must be made in the presence of, or with a copy to, all other parties, advisors, the investigator(s), and the hearing officer. Any communications not following such a procedure will be~~

~~placed on the record, and others will be given an opportunity to respond.~~

~~(5) Appeals of a determination regarding responsibility will be made by a panel consisting of an odd number of members, and such appeals will be decided within thirty calendar days of the deadline for the nonappealing party's response. The panel will be managed by a nonvoting individual who may be the review coordinator as defined in WAC 478-121-050(11). The panel may include reviewing officers, as defined by WAC 478-121-050(13), and may decide appeals of determinations of responsibility regarding EDFR prohibited conduct under Part VII or initial orders regarding prohibited conduct under Part II of this code.~~)) (2) Procedures and requirements for appeals for matters that include allegations from Part VII of this code will follow the provisions on appeals found in Parts I through VI of this code. In addition, when an appeal involving one or more allegations from Part VII of this code is received, the university will provide the nonappealing party the opportunity to submit a written statement within 21 calendar days of receipt of notice of the appeal. This is the nonappealing party's opportunity to respond to the appeal.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 478-121-140	Intimate partner violence.
WAC 478-121-310	Brief adjudicative proceedings—Standard of proof.
WAC 478-121-345	Brief adjudicative proceedings—Process following remand from administrative review or conversion.
WAC 478-121-417	Standard of proof in full hearings.
WAC 478-121-420	Continuances.
WAC 478-121-453	Privacy in full hearings.
WAC 478-121-605	Department of Education federal regulations prohibited conduct (sexual harassment).
WAC 478-121-610	Consent for purposes of EDFR prohibited conduct.
WAC 478-121-615	Additional definitions.
WAC 478-121-620	Reporting EDFR prohibited conduct.
WAC 478-121-670	Service and time—Subpoenas—No discovery.
WAC 478-121-675	Evidence.
WAC 478-121-680	Disqualification.
WAC 478-121-685	General record keeping.

WSR 26-15-105
PROPOSED RULES
UNIVERSITY OF WASHINGTON
[Filed July 20, 2026, 2:21 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 26-09-074.

Title of Rule and Other Identifying Information: Chapter 478-124 WAC, General conduct code for the University of Washington (university).

Hearing Location(s): On August 25, 2026, at 10:00-11:00 a.m., at the University of Washington, Gerberding Hall, Room 142, Seattle, Washington.

Date of Intended Adoption: September 9, 2026.

Submit Written Comments to: Barbara Lechtanski, Director and Rules Coordinator, University Policy and Rules Office, Box 351237, Seattle, WA 98195, email rules@uw.edu, beginning August 5, 2026, 8:00 a.m. PST [PDT], by August 25, 2026, 11:00 a.m. PST [PDT].

Assistance for Persons with Disabilities: Contact disability services office, phone 206-543-6450, fax 206-685-7264, TTY 206-543-6452, email dso@uw.edu, by August 11, 2026.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The university is proposing amendments to chapter 478-124 WAC, Conduct on campus code, to update and clarify the university's general conduct regulations applicable to individuals on university property. The proposed amendments revise prohibited conduct provisions, sanctions, hazing requirements, and interim suspension procedures; update terminology and cross-references; remove outdated language; and improve the organization and readability of the chapter.

The proposal also aligns the general code of conduct with related amendments to the student conduct code (chapter 478-121 WAC), incorporates changes reflecting current university operations and applicable state and federal laws, and provides greater consistency in the administration and application of the university's conduct regulations.

Reasons Supporting Proposal: The university is proposing these amendments to improve consistency between the general code of conduct and the student conduct code, clarify the conduct standards and procedures that apply on university property, and ensure that the regulations accurately reflect current university operations and disciplinary processes.

The proposed revisions also strengthen compliance with applicable state and federal laws and regulations, improve administrative efficiency, eliminate outdated or duplicative provisions, and provide clearer guidance for members of the university community and university officials responsible for administering and enforcing the regulations.

Statutory Authority for Adoption: RCW 28B.20.130.

Statute Being Implemented: RCW 28B.20.130.

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

Name of Proponent: University of Washington, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Denzil Suite, Vice President for Student Life, University of Washington, Room 101, Gerberding Hall, Seattle, Washington, 206-543-4972.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to the university, and the university has not voluntarily decided to apply it.

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

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

July 20, 2026
Barbara Lechtanski, Director
University Policy and Rules Office

RDS-7302.1

AMENDATORY SECTION (Amending Order 72-7, filed 11/30/72)

WAC 478-124-010 Conduct on campus code—General policy. It is the policy of the University of Washington to support and promote each individual's right to express ((~~his~~)) views and opinions for or against actions or ideas in which ((~~he~~)) the individual has an interest, to associate freely with others, and to assemble peacefully.

The above rights exist in equal measure for each member of the university community. They exist regardless of the professional stature or rank of the individual and regardless of the degree of acceptability among others of the views or opinions advocated.

AMENDATORY SECTION (Amending WSR 13-14-002, filed 6/19/13, effective 7/20/13)

WAC 478-124-020 Conduct on campus code—Prohibited conduct. (1) In order to safeguard the right of every citizen to criticize and to seek meaningful change, each individual has an obligation to respect the rights of all members of the university community.

(2) In order to assure those rights to all members of the university community and to maintain a peaceful atmosphere in which the university may continue to make its special contribution to society, the following types of conduct are hereby prohibited on or in property either owned, controlled, or operated by the university which is used or set aside for university purposes, hereinafter referred to as the university campus:

(a) Conduct which intentionally and substantially obstructs or disrupts teaching or freedom of movement or other lawful activities on the university campus;

(b) Physical abuse of any person or conduct which is intended unlawfully to threaten imminent bodily harm or to endanger the health or safety of any person on the university campus;

(c) ((~~Malicious~~)) Intentional or reckless damage to or ((~~malicious~~)) misuse of university property, or the property of any person where such property is located on the university campus;

(d) Refusal to comply with any lawful order to leave the university campus or any portion thereof;

(e) Possession or use of firearms, explosives, dangerous chemicals, or other dangerous weapons or instrumentalities on the university campus, except for authorized university purposes, unless prior written approval has been obtained from the university chief of police, or any other person designated by the president of the university;

(f) The possession, use, distribution, or manufacture of controlled substances (as defined in chapter 69.50 RCW or Title 21 U.S.C. Sec. 802), or of alcohol, on the university campus or during university-sponsored activities, where such possession, use, distribution, or manufacture is illegal under federal, state, or local law;

(g) Intentionally inciting others to engage immediately in any of the conduct prohibited herein, which incitement leads directly to such conduct. (Inciting is that advocacy which prepares the group addressed for imminent action and steels it to the conduct prohibited herein.)

(h) Doxing, which includes the unauthorized publication of another individual's personal identifying information when the following conditions are met:

(i) The person has not consented to publication of their personal identifying information;

(ii) The publication is made with the intent or knowledge that the information will be used to harm the individual whose information is published, or with reckless disregard for the risk the information will be used to harm the individual whose information is published; and

(iii) The publication causes the person to suffer physical injury, significant economic injury, mental anguish, fear of serious bodily injury or death for themselves or a close relation, or substation life disruption. Doxing does not include legally protected conduct that falls within one of the exceptions contained in RCW 4.24.792.

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-124-030 Conduct on campus code—Sanctions. (1) Any person while on the university campus who willfully refuses the request of a uniformed campus police officer to desist from conduct prohibited by these rules may be required by such officer to leave such premises.

(2) Disciplinary action which may result in ((~~dismissal from the~~)) termination of university employment will be initiated against ((~~faculty, staff, or students~~)) employees who violate these rules, in accordance with the disciplinary process applicable ((~~disciplinary codes or other appropriate due process procedures~~)) to their employment program.

(3) ((~~Sanctions which may be imposed against faculty are set forth in the *Faculty Code*, Chapter 25, Sections 25-51 and 25-71.~~

~~(4)~~)) Sanctions which may be imposed against students or student organizations are set forth in chapter 478-121 WAC ((~~478-121-210.~~

~~(5) Sanctions which may be imposed against the classified staff are set forth in the relevant University of Washington labor contract for contract-classified staff, and in Title 357 WAC and applicable university policy for classified nonunion staff.~~

~~(6) Sanctions which may be imposed against the professional staff are set forth in the University of Washington Professional Staff Program.~~

~~(7)~~)). Chapter 478-121 WAC also establishes the due process procedures that must be followed before sanctions are imposed.

(4) Violation of any of the above regulations may also constitute violation of the criminal laws or ordinances of the city, the county, the state of Washington, or the United States and may subject a violator to criminal sanctions in addition to any sanctions imposed by the university.

AMENDATORY SECTION (Amending WSR 20-09-105, filed 4/16/20, effective 5/17/20)

WAC 478-124-037 Conduct on campus code—Hazing. All students, student organizations, athletic teams, and living groups are prohibited from participating in hazing.

(1) Hazing includes:

(a) Conduct associated with recruitment, initiation ((~~or~~)), pledging, admission into, or affiliation with a student organization, athletic team, or living group, or any pastime or amusement engaged in with respect to such an organization, athletic team, or living group that causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm to any student or other person. ((~~This conduct~~)) Hazing includes, but is not limited to, subjecting a person to risk of the harms just mentioned, regardless of the person's willingness, through embarrassment, ridicule, sleep deprivation, verbal abuse, personal humiliation, or through causing, directing, coercing, or forcing another to participate in:

(i) Humiliation by ritual act;

(ii) Striking oneself or another person whether by use of any object or any part of one's body;

(iii) Causing someone to experience excessive fatigue or physical and/or psychological shock;

(iv) Causing someone to engage in degrading or humiliating games or activities ((~~that create a risk of serious psychological, emotional, and/or physical harm~~)); or

(v) Encouraging or promoting the ((~~unlawful possession, forced or coerced use, or competitive or ritualistic~~)) excessive consumption of food, liquid, alcohol, drugs, or other substances including competitive or ritualistic consumption.

(b) Hazing also includes conduct that is not a violation of (a) of this subsection associated with recruitment, initiation ((~~or~~)), pledging, admission into a student organization, athletic team, or living group, or any pastime or amusement ((~~engaged in~~)) with respect to a student organization, athletic team, or living group, such as:

(i) Subtle hazing: Activities or situations created that emphasize a direct or indirect power imbalance between members. This includes, but is not limited to, physical or mental manipulation, or causing ((~~someone~~)) a person to believe that ((~~they~~)) that person may

be required to participate in degrading or humiliating games or activities that create psychological, emotional, or physical harm;

(ii) Harassment hazing: Activities that cause confusion, frustration, or physical discomfort that are directly or indirectly required, in order to become or remain a member of the student organization, athletic team, or living group. This includes, but is not limited to, sleep deprivation, verbal abuse, or being expected to harass others; or

(iii) Interference hazing: Activities that do not allow reasonably adequate time for study or that otherwise unreasonably interferes with academic obligations.

(2) Hazing does not include customary athletic or cultural events or other similar contests or competitions.

(3) Consent is not a defense to hazing.

(4) ((~~Any student organization or student living group that knowingly permits hazing as defined in subsection (1)(a) of this section shall be deprived of official recognition, approval, or registration granted by the university. Any student organization or living group that knowingly permits hazing as defined in subsection (1)(b) of this section shall either be deprived of official recognition, approval, or registration or be placed on disciplinary probation for a period specified by the university.~~

~~(5)~~)) Students found responsible for violations of WAC 478-121-135 shall forfeit any entitlement to state funded grants, scholarships, or awards for a specified period of time determined by the university.

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

AMENDATORY SECTION (Amending WSR 14-17-097, filed 8/19/14, effective 9/19/14)

WAC 478-124-040 Conduct on campus code—Interim suspension. (1) The president or, in ((~~his or her~~)) their absence, any officer of the university designated by the president for this purpose, may impose on any student, faculty member, or staff member an interim suspension whenever there is reasonable cause to believe that such person has committed, and may reasonably be expected thereafter to commit, any of the acts prohibited herein and there exists a substantial and material threat to the health or safety of the university community or the orderly operation of the university. The process for imposing an interim suspension on a student is set forth in WAC 478-121-237. All other interim suspensions shall follow the process set forth below. ((~~The notice of such suspension shall state the nature, terms and conditions of such suspension and shall include such restrictions on use of campus facilities as the president or his designee deems in the best interest of the university.~~))

(2) Any person ((~~so~~)) placed on interim suspension shall be given prompt written notice ((~~of charges and~~)). The notice shall state the nature, terms, and conditions of such suspension and shall include

such restrictions on use of campus facilities as the president or their designee deems in the best interest of the university.

(3) Any person placed on interim suspension shall be given the opportunity to show cause at a preliminary hearing why such interim suspension should not continue until a formal hearing is held. To obtain such preliminary hearing, the person shall submit a written request ((~~therefor~~)) within seven days from the date the interim suspension was imposed. Such written request shall state the address to which notice of hearing is to be sent. The president or, in ((~~his or her~~)) their absence, any officer of the university designated by the president, shall grant such a preliminary hearing before a person or persons designated by the president not later than four days from the date of receipt of such request and shall immediately mail a written notice of the time, place, and date of such hearing to such person. The preliminary hearing shall consider only whether there is reasonable cause to believe that such person committed, and may reasonably be expected thereafter to commit, any of the acts prohibited herein.

((~~(3)~~)) (4) Interim suspension may be removed by the president or, in ((~~his or her~~)) their absence, by any officer of the university designated by the president, whenever the president has reason to believe that the person on whom interim suspension was imposed will not constitute a substantial and material threat to the orderly operation of the university campus or endanger the health and safety of any person thereon.

WSR 26-15-107
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Home and Community Living Administration)
[Filed July 20, 2026, 4:42 p.m.]

Supplemental Notice to WSR 26-09-016.

Preproposal statement of inquiry was filed as WSR 26-04-116.

Title of Rule and Other Identifying Information: The department of social and health services (DSHS) is proposing amendments to and the creation of WAC 388-116-1010, 388-116-4030, 388-116-4040, and 388-116-4050. This supplemental CR-102 proposal adds amendments to WAC 388-116-1010 and 388-116-4030, which were not on the original proposal.

Hearing Location(s): On August 25, 2026, at 10:00 a.m., virtually via Teams or call in. See the DSHS website at https://www.dshs.wa.gov/sesa/rpau/proposed-rules-and-public-hearings for the most current information.

Date of Intended Adoption: Not earlier than August 26, 2026.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, beginning noon on July 22, 2026, by 5:00 p.m. on August 25, 2026.

Assistance for Persons with Disabilities: Contact Shelley Tencza, rules consultant, phone 360-664-6036, TTY 711 relay service, email shelley.tencza@dshs.wa.gov, by 5:00 p.m. on August 4, 2026.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DSHS proposes amending and adding rules to address definitions of approved services and services available through financial management services vendors. The rules set requirements; provide direction; and outline limitations for eligible beneficiary reimbursements, payment to family members and friends for mileage driven, and purchases by a financial management services vendor for adaptive equipment and technology.

Reasons Supporting Proposal: The rules provide additional options for eligible beneficiaries of WA Cares to use their benefits, especially for those in rural communities where service delivery may be limited.

Statutory Authority for Adoption: RCW 50B.04.020 (k) and (l).

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting: Arielle Finney, P.O. Box 45600, Olympia, WA 98504-5600, 360-764-0384; Implementation and Enforcement: Katie Kelnhofer, P.O. Box 45600, Olympia, WA 98504-5600, 564-669-4440.

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 Arielle Finney, P.O. Box 45600, Olympia, WA 98504-5600, phone 360-764-0384, TTY 711 relay service, email Arielle.Finney2@dshs.wa.gov.

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

Is not exempt.

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

costs were calculated. The proposed rules do not create costs for small businesses. The rules address the financial management services vendor contracted by DSHS, eligible beneficiaries, and friends and family members who wish to receive payment for transportation. Any cost that may be associated with these rules is minor.

A copy of the detailed cost calculations may be obtained by contacting Arielle Finney, P.O. Box 45600, Olympia, WA 98504-5600, phone 360-764-0384, TTY 711 relay service, email Arielle.Finney2@dshs.wa.gov.

July 17, 2026
Katherine I. Vasquez
Rules Coordinator

SHS-5143.2

AMENDATORY SECTION (Amending WSR 25-18-020 [26-14-005], filed 8/21/25 [6/17/26], effective 9/21/25 [7/18/26])

WAC 388-116-1010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly indicates otherwise.

(1) **"Activities of daily living"** means bathing, bed mobility, continence, dressing, eating, medication management, mobility, personal hygiene, toileting, or transferring.

(a) **"Bathing"** means how a person washes their body including showers, baths, sponge baths, or bed baths, and how a person gets into and out of a shower or bathtub.

(b) **"Bed mobility"** means how a person moves to and from a lying position, turns side-to-side, and positions their body while in bed, in a recliner, or other furniture used for sleeping.

(c) **"Continence"** means the ability to control bladder and bowel functions, or, when unable to maintain control of bowel or bladder function, the ability to perform associated care and hygiene, including caring for a catheter or colostomy bag.

(d) **"Dressing"** means how a person puts on and takes off all items of clothing including prosthesis, splints, braces, and orthotics.

(e) **"Eating"** means how a person eats and drinks. Eating includes any method of receiving nutrition by mouth, tube, or through a vein. Eating does not include any set-up help received.

(f) **"Medication management"** means how a person organizes and takes prescription medications, over the counter medications, or supplements.

(g) **"Mobility"** means how a person gets from one place to another within their immediate environment and from outside their home to inside their home.

(h) **"Personal hygiene"** means how a person completes self-care activities such as combing hair, brushing teeth, shaving, applying make-up, washing face, drying face, washing hands, nail care, perineum care, and menses care. Personal hygiene does not include hygiene tasks completed during bathing.

(i) **"Toileting"** means how a person uses a toilet, commode, bedpan, or urinal to eliminate, and how they transfer on and off the toilet, perform associated hygiene, and adjust clothing.

(j) **"Transferring"** means how a person moves between surfaces such as to and from a bed, a chair, wheelchair, or standing position. Transferring does not include how a person moves to and from the bath, toilet, or vehicle.

(2) **"Approved services"** means long-term services and supports including:

(a) **"Adaptive equipment and technology"** means devices and services available in the categories listed in (2)(a)(i) through (v) of this subsection that maintain or improve the ability to perform activities of daily living; or maintain or improve functional capabilities; and increase independence, safety, and welfare including:

(i) Assistive technology items used to increase, maintain, or improve the functional capabilities of persons with physical or mental impairment;

(ii) Assistive technology services to evaluate, consult, train, and provide technical assistance regarding assistive or adaptive devices;

(iii) Medical equipment and supplies within one of the following categories:

(A) Incontinence supplies such as reusable or disposable briefs, pullups, wipes, and underpads;

(B) Personal protective equipment;

(C) Bathroom and toileting equipment such as urinals, bedside commodes, raised toilet seats, toilet and tub rails, bath and shower stools, chairs, and benches, including transfer benches and rolling shower chairs;

(D) Blood pressure monitoring devices;

(E) Over the counter non-custom surgical stockings;

(F) Grab bars for use anywhere in the home; and

(G) Lift chairs;

(iv) Specialized equipment and supplies, including non-medical goods and adaptive devices that provide remedial benefit, including weight utensils, waterproof mattress covers, long-handled brushes, and baskets for walkers; and

(v) Vehicle modifications that are necessary to accommodate a disability, including wheelchair ramps and lifts, adding hand controls, and modifying foot pedals, steering devices, or seating;

(vi) Excluded from allowable adaptive equipment and technology are:

(A) Any item purchased for recreational purposes;

(B) Software, game applications, or gift cards;

(C) Exercise equipment;

(D) Pressure reducing support surfaces;

(E) Hospital beds, including their accessories and other positioning devices;

(F) Patient lifts and transfer devices, not including lift chairs;

(G) Wound care supplies;

(H) Diabetic equipment and supplies;

(I) Nutrition equipment and supplies;

(J) Orthotic equipment and supplies;

(K) Ostomy supplies;

(L) Respiratory equipment and supplies;

(M) Transcutaneous electrical nerve stimulation (TENS) systems;

(N) Mobility aids, including but not limited to, crutches, canes, gait trainers, and walkers, as well as their accessories and replacement materials;

(O) Wheelchairs and their accessories and replacement materials;

(P) Eyeglasses, contact lenses, and hearing aids;

(Q) Therapy or service animals and their related expenses; and

(R) Experimental or investigational medical devices or drugs.

(b) **"Adult day services"** means adult day care or adult day health.

(i) **"Adult day care"** means a program that provides the services under WAC 388-71-0704.

(ii) **"Adult day health"** means a program that provides the services under WAC 388-71-0706.

(c) **"Adult family home services"** means services provided in a home-like residential setting where two to eight adults live and receive personal care, special care, and room and board under chapter 70.128 RCW and chapter 388-76 WAC.

(d) **"Assisted living services"** means services provided in a residential setting where seven or more adults live and receive basic services for their safety and well-being under chapter 18.20 RCW and chapter 388-78A WAC.

(e) **"Care transition coordination"** means services that provide comprehensive discharge planning and coordination of health care services for up to 60 days after being discharged from a hospital or nursing home with the goal of avoiding preventable poor outcomes as beneficiaries return home.

(f) **"Dementia and behavioral supports"** means an assessment by a mental health professional to determine causes, triggers, and purposes behind documented or identified behaviors such as wandering or aggression, and the development of a written strategy with recommendations for specific interactions designed to address identified behaviors.

(g) **"Education and consultation"** means non-medical skills training for eligible beneficiaries and their paid and unpaid caregivers related to an eligible beneficiary's diagnoses and chronic health issues to support managing their activities of daily living, behavior, health, and wellness.

(h) **"Environmental modification"** means alterations to a residence that accommodate an eligible beneficiary's disability and promote functional independence, health, welfare, and safety. Environmental modifications include, but are not limited to, installing grab bars, building ramps, widening doorways, and modification to bathrooms.

(i) **"Home delivered meals"** means nutritionally balanced meals prepared and delivered to an eligible beneficiary's home. Home delivered meals includes, but is not limited to, box meals, prepackaged meals, and hot meals, and must be from a provider that meets the requirements of chapter 246-215 WAC.

(j) **"Home safety evaluation"** means an assessment of a home to identify and reduce potential hazards, to minimize or prevent injury, and improve accessibility in the home.

(k) **"In-home personal care"** means assistance with activities of daily living and instrumental activities of daily living provided to a person in their own home.

(l) **"Long-term services and supports provided in nursing homes"** or **"nursing home services"** means long-term care or custodial services provided in one of the following settings:

(i) A setting that operates or maintains facilities providing convalescent or chronic care, or both, consistent with chapter 18.51

RCW and chapter 388-97 WAC, for a period in excess of 24 consecutive hours for three or more patients who are not related by blood or marriage to the operator, and who, by reason of illness or infirmity, are unable to properly care for themselves; or

(ii) A swing bed in a critical access hospital to provide post-acute nursing services, where "swing bed" is defined under WAC 246-310-410 and "critical access hospital" is defined under WAC 182-550-2598.

(iii) Excluded from nursing home services is medically necessary care provided in a skilled nursing facility that requires a licensed medical practitioner to perform, including, but not limited to:

(A) Rehabilitation services such as physical or occupational therapy; and

(B) Skilled nursing services such as wound care, intravenous injections, and catheter care.

(m) **"Memory care"** means a service provided in an assisted living facility that provides specialized, long-term care for individuals with memory loss under chapter 18.20 RCW and chapter 388-78A WAC.

(n) **"Personal emergency response system"** means a service to secure help in an emergency through an electronic device programmed to signal a response center that is staffed by trained professionals who immediately summon help. Systems must be approved by the Federal Communications Commission and meet the Underwriters Laboratories solutions or Intertek Electronic Testing Laboratories standards for home health care signaling equipment. Personal emergency response systems are limited to basic systems, global positioning systems, medication reminders, and fall detections.

(o) **"Professional nursing services"** means one or more of the following services:

(i) **"Skilled nursing"** means a short-term intermittent treatment of a chronic condition, or the treatment of chronic, stable, long-term conditions where the treatment cannot be delegated or self-directed. Excluded from skilled nursing services are treatments for acute care due to acute injury or illness.

(ii) **"Nurse delegation"** means specific nursing tasks assigned by a registered nurse to a nursing assistant certified pursuant to chapter 18.88A RCW or home care aide certified pursuant to chapter 18.88B RCW. Nurse delegation must be performed pursuant to RCW 18.79.260.

(iii) **"Private duty nursing"** means in-home skilled nursing care to a person who would otherwise be served in a medical institution. A person receiving private duty nursing is dependent on a technology modality, including mechanical ventilation, complex respiratory support, tracheostomy, intravenous or parenteral, administration of medication, or intravenous administration of nutritional substances.

(p) **"Respite for family caregivers"** means a short-term service that allows family caregivers a break from caregiving duties while the eligible beneficiary is cared for by an in-home service provider, or in the community by an adult day service provider, adult family home, assisted living facility, or nursing home.

(q) **"Services that assist paid and unpaid family members caring for eligible individuals"** ((~~which~~)) means housework, errands, yardwork, and snow removal tasks that are typically done by family members.

(i) **"Housework"** and **"errands"** are services supporting beneficiaries to remain in their own home by assisting with instrumental activities of daily living related to their health and safety.

(ii) **"Yardwork"** and **"snow removal"** are services to allow safe egress and entry into the home, reduce potential fire danger, assist the beneficiary to comply with local city and county codes, or other local requirements, such as a Homeowner's Association, in order to remain in their choice of setting.

(r) **"Transportation"** ((~~which~~)) means ((~~services that support the ability to~~)) non-emergency travel, by any means other than air, to therapeutic activities that support mental health, physical health, or wellbeing((~~,~~)): the grocery store((~~,~~)); medical appointments((~~,~~)); and social services. ((~~Services include, but are not limited to, trip or mileage reimbursement, bus passes, taxi scripts, bridge tolls, and ferry tickets.~~))

(3) **"Area agency on aging"** means an agency, other than a state agency, designated by the department to carry out certain programs or services in a defined geographical area of the state.

(4) **"Benefit unit"** has the same meaning as defined in RCW 50B.04.010.

(5) **"Care needs assessment"** means the department's or its designee's evaluation of a person's ability to complete activities of daily living.

(6) **"Consumer-to-consumer online platform"** means an e-commerce marketplace where the primary purpose is to facilitate person-to-person transactions through online classifieds or auctions where private individuals list items or services for direct sale to another person.

(7) **"Custodial services"** means long-term, non-medical care for individuals who need assistance with activities of daily living due to aging, disability, or chronic medical condition.

((~~(7)~~)) (8) **"Department"** means the department of social and health services.

((~~(8)~~)) (9) **"Eligible beneficiary"** has the same meaning as defined in RCW 50B.04.010.

((~~(9)~~)) (10) **"Eligibility determination"** means the department's or its designee's determination of whether a person is an eligible beneficiary.

((~~(10)~~)) (11) **"Evidence-based program provider"** means an entity that provides the approved service of care transition coordination or education and consultation, and whose programs have been rigorously tested in controlled settings, proven effective, and translated into practical models. Programs include Enhance®Wellness, Enhance®Fitness, program to encourage active and rewarding lives for seniors (PEARLS), star-caregivers program (STAR-C), powerful tools for caregivers, and community aging in place—advancing better living for elders (CAPABLE).

(12) **"Financial management services vendor"** means an entity contracted with the department to administer reimbursements, pay for transportation by family members or friends of eligible beneficiaries, and purchase adaptive equipment and technology on behalf of an eligible beneficiary.

((~~(11)~~)) (13) **"Health home"** means a set of services designed to support individuals with serious chronic conditions, a medical need, or a social service need with the goal of reducing visits to the emergency department and supporting the individual's health, well-being, and self-care.

((~~(12)~~)) (14) **"Health home care coordination organization"** means an organization that operationalizes the health home program through a contract with a lead entity.

((~~(13)~~)) (15) **"Health home lead entity"** means a managed care organization or qualified community-based organization contracted with the health care authority to oversee the health home program in specific parts of the state.

((~~(14)~~)) (16) **"In-state applicant"** means an individual who resides in Washington state and is applying to become an eligible beneficiary to receive services in Washington state.

((~~(15)~~)) (17) **"Instrumental activities of daily living"** means essential shopping, meal preparation, ordinary housework, telephone use, travel to medical services, or wood supply.

(a) **"Essential shopping"** means how a person completes brief, occasional trips within their local area to shop for food, medical necessities, and household items required for their health, nutrition, daily maintenance, or well-being.

(b) **"Meal preparation"** means how a person completes meal planning, cooking, assembling ingredients, setting out food or utensils, and cleaning up after meals;

(c) **"Ordinary housework"** means how a person completes routine household chores;

(d) **"Telephone use"** means how a person makes and receives calls, including dialing, answering, and comprehending spoken information, on the telephone;

(e) **"Travel to medical services"** means how a person travels by vehicle to a physician's office or clinic within their local area to obtain medical diagnosis or treatment. This travel includes driving a vehicle or traveling as a passenger in a vehicle; and

(f) **"Wood supply"** means how a person prepares wood or pellets when using wood, pellets, or both, as the only source of fuel for heating or cooking.

((~~(16)~~)) (18) **"Level of assistance"** means the amount and type of care a person needs to perform activities of daily living.

((~~(17)~~)) (19) **"Licensed practical nurse"** means an individual licensed pursuant to chapter 18.79 RCW and meets the definition of licensed practical nurse pursuant to RCW 18.79.060.

((~~(18)~~)) (20) **"Long-term services and supports"** means services and goods purchased that support quality of life, and the ability to perform activities of daily living and instrumental activities of daily living at an eligible beneficiary's own home, in the community, in residential settings, and nursing homes; and

(a) Support the eligible beneficiary's welfare, independence, and wellbeing;

(b) Do not replace services and goods otherwise available under medical insurance; and

(c) Do not include paying for services and goods that are for general utility, meaning the goods and services are not specific to the person's needs based on their disabilities or health conditions.

((~~(19)~~)) (21) **"Long-term services and supports provider"** has the same meaning as defined in RCW 50B.04.010.

((~~(20)~~)) (22) **"Own home"** means an eligible beneficiary's domicile, their present or intended place of residence:

(a) In a building that is rented where the rental is not contingent upon the purchase of services for assistance with activities of daily living and instrumental activities of daily living;

(b) In a building that is owned by the eligible beneficiary;

(c) In an established residence of a relative of the eligible beneficiary; or

(d) In the home of another where rent is not charged and residence is not contingent upon the purchase of services for assistance with activities of daily living and instrumental activities of daily living.

((~~(21)~~)) (23) **"Provider applicant"** means any individual, firm, partnership, corporation, company, association, joint stock association, or any other legal or commercial entity that is applying to become a long-term services and supports provider.

((~~(22)~~)) (24) **"Qualified individual"** has the same meaning as defined in RCW 50B.04.010.

((~~(23)~~)) (25) **"Registered nurse"** means an individual licensed pursuant to chapter 18.79 RCW and who meets the definition of registered nursing practice pursuant to RCW 18.79.040.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 25-20-048, filed 9/25/25, effective 10/26/25)

WAC 388-116-4030 Eligible beneficiary reimbursement. (1) An eligible beneficiary may pay out-of-pocket and request reimbursement up to the maximum rate for the following approved services:

(a) Adaptive equipment and technology; and

(b) Transportation. Transportation does not include expenses such as fuel, maintenance, vehicle upgrades, vehicle purchases, and repairs.

(2) To request reimbursement for the purchase of an approved service, the eligible beneficiary must submit ((~~a reimbursement request and~~)) a receipt for the purchased ((~~item~~)) approved service and a reimbursement request to a financial management services vendor.

(3) The purchase receipt must include the:

(a) Name of the seller;

(b) Date of the transaction;

(c) Name of the ((~~approved~~)) item or service;

(d) Method of payment; and

(e) ((~~Total~~)) The itemized total amount paid for the ((~~approved~~)) item or service, which includes ((~~additional~~)) required fees or costs, such as tax, shipping, or transaction fees.

(4) A request for reimbursement must be submitted to the financial management services vendor no more than 60 days after the date of the transaction.

(5) ((~~For the purposes of this section, the following definitions apply:~~

~~(a) "Financial management services vendor" means an entity contracted with the department to administer reimbursements to eligible beneficiaries, acquire adaptive equipment and technology on behalf of an eligible beneficiary, and process claims for provider payment.~~

~~(b) "Reimbursement" means payment to an eligible beneficiary from their benefit, by the financial management services vendor, for amount paid in the purchase of an approved service.~~)) An eligible beneficiary may not receive reimbursement for a purchase made using a consumer-to-consumer online platform.

NEW SECTION

WAC 388-116-4040 Transportation provided by a family member or friend. (1) Transportation by family member or friend:

(a) An eligible beneficiary may select a family member or friend to provide transportation for the beneficiary using a personal vehicle.

(b) The family member or friend may be paid, up to the preauthorized amount of miles driven, up to the maximum rate for mileage outlined in WAC 388-116-4020.

(2) To request payment to a family member or friend for transportation, the eligible beneficiary must be enrolled with the financial management services vendor and follow their requirements for processing and issuing payment.

(3) To be eligible to receive payment, the family member or friend must:

(a) Be age 18 or older; and

(b) Be enrolled with the financial management services vendor by providing the financial management services vendor:

(i) Proof of valid driver license;

(ii) Proof of current auto insurance;

(iii) Proof of vehicle registration.

(4) To request payment, the family member or friend must:

(a) Document the number of miles traveled with the eligible beneficiary and the date of service; and

(b) Submit the documentation to the financial management services vendor no more than 60 days after the date the transportation was provided.

(5) The family member or friend is not required to be a long-term services and supports provider under WAC 388-116-3010.

NEW SECTION

WAC 388-116-4050 Financial management services vendor purchases on behalf of an eligible beneficiary. (1) An eligible beneficiary may request the financial management services vendor purchase adaptive equipment and technology on their behalf.

(2) The adaptive equipment and technology must be allowable under WAC 388-116-1010.

(3) The total cost for the item, which includes required fees or costs, such as tax, shipping, or transaction fees, must not exceed the maximum rate under WAC 388-116-4020.

(4) The financial management services vendor must not purchase adaptive equipment and technology using a consumer-to-consumer online platform.

WSR 26-15-113
PROPOSED RULES
DEPARTMENT OF COMMERCE
[Filed July 21, 2026, 10:07 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-20-116.

Title of Rule and Other Identifying Information: Office of behavioral health advocacy (OBHA): Establishing rules for statewide behavioral health advocacy.

Hearing Location(s): On September 1, 2026, at 2:30-3:30 p.m., virtual via Zoom at https://wastatecommerce.zoom.us/j/83979654814?pwd=krQBMJ1sSHXyvOzz0bVj9I7bZrK6h9.1.

Date of Intended Adoption: October 8, 2026.

Submit Written Comments to: Katie Meehan, 1500 Jefferson Street S.E., P.O. Box 42525, Olympia, WA 98501-2355, email katie.meehan@commerce.wa.gov, beginning July 22, 2026, at 8:00 a.m., by September 4, 2026, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Katie Meehan, phone 360-628-2552, email katie.meehan@commerce.wa.gov, by August 25, 2026.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: OBHA is an independent body that protects the interests of Washington residents engaged in behavioral health services.

The proposed rules define OBHA's operational standards for behavioral health advocate qualifications, access procedures, and client confidentiality. These rules are anticipated to improve transparency and accountability related to accessing behavioral health advocacy services statewide.

This proposal will create new WAC sections under the department of commerce to codify OBHA's authority and functions. It does not change existing rules.

Reasons Supporting Proposal: RCW 71.40.030 requires the department to establish standards when certifying behavioral health advocates and procedures consistent with chapter 202, Laws of 2021. These rules will ensure consistent qualifications for advocates, streamline access procedures, and protect confidentiality. This will enhance advocacy effectiveness, ensure privacy, and unify statewide efforts for equitable service delivery.

Statutory Authority for Adoption: RCW 71.40.030.

Statute Being Implemented: Chapter 71.40 RCW.

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

Name of Proponent: Department of commerce, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Katie Meehan, 1500 Jefferson Street S.E., P.O. Box 42525, Olympia, WA 98501-2355, 360-628-2552.

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 costs will result from this rule making.

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

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule is not estimated to impose costs for compliance because the proposed rule is specific to OBHA operations. The proposed rule does not require impacted businesses to change business practices.

July 21, 2026
Amanda Hathaway
Rules Coordinator

RDS-7298.1

Chapter 365-25 WAC
OFFICE OF BEHAVIORAL HEALTH ADVOCACY (OBHA)

NEW SECTION

WAC 365-25-010 Purpose. The purpose of this chapter is to implement the behavioral health consumer advocacy program under the authority of the department of commerce as provided for in chapter 71.40 RCW. The office of behavioral health consumer advocacy (OBHA) promotes the interests, rights, and well-being of individuals receiving behavioral health services and addresses systemic issues affecting access to quality care for privately and publicly funded behavioral health services (including, without limitation, inpatient behavioral health services).

NEW SECTION

WAC 365-25-020 Definitions. (1) **"Behavioral health provider or facility"** includes:

(a) Behavioral health provider as defined in RCW 71.24.025;

(b) Licensed or certified behavioral health agency as defined in RCW 71.24.025;

(c) Long-term care facility as defined in RCW 43.190.020 that serves individuals with behavioral health conditions;

(d) State hospital as defined in RCW 72.23.010;

(e) Facilities or agencies receiving state funds to provide behavioral health treatment services to individuals with behavioral health conditions.

(2) **"Department"** means the department of commerce.

(3) **"Office"** or **"OBHA"** means the state office of behavioral health consumer advocacy.

(4) **"Behavioral health consumer advocate"** means individuals certified and authorized to provide behavioral health advocacy services as defined under this chapter.

(5) **"Complaint"** means a formal statement of dissatisfaction or concern made by an individual about a behavioral health provider or facility.

(6) **"Appeal"** means a request to review a decision or action involving a behavioral health provider or facility. This is submitted when an individual disagrees with a previous decision or resolution involving a behavioral health provider or facility.

(7) **"Grievance"** means a written complaint regarding a specific issue or concern about a behavioral health provider or facility, requiring further investigation or action by the office.

(8) **"Administrative hearings"** means formal legal proceedings where dispute(s) about a behavioral health provider or facility, including grievances, complaints, and appeals, are resolved by an impartial party or administrative law judge in line with state and federal rules.

(9) **"Contracting advocacy organization"** refers to the nonprofit organization selected by the department to operate the office.

NEW SECTION

WAC 365-25-030 Creation of the office. (1) **Establishment:** The department shall establish the office to serve as an independent advocacy body for individuals receiving behavioral health services from a behavioral health provider or facility.

(2) **Contracting advocacy organization:**

(a) The department shall select a nonprofit organization through a competitive bidding process to operate the office.

(b) The contracting advocacy organization must demonstrate financial stability, qualifications for the duties identified, and the absence of conflicts of interest.

(c) The department shall encourage individuals with lived experience in behavioral health or family members of such individuals to apply.

(3) **Duties of the office:** The office shall:

(a) Establish certification standards for behavioral health consumer advocates.

(b) Create procedures for access by behavioral health consumer advocates to behavioral health provider or facility, consistent with chapter 202, Laws of 2021, codified as chapter 71.40 RCW.

(c) Implement confidentiality procedures and protections for records and communications of patients, residents, clients, behavioral health provider or facility, and complainants as outlined in RCW 71.40.140.

NEW SECTION

WAC 365-25-040 Duties of the office. The office shall:

(1) Coordinate behavioral health consumer advocacy services statewide to ensure equitable access for individuals receiving behavioral health services from a behavioral health provider or facility.

(2) Adopt certification standards for behavioral health consumer advocates.

(3) Adopt training standards for appropriate access by behavioral health consumer advocates to behavioral health provider or facility.

(4) Establish a toll-free telephone number, website, and other appropriate technology to facilitate access to contracting advocacy organization services for patients, residents, and clients of behavioral health provider or facility.

(5) Investigate and resolve complaints related to services from a behavioral health provider or facility.

(6) Track and analyze behavioral health consumer advocacy metrics, including complaint trends, resolution rates, conditions for identifying and resolving significant problems, and systemic issues.

(7) Monitor and recommend improvements to laws, rules, regulations, and policies regarding behavioral health services in the state.

(8) Develop and deliver educational programs to patients, residents, clients, and families of the behavioral health provider or facility, including the topics described in RCW 71.40.040.

(9) Submit annual reports to the department detailing systemic barriers, policy recommendations, and programmatic improvements.

(10) Establish a statewide advisory council, where most of the council has lived experience in accordance with the requirements set forth in RCW 71.40.040 (7)(a) through (d).

(11) Ensure compliance with state and federal confidentiality laws in all operations.

NEW SECTION

WAC 365-25-050 Duties of certified behavioral health consumer advocates. (1) Behavioral health consumer advocates shall:

(a) Assist individuals with complaints, grievances, appeals, and administrative hearings.

(b) Provide behavioral health advocacy services while adhering to confidentiality and conflicts of interest requirements.

(c) Collaborate with individuals and their families to address barriers to accessing behavioral health services at the behavioral health provider or facility.

(d) Advocates must maintain neutrality and ensure that services are provided without bias or conflicts of interest.

(2) Certification requirements:

(a) Behavioral health consumer advocates must complete training and certification programs established by the office.

(b) Behavioral health consumer advocates must participate in continuing education programs established by the office to maintain certification.

NEW SECTION

WAC 365-25-060 Access to behavioral health provider or facility. (1) Behavioral health consumer advocates shall have access to the behavioral health provider or facility as necessary for complaint and grievance resolution and advocacy purposes.

(2) Behavioral health consumer advocates may access patient records with explicit patient consent or as legally permitted and must adhere to strict confidentiality standards.

NEW SECTION

WAC 365-25-070 Collaboration with other agencies. (1) The office shall establish working agreements with the department of social and health services (DSHS) and other state agencies to improve coordination and address systemic issues in behavioral health.

(2) The office shall collaborate with the behavioral health provider or facility to improve advocacy outcomes and reduce barriers to care.

NEW SECTION

WAC 365-25-080 Complaints—Review and resolution. (1) The office shall develop procedures for the review and resolution of complaints and grievances related to behavioral health consumer advocacy services.

(2) Complaints and grievances must be addressed promptly, and outcomes recorded in the office's tracking system.

(3) Systemic issues identified through complaints and grievances shall be included in the office's annual report to the department.

NEW SECTION

WAC 365-25-090 Confidentiality. (1) Certain records, communications, and files maintained by the office are confidential pursuant to RCW 71.40.120 and 71.40.140, but are public records subject to chapter 42.56 RCW (Public Records Act) and record retention laws.

(2) Records, communications, and files will remain confidential as may be allowed under chapter 71.40 RCW.

NEW SECTION

WAC 365-25-100 Liability. Certified behavioral health consumer advocates and the contracting advocacy organization shall not be held liable for good-faith performance of their duties under this chapter.

WSR 26-15-116
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE
[Order 26-10—Filed July 21, 2026, 12:58 p.m.]

Continuance of WSR 26-13-113 on June 17, 2026. The continuance is being filed with the code reviser to change the rule hearing date to August 6 from July 27. The department of fish and wildlife (department) needs additional time in its review of the proposed rules.

Preproposal statement of inquiry was filed as WSR 26-09-143 on April 22, 2026.

Title of Rule and Other Identifying Information: Hunting rules improvement project for chapters 220-400, 220-412, 220-413, 220-414, 220-415, and 220-417 WAC.

Hearing Location(s): On Thursday, August 6, 2026, at 1:00 p.m., via virtual director hearing by Zoom at https://us06web.zoom.us/webinar/register/WN_M3i9XmnxS4-rjv0wJht7bQ. To register to verbally comment at the public hearing, sign up at https://engage.wdfw.wa.gov/l176183.

Date of Intended Adoption: On or after August 11, 2026.

Submit Written Comments to: Rules Coordinator, P.O. Box 43200, Olympia, WA 98504, email 2026huntingimprovementcr102@publicinput.com, fax 360-902-2162, web https://engage.wdfw.wa.gov/2026huntingimprovementcr102, phone 855-925-2801, project code 5821, beginning June 17, 2026, 12:00 p.m., by August 6, 2026, 11:59 p.m.

Assistance for Persons with Disabilities: Contact Title VI/ADA compliance coordinator, phone 360-902-2349, TTY 1-800-833-6388 or 711, email Title6@dfw.wa.gov, web http://wdfw.wa.gov/accessibility/requests-accommodation, by July 31, 2026, 11:59 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is seeking to update hunting rules to improve their enforceability and to ensure that they are better understood by the public.

Reasons Supporting Proposal: The department is seeking certain amendments to rules to improve their enforceability. By implementing these rule changes, the department will improve the clarity and understanding of these regulations to gain greater public compliance with the hunting laws. Improved compliance will ultimately yield better outcomes for preserving wildlife resources and improved public safety.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047.

Statute Being Implemented: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047.

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

Name of Proponent: Washington state department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Thomas Knoll Jr., 1111 Washington Street S.E., Olympia, WA 98501, 360-951-3088; Implementation and Enforcement: Chief Mike Jewell, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2373.

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

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

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

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

July 21, 2026
Scott Bird
Rules Coordinator

WSR 26-15-117
PROPOSED RULES
STATE BOARD OF HEALTH
[Filed July 21, 2026, 2:08 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 26-07-010.

Title of Rule and Other Identifying Information: Minimum horizontal separations for on-site sewage systems (OSS); the state board of health (board) is proposing to amend WAC 246-272A-0210 to clarify the minimum horizontal separations (setbacks) for surface water used as a public and nonpublic drinking water source. The board is also proposing to make several technical, grammatical, and editorial corrections in WAC 246-272A-0010, 246-272A-0110, 246-272A-0120 (5)(b)(ii), 246-272A-0210, and 246-272A-0240 (2)(c).

Hearing Location(s): On October 1, 2026, at 1:30 p.m., at Norm Dicks Government Center, Auditorium, 345 6th Street, Bremerton, WA 98337; or virtually via Zoom at https://us02web.zoom.us/webinar/register/WN_kxfzJhAKREGMKdoAxwpthA, Webinar ID 819 4162 7760, Passcode 682856.

Date of Intended Adoption: October 1, 2026.

Submit Written Comments to: Shay Bauman, P.O. Box 47990, Olympia, WA 98504-7990, email shay.bauman@sboh.wa.gov, web https://fortress.wa.gov/doh/policyreview/, beginning the date and time of filing, by September 17, 2026, at 11:59 p.m.

Assistance for Persons with Disabilities: Contact Shay Bauman, phone 360-236-4110, TTY 711, email shay.bauman@sboh.wa.gov, web wsboh@sboh.wa.gov, by September 17, 2026.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board is proposing to amend Table IV in WAC 246-272A-0210 to amend the setbacks for surface water used as drinking water (public and nonpublic) measured from the ordinary high-water mark. The proposed rules would revert setback requirements from 200 feet to 100 feet from the drainfield/reserve area, from 200 feet to 50 feet from the sewage tank or distribution box, and from 100 feet to 50 feet from the building sewer or piping, matching the setback requirements established in rule prior to the most recent rule amendment in 2024. The proposed rules also provide clarity on setbacks for springs by separating surface water from springs in Table IV, and ensuring that setbacks for springs align with drinking water standards. Finally, the proposed rules make technical, grammatical, and editorial corrections in WAC 246-272A-0010, 246-272A-0110, 246-272A-0120 (5)(b)(ii), 246-272A-0210, and 246-272A-0240 (2)(c).

Reasons Supporting Proposal: The proposed rules address unintended consequences that arose after implementation of the board's most recent updates to chapter 246-272A WAC in 2024. At that time, the setback requirement for surface water used as a public drinking water source measured from the ordinary high-water mark was increased to proactively protect source water around surface water intakes. However, the implementation of the revised rule resulted in unintended consequences for local jurisdictions around the state. The rule as written requires a 200-foot setback along many miles of rivers, regardless of the location of the drinking water intake. This outcome was not the intent of the 2024 changes to WAC 246-272A-0210. In November 2025, the board received a petition for rule making, explaining the effects of the current setbacks on the development of lots along the Pend Oreille River system. This rule making provides clarity to interested parties

and addresses the petitioners' concerns, while ensuring public health protections are still in place.

Statutory Authority for Adoption: RCW 43.20.050(3).

Statute Being Implemented: RCW 43.20.050(3).

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

Name of Proponent: State board of health, governmental.

Name of Agency Personnel Responsible for Drafting: Shay Bauman, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4110; Implementation and Enforcement: Heather Watts-Goodfellow, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-3208.

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 Shay Bauman, P.O. Box 47990, Olympia, WA 98504-7990, phone 360-236-4110, TTY 711, email shay.bauman@sboh.wa.gov.

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

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rule applies to local health jurisdictions, which do not meet the definition of "small business" in RCW 19.85.020. Additionally, the proposed rule will not impact OSS installers or homeowners/property developers. WAC 246-272A-0010, 246-272A-0120 (5)(b)(ii), and 246-272A-0240 (2)(c) are exempt under RCW 34.05.310 (4)(d), as the proposed changes correct typographical errors. WAC 246-272A-0110 is exempt under RCW 34.05.310 (4)(c) and (d), as the proposed changes both incorporate by reference a national consensus code and correct typographical errors.

Scope of exemption for rule proposal:

Is fully exempt.

July 21, 2026
Michelle A. Davis, MPA
Executive Director

RDS-7288.2

AMENDATORY SECTION (Amending WSR 24-06-046, filed 3/1/24, effective 4/1/25)

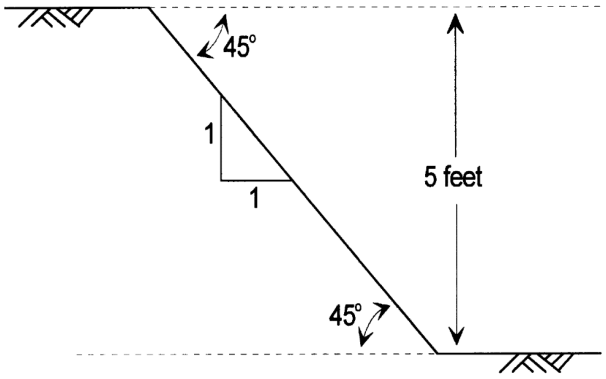
WAC 246-272A-0010 Definitions. The definitions used in this section apply throughout this chapter unless the context clearly indicates otherwise:

(1) "Additive" means a commercial product added to an OSS intended to affect the performance or aesthetics of an OSS.

(2) "ANSI" means American National Standards Institute.

(3) "Approved" means a written statement of acceptability issued by the local health officer or the department.

(4) "Bank" means any naturally occurring slope greater than 100 percent (45 degrees) and extending vertically at least five feet from the toe of the slope to the top of the slope as follows:



(5) "Bed" means a soil dispersal component consisting of an excavation with a width greater than three feet.

(6) "BL" means bacterial level.

(7) "Black water" means any waste from toilets or urinals.

(8) "BOD" means biochemical oxygen demand, typically expressed in mg/L.

(9) "Building drain" means that part of the lowest piping of a building's drainage system that receives the discharge of sewage from pipes inside the walls of the building and conveys it to the building sewer beginning two feet outside the building wall.

(10) "Building sewer" means that part of the horizontal piping of a drainage system extending from the building drain, which collects sewage from all the drainage pipes inside a building, to an OSS. It begins two feet outside the building wall and conveys sewage from the building drain to the OSS.

(11) "$CBOD_5$" means carbonaceous biochemical oxygen demand, typically expressed in mg/L.

(12) "Cesspool" means a pit receiving untreated sewage and allowing the liquid to seep into the surrounding soil or rock.

(13) "Conforming system" means any OSS or component, meeting any of the following criteria:

(a) In full compliance with new construction requirements under this chapter; or

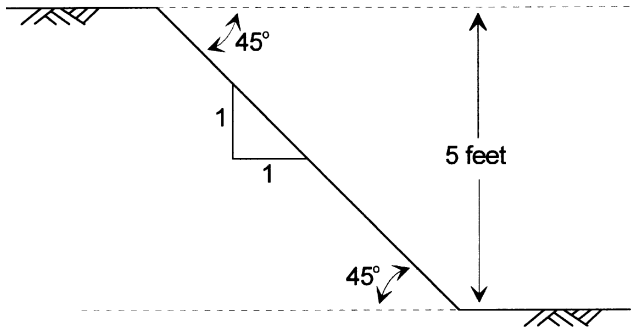
(b) Approved, installed, and operating in accordance with requirements of previous editions of this chapter; or

(c) Permitted by the waiver process under WAC 246-272A-0420.

(14) "Cover material" means soil placed over a soil dispersal component composed predominately of mineral material with no greater than 10 percent organic content. Cover material may contain an organic

surface layer for establishing a vegetative landscape to reduce soil erosion.

(15) "Cuts" means any artificially formed slope greater than 100 percent (45 degrees) and extending vertically at least five feet from the toe of the slope to the top of the slope as follows:



(16) "Department" means the Washington state department of health.

(17) "Designer" means a person who matches site and soil characteristics with appropriate on-site sewage technology. Throughout this chapter this term applies to both OSS designers licensed under chapter 18.210 RCW and professional engineers licensed under chapter 18.43 RCW.

(18) "Design flow" means the maximum volume of sewage a residence, structure, or other facility is estimated to generate in a 24-hour period. It incorporates both an operating capacity and a surge capacity for the OSS during periodic heavy use events. The sizing and design of the OSS components are based on the design flow.

(19) "Detention pond" means an earthen impoundment used for the collection and temporary storage of stormwater runoff.

(20) "Development" means the creation of a residence, structure, facility, subdivision, site, area, or similar activity resulting in the production of sewage.

(21) "Disinfection" means the process of destroying pathogenic microorganisms in sewage through the application of ultraviolet light, chlorination, or ozonation.

(22) "Distribution technology" means any arrangement of equipment or materials that distributes sewage within an OSS.

(23) "Drainrock" means clean washed gravel or crushed rock ranging in size from three-quarters inch to two and one-half inches and containing no more than two percent by weight passing a US No. 8 sieve and no more than one percent by weight passing a US No. 200 sieve.

(24) "DS&G" means department standards and guidance.

(25) "*E. coli*" means *Escherichia coli* bacteria. Counts of these organisms are typically used to indicate potential contamination from sewage or to describe a level of needed disinfection, typically expressed as colony forming units/100 mL.

(26) "Effluent" means liquid discharged from a sewage tank or other OSS component.

(27) "EPA" means United States Environmental Protection Agency.

(28) "Expanding clay" means a clay soil with the mineralogy of clay particles, such as those found in the Montmorillonite/Smectite Group, which causes the clay particles to expand when they absorb water, closing the soil pores, and contract when they dry out.

(29) "Expansion" means a change in a residence, facility, site, or use that:

(a) Causes the sewage quantity or quality to exceed the existing design flow of the OSS, for example, when a residence is increased from two to three bedrooms or a change in use from an office to a restaurant; or

(b) Reduces the treatment or dispersal capability of the existing OSS or the reserve area, for example, when a building is placed over a reserve area.

(30) "Extremely gravelly" means soil with 60 percent or more, but less than 90 percent rock fragments by volume.

(31) "Failure" means a condition of an OSS or component that threatens the public health by inadequately treating sewage or by creating a potential for direct or indirect contact between sewage and the public. Examples of failure include:

(a) Sewage on the surface of the ground;

(b) Sewage backing up into a structure caused by slow soil absorption of septic tank effluent;

(c) Sewage leaking from a sewage tank or collection system;

(d) Cesspools or seepage pits where evidence of groundwater or surface water quality degradation exists;

(e) Inadequately treated effluent contaminating groundwater or surface water; or

(f) Noncompliance with standards stipulated on the permit.

(32) "Fecal coliform" or "FC" means bacteria common to the digestive systems of warm-blooded animals that are cultured in standard tests. Counts of these organisms are typically used to indicate potential contamination from sewage or to describe a level of needed disinfection typically expressed in colony forming units/100 mL.

(33) "Fill" means unconsolidated material that:

(a) Meets soil types 1-6 textural criteria and is used as part of a soil dispersal component;

(b) Is used to change grade or to enhance surface water diversion; or

(c) Is any other human-transported material.

(34) "Flood plain" means an area that is low-lying and adjacent to a stream or river that is covered by water during a flood.

(35) "GPD" means gallons per day.

(36) "Gravelly" means soils with 15 percent or more, but less than 35 percent rock fragments by volume.

(37) "Greywater" means sewage from any source in a residence or structure that has not come into contact with toilet or urinal wastes, including bathtubs, showers, bathroom sinks, washing machines, dishwashers, and kitchen sinks.

(38) "Groundwater" means subsurface water occupying the zone of saturated soil, permanently, seasonally, or as the result of the tides. Indications of groundwater may include:

(a) Water seeping into or standing in an open excavation from the soil surrounding the excavation or monitoring ports.

(b) Spots or blotches of different color or shades of color interspersed with a dominant color in soil, caused by reduction and oxidation of iron. These color patterns are redoximorphic features, commonly referred to as mottling. Redoximorphic features often indicate the intermittent presence of groundwater and may indicate poor aeration and impeded drainage.

(39) "Holding tank sewage system" means an OSS that incorporates a sewage tank without a discharge outlet, the services of a sewage pumper/hauler, and the offsite treatment and disposal for the sewage generated.

(40) "Hydraulic loading rate" means the amount of effluent applied to a given treatment step, expressed as gallons per square foot per day or gal/sq.ft./day.

(41) "Industrial wastewater" means the water or liquid carried waste from an industrial process. These wastes may result from any process or activity of industry, manufacture, trade or business, from the development of any natural resource, or from animal operations such as feedlots, poultry houses, or dairies. Industrial wastewater includes contaminated stormwater and leachate from solid waste facilities.

(42) "Infiltration pond" means an earthen impoundment used for the collection, temporary storage, and infiltration of stormwater runoff.

(43) "Infiltrative surface" means the surface within a treatment component or soil dispersal component to which effluent is applied and through which effluent moves into original, undisturbed soil or other porous treatment media.

(44) "Installer" means a person approved by the local health officer to install an OSS or OSS components.

(45) "Local health officer" means the health officer of the city, county, or city-county health department or district within the state of Washington, or a representative authorized by and under the direct supervision of the local health officer, as defined in chapter 70.05 RCW.

(46) "LOSS" means a large on-site sewage system under chapter 246-272B WAC.

(47) "Maintenance" means the actions necessary to keep the OSS components functioning as designed.

(48) "Maintenance service provider" means a management entity certified by the local health officer and conducts a comprehensive analysis of an OSS.

(49) "Malfunction" means a damaged or deficient previously conforming OSS component that may be corrected by means of a minor repair.

(50) "Massive structure" means the condition of a soil layer in which the layer appears as a coherent or solid mass not separated into peds of any kind.

(51) "mg/L" means milligrams per liter.

(52) "mL" means milliliter.

(53) "Minimum usable land area" means the minimum land area within the minimum lot size required per development using an OSS, which is based on soil type and type of water supply. Minimum usable land area is free of all physical restrictions and meet minimum vertical and horizontal separations.

(54) "Minor repair" means the repair or replacement of any of the following existing damaged or malfunctioning OSS components except that the repair or replacement of a sewage tank, treatment component, or soil dispersal component is not considered a minor repair:

(a) Control panels;
(b) Building sewers;
(c) Any other portions of tightline in the OSS;
(d) Risers and riser lids;
(e) Sewage tank baffles;
(f) Effluent filters;
(g) Sewage tank pumps and lids;
(h) Pump control floats; and
(i) OSS inspection boxes and ports.

(55) "Moderate structure" means well-formed distinct peds evident in undisturbed soil. When disturbed, soil material parts into a mixture of whole peds, broken peds, and material that is not in peds.

(56) "Modification" means the alteration of an existing OSS component that does not result in an expansion of the system. A modification is not considered a repair.

(57) "Monitoring" means periodic or continuous checking of an OSS, which is performed by observations and measurements, to determine if the system is functioning as intended and if system maintenance is needed. Monitoring also includes maintaining accurate records that document monitoring activities.

(58) "NSF" means NSF International.

(59) "O&G" means oil and grease, a component of sewage typically originating from food stuffs such as animal fats or vegetable oils, or consisting of compounds of alcohol or glycerol with fatty acids such as soaps and lotions, typically expressed in mg/L.

(60) "Operating capacity" means the average daily volume of sewage an OSS can treat and disperse on a sustained basis. The operating capacity, which is lower than the design flow, is an integral part of the design and is used as an index in OSS monitoring.

(61) "Ordinary high-water mark" means the mark on lakes, streams, springs, and tidal waters, found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland with respect to vegetation, as that condition exists on the effective date of this chapter, or as it may naturally change thereafter. The following conditions apply where the ordinary high-water mark cannot be found:

(a) The ordinary high-water mark adjoining marine water is the elevation at mean higher high tide; and

(b) The ordinary high-water mark adjoining freshwater is the line of mean high water.

(62) "OSS" means on-site sewage system, an integrated system of components, located on or nearby the property it serves, which conveys, stores, treats, and provides subsurface soil treatment and dispersal of sewage. It consists of a collection system, a treatment component or treatment component sequence, and a soil dispersal component. An OSS also refers to a holding tank sewage system or other system that does not have a soil dispersal component. The term "on-site sewage system (OSS)" does not include any system regulated by a water quality discharge permit issued under chapter 90.48 RCW.

(63) "PAG" means policy advisory group.

(64) "PDP" means product development permit.

(65) "Ped" means a unit of soil structure such as blocks, column, granule, plate, or prism formed by natural processes.

(66) "Person" means any individual, corporation, company, association, society, firm, partnership, joint stock company, or any governmental agency, or the authorized agents of these entities. For the purposes of WAC 246-272A-0430 and 246-272A-0440, a person is defined to include:

(a) Applicant;

(b) Reapplicant;

(c) Permit holder; or

(d) Any individual associated with (a), (b) or (c) of this subsection including, but not limited to:

(i) Board members;

(ii) Officers;
(iii) Managers;
(iv) Partners;
(v) Association members;
(vi) Agents; and
(vii) Third persons acting with the knowledge of such persons.

(67) "Planned unit development" means a subdivision characterized by a unified site design, clustered residential units or commercial units, and areas of common open space.

(68) "Platy structure" means soil that contains flat peds that lie horizontally and often overlap. This type of structure impedes the vertical movement of water.

(69) "Pressure distribution" means a system of small diameter pipes equally distributing effluent throughout an OSS, as described in the *DS&G for Pressure Distribution Systems*, 2022. A subsurface drip system is considered a pressure distribution system.

(70) "Professional engineer" means a person who is currently licensed as an engineer under the provisions of chapter 18.43 RCW.

(71) "Proprietary product" means a sewage treatment and distribution technology, method, or material subject to a patent or trademark.

(72) "Public domain technology" means a sewage treatment and distribution technology, method, or material not subject to a patent or trademark.

(73) "Public sewer system" means a sewerage system:

(a) Owned or operated by a city, town, municipal corporation, county, or other approved ownership consisting of a collection system and necessary trunks, pumping facilities and a means of final treatment and disposal; and

(b) Approved by or under permit from the department of ecology, the department of health, or a local health officer.

(74) "Puget Sound counties" means Clallam, Island, Kitsap, Jefferson, Mason, San Juan, Seattle-King, Skagit, Snohomish, Tacoma-Pierce, Thurston, and Whatcom. All other counties are defined as non-Puget Sound counties.

(75) "Pump chamber" means a watertight receptacle placed after a septic tank, sewage tank, or other treatment facility that contains the required controls and alarms to convey sewage effluent to a treatment or dispersal component.

(76) "Pumper" means a person approved by the local health officer to remove and transport sewage or septage from an OSS.

(77) "Record drawing" means an accurate graphic and written record of the location and features of the OSS that are needed to properly monitor, operate, and maintain that system. Also known as an "as-built" drawing.

(78) "Remediation" means any action, approved by the local health officer, which attempts to restore the function of a previously conforming OSS dispersal component that has failed. Remediation is not considered:

(a) A minor repair;
(b) A repair;
(c) An additive; or
(d) A treatment or distribution technology that allows the OSS to meet a specific treatment level.

(79) "Repair" means the relocation, replacement, or reconstruction of a failed OSS, or any OSS components not included in the list for a minor repair, which have failed in order to restore the OSS to a nonfailure status.

(80) "Reserve area" means an area of land approved for the installation of a conforming OSS that is protected and maintained for replacement of the OSS upon its failure.

(81) "Residential sewage" means sewage having the ((~~constituency~~)) consistency and quality typical of residential septic tank effluent consistent with treatment level E identified in Table III in WAC 246-272A-0110.

(82) "Restrictive layer" means a stratum impeding the vertical movement of water, air, and growth of plant roots, such as hardpan, claypan, fragipan, caliche, some compacted soils, bedrock, and unstructured clay soils.

(83) "Rock fragment" means rock or mineral fragments having a diameter of two millimeters or more. Examples include, gravel, cobbles, stones, and boulders.

(84) "Seepage pit" means an excavation more than three feet deep where the sidewall of the excavation is designed to dispose of septic tank effluent. Seepage pits are also known as dry wells.

(85) "Septage" means liquid or solid material removed from sewage tanks, cesspools, portable toilets, type III marine sanitation devices, vault toilets, pit toilets, recreational vehicle holding tanks, or similar systems that receive only domestic sewage.

(86) "Septic tank" means a watertight treatment receptacle receiving the discharge of sewage from a building sewer or sewers, designed and constructed to separate settleable and floating solids from the liquid, detention and anaerobic digestion of the organic matter, prior to discharge of the liquid.

(87) "Sewage" means any urine, feces, and the water carrying human wastes, including kitchen, bath, and laundry wastes from residences, buildings, industrial establishments, or other places.

(88) "Sewage quality" means contents in sewage that include:

(a) $CBOD_5$, TSS, and O&G;

(b) Other parameters that may adversely affect treatment. Examples include pH, temperature, and dissolved oxygen; or

(c) Other constituents that create concerns due to specific site sensitivity. Examples include fecal coliform, *E. coli*, phosphorus, and nitrogen.

(89) "Sewage tank" means a prefabricated or cast-in-place septic tank, pump chamber, dosing chamber, holding tank, grease interceptor, recirculating filter tank or any other tanks as they relate to OSS including tanks for use with proprietary products.

(90) "Soil dispersal component" means a technology that releases effluent from a treatment component into the soil for dispersal, final treatment and recycling.

(91) "Soil log" means a detailed description of soil characteristics providing information on the soil's capacity to act as an acceptable treatment and dispersal medium for sewage.

(92) "Soil scientist" means a person certified by the American Society of Agronomy as a Certified Professional Soil Scientist.

(93) "Soil type" means one of seven numerical classifications of fine earth particles and rock fragments as described in WAC 246-272A-0220 (2)(e).

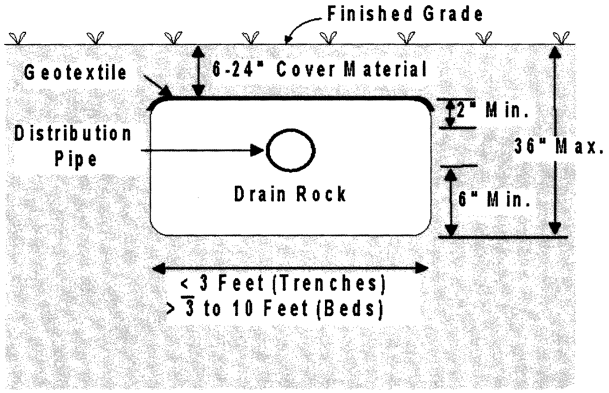
(94) "Standard methods" means the *23rd Edition of Standard Methods for the Examination of Water and Wastewater*, prepared and published jointly by the American Public Health Association, the American Water Works Association and the Water Environment Federation.

(95) "Strong structure" means peds are distinct in undisturbed soil. They separate cleanly when soil is disturbed, and the soil material separates mainly into whole peds when removed.

(96) "Subdivision" means a division of land or creation of lots or parcels, described under chapter 58.17 RCW, including both long and short subdivisions, planned unit developments, and mobile home parks.

(97) "Subsurface drip system" means an efficient pressurized wastewater distribution system that can deliver small, precise doses of effluent to soil surrounding the drip distribution piping, also known as dripline, as described in the *DS&G for Subsurface Drip Systems*, 2020.

(98) "SSAS" means a subsurface soil absorption system that is a soil dispersal component of trenches or beds containing either a distribution pipe within a layer of drainrock covered with a geotextile, or an approved gravelless distribution technology, designed and installed in suitable soil, with either gravity or pressure distribution of the treatment component effluent.



(99) "Suitable" means original, undisturbed, unsaturated soil of soil types 1-6 with at least the vertical separation established in this chapter.

(100) "Surface water" means any fresh or marine body of water flowing or contained in natural or artificial unlined depressions for significant periods of the year, including natural and artificial lakes, ponds, springs, rivers, streams, swamps, marshes, irrigation canals, and tidal waters.

(101) "TAG" means the technical advisory group established in WAC 246-272A-0400.

(102) "Timed dosing" means delivery of discrete volumes of sewage at prescribed time intervals.

(103) "TN" means total nitrogen, typically expressed in mg/L.

(104) "Treatment component" means a technology that treats sewage in preparation for further treatment or dispersal into the soil environment. Some treatment components, such as mound systems, incorporate a soil dispersal component in lieu of separate treatment and soil dispersal components.

(105) "Treatment component sequence" means any series of treatment components that discharges treated sewage to the soil dispersal component.

(106) "Treatment level" means one of the following levels (A, B, C, BL1, BL2, BL3, E, & N) to:

(a) Identify treatment component performance demonstrated through requirements specified in WAC 246-272A-0110; and

(b) Match site conditions of vertical separation and soil type with treatment components.

(107) "Trench" means a soil dispersal component consisting of an excavation with a width of three feet or less.

(108) "TSS" means total suspended solids, a measure of all suspended solids in a liquid, typically expressed in mg/L.

(109) "Unit volume of sewage" means:

(a) Flow from a single-family residence;

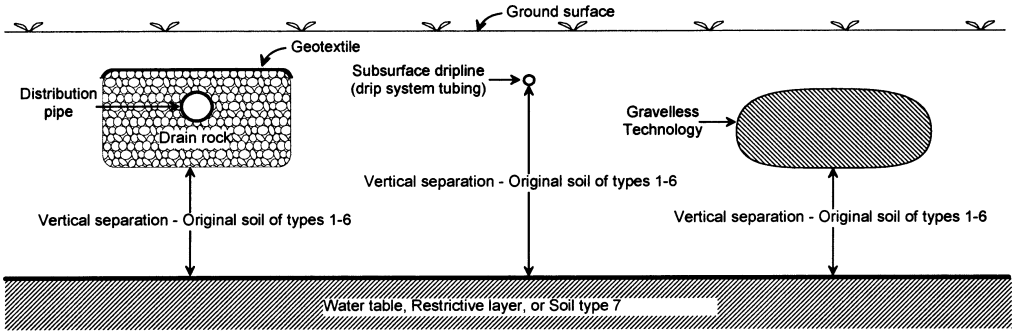
(b) Flow from a mobile home site in a mobile home park; or

(c) Four hundred fifty gallons of sewage per day where the proposed development is not single-family residences or a mobile home park.

(110) "Unknown OSS" means an OSS that was installed without the knowledge or approval of the local health jurisdiction, including those that were installed before such approval was required.

(111) "Unpermitted sewage discharge" means the discharge of sewage or treated effluent from an unknown OSS.

(112) "Vertical separation" means the depth of suitable soils between the bottom infiltrative surface of a soil dispersal component and the highest seasonal water table, a restrictive layer, or soil type 7 as illustrated below by the profile drawing of subsurface soil absorption systems:



(113) "Very gravelly" means soil containing 35 percent or more, but less than 60 percent rock fragments by volume.

(114) "Water supply protection zone" means the land area around each existing or proposed well site to protect the water supply from contamination.

(115) "Water table" means the upper surface of the groundwater, whether permanent or seasonal. Also see "groundwater" as defined in this section.

(116) "Well" means any excavation that is constructed when the intended use of the well is for the location, diversion, artificial recharge, observation, monitoring, dewatering or withdrawal of groundwater for agricultural, municipal, industrial, domestic, or commercial use. The following are not considered a well:

(a) A temporary observation or monitoring well used to determine the depth to a water table for locating an OSS;

(b) An observation or monitoring well used to measure the effect of an OSS on a water table;

(c) An interceptor or curtain drain constructed to lower a water table; and

(d) A dewatering well used temporarily for the purpose of a sewage tank or pump chamber installation.

AMENDATORY SECTION (Amending WSR 25-06-036, filed 2/26/25, effective 4/1/25)

WAC 246-272A-0110 Proprietary treatment products—Eligibility for registration. (1) Manufacturers shall register a proprietary treatment product with the department using the process described in WAC 246-272A-0120 before a local health officer may permit use of the product.

(2) To be eligible for product registration, manufacturers desiring to sell or distribute proprietary treatment products in Washington state shall:

(a) Verify product performance through testing using the testing protocol established in Table I of this section;

(b) Report product test results of influent and effluent sampling obtained throughout the testing period (including normal and stress loading phases) for evaluation of constituent reduction according to the requirements in Table II of this section;

(c) Demonstrate product performance according to the requirements in Table III of this section. All 30-day averages and geometric means obtained throughout the test period must meet the identified threshold values to qualify for registration at that threshold level; and

(d) Verify bacteriological reduction according to WAC 246-272A-0130 for product registration utilizing bacterial levels BL1, BL2, and BL3.

(3) Manufacturers verifying product performance through testing according to the following standards or protocols shall have product testing conducted by a testing facility accredited by ANSI:

(a) NSF/ANSI 40: Residential Wastewater Treatment Systems;

(b) NSF/ANSI 41: Non-Liquid Saturated Treatment Systems;

(c) NSF Protocol P157 Electrical Incinerating Toilets - Health and Sanitation;

(d) NSF/ANSI 245: Residential Wastewater Treatment Systems - Nitrogen Reduction; or

(e) NSF/ANSI 385: Residential Wastewater Treatment Systems - Disinfection Mechanics for Bacteriological Reduction described in WAC 246-272A-0130.

(4) Manufacturers verifying product performance through testing according to EPA Method 1664, Revision B and using a wastewater laboratory certified by the Washington department of ecology shall provide supporting information, including flow data, and influent and effluent quality sampling results from a minimum of three installations with similar design loading to demonstrate product performance to Category 2 standards.

(5) Treatment levels established in Table III of this section are intended to establish treatment product performance in a product testing setting under established protocols by qualified testing entities. Field compliance standards for proprietary treatment products shall follow the requirements in WAC 246-272A-0120(5).

(6) Manufacturers may submit a written request to substitute components of a registered product's construction in cases of supply chain shortage or similar manufacturing disruptions impacting installations, operation, or maintenance. The substitution request must include a report stamped, signed, and dated by a professional engineer demonstrating the substituted component will not negatively impact performance or diminish the effect of the treatment, operation, and

maintenance of the original registered product. If approved, substitution is authorized until rescinded by the department.

Table I

Testing Requirements for Proprietary Treatment Products	
Treatment Component/Sequence Category	**Required Testing Protocol**
Category 1 Designed to treat septic tank effluent anticipated to be equal to or less than treatment level E.	NSF/ANSI 40—Residential Wastewater Treatment Systems (versions dated between January 2009 and ((~~May 31, 2021~~)) October 1, 2023)
Category 2 Designed to treat effluent or sewage with sewage quality parameters anticipated to be greater than treatment level E. (Such as at restaurants, grocery stores, mini-marts, group homes, medical clinics, residences, etc.)	EPA Method 1664, Revision B (February 2010) and NSF/ANSI 40—Residential Wastewater Treatment Systems (versions dated between January 2009 and ((~~May 31, 2021~~)) October 1, 2023)
Category 3 Black water component of residential sewage (such as composting((~~*~~)) and incinerating((~~**~~)) toilets).	NSF/ANSI 41: Non-Liquid Saturated Treatment Systems (Versions dated between February 2011 and ((~~May 31, 2021~~)) November 1, 2023) ((~~**~~))NSF Protocol P157 Electrical Incinerating Toilets - Health and Sanitation (April 2000)
Total Nitrogen Reduction in Categories 1 & 2 (Above)	NSF/ANSI 245: Residential Wastewater Treatment Systems - Nitrogen Reduction (Versions dated between January 2018 and ((~~May 31, 2021~~)) December 1, 2023)

Table II

Test Results Reporting Requirements for Proprietary Treatment Products	
Treatment Component/Sequence Category	**Testing Results Reported**
Category 1 Designed to treat septic tank effluent anticipated to be equal to or less than treatment level E.	Report the following test results of influent and effluent sampling obtained throughout the testing period for evaluation of reduction of $CBOD_5$[2], and TSS: □ Average □ Standard Deviation □ Minimum □ Maximum □ Median □ Interquartile Range □ 30-day Average (for each month) For evaluation of bacteriological reduction performance. Report complete treatment component sequence testing as described in Table III, Category 1. For evaluation of performance meeting treatment level BL1: (1) Report fecal coliform test results of influent and effluent sampling by geometric mean from samples drawn within 30-day or monthly calendar periods, obtained from a minimum of three samples per week throughout the testing period. See WAC 246-272A-0130. (2) Report complete testing results for supplemental bacteriological reduction technology[1] when the required treatment levels for fecal coliform in Table III, Category 1 are not met by the primary proprietary treatment product.

Test Results Reporting Requirements for Proprietary Treatment Products	
	For evaluation of performance meeting treatment level BL2 or BL3: (1) Report fecal coliform test results of influent and effluent sampling by geometric mean from samples drawn within 30-day or monthly calendar periods, obtained from a minimum of three samples per week throughout the testing period as described in WAC 246-272A-0130; or (2) Report complete testing results for supplemental bacteriological reduction technology[1] when the required treatment levels for fecal coliform in Table III, Category 1 are not met by the primary proprietary treatment product. For all options, test report must also include the individual results of all samples drawn throughout the test period.
Category 2 Designed to treat effluent or sewage with sewage quality parameters anticipated to be greater than treatment level E. (Such as at restaurants, grocery stores, mini-marts, group homes, medical clinics, atypical residences, etc.)	Report all individual test results and full test average values of influent and effluent sampling obtained throughout the testing period for the evaluation of reduction of: $CBOD_5$, TSS and O&G. Establish the treatment capacity of the product tested in pounds per day for $CBOD_5$.
Category 3 Black water component of residential sewage (such as composting and incinerating toilets).	Report test results on all required performance criteria according to the format prescribed in the NSF test protocol described in Table I.
Total Nitrogen Reduction in Categories 1 & 2 (Above)	Report test results on all required performance criteria according to the format prescribed in the test protocol described in Table I.

1 Test results for BOD_5 may be submitted in lieu of test results for $CBOD_5$. In these cases numerical values for $CBOD_5$ will be determined using the following formula: ($BOD_5 \times 0.83 = CBOD_5$).

2 Supplemental bacteriological reduction technology must be tested for influent/effluent fecal coliform or *E. coli* per WAC 246-272A-0130 (bacteriological reduction testing protocol). Supplemental fecal coliform or *E. coli* reducing technologies will be rated for log base 10 removal of fecal coliform or *E. coli*. The lowest 30-day geometric mean will be used to rate reduction level. The highest monthly geometric mean for treatment technology fecal coliform or *E. coli* reduction will be used as the baseline value for review.

Table III

Product Performance Requirements for Proprietary Treatment Products							
Treatment Component/Sequence Category	**Product Performance Requirements**						
Category 1 Designed to treat effluent anticipated to be equal to or less than treatment level E.	**Treatment System Performance Testing Levels**						
	Level	**Parameters**					
		$CBOD_5$ mg/L	**TSS mg/L**	**O&G mg/L**	**FC cfu/100 mL**	**TN mg/L**	***E. coli* cfu/100 mL**
	A	10	10	—	—	—	—
	B	15	15	—	—	—	—
	C	25	30	—	—	—	—
	BL1			—	200	—	126
	BL2	—	—	—	1,000	—	—
	BL3	—	—	—	50,000	—	—
	E	228	80	20	—	—	—
	N	—	—	—	—	30 (or 50% reduction based on mass loading as required in WAC 246-272A-0320)	—

Product Performance Requirements for Proprietary Treatment Products	
Treatment Component/Sequence Category	**Product Performance Requirements**
	Values for Levels A - C are 30-day values (averages for $CBOD_5$, TSS, and geometric mean for FC.) All 30-day averages throughout the test period must meet these values in order to be registered at these levels. Values for Levels E and N are derived from full test averages.
Category 2 Designed to treat high-strength sewage when septic tank effluent is anticipated to be greater than treatment level E. (Such as at restaurants, grocery stores, mini-marts, group homes, medical clinics, residences, etc.)	All of the following requirements must be met: (1) All full test averages must meet Level E; and (2) Establish the treatment capacity of the product tested in pounds per day for $CBOD_5$.
Category 3 Black water component of residential sewage (such as composting and incinerating toilets).	Test results must meet the performance requirements established in the NSF test protocol.
Total Nitrogen Reduction in Categories 1 & 2 (Above)	Test results must establish product performance effluent quality meeting Level N, when presented as the full test average.

AMENDATORY SECTION (Amending WSR 24-06-046, filed 3/1/24, effective 4/1/25)

WAC 246-272A-0120 Proprietary treatment product registration—Process and requirements. (1) Manufacturers shall register proprietary treatment products with the department by submitting a complete registration application for review and approval in the format provided by the department, including:

(a) Manufacturer's name, mailing address, phone number, email address, and website address;

(b) Contact person's name, title, mailing address, email address, and phone number. The contact person must be vested with the authority to represent the manufacturer in this capacity;

(c) Name, including specific brand and model, of the proprietary treatment product;

(d) A description of the function of the proprietary treatment product along with any known limitation on the use of the product;

(e) Product description and technical information, including process flow drawings and schematics; materials and characteristics; component design specifications; design capacity, volumes and flow assumptions and calculations; components; dimensioned drawings and photos;

(f) For treatment systems in Category 2, daily capacity of the model or models in pounds per day of $CBOD_5$;

(g) Siting and installation requirements;

(h) Detailed description, procedure, and schedule of routine service and system maintenance events;

(i) Estimated operational costs for the first five years of the treatment component's life. This must include both estimated annual electricity costs, and routine maintenance costs, including replacement of parts;

(j) Identification of information subject to protection from disclosure of trade secrets;

(k) Most current dated copies of product brochures and manuals: *Sales & Promotional; Design; Installation; Operation & Maintenance; and Homeowner Instructions*;

(l) The most recently available product test protocol dated no earlier than the dates in WAC 246-272A-0110 Table I and the results report;

(m) A signed and dated certification by the manufacturer's agent specifically including the following statement, "I certify that I represent (INSERT MANUFACTURING COMPANY NAME) and I am authorized to prepare or direct the preparation of this application for registration. I attest, under penalty of law, that this document and all attachments are true, accurate, and complete. I understand and accept that the product testing results reported with this application for registration are the parameters and values to be used for determining conformance with Treatment System Performance Testing Levels established in chapter 246-272A WAC";

(n) A signed and dated certification from the testing entity including the statement, "I certify that I represent (INSERT TESTING ENTITY NAME), that I am authorized to report the testing results for this proprietary treatment product. I attest, under penalty of law, that the report about the test protocol and results is true, accurate, and complete"; and

(o) The fee described in WAC 246-272-2000.

(2) Products within a single series or model line, sharing distinct similarities in design, materials, and capacities, may be registered under a single application, consistent with the provisions of their test protocol for the certification of other products within a product series. Products outside of the series or model line must be registered under separate applications.

(3) Upon receipt of a registration application the department shall:

(a) Verify that the application is complete including dated and current copies of all of the required manuals; and

(b) If approved, place the product on the department's list of registered on-site treatment and distribution products.

(4) All registrations are valid for up to one year, expiring on December 31st of each year. Fees are not prorated.

(5) In order to renew a proprietary treatment product technology registration, a manufacturer shall:

(a) Apply for renewal of product registration using the format provided by the department;

(b) Submit any of the following applicable reports:

(i) A retesting report from the testing entity according to the protocol required for registration as identified in this section;

(ii) A field verification performance report as identified in the proprietary on-site wastewater treatment products DS&G, dated ((~~February 1, 2025~~)) July 2026. If field performance results demonstrate that the product has failed to meet the requirements in the DS&G, the manufacturer shall report to the department describing the reasons for the failure to meet the requirements consistent with the DS&G;

(c) Provide an attestation to the department verifying whether or not the product has changed over the previous year. If the product has changed, the attestation must also include a full description of the changes. If the product has changed in a way that affects performance, the product may not be renewed and shall meet the requirements for initial registration;

(d) Provide a statement that all required dated manuals are current, or submit the updated and dated new manuals; and

(e) Submit the fee established in WAC 246-272-2000.

(6) As part of product registration renewal, the department shall:

(a) Request field assessment comments from local health officers no later than October 31st of each year. These comments may include concerns about a variety of field assessment issues, including:

(i) Product function, including verification of field performance testing as identified in the DS&G;

(ii) Product reliability; and

(iii) Problems arising with operation and maintenance;

(b) Discuss with the TAG any field assessment information that may impact product registration renewal;

(c) Notify the manufacturer of any product to be discussed with the TAG, prior to discussion with the TAG, regarding the nature of comments received;

(d) Renew the product registration unless:

(i) The manufacturer of a product does not apply for renewal; or

(ii) The department, after deliberation with the TAG, concludes product registration renewal should not be given or should be delayed until the manufacturer submits information that satisfactorily answers concerns and issues; and

(e) Provide a compliance plan to the manufacturer within 90 days based on departmental concerns of public health risk related to the product.

(7) The department shall maintain a list of registered on-site treatment and distribution products meeting the registration requirements established in this chapter. The product registration is a condition of approval for use.

(8) Manufacturers shall have readily accessible product information for designers, regulators, OSS owners and other interested parties posted on the manufacturer's website including the most current dated version of:

(a) Product manuals;

(b) Design instructions;

(c) Installation instructions;

(d) Operation and maintenance;

(e) Owner instructions; and

(f) How to locate a list of representatives and manufacturer certified maintenance service providers, if any.

AMENDATORY SECTION (Amending WSR 24-06-046, filed 3/1/24, effective 4/1/25)

WAC 246-272A-0210 Location. (1) OSS must be designed and installed to meet at least the minimum horizontal separations shown in Table IV:

Table IV
Minimum Horizontal Separations

Items Requiring Setback	From edge of soil dispersal component and reserve area	From sewage tank and distribution box	From building sewer, and nonperforated distribution pipe
Well	100 ft.	50 ft.	50 ft.
Public drinking water well	100 ft.	100 ft.	100 ft.
Nonpublic drinking water well	100 ft.	50 ft.	50 ft.
Surface water used as drinking water (public and nonpublic) measured from the ordinary high-water mark	100 ft.	50 ft.	50 ft.
Public drinking water spring ((~~or surface water measured from the ordinary high-water mark~~))	200 ft.	200 ft.	((~~100~~)) 200 ft.
Nonpublic drinking water spring ((~~or surface water measured from the ordinary high-water mark~~[1]))	100 ft.	50 ft.	50 ft.
Nonpublic, in-ground, drinking water containment vessel((~~(3)~~)) [2]	20 ft.	10 ft.	10 ft.
Pressurized water supply line or easement for water supply line	10 ft.	10 ft.	10 ft.
Closed geothermal loop((~~(4)~~)) [3] or pressurized nonpotable water line	10 ft.	10 ft.	10 ft.
Decommissioned well (decommissioned in accordance with chapter 173-160 WAC)	10 ft.	N/A	N/A
Surface water measured from the ordinary high-water mark	100 ft.	50 ft.	10 ft.
Building foundation/in-ground swimming pool	10 ft.	5 ft.	2 ft.
Property or easement line	5 ft.	5 ft.	N/A
Lined((~~(5)~~)) [4] stormwater detention pond((~~(6)~~)) [5]			
Down-gradient((~~(7)~~)) [6]:	30 ft.	N/A	N/A
Up-gradient((~~(7)~~)) [6]:	10 ft.	N/A	N/A
Unlined((~~(8)~~)) [7] stormwater infiltration pond((~~(6)~~)) [5] (up or down-gradient)((~~(7)~~)) [6]	100 ft.	50 ft.	10 ft.
Irrigation canal or irrigation pond (up or down-gradient)	100 ft.	50 ft.	10 ft.
Interceptor/curtain drains/foundation drains/ drainage ditches			
Down-gradient((~~(2)~~)) [1]:	30 ft.	5 ft.	N/A
Up-gradient((~~(2)~~)) [1]:	10 ft.	N/A	N/A
Subsurface stormwater infiltration or dispersion component((~~(6)~~)) [5]			
Down-gradient((~~(7)~~)) [6]:	30 ft.	10 ft.	N/A
Up-gradient((~~(7)~~)) [6]:	30 ft.	10 ft.	N/A
Other site features that may allow effluent to surface			
Down-gradient((~~(2)~~)) [1]:	30 ft.	5 ft.	N/A
Up-gradient((~~(2)~~)) [1]:	10 ft.	N/A	N/A
Down-gradient cuts or banks with at least 5 ft. of original, undisturbed soil above a restrictive layer due to a structural or textural change	25 ft.	N/A	N/A

Items Requiring Setback	From edge of soil dispersal component and reserve area	From sewage tank and distribution box	From building sewer, and nonperforated distribution pipe
Down-gradient cuts or banks with less than 5 ft. of original, undisturbed soil above a restrictive layer due to a structural or textural change	50 ft.	N/A	N/A
Soil dispersal components serving a separate OSS	10 ft.	N/A	N/A

[1] ((~~If surface water is used as a public drinking water supply, the designer shall locate the OSS outside of the required source water protection area.~~

[2])) The item is down-gradient when liquid will flow toward it upon encountering a water table or a restrictive layer. The item is up-gradient when liquid will flow away from it upon encountering a water table or restrictive layer.

(([3])) [2] Any in-ground containment vessel used to store drinking water.

((~~[4]~~)) [3] A network of underground piping carrying fluid under pressure used to heat and cool a structure.

((~~[5]~~)) [4] Lined means any component that has the intended function of detaining the stormwater with no intention of dispersal into surrounding soil.

((~~[6]~~)) [5] OSS components take precedence in cases of horizontal setback conflicts between OSS and stormwater components.

((~~[7]~~)) [6] Down-gradient means that subsurface water flows toward and is usually located lower in elevation. Up-gradient means subsurface water does not flow toward and generally flat, or flows away from and generally located higher in elevation.

((~~[8]~~)) [7] Unlined means any component that has the ability to or intended function of infiltrating the stormwater.

(2) When conditions indicate a greater potential for contamination or pollution, the local health officer may increase the minimum horizontal separations. Examples of such conditions include, but are not limited to, excessively permeable soils, unconfined aquifers, shallow or saturated soils, dug wells, and improperly abandoned wells.

(3) The local health officer may allow a reduced horizontal separation to not less than two feet from where the property line, easement line, or building foundation is up-gradient.

(4) The local health officer may require an applicant to demonstrate the OSS meets (a), (b), or (c) of this subsection when determining if a horizontal separation to a minimum of 75 feet between an OSS dispersal component and a water well, spring, or surface water that is not a public water source is allowed:

(a) Adequate protective site-specific conditions, such as physical settings with low hydrogeologic susceptibility from contaminant infiltration. Examples of such conditions include evidence of confining layers, an aquatard that separates potable water from the OSS treatment zone, excessive depth to groundwater, down-gradient contaminant source, or outside the zone of influence; or

(b) Design and proper operation of an OSS with enhanced treatment performance beyond that accomplished by meeting the vertical separation and effluent distribution requirements described in Table VI in WAC 246-272A-0230; or

(c) Evidence the OSS satisfies the requirements of (a) and (b) of this subsection.

(5) Persons shall design or install a soil dispersal component only if:

(a) The slope is less than 45 percent or 24 degrees;

(b) The area is not subject to:

(i) Encroachment by buildings or construction such as placement of power poles and underground utilities;

(ii) Cover by impervious material;

(iii) Vehicular traffic; or

(iv) Other activities adversely affecting the soil or the performance of the OSS.

(c) Sufficient reserve area for replacement exists to treat and dispose one hundred percent of the design flow;

(d) The land is stable; and

(e) Surface drainage is directed away from the site.

(6) The local health officer may approve a sewer transport line within ten feet of a water supply line if the sewer line is constructed in accordance with section C1-9.1 of the department of ecology's "*Criteria For Sewage Works Design*," 2008.

AMENDATORY SECTION (Amending WSR 24-06-046, filed 3/1/24, effective 4/1/25)

WAC 246-272A-0240 Holding tank sewage systems. (1) A person may not install or use holding tank sewage systems for residential development or expansion of residences, whether seasonal or year-round, except as set forth under subsection (2) of this section.

(2) The local health officer may approve installation of holding tank sewage systems only:

(a) For permanent uses limited to controlled, part-time, commercial usage situations, such as recreational vehicle parks and trailer dump stations;

(b) For interim uses limited to handling of emergency situations; or

(c) For repairs as permitted under WAC 246-272A-0280 ((~~(1)(d)(i)~~)).

(3) A person proposing to use a holding tank sewage system shall:

(a) Follow design criteria established by the department;

(b) Submit a management program to the local health officer assuring ongoing operation, monitoring, and maintenance before the local health officer issues the installation permit; and

(c) Use a holding tank reviewed and approved by the department.

WSR 26-15-120
PROPOSED RULES
EMPLOYMENT SECURITY DEPARTMENT
[Filed July 21, 2026, 4:13 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 26-10-020.

Title of Rule and Other Identifying Information: New WAC 192-550-041 Can employer penalties be waived?, and 192-570-060 Will the department allow payment plans for delinquent employer premiums?; and amending WAC 192-550-010 What happens if an employer fails to submit required reports?, 192-560-010 Which businesses are eligible for small business assistance grants?, 192-560-020 What is the application process for a small business assistance grant?, 192-570-010 Conference and conciliation, 192-630-015 How will a determination be made about an employee's eligibility for benefits?, 192-650-005 How will the department collect overpayments owed by an employee?, 192-700-005 When is an employee entitled to employment restoration after leave ends?, and 192-800-005 What is the standard the department will use to determine fraud?

Hearing Location(s): On August 25, 2026, at 9:00 a.m., via Microsoft Teams. Join online at paidleave.wa/rulemaking [paidleave.wa.gov/rulemaking]; or join by phone 564-999-2000, PIN 171 037 5#.

Date of Intended Adoption: On or after September 1, 2026.

Submit Written Comments to: Janette Benham, Employment Security Department (ESD), P.O. Box 9046, Olympia, WA 98507-9046, email rules@esd.wa.gov, by August 25, 2026.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, state EO office, phone 360-480-5708, email teckstein@esd.wa.gov, by August 18, 2026.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: ESD, leave and care division, is adopting rules for the paid family and medical leave program to implement new or amended concepts regarding the following topics:

- Employer penalties.
- Small business assistance grants.
- Employer payment plans.
- Claim determinations.
- Benefit overpayments.
- Employment restoration.
- Fraud determinations.

Reasons Supporting Proposal: The proposed rules provide new and clarifying information for program stakeholders related to the previously listed topics.

Statutory Authority for Adoption: RCW 50A.05.060.

Statute Being Implemented: RCW 50A.10.030, 50A.15.060, 50A.15.090, 50A.20.030, 50A.30.070, 50A.35.010, 50A.45.010, and 50A.45.070.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: April Amundson, Olympia, Washington, 360-485-2816.

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 Janette Benham, ESD, P.O. Box 9046, Olympia, WA 98507-9046, email rules@esd.wa.gov.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; rule content is explicitly and specifically dictated by statute; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions:

Rule	Exemption
WAC 192-550-010 What happens if an employer fails to submit required reports?	**RCW 34.05.310 (4)(b):** The rule relates only to internal governmental operations that are not subject to violation by a nongovernment party.
WAC **192-550-030 How will the department calculate interest on delinquent payments?**	**RCW 34.05.310 (4)(f):** The rule adjusts rates pursuant to legislative standards
WAC 192-560-010 Which businesses are eligible for small business assistance grants?	**RCW 34.05.310 (4)(e):** The content of the rule is explicitly and specifically dictated by statute.
WAC 192-560-020 What is the application process for a small business assistance grant?	**RCW 34.05.310 (4)(e):** The content of the rule is explicitly and specifically dictated by statute.
WAC 192-570-010 Conference and conciliation.	**RCW 34.05.310 (4)(b):** The rule relates only to internal governmental operations that are not subject to violation by a nongovernment party.
WAC 192-630-015 How will a determination be made about an employee's eligibility for benefits?	**RCW 34.05.310 (4)(c):** The rule adopts without material change Washington state statutes.
WAC 192-800-005 What is the standard the department will use to determine fraud?	**RCW 34.05.310 (4)(c):** The rule adopts without material change Washington state statutes.

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: [See below.]

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.

Rule	Explanation
WAC 192-550-041 Can employer penalties be waived?	There is no evidence to suggest that filing for a waiver would be significantly more expensive for a small employer. Even if such a disparity did exist, the net benefit of the waiver would likely offset that cost.
WAC 192-570-060 Will the department allow payment plans for delinquent employer premiums?	There is no evidence to suggest that requesting a payment plan would be significantly more expensive for a small employer.

Rule	Explanation
WAC 192-650-005 How will the department collect overpayments owed by an employee?	This rule does require a cost benefit analysis, but has no cost impact for employer and is therefore exempt from a small business economic impact statement as prescribed in RCW 19.85.025(4).
WAC 192-700-005 When is an employee entitled to employment restoration after leave ends?	This rule does require a cost-benefit analysis, has no disproportionate cost impact for small employers and likely benefits employers by limiting the period in which employees may receive credit for 180 days of work before becoming eligible for employment restoration rights.

July 21, 2026
April Amundson
Policy and Rules Manager
Employment System, Policy, and Integrity
Leave and Care Programs

RDS-7274.1

AMENDATORY SECTION (Amending WSR 20-01-087, filed 12/12/19, effective 1/12/20)

WAC 192-550-010 What happens if an employer fails to submit required reports? (1) An employer that willfully fails to file a complete and timely report under WAC 192-540-030 through 192-540-050 is subject to penalties under RCW 50A.45.010.

(2) The department will send a ((~~warning letter~~)) notice for an employer's first incomplete or untimely report. For a second or subsequent occurrence within five years of the date of the last occurrence, the department will assess penalties under the following schedule:

(a) 2nd occurrence: $75.00

(b) 3rd occurrence: $150.00

(c) 4th and subsequent occurrences: $250.00

(3) After five years without a ((~~warning letter~~)) notice or occurrence, prior occurrences will not count and the employer shall receive a ((~~warning letter~~)) notice instead of a penalty on the next occurrence.

AMENDATORY SECTION (Amending WSR 18-22-080, filed 11/2/18, effective 12/3/18)

WAC 192-550-030 How will the department calculate interest on delinquent payments? (1) When an employer fails to remit payment by the due date, the remaining unpaid balance shall accrue interest at a rate of one percent((~~, compounded~~)) monthly, until payment is received in full.

(2) The department will issue a notice to employers whose payments are delinquent. The notice will include the total amount due for all applicable premiums, penalties, and interest under Title 50A RCW.

NEW SECTION

WAC 192-550-041 Can employer penalties be waived? (1) The department may, at its discretion, waive penalties for late filing of a report, nonpayment of premiums that are due with a report, penalties associated with voluntary plans, or filing of an incomplete report if the commissioner determines that there was no fault attributable to the employer.

(2) An employer must:

(a) Request a waiver of penalties in writing;

(b) Include all relevant facts;

(c) Attach available proof; and

(d) File the request online or in another manner approved by the department.

(3) The department may waive late penalties when there are circumstances beyond the control of the employer. These circumstances include, but may not be limited to, the following:

(a) The report was filed on time with payment but inadvertently mailed to another agency or state program;

(b) The delinquency was caused by an employee of the department, such as providing incorrect information to the employer, when the source can be identified;

(c) The delinquency was caused by the death or serious illness, before the filing deadline, of the employer, a member of the employer's immediate family, the individual primarily responsible for filing reports and remitting payments for the paid family and medical leave program, or a member of that individual's immediate family.

(d) The delinquency was caused by the unavoidable absence of the employer or key employee before the filing deadline. "Unavoidable absence" does not include absences because of business trips, vacations, personnel turnover, or terminations;

(e) The delinquency was caused by the accidental destruction of the employer's place of business or business records;

(f) The delinquency was caused by fraud, embezzlement, theft, or conversion by the employer's employee or other persons contracted with the employer, which the employer could not immediately detect or prevent. The employer must have had reasonable safeguards or internal controls in place;

(g) The employer, before the filing deadline, requested proper forms from the department and the forms were not supplied in enough time to allow the completed report to be filed and paid before the due date. The request must have been timely, which means at least three days before the filing deadline;

(h) An infection from a disease subject to a public health emergency occurred at the employer's place of business and caused the employer to close or severely curtail operations; or

(i) Situations when the department accepting timely reports or payments was difficult or impossible. These include, but are not limited to, equipment breakdown or lack of available staff.

(4) For the purposes of subsection (2) of this section, "employer" may include the employee typically responsible for the filing of reports and payment of premiums as required by Title 50A RCW.

(5) The department may waive late penalties if it finds the employer to be out of compliance during an employer-requested audit, but the department decides the employer made a good faith effort to comply with all applicable laws and rules.

(6) If a waiver is approved based on information from the employer, or on behalf of the employer, that is later determined by the department to be false or misleading, the waiver could be void and the amount previously waived will be considered due. The determination to make a waiver void is subject to appeal.

(7) The department may, at its discretion, waive penalties without requiring a request from the employer if the penalty was caused by the department's own error or for other good cause.

(8) An employer is not eligible for a waiver under this section if the employer has outstanding paid family and medical leave reports that have not yet been remitted.

RDS-7275.2

AMENDATORY SECTION (Amending WSR 26-01-027, filed 12/5/25, effective 1/1/26)

WAC 192-560-010 Which businesses are eligible for small business assistance grants? (1) An employer determined to have 150 or fewer employees in the state that is assessed the employer share of the premiums is eligible to apply for small business assistance grants as provided in chapter 50A.24 RCW.

(2) An employer determined to have fewer than 50 employees is only eligible for a small business assistance grant if the employer opts to pay the employer share of the premiums.

(a) The employer will be assessed the employer share of the premiums for a minimum of 12 consecutive calendar quarters beginning with the first calendar quarter after the most recent grant is approved.

(b) The employer may provide notice at any time after the approval of the grant to opt out of paying the employer share of the premiums.

(i) If the 12th consecutive quarter following approval of the grant has ended, the opt-out will become effective on the first day of the following quarter.

(ii) If the 12th consecutive quarter following approval of the grant has not ended, the opt-out will become effective on the first day of the 13th quarter following approval of the grant.

(3) An employer is not eligible for a small business assistance grant if, at the time of application, the employer has outstanding and delinquent reports, outstanding and delinquent payments, or due and owing penalties or interest under Title 50A RCW.

(4) An employer may request only one grant per year for each employee who takes paid family or medical leave under this title. Submissions under (a) and (b) of this subsection do not qualify as grant applications and ((~~therefore do not count against the employer's limit of 10 applications per year~~)) will not count against an employer's limit under RCW 50A.24.010 or 50A.24.030, as applicable.

(a) An employer that qualifies for a grant under RCW 50A.24.010 for an amount that is less than $1,000 may submit documentation of significant additional wage-related costs incurred after filing the initial grant application in an attempt to qualify for additional grant funds.

(b) An employer may submit a revised application for a grant under RCW 50A.24.010 in an attempt to qualify for additional grant funds.

AMENDATORY SECTION (Amending WSR 26-01-027, filed 12/5/25, effective 1/1/26)

WAC 192-560-020 What is the application process for a small business assistance grant? (1) Applications for small business assistance grants must be submitted online or in another format approved by the department. To be approved, an application must contain:

(a) The name and Social Security number or individual taxpayer identification number of the employee taking leave;

(b) The amount and type of grant being requested; and

(c) For businesses with:

(i) Fewer than 50 employees, a written statement attesting that the employer hired a temporary worker or incurred other significant wage-related costs due to an employee's use of family or medical leave.

(ii) Between 50 and 150 employees, written documentation including, but not limited to, personnel records related to the hiring of a new temporary employee, wage reports, and signed statements, showing the temporary worker hired or significant additional wage-related costs incurred are due to an employee's use of paid family or medical leave.

(d) The department may require additional information as necessary to verify an employer's eligibility for a small business grant.

(2) Incomplete applications will not be reviewed and will not count against an employer's limit ((~~of 10 applications per year~~)) under RCW 50A.24.010.

(3) The department will deny the application for reasons including, but not limited to, the employer's failure to demonstrate that:

(a) It hired a temporary worker or incurred any significant additional wage-related costs; or

(b) The temporary worker hired or significant additional wage-related cost incurred was not due to an employee's use of family or medical leave.

(4) The denial of a grant application is appealable.

RDS-7276.2

AMENDATORY SECTION (Amending WSR 19-23-090, filed 11/19/19, effective 12/20/19)

WAC 192-570-010 Conference and conciliation. (1)(a) The department will engage employers in conference and conciliation when the employer fails to make all required:

(i) Premium payments;

(ii) Payments on penalties assessed by the department for the failure to submit required reports; ((~~or~~))

(iii) Payments on penalties assessed by the department for the failure to remit required premium payments; or

(iv) Payments on penalties assessed by the department for violations related to voluntary plans.

(b) "Conference and conciliation" for the purpose of this chapter means to encourage an amicable resolution of disputes between the employer and the department prior to the issuance of a warning letter.

(2) The department will promptly attempt to contact the employer to engage in conference and conciliation when appropriate under subsection (1) of this section. If the department does not receive a response from the employer by the deadline given, the department will attempt the contact again, for a total of two attempts. A warning letter will be sent to the employer if no contact can be made.

(3)((~~(a) Through conference and conciliation employers will be given an opportunity to provide information and to explain their reasons for failing to meet the department's requirements in subsection (1) of this section. The department will not issue a warning letter if:~~

~~(i) The employer provides good cause;~~

~~(ii) The department determines the good cause provided prevented compliance; and~~

~~(iii) The parties agree to an approved payment schedule.~~

~~(b) "Good cause" for the purpose of this section means:~~

~~(i) Death or serious illness of one or more persons directly responsible for discharging the employer's duties under Title 50A RCW;~~

~~(ii) Destruction of the employer's place of business or business records not caused by, or at the direction of, the employer; or~~

~~(iii) Fraud or theft against the employer.~~

~~(4) The burden of proof is on the employer to provide all pertinent facts and evidence or documentation for the department to determine good cause.~~

~~(5)~~)) Conference and conciliation is only available to employers in the circumstances described in subsection (1)(a) of this section.

((~~(6)~~)) (4) If an employer is eligible for conference and conciliation, the department will issue a warning letter when:

(a) The employer does not comply with the approved repayment schedule; or

(b) A resolution is not reached through conference and conciliation.

NEW SECTION

WAC 192-570-060 Will the department allow payment plans for delinquent employer premiums? (1) The department may, at its discretion, establish payment plans for the payment of delinquent employer premiums, interest, penalties, or fees under RCW 50A.10.030 and chapter 50A.45 RCW.

(2) Employers are not eligible for a payment plan if:

(a) Delinquent premiums, interest, or penalties are the result of the employer willfully making a false statement or misrepresentation regarding a material fact, or willfully failing to report a material fact, to avoid making the required reports or remitting the full amount of the premiums when due under this title; or

(b) The employer has outstanding reports or payments for the paid family and medical leave program for past quarters that have not yet been remitted.

(3) An eligible employer may request a payment plan by contacting the department.

(4) When making a determination on a request for a payment plan, the department may request financial data or other information to evaluate the request. If the requested information is not provided, the department will make a determination based on available information.

(5) The employer may request a specific duration (in months) for the payment plan, but the duration will ultimately be determined by the department. Additional balances will not be included in a payment plan unless requested by the employer and approved by the department. If additional balances are approved, the minimum monthly payment may change.

(6) The department will establish a minimum monthly payment amount for each payment plan. The amount of the minimum monthly payment will be determined based on the following factors:

(a) The total amount owed, including penalties and interest;

(b) The duration of the payment plan; and

(c) The financial circumstances of the individual or employer, if provided.

(7) A payment plan will be considered in default when the employer fails to make a total of two required installment payments by the agreed upon due date.

(8) If a payment plan is determined to be in default and the balance is not remitted to the department by the described date, the plan may be canceled and/or the department may engage in additional collection activities as described in chapter 50A.45 RCW.

(9) If the department receives information that indicates the employer will be unable to meet the requirements of the approved payment plan, the payment plan may be canceled at the department's discretion and the remaining balance will be due immediately.

(10) Entering into a payment plan agreement with the department does not waive any interest, penalties, or other charges unless expressly provided.

RDS-7277.1

AMENDATORY SECTION (Amending WSR 20-11-034, filed 5/14/20, effective 6/14/20)

WAC 192-630-015 How will a determination be made about an employee's eligibility for benefits? (1) When the department has issued a notice under WAC 192-630-005 the department will not make a determination on whether an employee qualifies for paid family or medical leave until all interested parties have had an opportunity to provide information about the question of eligibility by the due date indicated on the notice.

(2) If new facts are discovered before the determination is made, the department will provide interested parties with an opportunity to respond to the new information.

(3) After the department makes a determination, it will inform all interested parties whether it has approved or denied the employee's application.

(4) If the department receives new and relevant information after a determination is made:

(a) The information will be considered by the department;

(b) Interested parties will be given an opportunity to respond, if necessary; and

(c) The department may make a new determination based on the newly provided information.

(5) If an employee is serving a waiting period for unemployment benefits under Title 50 RCW, the employee is not eligible for paid family or medical leave benefits under Title 50A RCW for that period as prescribed in RCW 50A.15.100.

RDS-7278.1

AMENDATORY SECTION (Amending WSR 19-16-081, filed 7/31/19, effective 8/31/19)

WAC 192-650-005 How will the department collect overpayments owed by an employee? When an employee is assessed an overpayment, the department will calculate a minimum monthly payment as follows:

(1) For overpayments due to fraud as defined in WAC 192-500-120, ((~~conditional payments, or fault attributable to the employee,~~)) the minimum monthly payment for an employee will be the greater of:

(a) The employee's weekly benefit amount; or

(b) Three percent of the outstanding balance when the billing statement is sent, rounded down to the next whole dollar amount.

(2) For all other overpayments, the minimum monthly payment will be the greater of:

(a) One-third of the weekly benefit amount;

(b) Three percent of the outstanding balance when the billing statement is sent, rounded down to the next whole dollar amount; or

(c) Twenty-five dollars.

(3) The employee may request a minimum monthly payment that is different than the amounts described in subsections (1) and (2) of this section. The department may request financial data or other information to evaluate the request. If the requested information is not provided, the department will make a determination based on available information.

RDS-7279.1

AMENDATORY SECTION (Amending WSR 21-04-067, filed 1/29/21, effective 3/1/21)

WAC 192-700-005 When is an employee entitled to employment restoration after leave ends? (1) Subject to RCW 50A.35.010, an employ-

ee who meets the criteria listed in that section who takes leave under Title 50A RCW is entitled, on return from the leave, to be restored by the employer to:

(a) The position of employment held by the employee when the leave commenced; or

(b) An equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

(i) "Equivalent position" means a position that is nearly identical to the employee's former position as if the employee did not take extended leave. This includes pay, benefits and working conditions, privileges, perks, location, and status. It must involve the same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility, and authority.

(ii) "Employment benefits" includes all benefits provided or made available to employees by an employer such as:

(A) Insurance;

(B) Paid time off;

(C) Educational benefits; or

(D) Retirement benefits.

(2) An employee is entitled to such reinstatement even if the employee has been replaced or the employee's position has been restructured to accommodate the employee's absence unless the employer can demonstrate the circumstances fall within WAC 192-700-010(1).

(3) The protections provided in RCW 50A.35.010 and this section apply to the employee beginning with the date the employee starts taking leave.

(4) For the purpose of employment restoration as described in RCW 50A.35.010, an employee is considered to have begun employment with the current employer at least 180 calendar days before taking the leave when the most recent hire date for that employee was at least 180 days prior to the leave start date. Any period of employment prior to the most recent start date will not be considered for this requirement.

RDS-7280.1

AMENDATORY SECTION (Amending WSR 19-13-001, filed 6/5/19, effective 7/6/19)

WAC 192-800-005 What is the standard the department will use to determine fraud? (1) The department will determine if fraud has been committed under WAC 192-500-120 based on a showing of clear, cogent, and convincing evidence.

(2) An employee who is determined to have committed fraud is not eligible for any benefits or rights guaranteed under Title 50A RCW for the period in which fraud was determined to have occurred.