

WSR 21-14-001
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed June 23, 2021, 12:56 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-08-061.

Title of Rule and Other Identifying Information: Amending coastal commercial Dungeness crab rules and implementing electronic fish ticket reporting for select Washington shellfish fisheries.

Hearing Location(s): On September 16-18, 2021, at 8:00 a.m., webinar and teleconference, visit our website at <http://wdfw.wa.gov/about/commission/meetings> or contact the commission office at 360-902-2267, email commission@dfw.wa.gov for instruction[s] on how to join the meeting.

Date of Intended Adoption: On or after October 21, 2021.

Submit Written Comments to: Heather Hall, P.O. Box 43200, Olympia, WA, email 24362@PublicInput.com, public comment website <https://publicinput.com/V3151>, by September 15, 2021.

Assistance for Persons with Disabilities: Contact Title VI/ADA compliance coordinator, phone 360-902-2349, TTY 711, email Title6@dfw.wa.gov, <https://wdfw.wa.gov/accessibility/requests-accommodation>, by September 15, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed rule changes would make it mandatory for several nontreaty coastal and Puget Sound commercial shellfish fisheries to report all landings into Washington ports using electronic fish tickets. The purpose of this change is to improve the timeliness of data collection and is needed to narrow data gaps, support management of catch relative to quotas, and better respond to state-tribal comanagement needs.

Proposed rule changes for the coastal commercial Dungeness crab fishery are necessary to reduce the risk of coastal commercial Dungeness crab gear becoming entangled with marine mammals, including humpback whales which are listed under the Endangered Species Act (ESA). Specifically, changes focused on reducing the risk of entanglements would eliminate the replacement buoy tag allowance, reduce the amount of time that crab gear can be left in the ocean unattended, and allow experimental gear testing by coastal Dungeness crab license holders only when authorized through a permit issued by the Washington department of fish and wildlife (WDFW) director.

Additional changes to coastal commercial Dungeness crab rules are necessary to provide clarity to existing rule language, that describe the preseason gear set period and clarify season opening provisions if the season is delayed due to biotoxins.

Reasons Supporting Proposal: Mandatory Electronic Fish Ticket Reporting (WAC 220-352-035, 220-352-305, 220-352-060, 220-352-140): Electronic fish ticket reporting will move several coastal and Puget Sound commercial shellfish fisheries from a voluntary electronic fish ticket reporting program to a mandatory requirement for deliveries of Dungeness crab, ocean pink shrimp, pink shrimp, coonstripe shrimp, sidestripe shrimp, or spot shrimp into Washington ports. Mandatory electronic reporting streamlines the reporting process and reduces the time between landings and when catch information is available to managers. This reduced reporting time allows managers to be more responsive to adjustments that may be needed to meet harvest sharing agree-

ments with tribal comanagers. A program that allows a fish buying business (dealer) to use electronic fish tickets on a voluntary basis has been in place since 2018 and has allowed interested dealer[s] to become familiar with electronic reporting tools. Currently, approximately eighty percent of coastal Dungeness crab landings are reported using the voluntary electronic fish ticket program. The voluntary reporting period has also allowed WDFW time to develop a mobile platform that will allow small dealers that may not have access to a computer at the time of delivery to complete an electronic fish ticket using a cell phone or tablet. This application is currently being field tested to ensure it will support the mandatory requirement by the implementation date. The proposed electronic fish ticket reporting requirements is also beneficial to participants and shellfish dealers because it eliminates the burden of duplicative reporting requirements that include submitting paper fish receiving tickets to WDFW, instead the proposal will allow participants and shellfish dealers to submit the same information electronically.

Additional changes to coastal Dungeness crab regulations are necessary to continue to implement measures that align with conservation plan objectives directed at reducing the risk of coastal Dungeness crab gear becoming entangled with marine mammals, including those listed under the ESA and protected by the Marine Mammal Protection Act (MMPA).

Eliminate Replacement Buoy Tag Program (WAC 220-340-430): Buoy tags are required on all crab gear fished in the coastal Dungeness crab fishery. Currently, a small number of replacement tags can be obtained if tags are lost between March 1 and April 30. Eliminating the replacement buoy tag program will reduce the option for participants to obtain replacement tags during the season and will reduce the entanglement risk by reducing the number of lines in the water. WDFW has been working with participants to progressively reduce the number of replacement tags allowed and this change would be the final step in that process. In recent years, participants have requested very few tags through the replacement tag program, eliminating the program will streamline and improve enforcement of the pot limit and have a minor impact on participants.

Gear Tending Requirement (WAC 220-340-480): Currently, each year after May 1, a landing must be made every twenty-one days on actively fished gear. This proposed rule would reduce the time that gear can be in the water without an associated landing to every fourteen days after May 1. This rule focuses on the period after May 1 when participants may be in the process of moving to other fisheries and ensures that gear that is not actively fished is removed from the water. This gear tending requirement provides enforcement staff with a regulatory structure for confiscating gear that is not actively being fished and contributes to efforts to reduce entanglements with marine mammals by minimizing gear in the water during the period when whales are more likely to be present off the Washington coast.

Experimental Gear Testing (WAC 220-340-430 and 220-353-020): Currently, the only gear allowed when fishing commercially for Dungeness crab are pots with a line attached from the pot to a buoy at the surface. This rule change would provide a regulatory pathway to allow license holders to consider, and experiment with innovative tools that may reduce the risk of entanglements with ESA and MMPA protected marine mammals. This experimental opportunity would also allow gear innovators to work directly with participants to test gear in the unique conditions off the Washington coast and will inform whether tools that

may be effective in one area, are a reasonable option for the coastal crab fishery. Permits would only be issued to license owners and would include specific provisions that require close coordination with WDFW managers and the enforcement program.

Minor Changes: Seventy-three-hour gear preset period (WAC 220-340-420) implements the gear set period, which is currently adopted each year by emergency rule, into permanent regulation.

Gear recovery (WAC 220-340-490) clarifies that gear recovery is now allowed after May 1, and after the September 15 close of the coastal commercial crab season.

Biotoxin delays (WAC 220-340-450) clarifies that fair start provisions will be applied when the crab season is delayed due to meat quality and the presence of biotoxins.

Statutory Authority for Adoption: RCW 77.040.020 [77.04.020], 77.12.045, and 77.12.047.

Statute Being Implemented: RCW 77.040.020 [77.04.020], 77.12.045, and 77.12.047.

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

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting: Heather Hall, 1111 Washington Street S.E., Olympia, WA, 360-490-9628; Implementation: Dan Ayres, Coast, Region Six Office, Montesano, WA, 360-249-1209, or Chris Eardley, Puget Sound, Port Townsend District Office, Port Townsend, 360-302-0302; and Enforcement: Chief Steve Bear, 1111 Washington Street S.E., Olympia, 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. A cost-benefit analysis is not required for this rule making under RCW 34.05.328 (5) (a).

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

Small Business Economic Impact Statement

Summary: The portion of the proposed rule making directed at making electronic fish ticket reporting may impose more-than-minor costs on businesses in the state of Washington. Other proposed changes for the coastal crab fishery are not likely to impose more-than-minor costs to [on] businesses. The costs associated with compliance with the proposed mandatory electronic fish ticket rule making may disproportionately impact small businesses. However, the value of costs to comply with the proposed rule making are still expected to be negligible for the vast majority of potentially impacted businesses, regardless of size. The department has provided significant opportunities for stakeholder input during the development of the proposed rule making in recent years. As a result of this stakeholder input, the department has developed a mobile application to mitigate the potential impacts to small businesses by providing a more accessible, low-cost platform from which to comply with the proposed rule. Job gains or losses are not anticipated as a result of this proposed rule, and businesses are not expected to lose access to revenue as a result of the proposed rule. While some may choose not to purchase fish products covered under the proposed rule making if electronic submission of fish tickets is required, other fish and fish products will remain available for purchase from harvesters using paper tickets.

A copy of the statement may be obtained by contacting Heather Hall, 1111 Washington Street S.E., Olympia, WA, phone 360-490-9628, fax 360-902-2943, email Heather.Hall@dfw.wa.gov.

June 23, 2021
Annie Szvetcz
Rules Coordinator

OTS-3130.1

AMENDATORY SECTION (Amending WSR 17-22-100, filed 10/30/17, effective 1/1/18)

WAC 220-340-420 Commercial crab fishery—Unlawful acts. (1)

Crab size and sex restrictions. It is unlawful for any person acting for commercial purposes to take, possess, deliver, or otherwise control:

(a) Any female Dungeness crab; or

(b) Any male Dungeness crab measuring less than 6-1/4 inches, caliper measurement, at the widest part of the shell immediately in front of the points (tips).

(2) Violation of subsection (1) of this section is a gross misdemeanor or class C felony depending on the value of fish or shellfish taken, possessed, or delivered, punishable under RCW 77.15.550 (1)(c).

(3) **Incidental catch may not be retained.** It is unlawful to retain salmon, food fish, or any shellfish other than octopus that is taken incidental to any commercial crab fishing.

(4) **Net fishing boats must not have crab on board.** It is unlawful for any person to possess any crab on board a vessel geared or equipped with commercial net fishing gear while fishing with the net gear for commercial purposes or while commercial quantities of food fish or shellfish are on board. Violation of this subsection is a gross misdemeanor or class C felony punishable under RCW 77.15.550(1), depending on the quantity of crab taken or possessed.

(5) **Area must be open to commercial crabbing.** It is unlawful for any person to set, maintain, or operate any baited or unbaited shellfish pots or ring nets for taking crab for commercial purposes in any area or time that is not open for commercial crabbing by rule of the department, except when acting lawfully under the authority of a valid gear recovery permit as provided in WAC 220-340-450.

(6) Violation of subsection (5) of this section is a gross misdemeanor or class C felony punishable under RCW 77.15.550, or a gross misdemeanor punishable under RCW 77.15.522 depending on the circumstances of the violation.

(7) **When it is unlawful to buy or land crab from the ocean without a crab vessel inspection.** It is unlawful for any fisher or wholesale fish buyer to land or purchase Dungeness crab taken from Grays Harbor, Willapa Bay, the Columbia River, or Washington coastal or adjacent waters of the Pacific Ocean from any vessel that has not been issued a Washington crab vessel inspection certificate during the first 30 days following the opening of a coastal crab season.

(a) Authorized department personnel will perform inspections for Washington crab vessel inspection certificates no earlier than 12

hours prior to the opening of the coastal crab season and during the following 30-day period.

(b) A Washington crab vessel inspection certificate may be issued to vessels made available for inspection at a Washington coastal port that:

- (i) Are properly licensed commercial crab fishing; and
- (ii) Contain no Dungeness crab on board the vessel.

(8) Violation of subsection (7) of this section is a gross misdemeanor, punishable under RCW 77.15.550 (1)(a) Violation of commercial fishing area or time—Penalty.

(9) **Coastal - Barging of crab pots by undesignated vessels.** It is unlawful for a vessel not designated on a Dungeness crab coastal fishery license to deploy crab pot gear except under the following conditions:

(a) The vessel deploys pot gear only during the (~~64-hour~~) 73-hour period immediately preceding the season opening date and during the 48-hour period immediately following the season opening date;

(b) The undesignated vessel carries no more than 250 crab pots at any one time; and

(c) The primary or alternate operator of the crab pot gear named on the license associated with the gear is on board the undesignated vessel while the gear is being deployed.

(10) Violation of subsection (9) of this section is a gross misdemeanor or class C felony punishable under RCW 77.15.500 Commercial fishing without a license—Penalty, depending on the circumstances of the violation.

[Statutory Authority: RCW 77.04.090, 77.04.130, 77.15.568, 77.08.010, 77.65.510, 77.65.515, and 77.65.520. WSR 17-22-100, § 220-340-420, filed 10/30/17, effective 1/1/18. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), amended and recodified as § 220-340-420, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.045, and 77.12.047. WSR 12-23-016 (Order 12-267), § 220-52-040, filed 11/9/12, effective 12/10/12. Statutory Authority: RCW 77.12.047 and 77.04.020. WSR 09-18-075 (Order 09-183), § 220-52-040, filed 8/31/09, effective 10/1/09. Statutory Authority: RCW 77.12.047. WSR 07-23-090 (Order 07-285), § 220-52-040, filed 11/20/07, effective 12/21/07; WSR 05-21-068 (Order 05-246), § 220-52-040, filed 10/14/05, effective 11/14/05; WSR 01-20-066 (Order 01-219), § 220-52-040, filed 9/28/01, effective 10/29/01; WSR 01-18-005 (Order 01-180), § 220-52-040, filed 8/22/01, effective 9/22/01; WSR 01-11-009 (Order 01-74), § 220-52-040, filed 5/3/01, effective 6/3/01; WSR 00-18-005 (Order 00-164), § 220-52-040, filed 8/23/00, effective 9/23/00. Statutory Authority: RCW 75.08.080. WSR 98-19-012 (Order 98-185), § 220-52-040, filed 9/4/98, effective 10/5/98; WSR 98-05-043, § 220-52-040, filed 2/11/98, effective 3/14/98; WSR 97-08-052 (Order 97-55), § 220-52-040, filed 3/31/97, effective 5/1/97; WSR 94-12-009 (Order 94-23), § 220-52-040, filed 5/19/94, effective 6/19/94; WSR 91-10-024 (Order 91-22), § 220-52-040, filed 4/23/91, effective 5/24/91; WSR 85-01-010 (Order 84-214), § 220-52-040, filed 12/7/84; WSR 84-08-014 (Order 84-24), § 220-52-040, filed 3/27/84; WSR 83-01-026 (Order 82-221), § 220-52-040, filed 12/8/82; WSR 80-13-064 (Order 80-123), § 220-52-040, filed 9/17/80; WSR 79-02-053 (Order 79-6), § 220-52-040, filed 1/30/79; Order 77-145, § 220-52-040, filed 12/13/77; Order 76-152, § 220-52-040, filed 12/17/76; Order 76-26, §

220-52-040, filed 1:45 p.m., 4/20/76; Order 1045, § 220-52-040, filed 3/8/73; Order 807, § 220-52-040, filed 1/2/69, effective 2/1/69; subsections 1, 5, 6, from Orders 409 and 256, filed 3/1/60; subsection 2 from Orders 500 and 256, filed 3/1/60; subsection 3 from Order 528, filed 6/1/61; Order 525, filed 5/3/61; Order 507, filed 4/8/60; Orders 409 and 256, filed 3/1/60; subsection 4 from Order 528, filed 6/1/61; Order 525, filed 5/3/61; Orders 409 and 256, filed 3/1/60; subsection 7 from Orders 414 and 256, filed 3/1/60; subsection 8 from Orders 410 and 256, filed 3/1/60; subsection 9 from Order 409, filed 9/14/56.]

OTS-3131.1

AMENDATORY SECTION (Amending WSR 20-04-066, filed 1/31/20, effective 3/2/20)

WAC 220-340-430 Commercial crab fishery—Gear requirements. (1)
Buoy tag and pot tag required.

(a) It is unlawful to place in the water, pull from the water, possess on the water, or transport on the water any crab buoy or crab pot without an attached buoy tag and pot tag that meet the requirements of this section, except as provided by (b) and (c) of this subsection. A violation of this subsection is punishable under RCW 77.15.520 Commercial fishing—Unlawful gear or methods—Penalty.

(b) Persons operating under a valid coastal gear recovery permit as provided in WAC 220-340-440 may possess crab pots or buoys missing tags or bearing the tags of another license holder, provided the permittee adheres to provisions of the permit. Failure to adhere to the provisions of the permit is a gross misdemeanor, punishable under RCW 77.15.750 Unlawful use of a department permit—Penalty.

(c) Persons operating under a valid coastal gear transport permit as provided in WAC 220-340-440 may possess crab pots or buoys bearing the tags issued by another state, provided the permittee adheres to provisions of the permit. Failure to adhere to the provisions of the permit is a gross misdemeanor, punishable under RCW 77.15.750 Unlawful use of a department permit—Penalty.

(2) **Commercial crab fishery pot tag requirements:** Each shellfish pot used in the commercial crab fishery must have a durable, nonbiodegradable tag securely attached to the pot that is permanently and legibly marked with the license owner's name or license number and telephone number. If the tag information is illegible, or the tag is lost for any reason, the pot is not in compliance with state law. A violation of this subsection is punishable under RCW 77.15.520 Commercial fishing—Unlawful gear or methods—Penalty.

(3) **Commercial crab fishery buoy tag requirements.**

(a) The department issues crab pot buoy tags to the owner of each commercial crab fishery license upon payment of an annual buoy tag fee per crab pot buoy tag. Prior to setting gear, each Puget Sound crab license holder must purchase 100 tags, and each coastal crab fisher must purchase 300 or 500 tags, depending on the crab pot limit assigned to the license.

(b) In coastal waters, except if authorized by permit issued by the director, each crab pot must have the department-issued buoy tag

securely attached to the first buoy on the crab pot buoy line (the buoy closest to the crab pot), and the buoy tag must be attached to the end of the first buoy, at the end away from the crab pot buoy line.

(c) In Puget Sound, all crab buoys must have the department-issued buoy tag attached to the outermost end of the buoy line.

(d) If there is more than one buoy attached to a pot, only one buoy tag is required.

(e) Replacement crab buoy tags.

(i) Puget Sound: The department only issues additional tags to replace lost tags to owners of Puget Sound commercial crab fishery licenses who obtain, complete, and sign a declaration, under penalty of perjury, in the presence of an authorized department employee. The declaration must state the number of buoy tags lost, the location and date where the licensee last observed lost gear or tags, and the presumed cause of the loss.

(ii) Coastal: The department only issues replacement buoy tags for the coastal crab fishery ((beginning March 1 and after a signed affidavit is received by an authorized department employee. The affidavit must be signed by the primary or alternate operator fishing the commercial crab gear and state the number of buoy tags lost, the location and date where the licensee last observed lost gear or tags, and the presumed cause of the loss.

~~(A) Coastal crab license holders with a 300-pot limit may replace lost tags according to the following schedule: March 1 through April 30, up to 10 tags.~~

~~(B) Coastal crab license holders with a 500-pot limit may replace lost tags according to the following schedule: March 1 through April 30, up to 15 tags.~~

~~(C) No replacement tags will be issued for the current season after May 1.~~

~~(D) In the case of extraordinary loss of crab pot gear, the department may issue replacement tags in excess of the amount listed in this subsection on a case-by-case basis)) in the case of extraordinary loss or on a case-by-case basis. Replacement buoy tags will not be issued in excess of the license holder's permanent pot limit.~~

(4) A violation of subsection (3) of this section is a gross misdemeanor, punishable under RCW 77.15.520 Commercial fishing—Unlawful gear or methods—Penalty.

(5) **Commercial crab fishery buoy requirements.**

(a) All buoys attached to commercial crab gear must consist of a durable material and remain floating on the water's surface when 5 pounds of weight is attached, unless otherwise authorized by permit issued by the director.

(b) No buoys attached to commercial crab gear in Puget Sound may be both red and white in color unless a minimum of 30 percent of the surface of each buoy is also prominently marked with an additional color or colors other than red or white. Red and white colors are reserved for personal use crab gear as described in WAC 220-330-020.

(c) It is unlawful for any coastal Dungeness crab fishery license holder to fish for crab unless the license holder has registered the buoy brand and buoy color(s) to be used with the license. A license holder may register only one unique buoy brand and one buoy color scheme with the department per license. Persons holding more than one state license must register buoy color(s) for each license that are

distinctly different. The buoy color(s) will be shown in a color photograph.

(i) All buoys fished under a single license must be marked in a uniform manner with one buoy brand number registered by the license holder with the department and be of identical color or color combinations, unless otherwise authorized by permit issued from the director.

(ii) It is unlawful for a coastal Dungeness crab fishery license holder to fish for crab using any other buoy brand or color(s) than those registered with and assigned to the license by the department.

(6) Coastal commercial crab fishery line requirements.

(a) All crab pots used in the coastal Dungeness crab fishery shall be set up to use only the amount of line reasonably necessary to compensate for tides, currents, and weather.

(b) (i) Beginning December 1, 2020, it is unlawful for a coastal Dungeness crab fishery license holder to use line that connects the main buoy to the crab pot that is not marked sufficiently to identify it as gear used in the Washington coastal Dungeness crab fishery.

(ii) For each shellfish pot used in the Washington coastal commercial Dungeness crab fishery ((~~must be~~)) and rigged with line, that ((~~is~~)) line must be marked with 12 inches of red in at least two places. At a minimum, 12 inches of line must be marked in red, no more than one fathom from the main buoy and no more than one fathom from the pot.

(7) Violation of subsection (5) of this section is a gross misdemeanor, punishable under RCW 77.15.520 Commercial fishing—Unlawful gear or methods—Penalty.

[Statutory Authority: RCW 77.04.020, 77.12.045, and 77.12.047. WSR 20-04-066 (Order 20-15), § 220-340-430, filed 1/31/20, effective 3/2/20. Statutory Authority: RCW 77.04.012, 77.04.055, 77.12.045, and 77.12.047. WSR 17-17-104 (Order 17-207), § 220-340-430, filed 8/18/17, effective 9/18/17. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), amended and recodified as § 220-340-430, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.045, and 77.12.047. WSR 15-03-091 (Order 15-01), § 220-52-042, filed 1/21/15, effective 2/21/15. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.045, and 77.12.047. WSR 12-23-016 (Order 12-267), § 220-52-042, filed 11/9/12, effective 12/10/12.]

OTS-3132.1

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

WAC 220-340-450 Commercial crab fishery—Seasons and areas—Coastal. The open times and areas for coastal commercial crab fishing are as follows:

(1) Coastal, Pacific Ocean, Grays Harbor, Willapa Bay and Columbia River waters are closed to commercial crab fishing except as provided by emergency rule. The target date for the commercial season

opening is December 1 based on the results of test fishing to determine crab condition.

(2) The department may delay opening of the coastal crab fishery due to softshell crab conditions or biotoxin levels. If the department delays a season due to softshell crab conditions or biotoxin levels, the following provisions will apply:

(a) After consultation with the Oregon department of fish and wildlife and the California department of fish and wildlife, the director may establish a softshell crab or biotoxin demarcation line by emergency rule.

(b) For waters of the Pacific Ocean north of Point Arena, California, it is unlawful for a person to use a vessel to fish in any area where the season opening is delayed due to softshell crab or biotoxin for the first 30 days following the opening of the area if the vessel was employed in the coastal crab fishery during the previous 45 days.

(c) It is unlawful for fishers to set crab gear in any area where the season opening is delayed, except that gear may be set as allowed by emergency rule. Emergency rules will allow setting crab gear in advance of the delayed season opening time.

(d) It is unlawful to fish for or possess Dungeness crab or to set crab gear in waters of the Pacific Ocean adjacent to the states of Oregon or California without the licenses or permits required to commercially fish for Dungeness crab within the state waters of Oregon or California. Washington coastal Dungeness crab permits are valid only in Washington state waters, the Columbia River, Willapa Bay, Grays Harbor, and the Pacific Ocean in federal waters north of the Washington/Oregon border (46°15'00"N. Lat.), extending 200 nautical miles westward.

[Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), recodified as § 220-340-450, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.045, and 77.12.047. WSR 15-03-091 (Order 15-01), § 220-52-045, filed 1/21/15, effective 2/21/15. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.045, and 77.12.047. WSR 12-23-016 (Order 12-267), § 220-52-045, filed 11/9/12, effective 12/10/12.]

AMENDATORY SECTION (Amending WSR 20-04-066, filed 1/31/20, effective 3/2/20)

WAC 220-340-480 Commercial crab fishery—Gear limits—Coastal.

(1) Coastal crab pot limit.

(a) It is unlawful for a person to take or fish for Dungeness crab for commercial purposes in Grays Harbor, Willapa Bay, the Columbia River, or waters of the Pacific Ocean adjacent to the state of Washington unless the person's Dungeness crab coastal fishery license or the equivalent Oregon or California Dungeness crab fishery license is assigned a crab pot limit. A violation of this subsection is punishable under RCW 77.15.520 Commercial fishing—Unlawful gear or methods—Penalty.

(b) It is unlawful for a person to deploy or fish more shellfish pots than the number of shellfish pots assigned to the license held by

that person, unless authorized under a permit issued by the director. A violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.520 Commercial fishing—Unlawful gear or methods—Penalty.

(c) It is unlawful to use any vessel other than the vessel designated on a license to operate or possess shellfish pots assigned to that license. A violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.530 Unlawful use of a nondesignated vessel—Penalty.

(d) It is unlawful for a person to take or fish for Dungeness crab or to deploy crab pots unless the person is in possession of valid documentation issued by the department that specifies the crab pot limit assigned to the license. A violation of this subsection is a misdemeanor, punishable under RCW 77.15.540 Unlawful use of a commercial fishery license—Penalty.

(e) Beginning May 1, through September 15, it is unlawful to leave Dungeness crab pots deployed in Grays Harbor, Willapa Bay, Columbia River, or waters of the Pacific Ocean adjacent to the state of Washington for more than ((21)) 14 consecutive days without making a Dungeness crab landing.

(2) **Grays Harbor pot limit of 200.** It is unlawful for any person to take or fish for crab for commercial purposes in Grays Harbor (Catch Area 60B) with more than 200 shellfish pots in the aggregate. It is unlawful for any group of persons using the same vessel to take or fish for crab for commercial purposes in Grays Harbor with more than 200 shellfish pots. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.520 Commercial fishing—Unlawful gear or methods—Penalty.

(3) **Determination of permanent coastal crab pot limits.**

(a) The number of crab pots assigned to a Washington Dungeness crab coastal fishery license, or to an equivalent Oregon or California Dungeness crab fishery license is based on documented landings of Dungeness crab taken from waters of the Pacific Ocean south of the United States/Canada border and west of the Bonilla-Tatoosh line, and from coastal estuaries in the states of Washington, Oregon, and California. Documented landings may be evidenced only by valid Washington state shellfish receiving tickets, or equivalent valid documents from the states of Oregon and California, which show Dungeness crab were taken between December 1, 1996, and September 16, 1999. Such documents must have been received by the respective states no later than October 15, 1999.

(b) The following criteria is used to determine and assign a crab pot limit to a Dungeness crab coastal fishery license, or to an equivalent Oregon or California Dungeness crab fishery license:

(i) The three "qualifying coastal Dungeness crab seasons" are from December 1, 1996, through September 15, 1997; from December 1, 1997, through September 15, 1998; and from December 1, 1998, through September 15, 1999. Of the three qualifying seasons, the one with the most poundage of Dungeness crab landed on a license determines the crab pot limit for that license. A crab pot limit of 300 will be assigned to a license with landings totaling up to 35,999 pounds and a crab pot limit of 500 will be assigned to a license with landings totaling 36,000 pounds of crab or more.

(ii) Landings of Dungeness crab made in the states of Oregon or California on valid Dungeness crab fisheries licenses during a qualifying season may be used for purposes of assigning a crab pot limit to

a Dungeness crab fishery license, provided that documentation of the landings is provided to the department by the Oregon department of fish and wildlife and/or the California department of fish and game.

(iii) Landings of Dungeness crab made in Washington, Oregon, and California on valid Dungeness crab fishery licenses during a qualifying season may be combined for purposes of assigning a crab pot limit, provided that the same vessel was named on the licenses, and the same person held the licenses. A crab pot limit assigned as a result of combined landings is invalidated by any subsequent split in ownership of the licenses. No vessel named on a Dungeness crab fishery license will be assigned more than one coastal crab pot limit.

(4) **Appeals of coastal crab pot limits.** An appeal of a crab pot limit by a coastal commercial license holder must be filed with the department on or before October 18, 2001. The shellfish pot limit assigned to a license by the department will remain in effect until such time as the appeal process is concluded.

(5) **Summer management period - Pot limits.** Beginning May 1 through September 15, it is unlawful for a person to deploy or fish more than the specified reduced pot limit assigned to each license, unless otherwise authorized by permit issued by the director. Each pot deployed during the summer management period must possess a summer buoy tag, unless authorized by permit issued by the director.

(a) Licenses with a permanent pot limit of 500 will be assigned a reduced pot limit of 330 pots.

(b) Licenses with a permanent pot limit of 300 will be assigned a reduced pot limit of 200 pots.

(c) It is unlawful to deploy gear that includes tags other than the summer buoy tag, unless authorized by permit issued by the director.

[Statutory Authority: RCW 77.04.020, 77.12.045, and 77.12.047. WSR 20-04-066 (Order 20-15), § 220-340-480, filed 1/31/20, effective 3/2/20. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), recodified as § 220-340-480, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.045, and 77.12.047. WSR 15-03-091 (Order 15-01), § 220-52-049, filed 1/21/15, effective 2/21/15. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.045, and 77.12.047. WSR 12-23-016 (Order 12-267), § 220-52-049, filed 11/9/12, effective 12/10/12.]

AMENDATORY SECTION (Amending WSR 20-15-049, filed 7/9/20, effective 8/9/20)

WAC 220-340-490 Commercial crab fishery—Coastal gear recovery permits. (1) **Emergency coastal crab gear recovery permit.** Emergency permits are granted on a case-by-case basis to allow crab fishers to recover shellfish pots that were irretrievable at the end of the lawful season opening due to extreme weather conditions. The director or director's designee may grant an emergency coastal crab gear permit once a commercial crab season is closed. Crab fishers must notify and apply to the department's enforcement program for such emergency permits within 24 hours prior to the close of the commercial crab season.

(2) **Coastal crab gear recovery permit.** ((15-days)) After the September 15 close of the primary coastal commercial crab season and from May 1 through September 15, the director or director's designee may grant a coastal crab gear recovery permit for licensed coastal Dungeness crab fishers to recover crab pots that remain in the ocean and belong to state licensed fishers.

(3) It is unlawful to fail to follow the provisions of a coastal crab gear recovery permit. Violation of this section is a misdemeanor, punishable under RCW 77.15.750 Unlawful use of a department permit—Penalty.

[Statutory Authority: RCW 77.04.020, 77.12.045, and 77.12.047. WSR 20-15-049 (Order 20-128), § 220-340-490, filed 7/9/20, effective 8/9/20; WSR 20-04-066 (Order 20-15), § 220-340-490, filed 1/31/20, effective 3/2/20. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), recodified as § 220-340-490, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.045, and 77.12.047. WSR 12-23-016 (Order 12-267), § 220-52-044, filed 11/9/12, effective 12/10/12.]

Reviser's note: The permanent filing 20-04-066 contained no amendments to this section.

OTS-3125.1

AMENDATORY SECTION (Amending WSR 18-11-052, filed 5/10/18, effective 6/10/18)

WAC 220-352-035 Requirement to prepare fish receiving ticket forms completely and accurately—Determining the appropriate form.

(1) Receivers must completely, accurately, and legibly prepare fish receiving tickets using a department-approved electronic or department-supplied paper form, as further specified in this section.

(2) Receivers must use an electronic fish receiving ticket form for the following:

(a) Deliveries from vessels fishing under the Pacific Fishery Management Council's Pacific Coast Groundfish Fishery Management Plan and related regulations under 50 C.F.R., Part 660. This requirement includes deliveries from research vessels but excludes deliveries of groundfish made under the trip limits for salmon troll (~~and pink shrimp trawl~~) vessels.

(b) Deliveries from directed commercial halibut vessels fishing under 50 C.F.R., Part 300 or vessels conducting research surveys for the International Pacific Halibut Commission if not previously delivered in another jurisdiction.

(c) Deliveries of groundfish harvested from the offshore waters off Alaska or British Columbia if not previously delivered in another jurisdiction.

(d) Deliveries of Dungeness crab, ocean pink shrimp, pink shrimp, coonstripe shrimp, sidestripe shrimp, or spot shrimp, and any other lawfully landed species taken incidentally by vessels fishing and delivering under a coastal Dungeness crab license, a Puget Sound Dungeness crab license, an ocean pink shrimp delivery license, an ocean

pink shrimp single delivery license, a Puget Sound shrimp pot license, a Puget Sound shrimp trawl license, or a coastal spot shrimp license issued by the department.

(3) Receivers not required to report under subsection (2) of this section may report using electronic fish receiving ticket forms if they enter into an electronic fish receiving ticket reporting agreement with the department.

(a) The department reserves the discretion to limit the use of electronic fish receiving ticket reporting agreements based on species, gears, areas, times, or other factors.

(b) Electronic fish receiving ticket reporting agreements will identify how to access the appropriate electronic forms and may include terms and conditions related to the timing and manner of completion and submittal.

(c) Receivers may not submit paper fish receiving tickets for deliveries covered by an electronic fish receiving ticket reporting agreement.

(d) The department or receiver may terminate an electronic fish receiving ticket reporting agreement with thirty days notice to the other party.

(e) A receiver who fails to comply with the terms of the electronic fish receiving ticket agreement commits a violation of this chapter.

(4) A receiver that is not required or authorized by agreement to use electronic fish receiving ticket forms must report using the appropriate paper form. There are separate forms for nontreaty troll fish, marine fish, shellfish, and Puget Sound salmon; and separate forms for treaty fish and treaty shellfish.

[Statutory Authority: RCW 77.04.090 and 77.04.130. WSR 18-11-052 (Order 18-92), § 220-352-035, filed 5/10/18, effective 6/10/18.]

OTS-3127.1

AMENDATORY SECTION (Amending WSR 18-11-052, filed 5/10/18, effective 6/10/18)

WAC 220-352-060 Completion, submission, distribution, and retention of copies of nontreaty fish receiving tickets. (1) Original receivers must complete state of Washington nontreaty fish receiving tickets by recording the delivery amount using the appropriate weight or quantity measure for all fish at the conclusion of the offload and prior to the fish being processed or transported away from the delivery site.

(2) Fish receiving tickets paper forms must be made out in quadruplicate (four copies) at the time of delivery of fish. Original receivers must use fish receiving tickets in numerical sequence, starting with the lowest numbered ticket issued. Original receivers reporting using paper forms must:

(a) Mail the state copy (green) of the fish receiving ticket to the department of fish and wildlife (department), except for original receivers who submit a fish receiving ticket in portable document format (PDF) to satisfy quick reporting requirements for salmon and stur-

geon under WAC 220-352-315, 220-352-320, 220-352-325 and 220-352-330. The department must receive the state copy no later than the sixth working day after the day the original receiver completes the fish ticket.

(b) Retain the dealer copies (white and yellow) of the fish receiving ticket for his or her records.

(c) The deliverer must retain the fisher copy (gold) for his or her records.

(3) Original receivers who submit fish receiving tickets using an electronic form must:

(a) (i) Submit the ticket within twenty-four hours of completion of the delivery if required ((by WAC 220-352-035(2)) to report electronically under WAC 220-352-035(2) except:

(ii) For deliveries made by vessels fishing and delivering under a coastal Dungeness crab license, the receiver must submit the ticket by the close of the next business day after the delivery is completed.

(b) Submit the ticket in compliance with the timely reporting conditions set forth in ((an)) the electronic fish receiving ticket reporting agreement if reporting voluntarily under WAC 220-352-035(3).

~~((c) Print and retain a copy of the completed electronic fish receiving ticket for three years unless an alternative fish ticket retention requirement is specified in an electronic fish receiving ticket agreement.))~~ (4) Original receivers who submit fish receiving tickets using an electronic form must print and retain a copy of the completed electronic fish receiving ticket for three years unless:

(a) The fish receiving ticket is signed electronically under WAC 220-352-140 (4)(c) and an electronic copy of the signed and completed fish receiving ticket is available to the department for a minimum of three years; or

(b) An alternative fish ticket retention requirement is specified in the electronic fish receiving ticket agreement governing the voluntary reporting of the delivery.

[Statutory Authority: RCW 77.04.090 and 77.04.130. WSR 18-11-052 (Order 18-92), § 220-352-060, filed 5/10/18, effective 6/10/18. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), amended and recodified as § 220-352-060, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.045, and 77.12.047. WSR 14-02-013 (Order 13-304), § 220-69-260, filed 12/19/13, effective 1/19/14. Statutory Authority: RCW 77.04.020, 77.12.045, 77.12.047, and 50 C.F.R. 660. WSR 12-04-028 (Order 12-09), § 220-69-260, filed 1/26/12, effective 2/26/12. Statutory Authority: RCW 77.12.047. WSR 04-17-096 (Order 04-210), § 220-69-260, filed 8/17/04, effective 9/17/04. Statutory Authority: RCW 75.08.080. WSR 00-01-145 (Order 99-221), § 220-69-260, filed 12/20/99, effective 1/20/00; WSR 94-01-001, § 220-69-260, filed 12/1/93, effective 1/1/94; WSR 91-05-015 (Order 91-07), § 220-69-260, filed 2/8/91, effective 3/11/91; WSR 90-03-068 (Order 90-05), § 220-69-260, filed 1/19/90, effective 2/19/90. Statutory Authority: RCW 75.08.080 and 75.58.040. WSR 86-19-043 (Order 86-102), § 220-69-260, filed 9/12/86. Statutory Authority: RCW 75.08.080. WSR 83-24-049 (Order 83-203), § 220-69-260, filed 12/2/83; WSR 80-05-093 (Order 80-27), § 220-69-260, filed 5/2/80; Order 76-153, § 220-69-260, filed 12/17/76.]

AMENDATORY SECTION (Amending WSR 18-11-052, filed 5/10/18, effective 6/10/18)

WAC 220-352-140 Signatures—Fish receiving tickets. (1) The fisher and original receiver of both treaty and nontreaty fish or shellfish must sign the appropriate completed fish receiving ticket paper form to certify that all entries on the ticket are accurate and correct.

(2) If an agent of the fisher delivers fish or shellfish to the original receiver, the receiver and the agent must complete and sign the fish receiving ticket together with the transportation ticket. The receiver and fisher shall assume complete responsibility for the correctness of all entries on the fish receiving ticket.

(3) Any employee of a licensed wholesale fish buyer who is authorized to receive or purchase fish or shellfish for that buyer on the premises of the primary business address or any of its plant locations as declared on the license application or agreement described under WAC 220-352-035(3), is authorized to initiate and sign fish receiving tickets on behalf of his or her employer. The business, firm, or licensed wholesale fish buyer that the receivers are operating under is responsible for the accuracy and legibility of all documents initiated in their name by any employee or agent.

(4) If an original receiver submits an electronic fish receiving ticket form, the fisher and original receiver must ~~((sign the printed completed fish receiving ticket form to certify that all entries on the ticket are accurate and correct, unless otherwise specified in an electronic fish receiving ticket reporting agreement (WAC 220-352-035(3))))~~ certify that all entries on the ticket are accurate and correct by either:

(a) Signing the printed and completed copy of the fish receiving ticket required under WAC 220-352-060(4);

(b) Following the terms and conditions for signature specified in an electronic fish receiving ticket reporting agreement (WAC 220-352-035(3)); or

(c) Signing electronically if the electronic form provided by the department directs the fisher and receiver to do so.

(5) If the receiver must complete an electronic fish receiving ticket form away from the place of delivery and it is impractical for the fisher to comply with subsection (4) of this section, the deliverer and receiver must sign the completed transportation ticket required by WAC 220-352-230 and attach it to the printed and signed copy of the completed electronic fish receiving ticket form, unless otherwise specified in an electronic fish receiving ticket reporting agreement (WAC 220-352-035(3)).

[Statutory Authority: RCW 77.04.090 and 77.04.130. WSR 18-11-052 (Order 18-92), § 220-352-140, filed 5/10/18, effective 6/10/18. Statutory Authority: RCW 77.04.090, 77.04.130, 77.15.568, 77.08.010, 77.65.510, 77.65.515, and 77.65.520. WSR 17-22-100, § 220-352-140, filed 10/30/17, effective 1/1/18. Statutory Authority: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.047, 77.12.150, 77.12.240, 77.12.800, 77.32.090, and 77.32.155. WSR 17-12-105 (Order 17-112), § 220-352-140, filed 6/6/17, effective 7/7/17. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), recodified as § 220-352-140, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055,

77.12.047, and 50 C.F.R. Part 660. WSR 17-03-006 (Order 17-04), § 220-69-274, filed 1/4/17, effective 1/4/17. Statutory Authority: RCW 77.04.020, 77.12.045, 77.12.047, and 50 C.F.R. 660. WSR 12-04-028 (Order 12-09), § 220-69-274, filed 1/26/12, effective 2/26/12. Statutory Authority: RCW 77.12.047. WSR 04-17-096 (Order 04-210), § 220-69-274, filed 8/17/04, effective 9/17/04. Statutory Authority: RCW 75.08.080 and 75.58.040. WSR 86-19-043 (Order 86-102), § 220-69-274, filed 9/12/86. Statutory Authority: RCW 75.08.080. WSR 85-11-020 (Order 85-43), § 220-69-274, filed 5/10/85; WSR 83-24-049 (Order 83-203), § 220-69-274, filed 12/2/83; Order 76-153, § 220-69-274, filed 12/17/76.]

OTS-3128.1

AMENDATORY SECTION (Amending WSR 18-11-052, filed 5/10/18, effective 6/10/18)

WAC 220-352-305 Coastal Dungeness crab—Additional reporting requirements. Original receivers of Dungeness crab from the Pacific Ocean, Coastal Washington, Grays Harbor, Willapa Harbor, and Columbia River waters must enter the crab vessel hold inspection certificate number on all ((shellfish)) nontreaty fish receiving tickets during the period specified in emergency regulations. ((The crab inspection certificate number must be entered legibly in the space indicated for dealer's use or where specified by the terms of an electronic fish ticket reporting agreement)) (WAC 220-352-035(3)).

[Statutory Authority: RCW 77.04.090 and 77.04.130. WSR 18-11-052 (Order 18-92), § 220-352-305, filed 5/10/18, effective 6/10/18.]

OTS-3129.1

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

WAC 220-353-020 General gear rules—Commercial fishery. (1) (a) Commercial shellfish pot, bottom fish pot, set line and set net gear must be marked with a buoy that bears the department approved and registered buoy brand issued to the license in a visible and legible manner. It is unlawful for the owner or operator of any commercial food fish or shellfish gear to leave the gear unattended in state or off-shore waters unless the gear is marked. Violation of this subsection is punishable under RCW 77.15.520 or 77.15.522, depending on the circumstances of the violation.

(b) Exemptions may apply for commercial shellfish pot gear otherwise authorized for use by permit issued by the director.

(2) Violations of the following are punishable under 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty:

(a) Buoys affixed to unattended commercial food fish or shellfish gear must be visible on the surface of the water except during strong tidal flow (~~(or)~~), extreme weather conditions, or as authorized by permit issued by the director.

(b) It is unlawful to operate any gill net unless there is a buoy, float, or other marker affixed within 5 feet of each end of the net and visible on the cork line. The buoy, float, or other marker must be labeled legibly and permanently with the name and gill-net license number of the owner of the net.

(c) It is unlawful to leave a gill net unattended at any time in the commercial salmon fishery.

(d) It is unlawful to allow salmon, sturgeon, or fish unlawful to retain that are entangled in commercial nets to pass through a power block or onto a power reel or drum.

(3) It is unlawful for any person who loses or abandons non-tribal commercial net fishing gear within the waters of the state to fail to:

(a) Contact the department of fish and wildlife within twenty-four hours of the loss, by phone at 855-542-3935, or online at <http://wdfw.wa.gov/fishing/derelict/>; and

(b) Provide the following required information:

(i) Type of gear;

(ii) General location of the gear;

(iii) Latitude (if known) of the gear;

(iv) Longitude (if known) of the gear;

(v) Estimated water depth where the gear is located;

(vi) Date the gear was lost;

(vii) Time the gear was lost;

(viii) Name of gear's owner;

(ix) Telephone number of the gear's owner; and

(x) Email address (if available) of the gear's owner.

(c) Failing to report lost or abandoned nontribal commercial net gear under this subsection is an infraction under RCW 77.15.160.

[Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), recodified as § 220-353-020, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.045, and 77.12.047. WSR 13-03-153 (Order 13-16), § 220-20-119, filed 1/23/13, effective 2/23/13.]

WSR 21-14-008
PROPOSED RULES
OFFICE OF
FINANCIAL MANAGEMENT
[Filed June 24, 2021, 8:59 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: WAC 357-31-005

For the purposes of chapter 357-31 WAC, what days are recognized as holidays?

Hearing Location(s): On August 12, 2021, at 8:30 a.m., at Office of Financial Management (OFM), audio conference only, dial-in 888-285-8919, enter pin 8101730, Code (if asked) 415.

Date of Intended Adoption: August 19, 2021.

Submit Written Comments to: Brandy Chinn, OFM, P.O. Box 47500, Olympia, WA 98501, email brandy.chinn@ofm.wa.gov, fax 360-586-4694, by August 5, 2021.

Assistance for Persons with Disabilities: Contact OFM, TTY 711 or 1-800-833-6384, by August 5, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 295, Laws of 2021 (SHB 1016) passed during the 2021 legislative session with an effective date of July 25, 2021. This bill amends RCW 1.16.050 to add Juneteenth (June 19th) as a legal holiday in recognition of the date of remembrance for the last day African slaves learned of their freedom, nearly two years after the Emancipation Proclamation was issued.

Reasons Supporting Proposal: To align chapter 357-31 WAC with the requirements in the new law.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 1.16.050.

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

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brandy Chinn, 128 10th Avenue, Olympia, WA 98501, 360-878-2901.

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

A cost-benefit analysis is not required under RCW 34.05.328. Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

June 24, 2021
Roselyn Marcus
Assistant Director of Legal
and Legislative Affairs

OTS-3097.1

AMENDATORY SECTION (Amending WSR 14-18-078, filed 9/3/14, effective 10/6/14)

WAC 357-31-005 For the purpose of chapter 357-31 WAC, what days are recognized as holidays? The following days are designated as holidays for the purpose of chapter 357-31 WAC:

- (1) The first day of January (New Year's Day);
- (2) The third Monday of January (Martin Luther King, Jr.'s birthday);
- (3) The third Monday of February (Presidents' Day);
- (4) The last Monday of May (Memorial Day);
- (5) The nineteenth day of June (Juneteenth);
- (6) The fourth day of July (Independence Day);
- ~~((6))~~ (7) The first Monday in September (Labor Day);
- ~~((7))~~ (8) The eleventh day of November (Veterans Day);
- ~~((8))~~ (9) The fourth Thursday in November (Thanksgiving Day);
- ~~((9))~~ (10) The Friday immediately following the fourth Thursday in November (Native American Heritage Day); and
- ~~((10))~~ (11) The twenty-fifth day of December (Christmas Day).

Higher education employers may designate other days to be observed in place of the above holidays. Holiday schedules for higher education employers may be determined on a calendar or fiscal year basis. When a higher education employer establishes a modified schedule, paid holidays must be granted based on the modified schedule.

[Statutory Authority: Chapter 41.06 RCW. WSR 14-18-078, § 357-31-005, filed 9/3/14, effective 10/6/14; WSR 05-21-057, § 357-31-005, filed 10/13/05, effective 11/15/05; WSR 05-08-136, § 357-31-005, filed 4/6/05, effective 7/1/05.]

WSR 21-14-009
PROPOSED RULES
OFFICE OF
FINANCIAL MANAGEMENT
[Filed June 24, 2021, 9:01 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: WAC 357-46-053
How is a higher education employee's seniority date determined? and
357-46-055 How is a general government employee's seniority date de-
termined?

Hearing Location(s): On August 12, 2021, at 8:30 a.m., at Office
of Financial Management (OFM), audio conference only, dial-in
888-285-8919, enter pin 8101730, code (if asked) 415.

Date of Intended Adoption: August 19, 2021.

Submit Written Comments to: Caroline Kirk, OFM, P.O. Box 47500,
Olympia, WA 98501, email caroline.kirk@ofm.wa.gov, fax 360-586-4694,
by August 5, 2021.

Assistance for Persons with Disabilities: Contact OFM, TTY 711 or
1-800-833-6384, by August 5, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including
Any Changes in Existing Rules: To protect a general government and
higher education employee's seniority date when leave without pay is
taken due to a governor's issued proclamation to protect the health
and safety of employees.

Reasons Supporting Proposal: To ensure employees can take leave
without pay when the governor has issued a proclamation related to
health and safety.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: Chapter 41.06 RCW.

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

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting, Implementa-
tion, and Enforcement: Caroline Kirk, 128 10th Avenue, Olympia, WA
98501, 360-878-4827.

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

A cost-benefit analysis is not required under RCW 34.05.328.
Rules are related to internal government operations and are not sub-
ject to violation by a nongovernmental party. See RCW 34.05.328
(5)(b)(ii) for exemption.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to in-
ternal governmental operations that are not subject to vio-
lation by a nongovernment party.

June 24, 2021
Roselyn Marcus
Assistant Director of Legal
and Legislative Affairs

OTS-3008.3

AMENDATORY SECTION (Amending WSR 05-12-075, filed 5/27/05, effective 7/1/05)

WAC 357-46-053 How is a higher education employee's seniority date determined? For higher education employees, the seniority date is determined as follows:

(1) In accordance with the employer's layoff procedure. The employer's layoff procedure must specify a uniform method for determining the seniority date for employees of the higher education institution or related board who are covered by the civil service rules.

(2) Employees on military leave as provided in WAC 357-31-370 must not have their seniority date adjusted for the time spent on military leave without pay.

(3) Employees on leave without pay as authorized by a proclamation issued by the governor directly related to health and safety must not have their seniority date adjusted for the time spent on leave without pay.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-12-075, § 357-46-053, filed 5/27/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 14-06-007, filed 2/20/14, effective 3/24/14)

WAC 357-46-055 How is a general government employee's seniority date determined? (1) For a full-time general government employee, the seniority date is the employee's most recent date of hire into state service (including exempt service) as adjusted for any period of leave without pay which exceeds fifteen consecutive calendar days except when the leave without pay is taken for:

(a) Military leave as provided in WAC 357-31-370;
 (b) Compensable work-related injury or illness leave;
 (c) Government service leave not to exceed two years and one month;

(d) Educational leave, contingent upon successful completion of the coursework; ~~((and/or))~~

(e) Reducing the effects of layoff~~((-))~~; and/or

(f) Leave without pay as authorized by a proclamation issued by the governor directly related to health and safety.

(2) When an employee is on leave without pay for more than fifteen consecutive calendar days and the absence is not due to one of the reasons listed above, the employee's seniority date must be moved forward in an amount equal to the number of calendar days on leave without pay.

~~((2))~~ (3) For a part-time general government employee, the seniority date is calculated by determining the number of actual hours worked and/or in paid status, excluding compensatory time off. Actual hours worked includes overtime hours regardless of whether or not the employee receives monetary payment or compensatory time for the hours worked. Time spent in leave without pay status is not credited unless the leave without pay is taken for:

(a) Military leave as provided in WAC 357-31-370;
 (b) Compensable work-related injury or illness leave;
 (c) Government service leave not to exceed two years and one month;

(d) Educational leave, contingent upon successful completion of the coursework; (~~and/or~~)

(e) Reducing the effects of layoff; and/or

(f) Leave without pay as authorized by a proclamation issued by the governor directly related to health and safety.

[Statutory Authority: Chapter 41.06 RCW. WSR 14-06-007, § 357-46-055, filed 2/20/14, effective 3/24/14; WSR 09-11-063, § 357-46-055, filed 5/14/09, effective 6/16/09; WSR 05-08-135, § 357-46-055, filed 4/6/05, effective 7/1/05.]

WSR 21-14-011

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed June 24, 2021, 10:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-15-124.

Title of Rule and Other Identifying Information: WAC 182-125-0100 Tribal-designated crisis responder.

Hearing Location(s): On August 10, 2021, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the health care authority (HCA) is not providing a physical location for this hearing. This promotes social distancing and the safety of the residents of Washington state. A virtual public hearing, without a physical meeting space, will be held instead.

To attend the virtual public hearing, you must register in advance https://zoom.us/webinar/register/WN_4prz5EyiTyWE17yOgcjWwg. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than August 11, 2021.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by August 10, 2021.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email amber.lougheed@hca.wa.gov, by July 30, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 256, Laws of 2020, among other things, amended RCW 71.05.020(15)'s definition of "designated crisis responder" to include a mental health professional appointed by HCA in consultation with a federally recognized Indian tribe or after meeting and conferring with an Indian health care provider. HCA is adopting a new rule to govern this appointment process.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

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: Lucilla Mendoza, P.O. Box 45564, Olympia, WA 98504-5564, 360-725-1834.

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.

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 governs the agency's appointment of tribal-designated crisis responders and does not impose costs on businesses.

June 24, 2021

OTS-3169.1

Chapter 182-125 WAC
TRIBAL-DESIGNATED CRISIS RESPONDERNEW SECTION

WAC 182-125-0100 Tribal-designated crisis responder. (1) The Washington state health care authority (the authority) appoints a tribal-designated crisis responder upon request and after consultation with one or more federally recognized Indian tribes or after meeting and conferring with one or more Indian health care providers. This rule does not apply to matters heard in tribal court.

(2) This rule does not apply to counties' independent authority to appoint designated crisis responders in collaboration with tribes under RCW 71.05.020(15). This rule does not eliminate the responsibility of the agency providing crisis services to serve American Indian/Alaska Native individuals.

(3) A tribal-designated crisis responder must meet the qualifications under RCW 71.05.760.

(4) A tribe or Indian health care provider located in Washington state may request that the authority appoint a qualified person as a tribal-designated crisis responder by submitting a letter of recommendation that includes the following:

(a) The person's name and contact information.

(b) An explanation of how the person meets the qualifications under RCW 71.05.760, including dates on which the person completed or will complete required designated crisis responder training.

(c) A copy of the policy and procedures for the designated crisis responder services. The policy and procedures must describe the tribe's or Indian health care provider's plan for training, back-up, information sharing, and communication for designated crisis responders who respond to private homes or nonpublic settings.

(d) A copy of the tribe's or Indian health care provider's behavioral health agency license and certification or attestation to provide emergency involuntary detention services under WAC 246-341-0810, including documentation of any applicable exemptions under WAC 246-341-0302.

(5) Upon appointment, the authority:

(a) Issues a certification and tribal-designated crisis responder card to the requesting tribe or Indian health care provider.

(b) Notifies all behavioral health administrative services organizations, tribal courts, and superior courts.

(6) Within twenty-four hours of responding to an event or as soon as feasible, tribal-designated crisis responders serving as officers of a superior court must submit involuntary treatment information to the Washington Indian behavioral health hub, a statewide resource sup-

ported by the authority and the department of health for the purpose of assisting American Indian and Alaska Native individuals and their providers to refer individuals to voluntary and involuntary crisis services, including evaluation and treatment facilities and withdrawal management and stabilization facilities.

(7) The Washington Indian behavioral health hub must submit all tribal-designated crisis responder data related to tribal-designated crisis responders' service as officers of a superior court to the authority within twenty-four hours of receiving the data or as soon as feasible.

(8) Tribal-designated crisis responders must comply with reporting requirements pertaining to no bed available reports under RCW 71.05.750. A tribal-designated crisis responder may submit a request for a single bed certification under RCW 71.05.745.

(9) Tribal-designated crisis responders designated by the authority may operate anywhere in Washington state and provide services to any person in Washington state.

(10) The local designated crisis responder office for any region in which a tribal-designated crisis responder provides services is expected to provide technical assistance if requested.

[]

WSR 21-14-047

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed July 1, 2021, 10:58 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-10-096.

Title of Rule and Other Identifying Information: WAC

182-535A-0010 Definitions, 182-535A-0040 Orthodontic treatment and orthodontic-related services—Covered, noncovered, and limitations to coverage, 182-535A-0050 Orthodontic treatment and orthodontic-related services—Authorization and prior authorization, and 182-535A-0060 Orthodontic treatment and orthodontic-related services—Payment.

Hearing Location(s): On August 10, 2021, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the health care authority (HCA) is not providing a physical location for this hearing. This promotes social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. To attend the virtual public hearing, you must register in advance for this public hearing https://zoom.us/webinar/register/WN_4prz5EyiTyWEL7yOgcjWwg. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than August 11, 2021.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by August 10, 2021.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email amber.lougheed@hca.wa.gov, by July 23, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending these rules to remove all references to interceptive treatment. This change is necessary to align with the planned discontinuance of the current dental terminology code for interceptive treatment, effective January 1, 2022, by the American Dental Association's Council of Dental Benefit Program's Code Maintenance Committee.

WAC 182-535A-0010 removed definition for interceptive treatment; 182-535A-0040 added new subsection (4)(e) Removable appliances as part of limited or comprehensive orthodontic treatment; 182-535A-0040 removed subsection (5)(a) Interceptive orthodontic treatment; 182-535A-0040 (5)(c) removed interceptive orthodontic treatment; 182-535A-0050 removed interceptive orthodontic treatment; 182-535A-0060 added new subsection (4)(d) That do not address medical issue(s) as listed in the prior authorization request; 182-535A-0060(5) removed interceptive orthodontic treatment; and 182-535A-0060 (6)(c)(i) payments are allowed once every three months during treatment "with the eighth periodic treatment visit covering the last six months of treatment."

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Valerie Freudenstein, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1344; Implementation and Enforcement: Janice Tadeo, P.O. Box 45506, Olympia, WA 98504-5506, 360-725-1583.

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.

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 does not impose any costs on businesses.

July 1, 2021
Wendy Barcus
Rules Coordinator

OTS-3089.2

AMENDATORY SECTION (Amending WSR 19-20-047, filed 9/25/19, effective 10/26/19)

WAC 182-535A-0010 Definitions. The following definitions and those found in chapter 182-500 WAC apply to this chapter.

"Adolescent dentition" means teeth that are present after the loss of primary teeth and prior to the cessation of growth that affects orthodontic treatment.

"Appliance placement" means the application of orthodontic attachments to the teeth for the purpose of correcting dentofacial abnormalities.

"Cleft" means an opening or fissure involving the dentition and supporting structures, especially one occurring in utero. These can be:

- (a) Cleft lip;
- (b) Cleft palate (involving the roof of the mouth); or
- (c) Facial clefts (e.g., macrostomia).

"Comprehensive full orthodontic treatment" means utilizing fixed orthodontic appliances for treatment of adolescent dentition leading to the improvement of a client's severe handicapping craniofacial dysfunction and/or dentofacial deformity, including anatomical and functional relationships.

"Craniofacial anomalies" means abnormalities of the head and face, either congenital or acquired, involving disruption of the dentition and supporting structures.

"Craniofacial team" means a cleft palate/maxillofacial team or an American Cleft Palate Association-certified craniofacial team. These teams are responsible for the management (review, evaluation, and approval) of patients with cleft palate craniofacial anomalies to provide integrated management, promote parent-professional partnership, and make appropriate referrals to implement and coordinate treatment plans.

"Crossbite" means an abnormal relationship of a tooth or teeth to the opposing tooth or teeth, in which normal buccolingual or labiolingual relations are reversed.

"Dental dysplasia" means an abnormality in the development of the teeth.

"Ectopic eruption" means a condition in which a tooth erupts in an abnormal position or is fifty percent blocked out of its normal alignment in the dental arch.

"EPSDT" means the agency's early and periodic screening, diagnostic, and treatment program for clients twenty years of age and younger as described in chapter 182-534 WAC.

"Hemifacial microsomia" means a developmental condition involving the first and second brachial arch. This creates an abnormality of the upper and lower jaw, ear, and associated structures (half or part of the face is smaller in size).

~~(**"Interceptive orthodontic treatment"** means procedures to lessen the severity or future effects of a malformation and to affect or eliminate the cause. Such treatment may occur in the primary or transitional dentition and may include such procedures as the redirection of ectopically erupting teeth, correction of isolated dental crossbite, or recovery of recent minor space loss where overall space is adequate.)~~

"Limited orthodontic treatment" means orthodontic treatment with a limited objective, not involving the entire dentition. It may be directed only at the existing problem, or at only one aspect of a larger problem in which a decision is made to defer or forego more comprehensive therapy.

"Malocclusion" means improper alignment of biting or chewing surfaces of upper and lower teeth or abnormal relationship of the upper and lower dental arches.

"Maxillofacial" means relating to the jaws and face.

"Occlusion" means the relation of the upper and lower teeth when in functional contact during jaw movement.

"Orthodontics" means treatment involving the use of any appliance, in or out of the mouth, removable or fixed, or any surgical procedure designed to redirect teeth and surrounding tissues.

"Orthodontist" means a dentist who specializes in orthodontics, who is a graduate of a postgraduate program in orthodontics that is accredited by the American Dental Association, and who meets the licensure requirements of the department of health.

"Permanent dentition" means those teeth that succeed the primary teeth and the additional molars that erupt.

"Primary dentition" means teeth that develop and erupt first in order of time and are normally shed and replaced by permanent teeth.

"Transitional dentition" means the final phase from primary to permanent dentition, in which most primary teeth have been lost or are in the process of exfoliating and the permanent successors are erupting.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 2019 c 415 §§ 211 (1)(c) and 1111 (1)(c). WSR 19-20-047, § 182-535A-0010, filed 9/25/19, effective 10/26/19. Statutory Authority: RCW 41.05.021, 41.05.160 and 2017 3rd sp.s. c 1 § 213 (1)(c). WSR 19-09-058, § 182-535A-0010, filed 4/15/19, effective 7/1/19. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 17-20-097, § 182-535A-0010, filed 10/3/17, effective 11/3/17. Statutory Authority: RCW 41.05.021 and 2013 2nd sp.s. c 4 § 213. WSR 14-08-032, § 182-535A-0010, filed 3/25/14, effective 4/30/14.]

WSR 11-14-075, recodified as § 182-535A-0010, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.04.050, 74.08.090. WSR 08-17-009, § 388-535A-0010, filed 8/7/08, effective 9/7/08. Statutory Authority: RCW 74.08.090, 74.09.520 and 74.09.035, 74.09.500. WSR 05-01-064, § 388-535A-0010, filed 12/8/04, effective 1/8/05. Statutory Authority: RCW 74.08.090, 74.09.035, 74.09.520, 74.09.500, 42 U.S.C. 1396d(a), C.F.R. 440.100 and 225. WSR 02-01-050, § 388-535A-0010, filed 12/11/01, effective 1/11/02.]

AMENDATORY SECTION (Amending WSR 20-03-042, filed 1/8/20, effective 2/8/20)

WAC 182-535A-0040 Orthodontic treatment and orthodontic-related services—Covered, noncovered, and limitations to coverage. Orthodontic treatment and orthodontic-related services require prior authorization.

(1) The medicaid agency covers orthodontic treatment and orthodontic-related services for a client who has one of the medical conditions listed in (a) and (b) of this subsection. Treatment and follow-up care must be performed only by an orthodontist or agency-recognized craniofacial team.

(a) Cleft lip and palate, cleft palate, or cleft lip with alveolar process involvement.

(b) The following craniofacial anomalies including, but not limited to:

- (i) Hemifacial microsomia;
- (ii) Craniosynostosis syndromes;
- (iii) Cleidocranial dental dysplasia;
- (iv) Arthrogyryposis;
- (v) Marfan syndrome;
- (vi) Treacher Collins syndrome;
- (vii) Ectodermal dysplasia; or
- (viii) Achondroplasia.

(2) The agency authorizes orthodontic treatment and orthodontic-related services when the following criteria are met:

(a) Severe malocclusions with a Washington Modified Handicapping Labiolingual Deviation (HLD) Index Score of twenty-five or higher as determined by the agency;

(b) The client has established caries control; and

(c) The client has established plaque control.

(3) The agency covers orthodontic treatment for dental malocclusions other than those listed in subsections (1) and (2) of this section on a case-by-case basis when the agency determines medical necessity based on documentation submitted by the provider.

(4) The agency does not cover the following orthodontic treatment or orthodontic-related services:

(a) Orthodontic treatment for cosmetic purposes;

(b) Orthodontic treatment that is not medically necessary;

(c) Orthodontic treatment provided out-of-state, except as stated in WAC 182-501-0180 (see also WAC 182-501-0175 for medical care provided in bordering cities); ((~~or~~))

(d) Orthodontic treatment and orthodontic-related services that do not meet the requirements of this section or other applicable WAC; or

(e) Removable appliances as part of limited or comprehensive orthodontic treatment.

(5) The agency covers the following orthodontic treatment and orthodontic-related services:

(a) ~~((Interceptive orthodontic treatment.~~

~~(b)))~~ Limited orthodontic treatment.

~~((e)))~~ (b) Comprehensive full orthodontic treatment on adolescent dentition.

~~((d)))~~ (c) A case study when done in conjunction with ~~((interceptive,))~~ limited~~((r))~~ or comprehensive orthodontic treatment only.

~~((e)))~~ (d) Other orthodontic treatment subject to review for medical necessity as determined by the agency.

(6) The agency covers the following orthodontic-related services:

(a) Clinical oral evaluations according to WAC 182-535-1080.

(b) Cephalometric films that are of diagnostic quality, dated, and labeled with the client's name.

(c) Orthodontic appliance removal as a stand-alone service only when:

(i) The client's appliance was placed by a different provider or dental clinic; and

(ii) The provider has not furnished any other orthodontic treatment or orthodontic-related services to the client.

(7) The treatment must meet industry standards and correct the medical issue. If treatment is discontinued prior to completion, or treatment objectives are not achieved, the provider must:

(a) Document in the client's record why treatment was discontinued or not completed, or why treatment goals were not achieved.

(b) Notify the agency by submitting the Orthodontic Discontinuation of Service form (HCA 13-0039).

(8) The agency evaluates a request for orthodontic treatment or orthodontic-related services:

(a) That are in excess of the limitations or restrictions listed in this section, according to WAC 182-501-0169; and

(b) That are listed as noncovered according to WAC 182-501-0160.

(9) The agency reviews requests for orthodontic treatment or orthodontic-related services for clients who are eligible for services under the EPSDT program according to the provisions of WAC 182-534-0100.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-03-042, § 182-535A-0040, filed 1/8/20, effective 2/8/20; WSR 19-11-028, § 182-535A-0040, filed 5/7/19, effective 7/1/19; WSR 17-20-097, § 182-535A-0040, filed 10/3/17, effective 11/3/17; WSR 16-10-064, § 182-535A-0040, filed 5/2/16, effective 6/2/16. Statutory Authority: RCW 41.05.021 and 2013 2nd sp.s. c 4 § 213. WSR 14-08-032, § 182-535A-0040, filed 3/25/14, effective 4/30/14. WSR 11-14-075, recodified as § 182-535A-0040, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.04.050, 74.08.090. WSR 08-17-009, § 388-535A-0040, filed 8/7/08, effective 9/7/08. Statutory Authority: RCW 74.04.050, 74.08.090, 74.09.530, and 74.09.700. WSR 06-24-036, § 388-535A-0040, filed 11/30/06, effective 1/1/07. Statutory Authority: RCW 74.08.090, 74.09.520 and 74.09.035, 74.09.500. WSR 05-01-064, § 388-535A-0040, filed 12/8/04, effective 1/8/05. Statutory Authority: RCW 74.08.090, 74.09.035, 74.09.520, 74.09.500, 42 U.S.C. 1396d(a), C.F.R. 440.100 and 225. WSR 02-01-050, § 388-535A-0040, filed 12/11/01, effective 1/11/02.]

AMENDATORY SECTION (Amending WSR 20-03-042, filed 1/8/20, effective 2/8/20)

WAC 182-535A-0050 Orthodontic treatment and orthodontic-related services—Authorization and prior authorization. When the medicaid agency authorizes (~~(an interceptive orthodontic treatment,)~~) a limited orthodontic treatment, full orthodontic treatment, or orthodontic-related services for a client, including a client eligible for services under the EPSDT program, that authorization indicates only that the specific service is medically necessary; authorization is not a guarantee of payment. The client must be eligible for the covered service at the time the service is provided.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-03-042, § 182-535A-0050, filed 1/8/20, effective 2/8/20. Statutory Authority: RCW 41.05.021 and 2013 2nd sp.s. c 4 § 213. WSR 14-08-032, § 182-535A-0050, filed 3/25/14, effective 4/30/14. WSR 11-14-075, recodified as § 182-535A-0050, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.04.050, 74.08.090. WSR 08-17-009, § 388-535A-0050, filed 8/7/08, effective 9/7/08. Statutory Authority: RCW 74.08.090, 74.09.520 and 74.09.035, 74.09.500. WSR 05-01-064, § 388-535A-0050, filed 12/8/04, effective 1/8/05. Statutory Authority: RCW 74.08.090, 74.09.035, 74.09.520, 74.09.500, 42 U.S.C. 1396d(a), C.F.R. 440.100 and 225. WSR 02-01-050, § 388-535A-0050, filed 12/11/01, effective 1/11/02.]

AMENDATORY SECTION (Amending WSR 20-03-042, filed 1/8/20, effective 2/8/20)

WAC 182-535A-0060 Orthodontic treatment and orthodontic-related services—Payment. (1) The medicaid agency pays providers for furnishing covered orthodontic treatment and orthodontic-related services described in WAC 182-535A-0040 according to this section and other applicable WAC.

(2) A provider who furnishes covered orthodontic treatment and orthodontic-related services to an eligible client accepts the agency's fees as published in the agency's fee schedules according to WAC 182-502-0010.

(3) Providers must deliver services and procedures that are of acceptable quality to the agency.

(4) The agency may recoup payment, not limited to services:

(a) Determined to be below the standard of care; or

(b) Of an unacceptable product quality; or

(c) That are not rendered; or

(d) That do not address medical issue(s) as listed in the prior authorization request.

(5) (~~(Interceptive orthodontic treatment. The agency pays for interceptive orthodontic treatment on primary or transitional dentition in one payment that includes all professional fees, laboratory costs, and required follow-up.~~

~~(6))~~ **Limited orthodontic treatment.** The agency pays for limited orthodontic treatment on transitional or adolescent dentition as follows:

(a) The first three months of treatment starts on the date the initial appliance is placed and includes active treatment for the first three months. The provider must bill the agency with the date of service that the initial appliance is placed.

(b) The agency's initial payment includes:

- (i) The placement of orthodontic appliances;
- (ii) Appliance removal;
- (iii) The initial retainer fee; and
- (iv) The final records (photos, a panoramic X-ray, a cephalometric film, and final trimmed study models).

(c) Continuing follow-up treatment must be billed as periodic orthodontic treatment visits.

(i) Payments are allowed once every three months during treatment.

(ii) Payment for treatment provided in addition to the three periodic orthodontic treatment visits requires a limitation extension. See WAC 182-535A-0040(8).

(iii) If treatment is discontinued or treatment objectives are not achieved, providers must notify the agency. See WAC 182-535A-0040(7).

~~((7))~~ (6) **Comprehensive full orthodontic treatment.** The agency pays for comprehensive full orthodontic treatment on adolescent dentition as follows:

(a) The first three months of treatment starts the date the initial appliance is placed and includes active treatment for the first three months. The provider must bill the agency with the date of service that the initial appliance is placed.

(b) The agency's initial payment includes:

- (i) The placement of orthodontic appliances;
- (ii) Appliance removal;
- (iii) The initial retainer fee; and
- (iv) The final records (photos, a panoramic X-ray, a cephalometric film, and final trimmed study models).

(c) Continuing follow-up treatment must be billed as periodic orthodontic treatment visits.

(i) Payments are allowed once every three months during treatment with the eighth periodic orthodontic treatment visit covering the last six months of treatment.

(ii) Payment for treatment provided in addition to the eight periodic orthodontic treatment visits requires a limitation extension. See WAC 182-535A-0040(8).

(iii) If treatment is discontinued or treatment objectives are not achieved, providers must notify the agency. See WAC 182-535A-0040(7).

~~((8))~~ (7) **Case study.** The agency pays for a case study, which includes:

(a) Preparation of comprehensive diagnostic records (additional photos, study casts, cephalometric examination film and panoramic film);

(b) Formation of diagnosis and treatment plan from such records; and

(c) Formal case conference.

~~((9))~~ (8) Payment for orthodontic treatment and orthodontic-related services is based on the agency's published fee schedule.

~~((10))~~ (9) Orthodontic providers who are in agency-designated bordering cities must:

(a) Meet the licensure requirements of their state; and

(b) Meet the same criteria for payment as in-state providers, including the requirements to contract with the agency.

~~((11))~~ (10) If the client's eligibility for orthodontic treatment under WAC 182-535A-0020 ends before the conclusion of the orthodontic treatment, payment for any remaining treatment is the client's responsibility. The agency does not pay for these services.

~~((12))~~ (11) The agency does not pay for orthodontic treatment provided after the client's twenty-first birthday. Payment for treatment that continues after the client's twenty-first birthday is the client's responsibility.

~~((13))~~ (12) The client is responsible for payment of any orthodontic service or treatment received during any period of medicaid ineligibility, even if the treatment was started when the client was eligible.

~~((14))~~ (13) See WAC 182-502-0160 and 182-501-0200 for when a provider or a client is responsible to pay for a covered service.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-03-042, § 182-535A-0060, filed 1/8/20, effective 2/8/20; WSR 19-11-028, § 182-535A-0060, filed 5/7/19, effective 7/1/19; WSR 17-20-097, § 182-535A-0060, filed 10/3/17, effective 11/3/17; WSR 16-10-064, § 182-535A-0060, filed 5/2/16, effective 6/2/16. Statutory Authority: RCW 41.05.021 and 2013 2nd sp.s. c 4 § 213. WSR 14-08-032, § 182-535A-0060, filed 3/25/14, effective 4/30/14. WSR 11-14-075, recodified as § 182-535A-0060, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.04.050, 74.08.090. WSR 08-17-009, § 388-535A-0060, filed 8/7/08, effective 9/7/08. Statutory Authority: RCW 74.08.090, 74.09.520 and 74.09.035, 74.09.500. WSR 05-01-064, § 388-535A-0060, filed 12/8/04, effective 1/8/05. Statutory Authority: RCW 74.08.090, 74.09.035, 74.09.520, 74.09.500, 42 U.S.C. 1396d(a), C.F.R. 440.100 and 225. WSR 02-01-050, § 388-535A-0060, filed 12/11/01, effective 1/11/02.]

**WSR 21-14-053
WITHDRAWAL OF PROPOSED RULES
PARKS AND RECREATION
COMMISSION**

[Filed July 1, 2021, 2:18 p.m.]

The Washington state parks and recreation commission filed a CR-102, June 22, 2021. The proposal, WSR 21-12-109, relates to chapter 352-28 WAC, Protection and conservation of state park natural resources.

Due to extreme weather conditions, the hearing location needed to be changed. The agency is requesting that the above proposal be withdrawn. All interested parties have been notified about postponing this hearing date.

The agency will refile a proposal covering this chapter when a new, climate-controlled meeting location can be identified.

Valeria Veasley
Management Analyst

WSR 21-14-057
PROPOSED RULES
TRANSPORTATION COMMISSION
[Filed July 1, 2021, 4:32 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-07-125.

Title of Rule and Other Identifying Information: State ferries and toll bridges, WAC 468-300-010, 468-300-020, and 468-300-040.

To meet legislative budget requirements, the transportation commission is proposing adjustments to ferry fares in October 2021 and October 2022. Proposed revisions to WAC 468-300-010, 468-300-020, and 468-300-040 increase passenger fares and vehicle fares effective on October 1, 2021; and a second increase effective on October 1, 2022.

The commission also proposes a change to the occupancy requirement for vanpools from five to three to align with the updated definition of ride sharing; and a change to the school groups eligibility requirement under WAC 468-300-010.

Hearing Location(s): On August 10, 2021, at 10:00 a.m., virtual https://us02web.zoom.us/webinar/register/WN_-SAyhW7KTrCW8pvVCMASwA. In response to the coronavirus disease 2019 (COVID-19), the Washington state transportation commission (WTSC) will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. This is an online meeting that you can attend from any computer using internet access. Please register at https://us02web.zoom.us/webinar/register/WN_-SAyhW7KTrCW8pvVCMASwA. After registering, you will receive a confirmation email containing information about joining the webinar. Participants can use their telephone or computer mic and speakers (VoIP).

Date of Intended Adoption: Tuesday, August 10, 2021.

Submit Written Comments to: Reema Griffith, Executive Director, WSTC, P.O. Box 47307, Olympia, WA 98504, email Griffir@wstc.wa.gov, fax 360-705-6802, by July 30, 2021.

Assistance for Persons with Disabilities: Contact Bobbie Garver, phone 360-705-7070, fax 360-705-6802, TTY 711 connect to 360-705-7070, email transc@wstc.wa.gov, by July 30, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule is to: (i) Increase ferry fares; and (ii) change the occupancy requirement for vanpools from five to three to align with the updated definition of ride sharing.

The anticipated effects of this proposal: General ferry fares will increase; tracks the legislature's amendment of "Ride-sharing" definitions in RCW 46.74.010 from a minimum of five passengers, including the driver, to a minimum of three passengers, including the driver; and removes the eligibility requirement for school groups to be an institutionally sponsored activity.

Reasons Supporting Proposal: The proposed fare changes are to meet requirements in state law, including adjustments to ferry fares to meet the fare revenue target established in the two-year transportation budget.

Statutory Authority for Adoption: RCW 47.56.030 and 47.60.315.

Statute Being Implemented: RCW 47.56.030 and 47.60.315.

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

Name of Proponent: Washington state department of transportation, ferries division, governmental.

Name of Agency Personnel Responsible for Drafting: Aaron Halbert, WSTC, 2404 Chandler Court S.W., Suite 270, Olympia, WA 98501, 360-705-7118; Implementation and enforcement: Raymond G. Deardorf, Washington State Ferries (WSF), 2901 Third Avenue, Suite 500, Seattle, WA 98121, 206-719-6468.

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. WSF is required to generate farebox revenue from the proposed fare increase which will meet the biennial budget requirement for operating revenue. The 2021-2023 Washington state transportation current law budget requires \$377 million to be generated in operating revenue, which is approximately \$9.2 million more than what would be projected to be generated in the 2021-2023 biennium without a general fare increase.

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.

July 1, 2021
Reema Griffith
Executive Director

OTS-3162.3

AMENDATORY SECTION (Amending WSR 19-18-004, filed 8/22/19, effective 9/22/19)

WAC 468-300-010 Ferry passenger tolls.

EFFECTIVE 03:00 A.M. October 1, ((2019)) 2021

ROUTES	Full Fare ⁹	Senior/ Disabled, Youth ⁹	Multiride Media 20 Rides ^{1,9}	Monthly Pass ^{5,9}	Bicycle Surcharge ²
Via Auto Ferry					
*Fautleroy-Southworth	((6.75)) 7.20	((3.35)) 3.60	((54.50)) 58.60	((87.20)) 93.80	1.00
*Seattle-Bremerton					
*Seattle-Bainbridge Island					
*Edmonds-Kingston	((8.65)) 9.25	((4.30)) 4.60	((69.70)) 75.00	((441.55)) 120.00	1.00
Port Townsend-Coupeville	((3.50)) 3.85	((1.75)) 1.90	((57.00)) 63.60	((91.20)) 101.80	0.50
*Fautleroy-Vashon					
*Southworth-Vashon					
*Pt. Defiance-Tahlequah	((5.65)) 6.10	((2.80)) 3.05	((45.70)) 49.80	((73.15)) 79.70	1.00
*Mukilteo-Clinton	((5.20)) 5.65	((2.60)) 2.80	((42.10)) 46.20	((67.40)) 73.95	1.00
*Anacortes to Lopez, Shaw, Orcas or Friday Harbor	((14.00)) 14.85	((7.00)) 7.40	((91.90)) 98.30	N/A	2.00 ⁶
Between Lopez, Shaw, Orcas and Friday Harbor ⁴	N/C	N/C	N/C	N/A	N/C
Anacortes to Sidney and Sidney to all destinations	((20.65)) 21.80	((10.30)) 10.90	N/A	N/A	4.00 ⁷
From Lopez, Shaw, Orcas and Friday Harbor to Sidney	((12.90)) 13.70	((6.40)) 6.85	N/A	N/A	2.00 ⁸

ROUTES	Full Fare ⁹	Senior/ Disabled, Youth ⁹	Multiride Media 20 Rides ^{1,9}	Monthly Pass ^{5,9}	Bicycle Surcharge ²
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) ³	((25.55)) <u>26.90</u>	((12.55)) <u>13.20</u>	N/A	N/A	4.00 ⁷

All fares rounded to the ~~((next))~~ nearest multiple of \$0.05.

*These routes operate as a one-point toll collection system with round trip tolls.

¹MULTIRIDE MEDIA - Shall be valid only for 90 days from date of purchase after which time the tickets shall not be accepted for passage. Remaining value will not be eligible for refund or exchange. There shall be no commercial resale of this fare media. For mail order deliveries, WSF may add additional days to allow for delivery times.

²BICYCLE SURCHARGE - Is an addition to the appropriate passenger fare. Customers using multiride media and monthly passes are exempt from the bicycle surcharge. On all routes except Anacortes/San Juan Islands/Sidney, B.C., customers paying with the ePurse or the ORCA card are exempt from the bicycle surcharge. For the purposes of WSF fare determination, the bicycle fare category shall include both bicycles as defined by RCW 46.04.071 and electric-assisted bicycles as defined ~~((in))~~ by RCW 46.04.169. Bicycles towing a kayak or canoe are to be charged the motorcycle/driver (stowage) rate in WAC 468-300-020. This rate includes the fare for the walk on passenger with the bicycle, and the kayak or canoe being towed by the bicycle. This requirement shall not apply to interisland travel in the San Juan Islands. All other bicycles towing trailers are charged the applicable bicycle surcharge.

³ROUND TRIP - Round trip passage for international travel available for trips beginning or ending on one of the Islands served.

⁴INTER-ISLAND FARES - Passenger fares included in Anacortes tolls.

⁵PASSES - Passenger passes are available for all routes except Anacortes/San Juan Islands/Sidney, B.C. Passes are valid for the period printed on the pass and will be presented to Washington state ferries staff or scanned through an automated turnstile whenever a passenger fare is collected. This pass is based on 16 days of passenger travel with a 20% discount. A \$1.00 retail/shipping and handling fee will be added to the price of the pass. A combination ferry-transit pass may be available for a particular route when determined by Washington state ferries and a local public transit agency to be a viable fare instrument. The WSF portion of the fare is based on 16 days of passenger travel per month at a 20% discount. The monthly pass is valid for a maximum of 31 round trips per month, is nontransferable, is nonreproducible, and is intended for a single user. Monthly passes purchased through the regional SmartCard program are also nontransferable and intended for a single user, but allow for unlimited usage.

⁶BICYCLE SURCHARGE - This becomes \$4.00 during peak season (May 1 through September 30).

⁷BICYCLE SURCHARGE - This becomes \$6.00 during peak season (May 1 through September 30).

⁸BICYCLE SURCHARGE - This becomes \$3.00 during peak season (May 1 through September 30).

⁹CAPITAL SURCHARGE - Included is a ~~((~~\$0.25~~))~~ \$0.50 capital surcharge on each single passenger fare collected. On all multiride cards except for Port Townsend/Coupeville, ~~((there is))~~ the included ~~((~~\$~~))~~ capital surcharge ~~((of ~~\$2.50~~))~~ is \$5.00. For Port Townsend/Coupeville, the included capital surcharge is ~~((~~\$5.00~~))~~ \$10.00 on multiride cards. On all monthly passes except Port Townsend/Coupeville, there is included a ~~((~~\$4.00~~))~~ \$8.00 capital surcharge. For Port Townsend/Coupeville, the included capital surcharge is ~~((~~\$8.00~~))~~ \$16.00 on monthly passes. For passenger half fare on Port Townsend/Coupeville the capital surcharge is \$0.40.

CHILDREN/YOUTH - Children under six years of age will be carried free when accompanied by parent or guardian. Children/youths six through eighteen years of age will be charged the youth fare, which will be 50% of full fare rounded down to the ~~((next))~~ nearest multiple of \$0.05.

- SENIOR CITIZENS - Passengers age 65 and over, with proper identification establishing proof of age, may travel at half-fare passenger tolls on any route where passenger fares are collected, which will be rounded down to the nearest multiple of \$0.05.
- PEOPLE WITH DISABILITIES - Any person who has a physical or mental impairment that substantially limits one or more major life activity, upon presentation of a WSF Disability Travel Permit, Regional Reduced Fare Permit, or other identification which establishes a disability may travel at half-fare passenger tolls on any route where passenger fares are collected, which will be rounded down to the nearest multiple of \$0.05. In addition, people with disabilities who require attendant care while traveling on the ferries, and are so certified by their physician, may obtain an endorsement on their WSF Disability Travel Permit and such endorsement shall allow the attendant to travel free as a passenger.
- BUS PASSENGERS - Passengers traveling on public transit buses pay the applicable fare. Passengers traveling in private or commercial buses will be charged the half-fare rate, which will be rounded down to the nearest multiple of \$0.05.
- MEDICARE CARD HOLDERS - Any person holding a medicare card duly issued to that person pursuant to Title II or Title XVIII of the Social Security Act may travel at half-fare passenger tolls, which will be rounded down to the nearest multiple of \$0.05 on any route upon presentation of a WSF Disability Travel Permit or a Regional Reduced Fare Permit at time of travel.
- IN-NEED ORGANIZATIONS - For qualified organizations serving in-need clients by providing tickets for transportation on WSF at no cost to clients, program would offer a monthly discount to approximate appropriate multiride media discount rates. Appointing bodies (those that appoint Ferry Advisory Committees) will nominate to the Washington State Transportation Commission those organizations that meet the criteria of the program. The Commission will review such nominations and certify those organizations that qualify. The following criteria will be used for nominating and certifying in-need organizations: Nongovernmental and not-for-profit organizations whose primary purpose is one or more of the following: Help clients with medical issues; provide clients with low-income social services; help clients suffering from domestic violence; provide clients with employment-seeking services; and/or help clients with Social Security. Travel will be initially charged based on full fare and billed monthly. The credits will be approximately based on the discount rates offered to multiride media users applicable on the date of travel.
- PROMOTIONAL TOLLS - A promotional rate may be established at the discretion of the WSF Assistant Secretary, Executive Director for a specific discount in order to enhance total revenue and effective only at designated times on designated routes. A promotional fare product may also be established to support tourism or other special events. The promotional fare or product may be bundled and sold as part of a multiparty promotional program.
- Special passenger fare rate(s) may be established for a pilot program in conjunction with the Central Puget Sound Regional Fare Integration project on ferry route(s) serving King, Pierce, Snohomish and Kitsap counties. The rate(s) may be established at the discretion of the WSF Assistant Secretary, Executive Director for a specific discount not to exceed fifty percent of full fare.
- SCHOOL GROUPS - Passengers traveling in authorized school groups, including home-school groups, will be charged a flat rate of (~~(\$1)~~) \$5.00 per walk-on group or per vehicle of students and/or advisors and staff. All school groups require a letter of authorization and prior notification. In the case of home-school groups, in addition to prior notification, a copy of the filed Declaration of Intent (as outlined in RCW 28A.200.010) shall be submitted to the tollbooth at the time of travel. Notification shall be made no less than 72 hours before the scheduled departure and will include the expected number of school-age children and adults that will be traveling to ensure WSF can satisfy U.S. Coast Guard lifesaving equipment requirements. Failure to provide adequate notification may result in delayed travel. Vehicles and drivers will be charged the fare applicable to vehicle size. The special school rate is (~~(\$2)~~) \$10.00 on routes where one-point toll systems are in effect.

BUNDLED SINGLE FARE BOOKS - WSF may bundle single fare types into multiride media as a customer convenience. Remaining value will not be eligible for refund or exchange. For mail order deliveries, WSF may add additional days for delivery times.

FIRE DEPARTMENT AND FIRE DISTRICT FARE CONSIDERATION - At the discretion of the WSF Assistant Secretary, WSF may authorize no-fare or discounted fare passage on scheduled and/or special ferry sailings for fire departments and fire districts that provide contracted fire protection services for WSF ferry terminals and/or other WSF facilities within their jurisdiction. Such passage shall be considered full and complete consideration for such fire protection services, in lieu of annual payments for such services, to be so noted in such fire protection agreements. The scope of such authorization includes designated fire department and fire district vehicles (see below), drivers and passengers en route to and from an emergency call, on ferry routes with a WSF terminal and/or other WSF facility served by a fire department or fire district pursuant to a WSF fire protection service agreement. Authorized vehicles may include public fire department and fire district medical aid units, fire trucks, incident command and/or other vehicles dispatched to and returning from an emergency call.

GROUP OR VOLUME SALES - In order to increase total revenues, WSF may develop full fare or discounted customer packages or bundle single fare types into multiride media or offer passes for high volume or group users. In pricing these packages, WSF will have discretion to set appropriate volume discounts based on a case-by-case basis.

SPECIAL EVENTS - In order to increase total revenues, WSF may develop, create or participate in special events that may include, but not be limited to, contributing or packaging discounted fares in exchange for the opportunity to participate in the income generated by the event.

LOW-INCOME FARE PILOT - Starting no earlier than January 1, 2020, special passenger fare rate(s) may be established for a pilot program offering a low-income fare on any ferry route for riders made eligible through an existing transit agency's low-income fare program. Enactment of this program is dependent upon legislative funding for the pilot project. If funded, Washington State Ferries' Assistant Secretary shall submit a proposal to carry out this pilot program and the Washington State Transportation Commission must approve both the program and the fare schedule before it is implemented. Once implemented, WSF shall provide, at a minimum, updates to the Commission every six months on the pilot. The pilot will conclude no longer than three years from its implementation.

GOOD TO GO! PILOT - Special ferry toll rate(s) may be established for a pilot program of Good to Go! or similar fare collection infrastructure, technology, or ORCA replacement system on any ferry route. Washington State Ferries Assistant Secretary shall design the program and submit a proposed program and fare schedule to the Washington State Transportation Commission. The Commission shall review, modify and approve the proposed fare schedule and fare policies before it is implemented. Once implemented, WSF shall provide, at a minimum, updates to the Commission every six months on the pilot. The pilot will conclude no longer than three years from its implementation.

EFFECTIVE 03:00 A.M. ((May 1, 2020)) October 1, 2022

ROUTES	Full Fare ⁸	Senior/ Disabled, Youth ⁸	Multiride Media 20 Rides ^{1, 8}	Monthly Pass ^{5, 8}	Bicycle Surcharge ²
Via Auto Ferry *Fautleroy-Southworth	((7.10)) 7.40	((3.55)) 3.70	((57.80)) 60.20	((92.50)) 96.35	1.00
*Seattle-Bremerton *Seattle-Bainbridge Island *Edmonds-Kingston	((9.05)) 9.45	((4.50)) 4.70	((73.40)) 76.60	((117.45)) 122.60	1.00
Port Townsend-Coupeville	((3.80)) 3.95	((1.80)) 1.95	((62.80)) 65.20	((100.50)) 104.35	0.50
*Fautleroy-Vashon *Southworth-Vashon *Pt. Defiance-Tahlequah	((5.95)) 6.25	((2.95)) 3.10	((48.60)) 51.00	((77.80)) 81.60	1.00
*Mukilteo-Clinton	((5.55)) 5.80	((2.75)) 2.90	((45.40)) 47.40	((72.65)) 75.85	1.00

ROUTES	Full Fare ⁸	Senior/ Disabled, Youth ⁸	Multiride Media 20 Rides ^{1, 8}	Monthly Pass ^{5, 8}	Bicycle Surcharge ²
*Anacortes to Lopez, Shaw, Orcas or Friday Harbor	((14.50)) <u>15.20</u>	((7.25)) <u>7.60</u>	((96.00)) <u>100.55</u>	N/A	2.00 ⁶
Between Lopez, Shaw, Orcas and Friday Harbor ⁴	N/C	N/C	N/C	N/A	N/C
Anacortes to Sidney and Sidney to all destinations	((21.30)) <u>22.35</u>	((10.65)) <u>11.15</u>	N/A	N/A	4.00 ⁷
From Lopez, Shaw, Orcas and Friday Harbor to Sidney	((13.40)) <u>14.05</u>	((6.65)) <u>7.00</u>	N/A	N/A	2.00 ⁸
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) ³	((26.30)) <u>27.60</u>	((12.80)) <u>13.50</u>	N/A	N/A	4.00 ⁷

All fares rounded to the ~~((next))~~ nearest multiple of \$0.05.

*These routes operate as a one-point toll collection system with round trip tolls.

¹MULTIRIDE MEDIA - Shall be valid only for 90 days from date of purchase after which time the tickets shall not be accepted for passage. Remaining value will not be eligible for refund or exchange. There shall be no commercial resale of this fare media. For mail order deliveries, WSF may add additional days to allow for delivery times.

²BICYCLE SURCHARGE - Is an addition to the appropriate passenger fare. Customers using multiride media and monthly passes are exempt from the bicycle surcharge. On all routes except Anacortes/San Juan Islands/Sidney, B.C., customers paying with the ePurse ~~((or))~~ or the ORCA card are exempt from the bicycle surcharge. For the purposes of WSF fares determination, the bicycle fare category shall include both bicycles as defined by RCW 46.04.071 and electric-assisted bicycles as defined by RCW 46.04.169. Bicycles towing a kayak or canoe are to be charged the motorcycle/driver (stowage) rate in WAC 468-300-020. This rate includes the fare for the walk on passenger with the bicycle, and the kayak or canoe being towed by the bicycle. This requirement shall not apply to interisland travel in the San Juan Islands. All other bicycles towing trailers are charged the applicable bicycle surcharge.

³ROUND TRIP - Round trip passage for international travel available for trips beginning or ending on one of the Islands served.

⁴INTER-ISLAND FARES - Passenger fares included in Anacortes tolls.

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⁶BICYCLE SURCHARGE - This becomes \$4.00 during peak season (May 1 through September 30).

⁷BICYCLE SURCHARGE - This becomes \$6.00 during peak season (May 1 through September 30).

⁸BICYCLE SURCHARGE - This becomes \$3.00 during peak season (May 1 through September 30).

⁹CAPITAL SURCHARGE ~~((*))~~ - Included is a ~~((30.25))~~ \$0.50 capital surcharge on each single passenger fare collected. On all multiride cards except for Port Townsend/Coupeville, ~~((there is an))~~ the included capital surcharge ~~((of \$2.50))~~ is \$5.00. For Port Townsend/Coupeville, the included capital surcharge is ~~((5.00))~~ \$10.00 on multiride cards. On all monthly passes except Port Townsend/Coupeville, there is an included ~~((34.00))~~ \$8.00 capital sur-

charge. For Port Townsend/Coupeville, the included capital surcharge is ~~((~~\$8.00~~))~~ \$16.00 on monthly passes. For passenger half fare on Port Townsend/Coupeville the capital surcharge is \$0.40.

~~((Beginning May 1, 2020, an additional \$0.25 capital surcharge for new vessel construction is included on each single passenger fare collected. On all multiride cards except for Port Townsend/Coupeville, there is an included new vessel capital surcharge of \$2.50. For Port Townsend/Coupeville, the included new vessel capital surcharge is \$5.00 on multiride cards. On all monthly passes except Port Townsend/Coupeville, there is included a \$4.00 new vessel capital surcharge. For Port Townsend/Coupeville, the included new vessel capital surcharge is \$8.00 on monthly passes. For passenger half fare on Port Townsend/Coupeville the new vessel capital surcharge is \$0.15.))~~

CHILDREN/YOUTH - Children under six years of age will be carried free when accompanied by parent or guardian. Children/youths six through eighteen years of age will be charged the youth fare, which will be 50% of full fare rounded down to the ~~((next))~~ nearest multiple of \$0.05.

SENIOR CITIZENS - Passengers age 65 and over, with proper identification establishing proof of age, may travel at half-fare passenger tolls on any route where passenger fares are collected, which will be rounded down to the nearest multiple of \$0.05.

PEOPLE WITH DISABILITIES - Any person who has a physical or mental impairment that substantially limits one or more major life activity, upon presentation of a WSF Disability Travel Permit, Regional Reduced Fare Permit, or other identification which establishes a disability may travel at half-fare passenger tolls on any route where passenger fares are collected, which will be rounded down to the nearest multiple of \$0.05. In addition, people with disabilities who require attendant care while traveling on the ferries, and are so certified by their physician, may obtain an endorsement on their WSF Disability Travel Permit and such endorsement shall allow the attendant to travel free as a passenger.

BUS PASSENGERS - Passengers traveling on public transit buses pay the applicable fare. Passengers traveling in private or commercial buses will be charged the half-fare rate, which will be rounded down to the nearest multiple of \$0.05.

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IN-NEED ORGANIZATIONS - For qualified organizations serving in-need clients by providing tickets for transportation on WSF at no cost to clients, program would offer a monthly discount to approximate appropriate multiride media discount rates. Appointing bodies (those that appoint Ferry Advisory Committees) will nominate to the Washington State Transportation Commission those organizations that meet the criteria of the program. The Commission will review such nominations and certify those organizations that qualify. The following criteria will be used for nominating and certifying in-need organizations: Nongovernmental and not-for-profit organizations whose primary purpose is one or more of the following: Help clients with medical issues; provide clients with low-income social services; help clients suffering from domestic violence; provide clients with employment-seeking services; and/or help clients with Social Security. Travel will be initially charged based on full fare and billed monthly. The credits will be approximately based on the discount rates offered to multiride media users applicable on the date of travel.

PROMOTIONAL TOLLS - A promotional rate may be established at the discretion of the WSF Assistant Secretary, Executive Director for a specific discount in order to enhance total revenue and effective only at designated times on designated routes. A promotional fare product may also be established to support tourism or other special events. The promotional fare or product may be bundled and sold as part of a multiparty promotional program.

Special passenger fare rate(s) may be established for a pilot program in conjunction with the Central Puget Sound Regional Fare Integration project on ferry route(s) serving King, Pierce, Snohomish and Kitsap counties. The rate(s) may be established at the discretion of the WSF Assistant Secretary, Executive Director for a specific discount not to exceed fifty percent of full fare.

SCHOOL GROUPS - Passengers traveling in authorized school groups, including home-school groups, ~~((for institution-sponsored activities))~~ will be charged a flat rate of \$5 per walk-on group or per vehicle of students and/or advisors and staff. All school groups require a letter of authorization and prior notification. In the case of home-school groups, in addition to prior notification, a copy of the filed Declaration of Intent (as outlined in RCW 28A.200.010) shall be submitted to the tollbooth at the time of travel. Notification shall be made no less than 72 hours before the scheduled departure and will include the expected number of school-age children and adults that will be traveling to ensure WSF can satisfy U.S. Coast Guard lifesaving equipment requirements. Failure to provide adequate notification may result in delayed travel. Vehicles and drivers will be charged the fare applicable to vehicle size. The special school rate is \$10 on routes where one-point toll systems are in effect.

BUNDLED SINGLE FARE BOOKS - WSF may bundle single fare types into multiride media as a customer convenience. Remaining value will not be eligible for refund or exchange. For mail order deliveries, WSF may add additional days for delivery times.

FIRE DEPARTMENT AND FIRE DISTRICT FARE CONSIDERATION - At the discretion of the WSF Assistant Secretary, WSF may authorize no-fare or discounted fare passage on scheduled and/or special ferry sailings for fire departments and fire districts that provide contracted fire protection services for WSF ferry terminals and/or other WSF facilities within their jurisdiction. Such passage shall be considered full and complete consideration for such fire protection services, in lieu of annual payments for such services, to be so noted in such fire protection agreements. The scope of such authorization includes designated fire department and fire district vehicles (see below), drivers and passengers en route to and from an emergency call, on ferry routes with a WSF terminal and/or other WSF facility served by a fire department or fire district pursuant to a WSF fire protection service agreement. Authorized vehicles may include public fire department and fire district medical aid units, fire trucks, incident command and/or other vehicles dispatched to and returning from an emergency call.

GROUP OR VOLUME SALES - In order to increase total revenues, WSF may develop full fare or discounted customer packages or bundle single fare types into multiride media or offer passes for high volume or group users. In pricing these packages, WSF will have discretion to set appropriate volume discounts based on a case-by-case basis.

SPECIAL EVENTS - In order to increase total revenues, WSF may develop, create or participate in special events that may include, but not be limited to, contributing or packaging discounted fares in exchange for the opportunity to participate in the income generated by the event.

LOW-INCOME FARE PILOT - Starting no earlier than January 1, 2020, special passenger fare rate(s) may be established for a pilot program offering a low-income fare on any ferry route for riders made eligible through an existing transit agency's low-income fare program. Enactment of this program is dependent upon legislative funding for the pilot project. If funded, Washington State Ferries' Assistant Secretary shall submit a proposal to carry out this pilot program and the Washington State Transportation Commission must approve both the program and the fare schedule before it is implemented. Once implemented, WSF shall provide, at a minimum, updates to the Commission every six months on the pilot. The pilot will conclude no longer than three years from its implementation.

GOOD TO GO! PILOT - Special ferry toll rate(s) may be established for a pilot program of Good to Go! or similar fare collection infrastructure, technology, or ORCA replacement system on any ferry route. Washington State Ferries Assistant Secretary shall design the program and

submit a proposed program and fare schedule to the Washington State Transportation Commission. The Commission shall review, modify and approve the proposed fare schedule and fare policies before it is implemented. Once implemented, WSF shall provide, at a minimum, updates to the Commission every six months on the pilot. The pilot will conclude no longer than three years from its implementation.

[Statutory Authority: RCW 47.56.030, 47.60.315, and 2019 c 431. WSR 19-18-004, § 468-300-010, filed 8/22/19, effective 9/22/19. Statutory Authority: RCW 47.56.030 and 47.60.315. WSR 17-18-018, § 468-300-010, filed 8/25/17, effective 9/25/17; WSR 15-18-002, § 468-300-010, filed 8/19/15, effective 10/1/15; WSR 13-18-019, § 468-300-010, filed 8/26/13, effective 9/26/13; WSR 11-18-034, § 468-300-010, filed 8/30/11, effective 10/1/11 and 5/1/12. Statutory Authority: RCW 47.56.030, 47.60.326. WSR 10-24-028, § 468-300-010, filed 11/19/10, effective 1/1/11; WSR 09-19-044, § 468-300-010, filed 9/10/09, effective 10/11/09; WSR 08-08-070, § 468-300-010, filed 3/31/08, effective 5/1/08; WSR 07-08-064, § 468-300-010, filed 3/29/07, effective 5/1/07; WSR 06-08-036, § 468-300-010, filed 3/29/06, effective 5/1/06; WSR 05-10-041, § 468-300-010, filed 4/28/05, effective 6/1/05; WSR 03-08-072, § 468-300-010, filed 4/1/03, effective 5/2/03; WSR 02-09-010, § 468-300-010, filed 4/5/02, effective 5/6/02; WSR 01-11-010, § 468-300-010, filed 5/3/01, effective 6/3/01; WSR 00-24-050, § 468-300-010, filed 11/30/00, effective 12/31/00; WSR 99-08-066, § 468-300-010, filed 4/5/99, effective 5/6/99; WSR 98-08-051, § 468-300-010, filed 3/27/98, effective 4/27/98; WSR 96-05-046 and 96-05-047 (Orders 79 and 80), § 468-300-010, filed 2/16/96, effective 3/19/96; WSR 94-18-014 (Order 77), § 468-300-010, filed 8/25/94, effective 9/25/94; WSR 94-07-104 (Order 75), § 468-300-010, filed 3/18/94, effective 4/18/94; WSR 93-18-005, § 468-300-010, filed 8/19/93, effective 9/19/93; WSR 92-18-005, § 468-300-010, filed 8/20/92, effective 9/20/92; WSR 91-18-022 (Order 72), § 468-300-010, filed 8/27/91, effective 9/27/91; WSR 89-14-052 (Order 67, Resolution No. 354), § 468-300-010, filed 6/30/89; WSR 89-04-014 (Order 66, Resolution No. 343), § 468-300-010, filed 1/23/89, effective 7/1/89; WSR 87-12-005 (Order 61, Resolution No. 298), § 468-300-010, filed 5/21/87. Statutory Authority: RCW 47.60.290, 47.60.300 and 47.60.326. WSR 86-24-009 (Order 59, Resolution No. 287), § 468-300-010, filed 11/21/86. Statutory Authority: RCW 47.60.326. WSR 86-06-010 (Order 54, Resolution No. 263), § 468-300-010, filed 2/21/86; WSR 85-11-007 (Order 44, Resolution No. 241), § 468-300-010, filed 5/3/85; WSR 84-11-052 (Order 42, Resolution Nos. 221 and 222), § 468-300-010, filed 5/17/84; WSR 84-10-002 (Order 41, Resolution No. 218), § 468-300-010, filed 4/20/84; WSR 83-07-062 (Order 33, Resolution No. 175), § 468-300-010, filed 3/22/83; WSR 82-07-063 (Order 28, Resolution No. 143), § 468-300-010, filed 3/22/82. Statutory Authority: RCW 47.60.325 and 47.56.030. WSR 81-15-099 (Order 23, Resolution No. 117), § 468-300-010, filed 7/22/81. Statutory Authority: RCW 47.60.325. WSR 81-08-044 (Order 17, Resolution No. 104), § 468-300-010, filed 3/31/81; WSR 80-16-012 (Order 16, Resolution No. 90), § 468-300-010, filed 10/27/80; WSR 80-04-104 (Order 15, Resolution No. 72), § 468-300-010, filed 4/1/80; WSR 79-09-136 (Order 11, Resolution No. 57), § 468-300-010, filed 9/5/79; WSR 79-04-047 (Order 6, Resolution No. 44), § 468-300-010, filed 3/27/79; WSR 78-06-040 (Order 2, Resolution No. 21), § 468-300-010, filed 5/19/78.]

AMENDATORY SECTION (Amending WSR 19-18-004, filed 8/22/19, effective 9/22/19)

WAC 468-300-020 Vehicle under 22', motorcycle, and stowage ferry tolls.

EFFECTIVE 03:00 A.M. October 1, ((2019)) 2021

ROUTES	Vehicle Under 14' Incl. Driver One Way ⁷	Vehicle Under 14' w/Sr Citizen or Disabled Driver ^{4, 7}	Vehicle under 14' Multiride Media 20 Rides ^{2, 7}
Fauntleroy-Southworth Port Townsend/Coupeville	((9.60)) <u>10.30</u>	((7.90)) <u>8.50</u>	((154.60)) <u>166.80</u>
Seattle-Bainbridge Island Seattle-Bremerton Edmonds-Kingston	((12.35)) <u>13.20</u>	((10.15)) <u>10.85</u>	((198.60)) <u>213.20</u>
*Fauntleroy-Vashon *Southworth-Vashon *Pt. Defiance-Tahlequah	((15.75)) <u>16.75</u>	((12.90)) <u>13.70</u>	((126.50)) <u>135.00</u>
Mukilteo-Clinton	((7.40)) <u>8.00</u>	((6.10)) <u>6.55</u>	((119.40)) <u>130.00</u>
10 Rides - 5 Round Trips			
*Anacortes to Lopez	((28.60)) <u>30.25</u>	((21.60)) <u>22.80</u>	((107.55)) <u>114.05</u>
*Shaw, Orcas	((34.35)) <u>36.30</u>	((27.35)) <u>28.85</u>	((129.15)) <u>136.75</u>
*Friday Harbor	((40.70)) <u>43.00</u>	((33.70)) <u>35.55</u>	((152.95)) <u>161.90</u>
Between Lopez, Shaw, Orcas and Friday Harbor ³	((16.95)) <u>18.05</u>	((16.95)) <u>18.05</u>	((68.05)) <u>72.70</u>
<i>International Travel</i>			
Anacortes to Sidney and Sidney to all destinations	((46.75)) <u>49.35</u>	((36.40)) <u>38.45</u>	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney	((29.05)) <u>30.75</u>	((22.55)) <u>23.90</u>	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) ⁵	((57.85)) <u>61.00</u>	((44.85)) <u>47.30</u>	N/A

ROUTES	Vehicle 14' to Under 22' Incl. Driver One Way ⁷	Vehicle 14' to Under 22' w/Sr Citizen or Disabled Driver ^{4, 7}	Vehicle 14' to Under 22' Multiride Media 20 Rides ^{2, 7}
Fauntleroy-Southworth Port Townsend/Coupeville	((12.20)) <u>13.05</u>	((10.50)) <u>11.25</u>	((196.20)) <u>210.80</u>
Seattle-Bainbridge Island Seattle-Bremerton Edmonds-Kingston	((15.75)) <u>16.80</u>	((13.55)) <u>14.45</u>	((253.00)) <u>270.80</u>
*Fauntleroy-Vashon *Southworth-Vashon *Pt. Defiance-Tahlequah	((20.10)) <u>21.35</u>	((17.25)) <u>18.30</u>	((161.30)) <u>171.80</u>
Mukilteo-Clinton	((9.40)) <u>10.10</u>	((8.10)) <u>8.65</u>	((151.40)) <u>163.60</u>
10 Rides - 5 Round Trips			
*Anacortes to Lopez	((35.90)) <u>38.00</u>	((28.90)) <u>30.55</u>	((134.95)) <u>143.15</u>
*Shaw, Orcas	((43.05)) <u>45.50</u>	((36.05)) <u>38.05</u>	((161.75)) <u>171.25</u>
*Friday Harbor	((51.10)) <u>53.95</u>	((44.10)) <u>46.50</u>	((191.95)) <u>202.95</u>
Between Lopez, Shaw, Orcas and Friday Harbor ³	((24.10)) <u>25.60</u>	((24.10)) <u>25.60</u>	((96.65)) <u>102.90</u>
<i>International Travel</i>			
Anacortes to Sidney and Sidney to all destinations	((57.95)) <u>61.15</u>	((47.60)) <u>50.25</u>	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney	((36.00)) <u>38.05</u>	((29.50)) <u>31.20</u>	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) ⁵	((71.75)) <u>75.60</u>	((58.75)) <u>61.90</u>	N/A

EFFECTIVE 03:00 A.M. October 1, ((2019)) 2021

ROUTES	Motorcycle ⁵ Incl. Driver Stowage ^{1, 7} One Way	Motorcycle w/Sr Citizen or Disabled Driver Stowage ^{1, 7} One Way	Motorcycle Frequent User Commuter 20 Rides ^{2, 7}
Fauntleroy-Southworth Port Townsend/Coupeville	((5.25)) <u>5.70</u>	((3.55)) <u>3.90</u>	((85.00)) <u>93.20</u>
Seattle-Bainbridge Island Seattle-Bremerton Edmonds-Kingston	((6.75)) <u>7.30</u>	((4.55)) <u>4.95</u>	((109.00)) <u>118.80</u>
*Fauntleroy-Vashon *Southworth-Vashon *Pt. Defiance-Tahlequah	((8.55)) <u>9.15</u>	((5.70)) <u>6.10</u>	((68.90)) <u>74.20</u>
Mukilteo-Clinton	((4.10)) <u>4.55</u>	((2.80)) <u>3.10</u>	((66.60)) <u>74.80</u>
*Anacortes to Lopez	((18.40)) <u>19.50</u>	((11.40)) <u>12.05</u>	((138.65)) <u>147.50</u>

ROUTES	Motorcycle ⁵ Incl. Driver Stowage ^{1, 7} One Way	Motorcycle w/Sr Citizen or Disabled Driver Stowage ^{1, 7} One Way	Motorcycle Frequent User Commuter 20 Rides ^{2, 7}
*Shaw, Orcas	((19.85)) <u>21.00</u>	((12.85)) <u>13.55</u>	((149.50)) <u>158.75</u>
*Friday Harbor	((21.45)) <u>22.70</u>	((14.45)) <u>15.25</u>	((161.50)) <u>171.50</u>
Between Lopez, Shaw, Orcas and Friday Harbor ³	((6.80)) <u>7.35</u>	((6.80)) <u>7.35</u>	N/A
Anacortes to Sidney and Sidney to all destinations	((28.15)) <u>29.70</u>	((17.80)) <u>18.80</u>	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney	((17.50)) <u>18.55</u>	((11.00)) <u>11.70</u>	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) ⁵	((34.75)) <u>36.60</u>	((21.75)) <u>22.90</u>	N/A

All fares rounded to the ~~((next))~~ nearest multiple of \$0.05.

*These routes operate as a one-point toll collection system with round trip tolls.

¹SIZE - Vehicles under 14' in length shall pay the vehicle under 14' toll. Customers may be required to provide documentation, digitally or on paper, at the tollbooth to prove vehicle length. Documentation may include an owner's manual, materials from an auto research web site, or similar reference material that clearly lists the relevant vehicle specifications. ~~((11))~~ Vehicles from 14' to under 22' in length shall pay the 14' to under 22' toll. Motorcycles towing a trailer and vehicles licensed as motorcycles with three or more wheels that are 8'0" or longer shall pay the appropriate length-based vehicle fare. Motorcycles include both mopeds and motorcycles as defined by RCW 46.04.304 and 46.04.330. Both are considered vehicles for the purposes of vehicle registration, license plate display, and WSF fare determination.

²MULTIRIDE MEDIA - Shall be valid only for 90 days from date of purchase after which time the media shall not be accepted for passage. Remaining value will not be eligible for refund or exchange. There shall be no commercial resale of this fare media. For mail order deliveries, WSF may add additional days to allow for delivery time. The vehicle/driver multiride card may be used for passage for an attendant driver plus one disabled ~~((driver))~~ passenger.

³INTER-ISLAND FARES - Tolls collected westbound only. Vehicles traveling between islands may request a single transfer ticket good for one transfer at an intermediate island. The transfer may only be obtained when purchasing the appropriate vehicle fare for inter-island travel (westbound at Lopez, Shaw, or Orcas) and is free of charge. Transfers shall be valid until the end of the service day on the day of purchase.

⁴SENIOR CITIZENS - Passengers age 65 and over, with proper identification establishing proof of age, may travel at half-fare passenger tolls on any route where passenger fares are collected, which will be rounded down to the nearest multiple of \$0.05. The half-fare discount applies to the driver portion of the vehicle-driver fare. The vehicle portion of the vehicle-driver fare is never further discounted.

PEOPLE WITH DISABILITIES - Any person who has a physical or mental impairment that substantially limits one or more major life activity, upon presentation of a WSF Disability Travel Permit, Reduced Fare Permit, or other identification which establishes a disability, may travel at half-fare passenger tolls on any route where passenger fares are collected, which will be rounded down to the nearest multiple of \$0.05. The half-fare discount applies to driver portion of the vehicle-driver fare. The vehicle portion of the vehicle-driver fare is never discounted. In addition, people with disabilities who require attendant care while traveling on the ferries, and are so certified by their physician, may obtain an endorsement on their WSF Disability Travel Permit and such endorsement shall allow the attendant to travel free.

⁵ROUND TRIP - Round trip passage for international travel available for trips beginning or ending on one of the islands served.

⁶VEHICLE RESERVATION DEPOSIT - Nonrefundable deposits for advance vehicle reservations may be established at a level of from 25 to 100 percent of the applicable 14' to under 22' standard vehicle one way fare. This is a deposit toward the fare and not an additional fee and applies only to those routes where the legislature has approved the use of a reservation

system. Where it is operationally necessary (routes where vehicle fares are collected in only one direction or to increase operational efficiency at the terminal) a reservation no-show fee may be used in lieu of a deposit. The no-show fee will be limited to 25 to 100 percent of the applicable one way 14' to under 22' standard vehicle fare and will be charged if the customer does not travel within the same service day as their reserved sailing, provided there are no service disruptions.

⁷CAPITAL SURCHARGE - Included is a (~~(\$0.25)~~) \$0.50 capital surcharge on each single vehicle/driver fare collected. On all multiride cards except for routes serving Vashon Island and the San Juan Islands, there is an included capital surcharge of (~~(\$5.00)~~) \$10.00. For Vashon Island routes, the included capital surcharge is (~~(\$2.50)~~) \$5.00 on multiride cards. For motorcycles in the San Juan Islands, the included capital surcharge on multiride cards is (~~(\$2.50)~~) \$5.00. For vehicles under 22' in the San Juan Islands, the included capital surcharge on multiride cards is (~~(\$1.25)~~) \$2.50.

RIDE SHARE VEHICLES - A commuter ride share vehicle which carries (~~(five)~~) three or more persons on a regular and expense-sharing basis for the purpose of travel to and from work or school and which is certified as such by a local organization approved by the Washington state ferry system, may purchase for a \$20 fee, a permit valid for one year valid only during the hours shown on the permit. The \$20.00 fee shall include the driver. Remaining passengers shall pay the applicable passenger fare. Except that the minimum total paid for all passengers in the van shall not be less than (~~(four)~~) two times the applicable passenger fare. Carpools of three or more registered in WSF's preferential loading program must also pay a \$20.00 yearly permit fee.

STOWAGE - Stowage carry-on items including kayaks, canoes and other items of comparable size which are typically stowed on the vehicle deck of the vessel shall be charged at the motorcycle rate. This rate includes the walk-on passenger carrying on the item to be stowed.

PEAK SEASON SURCHARGE - A 25% surcharge shall be applied to vehicles from May 1 through September 30 except those using multiride media. A 35% surcharge shall be applied on vehicle fares from Anacortes to Lopez, Shaw, Orcas and Friday Harbor, except those using multiride media. The resulting fare is rounded to the nearest \$0.05 if required.

FIRE DEPARTMENT AND FIRE DISTRICT FARE CONSIDERATION - At the discretion of the WSF Assistant Secretary, WSF may authorize no-fare or discounted fare passage on scheduled and/or special ferry sailings for fire departments and fire districts that provide contracted fire protection services for WSF ferry terminals and/or other WSF facilities within their jurisdiction. Such passage shall be considered full and complete consideration for such fire protection services, in lieu of annual payments for such services, to be so noted in such fire protection agreements. The scope of such authorization includes designated fire department and fire district vehicles (see below), drivers and passengers en route to and from an emergency call, on ferry routes with a WSF terminal and/or other WSF facility served by a fire department or fire district pursuant to a WSF fire protection service agreement. Authorized vehicles may include public fire department and fire district medical aid units, fire trucks, incident command and/or other vehicles dispatched to and returning from an emergency call.

IN-NEED ORGANIZATIONS - For qualified organizations serving in-need clients by providing tickets for transportation on WSF at no cost to clients, program would offer a monthly discount to approximate appropriate multiride media discount rates (20% off base season rates, except for Anacortes to San Juan Islands where it is 35% off base season end of week rates). Appointing bodies (those that appoint Ferry Advisory Committees) will nominate to the Washington State Transportation Commission those organizations that meet the criteria of the program. The Commission will review such nominations and certify those organizations that qualify. The following criteria will be used for nominating and certifying in-need organizations: Nongovernmental and not-for-profit organizations whose primary purpose is one or more of the following: Help clients with medical issues; provide clients with low-income social services; help clients suffering from domestic violence; provide clients with employment-seeking services; and/or help clients with Social Security. Travel will be ini-

tially charged based on full fare and billed monthly. The credits will be approximate based on the discount rates offered to multiride media users applicable on the date of travel.

PENALTY CHARGES - Owner of vehicle without driver will be assessed a \$100.00 penalty charge.

PROMOTIONAL TOLLS - A promotional rate may be established at the discretion of the WSF Assistant Secretary, Executive Director for a specified discount in order to enhance total revenue and effective only at designated times on designated routes. A promotional fare product may also be established to support tourism or other special events. The promotional fare or product may be bundled and sold as part of a multiparty promotional program.

GROUP OR VOLUME SALES - In order to increase total revenues, WSF may develop full fare or discounted customer packages or bundle single fare types into multiride media or offer passes for high volume or group users. In pricing these packages, WSF will have discretion to set appropriate volume discounts based on a case-by-case basis.

SPECIAL EVENTS - In order to increase total revenues, WSF may develop, create or participate in special events that may include, but not be limited to, contributing or packaging discounted fares in exchange for the opportunity to participate in the income generated by the event.

BUNDLED SINGLE FARE MEDIA - WSF may bundle single fare types into multiple trip books as a customer convenience. Remaining value will not be eligible for refund or exchange. For mail order deliveries, WSF may add additional days to allow for delivery time.

GOOD TO GO! PILOT - Special ferry toll rate(s) may be established for a pilot program of Good to Go! or similar fare collection infrastructure, technology, or ORCA replacement system on any ferry route. Washington State Ferries Assistant Secretary shall design the program and submit a proposed program and fare schedule to the Washington State Transportation Commission. The Commission shall review, modify and approve the proposed fare schedule and fare policies before it is implemented. Once implemented, WSF shall provide, at a minimum, updates to the Commission every six months on the pilot. The pilot will conclude no longer than three years from its implementation.

EFFECTIVE 03:00 A.M. ((May 1, 2020)) October 1, 2022

ROUTES	Vehicle Under 14' Incl. Driver One Way ⁷	Vehicle Under 14' w/Sr Citizen or Disabled Driver ^{4, 7}	Vehicle Under 14' Multiride Media 20 Rides ^{2, 7}
Fauntleroy-Southworth Port Townsend/Coupeville	((10.05)) <u>10.55</u>	((8.25)) <u>8.70</u>	((162.80)) <u>170.80</u>
Seattle-Bainbridge Island Seattle-Bremerton Edmonds-Kingston	((12.90)) <u>13.55</u>	((10.60)) <u>11.15</u>	((208.40)) <u>218.80</u>
*Fauntleroy-Vashon			
*Southworth-Vashon			
*Pt. Defiance-Tahlequah	((16.40)) <u>17.20</u>	((13.40)) <u>14.05</u>	((132.20)) <u>138.60</u>
Mukilteo-Clinton	((7.85)) <u>8.20</u>	((6.45)) <u>6.75</u>	((127.60)) <u>133.20</u>
	10 Rides - 5 Round Trips		
*Anacortes to Lopez	((29.55)) <u>31.00</u>	((22.30)) <u>23.40</u>	((111.45)) <u>116.90</u>
*Shaw, Orcas	((35.45)) <u>37.20</u>	((28.20)) <u>29.60</u>	((133.55)) <u>140.15</u>
*Friday Harbor	((41.95)) <u>44.05</u>	((34.70)) <u>36.45</u>	((157.95)) <u>165.80</u>
Between Lopez, Shaw, Orcas and Friday Harbor ³	((17.65)) <u>18.50</u>	((17.65)) <u>18.50</u>	((71.10)) <u>74.50</u>
<i>International Travel</i>			
Anacortes to Sidney and Sidney to all destinations	((48.15)) <u>50.55</u>	((37.50)) <u>39.35</u>	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney	((30.00)) <u>31.50</u>	((23.25)) <u>24.45</u>	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) ⁵	((59.50)) <u>62.50</u>	((46.00)) <u>48.40</u>	N/A

EFFECTIVE 03:00 A.M. ((May 1, 2020)) October 1, 2022

ROUTES	Vehicle 14' to Under 22' Incl. Driver One Way ⁷	Vehicle 14' to Under 22' w/Sr Citizen or Disabled Driver ^{4, 7}	Vehicle 14' to Under 22' Multiride Media 20 Rides ^{2, 7}
Fauntleroy-Southworth Port Townsend/Coupeville ⁶	((12.75)) 13.35	((10.95)) 11.50	((206.00)) 215.60
Seattle-Bainbridge Island Seattle-Bremerton Edmonds-Kingston	((16.40)) 17.20	((14.10)) 14.80	((264.40)) 277.20
*Fauntleroy-Vashon *Southworth-Vashon *Pt. Defiance-Tahlequah	((20.85)) 21.90	((17.85)) 18.75	((167.80)) 176.20
Mukilteo-Clinton	((9.90)) 10.35	((8.50)) 8.90	((160.40)) 167.60
10 Rides - 5 Round Trips			
*Anacortes to Lopez ⁶	((37.05)) 38.90	((29.80)) 31.30	((139.55)) 146.50
*Shaw, Orcas ⁶	((44.40)) 46.60	((37.15)) 39.00	((167.15)) 175.40
*Friday Harbor ⁶	((52.65)) 55.30	((45.40)) 47.70	((198.05)) 208.00
Between Lopez, Shaw, Orcas and Friday Harbor ³	((25.00)) 26.20	((25.00)) 26.20	((100.50)) 105.30
<i>International Travel</i>			
Anacortes to Sidney and Sidney to all destinations ⁶	((59.65)) 62.65	((49.00)) 51.45	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney	((37.15)) 39.00	((30.40)) 31.95	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) ⁶	((73.80)) 77.50	((60.30)) 63.40	N/A

EFFECTIVE 03:00 A.M. (~~May 1, 2020~~) October 1, 2022

ROUTES	Motorcycle ⁵ Incl. Driver Stowage ^{1, 7} One Way	Motorcycle w/Sr Citizen or Disabled Driver Stowage ^{1, 7} One Way	Motorcycle Frequent User Commuter 20 Rides ^{2, 7}
Fauntleroy-Southworth Port Townsend/Coupeville ⁶	((5.60)) 5.85	((3.80)) 4.00	((91.60)) 95.60
Seattle-Bainbridge Island Seattle-Bremerton Edmonds-Kingston	((7.15)) 7.45	((4.85)) 5.05	((116.40)) 121.20
*Fauntleroy-Vashon *Southworth-Vashon *Pt. Defiance-Tahlequah	((8.95)) 9.40	((5.95)) 6.25	((72.60)) 76.20
Mukilteo-Clinton	((4.45)) 4.60	((3.05)) 3.15	((73.20)) 75.60
*Anacortes to Lopez ⁶	((19.05)) 19.95	((11.80)) 12.35	((144.15)) 150.90
*Shaw, Orcas ⁶	((20.50)) 21.50	((13.25)) 13.90	((155.00)) 162.50
*Friday Harbor ⁶	((22.15)) 23.25	((14.90)) 15.65	((167.40)) 175.65
Between Lopez, Shaw, Orcas and Friday Harbor ³	((7.20)) 7.50	((7.20)) 7.50	N/A
Anacortes to Sidney and Sidney to all destinations ⁶	((29.00)) 30.45	((18.35)) 19.25	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney	((18.15)) 19.05	((11.40)) 12.00	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) ⁶	((35.80)) 37.60	((22.30)) 23.50	N/A

All fares rounded to the (~~next~~) nearest multiple of \$0.05.
*These routes operate as a one-point toll collection system with round trip tolls.

¹SIZE - Vehicles under 14' in length shall pay the vehicle under 14' toll. Customers may be required to provide documentation, digitally or on paper, at the tollbooth to prove vehicle length. Documentation may include an owner's manual, materials from an auto research web site, or similar reference material that clearly lists the relevant vehicle specifications. Vehicles from 14' to under 22' in length shall pay the 14' to under 22' toll. Motorcycles towing a trailer and vehicles licensed as motorcycles with three or more wheels that are 8'0" or longer shall pay the appropriate length-based vehicle fare. Motorcycles include both mopeds and motorcycles as defined by RCW 46.04.304 and 46.04.330. Both are considered vehicles for the purposes of vehicle registration, license plate display, and WSF fare determination.

²MULTIRIDE MEDIA - Shall be valid only for 90 days from date of purchase after which time the media shall not be accepted for passage. Remaining value will not be eligible for refund or exchange. There shall be no commercial resale of this fare media. For mail order deliveries, WSF may add additional days to allow for delivery time. The vehicle/driver multiride card may be used for passage for an attendant driver plus one disabled passenger.

³INTER-ISLAND FARES - Tolls collected westbound only. Vehicles traveling between islands may request a single transfer ticket good for one transfer at an intermediate island. The transfer may only be obtained when purchasing the appropriate vehicle fare for inter-island travel (westbound at Lopez, Shaw, or Orcas) and is free of charge. Transfers shall be valid until the end of the service day on the day of purchase.

⁴SENIOR CITIZENS - Passengers age 65 and over, with proper identification establishing proof of age, may travel at half-fare passenger tolls on any route where passenger fares are collected, which will be rounded down to the nearest multiple of \$0.05. The half-fare discount applies to the driver portion of the vehicle-driver fare. The vehicle portion of the vehicle-driver fare is never further discounted.

PEOPLE WITH DISABILITIES - Any person who has a physical or mental impairment that substantially limits one or more major life activity, upon presentation of a WSF Disability Travel Permit, Reduced Fare Permit, or other identification which establishes a disability, may travel at half-fare passenger tolls on any route where passenger fares are collected, which will be rounded down to the nearest multiple of \$0.05. The half-fare discount applies to driver portion of the vehicle-driver fare. The vehicle portion of the vehicle-driver fare is never discounted. In addition, people with disabilities who require attendant care while traveling on the ferries, and are so certified by their physician, may obtain an endorsement on their WSF Disability Travel Permit and such endorsement shall allow the attendant to travel free.

⁵ROUND TRIP - Round trip passage for international travel available for trips beginning or ending on one of the islands served.

⁶VEHICLE RESERVATION DEPOSIT - Nonrefundable deposits for advance vehicle reservations may be established at a level of from 25 to 100 percent of the applicable 14' to under 22' standard vehicle one way fare. This is a deposit toward the fare and not an additional fee and applies only to those routes where the legislature has approved the use of a reservation system. Where it is operationally necessary (routes where vehicle fares are collected in only one direction or to increase operational efficiency at the terminal) a reservation no-show fee may be used in lieu of a deposit. The no-show fee will be limited to 25 to 100 percent of the applicable one way 14' to under 22' standard vehicle fare and will be charged if the customer does not travel within the same service day as their reserved sailing, provided there are no service disruptions.

⁷CAPITAL SURCHARGE ~~((S))~~ - Included is a ~~(((\$0.25))~~ \$0.50 capital surcharge on each single vehicle/driver fare collected. On all multiride cards except for routes serving Vashon Island and the San Juan Islands, there is an included capital surcharge of ~~(((\$5.00))~~ \$10.00. For Vashon Island routes, the included capital surcharge is ~~(((\$2.50))~~ \$5.00 on multiride cards. For motorcycles in the San Juan Islands, the included capital surcharge ~~((included))~~ on multiride cards is ~~(((\$2.50))~~ \$5.00. For vehicles under 22' in the San Juan Islands, the included capital surcharge ~~((included))~~ on multiride cards is ~~(((\$1.25))~~ \$2.50. ~~((Beginning May 1, 2020, an additional \$0.25 capital surcharge for new vessel construction is included on each single vehicle/driver fare collected. Included is a \$0.25 new vessel capital surcharge on each single vehicle/driver fare collected. On all multiride cards except for routes serving Vashon Island and the San Juan Islands, there is an included new vessel capital surcharge of \$5.00. For Vashon Island routes, the included new vessel capital surcharge is \$2.50 on multiride cards. For motorcycles in the San Juan Islands, the included new vessel capital surcharge on multiride cards is \$2.50. For vehicles under 22' in the San Juan Islands, the included new vessel capital surcharge on multiride cards is \$1.25.))~~

RIDE SHARE VEHICLES - A commuter ride share vehicle which carries ~~((five))~~ three or more persons on a regular and expense-sharing basis for the purpose of travel to and from work or school and which is certified as such by a local organization approved by the Washington state ferry system, may purchase for a \$20 fee, a permit valid for one year valid only during the hours shown on the permit. The \$20.00 fee shall include the driver. Remaining

passengers shall pay the applicable passenger fare. Except that the minimum total paid for all passengers in the van shall not be less than (~~four~~) two times the applicable passenger fare. Carpools of three or more registered in WSF's preferential loading program must also pay a \$20.00 yearly permit fee.

STOWAGE - Stowage carry-on items including kayaks, canoes and other items of comparable size which are typically stowed on the vehicle deck of the vessel shall be charged at the motorcycle rate. This rate includes the walk-on passenger carrying on the item to be stowed.

PEAK SEASON SURCHARGE - A 25% surcharge shall be applied to vehicles from May 1 through September 30 except those using multiride media. A 35% surcharge shall be applied on vehicle fares from Anacortes to Lopez, Shaw, Orcas and Friday Harbor, except those using multiride media. The resulting fare is rounded (~~up~~) to the (~~next~~) nearest \$0.05 if required.

FIRE DEPARTMENT AND FIRE DISTRICT FARE CONSIDERATION - At the discretion of the WSF Assistant Secretary, WSF may authorize no-fare or discounted fare passage on scheduled and/or special ferry sailings for fire departments and fire districts that provide contracted fire protection services for WSF ferry terminals and/or other WSF facilities within their jurisdiction. Such passage shall be considered full and complete consideration for such fire protection services, in lieu of annual payments for such services, to be so noted in such fire protection agreements. The scope of such authorization includes designated fire department and fire district vehicles (see below), drivers and passengers en route to and from an emergency call, on ferry routes with a WSF terminal and/or other WSF facility served by a fire department or fire district pursuant to a WSF fire protection service agreement. Authorized vehicles may include public fire department and fire district medical aid units, fire trucks, incident command and/or other vehicles dispatched to and returning from an emergency call.

IN-NEED ORGANIZATIONS - For qualified organizations serving in-need clients by providing tickets for transportation on WSF at no cost to clients, program would offer a monthly discount to approximate appropriate multiride media discount rates (20% off base season rates, except for Anacortes to San Juan Islands where it is 35% off base season end of week rates). Appointing bodies (those that appoint Ferry Advisory Committees) will nominate to the Washington State Transportation Commission those organizations that meet the criteria of the program. The Commission will review such nominations and certify those organizations that qualify. The following criteria will be used for nominating and certifying in-need organizations: Nongovernmental and not-for-profit organizations whose primary purpose is one or more of the following: Help clients with medical issues; provide clients with low-income social services; help clients suffering from domestic violence; provide clients with employment-seeking services; and/or help clients with Social Security. Travel will be initially charged based on full fare and billed monthly. The credits will be approximate based on the discount rates offered to multiride media users applicable on the date of travel.

PENALTY CHARGES - Owner of vehicle without driver will be assessed a \$100.00 penalty charge.

PROMOTIONAL TOLLS - A promotional rate may be established at the discretion of the WSF Assistant Secretary, Executive Director for a specified discount in order to enhance total revenue and effective only at designated times on designated routes. A promotional fare product may also be established to support tourism or other special events. The promotional fare or product may be bundled and sold as part of a multiparty promotional program.

GROUP OR VOLUME SALES - In order to increase total revenues, WSF may develop full fare or discounted customer packages or bundle single fare types into multiride media or offer passes for high volume or group users. In pricing these packages, WSF will have discretion to set appropriate volume discounts based on a case-by-case basis.

SPECIAL EVENTS - In order to increase total revenues, WSF may develop, create or participate in special events that may include, but not be limited to, contributing or packaging discounted fares in exchange for the opportunity to participate in the income generated by the event.

BUNDLED SINGLE FARE MEDIA - WSF may bundle single fare types into multiple trip books as a customer convenience. Remaining value will not be eligible for refund or exchange. For mail order deliveries, WSF may add additional days to allow for delivery time.

GOOD TO GO! PILOT - Special ferry toll rate(s) may be established for a pilot program of Good to Go! or similar fare collection infrastructure, technology, or ORCA replacement system on any ferry route. Washington State Ferries Assistant Secretary shall design the program and submit a proposed program and fare schedule to the Washington State Transportation Commission. The Commission shall review, modify and approve the proposed fare schedule and fare policies before it is implemented. Once implemented, WSF shall provide, at a minimum, updates to the Commission every six months on the pilot. The pilot will conclude no longer than three years from its implementation.

[Statutory Authority: RCW 47.56.030, 47.60.315, and 2019 c 431. WSR 19-18-004, § 468-300-020, filed 8/22/19, effective 9/22/19. Statutory Authority: RCW 47.56.030 and 47.60.315. WSR 17-18-018, § 468-300-020, filed 8/25/17, effective 9/25/17; WSR 15-18-002, § 468-300-020, filed 8/19/15, effective 10/1/15; WSR 13-18-019, § 468-300-020, filed 8/26/13, effective 9/26/13; WSR 11-18-034, § 468-300-020, filed 8/30/11, effective 10/1/11 and 5/1/12. Statutory Authority: RCW 47.56.030, 47.60.326. WSR 10-24-028, § 468-300-020, filed 11/19/10, effective 1/1/11; WSR 09-19-044, § 468-300-020, filed 9/10/09, effective 10/11/09; WSR 08-08-070, § 468-300-020, filed 3/31/08, effective 5/1/08; WSR 07-08-064, § 468-300-020, filed 3/29/07, effective 5/1/07; WSR 06-08-036, § 468-300-020, filed 3/29/06, effective 5/1/06; WSR 05-10-041, § 468-300-020, filed 4/28/05, effective 6/1/05; WSR 03-08-072, § 468-300-020, filed 4/1/03, effective 5/2/03; WSR 02-09-010, § 468-300-020, filed 4/5/02, effective 5/6/02; WSR 01-11-010, § 468-300-020, filed 5/3/01, effective 6/3/01; WSR 00-24-050, § 468-300-020, filed 11/30/00, effective 12/31/00; WSR 99-08-066, § 468-300-020, filed 4/5/99, effective 5/6/99; WSR 98-08-051, § 468-300-020, filed 3/27/98, effective 4/27/98; WSR 96-19-045 (Order 82), § 468-300-020, filed 9/12/96, effective 10/13/96; WSR 94-18-014 (Order 77), § 468-300-020, filed 8/25/94, effective 9/25/94; WSR 94-07-104 (Order 75), § 468-300-020, filed 3/18/94, effective 4/18/94; WSR 93-18-005, § 468-300-020, filed 8/19/93, effective 9/19/93; WSR 92-18-005, § 468-300-020, filed 8/20/92, effective 9/20/92; WSR 91-18-022 (Order 72), § 468-300-020, filed 8/27/91, effective 9/27/91; WSR 89-14-052 (Order 67, Resolution No. 354), § 468-300-020, filed 6/30/89; WSR 89-04-014 (Order 66, Resolution No. 343), § 468-300-020, filed 1/23/89, effective 7/1/89; WSR 87-12-005 (Order 61, Resolution No. 298), § 468-300-020, filed 5/21/87. Statutory Authority: RCW 47.60.326. WSR 86-06-010 (Order 54, Resolution No. 263), § 468-300-020, filed 2/21/86; WSR 85-11-007 (Order 44, Resolution No. 241), § 468-300-020, filed 5/3/85; WSR 84-11-052 (Order 42, Resolution Nos. 221 and 222), § 468-300-020, filed 5/17/84; WSR 84-10-002 (Order 41, Resolution No. 218), § 468-300-020, filed 4/20/84; WSR 83-07-062 (Order 33, Resolution No. 175), § 468-300-020, filed 3/22/83; WSR 82-07-063 (Order 28, Resolution No. 143), § 468-300-020, filed 3/22/82. Statutory Authority: RCW 47.60.325 and 47.56.030. WSR 81-15-099 (Order 23, Resolution No. 117), § 468-300-020, filed 7/22/81. Statutory Authority: RCW 47.60.325. WSR 81-08-044 (Order 17, Resolution No. 104), § 468-300-020, filed 3/31/81; WSR 80-04-104 (Order 15, Resolution No. 72), § 468-300-020, filed 4/1/80; WSR 79-09-136 (Order 11, Resolution No. 57), § 468-300-020, filed 9/5/79; WSR 79-04-047 (Order 6, Resolution No. 44),

§ 468-300-020, filed 3/27/79; WSR 78-06-040 (Order 2, Resolution No. 21), § 468-300-020, filed 5/19/78.]

AMENDATORY SECTION (Amending WSR 19-18-004, filed 8/22/19, effective 9/22/19)

WAC 468-300-040 Oversize vehicle ferry tolls.

EFFECTIVE 03:00 A.M. October 1, ((2019)) 2021

((Oversize Vehicle Ferry Tolls¹
Overall Unit Length - Including Driver

ROUTES	22' To Under 30' Under 7'2" High ⁵	22' To Under 30' 7'2" High or Over ⁵	30' To Under 40' ⁵	40' To Under 50' ⁵	50' To Under 60' ⁵	60' To under 70' ⁵	70' To and include 80' ⁵	Cost Per Ft. Over 80'
Fauntleroy-Southworth Port Townsend/Coupeville	18.15	36.05	48.00	59.95	71.85	83.80	95.75	1.20
Seattle-Bainbridge Island Seattle/Bremerton Edmonds-Kingston	23.50	46.75	62.25	77.75	93.25	108.75	124.25	1.55
*Fauntleroy-Vashon *Southworth-Vashon *Pt. Defiance-Tahlequah	30.00	59.75	79.60	99.45	119.30	139.15	158.95	2.00
Mukilteo-Clinton	14.00	27.70	36.85	45.95	55.10	64.25	73.40	0.90
*Anacortes to Lopez ²	53.75	107.20	142.85	178.50	214.15	249.80	285.45	3.55
*Anacortes to Shaw, Orcas ²	64.40	128.60	171.35	214.15	256.95	299.70	342.50	4.30
*Anacortes to Friday Harbor	76.50	152.75	203.60	254.45	305.30	356.15	406.95	5.10
Between Lopez, Shaw, Orcas and Friday Harbor ³	36.05	71.85	95.75	119.60	143.45	167.35	191.20	N/A
<i>International Travel</i> Anacortes to Sidney to all destinations	91.95	91.95	122.55	153.10	183.65	214.25	244.80	3.05
Lopez, Shaw, Orcas and Friday Harbor to Sidney	57.05	57.05	76.00	94.90	113.85	132.75	151.70	1.90
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) ⁴	113.85	113.85	151.75	189.55	227.45	265.25	303.15	3.80))

Oversize Vehicle Ferry Tolls¹
Overall Unit Length - Including Driver

ROUTES	22' To Under 30' Under 7'2" High ⁵	22' To Under 30' 7'2" High or Over ⁵	30' To Under 40' ⁵	40' To Under 50' ⁵	50' To Under 60' ⁵	60' To under 70' ⁵	70' To and include 80' ⁵	Cost Per Ft. Over 80'
Fauntleroy-Southworth Port Townsend/Coupeville	19.30	38.15	50.70	63.25	75.80	88.35	100.90	1.25
Seattle-Bainbridge Island Seattle/Bremerton Edmonds-Kingston	24.95	49.40	65.70	82.00	98.30	114.60	130.90	1.65
*Fauntleroy-Vashon *Southworth-Vashon *Pt. Defiance-Tahlequah	31.80	63.10	83.95	104.80	125.70	146.55	167.40	2.10
Mukilteo-Clinton	14.95	29.35	38.95	48.60	58.20	67.80	77.45	0.95
*Anacortes to Lopez ²	56.75	112.95	150.45	187.95	225.45	262.95	300.40	3.75
*Anacortes to Shaw, Orcas ²	68.00	135.45	180.45	225.45	270.45	315.40	360.40	4.50
*Anacortes to Friday Harbor	80.70	160.90	214.35	267.80	321.30	374.75	428.20	5.35
Between Lopez, Shaw, Orcas and Friday Harbor ³	38.15	75.80	100.90	126.00	151.10	176.20	201.30	N/A
<i>International Travel</i> Anacortes to Sidney to all destinations	101.50	101.50	135.15	168.80	202.45	236.15	269.80	3.35
Lopez, Shaw, Orcas and Friday Harbor to Sidney	63.05	63.05	83.90	104.75	125.60	146.40	167.25	2.10
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) ⁴	125.60	125.60	167.30	209.00	250.70	292.30	334.00	4.20

All fares rounded to the nearest multiple of \$0.05.

*These routes operate as a one-point toll collection system with round trip tolls.

¹OVERSIZE VEHICLES - Includes all vehicles 22 feet in length and longer regardless of type: Commercial trucks, recreational vehicles, vehicles under 22' pulling trailers, etc. Length shall include vehicle and load to its furthest extension. Overheight charge is included in oversize vehicle toll. Vehicles wider than 8'6" pay double the fare applicable to their length. Private and commercial passenger buses or other passenger vehicles pay the applicable oversize vehicle tolls. Public transit buses and drivers shall travel free upon display of an annual permit which may be purchased for \$10. Upon presentation by either the driver or passenger of a WSF Disability Travel Permit, Regional Reduced Fare Permit, or other identification which establishes disability, vehicles 22-30 feet in length and 7'2" or over in height shall be charged the 22-30 foot length and under 7'2" in height fare for vehicles equipped with wheelchair lift or other feature designed to accommodate the person with the disability.

²TRANSFERS - Tolls collected westbound only. Oversize vehicles traveling westbound from Anacortes may (~~((purchase))~~) receive a single intermediate transfer when first purchasing the (~~((appropriate))~~) fare for the furthest intended point of travel for the trip. The transfer is valid until the end of the service day on the day purchased (~~((and is priced as follows: \$66.00 base season, \$88.95 peak season))~~).

³INTER-ISLAND - Tolls collected westbound only. Vehicles traveling between islands may request a single transfer ticket good for one transfer at an intermediate island. The transfer may only be obtained when purchasing the appropriate vehicle fare for inter-island travel (westbound at Lopez, Shaw, or Orcas) and is free of charge. Transfers shall be valid until the end of the service day on the day of purchase.

⁴ROUND TRIP - Round trip passage for international travel available for trips beginning or ending on one of the islands served.

⁵CAPITAL SURCHARGE - There is (~~((am))~~) included (~~(((\$0.25))~~) an additional \$0.50 capital surcharge on each single vehicle/driver fare collected.

BULK NEWSPAPERS - Per 100 lbs. \$2.85 (Shipments exceeding 60,000 lbs. in any month shall be assessed \$1.42 per 100 lbs.). Daily newspapers, in bundles, to be received and delivered without receipt and subject to owner's risk, will be transported between ferry terminals on regular scheduled sailings.

VEHICLE RESERVATION DEPOSIT - Nonrefundable deposits for advanced reservations may be established at a level of from 25 to 100 percent of the applicable oversize vehicle one way fare. This is a deposit toward the fare and not an additional fee and applies only to those routes where the legislature has approved the use of a reservation system. Where it is operationally necessary (routes where vehicle fares are collected in only one direction or to increase operational efficiency at the terminal) a reservation no-show fee may be used in lieu of a deposit. The no-show fee will be limited to 25 to 100 percent of the applicable one way oversize vehicle fare and will be charged if the customer does not travel within the same service day as their reserved sailing, provided there are no service disruptions.

PEAK SEASON SURCHARGE - A peak season surcharge shall apply to all oversize vehicles from May 1 through September 30. The oversize fare shall be determined based on the peak-season car-and-driver fare and the analogous oversize vehicle fare, calculated with the same factor as the oversize base seasons fares are to the base season under 20 foot fare. The senior citizen discount shall apply to the driver of an oversize vehicle. The resulting fare is rounded (~~((up))~~) to the (~~((next))~~) nearest \$0.05 if required.

SENIOR CITIZEN DISCOUNTS - Discounts of 50% for the driver of the above vehicles shall apply. Senior citizen discount is determined by subtracting full-fare passenger rate and adding half-fare passenger rate, which will be rounded down to the nearest multiple of \$0.05. The senior citizen discount shall apply to the driver of an oversize vehicle.

PENALTY CHARGES - Owner of vehicle without driver will be assessed a \$100.00 penalty charge.

COMMERCIAL ACCOUNTS - Commercial customers making 12 or more, one-way crossings per week (Sunday through Saturday) will qualify for a 10% discount from the regular ferry tolls. WSF will provide a commercial account program that will be prepaid and offer access to volume discounts based on travel, revenue or other criteria in accordance with WSF business rules. On an annual basis, commercial accounts will pay a \$50 nonrefundable account maintenance fee.

GROUP OR VOLUME SALES - In order to increase total revenues, WSF may develop full fare or discounted customer packages or bundle single fare types into multiple trip books or offer passes for high volume or group users. In pricing these packages, WSF will have discretion to set appropriate volume discounts based on a case-by-case basis.

SPECIAL EVENTS - In order to increase total revenues, WSF may develop, create or participate in special events that may include, but not be limited to, contributing or packaging discounted fares in exchange for the opportunity to participate in the income generated by the event.

FIRE DEPARTMENT AND FIRE DISTRICT FARE CONSIDERATION - At the discretion of the WSF Assistant Secretary, WSF may authorize no-fare or discounted fare passage on scheduled and/or special ferry sailings for fire departments and fire districts that provide contracted fire protection services for WSF ferry terminals and/or other WSF facilities within their jurisdiction. Such passage shall be considered full and complete consideration for such fire protection services, in lieu of annual payments for such services, to be so noted in such fire protection agreements. The scope of such authorization includes designated fire department and fire district vehicles (see below), drivers and passengers en route to and from an emergency call, on ferry routes with a WSF terminal and/or other WSF facility served by a fire department or fire district pursuant to a WSF fire protection service agreement. Authorized vehicles may include public fire department and fire district medical aid units, fire trucks, incident command and/or other vehicles dispatched to and returning from an emergency call.

EMERGENCY TRIPS DURING NONSERVICE HOURS - While at locations where crew is on duty charge shall be equal to the cost of fuel consumed to make emergency trip. Such trips shall only be offered as a result of official requests from an emergency services agency and only in the case of no reasonable alternative.

DISCLAIMER - Under no circumstances does Washington state ferries warrant the availability of ferry service at a given date or time; nor does it warrant the availability of space on board a vessel on a given sailing.

GOOD TO GO! PILOT - Special ferry toll rate(s) may be established for a pilot program of Good to Go! or similar fare collection infrastructure, technology, or ORCA replacement system on any ferry route. Washington State Ferries Assistant Secretary shall design the program and submit a proposed program and fare schedule to the Washington State Transportation Commission. The Commission shall review, modify and approve the proposed fare schedule and fare policies before it is implemented. Once implemented, WSF shall provide, at a minimum, updates to the Commission every six months on the pilot. The pilot will conclude no longer than three years from its implementation.

EFFECTIVE 03:00 A.M. (~~May 1, 2020~~) October 1, 2022

((Oversize Vehicle Ferry Tolls¹
Overall Unit Length - Including Driver

ROUTES	22' To Under 30' Under 7'2" High ⁵	22' To Under 30' 7'2" High or Over ⁵	30' To Under 40' ⁵	40' To Under 50' ⁵	50' To Under 60' ⁵	60' To under 70' ⁵	70' To and include 80' ⁵	Cost Per Ft. Over 80'
Fauntleroy-Southworth Port Townsend/Coupeville	18.90	37.25	49.45	61.70	73.95	86.20	98.45	1.25
Seattle-Bainbridge Island Seattle/Bremerton Edmonds-Kingston	24.35	48.20	64.10	80.00	95.90	111.80	127.70	1.60

((Oversize Vehicle Ferry Tolls¹
Overall Unit Length - Including Driver

ROUTES	22' To Under 30' Under 7'2" High ⁵	22' To Under 30' 7'2" High or Over ⁵	30' To Under 40' ⁵	40' To Under 50' ⁵	50' To Under 60' ⁵	60' To under 70' ⁵	70' To and include 80' ⁵	Cost Per Ft. Over 80'
*Fautleroy-Vashon								
*Southworth-Vashon								
*Pt. Defiance-Tahlequah	31.05	61.55	81.90	102.25	122.60	142.95	163.30	2.05
Mukilteo-Clinton	14.60	28.65	38.00	47.40	56.80	66.15	75.55	0.95
*Anacortes to Lopez ²	55.35	110.20	146.80	183.35	219.90	256.50	293.05	3.65
*Anacortes to Shaw, Orcas ²	66.35	132.15	176.05	219.90	263.80	307.70	351.55	4.40
*Anacortes to Friday Harbor	78.75	156.95	209.10	261.25	313.40	365.55	417.70	5.20
Between Lopez, Shaw, Orcas and Friday Harbor ³	37.25	73.95	98.45	122.95	147.40	171.90	196.40	N/A
<i>International Travel</i>								
Anacortes to Sidney to all destinations	99.00	99.00	131.80	164.65	197.50	230.30	263.15	3.30
Lopez, Shaw, Orcas and Friday Harbor to Sidney	61.50	61.50	81.85	102.15	122.50	142.80	163.15	2.05
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) ⁴	122.50	122.50	163.20	203.80	244.50	285.10	325.80	4.10))

Oversize Vehicle Ferry Tolls¹
Overall Unit Length - Including Driver

ROUTES	22' To Under 30' Under 7'2" High ⁵	22' To Under 30' 7'2" High or Over ⁵	30' To Under 40' ⁵	40' To Under 50' ⁵	50' To Under 60' ⁵	60' To under 70' ⁵	70' To and include 80' ⁵	Cost Per Ft. Over 80'
Fautleroy-Southworth								
Port Townsend/Coupeville	19.80	39.10	51.95	64.80	77.65	90.50	103.35	1.30
Seattle-Bainbridge Island								
Seattle/Bremerton								
Edmonds-Kingston	25.55	50.60	67.30	84.00	100.70	117.40	134.10	1.65
*Fautleroy-Vashon								
*Southworth-Vashon								
*Pt. Defiance-Tahlequah	32.60	64.65	86.00	107.40	128.75	150.15	171.50	2.15
Mukilteo-Clinton	15.30	30.05	39.90	49.75	59.60	69.45	79.30	1.00
*Anacortes to Lopez ²	58.15	115.75	154.15	192.55	230.95	269.35	307.80	3.85
*Anacortes to Shaw, Orcas ²	69.65	138.80	184.85	230.95	277.05	323.15	369.25	4.60
*Anacortes to Friday Harbor	82.70	164.85	219.60	274.40	329.15	383.95	438.70	5.45
Between Lopez, Shaw, Orcas and Friday Harbor ³	39.10	77.65	103.35	129.10	154.80	180.55	206.25	N/A
<i>International Travel</i>								
Anacortes to Sidney to all destinations	104.00	104.00	138.50	172.95	207.45	241.95	276.45	3.45
Lopez, Shaw, Orcas and Friday Harbor to Sidney	64.60	64.60	85.95	107.30	128.65	150.05	171.40	2.15
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) ⁴	128.70	128.70	171.40	214.10	256.80	299.60	342.30	4.30

All fares rounded to the nearest multiple of \$0.05.

*These routes operate as a one-point toll collection system with round trip tolls.

¹OVERSIZE VEHICLES - Includes all vehicles 22 feet in length and longer regardless of type: Commercial trucks, recreational vehicles, vehicles under 22' pulling trailers, etc. Length shall include vehicle and load to its furthest extension. Overheight charge is included in oversize vehicle toll. Vehicles wider than 8'6" pay double the fare applicable to their length. Private and commercial passenger buses or other passenger vehicles pay the applicable oversize vehicle tolls. Public transit buses and drivers shall travel free upon display of an annual permit which may be purchased for \$10. Upon presentation by either the driver or passenger of a WSF Disability Travel Permit, Regional Reduced Fare Permit, or other identification which establishes disability, vehicles 22-30 feet in length and 7'2" or over in height shall be charged the 22-30 foot length and under 7'2" in height fare for vehicles equipped with wheelchair lift or other feature designed to accommodate the person with the disability.

²TRANSFERS - Tolls collected westbound only. Oversize vehicles traveling westbound from Anacortes may receive a single intermediate transfer when first purchasing the fare for the furthest intended point of travel for the trip. The transfer is valid until the end of the service day on the day purchased.

³INTER-ISLAND - Tolls collected westbound only. Vehicles traveling between islands may request a single transfer ticket good for one transfer at an intermediate island. The transfer may only be obtained when purchasing the appropriate vehicle fare for inter-island travel (westbound at Lopez, Shaw, or Orcas) and is free of charge. Transfers shall be valid until the end of the service day on the day of purchase.

⁴ROUND TRIP - Round trip passage for international travel available for trips beginning or ending on one of the islands served.

⁵CAPITAL SURCHARGE ~~((S))~~ - There is included an additional ~~((~~\$0.25~~))~~ \$0.50 capital surcharge on each single vehicle/driver fare collected. ~~((Beginning May 1, 2020, an additional \$0.25 capital surcharge for new vessel construction is included on each single vehicle/driver fare collected.))~~

BULK NEWSPAPERS - Per 100 lbs. \$2.85 (Shipments exceeding 60,000 lbs. in any month shall be assessed \$1.42 per 100 lbs.). Daily newspapers, in bundles, to be received and delivered without receipt and subject to owner's risk, will be transported between ferry terminals on regular scheduled sailings.

VEHICLE RESERVATION DEPOSIT - Nonrefundable deposits for advanced reservations may be established at a level of from 25 to 100 percent of the applicable oversize vehicle one way fare. This is a deposit toward the fare and not an additional fee and applies only to those routes where the legislature has approved the use of a reservation system. Where it is operationally necessary (routes where vehicle fares are collected in only one direction or to increase operational efficiency at the terminal) a reservation no-show fee may be used in lieu of a deposit. The no-show fee will be limited to 25 to 100 percent of the applicable one way oversize vehicle fare and will be charged if the customer does not travel within the same service day as their reserved sailing, provided there are no service disruptions.

PEAK SEASON SURCHARGE - A peak season surcharge shall apply to all oversize vehicles from May 1 through September 30. The oversize fare shall be determined based on the peak-season car-and-driver fare and the analogous oversize vehicle fare, calculated with the same factor as the oversize base seasons fares are to the base season under 20 foot fare. The senior citizen discount shall apply to the driver of an oversize vehicle. The resulting fare is rounded ~~((up))~~ to the ~~((next))~~ nearest \$0.05 if required.

SENIOR CITIZEN DISCOUNTS - Discounts of 50% for the driver of the above vehicles shall apply. Senior citizen discount is determined by subtracting full-fare passenger rate and adding half-fare passenger rate, which will be rounded down to the nearest multiple of \$0.05. The senior citizen discount shall apply to the driver of an oversize vehicle.

PENALTY CHARGES - Owner of vehicle without driver will be assessed a \$100.00 penalty charge.

COMMERCIAL ACCOUNTS - Commercial customers ~~((7))~~ making 12 or more, one-way crossings per week (Sunday through Saturday) will qualify for a 10% discount from the regular ferry tolls. WSF will provide a commercial account program that will be prepaid and offer access to volume discounts based on travel, revenue or other criteria in accordance with WSF business rules. On an annual basis, commercial accounts will pay a \$50 nonrefundable account maintenance fee.

GROUP OR VOLUME SALES - In order to increase total revenues, WSF may develop full fare or discounted customer packages or bundle single fare types into multiple trip books or offer passes for high volume or group users. In pricing these packages, WSF will have discretion to set appropriate volume discounts based on a case-by-case basis.

SPECIAL EVENTS - In order to increase total revenues, WSF may develop, create or participate in special events that may include, but not be limited to, contributing or packaging discoun-

ted fares in exchange for the opportunity to participate in the income generated by the event.

FIRE DEPARTMENT AND FIRE DISTRICT FARE CONSIDERATION - At the discretion of the WSF Assistant Secretary, WSF may authorize no-fare or discounted fare passage on scheduled and/or special ferry sailings for fire departments and fire districts that provide contracted fire protection services for WSF ferry terminals and/or other WSF facilities within their jurisdiction. Such passage shall be considered full and complete consideration for such fire protection services, in lieu of annual payments for such services, to be so noted in such fire protection agreements. The scope of such authorization includes designated fire department and fire district vehicles (see below), drivers and passengers en route to and from an emergency call, on ferry routes with a WSF terminal and/or other WSF facility served by a fire department or fire district pursuant to a WSF fire protection service agreement. Authorized vehicles may include public fire department and fire district medical aid units, fire trucks, incident command and/or other vehicles dispatched to and returning from an emergency call.

EMERGENCY TRIPS DURING NONSERVICE HOURS - While at locations where crew is on duty charge shall be equal to the cost of fuel consumed to make emergency trip. Such trips shall only be offered as a result of official requests from an emergency services agency and only in the case of no reasonable alternative.

DISCLAIMER - Under no circumstances does Washington state ferries warrant the availability of ferry service at a given date or time; nor does it warrant the availability of space on board a vessel on a given sailing.

GOOD TO GO! PILOT - Special ferry toll rate(s) may be established for a pilot program of Good to Go! or similar fare collection infrastructure, technology, or ORCA replacement system on any ferry route. Washington State Ferries Assistant Secretary shall design the program and submit a proposed program and fare schedule to the Washington State Transportation Commission. The Commission shall review, modify and approve the proposed fare schedule and fare policies before it is implemented. Once implemented, WSF shall provide, at a minimum, updates to the Commission every six months on the pilot. The pilot will conclude no longer than three years from its implementation.

[Statutory Authority: RCW 47.56.030, 47.60.315, and 2019 c 431. WSR 19-18-004, § 468-300-040, filed 8/22/19, effective 9/22/19. Statutory Authority: RCW 47.56.030 and 47.60.315. WSR 17-18-018, § 468-300-040, filed 8/25/17, effective 9/25/17; WSR 15-18-002, § 468-300-040, filed 8/19/15, effective 10/1/15; WSR 13-18-019, § 468-300-040, filed 8/26/13, effective 9/26/13. Statutory Authority: RCW 47.56.030, 47.60.315, and 2010 c 247 § 205(1). WSR 12-10-032, § 468-300-040, filed 4/25/12, effective 6/1/12. Statutory Authority: RCW 47.56.030 and 47.60.315. WSR 11-18-034, § 468-300-040, filed 8/30/11, effective 10/1/11 and 5/1/12. Statutory Authority: RCW 47.56.030, 47.60.326. WSR 10-24-028, § 468-300-040, filed 11/19/10, effective 1/1/11; WSR 09-19-044, § 468-300-040, filed 9/10/09, effective 10/11/09; WSR 08-08-070, § 468-300-040, filed 3/31/08, effective 5/1/08; WSR 07-08-064, § 468-300-040, filed 3/29/07, effective 5/1/07; WSR 06-08-036, § 468-300-040, filed 3/29/06, effective 5/1/06; WSR 05-10-041, § 468-300-040, filed 4/28/05, effective 6/1/05; WSR 03-08-072, § 468-300-040, filed 4/1/03, effective 5/2/03; WSR 02-09-010, § 468-300-040, filed 4/5/02, effective 5/6/02; WSR 01-11-010, § 468-300-040, filed 5/3/01, effective 6/3/01; WSR 00-24-050, § 468-300-040, filed 11/30/00, effective 12/31/00; WSR 99-08-066, § 468-300-040, filed 4/5/99, effective 5/6/99; WSR 98-08-051, § 468-300-040, filed 3/27/98, effective 4/27/98; WSR 96-19-045 (Order 82), § 468-300-040, filed 9/12/96, effective 10/13/96; WSR 94-18-014 (Order 77), § 468-300-040, filed 8/25/94, ef-

fective 9/25/94; WSR 94-07-104 (Order 75), § 468-300-040, filed 3/18/94, effective 4/18/94; WSR 93-18-005, § 468-300-040, filed 8/19/93, effective 9/19/93; WSR 92-18-005, § 468-300-040, filed 8/20/92, effective 9/20/92; WSR 91-18-022 (Order 72), § 468-300-040, filed 8/27/91, effective 9/27/91; WSR 89-14-052 (Order 67, Resolution No. 354), § 468-300-040, filed 6/30/89; WSR 89-04-014 (Order 66, Resolution No. 343), § 468-300-040, filed 1/23/89, effective 7/1/89; WSR 87-12-005 (Order 61, Resolution No. 298), § 468-300-040, filed 5/21/87. Statutory Authority: RCW 47.60.290, 47.60.300 and 47.60.326. WSR 86-24-009 (Order 59, Resolution No. 287), § 468-300-040, filed 11/21/86. Statutory Authority: RCW 47.60.326. WSR 86-06-010 (Order 54, Resolution No. 263), § 468-300-040, filed 2/21/86; WSR 85-11-007 (Order 44, Resolution No. 241), § 468-300-040, filed 5/3/85; WSR 84-11-052 (Order 42, Resolution Nos. 221 and 222), § 468-300-040, filed 5/17/84; WSR 83-07-062 (Order 33, Resolution No. 175), § 468-300-040, filed 3/22/83; WSR 82-18-009 (Order 29, Resolution No. 153), § 468-300-040, filed 8/20/82; WSR 82-07-063 (Order 28, Resolution No. 143), § 468-300-040, filed 3/22/82. Statutory Authority: RCW 47.60.325 and 47.56.030. WSR 81-15-099 (Order 23, Resolution No. 117), § 468-300-040, filed 7/22/81. Statutory Authority: RCW 47.60.325. WSR 81-08-044 (Order 17, Resolution No. 104), § 468-300-040, filed 3/31/81; WSR 80-04-104 (Order 15, Resolution No. 72), § 468-300-040, filed 4/1/80; WSR 79-09-136 (Order 11, Resolution No. 57), § 468-300-040, filed 9/5/79; WSR 79-04-047 (Order 6, Resolution No. 44), § 468-300-040, filed 3/27/79; WSR 78-06-040 (Order 2, Resolution No. 21), § 468-300-040, filed 5/19/78.]

WSR 21-14-077
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed July 6, 2021, 8:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-01-200.

Title of Rule and Other Identifying Information: WAC

296-900-13015 Posting citation and notices.

Hearing Location(s): On August 11, 2021, at 1:00 p.m., join Zoom meeting <https://us02web.zoom.us/j/84837960300>, Meeting ID 848 3796 0300, Passcode hJd8R\$Q=. Dial by your location +1 253 215 8782 US (Tacoma), Meeting ID 848 3796 0300, Passcode 60002954. Find your local number <https://us02web.zoom.us/j/kcpPwPceZ6>. The hearing will continue until all oral comments are received.

Date of Intended Adoption: September 21, 2021.

Submit Written Comments to: Tari Enos, P.O. Box 44620, Olympia, WA 98504-4620, email tari.enos@lni.wa.gov, fax 360-902-5619, by August 18, 2021, by 5 p.m.

Assistance for Persons with Disabilities: Contact Tari Enos, phone 360-902-5541, email tari.enos@lni.wa.gov, by August 4, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to change the length of time that a citation and notice needs to be posted on an employee safety bulletin board; this includes any correspondence related to an employee complaint. The department of labor and industries (L&I) is proposing to change the amount of time a citation and notice is posted from three working days to seven working days, and add language clarifying that weekends and holidays are not included in the posting time period. L&I is also proposing to add language giving the employer the option to use electronic means to supplement the safety bulletin board for those employees that don't work where the physical board is located, such as those who telework. Please see below for the proposed amendments.

Amended Sections: WAC 296-900-13015 Posting citation and notices.

- In subsection (1), update "three" to "seven" working days, as well as add "excluding weekends and holidays" after "seven working days" to further clarify the length of time that the citation and notice should be posted to ensure being viewed by all employees.
- Add new sentence at the end of subsection (1) which gives the employer the option to use electronic means to supplement the safety bulletin board for employees that don't work in the office where the physical bulletin board is present, such as employees that telework.

Reasons Supporting Proposal: Employers are currently required to post a citation and notice for three working days for employees to see. There are employees who work nonstandard shifts that may not have access to this information due to the short amount of time the citation and notice is actually posted. L&I believes worker safety could be improved if all employees have access to corrective action information.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060 and 49.17.120.

Statute Being Implemented: Chapter 49.17 RCW.

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: Not applicable.

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Chris Miller, Tumwater, Washington, 360-902-5516; Implementation and Enforcement: Craig Blackwood, Acting Assistant Director, Tumwater, Washington, 360-902-5828.

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 Tari Enos, P.O. Box 44620, Olympia, WA 98504-4620, phone 360-902-5541, email tari.enos@lni.wa.gov.

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. It was determined that leaving the citation and notice on the bulletin board for the additional workdays does not create any new costs for employers. Employers must already post citations and notices and oftentimes notices are left up longer than three days already. The proposed language allows employers to use electronic means as an option of posting citations and notices for their employees. There are no mandated costs since using technology to give employees access to the citations and notices is voluntary.

July 6, 2021
Joel Sacks
Director

OTS-2690.3

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-13015 Posting citation and notices. (1) You must immediately notify employees of a citation and notice by posting it and any correspondence related to an employee complaint on the safety bulletin board for ~~((three))~~ seven working days, excluding weekends and holidays, or until all violations are corrected, whichever time period is longer. As an option, an employer may use electronic means to supplement the bulletin board, such as with telework employees.

(2) You must use any other appropriate means to notify employees who may receive notices posted on the safety bulletin board.

Examples of other appropriate means include sending a copy by mail or electronically to any of the following:

- (a) A designated employee representative.
- (b) Safety representatives.
- (c) The safety committee.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 17-18-075, § 296-900-13015, filed 9/5/17, effective

10/6/17; WSR 06-06-020, § 296-900-13015, filed 2/21/06, effective
6/1/06.]

WSR 21-14-082
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)
[Filed July 6, 2021, 12:38 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-09-080.

Title of Rule and Other Identifying Information: WAC 388-106-0250
What is the roads to community living (RCL) demonstration project and who is eligible?

Hearing Location(s): On August 10, 2021, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtual. Due to the effects of the COVID-19 pandemic, hearings are being held virtually. Please see the DSHS website for the most current information.

Date of Intended Adoption: Not earlier than August 11, 2021.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., on August 10, 2021.

Assistance for Persons with Disabilities: Contact DSHS rules coordinator, phone 360-664-6097, fax 360-664-6185, TTY 711 relay service, email DSHSRPAURulesCoordinator@dshs.wa.gov, by July 27, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend WAC 388-106-0250 to ensure that roads to community living eligibility aligns with the federal Money Follows the Person Demonstration eligibility criteria.

Reasons Supporting Proposal: The Consolidated Appropriations Act of 2021, Section 204 outlines an extension of Money Follows the Person Rebalancing Demonstration and changes the institutional residency period requirement, striking the ninety-day institutionalized eligibility period and inserting a sixty-day institutionalized period.

In addition, Money Follows the Person demonstration eligibility includes all settings identified as home and community-based settings. Roads to community living is the name of Washington state's money follows the person demonstration.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520; Affordable Care Act, Deficit Reduction Act of 2005 (P.L. 109-171), and Consolidated Appropriations Act of 2021 (Section 204).

Statute Being Implemented: RCW 74.09.520; Consolidated Appropriations Act of 2021 (Section 204).

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Julie Cope, P.O. Box 45600, Olympia, WA 98504-5600, 360-725-2529.

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 34.05.328 (5) (b) (vii).

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

Is exempt under RCW 19.85.025(4) because the proposed amendments impose no new or disproportionate costs on small businesses so a small business economic impact statement is not required.

July 2, 2021
Katherine I. Vasquez
Rules Coordinator

SHS-4878.1

AMENDATORY SECTION (Amending WSR 14-01-112, filed 12/18/13, effective 1/18/14)

WAC 388-106-0250 What is the roads to community living (RCL) demonstration project and who is eligible? (1) Roads to community living (RCL) is a demonstration project, funded by a "money follows the person" grant originally authorized under section 6071 of the Deficit Reduction Act of 2005 (P.L. 109-171) and extended through the Patient Affordable Care Act (P.L. 111-148). It is designed to test services and supports which help customers move from institutional settings into the community if they wish to.

(2) To be eligible, the department must assess your needs in CARE per chapter 388-106 or 388-845 WAC and you must:

(a) Have a continuous stay of at least ~~((90))~~ sixty days in a qualified institutional setting (hospital, nursing home, residential habilitation center);

(i) Any days you were solely receiving medicare-paid, short term rehabilitation services are excluded from the ~~((90))~~ sixty days.

(ii) If you are discharging from a state psychiatric hospital and meet the length of stay criteria, you must be under age ~~((22))~~ twenty-two, or age ~~((65))~~ sixty-five and older.

(b) Have received at least one day of medicaid-paid inpatient services immediately prior to discharge from the institutional setting;

(c) Intend to move to a ~~((qualified))~~ home and community based setting (home, apartment, licensed residential setting ~~((with four or less unrelated individuals)))~~; and

(d) On the day of discharge, you must be functionally and financially eligible for, but are not required to receive, medicaid waiver or state plan services.

[Statutory Authority: RCW 74.08.090, 74.09.520, and Affordable Care Act (ACA). WSR 14-01-112, § 388-106-0250, filed 12/18/13, effective 1/18/14. Statutory Authority: RCW 74.08.090, 74.09.520, and Deficit Reduction Act of 2005 (P.L. 109-171). WSR 08-18-046, § 388-106-0250, filed 8/29/08, effective 9/29/08.]

WSR 21-14-085
PROPOSED RULES
LAKE WASHINGTON
INSTITUTE OF TECHNOLOGY
[Filed July 6, 2021, 4:39 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-17-083.

Title of Rule and Other Identifying Information: Chapter 495D-121 WAC, Student conduct code.

Hearing Location(s): On August 17, 2021, at 4 p.m., Zoom, West Room at LWTech. Please note locations are to be determined due to the COVID-19 pandemic.

Date of Intended Adoption: August 18, 2021.

Submit Written Comments to: Dr. Ruby Hayden, 11605 132nd Avenue N.E., Kirkland, WA 98034, email ruby.hayden@lwtech.edu, fax 425-739-8110, by August 10, 2021.

Assistance for Persons with Disabilities: Contact Dr. Ruby Hayden, phone 425-739-8208, fax 425-739-8110, TTY Washington relay, email ruby.hayden@lwtech.edu, www.lwtech.edu, by August 17, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Federal Register printed amendments to Title IX regulations (85 F.R. 30575). The new regulations address the grievance process for formal complaints of sexual harassment and are scheduled to take effect on August 14, 2020. Previously these changes were through the emergency approval process, with extensions and the college now seeks a permanent ruling. In addition, other updates were made to the student code of conduct in alignment with suggestions from the attorney general's office including updates to: Academic dishonesty, unnecessary gendered language, and a new section on required medical withdraw.

Reasons Supporting Proposal: College is required by the United States Department of Education to comply with the recently adopted Title IX regulations. Other updates improve transparency of process for students and support college equity goals.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.

Rule is necessary because of federal law, Title IX regulations (85 F.R. 30575).

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: College administration and the board of trustees support adoption of these changes.

Name of Proponent: Lake Washington Institute of Technology, public.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Ruby Hayden, West 213C, 425-739-8208.

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. Per RCW 34.05.328 (5) (b) (ii) and (iv).

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules only correct typographical errors, make address or name changes, or clarify

language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

July 6, 2021

Elsa Gossett

Senior Executive Assistant
to the President

OTS-3157.1

AMENDATORY SECTION (Amending WSR 14-14-047, filed 6/25/14, effective 7/26/14)

- WAC 495D-121-320 Student conduct code—Jurisdiction.** (1) The student conduct code shall apply to student conduct that occurs:
- (a) On college premises;
 - (b) At or in connection with college sponsored activities;
 - (c) Off-campus when, in the judgment of the college, it adversely affects the college community or the pursuit of its objectives.
- (2) Jurisdiction extends to, but is not limited to, locations in which students engage in official college activities including, but not limited to:
- (a) Foreign or domestic travel;
 - (b) Activities funded by the associated students;
 - (c) Athletic events;
 - (d) Training internships;
 - (e) Cooperative and distance education;
 - (f) Online education;
 - (g) Practicums;
 - (h) Supervised work experiences;
 - (i) Any other college-sanctioned social or club activities.
- (3) Students are responsible for their conduct from the time of application for admission through the actual receipt of a degree, even though conduct may occur before classes begin or after classes end, (~~and~~) as well as during the academic year and during periods between terms of actual enrollment.
- (4) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending. The college has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct that occurs off campus.

[Statutory Authority: RCW 28B.50.140(13). WSR 14-14-047, § 495D-121-320, filed 6/25/14, effective 7/26/14.]

AMENDATORY SECTION (Amending WSR 14-14-047, filed 6/25/14, effective 7/26/14)

WAC 495D-121-330 Student conduct code—Definitions. The following definitions apply for the purposes of this student conduct code:

(1) "Business day" means a weekday, excluding weekends and official college holidays.

(2) "College premises" shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property the college owns, uses, or controls.

(3) "Complainant" means an alleged victim of sexual misconduct.

(4) "Conduct review officer" means the vice president of student services or other college administrator the president designates to have responsibility to receive and review or refer appeals of student disciplinary actions consistent with the procedures of this code. The president can reassign any and all of the conduct review officer's duties or responsibilities as set forth in this chapter as reasonably necessary.

~~((4))~~ (5) "Disciplinary action" means the process by which the student conduct officer imposes discipline against a student for ~~((vi-~~ olating)) a violation of the student conduct code.

~~((5))~~ (6) "Disciplinary appeal" means the process by which an aggrieved student can appeal the discipline ~~((the student conduct officer imposes)) imposed by the student conduct officer.~~ The student conduct committee hears disciplinary appeals for a suspension in excess of ten instructional days or a dismissal. The college will review appeals of all other appealable disciplinary action through brief adjudicative proceedings.

~~((6))~~ (7) "Filing" means the process by which a document is officially delivered to a college official responsible to facilitate a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified college official or college official's assistant; or

(b) Sending the document by email ~~((and))~~ or first class mail to the specified college official's office and college email address.

Papers required for filing are considered filed when the specified college official actually receives the papers during office hours.

~~((7))~~ (8) "President" means the president of the college. The president ~~((can))~~ is authorized to:

(a) Delegate any ~~((and all of his or her)) of their~~ responsibilities as set forth in this chapter as may be reasonably necessary; and

(b) Reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary.

~~((8))~~ (9) "Respondent" means the student against whom the college initiates disciplinary action.

~~((9))~~ (10) "Service" means the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:

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

(b) Sending the document by email ~~((and))~~ or by certified mail or first class mail to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is emailed ~~((and))~~ or deposited in the mail.

~~((10))~~ (11) "Sexual misconduct" has the meaning ascribed to this term in WAC 495D-121-590(18).

(12) "Student" includes all persons who take classes at or through the college, whether on a full-time or part-time basis, and whether such classes are credit courses, noncredit courses, online

courses, or otherwise. People who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who were notified of their acceptance for admission are considered students for purposes of this chapter.

~~((11))~~ (13) "Student conduct committee" means a college committee as described in WAC 495D-121-400.

~~((12))~~ (14) "Student conduct officer" means a college administrator to whom the president or vice president of student services designates responsibility to implement and enforce the student conduct code. The president or vice president can reassign any and all of the student conduct officer's duties or responsibilities as set forth in this chapter as reasonably necessary.

~~((13))~~ (15) "Title IX coordinator" means a college administrator to whom the president designates responsibility to implement and enforce the guidelines of federal Title IX legislation.

[Statutory Authority: RCW 28B.50.140(13). WSR 14-14-047, § 495D-121-330, filed 6/25/14, effective 7/26/14.]

AMENDATORY SECTION (Amending WSR 14-14-047, filed 6/25/14, effective 7/26/14)

WAC 495D-121-340 Student conduct code—Initiation of discipline.

(1) The student conduct officer initiates all disciplinary actions. If that officer is the subject of a complaint the respondent initiates, the president will, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities that relate to the complainant.

(2) The student conduct officer initiates disciplinary action by personally informing the student of the allegations or serving the respondent with written notice directing ~~((him or her))~~ them to attend a disciplinary meeting. The notice will briefly describe the:

(a) Factual allegations;

(b) Provision(s) of the conduct code the respondent allegedly violated;

(c) Range of possible sanctions for the alleged violation(s);

(d) Time and location of the meeting.

At the meeting, the student conduct officer will present the allegations to the respondent and the respondent will be afforded an opportunity to explain what took place. If the respondent ~~((student))~~ fails or refuses to attend the meeting after proper service of notice, the student conduct officer may take disciplinary action based upon the available information.

(3) The student conduct officer, prior to taking disciplinary action in a case involving allegations of sexual misconduct, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or conditions, if any, that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.

(4) Within ten calendar days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer will give the respondent a written decision that states:

(a) The facts and conclusions that support the decision;
 (b) The specific student conduct code provisions that were violated;

(c) The discipline imposed, if any;

(d) A notice of any appeal rights with an explanation of the consequences of not filing a timely appeal.

~~((4))~~ (5) The student conduct officer may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings;

(b) Impose a disciplinary sanction(s) as described in WAC 495D-121-290;

(c) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate. The student conduct officer will make this referral in writing, to the attention of the student conduct committee's chair with a copy served on the respondent.

~~((5) Any college administrator or managing authority of a distance learning course, except the president and the vice president who would hear any appeal, may initiate proceedings and recommend taking any of the disciplinary actions defined in WAC 495D-121-600, except that only the president, a vice president, or designee may dismiss or suspend a student from the college. Before taking the action, the disciplining official will notify his or her supervisor and meet or attempt to meet with the student to explain the seriousness of the matter and hear any explanation by the student.)~~ (6) In cases involving allegations of sexual misconduct, the student conduct officer, on the same date that a disciplinary decision is served on the respondent, will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure prompt notice of the protective disciplinary sanctions and/or conditions.

[Statutory Authority: RCW 28B.50.140(13). WSR 14-14-047, § 495D-121-340, filed 6/25/14, effective 7/26/14.]

AMENDATORY SECTION (Amending WSR 14-14-047, filed 6/25/14, effective 7/26/14)

WAC 495D-121-350 Student conduct code—Appeal from disciplinary action. (1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within ~~((twenty-one))~~ ten days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

(2) The notice of appeal must include a brief statement explaining why the respondent is seeking review.

(3) The parties to an appeal shall be the respondent and the conduct review officer.

(4) A respondent, who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

(5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.

(6) Imposition of disciplinary action for violation of the student conduct code shall be stayed pending appeal, unless respondent has been summarily suspended.

(7) The student conduct committee shall hear appeals from:

(a) The imposition of disciplinary suspensions in excess of ten instructional days;

(b) Dismissals; and

(c) Discipline cases referred to the committee by the student conduct officer, the conduct review officer, or the president.

(8) Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:

(a) Suspensions of ten instructional days or less;

(b) Disciplinary probation;

(c) Written reprimands; and

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

(9) Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary actions are final action and are not subject to appeal.

(10) In cases involving allegations of sexual misconduct, the complainant has the right to appeal the following actions by the student conduct officer following the same procedures as set forth above for the respondent:

(a) The dismissal of a sexual misconduct complaint; or

(b) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary warning.

(11) If the respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college shall notify the complainant of the appeal and provide the complainant an opportunity to intervene as a party to the appeal.

(12) Except as otherwise specified in this chapter, a complainant who timely appeals a disciplinary decision or who intervenes as a party to the respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as are afforded the respondent.

[Statutory Authority: RCW 28B.50.140(13). WSR 14-14-047, § 495D-121-350, filed 6/25/14, effective 7/26/14.]

AMENDATORY SECTION (Amending WSR 14-14-047, filed 6/25/14, effective 7/26/14)

WAC 495D-121-380 Student conduct code—Brief adjudicative proceedings—Initial hearing. (1) Brief adjudicative proceedings shall be conducted by a conduct review officer (~~designated by the president~~). The conduct review officer shall not participate in any case

in which (~~he or she is~~) they are a complainant or witness, or in which (~~he or she has~~) they have direct or personal interest, prejudice, or bias, or in which (~~he or she has~~) they have acted previously in an advisory capacity.

(2) Before taking action, the conduct review officer shall conduct an informal hearing and provide each party:

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

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

(3) The conduct review officer shall serve an initial decision upon both the parties within ten days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within (~~twenty-one~~) ten days of service of the initial decision, the initial decision shall be deemed the final decision.

(4) In cases involving allegations of sexual misconduct, the conduct review officer, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection. The notice will also inform the complainant of their appeal rights.

(5) If the conduct review officer, upon review, determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or (~~expulsion~~) dismissal, the matter shall be referred to the student conduct committee for a disciplinary hearing.

[Statutory Authority: RCW 28B.50.140(13). WSR 14-14-047, § 495D-121-380, filed 6/25/14, effective 7/26/14.]

AMENDATORY SECTION (Amending WSR 14-14-047, filed 6/25/14, effective 7/26/14)

WAC 495D-121-390 Student conduct code—Brief adjudicative proceedings—Review of an initial decision. (1) An initial decision is subject to review by the president, provided (~~the respondent~~) a party files a written request for review with the conduct review officer within (~~twenty-one~~) ten days of service of the initial decision.

(2) The president shall not participate in any case in which (~~he or she is~~) they are a complainant or witness, or in which (~~he or she has~~) they have direct or personal interest, prejudice, or bias, or in which (~~he or she has~~) they have acted previously in an advisory capacity.

(3) During the review, the president shall give (~~each party~~) all parties an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the student conduct committee for a formal adjudicative hearing.

(4) The decision on review must be in writing and must include a brief statement of the reasons for the decision and must be served on

the parties within twenty days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the president does not make a disposition of the matter within twenty days after the request is submitted.

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

(6) In cases involving allegations of sexual misconduct, the president, on the same date as the final decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights.

[Statutory Authority: RCW 28B.50.140(13). WSR 14-14-047, § 495D-121-390, filed 6/25/14, effective 7/26/14.]

AMENDATORY SECTION (Amending WSR 14-14-047, filed 6/25/14, effective 7/26/14)

WAC 495D-121-410 Student conduct code—Appeal—Student conduct committee. (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW (~~, and by the Model Rules of Procedure, chapter 10-08 WAC. To the extent there is a conflict between these rules and chapter 10-08 WAC, these rules shall control~~).

(2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven days in advance of the hearing date (~~, as further specified in RCW 34.05.434 and WAC 10-08-040 and 10-08-045~~). The chair may shorten this notice period if both parties agree, and also may continue the hearing to a later time for good cause shown.

(3) The committee chair is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

(4) Upon request filed at least five days before the hearing by any party or at the direction of the committee chair, the parties shall exchange, no later than the third day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(5) The committee chair may provide to the committee members in advance of the hearing copies of (a) the student conduct officer's notification of imposition of discipline (or referral to the committee) and (b) the notice of appeal, or any response to referral, by the re-

spondent. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

(6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the committee chair may provide copies of these admissible exhibits to the committee members before the hearing.

(7) The student conduct officer, upon request, shall provide reasonable assistance to the respondent and complainant in obtaining relevant and admissible evidence that is within the college's control.

(8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(9) ~~((Each party may be accompanied at the hearing by a nonattorney assistant of his/her choice. A respondent))~~ In cases heard by the committee, each party may be accompanied at the hearing by a nonattorney assistant of their choice. The respondent in all appeals before the committee, or a complainant in an appeal involving allegations of sexual misconduct before the committee, may elect to be represented by an attorney at ((his or her)) their own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer. The committee will ordinarily be advised by an assistant attorney general. If the respondent and/or the complainant is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened assistant attorney general.

[Statutory Authority: RCW 28B.50.140(13). WSR 14-14-047, § 495D-121-410, filed 6/25/14, effective 7/26/14.]

AMENDATORY SECTION (Amending WSR 14-14-047, filed 6/25/14, effective 7/26/14)

WAC 495D-121-420 Student conduct code—Student conduct appeals committee hearings—Presentation of evidence. (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

- (a) Proceed with the hearing and issuance of its decision; or
- (b) Serve a decision of default in accordance with RCW 34.05.440.

(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(3) The chair shall cause the hearing to be recorded by a method that he/she selects, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted, in accordance with WAC 10-08-190.

(4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.

(5) The student conduct officer, unless represented by an assistant attorney general, shall present the case for imposing disciplinary sanctions.

(6) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

(7) In cases involving allegations of sexual misconduct, no party shall directly question or cross examine one another. Attorneys for the parties are also prohibited from questioning the opposing party absent express permission from the committee chair. Subject to this exception, all cross-examination questions shall be directed to the committee chair, who in their discretion shall pose the questions on the party's behalf.

[Statutory Authority: RCW 28B.50.140(13). WSR 14-14-047, § 495D-121-420, filed 6/25/14, effective 7/26/14.]

AMENDATORY SECTION (Amending WSR 14-14-047, filed 6/25/14, effective 7/26/14)

WAC 495D-121-430 Student conduct code—Student conduct committee—Initial decision. (1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within twenty days following the later of the conclusion of the hearing, or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.

(3) The committee's initial order shall also include a determination on appropriate discipline, if any. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanction(s) or conditions, if any, as authorized in the student code. If the matter is an appeal by (~~the respondent~~) a party, the committee may affirm, reverse, or modify the disciplinary sanction and/or conditions imposed by the student conduct officer and/or impose additional disciplinary sanction(s) or conditions as authorized herein.

(4) The committee chair shall cause copies of the initial decision to be served on the parties and their legal counsel of record. The committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the president.

(5) In cases involving allegations of sexual misconduct, the chair of the student conduct committee, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations

of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. Complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to other parties. The notice will also inform the complainant of their appeal rights.

[Statutory Authority: RCW 28B.50.140(13). WSR 14-14-047, § 495D-121-430, filed 6/25/14, effective 7/26/14.]

AMENDATORY SECTION (Amending WSR 14-14-047, filed 6/25/14, effective 7/26/14)

WAC 495D-121-440 Student conduct code—Appeal from student conduct committee initial decision. (1) A respondent who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's initial decision to the president by filing a notice of appeal with the president's office within ~~((twenty-one))~~ ten days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

(2) The notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain argument why the appeal should be granted. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the notice of appeal.

(3) The president shall provide a written decision to all parties within ~~((forty-five))~~ twenty days after receipt of the notice of appeal. The president's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.

(4) ~~((The president may, at his or her discretion, suspend any disciplinary action pending review of the merits of the findings, conclusions, and disciplinary actions imposed.))~~ In cases involving allegations of sexual misconduct, the president, on the same date that the final decision is served upon the respondent, shall serve a written notice informing the complainant of the final decision. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.

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

[Statutory Authority: RCW 28B.50.140(13). WSR 14-14-047, § 495D-121-440, filed 6/25/14, effective 7/26/14.]

AMENDATORY SECTION (Amending WSR 14-14-047, filed 6/25/14, effective 7/26/14)

WAC 495D-121-450 Student conduct code—Summary suspension. (1)

Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

(2) The student conduct officer may impose a summary suspension if there is probable cause to believe that the respondent:

(a) Has violated any provision of the code of conduct; and

(b) Presents an immediate danger to the health, safety or welfare of members of the college community; or

(c) Poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.

(3) Notice. Any respondent who has been summarily suspended shall be served with oral or written notice of the summary suspension. If oral notice is given, a written notification shall be served on the respondent within two business days of the oral notice.

(4) The written notification shall be entitled "Notice of Summary Suspension" and shall include:

(a) The reasons for imposing the summary suspension, including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student conduct code or the law allegedly violated;

(b) The date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and

(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included that warns the student that (~~his or her~~) their privilege to enter into or remain on college premises has been withdrawn, that the respondent shall be considered trespassing and subject to arrest for criminal trespass if the respondent enters the college campus other than to meet with the student conduct officer or conduct review officer, or to attend a disciplinary hearing.

(5) Hearing procedures:

(a) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.

(b) During the summary suspension hearing, the issue before the conduct review officer is whether there is probable cause to believe that the summary suspension should be continued pending the conclusion of disciplinary proceedings and/or whether the summary suspension should be less restrictive in scope.

~~((b))~~ (c) The respondent shall be afforded an opportunity to explain why summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope.

~~((e))~~ (d) If the student fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.

~~((d))~~ (e) As soon as practicable following the hearing, the conduct review officer shall issue a written decision which shall include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal.

~~((e))~~ (f) To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or offices who may be bound or protected by it.

(6) In cases involving allegations of sexual misconduct, the complainant shall be notified that a summary suspension has been imposed on the same day that the summary suspension notice is served on the respondent. The college will also provide the complainant with timely notice of any subsequent changes to the summary suspension order.

[Statutory Authority: RCW 28B.50.140(13). WSR 14-14-047, § 495D-121-450, filed 6/25/14, effective 7/26/14.]

AMENDATORY SECTION (Amending WSR 14-14-047, filed 6/25/14, effective 7/26/14)

WAC 495D-121-460 Student conduct code—Discipline procedures for cases involving allegations of sexual misconduct—Supplemental sexual misconduct procedures. Both the respondent and the complainant in cases involving allegations of sexual misconduct shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the initial disciplinary decision-making process and to appeal any disciplinary decision.

~~(Application of the following procedures is limited to student conduct code proceedings involving allegations of sexual misconduct by a student. In such cases, these procedures shall supplement the student disciplinary procedures in WAC 495D-121-310 through 495D-121-450. In the event of conflict between the sexual misconduct procedures and the student disciplinary procedures, the sexual misconduct procedures shall prevail.)~~

[Statutory Authority: RCW 28B.50.140(13). WSR 14-14-047, § 495D-121-460, filed 6/25/14, effective 7/26/14.]

AMENDATORY SECTION (Amending WSR 14-14-047, filed 6/25/14, effective 7/26/14)

WAC 495D-121-500 Student conduct code—Free movement on campus. The president or designee is authorized in the instance of any event that ~~((he or she))~~ they deem~~((s))~~ impedes the movement of persons or vehicles or which ~~((he or she))~~ they deem~~((s))~~ to disrupt the ingress or egress of persons from the college facilities, to prohibit the entry of, or withdraw the license of, or privileges of a person or persons or any group of persons to enter onto or remain upon any portion of the college facility. The president may act through the vice president of administrative services or any other person ~~((he or she))~~ they may designate.

[Statutory Authority: RCW 28B.50.140(13). WSR 14-14-047, § 495D-121-500, filed 6/25/14, effective 7/26/14.]

AMENDATORY SECTION (Amending WSR 14-14-047, filed 6/25/14, effective 7/26/14)

WAC 495D-121-520 Student conduct code—Civil disturbances. In accordance with provisions contained in RCW 28B.10.571 and 28B.10.572:

(1) It shall be unlawful for any person, singly or in concert with others, to interfere by force or violence with any administrator, faculty, staff member, or student of the college who is in the peaceful discharge or conduct of (~~his/her~~) their duties or studies.

(2) It shall be unlawful for any person, singly or in concert with others, to intimidate by threat of force or violence any administrator, faculty, staff member, or student of the college who is in the peaceful discharge of (~~his/her~~) their duties or studies.

(3) The crimes described in RCW 28B.10.571 and 28B.10.572 shall not apply to any administrator, faculty, or staff member who is engaged in the reasonable exercise of their disciplinary authority.

(4) Any person or persons who violate the provisions of subsections (1) and (2) of this section will be subject to disciplinary action and referred to the authorities for prosecution.

[Statutory Authority: RCW 28B.50.140(13). WSR 14-14-047, § 495D-121-520, filed 6/25/14, effective 7/26/14.]

AMENDATORY SECTION (Amending WSR 14-14-047, filed 6/25/14, effective 7/26/14)

WAC 495D-121-530 Student conduct code—Authority to prohibit trespass. (1) Individuals who are not students or members of the faculty or staff and who violate Lake Washington Institute of Technology's rules, or whose conduct threatens the safety or security of its students, staff, or faculty will be advised of the specific nature of the violation, and if they persist in the violation, they will be requested by the campus president, or (~~his or her~~) their designee, to leave the college property. Such a request will be deemed to prohibit the entry of, withdraw the license or privilege to enter onto or remain upon any portion of the college property by the person or group of persons requested to leave, and subject such individuals to arrest under the provisions of chapter 9A.52 RCW.

(2) Members of the college community, students, faculty, and staff who do not comply with these regulations will be reported to the appropriate college office or agency for action in accord with established college policies.

(3) When the college revokes the license or privilege of any person to be on college property, temporarily or for a stated period of time, that person may file a request for review of the decision with the vice president of administrative services or designee within ten days of receipt of the trespass notice. The request must contain the reasons why the individual disagrees with the trespass notice. The

trespass notice will remain in effect during the pendency of any review period. The decision of the vice president of administrative services or designee will be the final decision of the college and should be issued within five business days.

[Statutory Authority: RCW 28B.50.140(13). WSR 14-14-047, § 495D-121-530, filed 6/25/14, effective 7/26/14.]

AMENDATORY SECTION (Amending WSR 14-14-047, filed 6/25/14, effective 7/26/14)

WAC 495D-121-540 Student conduct code—Academic dishonesty and classroom, lab, clinic conduct. (1) Honest assessment of student performance is of crucial importance to all members of the academic community. The college views acts of dishonesty as serious breaches of honor and will deal with them using the following:

(a) College administration and faculty will provide reasonable and prudent security measures designed to minimize opportunities for acts of academic dishonesty.

(b) Any student who, for the purpose of fulfilling any assignment or task required by a faculty member as part of the student's program of instruction, shall knowingly tender any work product that the student fraudulently represents to the faculty member as the student's work product, shall be deemed to have committed an act of academic dishonesty. Acts of academic dishonesty are cause for disciplinary action.

(c) Any student who aids or abets an act of academic dishonesty, as described in (b) of this subsection, (~~is~~) may be subject to disciplinary action.

(d) Faculty may adjust the student's grade on a particular project, paper, test, or class for academic dishonesty. This section shall not be construed as preventing a faculty from taking immediate disciplinary action when (~~he or she~~) they must act upon such breach of academic dishonesty to preserve order and prevent disruptive conduct in the classroom.

(2) Instructors have the authority to take whatever summary actions necessary to maintain order and proper conduct in the classroom and to maintain the effective cooperation of the class in fulfilling the course objectives.

(a) Any student who, by any act of misconduct, substantially disrupts a class by engaging in conduct that renders it difficult or impossible to maintain the decorum of the faculty's class is subject to disciplinary action.

(b) The faculty of each course, or the managing authority of distance learning courses, can take steps as necessary to preserve order and to maintain the effective cooperation of the class in fulfilling the course objectives, given that a student shall have the right to appeal the disciplinary action to the faculty's supervisor.

[Statutory Authority: RCW 28B.50.140(13). WSR 14-14-047, § 495D-121-540, filed 6/25/14, effective 7/26/14.]

AMENDATORY SECTION (Amending WSR 14-14-047, filed 6/25/14, effective 7/26/14)

WAC 495D-121-570 Student conduct code—Authority. The board of trustees, acting pursuant to RCW 28B.50.140(~~((14))~~) (13), delegates to the president of the college the authority to administer disciplinary action. Administration of the disciplinary procedures is the responsibility of the vice president of student ~~((affairs))~~ services or designee. The student conduct officer shall serve as the principal investigator and administrator for alleged violations of this code.

[Statutory Authority: RCW 28B.50.140(13). WSR 14-14-047, § 495D-121-570, filed 6/25/14, effective 7/26/14.]

AMENDATORY SECTION (Amending WSR 16-10-092, filed 5/3/16, effective 6/3/16)

WAC 495D-121-590 Student conduct code—Prohibited student conduct. The college may impose disciplinary sanctions against a student who commits, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of misconduct which include, but are not limited to, the following:

(1) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication.

(a) Cheating includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(d) Academic consequences for academic dishonesty or abetting in academic dishonesty may be imposed at the discretion of a faculty member up to and including a failing grade for the course. Students should refer to each of their faculty's course syllabus. Further academic consequences may follow consistent with the provisions in any program handbook. Incidents of academic dishonesty may also be referred to the student conduct officer for disciplinary action consistent with this chapter in addition to the academic consequences identified above.

(2) **Other dishonesty.** Any other acts of dishonesty. Such acts include, but are not limited to:

(a) Forgery, alteration, submission of falsified documents or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students; or

(c) Furnishing false information or failing to furnish correct information, in response to the request or requirement of a college officer or employee.

(3) **Obstructive or disruptive ((activity)) conduct.** (~~(Participation in any activity that obstructs or disrupts))~~ Conduct, not otherwise protected by law, that interferes with, impedes, or otherwise unreasonably hinders:

(a) Any instruction, research, administration, disciplinary proceeding, or other college activity;

(b) The free flow of pedestrian or vehicular movement on college property or at a college activity;

(c) Any student's ability to profit from the instructional program; or

(d) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

(4) **Assault, intimidation, and/or harassment.** (~~(Assault, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, stalking or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this subsection:~~

(a) ~~Bullying is physical or verbal abuse, repeated over time, and involving a power imbalance between the aggressor and victim.~~

(b) ~~Stalking is intentional and repeated following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated or harassed, even if the perpetrator lacks such an intent.)~~ Unwanted touching, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior, not otherwise protected by law that intentionally humiliates, harms, or intimidates the victim.

(5) **Imminent danger.** Where the student presents an imminent danger to college property, or to (~~(himself or herself))~~ themselves, or other students or persons in college facilities on or off campus, or to the education processes of the college.

(6) **Cyber misconduct.** Cyberstalking, cyberbullying, or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(7) **Property violation.** (~~(Attempted or actual damage to, or theft or misuse of, real or personal property or money of:~~

(a) ~~The college or state;~~

(b) ~~Any student or college officer, employee, or organization;~~

(c) ~~Any other person or organization; or~~

(d) ~~Possession of such property or money after it has been stolen.)~~ Damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging or destruction of college property or the property of another person. Property for purposes

of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.

(8) **Noncompliance.** Failure to comply with:

(a) The direction of a college officer or employee who is acting in the legitimate performance of (~~his or her~~) their duties, including failure to properly identify oneself to such a person when requested to do so;

(b) (~~A college attendance policy as published in the student handbook or course syllabus; or~~

~~(e)-)~~) A college rule or policy as set forth in the *Lake Washington Institute of Technology Policies and Procedures Manual* which may be found in the library or online.

(9) **Weapons.** Possession, holding, wearing, transporting, storage, or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, martial arts weapons, explosive device, dangerous chemicals, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties; or

(b) A student with a valid concealed weapons permit may store a firearm in (~~his or her~~) their vehicle parked on campus in accordance with RCW 9.41.050, provided the vehicle is locked and the weapon is concealed from view; or

(c) The president or designee may authorize possession of a weapon on campus upon a showing that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in advance to bringing weapons to the college, in writing, and shall be subject to such terms or conditions incorporated therein.

(10) **Hazing.** Hazing includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student.

(11) **Tobacco, electronic cigarettes, and related products.** The use of tobacco, electronic cigarettes, and related products in any building owned, leased, or operated by the college or in any location where such use is prohibited, including twenty-five feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased, or operated by the college. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, and snuff.

(12) **Alcohol.** Being observably under the influence of any alcoholic beverage, or otherwise using, possessing, selling, or delivering any alcoholic beverage, except as permitted by law and authorized by the college president.

(13) **Marijuana.** The use, possession, delivery, sale, or being observably under the influence of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(14) **Drugs.** (~~Being observably under the influence of any legend drug, narcotic drug, or controlled substance as defined in chapters 69.41 and 69.50 RCW, or otherwise using, possessing, delivering, or selling any such drug or substance, except in accordance with a lawful~~

prescription for that student by a licensed health care professional.) The use, possession, delivery, sale, or being observably under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner. Being observably under the influence of any lawfully prescribed drug when enrolled in classes that require operation of heavy equipment or other dangerous equipment.

(15) ~~((**Obstruction.** Obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity.~~

~~(16)) **Disorderly conduct.** Conduct which is disorderly, lewd, obscene, or a breach of peace on college premises or at college sponsored activities that is not otherwise protected under the law.~~

~~((17) **Discrimination.** Discriminatory action which harms or adversely affects any member of the college community because of her/his race; color; national origin; sensory, mental, or physical disability; age; religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification.~~

~~(18) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence.~~

~~(a) **Sexual harassment.** The term "sexual harassment" means unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature that is sufficiently serious as to deny or limit, and that does deny or limit, based on sex, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members.~~

~~(b) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.~~

~~(c) **Sexual violence.** "Sexual violence" is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.~~

~~(i) Nonconsensual sexual intercourse is any sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.~~

~~(ii) Nonconsensual sexual contact is any intentional sexual touching, however slight, with any object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.~~

~~(iii) Domestic violence includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.~~

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

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

~~(vi) Consent: Knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.~~

~~A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.~~

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

~~(19)) (16) **Discriminatory conduct.** Conduct which harms or adversely affects any member of the college community because of their race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; sexual orientation; gender identity; veteran's status; or any other legally protected classification.~~

~~(17) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX is defined in the supplemental procedures to this code. See WAC 495D-121-680 (supplemental Title IX student conduct procedures).~~

~~(a) **Sexual harassment.** The term "sexual harassment" means unwelcome sexual or gender-based conduct, including unwelcome sexual advances, requests for sexual favors, quid pro quo harassment, and other verbal, nonverbal, or physical conduct of a sexual or a gendered nature that is sufficiently severe, persistent, or pervasive as to:~~

~~(i) deny or limit the ability of a student to participate in or benefit from the college's educational program;~~

~~(ii) alter the terms or conditions of employment for a college employee(s); and/or~~

~~(iii) create an intimidating, hostile, or offensive environment for other campus community members.~~

~~(b) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex, including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.~~

~~(c) **Sexual violence.** "Sexual violence" is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.~~

(d) **Nonconsensual sexual intercourse.** Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(e) **Nonconsensual sexual contact.** Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(f) **Incest.** Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren, and adopted children under the age of eighteen.

(g) **Statutory rape.** Consensual intercourse between a person who is eighteen years of age or older, and a person who is under the age of sixteen.

(h) **Domestic violence.** Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(i) **Dating violence.** Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(i) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(ii) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(A) The length of the relationship;

(B) The type of relationship; and

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

(j) For purposes of this code, "consent" means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact. A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct. Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(18) **Harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person be-

cause of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental, or physical disability; age; religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "Sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic communications.

~~((20))~~ **(19) Retaliation.** ~~((Retaliation against any individual for reporting, providing information, exercising one's rights or responsibilities, or otherwise being involved in the process of responding to, investigating, or addressing allegations or violations of federal, state or local law, or college policies including, but not limited to, student conduct code provisions prohibiting discrimination and harassment.~~

~~(21))~~ Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such person reported an alleged violation of this code or college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.

(20) Misuse of information resources. Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

- (a) Unauthorized use of such resources or opening of a file, message, or other item;
- (b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;
- (c) Unauthorized use or distribution of someone else's password or other identification;
- (d) Use of such time or resources to interfere with someone else's work;
- (e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;
- (f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;
- (g) Use of such time or resources in violation of applicable copyright or other law;
- (h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization;
- (i) Failure to comply with the college's acceptable use policy.

~~((22))~~ **(21) Breach of campus safety.** Safety violation includes any nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community. Breaching campus safety or security includes, but is not limited to:

- (a) Unauthorized access to college facilities; intentionally damaging door locks; unauthorized possession of college keys or access cards; duplicating college keys or access cards; ~~((or))~~ propping open of exterior doors; or unauthorized entry onto or into college property;

(b) Tampering with fire safety equipment, such as fire extinguishers, smoke detectors, alarm pull stations or emergency exits or triggering false alarms or other emergency response systems;

(c) Placement of equipment or vehicles, including bicycles, so as to obstruct the means of access to/from college buildings;

(d) Entering or remaining in any closed college facility or entering after the closing time of the college facility without permission of a college official;

(e) Operation of any motor vehicle on college property in an unsafe manner or in a manner which is reasonably perceived as threatening the health or safety of another person.

~~((23))~~ **(22) Abuse of procedures.** Abuse or misuse of any of the procedures relating to student complaints or misconduct including, but not limited to:

(a) Failure to obey a subpoena;

(b) Falsification or misrepresentation of information;

(c) Disruption or interference with the orderly conduct of a proceeding;

(d) Interfering with someone else's proper participation in a proceeding;

(e) Destroying or altering potential evidence or attempting to intimidate or otherwise improperly pressure a witness or potential witness;

(f) Attempting to influence the impartiality of, or harassing or intimidating, a student conduct committee member;

(g) Failure to comply with any disciplinary sanction(s) imposed under this student conduct code.

~~((24))~~ **(23) Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college traffic and parking rules.

~~((25))~~ **(24) Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college ~~((shall proceed with))~~ reserves the right to pursue student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

[Statutory Authority: RCW 28B.50.140(13). WSR 16-10-092, § 495D-121-590, filed 5/3/16, effective 6/3/16; WSR 14-14-047, § 495D-121-590, filed 6/25/14, effective 7/26/14.]

AMENDATORY SECTION (Amending WSR 14-14-047, filed 6/25/14, effective 7/26/14)

WAC 495D-121-600 Student conduct code—Disciplinary sanctions.

~~((Disciplinary actions include, but are not limited to, the following sanctions that may be imposed upon students according to the procedure outlined in WAC 495D-121-340.~~

~~(1) Primary sanctions.))~~ (1) The following primary disciplinary sanctions may be imposed upon students found to have violated the student conduct code.

(a) **Disciplinary warning.** A verbal statement to a student that there is a violation and that continued violation may be cause for further disciplinary action.

(b) **Written reprimand.** Notice in writing that the student has violated one or more terms of this code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action.

(c) **Disciplinary probation.** Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation and which may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction, which may include, but is not limited to, a suspension or a dismissal from the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance at the college.

(d) **Disciplinary suspension.** Dismissal from the college and from the student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action is taken. The student is not guaranteed readmission at the end of such period of time, but is guaranteed a review of the case and a decision regarding eligibility for readmission.

(e) **Dismissal.** The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the action is taken.

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

(a) **Restitution.** Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.

(b) **Professional evaluation.** Referral for drug, alcohol, psychological, or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation including, but not limited to, drug and alcohol education, anger management coursework, or ongoing treatment. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(c) **Not in good standing.** A student may be deemed "not in good standing" with the college. If so the student shall be subject to the following restrictions:

(i) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.

(ii) Ineligible to represent the college to anyone outside the college community in any way, including representing the college at any official function, or any forms of intercollegiate competition or representation.

(d) **No contact orders and other summary relief.** The college may require a student to refrain from any form of contact with another student or college employee. Other forms or relief include, but are not limited to: Switching to alternate sections of individual classes or programs, delaying admission to an instructional program, assigned seating during a class, or behavioral contracts.

(3) **Secondary sanctions.** No order of severity is established for secondary sanctions:

(a) **Community/college service.** A student may be offered an opportunity to complete a specified number of hours of community/college service in lieu of other sanctions. The type of community/college service must be approved by the hearing officer.

(b) **Educational requirements.** A provision to complete a specific educational requirement directly related to the violation committed. The provision will be clearly defined. Such educational requirements may include, but are not limited to, completion of an alcohol education workshop, a diversity awareness workshop, an anger management class, essays, or reports.

(c) **Restrictions.** The withdrawal of specified privileges for a definite period of time, but without the additional stipulations contained in the imposition of conduct probation. The restrictions involved will be clearly defined.

(d) **Loss of parking privileges on campus.** Revocation of parking privileges.

[Statutory Authority: RCW 28B.50.140(13). WSR 14-14-047, § 495D-121-600, filed 6/25/14, effective 7/26/14.]

AMENDATORY SECTION (Amending WSR 14-14-047, filed 6/25/14, effective 7/26/14)

WAC 495D-121-620 Student conduct code—Refunds and access. (1) The college's refund policy covers refund of fees for the quarter in which disciplinary action occurs.

(2) The college may deny a student access to all or any part of the campus or other facility if (~~he or she was~~) they were suspended on the basis of conduct, which disrupted the orderly operation of the campus or any facility of the district, may be denied.

[Statutory Authority: RCW 28B.50.140(13). WSR 14-14-047, § 495D-121-620, filed 6/25/14, effective 7/26/14.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 495D-121-470 Student conduct code—Discipline procedures for cases involving allegations of sexual misconduct—Supplemental definitions.
- WAC 495D-121-480 Student conduct code—Discipline procedures for cases involving allegations of sexual misconduct—Supplemental complaint process.
- WAC 495D-121-490 Student conduct code—Discipline procedures for cases involving allegations of sexual misconduct—Supplemental appeal rights.

OTS-2491.3NEW SECTION**WAC 495D-121-680 Student conduct code—Order of precedence.**

This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with Lake Washington Institute of Technology's standard disciplinary procedures, WAC 495D-121-320 through 495D-121-670, these supplemental procedures shall take precedence. College may, at its discretion, contract with an administrative law judge or other person to act as presiding officer and assign such presiding officer to exercise any or all of the duties in lieu of the student conduct committee and committee chair.

[]

NEW SECTION

WAC 495D-121-690 Student conduct code—Prohibited conduct under Title IX. Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, Lake Washington Institute of Technology may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

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

(1) Quid pro quo harassment. A Lake Washington Institute of Technology employee conditioning the provision of an aid, benefit, or

service of Lake Washington Institute of Technology on an individual's participation in unwelcome sexual conduct.

(2) Hostile environment. Unwelcome conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to Lake Washington Institute of Technology's educational programs or activities, or employment.

(3) Sexual assault. Sexual assault includes the following conduct:

(a) Nonconsensual sexual intercourse. Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(b) Nonconsensual sexual contact. Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(c) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of eighteen.

(d) Statutory rape. Consensual sexual intercourse between someone who is eighteen years of age or older and someone who is under the age of sixteen.

(4) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(5) Dating violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(a) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(b) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(i) The length of the relationship;

(ii) The type of relationship; and

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

(6) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.

[]

NEW SECTION

WAC 495D-121-700 Student conduct code—Prohibited conduct under Title IX jurisdiction. (1) This supplemental procedure applies only if the alleged misconduct:

- (a) Occurred in the United States;
- (b) Occurred during a Lake Washington Institute of Technology educational program or activity; and
- (c) Meets the definition of sexual harassment as that term is defined in this supplemental procedure.

(2) For purposes of this supplemental procedure, an "educational program or activity" is defined as locations, events, or circumstances over which Lake Washington Institute of Technology exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by Lake Washington Institute of Technology.

(3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Dismissal under this supplemental procedure does not prohibit Lake Washington Institute of Technology from pursuing other disciplinary action based on allegations that the respondent violated other provisions of Lake Washington Institute of Technology's student conduct code, WAC 495D-121-320 through 495D-121-670.

(4) If the student conduct officer determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the student conduct officer will issue a notice of dismissal in whole or part to both parties explaining why some or all of the Title IX claims have been dismissed.

[]

NEW SECTION

WAC 495D-121-710 Student conduct code—Initiation of discipline.

(1) Upon receiving the Title IX investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

(2) If the student conduct officer determines that there are sufficient grounds to proceed under these supplemental procedures, the student conduct officer will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice with either the chair of the student conduct committee or the college's appointed Title IX hearing officer and serving the notice on the respondent and the complainant, and their respective advisors. The notice must:

- (a) Set forth the basis for Title IX jurisdiction;
- (b) Identify the alleged Title IX violation(s);
- (c) Set forth the facts underlying the allegation(s);
- (d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s);

(e) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:

(i) The advisors will be responsible for questioning all witnesses on the party's behalf;

(ii) An advisor may be an attorney; and

(iii) Lake Washington Institute of Technology will appoint the party an advisor of Lake Washington Institute of Technology's choosing at no cost to the party, if the party fails to do so.

(3) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

[]

NEW SECTION

WAC 495D-121-720 Student conduct code—Prehearing procedure.

(1) Upon receiving the disciplinary notice, the chair of the student conduct committee or the college's appointed Title IX hearing officer will send a hearing notice to all parties, in compliance with WAC 495D-121-410. In no event will the hearing date be set less than ten days after the Title IX coordinator provided the final investigation report to the parties.

(2) A party may choose to have an attorney serve as their advisor at the party's own expense. This right will be waived unless, at least five days before the hearing, the attorney files a notice of appearance with the committee chair with copies to all parties and the student conduct officer.

(3) In preparation for the hearing, the parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether Lake Washington Institute of Technology intends to offer the evidence at the hearing.

[]

NEW SECTION

WAC 495D-121-730 Student conduct code—Rights of parties. (1)

Lake Washington Institute of Technology's student conduct procedures, WAC 495D-121-320 through 495D-121-670, and this supplemental procedure shall apply equally to all parties.

(2) The Lake Washington Institute of Technology bears the burden of offering and presenting sufficient testimony and evidence to establish that the respondent is responsible for a Title IX violation by a preponderance of the evidence.

(3) The respondent will be presumed not responsible until such time as the disciplinary process has been finally resolved.

(4) During the hearing, each party shall be represented by an advisor. The parties are entitled to an advisor of their own choosing and the advisor may be an attorney. If a party does not choose an advisor, then the Title IX coordinator will appoint an advisor of Lake Washington Institute of Technology's choosing on the party's behalf at no expense to the party.

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NEW SECTION

WAC 495D-121-740 Student conduct code—Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

(1) **Relevance:** The committee chair or the college's appointed Title IX hearing officer shall review all questions for relevance and shall explain on the record their reasons for excluding any question based on lack of relevance.

(2) **Relevance** means that information elicited by the question makes facts in dispute more or less likely to be true.

(3) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:

(a) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or

(b) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.

(4) **Cross-examination required:** If a party or witness does not submit to cross-examination during the live hearing, the committee or the college's appointed Title IX hearing officer must not rely on any statement by that party or witness in reaching a determination of responsibility.

(5) **No negative inference:** The committee or the college's appointed Title IX hearing officer may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions.

(6) **Privileged evidence:** The committee or the college's appointed Title IX hearing officer shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(a) Spousal/domestic partner privilege;

(b) Attorney-client and attorney work product privileges;

(c) Privileges applicable to members of the clergy and priests;

(d) Privileges applicable to medical providers, mental health therapists, and counselors;

(e) Privileges applicable to sexual assault and domestic violence advocates; and

(f) Other legal privileges identified in RCW 5.60.060.

[]

NEW SECTION

WAC 495D-121-750 Student conduct code—Initial order. (1) In addition to complying with WAC 495D-121-430, the student conduct com-

mittee or the college's appointed Title IX hearing officer will be responsible for conferring and drafting an initial order that:

- (a) Identifies the allegations of sexual harassment;
 - (b) Describes the grievance and disciplinary procedures, starting with filing of the formal complaint through the determination of responsibility, including notices to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and hearings held;
 - (c) Makes findings of fact supporting the determination of responsibility;
 - (d) Reaches conclusions as to whether the facts establish whether the respondent is responsible for engaging in sexual harassment in violation of Title IX;
 - (e) Contains a statement of, and rationale for, the committee's or the college's appointed Title IX hearing officer's determination of responsibility for each allegation;
 - (f) Describes any disciplinary sanction or conditions imposed against the respondent, if any;
 - (g) Describes to what extent, if any, complainant is entitled to remedies designed to restore or preserve complainant's equal access to Lake Washington Institute of Technology's education programs or activities; and
 - (h) Describes the process for appealing the initial order to the Lake Washington Institute of Technology president.
- (2) The committee chair or the college's appointed Title IX hearing officer will serve the initial order on the parties simultaneously.

[]

NEW SECTION

WAC 495D-121-760 Student conduct code—Appeals. (1) The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in WAC 495D-121-440.

(2) The president or their delegate will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction and condition(s) imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s).

(3) President's office shall serve the final decision on the parties simultaneously.

[]

OTS-3158.1

AMENDATORY SECTION (Amending WSR 14-14-047, filed 6/25/14, effective 7/26/14)

WAC 495D-131-010 Scholarships. The financial aid office keeps detailed information about the criteria, eligibility, procedures for application, and other information on scholarships offered by Lake Washington Institute of Technology or administered by the financial aid office. Detailed information concerning the Lake Washington Foundation Scholarships is located in the Foundation office at the college.

[Statutory Authority: RCW 28B.50.140(13). WSR 14-14-047, § 495D-131-010, filed 6/25/14, effective 7/26/14; WSR 11-19-083, § 495D-131-010, filed 9/20/11, effective 10/21/11. Statutory Authority: CR-102 [RCW 28B.50.140]. WSR 00-20-007, § 495D-131-010, filed 9/22/00, effective 10/23/00. Statutory Authority: RCW 28B.50.140. WSR 92-15-081, § 495D-131-010, filed 7/16/92, effective 8/16/92.]

WSR 21-14-093

PROPOSED RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed July 7, 2021, 9:42 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-11-077.

Title of Rule and Other Identifying Information: Amending WAC 192-610-040 Can an employee backdate an application or a weekly claim for benefits?, and 192-620-035 When will a weekly benefit amount be prorated?

Hearing Location(s): On August 10, 2021, at 9:00 a.m., Microsoft TEAMS. Join online, link available at [paidleave.wa.gov/rulemaking-under "Upcoming Meetings."](https://paidleave.wa.gov/rulemaking-under-Upcoming-Meetings) Join by phone 564-999-2000, PIN 819916431#. Hearing will be held remotely due to COVID-19.

Date of Intended Adoption: August 11, 2021.

Submit Written Comments to: Janette Benham, Employment Security Department, P.O. Box 9046, Olympia, WA 98507-9046, email rules@esd.wa.gov, by August 10, 2021.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, state EO officer, phone 360-480-5708, TTY 711, email Teckstein@esd.wa.gov, by August 3, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The paid family and medical leave (PFML) program (Title 50A RCW) requires updating existing rules to ensure clarity and make necessary changes based on programmatic needs. Proposed amendments to WAC 192-620-035 provide clearer examples related to the proration of weekly claims for the benefit of employers, employees, and department staff. Proposed amendments to WAC 192-610-040 provide clarification by using plain language and allowing for department staff to consider all information provided when processing claims.

Reasons Supporting Proposal: Proposed amendments to the proration rules are necessary to provide clarification and to ensure that proper payment is consistent with statutory requirements for instances where an employee's leave begins in the middle of the week. The proposal is also necessary to provide ease of readability and operational flexibility for department staff when determining whether benefit claims may be backdated.

Statutory Authority for Adoption: RCW 50A.05.060.

Statute Being Implemented: RCW 50A.05.060, 50A.15.020.

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

Name of Proponent: Employment security department, leave and care division, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: April Amundson, Lacey, 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, Employment Security Department, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-790-6583, TTY 771 [711], email rules@esd.wa.gov.

WAC 192-610-040 requires a cost-benefit analysis.

WAC 192-620-035 is exempt under RCW 34.05.328 (5)(b)(ii) because the proposed amendments are related to internal government operations and do not subject a nongovernmental party to a violation.

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. Proposed amendments to WAC 192-610-040 and 192-620-035 do not impact businesses and pertain only to individuals applying for paid family and medical leave benefits.

July 7, 2021
 April Amundson
 Policy and Rules Manager
 Leave and Care Division

OTS-3174.2

AMENDATORY SECTION (Amending WSR 19-08-016, filed 3/22/19, effective 4/22/19)

WAC 192-610-040 Can an employee backdate an application or a weekly claim for benefits? (1) Generally, paid family or medical leave benefits are payable on or after the date the employee applies for benefits. An application or weekly claim may be backdated for good cause or for the convenience of the department.

(2) For the purpose of this section:

(a) (i) "Good cause" means factors beyond the employee's control that reasonably prevented an employee from applying for benefits ((prior to or)) at the time of need for paid leave ((such as)). These factors include, but are not limited to, a serious health condition, a period of incapacity, or a natural disaster.

(ii) The burden ((of proof is on the employee to provide all pertinent facts and evidence to the department to determine good cause. The evidence must show that the factors prevented the employee from applying for or claiming benefits when the qualifying event occurred and any subsequent duration in which the employee did not apply for or claim benefits. This evidence may include, but is not limited to, medical)) is on the employee to establish that good cause exists. The employee must provide all pertinent information and documentation which demonstrates that the factors prevented the employee from applying for benefits when the qualifying event occurred. This may include, but is not limited to, certification from a health care provider, evidence of a natural disaster, or other information required by the department.

(b) "For the convenience of the department" means for the purpose of program administration or situations when accepting timely applications or weekly claims was difficult or impossible. These include, but are not limited to, equipment breakdown or lack of available staff.

(3) An employee who wants to backdate an application or weekly claim must file for benefits during the first ((week in which)) seven days after the date that the factors that constitute good cause no longer exist.

[Statutory Authority: RCW 50A.04.215. WSR 19-08-016, § 192-610-040, filed 3/22/19, effective 4/22/19.]

OTS-3175.1

AMENDATORY SECTION (Amending WSR 21-11-009, filed 5/7/21, effective 6/7/21)

WAC 192-620-035 When will a weekly benefit amount be prorated?

(1) For an employee on paid family or medical leave, a weekly benefit amount is prorated when:

(a) The employee reports hours worked for wages;

(b) The employee reports hours for paid sick leave, paid vacation leave, or other paid time off that is not considered a supplemental benefit payment as defined in WAC 192-500-180; or

(c) The employee files a weekly application for benefits that contains a day or days for which the employee (~~did not claim~~) was not approved for paid family or medical leave.

(2) If an employee reports hours under subsection (1)(a) or (b) of this section, proration will be calculated as specified by RCW 50A.15.020(2).

(3) If an employee (~~claims part~~) is approved for leave for part of a week under subsection (1)(c) of this section, proration for that week will (~~be calculated by dividing the employee's typical workweek hours and weekly benefit amount for that week by sevenths, then multiplying by the number of days for which the employee claimed paid family or medical leave for that week. The remainder of the week will be calculated as specified by RCW 50A.15.020(2) and subsection (1)(a) and (b) of this section~~) occur as follows:

(a) The employee's typical workweek hours are multiplied by the number of days approved for leave, then divided by seven. The result is rounded down to the nearest whole hour. This amount is the employee's adjusted typical workweek hours.

(b) Any hours worked or taken as paid time off as reported by the employee are then subtracted from the employee's adjusted typical workweek hours. This amount will be the number of hours of paid family or medical leave claimed for that week.

(c) The number of hours claimed for that week are then divided by the employee's typical workweek hours to produce a percentage.

(d) The resulting percentage is then multiplied by the employee's normal weekly benefit amount. The resulting amount, rounded down to the nearest whole dollar, is the employee's benefit payment for that week.

Example 1: An employee has already served a waiting period in the claim year and files a claim for a week of paid medical leave. The employee typically works forty hours a week at eight hours per day. In the week for which the employee is claiming, the employee claimed one day of paid medical leave and worked the other four days. This employee's weekly benefit is usually eight hundred dollars. The weekly benefit would then be prorated by the hours on paid medical leave (eight hours) relative to the typical workweek hours (forty hours). Eight hours is twenty percent of forty hours. The employee's weekly benefit would be prorated to twenty percent for a total of one hundred sixty dollars.

Example 2: An employee (~~files a claim for eight hours of paid family or medical leave and takes sick leave from the employer for the same day. The employer does not offer the sick leave as a supplemental benefit payment. The sick leave is considered hours worked by the employee. The employee is being paid for the same hours claimed on paid~~

family or medical leave. This employee is not eligible for benefits for this week.

Example 3: ~~The employee's typical workweek hours are forty hours per week, and the weekly benefit amount is one thousand dollars. The employee files a claim for leave that starts on a Tuesday. Because the employee's claim did not include Sunday or Monday of that week, the employee's typical workweek hours and weekly benefit amount for that week will be prorated by two-sevenths, or two days of the seven days in the week. For that week only, the employee's typical workweek hours will be twenty-eight (five-sevenths of forty, rounded down to the nearest hour) and the weekly benefit amount will be seven hundred fourteen dollars (five-sevenths of one thousand dollars, rounded down to the nearest dollar))~~ with typical workweek hours of forty and a weekly benefit amount of one thousand dollars is approved for leave through Thursday. The employee is not approved for leave Friday or Saturday. For this week only, the following proration will occur:

(a) The employee's typical workweek hours (forty) are multiplied by the number of approved days of leave for that week (five) and then divided by seven and rounded down. The result is an adjusted typical workweek hours of twenty-eight.

(b) The employee reports no hours of work or paid time off for that week. The resulting number of hours claimed for that week are twenty-eight.

(c) The number of hours claimed for that week (twenty-eight) are then divided by the employee's normal typical workweek hours (forty). This results in a percentage of seventy percent.

(d) The percentage (seventy) is then multiplied by the employee's weekly benefit amount (one thousand). For that week, the employee will receive seven hundred dollars.

Example 3: An employee with typical workweek hours of forty and a weekly benefit amount of one thousand dollars is approved for leave through Thursday. The employee is not approved for leave Friday or Saturday. For this week only, the following proration will occur:

(a) The employee's typical workweek hours (forty) are multiplied by the number of approved days of leave for that week (five) and then divided by seven and rounded down. The result is an adjusted typical workweek hours of twenty-eight.

(b) The employee reports eight hours of work and eight hours of paid time for that week. The adjusted workweek hours are reduced to reflect sixteen hours of work and paid time. The resulting number of hours claimed for that week are twelve.

(c) The number of hours claimed for that week (twelve) are then divided by the employee's normal typical workweek hours (forty). This results in a percentage of thirty percent.

(d) The percentage (thirty) is then multiplied by the employee's weekly benefit amount (one thousand dollars). For that week, the employee will receive three hundred dollars.

[Statutory Authority: RCW 50A.05.060 and 50A.25.030. WSR 21-11-009, § 192-620-035, filed 5/7/21, effective 6/7/21. Statutory Authority: RCW 50A.05.060. WSR 20-20-073, § 192-620-035, filed 10/2/20, effective 11/2/20. Statutory Authority: RCW 50A.04.215. WSR 19-23-090, § 192-620-035, filed 11/19/19, effective 12/20/19.]

WSR 21-14-098

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed July 7, 2021, 9:50 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-11-023.

Title of Rule and Other Identifying Information: Chapter 388-112A WAC, Residential long-term care services training.

Hearing Location(s): On August 10, 2021, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtual. Due to the impacts of the COVID-19 pandemic, hearings are being held virtually. Please see the DSHS website for the most up-to-date information.

Date of Intended Adoption: Not earlier than August 11, 2021.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m. on August 10, 2021.

Assistance for Persons with Disabilities: Contact DSHS rules coordinator, phone 360-664-6097, fax 360-664-6185, TTY 711 relay service, email DSHSRPAURulesCoordinator@dshs.wa.gov, by July 27, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to add a new section as WAC 388-112A-1245 What are the requirements and minimum qualifications for high school instructors and programs that offer core basic, population specific, nurse delegation, and specialty trainings?

Reasons Supporting Proposal: The department is adding this new section to establish minimum qualifications for high school teachers with certain endorsements and experience to teach long-term care worker basic training to high school students.

Providing training at the high school level represents the aging and long-term support administration's ongoing commitment to increase the long-term care workforce in order to fully serve the growing population of individuals who require those services in Washington state. Since most high school teachers do not come from a long-term care work environment, different minimum qualifications need to be established for those instructors.

Statutory Authority for Adoption: RCW 74.08.090, 70.128.060.

Statute Being Implemented: RCW 74.08.090, 70.128.060.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: David Chappell, P.O. Box 45600, Olympia, WA 98504-5600, 360-725-2516; Enforcement: Christine Morris, P.O. Box 45600, Olympia, WA 98504-5600, 360-725-2549.

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

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. Rules affect school districts, do not impose more-than-minor costs.

July 2, 2021
Katherine I. Vasquez
Rules Coordinator

SHS-4876.2

NEW SECTION

WAC 388-112A-1245 What are the requirements and minimum qualifications for high school instructors and programs that offer core basic, population specific, nurse delegation, and specialty trainings?

(1) A high school instructor teaching core basic, population specific, nurse delegation core, nurse delegation special focus on diabetes, specialty and expanded specialty trainings must meet the following minimum qualifications:

- (a) Be at least twenty-one years of age;
- (b) Not have had a professional, adult family home, assisted living facility, or social services license or certification revoked in Washington state;
- (c) Meet the following education and work experience requirements upon initial approval or hire:
 - (i) Have a valid teaching credential with a related endorsement such as career and technical education, science, health, or special education; and
 - (A) Have caregiving experience within the last five years in a school, community-based, or home setting; or
 - (B) Be a registered nurse with direct care experience within the last five years; or
 - (C) Be certificated under the vocational code V511614; or
 - (D) Have successfully completed core basic training taught by a DSHS approved instructor; or
 - (E) Have taught forty hours of basic training while being mentored by an instructor who is approved to teach basic training;
 - (d) Have at least 100 hours teaching experience;
 - (e) Be knowledgeable in caregiving practices and demonstrate competency for teaching the course content or units being taught; and
 - (f) Have successfully completed any specialty or expanded specialty training classes before training others;
- (2) In addition to requirements under subsection (1) of this section, an instructor for nurse delegation core or diabetes must have a current Washington registered nurse (RN) license in good standing without practice restrictions.
- (3) A high school home care aide training program must be approved and contracted by the department as a community instructor program.

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WSR 21-14-111
PROPOSED RULES
LIQUOR AND CANNABIS
BOARD

[Filed July 7, 2021, 11:50 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-05-074.

Title of Rule and Other Identifying Information: WAC 314-55-040

What criminal history might prevent a marijuana (cannabis) license applicant from receiving or keeping a marijuana (cannabis) license? The Washington state liquor and cannabis board (board) (LCB) proposes changes to current rules that frame the standards and thresholds for criminal history checks for marijuana (cannabis) licensees.

Hearing Location(s): On August 18, 2021, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the board will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. Board members, presenters, and staff will all participate remotely. The public may login using a computer or device, or call-in using a phone, to listen to the meeting through the Microsoft Teams application. The public may provide verbal comments during the specified public comment and rules hearing segments. For more information about board meetings, please visit https://lcb.wa.gov/Boardmeetings/Board_meetings.

Date of Intended Adoption: Not earlier than September 1, 2021.

Submit Written Comments to: Jeff Kildahl, Policy and Rules Coordinator, 1025 Union Avenue, Olympia, WA 98501, email rules@lcb.wa.gov, fax 360-704-5027, by August 18, 2021.

Assistance for Persons with Disabilities: Contact Anita Bingham, ADA coordinator, human resources, phone 711 or 1-800-833-6388, fax 360-664-9689, TTY 711 or 1-800-833-6388, email anita.bingham@lcb.wa.gov, by August 4, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to revise the background check review and evaluation standards to remove unnecessary barriers for individuals who have been disproportionately impacted by marijuana (cannabis) criminalization. The proposed rule replaces the existing criminal history point system for determining if a cannabis license applicant or licensee qualifies or requalifies for a license with a threshold review process for reviewing and evaluating conviction information. This proposal also changes the title of WAC 314-55-040 from "What criminal history might prevent a marijuana (cannabis) license applicant from receiving or keeping a marijuana (cannabis) license?" to "Cannabis applicant or licensee background checks."

Under the proposed rule, criminal history information from the background check may not preclude approval, but will be considered in determining eligibility for licensure. The board will conduct a threshold review if the background check indicates one or more class A and B felony convictions within the past ten years, two or more class C felony convictions within seven years, or three misdemeanors or gross misdemeanor convictions within three years. The board will also conduct a threshold review if the background check indicates the applicant or renewing licensee is under active state supervision, active

federal supervision, or both, and will conduct a threshold review if the applicant or renewing licensee has pending criminal charges.

The board will consider certain criteria in the threshold review, including the time since the conviction or pending offenses, the nature of the specific offense, the nature of the offense or incident to the nature of the work performed, the number of offenses or incidents, evidence of rehabilitation since the time of offense, and any other relevant information. Failure by the applicant or licensee to disclose [disclose] full criminal history will not be considered in the threshold review, but licensees will be required to report any future criminal convictions to the board within thirty days.

Reasons Supporting Proposal: This proposal promotes socially equitable conditions for individuals who have been disproportionately impacted by marijuana (cannabis) criminalization by implementing a criminal history threshold review process for marijuana license applicants and renewing licensees and ending the existing criminal history point system which may negatively affect applicants who have inadvertently failed to disclose full details of their past criminal history.

Statutory Authority for Adoption: RCW 69.50.331, 69.50.342.

Statute Being Implemented: Not applicable.

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

Name of Proponent: LCB, governmental.

Name of Agency Personnel Responsible for Drafting: Katherine Hoffman, Policy and Rules Manager, 1025 Union Avenue, Olympia, WA 98501, 360-664-1622; Implementation: Rebecca Smith, Licensing and Regulation Director, 1025 Union Avenue, Olympia, WA 98501, 360-664-1615; and Enforcement: Chandra Brady, Enforcement and Education Director, 1025 Union Avenue, Olympia, WA 98501, 360-664-1726.

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

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required under RCW 34.05.328 because the subject of the proposed rule making does not qualify as a significant legislative rule or other rule requiring a cost-benefit analysis under RCW 34.05.328 (5) (c).

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. Agencies are required to consider costs **imposed** on business and costs associated with compliance with proposed rules. Agencies are **not** required under chapter 19.85 RCW to consider indirect costs not associated with compliance. Here, the agency considered potential **administrative** costs that a licensee may incur complying with the proposed rules.

LCB applied the North American Industry Classification System (NAICS) codes 453998 for marijuana stores, both medicinal and recreational, 424590 for marijuana processors, 111998 for outdoor marijuana growers, and 111419 for indoor marijuana growers. The industry descriptions for each of these codes is presented in the table below, and can be accessed at <https://www.census.gov/library/publications/2017/econ/2017-naics-manual.html>.

LCB applied a default cost when analyzing whether the rules would have a disproportionate impact on small businesses as defined in RCW 19.85.020(3). This reflects four hours of administrative time at \$50 per hour, for a total of \$200. The agency assumes this activity would include activities such as completing and submitting forms to LCB, and telephone calls.

2017 Industry NAICS Code	Estimated Cost of Compliance	Industry Description	NAICS Code Title	Minor Cost Estimate	1% of Avg Annual Payroll (Threshold)	0.3% of Avg Annual Gross Business Income (Threshold)
453998	\$200	Marijuana stores, medicinal and recreational	All Other Miscellaneous Store Retailers (except Tobacco Stores)	\$3,615.53	\$3,024.31 2018 Dataset pulled from ESD	\$3,615.53 2018 Dataset pulled from DOR
424590	\$200	Marijuana merchant wholesalers	Other Farm Product Raw Material Merchant Wholesalers	\$6,733.79	\$3,684.24 2018 Dataset pulled from USBLS	\$6,733.79 2018 Dataset pulled from DOR
111998	\$200	Marijuana, grown in an open field	All Other Miscellaneous Crop Farming	\$9,125.33	\$9,125.33 2018 Dataset pulled from ESD	\$2,834.77 2018 Dataset pulled from DOR
111419	\$200	Marijuana, grown under cover	Other Food Crops Grown Under Cover	\$2,349.42	\$2,349.42 2018 Dataset pulled from ESD	\$2,324.68 2018 Dataset pulled from DOR

As the table demonstrates, the estimated cost of compliance does not exceed the thresholds for any of the license types. Therefore, implementation of these rules are not anticipated to result in more-than-minor costs on businesses as defined in RCW 19.85.020 (2).

July 7, 2021
David Postman
Chair

OTS-3139.1

AMENDATORY SECTION (Amending WSR 16-11-110, filed 5/18/16, effective 6/18/16)

WAC 314-55-040 ((What criminal history might prevent a marijuana license applicant from receiving or keeping a marijuana license?)) Cannabis applicant or licensee background checks. ((-1) When the WSLCB processes a criminal history check on an applicant, it uses a point system to determine if the person qualifies for a license. The WSLCB will not normally issue a marijuana license or renew a license to an applicant who has accumulated eight or more points as indicated below:

Description	Time period during which points will be assigned	Points assigned
Felony conviction	Ten years	12 points
Gross misdemeanor conviction	Three years	5 points
Misdemeanor conviction	Three years	4 points
Currently under federal or state supervision for a felony conviction	n/a	8 points
Nondisclosure of any of the above	n/a	4 points each

~~(2) If a case is pending for an alleged offense that would earn eight or more points, the WSLCB will hold the application for the disposition of the case. If the disposition is not settled within ninety days, the WSLCB will administratively close the application.~~

~~(3) The WSLCB may not issue a marijuana license to anyone who has accumulated eight or more points as referenced above. This is a discretionary threshold and it is further recommended that the following exceptions to this standard be applied:~~

~~**Exception to criminal history point assignment.**~~

~~(a) Prior to initial license application, two federal or state misdemeanor convictions for the possession only of marijuana within the previous three years may not be applicable to the criminal history points accumulated. All criminal history must be reported on the personal/criminal history form.~~

~~(i) Regardless of applicability, failure to disclose full criminal history will result in point accumulation;~~

~~(ii) State misdemeanor possession convictions accrued after December 6, 2013, exceeding the allowable amounts of marijuana, usable marijuana, and marijuana-infused products described in chapter 69.50 RCW shall count toward criminal history point accumulation.~~

~~(b) Prior to initial license application, any single state or federal conviction for the growing, possession, or sale of marijuana will be considered for mitigation on an individual basis. Mitigation will be considered based on the quantity of product involved and other circumstances surrounding the conviction.~~

~~(4) Once licensed, marijuana licensees must report any criminal convictions to the WSLCB within fourteen days.) (1) The board conducts a background check of a new applicant or for license renewals to evaluate whether the applicant or licensee qualifies or requalifies for a license. The background check includes a criminal record check through the Washington state patrol and the Federal Bureau of Investigations database.~~

(2) **Review and evaluation of information produced by background checks.** The board will review the information produced by background checks to determine whether the applicant or licensee qualifies for a new or renewed license. Information from the background check may not preclude approval, but will be considered in determining the applicant's eligibility for licensure.

(3) The board will conduct a threshold review for the following types of convictions:

<u>Conviction Type</u>	<u>Conviction Class</u>	<u>Time Consideration</u>	<u>Determination</u>
<u>Felonies</u>	<u>Class A and B convictions</u>	<u>10 years</u>	<u>Threshold review if 1 or more</u>
	<u>Class C convictions</u>	<u>7 years</u>	<u>Threshold review if 2 or more</u>
<u>Misdemeanors</u>	<u>Gross misdemeanors and misdemeanors</u>	<u>3 years</u>	<u>Threshold review if 3 or more</u>

(a) Active state supervision and active federal supervision resulting in determination of threshold review.

(b) The board will conduct a threshold review of any license applicant or license renewal if the background check indicates that the applicant or renewing licensee is under active state supervision, active federal supervision, or both.

(4) **Pending criminal charge review and evaluation.** The board will review and evaluate the applicant or renewing licensee's pending criminal charges. Review and evaluation criteria include, but are not limited to:

(a) A determination of whether the convictions of pending charge(s) alone or compiled would put an individual over the conviction allowance above.

(b) The application may be placed on hold for ninety days and if no disposition within ninety days, the application will be withdrawn.

(5) **Threshold review evaluation criteria.** When a background check results in a determination for a threshold review, the board will consider the following criteria:

(a) Time since the conviction, or pending offenses;

(b) Nature and specific circumstances of the offense;

(c) Relationship of the offense or incident to the nature of the work performed;

(d) Number of offenses or incidents;

(e) If criminal, any relevant evidence of rehabilitation, such as information about compliance with conditions of parole or probation, including orders of no contact with victims and witnesses, and the individuals conduct and experience since the time of the offense; and

(f) Any other relevant information, including information submitted by the applicant or licensee, or requested by the board.

(6) **Continued reporting.** Cannabis licensees must report any criminal convictions to the board within thirty days. New convictions will be considered upon receipt or at the time of renewal.

[Statutory Authority: RCW 69.50.342 and 69.50.345. WSR 16-11-110, § 314-55-040, filed 5/18/16, effective 6/18/16; WSR 15-11-107, § 314-55-040, filed 5/20/15, effective 6/20/15. Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-040, filed 10/21/13, effective 11/21/13.]