

**WSR 20-19-006**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed September 3, 2020, 11:33 a.m., effective October 4, 2020]

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

Purpose: The department is amending WAC 388-400-0055 Who is eligible for the pregnant women assistance (PWA) program?, 388-400-0060 Who is eligible for aged, blind or disabled (ABD) cash assistance?, and 388-400-0070 Who is eligible for referral to the housing and essential needs (HEN) program?

The amendments remove language that prohibits individuals on home monitoring or home detention from being eligible for ABD and HEN referral benefits, allowing these individuals to access the programs if otherwise eligible. The amendments also implement SSB 6495 (chapter 322, Laws of 2020), which extends HEN referral eligibility to PWA program recipients.

Citation of Rules Affected by this Order: Amending WAC 388-400-0055, 388-400-0060, and 388-400-0070.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.04.655, 74.04.770, 74.04.805, 74.08.043, 74.08.090, 74.08.335, 74.08A.100, 74.62.030.

Other Authority: Chapter 322, Laws of 2020.

Adopted under notice filed as WSR 20-15-120 on July 17, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: September 2, 2020.

Katherine I. Vasquez  
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

**WAC 388-400-0055 Who is eligible for the pregnant women assistance (PWA) program?** (~~Effective November 1, 2014~~)

(1) The pregnant women assistance (PWA) program provides a state-funded cash stipend and a referral to the housing and essential needs (HEN) program under WAC 388-400-0065 to eligible low-income individuals. A referral to the

HEN program is valid for twenty-four consecutive months from the date the department determines PWA eligibility.

(2) You can get pregnant women assistance (PWA), if you:

- (a) Are pregnant as verified by a medical professional;
- (b) Meet the citizenship(~~(A)~~) and alien status requirements of WAC 388-424-0010;
- (c) Live in the state of Washington per WAC 388-468-0005;
- (d) Do not live in a public institution unless specifically allowed under RCW 74.08.025;
- (e) Meet TANF(~~(A)~~) and SFA:
- (i) Income requirements under chapter 388-450 WAC;
- (ii) Resource requirements under chapter 388-470 WAC; and
- (iii) Transfer of property requirements under chapter 388-488 WAC.

(f) Tell us your Social Security number as required under WAC 388-476-0005;

(g) Report changes of circumstances as required under WAC 388-418-0005; and

(~~(2)~~) (3) If you are an unmarried pregnant minor your living arrangements must meet the requirements of WAC 388-486-0005.

(~~(3)~~) (4) You cannot get PWA if you:

- (a) Are eligible for temporary assistance for needy families (TANF) benefits;
- (b) Are eligible for state family assistance (SFA) benefits;
- (c) Refuse or fail to meet a TANF or SFA eligibility rule;
- (d) Refuse or fail to participate in drug or alcohol treatment as required in WAC 388-449-0220 without good cause; or
- (e) Are eligible for supplemental security income (SSI) benefits.

AMENDATORY SECTION (Amending WSR 18-18-007, filed 8/23/18, effective 9/23/18)

**WAC 388-400-0060 Who is eligible for aged, blind or disabled (ABD) cash assistance?** (1) The aged, blind, or disabled (ABD) cash assistance program provides a state-funded cash stipend and a referral to the housing and essential needs (HEN) program under WAC 388-400-0065 to eligible low-income individuals.

(2) You are eligible for ABD if you:

- (a) Are:
  - (i) At least sixty-five years old;
  - (ii) Blind as defined by the Social Security Administration (SSA); or
  - (iii) Likely to be disabled as defined in WAC 388-449-0001 through 388-449-0100; and
- (b) Are at least eighteen years old or, if under eighteen, a member of a married couple;
- (c) Are in financial need according to ABD cash income and resource rules in chapters 388-450, 388-470 and 388-488 WAC. We determine who is in your assistance unit according to WAC 388-408-0060;

(d) Have countable income, as defined in WAC 388-450-0162, at or below the monthly income limits defined in WAC 388-478-0090;

(e) Meet the citizenship~~((f))~~ and alien status requirements under WAC 388-424-0015;

(f) Provide a Social Security number as required under WAC 388-476-0005;

(g) Reside in the state of Washington as required under WAC 388-468-0005;

(h) Sign an interim assistance reimbursement authorization agreeing to repay the monetary value of general assistance, disability lifeline, or aged blind or disabled benefits subsequently duplicated by supplemental security income benefits as described under WAC 388-449-0200, 388-449-0210 and 388-474-0020;

(i) Report changes of circumstances as required under WAC 388-418-0005; and

(j) Complete a mid-certification review and provide proof of any changes as required under WAC 388-418-0011.

(3) You aren't eligible for ABD if you:

(a) Are eligible for temporary assistance for needy families (TANF) benefits;

(b) Are eligible for state family assistance (SFA) benefits;

(c) Refuse or fail to meet a TANF or SFA eligibility rule;

(d) Refuse or fail to pursue federal aid assistance, including but not limited to medicaid, without good cause;

(e) Refuse or fail to participate in drug or alcohol treatment as required in WAC 388-449-0220 without good cause;

(f) Refuse or fail to follow through with the SSI application as required in WAC 388-449-0200 without good cause;

(g) Refuse or fail to participate in vocational rehabilitation services as required in WAC 388-449-0225 without good cause;

(h) Are eligible for supplemental security income (SSI) benefits;

(i) Are an ineligible spouse of an SSI recipient; or

(j) Failed to follow a Social Security Administration (SSA) program rule or application requirement and SSA denied or terminated your benefits.

(4) If you reside in a public institution and meet all other requirements, your eligibility for ABD depends on the type of institution. A "public institution" is an institution that is supported by public funds, and a governmental unit either is responsible for it or exercises administrative control over it.

(a) You may be eligible for ABD if you are:

(i) A patient in a public medical institution; or

(ii) A patient in a public mental institution and:

(A) Sixty-five years of age or older; or

(B) Twenty years of age or younger.

(5) You aren't eligible for ABD when you are in the custody of or confined in a public institution such as a state penitentiary or county jail including placement~~((f))~~

~~((a))~~ in a work release program~~((f))~~

~~((b))~~ Outside of the institution including home detention)).

AMENDATORY SECTION (Amending WSR 18-18-007, filed 8/23/18, effective 9/23/18)

**WAC 388-400-0070 Who is eligible for referral to the housing and essential needs (HEN) program?** (1) You are eligible for referral to the housing and essential needs (HEN) program if you:

(a) Apply for cash assistance as detailed in WAC 388-406-0010;

(b) Complete an interview with the department;

(c) Are incapacitated as defined in WAC 388-447-0001 through 388-447-0100;

(d) Are at least eighteen years old or, if under eighteen, legally emancipated or a member of a married couple;

(e) Are in financial need according to income rules in chapter 388-450 WAC and resource requirements in RCW 74.04.005 and chapter 388-470 WAC. We determine who is in your assistance unit according to WAC 388-408-0070;

(f) Have countable income, as defined in WAC 388-450-0162, at or below the monthly income limits defined in WAC 388-478-0090;

(g) Meet the citizenship~~((f))~~ and alien status ~~((requirement))~~ requirements for ABD cash assistance under WAC 388-424-0015;

(h) Meet the Social Security number verification requirement for cash assistance under WAC 388-476-0005;

(i) Meet the residency requirement for cash assistance under WAC 388-468-0005;

(j) Meet verification requirements for cash assistance detailed in WAC 388-490-0005.

(k) To remain eligible for HEN referral, you must also:

(i) Report changes in your circumstances as required for cash assistance under WAC 388-418-0007; and

(ii) Complete and return eligibility reviews we send you under WAC 388-434-0005.

(2) You are not eligible for referral to the HEN program if you:

(a) ~~((Are eligible for the pregnant women assistance (PWA) program;~~

~~((b)))~~ Are eligible for temporary assistance for needy families (TANF) program;

~~((c)))~~ (b) Refuse or fail to meet a TANF rule without good cause;

~~((d)))~~ (c) Refuse or fail to cooperate in obtaining federal aid assistance, including but not limited to medicaid, without good cause;

~~((e)))~~ (d) Refuse or fail to participate in drug or alcohol treatment as required in WAC 388-447-0120;

~~((f)))~~ (e) Are eligible for supplemental security income (SSI) benefits and receiving a state supplemental payment (SSP) under WAC 388-474-0012;

~~((g)))~~ (f) Are an ineligible spouse of an SSI recipient;

~~((h)))~~ (g) Refuse or fail to follow a Social Security Administration (SSA) program rule or application requirement without good cause and SSA denied or terminated your benefits;

~~((i)))~~ (h) Are terminated from ABD for refusing or failing to sign an interim assistance reimbursement authorization agreement under WAC 388-400-0060;

~~((j)))~~ (i) Are fleeing to avoid prosecution of, or to avoid custody or confinement for conviction of, a felony, or an

Rules Coordinator

attempt to commit a felony as described in WAC 388-442-0010; or

~~((4))~~ (j) Are disqualified from receiving cash assistance due to a conviction related to unlawful practices in obtaining cash assistance as described in WAC 388-446-0005.

(3) If you reside in a public institution and meet all other requirements, your eligibility for referral to the HEN program depends on the type of institution. A "public institution" is an institution that is supported by public funds, and a governmental unit either is responsible for it or exercises administrative control over it.

(a) You may be eligible for referral to the HEN program if you are:

(i) A patient in a public medical institution; or

(ii) A patient in a public mental institution and are sixty-five years of age or older.

(b) You aren't eligible for referral to the HEN program if you are in the custody of or confined in a public institution such as a state penitentiary or county jail, including placement

~~(i)~~ in a work release program~~((i))~~

~~(ii) Outside of the institution including home detention).~~

#### WSR 20-19-014

#### PERMANENT RULES

#### HEALTH CARE AUTHORITY

[Filed September 3, 2020, 3:57 p.m., effective October 4, 2020]

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

Purpose: The agency is amending these sections and creating a new section within chapter 182-524 WAC to implement RCW 74.09.719, which provides dental services for Compact of Free Association (COFA) Islanders.

Citation of Rules Affected by this Order: New WAC 182-524-0275; and amending WAC 182-524-0100 and 182-524-0200.

Statutory Authority for Adoption: RCW 74.09.719, 41.05.021, 41.05.160.

Adopted under notice filed as WSR 20-13-063 on June 15, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 2, Repealed 0.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 2, Repealed 0.

Date Adopted: September 3, 2020.

Wendy Barcus

AMENDATORY SECTION (Amending WSR 19-11-082, filed 5/17/19, effective 6/17/19)

**WAC 182-524-0100 General.** (1) Compact of Free Association (COFA) islander health care ~~((is a))~~ and COFA islander dental care are state-funded programs administered by the health care authority (the agency) to pay the monthly premiums and out-of-pocket expenses for silver level qualified health plans or qualified dental plans for eligible COFA islanders.

(2) For the purpose of this chapter, "our," "us," and "we" refer to the agency or the agency's designee and "you" refers to the applicant for, or recipient of, COFA islander health care.

(3) You have the right to appeal any adverse agency action regarding COFA islander health care or COFA islander dental care as described in chapter 182-526 WAC. For coordinated appeals with the Washington health benefit exchange, as described under WAC 182-526-0102, we treat appeals made to either the Washington health benefit exchange or us as filed on the same day. You will not have to submit any information that you have previously submitted to either the Washington health benefit exchange or us.

AMENDATORY SECTION (Amending WSR 19-11-082, filed 5/17/19, effective 6/17/19)

**WAC 182-524-0200 Definitions.** This section defines terms used in this chapter. See chapter 182-500 WAC for additional definitions.

**"Advance premium tax credit (APTC)"** - A tax credit taken in advance to lower a monthly health insurance payment (or premium).

**"COFA islander"** - A person who is a citizen of the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau.

**"COFA islander dental care"** - An agency-administered program that pays the premium and out-of-pocket costs for a stand-alone dental plan for eligible COFA islanders.

**"COFA islander health care"** - An agency-administered program that pays the premium and out-of-pocket costs for a silver level qualified health plan for eligible COFA islanders.

**"Compact of Free Association (COFA)"** - A legal agreement between the government of the United States and the governments of the Federated States of Micronesia (U.S. Pub. L. 108-188); the Republic of the Marshall Islands (U.S. Pub. L. 108-188); and the Republic of Palau (U.S. Pub. L. 99-658).

**"Cost-sharing funds"** - Agency-provided funds for out-of-pocket costs.

**"Out-of-pocket costs"** - Copayments, coinsurance, deductibles, and other cost-sharing requirements imposed under a qualified health plan for services, pharmaceuticals, devices, and other health benefits covered by the plan and rendered as in-network. Excludes premiums, balance billing amounts for out-of-network providers, and spending for non-covered services.

**"Premium cost"** - A person's premium for a qualified health plan, minus the amount of the person's advanced premium tax credit.

**"Qualified dental plan (QDP)"** - A stand-alone dental plan offered by the Washington health benefit exchange (HBE). For a definition of stand-alone dental plan, see WAC 284-43-6020.

**"Qualified dental plan - Noncovered services"** - In-network services that are not covered by the QDP, and are consistent with but do not exceed benefits covered under the agency's adult dental program described in chapter 182-535 WAC.

**"Silver level qualified health plan (QHP)"** - Silver level indicates the category of a qualified health plan (QHP) offered by the Washington health benefit exchange (HBE). For a definition of QHP, see WAC 182-500-0090.

#### NEW SECTION

**WAC 182-524-0275 Eligibility—COFA islander dental care coverage.** You apply for COFA islander dental care the same way you would apply for COFA islander health care as described in WAC 182-524-0250.

(1) To be eligible for state-funded COFA islander dental care, you must enroll in a qualified dental plan (QDP) through the Washington health benefit exchange (HBE) during open enrollment or when you qualify for a special enrollment period as described in 45 C.F.R. 155.410 and 45 C.F.R. 420.

(2) You are eligible for COFA islander dental care administered by us no earlier than January 1, 2021, if you enroll in a QDP and:

(a) Meet the requirements of COFA islander health care as described in WAC 182-524-0300 (1)(a) through (f); or

(b) Are enrolled in medicare, meet the requirements as described in WAC 182-524-0300 (1)(a) and (c) and:

(i) Are a resident as described in WAC 182-524-0400 (1) through (3).

(ii) You can be temporarily out-of-state and remain on COFA islander dental care if you:

(A) Intend to return once the purpose of your absence concludes; and

(B) Meet the eligibility requirements described in this section.

(3) Eligibility for COFA islander dental care under subsection (2) of this section is subject to the availability of amounts appropriated for the program as described in WAC 182-524-0300(2).

(4) Your COFA islander dental care begins the first day of the month your QDP coverage begins and you meet the other eligibility requirements described in subsection (2) of this section.

(5) We will pay for your premiums, QDP out-of-pocket costs and QDP-noncovered services the same way we pay your premiums and out-of-pocket costs for COFA islander health care as described in WAC 182-524-0600. We may require authorization for payment for QDP-noncovered services.

(6) We will not pay for expenses incurred by people not covered under COFA islander dental care or services

excluded under the medicaid dental program as described in WAC 182-535-1100.

(7) We will send you notices and letters according to the same provisions and requirements as the letters we send regarding COFA islander health care as described in WAC 182-524-0500.

(8) We will terminate your COFA islander dental care if you:

(a) No longer meet the eligibility criteria described in subsection (2) of this section;

(b) Request termination;

(c) Perform an act, practice, or omission that constitutes fraud and your insurer rescinds your policy;

(d) Use your COFA islander dental care cost-sharing funds to pay for anything other than:

(i) Out-of-pocket costs for dental coverage under your QDP; or

(ii) Authorized QDP-noncovered services.

(9) We will reinstate your COFA islander dental care if you are:

(a) Terminated in error; or

(b) Successful in your appeal of a termination.

(10) If you report a change that makes you eligible for COFA islander dental care, your sponsorship begins either:

(a) The first day of the following month, if the change was reported on or before the fifteenth of the month; or

(b) The first day of the month after the following month, if the change was reported after the fifteenth of the month.

(11) Your COFA islander dental care ends the day your enrollment in a silver level QHP ends or the last day of the month your COFA islander dental care eligibility ends, whichever is earlier.

#### **WSR 20-19-018**

#### **PERMANENT RULES**

#### **EMPLOYMENT SECURITY DEPARTMENT**

[Filed September 4, 2020, 8:13 a.m., effective September 4, 2020]

Effective Date of Rule: September 4, 2020.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The enacting legislation requires that applications be submitted by September 30, 2020 (EHB 2965 (section 5(1), chapter 7, Laws of 2020)). The effective immediate date provides employers with the maximum amount of time to submit applications prior to the statutory deadline.

Purpose: In the 2020 regular session, the legislature passed EHB 2965 (chapter 7, Laws of 2020), codified as RCW 50.29.100, which, among other things, creates a COVID-19 unemployment account and appropriates funds into the account for the purposes of reducing specified benefit charges to eligible employers. Rules are necessary in order to establish which employers are eligible to apply for benefit charge reduction, which benefit charges are eligible to be reduced, and the process for how employers can apply for benefit charge reduction.

Citation of Rules Affected by this Order: New WAC 192-320-066.

Statutory Authority for Adoption: RCW 50.29.100.

Adopted under notice filed as WSR 20-15-067 on July 13, 2020.

A final cost-benefit analysis is available by contacting Joshua Dye, P.O. Box 9046, phone 360-890-3472, fax 844-652-7096, email rules@esd.wa.gov, website https://esd.wa.gov/newsroom/rulemaking/benefits.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: September 4, 2020.

Dan Zeitlin  
Policy Director

#### NEW SECTION

**WAC 192-320-066 Eligibility for relief from benefit charges from the COVID-19 unemployment account—Section 5, chapter 7, Laws of 2020.** (1) **Application for relief.** The department will consider an employer's application to have a portion of unemployment benefits paid to an approved employee paid by the COVID-19 unemployment account instead of charged to its experience rating account if the employer:

(a) Submits an application on a form approved by the department.

(i) Electronic application forms can be accessed on the department's website.

(ii) Paper application forms can be accessed by either downloading them from the department's website or calling the accounts management center and asking for a copy of the form to be sent via mail.

(b) Timely submits the application.

(i) An electronically submitted form is submitted timely if the department's information technology system receives the form on or before 11:59 p.m. on September 30, 2020.

(ii) A form sent via mail is submitted timely if it has a postmark date of September 30, 2020.

(c) Attests that the information provided on the application is true and accurate.

(i) Employers must retain documents sufficient to substantiate the information provided on the application.

(ii) After the application is submitted, the department may ask employers for documents substantiating the information provided on the application.

(iii) The department may deny relief of benefit charges from the COVID-19 unemployment account if the department requests documentation from an employer and the

employer fails to provide documentation sufficient to substantiate the information provided on the application.

(2) **Definition of approved employee.** For purposes of this section, an "approved employee" is an employee who:

(a) Became temporarily unemployed as a direct or indirect consequence of COVID-19. For purposes of (a) of this subsection, an employee became temporarily unemployed as a direct or indirect consequence of COVID-19 if either:

(i) The individual's employer was required to close or severely curtail operations due to a state or federal executive order adopted in order to prevent the spread of COVID-19; or

(ii) The individual left employment due to a request from a medical professional, local health official, or the secretary of health in order to be isolated or quarantined as a consequence of COVID-19, even if the employee or the employee's immediate family member was not actually diagnosed with COVID-19.

(b) Spent at least one week of their unemployment described in (a) of this subsection on standby pursuant to WAC 192-110-015; and

(c)(i) Prior to September 26, 2020, worked at least four weeks with their employer in suitable work with a rate of weekly pay at least ninety percent of the rate of weekly pay the employee had prior to becoming unemployed as described in (a) of this subsection.

(ii) Worked less than four weeks with their employer if, after working at least one day, the employee:

(A) Was discharged for misconduct; or

(B) Voluntarily quit for reasons not attributable to the employer.

(3) **Benefits not eligible for relief.** In calculating the amount of benefits eligible for full or partial payment by the COVID-19 unemployment account, the department will not include:

(a) Benefits paid on or before February 29, 2020;

(b) Benefits charged to the third quarter of 2020 or after;

(c) Benefits subject to federal reimbursement or payment under Public Law 116-136, Title II, Subtitle A (Relief for Workers Affected by Coronavirus Act) or other federal law;

(d) Benefits for which the department granted relief of benefit charges pursuant to RCW 50.29.021;

(e) Benefits that the employer would have been eligible to receive relief of benefit charges pursuant to RCW 50.29.-021 but for which the employer failed to timely request relief; or

(f) Benefits paid for weeks where the approved employee was not on standby pursuant to WAC 192-110-015.

(4) **Ineligible employers.** The following employers are not eligible to apply for relief of benefit charges under this section:

(a) Employers described in RCW 50.44.010, 50.44.030, and 50.50.030 who have properly elected to make payments in lieu of contributions;

(b) Employers who are required to make payments in lieu of contributions;

(c) Taxable local government employers as described in RCW 50.44.035;

(d) Any employer that has not submitted all quarterly reports for the second quarter of 2020 and all prior quarters by September 30, 2020; and

(e) Any employer that has not paid all contributions, penalties and interest due by September 30, 2020, or has not entered into a department-approved deferred payment contract by September 30, 2020.

**(5) Appeal rights.**

(a) If the department denies all or part of an employer's application for relief of benefit charges from the COVID-19 unemployment account, the department will provide the employer with the reasons for the denial.

(b) An employer may not appeal the denial of an application for relief of benefit charges from the COVID-19 unemployment account.

(c) Independent of the right to request relief of charges from the COVID-19 unemployment account pursuant to this section, an employer still retains the right to request relief of the underlying benefit charges pursuant to WAC 192-320-065 and appeal any denial of that request under WAC 192-04-060.

**WSR 20-19-023**  
**PERMANENT RULES**  
**PROFESSIONAL EDUCATOR**  
**STANDARDS BOARD**

[Filed September 4, 2020, 11:27 a.m., effective October 5, 2020]

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

Purpose: An incorrect subsection was referenced in this WAC language. This change references the correct subsection.

Citation of Rules Affected by this Order: Amending WAC 181-85-033.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

Adopted under notice filed as WSR 20-14-046 on June 25, 2020.

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

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

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

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

Date Adopted: August 10, 2020.

Maren Johnson  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-15-111, filed 7/22/19, effective 8/22/19)

**WAC 181-85-033 Activity-based continuing education credit hours.** (1) **Eligibility period.** Individuals are eligible for the continuing education credit hours described in this section for up to seven years following the completion date of the indicated activity.

**(2) Professional growth team.**

(a) A professional growth team for the purpose of certificate renewal means a team comprised of the individual renewing the certificate and a minimum of one colleague, who holds a valid Washington state educator certificate under Title 181 WAC, or paraeducator certificate under Title 179 WAC, chosen by the individual.

(b) For consultation and collaboration, members of a professional growth team, excluding the candidate, are eligible for the equivalent of three continuing education credit hours. The team member may not receive more than the equivalent of six continuing education credit hours, as defined by this section, during the period beginning July 1st of one year and ending June 30th of the following year.

(3) **School accreditation site visit team.** A person holding a valid educational certificate under RCW 28A.410.010 is eligible for the equivalent of ten continuing education credit hours for serving on a school accreditation site visit team. The person may not receive more than the equivalent of twenty continuing education credit hours during a calendar year period.

**(4) Field experience supervisors and mentors.**

(a) Individuals officially designated as a supervisor by a college or university, school district, educational service district, an approved private school, a state agency providing educational services to students or the superintendent of public instruction, a person holding a valid educational certificate under RCW 28A.410.010 is eligible for the equivalent of thirty continuing education credit hours for service as a supervisor. The person may not receive more than the equivalent of thirty continuing education credit hours during a school year period.

(b) The term "supervisor" shall mean individuals officially designated as a supervisor or mentor by a college/university, school district, educational service district, an approved private school, a state agency providing educational services to students, or the office of superintendent of public instruction for supervising the training of teacher interns, administrative interns, educational staff associate interns, and paraprofessionals.

**(5) National board certification from the National Board for Professional Teaching Standards (NBPTS):**

(a) Individuals who submitted at least one component of an initial NBPTS national board certification process in 2017 or earlier, and who hold a valid educational certificate under RCW 28A.410.010, are eligible for the equivalent of forty-five continuing education credit hours for submission of a complete portfolio of four components of the National Board for Professional Teaching Standards certification process. Completion of a national board certification process shall be defined as published by the professional educator standards board. Upon achieving national board certification, the individual is eligible for the equivalent of an additional forty-five

continuing education credit hours for a total of ninety continuing education credit hours per national board certificate. Beginning January 1, 2022, all individuals submitting complete components as part of an initial NBPTS national board certification process are eligible for continuing education credit hours as described in ((WAC 181-85-033 (4)))(b) of this subsection.

(b) Individuals who first submitted a component of an initial NBPTS national board certification process in 2018 or later, and who hold a valid educational certificate under RCW 28A.410.010, are eligible for the equivalent of fifty continuing education credit hours per submission of a complete national board component, for a total of two hundred continuing education credit hours per submission of a complete national board certification portfolio. Completion of a national board component shall be defined as published by the professional educator standards board.

(c) Individuals who submit a complete NBPTS national board renewal portfolio in 2018 or later, and who hold a valid educational certificate under RCW 28A.410.010, are eligible for the equivalent of two hundred continuing education credit hours. Completion of a national board renewal portfolio shall be defined as published by the professional educator standards board.

**(6) External assessment for professional certification.** Teachers who achieve the professional certification through the external assessment under WAC 181-79A-206 are eligible for the equivalent of one hundred fifty continuing education credit hours.

**(7) First peoples' language, culture and oral tribal traditions.** In-service training or continuing education in first peoples' language, culture and oral tribal traditions provided by a sovereign tribal government participating in the Washington state first peoples' language, culture and oral tribal traditions teacher certification program authorized under RCW 28A.410.045 shall be considered approved in-service training or approved continuing education under this section.

**(8) Scorers for the Washington teacher performance assessment.** Individuals who serve as scorers for the Washington teacher performance assessment are eligible for the equivalent of ten continuing education credit hours for each four assessments scored, provided that an individual may not receive more than the equivalent of twenty continuing education credit hours during a calendar year period. Additionally, individuals who receive initial training as scorers for the Washington teacher performance assessment are eligible for the equivalent of ten continuing education credit hours.

**(9) Scorers for the Washington ProTeach Portfolio assessment.** Individuals who serve as scorers for the Washington ProTeach Portfolio assessment are eligible for the equivalent of ten continuing education credit hours for completing one full scoring session during a calendar year, provided that an individual may not receive more than the equivalent of twenty continuing education credit hours during a calendar year period. Individuals who receive initial training as scorers for the Washington ProTeach Portfolio assessment are eligible for the equivalent of ten additional continuing education credit hours. Continuing education credit hours under this subsection are available through December 31, 2027.

**(10) Professional growth plans.**

(a) Educator individualized professional growth plan means the document which identifies the formalized learning opportunities and professional development activities that relate to the specific competencies, knowledge, skills and experiences needed to meet the standards at the "career level" benchmarks as published by the professional educator standards board, or other standards for the role as published by the professional educator standards board.

(b) Only one professional growth plan may be completed each year. Professional growth plans will be completed during the period beginning July 1st of one year and ending June 30th of the following year. Completion of the professional growth plan will include review by the professional growth team, as defined in subsection (2) of this section.

(c) Individuals may apply their focused evaluation professional growth activities from the evaluation system towards the professional growth plan for certificate renewal under RCW 28A.405.100 (12)(c)(vi).

(d) Until June 30, 2018, individuals who complete the requirements of the annual professional growth plan are eligible for thirty continuing education credit hours. Beginning July 1, 2018, individuals who complete an annual professional growth plan are eligible for twenty-five continuing education credit hours.

(e) For educators holding multiple certificates as described in Title 179 or 181 WAC, a professional growth plan for teacher, administrator, education staff associate, or paraeducator shall meet the requirements of a professional growth plan for all certificates held by an individual.

**(11) Paraeducator certificates.**

(a) Individuals who complete the paraeducator fundamental course of study as described in chapter 179-09 WAC are eligible for the number of continuing education credit hours completed up to twenty-eight continuing education credit hours unless they are issued these continuing education credit hours by a state approved in-service education agency.

(b) Individuals who complete the course work for the English language learner subject matter certificate as described in chapter 179-13 WAC are eligible for the number of continuing education credit hours completed up to twenty continuing education credit hours unless they are issued these continuing education credit hours by a state approved in-service education agency.

(c) Individuals who complete the course work for the special education subject matter certificate as described in chapter 179-15 WAC are eligible for the number of continuing education credit hours completed up to twenty continuing education credit hours unless they are issued these continuing education credit hours by a state approved in-service education agency.

**WSR 20-19-027**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 20-179—Filed September 8, 2020, 1:24 p.m., effective October 9, 2020]

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

Purpose: The purpose of the proposed modification to chapter 220-111 WAC is to broaden the chapter to encompass agency rules to govern rule-making activities beyond emergency rules. The purpose of the proposed new rules is to identify a point of contact for the department's rule-making files and clarify the department's procedures relative to requests for public access to its rule-making files.

Citation of Rules Affected by this Order: New WAC 220-111-001, 220-111-002, 220-111-003, and 220-111-004.

Statutory Authority for Adoption: RCW 43.17.060, 34.05.220, and 77.04.080.

Adopted under notice filed as WSR 20-16-100 on July 31, 2020.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 4, Amended 0, Repealed 0.

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

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

Date Adopted: September 8, 2020.

Kelly Susewind  
Director

**Chapter 220-111 WAC**

**~~((EMERGENCY RULES))~~ RULE-MAKING**

NEW SECTION

**WAC 220-111-001 Rule-making files—Generally.** The purpose of this chapter is to specify criteria for the director to close or shorten seasons pursuant to RCW 77.12.150, and to provide procedures governing the department's maintenance of, and the public's request to inspect, rule-making files of the department pursuant to the Administrative Procedure Act, chapter 34.05 RCW.

NEW SECTION

**WAC 220-111-002 Agency rules coordinator.** (1) The department's rules coordinator:

(a) Has knowledge of the subjects of rules being proposed or prepared within the agency for proposal;

- (b) Maintains the records of any such action;
- (c) Maintains the department's rule-making docket;
- (d) Responds to public inquiries about possible, proposed, or adopted rules and the identity of agency personnel working, reviewing, or commenting on them; and
- (e) Oversees the department's compliance with the Administrative Procedure Act requirements concerning locating, processing, and making department rule-making files available for public inspection.

(2) The department's rules coordinator can be contacted at:

Agency Rules Coordinator  
Department of Fish and Wildlife

Office Location:  
Natural Resources Building, 5th Floor  
1111 Washington Street S.E.  
Olympia, WA 98501-1091

Mailing Address:  
P.O. Box 43200  
Olympia, WA 98504-3200  
email address: Rules.Coordinator@dfw.wa.gov

Current contact information is also available at the department's website at <http://wdfw.wa.gov>.

(3) The department's rules coordinator may designate one or more department staff to carry out the responsibilities set forth in subsection (1) of this section; and other staff may process requests to inspect rule-making files. Therefore, use of the term "department rules coordinator" in this chapter may include the department rules coordinator's designee(s) and/or any other staff assisting in processing requests to inspect rule-making files, where indicated by context.

NEW SECTION

**WAC 220-111-003 Rule-making files available.** (1) The department's rule-making docket and many of its rule-making files are publicly available on the department's website at <http://wdfw.wa.gov>. Requestors are encouraged to search for and view department rule-making activities on the department's website in lieu of or prior to submitting a request to inspect the department's rule-making files.

(2) Rule-making files are available for inspection, upon request, from 9:00 a.m. to 12:00 p.m. and from 1:30 p.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. Based on other demands on the agency and/or the size, format, and location of the rule-making file, the department rules coordinator may specify the date and times during which particular rule-making files will be made available for inspection.

(3) Requestors providing a valid email address may be able to view rule-making files on their own computers, or rule-making files may be inspected at the department's central office, located at 1111 Washington Street S.E., Olympia, Washington 98501.

(4) Requestors should contact the department's rules coordinator to determine the availability of records for inspection. The department will ordinarily respond to such requests within three days.



NEW SECTION

**WAC 220-111-004 Requests to inspect rule-making files.** (1) Any person wishing to inspect rule-making files of the department must contact the agency rules coordinator by letter or email to the office or email address set forth in WAC 220-111-002(2). The written request must be addressed and sent to the department's rules coordinator and include the following information:

- (a) Name of the requestor;
- (b) Contact information, including telephone number and email address, if the requestor has one; and
- (c) Identification of the rule-making files sought, in a form or description that is sufficient for the department's rules coordinator to identify and locate the requested file. If a request for inspection of a rule-making file is unclear, the rules coordinator may request clarification.

(2) If the requestor wishes to have copies of the records made, whether hard copy or electronic, instead of inspecting them, the requestor must submit a request for public records pursuant to the Public Records Act, chapters 42.56 RCW and 220-120 WAC. A public records request form is available to requestors at the office of the public records officer and at the department's website at <http://wdfw.wa.gov>.

**WSR 20-19-032****PERMANENT RULES****DEPARTMENT OF LICENSING**

[Filed September 9, 2020, 8:44 a.m., effective October 10, 2020]

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

Purpose: The Federal Motor Carrier Safety Administration (FMCSA) has delayed the implementation of the Training Provider Registry established under 49 C.F.R. 380.700 and requirements for approving CDL applicants skills and training by FMCSA registered Training Providers set forth in the same rule. Therefore, the department must update its rule to reflect the federal implementation date which has moved from February 7, 2020, to February 7, 2022. This will extend the deadline for requiring CDL training providers to register with FMCSA and the requirement of CDL applicants to have their skills and training provided by a FMCSA registered training provider.

Citation of Rules Affected by this Order: Amending WAC 308-100-033 Minimum training requirements and 308-100-035 Employer certification.

Statutory Authority for Adoption: RCW 46.01.110 and 46.25.085.

Adopted under notice filed as WSR 20-08-036 on March 24, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 1, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: September 9, 2020.

Damon Monroe  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 20-02-087, filed 12/30/19, effective 1/30/20)

**WAC 308-100-033 Minimum training requirements.**

(1) Approval for a course of instruction in the operation of a commercial motor vehicle will only be granted if the course of instruction:

(a) Is provided by, and under the direct supervision of, a training provider that has an application with the department approving the course of instruction offered by the training provider. Beginning on February 7, ((2020)) 2022, the training provider must also be listed on the Federal Motor Carrier Safety Administration's Training Provider Registry that is established under 49 C.F.R. 380.700; and

(b) **Class A course - Minimum requirements for approval:** A course of instruction for students seeking a class A CDL must follow the class A training curriculum defined in C.F.R. Appendix A to Part 380 as it existed on the (effective date of the WAC). The course must include not less than:

- (i) Forty hours of classroom instruction;
- (ii) Eighteen hours of street driving training;
- (iii) Sixteen hours of training in backing maneuvers;
- (iv) Sixteen hours of proficiency development; and
- (v) Seventy hours of combined lab training, range training, and observation.

(c) **Class B course - Minimum Requirements:** A course of instruction for students seeking a class B CDL must follow the class B training curriculum defined in C.F.R. Appendix B to Part 380 as it existed on the (effective date of the WAC). The course must include not less than:

- (i) Forty hours of classroom instruction;
- (ii) Fourteen hours of street driving training;
- (iii) Eight hours of training in backing maneuvers;
- (iv) Eight hours of proficiency development; and
- (v) Ten hours of combined lab training, range training, and observation.

(d) **Class C course - Minimum requirements:** A course of instruction for students seeking a class C CDL must follow the class B training curriculum defined in C.F.R. Appendix B to Part 380 as it existed on the (effective date of the WAC). The course must include not less than:

- (i) Forty hours of classroom instruction;
- (ii) Fourteen hours of street driving training;
- (iii) Eight hours of training in backing maneuvers;
- (iv) Eight hours of proficiency development; and
- (v) Ten hours of combined lab training, range training, and observation.

(e) **Upgrade from either class B or C to class A - Minimum requirements:** A course of instruction for students

seeking to upgrade from a class B or C to a class A must follow the class A behind the wheel training curriculum defined in C.F.R. Appendix A to Part 380 as it existed on the (effective date of the WAC). The course must include not less than:

- (i) Eighteen hours of street driving training;
- (ii) Sixteen hours of training in backing maneuvers;
- (iii) Sixteen hours of proficiency development; and
- (iv) Thirty hours of combined lab training, range training, and observation.

(f) **Upgrade from a class C to class B - Minimum requirements:** A course of instruction for students seeking to upgrade from a class C to a class B must follow the class B behind the wheel training curriculum defined in C.F.R. Appendix B to Part 380 as it existed on the (effective date of the WAC). The course must include not less than:

- (i) Fourteen hours of street driving training;
- (ii) Eight hours of training in backing maneuvers;
- (iii) Eight hours of proficiency development; and
- (iv) Ten hours of combined lab training, range training, and observation.

(g) **Passenger endorsement - Minimum requirements:** A course of instruction for students seeking a passenger endorsement must follow the passenger endorsement training curriculum defined in C.F.R. Appendix C to Part 380 as it existed on the (effective date of the WAC). The course must include not less than:

- (i) Four hours of classroom/theory instruction;
- (ii) Ten hours of proficiency development.

(h) **School bus endorsement - Minimum requirements:** A course of instruction for students seeking a school bus endorsement must follow the school bus endorsement training curriculum defined in C.F.R. Appendix D to Part 380 as it existed on the (effective date of the WAC). The course must include not less than:

- (i) Twenty hours of classroom/theory instruction;
- (ii) Ten hours of proficiency development.

(i) **Passenger and school bus endorsement - Minimum requirements:** A course of instruction for students seeking a passenger and school bus endorsement must follow the passenger and school bus endorsement training curriculum defined in C.F.R. Appendix C and D to Part 380 as it existed on the (effective date of the WAC). The course must include not less than:

- (i) Twenty hours of classroom/theory instruction;
- (ii) Ten hours of proficiency development.

(j) **Hazardous material endorsement - Minimum requirements:** A course of instruction for students seeking a HAZMAT endorsement must follow the hazardous material endorsement training curriculum defined in C.F.R. Appendix E to Part 380 as it existed on the (effective date of the WAC). The course must include not less than: Sixteen hours of classroom/theory instruction;

(k) In addition to the class A, B, and C curriculum as defined above, each class room training must include a minimum thirty minute section on "Truckers Against Trafficking."

(2) Students must complete all portions of the training within one year of completing the first portion.

AMENDATORY SECTION (Amending WSR 19-01-078, filed 12/17/18, effective 1/17/19)

**WAC 308-100-035 Employer certification.** (1) An employer may certify that one of its employees has the skills and training necessary to operate a commercial motor vehicle safely by certifying the employee has demonstrated proficiency in the elements of the course of instruction required in WAC 308-100-033, with the exception of the minimum required hours, on a form provided by the department. The certification must include the classification or endorsements of commercial motor vehicle that the employee is competent to operate.

(2) The certification must be provided to the department electronically. Beginning on February 7, ~~((2020))~~ 2022, an employer may only certify that an applicant for a CDL has the skills and training necessary to operate a commercial motor vehicle safely if the employee has successfully completed training with a training provider listed on FMCSA's Training Provider Registry established under 49 C.F.R. 380.700.

(3) The department must receive an electronic notification of successful completion prior to an employee taking a skills test.

#### WSR 20-19-045

#### PERMANENT RULES

#### SECRETARY OF STATE

[Filed September 10, 2020, 11:31 a.m., effective October 11, 2020]

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

Purpose: Permanent adoption of WAC changes related to operation of student voting HUBS on campuses and the associated grant program.

Citation of Rules Affected by this Order: New WAC 434-250-350 and 434-250-360.

Statutory Authority for Adoption: RCW 29A.04.611.

Adopted under notice filed as WSR 20-16-113 on July 31, 2020.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 0, Repealed 0.

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

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

Date Adopted: September 10, 2020.

Mark Neary  
Assistant Secretary of State

NEW SECTION

**WAC 434-250-350 Student engagement hubs.** Pursuant to chapter 29A.40 RCW, section 10, chapter 208, Laws of 2020 (ESB 6313), the county auditor and any educational institution within the county that are statutorily required to host a hub must enter a contract to operate a student engagement hub.

(1) For all institutions operating student engagement hubs, the contract must include:

(a) A method for voters to download and print the voter's ballot for the exact precinct and precinct split from the voter's county of registration from an online portal;

(b) Provisions for protecting the privacy and secrecy of any voted ballot;

(c) Provision of instruction for voters on how to return a ballot;

(d) Provision of services to those in line at 8:00 p.m. on election day to obtain a ballot, vote, and deposit their voted ballot;

(e) Provision of a secured ballot drop box at the hub, following current ballot drop box procedures for emptying the contents and closing the box at the conclusion of hub operations;

(f) Ensuring that when a voter is in line at the hub at 8:00 p.m. or earlier on election day, their ballot may be deposited in the drop box after 8:00 p.m., but no other voters can use the drop box after 8:00 p.m.

(g) Ensuring operation of the hub in a nonpartisan manner while allowing no campaign materials or campaigning within a minimum of at least twenty-five feet of the entrances and exits of the hub facility, or within the hub;

(h) Provision of accessible facilities compliant with the Americans with Disabilities Act.

(2) For institutions operating student engagement hubs that are statutorily required to include voter registration services, the contract must also include:

(a) An agreed upon method of voter registration services for all eligible citizens at the hub;

(b) Setting the hours of operation as the county auditor's normal working hours and, on Election Day, starting at normal business opening and extended until 8:00 p.m.;

(c) An agreement detailing the days that the hub will be in operation up to the statutory maximum of eight days prior to the election;

(d) Provision to the hub of at least the following services by agreement between the county auditor and the university or college:

(i) Staffing;

(ii) Availability of provisional ballots;

(iii) Provision of notice of the availability of services;

(iv) Provision of appropriate voter information including voter pamphlets; and

(v) Provision of services to those in line at 8:00 p.m. on election day to register to vote, obtain a ballot, vote, and deposit their voted ballot.

(3) The prohibitions listed in chapter 29A.84 RCW for voting centers and ballot drop boxes also apply to student engagement hubs.

(4) Hub staff may provide postage stamps for voters that choose to mail their ballot.

NEW SECTION

**WAC 434-250-360 Hub grant program.** (1) Each year that funding has been made available by the legislature, a county that is required to operate a student engagement hub under chapter 29A.40 RCW, section 10, chapter 208, Laws of 2020 (ESB 6313), may request grant funding from the secretary of state for the operation of a student engagement hub during any portion of the in-person voter registration period associated with each general election.

(a) Funding may be provided only after completion of a grant agreement between the county auditor and secretary of state pursuant to section 23, chapter 208, Laws of 2020.

(b) Funding may be provided for the purposes of obtaining equipment necessary for hub operation that will become the property of the county auditor for use in conducting elections.

(c) Funding may be provided for the purposes of obtaining hardware and software necessary for compliance with WAC 434-250-350 (2)(d).

(d) Funding may be provided for operational costs of the hub for staffing, materials, rent, information technology needs related to security and connectivity, and other costs agreed upon between the county auditor and the university or college for operation.

(e) Funding may be provided to county auditors to pay staffing costs at the auditor's office to accommodate operation of the hub during hub hours.

(f) Funding may be provided to county auditors for preparation, planning and training required to coordinate hub operation.

(g) Funding will be prorated based on the number of students enrolled on campus at the university or college, and the number of days of operation of each hub.

(h) Funding may be provided to the county auditor for the associated student organization of the university or college up to a maximum of three thousand dollars per hub for assistance in operation and promotion of the hub availability on campus.

(i) Funding may be provided on a case by case basis for additional requirements identified by the county auditor in a grant application.

(2) The application for grant funding to operate a hub must:

(a) Provide a detailed description of hub operations, hours, and intended expenditures to the secretary of state for review;

(b) Be accompanied by the signed agreement between the county auditor and the university or college pursuant to WAC 434-250-350;

(c) Be accompanied by any other grant funding requests pursuant to subsection (1) of this section;

(d) The grant application deadline is the third Monday in September.

(3) The Washington state director of elections will review each application and request additional documentation where necessary.

(a) Once the application and plan has been reviewed, the grant may be funded in full or in part at the sole discretion of the director of elections or designee.

(b) Grant amounts will vary based on the number of students enrolled on the university or college campus, the number of days of hub operation, and available funding.

(4) After each general election, any funds granted to a county that were not expended shall be returned to the secretary of state.

**WSR 20-19-046**

**PERMANENT RULES**

**EASTERN WASHINGTON UNIVERSITY**

[Filed September 10, 2020, 11:32 a.m., effective October 11, 2020]

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

Purpose: The modifications to chapter 172-121 WAC are needed to address changes in practice, procedures, and new United States federal regulations.

Citation of Rules Affected by this Order: Amending WAC 172-121-010, 172-121-020, 172-121-030, 172-121-

070, 172-121-075, 172-121-080, 172-121-100, 172-121-105, 172-121-110, 172-121-121, 172-121-122, 172-121-130, 172-121-140, 172-121-200, and 172-121-210.

Statutory Authority for Adoption: RCW 28B.35.120 (12).

Adopted under notice filed as WSR 20-07-015 on March 5, 2020.

Changes Other than Editing from Proposed to Adopted Version: RCW 34.05.340 Variance between proposed and final rule: As Eastern Washington University (EWU) made updates to the proposed rule after filing the CR-102, without a supplemental notice and in accordance with RCW 34.05.340[(2)](c), this document contains the description of changes made after the CR-102 filing. The general subject matter remains the same and a majority of the changes are required by new United States federal regulations regarding Title IX, which were released on May 6, 2020. Below is a listing of the changes made to the associated WAC, whether they are substantive and the reason for the changes.

WAC	Substantive	Changes Made	Reason
172-121-020	Y	Replaced the term "felony-level sexual misconduct" with "Title IX complaint."	All felony-level sexual misconduct is covered within the definition of "Title IX complaint." Including non-felony level sexual misconduct is necessary to comply with the updated Title IX federal regulations published on May 6, 2020.
172-121-030(11)	Y	Added complainants have the right to opt out of the student conduct process.	This simply reflects what EWU's process has been and is necessary to comply with updated Title IX federal regulations.
172-121-080 (2)(a)(x)	Y	Added administration and records requirements regarding remedies provided to the complaint to restore or preserve equal access.	Required by updated Title IX federal regulations.
172-121-100 (1)(b)(ii)	Y	Added Title IX coordinator.	This simply reflects EWU's current practice and is required by Title IX regulations.
172-121-100 (1)(e)	Y	Added language regarding the filing of Title IX complaints.	Required by updated Title IX federal regulations.
172-121-100 (3)(b)	Y	Added language regarding the responsibility of the Title IX coordinator to determine a complaint constitutes a Title IX complaint and if the complaint would not constitute sexual misconduct or interpersonal violence. If not, the complaint will be dismissed. Additional language added allowing the university to proceed with a student conduct case for misconduct outside of Title IX, including, but not limited to, sexual misconduct or interpersonal violence that does not fit the definition of a Title IX complaint.	This is very similar to language included in the CR-102 draft and is required by updated Title IX federal regulations.
172-121-100 (3)(d)	Y	Added language regarding the providing of all evidence obtained during an investigation to both parties. Each party will have ten calendar days to submit a written response and the investigator will consider such response prior to the completion of the investigative report.	This is very similar to language included in the CR-102 draft and is required by updated Title IX federal regulations.
172-121-105 (1)(a)	Y	Added language to make sure all complaints potentially involving Title IX go through a full hearing.	See earlier comments. Felony-level sexual misconduct is modified to "Title IX complaints." This slight expansion is necessary to comply with the updated Title IX federal regulations.
172-121-110 (1)(d)	N	Language identical to changes made in the CR-102 submission in WAC 172-121-030(1) and added to this section.	Required by updated Title IX federal regulations.
172-121-110 (1)(e)	N	Provides a reminder that the person may have an advisor of their choice throughout the student conduct process.	Not a substantive change as students have had the right to have an advisor present in previous versions.

WAC	Substantive	Changes Made	Reason
172-121-110(2)	Y	Added requirement regarding details contained in a notice of allegations.	This was previously contained in subsection (1) and the new version simply distinguishes between a notice of investigation and a notice of allegations. Information contained in a notice of allegations is required by updated Title IX federal regulations and much of it was included in the CR-102 draft.
172-121-110 (2)(a)	N	Added that notice must be in writing.	Not a substantive change. Previous versions included a written notice.
172-121-110 (2)(b)	N	Added that notice must include written list of allegations with sufficient detail of the allegations based on current information.	Not a substantive change as this was included in the CR-102. Difference is that the code now provides to [two] distinct notices (notice of allegation and notice of investigation).
172-121-110 (2)(c)	N	Language identical to changes made in the CR-102 submission in WAC 172-121-030(1) and added to this section.	Not a substantive change.
172-121-110 (2)(d)	N	Added that notice must have a reminder that the person may have an advisor of their choice throughout the student conduct process and for Title IX complaints, the university will provide them with and advisor upon request for purposes of cross-examination.	Not a substantive change. Previous versions provided a student with the right to have an advisor and the CR-102 draft included a provision indicating that if a student could not find an advisor, the university would assist them in finding one. Only real change is that the advisor is provided "for purposes of cross-examination" and this is required by updated Title IX federal regulations.
172-121-110 (2)(e)	N	Added that notice must provide information about how to review the evidence gathered.	Previous versions provided information about how to request the ability to review evidence.
172-121-110 (2)(f)	N	Added that the notice must remind students that they are prohibited from knowingly furnishing false information during the student conduct process.	CR-102 version indicated that the combined notice of investigation/notice of allegations must include a reminder that the code prohibits knowingly making false statements.
172-121-110(3)	N	Added that the complainant will be notified that they have a right to an advisor during the hearing process, and for Title IX complaints, the university will provide an advisor upon request for the purposes of conducting cross-examination.	Not a substantive change. Previous versions provided a student with the right to have an advisor and the CR-102 draft included a provision indicating that if a student could not find an advisor, the university would assist them in finding one. Only real change is that the advisor is provided "for purposes of cross-examination" and this is required by updated Title IX federal regulations.
172-121-121 (3)(c)	N	Added that in brief hearings, the advisor is limited to advising the student and cannot speak on behalf of the student.	Reflects current practice and is not a substantive change.
172-121-121(9)	Y	Added if student is also an employee, the conduct review officer's (CRO) decision may be forwarded to the student's supervisor to determine whether any employment action will be taken.	Updated Title IX federal regulations require a hearing for both student conduct and employment investigations. Due to this change, the code is revised to allow the student conduct process to provide the needed hearing for Title IX purposes.
172-121-122(1)	Y	Added felony-level crime and Title IX complaint. This ensures all Title IX complaints go through a full hearing.	Required by updated Title IX federal regulations. Reflects changes in definitions required to comply with Title IX.
172-121-122 (3)(a)	Y	Added that the council may not make an inference about the determination regarding responsibility based solely on a party's or witness's failure to appear at the hearing.	Required by updated Title IX federal regulations.
172-121-122 (3)(b)	N	Added that solely for Title IX complaints, if a party or witness does not appear at the hearing and submit to cross-examination, the council must not rely on any statement or that party or witness in reaching a determination regarding responsibility.	Not a substantive change as this was included in the CR-102.

WAC	Substantive	Changes Made	Reason
172-121-122 (3)(c)	N	Added that for Title IX complaints, the university will provide an advisor to a party upon request for the purposes of conducting cross-examination.	Not a substantive change. Previous versions provided a student with the right to have an advisor and the CR-102 draft included a provision indicating that if a student could not find an advisor, the university would assist them in finding one. Only real change is that the advisor is provided "for purposes of cross-examination" and this is required by updated Title IX federal regulations.
172-121-122 (7)(a)	N	Language modified to include that solely for Title IX complaints, statements obtained from a person who does not testify at the hearing shall not be considered by the council. Also added that for Title IX complaints, prior to allowing a question to be answered during cross-examination, the CRO must determine that the question is relevant, and, if excluded, the CRO must explain on the record the reason for exclusion.	Not a substantive change as very similar language was included in the CR-102.
172-121-122(10)	Y	Added that a motion for summary judgment is not permitted for Title IX complaints.	Required by updated Title IX federal regulations.
172-121-122 (12)(a)	N	Language modified to include that solely for Title IX complaints, statements obtained from a person who does not testify at the hearing shall not be considered by the council.	Not a substantive change as this is very similar to language included in the CR-102.
172-121-122(14)	Y	Added if student is also an employee, the CRO's decision may be forwarded to the student's supervisor to determine whether any employment action will be taken.	Updated Title IX federal regulations require a hearing for both student conduct and employment investigations. Due to this change, the code is revised to allow the student conduct process to provide the needed hearing for Title IX purposes.
172-121-122 (14)(c)	N	Added the requirement that the CRO's decision must identify the allegations at issue.	Not a substantive change in practice.
172-121-122 (14)(d)	N	Added the requirement that the CRO's decision must include a description of the procedural steps taken, including notifications to the parties, interviews with the parties and witnesses, site visits, methods used to gather other evidence, and hearings held.	Required by updated Title IX federal regulations.
172-121-122 (14)(g)	Y	Added the requirement that the CRO's decision must include a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed, and if any remedies are necessary to provide to the complainant in a Title IX complaint to restore or preserve equal access to the university's educational programs or activities.	Most of this language was included in the CR-102. The additional language about remedies is required by the updated Title IX federal regulations.
172-121-122 (17)(e)	N	Added that for Title IX complaints, the complaint shall receive a copy of the decision provided to the respondent.	Previous version provided that the complainant should receive notice of the outcome. Practice has been to provide them with the copy of the decision, so this is not a substantive change.
172-121-122(18)	Y	Added that for Title IX complaints, the Title IX coordinator must be provided with notice of the decision as the Title IX coordinator is responsible for effective implementation of any remedies.	Required by updated Title IX federal regulations.
172-121-130(1)	N	Added language that is [in] cases of sexual misconduct, interpersonal violence, or a Title IX complaint, the complainant may also file an appeal following dismissal of a complaint or full hearing.	Not a substantive change as previous versions of the code have given the complainant the right to appeal.
172-121-130 (1)(f)	N	Added that appeals may be filed regarding a conflict of interest or bias for or against complainants and respondents, regarding the Title IX coordinator, investigator, or hearing authorities that affected the outcome of the matter.	Required by updated Title IX federal regulations. However, this is not a substantive change as previous versions allowed for an appeal to challenge the process for failing to follow procedures under the code and previous versions included provisions prohibiting conflicts of interest.

WAC	Substantive	Changes Made	Reason
172-121-140(1)	N	Added that for sexual misconduct and interpersonal violence cases, supportive measures are available before or after the filing of a complaint or where no formal complaint is filed and that supportive measures are provided to students free of charge. Added additional language regarding supportive measures including protecting the safety of all parties and the university's educational environment, or deterring sexual harassment. Supportive measures in cases of sexual misconduct and interpersonal violence are coordinated by the Title IX coordinator or designee.	Not a substantive change as similar language was included in the CR-102 version.
172-121-140(2)	N	Added that for all non-Title IX cases, the director may take immediate action(s) against the student or student organization after conducting an individualized safety and risk analysis without prior notice or hearing. Simultaneously, the director shall refer the allegations to the CRO.	This is not a substantive change as the basis for taking immediate action in non-Title IX cases is not altered. The additional language is to distinguish non-Title IX cases from Title IX cases.
172-121-140 (2)(b)(ii)	Y	Added language regarding interim suspensions regarding Title IX complaints. For Title IX complaints, a student may only be placed on interim suspension if, after conducting an individualized safety and risk analysis, the director determines the person poses an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual misconduct or interpersonal violence.	Required by updated Title IX federal regulations.
172-121-200 (2)(d)	Y	Added citizenship or immigration status to the definition of discriminatory harassment.	Required by changes to the Washington Law Against Discrimination effective June 11, 2020.
172-121-200 (2)(e)(i)	Y	Changed the definition of domestic violence to meet new federal Title IX regulations.	Required by updated Title IX federal regulations.
172-121-200(g)	Y	Definition of retaliation updated to reflect new federal Title IX regulations.	Required by updated Title IX federal regulations.
172-121-200 (3)(a)(i)	Y	Updated the definition of sexual harassment to include if an EWU employee conditioned the provision of an aid, benefit, or service of the university on the complainant's participation in unwelcome sexual conduct.	Required by updated Title IX federal regulations.
172-121-200 (3)(a)(ii)	Y	Updated definition of sexual harassment.	Required by updated Title IX federal regulations.
172-121-200 (3)(b)	Y	Updated the definition of sexual assault, including consent and incapacity to give consent.	Required by updated Title IX federal regulations.
172-121-200 (3)(b)(i)	Y	Updated the definition of rape.	Required by updated Title IX federal regulations.
172-121-200 (3)(b)(ii)	Y	Updated the definition of fondling.	Required by updated Title IX federal regulations.
172-121-200 (3)(b)(iii)	Y	Updated the definition of incest.	Required by updated Title IX federal regulations.
172-121-200 (3)(b)(iv)	Y	Updated the definition of statutory rape.	Required by updated Title IX federal regulations.
172-121-210	Y	Added if student is also an employee, the CRO's decision may be forwarded to the student's supervisor to determine whether any employment action will be taken.	Updated Title IX federal regulations require a hearing for both student conduct and employment investigations. Due to this change, the code is revised to allow the student conduct process to provide the needed hearing for Title IX purposes.
172-121-210(3)	Y	Updated the definition of remedies for Title IX complaints. For Title IX complaints, if the respondent is found responsible for violating the code, the university may provide remedies to the complainant designed to restore or preserve equal access to the university's educational programs or activities.	Required by updated Title IX federal regulations.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 15, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 15, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: June 26, 2020.

Joseph Fuxa  
Policy and Compliance Manager

AMENDATORY SECTION (Amending WSR 20-01-032, filed 12/6/19, effective 1/6/20)

**WAC 172-121-020 Definitions.** For purposes of the student conduct code, chapter 172-121 WAC, the definitions in this section apply.

"Appeal authority" refers to the conduct review official presiding over an appeal under WAC 172-121-130.

"Appellant" refers to any respondent or complainant who appeals the decisions or sanctions of a hearing authority under WAC 172-121-130.

"Brief hearing" refers to a brief conduct review hearing before a conduct review officer (~~(or the student disciplinary council)~~) for allegations that, if substantiated by a preponderance of evidence, would result in a sanction less than a suspension or expulsion, do not involve a Title IX complaint, and that do not involve felony-level (~~(sexual misconduct)~~) crimes.

"Business days" refers to the days and hours the university is open for business. Business days are Monday through Friday, from 8:00 a.m. to 5:00 p.m., excluding holidays as set forth in the university holiday schedule.

"Complainant" means the person who was subjected to the alleged misconduct. The complainant may or may not be the reporting party. If the person who was subjected to the alleged misconduct does not wish to pursue a student conduct case, the university may (~~(choose to fill the role of the complainant throughout the student conduct proceedings)~~) initiate the student conduct process on its own behalf.

"Conduct review officer" or "CRO" refers to the person designated to serve as the decision maker for a brief hearing or the presiding officer for a full hearing.

"Council" or "the council" refers to the student disciplinary council as described in WAC 172-121-070.

"Council hearing" refers to a (~~(brief)~~) full conduct review hearing before the student disciplinary council.

"Dean of students" refers to the dean of students or designee.

"Director of SRR" or "director" refers to the director of student rights and responsibilities or designee.

"Filing" means to actually deliver documents. Documents required to be filed with a specific person under these rules shall be deemed filed upon actual receipt during office hours at EWU. Papers may be filed by delivering them to the dean of student's office, sending them via United States mail, properly addressed, postage prepaid, to (~~(301 Pence Union Building)~~) 129 Showalter Hall, or emailing them to srr@ewu.edu.

"Full hearing" refers to a full conduct reviewing hearing before (~~(a conduct review officer (CRO))~~) the council for allegations that, if substantiated by a preponderance of the evidence, could result in a sanction of a suspension or expulsion, involve a Title IX complaint, or that could constitute felony-level (~~(sexual misconduct)~~) crimes.

"Hearing authority" refers to the (~~(university official or student disciplinary council who holds)~~) decision-maker in a conduct review hearing.

"Interpersonal violence" encompasses domestic violence, dating violence, and stalking.

"Notify" means to provide notice to a person. A person may be notified in person, by telephone, by sending notice to

the person's university email account, by leaving a message on his or her personal telephone, or by sending the notice in the United States mail, properly addressed, postage prepaid, to the person's last known address.

"Off-campus" refers to any location or facility that is not owned, leased, rented, or operated by Eastern Washington University.

"Party/parties" refers to the complainant (~~(and the)~~), respondent, and/or the university.

"Policies" or "university policy" refers to the written regulations of the university, including the standards of conduct for students, residence life handbook, housing contract, university policies, and graduate/undergraduate catalogs and handbooks.

"Recognized student organizations" refers to clubs, organizations, societies or similarly organized groups recognized by the university or the associated students of Eastern Washington University (ASEWU).

"Reporting party" means the person who notifies student rights and responsibilities of alleged misconduct by a student or student organization. The reporting party may also be the complainant, but need not be the complainant.

"Respondent" refers to any student or student organization accused of violating the student conduct code under this chapter.

"Serve" means to post a document in the United States mail, properly addressed, postage prepaid, to a person's last known address, personal service, or electronic service to the person's university email account. Service by mail is complete upon deposit in the United States mail.

"Session council" refers to the student disciplinary council members selected for a specific hearing or appeal.

"Sexual misconduct" encompasses sexual harassment(~~(; domestic violence, dating violence, stalking, and acts of non-consensual sexual activity for the purposes of WAC 172-121-030 through 172-121-140 and for trainings provided on campus. However, in the violations section in WAC 172-121-200 the violations are defined separately and the term sexual misconduct has the more limited definition of nonconsensual sexual activity))~~) or sexual assault, as defined in WAC 172-121-200.

"Student" includes all of the following:

(a) Any applicant who becomes enrolled, for violations of the code committed as part of the application process or committed following the applicant's submission of the application until the time of official enrollment;

(b) Any person currently enrolled at the university;

(c) Nonmatriculated, international students attending institutes or foreign study programs through the university; and

(d) Any person who was previously enrolled at the university for violations of the code committed while enrolled. A person who engaged in conduct in violation of the student conduct code while a student remains subject to action under this code even if the person has graduated, withdrawn, or is not currently enrolled for any reason.

"Title IX complaint" means a complaint from a current student, applicant, or employee of sexual harassment, sexual assault, domestic violence, dating violence, or stalking for the conduct that occurred on university premises, during a uni-



versity program or activity within the United States, or at a building owned or controlled by a student organization that is officially recognized by the university. A complaint of sexual misconduct or interpersonal violence will only be considered a Title IX complaint under this code if it meets this definition. Sexual misconduct or interpersonal violence may still be addressed under this code if it does not meet the definition of a Title IX complaint.

"Title IX coordinator" refers to the Title IX coordinator or designee.

"University" means Eastern Washington University.

"University official" includes any person employed or contracted by the university, performing assigned administrative or professional responsibilities.

"University premises" means buildings and/or property (including adjacent streets and sidewalks) which are owned, leased, rented or operated by the university, to include all satellite campuses affiliated with the university.

"University president" refers to the university president or designee.

"Vice president for student affairs" refers to the vice president for student affairs or designee.

AMENDATORY SECTION (Amending WSR 19-01-047, filed 12/13/18, effective 1/13/19)

**WAC 172-121-030 Rights of students.** Any student or student organization charged with any violation of the student conduct code and the complainant in the case of an allegation of sexual misconduct or interpersonal violence, have the following rights where applicable:

- (1) The right to a fair and impartial conduct review process;
- (2) The right to prior written notice to attend a ~~((preliminary))~~ prehearing conference or hearing;
- (3) The right to remain silent during any conduct review hearing;
- (4) The right to know who filed the complaint against them as described in WAC 172-121-110;
- (5) The right to speak on their own behalf in all proceedings;
- (6) The right to hear all information and view all material presented against him or her;
- (7) The right to call witnesses as described in WAC ~~((172-121-121 or))~~ 172-121-122;
- (8) The right to ask or submit questions to be asked of witnesses for a full hearing, in a method determined by the conduct review officer, as described in WAC 172-121-122;
- (9) The right to consult an advisor as described in WAC 172-121-105(3);
- (10) The right to be presumed not responsible;
- (11) Complainants have the right to opt out of participating in the student conduct process;
- (12) The right to appeal as provided in WAC 172-121-130; and
- ~~((11))~~ (13) The right to be subjected to university disciplinary action only one time for the same conduct.

AMENDATORY SECTION (Amending WSR 20-01-032, filed 12/6/19, effective 1/6/20)

**WAC 172-121-070 Conduct review officials.** (1) The director of SRR or designee shall:

- (a) Serve as the primary point of contact for all matters relating to student conduct code violations and proceedings;
- (b) Manage the proceedings as described in this chapter;
- (c) Maintain all records of conduct review proceedings as described in WAC 172-121-080;
- (d) Ensure complaints are promptly investigated and resolved as required by federal and state laws; and
- (e) Review off-campus incidents of alleged misconduct and make determinations as to whether the conduct involved adversely affects the university community and/or the pursuit of its objectives and whether the conduct process should be initiated.

(2) Conduct review officer (CRO): The university president delegates to the vice president of student affairs the authority to designate one or more CRO(s). The director of SRR, dean of students, or any other qualified individual may be designated as a CRO. The CRO(s) shall preside over brief hearings ~~((, council hearings,))~~ and full conduct hearings under this chapter ~~((and shall serve as the decision maker in such cases unless a brief hearing is held before the student disciplinary council)).~~ For brief hearings, the CRO shall serve as the decision maker. For full hearings, the CRO shall serve as the presiding officer.

As the presiding officer, in full hearings the CRO has authority to:

- (a) Determine the order of presentation of evidence;
  - (b) Administer oaths and affirmations;
  - (c) Issue subpoenas pursuant to RCW 34.05.446;
  - (d) Rule on procedural matters, objections, and motions;
  - (e) Rule on motions for summary judgment;
  - (f) Rule on offers of proof and receive relevant evidence;
  - (g) Pursuant to RCW 34.05.449(5), close parts of a hearing to public observation or order the exclusion of witnesses upon a showing of good cause;
  - (h) Question witnesses in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter;
  - (i) Call additional witnesses and request additional exhibits deemed necessary to complete the record and receive such evidence subject to each party's opportunity for cross-examination and rebuttal;
  - (j) Take official notice of facts pursuant to RCW 34.05.452(5);
  - (k) Regulate the course of the hearing and take any appropriate action necessary to maintain order during the hearing;
  - (l) Permit or require oral argument or briefs and determine the time limits for submission thereof;
  - (m) Issue an order of default;
  - (n) Hold prehearing conferences; and
  - (o) Take any other action necessary and authorized by any applicable statute or rule.
- (3) Student disciplinary council: ~~((All brief hearings are scheduled with a CRO unless one of the parties requests a brief hearing before the student disciplinary council. The council also serves as an appeal authority under WAC 172-~~

~~121-130.))~~ The council serves as the decision maker for full hearings with respect to a finding of responsibility. The CRO in full hearings serves as the decision maker with respect to determining appropriate sanction(s) and remedies, upon a finding of responsibility.

(a) Council pool: For each academic year, a pool of council members shall be established. All members of the council pool are appointed by the vice president for student affairs. Appointment of council pool members is as follows:

(i) Faculty and staff members are appointed for three-year terms. Student members are appointed for one-year terms;

(ii) Council chair: The ~~((director of SRR, or designee,))~~ dean of students shall serve as the CRO and chair of council proceedings ~~((but will not have the right to vote, except in the case of a tie));~~

(iii) Vacancies: Council pool vacancies shall be filled as needed through appointment by the vice president for student affairs.

(b) Session council: When a student disciplinary council is needed for a ~~((brief hearing or an appeal, the director of SRR))~~ full hearing, the dean of students shall select available members from the council pool to serve as the session council. Each session council must include ~~((a quorum. A quorum is three voting members, which must include at least one student, one faculty/staff member, and one other member who could be a student or faculty/staff member))~~ three members. The council may consist of students, staff, or faculty members.

(4) Investigator: ~~((H))~~ For all Title IX, sexual misconduct, and interpersonal violence complaints, and certain other cases at the director's discretion, the ((CRO)) director may assign a complaint to an investigator to conduct an investigation. The investigator will provide a written investigative report to the ~~((CRO))~~ director.

(5) Presenter in cases of a full hearing, a person will present a case against the respondent on behalf of the university. The presenter will call witnesses, ask questions, and offer evidence during the hearing. The presenter may be the director of SRR, designee, or an assistant attorney general appearing on behalf of the university.

AMENDATORY SECTION (Amending WSR 20-01-032, filed 12/6/19, effective 1/6/20)

**WAC 172-121-075 Conflicts of interest.** (1) Individuals who play a role in ~~((receiving,))~~ investigating, ((advising,)) presiding over, and making decisions pertaining to individual student conduct cases including, but not limited to, the director, Title IX coordinator, dean of students, investigator, and council, shall not have any conflict of interest in the process or a bias for or against complainants or respondents generally or an individual complainant or respondent. A conflict of interest exists if the investigator, ~~((advisor,))~~ presiding officer or decision maker is the respondent, complainant, or a witness; if the respondent, complainant, or witness is a family member or friend; if the individual has a personal interest or bias; or if the individual has previously served in an advisory capacity for any of the parties or witnesses. In the event such a conflict arises in the process, the person shall disclose such

interest to the parties. Parties to the complaint who believe a university official involved in the process has a conflict of interest may report such concerns to the director of SRR or the dean of students. The director or dean shall determine whether a conflict of interest exists and take appropriate action.

(2) Challenges to council membership. Members of the student disciplinary council and the conduct review officer (CRO) are subject to the conflict of interest limitations set forth in subsection (1) of this section.

(a) If a member has such a conflict, the person shall recuse him/herself from further involvement in the case. In the event such a conflict arises after the council has been selected or during a proceeding, the member shall disclose the conflict to the parties.

(b) A council member's or the CRO's eligibility to participate in a case may be challenged by parties to the case or by other council members at any time by submitting a motion to disqualify to the CRO. When such a challenge is made, the session council, excluding the person alleged to have a conflict of interest, shall make a decision on the challenge.

(c) If a member is disqualified or disqualifies him/herself from a case, the ~~((director of SRR))~~ CRO will appoint a replacement.

AMENDATORY SECTION (Amending WSR 20-01-032, filed 12/6/19, effective 1/6/20)

**WAC 172-121-080 Administration and records.** (1) Student conduct code.

(a) Interpretation: Any questions regarding the interpretation or application of this student conduct code are referred to the vice president for student affairs for final determination.

(b) Review: This student conduct code shall be reviewed at least every three years under the direction of the vice president for student affairs.

(2) Records of conduct review proceedings.

(a) Records of conduct review proceedings under this chapter shall be prepared by the conduct review official(s) involved and maintained by the director of SRR. As much as possible, records should include:

(i) A summary of the proceedings during a prehearing conference;

(ii) An audio recording of conduct review hearings;

(iii) All letters, statements, memoranda, decisions, orders, notices, and other documents related to conduct review proceedings;

(iv) Any images, articles, recordings, or other materials presented as evidence in a conduct review proceeding;

(v) A statement of matters officially noticed or considered by the council or conduct review officer (CRO);

(vi) Evidence submitted, whether or not accepted, any objections and rulings, any cross-examination questions submitted to the council and rulings on such questions;

(vii) Proposed findings, requested orders, and exceptions;

(viii) Recording of the hearing and subsequent transcript, if any;

(ix) Any staff memorandum to the extent required by RCW 34.05.476; ~~((and))~~

(x) For Title IX complaints, and remedies provided to the complainant designed to restore or preserve equal access to the university's programs or activities; and

(xi) Matters placed on the record after any ex parte communication. "Ex parte" means when a member of the student discipline council or CRO communicates with a party about a nonprocedural matter regarding the hearing when the other party is not present.

(b) The director of SRR shall keep records of conduct review proceedings for seven years.

(c) Records of conduct review proceedings are the property of the university and are confidential to the extent provided in applicable law.

(d) Prior to the final disposition of a case, the respondent may review the records relative to their case. The respondent shall request to review the case records by contacting the CRO. The CRO shall make every reasonable effort to support the respondent's request.

(3) Student disciplinary records.

(a) Student disciplinary records are confidential and shall be treated consistently with the requirements of the Family Educational Rights and Privacy Act (FERPA) and applicable law. Disciplinary records shall be maintained in accordance with the university's records retention schedule.

(b) Release of student disciplinary records. The university shall not communicate a student's disciplinary record to any person or agency outside the university without the prior written consent of the student, except as required or permitted by law. Exceptions include, but are not limited to:

(i) The student's parents or legal guardians may review these records as permitted by FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99).

(ii) Release to another educational institution, upon request, where the student seeks or intends to enroll, as allowed by FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99).

(iii) In response to a judicial order or a lawfully issued subpoena.

(iv) The university shall release information related to disciplinary records to complainants or other persons as required by Title IX of the Education Amendments of 1972, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, and other state and federal laws.

(v) Disciplinary records will be made available to hearing councils and university personnel as needed for legitimate educational purposes.

(vi) A student may authorize release of their own disciplinary record to a third party in compliance with FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99) by providing a written consent to student rights and responsibilities.

(vii) Any student may review his/her own disciplinary records by contacting student rights and responsibilities.

(viii) A student may obtain a copy of their disciplinary record by making a written request to student rights and responsibilities. Student rights and responsibilities may charge the student a reasonable amount to cover copying expenses.

(ix) The university may disclose to a student's parents a violation of any federal, state, or local law, or of any university policy or rules regarding use or possession of alcohol or a controlled substance so long as the student is under the age of twenty-one at the time of the disclosure to the parent.

(c) When disciplinary records are released, personally identifiable information may be redacted to protect the privacy of others as permitted by law.

(d) Supportive measures. The university will keep any supportive measures provided to the complainant or respondent in sexual misconduct or interpersonal violence cases confidential to the extent that maintaining such confidentiality will not impair the ability of the university to provide the supportive measures.

(4) Holds:

(a) Types of holds. Holds placed on a student's academic records may prevent admission, registration, graduation, or other academic activities. Holds may also restrict access to transcripts, grades, or other academic records.

(b) Discretionary holds: The CRO may place a hold on a student's academic records in either of the following situations:

(i) Pending the student's satisfactory completion of any sanctions imposed by a conduct review hearing; or

(ii) If the student fails to respond to any properly delivered notice from the CRO.

(c) Required holds: The CRO shall place a hold on a student's academic record if the student is the respondent to a violation of the conduct code and has withdrawn from the university, or if the student withdraws from the university after a complaint is filed against the student. A hold is also required if a student is subject to a pending student conduct complaint at the time of graduation. This hold shall remain in place until the allegation or complaint is resolved.

AMENDATORY SECTION (Amending WSR 20-01-032, filed 12/6/19, effective 1/6/20)

**WAC 172-121-100 Complaints.** (1) Filing of complaints.

(a) Any person or the university may file a complaint against a student or student organization for violation of the student conduct code.

(b) A person wishing to file a complaint under the student conduct code must submit the complaint, in writing, to one of the following:

(i) Student rights and responsibilities; ~~((or))~~

(ii) Title IX coordinator; or

(iii) The office of the dean of students.

(c) Filing a complaint under the student conduct code does not prohibit or limit a person's right to file complaints or charges with other civil and/or criminal authorities for violations of local, county, state, or federal law.

(d) All student conduct code complaints will be forwarded to the director of SRR for further review and action.

(e) In cases where the university is ~~((acting as the complainant))~~ pursuing a student conduct case on its own behalf, an EWU employee shall initiate the complaint. For Title IX complaints, a complaint must either be filed by the person subject to the alleged misconduct or by the Title IX coordina-

tor. If a complaint is filed by the Title IX coordinator, the Title IX coordinator will not be considered a complainant for the purposes of participating in the investigation and hearing process.

(2) Complaint review. Upon receipt of a complaint, the director of SRR shall review the complaint to determine whether it includes allegations of sexual misconduct or interpersonal violence, may lead to suspension or expulsion and/or felony level criminal conduct ~~((that will require special processing under subsection (3) of this section and whether))~~ to determine which student conduct process applies and if appropriate law enforcement or other authorities should be notified. ~~((The director of SRR shall also review the complaint to determine whether the allegations may lead to a possible sanction of suspension, expulsion, or if the allegations rise to the level of a felony under Washington criminal law. All allegations that may lead to a possible suspension, expulsion, or that rise to the level of felony sexual misconduct under Washington criminal law shall be referred for a university investigation and full))~~ If a complaint falls within such categories, it shall be referred to a hearing under WAC 172-121-122.

(3) Sexual misconduct and interpersonal violence proceedings. Except where specifically stated, this section applies to all allegations the university receives of sexual misconduct or interpersonal violence regardless of the possible level of sanction or ~~((where the alleged acts occurred))~~ whether there is a formal Title IX complaint.

(a) Report to Title IX coordinator. The director of SRR shall report all complaints which may constitute any form of sexual misconduct or interpersonal violence to the university Title IX coordinator within twenty-four hours.

(b) Title IX complaints. The Title IX coordinator will determine whether or not the allegation of sexual misconduct or interpersonal violence constitutes a Title IX complaint under this code. Solely in cases of Title IX complaints, the university will not move forward with initiating a Title IX investigation or student conduct hearing unless SRR has received a formal complaint from the person alleged to have been subjected to sexual misconduct or interpersonal violence or a complaint from the Title IX coordinator requesting initiation of the student conduct process.

If the alleged behaviors identified in a Title IX complaint would not constitute sexual misconduct or interpersonal violence as defined in this code, even if substantiated by a preponderance of the evidence, or if they meet the definition of a Title IX complaint, the university will dismiss the Title IX complaint. Dismissal decisions may be appealed as identified in WAC 172-121-100(6). SRR may proceed, however, with pursuing a student conduct case against the respondent for misconduct outside of Title IX including, but not limited to, sexual misconduct or interpersonal violence that does not fit the definition of a Title IX complaint.

(c) Prompt resolution. The university shall investigate any complaint alleging sexual misconduct or interpersonal violence when it is legally required to do so ~~((to determine if the university will pursue the incident under this student conduct code and/or refer the incident to other departments or agencies for further criminal, civil, or disciplinary action. All~~

~~allegations of sexual misconduct shall be promptly investigated and resolved.~~

~~(e))~~. The university's goal is to have complaints of sexual misconduct or interpersonal violence resolved within ninety days. If the university needs additional time, the investigator or director of SRR should provide written notice to the complainant and respondent of the delay and the reasons for the delay. Delays and extensions beyond the ninety days must be based on good cause.

(d) Investigations. The university will investigate all sexual misconduct and interpersonal violence allegations, including Title IX complaints, and may, at its discretion, ask for an investigation of other alleged misconduct. During the investigation, the investigator is responsible for gathering evidence relating to the complaint. The investigator will contact the complainant, respondent, and other witnesses to ask questions and gather relevant evidence. Parties may be assisted by an advisor during the investigative process. During the investigation, parties will be provided with an equal opportunity to identify witnesses and other evidence that supports their position. Prior to any investigatory interview regarding a Title IX complaint, the investigator will provide written notice of the meeting with the date, time, location, participants, and purpose with sufficient time for the person to prepare to participate in the interview.

Prior to the completion of the investigative report for a Title IX complaint, the investigator will send to each party the evidence obtained during the investigation that is directly related to the allegations raised, including the evidence upon which the university does not intend to rely in reaching a determination regarding responsibility and inculpatory and exculpatory evidence. Each party will then have at least ten calendar days to submit a written response for a Title IX complaint. The investigator will consider the written response prior to the completion of the investigative report. At the conclusion of the investigation, the investigator will prepare a final written report that fairly summarizes the relevant evidence. The investigative report, along with any evidence collected during the investigation, shall then be transmitted to the director of SRR at least ten days prior to any hearing or other determination of responsibility. In cases of sexual misconduct or interpersonal violence, a copy of the report must also be provided to the parties for their review and written response.

(e) Confidentiality. To facilitate the investigative process and protect the privacy of those involved, all information will be maintained in a confidential manner to the fullest extent permissible by law. During an investigation, complaint information will be disseminated on a need-to-know basis. If the complainant wishes to remain anonymous, the university will take all reasonable steps to investigate the allegation without disclosing the name of the complainant to the extent allowed by state and federal law. If the complainant wishes to remain anonymous, the university shall inform them that its ability to investigate and respond to the allegation will be limited. The university cannot ensure confidentiality, as its legal obligations under federal or state law may require investigation of the allegation and possible disclosure of the complainant's name. Reports of crimes to the campus community shall not include the names of the complainants. Files

subject to public disclosure will be released to the extent required by law.

~~((d))~~ (f) Right to file a criminal report. Once the university is notified of an allegation of sexual misconduct or interpersonal violence, it will notify the potential complainant of their right to file a criminal complaint with campus or local law enforcement. If the complainant in such circumstances wishes to report the conduct to local law enforcement, the university will assist them in doing so. The university will also notify the complainant that he or she is not required to file a report with local law enforcement. The university will report allegations of sexual misconduct or interpersonal violence to law enforcement or other authorities ~~((consistent with))~~ when it is required to do so under federal, state, and local law.

(4) ~~((Interim))~~ Supportive measures and interim restrictions. During the complaint review, the director of SRR or Title IX coordinator will review whether any ~~((interim))~~ supportive measures or interim restrictions are needed. ~~((Interim))~~ Supportive measures and interim restrictions are addressed in WAC 172-121-140.

(5) SRR will follow up with the parties as described below.

(a) ~~((For cases other than sexual misconduct,))~~ The director of SRR will contact the ((parties)) respondent, and the complainant in cases of sexual misconduct or interpersonal violence, and provide them with the following information:

(i) The ~~((parties))~~ respondent's and complainant's rights under the student conduct code;

(ii) A summary of the allegations the complainant has against the respondent;

(iii) The potential conduct code violations related to the allegations; and

(iv) How to report any subsequent problems or retaliation, including intimidation, threats, coercion, or discrimination.

(b) In all cases alleging sexual misconduct or interpersonal violence, the director of SRR will, in addition to the information specified under (a) of this subsection, provide both parties with written information that will include, at a minimum:

(i) The student's rights and options, including options to avoid contact with the other party; a list of available university and community resources for counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other academic and housing services at the university and in the community; and options for, available assistance in, and how to request changes to academic, living, transportation, and working situations or protective measures;

(ii) The importance of preserving evidence of the alleged incident and procedures to follow to preserve evidence of the alleged incident;

(iii) Who will receive a report of the allegation;

(iv) Their right to file or not file a criminal complaint as detailed above and the ability to be assisted by campus authorities in notifying law enforcement authorities if the complainant wishes to do so;

(v) A list of resources for obtaining protective, no contact, restraining, or similar orders, if applicable;

(vi) The procedures the university will follow when determining if discipline is appropriate;

(vii) Steps the university will take to ensure confidentiality of complainants and other necessary parties and the limits this may place on the university's ability to investigate and respond, as set forth above; and

(viii) Information regarding the university's policy against retaliation, steps the university will take to prevent and respond to any retaliation, and how the student should report retaliation or new incidents.

(6) Following the complaint review, the director of SRR will either dismiss the matter or arrange a ~~((preliminary))~~ prehearing conference.

(a) Dismiss the matter. If the director of SRR determines the allegations, even if true, would not rise to the level of a conduct violation, he/she may dismiss the matter. In such cases, the director of SRR will prepare a written record of the dismissal. The director of SRR will also notify the complainant of their decision, if such notification is permissible under FERPA. The dismissal letter, along with the original complaint and any other related documents, will be maintained as described in WAC 172-121-080. In cases of sexual misconduct or interpersonal violence or for a Title IX complaint, the complainant may request a review of the dismissal by the dean of students by filing a request for review with the director of SRR within seven business days of receiving notice of the dismissal.

(b) ~~((Preliminary))~~ Prehearing conference. If the director of SRR does not dismiss the matter he/she will arrange a ~~((preliminary))~~ prehearing conference as described in WAC 172-121-110.

AMENDATORY SECTION (Amending WSR 20-01-032, filed 12/6/19, effective 1/6/20)

**WAC 172-121-105 Conduct review proceedings. (1)**

General provisions:

(a) Conduct review proceedings in which the allegations do not involve a Title IX complaint, felony level crimes, or the potential sanction is less than suspension((;)) or expulsion, ((or do not involve allegations of felony level sexual misconduct)) are brief hearings in accordance with WAC 172-108-050(3). Conduct review proceedings in which the allegations involve a Title IX complaint, felony level crimes, or the potential sanction is suspension((;)) or expulsion, ((or that involve allegations of felony level sexual misconduct)) are considered full hearings under the Administrative Procedure Act.

(b) Nonjudicial proceedings: Formal rules of process, procedure, and/or technical rules, such as are applied in criminal or civil courts, do not apply in student conduct code proceedings. All Title IX complaints shall follow the regulations prescribed under 34 C.F.R. Part 106.

(2) Notification for student organizations: When a charge is directed towards a student organization, the ~~((conduct review officer))~~ CRO((;)) will communicate all matters relative to conduct review proceedings with the president of the organization or their designee.

(3) Advisors: The complainant and the respondent may be assisted by one advisor of their choice, subject to the following provisions:

(a) Any fees or expenses associated with the services of an advisor are the responsibility of the complainant or the respondent that employed the advisor;

(b) The advisor may be an attorney or any other person of the student's choosing;

(c) The advisor must provide the CRO with a FERPA release signed by the student they are assisting;

(d) If a complainant or the respondent is represented by an attorney, the attorney shall provide the CRO and other parties with the attorney's name, address, telephone number, and email address. The attorney must file a notice of appearance when hired to represent a person and a notice of withdrawal upon withdrawal of representation. A notice of appearance must be filed at least two business days prior to any conduct review proceeding;

(e) If a complainant or respondent wishes to have an advisor for a Title IX complaint and is not able to identify one, the student may contact SRR for assistance in finding an advisor.

(4) Review of evidence:

(a) In brief hearings, the respondent, and, in cases of sexual misconduct or interpersonal violence, the complainant may request to view material related to their case prior to a scheduled hearing by contacting the CRO. To facilitate this process, the party should contact the CRO as early as possible prior to the scheduled hearing. The CRO shall make a reasonable effort to support the request to the extent allowable by state and federal law.

(b) In ~~((council))~~ full hearings, the ~~((parties))~~ respondent and, in cases of sexual misconduct or interpersonal violence, the complainant may request to view material related to the case prior to the scheduled hearing by contacting the ~~((CRO))~~ director of SRR. To facilitate this process, the party should contact the ~~((CRO))~~ director as early as possible prior to the scheduled hearing. The ~~((CRO))~~ director of SRR shall make a reasonable effort to support the request to the extent allowable by state and federal law.

(5) Continuances: Continuances, extensions of time, and adjournments may be ordered by the CRO. A party may file a timely request for a continuance if the party shows good cause for the continuance. A request for a continuance may be oral or written. Before granting a motion for a continuance, the CRO shall allow any other party to object to the request. The CRO will make a decision on the request and will communicate his/her decision in writing to the parties along with the reasons for granting or denying the request.

AMENDATORY SECTION (Amending WSR 20-01-032, filed 12/6/19, effective 1/6/20)

**WAC 172-121-110 Notice of allegations and initial scheduling.** (1) ~~((Scheduling))~~ Notice of investigation. If ~~(; after reviewing a complaint,)~~ the director of SRR ~~((decides to initiate conduct review proceedings, the director shall, within ten business days of receiving the initial complaint, appoint a conduct review officer (CRO) to the case and notify the respondent. In cases alleging sexual misconduct, the CRO~~

~~assigned must have completed training on issues relating to sexual misconduct, the Violence Against Women Reauthorization Act, and Title IX requirements. Notification of the allegations to the respondent must))~~ refers a complaint to an investigation, the director shall provide the respondent with a notice of investigation that meets the following requirements:

(a) ~~((Be))~~ Is made in writing;

(b) Include a written list of the allegations against the respondent with sufficient details of the allegations based on current information including, if known, date and time of the incident, description of the conduct, and the specific sections of this code allegedly violated;

(c) Indicates ~~((whether or not the allegation has been assigned to a university investigator and, if so, provide the contact information for the investigator; and~~

~~(d) In cases where an allegation is not assigned to an investigator, the information contained in subsection (2) of this section.~~

~~(2) After the conclusion of an investigation, or in cases where there is not an investigation, the director will provide written notice to the student the name of the CRO assigned to the case and the deadline for the respondent to contact the CRO in order to schedule a preliminary conference. Whenever possible, the deadline for the respondent to contact the CRO will be within five business days of the date the director of SRR sent notification to the respondent.~~

~~(3) Failure to respond: If the respondent fails to respond to the notice of allegations, the director of SRR shall schedule the preliminary conference and notify the respondent. The notification shall be in writing and shall include a date, time, and location of the preliminary conference.~~

~~(4))~~ that the complaint has been assigned to a university investigator and provide the contact information for the investigator;

~~(d) Provides notice that the respondent is presumed not responsible for the alleged conduct and a determination of responsibility will be made at the end of the hearing;~~

~~(e) Provides a reminder that the person may have an advisor of their choice throughout the student conduct process;~~

~~(f) A statement that students are prohibited from knowingly furnishing false information during the student conduct process; and~~

~~(g) Information about supportive measures and resources available to the respondent as well as information about the university's prohibition on retaliation.~~

~~(2) Notice of allegations: If the director of SRR decides to send the case to hearing, following a review of the investigative report if any, the director of SRR shall appoint a CRO to the case and notify the respondent of the CRO and the date of a prehearing conference. In cases alleging sexual misconduct or interpersonal violence, the CRO and session council assigned must have completed training on issues relating to sexual misconduct and interpersonal violence, the Violence Against Women Reauthorization Act, and Title IX requirements. Notification of the allegations to the respondent must:~~

~~(a) Be made in writing;~~

~~(b) Include a written list of the allegations against the respondent with sufficient details of the allegations based on current information, including, if known, date and time of the~~

incident, description of the conduct, and the specific sections of this code allegedly violated;

(c) Provide notice that the respondent is presumed not responsible for the alleged conduct and a determination of responsibility will be made at the end of the hearing;

(d) Provide a reminder that the person may have an advisor of their choice and, for Title IX complaints, that the university will provide them with an advisor upon requests for the purposes of conducting cross-examination;

(e) Provide information about how to review the evidence gathered prior to the hearing;

(f) Provide a statement that students are prohibited from knowingly furnishing false information during the student conduct process; and

(g) Include a date, time, and location of the prehearing conference.

(3) Follow up with complainant. In all cases alleging sexual misconduct ~~((or if there will be a full hearing))~~ or interpersonal violence, the SRR office shall notify the complainant(s) of the date, time, and location of the ~~((preliminary))~~ prehearing conference and of their right to attend the conference. The SRR office shall also follow up with the complainant(s)~~(s)~~ and respondent(s) to inform them of the process of reporting any retaliation or new incidents. If the complainant ~~((has experienced any type of))~~ or respondent engages in retaliatory behavior, the university shall take immediate steps to protect the complainant or respondent from further harassment or retaliation. The complainant will also be notified that they have a right to an advisor during the hearing process, and, for Title IX complaints, that the university will provide an advisor upon request for the purposes of conducting cross-examination.

(4) If additional information is learned during the investigation that may rise to additional allegations, the university must provide the respondent with an updated notice of allegations.

(5) The procedures for the ~~((preliminary))~~ prehearing conference for brief hearings is contained in WAC 172-121-121. The procedures for the ~~((preliminary and))~~ prehearing conference for full hearings is contained in WAC 172-121-122.

AMENDATORY SECTION (Amending WSR 20-01-032, filed 12/6/19, effective 1/6/20)

**WAC 172-121-121 Brief hearing~~(s)~~ procedures.**  
~~((Brief hearing procedures.))~~

(1) Applicability: The conduct review officer (CRO) may hold a brief hearing with the respondent if the proposed sanction is less than a suspension and the allegations do not involve a Title IX complaint, or felony level ~~((sexual misconduct. A respondent shall be informed of the option to have a brief hearing before a CRO or before the student discipline council. Unless the respondent affirmatively requests a council hearing, brief hearings shall be conducted with a CRO))~~ criminal behavior.

(2) General provisions.

(a) Hearing authority: The CRO exercises control over hearing proceedings. All procedural questions are subject to the final decision of the CRO.

(b) Closing hearings: All conduct review hearings will be closed. Admission of any person to a conduct review hearing shall be at the discretion of the ~~((hearing authority))~~ CRO.

(c) Consolidation of hearings: In the event that one or more students are charged with the same misconduct arising from the same occurrence, the hearing authority may conduct separate hearings for each student or consolidate the hearings as practical, as long as consolidation does not impinge on the rights of any student.

(3) Appearance.

(a) Failure to appear: In cases where proper notice has been given but the respondent fails to attend a conduct review hearing, the hearing authority shall decide the case based on the information available, without the respondent's input.

(b) Appearance: The ~~((parties))~~ respondent, and complainant in cases of sexual misconduct or interpersonal violence, will be provided options for reasonable alternative arrangements if they do not wish to be present in the same room as the other student during the hearing. ~~((The parties))~~ People may appear at the conduct review hearing in person, through telephone conference, or through any other practical means of communication, subject to the limits set forth below in (e) of this subsection. If a ~~((party))~~ person does not appear at the hearing, the hearing authority will decide the case based on the information available.

(c) Advisors: The complainant and the respondent may be assisted by one advisor during conduct review hearings as described in WAC 172-121-105. In brief hearings, the advisor is limited to advising the student and cannot speak on behalf of the student.

(d) Disruption of proceedings: Any person, including the respondent or advisor, who disrupts a hearing, may be excluded from the proceedings.

(e) ~~((Telephonic))~~ Electronic appearance. In the interest of fairness and expedience, the CRO may permit any person to appear by telephone, audio tape, written statement, or other means, as appropriate, if the rights of the parties will not be substantially prejudiced by ~~((a telephonic))~~ an electronic appearance as determined by the CRO.

(4) Standard of proof. The hearing authority shall determine whether the respondent violated the student conduct code, as charged, based on a preponderance of the evidence. A preponderance means, based on the evidence admitted, whether it is more probable than not that the respondent violated the student conduct code.

(5) ~~((Preliminary))~~ Prehearing conference. The SRR office will schedule a ~~((preliminary))~~ prehearing conference with the respondent. Only the respondent and the respondent's advisor may appear at the ~~((preliminary))~~ prehearing conference, unless the case involves alleged sexual misconduct or interpersonal violence. In cases alleging sexual misconduct or interpersonal violence, the respondent and the complainant, along with their advisors, if they choose to have an advisor, may appear at the same or separate ~~((preliminary))~~ prehearing conferences. The purpose of the ~~((preliminary))~~ prehearing conference is to advise the parties regarding the student conduct process. During the ~~((preliminary))~~ prehearing conference, the CRO will:

(a) Review the written list of allegations with the respondent;

- (b) Inform the respondent who is bringing the complaint against them;
- (c) Provide the respondent with a copy of the student conduct code and any other relevant university policies;
- (d) Explain the respondent's rights under the student code;
- (e) Explain the conduct review procedures;
- (f) Explain the respondent's and complainant's rights and responsibilities in the conduct review process; and
- (g) Explain possible penalties under the student conduct code.

At the end of the ~~((preliminary))~~ prehearing conference, the CRO will either conduct or schedule a brief hearing with the respondent as set forth in this subsection. If proper notice was given of the ~~((preliminary))~~ prehearing conference and the respondent fails to attend the conference, the CRO may either proceed with the brief hearing and decide the case based on the information available, or place a hold on the respondent's academic records as described in WAC 172-121-080 until the respondent cooperates with the student conduct process.

(6) Scheduling. A brief hearing may take place immediately following the ~~((preliminary))~~ prehearing conference or it may be scheduled for a later date or time, except that, in cases of sexual misconduct or interpersonal violence, a brief hearing cannot take place without first notifying the complainant/respondent of the hearing. If the brief hearing will be held at a later date or time, the CRO shall schedule the hearing and notify the respondent and, in the case of sexual misconduct or interpersonal violence, the complainant of the date, time, and place of the hearing. The CRO may coordinate with the parties to facilitate scheduling, but is not required to do so. The CRO has sole discretion as to whether to call witnesses.

(7) If the respondent fails to appear at the brief hearing, the CRO may conduct the hearing without the respondent present. The CRO may also place a hold on the respondent's academic records under WAC 172-121-080 until the respondent cooperates with the student conduct process.

(8) Deliberation. After the hearing, the CRO ~~((and/or council))~~ shall decide whether the respondent violated the student conduct code based on a preponderance of the evidence and issue a decision within seven business days. ~~((For council hearings, the council shall meet in closed session and, within seven business days, determine by majority vote whether the respondent violated the student conduct code.))~~

(a) If the CRO ~~((and/or council))~~ determines that there is not sufficient information to establish a violation by a preponderance of evidence, the CRO ~~((and/or council))~~ shall dismiss the complaint.

(b) If the CRO ~~((and/or council))~~ determines that the respondent violated the student conduct code, the CRO ~~((and/or council))~~ shall impose any number of sanctions as described in WAC 172-121-210, except suspension or expulsion.

(9) Sanctions. In determining what sanctions shall be imposed, the ~~((hearing authority))~~ CRO may consider the evidence presented at the hearing as well as any information contained in the student's disciplinary and academic records. If a student fails to appear for a hearing, then the ~~((hearings))~~

CRO authority shall review the evidence provided and may consider information available from the student's disciplinary and academic records in determining what sanction should be imposed. In addition to sanctions under this code, if the student is also an employee of the university, the CRO's decision may be forwarded to the student's supervisor to determine whether any employment actions outside of this code should be taken in accordance with university policy.

(10) Notification. The CRO ~~((and/or the presiding officer in cases of a council hearing,))~~ shall serve the respondent with a decision including its findings, conclusions, and rationale. The decision shall address credibility issues if credibility or witness demeanor was a substantial factor in the ~~((council's/CRO's))~~ CRO's decision. Credibility determinations may not be based on a person's status as a complainant, respondent, or witness.

(a) The findings shall be based exclusively on the evidence provided at the hearing. The decision must also ~~((identify the))~~ include:

(i) Identification of the section of the code alleged to have been violated;

(ii) A description of the procedural steps taken from the receipt of the complaint through the determination, including any notifications to the parties, interviews, methods to gather evidence, and hearings;

(iii) Findings of fact supporting the determination;

(iv) Conclusions regarding the application of the code to the facts along with the rationale for each determination;

(v) Sanctions and remedies;

(vi) Respondent's right to appeal.

(b) In cases of sexual misconduct or interpersonal violence, the complainant shall be provided with written notice of:

~~((a))~~ (i) The university's determination as to whether such sexual misconduct or interpersonal violence occurred;

~~((b))~~ (ii) The complainant's right to appeal;

~~((c))~~ (iii) Any change to the results that occurs prior to the time that such results become final; and when such results become final (20 U.S.C. 1092(f)).

(c) Information regarding the discipline of the respondent will not be released unless:

(i) The information contained in the record directly relates to the complainant, such as an order requiring the respondent to not contact the complainant; or

(ii) The misconduct involves a crime of violence or ~~((a sexual assault, including rape, dating violence, domestic violence or stalking))~~ other crime as defined in 42 U.S.C. Sec. 13925(a).

(11) Finality. The CRO's decision becomes final at either the conclusion or the appeal process under this code, if an appeal is filed, or, if an appeal is not filed, the date on which an appeal would no longer be timely.

AMENDATORY SECTION (Amending WSR 20-01-032, filed 12/6/19, effective 1/6/20)

**WAC 172-121-122 Full hearing procedures.** (1) Scheduling and notification. Full hearings are used for allegations which, if substantiated by a preponderance of the evidence, could be a felony-level crime, involve a Title IX com-



plaint, or could result in a sanction of suspension or expulsion ~~((or that involve felony-level sexual misconduct))~~. Following provision of the notice of allegations to the respondent, as set forth in WAC 172-121-110, the SRR office shall arrange for a ~~((preliminary))~~ prehearing conference.

(2) General provisions.

(a) Hearing authority: The CRO exercises control over hearing proceedings. All procedural questions are subject to the final decision of the CRO. The CRO chairs the disciplinary council.

(b) Closed hearings: All conduct review hearings will be closed. Admission of any person to a conduct review hearing shall be at the discretion of the CRO.

(c) Consolidation of hearings: In the event that one or more students are charged with the same misconduct arising from the same occurrence, the ~~((CRO))~~ council may conduct separate hearings for each student or consolidate the hearings as practical, as long as consolidation does not impinge on the rights of any student.

(3) Appearance.

(a) Failure to appear: In cases where proper notice has been given but the respondent fails to attend a conduct review hearing, the ~~((CRO))~~ council shall decide the case based on the information available, without the respondent's input. The council may not make an inference about the determination regarding responsibility based solely on a party's or witness's failure to appear at the hearing. However, nonappearance by a party may impact the evidence available for the council to make a decision.

(b) Appearance: The parties will be provided options for reasonable alternative arrangements if they do not wish to be present in the same room as the other student during the hearing. The parties may appear at the conduct review hearing in person ~~((, through telephone conference, or through any other practical means of communication))~~ via a method that allows the council to hear the parties and physically observe them while testifying, subject to the limits set forth below in (c) of this subsection. If a party does not appear at the hearing, the ~~((CRO))~~ council will decide the case based on the information available. Solely for Title IX complaints, if a party or witness does not appear at the hearing and submit to cross-examination, the council must not rely on any statement of that party or witness in reaching a determination regarding responsibility; additionally, the council cannot draw an inference regarding responsibility based on the failure to appear or refusal to answer cross-examination or other questions.

(c) Advisors: The complainant and the respondent may be assisted by one advisor during conduct review hearings as described in WAC 172-121-105. For Title IX complaints, the university will provide an advisor to a party upon request for the purposes of conducting cross-examination.

(d) Disruption of proceedings: Any person, including the respondent or advisor, who disrupts a hearing, may be excluded from the proceedings.

(e) ~~((Telephonic))~~ Remote appearance. In the interest of fairness and expedience, the CRO may permit any person to appear by ~~((telephone, audio tape, written statement, or other means, as appropriate, if the rights of the parties will not be substantially prejudiced by a telephonic appearance as deter-~~

~~mined by the CRO))~~ a method that allows the person to be seen and heard by the council.

(4) Standard of ~~((proof))~~ evidence. The ~~((CRO))~~ council shall determine whether the respondent violated the student conduct code, as charged, based on a preponderance of the evidence. A preponderance means, based on the evidence admitted, whether it is more probable than not that the respondent violated the student conduct code.

(5) ~~((Preliminary))~~ Prehearing conference. The SRR office or designee will arrange for a ~~((preliminary))~~ prehearing conference with ~~((each of))~~ the parties ~~((separately))~~ to advise them about the student conduct process. During the ~~((preliminary))~~ prehearing conference, the SRR office or designee will:

(a) Review the written list of allegations ~~((with the respondent));~~

(b) Inform the respondent who is bringing the complaint against them;

(c) Provide the respondent and complainant with a copy of the student conduct code and any other relevant university policies;

(d) Explain the respondent's and complainant's rights and responsibilities under the student code;

(e) Explain the conduct review procedures;

(f) ~~((Explain the respondent's and complainant's rights and responsibilities in the conduct review process; and~~

~~((g)))~~ Explain possible penalties under the student conduct code;

~~((g))~~ Schedule a date for the full hearing; and

~~((h))~~ Address any preliminary matters or motions.

(6) ~~((Prehearing conference. Following the preliminary conference, the case will be referred to the CRO and the CRO will arrange for a prehearing conference with the parties. The purpose of the prehearing conference is for the CRO to explain what will occur for during the full hearing process, to schedule a date for the full hearing, and to address any preliminary matters or motions.))~~ Notice of hearing. Following the prehearing conference, the ~~((CRO))~~ director shall schedule the hearing and notify the respondent ~~((with))~~ and complainant of the date, time, ~~((and))~~ location, participants, and purpose of the hearing. ~~((The director of SRR shall also notify the complainant of the date, time, and location of the hearing in writing as well as any other details required by RCW 34.05.434.))~~ The notices will include information about how to request accommodations or interpreters for any parties or witnesses. Any request for the presence of an emotional support animal or any other accommodation must be directed to disability support services and approved as a reasonable accommodation in advance of the hearing. The notice of hearing must be served on the respondent and complainant at least seven business days prior to the hearing. The ~~((CRO))~~ director may coordinate with the parties to facilitate scheduling, but is not required to do so.

(7) Evidence.

(a) Evidence: Pertinent records, exhibits and written statements may be accepted as information for consideration by the ~~((CRO))~~ council in accordance with RCW 34.05.452. Any investigation conducted by the university will be admitted into evidence as long as the investigator testifies at the hearing. Evidence, including hearsay evidence, is admissible

if in the judgment of the CRO it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs; however, solely for Title IX complaints, statements obtained from a person who does not testify at the hearing shall not be considered by the council. The CRO shall exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized by Washington courts. The CRO may exclude (~~(incompetent,)~~) irrelevant(~~(, immaterial or unduly repetitious)~~) material. If not inconsistent with this section, the CRO shall refer to the Washington rules of evidence as guidelines for evidentiary rulings. For Title IX complaints, prior to allowing a question to be answered during cross-examination, the CRO must determine that the question is relevant, and, if excluded, the CRO must explain on the record the reason for the exclusion.

(b) The respondent and complainant have the right to view all material presented during the course of the hearing, except a respondent's previous disciplinary history which shall be used solely for the purpose of determining the appropriate sanction.

(c) All testimony of parties and witnesses shall be made under oath or affirmation. Any interpreter shall be proscribed the oath set forth in WAC 10-08-160.

(d) Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

(e) Official notice may be taken of (i) any easily verifiable facts such as dates or weather conditions, (ii) technical or scientific facts within EWU's specialized knowledge, such as enrollment status or class schedules, and (iii) codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association. Parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material so noticed and the sources thereof, including any staff memoranda and data, and they shall be afforded an opportunity to contest the facts and material so noticed. A party proposing that official notice be taken may be required to produce a copy of the material to be noticed.

(f) All rulings upon objections to the admissibility of evidence shall be made in accordance with the provisions of RCW 34.05.452, except for the additional restrictions on the admission of evidence required by Title IX.

(8) Discovery. Discovery is not permitted under the code, except for requests for documentary information from the university. Either party may request the university to produce relevant documents in the university's possession as long as such request is submitted at least five business days prior to the hearing, absent extenuating circumstances. If the CRO determines the request is not relevant to the present allegation, the CRO may deny the request. The university will provide the requested information prior to the hearing to the extent permitted by state and federal law.

(9) Subpoenas.

(a) Subpoenas shall be issued and enforced, and witness fees paid, as provided in RCW 34.05.446 and 5.56.010.

(b) Any subpoena issued must conform to EWU's subpoena form. Every subpoena shall identify the party causing issuance of the subpoena and shall state EWU's name and the

title of the proceeding and shall command the person to whom it is directed to attend and give testimony or produce designated books, documents, or things under his or her control.

(i) A subpoena to a person to provide testimony at a hearing shall specify the time and place set for hearing.

(ii) A subpoena duces tecum requesting a person to produce designated books, documents, or things under his or her control shall specify a time and place for producing the books, documents, or things. That time and place may be the time and place set for the hearing, or another reasonably convenient time and place in advance of the hearing.

(c) A subpoena may be served by any suitable person over eighteen years of age, by exhibiting and reading it to the witness, or by giving him or her a copy thereof, or by leaving such copy at the place of his or her abode. When service is made by any other person than an officer authorized to serve process, proof of service shall be made by affidavit or declaration under penalty of perjury.

(d) The CRO, upon motion by a party or at his or her own discretion, may (i) quash or modify the subpoena if it is unreasonable and oppressive or (ii) condition denial of the motion upon advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things. Subpoenas may not be used to threaten or intimidate parties or witnesses.

(10) Summary judgment. A motion for summary judgment may be granted and an order issued if the written record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. A motion for summary judgment is not permitted for Title IX complaints.

(11) Witnesses.

(a) The complainant, respondent, (~~(investigator, and CRO may present)~~) and the university's presenter may call witnesses at full hearings.

(b) The (~~(party))~~ person who wishes to call a witness is responsible for ensuring that the witness is available and present at the time of the hearing. An attorney may subpoena a witness to appear at the hearing. Nonattorneys may request the CRO to subpoena witnesses in accordance with subsection (4) of this section. The CRO has the discretion to deny a request to issue a subpoena or to quash a subpoena issued by an attorney if the subpoena is unreasonable (~~(and)~~), oppressive, or does not conform to EWU's subpoena form.

(c) The CRO may exclude witnesses from the hearing room when they are not testifying. The CRO is not required to take the testimony of all witnesses called by the parties if such testimony may be (~~(inappropriate,)~~) irrelevant(~~(, immaterial, or unduly repetitious)~~). For Title IX complaints, any decision to exclude a witness shall be explained on the record.

(d) All parties have the right to hear all testimony provided by witnesses during the hearing.

(e) The parties should inform the CRO of any possible need for an interpreter or any accommodation requests at least five business days prior to the hearing. The CRO will comply with WAC 10-08-150.

(12) Questioning:

(a) ~~The ((complainant, the respondent, and their advisors)) complainant's advisor, the respondent's advisor, and the university's presenter may ask questions of ((each other or of any witnesses, except cross-examination questions for another party must be submitted in writing to the CRO)) any witness, or party, including cross-examination questions. For cases that do not involve Title IX complaints, if the student does not have an advisor, the complainant and respondent may submit questions in writing to the CRO and the CRO may ask the questions. For Title IX complaints, if a party does not have an advisor, the university will provide the party with an advisor aligned with that party for the purposes of conducting cross-examination as long as the party requests such an advisor at least five business days in advance of the hearing. The CRO may also ask ((such)) questions, but is not required to do so. The CRO may preclude any questions which ((he/she)) they consider((s inappropriate, irrelevant, immaterial or unduly repetitious or may require that all questions be submitted to the CRO rather than allowing the parties to directly question witnesses)) irrelevant, and for Title IX cases such decision must be explained on the record. The CRO must exclude and the council shall not consider any questions or evidence pertaining to the complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. The CRO will explain to the parties the reason for rejecting any questions and will maintain a record of the questions submitted and rulings made.~~

(b) ~~The ((CRO)) council may ask their own questions of any witness or party called before them.~~

(13) Remote appearance. The CRO may accommodate concerns for personal safety, well-being, or fears of confrontation of any person appearing at the hearing by providing separate facilities, or by permitting participation by ~~((telephone, audio tape,))~~ video conferencing, or other means that allows the council and parties to see and hear the party answering questions, as determined appropriate, subject to subsection (3)(b) of this section.

(14) Deliberations and sanctions. Following the hearing, the ~~((CRO))~~ council will determine in closed session whether, by a preponderance of the evidence, the respondent violated the student conduct code based on the evidence presented at the hearing. If a student fails to appear, the ~~((CRO))~~ council shall make a decision based on the information available. If the ~~((CRO))~~ council determines the respondent violated the student conduct code, the CRO shall then decide what sanctions and remedies shall be imposed. The CRO may review the respondent's previous disciplinary history solely for purposes of determining the appropriate sanction. In addition to sanctions under this code, if the student is also an employee of the university, the CRO's decision may be forwarded to the student's supervisor to determine whether any employment actions outside of this code should be taken in accordance with university policy.

The ~~((CRO))~~ council shall issue a decision including ~~((his/her))~~ their findings, conclusions, and rationale. The decision shall address credibility issues if credibility or witness demeanor was a substantial factor in the ~~((CRO's))~~ council's decision. Credibility determinations may not be based on a person's status as a complainant, respondent, or witness. The findings shall be based exclusively on the evidence provided at the hearing. If the council finds the respondent violated the code, the CRO shall add the decision regarding sanctions and remedies to the council's decision. Such decisions should be issued within ~~((seven))~~ ten business days from the date of the hearing. The written decision shall also:

(a) Be correctly captioned identifying EWU and the name of the proceeding;

(b) Designate all parties and representatives participating in the proceeding;

(c) Identify the allegations at issue;

(d) A description of the procedural steps taken, including notifications to the parties, interviews with the parties and witnesses, site visits, methods used to gather other evidence, and hearings held;

(e) Contain appropriate numbered findings of fact meeting the requirements in RCW 34.05.461;

~~((f))~~ (f) Contain ~~((appropriate))~~ appropriately numbered conclusions ~~((of law, including citations of statutes and rules relied upon;~~

~~(e) Contain an initial or final order disposing of all contested issues;~~

~~((f))~~ regarding the application of university policies and this code to the facts;

(g) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed, and if any remedies are necessary to provide to the complainant in a Title IX complaint to restore or preserve equal access to the university's educational programs or activities;

~~((h))~~ (h) Contain a statement describing ~~((the available post-hearing remedies))~~ rights to appeal and the procedures for appealing.

(15) Finality. The council's and CRO's decision becomes final at either the conclusion or the appeal process under this code, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be timely.

(16) Notification to the respondent. The ~~((director of SRR))~~ CRO shall serve the respondent with a copy of the decision and notice of the right to appeal.

~~((16))~~ (17) Notification to the complainant. In cases of sexual misconduct or interpersonal violence, simultaneous with notification of the decision to the respondent, the complainant shall be provided with written notice of:

(a) The university's determination as to whether sexual misconduct or interpersonal violence occurred;

(b) The complainant's right to appeal;

(c) Any change to the results that occurs prior to the time that such results become final and when such results become final (20 U.S.C. 1092(f));

(d) Information regarding the discipline of the respondent will not be released unless:

(i) The information contained in the record directly relates to the complainant, such as an order requiring the student harasser to not contact the complainant; or

(ii) The misconduct involves a crime of violence or a sexual assault, including rape, ~~((relationship))~~ dating violence, domestic violence or stalking as defined in 42 U.S.C. Sec. 13925(a).

(e) Any remedies provided to the complainant. For Title IX complaints, the complainant shall receive a copy of the decision provided to the respondent under subsection (14) of this section.

(18) Notification to Title IX coordinator. For Title IX complaints, the Title IX coordinator must be provided with notice of the decision as the Title IX coordinator is responsible for effective implementation of any remedies.

AMENDATORY SECTION (Amending WSR 20-01-032, filed 12/6/19, effective 1/6/20)

**WAC 172-121-130 Appeals.** (1) Basis: Appeals following a brief hearing ~~((=))~~ or full hearing ~~((= or dismissal of a complaint))~~ may be filed by the respondent ~~((or the complainant))~~ under this section. In cases of sexual misconduct, interpersonal violence, or a Title IX complaint, the complainant may also file an appeal following dismissal of a complaint or a full hearing. Appeals of interim restrictions are governed by WAC 172-121-140. Appeals may be filed for one or more of the following reasons:

(a) To determine whether the hearing was conducted according to established procedures ~~((= A hearing may have deviated from established procedures if:~~

~~((i) The hearing was not conducted fairly in light of the notice of allegations and information presented;~~

~~((ii) The complainant was not given a reasonable opportunity to prepare and to present information as provided by the student conduct code;~~

~~((iii) The respondent was not given a reasonable opportunity to prepare and to present a response as provided by the student conduct code))~~ that affected the outcome of the matter.

(b) The hearing authority misinterpreted the student conduct code.

(c) To determine whether the decision reached by the hearing authority, or the director of SRR's decision to not proceed with a hearing, was based on the information presented and that information was sufficient to reasonably establish that a violation of the conduct code did or did not occur based on a preponderance of the evidence.

(d) To determine whether the sanction(s) imposed were reasonable and appropriate for the associated conduct code violation(s).

(e) To consider newly discovered, material information ~~((which was not known to the appellant and could not reasonably have been discovered and presented by the appellant at the original hearing))~~ that was not reasonably available at the time the determination finding responsibility or dismissal was made that could affect the outcome of the matter. It is the party's obligation to present all evidence at the time of the original hearing. The university is not obligated to grant an appeal and conduct a new hearing when parties do not take

reasonable efforts to prepare their cases for the original hearing.

(f) The Title IX coordinator, investigator, or hearing authorities had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

(2) Filing: Appeals may be filed following a brief hearing, full hearing, or dismissal of a complaint, subject to the following provisions:

(a) The appeal must be submitted to the director of student rights and responsibilities within ten business days from service of the ~~((CRO's))~~ council's decision following a full hearing or dismissal of a complaint, or within twenty-one calendar days from service of a decision from a brief hearing conducted by the CRO ~~((or student disciplinary council));~~

(b) The appeal shall be in writing and shall include:

(i) The appellant's name;

(ii) The nature of the decision and sanctions reached by the hearing official;

(iii) The basis, as described in subsection (1) of this section, for the appeal; and

(iv) What remedy the appellant is seeking.

(c) In cases of sexual misconduct or interpersonal violence, the other party must be given a copy of the appeal and provided with an opportunity to provide his/her own written response to the appeal within three business days ~~((= and~~

~~((d) For dismissal of a complaint, appeals are determined by the dean of students)).~~

(3) Appeal authorities:

(a) For dismissal of a complaint, appeals are determined by the dean of students.

(b) For brief hearings ~~((heard by the CRO)),~~ appeals are determined by the ~~((student disciplinary council.~~

~~((b) For brief hearings heard by the student disciplinary council, appeals are determined by the))~~ dean of students.

(c) or full hearings, appeals are determined by the vice president for student affairs.

(4) Forwarding of appeals: The director of SRR shall forward the appeal to the appropriate appeal authority. The submitted appeal will include, at a minimum, the appellant's written appeal and the written report of the case. The director of SRR may also forward any other written records related to the case.

(5) Review of appeals:

(a) Before rendering a decision, the appeal authority may request additional information or explanation from any of the parties to the proceedings.

(b) Except as required to explain the basis of new information, an appeal shall be limited to a review of the verbatim record of the conduct review hearing and supporting documents.

(c) In making its decision, the appeal authority will only consider the written record before it, the appellant's notice of appeal, the other party's response, and other information and/or explanation it has requested from the parties to the proceedings.

(6) Decisions: After reviewing the appeal, the appeal authority may affirm, reverse, or remand the decision(s) of the hearing authority. The appeal decision shall include an

explanation of the appeal authority's decision and rationale. The appeal decision must be issued within thirty calendar days of the appeal authority receiving all necessary documentation.

(7) Remanded cases: In cases where the appeal authority remands the decision or sanction(s) of the hearing authority, the case will be returned to the hearing authority for reconsideration or other action as specified by the appeal authority. Following such reconsideration, the hearing authority will return the case to the appeal authority for further review/action. The appeal authority will then complete the appeal process or remand the case again. No appeal may, however, be remanded more than two times. After a case has been remanded twice, the appeal authority must affirm or reverse the decision and affirm, reverse, or modify the sanctions.

(8) Sanctions: The appeal authority may affirm, reverse, remand, or modify the sanctions assigned to the respondent. When determining sanctions, the appeal authority may consider the complete record of the respondent's prior conduct and academic performance in addition to all other information associated with the case.

(9) Notification: Once the appeal authority has made a final decision to affirm or reverse and/or to modify the sanctions assigned, the appeal authority shall forward the decision to the director of SRR. The director of SRR shall serve the respondent, and, in cases of sexual misconduct or interpersonal violence, notify the complainant, with a brief written statement setting forth the outcome of the appeal. The notification shall also inform the recipient that judicial review of the decision may be available under chapter 34.05 RCW.

(10) Further proceedings. The appeal authority's decision is final and no further appeals may be made under the student conduct code. Judicial review of the university's decision may be available under chapter 34.05 RCW.

(11) Appeals standards:

(a) Appeal authorities must weigh all pertinent information presented to them in determining whether sufficient evidence exists to support reversal or modification of decisions or sanctions.

(b) For appeals based on a deviation from established procedures, such deviations will not be a basis for sustaining an appeal unless the alleged deviation materially changed the outcome of the case or the sanctions imposed.

AMENDATORY SECTION (Amending WSR 20-01-032, filed 12/6/19, effective 1/6/20)

**WAC 172-121-140 ((Interim)) Supportive measures and interim restrictions.** (1) ((Interim)) Supportive measures. During the complaint review, the director of SRR, Title IX coordinator, or designee will evaluate the circumstances and ((~~recommend to the dean of students~~)) determine if any ((interim)) supportive measures to assist or protect the parties during the conduct code process are needed. ((Interim)) For sexual misconduct and interpersonal violence cases, supportive measures are available before or after the filing of a complaint or where no formal complaint is filed. Supportive measures are provided to students free of charge and may include, but are not limited to, safety planning with the ((EWU police department, no contact directives)) university, mutual restric-

tions on contact between the parties, academic or workplace modifications, providing counseling for the complainant and/or respondent, campus housing modifications, and/or an interim restriction for the respondent. The purpose of ((~~an interim~~)) a supportive measure is to provide an equitable process for both students that minimizes the possibility of a hostile environment on campus. For Title IX complaints, supportive measures are designed to restore or preserve equal access to the university's educational programs or activities without unreasonably burdening either party, including protecting the safety of all parties and the university's educational environment, or deterring sexual harassment. Supportive measures in cases of sexual misconduct and interpersonal violence are coordinated by the Title IX coordinator or designee.

(2) Interim restrictions. For Title IX complaints, in situations where there is cause to believe that a student or a student organization poses an immediate ((danger)) threat to the physical health((;)) or safety((; or welfare of)) of any student or other individual, including themselves, the ((university community, or property of the university community, the dean of students)) Title IX coordinator in conjunction with the director of SRR may take immediate action(s) against the student or student organization after conducting an individualized safety and risk analysis without prior notice or hearing.

Simultaneous with such action(s), the ((~~dean of students~~)) director of SRR will refer the allegations to the conduct review officer, who will process such allegations in accordance with the provisions of this student conduct code.

For all non-Title IX cases, the director may take immediate action(s) against the student or student organization after conducting an individualized safety and risk analysis without prior notice or hearing. Simultaneously, the director shall refer the allegations to the conduct review officer. For non-Title IX cases, interim restriction is subject to the following:

(a) Interim restriction actions may only be imposed in the following situations:

(i) When a student or student organization poses an immediate threat to:

(A) The physical health((;)) or safety ((or welfare)) of any ((part of the university community or public at large)) student or any other individual;

(B) The student's own physical safety and well-being; or  
(C) Any property of the university community; or

(ii) When it is believed that the student's or student organization's continued attendance or presence may cause disorder, substantially interfere with or impede the lawful activities of others, or imperil the physical or mental health and safety of members of the university community.

(b) During the interim restriction period, a student may be restricted by any or all of the following means:

(i) Denial of access including, but not limited to: Assignment to alternate university housing or removal from university housing, limitation of access to university facilities, or restriction of communication with specific individuals or groups;

(ii) Interim suspension, including temporary total removal from the university or restriction of access to campus. For Title IX complaints, a student may only be placed on interim suspension if, after conducting an individualized

safety and risk analysis, the director determines the person poses an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual misconduct or interpersonal violence;

(iii) Mandatory medical/psychological assessment of the student's capability to remain in the university.

(3) The ~~((dean of students))~~ director of SRR will determine what restriction(s) will be placed on a student.

(4) The ~~((dean of students))~~ director of SRR will prepare a brief memorandum for record containing the reasons for the interim restriction. The ~~((dean of students))~~ director will serve the memorandum on the restricted student and notify all other persons or offices bound by it. At a minimum, the memorandum will state:

(a) The alleged act(s) or behavior(s) of the student or student organization which prompted the interim restriction;

(b) How those alleged act(s) or behavior(s) could constitute a violation of the student conduct code;

(c) How the circumstances of the case necessitated the interim restriction action(s); and

(d) An explanation of the process for emergency appeal reviews.

(5) Notice to complainant. In cases alleging sexual misconduct or interpersonal violence, the complainant will be provided with notice of any interim restrictions that relate directly to the complainant. If the respondent appeals such interim restrictions, the complainant will be given notice of the respondent's appeal and an opportunity to submit a statement within five business days of the notice as to why the interim restriction should or should not be modified.

(6) Emergency appeal review.

(a) If a student has been suspended on an interim basis, the student will automatically receive an emergency appeal review with the vice president for student affairs, or designee. If the interim restriction is something less than a suspension, the student or student organization subject to the interim restriction must file a written appeal with the vice president for student affairs within five business days after service of the interim restriction. In all cases, the student must submit any information the student wishes the vice president to consider submitted within ten business days after service of the interim restriction. The appealing party should outline the desired modification(s) to the interim restriction as well as the specific challenge(s) to the interim restriction decision. Challenges to interim restriction decisions are limited to the criteria identified in WAC 172-121-140(1) upon which the interim restriction was imposed (threat to health or safety of the university community, potential for creating campus disorder, impeding the lawful activity of others, etc.). Appealing parties are limited to submitting their own written statements. Any other evidence should be submitted to the investigator or provided to the CRO under the regular hearing process.

(b) The vice president for student affairs, or designee, will conduct an emergency appeal review after receiving the respondent's review and complainant's response, if any. Emergency appeal reviews will address only the interim restriction decision of the dean of students and the basis on which the restriction modification or termination is requested by the appealing party. The emergency appeal review does not replace the regular hearing process. In the emergency

appeal review, the vice president will only review materials available to and information considered by the dean of students at the time the interim restriction was imposed, written statements by the two parties, and information that becomes available as a part of the university's investigation that the vice president deems relevant.

(c) In cases alleging sexual misconduct or interpersonal violence, if a complainant believes the interim restriction does not adequately protect their health and safety, the complainant may appeal the interim restriction using the process outlined in this subsection. If the complainant files an appeal, all parties shall be given notice of the appeal and shall be provided the opportunity to submit a written statement to the vice president within five business days of receiving notice of the complainant's appeal.

(d) During the emergency appeal review, the vice president for student affairs will review available materials and statements. The vice president for student affairs will issue a written decision upholding, modifying, or terminating the interim restriction action. The written decision shall include a rationale for the basis of the decision and be issued within fifteen business days of the date of service of an interim restriction.

(e) The interim restriction does not replace the regular hearing process, which will proceed as quickly as feasible consistent with this chapter.

(f) Duration. An interim restriction will remain in effect until terminated, in writing, by the student disciplinary council, CRO, or the vice president for student affairs.

AMENDATORY SECTION (Amending WSR 20-01-032, filed 12/6/19, effective 1/6/20)

**WAC 172-121-200 Violations.** The following are defined as offenses which are subject to disciplinary action by the university.

(1) **Acts of academic dishonesty.** University policy regarding academic dishonesty is governed by the university academic integrity policy.

(2) **Abuse, threats and harassment.**

(a) Abuse. Assault and other forms of physical abuse.

(b) Threats. Any conduct or statement that, when viewed objectively, threatens bodily harm to another person or that endangers the health or safety of another person.

(c) Bullying. Bullying is behavior that is:

(i) Intentional;

(ii) Targeted at an individual or group;

(iii) Repeated;

(iv) Hostile or offensive; and

(v) Creates an intimidating and/or threatening environment that is so severe or pervasive, and objectively offensive, that it substantially interferes with another's ability to work, study, participate in, or benefit from the university's programs and activities.

(d) Discriminatory harassment. Physical, verbal, electronic, or other conduct based on an individual's race, color, religion, national origin, sex, age, pregnancy, marital status, sexual orientation, gender identity or expression, citizenship or immigration status, disability, or veteran status when one

of the conditions outlined in ~~((subsection (1) or (2)))~~ (c)(i) or (ii) of this (section) subsection are present:

(i) Submission to, or rejection of such conduct is made implicitly or explicitly a term or condition of a person's instruction, academic standing, employment, or participation in any university program, activity, or benefit, or is used as a basis for evaluation in making academic or personnel decisions; or

(ii) Such conduct creates a hostile environment. A hostile environment is created when the conduct is sufficiently severe or pervasive, and objectively offensive, that it unreasonably interferes with an individual's academic or work performance, ability to participate in or benefit from the university's programs, services, opportunities, or activities. Unreasonable interference is viewed from both a subjective and objective standard.

(e) Interpersonal violence. Interpersonal violence includes domestic violence ~~((and)),~~ dating violence, and stalking.

(i) Domestic violence means(~~±~~

~~(A) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members;~~

~~(B) Sexual assault of one family or household member by another; or~~

~~(C) Stalking of one family or household member by another family or household member)) a felony or misdemeanor crime of violence committed by: A current or former spouse or intimate partner of the complainant; a person with whom the complainant shares a child in common; a person who is cohabitating with or has cohabitated with the complainant as a spouse or intimate partner; adult persons related by blood or marriage; adult persons who are presently residing together or who have resided together in the past; and, persons who have a biological or legal parent-child relationship. "Domestic violence" is further defined by 34 U.S.C. Sec. 12291(a)(8).~~

(ii) Dating violence ~~((is a type of domestic violence, except the acts specified above are))~~ means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. In determining whether such a relationship exists, the following factors are considered:

(A) The length of time the relationship has existed;

(B) The ~~((nature of the))~~ type of relationship; and

(C) The frequency of interaction between the parties involved in the relationship.

~~(f) ~~((Sexual and gender-based harassment. Sexual harassment is defined by the Office of Civil Rights as unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual harassment violates this code when it is sufficiently severe or pervasive such that it denies or limits another's ability to work, study, participate in, or benefit from the university's programs or activities.~~~~

~~In determining whether conduct is severe or pervasive, the university shall consider all relevant circumstances from both an objective and subjective perspective, including the type of harassment (verbal or physical); the frequency and~~

~~severity of the conduct; the age, sex, and relationship of the individuals involved; the degree to which the conduct affected the complainant; the setting and context in which the harassment occurred; whether other incidents have occurred at the university; and other relevant factors.~~

~~Gender-based harassment includes nonsexual acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on a person's gender or nonconformity with gender stereotypes. Gender-based harassment violates this code when it is sufficiently severe or pervasive, such that it denies or limits another's ability to work, study, participate in, or benefit from the university's programs or activities.)~~ Stalking. Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(i) Fear for their health and/or safety or the health/safety of others; or

(ii) Suffer substantial emotional distress.

~~(g) Retaliation. Any ~~((actual or threatened retaliation or any act of intimidation intended to prevent or otherwise obstruct the reporting of a violation of))~~ intimidation, threat, coercion, or discrimination against a person for the purpose of interfering with a person's rights under this code or because a person has made a report, complaint, testified, assisted, or participated or refused to participate in an investigation, proceeding, or hearing under this code is prohibited and is a separate violation of this code. Any actual or threatened retaliation ~~((or act of intimidation directed towards a person who participates in an investigation or disciplinary process under this code))~~ is prohibited and is a separate violation of this code.~~

(3) **Sexual misconduct.** Sexual misconduct includes, but is not limited to:

(a) ~~((Noneconsensual sexual activity. Noneconsensual sexual activity is sexual contact or sexual intercourse without consent. Sexual contact is intentional contact with a person's intimate body parts without their consent. Intimate body parts include, but are not limited to, breasts, genitalia, thighs, and buttocks. Noneconsensual sexual intercourse is penetration, no matter how slight, of the vagina, or anus, with any body part or object, without consent; or, oral penetration by a sex organ of another person without consent. Consent means actual words or conduct indicating freely given agreement to the sexual act. Consent cannot be inferred from silence, passivity, or lack of active resistance. There is no consent where there is a threat of force or violence or any other form of coercion or intimidation, physical or psychological. Sexual activity is noneconsensual when one person is incapable of consent by reason of mental incapacity, drug/alcohol use, illness, unconsciousness, or physical condition. Incapacitation due to drugs or alcohol refers to an individual who is in a state of intoxication such that the individual is incapable of making rational, reasonable decisions because the person lacks the capacity to give knowing consent.~~

~~(b))~~ Sexual harassment. Sexual harassment is conduct that meets one or more of the following:

(i) An EWU employee conditioned the provision of an aid, benefit, or service of the university on the complainant's participation in unwelcome sexual conduct; or

(ii) Unwelcome conduct on the basis of sex that is determined by a reasonable person to be so severe, pervasive, and

objectively offensive that it effectively denies the complainant equal access to the university's programs or activities.

In determining whether conduct is severe or pervasive, the university shall consider all relevant circumstances from both an objective and subjective perspective, including the type of harassment (verbal or physical); the frequency and severity of the conduct; the age, sex, and relationship of the individuals involved; the degree to which the conduct affected the complainant; the setting and context in which the harassment occurred; whether other incidents have occurred at the university; and other relevant factors.

(b) Sexual assault. Any sexual act directed against another person, without a person's consent, including instances where a person is not capable of giving consent. Consent means actual words or conduct indicating freely given agreement to the sexual act. Consent cannot be inferred from silence, passivity, or lack of active resistance. There is no consent where there is a threat of force or violence or any other form of coercion or intimidation, physical or psychological. Sexual activity is nonconsensual when one person is incapable of consent by reason of mental incapacity, drug/alcohol use, illness, unconsciousness, age, or physical condition. Incapacitation due to drugs or alcohol refers to an individual who is in a state of intoxication such that the individual is incapable of making rational, reasonable decisions because the person lacks the capacity to give knowing consent.

Sexual assault includes:

(i) Rape: The penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without a person's consent.

(ii) Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, without the person's consent. Private body parts include, but are not limited to, breasts, genitalia, thighs, and buttocks.

(iii) Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by state law.

(iv) Statutory rape: Sexual intercourse with a person who is under the age of consent as defined by state law.

(4) Other forms of inappropriate sexual (~~misconduct~~ behavior. Other forms of sexual misconduct include) behavior. Other forms of inappropriate sexual behavior that do not fall under Title IX or the definition of sexual harassment or interpersonal violence, such as indecent liberties; indecent exposure; sexual exhibitionism; (~~sex-based cyber harassment~~;) prostitution or the solicitation of a prostitute; peeping or other voyeurism; sexual misconduct with a minor; or going beyond the boundaries of consent, such as by allowing others to view consensual sex or the nonconsensual recording of sexual activity.

~~((4) Stalking. Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to:~~

~~(a) Fear for their health and/or safety or the health/safety of others; or~~

~~(b) Suffer substantial emotional distress.))~~

**(5) Unauthorized use of electronic or other devices.** Making an audio or video recording of any person while on university premises without the person's prior knowledge or without their effective consent, when such a recording is of a private conversation or of images taken of a person(s) at a time and place where the person would reasonably expect privacy and where such recordings are likely to cause injury or distress. This includes, but is not limited to, surreptitiously taking pictures of another person in a gym, locker room, or restroom, but does not include taking pictures of persons in areas which are considered by the reasonable person to be open to public view.

**(6) Property violations.** Theft of, damage to, or misuse of another person's or entity's property. This also includes any conduct or statement that, when viewed objectively, threatens to damage another's property.

**(7) Weapons.** Possession, carrying, discharge or other use of any weapon is prohibited on property owned or controlled by Eastern Washington University, except as permitted in (a) through (d) of this subsection. Examples of weapons under this section include, but are not limited to: Explosives, chemical weapons, shotguns, rifles, pistols, air guns, BB guns, pellet guns, longbows, hunting bows, throwing weapons, stun guns, electroshock weapons, and any item that can be used as an object of intimidation and/or threat, such as replica or look-a-like weapons.

(a) Commissioned law enforcement officers may carry weapons, which have been issued by their respective law enforcement agencies, while on campus or other university controlled property, including residence halls. Law enforcement officers must inform the university police of their presence on campus upon arrival.

(b) A person may possess a personal protection spray device, as authorized by RCW 9.91.160, while on property owned or controlled by Eastern Washington University.

(c) A person may bring a weapon onto campus for display or demonstration purposes directly related to a class or other educational activity, provided that they obtain prior authorization from the university police department. The university police department shall review any such request and may establish conditions to the authorization.

(d) Weapons that are owned by the institution for use in organized recreational activities or by special groups, such as EWU ROTC or university-sponsored clubs or teams, must be stored in a location approved by the university police department. These weapons must be checked out by the advisor or coach and are to be used only in organized recreational activities or by legitimate members of the club or team in the normal course of the club or team's related activity.

**(8) Failure to comply.**

(a) Failure to comply with lawful and/or reasonable directions of university officials or law enforcement officers acting in performance of their duties on campus or affecting conduct on campus;

(b) Failure to identify oneself to university officials in their course of duty, refusal or failure to appear before university officials or disciplinary bodies when directed to do so;

(c) Failure to attend any medical treatment or evaluation program when directed to do so by the dean of students or other authorized university official.



**(9) Trespassing/unauthorized use of keys.**

(a) Trespass. Entering or remaining on university property without authorization.

(b) Unauthorized use of keys. Unauthorized possession, duplication, or use of university keys or access cards.

**(10) Deception, forgery, fraud, unauthorized representation.**

(a) Knowingly furnishing false information to the university.

(b) Forgery, alteration, or misuse of university documents, records, or instruments of identification. This includes situations of identity theft where a person knowingly uses or transfers another person's identification for any purpose.

(c) Forgery or issuing a bad check with intent to defraud.

(d) Unauthorized representation. The unauthorized use of the name of the university or the names of members or organizations in the university community.

**(11) Safety.**

(a) Intentionally activating a false fire alarm.

(b) Making a bomb threat.

(c) Tampering with fire extinguishers, alarms, or safety equipment.

(d) Tampering with elevator controls and/or equipment.

(e) Failure to evacuate during a fire, fire drill, or false alarm.

**(12) Alcohol, drugs, and controlled substances.**

(a) Alcohol and substance violations. Use, possession, distribution, or sale of alcoholic beverages (except as permitted by university policy and state law) is prohibited. Under no circumstances may individuals under the age of twenty-one use, possess, distribute, manufacture or sell alcoholic beverages. Public intoxication is prohibited.

(b) Drugs and paraphernalia.

(i) Use, possession, distribution, manufacture, or sale of illegal drugs, paraphernalia, narcotics or controlled substances, is prohibited.

(ii) Use, possession, distribution, manufacture, or sale of marijuana is prohibited except for reasons permitted under EWU Policy 602-01 (drug and alcohol abuse prevention).

(iii) Being under the influence of marijuana or an illegal substance, while on property owned or operated by the university, is prohibited. Being under the influence of a controlled substance, except when legally prescribed by a licensed medical practitioner, is also prohibited while on property owned or operated by the university.

(13) **Hazing.** Any act which, for the purpose of initiation, admission into, affiliation with, or as a condition for continued membership in, a group or organization:

(a) Endangers the mental or physical health or safety of any student or other person;

(b) Destroys or removes public or private property; or

(c) Compels an individual to participate in any activity which is illegal or contrary to university rules, regulations or policies.

The express or implied consent of any participant is not a defense. A person who is apathetic or acquiesces in the presence of hazing violates this rule.

**(14) Disruptive conduct/obstruction.**

(a) Disruptive conduct. Conduct which unreasonably interferes with any person's ability to work or study, or obstructs university operations or campus activities.

(b) Disorderly conduct. Conduct that is disorderly, lewd, indecent or a breach of peace.

(c) Obstruction. Obstruction of the free flow of pedestrian or vehicular traffic on university premises or at university-sponsored or university-supervised events.

**(15) Violations of other laws, regulations and policies.**

(a) Violation of a local, county, state, or federal law.

(b) Violation of other university policies, regulations, contracts, or handbook provisions.

(16) **Assisting/attempts.** Soliciting, aiding, abetting, concealing, or attempting conduct in violation of this code.

**(17) Acts against the administration of this code.**

(a) Initiation of a complaint or charge knowing that the charge was false or with reckless disregard of its truth.

(b) Interference with or attempt to interfere with the enforcement of this code including, but not limited to, intimidation or bribery of hearing participants, acceptance of bribes, dishonesty, or disruption of proceedings and hearings held under this code.

(c) Knowing violation of the terms of any disciplinary sanction or attached conditions imposed in accordance with this code.

**(18) Other responsibilities.**

(a) Guests. A student, student group or student organization is responsible for the conduct of guests on or in university property and at functions sponsored by the university or sponsored by any recognized university organization.

(b) Students studying abroad. Students who participate in any university sponsored or sanctioned foreign country study program shall observe the following rules and regulations:

(i) The laws of the host country;

(ii) The academic and disciplinary regulations of the educational institution or residential housing program where the student is studying;

(iii) Any other agreements related to the student's study program in the foreign country; and

(iv) The student conduct code.

**(19) Student organization and/or group offenses.**

Clubs, organizations, societies or similarly organized groups in or recognized by the university and/or ASEWU are subject to the same standards as are individuals in the university community. The commission of any of the offenses in this section by such groups or the knowing failure of any organized group to exercise preventive measures relative to violations of the code by their members shall constitute a group offense.

AMENDATORY SECTION (Amending WSR 18-06-021, filed 2/27/18, effective 3/30/18)

**WAC 172-121-210 Sanctions and remedies.** If any student or student organization is found to have committed any of the offenses described in WAC 172-121-200, one or more of the sanctions described in this section may be imposed against the student or student organization. Imposed sanctions are effective as of the date the CRO or council

issues its decision unless the decision specifically identifies an alternative date. Failure to comply with any imposed sanction may result in additional sanctions. In addition to the sanction imposed by this code, if a student is also an employee of the university, the university may impose additional discipline in accordance with its policies and procedures pertaining to employees.

(1) Individual student sanctions:

(a) Admonition: An oral statement to a student that he/she has violated university rules and regulations.

(b) Warning: A notice to the student or student organization that they have violated the standards for student conduct and that any repeated or continuing violation of the same standard, within a specified period of time, may result in more severe disciplinary action. A warning may be verbal or written.

(c) Censure: A written reprimand for violation of specified regulations. A censure will also state that more severe disciplinary sanctions may be imposed if the student or student organization is found in violation of any regulation within a stated period of time.

(d) Disciplinary probation: A formal action which places one or more conditions, for a specified period of time, on the student's continued attendance. Disciplinary probation sanctions will be executed in writing and will specify the probationary conditions and the period of the probation. A disciplinary probation notice will also inform the student that any further misconduct will automatically involve consideration of suspension. Probationary conditions may include, but are not limited to:

(i) Restricting the student's university-related privileges;

(ii) Limiting the student's participation in extra-curricular activities; and/or

(iii) Enforcing a "no contact" order which would prohibit direct or indirect physical and/or verbal contact with specific individuals or groups.

(e) Restitution: Reimbursement to the university or others for damage, destruction, or other loss of property suffered as a result of theft or negligence. Restitution also includes reimbursement for medical expenses incurred due to conduct code violations. Restitution may take the form of appropriate service or other compensation. Failure to fulfill restitution requirements will result in cancellation of the student's registration and will prevent the student from future registration until restitution conditions are satisfied.

(f) Fines: The university conduct review officer and the student disciplinary council may assess monetary fines up to a maximum of four hundred dollars against individual students for violation of university rules or regulations or for failure to comply with university standards of conduct. Failure to promptly pay such fines will prevent the student from future registration. Failure to pay may also result in additional sanctions.

(g) Discretionary sanctions: Work assignments, service to the university community or other related discretionary assignments for a specified period of time as directed by the hearing authority.

(h) Loss of financial aid: In accordance with RCW 28B.30.125, a person who participates in the hazing of another forfeits entitlement to state-funded grants, scholar-

ships or awards for a specified period of time. ~~((Loss of financial aid is subject to the processes outlined in this chapter except any such loss must also be approved by the dean of students and the vice president for student affairs before such sanction is imposed.))~~

(i) Assessment: Referral for drug/alcohol or psychological assessment may be required. Results of the assessment may lead to the determination that conditions of treatment and further assessment apply to either continued attendance or return after a period of suspension.

(j) Suspension: Exclusion from classes and other privileges or activities for a specified period of time. Suspensions will be executed through a written order of suspension and will state all restrictions imposed by the suspension, as well as the suspension period and what conditions of readmission, if any, are ordered. ~~((Suspension is subject to the processes outlined in this chapter except any suspension must also be approved by the dean of students and the vice president for student affairs before such sanction is imposed.))~~ Suspensions may be noted on the student's transcript during the period of time the suspension is in effect.

(k) Expulsion: Permanent separation of the student from the university with no promise (implied or otherwise) that the student may return at any future time. The student will also be barred from university premises. ~~((Expulsion is subject to the processes outlined in this chapter except any expulsion must also be approved by the dean of students and the vice president of student affairs before such sanction is imposed.))~~ Expulsions may be noted on the student's transcript.

(l) Loss of institutional, financial aid funds: Formal withholding of all or a part of institutional funds currently being received by the student or promised for future disbursement to the student for a specified period of time. Loss of financial aid is subject to the processes outlined in this chapter except any such loss must be approved by the dean of students and the vice president for student affairs before such sanction is imposed.

(m) Revocation of degree: A degree awarded by the university may be revoked for fraud, misrepresentation, or other violation of law or university standards. Revocation of a degree is subject to processes outlined in this chapter except that revocation of a degree must also be approved by the university president.

(2) Student organizations and/or group sanctions: Any of the above sanctions may be imposed in addition to those listed below:

(a) Probation: Formal action placing conditions on the group's continued recognition by or permission to function at the university. The probationary conditions will apply for a specified period of time. Violation of the conditions of probation or additional violations while under probation may result in more severe sanctions;

(b) Social probation: Prohibition of the group from sponsoring any organized social activity, party or function, or from obtaining a permission for the use of alcoholic beverages at social functions for a specified period of time;

(c) Restriction: The temporary withdrawal of university or ASEWU recognition for a group, club, society or other organization. Restriction is subject to the processes outlined in this chapter except any restriction must also be approved

by the dean of students and the vice president of student affairs before such sanction is imposed;

(d) Revocation: The permanent withdrawal of university or ASEWU recognition for a group, club, society or other organization ~~((Revocation is subject to the processes outlined in this chapter except any revocation must also be approved by the dean of students and the vice president of student affairs before such sanction is imposed))~~;

(e) Additional sanctions: In addition to or separately from the above, any one or a combination of the following may be concurrently imposed on the group:

- (i) Exclusion from intramural competition as a group;
- (ii) Denial of use of university facilities for meetings, events, etc.;
- (iii) Restitution; and/or
- (iv) Fines.

(3) Remedies. For Title IX complaints, if the respondent is found responsible for violating the code, the university may provide remedies to the complainant designed to restore or preserve equal access to the university's educational programs or activities.

### WSR 20-19-058

#### PERMANENT RULES

#### EDMONDS COMMUNITY COLLEGE

[Filed September 11, 2020, 9:01 a.m., effective October 12, 2020]

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

Purpose: To provide guidance, clarity and consistency in traffic rules.

Citation of Rules Affected by this Order: Repealing WAC 132Y-100-006, 132Y-100-014, 132Y-100-020, 132Y-100-044, 132Y-100-054, 132Y-100-056, 132Y-100-060, 132Y-100-064, 132Y-100-067, 132Y-100-068, 132Y-100-070 and 132Y-100-082; and amending WAC 132Y-100-003, 132Y-100-004, 132Y-100-008, 132Y-100-012, 132Y-100-024, 132Y-100-028, 132Y-100-032, 132Y-100-066, 132Y-100-072, 132Y-100-076, 132Y-100-080, 132Y-100-084, 132Y-100-088, 132Y-100-092, 132Y-100-096, 132Y-100-100, 132Y-100-106, 132Y-100-108, 132Y-100-114, 132Y-100-115, and 132Y-100-116.

Statutory Authority for Adoption: RCW 28B.50.140(7), (10).

Adopted under notice filed as WSR 20-11-071 on May 20, 2020.

Changes Other than Editing from Proposed to Adopted Version: (1) Reduce redundancy in WACs previously entered twice; (2) to update and clarify rules regarding parking permits, and use of bicycle and foot propelled vehicles on pedestrian walkways; and (3) to ensure the college has the latitude to update policy and procedure as needed while maintaining good WAC oversight.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 21, Repealed 12.

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

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

Date Adopted: September 10, 2020.

Mushka Rohan  
Executive Director of  
Human Resources

AMENDATORY SECTION (Amending WSR 07-16-039, filed 7/24/07, effective 8/24/07)

**WAC 132Y-100-003 Definitions.** For the purpose of this chapter, the following terms and definitions shall apply:

(1) Board: The board of trustees of Edmonds ~~((Community))~~ College, state of Washington.

(2) Campus: Any or all real property owned, operated, controlled, or maintained by Edmonds ~~((Community))~~ College ~~((state of Washington))~~.

(3) ~~((Car pool))~~ Carpool: Any group of two or more faculty, staff or students who commute to the college in the same vehicle.

(4) College: Edmonds ~~((Community))~~ College or any additional community college hereafter established with Edmonds ~~((Community))~~ College, an agency of the state of Washington, and collectively, those responsible for its control and operations.

(5) Faculty members: Any employee of Edmonds ~~((Community))~~ College who is employed on a full-time or part-time basis as a teacher, counselor, librarian or other position for which the training, experience, and responsibilities are comparable as determined by the appointing authority, including administrative appointment.

(6) Foot propelled device: Wheeled devices including, but not limited to, skateboards, roller skates, roller blades, etc., designed or used for recreation and/or transportation purposes.

(7) Security office: The office designated for the safety ~~((and))~~, security ~~((department office))~~ and emergency preparedness department operations.

(8) Security officers: Employees of the college accountable to the ~~((vice president of finance and operations))~~ senior college security authority and responsible for campus safety, security, ((safety, and)) parking ((and)), traffic control, and emergency response and recovery.

(9) Staff: The administrative and classified members employed by the college.

(10) Student: Any person enrolled in the college.

(11) Vehicle: ~~((An))~~ A motorized automobile, truck, or motorcycle ~~((, scooter or bicycle, both engine powered and nonengine powered))~~.

(12) Visitor(s): Person(s) who come on campus as guest(s) or person(s) who lawfully visit the campus for purposes in keeping with the college's role as an institution of

higher learning in the state of Washington that are neither employees nor registered students of the institution.

AMENDATORY SECTION (Amending WSR 81-17-042, filed 8/14/81)

**WAC 132Y-100-004 Applicable traffic rules.** The traffic rules which are applicable upon state lands devoted mainly to the educational activities of Edmonds ((Community)) College are as follows:

- (1) The motor vehicle and other traffic laws of the state of Washington; and
- (2) The traffic code of Lynnwood, Washington, and Snohomish County; and
- (3) Rules set forth in chapter 132Y-100 WAC.

AMENDATORY SECTION (Amending WSR 07-16-039, filed 7/24/07, effective 8/24/07)

**WAC 132Y-100-008 Permits required for ((employee)) all vehicles ((in designated lots)) parked on campus.** Except as provided in WAC 132Y-100-012 and 132Y-100-052 no ((employee)) person shall leave any vehicle unattended ((in a designated staff lot;)) on the college campus ((of the college;)) without a permit issued by the ((security office unless such employee is in the process of loading and unloading)) college.

Permits shall not be utilized by any person except by the person ((registered to said permit. The college reserves the right to deny any application, or to revoke any permit at any time, if actions resulting from such application or permission constitute present or imminent danger or unlawful activity, or if a prospective user has previously violated the provisions of these parking policies or other written rules or regulations of the college)) to whom the permit is registered. Outstanding parking fines must be paid before a parking permit may be issued or renewed.

Parking permits are transferable from vehicle to vehicle when used by the permit holder.

((If a vehicle is sold or traded, a new permit will be issued to the permit holder at no additional cost if the permit holder does the following:

- (1) Records the invalid permit number; and
- (2) Removes invalid permit; and
- (3) Brings invalid permit or remnant thereof and permit number to the security office. The security office shall then issue the permit holder a new parking permit.

Students and visitors may park in any lot not designated as staff or car pool, without a permit.))

AMENDATORY SECTION (Amending WSR 07-16-039, filed 7/24/07, effective 8/24/07)

**WAC 132Y-100-012 Permit parking on campus.** There are ((two)) three categories of valid permits:

- (1) A temporary permit authorized by the ((security office of Edmonds Community)) college and displayed in accordance with instructions; ((or))
- (2) A current vehicle permit issued by the ((security office)) college and displayed on the vehicle in accordance with instructions; or

(3) A special permit issued by the senior college security authority or their designee and displayed on the vehicle in accordance with instructions. The special permit allows for parking in any legal parking spot. This permit is meant to be limited to those who need immediate access for college business that cannot be met by other means.

AMENDATORY SECTION (Amending WSR 81-17-042, filed 8/14/81)

**WAC 132Y-100-024 Right to refuse permit.** The college reserves the right to refuse the issuance of a parking permit, or to revoke any permit at any time, if actions resulting from such application or permission constitute present or imminent danger or unlawful activity, or if a prospective user has previously violated the provisions of these parking policies or other written rules or regulations of the college.

AMENDATORY SECTION (Amending WSR 07-16-039, filed 7/24/07, effective 8/24/07)

**WAC 132Y-100-028 Issuance of permits. ((+)) All permits are issued by the security office or their designees. Permit procedures and requirements can be found at [www.edcc.edu/safety](http://www.edcc.edu/safety). Presentation of valid college identification ((, vehicle make, model, color, license number)) is required to be issued a current vehicle permit.**

(((2) Employees may be issued a parking permit by the security office, upon registration of his/her vehicle with said office at the beginning of full-time employment.

(3) Part-time employees must obtain permits each quarter.

(4) Carpool permits are issued quarterly.

(5) The security office may issue visitor parking permits when such permits are necessary.

(6) Temporary and special permits may be issued by the security office when such permits are necessary to enhance the business operation of the college.)) Temporary visitor parking permits are coordinated through the security office or their designees. A special permit is issued by the senior college security authority or their designee.

AMENDATORY SECTION (Amending WSR 07-16-039, filed 7/24/07, effective 8/24/07)

**WAC 132Y-100-032 Display of permits.** All ((permanent)) parking permits shall be displayed as provided in the directions supplied with the parking permit. ((A special or temporary parking permit shall be placed within the vehicle where it can be plainly seen from the outside of the driver's side of the windshield. Permits not displayed in accordance with the provisions of this section shall not be valid.)) Permits not displayed in accordance with the provisions of this section shall not be valid.

AMENDATORY SECTION (Amending WSR 07-16-039, filed 7/24/07, effective 8/24/07)

**WAC 132Y-100-066 Carpool parking permit.** Carpool permits are available to ((staff and students who qualify. To qualify for a carpool permit, the individual must designate

at least one other regular rider in addition to the driver. This permit must be renewed each quarter and allows the holder to park in designated carpool lots/areas. The permit can be obtained from the security office) faculty, staff and students who qualify under college policy. College policies and procedures are available at edcc.edu/policies.

AMENDATORY SECTION (Amending WSR 92-09-055, filed 4/13/92, effective 5/14/92)

**WAC 132Y-100-072 ((Handicapped)) Disabled parking.** No vehicle shall park in a ((handicapped zone)) space designated for disabled persons without a current, valid, state issued ((handicapped)) disability permit. Enforcement of ((handicapped)) disability parking is accomplished by either the college ((or)), the police department ((of)), or the city of Lynnwood.

AMENDATORY SECTION (Amending WSR 81-17-042, filed 8/14/81)

**WAC 132Y-100-076 ((Disabled or)) Inoperative and abandoned vehicles.** ((No disabled or inoperative vehicle shall be parked on the campus without permission from the security office. Vehicles which have been parked in excess of forty-eight hours and which appear to be inoperative or abandoned may be impounded and stored at the expense of either or both owner and operator thereof.)) Inoperative or abandoned vehicles may not be parked on the campus without permission from the senior college security authority or their designee. Vehicles parked in excess of forty-eight hours will be impounded and stored at the expense of the owner.

AMENDATORY SECTION (Amending WSR 07-16-039, filed 7/24/07, effective 8/24/07)

**WAC 132Y-100-080 Regulatory signs and directions.** Edmonds ((Community)) College will erect and place signs, barricades, and other structures and paint marks and other directions upon the streets and roadways for the regulation of traffic and parking upon state lands devoted mainly to the educational or research activities of Edmonds ((Community)) College. Such signs, barricades, structures, markings, and directions shall be so made and placed as to be legible and in the opinion of the college president or ((his/her)) their designee will best effectuate the objectives stated in WAC 132Y-100-001.

AMENDATORY SECTION (Amending WSR 07-16-039, filed 7/24/07, effective 8/24/07)

**WAC 132Y-100-084 Speed.** No vehicle shall be operated on designated campus roadways or parking lots at a speed in excess of ten miles per hour, or the posted speed limit. No vehicle of any type shall at any time use the campus and/or lands devoted to educational, research, recreational, or parking for Edmonds ((Community)) College for ((testing, racing, or other)) any unlawful activities.

AMENDATORY SECTION (Amending WSR 07-16-039, filed 7/24/07, effective 8/24/07)

**WAC 132Y-100-088 Pedestrian's right of way.** (1) The operator of a vehicle shall yield to any pedestrian, but no pedestrian((s)) shall leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible or unsafe for the driver to yield.

(2) Whenever any vehicle slows or stops so as to yield to pedestrian traffic, the operator of any other vehicle approaching from the rear shall not overtake and pass such vehicle.

(3) Where a sidewalk is provided, pedestrians shall ((proceed upon)) use such sidewalk.

AMENDATORY SECTION (Amending WSR 81-17-042, filed 8/14/81)

**WAC 132Y-100-092 Report of accident.** The operator of any vehicle involved in an accident on campus shall within twenty-four hours report such accident to the campus security office. This does not relieve any person so involved in an accident from ((his)) their responsibility to file a ((state of Washington motor vehicle accident report)) State of Washington Vehicle Accident Report (SF137) within twenty-four hours after such accident.

AMENDATORY SECTION (Amending WSR 07-16-039, filed 7/24/07, effective 8/24/07)

**WAC 132Y-100-096 Special traffic/parking rules.** During special occasions or emergencies, ((causing)) that cause additional and/or heavy traffic, the ((director of safety and security)) senior college security authority is authorized to impose additional traffic and parking regulations to achieve the specified objectives of this chapter.

AMENDATORY SECTION (Amending WSR 07-16-039, filed 7/24/07, effective 8/24/07)

**WAC 132Y-100-100 Enforcement of parking and traffic rules and regulations.** ((The vice president of finance and operations is responsible for parking and traffic management on campus and delegates the authority to enforce the parking and traffic regulations to the director of safety and security.)) The senior college security authority, or their designee, is responsible for parking and traffic policies, procedures, and management of the same, on all college property, or college controlled properties.

AMENDATORY SECTION (Amending WSR 07-16-039, filed 7/24/07, effective 8/24/07)

**WAC 132Y-100-106 Fines, penalties and impounding.** (1) The current schedule of fines shall be published by the college and made available for review in the security office and is also available on the college's website at [www.edcc.edu/safety](http://www.edcc.edu/safety).

(2) In addition to imposing fines, the ((director of safety and security)) senior college security authority and duly appointed security officers are authorized to issue citations, impound, immobilize, and take to such place of storage as the

~~((director of safety and security))~~ senior college security authority selects, any vehicles parked on college property in violation of these regulations. The expenses of such impounding, immobilization, and storage shall be charged to the owner/operator of the vehicle and must be paid prior to the vehicle's release.

(a) The college shall not be liable for loss or damage of any kind resulting from such impounding, immobilization, or storage.

(b) Impoundment of a vehicle does not remove the obligation for any fines associated with the violation itself.

(c) Vehicles left unattended on college property for ~~((a period greater than seventy-two hours))~~ longer than forty-eight hours may be impounded.

(d) Grounds for impounding vehicles shall include, but not be limited to, the following:

(i) Blocking a roadway so as to impede the flow of traffic;

(ii) Blocking a walkway so as to impede the flow of pedestrian traffic;

(iii) Blocking a fire hydrant or fire lane;

(iv) Creating a safety hazard ~~((in the opinion of a campus security officer));~~

(v) Blocking another legally parked vehicle; or

(vi) Parking in a marked ~~((“tow-away” zone))~~ tow-away and/or load/unload zones.

(3) All fines must be paid within twenty calendar days from the date of the citation. All fines are payable as designated on the citation.

(a) If any citation remains unpaid after twenty calendar days from the date of the citation, the following action may be taken by Edmonds ~~((Community))~~ College:

(i) ~~((Degrees, transcripts, grades, refunds, or credits may be withheld until all fines are paid;~~

~~((ii) Registration for the following quarter may be delayed;~~

~~((iii))~~ Faculty, students, and staff may be denied future parking privileges.

(ii) Students may be referred to student conduct for unpaid citations.

(iii) Employees may be referred for discipline to supervisor and/or HR.

(b) An accumulation of parking and/or traffic tickets that are not responded to and resolved, by payment or appeal, may be sent to collections after such notification is provided to the registered owner of the vehicle cited.

AMENDATORY SECTION (Amending WSR 07-16-039, filed 7/24/07, effective 8/24/07)

**WAC 132Y-100-108 Appeal of fines and penalties.** Appeal of fines and penalties must be made in writing ~~((; within five calendar days, to the director of safety and security department. The owner of the vehicle shall be entitled to a hearing with the director of the safety and security department or designee within two business days of any impoundment pursuant to WAC 132Y-100-106. The owner may recover the vehicle before hearing by posting a bond in the amount of the sum of any past due fines plus any fine due for the impoundment infraction plus impoundment cost. In the~~

~~event that the owner is determined at hearing to be not liable for the impoundment infraction, the amount of the sum of the impoundment fine plus impoundment costs will be returned))~~ as outlined in college policy. College policies and procedures are available at [www.edcc.edu/policies](http://www.edcc.edu/policies).

AMENDATORY SECTION (Amending WSR 07-16-039, filed 7/24/07, effective 8/24/07)

**WAC 132Y-100-114 Parking of trailers, campers, and similar purpose vehicles on campus.** It is unlawful for any individual, firm or corporation to park any type of vehicle on the grounds of Edmonds ~~((Community))~~ College for the purpose of using such a vehicle as a living unit. Any exception must be submitted in writing and approved ~~((; in writing;))~~ by the ~~((director of safety and security))~~ senior college security authority.

AMENDATORY SECTION (Amending WSR 07-16-039, filed 7/24/07, effective 8/24/07)

**WAC 132Y-100-115 Damage to state property.** The cost of repair/replacement of college property damaged by negligent operations, or as the result of indiscriminate acts, must be paid in addition to assessed fines.

AMENDATORY SECTION (Amending WSR 07-16-039, filed 7/24/07, effective 8/24/07)

**WAC 132Y-100-116 Prohibition of literature on vehicles.** Distribution of literature by placement on motor vehicles parked on Edmonds ~~((Community))~~ College campus is hereby prohibited. Literature includes but is not limited to:

- (1) Pamphlets;
- (2) Flyers; and/or
- (3) Stickers.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 132Y-100-006 Visitor parking.
- WAC 132Y-100-014 Free parking by disabled persons.
- WAC 132Y-100-020 Permit revocation.
- WAC 132Y-100-044 Additional vehicles.
- WAC 132Y-100-054 Parking—Operator's responsibility.
- WAC 132Y-100-056 Parking within designated spaces.
- WAC 132Y-100-060 Locating legal parking space.
- WAC 132Y-100-064 Motorcycle parking.
- WAC 132Y-100-067 Motorcycle parking.
- WAC 132Y-100-068 Bicycle parking and traffic regulations.
- WAC 132Y-100-070 Alternative transportation regulations.
- WAC 132Y-100-082 Disabled or inoperative vehicles.

**WSR 20-19-062**  
**PERMANENT RULES**  
**HORSE RACING COMMISSION**

[Filed September 11, 2020, 11:37 a.m., effective October 12, 2020]

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

Purpose: To increase the commission's share of source market fees from 7.5% to 10.0% to stabilize the operating account due to the current health crisis in the state and inability to allow spectators for live racing.

Citation of Rules Affected by this Order: Amending WAC 260-49-070.

Statutory Authority for Adoption: RCW 67.16.020.

Adopted under notice filed as WSR 20-16-014 on July 23, 2020.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 11, 2020.

Douglas L. Moore  
Executive Secretary

AMENDATORY SECTION (Amending WSR 11-17-056, filed 8/15/11, effective 9/15/11)

**WAC 260-49-070 Distribution of source market fee.**

(1) A source market fee shall be paid monthly, unless otherwise directed by the commission, for the source market fee area on all accounts that have Washington as the principal residence address.

(2) The authorized advance deposit wagering service provider shall, at least monthly, unless otherwise directed by the commission, distribute the total source market fee as follows:

(a) Ninety percent of the total source market fee directly to the class 1 racing association and the remaining ten percent directly to the commission.

(b) The class 1 racing association shall ~~((distribute))~~ submit monthly two and one-half percent of the total source market fee to the commission to be deposited into the Washington bred owners' bonus fund ~~((and))~~.

(c) The class 1 racing association shall distribute two and one-half percent of the total source market fee to the Washington bred breeder award account as provided in RCW 67.16.175.

~~((e))~~ (d) The class 1 racing association and the recognized horsemen's organization shall negotiate a separate agreement for contributions to the purse account from the

source market fee and submit the agreement for review and approval by the commission. The class 1 racing association shall distribute the horsemen's share of the source market fee in accordance with the horseman's agreement.

~~((d) The commission shall distribute two and one-half percent of the total source market fee to the Washington bred owners' bonus fund and breeder award account and seven and one-half percent of the total source market fee to the commission's operating account.))~~

(3) The commission shall annually review the distribution of the source market fee. Any changes to the distribution shall be adopted by rule.

**WSR 20-19-079**  
**PERMANENT RULES**  
**HEALTH CARE AUTHORITY**

[Filed September 15, 2020, 3:23 p.m., effective October 16, 2020]

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

Purpose: To implement the Washington prescription drug pricing transparency program as required under chapter 43.71C RCW.

Citation of Rules Affected by this Order: New WAC 182-51-0050, 182-51-0100, 182-51-0200, 182-51-0300, 182-51-0400, 182-51-0500, 182-51-0600, 182-51-0700, 182-51-0800, 182-51-0900, 182-51-1000, 182-51-1100, 182-51-1200, 182-51-1300, 182-51-1400, 182-51-1500, 182-51-1600, 182-51-1700, and 182-51-1800.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; and ESSHB [E2SHB] 1224, chapter 334, Laws of 2019.

Adopted under notice filed as WSR 20-15-146 on July 21, 2020.

Changes Other than Editing from Proposed to Adopted Version:

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

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 19, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 19, Amended 0, Repealed 0.

Date Adopted: September 15, 2020.

Wendy Barcus  
Rules Coordinator

## Chapter 182-51 WAC

## PRESCRIPTION DRUG PRICING TRANSPARENCY PROGRAM

NEW SECTION

**WAC 182-51-0050 Authority and purpose.** (1) Under the authority of chapter 43.71C RCW, this chapter implements the Washington prescription drug pricing transparency program.

(2) The purpose of the Washington prescription drug pricing transparency program is to provide notice and disclosure of information relating to the cost and pricing of prescription drugs in order to provide accountability to the state for prescription drug pricing.

(3) The authority publishes a data submission guide to the authority's website, detailing the data elements to report as required by chapter 43.71C RCW, and how to submit the data.

NEW SECTION

**WAC 182-51-0100 Definitions.** For the purposes of this chapter:

(1) "Authority" means the health care authority.

(2) "Calendar days" means the same as in WAC 182-526-0010.

(3) "Calendar year" means the period from January 1st to December 31st of each year.

(4) "Covered drug" means any prescription drug that:

(a) A covered manufacturer intends to introduce to the market in Washington state at a wholesale acquisition cost of ten thousand dollars or more for a course of treatment lasting less than one month or a thirty-day supply, whichever period is longer; or

(b) Meets all of the following:

(i) Is currently on the market in Washington state;

(ii) Is manufactured by a covered manufacturer; and

(iii) Has a wholesale acquisition cost of more than one hundred dollars for a course of treatment lasting less than one month or a thirty-day supply, and, taking into account only price increases that take effect after July 28, 2019, the manufacturer increases the wholesale acquisition cost such that:

(A) The new wholesale acquisition cost is twenty percent higher than the wholesale acquisition cost on the same day of the month, twelve months before the date of the proposed increase; or

(B) The new wholesale acquisition cost is fifty percent higher than the wholesale acquisition cost on the same day of the month, thirty-six months before the date of the proposed increase.

(5) "Covered manufacturer" means a person, corporation or other entity engaged in the manufacture of prescription drugs sold in or into Washington state. "Covered manufacturer" does not include a private label distributor or retail pharmacy that sells a drug under the retail pharmacy's store label, or a prescription drug repackager.

(6) "Data" means all data provided to the authority under RCW 43.71C.020 through 43.71C.080 and any analysis prepared by the authority.

(7) "Data recipient" means an individual or entity authorized to receive data under RCW 43.71C.100.

(8) "Data submission guide" means the document that identifies the data required under chapter 43.71C RCW, and provides instructions for submitting this data to the authority, including guidance on required format for reporting, for each reporting entity.

(9) "Food and drug administration (FDA) approval date" means the deadline for the FDA to review applications for new drugs or new biologics after the new drug application or biologic application is accepted by the FDA as complete in accordance with the Prescription Drug User Fee Act of 1992 (106 Stat. 4491; P.L. 102-571).

(10) "Health plan," "health carrier," and "carrier" mean the same as in RCW 48.43.005.

(11) "Introduced to market" means marketed in Washington state.

(12) "Pharmacy benefit manager" means the same as defined in RCW 19.340.010.

(13) "Pharmacy services administrative organization" means an entity that:

(a) Contracts with a pharmacy to act as the pharmacy's agent with respect to matters involving a pharmacy benefit manager, third-party payor, or other entities, including negotiating, executing, or administering contracts with the pharmacy benefit manager, third-party payor, or other entities; and

(b) Provides administrative services to pharmacies.

(14) "Pipeline drug" means a drug or biologic product containing a new molecular entity, not yet approved by the Food and Drug Administration, for which a manufacturer intends to seek initial approval from the Food and Drug Administration under an original new drug application under 21 U.S.C. Sec. 355(b) or under a biologics license application under 42 U.S.C. Sec. 262 to be marketed in Washington state.

(15) "Prescription drug" means a drug regulated under chapter 69.41 or 69.50 RCW that is prescribed for outpatient use and distributed in a retail setting, including generic, brand name, specialty drugs, and biological products.

(16) "Private label distributor" means a firm that does not participate in the manufacture or processing of a drug but instead markets and distributes under its own trade name, and labels a drug product made by someone else.

(17) "Qualifying price increase" means a price increase described in subsection (3)(b) of this section.

(18) "Rebate" means negotiated price concessions, discounts, however characterized, that accrue directly or indirectly to a reporting entity in connection with utilization of prescription drugs by reporting entity members including, but not limited to, rebates, administrative fees, market share rebates, price protection rebates, performance-based price concessions, volume-related rebates, other credits, and any other negotiated price concessions or discounts that are reasonably anticipated to be passed through to a reporting entity during a coverage year, and any other form of price concession prearranged with a covered manufacturer, dispensing pharmacy, pharmacy benefit manager, rebate aggregator, group purchasing organization, or other party which are paid to a reporting entity and are directly attributable to the utilization of certain drugs by reporting entity members.



(19) "Reporting entity" means carriers, covered manufacturers, health carriers, health plans, pharmacy benefit managers, and pharmacy services administrative organizations, which are required to or voluntarily submit data according to chapter 43.71C RCW.

(20) "Wholesale acquisition cost" means, with respect to a prescription drug, the manufacturer's list price for the drug to wholesalers or direct purchasers in the United States, excluding any discounts, rebates, or reductions in price, for the most recent month for which the information is available, as reported in wholesale acquisition cost guides or other publications of prescription drug pricing.

### DATA REPORTING, NOTICES, AND CONFIDENTIALITY

#### NEW SECTION

**WAC 182-51-0200 Reporting entity registration.** (1) No later than August 1st of each year, a reporting entity must register with the authority and provide the required contact information as defined in the applicable data submission guide. Reregistration is required only if there is a change in contact information previously provided.

(2) It is the responsibility of the reporting entity to maintain current and accurate contact information with the authority.

(3) Failure to register and provide or maintain accurate contact information with the authority may result in a reporting entity's inability to submit required data in compliance with this chapter.

#### NEW SECTION

**WAC 182-51-0300 Health carriers—Cost utilization data reporting.** (1) No later than October 16, 2020, a health carrier must submit to the authority the prescription drug cost and utilization data for calendar years 2018 and 2019, for each health plan it offered in Washington state in calendar years 2018 and 2019, following the guidelines set in the authority's applicable data submission guide.

(2) Beginning October 1, 2021, and no later than October 1st annually thereafter, a health carrier must submit to the authority the prescription drug cost and utilization data for the previous calendar year for each health plan it offered in Washington state, following the guidelines set in the authority's applicable data submission guide.

(3) A carrier may voluntarily submit the data described in subsection (1) of this section for any employer-sponsored, self-funded health plan; Taft-Hartley trust health plan; worker's compensation plan; medicare Part D plan; or medicare advantage plan it administers.

(4) The authority may assess fines for not complying with the requirements in this section. See WAC 182-51-1100.

#### NEW SECTION

**WAC 182-51-0400 Pharmacy benefit managers—Data reporting.** (1) No later than March 1st of each year, a pharmacy benefit manager must submit to the authority all

data specified in RCW 43.71C.030, following the guidelines set in the authority's applicable data submission guide.

(2) The authority may examine or audit a pharmacy benefit manager's financial records to ensure the information submitted under this section is accurate. Information the authority acquires in an examination of financial records according to this subsection is treated as proprietary and confidential. The information collected according to this subsection is not subject to public disclosure under chapter 42.56 RCW.

(3) A pharmacy benefit manager may voluntarily submit the data described in subsection (1) of this section for any employer-sponsored, self-funded health plan; Taft-Hartley trust health plan; worker's compensation plan; medicare Part D plan; or medicare advantage plan it administers.

(4) The information submitted according to this section is not subject to public disclosure under chapter 42.56 RCW.

(5) The agency may assess fines for not complying with the requirements in this section. See WAC 182-51-1100.

#### NEW SECTION

**WAC 182-51-0500 Pharmacy benefit managers—Compliance.** (1) No later than March 1st of each year, each pharmacy benefit manager must file with the authority an attestation in the format required by the authority for the preceding calendar year, stating that the pharmacy benefit manager is in compliance with this chapter.

(2) A pharmacy benefit manager must not cause or knowingly permit the use of any advertisement, promotion, solicitation, representation, proposal, or offer that is untrue, deceptive, or misleading.

#### NEW SECTION

**WAC 182-51-0600 Manufacturers—Data and price reporting.** (1) On or before December 31, 2020, a covered manufacturer must submit to the authority all data specified in RCW 43.71C.050 and 43.71C.070, the following guidelines set in the authority's applicable data submission guide for each covered drug as the drug existed between and including July 28, 2019, and August 17, 2020.

(2) Beginning October 16, 2020, a covered manufacturer must submit to the authority all data specified in RCW 43.71C.050 and 43.71C.070, following the guidelines set in the authority's applicable data submission guide, for each covered drug as follows:

(a) Sixty days in advance of a qualifying prices increase for a covered drug marketed in Washington state; or

(b) Thirty days in advance of a new covered drug's introduction to market in Washington state.

(3) For any drug approved under section 505(j) of the federal Food, Drug, and Cosmetic Act as it existed on August 18, 2020, or a biosimilar approved under section 351(k) of the federal Public Health Service Act as it existed on August 18, 2020, if submitting data in accordance with subsection (2)(a) of this section is not possible sixty days before the price increase; or if submitting data in accordance with subsection (2)(b) of this section is not possible thirty days before the introduction to market, that submission must be made as

soon as known but no later than the date of the price increase or introduction to market.

(4) The information submitted according to this section is not subject to public disclosure under chapter 42.56 RCW.

(5) The authority may assess fines for not complying with the requirements in this section. See WAC 182-51-1100.

#### NEW SECTION

**WAC 182-51-0700 Manufacturers—Notice of new drug applications and biologic license applications.** (1) On or before December 31, 2020, a manufacturer must submit to the authority all data specified in RCW 43.71C.060(1), following the guidelines set in the authority's applicable data submission guide for all new drug applications or biologic license applications for pipeline drugs submitted on or after October 1, 2019, through October 15, 2020, for which the manufacturer has received an FDA approval date.

(2) Beginning October 16, 2020, a manufacturer must submit to the authority all data specified in RCW 43.71C.060(1), following the guidelines set in the authority's applicable data submission guide for all new drug applications or biologic license applications for pipeline drugs submitted on or after October 16, 2020, within sixty calendar days of the manufacturer receiving the FDA approval date.

(3) The authority considers fifty thousand dollars per biennium to be a significant impact on state expenditures. Reporting entities may anticipate a request for additional information per RCW 43.71C.060(3) from the authority for products expected to exceed fifty thousand dollars per biennium. To improve efficiency in reporting, manufacturers who submit a new drug application or a biologics license application for a pipeline drug or a biologics license application for a biological product that is expected to cost the state more than fifty thousand dollars per biennium may submit the data elements in RCW 43.71C.060(3) at the same time they submit the notice of the new drug application.

(4) A manufacturer may limit the information reported according to this section to information that is in the public domain or publicly reported.

(5) The agency may assess fines for not complying with the requirements in this section. See WAC 182-51-1100.

#### NEW SECTION

**WAC 182-51-0800 Pharmacy services administrative organizations—Data reporting.** (1) No later than October 16, 2020, and October 1st of each year thereafter, a pharmacy services administrative organization representing a pharmacy or pharmacy chain in Washington state must submit to the authority the data specified in RCW 43.71C.080 following the guidelines set in the authority's applicable data submission guide.

(2) Any pharmacy services administrative organization whose revenue is generated from flat service fees not connected to drug prices or volume, and paid by the pharmacy, is exempt from reporting, subject to audit by the authority. These organizations must petition the authority for exemption from the reporting requirements according to the frequency listed and the formatting guidelines in the authority's applicable data submission guide.

(3) The authority may assess fines for not complying with the requirements in this section. See WAC 182-51-1100.

#### NEW SECTION

**WAC 182-51-0900 Data confidentiality.** The authority provides data only after the data recipient, as defined by this chapter, has signed a nondisclosure agreement. The authority may prohibit access to or use of the data by a data recipient who violates the nondisclosure agreement.

#### NEW SECTION

**WAC 182-51-1000 Data submission guides.** (1) All data and data files must be submitted to the authority in accordance with the requirements in this chapter and the respective data submission guide for the respective reporting period. Data submission guides are located on the authority's website.

(2) The authority develops data submission guides and has final approval authority over them. The authority provides reporting entities the opportunity to comment on changes to data requirements in the applicable data submission guide, at least thirty days before the effective date of the change.

(3) At its discretion, the authority may grant reporting entities an extension to comply with any changes the authority makes to the data submission guides. Reporting entities must request extensions in accordance with WAC 182-51-1200.

### ENFORCEMENT

#### NEW SECTION

**WAC 182-51-1100 Authority to assess fines.** (1) RCW 43.71C.090 allows the authority to assess a fine of up to one thousand dollars per day for failure to comply with the requirements of RCW 43.71C.020 through 43.71C.080 and the requirements of this chapter. See WAC 182-51-1300 for fines for failing to comply with reporting requirements and WAC 182-51-1400 for the amount of fines based on culpability.

(2) The authority may grant an extension of time to a reporting requirement deadline under WAC 182-51-1200.

#### NEW SECTION

**WAC 182-51-1200 Extension of deadlines.** (1) The authority may grant:

(a) An extension of time to a reporting requirement deadline; or

(b) Permission to correct previously submitted data.

(2) Extensions.

(a) A reporting entity may request an extension of time for submitting a report or the resubmission of a report due to extenuating circumstances affecting the reporting entity's ability to submit the data by the deadline.

(b) The request for an extension must contain a detailed explanation as to the reason the reporting entity is unable to meet the reporting requirements for that period.

(c) A reporting entity must submit a request for an extension to the authority at least thirty calendar days before the applicable reporting deadline unless the requestor is unable to meet this deadline due to circumstances beyond the reporting entity's control. If unable to meet this deadline, the reporting entity must notify the authority in writing as soon as the reporting entity determines that an extension is necessary.

(d) The authority may approve a request for an extension for a period of time based on the specific circumstances or other extenuating circumstances. The authority provides written notification of the approval or denial to the requestor within fifteen calendar days from when the authority receives the request from the reporting entity. If the authority does not approve a request for an extension, the written notification includes the reason for the denial.

(e) A reporting entity may not appeal the authority's decision to deny an extension.

**NEW SECTION**

**WAC 182-51-1300 Fines for failure to comply with reporting requirements.** (1) The authority may assess fines for failure to comply with the general reporting requirements of this chapter including, but not limited to, failing to report data or reporting erroneous or inaccurate data.

(2) Unless the authority has approved an extension or has received a request to correct previously submitted data, the authority may assess a fine for failure to comply with general reporting requirements contained in chapter 43.71C RCW and this chapter including, but not limited to, the following:

- (a) Failure to timely submit required data files; or
- (b) Failure to accurately submit all data elements.

(3) Unless the authority has approved an extension or has received a request to correct previously submitted data, the authority may assess fines for failure to comply with data file requirements outlined in the applicable data submission guide in effect for the required reporting period including, but not limited to, the following:

- (a) Submitting a data file in an unapproved layout;
- (b) Submitting a data element in an unapproved format;
- (c) Submitting a data element with unapproved coding;
- (d) Failing to submit a required data element;
- (e) Failing to comply with the approved data submission schedule; or
- (f) Transmitting data files using an unapproved process.

**NEW SECTION**

**WAC 182-51-1400 Amount of fines based on culpability.** (1) In determining the amount of any fine, the authority considers the level of culpability associated with the violation. The levels of culpability, in the order of least severe to most severe, are as follows:

(a) **Did not know.** The reporting entity did not know and by exercising reasonable diligence, could not have known the violation had occurred.

(b) **Reasonable cause.** The reporting entity knew, or by exercising diligence should have known, that the violation had taken place, but the reporting entity did not act with willful neglect.

(c) **Willful neglect - Corrected.** The violation was due to the reporting entity's intentional failure or reckless indifference, and the violation was corrected within thirty calendar days from the date the reporting entity knew or with reasonable diligence should have known of the violation.

(d) **Willful neglect - Uncorrected.** The violation was due to the reporting entity's intentional failure or reckless indifference, and the violation was not corrected within thirty calendar days from the date the reporting entity knew or with reasonable diligence should have known of the violation.

(2) The fine ranges for each level of culpability and the daily cap for violations of a similar nature are as follows:

Culpability category	Fines per violation, per day
Did not know	\$250
Reasonable cause	\$500
Willful neglect - Corrected	\$750
Willful neglect - Not corrected	\$1,000

(3) Fines begin to accrue on the first day after the reporting deadline. For those reporting entities granted an extension by the authority, fines begin to accrue on the first day after the extended due date.

(4) Fines continue to accrue daily until the reporting entity comes into compliance, settles through an informal dispute resolution conference under WAC 182-51-1700, or files a formal appeal under WAC 182-51-1800.

**NEW SECTION**

**WAC 182-51-1500 Preliminary notice of violation and fine(s).** (1) Upon failing to comply with a reporting requirement in this chapter, the authority first issues a warning notice to a reporting entity. The authority sends the warning notice to the reporting entity's last known email or physical address. The warning notice describes the failure to comply with the requirements of this chapter and gives the reporting entity thirty days to become compliant or request an extension of time to report the required data according to WAC 182-51-1200(2).

(2) When a reporting entity fails to comply with reporting requirement(s) after receiving a warning notice, the authority may assess a fine(s) as established in WAC 182-51-1400. The authority mails a preliminary notice of violation and fine(s) to the reporting entity's last known address by certified mail, return receipt requested.

(3) The preliminary notice of violation and fine(s) includes the following information:

- (a) The specific reasons and criteria that support the imposition of the assessed fine(s);
- (b) The legal authority that supports the imposition of a fine or fines;
- (c) The amount of the fine(s) as of the date of the preliminary notice of violation and fine(s);

(d) Notice that fines will continue to accrue at the assessed daily rate, per WAC 182-51-1400, until the reporting entity either complies with the reporting requirements or

settles through an informal dispute resolution conference; and

(e) An explanation of the reporting entity's right to request an informal dispute resolution conference under WAC 182-51-1700.

#### NEW SECTION

**WAC 182-51-1600 Process to appeal determination of a violation and assessed fines.** (1) Each reporting entity to whom the authority issues a preliminary notice of a violation and fine(s) may request an informal dispute resolution conference under WAC 182-51-1700.

(2) If the reporting entity requests an informal dispute resolution conference under WAC 182-51-1700, the reporting entity must complete the informal dispute resolution process before requesting an administrative hearing.

(3) In lieu of an informal dispute resolution conference, the reporting entity may request a formal appeal under WAC 182-51-1800 in writing, in a manner that provides proof of receipt, within twenty-eight calendar days after receipt of the preliminary notice of violation and fine(s). Upon receipt for the reporting entity's request, the authority issues a final notice of violation and fine(s) with an explanation of the reporting entity's administrative hearing rights under WAC 182-51-1800.

(4) If the reporting entity does not request an informal dispute resolution conference or formal appeal within twenty-eight calendar days after receipt of the preliminary notice of violation and fine(s), the authority issues a final notice of violation with an explanation of the reporting entity's administrative hearing rights under WAC 182-51-1800.

#### NEW SECTION

**WAC 182-51-1700 Informal dispute resolution prior to a hearing.** (1) A reporting entity may informally dispute the authority's preliminary determination of a violation under this chapter.

(2) A reporting entity must submit a request for an informal dispute resolution conference to the authority in writing, in a manner that provides proof of receipt, within twenty-eight calendar days after receipt of the preliminary notice of violation and fine(s).

(3) Requests should specify:

(a) The name of the reporting entity requesting the informal dispute resolution conference and the reporting entity's, or representative's, mailing address, telephone number, and email address (if available);

(b) The items, facts, or conclusions in the preliminary notice of violation being contested; and

(c) The basis for contesting the authority's action, including any mitigating factors upon which the reporting entity relies and the outcome the reporting entity is seeking.

(4) If the agency grants the reporting entity's request for a dispute resolution conference, the conference occurs within sixty calendar days of the date the reporting entity received the authority's written acceptance of the request for a dispute resolution conference.

(5) The reporting entity must notify the authority of who will attend the dispute resolution conference on the reporting entity's behalf at least five business days before the conference.

(6) The authority may terminate the dispute resolution process at any time.

(7) Upon completion or termination of the informal dispute resolution process, the authority will issue a final notice of violation and fine(s).

(8) Nothing in this chapter prevents settlement discussions between the parties. All settlement discussions are informal and without prejudice to the rights of the participants in the discussions.

#### NEW SECTION

**WAC 182-51-1800 Administrative hearing (formal appeal) right.** (1) A reporting entity has a right to an administrative hearing (formal appeal), and any resulting appeals process available under chapters 34.05 RCW and 182-526 WAC, if the authority assesses a final notice of violation and fine(s) against the reporting entity under any section of chapter 43.71C RCW and this chapter. To the extent that there may be a conflict between the general provisions contained in chapter 182-526 WAC and this chapter, the more specific provisions in this chapter apply.

(2) A reporting entity may appeal both the assessed violation(s) and the amount of the fine(s) assessed in the final notice of violation and fine(s).

(3) A reporting entity must submit a request for formal hearing to the authority in writing, in a manner that provides proof of receipt, within twenty-eight calendar days after receipt of the final notice of violation and fine(s) under WAC 182-51-1700.

(4) Requests should specify:

(a) The name of the reporting entity requesting the hearing and the reporting entity's, or representative's, mailing address, telephone number, and email address (if available);

(b) The items, facts, or conclusions in the final notice of violation being contested; and

(c) The basis for contesting the authority's action, including any mitigating factors upon which the reporting entity relies and the outcome the reporting entity is seeking.

(5) At the administrative hearing and on appeal, the reporting entity bears the burden of proving by a preponderance of the evidence that it has complied with applicable laws, rules, regulations, and agreements.

(6) The administrative hearing process is governed by chapters 34.05 RCW and 182-526 WAC.

(7) The authority does not begin the collection process until a decision in the administrative hearing is issued and all levels of appeal have been exhausted.

(8) Interest on owed and outstanding fines continues to accrue at the rate of one percent per month or portion of a month, but it is not collected until a decision in the administrative hearing is issued and all levels of appeal have been exhausted.

**WSR 20-19-110  
PERMANENT RULES  
BOARD OF  
PILOTAGE COMMISSIONERS**

[Filed September 21, 2020, 8:16 a.m., effective October 22, 2020]

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

Purpose: The board is expanding the qualifications for pilot applicants to be more inclusive of sea service that demonstrates the essential qualities necessary for piloting in Washington state, as well as to bring additional clarity to the rules in preparation for the 2021 Marine Pilot Exam.

Citation of Rules Affected by this Order: Amending WAC 363-116-0751 Qualifications for pilot applicants.

Statutory Authority for Adoption: Chapter 88.16 RCW, Pilotage Act.

Adopted under notice filed as WSR 20-16-026 on July 24, 2020.

Changes Other than Editing from Proposed to Adopted Version: At the September 17, 2020, board meeting, one of the commissioners requested adding 300 GT (ITC) to the towing category on the chart, for formatting consistency. This was a housekeeping item only.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

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

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

Date Adopted: September 17, 2020.

Jaimie C. Bever  
Executive Director

AMENDATORY SECTION (Amending WSR 18-14-024, filed 6/26/18, effective 7/27/18)

**WAC 363-116-0751 Qualifications for pilot applicants.** (1) Sea service.

(a) In addition to meeting the preexamination requirements of RCW 88.16.090, pilot applicants must, before taking the examination provided in WAC 363-116-076, meet one of the following indicated service requirements (~~as master,~~) while holding a minimum license as mate/master of steam or motor vessels of not more than 1600 GRT or 3000 GT (ITC):

Vessel Type	Minimum Size	Waters	Minimum Time
Cargo or tank	5000 GRT or 10,000 GT (ITC)	Ocean or near coastal	1 year as master

Vessel Type	Minimum Size	Waters	Minimum Time
Cargo or tank	700 GRT or 1400 GT (ITC)	Ocean or near coastal	2 years as master
Cargo or tank	1600 GRT or 3000 GT (ITC)	Inland	2 years as master
Passenger or ferry	1600 GRT or 3000 GT (ITC)	Ocean, near coastal or inland	2 years as master
Towing	<del>((150)) 100</del> <u>100</u> GRT or <u>300</u> GT (ITC) <u>towing/barge combination greater than 1600 GRT or <del>((300)) 3000</del> GT (ITC)</u>	Ocean, near coastal or inland	2 years as master
Ship assist	<u>100 GRT or 300 GT (ITC)</u>	<u>Inland</u>	<u>2 years as master or 4 years sailing as a mate/master with a minimum of 1 year as master</u>
Articulated tug barge (ATB)	Combined 10,000 <del>((GRT))</del> <u>GT (ITC)</u>	Ocean or near coastal	4 years sailing as a mate/master with a minimum of 1 year as master
U.S. Flag government	3000 displacement tons	Ocean, near coastal or inland	2 years as commanding officer or master
Special purpose	1600 GRT or 3000 GT (ITC)	Ocean, near coastal or inland	2 years as master
<b>Other</b>			
<u>State-licensed pilot or Navy civil service pilot</u>	<u>1600 GRT or 3000 GT (ITC)</u>	<u>Ocean, near coastal or inland</u>	<u>2 years as pilot and 120 vessel moves</u>

<del>((Other</del>	Minimum Size	Waters	Minimum Time
<del>Professional-pilot association or government-employed pilot</del>	<del>1600 GRT or 3000 GT (ITC)</del>	<del>Ocean, near-coastal or inland</del>	<del>3 years as pilot)</del>

(b) Sea service is calculated based on days spent onboard a vessel while it is actively engaged in normal operations. "Sea service" does not include time onboard a vessel that is "laid up" or on "standby." In calculating sea service under this subsection (~~((1) of this section~~), a year of service shall equal three hundred sixty days of service on the vessel in the required capacity. Pilot applicants combining the above types of sea service shall have a total of at least two years of the various service times, except that one day of service as master on cargo, tank, or passenger/ferry vessels of at least 5000 GRT or 10,000 GT (ITC) shall be credited as two days of service time for the purpose of calculating such combined service times.

(c) Ship assist vessel sea service as mate must be on vessels where the mate is the sole vessel operator and acts independently of the master for twelve hours per day.

(2) In lieu of the requirements of subsection (1) of this section, a pilot applicant may substitute either:

(a) ~~Three years of service as an active member of an organized professional pilot association or as a government employed pilot during which periods the pilot applicant was actively engaged in piloting and docking vessels while holding a minimum license as a master of steam or motor vessels of not more than 1600 GRT or 3000 GT (ITC) upon oceans, near coastal waters or inland waters. For purposes of this section, piloting shall refer to piloting vessels in the capacity of the pilot in charge of navigation with no other responsibilities (either when piloting or not piloting) as a member of the ship's crew)~~ Two years of service as a state licensed pilot and active member of a professional pilot association or as a naval federal pilot during which periods the pilot applicant was actively engaged in maneuvering, docking and undocking vessels while holding a minimum license as a master of steam or motor vessels of not more than 1600 GRT or 3000 GT (ITC) upon oceans, near coastal waters or inland waters; or

(b) Two years of service as a commanding officer or master of U.S. flag government vessels of not less than 3000 displacement tons. The pilot applicant must hold at the time of application a minimum license as master of steam or motor vessels of not more than 1600 GRT or 3000 GT (ITC) upon oceans, near coastal waters or inland waters; or

(c) Two years of service as master of special purpose vessels of not less than 1600 GRT or 3000 GT (ITC) while holding a minimum license as master of steam or motor vessels of not more than 1600 GRT or 3000 GT (ITC), provided that the sea time making up the sea service was spent in charge of a vessel that can be documented to have been underway and to have required the type of ship-handling, navigation and leadership skills that the board finds necessary to provide the experience needed to become a pilot. Special purpose vessels may include fishing vessels, fishing processors, research vessels, offshore supply vessels, dredge vessels, and cable vessels. Special purpose vessels do not include drill ships. Evaluation of service time on special purpose vessels shall be made by the board on a case-by-case basis and shall not be approved unless the board finds the service to be the substantial equivalent of the sea service required in subsection (1)(a) and (b) of this section or (a) and (b) of this subsection ~~((2))~~. The determination of the board as to the suitability of service as master of a special purpose vessel will be final.

(3) As used in this section these terms shall have the following meanings:

(a) Cargo or tank vessels shall refer to vessels primarily engaged in the transportation of cargo between points.

(b) Passenger vessels shall refer to vessels primarily engaged in the transportation of passengers between points. This shall include yachts only to the extent and for such times that such vessels are actively engaged in moving passengers between points.

(c) Ferry vessels shall refer to vessels primarily engaged in the transportation of vehicles and passengers between points.

(d) Towing vessels shall refer to vessels primarily engaged in commercial towing ~~((of vessels or in ship assist work))~~.

(e) Ship assist vessels shall refer to vessels primarily engaged in assisting ships dock, undock, and maneuver.

~~((e))~~ (f) GRT shall refer to gross register tonnage (domestic).

~~((f))~~ (g) GT (ITC) shall refer to gross tonnage measured in accordance with the requirements of the *1969 International Convention on Tonnage Measurement of Ships*.

~~((g))~~ (h) Master shall refer to the person of master's rank on the vessel's station bill or muster list or other such document who, in the event of an emergency or the sounding of a general alarm, is required to be on the bridge and in charge. If there is no such designation, the term master shall refer to the person of master's rank and pay who is ultimately in charge of the navigation of the vessel as reflected in the vessel's official log book, or there being no official log book, the bridge log of the vessel.

~~((h))~~ (i) Mate shall refer to the person of mate's rank (third mate, second mate, chief mate or simply mate) whose duties include regular bridge watchkeeping.

(4) It will be the responsibility of the pilot applicant to provide adequate documentation to enable the board to set forth and verify sea service in the manner specified in the board's application form.

The board will not provide applicants with a final determination verifying service until it receives an application form. An applicant will not get official notification of whether he/she qualifies to sit for the examination until the board reviews a formal application. In the event an applicant is working on a vessel other than one of the five specified in subsection (1)(a) of this section, e.g., a special purpose vessel, he/she will be required to provide the board with sufficient documentation to demonstrate to the board the amount of time involved in the navigation of a vessel underway.

## WSR 20-19-113

### PERMANENT RULES

### DEPARTMENT OF LICENSING

[Filed September 21, 2020, 10:54 a.m., effective October 22, 2020]

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

Purpose: RCW 46.12.600(4) requires market value threshold (MVT) be increased when the target of \$50.00 has been reached. The target has been reached and now requires WAC 308-56A-460 Destroyed or wrecked vehicle—Reporting—Rebuilt, to be updated. The new MVT amount is eight thousand ten dollars.

Citation of Rules Affected by this Order: Amending WAC 308-56A-460(3).

Statutory Authority for Adoption: RCW 46.12.600.

Adopted under notice filed as WSR 20-11-065 on May 19, 2020.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

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

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

Date Adopted: September 21, 2020.

Damon Monroe  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 19-13-008, filed 6/6/19, effective 7/7/19)

**WAC 308-56A-460 Destroyed or wrecked vehicle—Reporting—Rebuilt.** (1) **What are total loss, destroyed, salvage, and wrecked vehicles?** For the purposes of this section:

(a) A total loss vehicle is one whose destruction has been reported to the department as described in RCW 46.12.600 by an insurer (insurance companies and self-insurers as described in RCW 46.29.630);

(b) A destroyed vehicle is one whose destruction has been reported to the department as described in RCW 46.12.600 by the vehicle's owner;

(c) A salvage vehicle as defined in RCW 46.04.514;

Note: When used in this section, the terms "destroyed" and "destroyed vehicle" include total loss, destroyed, and salvage vehicles.

(d) A wrecked vehicle as defined in RCW 46.80.010(6).

Note: A vehicle may be considered destroyed or wrecked when the evidence of ownership is a salvage certificate/title, insurance company bill of sale, or wrecker bill of sale from any jurisdiction, or when the evidence of ownership indicates the vehicle may be a destroyed vehicle not reported to the department.

(2) **How are vehicles reported to the department as total loss, destroyed, salvage, or wrecked?**

(a) Insurers may report total loss vehicles to the department:

(i) Electronically through the department's online reporting system. Insurers must destroy ownership documents for a vehicle reported this way; or

(ii) By submitting the certificate of title or affidavit in lieu of title indicating the vehicle is "DESTROYED"; or

(iii) By submitting a completed total loss claim settlement form (~~(TD 420-074)~~).

Note: Reports of total loss vehicles must include the insurer's name, address, and the date of loss.

(b) Registered or legal owners report a vehicle as destroyed by submitting the certificate of title or affidavit in lieu of title indicating the vehicle is "DESTROYED," and must include the registered owner's name, address, and date of loss.

(c) Licensed wreckers report wrecked vehicles as required in RCW 46.80.090.

(d) For vehicles six through twenty years old a statement whether or not the vehicle meets the market value threshold amount as defined in RCW 46.12.600 is also required.

(3) **What is the current market value threshold amount?** The current market value threshold amount is ~~((seven thousand nine hundred thirty))~~ eight thousand ten dollars.

(4) **How is the market value threshold amount determined?** Using the current market value threshold amount described in RCW 46.12.600 each year the department will add the increased value if the increase is equal to or greater than fifty dollars.

(5) **What if the "market value threshold amount" is not provided as required?** If the market value threshold amount is not provided when required, the department would treat the report of destruction as if the market value threshold as described in RCW 46.12.600 has been met. The certificate of title will be branded according to WAC 308-56A-530.

(6) **What documentation is required to obtain a certificate of title after a vehicle is destroyed?** After a vehicle has been reported destroyed or wrecked and is rebuilt, you must submit the following documentation to the department in order to obtain a new certificate of title:

(a) Application for certificate of title as described in RCW 46.12.530;

(b) Certificate of vehicle inspection as described in WAC 308-56A-150;

(c) Bill of sale from the insurer, owner, or wrecker who reported the vehicle's destruction to the department.

(i) Bills of sale from insurers must include a representative's signature and title of office;

(ii) Bills of sale from insurers and wreckers do not need to be notarized;

(iii) Bills of sale from owners shown on department records must be notarized or certified;

(iv) A bill of sale is not required when owners shown on department records retain a destroyed vehicle and apply for a new certificate of ownership;

(v) Releases of interest from lien holder(s) or proof of payment such as a canceled check bearing a notation that it has been paid by the bank on which it was drawn or a notarized statement on a receipt from the legal owner that the debt is satisfied are required when the vehicle is retained by the registered owner(s).

(d) Odometer disclosure statement, if applicable.

(7) **What is required of a Washington licensed vehicle dealer prior to selling a destroyed or wrecked vehicle?** Except as permitted by RCW 46.70.101 (1)(b)(viii), before a dealer may sell a destroyed or wrecked vehicle under their Washington vehicle dealer license, the dealer must:

(a) Rebuild the vehicle to standards set by the state of Washington or the federal government pertaining to the construction and safety of vehicles; and

(b) Obtain a vehicle inspection by the Washington state patrol; and

(c) Apply for and receive a certificate of ownership for the vehicle, issued in the name of the vehicle dealer.

(8) **Once a destroyed or wrecked vehicle is rebuilt, do the license plates remain with the vehicle?** Whether or not

the license plates remain with the vehicle depends on the circumstance:

(a) Standard issue license plates may remain with a destroyed vehicle unless they are severely damaged or the vehicle was issued a department temporary permit described in WAC 308-56A-140;

(b) Replacement license plates are required for wrecked vehicles since Washington licensed wreckers are required by WAC 308-63-070 to remove them;

(c) Special license plates may remain with or be transferred to a destroyed or wrecked vehicle;

(d) Applicants may retain the current license plate number as provided for in RCW 46.16A.200, unless the vehicle was issued a department temporary permit as described in WAC 308-56A-140.

(9) **Will the certificate of ownership or registration certificate indicate "WA REBUILT"?** Salvage or wrecked vehicles meeting the criteria described in WAC 308-56A-530 will be branded "WA REBUILT."

**WSR 20-19-115**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 20-199—Filed September 21, 2020, 12:29 p.m., effective October 22, 2020]

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

Purpose: As stated in the CR-102, there are two proposals related to hunting contests. The first excludes from hunting contests those species that do not have bag limits. The second makes it illegal to participate in a hunting contest that is not permitted by the department. The purpose of both of these proposals are to address concerns that some of our public have raised about people holding contests without a permit and the fact that these contests promote killing large numbers of those species that do not have a bag limit which can be perceived negatively by some members of the public.

Citation of Rules Affected by this Order: Amending WAC 220-412-110 Hunting contests and 220-413-060 Hunting restrictions.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 71.12.047, 77.32.050, and 77.32.252.

Adopted under notice filed as WSR 20-13-008 [20-13-088] on June 16, 2020.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, Repealed 0.

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

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

New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 11, 2020.

Larry M. Carpenter, Chair  
Washington Department of  
Fish and Wildlife Commission

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

**WAC 220-412-110 Hunting contests.** A person wishing to hold a hunting contest must comply with the following provisions:

(1) Only organizations filed with the state of Washington as a nonprofit corporation may apply for a hunting contest permit.

(2) Hunting contest permit applications shall be submitted to the department 30 days prior to the date for which the contest is proposed.

(3) Applications must include the permit fee required by ~~((RCW 77.32.211))~~ the department. The fee will be returned if the permit is denied.

(4) Contests ~~((are restricted to the species approved on the permit))~~ involving unclassified and classified wildlife species without a bag limit are prohibited and will not be permitted.

(5) Total value of prizes per contest shall not exceed \$2000.

(6) Entry fees or requests for donations are prohibited.

(7) It is unlawful to fail to comply with the conditions of a hunting contest permit.

Hunting contests which may adversely affect wildlife resources will be denied.

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

**WAC 220-413-060 Hunting restrictions.** (1) It is unlawful to hunt wildlife during any modern firearm deer or elk season with any firearm 240 caliber or larger, or containing slugs or buckshot, unless the hunter has a valid license, permits and tags for modern firearm deer or elk seasons are in his or her possession.

(a) This subsection does not apply to people hunting bear, cougar, mountain goat, mountain sheep, or turkey.

(b) A violation of this subsection is punishable under RCW 77.15.410 or 77.15.430, depending on the circumstances of the violation.

(2)(a) It is unlawful to hunt any wildlife at night or wild animals, except rabbits and hares, with dogs (hounds) during the month of October or November during the dates established for eastern and western Washington modern firearm deer or elk general seasons. During the modern firearm deer and elk general seasons the hunting hours are one-half hour before sunrise to one-half hour after sunset. A violation of this subsection is punishable under RCW 77.15.430, Unlawful hunting of wild animals—Penalty.

(b) It is unlawful to use hounds to hunt black bear, cougar (EXCEPT as pursuant to RCW 77.15.245), coyote, and bobcat year-round. A violation of this subsection is punish-



able under RCW 77.15.410, Unlawful hunting of big game—Penalty, or RCW 77.15.430, depending on the circumstances of the violation.

(3) It is unlawful to participate in a hunting contest for which no permit has been issued by the department. A violation of this subsection is punishable as an infraction under RCW 77.15.160 (6)(b).

**WSR 20-19-122**  
**PERMANENT RULES**  
**CONSERVATION COMMISSION**

[Filed September 21, 2020, 3:49 p.m., effective October 22, 2020]

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

Purpose: The proposal modifies existing and establishes new procedures and requirements for entering and exiting the office of conservation district supervisor, including, but not limited to, election and appointment of conservation district supervisors, for the purpose of populating and maintain[ing] conservation district governing boards.

Citation of Rules Affected by this Order: New WAC 135-110-385, 135-110-780, 135-110-790 and 135-110-795; repealing WAC 135-110-120, 135-110-340, 135-110-370, 135-110-470, 135-110-515, 135-110-530, 135-110-540, 135-110-820 and 135-110-950; and amending WAC 135-110-110, 135-110-140, 135-110-180, 135-110-200, 135-110-210, 135-110-220, 135-110-230, 135-110-240, 135-110-320, 135-110-330, 135-110-350, 135-110-355, 135-110-360, 135-110-380, 135-110-410, 135-110-430, 135-110-440, 135-110-460, 135-110-500, 135-110-520, 135-110-560, 135-110-570, 135-110-580, 135-110-600, 135-110-610, 135-110-620, 135-110-640, 135-110-650, 135-110-700, 135-110-710, 135-110-730, 135-110-740, 135-110-750, 135-110-760, 135-110-800, 135-110-920, and 135-110-970.

Statutory Authority for Adoption: RCW 89.08.040, 89.08.160, 89.08.190, 89.08.200.

Adopted under notice filed as WSR 20-14-15 [20-14-015] on June 22, 2020.

Changes Other than Editing from Proposed to Adopted Version: Proposed changes of the word "must" to "shall" in the entire chapter were rejected, sections affected are WAC 135-110-130, 135-110-140, 135-110-150, 135-110-160, 135-110-170, 135-110-180, 135-110-200, 135-110-210, 135-110-220, 135-110-230, 135-110-240, 135-110-250, 135-110-300, 135-110-320, 135-110-355, 135-110-360, 135-110-400, 135-110-410, 135-110-420, 135-110-430, 135-110-440, 135-110-450, 135-110-460, 135-110-500, 135-110-520, 135-110-550, 135-110-560, 135-110-600, 135-110-610, 135-110-620, 135-110-630, 135-110-640, 135-110-650, 135-110-700, 135-110-710, 135-110-720, 135-110-730, 135-110-750, 135-110-760, 135-110-770, 135-110-810, 135-110-900, 135-110-910, 135-110-920 and 135-110-960; the definition of "candidate required information" was rewritten to read [""] "Candidate required information" means the factual information a candidate must provide on the candidate information form to be eligible for election[""]; WAC 135-110-370 was repealed in its entirety; "as per the provisions in WAC 135-110-970" was added to WAC 135-110-740.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 4, Amended 37, Repealed 9.

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

Date Adopted: September 21, 2020.

Ron Shultz  
Director of Policy and  
Intergovernmental Relations

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-110 Definitions.** (~~"Absentee ballot" or "mail-in ballot" means a ballot issued to a voter before election day that can be delivered to the conservation district or designated election supervisor on or before the day of the election.~~)

"Ballot" or "official ballot" means the final, preprinted ballot containing the name of each declared, nominated candidate found eligible, and at least one line where a voter may enter the name of a write-in candidate.

"Ballot box" means a container secured against tampering into which paper ballots are placed.

"Candidate" means a person seeking the office of elected conservation district supervisor who has provided the required candidate information to the conservation district by the filing deadline and whose eligibility to run and to serve has been verified by the conservation district.

"Candidate optional information" means information provided by the candidate about their candidacy.

"Candidate required information" means the factual information a candidate must provide on the candidate information form to be eligible for election.

"Canvass" and "canvassing" means to examine carefully or scrutinize the election returns for authenticity and proper count.

"Certify" and "certification" means the canvassing of returns and the verification of substantial compliance with these procedures by the conservation commission.

"Conservation commission" means the Washington state conservation commission governing board and all deputies and representatives authorized to act on its behalf.

"Conservation commission board" and "conservation commission governing board" means the governing board of the Washington state conservation commission.

"Conservation district" means a governmental subdivision of the state of Washington organized under the provisions of chapter 89.08 RCW Conservation districts.

"Conservation district supervisors" and "district supervisors" means the governing board of a conservation district, composed of elected and appointed supervisors.

~~("Declared nominated candidate" and "nominated candidate" means an individual found to be a qualified district elector who is eligible and who has submitted the candidate information required, including a qualified nominating petition, to the conservation district by the filing deadline, and the conservation district has verified the eligibility of the candidate.)~~

"Declared vacant" means a declaration by the conservation commission that a conservation district supervisor position is vacant.

~~("Declared write-in candidate" means a person seeking the office of elected supervisor who has provided the required candidate information to the conservation district by the filing deadline, and the conservation district has found the person eligible.)~~

"Double envelope balloting" means a paper balloting system consisting of an inner and an outer envelope, where a ballot is placed in an inner envelope with no personally identifying marks on it, and then the inner envelope with ballot is placed in the outer envelope upon which the voter has provided sufficient information to allow polling officers to verify the eligibility of the voter.

"Due notice" or "notice" means a notice published at least twice, with at least six days between publications, in a publication of general circulation within the affected area. If there is no such publication, a notice may be posted at a reasonable number of public places within the area where it is customary to post notices concerning county and municipal affairs. There is no requirement for publication of a legal advertisement in a newspaper of record. However, if a legal advertisement is published, a copy of the announcement as published, showing the date of publication, is sufficient proof of publication.

"Elected supervisor" means a qualified district elector:

- (a) Who received more valid votes than any other candidate; and
- (b) Whose election has been certified and announced by the conservation commission.

"Election supervisor" means an individual or entity appointed by conservation district supervisors to organize, coordinate, and manage tasks related to the election of conservation district supervisors. Only the conservation district board of supervisors may set election dates and appoint the election supervisor.

"Electioneering" means the act of soliciting or advocating votes for a specific candidate, or speaking for or against a specific candidate within three hundred feet of a ballot box or voting place.

"Farm and agricultural land" is defined in RCW 89.08.-020 as follows: "Farm and agricultural land" means either:

- (a) Land in any contiguous ownership of twenty or more acres devoted primarily to agricultural uses;
- (b) Any parcel of land five acres or more, but less than twenty acres devoted primarily to agricultural uses, which has produced a gross income from agricultural uses equivalent to one hundred dollars or more per acre per year for three

of the five calendar years preceding the date of application for classification under this chapter; or

(c) Any parcel of land of less than five acres devoted primarily to agricultural uses which has produced a gross income of one thousand dollars or more per year for three of the five calendar years preceding the date of application for classification under this chapter.

(d) Agricultural lands shall also include farm woodlots of less than twenty and more than five acres and the land on which appurtenances necessary to production, preparation or sale of the agricultural products exist in conjunction with the lands producing such products.

(e) Agricultural lands shall also include any parcel of land of one to five acres, which is not contiguous, but which otherwise constitutes an integral part of farming operations being conducted on land qualifying under this section as "farm and agricultural lands."

"Farm operator" or "operator of a farm" means a person who operates farm and agricultural land.

"Filing deadline" means four weeks before election day in the current election cycle, or, if a local filing deadline that is more than four weeks before election day is adopted by formal action of the conservation district supervisors, that adopted filing deadline.

"Full term," "regular term," and "full term of office" means a three-year term of office.

"Incumbent" means the person in present possession of the office of conservation district supervisor.

"Landowner" means a person with legal title of record to real property in the conservation district at the time of filing for election or applying for appointment.

"Mail-in election" means an election in which mail-in ballots are provided before election day to qualified voters. Voters return completed ballots to a receiving location or address authorized by the conservation district board of supervisors.

"Malfeasance" means wrongful conduct that affects, interrupts, or interferes with the performance of a supervisor's official duty.

"Mid-term" and "mid-term vacancy" means a vacancy in the office of conservation district supervisor, when such vacancy occurs before the full term of office has been fulfilled.

"Municipal officer" means all elected and appointed officers of a conservation district, together with all deputies and assistants of such an officer, and all persons exercising or undertaking to exercise any of the powers or functions of a municipal officer.

"Neglect of duty" means failure by a supervisor or supervisors to perform mandatory duties. Such duties include, but are not limited to:

- (a) Compliance with laws and rules imposed by local, state, and federal government entities;
- (b) Attendance at a sufficient number of board meetings so as to not impede the work of the conservation district;
- (c) Maintaining a full and accurate record of district business;
- (d) Securing of surety bonds for board officers and employees;
- (e) Carrying out an annual financial audit;

(f) Providing for keeping current a comprehensive long-range program;

(g) Providing for preparation of an annual work plan;

(h) Providing for informing the general public, agencies, and occupiers of lands within the conservation district of conservation district plans and programs;

(i) Providing for including affected community members in regard to current and proposed plans and programs; and

(j) Providing for the submission of the conservation district's proposed long-range program and annual work plan to the conservation commission.

~~("Nominating petition" means a list of signatures of nominators who desire a candidate's name be placed on the official ballot for a conservation district election.~~

~~"Nominator" means a qualified district elector who signs a petition nominating an individual seeking the office of elected supervisor.)~~

"Poll list" or "polling list" means a list of voters who voted in an election.

"Polling officer" means a person appointed by the election supervisor to verify voter eligibility, assure compliance with this rule in and around the polling place, issue ballots, count ballots, and verify the unofficial ballot count in writing to conservation district supervisors.

"Poll site" and "polling site" means a location where votes are collected in a ballot box.

"Poll-site election" and "walk-in election" means an election in which a voter signs in on a poll list, receives a ballot from a polling officer, enters a vote for a candidate on the ballot, and places the ballot in a ballot box at a polling place supervised or monitored by polling officers.

"Provisional ballot" or "contested ballot" means a paper ballot issued to a voter whose qualifications as a qualified district elector cannot be determined at the time the paper ballot is issued. A provisional ballot consists of two envelopes and a paper ballot.

"Qualified district elector" means a registered voter in the county where the district is located and who resides within the conservation district boundary. Qualified district elector means an individual residing within the boundary of the conservation district and registered to vote in a county where the conservation district is located.

~~("Qualified nominating petition" means a nominating petition which contains at least twenty-five signatures of nominators.)~~

"Remote election" means an election in which ballots are returned by some means other than for a poll-site election. A mail-in election is a type of remote election.

"Short term" or "short term of office" means a term of office less than three years in duration.

"Significant noncompliance" means the failure to follow the requirements in this rule that may affect the outcome of an election or deny voters their right of privacy in voting.

"Supervisor" means an elected or appointed board member of a local conservation district governing board, in which the governing board is referred to as the board of supervisors.

"Supervisor-elect" means a supervisor who received more valid votes than any of the other candidates running for the same position in a conservation district election, but the

election has not yet been certified by the conservation commission.

"Tie" or "election tie" means an election where no candidate has received a simple majority of votes cast by qualified district electors, and two or more candidates have received the same number of votes cast by qualified district electors.

"Undeclared write-in candidate" means an individual who has not submitted required candidate information to the conservation district and who has not submitted a qualified nominating petition by the filing deadline.

"Voter" means a person who submits a ballot in a conservation district election.

"Withdrawal of candidacy" and "to withdraw" means a written notice, signed and dated by the candidate, and delivered to the conservation district, stating the person's desire to be removed from consideration for the office of conservation district supervisor.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-140 Records retention.** (1) Unissued or undeliverable ballots must be retained for ten days after the election is certified and the official results announced, and then may be destroyed.

(2) All ballots submitted by voters, and all candidate filing records (including candidate information, ~~(nominating petitions,))~~ verification of eligibility, and withdrawals of candidacy, must be retained for ~~((six))~~ twelve months after the election is certified and the official results announced, and then may be destroyed.

(3) The conservation commission shall abide by the records retention schedule as set out for conservation district elections in the local government common records retention schedule (CORE), as established by the office of the secretary of state, Washington state archives, and its own records retention policy.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-180 Disruptive acts prohibited.** (1) Behavior at the physical polling site that disrupts or interferes with the election of conservation district supervisors is prohibited.

(2) A conservation district supervisor, polling officer, or election supervisor may require disruptive persons to leave a physical poll-site election. Such disruptive persons must remain at least three hundred feet away from the polling place or facility where official election functions are being performed.

(3) A conservation district supervisor, polling officer, or election supervisor may enlist the aid of law enforcement personnel to assist in identifying disruptive persons and preventing such persons from disrupting or interfering with any election processes at the physical polling site.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-200 Conservation district must hold election.** A conservation district must hold an election during January, February, or March in the year a three-year term of an elected supervisor (~~will~~) expires.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-210 Conservation district must adopt election resolution.** (1) Each year the conservation district (~~supervisors must~~) board shall adopt a resolution establishing the election.

(2) The election resolution adopted by the conservation district supervisors must include the following information:

- (a) The name of the conservation district;
  - (b) For a poll site election, the date(s), the physical location(s), and the times polls will open and close for each polling place;
  - (c) The election methods selected for the election;
  - (d) A list showing the name of each elected and appointed conservation district supervisor with a term expiring in the election and appointment cycle covered by the resolution;
  - (e) The filing deadline for candidates as set out in WAC 135-110-330;
  - (f) Identification of an individual appointed by the conservation district to fulfill the duties of election supervisor; (~~and~~)
  - (g) The dated signature of at least one conservation district supervisor attesting to this information; and
  - (h) A reasonable deadline for voters to request a ballot.
- (3) This information must be provided to the conservation commission by the candidate filing deadline.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-220 Due notice required before and after election resolution.** (1) (~~Due notice of the intent to adopt a resolution establishing the election must be provided by the conservation district to potential qualified district electors of the conservation district prior to adopting the resolution.~~

~~(2))~~ Not later than seven days following the conservation district's adoption of the election resolution, due notice containing all election information in the resolution must be published, using the filing deadline as the date for determining compliance with due notice requirements.

~~((3))~~ (2) If a conservation district adopts a standing resolution establishing a repeating annual election schedule, due notice of expiring terms and the filing deadline must be provided to constituents, using the filing deadline as the date for determining compliance with due notice requirements.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-230 Conservation district appoints election supervisor.** (1) The conservation district supervisors must appoint a person or firm as the election supervisor.

- (2) The election supervisor:
  - (a) Serves as the primary point of contact between the conservation district and the conservation commission for the conservation district election;
  - (b) Organizes, coordinates, and facilitates election-related activities of the conservation district;
  - (c) Assures that required election procedures are properly conducted; (~~and~~)
  - (d) Assures that required information is properly transmitted to the conservation commission; and
  - (e) Shall be trained in election policy and procedure as per conservation commission requirements.
- (3) Conservation district supervisors remain responsible for conducting an election in compliance with this section.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-240 Election may be on-site, remote, or both.** (1) The conservation district supervisors must choose the method of the election using physical poll sites, or by remote methods, or by any combination of these methods that assures fair treatment of candidates and voters, provides privacy in voting, and complies with all other parts of this rule.

(2) Every physical poll site must be open for at least four consecutive hours at a time convenient for voters, and every physical poll site must have at least two polling officers present during the hours the polls are open.

(3) Ballots submitted by mail must be postmarked no later than the day of the election, or the last day if multiple election days. Ballots submitted by physical delivery must be received at the district office by the announced final polling time of the day of election, or the last day if multiple election days. Remote ballots transmitted by any other means must be transmitted by the last day of election.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-320 Submission of candidate information required to be elected.** (1) (~~Only persons who file candidate information with the conservation district by the filing deadline and who are found by the conservation district to be eligible to be elected may be elected, unless no person has filed for the office by the filing deadline.~~

~~(2) The name of a person who files candidate information by the filing deadline but does not file a qualified nominating petition must not be printed on the official ballot, but may be elected as a declared write-in candidate.~~

~~(3))~~ Information to be submitted to the conservation district by a person seeking to be a candidate for election must include:

- (a) The name of the conservation district;

(b) The person's name, residential address, mailing address (if different), and phone number;

(c) Whether the person is a registered voter in the county where the conservation district is located;

(d) Whether the person resides inside the conservation district boundary;

(e) Whether the person is a landowner or an operator of a farm; and

(f) The dated signature of the person attesting to the accuracy of the information so provided.

(2) For purposes of this section, an electronic signature contained in an electronic submittal of the candidate information is acceptable.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-330 Filing deadline.** ~~((+))~~ The filing deadline for candidates is set by the district board and shall be, at a minimum, not less than four weeks before election day.

~~((2) By formal action the conservation district supervisors may make the filing deadline on a day more than four weeks before the election.)~~

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-350 Types of candidacy.** (1) A declared candidate is a qualified district elector who has submitted candidate required information to the conservation district by the filing deadline.

(2) ~~A ((declared nominated candidate is a declared candidate who has submitted a qualified nominating petition to the conservation district by the filing deadline.~~

(3) ~~An undeclared)) write-in candidate is a person who has not submitted candidate required information to the conservation district by the filing deadline((, and who has not submitted a qualified nominating petition by the filing deadline)).~~

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-355 Election supervisor must verify candidate eligibility.** (1) The election supervisor must verify the eligibility of each person who submits candidate information required by WAC 135-110-320. The election supervisor may call upon the county auditor or the conservation commission for assistance in verifying eligibility.

(2) For a candidate to be eligible, the election supervisor must make a determination that:

(a) The name of the person who filed candidate information is the correct legal name of the individual;

(b) That the person submitted candidate information by the filing deadline;

(c) ~~((That the person submitted a valid nominating petition by the filing deadline;~~

~~((+))~~ That the person was a qualified district elector on the day of filing; and

~~((+))~~ (d) That at least two of the three elected conservation district supervisors on the conservation district board of supervisors will be landowners or operators of farms if the person is elected.

~~((3) For a nominated candidate, the conservation district must also verify that at least twenty-five eligible nominators signed the nominating petition.)~~

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-360 ((Undeclared)) A write-in candidate may be elected if no eligible person files.** (1) If ~~((no person has filed by the filing deadline, or if))~~ the election supervisor finds ineligible all persons who filed, then only ~~((undeclared))~~ write-in candidates may be elected.

(2) The ~~((undeclared))~~ write-in candidate, deemed the unofficial winner, must submit required candidate information to the conservation district~~((, and))~~ within ~~((four weeks~~ ~~(=))~~ twenty-eight calendar days~~(=))~~ following the first date of election, and the election supervisor must verify the eligibility of the unofficial winner to be elected and to serve.

(3) If the conservation district is unable to verify eligibility of the unofficial winner within ~~((four weeks))~~ twenty-eight calendar days of the election, the unofficial winner is disqualified. The person receiving the next highest vote count must then submit required candidate information and the conservation district must verify his or her eligibility as described above.

(4) If the ~~((undeclared))~~ write-in candidate who is the unofficial winner is found ineligible and no other persons received votes, ~~((the conservation commission will officially announce another full term of office for the incumbent on the third Thursday in May, but only upon verification by the conservation district of the eligibility of the incumbent to serve in the office of elected conservation district supervisor))~~ the provisions of WAC 135-110-740 shall apply.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-380 Candidate may withdraw candidacy in writing.** (1) Before election day, a candidate may withdraw his or her candidacy by submitting a written request to the conservation district.

(2) A person who withdraws his or her candidacy is not eligible to be elected in the current election.

(3) If a person withdraws his or her candidacy, the conservation district is not required to revise official ballots.

(4) In the event that some, but not all candidates withdraw, the unofficial winner of the election will be the remaining eligible candidate receiving the highest vote count after all the votes are tallied for each candidate, including those candidates who have withdrawn but remain on the ballot as per subsection (3) of this section.

NEW SECTION

**WAC 135-110-385 Effect of votes cast for withdrawn, deceased, or ineligible candidate.** (1) If the name of a deceased, withdrawn, or ineligible candidate appears on the

ballot under this chapter, the votes cast for the candidate shall be counted and entered on the official election returns in the same manner as for the other candidates.

(2) If the deceased, withdrawn, or ineligible candidate receives the vote required for election, the resulting vacancy shall be filled in the regular manner.

(3) If the deceased, withdrawn, or ineligible candidate and another candidate tie for the most votes in an election in which a plurality vote is sufficient for election, the other candidate is considered to be elected. If more than one other candidate is tied with the deceased, withdrawn, or ineligible candidate, the winner of the election shall be determined by resolving the tie between the other candidates in the regular manner for resolving a tie vote in the election as set out in WAC 135-110-730.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-410 Conservation district must set deadline for requesting ~~((absentee and mail-in))~~ ballots be mailed or sent.** To provide sufficient time for voters to obtain and return ballots to the conservation district, the conservation district must set a reasonable deadline for voters to request ~~((an absentee or mail-in))~~ a ballot be sent or mailed to them.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-430 Conservation district may publish candidate-provided optional information.** (1) To assist voters in the selection of a candidate during voting, a conservation district may publish candidate optional information provided by ~~((nominated and declared write-in))~~ candidates.

(2) If a conservation district chooses to publish information about candidates, it must provide equal opportunity for publication and equivalent space to each ~~((nominated and declared write-in))~~ candidate.

(3) Candidate information provided by candidates and published by the conservation district may be mailed or delivered to voters before election day, but may not be provided to voters at poll sites on election day.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-440 Employees and municipal officers of district must not be polling officers.** A conservation district supervisor, employee, intern or municipal officer may not serve as a polling officer in the conservation district election, unless the person is the election supervisor appointed by the conservation district supervisors. Conservation commission employees cannot serve as polling officers.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-460 Polling officers verify voters, issue ballots and count votes.** (1) A polling officer must verify a voter is a qualified district elector before issuing a ballot

to the voter. If a polling officer cannot verify a voter is a qualified district elector before a ballot is issued, a provisional ballot shall be issued to the voter.

(2) At a poll-site election, at least two polling officers must be present and in control of the ballot box(es) at all times while the polls are open.

(3) At a poll-site election, a provisional ballot must be issued if the voter's eligibility to vote cannot be determined during polling. A voter whose eligibility cannot be determined may only vote on a provisional ballot.

(4) Polling officers count votes cast by voters.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-500 Conservation district must create official ballot.** (1) A conservation district must create a ballot and provide a ballot to each person who ~~((wishes))~~ requests a ballot to vote in the conservation district election.

(2) The official ballot must:

(a) List the name of each candidate the conservation district has verified as eligible ~~((and who has submitted a qualified nominating petition));~~

(b) List names on the ballot in alphabetical order by last name, from top to bottom, with an empty checkbox or blank space next to each candidate's name; and

(c) Contain at least one blank line where a voter can enter the name of a ~~((declared write-in candidate, or if there are no declared candidates, the name of an undeclared))~~ write-in candidate.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-520 ~~((Absentee))~~ Ballots must be provided on request.** (1) ~~((Absentee))~~ Ballots must be provided to eligible voters upon request, and voters need not provide proof of any special condition to obtain ~~((an absentee))~~ a ballot.

(2) ~~((Absentee))~~ Ballots may be returned to the conservation district by mail, by personal delivery, or by electronic means previously approved by the election supervisor.

Ballot may be provided electronically if a suitable means of determining voter eligibility and preventing voter fraud are utilized.

(4) At a poll-site election, a provisional ballot shall be provided to any individual wishing to vote when the individual cannot be verified as eligible to vote prior to the issuance of a ballot.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-560 ~~((Mail-in, absentee, and provisional ballots must be double-envelope balloting))~~ Ballot security.** Ballots cast ~~((in a mail-in election, or as a paper absentee ballot, or as a paper provisional ballot,))~~ must use a double-envelope paper balloting system, in which:

(1) The voter places the completed ballot inside the inner envelope;

(2) The inner envelope is sealed to prevent tampering(~~(; and)~~);

(3) No personally identifying marks are to be placed on the inner envelope;

~~((3))~~ (4) The inner envelope containing the completed ballot is placed in the outer envelope; ~~((and~~

(4)) ~~(5)~~ The voter provides sufficient identifying information on, or inserted into, the outer envelope to allow polling officers to verify the eligibility of the voter;

(6) For electronic voting, the functional equivalent of a paper ballot shall be used to assure security; and

(7) The provisions listed above shall not apply to a ballot cast during a poll-site election by an individual that has been verified to be eligible to vote in the election.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-570 Election supervisor safeguards ballots ~~((except in a poll-site election))~~.** Ballots cast ~~((by mail-in or absentee methods))~~ are to be received and safeguarded by the election supervisor.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-580 Poll sites must be accessible.** ~~((No))~~ Every poll site ~~((selected by the conservation district may appear on the county auditor's list of inaccessible polling sites))~~ shall be accessible, as described in RCW ~~((29A.16-140))~~ 29A.40.160(5).

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-600 Electioneering prohibited at poll sites.** (1) On election day, information provided by candidates may not be provided to voters within three hundred feet of the poll site.

(2) ~~((Names of nominated and declared write-in candidates must))~~ Candidate required information shall not be publicly posted at the poll~~((s))~~ site or poll sites.

(3) Candidate optional information shall not be publicly posted at the poll site or poll sites.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-610 ~~((Every voter must be verified as eligible.))~~ Voter eligibility shall be verified before a ballot is counted.** ~~((1) Every individual requesting a)~~ Every ballot ~~((for any conservation district election))~~ must be verified as being cast by or returned by a qualified district elector before ~~((his or her))~~ the ballot is counted.

~~((2) At a poll-site election, a provisional ballot must be issued if the voter's eligibility to vote cannot be determined during polling and the individual wishes to vote.))~~

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-620 Conservation district must provide polling officers at each poll site.** The conservation district must provide at least two polling officers at each poll site, except the election supervisor or their designee may substitute for one polling officer at one poll site.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-640 Conservation district must assure privacy in voting.** (1) The ballot choice made by a voter must not be seen by any other person during the act of voting or the placing of the ballot in the ballot box, except in circumstances necessary to allow a disabled voter to cast their ballot, as set out in WAC 135-110-250.

(2) Paper ballots must be placed into ballot boxes. Electronic ballots must assure at least the same level of security and privacy as provided by paper balloting.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-650 Polls to close at published time but may be extended.** (1) ~~((Polling officers are to close the polls))~~ The polls must be closed at the published time, unless the ~~((polls are extended by the election supervisor.~~

~~(2) The))~~ election supervisor ~~((may))~~ extends the time polls are open, if needed, to accommodate voters.

~~((3))~~ (2) Persons waiting in line at a poll site when the polls are scheduled to be closed must be allowed to check in and vote.

~~((4))~~ (3) Poll times may not be less than advertised ~~((unless the incumbent was automatically reelected as allowed under WAC 135-110-370)).~~

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-700 Opening ballots.** (1) Only polling officers and the election supervisor may open and count ballots.

(2) ~~((Mail-in and provisional))~~ Ballots must be verified as having been submitted by a qualified district elector before the outer envelope is opened, and upon verification, the outer envelope must be opened and set aside, and the inner envelope placed into the ballot box.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-710 Polling officers to retain custody of ballots until counted.** Ballots cast in a poll-site election ~~((are to))~~ shall remain in the custody and control of polling officers until all ballots have been counted and properly tallied.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-730 Tie in unofficial election results.**

(1) In the case of two or more candidates receiving the most votes, and each receives an equal number of votes, polling officers must recount the ballots, as directed by the election supervisor.

(2) If a tie is verified by the recount, the winner of the election must be determined by drawing of names as provided under RCW 29A.60.221 to ensure the drawing is equitable to all affected candidates.

(a) If no more than two candidates are tied, a coin toss may be used in lieu of drawing names to determine the unofficial winner.

~~(b) ((If more than two candidates are tied, only a drawing of names may be used to determine the unofficial winner.~~

~~(e))~~ A representative of the conservation commission must be present for any drawing of names or coin toss.

~~((c))~~ (c) The candidate whose name is drawn (or who wins the coin toss) becomes the supervisor-elect.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-740 When no eligible candidate is elected.** ~~((H))~~ When no eligible candidate is elected, ~~((the conservation commission will officially announce another full term of office for the incumbent on the third Thursday in May, but only upon verification by the conservation district of the eligibility of the incumbent to serve in the office of elected conservation district supervisor.~~

~~(2) If the conservation district determines the incumbent conservation district supervisor is no longer eligible to serve in the office of elected conservation district supervisor, or if the incumbent has resigned,))~~ the position is deemed vacant and the conservation district may appoint an eligible successor, as per the provisions of WAC 135-110-970, following the official announcement by the conservation commission.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-750 Ballot results must be reported.**

(1) The results of balloting must be reported to the conservation commission within ~~((twenty-eight))~~ fourteen days of the election, unless, after consultation with the conservation commission, the election supervisor determines more time is needed.

(2) Ballot results must be reported separately for each poll site, for each mail-in or remote election, and for all ~~((absentee))~~ ballots. If the same poll site is open on more than one day, separate reports for each day are required.

(3) Information provided about the election must include:

(a) The name of the conservation district; and

(b) Whether the report is for a specific poll site or for a mail-in election, and if for a poll site, the location of the poll site and the date of polling must be specified.

(4) Information provided about candidates must include:

(a) The name of each candidate; and

(b) For each candidate, the number of eligible votes counted and the total number of votes cast for the person.

(5) The total number of ballots invalidated must be reported.

(6) The conservation district must identify the unofficial winner ~~((and whether the unofficial winner is a nominated candidate, a declared write-in candidate, or an undeclared write-in candidate)).~~

(7) The ballot results report must be signed and dated by the polling officers who counted the ballots. If the election supervisor participated in counting ballots, the election supervisor must also sign the report.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-760 Conservation commission canvasses returns, determines compliance, announces winners.**

(1) The conservation commission must canvass the returns of conservation district elections to verify election results and to determine if the election was properly conducted according to the requirements in these procedures.

(2) The conservation commission must announce the official election results for each conservation district election the conservation commission has certified as being substantially in compliance with this rule. The conservation commission may decline to announce the official results of elections found not to be substantially in compliance with this rule.

~~(3) ((The conservation commission must act on elections for full term positions annually at its regular meeting on the third Thursday in May.~~

~~(4))~~ Action at any other time will be for short terms of office or for any other reason that the conservation commission deems such later action to be necessary.

NEW SECTION

**WAC 135-110-780 Declaration voiding an election.**

The office held by a conservation district supervisor is vacant upon the decision of a court of competent jurisdiction declaring his or her election to be void.

NEW SECTION

**WAC 135-110-790 Procedure for contesting elections.**

(1) Written complaints regarding conservation district elections shall be received by the commission using an online form no later than April 30th.

(2) Complaints will be forwarded to the executive director of the conservation commission.

(3) The executive director will notify the chair and vice chair of the conservation commission, the chair of the affected conservation district, the election supervisor of the affected conservation district, conservation commission staff assigned to that conservation district, and the commission's elections officer that a complaint has been filed with the conservation commission.

(4) The executive director will inform the chair and vice chair of the conservation commission of the estimated length of the investigation, and will provide updates on the status of the investigation, as needed.



(a) The conservation commission's elections officer will investigate the complaint. The investigation shall include personal interviews with the person filing the complaint, the conservation district board, appropriate conservation district staff, polling officer, and members of the public, as appropriate and necessary.

(b) When the investigation is completed, the conservation commission's elections officer shall make a written report to the executive director of the results of the investigation.

(5) The executive director shall review the report of the investigation and make a determination that:

(a) The complaint does not rise to the level of significant noncompliance with election procedure sufficient to warrant the noncertification of the election, as per WAC 135-110-795; or

(b) The complaint does rise to the level of significant noncompliance with election procedure sufficient to warrant the noncertification of the election, as per WAC 135-110-795.

(6) If the executive director determines that:

(a) The complaint does not rise to the level of significant noncompliance with election procedure sufficient to warrant the noncertification of the election, the executive director may recommend that the election be certified and announced by the conservation commission.

(b) The complaint does rise to the level of significant noncompliance with election procedure sufficient to warrant the noncertification of the election, the executive director may recommend that the election not be certified and announced, and request that the conservation district hold another election as per the procedure in WAC 135-110-780.

#### NEW SECTION

**WAC 135-110-795 Compliance.** (1) The conservation commission shall make a determination of significant noncompliance when parties act in variance of this section.

(2) The conservation commission may decline to certify an election found in significant noncompliance. If the conservation commission certifies an election found to be in significant noncompliance, the conservation commission shall provide written rationale.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-800 Emergency relocation or rescheduling of election.** (1) A conservation district may change the date(s) or location(s) or times for poll sites only in an emergency.

(2) The election supervisor may declare an emergency when adverse conditions may negatively affect the health or safety of voters or the timely return of absentee ballots. Such conditions may include, but are not limited to:

- (a) Weather conditions;
- (b) Damage to roads, buildings, or other infrastructure;
- (c) Chemical spills;
- (d) Fire and smoke;
- (e) Volcanic eruption, earthquake, landslides, mudflows, and floods; or

(f) Disruptions in information network infrastructure.

(3) When an emergency is so declared, the election supervisor should make reasonable efforts to inform all conservation district supervisors (~~and~~), candidates listed on the ballot, and the conservation commission.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-920 Resignation from office.** (1) A conservation district supervisor may resign from public office at any time, and for any reason.

(2) Resignations must be made in writing to the conservation commission or to the conservation district.

(3) Resignations are effective on the earliest date received, unless the incumbent has specified a future date for the resignation to become effective.

AMENDATORY SECTION (Amending WSR 10-21-084, filed 10/19/10, effective 11/19/10)

**WAC 135-110-970 Replacement of elected supervisors.** A vacancy in the office of elected conservation district supervisor is filled by the conservation district board of supervisors after consultation with the conservation commission, for the remainder of the unexpired term, subject to the verification of supervisor qualifications by the conservation district and notification to the conservation commission. (~~While~~) Due notice to the affected community (~~(is strongly recommended, it is not)~~) shall be required.

(1) The application process shall require, at a minimum, that the board of supervisors pass a resolution:

(a) Acknowledging that the office is vacant;

(b) The dates of the four-week period for applicants to apply; and

(c) Describing the minimum requirements of applicants.

(2) The resolution shall then be advertised to the public at least one week prior to the commencing of the four-week period, and in the same manner as the due notice of an election resolution.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 135-110-120 Compliance.

WAC 135-110-340 Only nominated candidates may appear on official ballot.

WAC 135-110-370 Incumbent automatically reelected if no other person files.

WAC 135-110-470 Election supervisor may perform polling officer duties.

WAC 135-110-515 Conservation district must make ballots available.

WAC 135-110-530 Provisional ballots must be provided when voter eligibility is in question.

- WAC 135-110-540 Functional equivalent of paper ballot required.
- WAC 135-110-820 Conservation commission to be informed.
- WAC 135-110-950 Declaration voiding an election.

**WSR 20-19-133**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed September 22, 2020, 1:37 p.m., effective October 23, 2020]

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

Purpose: The purpose of this rule making is to update a reference to align with RCW 70.24.017. The adoption also includes a housekeeping update as well as reformatting to reflect clear rule writing. No requirements were affected.

**Amended Sections:**

**WAC 296-823-13005 Make hepatitis B vaccination available to employees.**

- Updated subsection (3) as it is part of the requirements not the exception.

**WAC 296-823-16010 Test the blood of the source person.**

- Updated Note 1 due to RCW 70.24.017. Law now provides for orders for testing for any bloodborne pathogen.

Citation of Rules Affected by this Order: Amending WAC 296-823-13005 and 296-823-16010.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050.

Adopted under notice filed as WSR 20-14-084 on June 30, 2020.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, Repealed 0.

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

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

Date Adopted: September 22, 2020.

Joel Sacks  
Director

AMENDATORY SECTION (Amending WSR 15-23-086, filed 11/17/15, effective 12/18/15)

**WAC 296-823-13005 Make hepatitis B vaccination available to employees.**

~~((EXEMPTION:~~

~~1. You are not required to provide the hepatitis B vaccination series to employees who meet any of the following:~~

~~a. The employee has previously received the complete hepatitis B vaccination series;~~

~~b. An antibody test has revealed that the employee is immune to hepatitis B;~~

~~e. There are medical reasons not to give the vaccine.~~

~~2. You are not required to provide the hepatitis B vaccination series to employees assigned to provide first aid only as a secondary duty, when you do all of the following:~~

~~a. Make hepatitis B vaccination available to all unvaccinated first aid providers who render assistance in any situation involving the presence of blood or OPIM. Vaccination must be made available as soon as possible, but no later than twenty-four hours after the incident;~~

~~b. Provide a reporting procedure that ensures all first aid incidents that involve the presence of blood or OPIM are reported before the end of the work shift;~~

~~c. Document first aid incidents that involve blood or OPIM, include at least:~~

~~i. The names of all first aid providers who rendered assistance;~~

~~ii. The time and date of the first aid incident;~~

~~iii. A description of the first aid incident.~~

~~3.) (1) Employers must make sure that the hepatitis B vaccination series is available to all employees who have occupational exposure and that it is:~~

~~((a.)) (a) Available at no cost to the employee;~~

~~((b.)) (b) Available to the employee at a reasonable time and location;~~

~~((c.)) (c) Administered by or under the supervision of a licensed physician or by another licensed health care professional;~~

~~((d.)) (d) Provided according to recommendations of the United States Public Health Service that are current at the time these evaluations and procedures take place;~~

~~((e.)) (e) Available to any employee who initially declines the vaccination but later decides to accept it while they are still covered by this chapter;~~

~~((f.)) (f) Made available after the employee has received training required by this chapter and within ten working days of initial assignment.~~

~~((Reference:~~

~~You can find more information about the United States Public Health Service recommendations for hepatitis B vaccination at <http://www.cdc.gov/ncidod/diseases/hepatitis/b/index.htm>.~~

~~((1)) (2) You must make sure participation in a prevaccination screening program for antibody status is not a condition for receiving hepatitis B vaccination.~~

~~((2)) (3) You must make sure that all laboratory tests are conducted by a laboratory licensed by the state or Clinical Laboratory Improvement Amendments (act) (CLIA).~~

~~((3))~~ (4) Make sure employees who decline the hepatitis B vaccination, offered by you, sign a form with this statement:

"I understand that due to my occupational exposure to blood or other potentially infectious materials I may be at risk of acquiring hepatitis B virus (HBV) infection. I have been given the opportunity to be vaccinated with hepatitis B vaccine, at no charge to myself. However, I decline hepatitis B vaccination at this time. I understand that by declining this vaccine, I continue to be at risk of acquiring hepatitis B, a serious disease. If in the future I continue to have occupational exposure to blood or other potentially infectious materials and I want to be vaccinated with hepatitis B vaccine, I can receive the vaccination series at no charge to me."

**(5) Exemptions:**

(a) You are not required to provide the hepatitis B vaccination series to employees who meet any of the following:

(i) The employee has previously received the complete hepatitis B vaccination series;

(ii) An antibody test has revealed that the employee is immune to hepatitis B;

(iii) There are medical reasons not to give the vaccine.

(b) You are not required to provide the hepatitis B vaccination series to employees assigned to provide first aid only as a secondary duty, when you do all of the following:

(i) Make hepatitis B vaccination available to all unvaccinated first-aid providers who render assistance in any situation involving the presence of blood or OPIM. Vaccination must be made available as soon as possible, but no later than twenty-four hours after the incident;

(ii) Provide a reporting procedure that ensures all first-aid incidents that involve the presence of blood or OPIM are reported before the end of the work shift;

(iii) Document first-aid incidents that involve blood or OPIM, include at least:

(A) The names of all first-aid providers who rendered assistance;

(B) The time and date of the first-aid incident;

(C) A description of the first-aid incident.

**Reference:**

You can find more information about the United States Public Health Service recommendations for hepatitis B vaccination at <http://www.cdc.gov/ncidod/diseases/hepatitis/b/index.htm>.

**Helpful tool:**

**Sample declination form:**

The declination form can help you document employees who have declined the hepatitis B vaccine. You can find a copy of this form in the resource section of this chapter.

**AMENDATORY SECTION** (Amending WSR 15-23-086, filed 11/17/15, effective 12/18/15)

**WAC 296-823-16010 Test the blood of the source person.**

~~((EXEMPTIONS: When the source individual is already known to be infected with HBV or HIV, you do not need to test their status.))~~

You must arrange to test the source individual's blood for HBV and HIV as soon as feasible after getting their consent.

(1) If you do not get consent, you must establish that legally required consent can not be obtained.

(2) When the law does not require the source individual's consent, their blood, if available, must be tested and the results documented.

(3) Exemption: When the source individual is already known to be infected with HBV or HIV, you do not need to test their status.

**Note:** 1. ~~((Your local health authority enforces rules regarding HIV testing and consent which are found in WAC 246-100-206, Special diseases—Sexually transmitted diseases, and WAC 246-100-207, Human immunodeficiency virus (HIV) testing. These rules can be found at: <http://www.leg.wa.gov/wac> and click on Title 246-WAC.))~~ If a source individual refuses testing, a worker may request that a local or state health officer order bloodborne pathogen testing. Authority for health officer orders is given in RCW 70.24.340.

2. Source testing: According to the Centers for Disease Control and Prevention (CDC), hepatitis C virus (HCV) infection is the most common chronic bloodborne infection in the United States. The CDC recommends testing of the source person for the presence of anti-HCV antibody. (Updated *U.S. Public Health Service Guidelines for the Management of Occupational Exposures to HBV, HCV, and HIV and Recommendations for Postexposure Prophylaxis*, MMWR, June 29, 2000/50(RR11); 1-42.)

**WSR 20-19-136**

**PERMANENT RULES**

**EMPLOYMENT SECURITY DEPARTMENT**

[Filed September 22, 2020, 2:57 p.m., effective October 23, 2020]

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

Purpose: Rules are necessary for the employment security department (ESD) to implement provisions of the long-term services and supports trust program under Title 50B RCW. WAC 192-01-001 dictates what chapters of Title 192 WAC are assigned to programs administered by ESD and include unemployment insurance under Title 50 RCW, Paid family and medical leave under Title 50A RCW, and portions of the long-term services and supports trust program under Title 50B RCW. Amendments to WAC 192-01-001 are necessary to assign chapters 192-900 through 192-999 WAC to the long-term services and supports trust program.

Citation of Rules Affected by this Order: Amending WAC 192-01-001 Rule governance statement.

Statutory Authority for Adoption: RCW 50B.04.020.

Adopted under notice filed as WSR 20-15-155 on July 22, 2020.

A final cost-benefit analysis is available by contacting April Amundson, ESD, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-486-2816, Washington relay 711 (contact Teresa Eckstein at 360-507-9890 for accommodations), email [rules@esd.wa.gov](mailto:rules@esd.wa.gov), website [https://opentownhall.com/portals/289/forum\\_home](https://opentownhall.com/portals/289/forum_home).

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

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: September 22, 2020.

April Amundson  
Policy and Rules Manager  
Long-Term Services and Supports

AMENDATORY SECTION (Amending WSR 18-22-080, filed 11/2/18, effective 12/3/18)

**WAC 192-01-001 Rule governance statement.** The employment security department administers several distinct programs in Titles 50 (~~and~~), 50A, and portions of 50B RCW through the Washington Administrative Code. The provisions in chapters 192-04 through 192-499 WAC apply to the Employment Security Act in Title 50 RCW and other programs administered by the employment security department (~~(, except for the paid family and medical leave program. Chapter 192-500 WAC and thereafter ()).~~). The provisions in chapters 192-500 through ((192-999)) 192-899 WAC((?)) apply to the paid family and medical leave program in Title 50A RCW. The provisions in chapters 192-900 through 192-999 WAC apply to portions of the long-term services and supports trust program in Title 50B RCW administered under the employment security department's authority.