

WSR 20-22-005
PROPOSED RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES

[Filed October 21, 2020, 1:41 p.m.]

October 21, 2020
 Brenda Villarreal
 Rules Coordinator

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 110-300-0100 General staff qualifications.

Hearing Location(s): On December 8, 2020, telephonic. Oral comments may be made by calling 360-902-8084 and leaving a voicemail that includes the comment and an email or physical mailing address where the department of children, youth, and families (DCYF) will send its response. Comments received through and including December 8, 2020, will be considered.

Date of Intended Adoption: December 9, 2020.

Submit Written Comments to: DCYF Rules Coordinator, P.O. Box 40975, email dcyf.rulescoordinator@dcyf.wa.gov, submit comments online at <https://dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/online>, by December 8, 2020.

Assistance for Persons with Disabilities: Contact DCYF rules coordinator, phone 360-902-7956, email dcyf.rulescoordinator@dcyf.wa.gov, by December 4, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Allow licensed early learning providers until August 1, 2026, to comply with child care licensing rules that require a provider to hold an early childhood education initial certificate, an early childhood education short certificate, or the equivalent.

Reasons Supporting Proposal: The proposed amendment is necessary to implement section 2, chapter 342, Laws of 2020.

Statutory Authority for Adoption: RCW 43.216.065.

Statute Being Implemented: RCW 43.216.755.

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

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Tyler Farmer, Seattle, 360-628-2151; Implementation and Enforcement: DCYF, statewide.

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

A cost-benefit analysis is not required under RCW 34.05.328. DCYF is not among the agencies listed as required to comply with RCW 34.05.328 (5)(a)(i). DCYF does not voluntarily make that section applicable to the adoption of the proposed rules.

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: RCW 43.216.755.

AMENDATORY SECTION (Amending WSR 20-11-026, filed 5/13/20, effective 6/13/20)

WAC 110-300-0100 General staff qualifications. All early learning providers must meet the following requirements prior to working:

(1) **Family home early learning program licensees** work from their private residence to provide early learning programming to a group of no more than twelve children present at one time.

(a) A family home licensee must meet the following qualifications upon application:

(i) Be at least eighteen years old;

(ii) Have a high school diploma or equivalent; and

(iii) Complete the applicable preservice requirements pursuant to WAC 110-300-0105.

(b) A family home licensee must meet the following qualifications:

~~(i) (Family home licensees must have an ECE initial certificate, or equivalent as approved and verified in the electronic workforce registry by the department as follows:~~

~~(A) A family home licensee licensed prior to August 1, 2019, must complete an ECE initial certificate or equivalent within five years of the date this section becomes effective;~~

~~(B) A family home licensee licensed August 1, 2019, or later must complete an ECE initial certificate or equivalent within five years of licensure; and~~

~~(ii) Upon completion of the ECE initial certificate or equivalent, family home licensees must complete an ECE short certificate or equivalent within two years, as approved and verified in the electronic workforce registry by the department.~~

~~(A) If a family home licensee already has an existing ECE initial certificate or equivalent, the licensee must complete an ECE short certificate or equivalent within five years of licensure by the department.~~

~~(B) Beginning August 1, 2024, the family home licensee must complete an ECE short certificate or equivalent within three years.~~

~~(iii) Have their continued professional development progress documented annually.~~

~~(e)) Have an ECE initial certificate or equivalent by August 1, 2026, or within five years of being licensed by the department, whichever occurs later;~~

~~(ii) Have an ECE short certificate or equivalent by August 1, 2028, or within two years of receiving an ECE initial certificate; and~~

~~(iii) Beginning August 1, 2026, a family home licensee must:~~

~~(A) Have an ECE initial certificate or equivalent within five years of being licensed by the department; and~~

~~(B) Have an ECE short certificate or equivalent within two years of receiving an ECE initial certificate.~~

~~(c) Family home licensees must have all ECE certificates or equivalent qualifications approved and verified in the department's electronic workforce registry;~~

(d) Family home licensees must have their professional development progress documented annually;

(e) Family home licensees must provide the following services:

(i) Be on-site for the daily operation of the early learning program fifty percent or more of weekly operating hours, or designate a person with the qualifications of a family home licensee to be on-site when not present;

(ii) Comply with these foundational quality standards;

(iii) Develop a curriculum philosophy, communicate the philosophy to all early learning program staff and parents, and train staff to ensure the philosophy serves all children in the early learning program;

(iv) Have knowledge of community resources available to families, including resources for children with special needs and the ability to share these resources with families; and

(v) Oversee early learning program staff and support staff in creating and maintaining staff records.

(2) **Center early learning program licensees** must meet the requirements of a center director, listed in subsection (3) of this section, or hire a center director who meets the qualifications prior to being granted an initial license. Center licensees who fulfill the role of center director in their early learning program must complete all trainings and requirements for center directors.

(3) **Center directors or assistant directors** manage the early learning program and set appropriate program and staff expectations.

(a) A center director must meet the following qualifications:

(i) Be at least eighteen years old;

(ii) Have an ECE state certificate or equivalent as approved and verified in the electronic workforce registry by the department as follows:

(A) A center director (~~((working at the time this chapter becomes effective))~~) must complete an ECE state certificate or equivalent (~~((within five years of the date this section becomes effective))~~) by August 1, 2026;

(B) A center director hired or promoted after this chapter becomes effective must have an ECE state certificate or equivalent within five years of the time of hire.

(iii) Have two years of experience as a teacher of children in any age group enrolled in the early learning program and at least six months of experience in administration or management or a department approved plan;

(iv) Complete the applicable preservice requirements, pursuant to WAC 110-300-0105;

(v) If a center director does not meet the minimum qualification requirements, the center early learning program must employ an assistant director or program supervisor who meets the minimum qualifications of these positions;

(vi) Have their continued professional development progress documented annually.

(b) An assistant director must meet the following qualifications:

(i) Be at least eighteen years old;

(ii) Have an ECE state certificate or equivalent as approved and verified in the electronic workforce registry by the department as follows:

(A) An assistant director (~~((working at the time this chapter becomes effective))~~) must complete an ECE state certificate or equivalent (~~((within five years of the date this section becomes effective))~~) by August 1, 2026;

(B) An assistant director hired or promoted after this chapter becomes effective must have an ECE state certificate or equivalent within five years of the time of hire.

(ii) Have two years of experience as a teacher of children in any age group enrolled in the early learning program or two years of experience in administration or management, or a department approved plan;

(iv) Complete the applicable preservice requirements, pursuant to WAC 110-300-0105;

(v) Have their continued professional development progress documented annually.

(c) A center director or assistant director or equivalent must provide the following services:

(i) Be on-site for the daily operation of the early learning program fifty percent or more of weekly operating hours up to forty hours per week, or designate a person with the qualifications of an assistant director, program supervisor, or equivalent. A center director may act as a substitute teacher if acting as a substitute does not interfere with management or supervisory responsibilities;

(ii) Comply with foundational quality standards;

(iii) Develop a curriculum philosophy, communicate the philosophy to all early learning program staff and parents, and train staff to ensure the philosophy serves all children in the early learning program (or designate a program supervisor with this responsibility);

(iv) Have knowledge of community resources available to families, including resources for children with special needs and be able to share these resources with families; and

(v) Oversee professional development plans for early learning program staff including, but not limited to:

(A) Providing support to staff for creating and maintaining staff records;

(B) Setting educational goals with staff and locating or coordinating state-approved training opportunities for staff; and

(C) Observing and mentoring staff.

(4) **Center program supervisors** plan the early learning program services under the oversight of a center director or assistant director.

(a) A program supervisor must meet the following qualifications:

(i) Be at least eighteen years old;

(ii) Have an ECE state certificate or equivalent (~~((within five years of the date this section becomes effective or from the time of hire or promotion, if a director or assistant director does not have an ECE state certificate or equivalent as required by this section))~~) by August 1, 2026;

(iii) Have two years of experience as a teacher of children in any age group enrolled in any early learning program;

(iv) Complete the applicable preservice requirements, pursuant to WAC 110-300-0105; and

(v) Have their continued professional development progress documented annually.

(b) A program supervisor performs the following duties:

(i) Guide the planning of curriculum philosophy, implementation, and environmental design of the early learning program;

(ii) Comply with foundational quality standards;

(iii) Act as a teacher or director as long as it does not interfere with the program supervisor's primary responsibilities; and

(iv) Manage the professional development plans and requirements for staff as needed.

(c) One person may be the center director, assistant director, and the program supervisor when qualified for all positions, provided that all requirements of subsection (3)(a) and (b) of this section are met.

(5) Any individual hired or promoted into a position detailed in subsections (2), (3), and (4) of this section who does not have an ECE state certificate or equivalent as required under subsections (3)(a)(ii), (b)(ii), and (4)(a)(ii) of this section must instead meet the following requirement as approved and verified in the electronic workforce registry by the department:

| | |
|--|--|
| If a center is licensed for this number of children: | Then the director, assistant director, or program supervisor must have completed at least this number of college quarter credits in early childhood education core competencies: |
| (a) 12 or fewer | 10 |
| (b) 13 to 24 | 25 |
| (c) 25 or more | 45 |

(6) **Lead teachers** are responsible for implementing the center or family home early learning program. Lead teachers develop and provide a nurturing and responsive learning environment that meets the needs of enrolled children.

(a) A lead teacher must meet the following qualifications:

(i) Be at least eighteen years old;

(ii) Have a high school diploma or equivalent; and

(iii) Complete the applicable preservice requirements, pursuant to WAC 110-300-0105.

(b) A center lead teacher must meet the following requirements:

(i) ~~((Have an ECE initial certificate or equivalent as approved and verified in the electronic workforce registry by the department within five years of the date this section becomes effective, or five years from being employed or promoted into this position at any licensed early learning program;~~

~~(ii) Progress towards an ECE short certificate or equivalent. A center lead teacher hired after this chapter becomes effective must have an ECE short certificate within two years of receiving an ECE initial certificate, or seven years from being employed or promoted into this position at any licensed early learning program; and~~

~~(iii) Have their professional development progress documented annually.~~

(e) A family home lead teacher must meet the following requirements:

~~(i) Have an ECE initial certificate or equivalent as approved and verified in the electronic workforce registry by the department within five years of the date this section becomes effective, or from being employed or promoted into this position at any licensed early learning program;~~

~~(ii) Prior to being in charge of their early learning program fifty percent or more of the time, a family home lead teacher must meet the qualifications of the family home licensee and complete or be registered in orientation training required in WAC 110-300-0105(1); and~~

~~(iii) Have their professional development progress documented annually.)~~ Have an ECE initial certificate or equivalent by August 1, 2026, or within five years of being hired or promoted into the position, whichever occurs later;

(ii) Have an ECE short certificate or equivalent by August 1, 2028, or within two years of receiving an ECE initial certificate; and

(iii) Beginning August 1, 2026, a center lead teacher must:

(A) Have an ECE initial certificate or equivalent within five years of being hired or promoted into this position; and

(B) Have an ECE short certificate or equivalent within two years of receiving an ECE initial certificate.

(c) Have all ECE certificates or equivalent qualifications approved and verified in the department's electronic workforce registry;

(d) Have their professional development progress documented annually; and

(e) A family home lead teacher must meet the following requirements:

(i) Have an ECE initial certificate or equivalent by August 1, 2026, or within five years of being hired or promoted into the position, whichever occurs later;

(ii) Beginning August 1, 2026, a family home lead teacher must have an ECE initial certificate or equivalent within five years of being hired or promoted into the position;

(iii) Have all ECE certificates or equivalent qualifications approved and verified in the department's electronic workforce registry; and

(iv) Have their professional development progress documented annually.

(7) **Assistant teachers** help a lead teacher or licensee provide instructional support to children and implement developmentally appropriate programs in center or family home early learning programs.

(a) An assistant teacher must meet the following qualifications:

(i) Be at least eighteen years old;

(ii) Have a high school diploma or equivalent; ~~((and))~~

~~(iii) Have ((a minimum of an ECE initial certificate or equivalent as approved and verified in the electronic workforce registry by the department within five years of the date this section becomes effective, or from being employed or promoted to this position at any licensed early learning program;~~

~~(iv)))~~ an ECE initial certificate or equivalent by August 1, 2026, or within five years of being hired or promoted into this position, whichever occurs later;

(iv) Beginning August 1, 2026, an assistant teacher must have an ECE initial certificate or equivalent within five years of being hired or promoted into the position.

(v) Complete the applicable preservice requirements, pursuant to WAC 110-300-0105; and

~~((v))~~ (vi) Have their professional development progress documented annually.

(b) Assistant teachers may work alone with children with regular, scheduled, and documented oversight and on-the-job classroom training from the classroom's assigned lead teacher who is primarily responsible for the care of the same group of children for the majority of their day.

(c) For continuity of care, assistant teachers can act as a substitute lead teacher up to two weeks. If longer than two weeks, the provider must notify the department with a plan to manage the classroom.

(8) **Aides** provide classroom support to an assistant teacher, lead teacher, program supervisor, center director, assistant director, or family home licensee. Aides must meet the following qualifications:

(a) Be at least fourteen years old;

(b) Have a high school diploma or equivalent, or be currently enrolled in high school or an equivalent education program;

(c) Complete the applicable preservice requirements, pursuant to WAC 110-300-0105;

(d) Have their professional development progress documented annually; and

(e) Aides may be counted in the staff-to-child ratio if they are working under the continuous oversight of a lead teacher, program supervisor, center director, assistant director, assistant teacher, or family home licensee.

(i) Aides working nineteen or fewer hours per month can be counted towards staff-to-child ratio with applicable preservice requirements pursuant to WAC 110-300-0105 but without in-service training requirements pursuant to WAC 110-300-0107 (1)(a).

(ii) Aides who work more than nineteen hours per month and who have a cumulative twelve months of employment must complete applicable preservice requirements detailed in WAC 110-300-0105 and the in-service training detailed in WAC 110-300-0107 (1)(a).

(9) **Other personnel** who do not directly care for children and are not listed in subsections (1) through (8) of this section must meet the following qualifications:

(a) Complete and pass a background check, pursuant to chapter 110-06 WAC;

(b) Have a negative TB test, pursuant to WAC 110-300-0105; and

(c) Complete program based staff policies and training, pursuant to WAC 110-300-0110.

(10) **Volunteers** help at early learning programs. Volunteers must meet the following qualifications:

(a) Be at least fourteen years old (volunteers must have written permission to volunteer from their parent or guardian if they are under eighteen years old);

(b) Work under the continuous oversight of a lead teacher, program supervisor, center director, assistant director, assistant teacher, or family home licensee;

(c) Regular, ongoing volunteers may count in staff-to-child ratio if they:

(i) Complete and pass a background check, pursuant to chapter 110-06 WAC;

(ii) Complete a TB test, pursuant to WAC 110-300-0105;

(iii) Complete the training requirements, pursuant to WAC 110-300-0106;

(iv) Complete program based staff policies and training, pursuant to WAC 110-300-0110; and

(v) Have their professional development progress documented annually.

(d) Occasional volunteers must comply with (a) and (b) of this subsection and cannot count in staff-to-child ratio. Occasional volunteers may include, but are not limited to, a parent or guardian helping on a field trip, special guest presenters, or a parent or guardian, family member, or community member helping with a cultural celebration.

WSR 20-22-037

WITHDRAWAL OF PROPOSED RULES STATE BOARD OF EDUCATION

[Filed October 27, 2020, 11:27 a.m.]

The state board of education requests withdrawal of proposed rules WSR 20-19-022 filed by the board on September 4. The proposed changes to chapter 180-16 WAC would have made permanent emergency rules previously adopted by the board. However, we are not able to prepare the required school district impact statement in time for the hearing and therefore are requesting to cancel the hearing and withdraw the CR-102. The agency will refile when the required statement is ready.

Randy Spaulding
Executive Director

WSR 20-22-038

PROPOSED RULES DEPARTMENT OF LABOR AND INDUSTRIES

[Filed October 27, 2020, 2:20 p.m.]

Continuance of WSR 20-19-132.

Preproposal statement of inquiry was filed as WSR 20-06-060.

Title of Rule and Other Identifying Information: Chapter 296-17 WAC, General reporting rules, audit and recordkeeping, rates and rating system for Washington workers' compensation insurance; and chapter 296-17A WAC, Classifications for Washington workers' compensation insurance.

Hearing Location(s): On October 27, 2020, at 1 p.m. Zoom hearing. Join electronically at <https://zoom.us/j/97481806932>, Meeting ID: 974 8180 6932, Passcode: 3B^K 7QVm. Joining by phone: +1-253-215-8782 US (Tacoma), Meeting ID: 974 8180 6932, Passcode: 43372117; and on October 29, 2020, at 1 p.m. Join Zoom meeting electronically

at <https://zoom.us/j/97217538063>, Meeting ID: 972 1753 8063, Passcode: Oct2920!. Joining by phone: +1-253-215-8782 US (Tacoma), Meeting ID: 972 1753 8063, Passcode: 22230074. The hearings start at 1:00 p.m. and will continue until all oral comments are received.

Date of Intended Adoption: November 30, 2020.

Submit Written Comments to: Jo Anne Attwood, P.O. Box 44148, Olympia, WA 98504-4148, email JoAnne.Attwood@Lni.wa.gov, fax 360-902-4988, by November 6, 2020, by 5 p.m.

Assistance for Persons with Disabilities: Contact Jo Anne Attwood, phone 360-902-4988, fax 360-902-5797, email JoAnne.Attwood@Lni.wa.gov, by October 25, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of labor and industries (L&I) is filing a continuance of the proposal to extend the written comment [comment] period by one week from October 30, 2020, to November 6, 2020. This will allow stakeholders more time to provide comments on the proposal.

Reasons Supporting Proposal: This proposal will ensure the United States Department of Energy (DOE) contractors and subcontractors will be covered by the state fund for workers' compensation insurance while working at the DOE Hanford site. This new classification and rating system will ensure that appropriate levels of premium are collected to offset losses for this work.

Statutory Authority for Adoption: RCW 51.16.035.

Statute Being Implemented: RCW 51.16.035.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Jo Anne Attwood, Tumwater, 360-902-4777; Implementation: Keith Bingham, Tumwater, 360-902-4826; and Enforcement: Victoria Kennedy, Tumwater, 360-902-4997.

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

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required per RCW 34.05.328 (5)(b)(vi), as the proposed rules adjust rates pursuant to legislative standards.

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

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

October 27, 2020

Joel Sacks
Director

NEW SECTION

WAC 296-17-89510 Department of Energy rates. These rates apply to businesses contracting with the Department of Energy.

Effective January 1, 2021

| Class | Accident Fund | Stay at Work | Medical Aid Fund | Supplemental Pension Fund | Composite Rate |
|-------|---------------|--------------|------------------|---------------------------|----------------|
| 7002 | 0.2303 | 0.0034 | 0.1340 | 0.1372 | 0.5049 |
| 7004 | 5.5371 | 0.0858 | 2.1073 | 0.1372 | 7.8674 |
| 7005 | 4.2295 | 0.0657 | 1.5088 | 0.1372 | 5.9412 |
| 7006 | 0.2322 | 0.0035 | 0.1071 | 0.1372 | 0.4800 |
| 7007 | 1.5358 | 0.0236 | 0.7287 | 0.1372 | 2.4253 |
| 7008 | 3.3528 | 0.0519 | 1.2354 | 0.1372 | 4.7773 |
| 7009 | 3.7630 | 0.0580 | 1.5417 | 0.1372 | 5.4999 |
| 7010 | 4.8838 | 0.0752 | 2.1108 | 0.1372 | 7.2070 |
| 7011 | 7.5947 | 0.1172 | 3.0774 | 0.1372 | 10.9265 |
| 7015 | 7.5947 | 0.1172 | 3.0774 | 0.1372 | 10.9265 |

Note: The premiums assessed using these rates are not subject to experience rating (WAC 296-17-855) or retrospective rating (chapter 296-17B WAC).

NEW SECTION

WAC 296-17-950 Department of Energy reporting. This rule applies to all work performed within the boundaries of the Hanford Site pursuant to a contract with the U.S. Department of Energy, whether directly or indirectly, that is

subject to the provisions of the Industrial Insurance Act under Title 51 RCW.

(1) **Reporting requirement.** Any employer with workers performing work within the scope of this rule shall report that work, and pay premiums on that work, according to this rule.

(2) **Premium basis.** The basis for calculation of premiums for all work within the scope of this rule shall be actual worker hours.

(3) **Risk classifications.** All work performed within the scope of this rule shall be reported in the following Hanford risk classifications:

(a) WAC 296-17A-7002 Classification 7002 Department of Energy Contractors - Administrative and professional employees;

(b) WAC 296-17A-7004 Classification 7004 Fire department;

(c) WAC 296-17A-7005 Classification 7005 Police and security;

(d) WAC 296-17A-7006 through 296-17A-7011 Department of Energy classifications based on groups of common composite rates; and

(e) WAC 296-17A-7015 Classification 7015 Department of Energy contractors - Vitrification plant.

(4) **Recordkeeping.** Any employer within the scope of this rule must create and maintain records of all work performed within the scope of this rule that are sufficient for the Department to determine the proper risk classification and premiums for such work. An employer that fails to create and maintain such records is required to report and pay premiums on the work in the risk class within the scope of this rule with the highest composite premium rate.

(5) **Division of hours.** Employers who maintain records sufficient to do so may report a worker's hours in more than one applicable Hanford risk classes. Employers who have workers who perform work both within and outside the scope of this rule may report a worker's hours in multiple risk classifications, provided the non-Hanford risk classifications do not prohibit reporting in multiple classifications.

(6) **Experience rating and retrospective rating.** Premiums for work within the scope of this rule will not be experience rated, and neither the premiums, nor any losses associated with work within the scope of this rule will be used in an employer's experience calculations. Premiums for work within the scope of this rule are not subject to retrospective rating, and neither the premiums nor losses within the scope of this rule will be used in retrospective rating calculations.

(7) **Retroactive adjustment of premium rates.** Notwithstanding any provisions of this chapter, the premium rates adopted for work within the scope of this rule are subject to retroactive adjustment by the Department for up to ten years. Periodically, the Department will review the premium reporting and loss experience, and may retroactively adjust premium rates if necessary to ensure that the rates for the risk classes within the scope of this rule are neither inadequate nor excessive. If the Department retroactively increases rates, the Department will recalculate each affected employer's premiums, provide each affected employer with notice of the additional premiums due, and give the employer sixty days to pay the additional premiums without penalty or interest. If the Department retroactively decreases rates, the Department will recalculate each affected employer's premiums, and refund the difference between the premiums paid and the adjusted premiums due.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-7002 Classification 7002.

~~((7002-00 Department of Energy contract~~

~~Applies to establishments that have contracted with the department of energy at DOE's nuclear facilities within the state of Washington to operate, construct or service the nuclear site. At present, the only site covered by this contract is at Richland. These contractors can be identified by the assignment of account number 000,100-xx with each contractor given a separate subaccount. The coverage provided by this classification is usually for the possibility of workers being exposed to nuclear radiation although the coverage applies to any type of on-the-job injury. Benefits for injured workers covered under this contract are paid from a special fund which DOE pays into to cover all industrial insurance and medical aid payments made to or in behalf of the injured workers and/or their beneficiaries. The premium paid by the contractors to labor and industries is limited to the supplemental pension premium assessment.~~

~~**Special note:** This classification is used to administer the DOE contract and collect supplemental pension fund premiums.))~~

7002 Department of Energy contractors - Administrative and professional employees

Applies to contractors of the Department of Energy usually working in an office or professional environment performing clerical, administrative, and professional services such as, but not limited to:

- Accounting;
- Auditing;
- Benefits coordination;
- Classroom training;
- Computer systems analysis;
- Contract administration;
- Drafting;
- Human resources;
- Legal;
- Project management;
- Risk management; and
- Software engineering.

Excludes:

- Firefighters who are to be reported separately in classification 7004;
- Law enforcement officers who are to be reported separately in classification 7005; and
- Construction activities described in classifications 7006 through 7011 which are reported in the applicable DOE construction classification.

NEW SECTION

WAC 296-17A-7004 Classification 7004.

7004 Fire department

Applies to employees of contractors for the Department of Energy, who provide firefighting and fire prevention services.

Duties of firefighters include, but are not limited to:

- Administering first aid and artificial respiration to injured persons and those overcome by fire and smoke;
 - Controlling and extinguishing fires;
 - Inspecting buildings for fire hazards and compliance with fire prevention ordinances;
 - Issuing citations to building owners listing the fire regulation violations to be corrected;
 - Maintaining firefighting equipment;
 - Protecting lives and property; and
 - Responding to fire alarms and other emergencies.
- This classification includes paramedics employed by the fire department.

NEW SECTION**WAC 296-17A-7005 Classification 7005.****7005 Police and security**

Applies to employees of contractors for the Department of Energy, who provide law enforcement and security services.

Duties of law enforcement officers include, but are not limited to:

- Arresting violators;
- Conducting criminal investigations;
- Directing traffic;
- Giving first aid;
- Guarding persons detained at the police station;
- Investigating disturbances of the peace;
- Patrolling by motor vehicle, motorcycle, bicycle, or on foot or horseback;
- Preventing crimes; and
- Responding to burglar or fire alarms.

Special note: State fund workers' compensation is not provided to volunteer firefighters covered by chapter 41.24 RCW and emergency service workers covered by chapter 38.52 RCW.

NEW SECTION

WAC 296-17A-7006 Classification 7006. Applies to work reportable under the Hanford special reporting rule, that but-for this special reporting rule, would be reportable in the following risk classifications:

- 7006-00 Classification 4900 Construction project or site superintendent/manager;
- 7006-01 Classification 4911 Construction estimator;
- 7006-02 Classification 4901 Consulting engineer and geologist;
- 7006-03 Classification 4903 Safety, building inspector;
- 7006-04 Classification 6109 Physicians and medical clinics;
- 7006-05 Classification 6406 Storekeeper;
- 7006-06 Classification 6909 Laboratory; and
- 7006-30 **Not otherwise classified.** Any other state fund class whose composite base rate is closest to this class's base composite rate.

NEW SECTION

WAC 296-17A-7007 Classification 7007. Applies to work reportable under the Hanford special reporting rule, that but-for this special reporting rule, would be reportable in the following risk classifications:

- 7007-00 Classification 0521 Painting: Buildings-interior work;
- 7007-01 Classification 0308 Lawn care maintenance;
- 7007-02 Classification 0606 Vending machine installation, service and repair;
- 7007-03 Classification 0601 Electrical wiring: Buildings and structures;
- 7007-04 Classification 5206 Construction/logging/trucking - Permanent yard;
- 7007-05 Classification 0608 Telephone and electrical alarm system installation;
- 7007-06 Classification 6602 Janitorial, commercial cleaning;
- 7007-07 Classification 1801 Lead smelting, rolling mills, metal recovery;
- 7007-08 Classification 3411 Auto repair shop;
- 7007-09 Classification 1007 Environmental surveyors, geophysical exploration, hygienist;
- 7007-10 Classification 4910 Property management;
- 7007-11 Classification 3402 Machine shops and machinery mfg;
- 7007-12 Classification 3404 Metal good mfg;
- 7007-13 Classification 3701 Chemical mixing and manufacturing; and
- 7007-30 **Not otherwise classified.** Any other state fund class whose composite base rate is closest to this class's base composite rate.

NEW SECTION

WAC 296-17A-7008 Classification 7008. Applies to work reportable under the Hanford special reporting rule, that but-for this special reporting rule, would be reportable in the following risk classifications:

- 7008-00 Classification 0219 Guardrails, street signs and traffic lights installation;
- 7008-01 Classification 1704 Quarries;
- 7008-02 Classification 0603 Machinery installation, service and repair;
- 7008-03 Classification 0306 Plumbing;
- 7008-04 Classification 0607 Appliance installation svc repair, store svcs contractor, and locksmiths;
- 7008-05 Classification 0112 Sand and gravel production including dealers;
- 7008-06 Classification 0602 Elevator installation, svcs and repair;
- 7008-07 Classification 1802 Aluminum smelting; and
- 7008-30 **Not otherwise classified.** Any other state fund class whose composite base rate is closest to this class's base composite rate.

NEW SECTION

WAC 296-17A-7009 Classification 7009. Applies to work reportable under the Hanford special reporting rule, that

but-for this special reporting rule, would be reportable in the following risk classifications:

7009-00 Classification 0105 Fence erection and repair N.O.C.;

7009-01 Classification 0101 Excavation, road construction, land clearing N.O.C.;

7009-02 Classification 0107 Underground utility line const and pipelaying N.O.C.;

7009-03 Classification 0104 Dredging N.O.C.;

7009-04 Classification 0108 Sewer and septic system cons, undgrd tank install, repair, remove;

7009-05 Classification 0509 Overhead power and transmission line construction;

7009-06 Classification 0502 Floor and counter covering installation;

7009-07 Classification 1703 Open cut mines;

7009-08 Classification 3506 Mobile crane, hoisting services, and concrete pumping;

7009-09 Classification 0301 Landscape construction and renovation;

7009-10 Classification 0210 Asphalt paving - Highway, streets and roads;

7009-11 Classification 0307 HVAC systems - Installation, service and repair;

7009-12 Classification 0513 Inter finish carpentry;

7009-13 Classification 0212 Asphalt paving or surfacing N.O.C.; and

7009-30 **Not otherwise classified.** Any other state fund class whose composite base rate is closest to this class's base composite rate.

NEW SECTION

WAC 296-17A-7010 Classification 7010. Applies to work reportable under the Hanford special reporting rule, that but-for this special reporting rule, would be reportable in the following risk classifications:

7010-00 Classification 0517 Factory-built home set-up by contractor/manufacturer;

7010-01 Classification 0403 Sign erection, repair, removal;

7010-02 Classification 0214 Concrete work-highways, streets, roads and sidewalks;

7010-03 Classification 0516 Building repair, remodeling and carpentry N.O.C.;

7010-04 Classification 1702 Underground mines;

7010-05 Classification 0511 Glass installation: Buildings;

7010-06 Classification 0103 Drilling and geophysical exploration N.O.C.;

7010-07 Classification 0519 Sheet metal siding, gutter and downspout installation;

7010-08 Classification 0508 Tower, tank, windmill and crane construction;

7010-11 Classification 0512 Insulation installation and asbestos abatement work;

7010-12 Classification 0514 Garage door installation, service, and repair;

7010-13 Classification 0518 Nonwood frame building construction;

7010-14 Classification 0217 Concrete work - Foundations and flatwork;

7010-15 Classification 0541 Wallboard taping - Discounted rate;

7010-16 Classification 1101 Delivery services;

7010-17 Classification 4305 Solid waste, landfill, hazardous waste and toxic material processing or handling N.O.C.; and

7010-30 **Not otherwise classified.** Any other state fund class whose composite base rate is closest to this class's base composite rate.

NEW SECTION

WAC 296-17A-7011 Classification 7011. Applies to work reportable under the Hanford special reporting rule, that but-for this special reporting rule, would be reportable in the following risk classifications:

7011-00 Classification 0507 Roof work - Construction and repair;

7011-01 Classification 0540 Wallboard installation - Discounted rate;

7011-02 Classification 0106 Tree care and pruning services N.O.C.;

7011-03 Classification 0510 Wood frame building construction and alterations;

7011-04 Classification 0701 Dam construction;

7011-05 Classification 0201 Bridge, bulkhead and tunnel construction;

7011-06 Classification 0302 Masonry construction;

7011-07 Classification 0504 Painting: Building and structures - Exterior work;

7011-08 Classification 0202 Pile construction, wharf, pier and dock construction, diving operations;

7011-09 Classification 0303 Plastering, stuccoing and lathing: Buildings;

7011-10 Classification 1102 Trucking; and

7011-30 **Not otherwise classified.** Any other state fund class whose composite base rate is closest to this class's base composite rate.

NEW SECTION

WAC 296-17A-7015 Classification 7015.

7015 Department of Energy contractors - Vitrification plant

Applies to contractors of the Department of Energy operating and maintaining the vitrification plant, also known as "Vit Plant," on the Hanford nuclear reservation. The vitrification process converts liquid radioactive and chemical waste into a solid, stable glass, eliminating environmental risks.

The vitrification process is performed by:

- Mixing waste with silica and other glass-forming materials at the low-activity waste facility;
- Sending the mixture to high-temperature melters where they are heated to 2,100 degrees Fahrenheit to form molten glass;
- Pouring molten glass into containment vessels where it cools to become solid glass; and

- Storing the stabilized waste safely at a federal repository.

Operations and work activities are performed in the following areas of the plant:

- Analytical laboratory;
- Pretreatment facility;
- High-level waste vitrification facility;
- Steam plant;
- Glass former facility;
- Chiller/compressor plant; and
- Low-activity waste vitrification facility.

Excludes:

- Construction activities described in classifications 7006 through 7011 which are reported in the applicable DOE construction classification.

WSR 20-22-040
PROPOSED RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES
 [Filed October 27, 2020, 5:34 p.m.]

October 21, 2020
 Brenda Villarreal
 Rules Coordinator

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.-330(1).

Title of Rule and Other Identifying Information: WAC 110-15-0075 Determining income eligibility and copayment amounts.

Hearing Location(s): On December 8, 2020, telephonic. Oral comments may be made by calling 360-902-8084 and leaving a voicemail that includes the comment and an email or physical mailing address where the department of children, youth, and families (DCYF) will send its response. Comments received through and including December 8, 2020, will be considered.

Date of Intended Adoption: December 9, 2020.

Submit Written Comments to: DCYF Rules Coordinator, P.O. Box 40975, email dcyf.rulescoordinator@dcyf.wa.gov, submit comments online at <https://dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/online>, by December 4, 2020.

Assistance for Persons with Disabilities: Contact DCYF rules coordinator, phone 360-902-7956, email dcyf.rulescoordinator@dcyf.wa.gov, by November 20, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Institute a cap of \$115 for copayments paid by working connections and seasonal child care program participants.

Reasons Supporting Proposal: Instituting a copayment cap allows more families to participate in child care subsidy programs administered by DCYF.

Statutory Authority for Adoption: RCW 43.215.060 and 43.215.070.

Statute Being Implemented: Chapter 43.215 RCW.

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

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Toni Sebastian, DCYF, 206-200-0824; Implementation and Enforcement: DCYF, statewide.

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

A cost-benefit analysis is not required under RCW 34.05.328. DCYF is not among the agencies listed as required to comply with RCW 34.05.328 (5)[(a)](i). Further, DCYF does not voluntarily make that section applicable to the adoption of this rule.

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

Is exempt under RCW 19.85.025(3) as the rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-15-0075 Determining income eligibility and copayment amounts. (1) (~~DSHS~~) DCYF takes the following steps to determine a consumer's eligibility and copayment, whether care is provided under a WCCC voucher or contract:

- (a) Determine the consumer's family size (under WAC (~~170-290-0015~~) 110-15-0015); and
 - (b) Determine the consumer's countable income (under WAC (~~170-290-0065~~) 110-15-0065).
- (2) (~~DSHS~~) DCYF calculates the consumer's copayment as follows:

| IF A CONSUMER'S INCOME IS: | THEN THE CONSUMER'S COPAYMENT IS: |
|--|---|
| (a) At or below 82% of the federal poverty guidelines (FPG). | \$15 |
| (b) Above 82% of the FPG up to 137.5% of the FPG. | \$65 |
| (c) Above 137.5% of the FPG through 200% of the FPG. | The dollar amount equal to subtracting 137.5% of the FPG from countable income, multiplying by 50%, then adding \$65, up to a maximum of \$115. |

(3) (~~DSHS~~) DCYF does not prorate the copayment when a consumer uses care for part of a month.

(4) The FPG is updated every year. The WCCC eligibility level is updated at the same time every year to remain current with the FPG.

WSR 20-22-042
PROPOSED RULES
LIQUOR AND CANNABIS
BOARD

[Filed October 28, 2020, 11:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-15-043.

Title of Rule and Other Identifying Information: WAC 314-55-020 Marijuana license qualifications and application process—Licensing change requests, the Washington state liquor and cannabis board (board) is proposing a rule amendment to establish a certificate of compliance for marijuana business premises consistent with SSB 6206 (chapter 154, Laws of 2020), now codified as RCW 69.50.331 (8)(e).

Hearing Location(s): On December 9, 2020, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the board will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. Board members, presenters, and staff will all participate remotely. The public may login using a computer or device, or call-in using a phone, to listen to the meeting through the WebEx application. The public may provide verbal comments during the specified public comment and rules hearing segments. For more information about board meetings, please visit https://lcb.wa.gov/boardmeetings/board_meetings.

Date of Intended Adoption: Not earlier than December 16, 2020.

Submit Written Comments to: Casey Schaufler, 1025 Union Avenue S.E., Olympia, WA 98504, email rules@lcb.wa.gov, by December 9, 2020.

Assistance for Persons with Disabilities: Contact Claris Nhanabu, ADA coordinator, human resources, phone 360-664-1642, fax 360-664-9689, TTY 711 or 1-800-833-6388, email Claris.Nhanabu@lcb.wa.gov, by December 2, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SSB 6206 was designed to prevent a competitor from opening a business that would disqualify another marijuana entity's license application. During legislative testimony, it was noted that this situation has occurred with some frequency, after an applicant had spent the money to secure a lease, and a competitor moved a business (such as an arcade business) next door, violating the zoning restrictions for the new applicant. The legislation provides certainty for applicants with considerable investment in their businesses who are waiting for completion of the board's license approval process. The proposed new rule section implements this by amending WAC 314-55-020(6) for issuance of certificate of compliance by the Washington state liquor and cannabis board (WSLCB) to the applicant if proposed business premises meets the minimum distance requirement as of the date the application was received by the WSLCB. Amended WAC 314-55-020(6), consistent with SSB 6206, also allows applicants granted licenses prior to adoption of this rule to operate notwithstanding a later occurring, otherwise disqualifying minimum distance factor.

Reasons Supporting Proposal: Amendment to existing rule is necessary to allow the WSLCB to issue a certificate of compliance consistent with the mandates of SSB 6206, now codified as RCW 69.50.331(8).

Statutory Authority for Adoption: RCW 69.50.342, 69.50.345.

Statute Being Implemented: RCW 69.50.331 (8)(e); SSB 6206 (chapter 154, Laws of 2020).

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

Name of Proponent: WSLCB, governmental.

Name of Agency Personnel Responsible for Drafting: Casey Schaufler, Policy and Rules Coordinator, 1025 Union Avenue S.E., Olympia, WA 98502, 360-664-1760; Implementation: Becky Smith, Director of Licensing, 1025 Union Avenue S.E., Olympia, WA 98502, 360-664-1753; and Enforcement: Justin Nordhorn, Enforcement Chief, 1025 Union Avenue S.E., Olympia, WA 98502, 360-664-1726.

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

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis was not required under RCW 34.05.325 because the subject of proposed rule making does not qualify as significant legislative rule or other rule requiring a cost-benefit analysis under RCW 34.05.328(5).

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

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 34.05.310 (4)(e).

Explanation of exemptions: WAC 314-55-020(6) adopts and incorporates the requirements of SSB 6206, codified in RCW 69.50.331 (8)(e).

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. There are no costs associated with this rule. The rule does not impose any additional regulatory burden on applicants or licensees, nor does it change, modify, add cost or otherwise alter the license application process. The WSLCB applied a default cost of compliance (\$100) when analyzing whether the rules would have a disproportionate impact on small businesses as defined in RCW 19.85.020(3). Below are calculations for minor cost thresholds across all license types based on the best analogous NAICS types. Although it is unlikely these rules would result in even the full default cost of compliance, the minor cost does not exceed any of the thresholds for any of the license types. Therefore, implementation of these rules will not result in any administrative, intrinsic or actual costs to the regulated community. For these reasons, the proposed rules do not impose more-than-minor costs on businesses as defined by RCW 19.85.020(2).

| 2017 Industry NAICS Code | Estimated Cost of Compliance | Industry Description | NAICS Code Title | Minor Cost Estimate - Max of 1% Pay, 0.3% Rev, and \$100 | 1% of Avg Annual Payroll (0.01*AvgPay) | 0.3% of Avg Annual Gross Business Income (0.003*AvgGBI) |
|--------------------------|------------------------------|----------------------|-------------------------------|--|--|---|
| 31199 | \$ 100.00 | Marijuana Processors | All Other Food Manufacturing | \$27,271.78 | \$9,424.11 2018 Dataset pulled from USBLS | \$27,271.78 2018 Dataset pulled from DOR |
| 111 | \$ 100.00 | Marijuana Producers | Crop Production | \$4,082.13 | \$4,082.13 2018 Dataset pulled from USBLS | \$2,998.38 2018 Dataset pulled from DOR |
| 453 | \$ 100.00 | Marijuana Retailers | Miscellaneous Store Retailers | \$2,799.83 | \$2,591.39 2018 Dataset pulled from USBLS | \$2,799.83 2018 Dataset pulled from DOR |

October 28, 2020
Jane Rushford
Chair

AMENDATORY SECTION (Amending WSR 18-22-055, filed 10/31/18, effective 12/1/18)

WAC 314-55-020 Marijuana license qualifications and application process—Licensing change requests. Each marijuana license application is unique and investigated individually. The WSLCB may inquire and request documents regarding all matters in connection with the marijuana license application. The application requirements for a marijuana license include, but are not limited to, the following:

(1) Consistent with RCW 69.50.331 (7) and (10), the WSLCB shall send a notice to cities and counties, tribal governments, and port authorities regarding the marijuana license application within said jurisdiction. The local authority, tribal government, or port authority has twenty days to respond with a recommendation to approve the application or an objection to the applicant, location, or both.

(2) Consistent with RCW 69.50.331 (8)~~((e))~~ (f), the WSLCB shall send a notice to tribal governments when an applicant or licensee is proposed to be located within the exterior boundaries of the reservation of a federally recognized Indian tribe. The tribal government will have twenty days to respond with an approval to the application. If written approval is not received within thirty days, the WSLCB will assume the tribe does not consent to the applicant's location and the applicant must find a new location.

(3) Applicants for a new marijuana producer, processor, retailer, transportation, or research license and those who apply to change their location must display a sign provided by the WSLCB on the outside of the premises to be licensed notifying the public that the premises are subject to an application for a marijuana license. Posting notices must occur within seven days of submitting the location confirmation form for new licenses or the change of location application for existing licensees. The WSLCB may check for compliance with this requirement at its discretion. The sign must:

(a) Not be altered. The licensee must post the sign sent by the WSLCB without changing, adding, or subtracting from the text;

(b) Be conspicuously displayed on, or immediately adjacent to, the premises subject to the application and in the location that is most likely to be seen by the public;

(c) Be of a size sufficient to ensure that it will be readily seen by the public, at a minimum these signs must be eight and one-half by eleven inches;

(d) Be posted within seven business days of the date the notice is sent to the applicant by the WSLCB; and

(e) The notice must be posted for fourteen consecutive days.

(4) All marijuana license applicants must meet the qualifications required by the WSLCB before they will be granted a license.

(5) The WSLCB will verify that the proposed business meets the minimum requirements for the type of marijuana license requested.

(6) Consistent with RCW 69.50.331 (8)(e), the WSLCB will issue a certificate of compliance if the proposed business premises meets the minimum distance requirements as of the date the application was received by the WSLCB. If the physical location changes during the application process, the certificate of compliance will be issued for the date that the premises change was received by the WSLCB. Applicants who were granted licenses prior to adoption of this rule are allowed to operate the business at the location notwithstanding a later occurring, otherwise disqualifying minimum distance factor.

(7) The WSLCB will conduct an investigation of the applicants' criminal history and administrative violation history, per WAC 314-55-040 and 314-55-045.

(a) The criminal history background check will consist of completion of a personal/criminal history form provided by the WSLCB and submission of fingerprints to a vendor approved by the WSLCB. The applicant will be responsible for paying all fees required by the vendor for fingerprinting. These fingerprints will be submitted to the Washington state patrol and the Federal Bureau of Investigation for comparison to their criminal records. The applicant will be responsible for paying all fees required by the Washington state patrol and the Federal Bureau of Investigation.

(b) Financiers will also be subject to criminal history investigations equivalent to that of the license applicant. Financiers will also be responsible for paying all fees required for the criminal history check.

~~((7))~~ (8) The WSLCB will conduct a financial investigation in order to verify the source of funds used for the acquisition and startup of the business, the applicants' right to the real and personal property, and to verify the true party(ies) of interest.

~~((8))~~ (9) The WSLCB may require a demonstration by the applicant that they are familiar with marijuana laws and rules.

~~((9))~~ (10) The WSLCB may conduct an inspection of the proposed or currently licensed business location, to determine if the applicant has complied with all the requirements of the license or change to the license or premises requested.

~~((10))~~ (11) Under RCW 69.50.331 (1)(c), all applicants applying for a marijuana license must have resided in the state of Washington for at least six months prior to application for a marijuana license. All business entities including, but not limited to, partnerships, employee cooperatives, associations, nonprofit corporations, corporations and limited liability companies, applying for a marijuana license must be formed in Washington. All members, governors, or agents of business entities must also meet the six month residency requirement. Managers or agents who manage a licensee's place of business must also meet the six month residency requirement.

~~((11))~~ (12)(a) As part of the application process, each applicant must submit an operating plan outlining required elements for the location as provided in this chapter pertaining to the license type being sought. The operating plan must be submitted using an operating plan format supplied by the WSLCB. This operating plan must also include a floor plan or site plan drawn to scale which illustrates the entire operation being proposed.

(b) After obtaining a license, the license holder must notify the WSLCB in advance of any change in their operating plan. Prior approval is required before the change may be implemented.

~~((12))~~ (13) The WSLCB may place licensing change applications made by a licensee on hold if the change application is reasonably related to an ongoing investigation.

(a) The WSLCB may withdraw licensing change applications pending the results of an adjudicative proceeding regarding a violation of chapter 314-55 WAC. Depending on the outcome of the adjudicative proceeding, the licensee may reapply for the withdrawn licensing change application(s).

(b) Examples of licensing change applications that may be affected under this subsection include:

- (i) Application for additional funding;
- (ii) Application for added medical marijuana endorsement;
- (iii) Assumption of a license;
- (iv) Change in governing people, percentage owned, or stock/unit ownership;
- (v) Change of location;
- (vi) Expanding plant canopy to maximum allotted;
- (vii) Request to alter marijuana site or operating plan;
- (viii) Request to add a processor license; and
- (ix) Splitting a producer and processor license.

~~((13))~~ (14)(a) To aid the WSLCB in monitoring the industry as it develops, the WSLCB requests that all appli-

cants and licensees seeking renewal provide the following information:

(b) Employees compensation and benefits data.

(i) Will the applicant/licensee provide a living wage (at least one hundred fifty percent of the state minimum wage) to eighty-five percent or more of its hourly employees?

(ii) Will the applicant/licensee provide health insurance to at least eighty-five percent of its hourly employees?

(iii) Will the applicant/licensee provide a defined benefit pension plan to at least eighty-five percent of its hourly employees?

(iv) Will the applicant/licensee provide five or more paid sick days annually to at least eighty-five percent of its hourly employees?

(v) Is there a signed labor peace agreement or collective bargaining agreement with a labor organization in place?

~~((14))~~ (15) Applicants applying for a marijuana license must be current in any tax obligations to the Washington state department of revenue and other state agencies, as an individual or as part of any entity in which they have an ownership interest. Applicants must sign an attestation that, under penalty of denial or loss of licensure, that representation is correct.

~~((15))~~ (16) The issuance or approval of a license shall not be construed as a license for, or an approval of, any violations of local rules or ordinances including, but not limited to: Building and fire codes, zoning ordinances, and business licensing requirements.

~~((16))~~ (17) Upon failure to respond to the WSLCB licensing and regulation division's requests for information and/or documentation within the timeline provided, the application may be administratively closed or denial of the application will be sought.

WSR 20-22-051

PROPOSED RULES

EASTERN WASHINGTON UNIVERSITY

[Filed October 29, 2020, 12:52 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-18-035.

Title of Rule and Other Identifying Information: WAC 172-191-050 Obtaining copies of records.

Hearing Location(s): On December 8, 2020, at 9:00 a.m., at Eastern Washington University, Main Campus, 526 5th Street, Cheney, WA 99004. This will be a virtual meeting via Zoom. The link to participate in the Zoom meeting is <https://ewu.zoom.us/j/91923365877>.

Date of Intended Adoption: December 11, 2020.

Submit Written Comments to: Annika Scharosch, Eastern Washington University, Main Campus, 526 5th Street, 211 Tawanka Hall, Cheney, WA 99004, email ascharosch@ewu.edu, fax 509-359-6724, by December 8, 2020.

Assistance for Persons with Disabilities: Contact Annika Scharosch, phone 509-359-6724, fax 509-359-2874, email ascharosch@ewu.edu, by December 8, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Due to a new state

law, the WAC is being updated to eliminate language regarding outstanding debts owed to the university as a means to withhold educational records.

Reasons Supporting Proposal: Required by state law.

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

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

Name of Proponent: Eastern Washington University, governmental.

Name of Agency Personnel Responsible for Drafting: Joseph Fuxa, 211 Tawanka Hall, 509-359-7496; Implementation and Enforcement: Dr. David May, 214 Showalter Hall, 509-359-6362.

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

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 34.[0]5.328 (5)(a)(i), this agency is not an agency mandated to comply with RCW 34.05.328. Further, the agency does not voluntarily make that section applicable to the adoption of this rule pursuant to subsection (5)(a)(ii), and to date, the joint administrative rules review committee has not made the section applicable to the adoption of this rule.

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

Is exempt under RCW 19.85.025(4).

October 29, 2020

Joseph Fuxa

Policy and Compliance Manager

AMENDATORY SECTION (Amending WSR 09-19-064, filed 9/14/09, effective 10/15/09)

WAC 172-191-050 Obtaining copies of records. Students may obtain copies of their education records. The office of the registrar is the only office which may issue an official transcript of the student's academic record. Charges for copies shall not exceed the cost normally charged by the university copy center (except in cases where charges have previously been approved for certain specified services).

(1) The university may refuse to provide copies of education records including transcripts and diplomas in the following circumstances:

(a) If the record is a secure exam as determined by the department that maintains the exam, so that the integrity of such exams may be protected; and/or

(b) ~~((If the student has outstanding debts owed to the university, so that the university may facilitate collection of such debts; and/or~~

~~(e)))~~ If disciplinary action is pending or sanctions are not completed.

(2) The university must provide copies of education records, subject to the provisions of subsection (1) of this section, in the following circumstances:

(a) If failure to do so would effectively prevent the student from inspecting and reviewing a record;

(b) When records are released pursuant to a student's consent and the student requests copies; and/or

(c) When the records are transferred to another educational institution where the student seeks to attend or intends to enroll and the student requests copies.

WSR 20-22-052

PROPOSED RULES

EASTERN WASHINGTON UNIVERSITY

[Filed October 29, 2020, 12:54 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-18-033.

Title of Rule and Other Identifying Information: WAC 172-108-050, adjudicative proceedings.

Hearing Location(s): On December 8, 2020, at 9:00 a.m., at Eastern Washington University, Main Campus, 526 5th Street, Cheney, WA 99004. This will be a virtual meeting via Zoom. The link to participate in the Zoom meeting is <https://ewu.zoom.us/j/91923365877>.

Date of Intended Adoption: December 11, 2020.

Submit Written Comments to: Annika Scharosch, Eastern Washington University, Main Campus, 526 5th Street, 211 Tawanka Hall, Cheney, WA 99004, email ascharosch@ewu.edu, fax 509-359-6724, by December 8, 2020.

Assistance for Persons with Disabilities: Contact Annika Scharosch, phone 509-359-6724, fax 509-359-2874, email ascharosch@ewu.edu, by December 8, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Updates are being made to reflect that Title IX employment hearings are considered a type of formal adjudicative proceeding due to changes in federal Title IX regulations. The list of what decisions may be challenged in a brief adjudicative proceeding. Contact information has also been updated.

Reasons Supporting Proposal: Required by federal Title IX regulations.

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

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

Name of Proponent: Eastern Washington University, governmental.

Name of Agency Personnel Responsible for Drafting: Joseph Fuxa, 211 Tawanka Hall, 509-359-7496; Implementation and Enforcement: Dr. David May, 214 Showalter Hall, 509-359-6362.

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

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 34.[0]5.328 (5)(a)(i), this agency is not an agency mandated to comply with RCW 34.05.328. Further, the agency does not voluntarily make that section applicable to the adoption of this rule pursuant to subsection (5)(a)(ii), and to date, the joint administrative rules review committee has not made the section applicable to the adoption of this rule.

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

Is exempt under RCW 19.85.025(4).

October 29, 2020

Joseph Fuxa

Policy and Compliance Manager

AMENDATORY SECTION (Amending WSR 17-11-051, filed 5/15/17, effective 6/15/17)

WAC 172-108-040 Formal adjudicative proceedings.

(1) Eastern Washington University utilizes a formal adjudicative proceeding for certain student conduct proceedings as identified in chapter 172-121 WAC and certain academic integrity code proceedings as identified in chapter 172-90 WAC. The procedural rules for these formal adjudicative proceedings are contained in the Student conduct code, chapter 172-121 WAC, and the academic integrity code, chapter 172-90 WAC. In all other cases, Eastern Washington University only utilizes formal adjudicative proceedings when required by RCW 34.05.413 through 34.05.476. ~~(For such proceedings, excluding the student conduct process, Eastern Washington University adopts the model rules of procedure adopted by the chief administrative law judge pursuant to RCW 34.05.250, as now or hereafter amended, except for those rules which are in conflict with the provisions set forth in this chapter. The model rules are contained in chapter 10-08 WAC. In the case of a conflict between the model rules of procedure and these procedural rules, the procedural rules adopted by Eastern Washington University shall govern.)~~ or for the adjudication of formal Title IX complaints against employees as set forth in university policy.

(2) An application for a formal adjudicative proceeding shall be in writing. Application forms are available from: University Policy Administration; ~~(Office of the President;)~~ Eastern Washington University; ~~(Showalter 214))~~ Tawanka 211, Cheney, WA 99004-2496. Written application for a formal adjudicative proceeding in response to the institution's action must be submitted to the above address within twenty-one calendar days of the action, unless otherwise provided by statute or rule.

AMENDATORY SECTION (Amending WSR 17-11-051, filed 5/15/17, effective 6/15/17)

WAC 172-108-050 Brief adjudicative proceedings.

In accordance with RCW 34.05.410 (1)(a), the procedures identified in RCW 34.05.482 through 34.05.494 apply to all brief adjudicative proceedings at Eastern Washington University. All applications for a brief adjudicative proceeding shall be in writing. Application forms are available from: University Policy Administration; ~~(Office of the President; Showalter 214))~~ Tawanka 211; Eastern Washington University; Cheney, WA 99004-2496. Written application for a brief adjudicative proceeding in response to the institution's action must be submitted to the university within twenty-one calendar days of the action, unless a different time frame is specified in the regulations identified below that apply to the type of decision being challenged. When required by law or constitutional right, brief adjudicative proceedings shall be used in all matters of appeal related to:

(1) Residency determinations made pursuant to RCW 28B.15.013 and chapter 250-18 WAC;

(2) Challenges to contents of education records, review of the denial to inspect such records, or challenges to the disclosure of such records. In addition to the rules identified below, these challenges are governed by chapter 172-191 WAC;

(3) Student conduct proceedings, if the potential sanction for the alleged misconduct does not include suspension, expulsion, formal Title IX complaints, or an allegation of felony-level sexual misconduct. In addition to the rules identified below, these proceedings are governed by chapter 172-121 WAC;

(4) Outstanding debts owed by students or employees, pursuant to chapters 172-124 and 172-144 WAC;

(5) Traffic and parking violations and revocations of any parking permit pursuant to chapter 172-100 WAC;

(6) Student academic integrity proceedings, if the potential sanction for the alleged misconduct does not include suspension or expulsion. In addition to the rules identified in this section, these proceedings are governed by chapter 172-90 WAC;

(7) Library fines and charges;

(8) Reduction, cancellation, or nonrenewal of institutional financial aid when based in any degree on athletics ability per National Collegiate Athletic Association rules;

(9) Administrative decisions regarding ~~((mandatory))~~ statutorily mandated tuition and/or fee waivers;

(10) ~~((Intellectual property ownership determinations in accordance with EWU Policy 302-04;~~

~~((11) Ethics in))~~ Research integrity violations in accordance with EWU Policy 302-05 when required by federal law;

~~((12) Matters subject to review by the academic appeals board in accordance with EWU Policy 303-21;~~

~~((13) Matters subject to review regarding graduate students in accordance with EWU Policy 303-22;~~

~~((14))~~ (11) Citations issued by university police regarding the use of golf carts and utility vehicles, in accordance with EWU Policy 603-06;

~~((15))~~ (12) Fines imposed for impermissible use of tobacco, electronic cigarettes, and related products in accordance with WAC 172-122-310;

~~((16))~~ (13) Financial aid appeals as provided for by federal law and in accordance with EWU policies for satisfactory academic progress for undergraduate, post-baccalaureate, and graduate students;

~~((17))~~ (14) Denial of work study or termination from a work study position when required by federal law;

~~((18))~~ (15) Notice against trespass issued per WAC 172-122-200;

~~((19))~~ (16) Denial of request to waive undergraduate housing requirement under chapter 172-130 WAC;

~~((20))~~ (17) Fines assessed under a university housing agreement; and

~~((21))~~ (18) Penalties imposed for violations of pet control regulations in accordance with chapter 172-115 WAC.

WSR 20-22-053**PROPOSED RULES****EASTERN WASHINGTON UNIVERSITY**

[Filed October 29, 2020, 12:56 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-19-060.

Title of Rule and Other Identifying Information: Chapter 172-121 WAC, Student conduct code.

Hearing Location(s): On December 8, 2020, at 9:00 a.m., at Eastern Washington University, Main Campus, 526 5th Street, Cheney, WA 99004. This will be a virtual meeting via Zoom. The link to participate in the Zoom meeting is <https://ewu.zoom.us/j/91923365877>.

Date of Intended Adoption: December 11, 2020.

Submit Written Comments to: Annika Scharosch, Eastern Washington University, Main Campus, 526 5th Street, 211 Tawanka Hall, Cheney, WA 99004, email ascharosch@ewu.edu, fax 509-359-6724, by December 8, 2020.

Assistance for Persons with Disabilities: Contact Annika Scharosch, phone 509-359-6724, fax 509-359-2874, email ascharosch@ewu.edu, by December 8, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The updates modify the definition of a formal Title IX complaint to include participants and potential participants in programs and activities. The updates also limit the ability of parties to subpoena one another in Title IX cases.

Reasons Supporting Proposal: Required by federal Title IX regulations.

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

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

Name of Proponent: Eastern Washington University, governmental.

Name of Agency Personnel Responsible for Drafting: Joseph Fuxa, 211 Tawanka Hall, 509-359-7496; Implementation and Enforcement: Dr. David May, 214 Showalter Hall, 509-359-6362.

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

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 34.[0]5.328 (5)(a)(i), this agency is not an agency mandated to comply with RCW 34.05.328. Further, the agency does not voluntarily make that section applicable to the adoption of this rule pursuant to subsection (5)(a)(ii), and to date, the joint administrative rules review committee has not made the section applicable to the adoption of this rule.

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

Is exempt under RCW 19.85.025(4).

October 29, 2020

Joseph Fuxa

Policy and Compliance Manager

AMENDATORY SECTION (Amending WSR 20-19-046, filed 9/10/20, effective 10/11/20)

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 for allegations that, if substantiated by a preponderance of evidence, would result in a sanction less than a suspension or expulsion, do not involve a Title IX complaint, and that do not involve felony-level crimes.

"Business days" refers to the days and hours the university 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 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 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 129 Showalter Hall, or emailing them to srr@ewu.edu.

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

"Hearing authority" refers to the decision-maker in a conduct review hearing.

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

"Notify" means to provide notice to a person. A person may be notified in person, by telephone, by sending notice to the person's university 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, 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 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 formal signed complaint from a current student, applicant, ~~(employee)~~ ~~(employee)~~, or person participating in or seeking to participate in a university program or activity, or by the Title IX coordinator, alleging sexual harassment, sexual assault, domestic violence, dating violence, or stalking for the conduct that occurred on university premises, during a university program or activity within the United States, or at a building owned or controlled by a student organization that is officially recognized by the university. A complaint of sexual misconduct or interpersonal violence will only be considered a Title IX complaint under this code if it meets this definition. Sexual misconduct or interpersonal violence may still be addressed under this code if it does not meet the definition of a Title IX complaint.

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

"University" means Eastern Washington University.

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

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

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

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

AMENDATORY SECTION (Amending WSR 20-19-046, filed 9/10/20, effective 10/11/20)

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 and full conduct hearings under this chapter. 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: 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 dean of students or designee shall serve as the CRO and chair of council proceedings;

(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 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 three members. The council may consist of students, staff, or faculty members.

(4) Investigator: For all Title IX, sexual misconduct, and interpersonal violence complaints, and certain other cases at the director's discretion, the director may assign a complaint to an investigator to conduct an investigation. The investigator will provide a written investigative report to the 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 20-19-046, filed 9/10/20, effective 10/11/20)

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;

(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 pursuing a student conduct case on its own behalf, an EWU employee shall initiate the complaint. For Title IX complaints, a complaint must either be filed by the person subject to the alleged misconduct or by the Title IX coordinator. If a complaint is filed by the Title IX coordinator, the Title IX coordinator will not be considered a complainant for the purposes of participating in the investigation and hearing process.

(2) Complaint review. Upon receipt of a complaint, the director of SRR shall review the complaint to determine whether it includes allegations of sexual misconduct or interpersonal violence, may lead to suspension or expulsion and/or felony level criminal conduct to determine which student conduct process applies and if appropriate law enforcement or other authorities should be notified. If a complaint falls within such categories, it shall be referred to a hearing under WAC 172-121-122.

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

(a) Report to Title IX coordinator. The director of SRR shall report all complaints which may constitute any form of sexual misconduct or interpersonal violence to the university Title IX coordinator within 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).)) The Title IX coordinator is responsible for determining whether or not the allegations constitute a formal Title IX complaint. If allegations do not meet the definition of a Title IX complaint, the Title IX coordinator will inform the complainant and the respondent that the complaint is not considered a Title IX complaint and the reasons it does not fit within the required elements of a formal Title IX complaint. If the complainant or respondent disagrees with the Title IX coordinator's decision, the party may file an appeal with the dean of students within three calendar days of the Title IX coordinator's decision. The dean of students can affirm, reverse, or remand the Title IX coordina-

tor's decision and such decision must be communicated in writing simultaneously to the parties.

SRR may proceed, however, with pursuing a student conduct case against the respondent for misconduct outside of Title IX including, but not limited to, sexual misconduct or interpersonal violence that does not fit the definition of a Title IX complaint.

(c) Prompt resolution. The university shall investigate any complaint alleging sexual misconduct or interpersonal violence when it is legally required to do so. The university's goal is to have complaints of sexual misconduct or interpersonal violence resolved within 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.

(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 when it is required to do so under federal, state, and local law.

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

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

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

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

AMENDATORY SECTION (Amending WSR 20-19-046, filed 9/10/20, effective 10/11/20)

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, 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, are considered full hearings under the Administrative Procedure Act.

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

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

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

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

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

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

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

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

(f) In addition to an advisor, a complainant or respondent may bring a certified therapy animal with a handler for the hearing. The handler is not allowed to participate in the hearing process.

(4) Review of evidence:

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

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

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

AMENDATORY SECTION (Amending WSR 20-19-046, filed 9/10/20, effective 10/11/20)

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. Following provision of the notice of allegations to the respondent, as set forth in WAC 172-121-110, the SRR office shall arrange for a prehearing conference.

(2) General provisions.

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

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

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

(3) Appearance.

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

(b) Appearance: The parties will be provided options for reasonable alternative arrangements if they do not wish to be present in the same room as the other student during the hearing. The parties may appear at the conduct review hearing in person via a method that allows the council to hear the parties and physically observe them while testifying, subject to the limits set forth below in (e) of this subsection. If a party does not appear at the hearing, the council will decide the case based on the information available. 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) Remote appearance. In the interest of fairness and expedience, the CRO may permit any person to appear by a method that allows the person to be seen and heard by the council.

(4) Standard of evidence. The council shall determine whether the respondent violated the student conduct code, as charged, based on a preponderance of the evidence. A preponderance means, based on the evidence admitted, whether

it is more probable than not that the respondent violated the student conduct code.

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

(a) Review the written list of allegations;

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

(c) Provide the respondent and 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 possible penalties under the student conduct code;

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

(h) Address any preliminary matters or motions.

(6) Notice of hearing. Following the prehearing conference, the director shall schedule the hearing and notify the respondent and complainant of the date, time, location, participants, and purpose of the hearing. The notices will include information about how to request accommodations or interpreters for any parties or witnesses. Any request for the presence of an emotional support animal or any other accommodation must be directed to disability support services and approved as a reasonable accommodation in advance of the hearing. A person may bring a certified therapy animal with a handler to a hearing. The notice of hearing must be served on the respondent and complainant at least seven business days prior to the hearing. The director may coordinate with the parties to facilitate scheduling, but is not required to do so.

(7) Evidence.

(a) Evidence: Pertinent records, exhibits and written statements may be accepted as information for consideration by the council in accordance with RCW 34.05.452. 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 irrelevant 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)) may be issued by the presiding officer or an attorney consistent with RCW 34.05.446. However, for the protection of both parties, a party cannot subpoena the other party. A party may request an exemption from this rule by filing a written request with the presiding officer at least ten days prior to the hearing. The presiding officer will provide a copy of the request to the other party and give them three days to respond. The presiding officer will then decide whether or not sufficient cause exists to grant an exemption to this rule and will inform the parties of the decision. Any subpoena issued must conform to EWU's subpoena form. Every subpoena shall identify the party causing issuance of the subpoena and shall state EWU's name and the title of the proceeding and shall ((command)) direct 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)) (b) 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)) (c) 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)) or 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, and the university's presenter may call witnesses at full hearings.

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

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

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

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

(12) Questioning:

(a) The complainant's advisor, the respondent's advisor, and the university's presenter may ask questions of any witness, or party, including cross-examination questions. For cases that do not involve Title IX complaints, if the student does 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 questions, but is not required to do so. The CRO may preclude any questions which they consider irrelevant, and for Title IX cases such decision must

be explained on the record. The CRO must exclude and the council shall not consider any questions or evidence pertaining to the complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. The CRO will explain to the parties the reason for rejecting any questions and will maintain a record of the questions submitted and rulings made.

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

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

(14) Deliberations and sanctions. Following the hearing, the council will determine in closed session whether, by a preponderance of the evidence, the respondent violated the student conduct code based on the evidence presented at the hearing. If a student fails to appear, the council shall make a decision based on the information available. If the council determines the respondent violated the student conduct code, the CRO shall then decide what sanctions and remedies shall be imposed. The CRO may review the respondent's previous disciplinary history 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 council shall issue a decision including their findings, conclusions, and rationale. The decision shall address credibility issues if credibility or witness demeanor was a substantial factor in the council's decision. Credibility determinations may not be based on a person's status as a complainant, respondent, or witness. The findings shall be based exclusively on the evidence provided at the hearing. If the council finds the respondent violated the code, the CRO shall add the decision regarding sanctions and remedies to the council's decision. Such decisions should be issued within 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) Contain appropriately numbered conclusions 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) Contain a statement describing rights to appeal and the procedures for appealing.

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

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

(17) Notification to the complainant. In cases of sexual misconduct or interpersonal violence, 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, 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 20-19-046, filed 9/10/20, effective 10/11/20)

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

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

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

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

For all non-Title IX cases, the 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 of any 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 director of SRR will determine what restriction(s) will be placed on a student.

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

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

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

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

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

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

(6) Emergency appeal review.

(a) If a student has been suspended on an interim basis, the student will automatically receive an emergency appeal review with the vice president for student affairs, or designee. If the interim restriction is something less than a suspension, the student or student organization subject to the interim restriction must file a written appeal with the vice president for student affairs 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))~~ director and the basis on which the restriction modification or termination is requested by the appealing party. The emergency appeal review does not replace the regular hearing process. In the emergency appeal review, the vice president will only review materials available to and information considered by the 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.

WSR 20-22-054

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed October 29, 2020, 1:22 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-12-096.

Title of Rule and Other Identifying Information: WAC 388-823-1095 What are my rights as a DDA client?

Hearing Location(s): On December 8, 2020, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington Street S.E., Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or by Skype. Due to the COVID-19 pandemic, hearing may be held via Skype, see DSHS website for most up to date information.

Date of Intended Adoption: Not earlier than December 9, 2020.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., December 8, 2020.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by November 24, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed amendments to WAC 388-823-1095 implement 2SHB 1651 (2019), which is related to the rights of developmental disabilities administration (DDA) clients.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: Chapter 71A.26 RCW.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1589; Implementation and Enforcement: Teresa Boden, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1502.

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

A cost-benefit analysis is not required under RCW 34.05.328. DDA is exempt from preparing a cost-benefit analysis under RCW 34.05.328 (5)(b)(iii) because the content is copied from statute without material change.

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

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 34.05.310 (4)(e) because the content is explicitly and specifically dictated by statute.

October 29, 2020

Katherine I. Vasquez

Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-1095 What are ((my)) a person's rights as a DDA client or eligible person? ((As a DDA client, you have the following rights:))

~~(1) The ((right to be free from any kind of abuse or punishment (verbal, mental, physical, and/or sexual); or being sent to a place by yourself, if you do not choose to be alone;~~

~~(2) The right to appeal any decision by DDA that denies, reduces, or terminates your eligibility, your services or your choice of provider;~~

~~(3) The right to receive only those services you agree to;~~

~~(4) The right to meet with and talk privately with your friends and family;~~

~~(5) The right to personal privacy and confidentiality of your personal and other records;~~

~~(6) The right to choose activities, schedules, and health care that meet your needs;~~

~~(7) The right to be free from discrimination because of your race, color, creed, national origin, religion, sex, age, disability, marital status, gender identity, or sexual orientation;~~

~~(8) The right to set your own rules in your home and to know what rules your providers have when you are living in their house or working in their facility;~~

~~(9) The right to request information regarding services that may be available from DDA;~~

~~(10) The right to know what your doctor wants you to do or take and to help plan how that will happen;~~

~~(11) The right to be free from unnecessary medication, restraints and restrictions;~~

~~(12) The right to vote and help people get elected to office;~~

~~(13) The right to complain and not to have someone "get even";~~

~~(14) The right to have your provider listen to your concerns including those about the behavior of other people where you live;~~

~~(15) The right to receive help from an advocate;~~

~~(16) The right to manage your money or choose other persons to assist you;~~

~~(17) The right to be part of the community;~~

~~(18) The right to make choices about your life;~~

~~(19) The right to wear your clothes and hair the way you want;~~

~~(20) The right to work and be paid for the work you do; and~~

~~(21) The right to decide whether or not to participate in research after the research has been explained to you, and after you or your guardian gives written consent for you to participate in the research))~~ following definitions apply to this section:

(a) "Administration" means the division of the department responsible for providing services to eligible persons, but does not include the division of the department responsible for the licensing and certification of services and facilities for eligible persons.

(b) "Assessment" has the same meaning as defined in RCW 71A.10.020.

(c) "Client" means a person who has a developmental disability as defined in RCW 71A.10.020 and has been determined to be eligible to receive services under chapter 71A.16 RCW.

(d) "Department" means the department of social and health services.

(e) "Developmental disabilities ombuds" means the office created under chapter 43.382 RCW.

(f) "Eligible person" has the same meaning as defined in RCW 71A.10.020.

(g) "Legal representative" means a parent of a client under age eighteen, a court-appointed guardian or limited guardian under Title 11 RCW if the subject matter is within the scope of the guardianship order, or any other person authorized by law to act for the client.

(h) "Necessary supplemental accommodation representative" means an individual who receives copies of administration correspondence to help a client or eligible person understand the documents and exercise the client or eligible person's rights. The necessary supplemental accommodation representative is identified by the client or eligible person when the client or eligible person does not have a legal guardian and is requesting or receiving services from the administration.

(i) "Provider" means an individual, a facility, or an agency that is one or more of the following: Licensed, certified, contracted by the department, or state operated to provide services to administration clients.

(j) "Restraint" includes:

(i) Physical restraint, which is a manual method, obstacle, or physical or mechanical device, material, or equipment attached or adjacent to the client's body that restricts freedom of movement or access to the client's body, is used for discipline or convenience, and is not required to treat the client's medical symptoms; and

(ii) Chemical restraint, which is a psychopharmacologic drug that is used for discipline or convenience and is not required to treat the client's medical symptoms.

(k) "Restriction" means a limitation on the client's use or enjoyment of property, social activities, or engagement in the community.

(l) "Service plan" means any plan required by the department to deliver the services authorized by the administration to the client

(2) The rights set forth in this section are the minimal rights guaranteed to all clients of the administration, and are not intended to diminish rights set forth in other state or federal laws that may contain additional rights.

(3) The administration must notify the individual and the individual's legal representative or necessary supplemental accommodation representative of the rights set forth in this section upon determining the individual is an eligible person. The notification the administration provides must be in written form. The administration must document the date that the notification required in this subsection was provided.

(4) The administration must notify a client and a client's legal representative or necessary supplemental accommodation representative of the rights set forth in this section upon conducting a client's assessment. The notification the administration provides must be in written form. The administration must document the date it provided the notification required in this subsection.

(5) The client has the right to exercise autonomy and choice free from provider interference. This includes the client's right to:

(a) Be free from sexual, physical, and mental abuse, corporal punishment, and involuntary seclusion;

(b) Be free from discrimination based on race, color, creed, national origin, religion, sex, age, disability, marital and family status, gender identity, or sexual orientation;

(c) Make choices regarding the type of food available within the client's resources and service plan;

(d) Have visitors at the client's home and associate with persons of the client's choosing and subject to limitations as negotiated with the client's housemates;

(e) Control the client's schedule and choose activities, schedules, and health care that meet the client's needs;

(f) Information about the treatment ordered by the client's health care provider and help plan how the treatment will be implemented;

(g) Be free from unnecessary medication, restraints, and restrictions;

(h) Vote, participate in the democratic process, and help people with getting elected to office;

(i) Manage the client's money or choose a person to assist;

(j) Be part of the community;

(k) Make choices about the client's life;

(l) Choose the clothes and hairstyle the client wears;

(m) Furnish and decorate the client's bedroom to the client's preferences or furnish and decorate the client's home to the client's preferences subject to agreement with the client's housemates;

(n) Seek paid employment;

(o) Receive the services that the client agrees to receive;

(p) Decide whether or not to participate in research after the research has been explained to the client, and after the client or the client's legal representative gives written consent for the client to participate in the research; and

(q) Be free from financial exploitation.

(6) The client has the right to participate in the administration's service planning. This includes the client's right to:

(a) Be present and provide input on the client's service plans written by the administration and providers;

(b) Have meaningful opportunities to lead planning processes;

(c) Have the client's visions for a meaningful life and the client's goals for education, employment, housing, relationships, and recreation included in the planning process;

(d) Choose an advocate to attend the planning processes with the client; and

(e) Have access to current and accurate information about recreation, education, and employment opportunities available in the client's community.

(7) The client has the right to access information about services and health care. This includes the client's right to:

(a) View a copy of all of the client's service plans;

(b) Possess full copies of the client's current service plans;

(c) Review copies of the policies and procedures for any service the client receives, at any time. This includes policies and procedures about how the client may file a complaint to providers and the department;

(d) Examine the results of the department's most recent survey or inspection conducted by state surveyors or inspectors, statements of deficiency, and plans of correction in effect with respect to the client's provider and the client's residence. The client's service provider must assist the client with locating and accessing this information upon the client's request; and

(e) Receive written notification of enforcement actions taken by the department against the client's provider. The administration's case manager or designee must provide notification to the client and the client's legal representative or necessary supplemental accommodation representative within twenty days, excluding weekends and holidays, of the date of enforcement. For purposes of this subsection, a "provider" means an entity that provides residential services received by a client that is operated by or contracted through the administration. An enforcement action that requires this notification includes:

(i) Conditions placed on the provider certification or license;

(ii) Suspension or limited suspension of referrals or admissions;

(iii) Imposition of provisional certification or decertification; or

(iv) Denial, suspension, or revocation of a license or certification.

(8) The client has the right to file complaints and grievances, and to request appeals. This includes the client's right to:

(a) Appeal any decision by the department that denies, reduces, or terminates the client's eligibility, services, or choice of provider as defined in federal medicaid law and state public assistance laws;

(b) Submit grievances to the client's provider about the client's services or other concerns. This includes, but is not limited to, concerns about the behavior of other people where the client lives. The provider must maintain a written policy on the grievance process that includes timelines and possible remedies. If a grievance is unresolved, the provider must provide the client with information on how to submit the grievance to the department;

(c) File complaints and grievances, and request appeals without penalty or retaliation by the department or providers; and

(d) Receive information about how to obtain accommodation for disability in the appeal process.

(9) The client has the right to privacy and confidentiality. This includes the client's right to:

(a) Personal privacy and confidentiality of the client's personal records;

(b) Communicate privately, including the right to send and receive mail and email, and the right to use a telephone in an area where calls can be made without being overheard; and

(c) Meet with and talk privately with the client's friends and family.

(10) The client has rights during discharge, transfer, and termination of services as set forth in this subsection.

(a) Clients who are residents of a long-term care facility that is licensed under chapter 18.20, 72.36, or 70.128 RCW have the rights set forth in RCW 70.129.110.

(b) Clients who receive certified community residential services have the right to:

(i) Remain with the client's provider. Services must not be terminated unless the provider determines and documents that:

(A) The provider cannot meet the needs of the client;

(B) The client's safety or the safety of other individuals in the facility or residence is endangered;

(C) The client's health or the health of other individuals in the facility or residence would otherwise be endangered; or

(D) The provider ceases to operate.

(ii) Receive written notice from the provider of any potential termination of services at least thirty days before such termination, except when there is a health and safety emergency that requires termination of service, in which case notice must be provided at least seventy-two hours before the date of termination. The notice must be provided to the client and the client's legal representative or necessary supplemental accommodation representative. The notice must include:

(A) The reason for termination of services; and

(B) The effective date of termination of services.

(iii) Receive a transition plan at least two days before the effective date of the termination of services, or if the termina-

tion was based on a health and safety emergency receive a transition plan within two days of the administration's receipt of notice for emergency termination. The administration must provide the client and the client's legal representative or necessary supplemental accommodation representative with the plan. The plan must include:

(A) The location where the client will be transferred;

(B) The mode of transportation to the new location; and

(C) The name, address, and telephone number of the developmental disabilities ombuds.

(c) A provider that provides services to clients in a residence owned by the provider must exhaust the procedures for termination of services prior to the commencement of any unlawful detainer action under RCW 59.12.030.

(11) The client has the right to access advocates. The client has the right to receive information from agencies acting as client advocates, and be afforded the opportunity to contact these agencies. The provider must not interfere with the client's access to any of the following:

(a) Any representative of the state;

(b) The resident's individual physician;

(c) The developmental disabilities ombuds; or

(d) Any representative of the organization designated to implement the protection and advocacy program pursuant to RCW 71A.10.080.

(12) If a client is subject to a guardianship order pursuant to chapter 11.88 RCW, the rights of the client under this section are exercised by the client's guardian if the subject matter is within the scope of the guardianship order.

WSR 20-22-072

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed November 2, 2020, 10:46 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-07-064.

Title of Rule and Other Identifying Information: Chapter 308-12 WAC, Architects.

Hearing Location(s): On December 9, 2020, at 1:00 p.m. Telephonic public hearing, call-in number 360-407-3780, Conference PIN code: 947159#. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the department of licensing (DOL) will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical space, will be held instead. Board members, presenters, and staff will all participate remotely. The public may call in using the information provided for the telephonic conference.

Date of Intended Adoption: December 10, 2020.

Submit Written Comments to: Julie Konnersman, DOL, Washington State Board for Architects, P.O. Box 9020, Olympia, WA 98507-9020, email jkonnersma@dol.wa.gov, fax 360-570-7098, by December 9, 2020.

Assistance for Persons with Disabilities: Contact Shari Honeywell, phone 360-764-6175, fax 360-570-7098, TTY 711, email shoneywell@dol.wa.gov, by December 8, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Updated language is necessary to support the new licensing system upgrade and its requirements and anticipated changes to chapter 18.08 RCW. Update application language to clarify the various application requirements. New language is being added to clarify existing signature requirements including electronic.

Reasons Supporting Proposal: To streamline the application process for licensees and applicants; and fulfill system requirements necessary to apply online. To align the signature requirements, including electronic, with the other design programs regulated by the regulatory boards section.

Statutory Authority for Adoption: RCW 18.08.340.

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

Name of Proponent: DOL, governmental.

Name of Agency Personnel Responsible for Drafting: Julia Manley, 405 Black Lake Boulevard S.W., Olympia, WA 98502, 360-664-6557; Implementation and Enforcement: Rick Storvick, 405 Black Lake Boulevard S.W., Olympia, WA 98502, 360-664-1387.

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

A cost-benefit analysis is not required under RCW 34.05.328. These rule changes will impact all architect licensees but they will have no to minimal costs to implement and comply. The changes are administrative in nature, such as simplifying the administrative tasks to obtain a license and aligning signature requirements with other design programs.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of exemptions: The changes will shorten the amount of time applicants spend in the managed training program to align with national standards. There are no new fees or changes to current fees required with this update. Current licensees will not be required to purchase new stamps. Given the efforts to streamline the licensing administrative process it is possible licensees may see cost savings either real or in staff time for processing.

November 2, 2020

Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-11-019, filed 5/9/11, effective 7/1/11)

WAC 308-12-005 Definitions. (1) "Architect of record" is the architect whose (~~name appears on the building permit~~) stamp or seal appears on the technical submission.

(2) "ARE" or "examination" means the architect registration examination written and administered by NCARB.

(3) "AXP" means the Architecture Experience Program established by NCARB, which is the structured training pro-

gram currently recognized by the Washington state board for architects.

(4) "Building" means "structure" as defined in RCW 18.08.320.

~~((4))~~ (5) "Direct supervision," as in the phrase "under the direct supervision of an architect," as used in connection with architectural work experience for qualification and eligibility for the examination shall refer to any of the following conditions or situations:

(a) The supervising architect is an employer who is knowledgeable of the performance and competence of the applicant.

(b) The supervising architect works for the same employer as the applicant, and is either the direct superior of the applicant, or a co-worker knowledgeable and responsible for the efforts of the applicant.

(c) The supervising architect is licensed in an NCARB-recognized jurisdiction.

~~((5))~~ (6) "Entire examination" as referred to in RCW 18.08.360(3) means all divisions of the ARE.

~~((6))~~ (7) "Institution of higher education" as used in RCW 18.08.320 means a college or school recognized by the National Architectural Accreditation Board (NAAB) as having accredited programs in architecture.

~~((7) "Intern development program" or "IDP" is a structured internship training program designed to provide a profession-wide, comprehensive program that contributes to the development of competent architects.)~~

(8) "IPAL" means the Integrated Path to Architectural Licensure established by NCARB and is a structured path to earning an architectural license that gives students the opportunity to complete all core licensure requirements while earning a degree.

(9) "NAAB" means National Architectural Accreditation Board.

(10) "NCARB" means the National Council of Architectural Registration Boards, of which the Washington board is a member.

~~((9))~~ (11) "Practical architectural work experience" means performing activities involved in the practice of architecture, as defined in RCW 18.08.320 and meeting the criteria in RCW 18.08.350.

~~((10) Professional development equivalents:~~

~~(a) One professional development hour (PDH) is equal to no less than fifty minutes of instruction.~~

~~(b) For professional development through an institution of higher education:~~

~~(i) One semester hour equals forty-five PDH.~~

~~(ii) One quarter hour equals thirty PDH.~~

~~((11))~~ (12) "Technical submission" means designs, drawings, specifications, studies, and other technical documents prepared ~~((in the course of practicing architecture))~~ for the submission to public authorities.

AMENDATORY SECTION (Amending WSR 11-11-019, filed 5/9/11, effective 7/1/11)

WAC 308-12-010 How does the state board function?

The Washington state board for architects, hereafter called the board, shall hold quarterly regular public meetings each

year. Additional ~~((public))~~ special meetings may be held at such times and places as the board may deem necessary. At its regular meeting during the second quarter of the calendar year, the board will elect a chair, a vice chair and a secretary for the upcoming year.

AMENDATORY SECTION (Amending WSR 11-11-019, filed 5/9/11, effective 7/1/11)

WAC 308-12-016 What are the board member rules of conduct? (1) When a member of the board either owns a beneficial interest in or is an officer, agent, employee, or member of an entity; or ~~((individual which is engaged in a transaction involving the board))~~ has a close relationship with an individual or organization who is the subject of a board action, the member shall:

(a) Recuse ~~((him or herself))~~ themselves from the board discussion regarding the specific ~~((transaction))~~ action;

(b) Recuse ~~((him or herself))~~ themselves from the board vote on the specific ~~((transaction))~~ action; and

(c) Refrain from attempting to influence the remaining board members in their discussion and vote regarding the specific ~~((transaction))~~ action.

(2) The prohibition against discussion and voting set forth in subsection (1)(a) and (c) of this section shall not prohibit the member of the board from using ~~((his or her))~~ general expertise to educate and provide general information on the subject area to the other members.

(3) ~~(("Transaction involving the board":~~

~~(a) Means a proceeding, application, submission, request for a ruling or other determination, contract, claim, case, or other similar matter that the member in question believes, or has reason to believe:~~

~~(i) Is, or will be, the subject of board action; or~~

~~(ii) Is one to which the board is or will be a party; or~~

~~(iii) Is one in which the board has a direct and substantial proprietary interest.~~

~~(b) Does not include the following:~~

~~Preparation, consideration, or enactment of legislation, including appropriation of moneys in a budget, or the performance of legislative duties by a member; or a claim, case, lawsuit, or similar matter if the member did not participate in the underlying transaction involving the board that is the basis for the claim, case, or lawsuit. Rule making is not a "transaction involving the board."~~

(4)) "Board action" means any action on the part of the board, including, but not limited to:

(a) A decision, deliberation, determination, finding, ruling, or order; ~~((and))~~ or

(b) A grant, payment, award, license, contract, transaction, sanction, or approval, or the denial thereof, or failure to act with respect to a decision, determination, finding, ruling, or order.

~~((5) The following are examples of possible scenarios related to board member rules of conduct:~~

~~(a) **EXAMPLE 1:**~~

~~The state board for architects disciplines licensed architects in Washington. The board is conducting an investigation involving the services provided by a licensed architect. One of the members of the~~

board is currently serving a subcontractor to that architect on a large project. The board member must recuse himself or herself from any board investigation, discussion, deliberation and vote with respect to disciplinary actions arising from licensed architect services.

(b) EXAMPLE 2:

The state board for architects makes licensing decisions on applications for licensure. An applicant for licensure owns a school construction business which employs licensed architects, including one of the board members. The board member must recuse himself or herself from any board investigation, discussion, deliberation and vote with respect to his employer's application for licensure.

(c) EXAMPLE 3:

The state board for architects makes licensing decisions on applications from registered architects in another state or territory of the United States, the District of Columbia, or another country. The board can grant licensure if that individual's qualifications and experience are equivalent to the qualifications and experience required of a person registered under Washington law. An out-of-state applicant is employed as an architect by a multinational corporation that is planning to build its world headquarters in Washington and has hired a board member's firm as the architect for the project. The board member must recuse himself or herself from any board investigation, discussion, deliberation and vote with respect to the sufficiency of the out-of-state architect's qualifications and experience.

(6) Recusal disclosure. If recusal occurs pursuant to this rule, the member of the board shall disclose to the public the reasons for his or her recusal from any board action whenever recusal occurs. The board staff shall record each recusal and the basis for the recusal.)

AMENDATORY SECTION (Amending WSR 11-11-019, filed 5/9/11, effective 7/1/11)

WAC 308-12-023 How do I become a licensed architect? You need to fulfill three general requirements before getting your license: Education, examination, and experience. If you are already licensed in another NCARB-recognized jurisdiction, you will need to verify you have met these requirements before being licensed in Washington. The board may request additional information (~~or an oral interview, if~~) as necessary. You must also satisfactorily complete (~~a review of laws related to the practice of architecture as determined by the board~~) the Washington state law review exam.

AMENDATORY SECTION (Amending WSR 11-11-019, filed 5/9/11, effective 7/1/11)

WAC 308-12-025 What qualifications do I need to meet (~~if I am not already licensed~~) for initial licensure? If you are not licensed in another jurisdiction, your combination of education and experience will determine what you need to do to get your license (see the chart below). To become licensed, register through NCARB and they will guide you through both the AXP and the ARE.

| (Education type | Accredited professional degree (typically five-year bachelor of architecture or six-year master of architecture) | An equivalent degree, awarded by EESA (education evaluation services for architects) for candidates from a nonaccredited U.S. architectural school or a foreign architectural school | A preprofessional degree in architecture (typically four-years) from a program offering an accredited degree | Postsecondary study in architecture or related fields , with passing grades, in increments of one year, will receive up to three years credit | A degree in architectural technology (typically a two-year community college or trade school degree) | High school diploma or equivalent |
|--|---|---|---|--|---|--|
| Practical architectural work experience | Gained during IDP | | Two years under the direct supervision of an architect | Three or more years depending on your education credit Three of these years must be under the direct supervision of an architect | Four years | Six years |
| IDP | Contact NCARB to find out when you can enroll in IDP | | You can't enroll in IDP until you complete the practical architectural work experience | | | |
| When to apply to take the ARE | You can start taking the ARE through NCARB while enrolled in IDP | Apply to the board after you have completed the practical architectural work experience and IDP | | | | |
| When can you get your license | Apply to the board after you have completed your IDP and ARE | Apply to the board after you have completed the ARE | | | | |
| Additional materials | All candidates must complete the Washington law review)) | | | | | |

(1) If you have an NAAB accredited architectural degree, **or are enrolled in an IPAL program**, you ~~((need to))~~ **must complete ((IDP)) the AXP and the ARE.** ~~((If you choose, you can take the exams while you are completing IDP. NCARB will register and guide you through both IDP and the ARE.))~~ The board also requires a review of Washington's laws and rules relating to the practice of architecture.

(2) If you do not have an NAAB accredited architectural degree, you must have:

(a) A high school diploma or equivalent ~~((and at least nine years' practical architectural work experience.~~))

~~((+))~~;

(b) You must complete the ARE; and

(c) You must have at least ~~((six years of))~~ **eight years'** practical architectural work experience ~~((before enrolling in IDP.~~))

~~((a))~~ **that includes the completion of the AXP.**

(i) At least three of these years of work experience must be under the direct supervision of a licensed architect and be completed outside of the experience reported in the AXP.

~~((b))~~ (ii) The remaining three years can be any combination of the following as approved by the board:

~~((+))~~ (A) Postsecondary education courses in architecture, architectural technology or a related field (:

(A) ~~Related fields may include the following:~~

~~((+))~~ including, but not limited to, environmental design; ~~((H))~~ urban planning; ~~((HH))~~ landscape architecture; ~~((IV))~~ construction management; ~~((V))~~ civil engineering; ~~((VI))~~ naval architecture; ~~((VII))~~ interior architecture; ~~((VIII))~~ other fields as determined by the board.

(B) ~~((With a passing grade, thirty semester credit hours or forty five quarter hours are considered to be one year. Any~~ fraction, one half year or greater, will be counted one half year, and less than one half year will not be counted.

~~((+))~~ (ii) Practical architectural work experience may be accrued simultaneously while educational credit is being accrued and will receive credit if it is as follows:

(A) At least thirty-five hours per week for at least ten consecutive weeks – One hundred percent.

(B) At least twenty hours per week for at least six continuous months – Fifty percent.

(2) After you complete IDP, apply to the board to take the ARE. When your application is approved, board staff will register you to take the ARE. You will pay the fees for examination and reexamination directly to NCARB.

(3) The board also requires a review of Washington's laws and rules relating to the practice of architecture.) A year consists of three quarters (45 credit hours), or two semesters (30 credit hours), or as otherwise defined by the postsecondary school attended. You may earn a partial year of experience as follows: Each quarter (15 credits) completed equals four months of experience; each semester (15 credits) completed equals six months of experience. Experience will not be awarded for increments less than 15 credits or its equivalent.

(iii) Practical architectural work experience may be accrued simultaneously while earning postsecondary educational credit.

Part-time work will accrue on a prorated basis.

(3) The board also requires satisfactory completion of the Washington state law review exam.

Architect - Draft rule changes

| <u>Education type</u> | <u>Accredited professional degree</u> (B.Arch or M.Arch) <u>Or Enrolled in IPAL</u> | <u>An equivalent degree, awarded by EESA</u> (education evaluation services for architects) for candidates from a nonaccredited U.S. architectural school or a foreign architectural school | <u>A preprofessional degree in architecture</u> (typically four-years) from a program offering an accredited degree | <u>Postsecondary study in architecture or related fields</u> , with passing grades, in increments of one year, will receive up to three years credit | <u>A degree in architectural technology</u> (typically a two-year community college or trade school degree) | <u>High school diploma</u> or equivalent |
|---|---|--|--|--|--|---|
| <u>Practical architectural work experience</u> | Gained during AXP | | AXP PLUS Two additional years under the direct supervision of an architect | AXP PLUS Three or more additional years depending on your education credit Three of these additional years must be under the direct supervision of an architect | AXP PLUS Four additional years | AXP PLUS Six additional years |
| <u>AXP</u> | After graduating high school, contact NCARB to enroll in AXP and begin reporting experience | | | | | |

| | | | | | | |
|---|--|--|--|--|--|---|
| | <p>Accredited professional degree (B.Arch or M.Arch) Or Enrolled in IPAL</p> | <p>An equivalent degree, awarded by EESA (education evaluation services for architects) for candidates from a nonaccredited U.S. architectural school or a foreign architectural school</p> | <p>A preprofessional degree in architecture (typically four-years) from a program offering an accredited degree</p> | <p>Postsecondary study in architecture or related fields, with passing grades, in increments of one year, will receive up to three years credit</p> | <p>A degree in architectural technology (typically a two-year community college or trade school degree)</p> | <p>High school diploma or equivalent</p> |
| <p>When to apply to take the ARE</p> | <p>You can start taking the ARE through NCARB while enrolled in AXP or actively participating in an NCARB-accepted Integrated Path to Architectural Licensure (IPAL) option within a NAAB-accredited professional degree program in architecture while enrolled in AXP</p> | <p>After completing and submitting the board's official application form with payment contact NCARB to register for the ARE</p> | | | | |
| <p>When can you get your license</p> | <p>Apply to the board after you have completed your AXP and ARE</p> | <p>Apply to the board after you have met the education and/or experience requirements and have completed the AXP and ARE</p> | | | | |
| <p>Additional materials</p> | <p>All candidates must complete the Washington law review</p> | | | | | |

AMENDATORY SECTION (Amending WSR 11-11-019, filed 5/9/11, effective 7/1/11)

WAC 308-12-028 What is the application process (~~if I am not already licensed~~) for initial licensure as an architect? (1) If you have an NAAB accredited architectural degree, **or are enrolled in an IPAL program:**

(a) Contact NCARB to register for (~~IDP~~) the AXP and the ARE. You will pay the fees for examination and reexamination directly to NCARB.

(b) When you have finished (~~IDP~~) the AXP and the ARE:

(i) Have NCARB transmit your council record directly to the board office, showing evidence of your qualifications, (~~experience~~) and successful completion of the (~~ARE, as shown by your council record, directly to the Washington board office~~) AXP and the ARE.

(ii) Complete the board's official application form with the application fee and initial license fee and submit it to the board office. The application fee is not refundable.

(iii) (~~Complete a review of Washington's laws and rules relating to the practice of architecture.~~) Satisfactorily complete the Washington state law review exam.

(2) If you do not have an accredited architectural degree:

(a) Complete the board's official application form with the application fee and submit it to the board office. The application fee is not refundable.

(b) Contact NCARB to register for the AXP and the ARE. You will pay the fees for examination and reexamination directly to NCARB.

(c) Using the board's application forms, have the licensed architects who have reviewed your practical work experience provide verification of your experience directly to the board office.

(~~e~~) Once your application is approved, contact NCARB to register for IDP.

(d) Complete IDP and have NCARB transmit your council record directly to the Washington board office. Board staff will register you for the ARE. You will pay the fees for examination and reexamination directly to NCARB.

(~~e~~) Successfully complete the ARE.

(~~f~~) Submit the initial license fee to the board office.

(~~g~~) Complete a review of Washington's laws and rules relating to the practice of architecture. (d) If applicable, have your college or university submit, directly to the board office, official sealed transcript(s) showing any applicable courses you have taken.

(e) Once you successfully complete all education/experience requirements, the AXP and the ARE have NCARB transmit your council record directly to the board office.

(f) Submit the initial license fee to the board office.

(g) Satisfactorily complete the Washington state law review exam.

AMENDATORY SECTION (Amending WSR 11-11-019, filed 5/9/11, effective 7/1/11)

WAC 308-12-031 Who manages the (~~required intern training program and examination~~) AXP and

administers the ARE examination? ~~((The National Council of Architectural Registration Boards (NCARB)))~~ NCARB maintains and validates the continuing, comprehensive record of ~~((internship))~~ training and the board has adopted NCARB's ~~((Intern Development Program (IDP)))~~ AXP as the board-approved structured ~~((intern))~~ training program. The board has adopted the NCARB ~~((Architect Registration Examination (ARE)))~~ ARE and grading procedure prepared by NCARB as the state examination for licensure. NCARB administers the entire examination for Washington candidates, and collects examination and reexamination fees accordingly. Candidates ~~((with an accredited architectural degree))~~ may take portions of the examination concurrently while enrolled in ~~((IDP))~~ the AXP. No review or appeal of failed examinations is accepted by the department or the board.

AMENDATORY SECTION (Amending WSR 11-11-019, filed 5/9/11, effective 7/1/11)

WAC 308-12-050 What qualifications do I need to meet if I am already licensed? (1) If you hold an active architect license in good standing in any jurisdiction recognized by NCARB, you can apply for a Washington license if your qualifications and experience meet one of the following:

~~((1))~~ (a) You have an NCARB certificate. The board recognizes NCARB certification to include certification through the broadly experienced architect and/or broadly experienced foreign architect programs;

~~((2))~~ (b) You do not have an NCARB certificate, but you have satisfactorily completed the ARE or an examination as approved by the board~~((-including a test component or licensing requirement addressing seismic structure as determined by the board;))~~ and:

~~((a))~~ (i) Have been licensed as an architect ~~((nine))~~ eight or more years; or

~~((b) Have an NAAB degree and have completed IDP.)~~ (ii) Have met the educational and experience requirements of WAC 308-12-025, and have completed the AXP.

(2) If your architect license is from a jurisdiction not recognized by NCARB, you will need to apply for initial licensure as described in WAC 308-12-028.

AMENDATORY SECTION (Amending WSR 11-11-019, filed 5/9/11, effective 7/1/11)

WAC 308-12-055 What is the application process if I am already licensed in an NCARB recognized jurisdiction? (1) If you are currently licensed and have an NCARB certificate:

(a) Complete the board's official application form and submit it to the board office with the reciprocity application fee and the initial license fee. The application fee is not refundable.

(b) Have NCARB transmit evidence of your certification directly to the Washington board office.

~~((Complete a review of Washington's laws and rules relating to the practice of architecture.))~~ Satisfactorily complete the Washington state law review exam.

(2) If you are licensed in an NCARB-recognized jurisdiction and ~~((don't))~~ do not have an NCARB certificate:

(a) Complete the board's official application form and submit it to the board office with the reciprocity application fee and the initial license fee. The application fee is not refundable.

(b) Request certification be sent directly from the issuing jurisdiction to the ~~((Washington))~~ board office, verifying you have successfully passed the ARE, and:

(i) Have held an active license for ~~((nine))~~ eight or more years; or

(ii) Have held an active license for less than ~~((nine))~~ eight years and have ~~((one or more of the following))~~ either:

(A) An ~~((NAAB degree and have completed IDP))~~ NAAB accredited architectural degree, as shown by ~~((your IDP record))~~ an official sealed transcript sent directly to the board office by the college or university and have completed the AXP as shown by your AXP record sent directly to the ~~((Washington))~~ board office from NCARB;

(B) A combination of education and experience, including completion of the AXP, totaling eight years, as shown by:

(I) An official sealed transcript showing any applicable courses you have taken from a community college, technical college, or university. The transcript must be sent directly from the college or university to the board office; ~~((and))~~

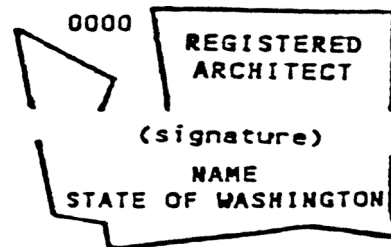
(II) Verification of practical architectural work experience, on the board's application forms, ~~((completely))~~ completed by licensed architects who have reviewed your practical work experience and sent directly to the board office; and

(III) Your AXP record sent directly to the board office from NCARB.

(3) Satisfactorily complete a review of ~~((Washington's laws and rules relating to the practice of architecture))~~ Washington state law review exam.

AMENDATORY SECTION (Amending WSR 11-11-019, filed 5/9/11, effective 7/1/11)

WAC 308-12-081 Do I need a stamp or seal? Every architect licensed in the state of Washington must have a seal of design authorized by the board, bearing the registrant's name, license number and the legend "Registered architect, state of Washington." An example of the board-authorized seal appears below. Deviations are not allowed.



You must sign and seal all technical submissions required for building permits or regulatory approvals that are filed with authorities having jurisdiction.

(1) Drawings prepared by you must be signed and sealed on each sheet.

(2) Specifications and other technical submissions need only be sealed on the cover, title page, and all pages of the table of contents.

(3) The seal may be electronic.

You may only sign and seal drawings prepared by you, or in one of the following ways:

~~((*)~~ (a) By your regularly employed subordinates and reviewed by you;

~~((*)~~ (b) By an individual or firm under direct subcontract with you, if the signing and sealing architect has reviewed and coordinated the preparation of the work, or has integrated the work into their own technical submissions;

~~((*)~~ (c) In collaboration with an architect licensed in a jurisdiction recognized by the board provided there is a contractual agreement between you and that architect, if the signing and sealing architect has reviewed and coordinated the preparation of the work, or has integrated the work into their own technical submission.

By signing and sealing ~~((drawings or specifications))~~ technical submissions, you become the architect of record and are responsible to the same extent as if you prepared the ~~((drawings or specifications))~~ technical submissions yourself.

Without exception, these stamping requirements apply to all work filed with public authorities you prepare or review, or that is prepared under your personal supervision by persons under your direction and control, regardless whether the work is exempt from the licensing requirements found in RCW 18.08.410.

~~((3))~~ (4) The term "signature" or "signed" as used in chapters 18.08 RCW and/or 308-12 WAC, means the following:

(a) A handwritten identification or a digital representation of your handwritten identification that represents the act of putting your name on a document to attest to its validity. The handwritten or digital identification must be:

(i) Original and written by hand, or a scanned image of an original, handwritten identification;

(ii) Permanently affixed to the document(s) being certified;

(iii) Applied to the document by the identified licensee or by their designee under the direction of the licensee;

(iv) Placed across the seal/stamp of the licensee.

(b) A digital identification that is an electronic authentication process attached to or logically associated with an electronic document. The digital identification may include a scanned or digitized signature. The digital identification must be:

(i) Unique to the licensee using it;

(ii) Capable of independent verification;

(iii) Under the exclusive control of the licensee using it;

and

(iv) Linked to a document in such a manner that a digital identification is invalidated if any data in the document is changed.

AMENDATORY SECTION (Amending WSR 15-15-034, filed 7/8/15, effective 8/8/15)

WAC 308-12-205 Architect fees. ~~((+) Suspension of fees. Effective July 1, 2015, the listed fees shown in subsection (2) of this section are suspended and replaced with the following:~~

| Title of Fee | Fee |
|--------------------------------------|------------|
| Individuals: | |
| Examination application | \$50.00 |
| Reciprocity application | 250.00 |
| Initial licensure | 75.00 |
| License renewal (2 years) | 75.00 |
| Late renewal penalty | 25.00 |
| Duplicate license | 15.00 |
| Business entities: | |
| Certificate of authorization | 100.00 |
| Certificate of authorization renewal | 50.00 |

~~The fees set forth in this section shall revert back to the fee amounts shown in subsection (2) of this section on July 1, 2017.~~

~~(2))~~ The following fees shall be charged by the business and professions division of the department of licensing:

| Title of Fee | Fee |
|--|------------|
| Examination application | \$100.00 |
| Reciprocity application | 390.00 |
| Initial licensure | 99.00 |
| License renewal (2 years) | 99.00 |
| Late renewal ((penalty)) <u>fee</u> | 33.00 |
| Duplicate license | 15.00 |
| Business entities: | |
| Certificate of authorization | 278.00 |
| Certificate of authorization renewal | 139.00 |

AMENDATORY SECTION (Amending WSR 11-11-019, filed 5/9/11, effective 7/1/11)

WAC 308-12-215 How do I renew my license? The architect license renewal period is two years. Your expiration date is your birthday. You must notify the board in writing of any address changes.

You are responsible for renewing your license regardless of receiving a renewal notice from the department. If you fail to renew your license, your license is delinquent and you are prohibited from offering and/or providing professional architect services until your license is reinstated.

(1) If your license has been delinquent less than two years, send to the department:

(a) A letter requesting reinstatement, including certification of having met current professional development requirements; and

(b) The current renewal fee plus the late ~~((penalty))~~ fee.

(2) If your license has been delinquent over two years but less than five years, send to the department:

(a) A letter requesting reinstatement, including certification of having met current professional development requirements; and

(b) Payment from the previous renewal cycle, the current renewal fee, and the late ((penalty)) fee.

(3) If your license has been delinquent five or more years, send to the department:

(a) A letter of application requesting reinstatement;

(b) Payment from all previous renewal cycles, the current renewal fee, and the late ((penalty)) fee;

(c) A review of Washington's laws and rules relating to the practice of architecture; and

(d) Evidence of completion of thirty-six PDH within the previous three years. See WAC 308-12-260 for qualifying activities.

(4) If your license has been delinquent five or more years, the board will review all of your reinstatement materials. They may request additional information if necessary.

AMENDATORY SECTION (Amending WSR 11-11-019, filed 5/9/11, effective 7/1/11)

WAC 308-12-240 How do I reactivate my inactive license? (1) If you are returning to active status from less than five years of inactive status, send to the department:

(a) A letter of application requesting reactivation;

(b) The current renewal fee;

(c) Evidence of completion of twenty-four PDH within the previous two years. See WAC 308-12-260 for qualifying activities.

(2) If you are returning to active status after five years of inactive status, send to the department:

(a) A letter of application requesting reinstatement;

(b) The current renewal fee plus the late ((penalty)) fee;

(c) A review of Washington's laws and rules relating to the practice of architecture;

(d) Evidence of completion of thirty-six PDH within the previous three years. See WAC 308-12-260 for qualifying activities.

AMENDATORY SECTION (Amending WSR 11-11-019, filed 5/9/11, effective 7/1/11)

WAC 308-12-250 Do I need ongoing professional development to maintain my license? (1) To maintain active practice, you must accumulate twenty-four professional development hours (PDH) for the upcoming two-year renewal period.

(2) The PDH you accumulate are subject to audit by the board.

(3) Up to twelve PDH over the required hours can be carried forward from the second year of your previous renewal period.

(4) Professional development equivalents:

(a) One professional development hour (PDH) is equal to no less than fifty minutes of instruction.

(b) For professional development through an institution of higher education:

(i) One semester hour equals forty-five PDH.

(ii) One quarter hour equals thirty PDH.

AMENDATORY SECTION (Amending WSR 11-11-019, filed 5/9/11, effective 7/1/11)

WAC 308-12-270 How do I record and report my professional development activities? In order to renew your license, you must attest to having completed the required professional development hours for that renewal period.

(1) You must maintain the records of your professional development activities. The records must include the date of the activity, the provider's name (if any), a description of activity and its location and the number of PDH.

(2) ~~(You must keep your records for the cumulative time in the current renewal period plus the three years before the last renewal (five years total).)~~

(3) By renewing your professional architect license, you attest you have completed the required professional development for that renewal period.) The board will audit a random sample of licensees applying for renewal. If you are selected for an audit, the board will provide instructions about how to respond.

(3) You may face disciplinary action for failing to complete your professional development requirement or falsifying your records.

(4) If an audit disqualifies credits that you reported to the board and results in you failing to complete the PDH requirements, the board may require the shortage to be made up over a period of time established by the board.

(5) It is recommended that you keep your records for a period of ten years.

AMENDATORY SECTION (Amending WSR 11-11-019, filed 5/9/11, effective 7/1/11)

WAC 308-12-330 What are the standards of professional practice? (1) **Competence.**

(a) When practicing architecture, you must act with reasonable care and competence, and must apply the technical knowledge and skill which is ordinarily applied by architects of good standing, practicing in the same locality and similar type projects.

(b) When designing a project, you must take into account all applicable state and municipal building laws and regulations. You may rely on the advice of other professionals (e.g., attorneys, engineers, and other qualified persons) as to the intent and meaning of such regulations. You must not knowingly design a project in violation of such laws and regulations.

(c) You must perform professional services only when you, together with those you may engage as consultants, are qualified by education, training, and experience in the specific technical areas involved.

~~((d) You will not be permitted to practice architecture if, in the board's judgment, your professional competence is substantially impaired by physical or mental disabilities.))~~

(2) **Conflict of interest.**

(a) You must not accept compensation for services from more than one party on a project unless the circumstances are fully disclosed and agreed to in writing by all interested parties.

(b) You must fully disclose in writing to your client or employer the nature of any business association or direct or

indirect financial interest which is substantial enough to influence your judgment in connection with the performance of professional services. If your client or employer objects to such association or financial interest, you must either terminate such association or interest or offer to give up the commission or employment.

(c) You must not solicit or accept compensation from material or equipment suppliers in return for specifying or endorsing their products.

(d) When acting as the interpreter of building contract documents and the judge of contract performance, you must render decisions impartially, favoring neither party to the contract.

(3) Full disclosure.

(a) You must disclose any compensation received for making public statements on architectural questions.

(b) You must accurately represent qualifications and scope of responsibility to prospective or existing clients or employers for work for which you are claiming credit.

(c) In the course of work on a project, if you become aware of a decision made by your employer or client, against your advice, which violates applicable state or municipal building laws and regulations and which will, in your judgment, materially and adversely affect the safety to the public of the finished project:

(i) You must report the decision to the local building inspector or other public official charged with the enforcement of the applicable state or municipal building laws and regulations, refuse to consent to the decision, and terminate services on the project when you reasonably believe decisions will be made against your objection. ~~((In the case of a termination in accordance with (c)(i) of this subsection, you shall have no liability to your client or employer because of such termination.))~~

(ii) You must not deliberately make a materially false statement or deliberately fail to disclose a material fact in connection with your application for registration or renewal.

(iii) You must not assist a person in applying for registration when you know the applicant is unqualified in education, training, experience, or character.

(iv) If you possess knowledge of a violation of these rules by another architect, you must report such knowledge to the board.

(4) Compliance with laws.

(a) You must not, in the conduct of architectural practice, knowingly violate any state or federal criminal law.

(b) You must not offer or make any payment or gift to a government official (whether elected or appointed) with the intent of influencing the official's judgment in connection with a prospective or existing project in which you are interested.

(c) You must comply with the registration laws and regulations governing your professional practice.

(5) Professional conduct.

(a) An office maintained for the purpose of providing architectural services must have an architect resident regularly employed in that office with direct knowledge and supervisory control of such work.

(b) ~~((You must not offer or provide any gifts, other than gifts of nominal value (including, for example, reasonable~~

~~entertainment and hospitality), with the intent of influencing the judgment of an existing or prospective client in connection with a project in which you are interested.~~

~~((e))) You must not engage in conduct involving fraud or wanton disregard of the rights of others.~~

AMENDATORY SECTION (Amending WSR 18-21-028, filed 10/5/18, effective 11/5/18)

WAC 308-12-345 Brief adjudicative proceedings. (1) The board will conduct brief adjudicative proceedings as provided for in RCW 34.05.482 through 34.05.494 of the Administrative Procedure Act. ~~((Brief adjudicative proceedings may be used whenever a statement of charges, notice of intent to issue a cease and desist order, or temporary cease and desist order alleges violations of chapters 18.08 and 18.235 RCW, administrative rules in Title 308 WAC or any statutes or rules that specifically govern the defined practices of architects. Brief adjudicative proceedings may also be used in place of formal adjudicative hearings whenever the board issues a statement of charges, notice of intent to issue a cease and desist order, or temporary cease and desist order alleging that an applicant or licensee's conduct, act(s), or condition(s) constitute unlicensed practice or unprofessional conduct as that term is defined under chapter 18.235 RCW, the Uniform Regulation of Business and Professions Act.))~~

(2) Brief adjudicative proceedings may be used to determine the following issues~~((s))~~ including, but not limited to:

(a) Whether an applicant has satisfied terms for reinstatement of a license after a period of license restriction, suspension, or revocation;

(b) Whether an applicant is eligible to sit for a professional licensing examination;

(c) Whether a sanction proposed by the board is appropriate based on the stipulated facts;

(d) Whether an applicant meets minimum requirements for an initial or renewal application;

~~((e))~~ ~~((Whether an applicant has failed the professional licensing examination;))~~

~~((f))~~ ~~((Whether an applicant or licensee failed to cooperate in an investigation by the department;))~~

~~((g))~~ ~~((f))~~ ~~((Whether an applicant or licensee was convicted of a crime that disqualifies the applicant or licensee from holding the specific license sought or held;))~~

~~((h))~~ ~~((g))~~ ~~((Whether an applicant or licensee has violated the terms of a final order issued by the board or the board's designee;))~~

~~((i))~~ ~~((h))~~ ~~((Whether a person has engaged in false, deceptive, or misleading advertising; or))~~

~~((j))~~ ~~((i))~~ ~~((Whether a person has engaged in unlicensed practice.))~~

~~((3))~~ ~~((In addition to the situations enumerated in subsection (2) of this section, the board may conduct brief adjudicative proceedings instead of formal adjudicative hearings whenever the parties have stipulated to the facts and the only issues presented are issues of law, or whenever issues of fact exist but witness testimony is unnecessary to prove or disprove the relevant facts.))~~

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 308-12-280 How does the board verify I have completed my professional development?
 WAC 308-12-355 Conduct of brief adjudicative proceedings.

WSR 20-22-075**PROPOSED RULES****UTILITIES AND TRANSPORTATION****COMMISSION**

[Filed November 2, 2020, 3:34 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-05-009.

Title of Rule and Other Identifying Information: Chapter 480-107 WAC, Electric companies, the proposed rules revise sections of chapter 480-107 WAC to incorporate statutory changes including the Clean Energy Transformation Act (CETA) (chapter 19.405 RCW) and revisions to chapters 80.28 and 19.280 RCW, and to consider policy and process changes to create more effective rules governing utility resource acquisition. The commission is considering these changes under Commission Docket UE-190837.

Hearing Location(s): On December 14, 2020, at 9:30 a.m. https://teams.microsoft.com/l/meetup-join/19%3ameeting_MjRiM2Q1YTctODk4Yi00MGMyLTg2YWMTmMmY4NzZIYTmZmVl%40thread.v2/0?context=%7b%22id%22%3a%2211d0e217-264e-400a-8ba0-57dcc127d72d%22%2c%22oid%22%3a%22e087eca4-4cd8-416f-8fc0-53ed60dbc833%22%7d. Public hearing to consider adoption of the proposed rule.

Date of Intended Adoption: December 14, 2020.

Submit Written Comments to: Mark L. Johnson, Executive Director and Secretary, P.O. Box 47250, Olympia, WA 98504-7250, email records@utc.wa.gov, by December 3, 2020.

Assistance for Persons with Disabilities: Contact Susan Holman, phone 360-664-1243, TTY 360-586-8203, email susan.holman@utc.wa.gov, by December 1, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules reflect changes necessary to implement legislative changes to integrated resource planning in chapter 19.280 RCW and WAC 480-100-238. The proposed amendments modify or add definitions; establish a requirement to issue request for proposals (RFP); add conditions that require the use of an independent evaluator in an RFP; establish minimum thresholds for the purpose and duties of an independent evaluator; set minimum standards for an RFP; and create and enhance the public participation processes for the RFP.

Reasons Supporting Proposal: The Washington legislature in 2019 passed CETA, which required the commission to promulgate new rules for investor-owned electric utilities to

comply with CETA regarding requirements for the procedures for purchasing resources.

Statutory Authority for Adoption: RCW 80.01.040, 80.04.160; chapters 80.28, 19.280, and 19.405 RCW.

Statute Being Implemented: Chapters 19.405, 80.28, and 19.280 RCW.

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

Name of Proponent: Washington utilities and transportation commission, governmental.

Name of Agency Personnel Responsible for Drafting: Steve Johnson, 621 Woodland Square Loop S.E., Lacey, WA 98503, 360-481-1573; Implementation and Enforcement: Mark L. Johnson, 621 Woodland Square Loop S.E., Lacey, WA 98503, 360-664-1115.

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

A cost-benefit analysis is not required under RCW 34.05.328. The utilities and transportation commission is not an agency to which RCW 34.05.328 applies.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The commission issued a small business economic impact statement questionnaire asking small and large businesses to comment on the potential costs of the draft rules. No small businesses responded. One large business, an investor-owned utility, responded with estimated costs of implementation. The commission also conducted its own analysis of the potential impact to small businesses. In that analysis, the commission determined that the costs of implementation were small and would have a de minimus effect on small businesses' utility rates as the costs would be spread across all customers alike. The rules do not apply to small businesses and therefore do not impose any direct costs on them.

A copy of the detailed cost calculations may be obtained by contacting Steve Johnson, P.O. Box 47250, Olympia, WA 98504-7250, phone 360-481-1573, email steve.johnson@utc.wa.gov.

November 2, 2020

Mark L. Johnson

Executive Director

and Secretary

AMENDATORY SECTION (Amending WSR 19-13-031, filed 6/12/19, effective 7/13/19)

WAC 480-107-001 Purpose and scope. (1) The rules in this chapter (~~require utilities to solicit bids, rank project proposals, and identify any bidders that meet the minimum selection criteria~~) establish the requirements for various utility solicitations and procurements, including provisions governing competitive solicitations, all-source RFPs, targeted RFPs, independent evaluators and system emergencies. The rules in this chapter do not establish the sole procedures (~~utilities must~~) a utility may use to acquire new resources. (~~Utilities~~) A utility may construct (~~electric~~) new resources, operate conservation and efficiency resource programs, purchase power through negotiated contracts, or take

other action to satisfy ~~((their))~~ the utility's public service obligations.

(2) The commission will consider the information the utility obtained through ~~((these bidding procedures))~~ its acquisition efforts when ~~((#))~~ the commission evaluates the performance of the utility in rate and other proceedings.

AMENDATORY SECTION (Amending WSR 06-08-025, filed 3/28/06, effective 4/28/06)

WAC 480-107-002 ((Application of)) Exemptions from rules. ~~((1))~~ The rules in this chapter apply to any utility that is subject to the commission's jurisdiction under RCW 80.04.010 and chapter 80.28 RCW.

~~(2) Any affected person may ask the commission to review the interpretation or application of these rules by a utility or customer by making an informal complaint under WAC 480-07-910, Informal complaints, or by filing a formal complaint under WAC 480-07-370, Pleading—General.~~

~~(3) No exception from the provisions of any rule in this chapter is permitted without prior written authorization by the commission. Such exceptions may be granted only if consistent with the public interest, the purposes underlying regulation, and applicable statutes. Any deviation from the provisions of any rule in this chapter without prior commission authorization will be subject to penalties as provided by law.)~~ Consistent with WAC 480-07-110, the commission may grant an exemption from the provisions of any rule in this chapter.

AMENDATORY SECTION (Amending WSR 19-13-031, filed 6/12/19, effective 7/13/19)

WAC 480-107-007 Definitions. "Affiliate" means a person or corporation that meets the definition of an "affiliated interest" in RCW 80.16.010.

~~((**"Avoided costs"** means the incremental costs to a utility of electric energy, electric capacity, or both, that the utility would generate itself or purchase from another source, but for purchases to be made under these rules. A utility's avoided costs are the prices, terms and conditions, including the period of time and the power supply attributes, of the least cost final contract entered into as a result of the competitive bidding process described in these rules. If no final contract is entered into in response to a request for proposal (RFP) issued by a utility under these rules, the utility's avoided costs are the lesser of:~~

~~(a) The price, terms and conditions set forth in the least cost project proposal that meets the criteria specified in the RFP; or~~

~~(b) Current projected market prices for power with comparable terms and conditions.)~~ **"All-source RFP"** means an RFP that solicits and accepts bids from any resource capable of meeting all or part of the resource need outlined in the utility's solicitation documents.

"Bid" means bidder's document containing a description of a project and other information responsive to the requirements set forth in an RFP. If a bid contains multiple projects, each individual project will be considered as a separate bid.

"Bidder" means an individual, association, corporation, or other legal entity that can enter into a power or conserva-

tion contract with the utility to fill a resource need or portion thereof.

"Commission" means the Washington utilities and transportation commission.

"Conservation and efficiency resources" ((means any reduction in electric power consumption that results from increases in the efficiency of energy use, production or distribution, or from demand response, load management or efficiency measures that reduce peak capacity demand)) has the same meaning as defined in WAC 480-100-605.

~~((**"Conservation supplier"** means a third party supplier or utility affiliate that provides equipment or services that save capacity or energy.~~

~~**"Generating facilities"** means plant and other equipment used to generate electricity purchased through contracts entered into under these rules.)~~

"Demand response" has the same meaning as defined in WAC 480-100-605.

"Equitable distribution" has the same meaning as defined in WAC 480-100-605.

"Highly impacted community" has the same meaning as defined in WAC 480-100-605.

"Independent evaluator" means a third party, not affiliated with the utility, that provides, at a minimum, evaluations as required in these rules.

"Independent power producers" means an entity other than a utility or its subsidiary or affiliate that develops or owns generating facilities or portions thereof that are not ((included in a utility's rate base and that are not)) qualifying facilities as defined in ((this section)) WAC 480-106-007.

"Indicator" has the same meaning as defined in WAC 480-100-605.

"Integrated resource plan" or "IRP" means the filing made ((every two years)) by a utility in accordance with WAC ((480-100-238 Integrated resource planning)) 480-100-625.

~~((**"Project developer"** means an individual, association, corporation, or other legal entity that can enter into a power or conservation contract with the utility.~~

"Project proposal" means a project developer's document containing a description of a project and other information responsive to the requirements set forth in a request for proposal, also known as a bid.) **"Lowest reasonable cost"** has the same meaning as defined in WAC 480-100-605.

"Qualifying facilities" ((means generating facilities that meet the criteria specified by the FERC in 18 C.F.R. Part 292 Subpart B)) has the same meaning as defined in WAC 480-106-007.

"Renewable resource" has the same meaning as defined in WAC 480-100-605.

"Repowering" means a rebuild or refurbishment, including fuel source changes, of a utility-owned generator or generation facility that is required due to the generator or facility reaching the end of its useful life or useful reasonable economic life. The rebuild or refurbishment does not constitute repowering if it is part of routing major maintenance, existing hydroelectric licensing obligations, or replacement of equipment that does not materially affect the physical or economical longevity of the generator or generation facility.

"Request for proposals" or "RFP((s))" means the documents describing a utility's solicitation of bids for delivering ~~((electric capacity, energy, or capacity and energy, or conservation))~~ a resource need.

"Resource" has the same meaning as defined in WAC 480-100-605.

"Resource ((block)) need" ~~((means the deficit of capacity and associated energy that the IRP shows for the near term))~~ has the same meaning as defined in WAC 480-100-605.

"Resource supplier" means a third-party supplier, utility or affiliate that provides electric power, equipment or services that serve a resource need.

"Subsidiary" means any company in which the utility owns directly or indirectly five percent or more of the voting securities, and that may enter a power or conservation contract with that electric utility. A company is not a subsidiary if the utility can demonstrate that it does not control that company.

"Targeted RFP" means an RFP that solicits and accepts bids for certain types or locations of resources (including, for example, demand response, conservation and efficiency resources) capable of meeting all or part of the utility's specific resource need.

"Utility" means an electrical company as defined by RCW 80.04.010.

"Vulnerable populations" has the same meaning as defined in WAC 480-100-605.

NEW SECTION

WAC 480-107-009 Required all-source RFPs and conditions for targeted RFPs. (1) All-source RFP requirements. All-source RFPs must allow bids from different types of resources that may fill all or part of the characteristics or attributes of the resource need. Such resource types include, but are not limited to, unbundled renewable energy credits, conservation and efficiency resources, demand response or other distributed energy resources, energy storage, electricity from qualifying facilities, electricity from independent power producers, or other resources identified to contribute to an equitable distribution of energy and nonenergy benefits to vulnerable populations and highly impacted communities.

(2) Required RFP. A utility must issue an all-source RFP if the IRP demonstrates that the utility has a resource need within four years. A utility may supplement its all-source RFP with one or more targeted RFPs issued at the same time. The required RFP and any supplemental RFPs are subject to commission approval.

(3) Voluntary RFP. Whenever a utility chooses to issue an RFP to meet resource needs outside of the timing of its required RFP, it may issue an all-source RFP or a targeted RFP. Voluntary RFPs are not subject to commission approval.

(4) Targeted RFP requirements. If the utility issues a targeted RFP in conjunction with an all-source RFP, it must fairly compare all resource options in its combined analysis.

NEW SECTION

WAC 480-107-011 Applicability of rule sections. (1) The required RFP issued pursuant to WAC 480-107-009(2) must comply with all sections of this chapter except WAC 480-107-021 requiring an informational filing.

(2) A targeted RFP filed with a required RFP under WAC 480-107-009(2) must comply with all sections of this chapter except WAC 480-107-021 requiring an informational filing.

(3) A voluntary RFP issued pursuant to WAC 480-107-009(3) must comply with all sections of this chapter except WAC 480-107-017 requiring commission approval.

(4) For all other actions by the utility to acquire resources not included in WAC 480-107-009, the utility must comply with WAC 480-107-115.

AMENDATORY SECTION (Amending WSR 06-08-025, filed 3/28/06, effective 4/28/06)

WAC 480-107-015 ((The)) Solicitation process for any RFP. (1) ~~((Any owner of a generating facility, developer of a potential generating facility, marketing entity, or provider of energy savings may participate in the RFP process. Bidders may propose a variety of energy resources including: Electrical savings associated with conservation; electricity from qualifying facilities; electricity from independent power producers; and, at the utility's election, electricity from utility subsidiaries, and other electric utilities, whether or not such electricity includes ownership of property. Qualifying facility producers with a generation capacity of one megawatt or less may choose to participate in the utilities' standard tariffs without filing a bid))~~ The provisions of this section apply to any RFP issued to fill a resource need. The commission strongly encourages a utility to consult with commission staff and other interested stakeholders during the development of an RFP and the associated evaluation rubric.

(2) ~~A utility ((may participate in the bidding process as a power supplier, or may allow a subsidiary or affiliate to participate in the bidding process as a power supplier, on conditions described in WAC 480-107-135 Conditions for purchase of electrical power or savings from a utility's subsidiary or affiliate. The utility's RFP submittal must declare the utility's or affiliate's participation and must demonstrate how the utility will satisfy the requirements of WAC 480-107-135))~~ must conduct outreach to potential bidders or resource suppliers, including nonprofit organizations and under-represented bidders such as minority-, women-, disabled-, and veteran-owned businesses, to encourage equitable participation in the bidding process. A utility must provide to all potential bidders equitable access to information relevant to responding to the utility's RFP including, but not limited to, accommodation required by the Americans with Disabilities Act's communications guidance.

(3) ~~((Timing of the solicitation process.~~

~~(a) The rules in this section do not apply when a utility's integrated resource plan, prepared pursuant to WAC 480-100-238, demonstrates that the utility does not need additional capacity within three years.~~

~~(b) A utility must submit to the commission a proposed request for proposals and accompanying documentation no~~

~~later than one hundred thirty five days after the utility's integrated resource plan is due to be filed with the commission. Interested persons will have sixty days from the RFP's filing date with the commission to submit written comments to the commission on the RFP. The commission will approve or suspend the RFP within thirty days after the close of the comment period.~~

~~(c) A utility must solicit bids for electric power and electrical savings within thirty days of a commission order approving the RFP.~~

~~(d) All bids will remain sealed until expiration of the solicitation period specified in the RFP)) A utility must post a copy of the RFP on the utility's public website and make best efforts to ensure the RFP is known to industry participants and potential bidders, such as by placing notices in relevant industry publications, including publications aimed at women-, minority-, disabled-, and veteran-owned businesses.~~

~~(4) ((In addition to the solicitation process required by these rules, a utility may, at its own discretion, issue an RFP that limits project proposals to resources with specific characteristics. In addition, a utility, at its own discretion, may issue RFPs more frequently than required by this rule)) The utility must publish on its public website information about how interested persons can participate in or follow the utility's RFP process, including RFP approval, if required, and how to contact the commission's records center to be placed on relevant distribution lists for utility RFPs.~~

~~(5) ((Persons interested in receiving commission notice of a specific utility's RFP filings can request the commission to place their names on a mailing list for notification of future RFP filings by that utility-)) Prior to the expiration of the solicitation period specified in the RFP, the utility may allow the bid contents to be available to its employees and the independent evaluator, within the limitations established in WAC 480-107-024(3). Such availability must be solely for the purpose of tracking the receipt of bids and to prepare for, but not to begin, the evaluation phase of the RFP process.~~

~~(6) A utility or its subsidiary or affiliate may participate in the utility's own RFP process as a bidder consistent with the requirements in WAC 480-107-023 and 480-107-024.~~

~~(7) If demand response may meet some or all of the identified resource need, the utility must make a good faith effort to provide sufficiently detailed information that allows a bidder the opportunity to develop a demand response bid that includes, but is not limited to, stacked values of benefits and costs.~~

NEW SECTION

WAC 480-107-017 RFP filing and approval. (1) For required and targeted RFPs under WAC 480-107-009(2), a utility must file the RFPs and accompanying documentation with the commission no later than one hundred twenty days after the utility files its final IRP.

(2) The utility must provide information on its public website detailing the commission approval process required in subsection (1) of this section, including a link to the RFP filed with the commission, and a description of the subsequent public comment period and, if applicable, the independent evaluator selection and commission approval process.

(3) Within forty-five days after the utility files an RFP, interested persons may submit written comments to the commission on the RFP.

(4) The commission will approve, approve with conditions, or suspend the filed RFP, including the procedures and criteria the utility will use to evaluate and rank bids in accordance with WAC 480-107-035, within seventy-five days after the utility files its RFP.

(5) A utility must solicit bids for a resource need within thirty days of a commission order approving an RFP unless the commission establishes a different deadline.

NEW SECTION

WAC 480-107-021 Informational filing requirement.

(1) A utility must file any voluntary RFP allowed under WAC 480-107-009(3) and accompanying documentation thirty days prior to accepting bids.

(2) If the utility must retain an independent evaluator under WAC 480-107-023, the utility must publish, on its public website, information explaining its independent evaluator selection process and commission approval process, including how interested persons can participate in the approval process.

NEW SECTION

WAC 480-107-023 Independent evaluator for repowering and bids from a utility or its subsidiary or affiliate.

(1) A utility must engage the services of an independent evaluator to assess and report on the solicitation process if:

(a) The utility or its subsidiary or affiliate participates in the utility's RFP bidding process;

(b) The utility intends to retain the option to procure resources that will result in the utility owning or having a purchase option in the resource over its expected useful life; or

(c) The utility is considering repowering its existing resources to meet its resource need.

(2) After consulting with commission staff and stakeholders, the utility may issue a solicitation for an independent evaluator and must recommend an independent evaluator for approval by the commission.

(3) The independent evaluator will contract with, and be paid by, the utility. The utility will also manage the contract terms with the independent evaluator.

(4) The utility must provide the independent evaluator with all data and information necessary to perform a thorough examination of the bidding process and responsive bids.

(5) The independent evaluator will, at a minimum:

(a) Ensure that the RFP process is conducted fairly, transparently, and properly;

(b) Participate in the design of the RFP;

(c) Evaluate the unique risks, burdens, and benefits of each bid;

(d) Provide to the utility the independent evaluator's minutes of meetings and the full text of written communications between the independent evaluator and the utility and any third-party related to the independent evaluator's execution of its duties;

(e) Verify that the utility's inputs and assumptions, including capacity factors and capital costs, are reasonable;

(f) Assess whether the utility's process of scoring the bids and selection of the initial and final shortlists is reasonable;

(g) Prepare a final report to the commission after reconciling rankings with the utility in accordance with WAC 480-107-035(3) that must:

(i) Include an evaluation of the competitive bidding process in selecting the lowest reasonable cost acquisition or action to satisfy the identified resource need, including the adequacy of communication with stakeholders and bidders; and

(ii) Explain ranking differences and why the independent evaluator and the utility were or were not able to reconcile the differences.

(6) The commission may request that additional analysis be included in the final report.

(7) Interested persons may file comments on the final report filed with the commission, including concerns about routine processes, such as administrative corrections or recommending removal of bids that do not comply with the minimum criteria identified in the RFP, but no stakeholder, including the utility or commission staff, shall have any editorial review or control over the independent evaluator's final report.

NEW SECTION

WAC 480-107-024 Conditions for purchase of resources from a utility, utility subsidiary, or affiliate. (1) A utility or its subsidiary or affiliate may participate in the utility's RFP bidding process, and the utility may accept bids that will result in the utility owning or having a purchase option in the resource over its expected useful life. The utility may also consider repowering its existing resources to meet its resource need. If any one of these circumstances is expected to occur:

(a) The RFP solicitation and bidding process will be subject to the requirement for a utility to retain an independent evaluator to ensure that no unfair advantage occurs; and

(b) The utility must include statements regarding whether such circumstances exist:

(i) In its RFP;

(ii) In the transmittal letter accompanying the RFP filing; and

(iii) In the notice required by WAC 480-107-015(3).

(2) If the utility is considering repowering a resource to meet a resource need, the utility must submit its repowering project as a bid during the RFP process.

(3) A utility and its independent evaluator may not disclose the contents or results of an RFP or competing bids to personnel involved in developing the utility's bid, or to any subsidiary or affiliate prior to making such information public. The utility must include in the RFP the methods the utility used, and will use, to ensure that it or its independent evaluator did not, and will not, improperly disclose that information.

AMENDATORY SECTION (Amending WSR 19-13-031, filed 6/12/19, effective 7/13/19)

WAC 480-107-025 Contents of ~~((the))~~ RFP solicitations. (1) ~~((The))~~ An RFP must ~~((identify))~~ define the resource ~~((block, consisting of the overall))~~ need, including specific attributes or characteristics the utility is soliciting, such as the amount and duration of power ~~((the utility is soliciting, the initial estimate of avoided cost schedule as calculated in WAC 480-106-040 Avoided cost schedule, and any additional information necessary for potential bidders to make a complete bid)),~~ time and locational attributes, operational attributes, the type of technology or fuel source necessary to meet a compliance requirement, and any additional information necessary for potential bidders to make a complete bid, including a copy or link to the complete assessment of avoided costs identified in WAC 480-100-615(12).

(2) The RFP must request information identifying energy and nonenergy benefits or burdens to highly impacted communities and vulnerable populations, short-term and long-term public health impacts, environmental impacts, resiliency and energy security impacts, or other information that may be relevant to identifying the costs and benefits of each bid, such as a bidder's past performance utilizing diverse businesses and a bidder's intent to comply with the labor standards in RCW 82.08.962 and 82.12.962. After the commission has approved the utility's first clean energy implementation plan (CEIP), requested information must include, at a minimum, information related to indicators approved in the utility's most recent CEIP, including descriptions of the indicators.

(3) The RFP must document that the size and operational attributes of the resource ~~((block is))~~ need requested are consistent with the range of estimated new resource needs identified in the utility's ~~((integrated resource plan))~~ IRP.

~~((3))~~ (4) The RFP must explain ~~((general evaluation and))~~ the specific ranking procedures and assumptions that the utility will use in accordance with WAC 480-107-035 ~~((Project ranking procedure))~~. The RFP must ~~((also specify any minimum criteria that bidders must satisfy to be eligible for consideration in the ranking procedure))~~ include a sample evaluation rubric that quantifies, where possible, the weight the utility will give each criterion during the bid ranking procedure, and provides a detailed explanation of the aspects of each criterion that would result in the bid receiving higher priority.

~~((4))~~ (5) The RFP must specify ~~((the timing of))~~ a detailed timeline for each stage of the RFP process including ~~((the))~~ solicitation ~~((period, the))~~, ranking ~~((period))~~, and ~~((the expected))~~ selection ~~((period))~~, as well as the utility's schedule of planned informational activities and contact information for the RFP.

~~((5))~~ (6) The RFP must generally identify ~~((all security requirements and the rationale for them.~~

~~((6))~~ Utilities are encouraged to consult with commission staff during the development of the RFP. Utilities, at their own discretion, may submit draft RFPs for staff review prior to formally submitting an RFP to the commission.) any utility-owned assets, including merchant-side assets that the utility has available, for the purpose of receiving bids that assist the utility in meeting its resource need at the lowest reason-

able cost. The utility must make reasonable efforts to provide bidders with necessary technical details they request and to allow bidders to design their bids for use in conjunction with utility-owned assets.

(7) The RFP must identify any minimum bidder requirements, including for financial security requirements and the rationale for such requirements, such as proof of a bidder's industry experience and capabilities.

(8) The RFP must include standard form contracts to be used in acquisition of resources.

(9) All RFPs must discuss the impact of any applicable multistate regulation on RFP development including the requirements imposed by other states for the RFP process.

(10) All RFPs must clearly state the scope of the solicitation and the types of bids that the utility will accept consistent with WAC 480-107-024.

AMENDATORY SECTION (Amending WSR 06-08-025, filed 3/28/06, effective 4/28/06)

WAC 480-107-035 ((Project)) Bid ranking procedure. (1) ~~((The procedures and criteria the utility will use in its RFP to evaluate and rank project proposals are subject to commission approval.~~

~~(2))~~ (2)) At a minimum, ((the)) a utility's RFP ranking criteria must recognize resource cost, market-volatility risks, demand-side resource uncertainties and benefits, resource dispatchability, resource effect on system operation, credit and financial risks to the utility, the risks imposed on ratepayers, public policies regarding resource preference ((adopted by)), and Washington state or ((the)) federal government ((and environmental effects including those associated with resources that emit carbon dioxide)) requirements. The ranking criteria must recognize differences in relative amounts of risk and benefit inherent among different technologies, fuel sources, financing arrangements, and contract provisions, including risks and benefits to vulnerable populations and highly impacted communities. The ranking ((process must complement power acquisition goals identified)) criteria must also be consistent with the avoided cost methodology developed in the ((utility's integrated resource plan.

~~(3) After the project proposals have been opened for ranking, the utility must make available for public inspection at the utility's designated place of business a summary of each project proposal and a final ranking of all proposed projects.~~

~~(4))~~ (4)) IRP the utility uses to support its determination of its resource need. The utility must consider the value of any additional net benefits that are not directly related to the specific need requested.

(2) In choosing to remove a bid during any stage of its evaluation process, the utility may not base its decision solely on the project's ability to only meet a portion of the resource need.

(3) The utility may ((reject any project proposal that does not specify, as part of the price bid, the costs of complying with environmental laws, rules, and regulations in effect at the time of the bid)) not discriminate based on a bidder's ownership structure in the ranking process.

~~((5))~~ (4) The utility ((may reject all project proposals if it finds that no proposal adequately serves ratepayers' inter-

ests. The commission will review, as appropriate, such a finding together with evidence filed in support of any acquisition in the utility's next general rate case or other cost recovery proceeding.

(6) When the utility, the utility's subsidiary or an affiliate submits a bid in response to an RFP, one or more competing bidders may request the commission to appoint an independent third party to assist commission staff in its review of the bid. Should the commission grant such a request, the fees charged by the independent third party will be paid by the party or parties requesting the independent review)) and any independent evaluator selected by the utility will each score and rank the qualifying bids using the RFP's ranking criteria and methodology. If bids include unexpected content, the utility may modify the ranking criteria but must notify all bidders of the change, describe the change, and provide an opportunity for bidders to modify their bids.

(5) Within thirty days after the close of the bidding period, the utility must post on its public website a summary of each bid the utility has received. Where use of confidential data prohibits the utility from identifying specifics of a bid, a generic but complete description is sufficient.

(6) The utility may reject any bids that do not comply with the minimum requirements of the RFP or identify the costs of complying with environmental, public health, or other laws, rules, and regulations in effect at the time of the bid.

(7) Within thirty days after executing an agreement for acquisition of a resource, the utility must file the executed agreement and supporting documents with the commission.

(8) The commission may review any acquisitions resulting from the RFP process in the utility's general rate case or other cost recovery proceeding.

(9) The commission will review, as appropriate, a utility's finding that no proposal adequately serves ratepayers' interests, together with evidence filed in support of any acquisition made outside of the RFP process, in the utility's general rate case or other cost recovery proceeding.

AMENDATORY SECTION (Amending WSR 06-08-025, filed 3/28/06, effective 4/28/06)

WAC 480-107-045 Pricing and contracting procedures. (1) ~~((project proposals have been))~~ bids are ranked in accordance with WAC 480-107-035 ((Project ranking procedure)), the utility must ((identify the bidders that)) determine which bids best meet the selection criteria and ((that are expected to)) produce the ((energy, capacity, and electrical savings as defined by)) relevant attributes required in that portion of the resource ((block)) need to which the ((project proposal)) bid is directed.

(2) The ((project proposal's)) bid's price, pricing structure, and terms are subject to negotiation.

AMENDATORY SECTION (Amending WSR 06-08-025, filed 3/28/06, effective 4/28/06)

WAC 480-107-065 ((Eligibility for long-run)) Acquisition of conservation ((purchase rates)) and efficiency resources. (1) ~~((Any))~~ A conservation and efficiency resource supplier may participate in the bidding process for

any resource need. A utility ~~((may allow a utility))~~ or its subsidiary ~~((or))~~ or affiliate may participate as a conservation resource supplier ~~((-on))~~ subject to the conditions described in WAC ~~((480-107-135 Conditions for purchase of electrical power or savings from a utility's subsidiary or affiliate. A decision to allow a utility subsidiary to participate must be explained in the utility's RFP submittal))~~ 480-107-024.

(2) All conservation and efficiency measures ~~((included in a project proposal))~~ within a bid must ~~((:~~

(a) Produce electrical savings over a time period greater than five years, or a longer period if specified in the utility's RFP. A measure with an expected life that is shorter than the contract term must include replacements through the contract term;

(b) Be consistent with the utility's integrated resource plan; and

(c) produce savings that can be reliably measured or estimated with accepted engineering, statistical, or meter-based methods.

(3) A utility must acquire conservation and efficiency resources through a competitive procurement process as described in this rule unless the utility is implementing a competitive procurement framework for conservation and efficiency resources as approved by the commission.

(a) As part of that process, a utility may develop, and update each biennium, a competitive procurement framework for conservation and efficiency resources in consultation with its conservation advisory group, as described in WAC 480-109-110. The utility may file its first competitive procurement framework for conservation and efficiency resources with the utility's 2022-2023 biennial conservation plan.

(b) The competitive procurement framework for conservation and efficiency resources must:

(i) Define the specific criteria that the utility will use to determine the frequency of competitive bidding for conservation and efficiency resource programs, in whole or part;

(ii) Address appropriate public participation, outreach, and communication of evaluation and selection criteria;

(iii) Enhance or, at minimum, not interfere with the adaptive management of programs;

(iv) Include documentation of support by the advisory group; and

(v) Be filed as an appendix to the utility's biennial conservation plan, as described in WAC 480-109-120.

(c) The competitive procurement framework for conservation and efficiency resources may:

(i) Exempt particular programs from competitive procurement, such as low-income, market transformation, or self-directed programs; and

(ii) Consider if and when to use an independent evaluator.

AMENDATORY SECTION (Amending WSR 06-08-025, filed 3/28/06, effective 4/28/06)

WAC 480-107-075 Contract finalization. (1) Unless otherwise prohibited by law, a utility ~~((has discretion to))~~ may decide whether to enter into a final contract with any ~~((project))~~ bidder that meets the selection criteria of the RFP.

Any such bidder may petition the commission to review a utility's decision not to enter into a final contract.

(2) Any ~~((project))~~ bidder and utility may negotiate changes to the selected ~~((project proposal))~~ bid, subject to any limitation established in the RFP, for the purpose of finalizing a particular contract consistent with the provisions of this chapter.

(3) ~~((The utility may sign contracts for any appropriate time period specified in a selected project proposal for up to a twenty-year term. The utility may sign longer term contracts if such provisions are specified in the utility's RFP.))~~ Any contract signed by the utility to fill a resource need as a result of an RFP process must require the firm awarded the contract to track and report to the utility its use of diverse businesses including, but not limited to, women-, minority-, disabled-, and veteran-owned businesses, and to track and report to the utility the firm's application of the labor standards in RCW 82.08.962 and 82.12.962.

(4) If a bidder makes material changes ~~((are made))~~ to ~~((the project proposal))~~ its bid after ~~((project))~~ bid ranking, including material price changes, the utility must suspend contract finalization with that ~~((party))~~ bidder, and the utility and any independent evaluator must rerank ~~((projects))~~ bids according to the revised ~~((project proposal))~~ bid. If the material changes cause the revised ~~((project proposal))~~ bid to rank lower than ~~((projects))~~ bids the utility has not originally selected, the utility must instead pursue contract finalization with the next highest ranked ~~((project))~~ bid.

~~((5) A project developer must provide evidence that the developer has obtained or will obtain a generation site (e.g., letter of intent) before signing a contract with the purchasing utility.))~~

AMENDATORY SECTION (Amending WSR 06-08-025, filed 3/28/06, effective 4/28/06)

WAC 480-107-115 System emergencies. (1) A generating facility entering into a power contract ~~((under these rules is required to))~~ must provide energy or capacity to a utility during a system emergency only to the extent:

(a) Provided by agreement between such generating facility and utility; or

(b) Ordered under section 202(c) of the Federal Power Act.

(2) During any system emergency, a utility may discontinue or curtail:

(a) Purchases from a generating facility if such purchases would contribute to such emergency; and

(b) Sales to a generating facility, if such discontinuance or curtailment:

(i) Does not discriminate against a generating facility; and

(ii) Takes into account the degree to which purchases from the generating facility would offset the need to discontinue or curtail sales to the generating facility.

(3) System emergencies resulting in utility action under this chapter are subject to verification by the commission upon request by either party to the power contract.

AMENDATORY SECTION (Amending WSR 06-08-025, filed 3/28/06, effective 4/28/06)

WAC 480-107-145 Filings—Investigations. (1) The commission retains the right to examine ~~((project proposals))~~ bids as originally submitted to the utility by ~~((potential developers))~~ bidders. The utility must keep all documents supplied by ~~((project))~~ bidders or on their behalf, and all documents created by the utility relating to each bid, including materials provided to the utility by an independent evaluator, for ((at least)) the later of seven years from the close of the bidding process, or the conclusion of the utility's ((next)) general rate case((, whichever is later)) in which the commission reviewed the fully-developed project for prudence, including any time period allowed for reconsideration or appeal.

(2) The utility must file with the commission ~~((and maintain on file for inspection at its place of business, the current rates, prices, and charges established in accordance with this chapter))~~ within ninety days of the conclusion of any RFP process, a summary report of responses including, at a minimum:

(a) Specific reasons for rejecting any bid under WAC 480-107-035(5);

(b) The number of bids received, categorized by technology type;

(c) The size of the bids received, categorized by technology type;

(d) The median and average bid price, categorized by technology type and sufficiently general to limit the need for confidential designation whenever possible;

(e) The number of bids received by location, including locations designated as highly impacted communities;

(f) The number of bids received and accepted by bidder type, including women-, minority-, disabled-, or veteran-owned businesses;

(g) The number of bids received, categorized by ownership structures; and

(h) The number of bids complying with the labor standards identified in RCW 82.08.962 and 82.12.962.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 480-107-135 Conditions for purchase of electrical power or savings from a utility, a utility's subsidiary or affiliate.

**WSR 20-22-081
PROPOSED RULES
OFFICE OF THE
INSURANCE COMMISSIONER**

[Insurance Commissioner Matter R 2020-04—Filed November 3, 2020,
8:45 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-12-031.

Title of Rule and Other Identifying Information: Health care benefit managers.

Hearing Location(s): On December 9, 2020, at 3:30 p.m. Zoom meeting; Detailed information for attending the Zoom meeting posted on the office of the insurance commissioner's (OIC) website here: <https://www.insurance.wa.gov/health-care-benefit-managers-r-2020-04>. Due to the COVID-19 public health emergency, this hearing will be held via Zoom.

Date of Intended Adoption: December 10, 2020.

Submit Written Comments to: Mandy Weeks-Green, P.O. Box 40260, Olympia, WA 98504-0260, email rulescoordinator@oic.wa.gov, fax 360-586-3109, by December 9, 2020.

Assistance for Persons with Disabilities: Contact Melanie Watness, phone 360-725-7013, fax 360-586-2023, TTY 360-586-0241, email MelanieW@oic.wa.gov, by December 8, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commissioner will consider adopting rules regarding health care benefit managers to ensure implementation of registration, associated filings, and regulation as provided for in 2SSB 5601 (chapter 240, Laws of 2020), which has been codified in chapter 48.200 RCW. In addition to adding new sections, the commissioner is considering amending existing WAC, including chapter 284-180 WAC.

Reasons Supporting Proposal: The legislature passed SSB [2SSB] 5601 during the 2020 session. The bill requires the regulation and registration of health care benefit managers. The bill also requires the filing of health care benefit management contracts with OIC. To align with SSB [2SSB] 5601 (chapter 240, Laws of 2020), OIC needs to develop rules to amend existing WAC, including in chapter 284-180 WAC, and add new sections.

Statutory Authority for Adoption: RCW 48.02.060; and chapter 48.200 RCW.

Statute Being Implemented: Chapter 48.200 RCW.

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Mandy Weeks-Green, P.O. Box 40260, Olympia, WA 98504-0260, 360-725-7041; Implementation and Enforcement: Melanie Anderson, P.O. Box 40260, Olympia, WA 98504-0260, 360-725-7214.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Tabba Alam, P.O. Box 40260, Olympia, WA 98504-0260, phone 360-725-7170, fax 360-586-3109.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated.

Summary: This rule was developed as a result of the passage of SB [2SSB] 5601 in 2020, regarding regulation of health care benefit managers. The proposed rule sets the provisions relating to the transparency and oversight of health care benefit managers by OIC. A health care benefit manager

(HCBM) contracts to administer health benefits on behalf of a health insurer, or a health maintenance organization (HMO), or employer. Many public and private employers and health plans contract with BMs to help control health care costs.

Background: An HCBM is defined as any person or entity providing service to, or acting on behalf of, a health carrier, a public employee benefit program, or a school employee benefit program, that directly or indirectly impacts the determination or utilization of benefits for, or patient access to, health care services, drugs, and supplies, including:

- Prior authorization or preauthorization of benefits or care;
- Certification of benefits of care;
- Medical necessity determinations;
- Utilization review;
- Benefit determinations;
- Claims processing and repricing;
- Outcome management;
- Provider credentialing or re-credentialing;
- Payment or authorization of payment to providers and facilities for services or procedures;
- Dispute resolution, grievances, or appeals relating to determinations;
- Provider network management;
- Disease management.

Insurers who do business in Washington are regulated by OIC. Insurance companies had been managing their own benefits, and were regulated by OIC, which meant consumers had a place to go for their complaints and concerns to be heard. However, with unregulated HCBMs, there is no place for consumers to go with complaints about benefit manage-

ment services. The bill SB [2SSB] 5601 sets the standards for regulating of HCBMs under the regulatory authority of OIC, and gives consumers a place to address their grievances. Presently, benefit managers are impacting decisions that should be solely part of the physician patient relationship. If patients can receive care early, there will be less costs to the health care system.

Analysis: Although, there is less than minor fiscal impact on small businesses due to the proposed rule in the spirit of compliance OIC has applied a **higher default cost of compliance (\$1,000)** when analyzing whether the rules would have a disproportionate impact on any businesses impacted as the licensing requirement for HCBMs the first year would cost a total of \$750/yr., as defined in RCW 19.85.020(3).

Below are calculations for minor cost thresholds across stakeholders that classify as small and large businesses, based on the best analogous NAICS types. Please note that since this is an emerging market the full fiscal impact of this regulation on the health care **economy of Washington is indeterminate due to** the potential costs associated with compliance and enforcement. The bill requires OIC to license HCBMs in Washington state. Although it is unlikely these rules would result in even the full default cost of compliance, the minor cost does not exceed any of the thresholds for any of the stakeholders.

In contrast, OIC had determined on the basis of several stakeholder meetings that the proposed rule will offer increased benefits to small businesses.

For these reasons, the proposed rules do not impose more than minor cost to small businesses, as defined by RCW 19.85.020(2).

| 2019 Industry NAICS Code | Estimated Cost of Compliance | Industry Description | NAICS Code Title | Average Number of Employees/ Business | Minor Cost Estimate - 0.3% of Avg. Annual Gross Business Income 0.003*AvgGBI |
|--------------------------|------------------------------|--|-----------------------|---------------------------------------|--|
| 524292 | \$1,000.00 | Third party administration of insurance funds | Finance and insurance | 76 (Not small business) | \$191,997.00 |
| 524291 | \$1,000.00 | Claims adjusting | Finance and insurance | 12 | \$7,225.00 |
| 522320 | \$1,000.00 | Financial transactions processing, reserve, and clearinghouse activities | Finance and insurance | 55 (Not small business) | \$77,195.00 |

Source: United States Census Bureau (2017). Retrieved October 20, 2020, from census.gov

Conclusion: While adoption of these rules will put increased administrative costs on the health carriers, OIC, and benefit managers, those costs are outweighed by the benefits to the consumers.

There is always some degree of uncertainty in anticipating what the costs and benefits of adopted rules will ultimately be. That said, within the constraints of our resources, we have attempted to provide estimates that are as accurate as possible by performing a comprehensive analysis that is data-driven and evidence-based.

A copy of the detailed cost calculations may be obtained by contacting Tabba Alam, P.O. Box 40260, Olympia, WA 98504-0260, phone 360-725-7170, fax 360-586-3109.

November 3, 2020
Mike Kreidler
Insurance Commissioner

Chapter 284-180 WAC

((PHARMACY)) HEALTH CARE BENEFIT MANAGERS

AMENDATORY SECTION (Amending WSR 17-01-139, filed 12/20/16, effective 1/1/17)

WAC 284-180-110 Purpose. ~~((These regulations implement chapter 19.340 RCW))~~ (1) The purpose of this chapter is to establish uniform regulatory standards for health care benefit managers including, but not limited to, the processes and procedures for registration ~~((and regulation of pharmacy))~~ of health care benefit managers by the office of the insurance commissioner (commissioner).

(2) This chapter applies to all health care benefit managers except as otherwise expressly provided in this chapter. Health care benefit managers are responsible for compliance with the provisions of this chapter and are responsible for the compliance of any person or organization acting on behalf of or at the direction of the health care benefit manager, or acting pursuant to health care benefit manager standards or requirements. Carriers remain responsible for activities of health care benefit managers conducted on their behalf. A carrier may not offer as a defense to a violation of any provision of this chapter that the violation arose from the act or omission of a health care benefit manager or other person acting on behalf of or at the direction of a health care benefit manager.

AMENDATORY SECTION (Amending WSR 17-01-139, filed 12/20/16, effective 1/1/17)

WAC 284-180-120 Applicability and scope. (1) This chapter applies to ~~((pharmacy))~~ health care benefit managers as defined in RCW ~~((19.340.010))~~ 48.200.020.

~~((1)) Specifically, this chapter applies to the actions of pharmacy benefit managers regarding contracts with pharmacies on behalf of an insurer, a third-party payor, or the prescription drug purchasing consortium established under RCW 70.14.060 in regard to:~~

~~((a)) Fully insured health plans; and~~

~~((b)) Medicaid plans. However, the appeal requirements of RCW 19.340.100 do not apply to Medicaid plans;))~~

(2) This chapter does not apply to the actions of ~~((pharmacy))~~ health care benefit managers providing services to, or acting ~~((as third-party administrators regarding contracts with pharmacies on behalf of an insurer, a third-party payor, or the prescription drug purchasing consortium established under RCW 70.14.060 in regard to))~~ on behalf of:

(a) Self-insured health plans; ~~((and))~~

(b) Medicare plans; and

(c) Union plans.

AMENDATORY SECTION (Amending WSR 17-01-139, filed 12/20/16, effective 1/1/17)

WAC 284-180-130 Definitions. Except as defined in other subchapters and unless the context requires otherwise, the following definitions apply throughout this chapter:

(1) "Affiliate" or "affiliated employer" has the same meaning as the definition of affiliate or affiliated employer in RCW 48.200.020.

(2) "Certification" has the same meaning as the definition of certification in RCW 48.43.005.

(3) "Corporate umbrella" means an arrangement consisting of, but not limited to, subsidiaries and affiliates operating under common ownership or control.

~~((2))~~ (4) "Employee benefits programs" has the same meaning as the definition of employee benefits program in RCW 48.200.020.

(5) "Generally available for purchase" means available for purchase by multiple pharmacies within the state of Washington from national or regional wholesalers.

~~((3))~~ (6) "Health care benefit manager" has the same meaning as the definition of health care benefit manager in RCW 48.200.020.

(7) "Health care provider" or "provider" has the same meaning as the definition of health care provider in RCW 48.43.005.

(8) "Health care services" has the same meaning as the definition of health care services in RCW 48.43.005.

(9) "Health carrier" has the same meaning as the definition of health carrier in RCW 48.43.005.

(10) "Laboratory benefit manager" has the same meaning as the definition of laboratory benefit manager in RCW 48.43.020.

(11) "Mental health benefit manager" has the same meaning as the definition of mental health benefit manager in RCW 48.200.020.

(12) "Net amount" means the invoice price that the pharmacy paid to the supplier for a prescription drug that it dispensed, plus any taxes, fees or other costs, minus the amount of all discounts and other cost reductions attributable to the drug.

~~((4))~~ (13) "Network" has the same meaning as the definition of network in RCW 48.200.020.

(14) "Oversight activities" includes all work done by the commissioner to ensure that the requirements of chapter ~~((19.340))~~ 48.200 RCW are properly followed and in fulfilling its duties as required under chapter ~~((19.340))~~ 48.200 RCW.

~~((5))~~ (15) "Person" has the same meaning as the definition of person in RCW 48.200.020.

(16) "Pharmacy benefit manager" has the same meaning as the definition of pharmacy benefit manager in RCW 48.200.020.

(17) "Predetermined reimbursement cost" means maximum allowable cost, maximum allowable cost list, or any other benchmark price utilized by the pharmacy benefit manager, including the basis of the methodology and sources utilized to determine multisource generic drug reimbursement amounts. However, dispensing fees are not included in the calculation of predetermined reimbursement costs for multisource generic drugs.

~~((6))~~ (18) "Radiology benefit manager" has the same meaning as the definition of radiology benefit manager in RCW 48.200.020.

(19) "Readily available for purchase" means manufactured supply is held in stock and available for order by more

than one pharmacy in Washington state when such pharmacies are not under the same corporate umbrella.

~~((7))~~ (20) "Retaliate" means action, or the implied or stated threat of action, to decrease reimbursement or to terminate, suspend, cancel or limit a pharmacy's participation in a pharmacy benefit manager's provider network solely or in part because the pharmacy has filed or intends to file an appeal under RCW ~~((19.340.100))~~ 48.200.280.

~~((8))~~ (21) "Unsatisfied" means that the network pharmacy did not receive the reimbursement that it requested at the first tier appeal.

(22) "Utilization review" has the same meaning as the definition of utilization review in RCW 48.43.005.

AMENDATORY SECTION (Amending WSR 17-01-139, filed 12/20/16, effective 1/1/17)

WAC 284-180-210 Registration and renewal fees. (1)

The registration, renewal and oversight activities for ~~((pharmacy))~~ health care benefit managers must be self-supporting. Each ~~((pharmacy))~~ health care benefit manager must contribute a sufficient amount to the commissioner's regulatory account to pay the reasonable costs, including overhead, of regulating ~~((pharmacy))~~ health care benefit managers.

(2) The registration fee is two hundred dollars.

(3) For the renewal fee, the commissioner will charge a proportional share of the annual cost of renewal and oversight activities to all ~~((pharmacy))~~ health care benefit managers. The ~~((pharmacy))~~ health care benefit managers' proportional share shall be based on their Washington state annual gross ~~((pharmacy))~~ health care benefit manager business income for the previous calendar year. The minimum renewal fee is five hundred dollars.

~~((4))~~ ~~((No later than March 1st of each year, pharmacy benefit managers must report their Washington state annual gross pharmacy benefit manager business income for the previous calendar year on a form prescribed by the commissioner.~~

~~((5))~~ ~~((On or before June 1st of each year, the commissioner will calculate and set the renewal fees for the ensuing fiscal year of July 1st through June 30th.~~

~~((6))~~ If an unexpended balance of ~~((pharmacy))~~ health care benefit manager registration and renewal funds remain in the insurance commissioner's regulatory account at the close of a fiscal year, the commissioner will carry the unexpended funds forward and use them to reduce future renewal fees.

AMENDATORY SECTION (Amending WSR 17-01-139, filed 12/20/16, effective 1/1/17)

WAC 284-180-220 ((Pharmacy)) Health care benefit manager registration. (1) Beginning January 1, 2017, ~~((and thereafter))~~ through December 31, 2021, to conduct business in this state, pharmacy benefit managers must register with the commissioner and must annually renew the registration.

(2) ~~((Pharmacy))~~ Beginning January 1, 2022, and thereafter, to conduct business in this state, health care benefit managers must register and have an approved registration with the commissioner. To continue conducting business in this state, previously registered pharmacy benefit managers

must submit an application and registration fee to register as a health care benefit manager. Health care benefit managers must annually renew their registration.

(3) Health care benefit managers must ~~((register))~~ apply for registration using the commissioner's electronic system, which is available at www.insurance.wa.gov.

~~((3))~~ (4) The registration period is valid from the date of approval of registration through June 30th of the same fiscal year.

~~((4))~~ (5) The registration application is not complete until the commissioner receives ~~((both))~~ the complete registration form, any supporting documentation if required by the commissioner, and the correct registration fee.

(6) A health care benefit manager may conduct business in this state, after the health care benefit manager receives notice of approval of the registration application from the commissioner.

AMENDATORY SECTION (Amending WSR 17-01-139, filed 12/20/16, effective 1/1/17)

WAC 284-180-230 ((Pharmacy)) Health care benefit manager renewal. (1) ~~((Pharmacy))~~ Health care benefit managers must annually renew their registrations ~~((by paying))~~ and pay the health care benefit manager's renewal fee ~~((Pharmacy benefit managers must access invoices through))~~

using the commissioner's electronic system, which is available at www.insurance.wa.gov.

~~((2))~~ ~~((The renewal is valid for one fiscal year, from July 1st through June 30th.~~

~~((3))~~ ~~((The renewal fee is due and payable no later than July 15th of each year. Failure to timely pay the renewal fee may subject a pharmacy benefit manager to a civil penalty under RCW 19.340.110(2).)~~

~~((4))~~ Health care benefit managers must renew their registrations by:

(a) No later than March 1st of each year, submitting a complete renewal form and supporting documents for approval to include:

(i) The health care benefit manager's Washington state annual gross health care benefit manager business income for the previous calendar year; and

(ii) Any additional information as required by the commissioner.

(b) No later than July 15th of each year, pay the renewal fee as invoiced by the commissioner.

On or before June 1st of each year, the commissioner will calculate and set the renewal fees for the upcoming fiscal year for July 1st through June 30th.

(3) The renewal application is not complete until the commissioner receives the complete renewal form, supporting documentation if required by the commissioner, and the correct renewal fee.

(4) Failure to timely submit a completed renewal form and fees may result in delayed renewal or nonrenewal in addition to potential violations if a health care benefit manager provides services without being registered.

(5) The health care benefit manager will receive notice of approval of the renewal application from the commissioner.

(6) The renewal is valid for one fiscal year from July 1st through June 30th.

AMENDATORY SECTION (Amending WSR 18-13-023, filed 6/8/18, effective 7/9/18)

WAC 284-180-240 Providing and updating registration information. (1) At the time of registration, a ((pharmacy)) health care benefit manager must submit an application with an affidavit affirming its accuracy. In the application, a health care benefit manager must provide ((its)):

(a) The legal name as well as any and all additional names that it uses to conduct business((-

(2) Registered pharmacy benefit managers must provide the commissioner with a valid email address, which the commissioner will use as the official contact address for communications regarding registrations, renewals and oversight activities.

(3) In addition to providing a valid email address, registered pharmacy benefit managers must identify a pharmacy benefit manager employee who is the single point of contact for appeals under WAC 284-180-420 and 284-180-430, and must fill out the form that the commissioner makes available for this purpose at www.insurance.wa.gov.

(4)):

(b) The names of all persons and entities with any ownership or controlling interest, including officers and directors in the health care benefit manager, along with completed NAIC Form 11 biographical affidavits and, if requested, an NAIC Approved Third-Party Vendor Background Report;

(c) Tax identification numbers;

(d) Other business licenses and registrations that the health care benefit manager has held and those that are active;

(e) Identifying any areas of specialty, such as a pharmacy benefit management, radiology benefit management, laboratory benefit management, mental health care benefit management, or any other areas of specialty identified in the application;

(f) Contact information for communications regarding registration, renewal and oversight activities, including address, phone number, name of the contact person for the health care benefit manager, and valid email address;

(g) Name and contact information for the person the health care benefit manager has designated as responsible for compliance with state and federal laws;

(h) Identify if the health care benefit manager has committed any violations in this or any state or been the subject of an order from a department of insurance or other state agency; and

(i) Any additional information requested by the commissioner.

(2) Registered ((pharmacy)) health care benefit managers must ensure that the information that they disclosed when they registered with the commissioner remains current by notifying the commissioner of any changes or additions.

(a) This information includes, but is not limited to:

(i) Any and all additional names that ((pharmacy)) the health care benefit manager((s-use)) uses to conduct business; and

(ii) The email address for official communications between the commissioner and the ((pharmacy)) health care benefit manager((-and

(iii) The name, contact information, and any other information that the pharmacy benefit manager submitted on the commissioner's form under subsection (3) of this section regarding the pharmacy benefit manager employee who is the pharmacy benefit manager's single point of contact for appeals under WAC 284-180-420 and 284-180-430)).

(b) Any change in the information provided to obtain or renew a registration is a material change and must be reported within thirty days of any change, ((pharmacy)) by the health care benefit manager((s must report changes to the commissioner)) using the commissioner's electronic system.

SUBCHAPTER C

~~((ENFORCEMENT))~~ RECORDS AND NOTICES

AMENDATORY SECTION (Amending WSR 17-01-139, filed 12/20/16, effective 1/1/17)

WAC 284-180-310 ((Pharmacy)) Health care benefit manager records. (1) ((Pharmacy)) Health care benefit managers must maintain all records for a period of seven years from the date of creation and make them available to the commissioner upon request. Records include, but are not limited to:

(a) Registration and renewal materials that ((pharmacy)) health care benefit managers submit to the commissioner to request registration and renewal; and

(b) Health care benefit managers that engage in pharmacy benefit management must also maintain information about appeals under chapter ((49-340)) 48.200 RCW.

(2) These materials are subject to review by the commissioner's representatives.

(3) The commissioner may require ((pharmacy)) health care benefit managers to provide copies of records.

(4) When the commissioner requests copies of records for inspection, ((pharmacy)) health care benefit managers must transmit these documents ((to)) as directed by the commissioner ((electronically)).

AMENDATORY SECTION (Amending WSR 17-01-139, filed 12/20/16, effective 1/1/17)

WAC 284-180-320 Deadline to provide copies of records. (1) If the commissioner requests records for inspection for a purpose other than to resolve an appeal under RCW ((49-340.100(6), a pharmacy)) 48.200.280, a health care benefit manager must make the records available to the commissioner within fifteen business days from the date on the written request. If the commissioner grants a written extension, then the records are due by the date indicated on the extension.

(2) Upon receipt of any inquiry from the commissioner concerning a complaint, every health care benefit manager must furnish the commissioner with an adequate response to the inquiry within fifteen business days after receipt of the commissioner's inquiry using the commissioner's electronic company complaint system.

NEW SECTION

WAC 284-180-325 Required notices. (1) Carriers must post on their website information that identifies each health care benefit manager contracted with the carrier and identify the services provided by the health care benefit manager. The information must be easy to find on the carriers' website with a link from the web page utilized for enrollees. The carrier is required to update the information on their website within thirty business days of any change, such as addition or removal of a health care benefit manager or a change in the services provided by a health care benefit manager.

(2) Carriers must notify enrollees in writing and at least annually, including at plan enrollment and renewal, of each health care benefit manager contracted with the carrier to provide any health care benefit management services. For example, written notices include disclosure in the policy or member handbook. This notice must identify the website address where enrollees can view an updated listing of all health care benefit managers utilized by the carrier.

SUBCHAPTER D**((APPEALS)) CONTRACT FILINGS**

AMENDATORY SECTION (Amending WSR 18-13-023, filed 6/8/18, effective 7/9/18)

WAC 284-180-400 Appeals by network pharmacies to ~~((pharmacy))~~ health care benefit managers who provide pharmacy benefit management services. A network pharmacy may appeal a reimbursement to a health care benefit manager providing pharmacy benefit ~~((manager))~~ management services (first tier appeal) if the reimbursement for the drug is less than the net amount the network pharmacy paid to the supplier of the drug. "Network pharmacy" has the meaning set forth in RCW 19.340.100 (1)(d). "Pharmacy benefit manager" is a health care benefit manager that offers pharmacy benefit management services and has the meaning set forth in RCW ~~((19.340.010 (6)(a)))~~ 48.200.020. A pharmacy benefit manager must process the network pharmacy's appeal as follows:

(1) A pharmacy benefit manager must include language in the pharmacy provider contract and on the pharmacy benefit manager's website fully describing the right to appeal under RCW ~~((19.340.100))~~ 48.200.280. If the health care benefit manager provides other health care benefit management services in addition to pharmacy benefit management services, then this information must be under an easily located page that is specific to pharmacy services. The description must include, but is not limited to:

(a) Contact information, including:

(i) A telephone number by which the pharmacy may contact the pharmacy benefit manager during normal business hours and speak with an individual responsible for processing appeals;

(ii) A summary of the specific times when the pharmacy benefit manager will answer calls from network pharmacies at that telephone number;

(iii) A fax number that a network pharmacy can use to submit information regarding an appeal; and

(iv) An email address that a network pharmacy can use to submit information regarding an appeal.

(b) A detailed description of the actions that a network pharmacy must take to file an appeal; and

(c) A detailed summary of each step in the pharmacy benefit manager's appeals process.

(2) The pharmacy benefit manager must reconsider the reimbursement. A pharmacy benefit manager's review process must provide the network pharmacy or its representatives with the opportunity to submit information to the pharmacy benefit manager including, but not limited to, documents or written comments. The pharmacy benefit manager must review and investigate the reimbursement and consider all information submitted by the network pharmacy or its representatives prior to issuing a decision.

(3) The pharmacy benefit manager must complete the appeal within thirty calendar days from the time the network pharmacy submits the appeal. If the network pharmacy does not receive the pharmacy benefit manager's decision within that time frame, then the appeal is deemed denied.

(4) The pharmacy benefit manager must uphold the appeal of a network pharmacy with fewer than fifteen retail outlets within the state of Washington, under its corporate umbrella, if the pharmacy demonstrates that they are unable to purchase therapeutically equivalent interchangeable product from a supplier doing business in the state of Washington at the pharmacy benefit manager's list price. "Therapeutically equivalent" is defined in RCW 69.41.110(7).

(5) If the pharmacy benefit manager denies the network pharmacy's appeal, the pharmacy benefit manager must provide the network pharmacy with a reason for the denial and the national drug code of a drug that has been purchased by other network pharmacies located in the state of Washington at a price less than or equal to the predetermined reimbursement cost for the multisource generic drug. "Multisource generic drug" is defined in RCW 19.340.100 (1)(c).

(6) If the pharmacy benefit manager upholds the network pharmacy's appeal, the pharmacy benefit manager must make a reasonable adjustment no later than one day after the date of the determination. If the request for an adjustment is from a critical access pharmacy, as defined by the state health care authority by rule for purpose related to the prescription drug purchasing consortium established under RCW 70.14.060, any such adjustment shall apply only to such pharmacies.

(7) If otherwise qualified, the following may file an appeal with a pharmacy benefit manager:

(a) Persons who are natural persons representing themselves;

(b) Attorneys at law duly qualified and entitled to practice in the courts of the state of Washington;

(c) Attorneys at law entitled to practice before the highest court of record of any other state, if attorneys licensed in Washington are permitted to appear before the courts of such other state in a representative capacity, and if not otherwise prohibited by state law;

(d) Public officials in their official capacity;

(e) A duly authorized director, officer, or full-time employee of an individual firm, association, partnership, or corporation who appears for such firm, association, partnership, or corporation;

(f) Partners, joint venturers or trustees representing their respective partnerships, joint ventures, or trusts; and

(g) Other persons designated by a person to whom the proceedings apply.

(8) A pharmacy benefit((s)) manager's response to an appeal submitted by a Washington small pharmacy that is denied, partially reimbursed, or untimely must include written documentation or notice to identify the exact corporate entity that received and processed the appeal. Such information must include, but is not limited to, the corporate entity's full and complete name, taxpayer identification number, and number assigned by the office of the insurance commissioner.

(9) Health care benefit managers providing pharmacy benefit management services benefit managers must identify a pharmacy benefit manager employee who is the single point of contact for appeals, and must include the address, phone number, name of the contact person, and valid email address. This includes completing and submitting the form that the commissioner makes available for this purpose at www.insurance.wa.gov.

NEW SECTION

WAC 284-180-405 Definitions in this subchapter.

The definitions in this section apply throughout this subchapter.

(1) "Complete filing" means a package of information containing forms, supporting information, documents and exhibits submitted to the commissioner electronically using the system for electronic rate and form filing (SERFF).

(2) "Date filed" means the date a complete filing has been received and accepted by the commissioner.

(3) "Filer" means:

(a) A person, organization or other entity that files forms or rates with the commissioner for a carrier or health care benefit manager; or

(b) A person employed by a carrier or health care benefit manager to file under this chapter.

(4) "Form" means a "health care benefit management contract" or "contract" and means any written agreement describing the rights and responsibilities of the parties, such as carriers, health care benefit managers, providers, pharmacy, pharmacy services administration organization, and employee benefit program conforming to chapter 48.200 RCW and this chapter including:

(a) All forms that are part of the contract; and

(b) All amendments to the contract.

(5) "NAIC" means the National Association of Insurance Commissioners.

(6) "Objection letter" means correspondence created in SERFF and sent by the commissioner to the filer that:

(a) Requests clarification, documentation, or other information; or

(b) Explains errors or omissions in the filing.

(7) "SERFF" means the system for electronic rate and form filing. SERFF is a proprietary NAIC computer-based application that allows insurers and other entities to create and submit rate, rule, and form filings electronically to the commissioner.

(8) "Type of insurance" or "TOI" means a specific type of health care coverage listed in the *Uniform Life, Accident and Health, Annuity and Credit Coding Matrix* published by the NAIC and available at www.naic.org.

AMENDATORY SECTION (Amending WSR 17-01-139, filed 12/20/16, effective 1/1/17)

WAC 284-180-410 Use of brief adjudicative proceedings for appeals by network pharmacies to the commissioner. The commissioner has adopted the procedure for brief adjudicative proceedings provided in RCW 34.05.482 through 34.05.494 for actions involving a network pharmacy's appeal of a pharmacy benefit manager's reimbursement for a drug subject to predetermined reimbursement costs for multisource generic drugs (reimbursement). WAC ((284-180-410)) ~~284-180-500~~ through ((284-180-440)) ~~284-180-540~~ describe the procedures for how the commissioner processes a network pharmacy's appeal of the pharmacy benefit manager's decision in the first tier appeal (second tier appeal) through a brief adjudicative proceeding.

This rule does not apply to adjudicative proceedings under WAC 284-02-070, including converted brief adjudicative proceedings.

NEW SECTION

WAC 284-180-411 Purpose of this subchapter. The purpose of this subchapter is to:

(1) Adopt processes and procedures for filers to use when submitting electronic forms and rates to the commissioner by way of SERFF.

(2) Designate SERFF as the method by which filers, including health care service contractors, health maintenance organizations, insurers as defined in RCW 48.01.050, and health care benefit managers must submit all health care benefit management contract forms to the commissioner.

NEW SECTION

WAC 284-180-415 Scope of this subchapter. This subchapter applies to all carriers and health care benefit managers that must file forms under chapter 48.200 RCW.

AMENDATORY SECTION (Amending WSR 18-13-023, filed 6/8/18, effective 7/9/18)

WAC 284-180-420 Appeals by network pharmacies to the commissioner. The following procedure applies to brief adjudicative proceedings before the commissioner for actions involving a network pharmacy's appeal of a pharmacy benefit manager's decision in a first tier appeal regarding reimbursement for a drug subject to predetermined reimbursement costs for multisource generic drugs, unless the matter is converted to a formal proceeding as provided in WAC ((284-180-440)) ~~284-180-540~~(3).

(1) **Grounds for appeal.** A network pharmacy or its representative may appeal a pharmacy benefit manager's decision to the commissioner if it meets all the following requirements:

(a) The pharmacy benefit manager's decision must have denied the network pharmacy's appeal, or the network pharmacy must be unsatisfied with the outcome of its appeal to the pharmacy benefit manager;

(b) The network pharmacy must request review of the pharmacy benefit manager's decision by filing a written petition for review form. A form for this purpose is available at www.insurance.wa.gov.

The petition for review must include:

(i) The network pharmacy's basis for appealing the pharmacy benefit manager's decision in the first tier appeal;

(ii) The network pharmacy's federal identification number, unified business identifier number, business address, and mailing address;

(iii) The documents from the first tier review, including the documents that the pharmacy submitted to the pharmacy benefit manager as well as the documents that the pharmacy benefit manager provided to the pharmacy in response to the first tier review; ~~(and)~~

(iv) Documentation evidencing the net amount paid for the drug by the small pharmacy;

(v) If the first-tier appeal was denied by the pharmacy benefit manager because a therapeutically equivalent drug was available in the state of Washington at a price less than or equal to the predetermined reimbursement cost for the multi-source generic drug and documentation provided by the pharmacy benefit manager evidencing the national drug code of the therapeutically equivalent drug; and

(vi) Any additional information that the commissioner may require.

(c) The network pharmacy must deliver the petition for review to the commissioner's Tumwater office by mail, hand delivery, or by other methods that the commissioner may make available;

(d) The network pharmacy must file the petition for review with the commissioner within thirty days of receipt of the pharmacy benefit manager's decision; and

(e) The network pharmacy making the appeal must have less than fifteen retail outlets within the state of Washington under its corporate umbrella. The petition for review that the network pharmacy submits to the commissioner must state that this requirement is satisfied, and must be signed and verified by an officer or authorized representative of the network pharmacy.

(2) **Time frames governing appeals to the commissioner.** The commissioner must complete the appeal within thirty calendar days of the receipt of the network pharmacy's ~~((appeal))~~ complete petition for review. A complete petition for review means that all requirements under (1) of this subsection have been satisfied, including the submission of all required documents and documentation. An appeal before the commissioner is deemed complete when a presiding officer issues an initial order on behalf of the commissioner to both the network pharmacy and pharmacy benefit manager under subsection (8) of this section. Within seven calendar days of the resolution of a dispute, the presiding officer shall provide a copy of the initial order to both the network pharmacy and pharmacy benefit manager.

(3) **Relief the commissioner may provide.** The commissioner, by and through a presiding officer or reviewing

officer, may enter an order directing the pharmacy benefit manager to make an adjustment to the disputed claim, denying the network pharmacy's appeal, or may take other actions deemed fair and equitable.

(4) **Notice.** If the presiding officer under the use of discretion chooses to conduct an oral hearing, the presiding officer will set the time and place of the hearing. Written notice shall be served upon both the network pharmacy and pharmacy benefit manager at least seven days before the date of the hearing. Service is to be made pursuant to WAC 284-180-440(2). The notice must include:

(a) The names and addresses of each party to whom the proceedings apply and, if known, the names and addresses of any representatives of such parties;

(b) The official file or other reference number and name of the proceeding, if applicable;

(c) The name, official title, mailing address and telephone number of the presiding officer, if known;

(d) A statement of the time, place and nature of the proceeding;

(e) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(f) A reference to the particular sections of the statutes or rules involved;

(g) A short and plain statement of the matters asserted by the network pharmacy against the pharmacy benefit manager and the potential action to be taken; and

(h) A statement that if either party fails to attend or participate in a hearing, the hearing can proceed and the presiding or reviewing officer may take adverse action against that party.

(5) **Appearance and practice at a brief adjudicative proceeding.** The right to practice before the commissioner in a brief adjudicative proceeding is limited to:

(a) Persons who are natural persons representing themselves;

(b) Attorneys at law duly qualified and entitled to practice in the courts of the state of Washington;

(c) Attorneys at law entitled to practice before the highest court of record of any other state, if attorneys licensed in Washington are permitted to appear before the courts of such other state in a representative capacity, and if not otherwise prohibited by state law;

(d) Public officials in their official capacity;

(e) A duly authorized director, officer, or full-time employee of an individual firm, association, partnership, or corporation who appears for such firm, association, partnership, or corporation;

(f) Partners, joint venturers or trustees representing their respective partnerships, joint ventures, or trusts; and

(g) Other persons designated by a person to whom the proceedings apply with the approval of the presiding officer.

In the event a proceeding is converted from a brief adjudicative proceeding to a formal proceeding, representation is limited to the provisions of law and RCW 34.05.428.

(6) **Method of response.** Upon receipt of any inquiry from the commissioner concerning a network pharmacy's appeal of a pharmacy benefit manager's decision in the first tier appeal regarding reimbursement for a drug subject to predetermined reimbursement costs for multisource generic

drugs, pharmacy benefit managers must respond to the commissioner using the commissioner's electronic pharmacy appeals system.

(7) **Hearings by telephone.** If the presiding officer chooses to conduct a hearing, then the presiding officer may choose to conduct the hearing telephonically. The conversation will be recorded and will be part of the record of the hearing.

(8) **Presiding officer.**

(a) Per RCW 34.05.485, the presiding officer may be the commissioner, one or more other persons designated by the commissioner per RCW 48.02.100, or one or more other administrative law judges employed by the office of administrative hearings. The commissioner's choice of presiding officer is entirely discretionary and subject to change at any time. However, it must not violate RCW 34.05.425 or 34.05.458.

(b) The presiding officer shall conduct the proceeding in a just and fair manner. Before taking action, the presiding officer shall provide both parties the opportunity to be informed of the presiding officer's position on the pending matter and to explain their views of the matter. During the course of the proceedings before the presiding officer, the parties may present all relevant information.

(c) The presiding officer may request additional evidence from either party at any time during review of the initial order. After the presiding officer requests evidence from a party, the party has seven days after service of the request to supply the evidence to the presiding officer, unless the presiding officer, under the use of discretion, allows additional time to submit the evidence.

(d) The presiding officer has all authority granted under chapter 34.05 RCW.

(9) **Entry of orders.**

(a) When the presiding officer issues a decision, the presiding officer shall briefly state the basis and legal authority for the decision. Within ten days of issuing the decision, the presiding officer shall serve upon the parties the initial order, as well as information regarding any administrative review that may be available before the commissioner. The presiding officer's issuance of a decision within the ten day time frame satisfies the seven day requirement in subsection (2) of this section.

(b) The initial order consists of the decision and the brief written statement of the basis and legal authority. The initial order will become a final order if neither party requests a review as provided in WAC ((284-180-430)) 284-180-530 (1).

(10) **Filing instructions.** When a small pharmacy or a pharmacy benefit manager provides information to the commissioner regarding appeals under WAC ((284-180-420)) 284-180-520, the small pharmacy or pharmacy benefit manager must follow the commissioner's filing instructions, which are available at www.insurance.wa.gov.

NEW SECTION

WAC 284-180-421 Filing instructions that are incorporated into this subchapter. SERFF is a dynamic application that the NAIC will revise and enhance over time. To be consistent with NAIC filing standards and provide timely

instructions to filers, the commissioner will incorporate documents posted on the SERFF website into this chapter. By reference, the commissioner incorporates these documents into this chapter:

(1) The *SERFF Industry Manual* available within the SERFF application; and

(2) The *Washington State SERFF Health Care Benefit Management General Filing Instructions* posted on the commissioner's website (www.insurance.wa.gov).

NEW SECTION

WAC 284-180-425 General health care benefit management form filing rules. (1) Each health care benefit management contract form and contract amendment form filing must be submitted to the commissioner electronically using SERFF.

(a) Every form filed in SERFF must:

(i) Be attached to the form schedule; and

(ii) Have a unique identifying number and a way to distinguish it from other versions of the same form.

(b) Filers must send all written correspondence related to a form filing in SERFF.

(2) All filed forms must be legible for both the commissioner's review and retention as a nonpublic record. Filers must submit new or revised forms to the commissioner for review in final form displayed in ten-point or larger type.

(3) Filers must submit complete filings that comply with the *SERFF Industry Manual* available within the SERFF application and the *Washington State SERFF Health Care Benefit Management General Filing Instructions*, as revised from time to time and posted on the commissioner's website (www.insurance.wa.gov).

AMENDATORY SECTION (Amending WSR 17-01-139, filed 12/20/16, effective 1/1/17)

WAC 284-180-430 Review of initial orders from brief adjudicative proceedings. The following procedure applies to the commissioner's review of a brief adjudicative proceeding conducted pursuant to WAC ((284-180-420)) 284-180-520, unless the matter is converted to a formal proceeding as provided in WAC ((284-180-440)) 284-180-540 (4).

(1) **Request for review of initial order.** A party to a brief adjudicative proceeding under WAC ((284-180-420)) 284-180-520 may request review of the initial order by filing a written petition for review with the commissioner within twenty-one days after service of the initial order is received or deemed to be received by the party. A form for this purpose is available at www.insurance.wa.gov. The request for review must be in writing and delivered to the commissioner's Tumwater office by mail, hand delivery, or by other methods that the commissioner may make available.

(a) When making a petition for review of the initial order, the petitioner must submit to the reviewing officer any evidence or written material relevant to the matter that the party wishes the reviewing officer to consider.

(b) The commissioner may, on its own motion, conduct an administrative review of the initial order as provided for in RCW 34.05.491.

(2) **Reviewing officer.** The commissioner shall appoint a reviewing officer who satisfies the requirements of RCW 34.05.491(2). The reviewing officer shall:

(a) Make such determination as may appear to be just and lawful;

(b) Provide both the network pharmacy and the pharmacy benefit manager an opportunity to explain their positions on the matter; and

(c) Make any inquiries necessary to determine whether the proceeding should be converted to a formal adjudicative proceeding. The review is governed by the brief adjudicative procedures of chapter 34.05 RCW and this rule, or WAC 284-02-070 in the event a brief adjudicative hearing is converted to a formal adjudicative proceeding. The reviewing officer shall have the authority of a presiding officer as provided in WAC ((~~284-180-420~~) 284-180-520).

(3) **Record review.**

(a) Review of an initial order is limited to:

(i) The evidence that the presiding officer considered;

(ii) The initial order;

(iii) The recording of the initial proceeding; and

(iv) Any records and written evidence that the parties submitted to the reviewing officer.

(b) However, the record that the presiding officer made does not need to constitute the exclusive basis for the reviewing officer's decision.

(c) The reviewing officer may request additional evidence from either party at any time during review of the initial order. After the reviewing officer requests evidence from a party, the party has seven days after service of the request to supply the evidence to the reviewing officer, unless the reviewing officer, under the use of discretion, allows additional time to submit the evidence.

(d) If the reviewing officer determines that oral testimony is needed, the officer may schedule a time for both parties to present oral testimony. Oral statements before the reviewing officer shall be by telephone, unless specifically scheduled by the reviewing officer to be in person.

(e) Each party will have an opportunity to respond to the other party's request for review and may also submit any other relevant evidence and written material to the reviewing officer.

(i) The other party must:

(A) Submit material within seven days of service of the material submitted by the party requesting review of the initial order; and

(B) Serve a copy of all evidence and written material provided to the reviewing officer to the party requesting review according to WAC ((~~284-180-440~~) 284-180-540(2)).

(ii) Proof of service is required under WAC ((~~284-180-440~~) 284-180-540 (2)(g) when a party submits material to the other party under this subsection.

(4) **Failure to participate.** If a party requesting review of an initial order under subsection (1) of this section fails to participate in the proceeding or fails to provide documentation to the reviewing officer upon request, the reviewing officer may uphold the initial order based upon the record.

(5) **Final orders.**

(a) The reviewing officer's final order must include the decision of the reviewing officer and a brief statement of the basis and legal authority for the decision.

(b) Unless there are continuances, the reviewing officer will issue the final order within twenty days of the petition for review.

(6) **Reconsideration.** Unless otherwise provided in the reviewing officer's order, the reviewing officer's order represents the final position of the commissioner. A petitioner may only seek a reconsideration of the reviewing officer's order if the final order contains a right to a reconsideration.

(7) **Judicial review.** Judicial review of the final order of the commissioner is available under Part V, chapter 34.05 RCW. However, as required by RCW 34.05.534, judicial review may be available only if the petitioner has requested a review of the initial order under this subsection and has exhausted all other administrative remedies.

NEW SECTION

WAC 284-180-431 The commissioner may reject filings. (1) The commissioner may reject and close any filing that does not comply with this subchapter. If the commissioner rejects a filing, the filer has not filed forms with the commissioner.

(2) If the commissioner rejects a filing and the filer resubmits it as a new filing, the date filed will be the date the commissioner receives and accepts the new filing.

NEW SECTION

WAC 284-180-435 Filing authorization rules. A carrier or health care benefit manager may authorize a third-party filer to file forms or rates on its behalf. For the purposes of this section, a "third-party filer" means a person or entity in the business of providing regulatory compliance services.

(1) If a carrier or health care benefit manager delegates filing authority to a third-party filer, each filing must include a letter as supporting documentation signed by an officer of the carrier or health care benefit manager authorizing the third-party filer to make filings on behalf of the carrier or health care benefit manager.

(2) The carrier or health care benefit manager may not delegate responsibility for the content of a filing to a third-party filer. The commissioner considers errors and omissions made by the third-party filer to be errors and omissions of the carrier or health care benefit manager.

(3) If a third-party filer has a pattern of making filings that do not comply with this chapter, the commissioner may reject a delegation of filing authority.

NEW SECTION

WAC 284-180-441 Rules for responding to an objection letter. An objection letter may ask the filer to revise a noncompliant form or provide clarification or additional information. The objection letter will state the reason(s) for the objection, including relevant case law, statutes, and rules. Filers must:

(1) Provide a complete response to an objection letter. A complete response must include a separate response to each objection, and if appropriate:

(a) A description of changes proposed to noncompliant forms, and a replacement form attached to the form schedule; or

(b) Revised exhibits and supporting documentation.

(2) Respond to the commissioner in a timely manner designated by the commissioner in the objection letter.

(3) Failure to timely respond to an objection is a violation.

NEW SECTION

WAC 284-180-445 Rules for revised or replaced forms. If a carrier or health care benefit manager files a revised or replaced form, the filer must provide the supporting documentation described below:

(1) If a form is revised due to an objection(s) from the commissioner, the filer must provide a detailed explanation of all material changes to the replaced form.

(2) If a form is replaced with a new version, the filer must submit an exhibit that marks and identifies each change or revision to the replaced form using one of these methods:

(a) A draft form that strikes through deletions and underlines additions or changes in the form;

(b) A draft form that includes comments in the margins explaining the changes in the form; or

(c) A side-by-side comparison of current and proposed language.

NEW SECTION

WAC 284-180-450 Effective date rules. (1) Filers must include a common implementation date for all forms submitted in a filing.

(2) Filers may submit a request to change the implementation date of a filing as a note to reviewer.

NEW SECTION

WAC 284-180-455 Carrier filings related to health care benefit managers. (1) A carrier must file all contracts and contract amendments with a health care benefit manager within thirty days following the effective date of the contract or contract amendment. If a carrier negotiates, amends, or modifies a contract or a compensation agreement that deviates from a previously filed contract, then the carrier must file that negotiated, amended, or modified contract or agreement with the commissioner within thirty days following the effective date. The commissioner must receive the filings electronically in accordance with this subchapter.

(2) Carriers must maintain health care benefit manager contracts at its principal place of business in the state, or the carrier must have access to all contracts and provide copies to facilitate regulatory review upon twenty days prior written notice from the commissioner.

(3) Nothing in this section relieves the carrier of the responsibility detailed in WAC 284-170-280 (3)(b) to ensure that all contracts are current and signed if the carrier utilizes a health care benefit manager's providers and those providers

are listed in the network filed for approval with the commissioner.

(4) If a carrier enters into a reimbursement agreement that is tied to health outcomes, utilization of specific services, patient volume within a specific period of time, or other performance standards, the carrier must file the reimbursement agreement with the commissioner within thirty days following the effective date of the reimbursement agreement, and identify the number of enrollees in the service area in which the reimbursement agreement applies. Such reimbursement agreements must not cause or be determined by the commissioner to result in discrimination against or rationing of medically necessary services for enrollees with a specific covered condition or disease. If the commissioner fails to notify the carrier that the agreement is disapproved within thirty days of receipt, the agreement is deemed approved. The commissioner may subsequently withdraw such approval for cause.

(5) Health care benefit manager contracts and compensation agreements must clearly set forth the carrier provider networks and applicable compensation agreements associated with those networks so that the provider or facility can understand their participation as an in-network provider and the reimbursement to be paid. The format of such contracts and agreements may include a list or other format acceptable to the commissioner so that a reasonable person will understand and be able to identify their participation and the reimbursement to be paid as a contracted provider in each provider network.

NEW SECTION

WAC 284-180-460 Health care benefit manager filings. (1) A health care benefit manager must file all contracts and contract amendments between a provider, pharmacy, pharmacy services administration organization, or other health care benefit manager entered into directly or indirectly in support of a contract with a carrier or employee benefits program within thirty days following the effective date of the contract or contract amendment. If a health care benefit manager negotiates, amends, or modifies a contract or a compensation agreement that deviates from a filed agreement, then the health care benefit manager must file that negotiated, amended, or modified contract or agreement with the commissioner within thirty days following the effective date. The commissioner must receive the filings electronically in accordance with this chapter.

(2) Health care benefit managers must maintain health care benefit management contracts at its principal place of business in the state, or the health care benefit manager must have access to all contracts and provide copies to facilitate regulatory review upon twenty days prior written notice from the commissioner.

(3) Health care benefit manager contracts and compensation agreements must clearly set forth provider network names and applicable compensation agreements associated with those networks so that the provider or facility can understand their participation as an in-network provider and the reimbursement to be paid. The format of such contracts and agreements may include a list or other format acceptable to the commissioner so that a reasonable person will understand

and be able to identify their participation and the reimbursement to be paid as a contracted provider in each provider network.

SUBCHAPTER E

APPEALS

NEW SECTION

WAC 284-180-500 Applicability and scope. This subchapter applies to health care benefit managers providing pharmacy benefit management services, referred to as pharmacy benefit managers in this subchapter.

(1) Specifically, this subchapter applies to the actions of pharmacy benefit managers regarding contracts with pharmacies on behalf of an insurer, a third-party payor, or the prescription drug purchasing consortium established under RCW 70.14.060 in regard to:

- (a) Fully insured health plans; and
- (b) Medicaid plans. However, the appeal requirements of RCW 19.340.100 do not apply to medicaid plans.

(2) This subchapter does not apply to the actions of pharmacy benefit managers acting as third-party administrators regarding contracts with pharmacies on behalf of an insurer, a third-party payor, or the prescription drug purchasing consortium established under RCW 70.14.060 in regard to:

- (a) Self-insured health plans; and
- (b) Medicare plans.

NEW SECTION

The following sections of the Washington Administrative Code are decodified and recodified as follows:

| Old WAC Number | New WAC Number |
|----------------|----------------|
| 284-180-140 | 284-180-510 |
| 284-180-400 | 284-180-505 |
| 284-180-410 | 284-180-515 |
| 284-180-420 | 284-180-520 |
| 284-180-430 | 284-180-530 |
| 284-180-440 | 284-180-540 |

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 284-180-330 Actions that may result in a fine.
- WAC 284-180-340 When a violation is knowing and willful.

WSR 20-22-094

PROPOSED RULES

LOWER COLUMBIA COLLEGE

[Filed November 3, 2020, 12:49 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-18-062.

Title of Rule and Other Identifying Information: Chapter 132M-125 WAC, Code of student conduct, repeal and replace with new code of student conduct, chapter 132M-126 WAC; and chapter 132M-300 WAC, Discrimination and harassment, rules repeal and replace with college policy and procedures.

Hearing Location(s): On December 16, 2020, at 5:00 p.m. Join Zoom meeting at <https://lowercolumbia.zoom.us/j/88523391652>, Meeting ID: 885 2339 1652, One tap mobile +12532158782,,88523391652# US (Tacoma), +13462487799,,88523391652# US (Houston).

Dial by your location +1 253 215 8782 US (Tacoma), +1 346 248 7799 US (Houston), +1 669 900 6833 US (San Jose), +1 646 876 9923 US (New York), +1 301 715 8592 US (Germantown), +1 312 626 6799 US (Chicago), Meeting ID: 885 2339 1652, find your local number: <https://lowercolumbia.zoom.us/j/88523391652>. Join by SIP 88523391652@zoomcrc.com.

Date of Intended Adoption: December 16, 2020.

Submit Written Comments to: Bryanna Smith, 1600 Maple Street, P.O. Box 3010, Longview, WA 98632, email rulemaking@lowercolumbia.edu, fax 360-442-2129, by December 11, 2020.

Assistance for Persons with Disabilities: Contact Bryanna Smith, phone 360-442-2100, fax 360-442-2129, TTY 800-833-6388, email rulemaking@lowercolumbia.edu, by December 11, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 132M-125 WAC, Code of student conduct, repeal and replace with new chapter 132M-126 WAC, Code of student conduct, that complies with new federal regulations for Title IX of the Education Amendments of 1972 (Title IX) by adding new sections on Supplemental Title IX Student Conduct Procedures; reorganizes the student conduct code; uses consistent terminology throughout the code and revises some definitions; revises the jurisdiction section of the code; removes the section of the code applying to students studying abroad; adds a clause that academic consequences for academic dishonesty may be addressed outside of the code through failing grades and other academic consequences; revises subsections on prohibited student conduct; removes a section addressing trespass; revises the section on sanctions, initiation of disciplinary action, brief adjudicative proceedings, appeals to the student conduct committee, conduct committee hearings, initial orders, appeals from initial orders, record keeping, and summary suspension; removes the section on supplemental sexual misconduct procedures and imbeds those procedures within the rest of the code. Chapter 132M-300 WAC, Discrimination and harassment rules, repeal and replace with college policy and procedures that are in compliance with new federal regulations for Title IX of the Education Amendments of 1972 (Title IX).

Reasons Supporting Proposal: Lower Columbia College must repeal and replace their chapter 132M-125 WAC to meet new federal regulations for Title IX of the Education Amendments of 1972 (Title IX) that specify how recipients of federal financial assistance covered by Title IX, including post-secondary institutions, must respond to allegations of sexual harassment consistent with Title IX's prohibition against sex discrimination. In addition, other revisions to the code of student conduct are necessary to address changes in case law, and align with the new processes and changes in practice for student conduct. Chapter 132M-300 WAC, Discrimination and harassment, sections should be repealed as it is not necessary to address these matters through WAC and they should instead be replaced as college policies and procedures.

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

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

Rule is necessary because of federal law, 34 C.F.R. 106; *Nelson v. Spokane Community College*, 14 Wn.App.2d 40, 469 P.3d 317 (2020).

Name of Proponent: Lower Columbia College, public.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Sue Orchard, 1600 Maple Street, P.O. Box 3010, Longview, WA 98632, 360-442-2301.

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

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 34.05.328 (5)(a)(i), this agency is not mandated to comply with RCW 34.05.328. Further, the agency does not voluntarily make that section applicable to the adoption of this rule pursuant to subsection (5)(a)(ii), and to date the joint administrative rules committee has not made that section applicable to the adoption of this rule.

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

Is exempt under RCW 19.85.025(3) and 34.05.310 (4)(g)(i).

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. This change is not anticipated to impose any additional cost on business.

November 3, 2020

Kendra Sprague
Vice President of Foundation
Human Resources and Legal Affairs

REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 132M-125-005 Student responsibilities.
- WAC 132M-125-010 Authority.
- WAC 132M-125-015 Definitions.

- WAC 132M-125-020 Statement of jurisdiction.
- WAC 132M-125-025 Students studying abroad.
- WAC 132M-125-030 Statement of student rights.
- WAC 132M-125-035 Prohibited student conduct.
- WAC 132M-125-040 Trespass.
- WAC 132M-125-045 Disciplinary sanctions and terms and conditions.
- WAC 132M-125-100 Initiation of disciplinary action.
- WAC 132M-125-105 Appeal from disciplinary action.
- WAC 132M-125-110 Brief adjudicative proceedings—Initial hearing.
- WAC 132M-125-115 Brief adjudicative proceedings—Review of an initial decision.
- WAC 132M-125-120 Student conduct committee.
- WAC 132M-125-125 Appeal—Student conduct committee.
- WAC 132M-125-130 Student conduct committee hearings—Presentations of evidence.
- WAC 132M-125-135 Student conduct committee—Initial decision.
- WAC 132M-125-140 Appeal from student conduct committee initial decision.
- WAC 132M-125-145 Summary suspension.
- WAC 132M-125-150 Classroom misconduct and authority to suspend for no more than one day.
- WAC 132M-125-200 Supplemental sexual misconduct procedures.
- WAC 132M-125-205 Supplemental definitions.
- WAC 132M-125-210 Supplemental complaint process.
- WAC 132M-125-215 Supplemental appeal rights.
- WAC 132M-125-220 Brief adjudicative proceedings—College record.
- WAC 132M-125-225 Recordkeeping.

Chapter 132M-126 WAC

CODE OF STUDENT CONDUCT

NEW SECTION

WAC 132M-126-005 Preamble. Lower Columbia College is a diverse and dynamic learning community. As such, the college maintains a strong commitment to providing a learning environment that is civil and free from disruptive behavior. All members of the college community share in the responsibility to promote a positive learning environment, demonstrate mutual respect and dignity, and avoid adversarial relationships. Thus, students are expected to act as responsible members of this community, maintain a high degree of honesty and integrity, comply with the rules and regulations of the college, and respect the rights, privileges, and property of the college community.

NEW SECTION

WAC 132M-126-010 Authority. The board of trustees of Washington State Community College District No. 13, acting pursuant to RCW 28B.50.140(13), delegates to the president of the college the authority to administer disciplinary action. Administration of the disciplinary procedures is the responsibility of the vice president of student services or their designee. Unless otherwise specified, the student conduct officer or delegee shall serve as the principal investigator and administrator for alleged violations of this code.

NEW SECTION

WAC 132M-126-015 Definitions. The following definitions shall apply for purposes of this student conduct code:

(1) "ASLCC" means the associated students of Lower Columbia College as defined in the constitution of that body.

(2) "Assembly" means any overt activity engaged in by one or more persons, the object of which is to gain publicity, advocate a view, petition for a cause, or disseminate information to any person, persons, or group of persons.

(3) "Business day" means a weekday, excluding weekends, college holidays, and college closure days.

(4) "College" means Lower Columbia College and any other college centers or premises established within Washington State Community College District No. 13.

(5) "College community" means trustees, students, staff, faculty, and visitors in college facilities and college premises.

(6) "College official" includes any person employed by the college performing assigned duties.

(7) "College premises" shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

(8) A "complainant" is an alleged victim of sexual misconduct.

(9) "Conduct review officer" is the vice president of student services or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code.

(10) "Controlled substance" means and includes any drug or substance as defined in chapter 69.50 RCW as now law or hereafter amended.

(11) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student code of conduct.

(12) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ten instructional days or an expulsion are heard by the student conduct committee. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

(13) "Faculty member" and "instructor" mean any employee of Washington State Community College District No. 13 who is employed on a full-time or part-time basis as a teacher, instructor, counselor or librarian.

(14) "Filing" is the process by which a document is officially delivered to a college official responsible for facilitat-

ing a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

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

(b) By sending the document by email and first-class mail to the specified college official's office and college email address.

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

(15) "The president" is the president of the college. The president is authorized to:

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

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

(16) "RCW" means Revised Code of Washington which can be accessed at <http://apps.leg.wa.gov/rcw/>.

(17) "Respondent" is the student against whom disciplinary action is initiated.

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

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

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

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

(19) "Sexual misconduct" has the meaning ascribed to this term in WAC 132M-126-030(13).

(20) "Student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered "students" for purposes of this chapter.

(21) "Student conduct officer" is a college administrator designated by the president to be responsible for implementing and enforcing the student conduct code.

(22) "Student organization" means any number of students who have met the formal requirements of clubs and organizations.

NEW SECTION

WAC 132M-126-020 Statement of jurisdiction. (1) The student conduct code shall apply to student conduct that occurs:

(a) On college premises;

(b) At or in connection with college-sponsored activities; or

(c) Off-campus conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives.

(2) Jurisdiction extends to, but is not limited to, locations in which students are engaged in official college activities

including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences or any other college-sanctioned social or club activities.

(3) Students are responsible for their conduct from notification of acceptance at the college through the actual receipt of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment.

(4) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending. The student conduct officer has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct that occurs off campus.

NEW SECTION

WAC 132M-126-025 Statement of student rights. As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

The following enumerated rights are guaranteed to each student within the limitations of statutory law and college policy, which are deemed necessary to achieve the educational goals of the college:

(1) Academic freedom.

(a) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college premises that are generally open and available to the public.

(b) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services, subject to the limitations of RCW 28B.50.090 (3) (b).

(c) Students shall be protected from academic evaluation which is arbitrary, prejudiced, or capricious, but are responsible for meeting the standards of academic performance established by each of their instructors.

(d) Students have the right to a learning environment which is free from unlawful discrimination, inappropriate and disrespectful conduct, and any and all harassment, including sexual harassment.

(2) Due process.

(a) The rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures is guaranteed.

(b) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(c) A student accused of violating this code of student conduct is entitled, upon request, to procedural due process as set forth in this chapter.

NEW SECTION

WAC 132M-126-030 Prohibited student conduct.

The college may impose disciplinary sanctions against a student who commits, attempts to commit, aids, abets, incites, encourages or assists another person to commit, an act(s) of misconduct which include, but are not limited to, the following:

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

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

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

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

(d) Academic consequences for academic dishonesty or abetting in academic dishonesty may be imposed at the discretion of a faculty member up to and including a failing grade for the course. Students should refer to each of their faculty's course syllabus and program handbook. Further academic consequences may follow consistent with the provisions in any program handbook including, but not limited to, dismissal from an academic program. Incidents of academic dishonesty may also be referred to the student conduct officer for disciplinary action consistent with this chapter in addition to the academic consequences identified above.

(2) **Other dishonesty.** Any other acts of dishonesty. Such acts include, but are not limited to:

(a) Forgery, alteration, submission of falsified documents or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students; or

(c) Furnishing false information or failing to furnish correct information, in response to the request or requirement of a college officer or employee.

(3) **Obstruction or disruptive conduct.** Conduct, not otherwise protected by law, that interferes with, impedes, or otherwise unreasonably hinders:

(a) Instruction, research, administration, disciplinary proceeding(s), or other college activities, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

(4) **Assault, intimidation, harassment.** Unwanted touching, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this code, "bullying" is defined as repeated or

aggressive unwanted behavior, not otherwise protected by law that intentionally humiliates, harms, or intimidates the victim.

(5) **Cyber misconduct.** Cyberstalking, cyberbullying or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(6) **Property violation.** Damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging or destruction of college property or the property of another person. Property for purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.

(7) **Failure to comply with directive.** Failure to comply with the directive of a college officer or employee who is acting in the legitimate performance of their duties, including failure to properly identify oneself to such a person when requested to do so.

(8) **Weapons.** Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties;

(b) A student with a valid concealed weapons permit may store a pistol in their vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view; or

(c) The president may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission.

(d) This policy does not apply to the possession and/or use of disabling chemical sprays when possessed and/or used for self-defense.

(9) **Hazing.** Hazing includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student.

(10) **Alcohol, drug, and tobacco violations.**

(a) **Alcohol.** The use, possession, delivery, sale, or being observably under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(b) **Marijuana.** The use, possession, delivery, or sale of marijuana or the psychoactive compounds found in marijuana intended for human consumption, regardless of form, or being observably under the influence of marijuana or the psychoactive compounds found in marijuana. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(c) **Drugs.** The use, possession, delivery, sale, or being observably under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

(d) **Tobacco, electronic cigarettes and related products.** The use of tobacco, electronic cigarettes, and related products in any building owned, leased or operated by the college or in any location where such use is prohibited, including twenty-five feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased or operated by the college. This includes all college sidewalks, parking lots, landscaped areas, sports fields and college buildings. Use of tobacco is also prohibited at events on college premises, or in college-owned, rented or leased vehicles. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, vaporizers, and snuff.

(11) **Lewd conduct.** Conduct which is lewd or obscene that is not otherwise protected under the law.

(12) **Discriminatory conduct.** Conduct which harms or adversely affects any member of the college community because of their race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(13) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX is defined in the supplemental procedures in this code. See WAC 132M-126-115 through 132M-126-155.

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome sexual or gender-based conduct, including unwelcome sexual advances, requests for sexual favors, quid pro quo harassment, and other verbal, nonverbal, or physical conduct of a sexual or a gendered nature that is sufficiently severe, persistent, or pervasive as to:

(i) Deny or limit the ability of a student to participate in or benefit from the college's educational program;

(ii) Alter the terms or conditions of employment for a college employee(s); and/or

(iii) Create an intimidating, hostile, or offensive environment for other campus community members.

(b) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(c) **Sexual violence.** "Sexual violence" is a type of sexual discrimination and harassment. Nonconsensual sexual

intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.

(i) **Nonconsensual sexual intercourse.** Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(ii) **Nonconsensual sexual contact.** Any actual or attempted sexual touching however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(iii) **Incest.** Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren, and adopted children under the ages of eighteen.

(iv) **Statutory rape.** Consensual intercourse between a person who is eighteen years of age or older, and a person who is under the age of sixteen.

(v) **Domestic violence.** Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(vi) **Dating violence.** Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(A) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(B) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(I) The length of the relationship;

(II) The type of relationship; and

(III) The frequency of interactions between the persons involved in the relationship.

(vii) **Stalking.** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(A) Fear for their safety or the safety of others; or

(B) Suffer substantial emotional distress.

(d) For purposes of this code, "consent" means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual word or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(14) **Harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program, that changes the terms or conditions of employment for a college employee, or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic communications.

(15) **Retaliation.** Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such person reported an alleged violation of this code or college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceedings.

(16) **Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

(a) Unauthorized use of such resources or opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of such time or resources to interfere with someone else's work;

(e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(g) Use of such time or resources in violation of applicable copyright or other law;

(h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization.

(17) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

(18) **Safety violations.** Nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(19) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college traffic and parking rules.

(20) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college reserves the right to pursue student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

NEW SECTION

WAC 132M-126-035 Disciplinary sanctions and terms and conditions. (1) The following disciplinary sanctions may be imposed upon students found to have violated the student conduct code.

(a) **Disciplinary warning.** A verbal statement to a student that there is a violation and that continued violation may be cause for further disciplinary action.

(b) **Written reprimand.** Notice in writing that the student has violated one or more terms of this code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action.

(c) **Disciplinary probation.** Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation and which may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction which may include, but is not limited to, a suspension or a dismissal from the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance at the college.

(d) **Disciplinary suspension.** Dismissal from the college and from student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action is taken.

(e) **Dismissal.** The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled premises without any possibility of return. There will be no refund of tuition or fees for the quarter in which the action is taken.

(2) Disciplinary terms and conditions that may be imposed alone or in conjunction with the imposition of a dis-

ciplinary sanction include, but are not limited to, the following:

(a) **Restitution.** Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.

(b) **Educational sanction.** The college may require the student to complete an educational activity or experience directly related to the violation committed, at the student's expense.

(c) **Professional evaluation.** Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(d) **Not in good standing.** A student may be deemed "not in good standing" with the college. If so, the student shall be subject to the following restrictions:

(i) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.

(ii) Ineligible to represent the college to anyone outside the college community in any way, including representing the college at any official function, or any forms of intercollegiate competition or representation.

(e) **No trespass order.** A student may be restricted from college property based on their misconduct.

(f) **No contact order.** An order directing a student to have no contact with a specified student, college employee, a member of the college community, or a particular college facility.

NEW SECTION

WAC 132M-126-040 Initiation of disciplinary action.

(1) All disciplinary actions will be initiated by the student conduct officer. If that officer is the subject of a complaint initiated by the respondent, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.

(2) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing them to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specify the time and location of the meeting. At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportu-

nity to explain what took place. If the respondent fails to attend the meeting after proper service of notice, the student conduct officer may take disciplinary action based upon the available information.

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

(4) Within ten days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting their decision, the specific student conduct code provisions found to have been violated, the discipline imposed, if any, and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal.

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

(a) Exonerate the respondent and terminate the proceedings.

(b) Impose a disciplinary sanction(s), as described in WAC 132M-126-035.

(c) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate. Such referral shall be in writing, to the attention of the chair of the student conduct committee, with a copy served on the respondent.

(6) In cases involving allegations of sexual misconduct, the student conduct officer on the same date that a disciplinary decision is served on the respondent, will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure that prompt notice of the protective disciplinary sanctions and/or conditions occurs.

NEW SECTION

WAC 132M-126-045 Appeal from disciplinary action. (1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within ten days of the student conduct officer's decision. Failure to file a notice of appeal timely constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

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

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

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

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

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

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

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

(b) Dismissals; and

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

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

(a) Suspensions of ten instructional days or less;

(b) Disciplinary probation;

(c) Written reprimands; and

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

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

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

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

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

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

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

NEW SECTION

WAC 132M-126-050 Brief adjudicative proceedings authorization. Brief adjudicative proceedings shall be used for student conduct appeals involving the following disciplinary actions:

(1) Suspension of ten instructional days or less;

(2) Disciplinary probation;

(3) Written reprimands;

(4) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions; and

(5) Appeals by a complainant in student disciplinary proceeding involving allegations of sexual misconduct in which the student conduct officer:

(a) Dismisses disciplinary proceedings based upon a finding that the allegations of sexual misconduct have no merit; or

(b) Issues a verbal warning to the respondent.

NEW SECTION

WAC 132M-126-055 Brief adjudicative proceedings—Initial hearing. (1) Brief adjudicative proceedings shall be conducted by a conduct review officer. The conduct review officer shall not participate in any case in which they are a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(2) The parties to a brief adjudicative proceeding are the respondent, the student conduct officer, and in cases involving sexual misconduct, the complainant. Before taking action, the conduct review officer shall conduct an informal hearing and provide each party:

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

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

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

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

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

NEW SECTION

WAC 132M-126-060 Brief adjudicative proceedings—Review of an initial decision. (1) An initial decision is subject to review by the president or designee, provided the party files a written request for review with the conduct review officer within ten days of service of the initial decision.

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

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

(4) The decision on review must be in writing and must include a brief statement of the reasons for the decision and must be served on the parties within twenty days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the president or designee does not make a disposition of the matter within twenty days after the request is submitted.

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

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

NEW SECTION

WAC 132M-126-065 Brief adjudicative proceedings—College record. The college record for brief adjudicative proceedings shall consist of any documents regarding the matter that were considered or prepared by the presiding officer for the brief adjudicative proceeding or by the reviewing officer for any review. These records shall be maintained according to the college's record retention schedule as the official record of the proceedings.

NEW SECTION

WAC 132M-126-070 Student conduct committee. (1) The student conduct committee shall consist of five members:

(a) Two full-time students appointed by the student government (ASLCC);

(b) Two faculty members appointed by the faculty association;

(c) One administrative staff member (other than an administrator serving as a student conduct or conduct review officer), or other impartial hearing chair, appointed by the president.

(2) The administrative staff member or other impartial hearing officer shall serve as the chair of the committee and may take action on preliminary hearing matters prior to convening the committee. The chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.

(3) Hearings may be heard by a quorum of three members of the committee so long as one faculty member and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness, in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity. Any party may petition the committee for disqualification of a committee member.

NEW SECTION

WAC 132M-126-075 Appeal—Student conduct committee. (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW and by the model rules of procedure, chapter 10-08 WAC. To the extent there is a conflict between these rules and chapter 10-08 WAC, these rules shall control.

(2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven days in advance of the hearing date. The chair may shorten this notice period if both parties agree, and also may continue the hearing at a later time for good cause shown.

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

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

(5) The committee chair may provide to the committee members in advance of the hearing copies of (a) the conduct officer's notification of imposition of discipline (or referral to the committee) and (b) the notice of appeal (or any response to referral) by the respondent. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

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

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

(8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate, and

any improper ex parte communication shall be placed on the record, as further provided in RCW 34.05.455.

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

NEW SECTION

WAC 132M-126-080 Student conduct committee hearings—Presentations of evidence. (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

(a) Proceed with the hearing and issuance of its decision; or

(b) Serve a decision of default in accordance with RCW 34.05.440.

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

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

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

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

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

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

NEW SECTION**WAC 132M-126-085 Student conduct committee—**

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

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

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

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

(5) In cases involving allegations of sexual misconduct, the chair of the student conduct committee, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including the suspension or dismissal of the respondent. The complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to other parties. The notice will also inform the complainant of their appeal rights.

NEW SECTION**WAC 132M-126-090 Appeal from student conduct**

committee initial decision. (1) A party who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's initial decision to the president or designee by filing a notice of appeal with the president's office within ten days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

(2) The notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain argument why the

appeal should be granted. If necessary to aid review, the president or designee may ask for additional briefing from the parties on issues raised on appeal. The president's or designee's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the notice of appeal.

(3) The president or designee shall provide a written decision to the party and the student conduct officer within twenty days after receipt of the notice of appeal. The president's or designee's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.

(4) In cases involving allegations of sexual misconduct, the president or designee, on the same date that the final decision is served upon the respondent, shall serve a written notice informing the complainant of the final decision. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.

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

NEW SECTION

WAC 132M-126-095 Recordkeeping. (1) Student conduct code records are maintained in accordance with the college's records retention schedule.

(2) The disciplinary record is confidential, and is released only as authorized under the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99).

NEW SECTION

WAC 132M-126-100 Summary suspension. (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

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

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

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

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

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

(4) The written notification shall be entitled "notice of summary suspension" and shall include:

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

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

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

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

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

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

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

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

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

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

NEW SECTION

WAC 132M-126-105 Classroom misconduct and authority to suspend for no more than one day. (1) Faculty members have the authority to take appropriate action to maintain order and proper conduct in the classroom and to maintain the effective cooperation of students in fulfilling the objectives of the course.

(2) Bringing any person, thing, or object to a teaching and learning environment that may disrupt the environment

or cause a safety or health hazard, without the express approval of the faculty member, is expressly prohibited.

(3) Faculty members or college administrators have the right to suspend any student from any single class or related activity for no more than one day, if the student's misconduct creates disruption to the point that it is difficult or impossible to maintain the decorum of the class, related activity or the learning and teaching environment. The faculty member or college administrator shall report this suspension to the student conduct officer or designee on the same day of the suspension. In consultation with the faculty member, the student conduct officer may set conditions for the student upon return to the class or activity.

NEW SECTION

WAC 132M-126-110 Sexual misconduct procedures.

Both the respondent and the complainant in cases involving allegations of sexual misconduct shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the initial disciplinary decision-making process and to appeal any disciplinary decision.

SUPPLEMENTAL TITLE IX STUDENT CONDUCT PROCEDURES

NEW SECTION

WAC 132M-126-115 Order of precedence. This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with the college's standard disciplinary procedures, WAC 132M-126-005 through 132M-126-110, these supplemental procedures shall take precedence.

NEW SECTION

WAC 132M-126-120 Prohibited conduct under Title IX. Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, the college may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

For purposes of this supplemental procedure, "sexual harassment" encompasses the following conduct:

(1) **Quid pro quo harassment.** A college employee conditioning the provision of an aid, benefit, or service of the college on an individual's participation in unwelcome sexual conduct.

(2) **Hostile environment.** Unwelcome conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the college's educational programs or activities, or employment.

(3) **Sexual assault.** Sexual assault includes the following conduct:

(a) Nonconsensual sexual intercourse. Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(b) Nonconsensual sexual contact. Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(c) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of eighteen.

(d) Statutory rape. Consensual sexual intercourse between someone who is eighteen years of age or older and someone who is under the age of sixteen.

(4) **Domestic violence.** Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(5) **Dating violence.** Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(a) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(b) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(i) The length of the relationship;

(ii) The type of relationship; and

(iii) The frequency of interaction between the persons involved in the relationship.

(6) **Stalking.** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.

NEW SECTION

WAC 132M-126-125 Title IX jurisdiction. (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

(b) Occurred during a college educational program or activity; and

(c) Meets the definition of sexual harassment as that term is defined in this supplemental procedure.

(2) For purposes of this supplemental procedure, an "educational program or activity" is defined as locations, events, or circumstances over which the college exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by the college.

(3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Dismissal under this supplemental procedure does not prohibit the college from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the college's student conduct code, WAC 132M-126-005 through 132M-126-110.

(4) If the student conduct officer determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the student conduct officer will issue a notice of dismissal in whole or part to both parties explaining why some or all of the Title IX claims have been dismissed.

NEW SECTION

WAC 132M-126-130 Initiation of discipline. (1) Upon receiving the Title IX investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

(2) If the student conduct officer determines that there are sufficient grounds to proceed under these supplemental procedures, the student conduct officer will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice with the chair of the student conduct committee and serve the notice on the respondent, the complainant, and their respective advisors. The notice must:

(a) Set forth the basis for Title IX jurisdiction;

(b) Identify the alleged Title IX violation(s);

(c) Set forth the facts underlying the allegation(s);

(d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s); and

(e) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:

(i) The advisors will be responsible for questioning all witnesses on the party's behalf;

(ii) An advisor may be an attorney; and

(iii) The college will appoint the party an advisor of the college's choosing at no cost to the party, if the party fails to do so; and

(3) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

NEW SECTION

WAC 132M-126-135 Prehearing procedure. (1) Upon receiving the disciplinary notice, the chair of the student conduct committee will send a hearing notice to all parties, in compliance with WAC 132M-126-075. In no event will the hearing date be set less than ten days after the Title

IX coordinator provided the final investigation report to the parties.

(2) A party may choose to have an attorney serve as their advisor at the party's own expense. This right will be waived unless, at least five days before the hearing, the attorney files a notice of appearance with the committee chair with copies to all parties including the student conduct officer.

(3) In preparation for the hearing, the parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether the college intends to offer the evidence at the hearing.

NEW SECTION

WAC 132M-126-140 Rights of parties. (1) The college's student conduct procedures, WAC 132M-126-040 through 132M-126-100, and this supplemental procedure shall apply equally to all parties.

(2) The college bears the burden of offering and presenting sufficient testimony and evidence to establish that the respondent is responsible for a Title IX violation by a preponderance of the evidence.

(3) The respondent will be presumed not responsible until such time as the disciplinary process has been resolved.

(4) During the hearing, each party shall be represented by an advisor. The parties are entitled to an advisor of their choosing and the advisor may be an attorney. If a party does not choose an advisor, then the Title IX coordinator will appoint an advisor of the college's choosing on the party's behalf at no expense to the party.

NEW SECTION

WAC 132M-126-145 Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

(1) **Relevance:** The committee chair shall review all questions for relevance and shall explain on the record their reasons for excluding any question based on lack of relevance.

(2) **Relevance means** that information elicited by the question makes facts in dispute more or less likely to be true.

(3) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:

(a) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or

(b) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.

(4) **Cross-examination required:** If a party or witness does not submit to cross-examination during the live hearing, the committee must not rely on any statement by that party or witness in reaching a determination of responsibility.

(5) **No negative inference:** The committee may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions.

(6) **Privileged evidence:** The committee shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information

includes, but is not limited to, information protected by the following:

(a) Spousal/domestic partner privilege;

(b) Attorney-client and attorney work product privileges;

(c) Privileges applicable to members of the clergy and priests;

(d) Privileges applicable to medical providers, mental health therapists, and counselors;

(e) Privileges applicable to sexual assault and domestic violence advocates; and

(f) Other legal privileges identified in RCW 5.60.060.

NEW SECTION

WAC 132M-126-150 Initial order. (1) In addition to complying with WAC 132M-126-085, the student conduct committee will be responsible for conferring and drafting an initial order that:

(a) Identifies the allegations of sexual harassment;

(b) Describes the grievance and disciplinary procedures, starting with filing of the formal complaint through the determination of responsibility, including notices to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and hearings held;

(c) Makes findings of fact supporting the determination of responsibility;

(d) Reaches conclusions as to whether the facts establish whether the respondent is responsible for engaging in sexual harassment in violation of Title IX;

(e) Contains a statement of, and rationale for, the committee's determination of responsibility for each allegation;

(f) Describes any disciplinary sanction or conditions imposed against the respondent, if any;

(g) Describes to what extent, if any, complainant is entitled to remedies designed to restore or preserve complainant's equal access to the college's educational programs or activities; and

(h) Describes the process for appealing the initial order to the college president.

(2) The committee chair will serve the initial order on the parties simultaneously.

NEW SECTION

WAC 132M-126-155 Appeals. (1) The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in WAC 132M-126-090.

(2) The president or their delegate will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction and condition(s) imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s).

(3) The president's office shall serve the final decision on the parties simultaneously.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 132M-300-001 Nondiscrimination and antiharassment policy.
- WAC 132M-300-010 Discrimination and harassment complaint procedure.

WSR 20-22-095
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed November 3, 2020, 1:25 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-22-060.

Title of Rule and Other Identifying Information: The department is proposing amendments to WAC 388-444-0010 Who is exempt from work registration while receiving basic food?, 388-444-0030 Are able-bodied adults without dependents (ABAWD) subject to additional work requirements and time limits to be eligible for basic food?, and 388-444-0035 Who is exempt from ABAWD time limits and minimum work requirements?

Hearing Location(s): On December 8, 2020, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington Street S.E., Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or by Skype. Due to the COVID-19 pandemic, hearing may be held via Skype, see DSHS website for most up-to-date information.

Date of Intended Adoption: No earlier than December 9, 2020.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., December 8, 2020.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by November 24, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed amendments align rules regarding basic food work registration and able-bodied adults without dependents (ABAWD) work requirements more closely with federal Supplemental Nutrition Assistance Program regulations, and strike obsolete or duplicative language.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120; 7 C.F.R. 273.7, 7 C.F.R. 273.24.

Rule is necessary because of federal law, 7 C.F.R. 273.7 and 7 C.F.R. 273.24.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Ivette Dones-Figueroa, P.O. Box 45470, Olympia, WA 98504-5470, 360-725-4651.

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

A cost-benefit analysis is not required under RCW 34.05.328. This amendment is exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

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

Is exempt under RCW 34.05.328 (5)(b)(vii).

Explanation of exemptions: These amendments do not impact small businesses, they only impact DSHS clients.

October 30, 2020
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-04-046, filed 1/27/16, effective 2/27/16)

WAC 388-444-0010 Who is exempt from work registration while receiving basic food? If you receive basic food, you are exempt from work registration and the requirements in chapter 388-444 WAC if you meet any one of the following conditions:

- (1) Are age sixteen or seventeen, and:
 - (a) Not the head of household;
 - (b) Attend school; or
 - (c) Are enrolled at least half time (using the institutions definition) in an employment and training program under:
 - (i) The Workforce Innovation and Opportunity Act of 2014 (WIOA);
 - (ii) Section 236 of the Trade Act of 1974; or
 - (iii) A state or local employment and training program.
- (2) You are a student age eighteen or older enrolled at least half time as defined by the institution in:
 - (a) Any accredited school;
 - (b) A training program; or
 - (c) An institution of higher education. If you are enrolled in higher education, you must meet the requirements under WAC 388-482-0005 to be eligible for basic food benefits.
- (3) You are an employed or self-employed person working at least thirty hours per week, or receiving weekly earnings equal to the federal minimum wage multiplied by thirty;
- (4) You are complying with the work requirements of an employment and training program under temporary assistance for needy families (TANF);
- (5) You receive unemployment compensation (UC) benefits or have an application pending for UC benefits;
- (6) You are responsible to care for:
 - (a) A dependent child under age six; or
 - (b) ~~((An adult))~~ A person with an incapacity that meets the requirements of WAC 388-310-0350 (1)(d)(i), (ii), (iv),

and (v), except the person does not need to be related to you as stated in (1)(d)(v).

(7) You are physically or mentally unable to work as determined below:

(a) A DSHS SSI facilitator has assessed you as likely to be approved for SSI or other benefits and are required to apply for SSI or another type of federal disability benefit (such as railroad retirement or Social Security disability) and your SSI application status may be verified through either the SSI facilitator or state data exchange, or both;

(b) You have a severe and chronic mental, physical, emotional, or cognitive disability that prevents you from participating in work or work activities for at least thirty hours a week; or

(c) We verify your disability using documentation from DDA, DVR, HCS, MHD, or RSN, or by one of the medical or mental health professionals listed in WAC 388-310-0350 (2).

(8) You regularly participate in a drug addiction or alcoholic treatment and rehabilitation program as defined by the Food Stamp Act of 1977.

AMENDATORY SECTION (Amending WSR 19-17-086, filed 8/21/19, effective 9/21/19)

WAC 388-444-0030 Are able-bodied adults without dependents (ABAWD) subject to additional work requirements and time limits to be eligible for basic food?

(1) An able-bodied adult without dependents (ABAWD) is a person who:

(a) Is age eighteen through forty-nine; and

(b) Is fit for work and not exempted under WAC 388-444-0035(~~and~~

~~(c) Does not receive food assistance in an assistance unit (AU) that includes a minor child (we will consider the AU to include a minor child even if the minor child is not eligible to receive food assistance)).~~

(2) If you are an ABAWD, you must participate in work activities under subsection ~~((4))~~ (3) of this section.

(3) ~~((Nonexempt ABAWDs who live outside of King County or on the Muckleshoot Tribal Reservation may continue to receive food assistance until December 31, 2019, even if they fail to participate in work-related activities.~~

~~(4))~~ A nonexempt ABAWD is not eligible to receive food assistance for more than three full months (which do not have to be consecutive months), not including any partial benefit months in a thirty-six month period, unless the ABAWD:

(a) Works an average of eighty hours per month, including:

(i) Work in exchange for money;

(ii) Work in exchange for goods or services ("in kind" work);

(iii) Unpaid work that is verified according to department requirements; or

(iv) Any combination of (a)(i) through (iii) of this subsection;

(b) Participates in one of the following work programs and is meeting the requirements of that work program:

(i) The Workforce Innovation and Opportunity Act of 2014;

(ii) Section 236 of the Trade Act of 1974;

(iii) A state-approved employment and training program at least an average of eighty hours per month; or

(c) Participates in an unpaid work program as provided in WAC 388-444-0040.

AMENDATORY SECTION (Amending WSR 16-22-002, filed 10/19/16, effective 11/19/16)

WAC 388-444-0035 Who is exempt from ABAWD time limits and minimum work requirements? Some people who receive basic food are exempt from able-bodied adult without dependents (ABAWD) time limits and minimum work requirements. You are exempt from ABAWD time limits and work requirements under WAC 388-444-0030 if you meet any one or more of the following:

(1) You are exempt from work requirements under WAC 388-444-0010;

~~(2)~~ You are under age eighteen or are age fifty or older;

~~((2))~~ (3) You receive temporary or permanent disability benefits issued by a governmental or private source;

~~((3))~~ (4) You are obviously mentally or physically unfit for employment as determined by the department; however, if the unfitness is not obvious, you must provide a statement that you are physically or mentally unfit for employment from a physician, physician's assistant, nurse, nurse practitioner, designated representative of the physician's office, licensed or certified psychologist, social worker, or any other medical personnel the department determines appropriate;

~~((4))~~ (5) You are an adult in a basic food assistance unit that has a family member who is under the age of eighteen;

~~((5))~~ (6) You are pregnant;

~~((6))~~ (7) You live in an area approved as exempt by U.S. Department of Agriculture (USDA); or

~~((7))~~ You are complying with the work requirements of an employment and training program under temporary assistance for needy families (TANF);

(8) You are applying for or currently receive unemployment compensation;

(9) You are a student enrolled at least half time as defined by the institution in:

(a) Any accredited school;

(b) Training program; or

(c) Institution of higher education and you meet the requirements of WAC 388-482-0005 regarding basic food eligibility;

~~(10)~~ You are participating in a chemical dependency treatment and rehabilitation program;

~~(11)~~ You are employed a minimum of thirty hours per week or receive weekly earnings that equal the federal minimum hourly rate multiplied by thirty hours;

~~(12))~~ (8) You are eligible for one of the approved exemption slots under the U.S. Department of Agriculture (USDA) fifteen percent exemption rule(~~or~~

~~(13)~~ You are otherwise exempt from work requirements under WAC 388-444-0010)).

WSR 20-22-100
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)
[Filed November 3, 2020, 3:48 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-14-117.

Title of Rule and Other Identifying Information: The department is proposing to update chapter 388-76 WAC, Adult family home minimum licensing requirements, by amending WAC 388-76-10695 Building codes—Structural requirements, and 388-76-10730 Grab bars and handrails.

Hearing Location(s): On December 8, 2020, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington Street S.E., Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or by Skype. Due to the COVID-19 pandemic, hearing may be held via Skype, see DSHS website for most up-to-date information.

Date of Intended Adoption: Not earlier than December 9, 2020

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., December 8, 2020.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by November 24, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed change is a technical correction to chapter 388-76 WAC, updating the adoption by reference to the adult family home section of the building code, which moved from WAC 51-51-0325 to 51-51-0330 effective July 1, 2020. There is no policy change associated with this proposal.

Reasons Supporting Proposal: Currently the references to the adult family home section of the building code are inaccurate and may cause confusion for providers if they go to the section referenced and do not find the information they are looking for. This proposal corrects that reference for ease of compliance and implementation.

Statutory Authority for Adoption: RCW 70.128.040.

Statute Being Implemented: None.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Libby Wagner, P.O. Box 45600, Olympia, WA 98504, 253-234-6061.

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

A cost-benefit analysis is not required under RCW 34.05.328. This proposal is exempt under RCW 34.05.328 (5)(b)(iii). This is updating an adoption-by-reference.

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rule does not affect small businesses or nonprofits.

November 2, 2020

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10695 Building codes—Structural requirements. (1) For single family dwellings used as an adult family home after July 1, 2007, the home must ensure the building meets the requirements of WAC (~~(51-51-0325 Section R325))~~ 51-51-0330 if the building is:

- (a) New; or
 - (b) An existing building converted for use as an adult family home.
- (2) For buildings licensed as a home before July 1, 2007, the requirement of subsection (1) of this section does not apply if:

- (a) The building sells or transfers to a new owner; and
- (b) The new owner takes possession of the building before the issuance of the license.
- (3) The home must ensure that every area used by residents:
 - (a) Has direct access to at least one exit which does not pass through other areas such as a room or garage subject to being locked or blocked from the opposite side; and
 - (b) Is not accessible only by or with the use of a:
 - (i) Ladder;
 - (ii) Folding stairs; or
 - (iii) Trap door.

AMENDATORY SECTION (Amending WSR 16-20-095, filed 10/4/16, effective 11/4/16)

WAC 388-76-10730 Grab bars and hand rails. (1) Homes licensed before November 1, 2016, must have at a minimum securely installed:

- (a) Grab bars in bathing facilities such as tubs and showers;
- (b) Grab bars next to toilets, if needed by any resident;
- (c) Handrails on a step or steps if needed by any resident; and
- (d) Handrails on ramps if needed by any resident.

(2) Homes licensed and bathroom additions that occur after November 1, 2016, must install grab bars securely fastened in accordance with WAC (~~(51-51-0325))~~ 51-51-0330 at the following locations:

- (a) Bathing facilities such as tubs and showers; and
- (b) Each side of any toilet used by residents.
- (3) Homes licensed after November 1, 2016, must install handrails on each side of the following:
 - (a) Step or steps; and
 - (b) Ramps used by residents.

WSR 20-22-102
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)
[Filed November 3, 2020, 3:57 p.m.]

Supplemental Notice to WSR 20-11-055.

Preproposal statement of inquiry was filed as WSR 19-03-148.

Title of Rule and Other Identifying Information: This proposal would update chapter 388-76 WAC, Adult family home minimum licensing requirements, amending the following sections: WAC 388-76-10510 Resident rights—Basic rights, 388-76-10515 Resident rights—Exercise of rights, 388-76-10522 Resident rights—Notice—Policy on accepting Medicaid as a payment source, 388-76-10525 Resident rights—Description, 388-76-10530 Resident rights—Notice of services, 388-76-10532 Resident rights—Standardized disclosure of services form, 388-76-10540 Resident rights—Disclosure of fees and charges—Notice requirements—Deposits, 388-76-10545 Resident rights—Admitting and keeping residents, 388-76-10550 Resident rights—Adult family home staffing—Notification required, 388-76-10560 Resident rights—Adult family home management of resident financial affairs, 388-76-10561 Resident rights—Resident security deposit account, 388-76-10585 Resident rights—Examination of inspection results, 388-76-10595 Resident rights—Advocacy access and visitation rights, 388-76-10600 Resident rights—Mail and telephone privacy, 388-76-10605 Resident rights—Personal property and storage space, 388-76-10615 Resident rights—Transfer and discharge, 388-76-10620 Resident rights—Quality of life—General, 388-76-10685 Bedrooms, 388-76-10715 Doors—Ability to open, 388-76-10720 Electronic monitoring equipment—Audio monitoring and video monitoring, 388-76-10725 Electronic monitoring equipment—Resident requested use, 388-76-10750 Safety and maintenance, 388-76-10765 Storage, 388-76-10770 Telephones, 388-76-10784 Water hazards—Fences, gates and alarms, 388-76-10795 Windows, 388-76-10800 Adult family home located outside of public fire protection, 388-76-10805 Automatic smoke detectors, 388-76-10810 Fire extinguishers, 388-76-10825 Space heaters, fireplaces, and stoves, 388-76-10830 Emergency and disaster plan—Required, 388-76-10840 Emergency food supply, 388-76-10850 Emergency medical supplies, 388-76-10865 Resident evacuation from adult family home, 388-76-10870 Resident evacuation capability levels—Identification required, 388-76-10885 Elements of emergency evacuation floor plan, 388-76-10890 Posting the emergency evacuation floor plan—Required, 388-76-10895 Emergency evacuation drills—Frequency and participation, 388-76-10900 Documentation of emergency evacuation drills—Required, and 388-76-10905 Emergency evacuation—Notification of department required.

The proposal would also repeal the following sections: WAC 388-76-10520 Resident rights—General notice, 388-76-10555 Resident rights—Financial affairs, 388-76-10565 Resident rights—Adult family home system for management of resident financial affairs, and 388-76-10835 Elements of an emergency and disaster plan.

This proposal would also add a new section, WAC 388-76-10616 Resident rights—Transfer and discharge notice.

Hearing Location(s): On December 22, 2020, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington Street S.E., Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or by Skype. Due to the COVID-19 pandemic, hearing may be held via Skype, see DSHS website for most up-to-date information.

Date of Intended Adoption: Not earlier than December 23, 2020.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., December 22, 2020.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by December 8, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to update rules that are obsolete or require clarification. The department worked with internal and external stakeholders to identify rules that have been in place for a number of years and that are ambiguous or difficult to implement or enforce. We sought to clarify areas where a rule may have multiple interpretations. Some of the rules are being updated to reflect new or improved technology. Other rule changes are intended to improve resident safety. Because some of the regulations in the section outlining resident rights are closely related to the federal regulations under the home and community based settings program, we adapted the language to a closer alignment with those requirements. Similarly, adult family homes must meet the requirements of this chapter and the building code, so some of the changes here incorporate parts of the international residential code as adopted by Washington state into this chapter for easier use.

Reasons Supporting Proposal: The goal of this proposal is to update these rules to improve clarity and usability of the rules and compliance by adult family homes, and improve resident safety and quality of life. Addressing known barriers and increasing the clarity of the rules is intended to improve compliance. Reorganizing and strengthening these rules is intended to improve resident safety and quality of life, and make it easier for residents to exercise their rights. The department solicited feedback on the proposal from internal and external stakeholders and incorporated the suggestions received wherever possible.

This proposal was updated based on comments received during the previous public comment period. The supplemental rule filing is to allow the public to comment on the changes. This second supplemental filing reflects changes made on public comments.

Statutory Authority for Adoption: RCW 70.128.040, 70.128.060.

Statute Being Implemented: Chapters 70.128, 74.34 RCW.

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

Name of Proponent: [No information supplied], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Libby Wagner, P.O. Box 45600, Olympia, WA 98504, 360-464-0487.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Libby Wagner, P.O. Box 45600, Olympia, WA 98504, phone 360-464-0487, fax 360-725-3224, email libby.wagner@dshs.wa.gov.

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

The department completed a small business economic impact statement and cost-benefit analysis and determined that while most homes will face no costs or minimal costs, some homes may experience more-than-minor costs. However, the benefits to these changes outweigh the costs.

A copy of the statement may be obtained by contacting Libby Wagner, P.O. Box 45600, Olympia, WA 98504, phone 360-464-0487, fax 360-725-3224, email libby.wagner@dshs.wa.gov.

November 2, 2020
Katherine I. Vasquez
Rules Coordinator

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 20-23 issue of the Register.

WSR 20-22-103
PROPOSED RULES
DEPARTMENT OF REVENUE
[Filed November 3, 2020, 4:21 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-18-080.

Title of Rule and Other Identifying Information: WAC 458-40-540 Forest land values—2020, and 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments.

Hearing Location(s): On December 15, 2020, at 10:00 a.m. This meeting will be conducted over the internet/phone. Contact Keith Dacus at KeithD@dor.wa.gov for login/dial-in information.

Date of Intended Adoption: December 21, 2020.

Submit Written Comments to: Jennifer Arnold, P.O. Box 47453, Olympia, WA 98504-7453, email JenniferA@dor.wa.gov, fax 360-534-1606, by December 18, 2020.

Assistance for Persons with Disabilities: Contact Julie King or Renee Cosare, phone 360-704-5733 or 360-704-5734, TTY 800-833-6384, by December 8, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 84.33.091 requires the department to revise the stumpage value tables

every six months. The department establishes the stumpage value tables to apprise timber harvesters of the timber values used to calculate the timber excise tax. The values in the proposed rule will apply beginning January 1, 2021, through June 30, 2021.

The forest land values are updated to reflect land values per acre for 2021.

The western Washington logging conditions definitions for Class 1 and Class 2 in the harvest adjustment table for stumpage value areas 1, 2, 3, 4, 5, and 9 are updated to reflect a new method of cable-assist or tethered logging.

The dollar adjustment per mbf net Scribner scales for logs yarded from stump to landing by helicopter is updated to two hundred from one hundred forty-five for all stumpage value areas.

The dollar adjustment per mbf net Scribner scale for eastern Washington Class 3 logging conditions (where the majority of the harvest unit has rough, broken ground with slopes over sixty percent; numerous rock outcrops and bluffs) in the harvest adjustment table for stumpage value areas 6 and 7 is updated from seventy-five to eighty-five.

Reasons Supporting Proposal: This proposal provides the revised stumpage value tables for January 1 through June 30, 2021, and the forest land values for 2021.

Statutory Authority for Adoption: RCW 82.01.060(2) and 84.33.096.

Statute Being Implemented: RCW 84.33.091.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Jennifer Arnold, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1574; Implementation and Enforcement: John Ryser, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1605.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Jennifer Arnold, Interpretations and Technical Advice Division, P.O. Box 47453, Olympia, WA 98504-7453, phone 360-534-1574, fax 360-534-1606.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule does not impose more-than-minor costs on businesses, as it does not propose any new requirements not already provided for in statute. The proposed rule does not impose fees, filing requirements, or recordkeeping guidelines that are not already established in statute [statute].

November 3, 2020
Atif Aziz
Rules Coordinator

AMENDATORY SECTION (Amending WSR 20-02-053, filed 12/23/19, effective 1/1/20)

WAC 458-40-540 Forest land values—(~~2020~~) 2021.
The forest land values, per acre, for each grade of forest land

for the ~~((2020))~~ 2021 assessment year are determined to be as follows:

| LAND GRADE | OPERABILITY CLASS | ((2020)) 2021 VALUES PER ACRE |
|------------|-------------------|--|
| 1 | 1 | \$218 |
| | 2 | 216 |
| | 3 | 202 |
| | 4 | 148 |
| 2 | 1 | 186 |
| | 2 | 179 |
| | 3 | 172 |
| | 4 | 122 |
| 3 | 1 | 144 |
| | 2 | 140 |
| | 3 | 138 |
| | 4 | 106 |
| 4 | 1 | 112 |
| | 2 | 107 |
| | 3 | 106 |
| | 4 | 81 |
| 5 | 1 | 81 |
| | 2 | 71 |
| | 3 | 70 |
| | 4 | 50 |
| 6 | 1 | 41 |
| | 2 | 39 |
| | 3 | 39 |
| | 4 | 37 |
| 7 | 1 | 18 |
| | 2 | 18 |
| | 3 | 17 |
| | 4 | 17 |
| 8 | 1 | 1 |

AMENDATORY SECTION (Amending WSR 20-14-067, filed 6/26/20, effective 7/1/20)

WAC 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments. (1) **Introduction.** This rule provides stumpage value tables and stumpage value adjustments used to calculate the amount of a harvester's timber excise tax.

(2) **Stumpage value tables.** The following stumpage value tables are used to calculate the taxable value of stumpage harvested from ~~((July 1))~~ January 1st through ~~((December 31, 2020))~~ June 30, 2021:

Washington State Department of Revenue
WESTERN WASHINGTON STUMPAGE VALUE TABLE
 ((July)) January 1 through ~~((December 31, 2020))~~ June 30, 2021
 Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾
 Starting January 1, 2019, there are no Haul Zone adjustments.

| Species Name | Species Code | SVA | | | |
|-------------------------------|---------------------------|--|----------------------------|-----|---------------------------|
| | | (Stumpage Value Area) | Stumpage Values | | |
| Douglas-fir ⁽²⁾ | DF | 1 | \$(358)) 391 | | |
| | | 2 | ((447)) 453 | | |
| | | 3 | ((452)) 483 | | |
| | | 4 | ((471)) 511 | | |
| | | 5 | ((453)) 465 | | |
| | | 9 | ((344)) 377 | | |
| | | Western Hemlock and Other Conifer ⁽³⁾ | WH | 1 | ((199)) 226 |
| | | | | 2 | ((254)) 290 |
| | | | | 3 | ((256)) 389 |
| | | 4 | ((296)) 320 | | |
| | | 5 | ((258)) 255 | | |
| | | 9 | ((185)) 212 | | |
| | | Western Redcedar ⁽⁴⁾ | RC | 1-5 | ((899)) 932 |
| 9 | ((885)) 918 | | | | |
| Ponderosa Pine ⁽⁵⁾ | PP | 1-5 | ((167)) 158 | | |
| | | 9 | ((153)) 144 | | |
| Red Alder | RA | 1-5 | ((418)) 343 | | |
| | | 9 | ((404)) 329 | | |
| Black Cottonwood | BC | 1-5 | ((29)) 1 | | |
| | | 9 | ((15)) 1 | | |
| Other Hardwood | OH | 1-5 | ((251)) 159 | | |
| | | 9 | ((237)) 145 | | |

| Species Name | Species Code | SVA (Stumpage Value Area) | Stumpage Values |
|--|--------------|---------------------------|------------------------------------|
| Douglas-fir Poles & Piles | DFL | 1-5 | ((786)) <u>798</u> |
| | | 9 | ((772)) <u>784</u> |
| Western Red-cedar Poles | RCL | 1-5 | ((1301)) <u>1459</u> |
| | | 9 | ((1287)) <u>1445</u> |
| Chipwood ⁽⁶⁾ | CHW | 1-5 | ((9)) <u>5</u> |
| | | 9 | ((7)) <u>3</u> |
| RC Shake & Shingle Blocks ⁽⁷⁾ | RCS | 1-9 | 301 |
| Posts ⁽⁸⁾ | LPP | 1-9 | 0.35 |
| DF Christmas Trees ⁽⁹⁾ | DFX | 1-9 | 0.25 |
| Other Christmas Trees ⁽⁹⁾ | TFX | 1-9 | 0.50 |

- (1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- (2) Includes Western Larch.
- (3) Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed on this page.
- (4) Includes Alaska-Cedar.
- (5) Includes all Pines in SVA 1-5 & 9.
- (6) Stumpage value per ton.
- (7) Stumpage value per cord.
- (8) Includes Lodgepole posts and other posts, Stumpage value per 8 lineal feet or portion thereof.
- (9) Stumpage value per lineal foot.

**Washington State Department of Revenue
EASTERN WASHINGTON STUMPAGE VALUE TABLE**
(July) January 1 through (December 31, 2020) June 30, 2021

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾
Starting January 1, 2019, there are no Haul Zone adjustments.

| Species Name | Species Code | SVA (Stumpage Value Area) | Stumpage Values |
|--|--------------|---------------------------|-----------------------------------|
| Douglas-fir ⁽²⁾ | DF | 6 | \$(225)) <u>233</u> |
| | | 7 | ((239)) <u>247</u> |
| Western Hemlock and Other Conifer ⁽³⁾ | WH | 6 | ((200)) <u>204</u> |
| | | 7 | ((214)) <u>218</u> |

| Species Name | Species Code | SVA (Stumpage Value Area) | Stumpage Values |
|--|--------------|---------------------------|------------------------------------|
| Western Red-cedar ⁽⁴⁾ | RC | 6 | ((719)) <u>704</u> |
| | | 7 | ((733)) <u>718</u> |
| Ponderosa Pine ⁽⁵⁾ | PP | 6 | ((153)) <u>144</u> |
| | | 7 | ((167)) <u>158</u> |
| Other Hardwood | OH | 6 | ((9)) <u>4</u> |
| | | 7 | 18 |
| Western Red-cedar Poles | RCL | 6 | ((1370)) <u>1442</u> |
| | | 7 | ((1384)) <u>1456</u> |
| Chipwood ⁽⁶⁾ | CHW | 6 | 1 |
| | | 7 | 2 |
| Small Logs ⁽⁶⁾ | SML | 6 | ((47)) <u>16</u> |
| | | 7 | ((49)) <u>18</u> |
| RC Shake & Shingle Blocks ⁽⁷⁾ | RCS | 6-7 | 301 |
| Posts ⁽⁸⁾ | LPP | 6-7 | 0.35 |
| DF Christmas Trees ⁽⁹⁾ | DFX | 6-7 | 0.25 |
| Other Christmas Trees ⁽⁹⁾ | TFX | 6-7 | 0.50 |

- (1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- (2) Includes Western Larch.
- (3) Includes all Hemlock, Spruce and true Fir species, and Lodgepole Pine in SVA 6-7, or any other conifer not listed on this table.
- (4) Includes Alaska-Cedar.
- (5) Includes Western White Pine in SVA 6-7.
- (6) Stumpage value per ton.
- (7) Stumpage value per cord.
- (8) Includes Lodgepole posts and other posts, Stumpage value per 8 lineal feet or portion thereof.
- (9) Stumpage value per lineal foot.

(3) **Harvest value adjustments.** The stumpage values in subsection (2) of this rule for the designated stumpage value areas are adjusted for various logging and harvest conditions, subject to the following:

(a) No harvest adjustment is allowed for special forest products, chipwood, or small logs.

(b) Conifer and hardwood stumpage value rates cannot be adjusted below one dollar per MBF.

(c) Except for the timber yarded by helicopter, a single logging condition adjustment applies to the entire harvest unit. The taxpayer must use the logging condition adjustment

class that applies to a majority (more than 50%) of the acreage in that harvest unit. If the harvest unit is reported over more than one quarter, all quarterly returns for that harvest unit must report the same logging condition adjustment. The helicopter adjustment applies only to the timber volume from the harvest unit that is yarded from stump to landing by helicopter.

(d) The volume per acre adjustment is a single adjustment class for all quarterly returns reporting a harvest unit. A harvest unit is established by the harvester prior to harvesting. The volume per acre is determined by taking the volume logged from the unit excluding the volume reported as chipwood or small logs and dividing by the total acres logged. Total acres logged does not include leave tree areas (RMZ, UMZ, forested wetlands, etc.) over 2 acres in size.

(e) A domestic market adjustment applies to timber which meet the following criteria:

(i) **Public timber** - Harvest of timber not sold by a competitive bidding process that is prohibited under the authority of state or federal law from foreign export may be eligible for the domestic market adjustment. The adjustment may be applied only to those species of timber that must be processed domestically. According to type of sale, the adjustment may be applied to the following species:

Federal Timber Sales: All species except Alaska-cedar. (Stat. Ref. - 36 C.F.R. 223.10)

State, and Other Nonfederal, Public Timber Sales: Western Redcedar only. (Stat. Ref. - 50 U.S.C. appendix 2406.1)

(ii) **Private timber** - Harvest of private timber that is legally restricted from foreign export, under the authority of The Forest Resources Conservation and Shortage Relief Act (Public Law 101-382), (16 U.S.C. Sec. 620 et seq.); the Export Administration Act of 1979 (50 U.S.C. App. 2406(i)); a Cooperative Sustained Yield Unit Agreement made pursuant to the act of March 29, 1944 (16 U.S.C. Sec. 583-583i); or Washington Administrative Code (WAC 240-15-015(2)) is also eligible for the Domestic Market Adjustment.

The following harvest adjustment tables apply from ~~((July 1)) January 1st through ((December 31, 2020)) June 30, 2021~~:

TABLE 9—Harvest Adjustment Table
Stumpage Value Areas 1, 2, 3, 4, 5, and 9
~~((July)) January 1 through ((December 31, 2020)) June 30, 2021~~

| Type of Adjustment | Definition | Dollar Adjustment Per Thousand Board Feet Net Scribner Scale |
|-------------------------------|--|--|
| I. Volume per acre | | |
| Class 1 | Harvest of 30 thousand board feet or more per acre. | \$0.00 |
| Class 2 | Harvest of 10 thousand board feet to but not including 30 thousand board feet per acre. | -\$15.00 |
| Class 3 | Harvest of less than 10 thousand board feet per acre. | -\$35.00 |
| II. Logging conditions | | |
| Class 1 | Ground based logging a majority of the unit using tracked or wheeled ((vehicles)) equipment or draft animals. | \$0.00 |

| Type of Adjustment | Definition | Dollar Adjustment Per Thousand Board Feet Net Scribner Scale |
|---------------------------------------|--|--|
| Class 2 | ((Cable)) Logging a majority of the unit; Using an overhead system of winch-driven cables <u>and/or logging on slopes greater than 45% using tracked or wheeled equipment supported by winch-driven cables.</u> | -\$85.00 |
| Class 3 | Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products. | -\$((145.00)) <u>200.00</u> |
| III. Remote island adjustment: | | |
| | For timber harvested from a remote island | -\$50.00 |
| IV. Thinning | | |
| Class 1 | A limited removal of timber described in WAC 458-40-610 (28) | -\$100.00 |

TABLE 10—Harvest Adjustment Table
Stumpage Value Areas 6 and 7
~~((July)) January 1 through ((December 31, 2020)) June 30, 2021~~

| Type of Adjustment | Definition | Dollar Adjustment Per Thousand Board Feet Net Scribner Scale |
|---------------------------------------|---|--|
| I. Volume per acre | | |
| Class 1 | Harvest of more than 8 thousand board feet per acre. | \$0.00 |
| Class 2 | Harvest of 8 thousand board feet per acre and less. | -\$8.00 |
| II. Logging conditions | | |
| Class 1 | The majority of the harvest unit has less than 40% slope. No significant rock outcrops or swamp barriers. | \$0.00 |
| Class 2 | The majority of the harvest unit has slopes between 40% and 60%. Some rock outcrops or swamp barriers. | -\$50.00 |
| Class 3 | The majority of the harvest unit has rough, broken ground with slopes over 60%. Numerous rock outcrops and bluffs. | -\$((75.00)) <u>85.00</u> |
| Class 4 | Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products. | -\$((145.00)) <u>200.00</u> |
| Note: | A Class 2 adjustment may be used for slopes less than 40% when cable logging is required by a duly promulgated forest practice regulation. Written documentation of this requirement must be provided by the taxpayer to the department of revenue. | |
| III. Remote island adjustment: | | |
| | For timber harvested from a remote island | -\$50.00 |

TABLE 11—Domestic Market Adjustment

| Class | Area Adjustment Applies | Dollar Adjustment Per Thousand Board Feet Net Scribner Scale |
|-------|-------------------------|--|
|-------|-------------------------|--|

SVAs 1 through 5 only: \$0.00

Note: This adjustment only applies to published MBF sawlog values.

(4) **Damaged timber.** Timber harvesters planning to remove timber from areas having damaged timber may apply to the department of revenue for an adjustment in stumpage values. The application must contain a map with the legal descriptions of the area, an accurate estimate of the volume of damaged timber to be removed, a description of the damage sustained by the timber with an evaluation of the extent to which the stumpage values have been materially reduced from the values shown in the applicable tables, and a list of estimated additional costs to be incurred resulting from the removal of the damaged timber. The application must be received and approved by the department of revenue before the harvest commences. Upon receipt of an application, the department of revenue will determine the amount of adjustment to be applied against the stumpage values. Timber that has been damaged due to sudden and unforeseen causes may qualify.

(a) Sudden and unforeseen causes of damage that qualify for consideration of an adjustment include:

(i) Causes listed in RCW 84.33.091; fire, blow down, ice storm, flood.

(ii) Others not listed; volcanic activity, earthquake.

(b) Causes that do not qualify for adjustment include:

(i) Animal damage, root rot, mistletoe, prior logging, insect damage, normal decay from fungi, and pathogen caused diseases; and

(ii) Any damage that can be accounted for in the accepted normal scaling rules through volume or grade reductions.

(c) The department of revenue will not grant adjustments for applications involving timber that has already been harvested but will consider any remaining undisturbed damaged timber scheduled for removal if it is properly identified.

(d) The department of revenue will notify the harvester in writing of approval or denial. Instructions will be included for taking any adjustment amounts approved.

(5) **Forest-derived biomass**, has a \$0/ton stumpage value.

WSR 20-22-104
PROPOSED RULES
OFFICE OF THE
INSURANCE COMMISSIONER

[Insurance Commissioner Matter R 2020-14—Filed November 3, 2020,
6:20 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-17-056.

Title of Rule and Other Identifying Information: Mitigating inequity in the health insurance market.

Hearing Location(s): On December 8, 2020, at 9 a.m. Zoom meeting. Detailed information for attending the Zoom meeting posted on the office of the insurance commissioner (OIC) website here <https://www.insurance.wa.gov/mitigat>

ing-inequity-health-insurance-market-r-2020-14. Due to the COVID-19 public health emergency, this hearing will be held via Zoom.

Date of Intended Adoption: December 9, 2020.

Submit Written Comments to: Tabba Alam, P.O. Box 40260, Olympia, WA 98504-0260, email rulescoordinator@oic.wa.gov, fax 360-586-3109, by December 8, 2020.

Assistance for Persons with Disabilities: Contact Melanie Watness, phone 360-725-7013, fax 360-586-2023, TTY 360-586-0241, email MelanieW@oic.wa.gov, by December 4, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commissioner will consider adopting rules regarding adding new WAC 284-43-6590 to chapter 284-43 WAC, necessary to implement HB [SHB] 2554, chapter 283, Laws of 2020, concerning mandatory benefits, notices and fees related to mandatory benefits.

Reasons Supporting Proposal: The legislature passed HB [SHB] 2554 in 2020, that requires the insurance commissioner to assess a fee on a health carrier that excludes, under state or federal law, any health benefit required or mandated by Title 48 RCW, or rules adopted by the commissioner from any health plan or student health plan. The legislation requires health carriers to provide notice on their website about alternative ways to get access to excluded mandatory benefits. OIC is required, to provide notices and information about the carriers' excluded benefits on their website. Further, it also requires the health benefit exchange to update their website and provide notice about ay [ways] to get access alternatively in a timely manner. The rule has also been developed to ensure that OIC's process for collecting the fee and the fee-waiver process described by the bill is detailed.

Statutory Authority for Adoption: HB [SHB] 2554 (chapter 283, Laws of 2020, effective date June 11, 2020); RCW 48.02.060, 48.43.072, 48.43.073.

Statute Being Implemented: HB [SHB] 2554 (chapter 283, Laws of 2020).

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Tabba Alam, P.O. Box 40260, Olympia, WA, 360-725-7170; Implementation: Molly Nolette/Melanie Anderson, P.O. Box 40255, Tumwater, WA, 360-725-7117/360-725-7214; and Enforcement: Toni Hood, P.O. Box 40255, Tumwater, WA, 360-725-7050.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Tabba Alam, 302 Sid Snyder Avenue S.W., Olympia, WA 98504, phone 360-725-7170, email rulescoordinator@oic.wa.gov, www.insurance.wa.gov.

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: This rule only impacts large insurance carriers which are not classified as small businesses as defined by RCW 19.85.020(2). While calculating we have applied default cost of compliance \$1,000 as it is indeterminate at this time. OIC has directly heard from stakeholders regarding questions and issues related to implementation and have revised internal processes to respond to some of these issues. OIC has determined that the compliance with the proposed rule does not put any disproportionate impact on small businesses or government agencies.

| 2019 Industry NAICS Code | Estimated Cost of Compliance | Industry Description | NAICS Code Title | Average Number of Employees/Business | Minor Cost Estimate - 0.003% of Avg. Annual Receipts |
|--------------------------|------------------------------|--|-----------------------|--------------------------------------|--|
| 524114 | \$1,000 | Direct Health and Medical Insurance Carriers | Finance and insurance | 742 (Not small business) | \$3,503,165 |

Source: United States Census Bureau (2017). Retrieved October 20, 2020, from census.gov.

November 3, 2020
 Mike Kreidler
 Insurance Commissioner

NEW SECTION

WAC 284-43-6590 Requirements for mitigating inequity in the health insurance market. For the purposes of mitigating inequity in the health insurance market, unless waived by the commissioner pursuant to RCW 48.43.725 and subsection (3) of this section, the commissioner must assess a fee on any health carrier offering a health plan or student health plan that excludes, under state or federal law, any benefit mandated or required by Title 48 RCW or rules adopted by the commissioner. Such health carrier must:

- (1) Notify each enrollee in writing of the following:
 - (a) Which benefits the health plan or student health plan does not cover; and
 - (b) Alternate ways in which the enrollees may access excluded benefits in a timely manner.
- (2) As part of its form filing:
 - (a) Provide a sample notification to enrollees as required in subsection (1) of this section;
 - (b) Include in the benefit description alternate ways enrollees may access excluded benefits in a timely manner; and
- (c) Describe how enrollees have prompt access to the information required under subsection (1) of this section.
 - (3) As part of its rate filing:
 - (a) Include a cover letter and as a separate supporting document, a description of excluded benefits and the specific state or federal law permitting the benefit exclusion;
 - (b) Submit the health carrier's supporting documentation for calculating the amount of estimated fee, per member per month and in total. The estimated fee in total must be the actuarial equivalent of costs attributed to the provision and administration of the excluded benefit for members in the rating group or rating pool. The carrier must include a certification by a member of the American Academy of Actuaries that the estimated fee in total is the actuarial equivalent of costs attributed to the provision and administration of the excluded benefit; and
 - (c) If a health carrier intends to request the commissioner's approval to waive the fee calculated in this subsection, the health carrier must submit:
 - (i) A separate document requesting a fee waiver;

- (ii) A description of any excluded mandated or required benefit and the specific state or federal law permitting the benefit exclusion; and

- (iii) A detailed description of alternative access provided by the carrier to any excluded mandated or required benefit. The description should include sufficient information for the commissioner to determine whether a carrier excluding a mandated or required benefit has provided enrollees alternative access to such benefit. In making a fee-waiver determination, the commissioner may take into account timely access, cost, ease of use, and provider access.

- (d) The commissioner may request from the carrier additional information or documents necessary to evaluate the fee-waiver request.

- (4) The commissioner's determination whether to grant the fee waiver requested by the carrier will be part of the rate filing records.

- (5) If a fee waiver is not requested or granted based upon a request in the rate filing, fees calculated and assessed by the commissioner under RCW 48.43.725(2) and subsection (3) of this section, must be paid by the health carrier to the OIC within sixty days after the rate filing is approved.

WSR 20-22-108
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF REVENUE
 (By the Code Reviser's Office)
 [Filed November 4, 2020, 8:41 a.m.]

WAC 458-20-146, proposed by the department of revenue in WSR 20-09-149, appearing in issue 20-09 of the Washington State Register, which was distributed on May 6, 2020, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Jennifer C. Meas, Editor
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