

WSR 21-01-012
PROPOSED RULES
HEALTH CARE AUTHORITY

[Filed December 3, 2020, 9:49 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-24-054.

Title of Rule and Other Identifying Information: WAC 182-531-1675 Washington apple health—Gender affirming interventions for gender dysphoria.

Hearing Location(s): On January 26, 2021, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the agency will not provide a physical location for this hearing. This promotes social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. To attend the virtual public hearing, you must register at the following link <https://attendee.gotowebinar.com/register/5895859935949871883>. Webinar ID: 563-710-843. After registering, you will receive a confirmation email containing the information about joining the webinar.

Date of Intended Adoption: Not sooner than January 27, 2021.

Submit Written Comments to: Health Care Authority (HCA), Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by January 26, 2021.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email amber.lougheed@hca.wa.gov, by January 8, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is revising this rule to:

- Remove the list of noncovered services and clarify that requests will be evaluated for medical necessity;
- Remove barriers and unnecessary administrative processes for the client and provider; and
- Streamline the authorization process.

The proposed rule:

- Provides that psychosocial evaluations shall be effective for eighteen months instead of twelve;
- Allows clients to document safety concerns that have prevented them from living full time in the desired gender; and
- Includes alternate requirements for clients who have not met the standard documentation requirements for surgery.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1408; Implementation and Enforcement: Annette

Schuffenhauer, P.O. Box 45502, Olympia, WA 98504-5502, 360-725-1254.

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

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

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. These rules do not impose costs on businesses.

December 3, 2020

Wendy Barcus

Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-16-084, filed 7/31/15, effective 8/31/15)

WAC 182-531-1675 Washington apple health—Gender affirming interventions for gender dysphoria (~~(treatment program)~~). (1) **Overview of (~~(the gender dysphoria)~~) treatment program.**

(a) **Medicaid agency coverage.** The medicaid agency covers the (~~(following services, consistent with the program rules described in Title 182 WAC, to treat gender dysphoria:~~

~~(i)) services listed in (b) of this subsection to treat gender dysphoria (also referred to as gender incongruence) under WAC 182-501-0050 and 182-531-0100. These services include life-changing procedures that may not be reversible.~~

(b) Medical services covered. Medical services (~~(including, but)~~) covered by the agency include, but are not limited to:

~~((A)) (i) Presurgical and postsurgical hormone therapy; ((B) Prepuberty) (ii) Puberty suppression therapy; ((ii) Mental) (iii) Behavioral health services; and ((iii)) (iv) Surgical and ancillary services including, but not limited to:~~

(A) Anesthesia;

(B) Labs;

(C) Pathology;

(D) Radiology;

(E) Hospitalization;

(F) Physician services; and

(G) Hospitalizations and physician services required to treat postoperative complications of procedures performed under (~~(component four.~~

~~(b) The agency's gender dysphoria treatment program has four components. Prior authorization is required for services provided in component four only. Any medicaid provider can refer a client to component one. These components are not intended to be sequential and may run concurrently to meet the client's medical needs. The components are as follows:~~

~~(i) Component one—Initial assessment and diagnosis of gender dysphoria;~~

~~(ii) Component two—Mental health and medical treatment;~~

~~(iii) Component three—Presurgical requirements for prior authorization for component four; and~~

(iv) Component four—Gender reassignment surgery.

(e) All services under this program must be delivered by providers who meet the qualifications in subsection (2) of this section.

(d) The agency evaluates requests for clients under age twenty-one according to the early and periodic screening, diagnosis, and treatment (EPSDT) program described in chapter 182-534 WAC. Under the EPSDT program, a service may be covered if it is medically necessary, safe, effective, and not experimental.

(e) The agency covers transportation services under the provisions of chapter 182-546 WAC.

(f) Any out-of-state care, including a presurgical consultation, must be approved as an out-of-state service under WAC 182-501-0182.

(2) Qualified health care providers for gender dysphoria treatment:

(a) Providers must meet the qualifications outlined in chapter 182-502 WAC.

(b) Each provider must be recognized as an agency-designated center of excellence (COE). COE is defined in WAC 182-531-0050. To be a COE, all providers must complete an agency form attesting that they:

(i) Possess knowledge about current community, advocacy, and public policy issues relevant to transgender people and their families (knowledge about sexuality, sexual health concerns, and the assessment and treatment of sexual disorders is preferred);

(ii) Endorse the *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People, Version 7* as developed by the World Professional Association for Transgender Health (WPATH); and

(iii) Agree to provide services consistent with this section. The agency's forms are available online at <http://www.hea.wa.gov/medicaid/forms/Pages/index.aspx>.

(c) Diagnosis in component one must be made or confirmed by a COE provider who is a board-certified physician, a psychologist, a board-certified psychiatrist, or a licensed advanced registered nurse practitioner (ARNP).

(d) Mental health professionals who provide component two mental health treatment described in subsection (4)(d) of this section, or who perform the psychosocial evaluation described in subsection (5)(a)(iii) of this section must:

(i) Meet the requirements described in WAC 182-531-1400;

(ii) Sign the agency's form (HCA 18-493) attesting that they:

(A) Are competent in using the *Diagnostic Statistical Manual of Mental Disorders, Fifth Edition (DSM-5)* and the *International Classification of Diseases* for diagnostic purposes;

(B) Are able to recognize and diagnose coexisting mental health conditions and to distinguish these from gender dysphoria;

(C) Have completed supervised training in psychotherapy or counseling;

(D) Are knowledgeable of gender-nonconforming identities and expressions, and the assessment and treatment of gender dysphoria; and

(E) Have completed continuing education in the assessment and treatment of gender dysphoria. This may include attending relevant professional meetings, workshops, or seminars; obtaining supervision from a mental health professional with relevant experience; or participating in research related to gender nonconformity and gender dysphoria; and

(iii) Be a board-certified psychiatrist, a psychologist, or a licensed:

- (A) Psychiatric ARNP;
- (B) Psychiatric mental health nurse practitioner;
- (C) Mental health counselor;
- (D) Independent clinical social worker;
- (E) Advanced social worker; or
- (F) Marriage and family therapist.

(e) Any surgeon who performs gender reassignment surgery must:

(i) Be a board-certified or board-qualified:

- (A) Urologist;
- (B) Gynecologist;
- (C) Plastic surgeon;
- (D) Cosmetic surgeon; or
- (E) General surgeon;

(ii) Have a valid medical license in the state where the surgery is performed; and

(iii) Sign the agency's form (HCA 18-492) attesting to specialized abilities in genital reconstructive techniques and produce documentation showing that they have received supervised training with a more experienced surgeon.

(f) Any medical provider managing hormone therapy, androgen suppression, or puberty suppression for clients diagnosed with gender dysphoria must:

(i) Be either of the following:

- (A) A licensed, board-certified, or board-qualified:
 - (I) Endocrinologist;
 - (II) Family practitioner;
 - (III) Internist;
 - (IV) Obstetrician/gynecologist;
 - (V) Pediatrician;
 - (VI) Naturopath; or
- (B) A licensed ARNP or a licensed physician's assistant;

and

(ii) Sign the agency's form (HCA 18-494) attesting to specialized abilities managing hormone therapy in treating gender dysphoria. The specialized abilities may be proved by producing documentation showing supervised training with a more experienced physician, and attesting attendance at relevant professional meetings, workshops, or seminars.

(3) Component one—Initial assessment and diagnosis of gender dysphoria. The purpose of component one is to assess and diagnose the client, and refer the client to other qualified providers as needed for additional medically necessary services. A health professional who meets the qualifications in subsection (2)(e) of this section must assess the client and:

(a) Confirm the diagnosis of gender dysphoria as defined by the *Diagnostic Statistical Manual of Mental Disorders, Fifth Edition (DSM-5)*;

(b) Determine the gender dysphoria is not the result of another mental or physical health condition, and refer the cli-

ent to other specialists if other health conditions are indicated;

(c) Develop an individualized treatment plan for the client;

(d) Refer the client to qualified providers for the component two services described in subsection (4) of this section; and

(e) Assist and support the client in navigating component two and component three requirements, and provide services consistent with WPATH guidelines and WAC 182-531-1675.

(4) ~~Component two – Mental health and medical treatment.~~

(a) Clients enrolled with an agency managed care organization (MCO) plan are subject to the respective plan's policies and procedures for coverage of these services.

(b) ~~Mental health and medical treatment are covered after a health professional who meets the qualifications in subsection (2)(c) of this section has diagnosed, or confirmed the diagnosis of, gender dysphoria as defined by the DSM-5 criteria.~~

(c) ~~Medical treatment in component two covers androgen suppression, puberty suppression, continuous hormone therapy, and laboratory testing to monitor the safety of hormone therapy. Some of these prescriptions may be subject to prior authorization as required by pharmacy policy in chapter 182-530 WAC. Medical treatment must be prescribed by a COE provider who meets the requirements in subsection (2) (a), (b), and (f) of this section.~~

(d) ~~The agency covers mental health treatment for the client and the client's spouse, parent, guardian, child, or person with whom the client has a child in common if the treatment is:~~

(i) ~~Medically necessary;~~

(ii) ~~Provided according to the provisions of WAC 182-531-1400; and~~

(iii) ~~Provided by a health professional who meets the requirements in subsection (2)(a), (b), and (d) of this section.~~

(5) ~~Component three – Presurgical requirements.~~

(a) ~~To proceed to component four gender reassignment surgery, the client must:~~

(i) ~~Be age eighteen or older, unless allowed under EPSDT as described in subsection (1)(d) of this section;~~

(ii) ~~Be competent to give consent for treatment and have this competency documented in clinical records; and~~

(iii) ~~Undergo a comprehensive psychosocial evaluation that must do all of the following:~~

(A) ~~Be conducted by two mental health professionals for genital surgery and one mental health professional for chest surgery. These mental health professionals must meet the qualifications described in subsection (2)(d) of this section.~~

(B) ~~Confirm the diagnosis of gender dysphoria, document that professionals performing the evaluation believe the client is a good candidate for gender reassignment surgery, and document that surgery is the next reasonable step in the client's care.~~

(C) ~~Evaluate the client for the presence of coexisting behavioral health conditions (substance abuse problems, or mental health illnesses), which could prevent the client from participating in gender dysphoria treatment including, but not~~

~~limited to, gender reassignment surgery and postsurgical care.~~

(D) ~~Document that any coexisting behavioral health condition is adequately managed.~~

(b) ~~The surgeon who will perform the gender reassignment surgery and who meets the qualifications outlined in subsection (2)(a), (b), and (e) of this section, must complete a presurgical consultation. When the presurgical consultation is completed, the surgeon must forward the report of the consultation to the other treatment team members.~~

(c) ~~The client must have received continuous hormone therapy as required by the treatment plan to meet treatment objectives. For exceptions, see subsection (6)(b) of this section.~~

(d) ~~The client must have lived in a gender role congruent with the client's gender identity immediately preceding surgery as required by the treatment plan to meet treatment objectives. For exceptions, see subsection (6)(b) of this section.~~

(e) ~~The client's medical record must document that the client met the requirements in (a) through (d) of this subsection.~~

(f) ~~A member of the treatment team must write a referral letter and submit it to the agency along with the prior authorization request for surgery. The contents of the referral letter or its attachments must include:~~

(i) ~~Results of the client's psychosocial evaluation, as described in (a)(iii) of this subsection;~~

(ii) ~~Documentation that any coexisting behavioral health condition is adequately managed;~~

(iii) ~~A description of the relationship between the mental health professionals and the client, including the duration of the professional relationship, and the type of evaluation and therapy or counseling to date;~~

(iv) ~~A brief description of the clinical justification supporting the client's request for surgery;~~

(v) ~~An assessment and attestation that the provider believes the client is able to comply with the postoperative requirements, has the capacity to maintain lifelong changes, and will comply with regular follow up;~~

(vi) ~~A statement about the client's adherence to the medical and mental health treatment plan;~~

(vii) ~~A description of the outcome of the client's hormone therapy;~~

(viii) ~~A copy of the client's signed informed consent according to the requirements under WAC 182-531-1550, or written acknowledgment of the permanent impact on male and female reproductive capacity if WAC 182-531-1550 is not applicable;~~

(ix) ~~A statement that all the members of the treatment team will be available to coordinate or provide postoperative care as needed;~~

(x) ~~A description of the surgical plan. See subsection (6)(d) and (e) of this section, covered and noncovered procedures. The description must:~~

(A) ~~List all planned surgical procedures, including any listed in subsection (6)(e) of this section, with clinical justification; and~~

(B) ~~Provide a timeline of surgical stages if clinically indicated; and~~

(xi) Signatures from the following treatment team members:

(A) The two mental health professionals for genital surgery and one mental health professional for chest surgery who completed the responsibilities described in subsection (4)(d) of this section and (a)(iii) of this subsection;

(B) The medical provider who has managed the care;

(C) Any surgeon performing the procedures; and

(D) The client.

(6) Component four – Gender reassignment surgery.

(a) The agency requires prior authorization for component four. Subsection (5) of this section lists the documentation that is required to be submitted with the authorization requests. Surgeries are not required to be completed at the same time. Surgeries may be performed in progressive stages.

(b) If the client fails to complete all of the requirements in subsection (5) of this section, the agency will not authorize gender reassignment surgery unless the clinical decision-making process is provided in the referral letter and attachments described in subsection (5)(f) of this section.

(c) A client preparing for gender reassignment surgery must be cared for by a treatment team consisting of:

(i) One of the mental health professionals described in subsection (2)(d) of this section, if mental health services are part of the treatment plan;

(ii) The medical provider who managed the medical care in component two and component three; and

(iii) Any surgeon performing the procedures.

(d) The agency covers the following procedures in component four with prior authorization:

(i) Abdominoplasty;

(ii) Belpharoplasty;

(iii) Breast reconstruction (male to female);

(iv) Bilateral mastectomy with or without chest reconstruction;

(v) Cliteroplasty;

(vi) Colovaginoplasty;

(vii) Colpectomy;

(viii) Genital surgery;

(ix) Genital electrolysis as required as part of the genital surgery;

(x) Hysterectomy;

(xi) Labiaplasty;

(xii) Laryngoplasty;

(xiii) Metoidioplasty;

(xiv) Orchiectomy;

(xv) Penectomy;

(xvi) Phalloplasty;

(xvii) Placement of testicular prosthesis;

(xviii) Rhinoplasty;

(xix) Salpingo-oophorectomy;

(xx) Serotoplasty;

(xxi) Urethroplasty;

(xxii) Vaginectomy; and

(xxiii) Vaginoplasty.

(e) For the purposes of this section, the agency will review on a case-by-case basis and may pay for the following noncovered services under exception to rule:

(i) Cosmetic procedures and services:

(A) Brow lift;

(B) Calf implants;

(C) Cheek/malar implants;

(D) Chin/nose implants;

(E) Collagen injections;

(F) Drugs for hair loss or growth;

(G) Facial or trunk electrolysis, except for the limited electrolysis described in (d)(ix) of this subsection;

(H) Facial feminization;

(I) Face lift;

(J) Forehead lift;

(K) Hair transplantation;

(L) Jaw shortening;

(M) Lip reduction;

(N) Liposuction;

(O) Mastopexy;

(P) Neck tightening;

(Q) Pectoral implants;

(R) Reduction thyroid chondroplasty;

(S) Removal of redundant skin;

(T) Suction-assisted lipoplasty of the waist; and

(U) Trachea shave;

(ii) Voice modification surgery; and

(iii) Voice therapy.

(f) The agency evaluates a request for any noncovered service listed in (e) of this subsection as an exception to rule under the provisions of WAC 182-501-0160. The justification included in the surgical plan for any of the procedures listed in (e) of this subsection may be recognized by the agency as meeting the documentation requirements of WAC 182-501-0160.) this section.

(c) Surgical services covered. Surgical services to treat gender dysphoria are a covered service with prior authorization for clients who have a diagnosis of gender dysphoria made by a provider who meets the qualifications outlined in chapter 182-502 WAC.

(d) Medical necessity. Under this program, the agency authorizes and pays for only medically necessary services. Medical necessity is defined in WAC 182-500-0070 and is determined under WAC 182-501-0165 and limitation extensions in accordance with WAC 182-501-0169.

(e) Provider requirements. Providers should be knowledgeable of gender-nonconforming identities and expressions, and the assessment and treatment of gender dysphoria, including experience utilizing standards of care that include the World Professional Association for Transgender Health (WPATH) Standards of Care.

(f) Clients age twenty and younger. The agency evaluates requests for clients age twenty and younger according to the early and periodic screening, diagnosis, and treatment (EPSDT) program described in chapter 182-543 WAC. Under the EPSDT program, the agency pays for a service if it is medically necessary, safe, effective, and not experimental.

(g) Transportation services. The agency covers transportation services under the provisions of chapter 182-546 WAC.

(h) Out-of-state care. Any out-of-state care, including a presurgical consultation, must be prior authorized as an out-of-state service under WAC 182-501-0182.

(i) **Reversal procedures.** The agency does not cover procedures and surgeries related to reversal of gender affirming surgery.

(2) **Prior authorization.**

(a) **Prior authorization requirements for surgical services.** The agency requires prior authorization for all surgical services to treat gender dysphoria, including modifications to, or complications from, a previous surgery, except as provided in subsection (3) of this section.

(b) **Required documentation.** The following documentation must be submitted with the prior authorization request:

(i) **Two psychosocial evaluations required.** Documentation of two separate psychosocial evaluations performed within eighteen months preceding surgery by two separate qualified mental health professionals as defined in WAC 182-531-1400. These providers must be licensed health care professionals who are eligible under chapter 182-502 WAC, as follows:

(A) Psychiatrist;

(B) Psychologist;

(C) Psychiatric advanced registered nurse practitioner (ARNP);

(D) Psychiatric mental health nurse practitioner-board certified (PMHNP-BC);

(E) Mental health counselor (LMHC);

(F) Independent clinical social worker (LICSW);

(G) Advanced social worker (LASW); or

(H) Marriage and family therapist (LMFT).

(ii) **One psychosocial evaluation for top surgery.** For top surgery with or without chest reconstruction, the agency requires only one comprehensive psychosocial evaluation.

(iii) **Evaluation requirements.** Each comprehensive psychosocial evaluation must:

(A) Confirm the diagnosis of gender dysphoria as defined by the *Diagnostic Statistical Manual of Mental Disorders*;

(B) Establish that the client's condition is associated with clinically significant distress or impairment in social, occupational, or other important areas of functioning due to a strong desire to be rid of one's birth sex characteristics because of a marked incongruence with one's experiences or expressed gender, or both; and

(C) Document that:

(I) The client has:

• Lived in the desired gender full time, in all aspects of life, for a minimum of one year immediately preceding the request; or

• Been unable to live in the desired gender in all aspects of life full time due to personal safety concerns. Documentation must include an explanation of the client's safety concerns and the duration of the client's life experience in their desired gender.

(II) The client has been evaluated for the presence of coexisting behavioral health conditions;

(III) Any coexisting behavioral health condition is adequately managed;

(IV) The client has been evaluated for the ability to comply with postoperative requirements and has the capacity to maintain lifelong changes; and

(V) Surgery is the next reasonable step in the client's care.

(iv) **Hormone therapy.** Documentation from the primary care provider or the provider prescribing hormone therapy that the client has:

(A) Taken hormones for a minimum of twelve continuous months immediately preceding the request for surgery, except for mastectomy or reduction mammoplasty; or

(B) A medical contraindication to hormone therapy; and

(C) A medical necessity for surgery and that the client is adherent with current gender dysphoria treatment.

(v) **Surgical.** Documentation from the surgeon of the client's:

(A) Medical history and physical examination(s) performed within the twelve months preceding surgery;

(B) Medical necessity for surgery and surgical plan;

(C) Post-operative plan for care; and

(D) For hysterectomies, a completed agency hysterectomy consent form must be submitted.

(c) **Other requirements.** If the client fails to complete all of the requirements in subsection (2)(b) of this section, the agency will not authorize gender affirming surgery unless:

(i) The clinical decision-making process is provided in the referral letter and attachments described in subsection (2)(b) of this section; and

(ii) The agency has determined that the request is medically necessary in accordance with WAC 182-501-0165 based on review of all submitted information.

(d) **Behavioral health provider requirements.** Behavioral health providers who perform the psychosocial evaluation described in subsection (2)(b)(i) of this section must:

(i) Meet the provisions of WAC 182-531-1400;

(ii) Be competent in using the *Diagnostic Statistical Manual of Mental Disorders*, and the *International Classification of Diseases* for diagnostic purposes;

(iii) Be able to recognize and diagnose coexisting mental health conditions and to distinguish these from gender dysphoria;

(iv) Be knowledgeable of gender-nonconforming identities and expressions, and the assessment and treatment of gender dysphoria; and

(v) Have completed continuing education in the assessment and treatment of gender dysphoria. This may include attending relevant professional meetings, workshops, or seminars; obtaining supervision from a mental health professional with relevant experience; or participating in research related to gender nonconformity and gender dysphoria.

(e) **Clients age seventeen and younger.** Clients age seventeen and younger must meet the requirements for prior authorization identified in subsection (2)(a) through (d) of this section, except that:

(i) One of the comprehensive psychosocial evaluations required in subsection (2)(b)(i) of this section must be performed by a behavioral health provider who specializes in adolescent transgender care and meets the qualifications outlined in WAC 182-531-1400.

(ii) For top surgery with or without chest reconstruction, the agency requires only one comprehensive psychosocial evaluation from a behavioral health provider who specializes

in adolescent transgender care and meets the qualifications outlined in WAC 182-531-1400.

(3) Expedited prior authorization (EPA).

(a) Approved EPA procedures. The agency allows a provider to use the EPA process for clients age eighteen and older for the following medically necessary procedures:

(i) Bilateral mastectomy or reduction mammoplasty with or without chest reconstruction; and

(ii) Genital or donor skin graft site hair removal when medically necessary to prepare for genital reassignment.

(b) Clinical criteria and documentation. To use the EPA process for procedures identified in (a) of this subsection, the following clinical criteria and documentation must be kept in the client's record and made available to the agency upon request:

(i) One comprehensive psychosocial evaluation performed by a licensed behavioral health provider within the twelve months preceding surgery that meets the requirements identified in subsection (2) of this section.

(ii) Documentation from the primary care provider or the provider prescribing hormone therapy of the medical necessity for surgery and confirmation that the client is adherent with current gender dysphoria treatment; and

(iii) Documentation of medical necessity for surgery from the surgeon detailing the client's:

(A) Medical history and physical examinations performed within the twelve months preceding surgery;

(B) Surgical plan; and

(C) Post-operative plan for care.

(c) Documentation exception. When the requested procedure is for genital or donor skin graft site hair removal to prepare for bottom surgery, there is an exception to the requirements in (b) of this subsection. The only documentation required for that procedure is the provider's statement that the service is medically necessary to prepare for bottom surgery.

(d) Prior authorization required for other surgeries. All other surgeries to treat gender dysphoria, including modifications to, or complications from, a previous surgery, require prior authorization to determine medical necessity.

(e) Recoupment. The agency may recoup any payment made to a provider for procedures listed in this subsection if the provider does not follow the EPA process outlined in WAC 182-501-0163 or if the provider does not maintain the documentation required by this subsection.

112-085, 434-112-090, 434-120-035, 434-120-042, and others.

Hearing Location(s): On January 26, 2021, at 2:00 p.m., at Corporations and Charities Division, 801 Capitol Way South, Olympia, WA. The hearing will be conducted using WebEX, to join the hearing a person can call the following telephone number 206-207-1700 and enter the attendance code 146 363 9809. People will be able to hear and comment.

Date of Intended Adoption: January 27, 2021.

Submit Written Comments to: Patrick Reed, Office of the Secretary of State (SOS), P.O. [Box] 40234, Olympia, WA 98504, email Patrick.reed@sos.wa.gov, www.sos.wa.gov/corps.

Assistance for Persons with Disabilities: Contact Patrick Reed, phone 360-725-0358, email Patrick.reed@sos.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Update rules to reflect changes in filing processes.

Statutory Authority for Adoption: Chapters 11.110, 18.100, 19.77, 19.09, 23.86, 23.90, 23B.01, 24.03, 24.06, 25.10, 25.15, 43.07, 46.64 RCW.

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

Name of Proponent: SOS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Patrick Reed, Olympia, 360-725-0358.

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

A cost-benefit analysis is not required under RCW 34.05.328.

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

Is exempt under RCW 19.85.025(3) as the rules 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.

December 3, 2020

Mark Neary

Assistant Secretary of State

WSR 21-01-016

PROPOSED RULES

SECRETARY OF STATE

[Filed December 3, 2020, 12:34 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-20-113.

Title of Rule and Other Identifying Information: Update to filing information and procedures for corporate filing found in Title 434 WAC. Including, but not limited to, WAC 434-112-023, 434-112-050, 434-112-075, 434-112-080, 434-

AMENDATORY SECTION (Amending WSR 15-22-047, filed 10/29/15, effective 1/1/16)

WAC 434-112-023 Preclearance. Records will only be precleared in person at the front counter. ~~((The filing fee is ten dollars plus the immediate service fee of fifty dollars. If immediate service is not required, the record may be left for processing with other records received that day and the pre-cleared record will be returned by mail or electronically within five business days.))~~ If grounds for rejection are found, a notice of the grounds will be included with the returned record.

AMENDATORY SECTION (Amending WSR 15-22-047, filed 10/29/15, effective 1/1/16)

WAC 434-112-040 Standards for confirmation of filed records. All paper or electronic business related records are returned to the registered agent's (~~(mail or electronic)~~) email address on behalf of the entity when processing is completed unless the record indicates otherwise.

AMENDATORY SECTION (Amending WSR 15-22-047, filed 10/29/15, effective 1/1/16)

WAC 434-112-045 Rejection of records. (1) The corporations program may reject paper or electronic records that:

- (a) Are not legible; or
 - (b) Are not able to be recorded as an image with adequate resolution and clarity; or
 - (c) Are incomplete; or
 - (d) Are not permitted to be filed in the corporations office; or
 - (e) Paper records completed in pencil or faxed will not be accepted for filing.
- (2) Additional information or payment may be requested by telephone, email or letter.
- (3) The corporations program may hold records for up to thirty days to await additional information or funds needed to complete the filing process. After thirty days, new records and fees (~~(are)~~) may be required.
- (4) Records that do not include a return address will not be accepted for filing.

AMENDATORY SECTION (Amending WSR 15-22-047, filed 10/29/15, effective 1/1/16)

WAC 434-112-050 Filing procedure. (1) Persons submitting paper business records under chapters 18.100, 19.77 RCW, or Titles 23, 23B, 24, 25 RCW, and chapter 176, Laws of 2015, must submit one copy of the record for filing.

(2) The corporations program will retain a digital image of the paper or electronic record submitted for filing. The corporations program will, on completion of the filing, send a confirmation per WAC 434-112-040.

(3) The corporations program may return the completed filed record via email or other electronic means if the record indicates that an electronic response is acceptable.

(4) If a record submitted for filing contains more than one hundred governors as defined in RCW 23.95.105(12), that record must be submitted by using the online filing system.

AMENDATORY SECTION (Amending WSR 15-22-047, filed 10/29/15, effective 1/1/16)

WAC 434-112-075 Online services. (1) Online filings:

- (a) Will be subject to (~~(a)~~) an online processing fee of twenty dollars, with the exception of annual reports (~~(or)~~) statements of change (for registered agent information processed online), designation of registered agent, resignation of registered agent, articles of dissolution or statement of withdrawal, requested certificates or certified copies; and

(b) Be treated as received when the division's system records receipt of the completed transaction including payment authorization.

(2) When submitting an online filing, the person completing the filing shall sign the application by: Typing their full name in the space provided on the web form; stating their capacity with the entity addressed in the filing; and following the directions for signing the web form.

(3) Online processing fees (~~(are non-refundable)~~) may not be refundable.

AMENDATORY SECTION (Amending WSR 15-22-047, filed 10/29/15, effective 1/1/16)

WAC 434-112-080 Immediate and expedited service—Special fees. (1) Immediate service is available at the division's front counter for an immediate service fee of fifty dollars for single or multiple transactions on paper within each new or existing division program filing. In addition, the filing fee for each transaction applies.

(2) There is no immediate service fee for records dropped off in-person for processing with nonexpedited records received that day.

(3) (~~(There is no immediate service fee for photocopies requested in person, however, photocopies ordered online are subject to a twenty dollar online processing fee. If a request is made for immediate service on a photocopy that was ordered online, an additional immediate service fee may be assessed.~~

(4)) Expedited service requests for filing paper records received by mail, will be completed within two working days of submission for an expedited service fee of fifty dollars. If a request is made for immediate service on an expedited record, an immediate service fee may be assessed.

(~~(5))~~) (4) Nonexpedited service requests for filing paper records received by mail are processed within fifteen business days (~~(with no service fee)~~). If a request is made for expedite or immediate service, the applicable fee may be assessed.

(~~(6) The processing fee for online service is twenty dollars and records are filed within two business days.)~~

(5) If an online record is subsequently requested to be filed immediately, an additional immediate service fee may be required.

(~~(7))~~) (6) The filing party may indicate expedited service is requested on mailed records by placing the word "expedite" in bold letters on either the envelope, the face of the record to be filed, or on any cover letter submitted with the record.

(~~(8))~~) (7) Customers who resubmit rejected records that were expedited the first time they were submitted, may be charged an additional expedite fee upon resubmission.

(~~(9))~~) (8) Emergency services outside regular business hours requiring employee overtime are one hundred fifty dollars per hour plus transaction fees due on any filing. When the division receives a request for emergency services, staff will notify the customer of the service fee and any other reasonable conditions set by the director. The customer must agree to pay the fees or have received a fee waiver before emergency services are provided.

~~((10))~~ (9) A customer may make alternate arrangements with the director prior to bringing or sending in records, if a sudden, unexpected situation occurs during the business day.

~~((11))~~ (10) A customer may submit a written request to waive emergency, expedited, or penalty fees, which must include the special circumstances justifying the fee waiver. The director or deputy director will make the determination to waive fees or not.

~~((12))~~ (11) Immediate, online, or expedited service fees ~~(are)~~ may not be refundable.

AMENDATORY SECTION (Amending WSR 15-22-047, filed 10/29/15, effective 1/1/16)

WAC 434-112-085 Fees and penalties. (1) For domestic and foreign business entities, formed under Title 23B RCW, chapters 23.78, 25.15, 25.10, and 25.05 RCW, fees and penalties are:

- (a) Public organic record including ~~((employee))~~ cooperatives One hundred eighty dollars
- (b) Foreign registration statement One hundred eighty dollars (may include back fees)
- (c) Articles of amendment or amendment of foreign registration statement Thirty dollars
- (d) Articles of restatement Thirty dollars
- (e) Statement of correction Thirty dollars
- (f) Revocation of voluntary dissolution Thirty dollars
- (g) Delinquent fee Twenty-five dollars
- (h) Annual report including ~~((employee))~~ cooperatives Sixty dollars plus business licensing services fee when applicable
- (i) Reinstatement from administrative dissolution One hundred forty dollars plus all delinquent license or annual fees
- (j) Requalification from administrative termination One hundred eighty dollars plus all delinquent fees or penalties
- (k) Articles of merger or exchange Twenty dollars for each listed company
- (l) Resignation of registered agent No fee
- (m) Initial report filed with public organic record No fee
- (n) Initial report filed separate Ten dollars

- (o) Amended annual report Ten dollars
- (p) Change of registered agent No fee
- (q) Registration, reservation, or transfer of name Thirty dollars
- (r) Articles of dissolution or voluntary termination of statement No fee
- (s) Agent's consent to act as agent No fee
- (t) Agent's resignation if appointed without consent No fee
- (u) Other statement or report Ten dollars

(2) For domestic and foreign nonprofit entities under Title 24 RCW and chapter 23.86 RCW, fees and penalties are:

- (a) Public organic record Thirty dollars
- (b) Foreign registration statement Thirty dollars
- (c) Cooperative association Twenty-five dollars
- (d) Articles of amendment Twenty dollars
- (e) Restatement Twenty dollars
- (f) Annual report Ten dollars
- (g) Articles of voluntary dissolution, statement of withdrawal No fee
- (h) Reinstatement from administrative dissolution Thirty dollars plus all delinquent annual fees and five dollar penalty
- (i) Articles of merger or exchange Twenty dollars for each listed corporation
- (j) Amended annual report Ten dollars
- (k) Change of registered agent No fee
- (l) Change of registered agent address No fee
- (m) Resignation of registered agent No fee
- (n) Registration, reservation, or transfer of reservation of name Twenty dollars
- (o) Certificate of election adopting provisions of chapter 24.03 RCW Thirty dollars

- (p) Other statement or report filed Ten dollars

(3) For registering trademarks for use within the state, the fees are as follows:

- (a) Five year registration Fifty-five dollars (includes five dollars heritage center fee) for each class registered
- (b) Five year renewal Fifty dollars for each class registered
- (c) Assignment of trademark Ten dollars
- (d) New certificate with name of assignee Five dollars
- (e) Reservation of trademark Thirty dollars for each class reserved, for one hundred eighty days
- (f) Amendment of trademark Fifty dollars for each class
- (g) Cancellation of trademark No fee
- (h) Other statement or report filed Ten dollars

(4) For filings related to state registered domestic partnership, the fees are:

- (a) Registration Fifty dollars
- (b) Name change No fee
- (c) Address change No fee
- (d) Notice of termination by reason of death No fee

(5) Fees paid under WAC 434-112-085 ~~((are))~~ may not be refundable.

AMENDATORY SECTION (Amending WSR 15-22-047, filed 10/29/15, effective 1/1/16)

WAC 434-112-090 Miscellaneous fees. (1) ~~((Copy fees for corporate records are:~~

- ~~(a) Each annual report, five dollars;~~
- ~~(b) Initial articles of incorporation, initial certificate of formation, or other initial organizing records including a foreign entity registration or any single document except an annual report, ten dollars each;~~
- ~~(c) Initial organizational records as listed in (b) of this subsection plus all subsequent amendments, changes, and restatements, including mergers, conversions, etc., twenty dollars;~~
- ~~(d) Copy of any filing related to a state registered domestic partnership, five dollars;~~
- ~~(e) Surcharge for files exceeding one hundred pages of copy, thirteen dollars for each fifty page increment.~~

(2) For certificates of existence, registration, or any fact on record, fees are as follows:

- ~~(a) With complete historical data, thirty dollars;~~
- ~~(b) Without complete historical data, twenty dollars;~~
- ~~(c) Duplicate certificate, twenty dollars.~~
- ~~(3) For additional certificates of registration of a state registered domestic partnership, five dollars. For an additional or replacement state registered domestic partnership wallet card, ten dollars.~~
- ~~(4) For verifying the signature of a notary or public official, for an apostille or certification authenticating a sworn document, the fee is fifteen dollars.~~
- ~~(5)) For each certified copy of any record the fee is ((ten dollars plus the record copy fee)) twenty dollars.~~
- ~~((6)) (2) For any service of process the fee is fifty dollars.~~

~~((7)) (3) Dishonored checks. If a person, corporation, or other submitting entity has attempted to pay any fee due to the secretary of state by means of a check, and the check is dishonored by the financial institution when presented, the secretary of state will impose a twenty-five-dollar penalty, payable to the secretary of state.~~

In the event a valid replacement check and dishonor charge is not received in the office of the secretary of state within the time prescribed by its accounting division, the transaction covered by the dishonored check will be canceled and all other late filing fees and penalties will be instituted.

AMENDATORY SECTION (Amending WSR 17-16-073, filed 7/26/17, effective 8/26/17)

WAC 434-120-035 Mandatory filing online. All charitable organizations and commercial fund-raisers filing registrations and renewals, and charitable trusts filing renewals, ~~((will be))~~ are required to file using the secretary of state's online filing application ~~((as of January 1, 2018. Except for initial trust registrations, paper documents will not be accepted after December 31, 2017)), unless an online filing option is not available.~~

AMENDATORY SECTION (Amending WSR 14-17-025, filed 8/12/14, effective 9/12/14)

WAC 434-120-042 Fees. (1) Charitable organizations, commercial fund-raisers, and charitable trusts registering under chapter 11.110 or 19.09 RCW are subject to the following fees:

- (a) Amendment of current registration: No fee.
- (b) ~~((Replacement of confirmation letter: \$5.00.~~
- ~~(c) Service of process: \$50.00.~~
- ~~((d)) Late fee, failure to renew by due date: \$50.00.~~
- ~~((e)) (c) Specialized reports ~~((electronic or paper))~~: \$20.00.~~
- ~~((f)) (d) Expedited service fee (paper, per entity): \$50.00.~~
- ~~((g) Expedited service fee (online, per entity): \$20.00.~~
- ~~((h)) (e) Emergency services outside regular business hours: \$150 per hour.~~
- (2) Charitable organizations registering under chapter 19.09 RCW are subject to the following fees:
 - (a) Initial registration (RCW 19.09.062): \$60.00.
 - (b) Annual renewal (RCW 19.09.062): \$40.00.
 - (c) Reregistration: \$60.00.

(d) Optional registration, initial or update: No fee.

~~(c) ((Electronic or paper copy of a charitable organization file: \$5.00.~~

~~(f))~~ Registration of a fund-raising service contract (RCW 19.09.062): \$20.00.

~~((g) Electronic or paper copy of a fund raising service contract registration: \$10.00.))~~

(3) Commercial fund-raisers registering under chapter 19.09 RCW are subject to the following fees:

(a) Initial registration (RCW 19.09.062): \$300.00.

(b) Annual renewal (RCW 19.09.062): \$225.00.

(4) Charitable trusts registering under chapter 11.110 RCW are subject to the following fees:

(a) Initial registration: \$25.00.

(b) Annual renewal: \$25.00.

~~((c) Electronic or paper copy of a trust registration: \$5.00.~~

~~(d) Electronic copy of IRS Form 990EZ (up to fifty pages): \$5.00.~~

~~(e) Electronic or paper copy of IRS Form 990/990PF (up to one hundred pages): \$10.00.~~

~~(f) Electronic or paper copy of IRS Form 990/990PF (more than one hundred pages): \$13.00 for each additional fifty pages.~~

~~(g) Charitable trust directory: No fee.))~~

(5) ~~((Filing fees are nonrefundable.))~~ Fees paid under this section may not be refundable.

AMENDATORY SECTION (Amending WSR 14-17-025, filed 8/12/14, effective 9/12/14)

WAC 434-120-107 Audited financial report—Tiered reporting requirements. (1) If a charitable organization has been in existence for less than three years, the organization shall calculate its average gross revenue based on the number of years the organization has been in existence to determine which tier, per RCW 19.09.541, is applicable.

(2) For purposes of these regulations, the charities program may waive the requirement to obtain an audited financial statement prepared by an independent certified public accountant for organizations with more than three million dollars in gross revenue averaged over the last three accounting years that meet one of the following:

(a) Directly or indirectly receives five hundred thousand dollars or less in cash averaged over the last three accounting years. Organizations with five hundred thousand dollars or less in cash averaged over the last three accounting years must meet tier two reporting requirements in RCW 19.09.541

(2). For purposes of meeting the financial requirements in this section, "cash" includes currency, checks, credit card payments, donor advised funds, and electronic fund transfers received from all sources including, but not limited to, solicitations, investment income and tuition. "Cash" does not include gifts of tangible, real, or personal property or in-kind services; ~~((or))~~

(b) Organizations that can demonstrate that they have reached a three-year average of more than three million dollars in gross revenue through unusual or nonrecurring revenue received in a single year without which they would not have met the three-year annual gross average threshold; or

(c) If the tier three audited financial statement has been waived by the charities program, then the tier two reporting requirements shall apply as replacement to the waived audited financial statement.

WSR 21-01-021

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed December 3, 2020, 4:17 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-14-098.

Title of Rule and Other Identifying Information: WAC 182-530-7900 Drugs purchased under the Public Health Service Act.

Hearing Location(s): On January 26, 2021, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the agency will not provide a physical location for this hearing. This promotes social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. The [to] attend the virtual public hearing, you must register at the following link: <https://attendee.gotowebinar.com/register/5895859935949871883>. Webinar ID: 563-710-843. After registering, you will receive a confirmation email containing the information about joining the webinar.

Date of Intended Adoption: Not sooner than January 27, 2021.

Submit Written Comments to: Health care authority (HCA) Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by January 26, 2021.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email amber.lougheed@hca.wa.gov, by January 8, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency previously filed this proposal under WSR 20-02-073, and held a public hearing on February 4, 2020. Stakeholder comments and then the subsequent public health emergency further delayed this rule making. In accordance with RCW 34.05.335(3), the agency is refiling this proposal without change and will hold a second public hearing. Comments and testimony that were previously submitted on this proposal under WSR 20-02-073 will be included in the agency's concise explanatory statement.

The agency is revising this section to clarify that as part of participation in the 340B program, providers must agree, via an annual attestation form, that all claims for Washington apple health clients in both fee-for-service and managed care are subject to their respective 340B rules. The agency is amending subsection (4) to include the medicaid fee-for-service program.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Valerie Freudenstein, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1344; Implementation and Enforcement: Natalia Oxford Wilson, P.O. Box 45510, Olympia, WA 98504-5510, 360-725-1861.

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

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

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule does not impose any costs on businesses.

December 3, 2020
Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-07-001, filed 3/1/17, effective 4/1/17)

WAC 182-530-7900 Drugs purchased under the Public Health Service (PHS) Act. (1) Providers dispensing or administering 340B drugs to Washington apple health clients are required to submit their valid medicaid provider number(s) or national provider identification (NPI) number to the PHS health resources and services administration, office of pharmacy affairs. See WAC 182-530-7500 for information on the drug rebate program.

(2) Drugs purchased under section 340B of the Public Health Service (PHS) Act can be billed to Washington apple health only by PHS-qualified entities. The Washington medicaid rebate process excludes 340B claims from invoicing only when the drug is billed by a medicaid provider number or national provider identification (NPI) number listed on the PHS office of pharmacy affairs national medicaid exclusion file. See WAC 182-530-7500 for information on the drug rebate program.

(3) As part of participation in the 340B program, providers must submit a completed annual attestation form (HCA 13-0047) to the agency acknowledging that all claims for Washington apple health clients in both fee-for-service and managed care are subject to their respective 340B rules. Providers who fail to submit a completed attestation form to the agency may receive a compliance audit and be at risk of duplicate discounts.

(4) With the exception of claim types identified in subsection ((4)) (5) of this section, all 340B purchased drugs under the medicaid fee-for-service program must be billed to the medicaid agency at the 340B actual acquisition cost (340B AAC).

((4)) (5) Exceptions to the 340B AAC billing requirement are only made for:

(a) Outpatient hospital claims paid under the enhanced ambulatory payment group (EAPG) methodology (see WAC 182-550-7000); and

(b) Ambulatory surgery claims paid under payment groups methodology.

WSR 21-01-028

WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF HEALTH STATE BOARD OF HEALTH

[Filed December 4, 2020, 11:34 a.m.]

This memo serves as notice that the state board of health (board) and department of health (department) are withdrawing the supplemental CR-102 for notifiable conditions, which was filed June 15, 2020, and published in WSR 20-13-062.

The purpose of chapter 246-101 WAC, Notifiable conditions, is to provide critical information to public health authorities to aid them in protecting and improving public health through prevention and control of infectious and non-infectious conditions as required under RCW 43.20.050, 70.104.055, and 43.70.545. Public health authorities use the information gathered under this chapter to take appropriate action, including, but not limited to, treating ill people; providing preventive therapies for individuals who came into contact with infectious agents; investigating and halting outbreaks; removing harmful health exposures from the environment; assessing broader health-related patterns, including historical trends, geographic clustering, and risk factors; and redirecting program activities and developing policies based on broader health-related patterns.

The board held a public hearing on the proposed revisions to chapter 246-101 WAC on April 8, 2020. The board determined it would continue its consideration of the proposed rule until its August meeting in recognition of interested parties' limited ability to review and comment on the proposed changes as a result of the coronavirus disease 2019 (COVID-19) pandemic. In addition, the board determined that further amendments to the rule were necessary to include an additional reportable condition, reporting requirements, as well as other administrative changes. A supplemental CR-102 was filed on June 15, 2020, as WSR 20-13-062.

A public hearing for the supplemental CR-102 was held on August 12, 2020. The board received comments from stakeholders requesting that additional demographic data be collected with case and laboratory reports for all notifiable conditions, including race, ethnicity, primary language, sexual orientation, gender identity, and disability status. These reportable data components were requested to better inform disease response and allow the public health system to identify and partner with community-based organizations on outreach, prevention, and access to care.

The board directed staff to explore the feasibility of incorporating these additional demographic data components at its August meeting, and further directed staff to work with stakeholders to draft proposed rule language incorporating race, ethnicity, and language reporting.

This CR-102 will expire on December 28, 2020. The board and department are withdrawing the CR-102 to allow more time for staff to work with subject matter and community experts, the regulated community, and local health juris-

dictions to develop proposed rule language that would require additional demographic reporting for notifiable conditions. It is the intent of the board and department to file a new CR-102 in early 2021 in anticipation of a public hearing and possible adoption of proposed revisions to this chapter in March 2021.

Individuals requiring information on this rule should contact the following: Kaitlyn Donahoe, Health Policy Advisor, Washington State Board of Health, kaitlyn.donahoe@sboh.wa.gov, 360-584-6737; or Alexandra Montano, Director, Policy and Legislative Relations, Disease Control and Health Statistics Division, Washington State Department of Health, alexandra.montano@doh.wa.gov, 360-236-4205.

Tami M. Thompson
Regulatory Affairs Manager

WSR 21-01-033
PROPOSED RULES
WASHINGTON STATE PATROL

[Filed December 7, 2020, 10:13 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-20-136.

Title of Rule and Other Identifying Information: Chapter 446-20 WAC, Employment—Conviction records.

Hearing Location(s): On February 9, 2021, at 9:00 a.m.
Call-in: 1-253-215-8782. Passcode: 859247.

Date of Intended Adoption: February 10, 2020 [2021].

Submit Written Comments to: Kimberly Mathis, Agency Rules Coordinator, 106 11th Street S.E., Olympia, WA 98507, email wsprules@wsp.wa.gov, by December 4, 2020 [February 4, 2021].

Assistance for Persons with Disabilities: Contact Kimberly Mathis, agency rules coordinator, phone 360-596-4017, email wsprules@wsp.wa.gov, by December 4, 2020 [February 4, 2021].

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed changes will provide clean up and clarification to the existing language to ensure the rules reference and comply with current laws in the state of Washington.

Reasons Supporting Proposal: Updates are to provide clarity and clean up existing language.

Statutory Authority for Adoption: Chapters 10.97 and 43.43 RCW.

Statute Being Implemented: Chapters 10.97 and 43.43 RCW.

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

Name of Proponent: Washington state patrol, governmental.

Name of Agency Personnel Responsible for Drafting: Kimberly Mathis, Olympia, Washington, 360-596-4017; Implementation: Becky Miner, Olympia, Washington, 360-534-2111; Enforcement: Washington State Patrol, Olympia, Washington, 360-596-4017.

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

A cost-benefit analysis is not required under RCW 34.05.328. This rule is exempt pursuant to RCW 34.05.328 (5)(b)(v).

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.

December 7, 2020

John R. Batiste

Chief

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-20-020 Definitions. For the purpose of this section the following apply:

(1) The definitions in RCW 10.97.030 will apply to these regulations.

(2) The definitions as enumerated in RCW 43.43.830 through 43.43.845, and as amended by chapter 9A.44 RCW, "An act relating to child and adult abuse information," will apply whenever applicable in these regulations.

(3) "Nonconviction data" has the meaning set forth in RCW 10.97.030 (2) ~~((, but will not include dismissals following a period of probation, or suspension, or deferral of sentence)) and (8).~~

(4) ~~((Section))~~ Division means the ~~((identification and criminal history section))~~ criminal records division of the Washington state patrol.

(5) "The administration of criminal justice" has the meaning set forth in RCW 10.97.030 ~~((6))~~ (1), but does not include crime prevention activities (if that is the sole function of the program or agency) or criminal defense activities.

AMENDATORY SECTION (Amending WSR 15-22-078, filed 11/3/15, effective 12/4/15)

WAC 446-20-040 Deferred prosecutions. (1) A deferred prosecution under chapter 10.05 RCW of an alleged offender does not become nonconviction data until more than one year has elapsed since arrest, citation, charge, or service of warrant, or there is a final decision to dismiss charges or not to prosecute, whichever occurs first.

(2) A deferred prosecution under this section will not be subject to deletion under RCW 10.97.060 ~~((until))~~ unless there is a final decision ~~((to dismiss charges or))~~ not to prosecute.

(3) Notwithstanding subsection (2) ~~((#))~~ of this section, the ~~((section))~~ division retains the discretion to refuse to delete nonconviction data as provided in RCW 10.97.060.

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-20-050 Criminal justice agencies. (1) The following agencies will be considered criminal justice agencies for the purpose of chapter 10.97 RCW and these regulations.

(a) The Washington state patrol;

- (b) Foreign, federal, state, and local governmental law enforcement agencies;
 - (c) State, county, or municipal agencies that have responsibility for the detention, pretrial release, post-trial release, correctional supervision, or rehabilitation of accused persons or criminal offenders;
 - (d) Indeterminate sentence review board;
 - (e) Courts at any level for the administration of criminal justice.
- (2) An agency or portion thereof that has been certified as a criminal justice agency pursuant to WAC 446-20-060.

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-20-060 Certification of agencies. (1) An agency or portion of an agency that asserts a right to receive criminal history record information based on its status as a criminal justice agency must show satisfactory evidence of its certification as a criminal justice agency prior to receiving such information. The ~~((section))~~ division will certify such an agency or portion of an agency, based on a showing that the agency or portion of an agency, meets the definition of a criminal justice agency in RCW 10.97.030. Agencies or portions of agencies which assert the right to be certified as a criminal justice agency must submit a written request for certification to the ~~((section on the form provided under WAC 446-20-430))~~ division.

(2) An agency or portion of an agency that asserts a right to receive nonconviction criminal history record information must show satisfactory evidence of certification to receive such information. Certification by the ~~((section))~~ division will be granted based upon statute, ordinance, executive order, or a court rule, decision, or order which expressly refers to nonconviction criminal history record information, and which authorizes or directs that it be available or accessible for a specific purpose.

(3) The application must include documentary evidence which establishes eligibility for access to criminal history record information.

(4) The ~~((section))~~ division will make a determination in writing on the eligibility or noneligibility of the applicant. The written determination, together with reasons for the decisions, will be sent to the applicant.

(5) The ~~((section))~~ division must keep a current list of all agencies that have been certified to receive criminal history record information.

AMENDATORY SECTION (Amending WSR 12-17-114, filed 8/21/12, effective 9/21/12)

WAC 446-20-090 Inspection of record by the subject of record. (1) Any person desiring to inspect his or her criminal history record information or request a copy of his or her nonconviction data for a reasonable fee may do so at the central records keeping office of any criminal justice agency or at the Washington state patrol ~~((identification and criminal history section))~~ criminal records division, during normal business hours, Monday through Friday, excepting legal holidays.

(2) Any person desiring to inspect his or her criminal history record information or request a copy of his or her nonconviction data for a reasonable fee must first permit his or her fingerprints to be taken by the criminal justice agency for identification purposes ~~((, if requested to do so))~~. The criminal justice agency in its discretion may accept other identification in lieu of fingerprints.

(3) A reasonable period of time, not to exceed thirty minutes, will be allowed each individual to visually examine criminal history record information pertaining to himself or herself.

(4) If any person who desires to examine his or her criminal history record information is unable to read or is otherwise unable to examine same because of a physical disability, he or she may designate another person of their own choice to assist him or her. The person about whom the information pertains must execute, with his or her mark, a form provided by the criminal justice agency consenting to the inspection of criminal history information pertaining to himself or herself by another person for the purpose of it being read or otherwise described to him or her. Such designated person will then be permitted to read or otherwise describe or translate the criminal history record information to the person about whom it pertains.

(5) Each criminal justice agency will develop procedures to ensure that no individual improperly retains or mechanically reproduces nonconviction data during the process of inspection.

AMENDATORY SECTION (Amending WSR 12-17-114, filed 8/21/12, effective 9/21/12)

WAC 446-20-100 Inspection—Timeliness and manner of agency response. (1) A criminal justice agency not maintaining criminal history record information of the individual requesting inspection will not be obligated to further processing of inspection request.

(2) A criminal justice agency maintaining criminal history record information of the individual requesting inspection must respond in the manner following and as soon as administratively convenient, but in no event later than ten business days from the date of the receipt of the request.

(a) If the criminal history record information concerns offenses for which fingerprints were not submitted to the ~~((section))~~ division, the agency must respond by disclosing the identifiable descriptions and notations of arrests, charges, and dispositions that are contained in the files of the agency.

(b) If the criminal history record information concerns offenses for which fingerprints were submitted to the ~~((section))~~ division, the agency upon request of the subject of the record, must forward the request to the ~~((section))~~ division for processing.

(c) The ~~((section))~~ division will copy all Washington state criminal history record information in the files of the ~~((section))~~ division relating to the individual requester and forward it to the criminal justice agency submitting the request. The ~~((section))~~ division may provide a copy of the individual's nonconviction data directly to the subject of record upon written request from the individual for a reasonable fee.

(d) Upon receipt by the criminal justice agency of the requester's criminal history record information, the agency will notify the requester at his or her designated address or telephone number that the requested information is available for inspection. The subject of the criminal history record information must appear at the agency during its normal business hours for purpose of inspecting the record.

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-20-130 Challenge—Forms to be made available. Every criminal justice agency which authorizes individuals to use its facilities for the purpose of inspecting their criminal history record information ~~((must))~~ shall provide an appropriate challenge form and the ~~((address))~~ contact information of the agency whose record entry is being challenged. Such forms ~~((must))~~ shall be substantially equivalent to that set forth in WAC 446-20-450.

AMENDATORY SECTION (Amending WSR 20-01-100, filed 12/13/19, effective 1/13/20)

WAC 446-20-160 Review of refusal to alter record. A person who is the subject of a criminal record and who disagrees with the refusal of the agency maintaining or submitting the record to correct, complete, or delete the record, may request a review of the refusal within twenty business days of the date of receipt of such refusal. The request for review must be in writing ~~((, and must be made by the completion of a form substantially equivalent to that set forth in WAC 446-20-410))~~. If review is requested in the time allowed, the head of the agency whose record or submission has been challenged must complete the review within thirty days and make a final determination of the challenge. The head of the agency may extend the thirty-day period for an additional period not to exceed thirty business days. If the head of the agency determines that the challenge should not be allowed, he or she must state his or her reasons in a written decision, a copy of which must be provided to the subject of the record. Denial by the agency head will constitute a final decision under RCW 34.05.570. Notwithstanding this section, RCW 43.43-730 governs an individual's request to the Washington state patrol ~~((identification and criminal history section))~~ criminal records division to purge, modify, or supplement that individual's criminal history record information on file with the Washington state patrol ~~((identification and criminal history section))~~ criminal records division.

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-20-170 Secondary dissemination. (1) Criminal justice agencies that receive state criminal history record information from the ~~((section))~~ division may disseminate them further, "but only to the same extent to which the ~~((section))~~ division itself would be authorized to make dissemination in the first instance." Nonconviction data based on an incident that arose in the jurisdiction of that agency about to make the dissemination is not subject to this restriction, if the

agency is otherwise authorized to disseminate such information.

(2) Noncriminal justice agencies authorized to receive criminal history record information from whatever source may use it only for the specific purpose for which the agency is certified and shall not disseminate it further.

(3) Use of criminal history record information contrary to chapter 10.97 RCW or chapter 446-20 WAC may result in suspension or cancellation of authorization.

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-20-190 Dissemination—Research purposes. Criminal history record information which includes nonconviction data may be disseminated for research, evaluative, or statistical purposes according to the provisions of RCW 10.97.050(6). The transfer agreement provided for by that section must be substantially similar to that set forth in WAC 446-20-420 (model transfer provisions).

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-20-220 Protection against unauthorized access. Criminal history record systems, whether dedicated to criminal justice purposes, or shared, will be designed and operated in accordance with procedures which will assure that:

(1) Access to criminal history record information facilities and system operating areas (whether for computerized or manual systems) and the content of data files and systems documentation, will be restricted to authorized personnel. These procedures may include use of guards, keys, badges, passwords, sign-in logs, or similar safeguards.

(2) All facilities which house criminal history record information must be designed and constructed so as to reduce the possibility of physical damage to the information resulting from unauthorized access.

(3) Criminal history record information is stored in such a manner that will prevent modification, destruction, access, change, purging, or overlay of criminal history record information by unauthorized personnel.

(4) Operational programs are used in computerized systems that will prohibit inquiry, record updates, or destruction of records from any terminal other than those authorized to perform criminal history record information functions.

(5) The purging or destruction of records is limited to personnel authorized by the criminal justice agency or through contract ~~((with the noncriminal justice agency))~~ as required under WAC 446-20-180, and consistent with WAC 446-20-230.

(6) Refuse from the criminal history record information system installations is transferred and destroyed under such reasonably secure conditions as will effectively guard against unauthorized availability.

(7) Operational procedures are used in computerized systems to detect and store unauthorized attempts to penetrate any criminal history record information system, program or file, and that such information is made available only

to criminal justice agency employees with responsibility for system security, or as authorized by WAC 446-20-180.

(8) The procedures developed to meet standards of subsections (4) and (7) of this section, are known only to authorized employees responsible for criminal history records information system control.

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-20-230 Personnel security. ~~(((1) Agencies and contractors which collect and retrieve, or are authorized to maintain or modify, criminal history record information must: Identify those positions which are of such a sensitive nature that fingerprints of employees will be required and used to conduct a criminal record background investigation. Such background investigations will be the responsibility of the criminal justice agency and may consider the date, the disposition, number, and seriousness of any previous arrests or convictions. Decisions concerning employment will be the responsibility of the employing agency or contractor.~~

~~(2) When agency or contractor personnel violate the provisions of chapter 10.97 RCW or other security requirements established through administrative code for the collection, storage and dissemination of such information, agencies or contractors, as defined by subsection (1) of this section, must initiate, or cause to be initiated, action that will ensure the integrity of records containing criminal history record information.))~~ Any personnel with unescorted access to unencrypted criminal justice information including criminal history record information must meet the standards established by the Federal Bureau of Investigation's Criminal Justice Information Services (CJIS) Security Policy.

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-20-240 Personnel training. ~~(((1) Criminal justice agencies will be required directly, or in cooperation with the criminal justice training commission to familiarize their employees and those of the contractors, with all federal, state, and local legislation, executive orders, rules, and regulations, applicable to such a system.~~

~~(2) Training to be provided must include not only initial training, but continuing training, designed to maintain among criminal history record information system personnel current knowledge and operational proficiency with respect to security and privacy law and regulations.))~~ Any personnel with unescorted access to unencrypted criminal justice information including criminal history record information must meet the training standards established by the Federal Bureau of Investigation's Criminal Justice Information Services (CJIS) Security Policy.

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-20-250 Contractor personnel clearances. ~~(((1) No personnel of a noncriminal justice agency will be granted access to criminal history record information without~~

~~appropriate security clearance by the contracting agency or agencies.~~

~~(2) To provide evidence of the person's security clearance, the grantor of such clearance may provide an authenticated card or certificate. Responsibility for control of the issuance, or revocation of such clearances must rest with the grantor.))~~ Any personnel with unescorted access to unencrypted criminal justice information including criminal history record information must meet the standards established by the Federal Bureau of Investigation's Criminal Justice Information Services (CJIS) Security Policy.

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-20-280 Employment—Conviction records.

(1) A conviction record will be furnished consistent with the provisions of RCW 43.43.815, upon the submission of a written or electronic request of any employer, accompanied by fingerprints and other identifying data of the employee or prospective employee.

(2) Fingerprints must be submitted on cards of the type specified by the ~~((section))~~ division, and must contain a certification by the employer that the information is being disseminated to and will be available only to persons involved in the hiring, background investigation, or job assignment of the person whose record is disseminated, that the record will be used only as necessary for the purposes enumerated in this section, and that the request for conviction data is for one of the following purposes:

(a) Securing a bond required for any employment;

(b) Conducting preemployment and postemployment evaluations of employees and prospective employees who, in the course of employment, may have access to information affecting national security, trade secrets, confidential or proprietary business information, money, or items of value; or

(c) Assisting an investigation of suspected employee misconduct where such misconduct may also constitute a penal offense under the laws of the United States or any state.

AMENDATORY SECTION (Amending WSR 12-17-114, filed 8/21/12, effective 9/21/12)

WAC 446-20-285 Employment—Conviction records.

Conviction information will be furnished by the state patrol upon written or electronic request of any applicant, business or organization, the state board of education, or the department of social and health services. This information will consist of the following:

(1) Convictions of crimes; and

(2) Criminal history information will be furnished from the ~~((section))~~ division, consistent with the provisions of RCW 43.43.830 through 43.43.840, upon receipt of a written or electronic request.

School districts, the superintendent of public instruction, educational service districts and their contractors will also receive conviction information under RCW 10.97.030 and 10.97.050 pursuant to chapter 159, Laws of 1992.

The ~~((section))~~ division will also furnish any similar records maintained by the Federal Bureau of Investigation or records in custody of the National Crime Information Center,

if available, subject to their policies and procedures regarding such dissemination.

(a) The business or organization making such request will not make an inquiry to the Washington state patrol or an equivalent inquiry to a federal law enforcement agency unless the business or organization has notified the applicant who has been offered a position as an employee or volunteer that an inquiry may be made.

(b) For positive identification, the request for criminal history information form may be accompanied by fingerprint cards of a type specified by the ((section)) division, and must contain a certification by the business or organization; the state board of education; or the department of social and health services, that the information is being requested and will be used only for the purposes as enumerated in RCW 43.43.830 through 43.43.845.

(c) In the absence of fingerprint cards, the applicant may provide a right thumb fingerprint impression in the area provided on the request for criminal history information form. In the event of a possible match to the applicant's name and date of birth, the right thumb fingerprint impression will be used for identification verification purposes only.

(d) After processing a properly completed request for criminal history information form, if the conviction record, disciplinary authority final decision, or equivalent response from a federal law enforcement agency shows no evidence of crimes, an identification declaring the showing of no evidence will be issued to the business or organization by the ((section)) division within fourteen working days of receipt of the request. Possession of such identification will satisfy future record check requirements for the applicant for a two-year period.

(e) The business or organization must notify the applicant of the state patrol's response within ten calendar days after receipt by the business or organization. The employer must provide a copy of the response to the applicant and must notify the applicant of such availability.

(f) The business or organization will be immune from civil liability for failure to request background information on a prospective employee or volunteer unless the failure to do so constitutes gross negligence.

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-20-400 Form of request to inspect record.

INSPECTION OF RECORD REQUEST
(RCW 10.97.080/WAC 446-20-070)

Agency
Agency No
Date
Time

I,, do hereby request to inspect my criminal history record information maintained in the files of the above named agency. In order to ensure positive identification as the person in question, I am submitting my fingerprints in the space below.

~~((I was born ((Date of Birth)), in ((Place of Birth)), and to ensure positive identification as the person in question, I am willing to submit my fingerprints in the space provided below, if required or requested.))~~

(Fill in ((and check)) where applicable box)

Because I am unable to read ; (()) do not understand English ; ((~~otherwise need assistance in reviewing my record~~)) other reason ; I hereby designate and consent that (Print Name), whose address is, ((~~assist me in examining~~)) read or otherwise described or translated to me the criminal history record information concerning myself.

.....
.....
Prints of right four fingers (Signature or mark
taken simultaneously of Applicant)
.....
(Address)
.....
.....
(Signature of Designee)

AMENDATORY SECTION (Amending WSR 80-08-057, filed 7/1/80)

WAC 446-20-450 CHRI challenge form.

CHRI CHALLENGE FORM
(REQUEST FOR MODIFICATION OF CHRI)
RCW 10.97.080/WAC 446-20-120

AGENCY AGENCY CASE NO.
ADDRESS DATE

I, (Print Name), Date of Birth hereby acknowledge ((~~review~~)) receipt this date,, of a copy of a ((~~CHRI rap sheet~~)) Washington State Patrol Criminal Records Division RAPsheet bearing ((~~agency number~~; ~~or~~)) SID number, consisting of page(s) and identified as a history of criminal offenses charged to me.

I challenge the following specific portion(s) of the CHRI as being inaccurate or incomplete:

<u>Agency</u>	<u>Case No.</u>	<u>Date</u>	<u>Charge</u>
.....
.....
.....

and request modification to read:

I further request((~~, if such modifications are determined to be valid, that all~~)) that the following designated persons or agencies who have received ((prior)) copies of the ((CHRI)) record be advised of the modifications.

.....
(Signature of ~~((Challenger))~~
Requestor
Prints of right four fingers taken
simultaneously together

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-20-500 Sex offender and kidnapping offender registration. RCW 9A.44.130 requires any adult or juvenile residing in this state who has been found to have committed or has been convicted of any sex offense or kidnapping offense to register with the county sheriff for the county of that person's residence. The sheriff is required to forward the registration information to the ~~((section))~~ division within five working days. The Washington state patrol is mandated to maintain a central registry of sex offenders and kidnapping offenders consistent with chapters 10.97, 10.98, and 43.43 RCW.

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-20-515 Photograph/fingerprint requirement. Registration requires the offender be fingerprinted and photographed and also provide the sheriff with the following information which must be forwarded to the Washington state patrol ~~((identification and criminal history section))~~ criminal records division within five working days:

- Name;
- Address;
- Date of birth;
- Place of birth;
- Social Security number;
- Institution of higher education enrolled, attending;
- Place of employment;
- Crime for which convicted;
- Date/place of conviction; and
- Aliases used.

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-20-520 Photographs. Photographs must be in color. These are not to be file photographs. A new photograph is required.

For paper submissions, write full name, date of birth, and state identification number (SID). Paperclip (no staples please) the photograph to the fingerprint card with the registration information completed and forward to Washington state patrol, ~~((identification and criminal history section))~~ criminal records division. For electronic submissions, current color photographs ((may be)) added to OffenderWatch can be electronically ((mailed to a designated email address at the section. Identifying information (full name, date of birth, and SID) must accompany the photograph)) uploaded to the Washington state patrol database.

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-20-525 Change of address form. Registered sex and kidnapping offenders who change residence within the same county are required to submit change of address information to the county sheriff ~~((at least fourteen days before moving))~~ within three days.

Registered sex and kidnapping offenders who change residence from one county to another are required to ~~((send))~~ register with the new county of residence within three days of moving and must provide written notice ~~((fourteen days before moving to the county sheriff in the new county residence and must register with that county sheriff within twenty four hours of moving. The offender must send "change of address" information within ten days of moving in the new county))~~ of the change of address or in person to the county sheriff with whom the offender last registered.

~~((Registered sex and kidnapping offenders who move to another state or county must submit "change of address" information ten days before moving to the new state or county to the county sheriff with whom the offender last registered in Washington state.))~~

County sheriffs must forward "change of address" information to the Washington state patrol ~~((identification and criminal history section))~~ criminal records division within five working days upon receipt.

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-20-530 Refundable fee. The ~~((section))~~ division will reimburse sheriffs' offices for the actual registration cost, not to exceed thirty-two dollars for each registration, which must include photographs and fingerprints submitted pursuant to RCW 9A.44.130. This fee will further ensure that direct and indirect costs at the county level associated with the provisions of this chapter are refunded by the ~~((section))~~ division on a monthly basis based upon the number of registrations submitted.

AMENDATORY SECTION (Amending WSR 12-17-114, filed 8/21/12, effective 9/21/12)

WAC 446-20-600 Fees. (1) A nonrefundable fee must accompany each request for conviction records submitted for a name and date of birth background check or a background check requested by fingerprint search at the state level pursuant to RCW 43.43.830 through 43.43.845, and chapter 10.97 RCW unless through prior arrangement, an account is authorized and established.

(2) A nonrefundable FBI fee will be charged for fingerprint cards submitted for federal searches. It will be the responsibility of the ~~((section))~~ division to collect all fees due and forward fingerprint cards and fees to the FBI.

(3) A nonrefundable fee will be charged for taking fingerprint impressions by the ~~((section))~~ division. Fees are to be deposited in the Washington state patrol fingerprint identification account.

(4) A reasonable fee will be charged for a request for nonconviction data in lieu of a record review pursuant to RCW 10.97.080.

(5) All fees are to be made payable to the Washington state patrol and are to be remitted by cash, cashier's check, money order or check written on a business account. Credit cards may be used only for payment of electronic requests and for any other fingerprint or conviction record services the state patrol has implemented credit card payment procedures. The ~~((section))~~ division must adjust the fee schedule as may be practicable to ensure that direct and indirect costs associated with the provisions of these chapters are recovered.

(6) Pursuant to the provisions of RCW 43.43.838 and chapter 28A.410 RCW, no fees will be charged to a nonprofit organization, or volunteers in school districts and educational service districts for background checks.

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-20-610 Superintendent of public instruction—Prospective educational employees—Fees. (1) In addition to the state search, an FBI search is required for requests submitted under chapter 28A.410 RCW. One fingerprint card is required to be submitted to the Washington state patrol ~~((identification and criminal history section))~~ criminal records division.

(2) Appropriate nonrefundable fees are to be charged and made payable to the Washington state patrol for searches conducted under chapter 28A.410 RCW.

(3) Prospective employees hired by the superintendent of public instruction, educational service districts, school districts and/or their contractors must pay the appropriate fees for state and federal fingerprint checks conducted under chapter 28A.410 RCW.

(4) Fees are to be deposited in the Washington state patrol fingerprint identification account.

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-20-630 Department of social and health services—Child care licensing—Fees. (1) In addition to the state search, an FBI search is required for requests submitted under chapter 74.15 RCW. One fingerprint card is required to be submitted to the Washington state patrol ~~((identification and criminal history section))~~ criminal records division.

(2) Department of social and health services (DSHS) will process fingerprint background checks under chapter 74.15 RCW, RCW 43.43.837 and 43.20A.710.

(3) All nonrefundable fees collected will be deposited into the Washington state patrol fingerprint identification account.

(4) A nonrefundable state and FBI fee will be charged on fingerprint cards clearly designated as "volunteer" pursuant to the provisions under Section 3e of the National Child Care Protection Act of 1993 as amended by the Crime Control Act of 1994.

"RCW 43.43.837" and "volunteer" must be entered in the "reason fingerprinted" box on ~~((both))~~ the ~~((state and FBI))~~ fingerprint card(s) submitted. Failure to indicate "vol-

unteer" and the RCW citation on fingerprint cards will result in full fees being charged.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 446-20-410 Form of request to review refusal to modify record.

WAC 446-20-430 Certification request.

WAC 446-20-440 Contract for support services model agreement under WAC 446-20-180.

WSR 21-01-044

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed December 8, 2020, 10:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-21-013.

Title of Rule and Other Identifying Information: WAC 182-503-0090 Washington apple health—Exceptions to rule.

Hearing Location(s): On January 26, 2021, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the agency will not provide a physical location for this hearing. This promotes social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. To attend the virtual public hearing, you must register at the following link: <https://attendee.gotowebinar.com/register/5895859935949871883>. Webinar ID: 563-710-843. After registering, you will receive a confirmation email containing the information about joining the webinar.

Date of Intended Adoption: Not sooner than January 27, 2021.

Submit Written Comments to: The Health Care Authority (HCA), Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by January 26, 2021.

Assistance for Persons with Disabilities: Contact Amber Loughheed, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email amber.loughheed@hca.wa.gov, by January 8, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending WAC 182-503-0090 to specify the department of social and health services administrations responsible for processing exceptions to rule related to long-term services and supports programs. The agency is also making nonsubstantive changes for consistency with other agency rules.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Jensen, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0815; Implementation and Enforcement: Mark Westenhaber, P.O. Box 45534, Olympia, WA 98504-5534, 360-725-1324.

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

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

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule pertains to client program eligibility and does not impose any costs on businesses.

December 8, 2020
Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-14-019, filed 6/24/13, effective 7/25/13)

WAC 182-503-0090 Washington apple health—
Exceptions to rule. (1) ~~((An individual))~~ A client or client's representative may request an exception to a Washington apple health financial eligibility rule in Title 182 WAC. ~~((An individual must request an exception to rule (ETR) within ninety calendar days of the agency action with which the individual disagrees. The individual or the individual's representative may))~~ The request for an exception to rule (ETR) may be submitted orally or in writing. The request must:

(a) Be received within ninety calendar days of the agency action with which the client disagrees or wants waived;

(b) Identify the rule for which an exception is being requested;

~~((b))~~ (c) State what the ~~((individual))~~ client is requesting; and

~~((e))~~ (d) Describe how the request meets subsection (2) of this section.

(2) The agency director or designee has the discretion to grant an ETR if ~~((he or she))~~ they determine~~((s))~~ that the ~~((individual's))~~ client's circumstances satisfy the conditions below:

(a) The exception would not contradict a specific provision of federal or state law; and

(b) The ~~((individual's))~~ client's situation differs from the majority; and

(c) It is in the interest of the overall economy and the ~~((individual's))~~ client's welfare, and:

(i) It increases opportunity for the ~~((individual))~~ client to function effectively; or

(ii) The ~~((individual))~~ client has an impairment or limitation that significantly interferes with the usual procedures required to determine eligibility and payment.

(3) ~~((Individuals cannot appeal))~~ A client does not have a right to an administrative hearing on ETR decisions under chapter 182-526 WAC.

(4) ~~((An individual))~~ A client is mailed a decision in writing within ten calendar days when agency staff:

(a) Approve or deny an ETR request; or

(b) Request more information.

(5) If the ETR is approved, the notice includes information on ~~((the approval period))~~ what is approved and for what time frame.

(6) The agency designates staff at the aging and ~~((disability services))~~ long-term support administration ~~((ADSA))~~ (ALISA) and the developmental disabilities administration (DDA) to process all ETRs specifically relating to long-term ~~((care))~~ services and supports programs described in Title 182 WAC.

(7) This section does not apply to requests that the agency pay for noncovered medical or dental services or related equipment. WAC 182-501-0160 applies to such requests.

WSR 21-01-058
PROPOSED RULES
LIQUOR AND CANNABIS
BOARD

[Filed December 9, 2020, 10:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-15-041.

Title of Rule and Other Identifying Information: The Washington state liquor and cannabis board (WSLCB) proposes to amend WAC 314-55-010 and proposes new WAC 314-55-550 and 314-55-1055 to implement the directives and requirements of HB 2826 (chapter 133, Laws of 2020), concerning marijuana vapor products, now codified in RCW 69.50.101, 69.50.327, 69.50.342.

Hearing Location(s): On February 3, 2021, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the board will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. Board members, presenters, and staff will all participate remotely. The public may login using a computer or device, or call-in using a phone, to listen to the meeting through the 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 February 17, 2020 [2021].

Submit Written Comments to: Casey Schaufler, 1025 Union Avenue S.E., Olympia, WA 98504, email rules@lcb.wa.gov, by February 3, 2021.

Assistance for Persons with Disabilities: Contact Claris Nhanabu, Americans with Disabilities Act 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 January 27, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HB 2826 provides that the board may adopt rules prohibiting any type of marijuana vapor product device, or prohibit the use of any type of additive, solvent, ingredient, or compound in the production and processing of marijuana products, including marijuana vapor products. Proposed new rule section, WAC 314-55-550, establishes a procedure for the board to monitor, evaluate, and prohibit devices or additives used in conjunction with marijuana vapor products, consistent with HB 2826 and codified in RCW 69.50.342 (1)(m). The proposed rule also amends WAC 314-55-010 (4) and (40), adding definitions for "characterizing flavor" and "terpenes." Proposed new rule section, WAC 314-55-1055, makes current emergency rules, originally adopted on October 16, 2019, under WSR 19-21-100 and most recently readopted September 16, 2020, under WSR 20-19-083 permanent. The proposed new rule section requires marijuana processors and producers to disclose all compounds, including but not limited to ingredients, solvents, additives, preservatives, thickening agents, terpenes, and other substances used to produce or added to marijuana concentrates for inhalation or marijuana-infused extracts for inhalation at any point during production and processing, regardless of source or origin. Disclosure must be made to the board on forms provided by the board, consistent with HB 2826 and codified in RCW 69.50.342 (1)(n).

Reasons Supporting Proposal: New rule sections and amendment to existing rule is necessary to allow WSLCB to implement marijuana vapor product regulation consistent with HB 2826, and to establish definitions for terms including, but not limited to "characterizing flavor," "botanical terpenes," and others.

Statutory Authority for Adoption: RCW 69.50.342, 69.50.345.

Statute Being Implemented: HB 2826 (chapter 133, Laws of 2020), now codified in RCW 69.50.101, 69.50.327, 69.50.342.

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

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

Name of Proponent: 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 314-55-010 (4) and (40), 314-55-550 and 314-55-1055 adopts, incorporates and implements the requirements of HB 2826, codified in RCW 69.50.327 and 69.50.342 (1)(m) and (n).

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. Licensing costs: There are no licensing 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. Thus, licensing costs were not included in this calculation.

Administrative costs: WSLCB estimates it will take a producer or processor licensee around one hour for each submitted ingredient disclosure form and any related phone calls or communications with agency staff. It will not be necessary for a retail licensee to submit a disclosure form. Producer and processor licensees must disclose all ingredients used in the production of marijuana concentrates for inhalation and marijuana-infused extracts for inhalation, and forms must be updated whenever there is any change in product composition. If a producer or processor submits an ingredient disclosure form up to two times a month, they could spend up to twenty-four hours per year on product disclosure forms (1 hour per form x 24 forms per year = 24 hours per year).

According to the 2019 Occupational Employment Statistics Databook (<https://esd.wa.gov/labormarketinfo/report-library>), the average hourly wage in Washington state for secretaries and administrative assistants, except legal, medical, and executive (using the SOC Code 43-6014) is \$21.31. The estimated annual cost for these administrative activities is up to \$511.44 (\$21.31 avg. hourly wage x 24 hours = \$511.44).

Below are calculations for minor cost thresholds across all impacted license types based on the best analogous NAICS types. The minor cost does not exceed any of the thresholds for any of the license types. 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	\$511.44	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	\$511.44	Marijuana Producers	Crop Production	\$4,082.13	\$4,082.13 2018 Dataset pulled from USBLS	\$2,998.38 2018 Dataset pulled from DOR

December 9, 2020
Jane Rushford
Chair

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

WAC 314-55-010 Definitions. The following definitions apply for the purpose of this chapter in addition to the definitions provided in RCW 69.50.101.

(1) "Applicant" or "marijuana license applicant" means any person or business entity who is considered by the WSLCB as a true party of interest in a marijuana license, as outlined in WAC 314-55-035. However, for purposes of determining an application's priority under RCW 69.50.331 (1)(a), only the person or business entity that is applying for the license will be considered the applicant.

(2) "Batch" means a quantity of marijuana-infused product containing material from one or more lots of marijuana.

(3) "Business name" or "trade name" means the name of a licensed business as used by the licensee on signs and advertising.

(4) "Characterizing flavor" means a noticeable taste, other than one of cannabis, resulting from an additive or combination of additives including, but not limited to, fruit, spice, herbs, alcohol, candy, or menthol, or that is noticeable before or during consumption of the cannabis product.

(5) "Child care center" means an entity that regularly provides child day care and early learning services for a group of children for periods of less than twenty-four hours licensed by the Washington state department of early learning under chapter 170-295 WAC.

~~((5))~~ (6) "Consultant" means an expert who provides advice or services in a particular field, whether a fee is charged or not. A consultant who is in receipt of, or has the right to receive, a percentage of the gross or net profit from the licensed business during any full or partial calendar or fiscal year is a true party of interest and subject to the requirements of WAC 314-55-035. A consultant who exercises any control over an applicant's or licensee's business operations is also subject to the requirements of WAC 314-55-035(4).

~~((6))~~ (7) "Cooperative" means a group of more than one, but no more than four qualified medical marijuana patients and/or designated providers who share responsibility for growing and processing marijuana only for the medical use of the members of the cooperative.

~~((7))~~ (8) "Domicile" means a person's true, fixed, primary permanent home and place of habitation and the tax parcel on which it is located. It is the place where the person intends to remain and to which the person expects to return

when the person leaves without intending to establish a new domicile elsewhere.

~~((8))~~ (9) "Elementary school" means a school with a physical location for early education that provides the first four to eight years of basic education and recognized by the Washington state superintendent of public instruction.

~~((9))~~ (10) "Employee" means any person performing services on a licensed premises for the benefit of the licensee whether or not such person is compensated by the licensee.

~~((10))~~ (11) "End product" means a marijuana product that requires no further processing prior to retail sale.

~~((11))~~ (12) "Financier" means any person or entity, other than a banking institution, that provides money as a gift or loans money to the applicant/business and expects to be paid back the amount of the loan with or without reasonable interest.

~~((12))~~ (13) "Game arcade" means an entertainment venue featuring primarily video games, simulators, and/or other amusement devices where persons under twenty-one years of age are not restricted.

~~((13))~~ (14) "Harvest" means the marijuana plant material derived from plants of the same strain that were cultivated at the same licensed location and gathered at the same time.

~~((14))~~ (15) "Immature plant or clone" means a marijuana plant or clone that has no flowers, is less than twelve inches in height, and is less than twelve inches in diameter.

~~((15))~~ (16) "Intermediate product" means marijuana flower lots or other material lots that have been converted by a marijuana processor to a marijuana mix lot, marijuana concentrate or marijuana-infused product that must be or are intended to be converted further to an end product.

~~((16))~~ (17) "Library" means an organized collection of resources made accessible to the public for reference or borrowing supported with money derived from taxation.

~~((17))~~ (18) "Licensed premises" means all areas of a premises where the licensee has leasehold rights as listed in the property lease submitted to the board. Any vehicle assigned for the purposes of transporting marijuana, useable marijuana, marijuana concentrates, or marijuana-infused products shall be considered an extension of the licensed premises.

~~((18))~~ (19) "Licensee" or "marijuana licensee" means any person or entity that holds a marijuana license, or any person or entity who is a true party of interest in a marijuana license, as outlined in WAC 314-55-035.

~~((19))~~ (20) "Lot" means either of the following:

(a) The flowers from one or more marijuana plants of the same strain. A single lot of flowers cannot weigh more than five pounds; or

(b) The trim, leaves, or other plant matter from one or more marijuana plants. A single lot of trim, leaves, or other plant matter cannot weigh more than fifteen pounds.

~~((20))~~ (21) "Lozenge" means a marijuana-infused product such as a hard candy, mint, pastille, tablet, or similar type of edible product that is generally swallowed whole, chewed and swallowed, or dissolved in the mouth.

~~((21))~~ (22) "Marijuana strain" means a pure breed or hybrid variety of Cannabis reflecting similar or identical combinations of properties such as appearance, taste, color, smell, cannabinoid profile, and potency.

~~((22))~~ (23) "Marijuana mix" means an intermediate lot that contains multiple strains of useable marijuana and is chopped or ground so no particles are greater than 3 mm.

~~((23))~~ (24) "Marijuana mix infused" or "mix infused" means an end product that contains marijuana mix and may contain other intermediate products or useable marijuana.

~~((24))~~ (25) "Marijuana mix packaged" or "mix packaged" means an end product containing only marijuana mix and no other product types.

~~((25))~~ (26) "Member," except as that term is used in relation to registered cooperatives, means a principal or governing person of a given entity, including but not limited to: LLC member/manager, president, vice president, secretary, treasurer, CEO, director, stockholder, partner, general partner, limited partner. This includes all spouses of all principals or governing persons named in this definition and referenced in WAC 314-55-035.

~~((26))~~ (27) "Paraphernalia" means items used for the storage or use of useable marijuana, marijuana concentrates, or marijuana-infused products, such as, but not limited to, lighters, roach clips, pipes, rolling papers, bongs, and storage containers. Items for growing, cultivating, and processing marijuana, such as, but not limited to, butane, lights, and chemicals are not considered "paraphernalia."

~~((27))~~ (28) "Pesticide" means, but is not limited to: (a) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, snail, slug, fungus, weed, and any other form of plant or animal life or virus, except virus on or in a living person or other animal which is normally considered to be a pest; (b) any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; and (c) any spray adjuvant. Pesticides include substances commonly referred to as herbicides, fungicides, insecticides, and cloning agents.

~~((28))~~ (29) "Perimeter" means a property line that encloses an area.

~~((29))~~ (30) "Plant" means a marijuana plant.

~~((30))~~ (31) "Plant canopy" means the square footage dedicated to live plant production, such as maintaining mother plants, propagating plants from seed to plant tissue, clones, vegetative or flowering area. Plant canopy does not include areas such as space used for the storage of fertilizers, pesticides, or other products, quarantine, office space, etc.

~~((31))~~ (32) "Playground" means a public outdoor recreation area for children, usually equipped with swings, slides,

and other playground equipment, owned and/or managed by a city, county, state, federal government, or metropolitan park district.

~~((32))~~ (33) "Product(s) otherwise taken into the body" means a marijuana-infused product for human consumption or ingestion intended for uses other than inhalation, oral ingestion, or external application to the skin.

~~((33))~~ (34) "Public park" means an area of land for the enjoyment of the public, having facilities for rest and/or recreation, such as a baseball diamond or basketball court, owned and/or managed by a city, county, state, federal government, or metropolitan park district. Public park does not include trails.

~~((34))~~ (35) "Public transit center" means a facility located outside of the public right of way that is owned and managed by a transit agency or city, county, state, or federal government for the express purpose of staging people and vehicles where several bus or other transit routes converge. They serve as efficient hubs to allow bus riders from various locations to assemble at a central point to take advantage of express trips or other route to route transfers.

~~((35))~~ (36) "Recreation center or facility" means a supervised center that provides a broad range of activities and events intended primarily for use by persons under twenty-one years of age, owned and/or managed by a charitable non-profit organization, city, county, state, federal government, or metropolitan park district.

~~((36))~~ (37) "Residence" means a person's address where he or she physically resides and maintains his or her abode.

~~((37))~~ (38) "Secondary school" means a high and/or middle school with a physical location: A school for students who have completed their primary education, usually attended by children in grades seven to twelve and recognized by the Washington state superintendent of public instruction.

~~((38))~~ (39) "Selling price" means the same meaning as in RCW 82.08.010, except that when the product is sold under circumstances where the total amount of consideration paid for the product is not indicative of its true value. Selling price means the true value of the product sold as determined or agreed to by the WSLCB. For purposes of this subsection:

(a) "Product" means marijuana, marijuana concentrates, useable marijuana, or marijuana-infused products; and

(b) "True value" means market value based on sales at comparable locations in the state of the same or similar product of like quality and character sold under comparable conditions of sale to comparable purchasers. In the absence of such sales of the same or similar product, true value means the value of the product sold as determined by all of the seller's direct and indirect costs attributed to the product.

~~((39))~~ (40) "Terpenes" means a class of compounds that impart smell, taste, or both occurring in the cannabis plant which consist of a carbon skeleton derived from isoprene units. The word "terpene" may include, but is not limited to, the following:

(a) "Botanical terpenes" means constituents derived from a spice, fruit, vegetable or vegetable juice, edible yeast, herb, bark, bud, root, or leaf or similar plant material. Their

significant function in cannabis products is flavoring. This includes:

(i) Essential oil, which is natural oil typically obtained by distillation and possessing the characteristic fragrance of the plant or other source from which it is extracted;

(ii) Oleoresin, which is a natural or artificial mixture of essential oils and a resin;

(iii) Distillate; or

(iv) Any product of roasting, heating, or enzymolysis which contains terpenes.

(b) "Synthetic terpenes" means any terpene that does not occur in the cannabis plant, or in other botanical sources, and is produced through chemical manipulation in a laboratory or similar facility.

(c) "Terpenoids" means the natural products and related compounds formally derived from isoprene units, or "isoprenoids," that have the same meaning as that found in the current version of the International Union of Pure and Applied Chemistry (IUPAC) and as hereafter amended.

(41) "Unit" means an individually packaged marijuana-infused solid or liquid product meant to be eaten or swallowed, not to exceed ten servings or one hundred milligrams of active tetrahydrocannabinol (THC), or Delta 9.

~~((40))~~ (42) "WSLCB" means the Washington state liquor and cannabis board.

NEW SECTION

WAC 314-55-550 Marijuana vapor products. (1) The purpose of this section is to:

(a) Support and further the protection of public health and prevention of youth access consistent with RCW 69.50-101(xx).

(b) Mitigate the risks to public health and youth access by prohibiting the use of any additive, solvent, ingredient, or compound in marijuana vapor product production and processing when appropriate, consistent with RCW 69.50.342 (1)(m).

(c) Mitigate the risks to public health and youth access by prohibiting any device used in conjunction with a marijuana vapor product when appropriate, consistent with RCW 69.50.342 (1)(n).

(2) Procedure for prohibited substances.

(a) The board may prohibit any type of device used in conjunction with a marijuana vapor product, and may prohibit the use of any type of additive, solvent, ingredient, or compound in the production of marijuana vapor products that may pose a risk to public health or youth access.

(b) The board may consider, following consultation with the department of health or other authority the board deems appropriate, any relevant data when determining whether a device, additive, solvent, ingredient or compound may pose a risk to public health or youth access including, but not limited to:

(i) Case report data;

(ii) Other local, state and federal agency findings, reports, etc.;

(iii) A product or substance that is the subject of a recall under WAC 314-55-225;

(iv) Any other information sourced and confirmed from reliable entities.

(c) The board may prohibit the use of a product or substance by adoption of emergency or permanent rules. The board will provide notices of rule making consistent with the requirements of chapter 34.05 RCW.

(d) The board will maintain a list of prohibited substances prohibited by permanent or emergency rules on its website.

(e) The list of prohibited substances will be reviewed on an annual basis.

(f) Prohibited substances may be removed from the list of prohibited substances if the board determines, after a review consistent with (b)(i) through (iv) of this subsection, that it no longer poses a risk to public health or youth access.

NEW SECTION

WAC 314-55-1055 Ingredient disclosure. (1) All licensed marijuana processors and producers must disclose all ingredients used in the production of marijuana concentrates for inhalation and marijuana-infused extracts for inhalation.

(2) All chemicals, compounds, additives, preservatives, thickening agents, terpenes, and other substances used at any point in the production or processing of marijuana concentrates for inhalation or marijuana-infused extracts for inhalation, regardless of source or origin, must be disclosed to the board as follows:

(a) On a form provided by the board and stored by the licensee, either electronically or in hard copy, and made available for inspection if requested by an employee of the board; and

(b) In a manner directed by the board including, but not limited to, submission to an email address or other online platform provided and maintained by the board.

(3) The complete list of all chemicals, compounds, additives, preservatives, thickening agents, terpenes, and other substances used at any point in the production or processing of marijuana concentrates for inhalation or marijuana-infused extracts for inhalation, regardless of source or origin, that is required under subsection (2) of this section must be kept and maintained, consistent with recordkeeping requirements described in WAC 314-55-087, at the facility in which the products are processed. The list must be updated whenever there is any change in product composition.

WSR 21-01-091

PROPOSED RULES

SEATTLE COLLEGES

[Filed December 10, 2020, 5:18 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-15-102.

Title of Rule and Other Identifying Information: Student activities, rights, and discipline.

Hearing Location(s): On January 26, 2021, at 3:00-5:00 p.m., Zoom (online).

Date of Intended Adoption: February 11, 2021.

Submit Written Comments to: Jennie Chen, 1500 Harvard Avenue, Seattle, WA 98122, email jennie.chen@seattlecolleges.edu, by January 22, 2020 [2021].

Assistance for Persons with Disabilities: Contact Jennie Chen, phone 206-934-3873, email jennie.chen@seattlecolleges.edu, by January 22, 2020 [2021].

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Update current rules to be in compliance with new Title IX federal regulations issued by the Department of Education (DOE). Emergency rules filed are set to expire so we are adopting permanent rules. New sections set forth rules for Title IX allegations, the discipline process, and the hearing procedures.

Reasons Supporting Proposal: These rules are needed for compliance with the new Title IX requirements from DOE.

Statutory Authority for Adoption: RCW 28B.50.140, 28B.50.090(3).

Statute Being Implemented: Not applicable.

Rule is necessary because of federal law, 34 C.F.R. 106.

Name of Proponent: Seattle Colleges, public.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jennie Chen, Siegal Center, 206-934-3873.

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 district is not one of the enumerated agencies listed in 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 34.05.328.

Explanation of exemptions: Pursuant to RCW 34.05.328 (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.

December 10, 2020
Jennie Chen, Director
Legal Compliance

AMENDATORY SECTION (Amending WSR 16-04-025, filed 1/25/16, effective 2/25/16)

WAC 132F-121-005 Statement of values. The Seattle College District is a diverse and dynamic learning community. As such, the college district maintains a strong commitment to our values. We value students: We promote programs, services and activities that address students' needs and interests; student success through accessibility and support services; and student development through activities both inside and outside the classroom. We value diversity: We promote respect for the abilities and interests of each individual; awareness and understanding of all people; and appreciation of the unique cultures of our campuses. We are committed to the concept and practice of equal opportunity for all, and do not tolerate discrimination or retaliation against any

member of the college community because of (~~her/his~~) their race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status, religion; creed; genetic information; sexual orientation; age; gender identity; gender expression; veteran's status; or any other legally protected classification, in accordance with WAC 132F-121-110(1).

AMENDATORY SECTION (Amending WSR 16-04-025, filed 1/25/16, effective 2/25/16)

WAC 132F-121-010 Definitions and general provisions. For purposes of this chapter(~~(:)~~), except for the Title IX supplemental procedures, the following definitions apply. The definition of "consent," however, will apply to the whole chapter.

(1)(a) **Bullying.** Bullying is defined as the repeated use by one or more students of a written, verbal or electronic expression or a physical act or gesture or any combination thereof, directed at another student or staff that:

(i) Intentionally causes physical or emotional imminent harm to the student or damage to the student's property;

(ii) Places the student in reasonable fear of harm to (~~her-self or himself~~) themselves or of damage to the student's property;

(iii) Creates an unlawful hostile environment at school for the student;

(iv) Infringes on the rights of the student at school; or

(v) Is conduct that is sufficiently severe or pervasive to cause material disruption to the ability of a student to participate or benefit in the education program.

(b) **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, including images or videos of a sexual nature, and nonconsensual distribution of such material.

(c) **Stalking.** Stalking is intentional and repeated following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that person is frightened, intimidated or harassed, even if the perpetrator lacks such an intent.

(2) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, sexual violence, and domestic violence.

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature that is sufficiently serious as to deny or limit, and that

does deny or limit, based on sex, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members.

(b) Sexual intimidation. The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(c) Sexual violence. Sexual violence is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.

(i) Nonconsensual sexual intercourse is any sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(ii) Nonconsensual sexual contact is any intentional sexual touching, however slight, with any object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(iii) Domestic violence as defined in (d) of this subsection.

(iv) Dating violence means violence by a person who has been in a romantic or intimate relationship with the victim, and includes conduct that causes emotional, psychological, physical, and sexual trauma. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

(v) Stalking as defined in subsection (1)(c) of this section.

(vi) Consent: Knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

A person cannot consent if ~~((he or she is))~~ they are unable to understand what is happening or is disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(d) Domestic violence. Domestic violence includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law, and, includes conduct that causes emotional, psychological, physical, and sexual trauma.

(3) The terms "college" and "campus" are used interchangeably, and each refers to any of the district's three colleges, North Seattle College, Seattle Central College, and South Seattle College. The Seattle Vocational Institute is considered to be part of Seattle Central College.

(4) "Day" means calendar day, unless specified otherwise, and deadlines shall be computed in accordance with WAC 10-08-080.

(5) "District" means the sixth state college district, the district administrative offices (Siegal Center), North Seattle College, Seattle Central College, South Seattle College, ~~((the Seattle Vocational Institute,))~~ and/or every other District VI educational facility, each separately and all together.

(6) "District community" includes, but is not limited to, the district itself and all enrolled students, employees, officers, and invitees of the district.

(7) "District property" includes all real property, buildings, and other facilities that are owned, leased, or controlled by the district or by the state for district purposes.

(8) "Vice president for student services" means the person whom a college president has appointed to that position or has otherwise designated to perform the functions ascribed to that position in this chapter.

(9) An action or activity that may be authorized or taken by the district chancellor, a vice chancellor, a campus president, or a campus vice president may also be authorized or taken by any other person whom that officer has specifically designated to perform that function on ~~((his/her))~~ their behalf, but this officer retains responsibility for the function.

(10) After the adoption of these rules, if a statute or rule to which they refer is renumbered or otherwise amended, these rules shall be interpreted to the fullest extent possible to incorporate such amendment while still giving effect to their original purposes.

(11) Service of any document, notice, or copy under this chapter shall be made (a) by personal delivery, (b) by mailing to the recipient's last known address, which service shall be regarded as complete upon deposit in the U.S. mail properly stamped and addressed, or (c) as otherwise authorized by law or rule.

(12) The term "student" includes all persons taking courses at the district, either full-time or part-time. Persons who withdraw after allegedly violating the student code, who are not officially enrolled for a particular term but who have a continuing relationship with the district, or who have been notified of their acceptance for admission are considered "students" as are persons who are living in district resident halls, although not enrolled at the district.

AMENDATORY SECTION (Amending WSR 16-04-025, filed 1/25/16, effective 2/25/16)

WAC 132F-121-020 Student rights, freedoms, and responsibilities. (1) 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:

(a) Academic freedom.

(i) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public.

(ii) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services, subject to the limitations of RCW 28B.50.090 (3)(b).

(iii) Students shall be protected from academic evaluation which is arbitrary, prejudiced, or capricious, but are responsible for meeting the standards of academic performance established by each of their instructors.

(iv) Students have the right to a learning environment which is free from unlawful discrimination, inappropriate and disrespectful conduct, and any and all harassment, including sexual harassment.

(b) Due process.

(i) The rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures is guaranteed.

(ii) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(iii) A student accused of violating this code of student conduct is entitled, upon request, to procedural due process as set forth in this chapter.

(iv) Sexual misconduct investigations. Both the respondent and the ~~((complainant))~~ claimant 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.

(2) Classroom freedom of expression. The district recognizes the rights of students to freedom of discussion and free expression of views. However, students' rights of classroom expression do not include expressions or conduct which create a hostile educational environment or violate chapter 49.60 RCW or other applicable law. It is the responsibility of the instructor to insure and encourage the realization not only of the fact but of the spirit of free inquiry. Instructors have the responsibility to maintain order, but this authority shall not be used to inhibit the expression of views contrary to their own. Students have the right to take reasoned exception to the data or views offered in any course of study and to reserve judgment about matters of opinion, but they cannot do so in a disruptive manner that interferes with the educational process. Students are responsible for learning the content of any course of study for which they are enrolled. It also is the responsibility of the student to comply with the instructor's efforts to assure freedom of expression and to maintain order.

(3) Protection against improper evaluation. Instructors shall give their students fair and consistent evaluations of the students' course performance. Toward this end, instructors are also responsible for establishing appropriate standards of academic performance for each course. Fair and consistent grading is a legitimate classroom experience.

(4) Protection against improper disclosure. Information about student views, beliefs, and political associations which is acquired by instructors in the course of their work as faculty or advisors, under circumstances which clearly indicate that it is intended to be confidential, shall be treated as confidential and shall not be disclosed to others, unless it relates to the apparent or intended commission of a crime or disclosure is required by law. Protection against improper disclosure of student education record information is a serious professional obligation incurred by the teaching profession and district administrators. However, evaluations of student ability and character may be provided to third parties with the student's consent or in accordance with applicable law.

(5) Nonacademic expression and inquiry. Students and student organizations are free to examine and to discuss all questions of interest to them and to express opinions publicly and privately, in accordance with law. They are free to support causes by orderly and lawful means which do not disrupt the operation of the institution and which comply with the district's policies regarding these activities.

(6) The district shall respect students' right to privacy. It will not inquire into the off-campus activities of its students without legal justification.

AMENDATORY SECTION (Amending WSR 13-11-127, filed 5/21/13, effective 6/21/13)

WAC 132F-121-030 Student organizations. (1) Student organizations may be established and recognized whether their aims are educational, cultural, recreational, social, athletic, religious, political, or economic. Affiliation with an external organization shall not in and of itself disqualify a campus-based student organization from recognition. Membership in a student organization shall be open to any student who subscribes to the stated aims of the organization. To operate as such, a student organization must be recognized by the approved student government organization. The student organization shall abide by all governing federal and state laws and district and campus rules, policies and procedures.

(2) A college may require, as a condition of access to campus funds and/or facilities, demonstration or proof of the student enrollments of a student organization's members. However, any list of members compiled for such purposes shall not be publicly disclosed except in accordance with applicable law. A college may, in its discretion, permit others, such as students' spouses, to participate in a student organization's activities under appropriate conditions.

(3) Each year, before a student organization may be recognized or function as such, or may use services and activities funds, a college employee must be identified to serve as its advisor and ~~((his/her))~~ their name must be approved by the vice president for student services or designee.

(4) Where funds are allocated to a student organization, financial accountability is required. Student organizations' funds shall be maintained at the college, in college accounts. The organizations shall keep detailed written records of their income and expenditures and shall assure that these can be reconciled with the campus budget and accounting system. Student organizations' financial records must be made available upon request to the student government organization and to any administrative officer designated by the college president.

(5) A college president may withdraw a student organization's recognition and funding for good cause. Such cause shall include, but not be limited to, (a) failure to comply with this rule or other district requirements or (b) hazing.

AMENDATORY SECTION (Amending WSR 13-11-127, filed 5/21/13, effective 6/21/13)

WAC 132F-121-050 Student use of the district/college name. (1) No individual student, student group, or student organization may act or make any representation in the name of the district or of any campus without specific authorization from the vice president for student services or designee.

(2) No individual student, student group or student organization shall falsely indicate or represent that (~~(his, her, or its)~~) their own position on any policy or issue is that of the district or of any campus.

AMENDATORY SECTION (Amending WSR 13-11-127, filed 5/21/13, effective 6/21/13)

WAC 132F-121-080 Formal processing of complaints. (1) To be considered under the formal process, a complaint must be filed in writing with the campus complaints officer by the final day of the quarter following the quarter in which the problem occurred, except as otherwise provided in WAC 132F-121-090 for a grade complaint. For purposes of complaints, the quarter which follows spring quarter is fall quarter. The written document should fully specify the facts and other grounds on which the complaint is based, and should include copies of relevant supporting documents when feasible. The complaints officer may extend any deadline herein for good cause.

(2) If the complaints officer determines that the complaint does not qualify to be addressed through the formal process, that officer must inform the student, explaining the reasons in writing within five working days. The student complainant may obtain review of that notice of complaint disqualification by filing a written request with the complaints officer under subsection (9) of this section.

(3) If the complaints officer determines that the complaint does qualify as such, that officer must serve copies of the complaint and the supporting documents on the individual named in the complaint (the respondent) and the respondent's supervisor, within five working days.

(4) The respondent, upon receiving notice of the formal complaint, shall provide a response in writing to the complaints officer, and to the respondent's supervisor, within ten working days.

(5) The complaints officer must forward the written response, or the information that no response was received, to the student complainant within five working days of receipt of the response, or five working days from when a response was due.

(6) If the student complainant finds that the response or lack thereof is unsatisfactory she/he has five working days in which to submit a written request for the complaints officer to schedule a conference with the respondent to discuss the matter.

(7) Upon receipt of such request, the complaints officer has five working days to schedule the conference which must be convened within ten working days of receipt of the students' request or as soon thereafter as feasible. This conference will include the student, the respondent, and (~~(his or her)~~) their supervisor, and be moderated by the complaints officer.

(8) During this conference the complaints officer shall try to facilitate resolution. The complaints officer shall produce a written statement summarizing the conference and provide copies to all parties within ten working days of the conference.

(9) The student complainant may request a review of the outcome of the complaint conference (or of a complaint disqualification) by submitting a written request for administrative review to the complaints officer within five working days of receiving the conference summary.

(10) The complaints officer shall forward, within five working days, the request for administrative review, the complaint, supporting documents, and the conference summary either to the vice president of instruction (if the officer determines that the complaint is predominantly an instructional matter), or to the vice president for student services (if the officer determines that the complaint is predominantly non-instructional in nature).

(11) This administrator shall review the complaint and documentation, and may also interview knowledgeable persons as appropriate. The administrator should render a written decision within ten working days after receiving the complaint and documents, or as soon thereafter as feasible. The administrator may accept, reject, or modify any of the previous action(s) in the matter, and/or take other action(s). This decision shall be in writing and shall be served on the student complainant and others deemed appropriate.

(12) This decision of the reviewing administrator shall be the final decision of the district on that complaint.

AMENDATORY SECTION (Amending WSR 16-04-025, filed 1/25/16, effective 2/25/16)

WAC 132F-121-110 Student misconduct. Misconduct for which the campuses may impose sanctions includes, but is not limited to, any of the following:

(1) Discriminatory conduct. Discriminatory conduct which harms or adversely affects any member of the college community because of (~~(her/his)~~) their race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status, religion; creed; genetic information; sexual orientation; age; gender

identity; gender expression; veteran's status; or any other legally protected classification.

(2) Sexual misconduct. The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence as defined in WAC 132F-121-010(2).

(3) Harassment. Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; genetic information; sexual orientation; gender identity; gender expression; veteran's status; or any other legally protected classification, and includes sexual harassment. Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic forms of communication.

(4) Any act of course-related dishonesty, including but not limited to cheating or plagiarism.

(a) Cheating includes, but is not limited to, using, or attempting to use, any material, assistance, or source which has not been authorized by the instructor to satisfy any expectation or requirement in an instructional course, or obtaining, without authorization, test questions or answers or other academic material that belong to another.

(b) Plagiarism includes, but is not limited to, using another person's ideas, words, or other work in an instructional course without properly crediting that person.

(c) Academic dishonesty also includes, but is not limited to, submitting in an instructional course either information that is known to be false (while concealing that falsity) or work that is substantially the same as that previously submitted in another course (without the current instructor's approval).

(5) Any other act of college-related dishonesty. Such acts include, but are not limited to:

(a) Forgery, alteration, or misuse of any district document, record, or instrument of identification;

(b) Tampering with an election conducted by or for district students; or

(c) Furnishing false information, or failing to furnish correct information, in response to the request or requirement of a district officer or employee.

(6) Obstruction or disruption of (a) any instruction, research, administration, disciplinary proceeding, or other district activity, whether occurring on or off district property, or (b) any other activity that is authorized to occur on district property, whether or not actually conducted by the district.

(7) Assault, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, cyberbullying, stalking or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property.

(8) Attempted or actual damage to, or theft or misuse of, real or personal property or money of (a) the district or state, (b) any student or district officer, employee, or organization,

or (c) any other person or organization lawfully present on district property, or possession of such property or money after it has been stolen.

(9) Failure to comply with the direction of a district officer or employee who is acting in the legitimate performance of (~~(his or her)~~) their duties, or failure to properly identify oneself to such a person when requested to do so.

(10) Participation in any activity which unreasonably disrupts the operations of the district or infringes on the rights of another member of the district community, or leads or incites another person to engage in such an activity.

(11) Weapons. Carrying, holding, wearing, exhibiting, displaying or drawing 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 firearm in (~~(his or her)~~) their vehicle parked on campus in accordance with RCW 9.41.050, provided the vehicle is locked and the weapon is concealed from view; or

(c) The president or the president's designee may authorize possession of a weapon on campus upon a showing that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated therein.

This policy does not apply to the possession and/or use of disabling chemical sprays when possessed and/or used for self-defense.

(12) 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.

(13) Alcohol. The use, possession, delivery, or sale of any alcoholic beverage, except as permitted by law, applicable college policies, or authorized by chancellor or a college president, or being observably under the influence of alcohol.

(14) Drugs.

(a) Marijuana. The use, possession, delivery, or sale of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(b) Drugs. The use, possession, delivery, sale or being 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.

(15) Obstruction of the free flow of pedestrian or vehicular movement on district property or at a district activity.

(16) Conduct which is disorderly, lewd, or obscene.

(17) Breach of the peace, or aiding, abetting, or procuring a breach of the peace.

(18) The use of tobacco, electronic cigarettes, and related products is prohibited in any building owned, leased or operated by the college, including twenty-five feet from entrances, exits, windows that open, and ventilation intakes of such buildings, and where otherwise prohibited. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, water pipes, hookahs, chewing tobacco, and snuff.

(19) Theft or other misuse of computer time or other electronic information resources of the district. 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 district'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 district's electronic information resources without authorization; or

(i) Failure to comply with the district's electronic use policy.

(20) Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to district property, or unauthorized entry onto or into district property.

(21) Abuse or misuse of any of the procedures relating to student complaints or misconduct including, but not limited to:

(a) Failure to obey a subpoena;

(b) Falsification or misrepresentation of information;

(c) Disruption, or interference with the orderly conduct, of a proceeding;

(d) Interfering with someone else's proper participation in a proceeding;

(e) Destroying or altering potential evidence, or attempting to intimidate or otherwise improperly pressure a witness or potential witness;

(f) Attempting to influence the impartiality of, or harassing or intimidating, a student conduct committee member; or

(g) Failure to comply with any disciplinary sanction(s) imposed under this student conduct code.

(22) Safety violations. The operation of any motor vehicle on district property in an unsafe manner or in a manner which is reasonably perceived as threatening the health or safety of another person. Safety violation includes any nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(23) Violation of any other district rule, requirement, or procedure including, but not limited to, any that is posted in electronic form, the district's traffic and parking rules, or the requirements for carpool parking.

(24) Violation of any federal, state, or local law, rule, or regulation, including any hate crime.

(25) 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 an educational goal or major.

In addition to initiating discipline proceeding for violation of the student conduct code, the college may refer any violations of federal, state or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

(26) Aiding, abetting, inciting, encouraging, or assisting another person to commit any of the foregoing acts of misconduct.

(27) Retaliation. Retaliation against any individual for reporting, providing information, exercising one's rights or responsibilities, or otherwise being involved in the process of responding to, investigating, or addressing allegations or violations of federal, state or local law, or college policies including, but not limited to, student conduct code provisions prohibiting discrimination and harassment.

AMENDATORY SECTION (Amending WSR 03-16-015, filed 7/28/03, effective 8/28/03)

WAC 132F-121-120 Instructor sanctions for course work dishonesty or classroom misconduct. (1) An instructor need not give credit for course work that is the product of cheating, plagiarism, or other dishonesty. For any act of dishonesty that occurs during an instructional course, the instructor may adjust the student's grade accordingly for the particular examination, paper, or other work product where that dishonesty occurred. Any such grade adjustment shall not limit or preclude disciplinary sanction(s) for the same act of dishonesty.

(2) An instructor may 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. If a student is so disorderly or disruptive that it is difficult or impossible to maintain classroom decorum, that action may include removing that student from that day's class session.

(3) With regard to any act of course-related dishonesty, classroom misconduct, or other academic misconduct, the faculty member involved may notify (~~his/her~~) their dean, with supporting documentation. The dean shall then determine whether to refer the matter to the vice president for student services for possible disciplinary action.

(4) A student who has received a grade adjustment by the instructor on the basis of dishonesty may grieve that adjustment under the student complaint procedure. However, any disciplinary sanction that is imposed instead of or in addition to an instructor's grade adjustment may be imposed and reviewed only under the student disciplinary procedure.

AMENDATORY SECTION (Amending WSR 13-11-127, filed 5/21/13, effective 6/21/13)

WAC 132F-121-140 Initiation of discipline. (1) The vice president for student services or designee at each campus is responsible for investigating possible violations of this student conduct code at that campus and initiating any appropriate disciplinary actions. If that officer is a respondent in a complaint initiated by the subject student, the college president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.

(2) Any member of the district community may make a complaint against a student whom she/he believes has violated this student conduct code. Such a complaint should ordinarily be filed in writing with the vice president for student services. However, no such complaint is required in order for that vice president to take action on any matter that comes to ((his/her)) their attention.

AMENDATORY SECTION (Amending WSR 16-04-025, filed 1/25/16, effective 2/25/16)

WAC 132F-121-170 Appeals and referrals generally.

(1) Except as otherwise provided herein, a respondent who has received notice of disciplinary sanction(s) imposed by the vice president for student services may appeal such sanction(s) by filing a written notice of appeal with that officer within ten days. The notice of appeal may include any statement that the respondent wishes to make of the grounds for ((her/his)) their appeal.

(2) If the vice president has referred the matter to the student conduct committee for action, no appeal is required, but the student may file a written response with the vice president within twenty days of service of that referral.

(3) Except for conduct matters referred for brief adjudicative proceedings, the vice president shall promptly transmit any notice of appeal or response to referral, together with a copy of any notification of discipline, to the chair of the student conduct committee, described below. The vice president should serve a copy of that transmittal on the respondent.

(4) Except through a summary suspension under WAC 132F-121-250, a respondent's enrollment status and rights as an enrolled student shall not be altered, on the basis of a disciplinary sanction imposed by the vice president, until (a) the appeal period has run without a proper appeal being filed or (b) if there is an appeal, either that appeal has been withdrawn or the final order has been entered.

(5) If a respondent files a timely appeal of a probation or suspension that includes restrictions on contacts, communications, or campus access, the vice president will ordinarily modify those restrictions as necessary to facilitate the respondent's preparation for the hearing.

AMENDATORY SECTION (Amending WSR 13-11-127, filed 5/21/13, effective 6/21/13)

WAC 132F-121-180 Student conduct committee. (1)

A student conduct committee at each college will hear all disciplinary cases at that college which are referred to it by the vice president for student services or appealed to it by a stu-

dent. For purposes of WAC 132F-108-020 and any other requirements, the district trustees and chancellor and each college president designate (a) the committee provided for herein to serve as presiding officer to hear the described student disciplinary matters and (b) the committee chair both to handle and decide procedural matters (as provided herein) and to preside at the hearing.

(2) This committee shall be composed of the following three members:

(a) One administrator or exempt employee, appointed by the college president;

(b) One member of the faculty, appointed by the college president; and

(c) One student, appointed by the president of the recognized student government organization.

(3) Each appointment shall be accompanied by the appointment of two alternates. Each member and alternate shall serve for the academic year or until a replacement is appointed, whichever is longer. When a member is not available for a hearing, the committee chair shall designate an alternate to replace ((him/her)) them for that hearing. If a member or alternate ceases to serve, a successor shall be promptly appointed. A member or alternate may be reappointed in any role.

(4) The administrator or exempt employee shall be the committee chair.

(5) A committee member is subject to disqualification for bias, prejudice, interest, or as further provided in RCW 34.05.425.

AMENDATORY SECTION (Amending WSR 13-11-127, filed 5/21/13, effective 6/21/13)

WAC 132F-121-190 Student conduct committee hearings—In general. (1) A respondent student has a right to a prompt, fair, and impartial hearing before the student conduct committee on a referral for, or timely appeal of, a disciplinary sanction, except as otherwise provided in these rules.

(2) Chapter 34.05 RCW and chapter 10-08 WAC govern committee proceedings and control in the event of any conflict with these rules. The district's chapter 132F-108 WAC also governs committee proceedings.

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

(4) The committee chair may provide to the committee members in advance of the hearing copies of (a) the vice president for student service'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.

(5) The committee chair is authorized to conduct prehearing conferences and/or to make prehearing decisions, except as overridden by majority vote of the committee, con-

cerning the extent and forms of any discovery, issuance of protective orders, and similar procedural matters.

(6) Upon request made at least five days before the hearing by either the respondent or the vice president, the two of them 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 in their respective cases, except impeachment or rebuttal evidence. 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.

(7) The respondent and the vice president 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.

(8) The vice president shall provide reasonable assistance to the respondent, upon request, in obtaining relevant and admissible evidence that is within the college's control.

(9) Communications between committee members and other persons 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.

(10) Each party may be accompanied at the hearing by a nonattorney assistant of ((his/her)) their choice. A respondent may elect to be represented by an attorney, but will be deemed to have waived that right unless, at least four days before the hearing, written notice of the attorney's identity and participation is served on both the chair and the vice president. If the respondent is represented by an attorney, the vice president may also be represented by an attorney. If both the respondent and vice president have counsel, the committee will ordinarily be advised by a separate assistant attorney general.

(11) Minor disciplinary actions imposing probation or suspension of ten instructional days or less and any conditions or terms placed on the student may be conducted by a brief adjudicative proceeding in accordance with RCW 34.05.482 through 34.05.494.

AMENDATORY SECTION (Amending WSR 03-16-015, filed 7/28/03, effective 8/28/03)

WAC 132F-121-220 President's review and final college order. (1) The college president shall review the record and enter the final college order, in accordance with RCW 34.05.461(2) and 34.05.464.

(2) If either the respondent or the vice president for student services wishes to file written argument with the president, she/he must file that argument and serve a copy on the other within fifteen days after service of the committee's order. Within seven days after service of any such argument, the other party may file and serve a written response. The president shall have discretion to modify these deadlines and/or to allow oral arguments. However no new evidence, not already part of the record, may be introduced in any argu-

ment, except as expressly authorized by the president upon a showing of compelling legal justification and after any appropriate fact-finding.

(3) The president shall personally consider the whole record or such portions of it as may be cited by the parties. A party's failure to present any argument shall mean that the party is citing "none" of the record.

(4) If the committee's order includes a provision for expulsion, the president must consult with and obtain the agreement of the district chancellor. If the committee's order includes a provision for suspension from any other college(s) of the district, the president must consult with and obtain the agreement of the president(s) of such college(s).

(5) Within ninety days following the later of the conclusion of the hearing or the committee's receipt of closing arguments, the president shall either remand the matter for further proceedings, with instructions to the committee, or enter a final order in the matter. The president shall have all of decision-making power that he/she would have had if presiding over the hearing, including the power to affirm, reverse, or modify any disciplinary sanction.

(6) The president's final order shall include, or incorporate by reference to the committee's initial order, all matters required by RCW 34.05.461, in accordance with RCW 34.05.464. It shall also include notice to the respondent of ((his/her)) their right to seek judicial review under RCW 34.05.510 et seq.

(7) Copies of the final order shall be served on the respondent, the vice president, any legal counsel who have appeared, and the committee chair.

(8) The decision of the president shall be the final district action in the matter.

AMENDATORY SECTION (Amending WSR 03-16-015, filed 7/28/03, effective 8/28/03)

WAC 132F-121-230 Reestablishment of academic standing after successful appeal. When a student has missed classes and/or course work due to a disciplinary suspension or expulsion, but that disciplinary sanction was appealed and not upheld, the student shall be given a reasonable opportunity to reestablish ((his/her)) their academic standing and the alternative of a withdrawal and refund of tuition and fees. Depending on the circumstances, reestablishing academic standing may include opportunities to take examinations and otherwise complete course offerings that were missed due to the disciplinary sanction or to retake the class(es).

AMENDATORY SECTION (Amending WSR 13-11-127, filed 5/21/13, effective 6/21/13)

WAC 132F-121-250 Summary suspensions. (1) A summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which the student might otherwise be eligible, during which an investigation and/or formal disciplinary procedures are pending.

Suspension may be imposed, if the vice president for student services or ((his/her)) their designee(s) has cause to believe that any student:

(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) If the student poses an ongoing threat of disruption of, or interference with, the operations of the college, that student may be summarily suspended.

(2) Notice. Any student who has been summarily suspended shall be served with written notice or verbal notice of the summary suspension. If such notice is made in writing, it shall be provided by certified mail and first class mail delivered to the student's last known address.

(3) The oral or written notice to the student shall include the reasons for summary suspension, duration of the summary suspension, and any possible additional disciplinary or corrective action that may be taken. The notification shall indicate that the student must appear before the vice president of student services or designee for a summary suspension hearing at a time specified in the notice. If oral notice is given, written notice shall follow within two calendar days. In addition, the vice president for student services or designee shall set a date for summary suspension hearing as soon as practicable.

(4) The student shall be given the opportunity to present written and/or oral evidence. The issue before the vice president for student services or designee shall be whether probable cause exists to support and to continue the summary suspension.

(5) The vice president for student services or designee shall issue a written order within two days of the informal hearing, including a brief statement of findings of fact, conclusions of law, and policy reasons for the decision to justify the determination of an immediate danger and the vice president's decision to take the specific action.

(6) If a student who has been summarily suspended fails to appear for a summary suspension hearing, the vice president for student services may order the suspension to remain in place pending the final disposition of the disciplinary process as provided in this section.

(7) The student may request a de novo review of the informal hearing decision before the student conduct committee. The review will be scheduled promptly. Either party may request the review to be consolidated with any other disciplinary proceeding arising from the same matter.

(8) Nothing herein shall prevent faculty members from taking summary action as may be reasonably necessary to maintain order in the classroom and/or prevent substantial disruption to the educational process. Such summary action in the form of removal from the classroom may not exceed one day per episode. Any such summary action may be appealed to the vice president for student services for a brief adjudicative proceeding.

NEW SECTION

WAC 132F-121-270 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 Seattle Colleges' standard disciplinary procedures, WAC 132F-121-110 through 132F-121-260, these supplemental procedures shall take precedence.

NEW SECTION

WAC 132F-121-280 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 Seattle Colleges 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 Seattle Colleges' student conditioning the provision of an aid, benefit, or service of the Seattle Colleges 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 Seattle Colleges' 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 132F-121-290 Title IX jurisdiction. (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

(b) Occurred during a Seattle Colleges' 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 Seattle Colleges 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 Seattle Colleges.

(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 Seattle Colleges from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the Seattle Colleges' student conduct code, WAC 132F-121-110.

(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 132F-121-300 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 serving the notice on the respondent and the complainant, and their respective advisors. The notice must:

(a) Set forth the basis for Title IX jurisdiction;

(b) Identify the alleged Title IX violation(s);

(c) Set forth the facts underlying the allegation(s);

(d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s); 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 Seattle Colleges will appoint the party an advisor of the Seattle Colleges' choosing at no cost to the party, if the party fails to do so.

(3) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

NEW SECTION

WAC 132F-121-310 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 132F-121-180. In no event will the hearing date be set less than ten days after the Title IX coordinator provided the final investigation report to the parties.

(2) A party may choose to have an attorney serve as their advisor at the party's own expense. This right will be waived unless, at least five days before the hearing, the attorney files a notice of appearance with the committee chair with copies to all parties and the student conduct officer.

(3) In preparation for the hearing, the parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether the Seattle Colleges intends to offer the evidence at the hearing.

NEW SECTION

WAC 132F-121-320 Rights of parties. (1) The Seattle Colleges' student conduct procedures, WAC 132F-121-110, and this supplemental procedure shall apply equally to all parties.

(2) The Seattle Colleges bears the burden of offering and presenting sufficient testimony and evidence to establish that the respondent is responsible for a Title IX violation by a preponderance of the evidence.

(3) The respondent will be presumed not responsible until such time as the disciplinary process has been finally resolved.

(4) During the hearing, each party shall be represented by an advisor. The parties are entitled to an advisor of their own choosing and the advisor may be an attorney. If a party does not choose an advisor, then the Title IX coordinator will appoint an advisor of the Seattle Colleges' choosing on the party's behalf at no expense to the party.

NEW SECTION

WAC 132F-121-330 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 132F-121-340 Initial order. (1) In addition to complying with WAC 132F-121-210 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 Seattle Colleges' education programs or activities; and

(h) Describes the process for appealing the initial order to the Seattle Colleges' president.

(2) The committee chair will serve the initial order on the parties simultaneously.

NEW SECTION

WAC 132F-121-350 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 132F-121-170.

(2) The president or their delegate will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction and condition(s) imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s).

(3) President's office shall serve the final decision on the parties simultaneously.

WSR 21-01-097**PROPOSED RULES****SEATTLE COLLEGES**

[Filed December 11, 2020, 10:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-12-018.

Title of Rule and Other Identifying Information: Required and emergency medical leaves of absence.

Hearing Location(s): On January 26, 2021, at 3:00-5:00 p.m. Zoom - Virtual.

Date of Intended Adoption: February 11, 2021.

Submit Written Comments to: Jennie Chen, 1500 Harvard Avenue, Seattle, WA 98122, email jennie.chen@seattlecolleges.edu, fax 206-934-3894.

Assistance for Persons with Disabilities: Contact Jennie Chen, phone 206-934-3873, email jennie.chen@seattlecolleges.edu, by October 7, 2020 [January 22, 2021].

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed rule addresses a need for the colleges to issue medical withdrawals to students who exhibit self-harm and cannot otherwise be accommodated through the interactive process while attending college.

Reasons Supporting Proposal: The Department of Education's Office for Civil Rights recommends that colleges separate emergency medical leave procedures from the disciplinary procedures.

Statutory Authority for Adoption: RCW 28B.50.140, 28B.50.090(3).

Statute Being Implemented: Not applicable.

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

Name of Proponent: Seattle Colleges, public.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kurt Buttleman, Siegal Center, 206-934-4111.

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 district is not one of the enumerated agencies listed in 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 34.05.328.

Explanation of exemptions: Pursuant to RCW 34.05.328 (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.

December 10, 2020

Kurt Buttleman

Vice Chancellor of

Academic and Student Success

Chapter 132F-126 WAC

REQUIRED AND EMERGENCY MEDICAL LEAVES OF ABSENCE

NEW SECTION

WAC 132F-126-010 Issuing a required medical leave of absence. (1) The vice president of student services, or the vice president's designee, (hereinafter collectively referred to as the "vice president") may require a student to take a medical leave of absence if a student has a physical illness or a mental, emotional, or psychological condition and as a result of the condition:

(a) Is engaging in, or is threatening to engage in, behavior that poses a significant danger of causing substantial harm to the health, safety, or welfare of the student or others;

(b) The student's behavior has resulted in substantial harm to the health, safety, or welfare of the student or others and the behavior continues, or there is a risk the behavior will continue, posing a significant danger of causing substantial harm to the health, safety, or welfare of the student or others; or

(c) The student's behavior has resulted in significant disruption of the teaching, learning or administrative activities of other members of the campus community and the behavior continues, or there is a risk the behavior will continue, with the likely result of such behavior substantially impeding the education processes or proper activities or functions of the college and its personnel.

(2) In determining whether to require a student to take a medical leave of absence, the vice president shall consult

with counseling faculty and, where possible, other persons who can provide relevant information about a student's condition.

(3) Prior to the vice president requiring a student to take a medical leave of absence, the student shall be provided an opportunity to present information about his or her circumstances, where reasonably possible, to the vice president. A student waives their opportunity to provide information if he or she is unwilling or unable to meet with the vice president upon request.

(4) The vice president shall issue the required medical leave of absence in writing to the student. The written notice shall include the effective date of the leave, the reasons for requiring the leave, the conditions for reenrollment, and any restrictions imposed on the student's access to the campus or college-sponsored activities.

(5) The required medical leave of absence shall be effective twenty-one days after it is served on the student, unless the student files an appeal.

NEW SECTION

WAC 132F-126-020 Appealing a required medical leave of absence. A student may appeal the vice president's decision imposing a required medical leave of absence to the medical leave of absence review board (review board). The appeal must be filed in writing with the vice president of student services within twenty days of service of the vice president's decision. Service of the vice president's decision shall be complete upon deposit in the United States mail to the student, postage prepaid and properly addressed to the student at the last known address on file with the registrar's office, or by personal service on the student.

NEW SECTION

WAC 132F-126-030 Hearing an appeal of a required medical leave of absence. (1) Upon receipt of a timely appeal by a student of the vice president's decision imposing a required medical leave of absence, the vice president of student services, or the vice president's designee, shall convene the review board to hear the appeal. The review board may:

(a) Affirm the vice president's decision;

(b) Affirm the vice president's decision but alter the disposition from imposition of a required medical leave of absence to conditional enrollment under specified directives; or

(c) Reverse the vice president's decision allowing the student to remain enrolled without restriction.

(2) The review board's decision shall be in writing and served on the student within seven business days of the hearing. Service of the decision shall be effective upon deposit in the United States mail to the student, postage prepaid and properly addressed to the student at the last known address on file with the registrar's office, or by personal service on the student.

(3) The review board shall be composed of at least three members drawn from a pool of academic deans and staff members not reporting to the vice president who have been identified by the president. The president shall select one of the members to act as the chair at the hearing.

(4) The vice president shall notify the student in writing of the time, date, and location of the hearing.

(5) The review board shall conduct the hearing according to the Administrative Procedure Act, chapter 34.05 RCW.

(6) The chair of the review board may order the hearing closed to public observation as necessary to protect from disclosure medical or educational records held to be confidential under state or federal law.

NEW SECTION

WAC 132F-126-040 President's review and final college order. (1) The college president shall review the record and enter the final college order, in accordance with RCW 34.05.461(2) and 34.05.464.

(2) If either the respondent or the vice president for student services wishes to file written argument with the president, she/he must file that argument and serve a copy on the other within fifteen days after service of the review board's order. Within seven days after service of any such argument, the other party may file and serve a written response. The president shall have discretion to modify these deadlines and/or to allow oral arguments. However no new evidence, not already part of the record, may be introduced in any argument, except as expressly authorized by the president upon a showing of compelling legal justification and after any appropriate fact-finding.

(3) The president shall personally consider the whole record or such portions of it as may be cited by the parties. A party's failure to present any argument shall mean that the party is citing "none" of the record.

(4) Within ninety days following the later of the conclusion of the hearing or the review board's receipt of closing arguments, the president shall either remand the matter for further proceedings, with instructions to the review board, or enter a final order in the matter. The president shall have all of the decision-making power that he/she would have had if presiding over the hearing, including the power to affirm, reverse, or modify the review board's decision.

(5) The president's final order shall include, or incorporate by reference to the review board's initial order, all matters required by RCW 34.05.461, and in accordance with RCW 34.05.464. It shall also include notice to the respondent of his/her right to seek judicial review under RCW 34.05.510 et seq.

(6) Copies of the final order shall be served on the respondent, the vice president, any legal counsel who have appeared, and the review board's chair.

(7) The decision of the president shall be the final district action in the matter.

NEW SECTION

WAC 132F-126-050 Emergency medical leave of absence. (1) The vice president may immediately require a student to take an emergency medical leave of absence if the student has a medical, mental, emotional, or psychological condition and as a result of the condition:

(a) The student is engaging in, or threatening to engage in, behavior that poses a significant danger of causing immi-

nent and substantial harm to the health, safety, or welfare of the student or others; or

(b) The student's behavior has resulted in substantial harm to the health, safety, or welfare of the student or others and the behavior continues, or there is a risk the behavior will continue, posing a significant danger of causing imminent and substantial harm to the health, safety, or welfare of the student or others; or

(c) The student's behavior has resulted in significant disruption of the teaching, learning or administrative activities of other members of the campus community and the behavior continues, or there is a risk the behavior will continue, with the likely result of such behavior imminently and substantially impeding the education processes or proper activities or functions of the college and its personnel.

(2) A decision by the vice president requiring a student to take an emergency medical leave of absence shall be in writing and served on the student. The decision shall set forth the reasons for requiring the leave and, as appropriate, any restrictions imposed on the student's access to the campus or college-sponsored activities. Service of the decision shall be effective upon deposit in the United States mail to the student, postage prepaid and properly addressed to the student at the last known address on file with the registrar's office, or by personal service on the student.

(3) A student subject to an emergency medical leave of absence shall be provided a hearing before a presiding officer appointed by the college president to review the vice president's decision. The hearing shall occur within three business days of the student being served with the vice president's decision imposing the emergency medical leave of absence unless a student elects to waive his or her right to a hearing. Except as otherwise provided herein, the process for conducting the emergency medical leave hearing shall be pursuant to the Administrative Procedure Act, chapter 34.05 RCW.

(4) An emergency medical leave of absence shall take effect immediately and remain in effect until the review board or president reinstate the student. The vice president may at any time decide to reinstate the student under an emergency medical leave when the vice president determines that the reasons for the emergency medical leave of absence no longer exist.

NEW SECTION

WAC 132F-126-060 Returning from a required or emergency leave of absence. (1) A student wishing to be considered for reenrollment to the college shall submit an application for reenrollment to the vice president at least one month prior to the start of the quarter in which the student wishes to reenroll. The student shall provide appropriate documentation with any conditions for reenrollment set forth in the vice president's decision. If a student files an appeal of the vice president's decision, and the conditions for reenrollment are modified by the review board, the student shall provide evidence that the conditions set forth in the review board's order have been met. A student must also meet all other admission or enrollment requirements of the college for reenrollment.

(2) The vice president shall consult with counseling faculty and, where possible, other persons who can provide relevant information about a student's condition prior to determining if the student may reenroll.

(3) The vice president shall notify the student in writing of the decision and the conditions associated with the approval or denial for reenrollment.

WSR 21-01-100
PROPOSED RULES

BELLINGHAM TECHNICAL COLLEGE

[Filed December 11, 2020, 12:52 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-14-043; proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); and proposal is exempt under RCW 19.85.061.

Title of Rule and Other Identifying Information: On May 19, 2020, the Federal Register published amendments to Title IX regulations (85 F.R. 30026-30579; 34 C.F.R. 106). The new regulations address the grievance process for formal complaints of sexual harassment. An emergency rule was filed on August 14, 2020, with updates to the college's chapter 495B-121 WAC, Student conduct code, to be compliant with federal regulations. In addition, other sections of chapter 495B-121 WAC, Student conduct code, are being updated.

Hearing Location(s): On January 26, 2021, at 11:00 a.m., at Bellingham Technical College, College Services, Room 215, 3028 Lindbergh Avenue, Bellingham, WA 98225.

Join Zoom meeting: <https://btc-tech.zoom.us/j/84479784399>. Meeting ID: 844 7978 4399. One tap mobile +1253 2158782,,84479784399# US (Tacoma), +12063379723,,84479784399# US (Seattle).

Date of Intended Adoption: March 18, 2021.

Submit Written Comments to: Ronda Laughlin, 3028 Lindbergh Avenue, Bellingham, WA 98225, email rlaughter@btc.edu, fax 360-752-7134, by January 22, 2021.

Assistance for Persons with Disabilities: Contact Mary Gerard, phone 360-752-8576, fax 360-752-7376, email ar@btc.edu, by January 12, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: All public institutions must update their policies and procedures to comply with the recently adopted Title IX regulations, which took effect on August 14, 2020. In order to comply, Bellingham Technical College must update portions of its student conduct code with certain procedures required by Title IX that the college must take in response to allegations of sexual harassment. Bellingham Technical College is also updating other sections of its student conduct code procedures.

Reasons Supporting Proposal: If the college does not update its student conduct code to comply with the new Title IX regulations, it would be in violation of federal statute and at risk of lawsuits.

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.; RCW 28B.50.130.

Statute Being Implemented: 85 F.R. 30026-30579; 34 C.F.R. 106.

Rule is necessary because of federal law, 85 F.R. 30026-30579; 34 C.F.R. 106.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: None.

Name of Proponent: Bellingham Technical College, public and governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Michele Waltz, CS 201, 360-752-8440.

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. There are not costs imposed with the amendments to these 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: 85 F.R. 30026-30579; 34 C.F.R. 106.

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; rule content is explicitly and specifically dictated by statute; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Explanation of exemptions: Chapter 495B-121 WAC is amended in response to legislative directive 85 F.R. 30026-30579; 34 C.F.R. 106.

December 11, 2020
Ronda Laughlin
Executive Assistant
to the President

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-010 Definitions. The following definitions shall apply for the purpose of this student conduct code.

(1) "Board" means the board of trustees of Bellingham Technical College.

(2) "College" means Bellingham Technical College.

(3) "Student conduct officer" is a Bellingham Technical College (~~administrator~~) employee designated by the president (~~(or vice president of student services)~~) to be responsible for implementing and enforcing the student conduct code. The president or vice president of student services is authorized to reassign any and all of the student conduct officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.

(4) "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. The president is authorized to reassign any and all of the conduct review officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.

(5) "The president" is the president of ~~((the))~~ Bellingham Technical College. The president is authorized to:

(a) Delegate any ~~((and all))~~ of ~~((his or her))~~ 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.

(6) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.

(7) "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 ~~((and))~~ an expulsion are heard by the student conduct ~~((appeals board))~~ committee. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

(8) "Respondent" is the student against whom disciplinary action is initiated.

(9) "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.

(10) "Filing" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

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

(b) By sending the document by email and first-class mail to the specified college official's office and college email address.

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

(11) "College premises" includes all campuses of Bellingham Technical College, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

(12) "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, ~~((&))~~ and persons who have been

notified of their acceptance for admission are considered "students~~((-))~~" for purposes of this chapter.

(13) "Day" ~~((and))~~ means a calendar day, except when a "business day" is specified. "Business day" means a week-day, excluding weekends and college holidays.

(14) ~~(("Alcohol" or "alcoholic beverages" means the definition of liquor as contained within RCW 66.04.010 as now law or hereinafter amended.~~

(15) "Drugs" means a narcotic drug as defined in RCW 69.50.101, a controlled substance as defined in RCW 69.50.201 through 60.50.212, or a legend drug as defined in RCW 69.41.010.) A "complainant" is an alleged victim of sexual misconduct.

(15) "Sexual misconduct" has the meaning ascribed to this term in WAC 495B-121-265(13).

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-020 Authority. The board of trustees, acting pursuant to RCW 28B.50.140(14), delegates to the president of Bellingham Technical 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. ~~((The vice president of student services or))~~ Unless otherwise specified, the student conduct officer, or their delegee, shall serve as the principal investigator and administrator for alleged violations of this code.

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-040 Prohibited student conduct. ~~((Prohibited student conduct for which))~~ The college may impose ((sanctions includes, but is)) 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, any of 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 or dismissal from an academic program. Policies and procedures governing the imposition of aca-

demeric sanctions for academic dishonesty can be found in the college's academic integrity policy, the course syllabus, and any applicable program handbook. Incidents of academic dishonesty may also be referred to the student conduct officer for disciplinary action consistent with this chapter in addition to the academic consequences identified above.

(2) Other dishonesty. Any other acts of dishonesty. Such acts include, but are not limited to:

(a) Forgery, alteration, submission of falsified documents or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election 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 ((disruption of)) disruptive conduct. Conduct, not otherwise protected by law, that interferes with, impedes, or otherwise unreasonably hinders:

(a) Any instruction, research, administration, disciplinary proceeding, or other college activities, including the obstruction of the free flow of pedestrian or vehicular movement on campus 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, ((stalking)) or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this ((subsection:

(a) Bullying is physical or verbal abuse, repeated over time, and involving a power imbalance between the aggressor and victim.

(b) Stalking is intentional and repeated harassment or repeated following of another person, which places that person in reasonable fear that the stalker intends to injure the person, another person, or the property of the person or another person, and the stalker either intends to frighten, intimidate, or harass the person, or knows or reasonably should know that the person is frightened, intimidated or harassed, even if the stalker lacks such an intent)) 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) ((Attempted or actual damage to, or theft or misuse of, real or personal property or money of:~~

~~(a) The college or state;~~

~~(b) Any student or college officer, employee, or organization; or~~

~~(c) Any other person or organization, or possession of such property or money after it has been stolen.)) 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 direction of a college officer or employee who is acting in the legitimate performance of ~~((his or her))~~ their duties, including failure to properly identify oneself to such person when requested to do so.

~~(8) ((Participation in any activity which unreasonably disrupts the operations of the college or infringes on the rights of another member of the college community, or leads or incites another person to engage in such an activity.~~

~~(9))~~ Weapons. Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive devices, 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 ~~((his or her))~~ 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~~((:))~~; or

~~((d))~~ (d) This policy does not apply to the possession and/or use of disabling chemical sprays when possessed and/or used for self-defense.

~~((10))~~ (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.

~~((11) Tobacco, electronic cigarettes, and related products. The use of tobacco, electronic cigarettes, and related products in any building owned, leased, or operated by the college or in any location where such use is prohibited, including twenty-five feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased, or operated by the college, except in designated areas. "Related products" include, but are not limited to, cigarettes, cigars, pipes, bidi, clove cigarettes, water pipes, hookahs,~~

chewing tobacco, personal vaporizers, vape pens, electronic nicotine delivery systems and snuff.

(12) Alcohol. Being observably under the influence of any alcoholic beverage, or otherwise using, possessing, selling or delivering any alcoholic beverage, except as permitted by law and authorized by the college president.

(13) Marijuana. Being observably under the influence of marijuana or the psychoactive compounds found in marijuana, or otherwise using, possessing, selling, or delivering any product containing marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(14) Being observably under the influence of any legend drug, narcotic drug, or controlled substance as defined in chapters 69.41 and 69.50 RCW, or otherwise using, possessing, delivering, or selling any such drug or substance, except in accordance with a lawful prescription for that student by a licensed health care professional.

(15) Obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity.

(16) Conduct that is disorderly, lewd, or obscene.

(17) Breach of the peace.

(18) Discriminatory action)) (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, sale, or being observably under the influence of marijuana or the psychoactive compounds found in marijuana intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(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, except in designated areas. The use of tobacco, electronic cigarettes, and related products on the college campus is restricted to designated smoking areas. "Related products" include, but are not limited to, cigarettes, cigars, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, personal vaporizers, vape pens, electronic nicotine delivery systems, 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 ((student or college employee)) member of the college community because of ((his/her race,)) 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((; age, creed, or religion.

(19) Sexual violence. Sexual or gender-based misconduct perpetrated against a person's will or where a person is incapable of giving consent including, but not limited to, rape, sexual assault, sexual battery, gender-based stalking, and sexual coercion, regardless of the relationship between the perpetrator and the victim.

(20) Sexual harassment. Conduct that includes, but is not limited to, engaging in unwelcome sexual advances, requests for sexual favors, or other sexual conduct, including verbal, nonverbal, electronic or social media communication, or physical touching that would substantially interfere with a reasonable person's ability to participate in or benefit from the college's program, or to create an intimidating, hostile, or offensive educational environment.

(21) Other harassment. Conduct that has the purpose or effect of substantially interfering with a reasonable person's work or educational performance or creating an intimidating, hostile or offensive working or educational environment, when such conduct is directed at an individual because of race, national origin, disability, age, religion, sexual orientation, gender or any other legally protected classification.)); 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 to this code. See WAC 495B-121-355 (supplemental Title IX student conduct procedures).

(a) Sexual harassment. The term "sexual harassment" means unwelcome sexual or gender-based conduct, including unwelcome sexual advances, requests for sexual favors, quid pro quo harassment, and other verbal, nonverbal, or physical conduct of a sexual or a gendered nature that is sufficiently severe, persistent, or pervasive as to:

(i) Deny or limit the ability of a student to participate in or benefit from the college's educational programs;

(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 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 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 age 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 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 interaction 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 the purposes of this code, "consent" means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

A person cannot consent if 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 conduct, including verbal, nonverbal, or physical conduct, that is directed at a person

because 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.

((22)) (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 proceeding.

(16) Misuse of electronic resources. Theft or misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

(a) Unauthorized use of such resources or opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of such time or resources to interfere with someone else's work;

(e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(g) Use of such time or resources in violation of applicable copyright or other law;

(h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or

(i) Failure to comply with the college's electronic use policy.

((23)) (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.

((24)) (18) Procedural interference. Abuse or misuse of any of the procedures relating to student complaints or misconduct including, but not limited to:

(a) ((Failure to obey a subpoena;

(b) Falsification or misrepresentation of information;

(c)) Disruption or interference with the orderly conduct of a proceeding;

((d)) (b) Interfering with someone else's proper participation in a proceeding;

((e)) (c) Destroying or altering potential evidence, or attempting to intimidate or otherwise improperly pressure a witness or potential witness; or

~~((f))~~ (d) Attempting to influence the impartiality of, or harassing or intimidating, a student conduct committee member ~~(; or~~

~~(g) Failure to comply with any disciplinary sanction(s) imposed under this student conduct code.~~

~~(25) Operation of any motor vehicle on college property in an unsafe manner or in a manner which is reasonably perceived as threatening the health or safety of another person).~~

~~((26))~~ (19) Safety violations. ~~((Safety violation includes any))~~ Nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment ~~((and)), triggering false alarms or other emergency response systems, or operating a motor vehicle on college property in a manner which is reasonably perceived as threatening the health or safety of another person.~~

~~((27))~~ (20) 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.

~~((28))~~ (21) 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.

~~((29) Aiding, abetting, inciting, encouraging, or assisting another person to commit any of the foregoing acts of misconduct.))~~

In addition to initiating discipline proceedings for violations of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-050 Disciplinary sanctions terms and conditions. (1) The following disciplinary ~~((actions include, but are not limited to, the following sanctions that may be imposed upon students according to the procedure outlined in WAC 495B-121-070 through 495B-121-200.~~

~~(1))~~ 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.

~~((2))~~ (b) Written reprimand ~~((;))~~. Notice in writing that the student has violated one or more terms of this code of conduct and that continuation or repetition of the same or similar ~~((behavior))~~ may result in more severe disciplinary action. This sanction is not subject to appeal.

~~((3))~~ (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(s) 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. ~~((A student who is on disciplinary probation may be deemed "not in good standing" with the college. If so, the student shall be subject to the following restrictions:~~

~~(a) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.~~

~~(b) 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.~~

~~(4))~~ (d) Summary suspension. Immediate exclusion from classes and other privileges or activities in accordance with this code.

(e) Disciplinary suspension. Dismissal from the college and from the student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action is taken.

(f) Deferred suspension. Notice of suspension from the college with the provision that the student may remain enrolled contingent on meeting any condition(s) specified. Not meeting the contingency shall immediately invoke a suspension for the period of time and under the conditions originally imposed.

(g) Dismissal. The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return except as outlined in WAC 495B-121-340. 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 disciplinary sanctions include, but are not limited to, the following:

(a) Educational sanction. Participation in or successful completion of an educational assignment designed to create an awareness of the student's misconduct.

(b) 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.

~~((5) Disciplinary suspension. Dismissal from the college and from the student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action is taken.~~

~~((6))~~ (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. May also include mandatory attendance at educational programs, courses, or other assignments. 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.

~~((7) Dismissal: The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the action is taken.~~

~~(8) Refund of fees: Refund of fees for the quarter in which disciplinary action is taken shall be in accordance with the college's refund policy.~~

~~A student suspended on the basis of conduct that disrupted the orderly operation of the campus or any facility of the college may be denied access to all or any part of the campus or other college facility.~~

~~(9)) (d) Not in good standing. A student may be deemed "not in good standing" with the college. If so, that student shall be subject to the following restrictions:~~

~~(i) Ineligible to hold any 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.~~

~~(c) 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.~~

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-060 Statement of jurisdiction. (1)

The student conduct code shall apply to student conduct that occurs:

(a) On Bellingham Technical College premises and facilities((; to conduct that occurs));

(b) At or in connection with college-sponsored activities((; or to off-campus conduct that)); or

(c) Off-campus, and which, 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 ((the time of application for admission)) notification of admission 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 college has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct that occurs off campus.

(5) The student conduct officer has sole discretion, on a case-by-case basis, to bring a student conduct proceeding under this code for academic dishonesty. Nothing in this code precludes instructors and/or academic divisions or departments from imposing an academic sanction, up to and including a failing grade in an academic course or dismissal from an academic program, in response to academic dishonesty. Policies and procedures governing the imposition of academic sanctions for academic dishonesty can be found in the college's academic integrity policy, the course syllabus, and any applicable program handbook.

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-065 Statement of purpose. The purpose of these rules is to prescribe standards of conduct for students of Bellingham Technical College. Violations of these standards may be cause for disciplinary action as described in this code.

(1) Bellingham Technical College is maintained by the state of Washington for the provision of programs of instruction in higher education and related community services. Like any other institution having its own special purposes, the college must maintain conditions conducive to the effective performance of its functions. Consequently, it has special expectations regarding the conduct of the various participants in the college community.

(2) Admission to the college carries with it the prescription that the student will conduct ~~((himself or herself))~~ themselves as a responsible member of the college community. This includes an expectation that the student will obey appropriate laws, will comply with the rules of the college and its departments, and will maintain a high standard of integrity and honesty.

(3) Sanctions for violations of college rules or conduct that interferes with the operation of college affairs may be applied by the college, and the college may impose sanctions independently of any action taken by civil or criminal authorities. In the case of minors, misconduct may be referred to parents or legal guardians.

(4) The rules and regulations prescribed in this title shall be observed by guests and visitors while on campus, at all college functions and events, and on or within any other college-controlled or college-owned property. Guests and visitors who willfully refuse to obey college security or other duly designated college authorities to desist from conduct prohibited by such rules and regulations may be ejected from the premises. Refusal to obey such an order may subject the person to arrest under the provisions of the Washington criminal trespass law, in addition to such other sanctions as may be applicable.

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-070 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 ~~((him or her))~~ 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 opportunity to explain what took place. If the respondent fails to attend the meeting after proper service of notice the student conduct officer may take disciplinary action based upon the available information.

(3) 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 business days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting ~~((his or her))~~ 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.

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

(a) Exonerate the respondent and terminate the proceedings;

(b) Impose a disciplinary sanction(s), as described in WAC ~~((495B-121-040))~~ 495B-121-265;

(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 the 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 reason-

able effort to contact the complainant to ensure prompt notice of the protective disciplinary sanctions and/or conditions.

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-080 Appeal from disciplinary action.

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

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

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

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

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

(6) Imposition of disciplinary action for violation of the student conduct code shall be stayed pending appeal, unless the 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))~~ subject to the procedures outlined in WAC 495B-121-290 through 495B-121-305.

(9) Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary actions are final actions and 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 a respondent's appeal of disciplinary decisions shall be afforded the same procedural rights as are afforded the respondent.

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

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-090 Brief adjudicative proceedings—Initial hearing. (1) Brief adjudicative proceedings shall be conducted by a conduct review officer (~~(designated by the president)~~). The conduct review officer shall not participate in any case in which (~~(he or she is)~~) they are a complainant or witness, or in which 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)~~) college's view of the matter; and

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

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

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-100 Brief adjudicative proceedings—Review of an initial decision. (1) An initial decision is subject to review by the president, provided (~~(the respon-~~

~~dent)~~) a party files a written request for review with the conduct review officer within (~~(twenty-one)~~) ten business days of service of the initial decision.

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

(3) During the review, the president shall give (~~(each party)~~) 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 decisions and must be served on the parties within twenty business days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that committee review may be available. A request for review may be deemed to have been denied if the president does not make a disposition of the matter within twenty business days after the request is submitted.

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

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

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-110 Student conduct committee. (1) The student conduct committee shall consist of five members:

(a) Two full-time students appointed by the student government;

(b) Two faculty members appointed by the president;

(c) One administrative (~~(staff member)~~) employee (other than an administrator serving as a student conduct or conduct review officer) appointed by the president at the beginning of the academic year.

(2) The administrative (~~(staff member)~~) employee appointed on a yearly basis shall serve as the chair of the committee and may (~~(take action)~~) act 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~~(s)~~; in which they have direct or personal interest, prejudice, or bias~~(s)~~; or in which they have acted previously in an advisory capacity. Any party may petition for disqualification of a committee member pursuant to RCW 34.05.425 (4).

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-120 (~~Appeal~~) Student conduct committee—Procedure and evidence. (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 business days in advance of the hearing date~~(, as further specified in RCW 34.05.434 and WAC 10-08-040 and 10-08-045)~~. The chair may shorten this notice period if both parties agree, and ~~(also)~~ may also continue the hearing to a later time for good cause shown.

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

(4) ~~(Upon request,)~~ If a request for a document exchange is filed at least five business days before the hearing by any party or at the direction of the committee chair, the parties shall exchange, no later than the third business 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 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 ~~(his/her)~~ their choice. A respondent in all appeals before the committee, or a complainant in an appeal involving allegations of sexual misconduct before the committee, may elect to be represented by an attorney at ~~(his or her)~~ their own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer. The committee will ordinarily be advised by an assistant attorney general. If the respondent and/or complainant is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened assistant attorney general.

(10) At the option of the college president, the college may appoint an administrative law judge as a hearing officer responsible for handling procedural matters otherwise assigned to the chair and to conduct the hearing on behalf of the student conduct committee.

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-125 Student conduct (~~appeals~~) committee hearing(~~s~~—Presentations of evidence) procedures. (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)~~ location.

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

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-130 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))~~ ten business days following the latter of the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall so be identified.

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

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

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

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-135 Appeal from student conduct committee initial decision. (1) A ~~((respondent))~~ 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 by filing a notice of appeal with the president's office within ~~((twenty-one))~~ ten business 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 an argument as to why the appeal should be granted. If necessary, to aid review, the president may ask for additional briefing from the parties on issues raised on appeal. The president's review shall be restricted to the hearing record made before the student conduct committee and will ~~((normally))~~ be limited to a review of those issues and arguments raised in the notice of appeal.

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

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

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

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-140 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 disruption of, or interference with, the operations of the college.

(3) Notice. Any respondent who has been summarily suspended shall be served with oral or written notice of the

summary suspension. If oral notice is given, a written notification shall be served on the respondent within two business days of the oral notice.

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

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

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

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

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

~~(a) ((The hearing will be conducted as a brief adjudicative proceeding.~~

~~(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))~~ Determine 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; and

(b) Provide the respondent the 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))~~ (6) If the ((student)) 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))~~ (7) 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))~~ (8) To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or offices who may be bound or protected by it.

(9) 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 suspen-

sion notice is served on the respondent. The college will also provide the complainant with timely notice of any subsequent changes to the summary suspension order.

~~((DISCIPLINE PROCEDURES FOR CASES INVOLVING ALLEGATIONS OF SEXUAL MISCONDUCT))~~

NEW SECTION

WAC 495B-121-250 General policies. (1) Bellingham Technical College is an agency of the state of Washington and adheres to all local, state, and federal laws. The college is obligated to demonstrate respect for laws by cooperating in their enforcement.

(2) Bellingham Technical College cannot and will not establish regulations that would abridge constitutional rights.

(3) Proper procedures are established to maintain conditions helpful to the effective function of the college, to protect individual students from unfair penalties, and to assure due process. Bellingham Technical College is granted the right by law to adopt rules to govern its operations.

(4) If these rules are broken, the college has the right and the obligation to take that action which is in the best interest of the entire college.

(5) Bellingham Technical College reserves the right to impose the provisions of this code and provide further sanctions before or after law enforcement agencies, courts, or other agencies have imposed penalties or otherwise disposed of a case. College hearings are not subject to challenge on the grounds that criminal or civil charges involving the same incident have been dismissed or reduced or in which the defendant has been found not guilty or otherwise not liable. In addition, the college reserves the right to refer incidents to the appropriate civilian authorities or law enforcement agencies.

NEW SECTION

WAC 495B-121-255 Student responsibilities. Bellingham Technical College is a dynamic learning community that promotes growth and development by offering opportunities to gain knowledge, entrance skills, examine values, and pursue learning options. The college is committed to quality life-long learning through its values of respect, responsibility, and responsiveness. To that end, Bellingham Technical College maintains a strong commitment to providing a civil and non-disruptive learning environment. Students are reminded that they assume certain responsibilities of performance and conduct which have been reasonably established in order to accomplish Bellingham Technical College's education goals. Therefore, the college expects that students will conduct themselves as responsible members of the college community, will comply with the rules and regulations of the college, will maintain high standards of integrity and honesty, and will respect the rights, privileges, and property of other members of the college community.

NEW SECTION

WAC 495B-121-270 Disciplinary sanctions. (1) Administration of the disciplinary procedure is the responsi-

bility of the vice president of student services. The student conduct officer, or designee, shall serve as the principle investigator and prosecutor for alleged violations of this code.

(2) 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.

(3) 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.

(4) 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.

(5) The student has the right to appeal any disciplinary action of an instructor or college employee to the student conduct officer in accordance with the procedures set forth in this code.

(6) A student formally charged or under investigation for a violation of this code may not excuse themselves from disciplinary hearings by withdrawing from the college.

(7) In addition to initiating discipline proceedings for the violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

NEW SECTION

WAC 495B-121-290 Brief adjudicative proceedings authorized. This chapter is adopted in accordance with RCW 34.05.482 through 34.05.494. Brief adjudicative proceedings shall be used, unless provided otherwise by another rule or determined otherwise in a particular case by the president, or a designee, in regard to:

(1) Student conduct appeals involving the following disciplinary actions:

- (a) Suspensions of ten instructional days or less;
- (b) Disciplinary probation;
- (c) Written reprimands;
- (d) Any condition or term imposed in conjunction with one of the foregoing disciplinary actions;
- (e) Summary suspensions; and
- (f) Appeals by a complainant in student disciplinary proceedings involving allegations of sexual misconduct in which the student conduct officer:

(i) Dismisses disciplinary proceedings based upon a finding that the allegations of sexual misconduct have no merit; or

(ii) Issues a verbal warning to respondent.

(2) Brief adjudicative proceedings are informal hearings and shall be conducted in a manner which will bring about a prompt fair resolution of the matter.

NEW SECTION

WAC 495B-121-305 Brief adjudicative proceedings—Agency record. The agency 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 as the official record of the proceedings.

NEW SECTION

WAC 495B-121-340 Readmission after dismissal. A student dismissed due to a code of conduct violation from the college may be readmitted only on written petition to the president. Petitions must indicate reasons that support reconsideration. The president may use whatever review procedures are at the president's disposal in consideration of readmission. The president shall convey a decision in writing to the student within thirty days after completion of the review process.

NEW SECTION

WAC 495B-121-345 Review of rules. These rules will be reviewed annually by the student conduct officer. Upon determining a need to revise this code a review committee shall be convened to make recommendations for change in the code. The ASBTC executive team will be notified of proposed changes.

SUPPLEMENTAL TITLE IX STUDENT CONDUCT PROCEDURES

NEW SECTION

WAC 495B-121-350 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 Bellingham Technical College's standard disciplinary procedures, WAC 495B-121-230 through 495B-121-345, these supplemental procedures shall take precedence.

NEW SECTION

WAC 495B-121-355 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 495B-121-360 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 495B-121-230 through 495B-121-345.

(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 495B-121-365 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 Title IX hearing committee and serving the notice on the respondent and the complainant, and their respective advisors. The notice must:

(a) Set forth the basis for Title IX jurisdiction;

(b) Identify the alleged Title IX violation(s);

(c) Set forth the facts underlying the allegation(s);

(d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s); 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

(f) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

NEW SECTION

WAC 495B-121-370 Prehearing procedure. (1) Upon receiving the disciplinary notice, the chair of the Title IX hearing committee will send a hearing notice to all parties, in compliance with WAC 495B-121-315. In no event will the hearing date be set less than ten days after the Title IX coordinator provided the final investigation report to the parties.

(2) A party may choose to have an attorney serve as their advisor at the party's own expense. This right will be waived unless, at least five days before the hearing, the attorney files a notice of appearance with the committee chair with copies to all parties and the student conduct officer.

(3) In preparation for the hearing, the parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether the college intends to offer the evidence at the hearing.

NEW SECTION

WAC 495B-121-375 Rights of parties. (1) The college's student conduct procedures, WAC 495B-121-230 through 495B-121-345 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 finally resolved.

(4) During the hearing, each party shall be represented by an advisor. The parties are entitled to an advisor of their own choosing and the advisor may be an attorney. If a party does not choose an advisor, then the Title IX coordinator will appoint an advisor of the college's choosing on the party's behalf at no expense to the party.

NEW SECTION

WAC 495B-121-380 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 495B-121-385 Initial order. (1) In addition to complying with WAC 495B-121-325 the Title IX hearing 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, the complainant is entitled to remedies designed to restore or preserve complainant's equal access to the college 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 495B-121-390 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 495B-121-330.

(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(s) and condition(s) imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction(s) and/or condition(s).

(3) President's office shall serve the final decision on the parties simultaneously.

NEW SECTION

The following sections of the Washington Administrative Code are decodified and recodified as follows:

Old WAC Number	New WAC Number
495B-121-010	495B-121-245
495B-121-020	495B-121-230
495B-121-030	495B-121-260
495B-121-040	495B-121-265
495B-121-050	495B-121-275
495B-121-060	495B-121-235
495B-121-065	495B-121-240
495B-121-070	495B-121-280
495B-121-080	495B-121-285
495B-121-090	495B-121-295
495B-121-100	495B-121-300
495B-121-110	495B-121-310
495B-121-120	495B-121-315
495B-121-125	495B-121-320
495B-121-130	495B-121-325
495B-121-135	495B-121-330
495B-121-140	495B-121-335

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 495B-121-150	Supplemental sexual misconduct—Procedures.
WAC 495B-121-160	Supplemental sexual misconduct—Definitions.
WAC 495B-121-170	Supplemental complaint process.
WAC 495B-121-180	Supplemental appeal rights.
WAC 495B-121-190	Brief adjudicative proceedings authorized.
WAC 495B-121-200	Brief adjudicative proceedings—Agency record.

WSR 21-01-131

PROPOSED RULES

DEPARTMENT OF REVENUE

[Filed December 16, 2020, 9:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-22-092.

Title of Rule and Other Identifying Information: WAC 458-20-211 Leases or rentals of tangible personal property, bailments.

Hearing Location(s): On Tuesday, February 2, 2021, at 10:00 a.m. This meeting will be conducted over the internet/telephone. Contact Keith Dacus at KeithD@dor.wa.gov for login/dial-in information.

Date of Intended Adoption: February 26, 2021.

Submit Written Comments to: Brenton Madison, P.O. Box 47453, Olympia, WA 98504-7453, email BrentonM@dor.wa.gov, fax 360-534-1583, by Tuesday, February 9, 2021.

Assistance for Persons with Disabilities: Contact Julie King or Renee Cosare, phone 360-704-5733 or 360-704-5734, TTY 800-833-6384, by January 26, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department issued an interim guidance statement in August 2019 regarding the taxation of stand-alone concrete pumping services, which went into effect April 1, 2020. The department is proposing amendments to WAC 458-20-211 to incorporate some of the clarification provided in the interim guidance statement and to clarify its policies by example. Specifically, the department's proposed amendments address the issue of distinguishing concrete pumping services that are rentals of equipment with an operator from sales of construction services and/or construction materials.

The department is also proposing amendments that reformat and modernize the rule.

Reasons Supporting Proposal: Clarifies the department's policy for sales which include a provision of concrete pumping equipment with an operator.

Statutory Authority for Adoption: RCW 82.01.060(2) and 82.32.300.

Statute Being Implemented: RCW 82.04.040(3) and 82.04.050(9).

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: Brenton Madison, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1583; 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 not required under RCW 34.05.328. This rule is not a significant legislative rule as defined by RCW 34.05.328.

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 amendments do not impose more than a minor cost on businesses as they do not impose any new fees, filing requirements, or recordkeeping guidelines that have not already been established by statute or by the department of revenue in the administration of excise taxes.

December 16, 2020
Atif Aziz
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-06-070, filed 2/25/10, effective 3/28/10)

WAC 458-20-211 Leases or rentals of tangible personal property, bailments. (1) **Introduction.** This section explains how persons are taxable who rent or lease tangible personal property or rent equipment with an operator. It explains that some activities performed by operated equipment may be taxable under classifications other than retail sales if the operator and equipment perform activities as a prime contractor or subcontractor and these activities are specifically classified under other tax classifications by the revenue act. Readers may want to refer to rules in the following list:

- (a) WAC 458-20-102 Reseller permits.
- (b) WAC 458-20-13501 Timber harvest operations.
- (c) WAC 458-20-170 Constructing and repairing of new or existing buildings or other structures upon real property.
- (d) WAC 458-20-17001 Government contracting—Construction, installations, or improvements to government real property.
- (e) WAC 458-20-171 Building, repairing or improving streets, roads, etc., which are owned by a municipal corporation or political subdivision of the state or by the United States and which are used primarily for foot or vehicular traffic.
- (f) WAC 458-20-180 Motor carriers.
- (g) WAC 458-20-198 Installment sales, method of reporting.
- (h) WAC 458-20-209 Farming for hire and horticultural services performed for farmers.

(2) Definitions.

(a) The terms "leasing" and "renting" are used interchangeably and refer generally to the act of granting to another the right of possession to and use of tangible personal property for a consideration. When "lease," "leasing," "lessee," or "lessor" are used in this section, these terms are intended to include rentals as well, even if not specifically stated.

Persons may not claim to be leasing or renting equipment to themselves since they are not granting to another the right of possession.

(b) The term "bailment" refers to the act of granting to another the temporary right of possession to and use of tangible personal property for a stated purpose without consideration to the grantor.

(c) The term "subcontractor" refers to a person who has entered into a contract for the performance of an act with the person who has already contracted for its performance. A subcontractor is generally responsible for performing the work to contract specification and determines how the work

will be performed. In purchasing subcontract services, the customer is primarily purchasing the knowledge, skills, and expertise of the contractor to perform the task, as distinguished from the operation of the equipment.

(d) The term "rental of equipment with operator" means the provision of equipment with an operator to a lessee to perform work under the specific direction of the lessee. In such cases the lessor is generally not responsible for performing work to contract specification and does not determine how the work will be performed. ~~((Though not controlling, persons who rent equipment with an operator typically bill on the basis of the amount of time the equipment was used.))~~

(e)(i) The term "true object test" as it relates to this section means the analysis of a transaction involving the rental of equipment ((and) with an operator, to determine if the lessee is simply purchasing the use of the equipment or purchasing the knowledge, skills, and expertise of the operator beyond those needed to operate the equipment. Even if it is determined that the customer is purchasing the knowledge, skills, and expertise of the operator, the transaction may still be a retail sale if the activity is specifically included by statute within the definition of a retail sale. This test can also be applied to rentals of tangible personal property ~~((when the seller))~~ without an operator, where the lessor performs some service in connection with the rental property. See examples 5 and 6.

(ii) The "true object test" described in this section is distinguished from the "true object test" described in RCW 82.08.190 for bundled transactions of two or more products. See example 15.

(iii) The "true object test" described in this section is also distinguished from transactions involving two or more products where one or more of the products is real property or a service to real property. See example 10.

(f) The term "true lease" (often referred to as an "operating lease") refers to the act of leasing property to another for consideration with the property under the dominion and control of the lessee for the term of the lease with the intent that the property will revert back to the lessor at the conclusion of the lease.

(g) The term "financing lease" (often referred to as a "capital lease") typically involves the lease of property for a stated period of time with ownership transferring to the "lessee" at the conclusion of the lease for a nominal or minimal payment. The transaction is structured as a lease, but retains some elements of an installment sale. Financing leases will generally be taxed as if they are installment sales. The presence of some or all of the following factors indicates a financing lease with the transaction treated as an installment sale:

- (i) The lessee is given an option to purchase the equipment, and, if so, the option price is nominal (sometimes referred to as a "bargain purchase option");
- (ii) The lessee acquires equity in the equipment;
- (iii) The lessee is required to bear the entire risk of loss;
- (iv) The lessee pays all the charges and taxes imposed on ownership;
- (v) There is a provision for acceleration of rent payments; and
- (vi) The property was purchased specifically for lease to this lessee.

(3) A true lease, rental, or bailment of personal property does not arise unless the lessee or bailee, or employees or independent operators hired by the lessee or bailee actually takes possession of the property and exercises dominion and control over it. Where the owner/lessor of the equipment or the owner's/lessor's employees or agents maintain dominion and control over the personal property and actually operate it, the owner/lessor has not generally relinquished sufficient control over the property to give rise to a true lease, rental, or bailment of the property.

(4)(a) RCW 82.04.050 excludes from the definition "retail sale" any purchases for the purpose of resale, "as tangible personal property." Persons who use equipment in performing services either as prime contractors or as subcontractors are not purchasing the equipment for purposes of reselling the equipment as tangible personal property. These contractors must pay retail sales tax or use tax at the time the equipment is acquired ~~((Generally persons who rent equipment with an operator are not purchasing the equipment for resale as tangible personal property and must pay retail sales or use tax at the time the equipment is acquired)) and are not eligible to use a reseller permit for the purchase.~~

(b) Persons renting operated equipment to others may purchase the equipment without payment of retail sales tax only when the equipment is rented as tangible personal property. This can be demonstrated only when:

~~((a))~~ (i) The agreement between the parties is designated as an outright lease or rental, without reservations; and

~~((b))~~ (ii) The lessee acquires the right of possession, dominion, and control of the equipment, even to the exclusion of the lessor.

This last requirement is a factual question and the burden of proof is upon the owner/operator of the equipment to establish that the degree of control has been relinquished necessary to constitute a lessor-lessee relationship. Weight will be given to such factors as who has physical, operating control of the equipment; who is responsible for its maintenance, fueling, repair, storage, insurance (risk of loss or damage), safety and security of operation, and whether the operator is a loaned employee. If control of these factors is left with the owner/operator, then as a matter of fact, there has not been a relinquishing of control of the equipment to the degree necessary to create a lessor-lessee relationship for the rental of tangible personal property. This is true, even though the customer exercises some constructive control over such matters as when and where the equipment is used in connection with the construction work being performed, i.e., the contractor controls the job site.

(5) Business and occupation (B&O) tax.

(a) Outright rentals of bare (unoperated) equipment or other tangible personal property as well as leases of operated equipment are generally subject to the retailing ~~((classification of the business and occupation))~~ B&O tax.

(i) When a lessor purchases equipment for bare rental or lease, the seller of the equipment is making a wholesale sale to the lessor and is required to obtain a ~~((resale certificate for sales made before January 1, 2010, or a))~~ reseller permit ~~((for sales made on or after January 1, 2010,))~~ from the lessor to document the wholesale nature of any sale, as provided in ~~((WAC 458-20-102A (Resale certificates) and))~~ WAC 458-

20-102 (Reseller permits). ~~((Even though resale certificates are no longer used after December 31, 2009, they must be kept on file by the seller for five years from the date of last use or December 31, 2014.))~~

(ii) Under unique circumstances when equipment is rented ~~((for rent by the lessee,))~~ by a lessee for use as a rental to other lessees without intervening use, ~~((then))~~ the original rental is subject to ~~((the wholesaling classification of tax))~~ wholesaling B&O tax and the subsequent rental is subject to the retailing ~~((classification))~~ B&O tax. The original seller is required to obtain ~~((a resale certificate (WAC 458-20-102A) for sales made before January 1, 2010, or))~~ a reseller permit (WAC 458-20-102) ~~((for sales made on or after January 1, 2010, for these wholesale sales))~~ to substantiate the wholesale nature of the transaction.

(iii) Persons who purchase equipment for use as prime contractors or subcontractors are considered ~~((to be the))~~ consumers of ~~((these purchases. They are the consumers because they are not specifically reselling the tangible personal property. Persons selling equipment to these persons are retailers and))~~ the equipment, as the contractor, not their customers, actually use the equipment. Sales of equipment and tools to prime contractors and subcontractors are generally subject to ~~((the))~~ retailing B&O tax, unless purchased for resale without any use on the part of the purchaser.

(b) Persons who provide equipment or other tangible personal property and, in addition, operate the equipment or supply an employee to operate the same for a charge, without relinquishing substantial dominion and control to the customer, are providing a service that is classified as a retail sale unless the nature of the activity is specifically classified under another tax classification. Where a specific tax classification applies to the activity, the income is subject to ~~((the business and occupation))~~ B&O tax (or public utility tax (PUT)) according to the classification of the activities performed by the equipment ~~((and))~~ operator. In the case of building construction, it ~~((will be))~~ is presumed that the rental of equipment with an operator to a contractor is a retail sale unless the operator ~~((has responsibility))~~ is responsible for performing construction to contract specifications and assumes control over how the work will be performed.

(c) Under some circumstances, the ~~((leasing or renting))~~ rental or lease of tangible personal property ~~((can be))~~ is subject to the ~~((special))~~ "retailing of interstate transportation equipment" B&O tax classification. This classification applies if the sale is exempt from retail sales tax because of the specific tax exemptions ~~((of))~~ provided in RCW 82.08-0261, 82.08.0262, or 82.08.0263. These exemptions apply primarily to sales to private or common carriers who are engaged in interstate or foreign commerce.

~~((d))~~ The following examples show how the tax would be applied to certain situations:

(i) ~~The charge made by a subcontractor to a prime construction contractor for use of equipment with an operator used in the paving of a parking lot as part of the construction of a building would be taxable under wholesaling—other when the subcontractor has the responsibility to perform the work to contract specification and determines how the work will be performed.~~

~~(ii) A contractor performing work to contract specification making a charge to a city for use of equipment and operator in the construction of a publicly owned road would be taxable under public road construction.~~

~~(iii) Income for loading of a vessel using equipment with an operator is taxable under the stevedoring classification.~~

~~(iv) Income from transporting persons or property for hire by motor vehicle, including leasing or renting motor carrier equipment with driver, is generally taxable under either motor transportation or urban transportation.~~

~~(v) A customer rents scaffolding and the seller is responsible for a technician to setup, move, and dismantle it. This is the rental of tangible personal property since the true object of the transaction is having the scaffolding available for use by the customer. The customer also assumes dominion or control over the scaffolding by determining who will use the scaffolding and by controlling the use of the scaffolding.~~

~~(vi) Income from transporting persons or property for hire by vessel is not a retail equipment rental with operator.)~~

(6) **Retail sales tax.** Persons who rent or lease tangible personal property to ~~((users or))~~ consumers are required to collect ~~((from their lessees the))~~ retail sales tax measured by ~~((gross income from))~~ the selling price of the rentals as of the time the rental payments ~~((fall))~~ become due. See RCW 82.08.010.

(a) RCW 82.04.050 excludes from the definition of the term "retail sale," purchases for the purpose of resale in the regular course of business without intervening use "as tangible personal property." Thus, the retail sales tax does not apply ~~((upon))~~ to sales of tangible personal property to persons who purchase the same solely for the purpose of renting or leasing such property without operators in the regular course of business. However, the retail sales tax applies upon sales to persons who provide such property with operators for a charge, without relinquishing substantial dominion and control, or who intend to make some use of the property other than or in addition to renting or leasing it.

(b) For state tax purposes, financing leases are treated ((for state tax purposes)) as installment sales. The retail sales tax applies to the full selling price. Refer to WAC 458-20-198.

~~((c) The retail sales tax does not apply to lease payments made by a seller/lessee under a sale/leaseback agreement in respect to property, equipment, and components used by the seller/lessee primarily in the business of canning, preserving, freezing, or dehydrating fresh fruits, vegetables, and fish. Nor does the sales tax apply to the purchase amount paid by the lessee pursuant to an option to purchase this specific kind of processing equipment at the end of the lease term. (See RCW 82.08.0295.) In both situations the availability of this special sales tax exemption is contingent upon the seller/lessee having paid retail sales tax or use tax at the time of acquisition of such special processing property, equipment, and components. The use tax will also not apply if the sales tax does not apply.)~~

(7) **Use tax ((and/or)) or deferred retail sales tax.** Consumers who rent or lease tangible personal property from others and who have not paid ~~((the))~~ retail sales tax to their lessors are liable for ~~((the))~~ retail sales tax or use tax on the amount of the rental payments as of the time the payments

fall due unless an exemption from the tax applies. ~~((However, if the))~~ In cases where rental payments do not represent a reasonable rental value for the article, the taxable value shall be determined according to the rental charges made by other sellers of similar articles of like quality and character. This ((can)) may include using the rate of return as a percentage of the capitalized value that lessors of the particular type of property are generally using in rate setting.

In some cases, lessors may lease articles wherein the lease payments do not include property taxes or insurance. These leases are often referred to as "net leases" with the insurance and property taxes paid directly by the lessee. If the lessor is the party insured and the party legally liable for payment of the taxes, the payments made directly by the lessee must be treated as additional consideration to the lessor and subject to ~~((the))~~ retailing B&O tax and retail sales tax.

(a) **Bailment.** The value of tangible personal property held or used under bailment is subject to use tax if the property was purchased or acquired under conditions whereby the retail sales tax was not paid by the bailor. Tax liability is that of the bailor, or of the bailee if the bailor has not paid the tax. The measure of the use tax to the bailor is the fair market value of the article at the time the article was first put to use in Washington. The measure of the use tax to the bailee for articles acquired by bailment is the reasonable rental ~~((with the))~~ value ~~((to be))~~, determined as nearly as possible according to the rental price at the place of use of similar products of like quality and character. In the absence of rental prices for similar products, the reasonable rental value may be computed by prorating the retail selling price over the period of possession ~~((had))~~ by a bailee and payable in monthly installments. No further use tax is due upon property acquired by bailment after use tax has been paid by the bailee or any previous bailee upon the full original value of the article.

(b) Use tax does not apply to use by a bailee of any article of tangible personal property which is entirely consumed in the course of research, development, experimental, and testing activities conducted by the user, providing the acquisition or use of such articles by the bailor are exempt from retail sales tax or use tax. (RCW 82.12.0265.)

(8) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances. In some situations it may be difficult to determine if the transaction is a retail equipment rental with an operator. If in doubt as to whether a particular rental with an operator is a retail sale, taxpayers should contact the department for a ~~((specific))~~ tax ruling.

~~((a))~~ **Example 1.** ABC Contracting, Inc. (prime contractor) is hired by XYZ Property Rentals, Inc. (end consumer) to construct a retail shopping complex, including construction of an on-site parking lot adjacent to the shopping complex. ABC hires DEF Subcontracting, Inc. (subcontractor) to pave the parking lot. DEF will use its own equipment to complete the project, including equipment to pour, roll, and level the asphalt. As part of its contract with ABC, DEF is liable for meeting the contractual specifications set by XYZ (end consumer). At the time of purchase, ABC provides DEF with a reseller permit in lieu of paying retail sales tax.

In this scenario, DEF's business activity is classified as a construction service, rather than a rental of equipment with an operator, the charges for which are subject to wholesaling B&O tax, as construction services are eligible for resale in this case. This conclusion is supported by the fact that DEF is responsible for the actual performance of the construction activities, not merely the provision of equipment with an operator, which might also include services limited solely to the operation of the equipment.

Example 2. ABC Contracting, Inc. (prime contractor) enters into a contract with the city of Olympia, Washington, to construct a publicly owned road to specification. The contract includes separately stated charges for ABC's use of its own equipment and equipment operators to construct the publicly owned road. ABC's activities are assumed to meet the requirements of the public road construction B&O tax classification.

In this scenario, ABC's business activity is classified as a public road construction service, the charges for which, including charges for equipment and operators, are subject to the public road construction B&O tax. Additionally, ABC may be subject to deferred retail sales or use tax, if it has not previously reported and paid retail sales or use tax on its purchase of the equipment used to provide the public road construction services at issue in this scenario.

Example 3. GHI Crane Operators, Inc. is hired by UVW Terminal, Inc. to load storage containers onto a vessel. Under the terms of its contract with UVW, GHI will use its own crane and operator to load the storage containers onto the vessel. Additionally, GHI will use its own discretion in properly loading the vessel according to its experience in stevedoring. GHI's activities are assumed to meet the requirements of the stevedoring B&O tax classification.

In this scenario, GHI's business activity is classified as a stevedoring service, the charges for which are subject to stevedoring B&O tax. Additionally, GHI may be subject to deferred retail sales tax or use tax, if it has not previously reported and paid tax on its purchase of the crane used to provide stevedoring services.

Example 4. JKL Trucking, Inc. contracts with MNO Builders, Inc. to lease to MNO several motor carrier vehicles that are operated by JKL employees. The vehicles are used to haul construction materials from MNO's headquarters in Yakima, Washington, to a construction site in Vancouver, Washington, over state highways. JKL's activities are assumed to meet the requirements of the motor transportation PUT classification.

In this scenario, JKL's business activity is classified as a motor transportation service, the charges for which are subject to motor transportation PUT.

Example 5. ZYX Construction Co. contracts with WVU Rental Co. for the rental of scaffolding. WVU's technicians set up, move, and dismantle the equipment. After assembly, ZYX assumes dominion and control over the use of the scaffolding until it is dismantled by WVU upon conclusion of the construction project.

In this scenario, WVU's business activity is classified as a rental of tangible personal property without an operator, the charges for which are subject to retailing B&O and retail

sales tax. As the consumer of the scaffolding, ZYX is not eligible to use a reseller permit in lieu of paying retail sales tax.

Example 6. ABC Crane Co. is hired by DEF Builders Co. to supply a crane and operator to lift air conditioning equipment from the ground and hold it in place on the roof of a six-story building while ~~((the prime construction contractor))~~ DEF employees bolt ~~((s))~~ the unit down. ~~((ABC Crane's))~~ ABC's operator will retain control over the crane. ABC ~~((Crane))~~ has no responsibility to attach wiring, plumbing, or otherwise make the unit operational.

~~((ABC Crane is renting))~~ In this scenario, ABC's business activity is classified as a rental of equipment with an operator ~~((since it has no responsibility to perform actual construction to contract specification. The activity of renting a crane with an operator is a service included within the definition of a retail sale and is not otherwise tax classified elsewhere within the revenue act. The purchase of the crane by ABC is also a retail transaction because ABC retained control over the crane and is not renting the crane as tangible personal property.~~

~~((b))~~, the charges for which are subject to retailing B&O and retail sales tax. RCW 82.04.050(9). This is demonstrated by the fact that ABC is not responsible for the performance of any services, other than those necessary to operate the crane.

Additionally, ABC may be subject to retail sales tax or use tax on its use of the crane, if it has not already paid the tax at the time ABC initially acquired or used the crane in Washington.

Example 7. ABC Crane Co. (ABC) is hired by ~~((a prime contractor))~~ DEF Builders Co. (DEF), the prime contractor, to install a neon sign on the side of a new six-story building ~~((which is being constructed))~~ DEF is constructing. At the time of purchase, DEF provides ABC with a reseller permit in lieu of paying retail sales tax. ABC is responsible for making certain that the sign is correctly fastened to the side of the building and ~~((for installation of the electrical connections and meets the proper building codes. ABC is directly involved in construction and performs work to contract specification. Since the work is being done for the prime contractor for further resale, this is a wholesale sale, provided a resale certificate (WAC 458-20-102A) is obtained for sales made before January 1, 2010, or a reseller permit (WAC 458-20-102) for sales made on or after January 1, 2010. Had ABC only been hired to hold the sign in place while the prime contractor fastened it, this would have been a retail rental of equipment with operator.~~

~~((e))~~ XYZ Concrete Pumping is hired by a prime contractor to supply a concrete pump and operator to pump concrete from a premix concrete delivery truck to the location of the forms. XYZ has no responsibility to build forms, do the concrete finishing, or otherwise see that the concrete meets or is placed according to contract specifications. In short, the pump functions similarly to a wheelbarrow, but in a more efficient manner. XYZ is not a subcontractor and is making a retail rental of equipment with an operator.

~~((d))~~ ABC Company purchases a crane which it rents to others as a bare rental. It periodically rents the crane to lessees on this basis for two years. Beginning in the third year of ownership of this crane, ABC decides to start providing these customers with an employee to operate the crane. The

employee will operate under the direction of ABC with ABC retaining dominion and control over the crane. Does ABC owe use tax on the crane, and if so, what is the measure of the use tax?

ABC owes use tax upon the first use of the crane as a consumer. This occurred in the third year of ownership when ABC began supplying an operator. The measure of the tax is the retail market value of the crane at the time it is put to use by ABC.

(e)) in accordance with the contract specifications established between DEF and the property owner.

In this scenario, ABC's business activity is classified as a construction service, the charges for which are generally subject to retailing B&O and retail sales tax. RCW 82.04.050(2). However, in this scenario the charges are subject to wholesaling B&O tax, as construction services are eligible for resale, and ABC received a reseller permit from DEF, who is reselling construction services to the property owner.

Example 8. ABC Crane Co. is an Oregon business. ABC purchases a crane in Oregon for \$75,000, which it will rent to customers. ABC's employees will operate the crane and ABC will retain dominion and control over the crane at all times. In the first two years following ABC's purchase of the crane, all rentals occur in Oregon. In the third year, ABC moves its operations to Washington, and begins renting the crane with an operator to Washington customers.

In this scenario, ABC owes use tax upon its first use of the crane as a consumer. This occurred in the third year of ownership when ABC first used the crane as a consumer in Washington. The measure of the tax is the retail market value of the crane at the time ABC puts it to use. At that time, the comparable retail value of the crane is determined to be \$50,000, which is the measure of the use tax.

Example 9. DEF Builders Co. (prime contractor) is hired to construct an apartment complex. DEF is performing a significant portion of the construction services associated with the project on its own behalf, including construction of the building's foundation. After constructing forms for the apartment's foundation, DEF contracts with XYZ Concrete Co. to pump premixed concrete from a ready mix truck (located at the construction site) into the forms. XYZ operates its own pumping equipment, however, DEF controls the flow and placement of the concrete, directing XYZ's operator to start and stop the pump. The premixed concrete is not provided by XYZ. DEF is responsible for finishing the concrete.

In this scenario, XYZ is providing stand-alone concrete pumping services, and its business activity is classified as a rental of equipment with an operator, the charges for which are subject to retailing B&O and retail sales tax. Additionally, XYZ's activity is not eligible for resale, as DEF is considered the consumer of the operated rental equipment.

Example 10. DEF Builders Co. (prime contractor) is hired to construct an apartment complex. DEF is performing a significant portion of the construction services associated with the project on its own behalf, including construction of the building's foundation. After constructing forms for the apartment's foundation, DEF contracts with XYZ Concrete Co. to provide premixed concrete and to pump for the pour. XYZ operates its own pumping equipment, however, DEF controls the flow and placement of the concrete, directing

XYZ's operator to start and stop the pump. At the time of its purchase, DEF provides XYZ with a reseller permit in lieu of paying retail sales tax.

In this scenario, where the taxpayer is providing both the concrete materials and the concrete pumping equipment and pumping services, XYZ's activity is classified according to subsection (2)(e)(iii) of this rule. In this case, the transaction's true object (or primary purpose) is the sale of premixed concrete. The sale of tangible personal property (concrete) for resale is subject to wholesaling B&O tax.

Example 11. DEF Builders Co. (prime contractor) is hired to construct an apartment complex. DEF hires subcontractors to perform a significant portion of the construction services associated with the project, including construction of the building's foundation. DEF contracts with XYZ Concrete Co. to pour and finish the building's concrete foundation, including construction of forms to pour the foundation. XYZ operates its own pumping equipment, in addition to providing on-site contractors who will manage the flow and placement of the pumped concrete. After the pour, XYZ is responsible for finishing the concrete. XYZ's contract with DEF requires the finished foundation meet the contract specifications entered into between DEF and its customer, the building owner.

In this scenario, XYZ's business activity is classified as the sale of subcontracted construction services, the charges for which are subject to wholesaling B&O tax, provided XYZ received a reseller permit from DEF.

Example 12. Farm Services, Inc. specializes in the cutting and baling of hay for farmers. Farm Services contracts with PQR Farms, Inc. (farmer) to cut and bale PQR's hay. The hay, after being cut and baled, is sold by ((the farmer)) PQR.

((Farm Services is not making a retail rental of equipment with operator, but is engaged in a farming for hire activity which is taxable under the)) In this instance, Farm Services' business activity is a farming for hire service, the proceeds from which are subject to service and other business activities B&O tax ((classification)). See WAC 458-20-209.

((#)) **Example 13.** Helicopter, Inc. contracts with Logs, Inc. to move logs from where they have been cut in the woods to a landing approximately one mile away where the logs will be sorted, loaded on trucks, and transported to a mill. Total control over the helicopter operation rests with Helicopter, Inc.

In this scenario, Helicopter, Inc.'s business activity is classified as an extracting for hire service, the proceeds from which are subject to extracting for hire B&O tax. This is not a rental of equipment with an operator, nor is it considered as an air transportation service((-This)) as the activity is directly part of the timber extracting and harvesting activity ((and is taxable as extracting for hire)). See WAC 458-20-13501.

((g)) **Example 14.** ABC Sound Productions ((provides)) Co. contracts with DEF Entertainers, Inc. (entertainment promoter) to provide lighting, amplifying equipment, and speakers ((as part of the services it sells to entertainment promoters. ABC also provides several operators of the equipment. This is a rental of equipment with operator.)) for a performance run and operated by DEF. As part of its contract with DEF, ABC's employees operate all of the equipment

provided. DEF will oversee and direct the operators as to the specific use of the equipment.

In this scenario, ABC's business activity is classified as a rental of equipment with an operator, the proceeds from which are subject to retailing B&O tax and retail sales tax. In applying the true object test, ((the promoter)) DEF is primarily purchasing the use of ((the)) lighting and sound equipment. ((The performer or promoter could be expected to)) DEF maintains the authority to specify the color, location, and degree of lighting and ((may)) also ((request)) changes and modifications to the level of sound amplification during the performance. ABC's services are solely limited to the operation of the equipment itself.

Example 15. Fun Snacks, LLC is in the business of renting popcorn and cotton candy machines with an operator. Fun Snacks does not sell cotton candy or popcorn to individual customers attending an event, but rather charges a flat rate to event organizers in which attendees of the event consume either product for no additional charge. Fun Snacks is hired by Little Farm, Inc. to provide a cotton candy machine with an operator for a fall festival organized and operated by Little Farm. Little Farm staff will operate concessions at the event and will oversee the flavor and quantity of cotton candy made by the operator of the machine. Fun Snacks charges a flat rate of \$500 to Little Farm which includes the rental equipment, operator, and cotton candy ingredients and supplies.

In this scenario, Fun Snacks is selling a bundled transaction, subject to the "true object test" contemplated in RCW 82.08.190. Because one or more of the products included in the transaction are subject to retail sales tax, the rental of equipment with an operator and cotton candy ingredients and supplies, the total charge of \$500 is subject to retailing B&O tax and retail sales tax.

((H)) **Example 16.** John Doe ((purchased)) purchases a vessel ((which will be rented)) that he will rent to others as a bare boat rental. The rentals will be arranged through an agent at ((a marina. The marina)) GHI Marina. GHI receives a commission based on any usage of the vessel, including usage by ((the owner)) John Doe. The rental of the boat is a retail sale when the boat is rented to others. The usage of the boat by John Doe is not a rental. Since John Doe will be using the boat at times for his own use, he may not purchase the boat for resale. As a result, John Doe is subject to retail sales tax or use tax on his initial acquisition or use of the vessel in Washington.

WSR 21-01-169

PROPOSED RULES

EASTERN WASHINGTON UNIVERSITY

[Filed December 21, 2020, 8:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-22-067.

Title of Rule and Other Identifying Information: Chapter 172-64 WAC, Alcohol policy.

Hearing Location(s): On February 11, 2021, at 9:00 a.m., at the Eastern Washington University (EWU), Tawanka 215, 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/93498449616?from=addon>.

Date of Intended Adoption: February 26, 2021.

Submit Written Comments to: Annika Scharosch, EWU, 211 Tawanka Hall, Cheney, WA 99004, email ascharosch@ewu.edu, fax 509-359-6724, by February 11, 2020.

Assistance for Persons with Disabilities: Contact Annika Scharosch, phone 509-359-6724, fax 509-359-2874, email ascharosch@ewu.edu, by February 11, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This updates the rules for consumption of alcohol in university apartments. It also modifies the restrictions on the service and consumption of alcohol at university sponsored events off campus.

Reasons Supporting Proposal: Changes in university housing and the need to revise EWU's approach to off-campus university sponsored events.

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

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

Name of Proponent: EWU, governmental.

Name of Agency Personnel Responsible for Drafting: Annika Scharosch, 211 Tawanka Hall, 509-359-6724; 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 34.5.328 [34.05.328] (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 [these] rules 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).

December 21, 2020

Annika Scharosch
Associate Vice President for
Civil Rights, Compliance
and Enterprise Risk Management

AMENDATORY SECTION (Amending WSR 14-24-037, filed 11/24/14, effective 12/25/14)

WAC 172-64-010 Policy. Alcoholic beverages may be possessed, sold, served, and/or consumed on university owned or operated property and/or at university sponsored events and activities only as provided for in this chapter.

EWU prohibits the unlawful possession, use, consumption or distribution of alcohol by students, employees, or visitors on university property or during any university-sponsored program or activity, whether held on or off campus. Members of the university community are responsible for complying with these rules as well as all state laws regarding the use, possession and/or distribution of alcohol.

The university will respond to reported or suspected violations of these rules and take appropriate action, up to and including referral to law enforcement agencies for criminal prosecution.

University employees, students, and student organizations are subject to disciplinary action for violations of these rules and associated state laws, local ordinances, and university policies.

AMENDATORY SECTION (Amending WSR 15-14-077, filed 6/29/15, effective 7/30/15)

WAC 172-64-020 Alcohol use in university residence halls. (1) Applicability. This section establishes rules for alcoholic beverages in residence halls that are owned or operated by Eastern Washington University.

(2) General policy. Persons, who are at least twenty-one years old, may possess and consume alcoholic beverages in the privacy of individual residence hall rooms subject to the requirements of this section.

(3) Restrictions.

(a) Consumption of alcoholic beverages is prohibited in any areas of residence halls outside of individual rooms including, but not limited to, hallways, entrances, corridors, lounges, and reception areas.

(b) Doors to individual residence hall rooms must remain closed while alcohol is being consumed.

(c) Kegs, common source containers, and nonalcoholic brews such as "near beer" are prohibited.

(d) Selling or providing alcohol to minors is prohibited.

(e) Alcohol is prohibited in any residence hall room where any student living in the room is under twenty-one years old, regardless of whether the under-age student is present or not.

(f) Alcohol may not be consumed in any room where any person present is under twenty-one years old.

(g) Alcohol may not be consumed in any area designated as alcohol-free housing.

(h) Residents in Brewster Hall or the apartments, who are at least twenty-one years old, may have alcohol in their individual room but not in their common room areas if any of their suitemates are under twenty-one except for approved family housing.

(i) Vendors may not deliver alcohol to residence halls or any other campus area except as provided for in WAC 172-64-090.

(j) Alcohol must not be visible to the public when carried into a residence hall.

(k) Alcohol containers may not be used as decorative pieces in residence halls.

(l) Students shall comply with reasonable requests by university staff to provide identification, proof of age, and/or show contents of a container when requested.

(m) Possession and consumption of alcohol in the privacy of individual residence hall rooms must not infringe on the privacy and peace of other individuals.

(n) Residence hall or housing funds may not be used to purchase alcoholic beverages.

(4) Alcohol-free housing. Per RCW 28B.10.575, the university shall notify all students applying for student housing

of the availability of housing where all alcoholic beverage use is prohibited. The university shall accommodate student requests for alcohol-free housing.

(5) Awareness. The university shall distribute to students in university residence halls the process for reporting violations and complaints of alcohol and illegal drug use, the policies and procedures for investigating such complaints, and sanctions that may be applied for violations of the institution's alcohol and illegal drug use policies.

AMENDATORY SECTION (Amending WSR 14-24-037, filed 11/24/14, effective 12/25/14)

WAC 172-64-030 Alcohol use in private university residences. Persons of legal age may possess, consume, and/or serve alcohol inside university-owned buildings other than residence halls or the apartments when the buildings are being used as private residence, such as ~~((university apartments and))~~ the University House.

AMENDATORY SECTION (Amending WSR 15-14-077, filed 6/29/15, effective 7/30/15)

WAC 172-64-040 Alcohol use at on-campus events and events off-campus that are sponsored by the university. (1) ~~((Applicability))~~ **On university property.** This section establishes rules for possessing, consuming, selling, and/or serving alcoholic beverages ~~((~~

~~((a) At events))~~ on university-owned or operated property, regardless of whether ~~((the))~~ an event is sponsored by the university and regardless of whether event sponsors are affiliated with the university ~~((; and~~

~~((b) At off-campus events that are sponsored, in whole or in part, by the university.~~

~~((2) An event is considered to be sponsored by the university when the event is organized and/or staffed by university students or employees or when the event is funded, in whole or in part, by the university)).~~

~~((3))~~ (a) Sponsor requirements. Sponsors of an event ~~((; as described in subsection (1) of this section;))~~ where alcohol is to be possessed, sold, served and/or consumed, must comply with the following requirements:

~~((4))~~ (i) Obtain written permission from the appropriate official(s) in advance of the event:

~~((5))~~ (A) Student clubs and organizations must obtain permission from the student activities office;

~~((6))~~ (B) For all other requests, sponsors must obtain permission from the vice president for business and finance or designee;

~~((7))~~ (ii) Contact event planning to request a banquet permit or a special occasion license per WAC 172-64-070;

~~((8))~~ (iii) Comply with all Washington state laws, chapter 172-64 WAC, all other university rules and policies; and any additional instructions provided to the event/activity sponsor as a condition of approval;

~~((9))~~ (iv) Ensure Washington state alcohol serving requirements are enforced:

~~((10))~~ (A) Event sponsors must ensure that all persons designated to serve alcohol are at least twenty-one years old and have received alcohol server training ~~((;))~~;

~~((f))~~ (B) Event sponsors must ensure that servers check ID and do not serve alcohol to any person who is under twenty-one years old or who appears intoxicated;

~~((e))~~ (v) Prohibit serving alcohol during normal, university business hours unless an exception has been granted as part of the request under (a)(i) of this subsection;

~~((f))~~ (vi) Prohibit persons from bringing alcoholic beverages into the event unless specifically authorized by the banquet permit or special occasion license;

~~((g))~~ (vii) Prohibit persons from taking alcoholic beverages outside of the approved alcohol use area, except for beer/wine in the original unopened container that is sold or auctioned for off-premises consumption as specifically authorized by a special occasion license;

~~((h))~~ (viii) Provide food or snacks and nonalcoholic beverages at the same place as alcoholic beverages and feature nonalcoholic beverages at least as prominently as alcoholic beverages; ~~(and~~

~~(i) For an event on university owned or operated property,~~ (ix) Inform university police of the event and consult with the university police about appropriate security measures ~~((as provided for in subsection (5) of this section)).~~

~~((4))~~ The university police shall determine appropriate security measures to be taken for on-campus events where alcohol is to be possessed, consumed, sold, and/or served. University police shall coordinate with the event's sponsor and appropriate university personnel to assist in compliance with state laws and university rules; and

(x) Gifts, awards, and rewards. Alcoholic beverages may not be provided as gifts or awards to any person as part of any event conducted under a special occasion license.

(2) Publicity and advertising of events on campus and off campus. The following rules apply to any events on university-owned or operated property as well as university-sponsored events off campus.

(a) Events conducted under a banquet permit are by invitation only and may not be advertised to the public.

(b) All announcements and advertisements concerning an event including, but not limited to, flyers, notices, posters, banners, tee-shirts and newspaper and radio announcements, must:

(i) Note the availability of nonalcoholic beverages at least as prominently as the availability of alcoholic beverages;

(ii) State that proper identification is required in order to be served or sold alcoholic beverages; and

(iii) Not make reference to the amount of alcoholic beverages available at the event.

(c) All announcements and advertisements, as well as any promotions of specific alcoholic beverage brands at the event:

(i) Must not make reference to any form of drinking contest. Drinking contests and similar activities which encourage the rapid and/or excessive consumption of alcoholic beverages are prohibited;

(ii) Must not portray drinking as a solution to personal or academic problems or as necessary to social, sexual, or academic success; and

(iii) Must not encourage any form of alcohol abuse or place emphasis on quantity or frequency of consumption.

~~((5) Gifts, awards, and rewards. Alcoholic beverages may not be provided as gifts or awards to any person as part of any event conducted under a special occasion license.~~

~~(6) Security measures. The university police shall determine appropriate security measures to be taken for on-campus events where alcohol is to be possessed, consumed, sold, and/or served. University police shall coordinate with the events' sponsor and appropriate university personnel to assist in compliance with state laws and university rules.)~~ (3) University-sponsored events off campus.

(a) All university-sponsored events involving the consumption of alcohol must take place outside of normal university business hours unless permission is obtained in advance from the vice president for business and finance or designee.

(b) If a university sponsored event is hosted off campus at the site of a private vendor, individuals may purchase alcohol from the private vendor. The private vendor is responsible for complying with all relevant state and local laws.

(c) If a university sponsored event is hosted off campus at an employee's private residence, university employees are prohibited from serving or providing alcohol to any university students.

AMENDATORY SECTION (Amending WSR 14-24-037, filed 11/24/14, effective 12/25/14)

WAC 172-64-070 Banquet permits and special occasion licenses. A banquet permit or a special occasion license must be obtained in order to permit alcoholic beverages to be possessed, sold, served, and/or consumed on university owned or operated property and/or at university-sponsored events and activities.

Banquet permits and special occasion licenses have specific rules concerning alcohol serving, sales (including raffles and gifts), event advertising, and related issues as contained in chapters 314-05 and 314-18 WAC.

Event organizers must contact EWU event planning to initiate the process for obtaining a banquet permit or special occasion license. Banquet permits and special occasion licenses are issued by the Washington state liquor ~~((control))~~ and cannabis board.

WSR 21-01-170

PROPOSED RULES

EASTERN WASHINGTON UNIVERSITY

[Filed December 21, 2020, 9:05 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-22-066.

Title of Rule and Other Identifying Information: Chapter 172-11 WAC, new chapter setting for information about financial aid and tuition waivers at Eastern Washington University (EWU).

Hearing Location(s): On February 11, 2021, at 9:00 a.m., at EWU, Tawanka 215, 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/93498449616?from=addon>.

Date of Intended Adoption: February 26, 2021.

Submit Written Comments to: Annika Scharosch, EWU, 211 Tawanka Hall, Cheney, WA 99004, email ascharosch@ewu.edu, fax 509-359-6724, by February 11, 2020.

Assistance for Persons with Disabilities: Contact Annika Scharosch, phone 509-359-6724, fax 509-359-2874, email ascharosch@ewu.edu, by February 11, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule will provide information about who to contact regarding financial aid and scholarships. It also identifies the permissible tuition waivers EWU offers in accordance with RCW 28B.15.910.

Reasons Supporting Proposal: This chapter is intended to document EWU's current practices in a regulation.

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

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

Name of Proponent: EWU, governmental.

Name of Agency Personnel Responsible for Drafting: Annika Scharosch, 211 Tawanka Hall, 509-359-6724; 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 34.05.328 [34.05.328] (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 [these] rules 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).

December 21, 2020

Annika Scharosch
Associate Vice President for
Civil Rights, Compliance
and Enterprise Risk Management

Chapter 172-11 WAC

REGISTRATION

NEW SECTION

WAC 172-11-010 Authority. Pursuant to the authority granted by RCW 28B.35.120 and chapter 28B.15 RCW, the board of trustees of Eastern Washington University has established the following regulations regarding registration.

NEW SECTION

WAC 172-11-030 Financial aid information. Federal, state, and private financial aid applications and information may be obtained from:

Eastern Washington University

Financial Aid & Scholarships Office
102 Sutton Hall
333 Eagle Lane
Cheney, WA 99004

Federal and state aid will be awarded in accordance with applicable federal and state laws and regulations.

NEW SECTION

WAC 172-11-040 Waiver of tuition. (1) The board of trustees is authorized to grant tuition waivers to students pursuant to RCW 28B.15.910 and the laws identified therein. A number of these statutes authorize, but do not require, the board of trustees to grant waivers for different categories of students and provide waivers of different fees. For waivers that are authorized but not required by state law, the board of trustees delegates to the president or designee the authority to implement voluntary tuition waivers. The permissive waivers that EWU has implemented are identified below. A list of permissive waivers and mandatory waivers is available from EWU's financial aid and scholarships office. These waivers may be modified at any time. Eligibility is based on the term for which the student is seeking a waiver and both the waiver and eligibility criteria may be subsequently modified or revoked with or without notice to a student. Awarding of a waiver for one term is not a guarantee that the waiver will be awarded in a subsequent term.

(2) Even if EWU has implemented a permissive waiver, the university, for specific reasons and a general need for flexibility in the management of its resources, may choose not to award waivers to all students who may be eligible under the terms of the laws due to funding limitations and enrollment strategies. The university may modify its restrictions or requirements pursuant to changes in state or federal law, changes in programmatic requirements, or in response to financial or other considerations, which may include, but are not limited to, the need to adopt fiscally responsible budgets, the management of the overall levels and mix of enrollments, management initiative to modify enrollment demand for specific programs, and management decisions regarding the array of academic programs offered. The university may choose not to exercise the full funding authority granted under RCW 28B.15.910 and may limit the total funding available under RCW 28B.15.915.

(3) Pursuant to RCW 28B.15.910, EWU adopts the following tuition waivers with the following limitations. These limitations are in addition to any limitations set forth in state or federal law.

(a) RCW 28B.15.014(1);

(b) RCW 28B.15.014(2). Waivers under this subsection for the nonresident tuition fee differential shall be restricted to three quarters within the first year from the employee's initial date of employment with EWU. The employee must be employed on or before the first day of the quarter for which the waiver is requested;

(c) RCW 28B.15.544. Applicants must meet initial enrollment and academic eligibility requirements available on the financial aid office's website;

(d) RCW 28B.15.556. Limitations are included in specific student exchange agreements;

(e) RCW 28B.15.558. All waivers authorized by RCW 28B.15.588 shall be subject to additional limitations as determined by the university. The details of EWU's program of tuition waivers for state, teachers and other certificated instructional staff, and K-12 classified staff are set forth in EWU Policy 409-04. As authorized by RCW 28B.15.558(5), waivers may be awarded to eligible EWU employees before considering waivers for eligible persons who are not employed by EWU. These waivers are not available for self-support courses or individualized instruction;

(f) RCW 28B.15.615;

(g) RCW 28B.15.621(2). This waiver is limited to Washington residents who are enrolled full-time and pursuing their first undergraduate degree and is only a partial waiver. Information about eligibility for this waiver is available on the financial aid office's website. To qualify as an eligible veteran or National Guard member, the person seeking the waiver must provide proof of domicile in Washington state and either a DD Form 214 or other documentation establishing they meet the criteria in RCW 28B.15.621(8);

(h) RCW 28B.15.740 (1) and (2); and

(i) RCW 28B.70.050.

(4) Any waivers identified in subsection (3) of this section only apply to the operating portion of tuition for state supported courses or programs, unless otherwise required by law. They do not apply to self-support courses or programs.

(5) Additional procedures and requirements for the waivers identified in subsection (3) of this section may be included in EWU policies. EWU may offer additional waivers at its discretion under RCW 28B.15.915.

(6) Information about fee waivers is available from Student Financial Services, 202 Sutton Hall, Cheney, WA 99004, phone 509-359-6372.

conduct committee; Student conduct committee hearings—Presentations of evidence; Student conduct committee—Initial decision; Appeal from student conduct committee's initial decision; Sexual misconduct proceedings; and Supplemental Title IX student conduct procedures (Order of precedence; Prohibited conduct under Title IX; Title IX jurisdiction; Initiation of discipline; Prehearing procedure; Rights of parties; Evidence; Initial order; Appeals). The following WAC have been updated: WAC 132X-60-015, 132X-60-020, 132X-60-090, 132X-60-100, 132X-60-105, 132X-60-120, 132X-60-140, and 132X-90-040. The following WAC have been repealed: WAC 132X-60-010, 132X-60-030, 132X-60-035, 132X-60-037, 132X-60-040, 132X-60-045, 132X-60-046, 132X-60-050, 132X-60-060, 132X-60-065, 132X-60-070, 132X-60-080, 132X-60-160, and 132X-60-170.

Hearing Location(s): On February 1, 2021, at 2:00 p.m., <https://spscc.zoom.us/j/81890319727> OR Call: 253-215-8782, Meeting ID: 818 9031 9727. Public hearing to be held remotely due to COVID-19.

Date of Intended Adoption: February 9, 2021.

Submit Written Comments to: David Pelkey, 2011 Mottman Road S.W., Olympia, WA 98512, email dipelkey@spscc.edu, fax 360-596-5209, phone 360-596-5231, by February 1, 2021.

Assistance for Persons with Disabilities: Contact access services, phone 360-596-5306, fax 360-596-5209, TTY 360-596-5439, email Access.Services@spscc.edu.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The college's code of student rights and responsibilities were last updated in February 2012. The college is making changes to the student conduct rules to update them for compliance with current best practices. In addition, the Department of Education (DOE) issued updated Title IX rules which took effect August 14, 2020, forward. The updated rules will incorporate new supplemental Title IX student conduct code requirements that necessitate SPSCC amending chapter 132X-60 WAC, Code of student rights and responsibilities, rules to remain in compliance with the updated DOE requirements. A related WAC in chapter 132X-90 WAC (WAC 132X-90-040) is being updated to best practices. Several WAC are being repealed as part of the update.

Reasons Supporting Proposal: The college's existing code of student rights and responsibilities require updating to be compliant with current best practices. In addition, supplemental WAC and other changes are required to comply with new federal Title IX rules.

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

Rule is necessary because of federal law, 34 C.F.R. § 106.30, § 106.44, § 106.45.

Name of Proponent: SPSCC, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: David Pelkey, Vice President for Student Services Office, 360-596-5231.

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. SPSCC is not one of the enumerated agencies

WSR 21-01-177

PROPOSED RULES

SOUTH PUGET SOUND COMMUNITY COLLEGE

[Filed December 21, 2020, 10:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-19-143.

Title of Rule and Other Identifying Information: South Puget Sound Community College's (SPSCC) code of student rights and responsibilities have been updated to comply with current best practices. In addition, supplemental Title IX WAC have been added due to recent changes in federal law. Specifically, the following new WAC have been included: WAC 132X-60-005, 132X-60-011, 132X-60-109, 132X-60-115, 132X-60-155, 132X-60-165, 132X-60-175, 132X-60-185, 132X-60-190, 132X-60-195, 132X-60-200, 132X-60-210, 132X-60-220, 132X-60-230, 132X-60-240, 132X-60-250, 132X-60-260, 132X-60-270, and 132X-60-280. Authority; Statement of student rights, inclusive of academic freedom and due process; Brief adjudicative proceedings—Initial hearing; Brief adjudicative proceedings—Review of an initial decision; Student conduct committee; Appeal—Student

required to conduct 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 rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

December 21, 2020
Dr. Timothy S. Stokes
President

NEW SECTION

WAC 132X-60-005 Authority. The board of trustees, 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 affairs 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 132X-60-011 Statement of student rights. As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

The following enumerated rights are guaranteed to each student within the limitations of statutory law and college policy, which are deemed necessary to achieve the educational goals of the college:

(1) **Academic freedom.**

(a) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public.

(b) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and 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.

AMENDATORY SECTION (Amending WSR 12-03-093, filed 1/17/12, effective 2/17/12)

WAC 132X-60-015 Definitions. ((As used in this *Code of Student Rights and Responsibilities* the following words and phrases shall mean:

(1) ~~Associated student body (ASB) SPSCC senate~~ means the representative governing body for students, also referred to as student government, at South Puget Sound Community College recognized by the board of trustees.

(2) ~~Assembly~~ means any overt activity engaged in by two 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) ~~Board~~ means the board of trustees of South Puget Sound Community College District 24, state of Washington.

(4) ~~College~~ means South Puget Sound Community College, District 24.

(5) ~~College facilities~~ means and includes any or all real and personal property owned or operated by the college and shall include all buildings and appurtenances affixed thereon or attached thereto.

(6) ~~College personnel~~ refers to any person employed by Community College District 24 on a full-time or part-time basis.

(7) ~~Disciplinary action~~ means and includes dismissal or any lesser sanction of any student by the vice president for student services, the student judicial board, or the college president for the violation of any of the provisions of the code of student rights and responsibilities for which such sanctions may be imposed.

(a) ~~The college president or designee shall have the authority to take any disciplinary action including the authority to suspend any student of the college for a period not to exceed ten academic calendar days.~~

(b) ~~The college president or designee shall have the authority to take any disciplinary action including the authority to dismiss any student of the college.~~

(8) ~~District~~ means Community College District 24, state of Washington.

(9) ~~Hazing~~ includes any method of initiation into a student organization or living group, or any pastime or amusement engaged in with respect to such an organization or living group that causes, or is likely to cause, bodily harm or physical harm, or serious mental or emotional harm, to any

student or other person attending the college. Hazing does not include customary athletic events or other similar contests or competitions.

(10) **Initiation** means the ceremonies or rites by which a person is admitted into a club, organization, or living group not amounting to hazing. Initiation conduct may include embarrassments, ridicule, sleep deprivation, verbal abuse or personal humiliation.

(11) **President** means the duly appointed chief executive officer of South Puget Sound Community College, District 24, state of Washington, or in his/her absence, the designee.

(12) ~~Recognized student organization~~ means and includes any group or organization composed of students which is recognized formally by the college.

(13) ~~A sponsored event or activity~~ means any activity that is scheduled by the college or a recognized student organization and is supervised and controlled by college personnel. Such sponsorship shall continue only as long as the event is supervised and controlled by college personnel. When the sponsored event or activity is of a prolonged nature, and free time periods are permitted to the students participating in the event, any activity taking place during such a free time period outside of the supervision and control of college personnel responsible for the event or activity shall be deemed to be a nonsponsored activity.

(14) ~~Student~~, unless otherwise qualified, means and includes any person who is enrolled for classes.)) The following definitions shall apply for purpose of this student conduct code:

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

(2) **"College premises"** shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

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

(4) **"Conduct review officer"** is the vice president for student services or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code.

(5) **"Disciplinary action"** is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.

(6) **"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 appeals board. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings. See 132X-60-105 for a general overview of appeals process.

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

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

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

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

(8) **"Respondent"** is the student against whom disciplinary action is initiated.

(9) **"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 of the document is emailed and deposited in the mail.

(10) **"Sexual misconduct"** has the meaning ascribed to this term in WAC 132X-60-090.

(11) **"Student"** includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered "students" for purposes of this chapter.

(12) **"Student conduct officer"** is a college administrator designated by the president to be responsible for implementing and enforcing the student conduct code.

(13) **"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.

AMENDATORY SECTION (Amending WSR 12-03-093, filed 1/17/12, effective 2/17/12)

WAC 132X-60-020 Jurisdiction. ((All rules herein adopted shall apply to every student whenever said student is present upon or in any college facility and whenever said student is present at or engaged in any college or recognized student organization sponsored activity or function which is held on or in nonecollege facilities.

Persons aiding or abetting a student's breach of this code shall be subject to having their privilege removed as to remaining on college property or engaging in college sponsored activities, and/or appropriate disciplinary action pursuant to this code, college policies and procedures, and/or state civil or criminal law. If the privilege to remain on campus is revoked, trespassers shall be subject to possible arrest and prosecution under the state criminal trespass law.)) (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) To 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.

AMENDATORY SECTION (Amending WSR 12-03-093, filed 1/17/12, effective 2/17/12)

WAC 132X-60-090 (~~(Violations.)~~) Prohibited student conduct. ~~((Any student found to have committed or to have attempted to commit any of the following violations on college-owned or controlled property or at college-sponsored or supervised functions is subject to the disciplinary sanctions outlined in WAC 132X-60-120:~~

~~(1) Abusive conduct: Physical and/or verbal abuse of any person or conduct, including hazing and initiations which is intended to threaten imminent bodily harm or to endanger the health or safety of any person.~~

~~(2) Destroying or damaging property: Malicious damage to or malicious misuse of college property, or the property of any person.~~

~~(3) Dishonesty: All forms of dishonesty including: Cheating; plagiarism; knowingly furnishing false information to the college; intentionally initiating or causing to be initiated any false report, warning, or threat of fire, explosion, or other emergency;; forgery; alteration or use of college documents or instruments of identification with intent to defraud.~~

~~(4) Disorderly conduct: Materially and substantially interferes with the personal rights or privileges of others or the educational process of the college.~~

~~(5) Drugs: Using, possessing, furnishing, or selling any narcotic or dangerous drug as those terms are used in Washington statutes, except when the use or possession of a drug is specifically prescribed to the student as medication by an authorized medical practitioner.~~

~~(6) Inciting others: Intentionally inciting others to engage in any prohibited conduct as defined herein, which incitement directly leads to such conduct. Inciting is the advocacy which prepares the group or individual addressed for immediate action and compels that individual or group to engage in the prohibited conduct.~~

~~(7) Insubordination: Failure to comply with lawful directions of college personnel acting in performance of their official duties.~~

~~(8) Liquor: Possessing, consuming, or furnishing of alcoholic beverages where prohibited by law or college rules.~~

~~(9) Theft: Theft or conversion of college property or private property.~~

~~(10) Trespass/unauthorized presence: Entering or remaining unlawfully, as defined by state law, or using college premises, facilities, or property, without authority.~~

~~(11) Sexual harassment: Unwelcome sexual advances, requests for sexual favors, other conduct soliciting sexual favors, or other conduct of a sexual nature which conduct objectively and subjectively creates a hostile environment that substantially interferes with a student's educational performance, or substantially interferes with an individual's work, regardless of whom is initiating or receiving that conduct. That is, sexual harassment conduct of employees toward students, supervisors toward supervisees, students toward students, students toward employees. Sexual harassment complaints are covered by the college's Nondiscrimination Policy and Discrimination Complaint/Grievance Procedures at <http://www.spsee.ctc.edu/getting-to-know-us/policies>.~~

~~(12) Weapons: Carrying, exhibiting, displaying or drawing any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, or any other weapon apparently capable of producing bodily harm, in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons.~~

~~(13) Computers – Misuse of technology: Use of college computers and/or computer programs for any purpose other than legitimate college business.~~

~~(14) Other violations: Students may be accountable to civil and criminal authorities and to the college for acts which constitute violations of federal, state, or local law as well as college rules and policy. The college may refer any such violation to civil and criminal authorities for disposition.)) 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 sanctions for failing to meet the college's standards for satisfactory scholarship and academic integrity may be imposed at the discretion of a faculty member, program chair, dean, or academic review panel, as set forth in the college's academic standards policy. Students should refer to each faculty course syllabus, and the college's academic standards policy, which is separate and distinct from the policies and procedures associated with the college's student conduct code, Title IX, and final course grade appeals.

(2) Alcohol, drug, and tobacco violations.

(a) Alcohol. The use, possession (where possession is illegal under federal, state, or local law), 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 (where possession is illegal under federal, state, or local law), 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. The use of tobacco, electronic cigarettes, and related products on the college campus is restricted to designated smoking areas. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, vaporizers, and snuff.

(3) 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.

(4) 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 threat-

ening 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.

(5) Discriminatory conduct. Conduct which harms or adversely affects any member of the college community because of her/his 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.

(6) 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.

(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 his or her duties, including failure to properly identify oneself to such a person when requested to do so.

(8) 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.

(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) Lewd conduct. Conduct which is lewd or obscene that is not otherwise protected under the law.

(11) Misuse of electronic resources. Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

(a) Unauthorized use of such resources or opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of such time or resources to interfere with someone else's work;

(e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(g) Use of such time or resources in violation of applicable copyright or other law;

(h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or

(i) Failure to comply with the college's electronic use policy.

(12) Obstructive or disruptive conduct. Conduct, not otherwise protected by law, that materially or substantially interferes with, impedes, or otherwise unreasonably hinders the educational process.

(a) Instruction, research, administration, disciplinary proceeding, 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.

(13) 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.

(14) 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.

(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 proceeding.

(16) 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.

(17) Sexual misconduct. The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX is defined in the supplemental procedures to this code. See WAC 132X-60-210 (supplemental Title IX student conduct procedures).

(a) Sexual harassment. The term "sexual harassment" means unwelcome sexual- or gender-based conduct, includ-

ing 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 age 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 interaction 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 words or conduct indicating freely given agreement to have sexual intercourse or sexual contact. A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual sexual conduct. Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(18) 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.

(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) Weapons. Carrying, exhibiting, displaying or drawing any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, or any other weapon apparently capable of producing bodily harm, in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons.

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.

AMENDATORY SECTION (Amending WSR 12-03-093, filed 1/17/12, effective 2/17/12)

WAC 132X-60-100 Disciplinary proceedings. ~~((+) Initiation of disciplinary action. Alleged violations shall be reported in writing to the vice president for student services within ten calendar days of occurrence.~~

~~(2) Notice requirements. Any student charged with an alleged violation shall receive written notice from the office of the vice president for student services delivered to the student personally or by registered or certified mail to the student's last known address no later than two calendar weeks~~

~~after a reported violation. The notice shall not be ineffective if presented later due to student's absence. The notice to the accused student shall:~~

~~(a) Inform the student what provision(s) of the student code he/she is charged with allegedly violating; and~~

~~(b) Specify the exact time and date the student is required to meet with the vice president for student services; and~~

~~(c) Inform the student that failure to appear at the appointed time to meet with the vice president for student services may subject the student to suspension from the institution for a stated or indefinite period of time.~~

~~(3) Meeting with the vice president for student services.~~

~~(a) At the meeting with the vice president for student services the student shall be reformed of the provision(s) of the code of student rights and responsibilities that are involved, and that the student may appeal any sanction imposed by the vice president for student services as outlined in WAC 132X-60-105.~~

~~(b) After considering the evidence in the case and, as appropriate, interviewing the student or students involved, the vice president for student services may take any of the following actions:~~

~~(i) Terminate the proceedings exonerating the student or students; or~~

~~(ii) Impose disciplinary sanctions as provided for in WAC 132X-60-120.~~

~~(c) A student accused and found guilty of violating any provision of this code shall, within ten calendar days, be given notification of any disciplinary action taken by the vice president for student services, including a brief statement of the reasons for the decision and notice of their right to appeal to the student judicial board within ten calendar days of the disciplinary action taken by the vice president.~~

~~(d) Disciplinary action taken by the vice president for student services is final unless the student exercises the right of appeal to the student judicial board.) (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 him or her to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specify the time and location of the meeting. At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting after proper service of notice, the student conduct officer may take disciplinary action based upon the available information.~~

~~(3) 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 132X-60-120.

(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.

AMENDATORY SECTION (Amending WSR 12-03-093, filed 1/17/12, effective 2/17/12)

WAC 132X-60-105 Student judicial board appeals process. ~~((1) Composition. The college shall have a student judicial board composed of six members, who shall be chosen and appointed to serve until their successors are appointed. The membership of the board shall consist of two members of the exempt staff, excepting the vice president for student services, appointed by the president; two faculty members appointed by the faculty senate; and two students appointed by the associated student body president. Any student entitled to a hearing before the student judicial board shall choose, in writing, three members of the board to hear and decide the appeal, provided the student must choose at least one student, one faculty member and one exempt staff from the six member board. In the event that unforeseen circumstances prevent a previously selected board member from attending the hearing, the student must choose a replacement from among the balance of the board.~~

~~(2) Disciplinary hearing procedures:~~

~~(a) The three members of the student judicial board will hear the appeal within ten days of receipt of the appeal from the student.~~

~~(b) The three members of the student judicial board shall elect from among themselves a chairperson for the purpose of presiding at the disciplinary hearing.~~

~~(c) At least seven calendar days in advance, the student shall be given written notice of the time, date, and location of the hearing; the specific charges against him/her; and shall be given reasonable access to a list of witnesses who will appear with a brief summary of the witness expected testimony and other evidence. The evidence will be retained by the vice president for student services.~~

~~(d) Student judicial board hearings shall be held in closed session. The complainant, accused student and their representative/advocate, if any, the vice president for student services, college counsel, counsel for the judicial board, and a court reporter or person operating audio recording equipment shall be allowed to attend the entire portion of the student judicial board hearing, excluding deliberation. Admission of any other person to the student judicial board hearing shall be at the election of the accused student.~~

~~(e) The chairperson shall exercise control over the hearing to avoid needless consumption of time and to prevent the harassment or intimidation of witnesses. Any person, including the accused student, who disrupts a hearing or who fails to adhere to the rulings of the chairperson or board may be excluded from the proceedings and may be subject to disciplinary action as set forth in this code.~~

~~(f) The accused student has the right to be assisted by any person they choose, at their own expense. The chosen person is not permitted to speak or participate directly in any hearing before the judicial board. If the accused student chooses a licensed attorney, the accused student must notify the vice president for student services at least five calendar days prior to the hearing, of the attorney's intended appearance.~~

~~(g) The accused student, vice president for student services and/or their counsel may arrange for witnesses to present pertinent information to the student judicial board. Witnesses will provide information under oath and answer questions.~~

~~(h) Formal rules of evidence and procedure shall not be applicable in disciplinary proceedings conducted under this code. Pertinent records, exhibits, and written statements may be accepted as information for consideration by the student judicial board at the discretion of the chairperson. All procedural questions are subject to the final decision of the chairperson of the student judicial board.~~

~~(i) There shall be a single verbatim record, such as a tape recording or transcript, of all student judicial board hearings, excluding deliberations. The record shall be the property of the college.~~

~~(3) Hearing conclusions. After considering the evidence in the case, the student judicial board shall decide by majority vote whether to:~~

~~(a) Affirm the disciplinary sanctions imposed by the vice president for student services; or~~

~~(b) Terminate the proceedings exonerating the student(s); or~~

~~(e) Impose other appropriate disciplinary sanctions as provided in WAC 132X-60-120.~~

~~Final decisions of the student judicial board, reasons for the decision, including findings of fact, and conclusions of law, shall be delivered within ten calendar days of the hearing by return receipt requested mail to the student's last known address and a copy filed with the office of the vice president for student services.~~

~~The decision of the student judicial board is final.) (1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within ten days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.~~

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

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

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

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

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

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

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

~~(b) Dismissals; and~~

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

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

~~(a) Suspensions of ten instructional days or less;~~

~~(b) Disciplinary probation;~~

~~(c) Written reprimands; and~~

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

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

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

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

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

~~(11) If the respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college shall notify the complainant of the appeal and provide the~~

complainant an opportunity to intervene as a party to the appeal.

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

NEW SECTION

WAC 132X-60-109 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 132X-60-115 Brief adjudicative proceedings—Review of an initial decision. (1) An initial decision is subject to review by the president, provided a party files a written request for review with the conduct review officer within ten days of service of the initial decision.

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

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

(4) The decision on review must be in writing and must include a brief statement of the reasons for the decision and must be served on the parties within twenty days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the president does not make a disposition of the matter within twenty days after the request is submitted.

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

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

AMENDATORY SECTION (Amending WSR 12-03-093, filed 1/17/12, effective 2/17/12)

WAC 132X-60-120 Disciplinary sanctions and terms and conditions. ((The following sanctions may be imposed by the vice president for student services or the student judicial board upon any student found to have violated the code of student rights and responsibilities:

(1) ~~Warning. Notice to a student, either verbally or in writing. Such warnings will include the statement that continuation or repetition of the specific conduct involved or other misconduct will normally result in one of the more serious disciplinary sanctions described below.~~

(2) ~~Reprimand. Formal action censuring a student for violation of the college code. Reprimands shall be made in writing to the student with copies filed in the office of the vice president for student services. A reprimand will include the statement that continuation or repetition of the specific conduct involved or other misconduct will normally result in one of the more serious disciplinary sanctions described below.~~

(3) ~~Fines. Assess monetary fines against individual students for violation of the college code. The fines imposed will be deposited in the appropriate college account. Failure to pay such fines within thirty days may, at the discretion of the vice president for student services, result in suspension for an indefinite period of time as set forth in subsection (6) of this section, provided that a student may be reinstated upon payment of the fine.~~

(4) ~~Restitution. An individual student may be required to make restitution for damage or loss to college or other property and for injury to persons. Failure to make restitution within thirty days may, at the discretion of the vice president for student services, result in suspension for an indefinite period of time as set forth in subsection (8) of this section, provided that a student may be reinstated upon payment.~~

(5) ~~Forfeit of state-funded grants, scholarships or awards. A person who participates in the hazing of another shall forfeit any entitlement to state-funded grants, scholarships, or awards for a period of time determined by the college.~~

(6) ~~Deprivation of official recognition of organization, association, student living group or club. Any organization, association, student living group or club that knowingly permits hazing to be conducted by its members or by others subject to its direction or control shall be deprived of any official recognition or approval granted by the college.~~

(7) ~~Disciplinary probation. Formal action placing conditions upon the student's continued attendance for violations of the college code. Written notice of disciplinary probation will specify the period of probation and any conditions, such as limiting the student's participation in extracurricular activities or access to specific areas of the college's facilities. Copies of the notice shall be kept on file in the office of the vice president for student services and, at the discretion of the vice president for student services, in the student's official educational records. Disciplinary probation will be for a specified term.~~

(8) ~~Suspension/dismissal. Temporary, summary or permanent dismissal of a student from the college for violation of college code. The written notification suspending a student will state the term of the suspension, any special conditions which must be met before readmission, and the provision for appeal for readmission as outlined in WAC 132X-60-130. Notice shall be on file in the office of the vice president for student services and in the student's official education record.~~

~~Students who are suspended from the college may be denied access to all or any part of the campus or other facility during the duration of the period of suspension.~~

~~Refund of tuition and fees for the quarter in which disciplinary action is taken shall be in accordance with the college's refund rules.~~

(9) ~~Withholding transcripts and/or degree. The college may withhold issuing transcripts or awarding a degree otherwise earned until completion of the process set forth in this code.~~

(10) ~~More than one of the sanctions listed above may be imposed for any single violation.)~~ (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 the student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action is taken.

(e) **Dismissal.** The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the action is taken.

(2) Disciplinary terms and conditions that may be imposed alone or in conjunction with the imposition of a disciplinary sanction include, but are not limited to, the following:

(a) **Restitution.** Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.

(b) **Professional evaluation.** Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(c) **Not in good standing.** A student may be deemed "not in good standing" with the college. If so, the student shall be subject to the following restrictions:

(i) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.

(ii) Ineligible to represent the college to anyone outside the college community in any way, including representing the college at any official function, or any forms of intercollegiate competition or representation.

(d) **No contact 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.

AMENDATORY SECTION (Amending WSR 12-03-093, filed 1/17/12, effective 2/17/12)

WAC 132X-60-140 Summary suspension procedures. ~~((1) Initiation of summary suspension procedures. The vice president for student services, or designee, may suspend any student of the college for not more than ten calendar days pending investigation, action or initiating disciplinary proceedings of alleged violation(s) of the college code, if the vice president for student services has reason to believe the student's presence presents an immediate danger to the public health, safety or welfare requiring immediate action.~~

~~(2) Permission to enter or remain on campus. During the period of summary suspension, the suspended student shall not enter the campus of the college or any facility under the operation of the college other than to meet with the vice president for student services or to attend the disciplinary hearing. However, the vice president for student services may grant the student special permission to enter a campus for the express purpose of meeting with faculty, staff, or students in preparation for the disciplinary hearing.~~

~~(3) Notice of order of summary suspension proceedings.~~

~~(a) If the vice president for student services or designee finds it necessary to exercise the authority to summarily suspend a student, he/she shall:~~

~~(i) Send a notice including a brief statement of reason for the decision (findings of fact and conclusions of law); and~~

~~(ii) The corrective action or punishment which may be imposed against the student; that anything the student says to the vice president may be used against the student; and that the student may either accept the disciplinary action or, within forty-eight hours or two academic days following receipt of the notice, file at the office of the vice president for student services, an appeal to the student judicial board. If the appeal is not filed within the prescribed time, it will be deemed waived. The college shall maintain its official record all documents considered or prepared regarding the matter.~~

~~(b) Appeal and disciplinary hearing. The hearing shall be held according to the process set forth in WAC 132X-60-105. Failure by the student to appear at the hearing with the student judicial board may result in the vice president for student services or designee suspending the student from the college.~~

~~(4) Classroom summary suspension and appeal process. Nothing herein shall prevent faculty members from taking summary action as may be reasonably necessary to maintain order when they have reason to believe that such action is necessary for the public health, safety or welfare requiring immediate college action or where the student's conduct materially and substantially disrupts the educational process.~~

~~(a) Such summary action in the form of removal from the classroom shall be effective for a period not to exceed three scheduled classroom days.~~

~~(b) The faculty member must immediately report such suspension to the vice president for student services who will follow the process in subsections (1), (2) and (3) of this section.~~

~~(c) Any summary action may be appealed immediately in writing by the student to the vice president for student services.~~

~~(d) The vice president for student services must decide the appeal within twenty-four hours' receipt of the appeal and~~

their decision is final.)) (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 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 offices who may be bound or protected by it.

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

~~((LOSS OF ELIGIBILITY STUDENT ATHLETIC PARTICIPATION))~~

NEW SECTION

WAC 132X-60-155 Student conduct committee. (1)

The student conduct committee shall consist of five members:

(a) Two full-time students appointed by the student government;

(b) Two faculty members appointed by the president;

(c) One faculty member or administrator (other than an administrator serving as a student conduct or conduct review officer) appointed by the president at the beginning of the academic year.

(2) The faculty member or administrator appointed on a yearly basis shall serve as the chair of the committee and may take action on preliminary hearing matters prior to convening the committee. 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 132X-60-165 Appeal—Student conduct committee. (1)

Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW.

(2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven days in advance of the hearing date. The chair may shorten this notice period if both parties agree, and also may continue the hearing to a later time for good cause shown.

(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 the 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 132X-60-175 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 an 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 132X-60-185 Student conduct committee—Initial decision. (1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

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

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

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

copy of the decision and the record of the committee's proceedings to the president.

(5) In cases involving allegations of sexual misconduct, the chair of the student conduct committee, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. Complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to other parties. The notice will also inform the complainant of their appeal rights.

NEW SECTION

WAC 132X-60-190 Appeal from student conduct committee's 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 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 may ask for additional briefing from the parties on issues raised on appeal. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the notice of appeal.

(3) The president 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 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, on the same date that the final decision is served upon the respondent, shall serve a written notice informing the complainant of the final decision. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.

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

NEW SECTION

WAC 132X-60-195 Sexual misconduct proceedings. 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.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132X-60-010	Preamble.
WAC 132X-60-030	Right to demand identification.
WAC 132X-60-035	Trespass regulations.
WAC 132X-60-037	Freedom of access to higher education.
WAC 132X-60-040	Freedom of association and organization.
WAC 132X-60-045	Freedom of expression.
WAC 132X-60-046	Student participation in college governance.
WAC 132X-60-050	Student records.
WAC 132X-60-060	Student publications.
WAC 132X-60-065	Posting of materials.
WAC 132X-60-070	Use of college facilities.
WAC 132X-60-080	Student complaints.
WAC 132X-60-160	Athletics—Grounds for ineligibility.
WAC 132X-60-170	Initiation of athletic ineligibility proceedings.

SUPPLEMENTAL TITLE IX STUDENT CONDUCT PROCEDURES

NEW SECTION

WAC 132X-60-200 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 South Puget Sound Community College's standard disciplinary procedures in chapter 132X-60 WAC, these supplemental procedures shall take precedence.

NEW SECTION

WAC 132X-60-210 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, South Puget Sound Community 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 132X-60-220 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 in chapter 132X-60 WAC.

(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 vice president for student services or their designee 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 132X-60-230 Initiation of discipline. (1) Upon receiving the Title IX investigation report from the Title IX coordinator, the vice president for student services or their designee 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 vice president for student services or their designee determines that there are sufficient grounds to proceed under these supplemental procedures, the vice president for student services or their designee will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice with the chair of the student conduct committee and serving the notice on the respondent and the complainant, and their respective advisors. The notice must:

(a) Set forth the basis for Title IX jurisdiction;

(b) Identify the alleged Title IX violation(s);

(c) Set forth the facts underlying the allegation(s);

(d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s); 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.

(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 132X-60-240 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 chapter 132X-60 WAC. In no event will the hearing date be set less than ten business 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 business days before the hearing, the attorney files a notice of appearance with the committee chair with copies to all parties and the student conduct officer.

(3) In preparation for the hearing, the parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether the college intends to offer the evidence at the hearing.

NEW SECTION

WAC 132X-60-250 Rights of parties. (1) The college's standard student conduct procedures in chapter 132X-60 WAC, 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 finally resolved.

(4) During the hearing, each party shall be represented by an advisor. The parties are entitled to an advisor of their own choosing and the advisor may be an attorney. If a party does not choose an advisor, then the Title IX coordinator will appoint an advisor of the college's choosing on the party's behalf at no expense to the party.

NEW SECTION

WAC 132X-60-260 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 132X-60-270 Initial order. (1) In addition to complying with chapter 132X-60 WAC, 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 education 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 132X-60-280 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 chapter 132X-60 WAC.

(2) The president or their delegate will determine whether the grounds for appeal have merit, provide the ratio-

nale for this conclusion, and state whether the disciplinary sanction and condition(s) imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s).

(3) President's office shall serve the final decision on the parties simultaneously.

AMENDATORY SECTION (Amending WSR 12-03-093, filed 1/17/12, effective 2/17/12)

WAC 132X-90-040 Brief adjudicative procedure.

This rule adopts the provision of RCW 34.05.482 through 34.05.494. Brief adjudicative procedures (~~(may, at the election of college, be used in all appeals)~~) shall be used in all matters related to:

- (1) Residency classifications made pursuant to RCW 28B.15.013;
- (2) Outstanding debts of college employees or students;
- (3) Loss of eligibility to participate in athletic events;
- (4) Contents of educational records pursuant to 34 C.F.R. (~~(section)~~) Sec. 99.21;
- (5) Denial of mandatory tuition and fee waivers;
- (6) Denial of tuition and fee refunds;
- (7) Use of college facilities;
- (8) Any other rule adopted by college which specifically provides for a brief adjudicative procedure; and
- (9) Student conduct disciplinary proceedings.

WSR 21-01-183
PROPOSED RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES

[Filed December 21, 2020, 2:57 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: New chapter 110-05 WAC, Background Checks—Certificates of parental improvement; WAC 110-05-0001 Scope and purpose, 110-05-0005 Definitions, 110-05-0010 Request for CPI—Consideration, 110-05-0015 CPI—Exclusions, 110-05-0020 Determination—Notice, 110-05-0025 Denial of a CPI—Department review, 110-05-0030 Denial of a CPI—Administrative hearing, and 110-05-0035 Confidentiality.

Hearing Location(s): On January 26, 2021, 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 January 26, 2021, will be considered.

Date of Intended Adoption: January 27, 2021.

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 January 26, 2021.

Assistance for Persons with Disabilities: Contact DCYF rules coordinator, phone 360-902-7956, email dcyf.rulescoordinator@dcyf.wa.gov, by January 22, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Clarify the certificate for parental improvement application process, who is eligible to receive a certificate, and the review process and administrative hearing rights for applications that are denied.

Reasons Supporting Proposal: Section 1, chapter 270, Laws of 2020, directs the department to enact rules that implement a process by which an individual who is the subject of a founded finding of negligent treatment or maltreatment or physical abuse as defined in RCW 26.44.020 or by rule or an individual whose child was found by a court to be dependent as a result of a finding that the individual abused or neglected their child pursuant to RCW 13.34.030 (6)(b) may request the secretary issue a certificate of parental improvement. Section 2, chapter 270, Laws of 2020, directs the department to enact rules that establish procedures for reviewing requests for certificates of parental improvement and requests to alter the decision to deny a request.

Statutory Authority for Adoption: Chapter 270, Laws of 2020.

Statute Being Implemented: RCW 74.13.720 and 74.13.-730.

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

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Chris Parvin, Olympia, Washington, 360-407-5501; 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 relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rule content is explicitly and specifically dictated by statute.

December 21, 2020

Brenda Villarreal

Rules Coordinator

Chapter 110-05 WAC

BACKGROUND CHECKS—CERTIFICATES OF PARENTAL IMPROVEMENT

NEW SECTION

WAC 110-05-0001 Scope and purpose. (1) Chapter 26.44 RCW authorizes the department to investigate allegations of child abuse or neglect and to determine if allegations

are founded or unfounded as defined in RCW 26.44.020. Prior to the creation of the department, these determinations were made by the department of social and health services, children's administration.

(2) RCW 74.13.720 directs the department to establish a process that allows the secretary to issue a certificate of parental improvement to an individual who is the subject of a founded finding of abuse or neglect or a court determination that the individual's child was dependent as a result of a finding that the individual abused or neglected their child.

NEW SECTION

WAC 110-05-0005 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

"Abuse or neglect" has the same meaning as "abuse or neglect" in RCW 26.44.020.

"Certificate of parental improvement" or "CPI" has the same meaning as "certificate of parental improvement" in RCW 74.13.020(2).

"Department" means the department of children, youth, and families.

"Dependency finding" means a court determination that a requestor's child was found dependent as a result of a finding the requestor abused or neglected their child, pursuant to RCW 13.34.030 (6)(b).

"Founded" has the same meaning as "founded" in RCW 26.44.020.

"Negligent treatment or maltreatment" has the same meaning as "negligent treatment or maltreatment" in RCW 26.44.020.

"OAH" means the Washington state office of administrative hearings.

"Physical abuse" has the same meaning as "physical abuse" in WAC 110-30-0030.

"Requestor" means a person who has or is seeking a CPI.

"Secretary" means the secretary of the department.

NEW SECTION

WAC 110-05-0010 Request for a CPI—Consideration. (1) The request for a CPI must contain the following information:

(a) The requestor's current name, mailing address, and telephone number;

(b) The requestor's name at the time the founded finding or dependency finding was issued;

(c) A description of the changed circumstances, from the date after the founded finding or dependency finding, that justify the issuance of a CPI to the requestor; and

(d) The information described in subsection (5) of this section.

(2) Application forms and instructions are available on the department's website.

(3) The department may return an incomplete request or contact the requestor for more information to complete the request.

(4) The secretary must accept the underlying founded finding or dependency finding as valid and may not review the merits of that founded finding or dependency finding.

(5) The secretary determines whether to issue a CPI by considering:

(a) Documentation of any founded finding of child abuse or neglect and the underlying documentation the entity that issued the finding relied upon to make that finding;

(b) Findings from any civil adjudication proceeding as defined in RCW 43.43.830;

(c) Referral history alleging child abuse or neglect against the requestor;

(d) The length of time that has elapsed since the founded finding of child abuse or neglect;

(e) Whether a court made a finding that the requestor's child was dependent pursuant to chapter 13.34 RCW, the length of time elapsed since that dependency proceeding was dismissed, and the outcome of the dependency proceeding, including whether the child was returned to the requestor's home;

(f) Any documentation submitted by the requestor indicating whether the requestor successfully addressed the circumstances that led to the founded finding of physical abuse or negligent treatment or maltreatment including, but not limited to: A declaration by the requestor signed under penalty of perjury; recent assessments or evaluations of the requestor; and completion or progress toward completion of recommended court-ordered treatment, services, or programs;

(g) Any pending criminal or civil actions against the requestor;

(h) Background checks as authorized under RCW 10.97.050, 43.43.833, and 43.43.834, and the Federal Bureau of Investigation;

(i) Personal and professional references submitted by the requestor from employers, professionals, and agencies familiar with the requestor who can address the requestor's current character;

(j) Any education, volunteer work, employment history, or community involvement of the requestor identified by the requestor; and

(k) Any additional information the secretary deems relevant.

(6) The secretary must issue a CPI if, on a more probable than not basis, the requestor has the character, suitability, and competence to care for children, youth, or vulnerable persons and meets the other requirements of RCW 74.13.720 at the time of the request.

(7) The decision to issue or not issue a CPI will be mailed to the requestor within sixty calendar days from the date a request for a CPI as described in WAC 110-05-0010 was received.

NEW SECTION

WAC 110-05-0015 CPI—Exclusions. The secretary may not issue a CPI if:

(1) Fewer than five years have elapsed since the date the investigative assessment was issued that resulted in the requestor's last founded finding of child abuse or neglect;

(2) Fewer than two years have passed since the secretary's denial of the requestor's request for a CPI;

(3) The requestor has a founded finding for sexual abuse or sexual exploitation or has a founded finding for physical

abuse and the conduct that was the basis for the physical abuse finding involved cutting, burning, interfering with a child's breathing, shaking a child under three, or threatening a child with a deadly weapon;

(4) The requestor was convicted of or is the subject of a pending criminal investigation for:

(a) Any felony offense involving the physical neglect of a child under chapter 9A.42 RCW;

(b) Any felony offense under chapter 9A.32 or 9A.36 RCW involving a physical injury or death of a child;

(c) Any felony domestic violence offense committed against a family or household member as defined in chapter 10.99 RCW;

(d) A felony offense against a child under chapter 9.68A RCW; or

(e) Any of the following felony offenses:

(i) Defined under any law as a class A felony or an attempt to commit a class A felony;

(ii) Criminal solicitation of or criminal conspiracy to commit a class A felony;

(iii) Manslaughter in the first or second degree;

(iv) Indecent liberties;

(v) Kidnapping in the second degree;

(vi) Arson in the second degree;

(vii) Extortion in the first degree;

(viii) Robbery in the second degree;

(ix) Drive-by shooting; and

(x) Vehicular homicide; or

(f) Any out-of-state, federal, or state conviction for a felony offense that is comparable to an offense listed in subsection (4) of this section; or

(5) The requestor applying for a CPI has previously received a CPI and is the alleged perpetrator in a subsequent, founded finding of child abuse or neglect.

NEW SECTION

WAC 110-05-0020 Determination—Notice. (1) The department will issue a written decision that states whether a CPI is granted or denied.

(2) The written decision must be sent by certified mail, return receipt requested, to the requestor's last known address.

(3) If the secretary denies a CPI, the written decision must include the following information:

(a) The reason or reasons for the denial, including identifying information relied upon that was not provided by the applicant;

(b) Copies of the information relied upon that was not provided by the applicant or directions on how to obtain copies of the information;

(c) Notice that the requestor has a right to challenge the secretary's decision, including a description of the process for requesting review of the decision denying the request for a CPI; and

(d) A statement that the requestor must wait two years from the date of the denial to request a CPI again, if the denial is not successfully appealed.

NEW SECTION

WAC 110-05-0025 Denial of a CPI—Department review. (1) An individual whose request for a CPI is denied may request that the secretary or designee review the denial. The request for review must be in writing and must clearly state why the requestor disagrees with the denial. The request for review should include any relevant supporting information and documentation.

(2) A request for review of the denial must be in writing and must be received by the department within forty-five calendar days of when the decision described in WAC 110-05-0020 was mailed to the requestor's last known address.

(3) The failure by a requestor to timely request review of a CPI denial decision will result in the loss of any right to a hearing or further challenges to the denial.

(4) A department management level staff-person designated by the secretary who was not involved in the decision-making process will review the CPI denial decision.

(5) The department must complete its review within thirty days after receiving the request for review.

(6) The department will notify the requestor in writing of its review determination by sending the review determination to the requestor's last known address.

(a) If the review determination does not alter the CPI denial decision, the department will send the review determination by certified mail, return-receipt requested.

(b) If the CPI denial decision is overturned, the department will send the review decision by regular, first-class mail.

(7) The review determination will contain information that describes the process for how to request a hearing at the OAH under chapter 34.05 RCW.

NEW SECTION

WAC 110-05-0030 Denial of a CPI—Administrative hearing. (1) An individual who is denied a CPI under WAC 110-05-0025 has the right to challenge that review determination by requesting an administrative hearing under chapters 34.05 RCW and 110-03 WAC.

(2) A request for hearing under chapter 34.05 RCW must be filed at the OAH, as defined in WAC 110-03-0020, within forty-five calendar days of the date the department placed the agency review determination in the mail addressed to the requestor.

(3) The failure to timely request an administrative hearing results in the loss of any right to a hearing or further challenges to the CPI denial.

(4) The request for administrative hearing filed with the OAH must include a copy of the review determination notice. OAH will conduct an administrative hearing and issue an initial order.

(5) A copy of the request for administrative hearing and review determination notice must be served, as defined in WAC 110-03-0020, on the department at the address provided in the review determination notice.

(6) A requestor who disagrees with the initial order issued by OAH may appeal it to the DCYF board of appeals as provided in WAC 110-03-0520 through 110-03-0580. If an appeal is not filed on or before the twenty-first calendar

day after the initial order is served on the requestor, the initial order issued by OAH becomes the final order.

NEW SECTION

WAC 110-05-0035 Confidentiality. Reviews and hearings conducted under this chapter are confidential and are not open to the public. Information about reports, reviews, and hearings may be disclosed only in accordance with federal and state laws pertaining to child welfare records and child protective services reports.

WSR 21-01-184
PROPOSED RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES

[Filed December 21, 2020, 3:10 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 110-15-0040 Approved activities for applicants and consumers participating in WorkFirst and 110-15-0045 Approved activities for applicants and consumers not participating in WorkFirst.

Hearing Location(s): On January 26, 2021, 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 January 26, 2021, will be considered.

Date of Intended Adoption: January 27, 2021.

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 January 26, 2021.

Assistance for Persons with Disabilities: Contact DCYF rules coordinator, phone 360-902-7956, email dcyf.rulescoordinator@dcyf.wa.gov, by January 22, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: For the working connections child care program eligibility, relieve single parents enrolled in specified education programs from the work requirement.

Reasons Supporting Proposal: The proposed amendments are necessary to implement SHB 2456.

Statutory Authority for Adoption: RCW 43.215.060 and 43.215.070.

Statute Being Implemented: RCW 43.216.136.

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).

December 21, 2020
Brenda Villarreal
Rules Coordinator

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

WAC 110-15-0040 Approved activities for applicants and consumers participating in WorkFirst. (1) Applicants and consumers who participate in WorkFirst activities may be eligible for WCCC benefits for the following approved activities in their individual responsibility plans (IRPs), for up to a maximum of sixteen hours per day, including:

((+)) (a) An approved WorkFirst activity under WAC 388-310-0200, with the following exception: In-home/relative providers who are paid child care subsidies to care for children receiving WCCC benefits may not receive those benefits for their own children during the hours in which they provide subsidized child care. These consumers may be eligible for other approved activities in their IRPs;

((+)) (b) Employment as defined in WAC ((170-290-0003)) 110-15-0003;

((+)) (c) Self-employment as defined in WAC ((170-290-0003)) 110-15-0003 and as described in the consumer's current WorkFirst IRP;

((+)) ((4-Transportation)) (d) Travel time between the ((location of)) child care location and the consumer's place of employment or approved activity;

((+)) (e) Up to ten hours per week of study time for approved classes; ((and

((+)) (f) Up to eight hours of sleep time before or after a night shift; and

(g) Any activity approved by tribal TANF.

(2) WorkFirst consumers participating in approved activities for at least one hundred ten hours per month as described in WAC 110-15-0190 are considered to have a schedule of Monday through Friday, 8:00 a.m. to 5:00 p.m., except when:

(a) The consumer's IRP specifies a different schedule; or

(b) Verified differently by the consumer.

AMENDATORY SECTION (Amending WSR 19-08-020, filed 3/26/19, effective 4/26/19)

WAC 110-15-0045 Approved activities for applicants and consumers not participating in WorkFirst. (1) Applicants and consumers not participating in WorkFirst activities may be eligible for WCCC benefits for the following approved activities ((as described below.

(1) Applicants and consumers who are):

- (a) ~~((Employed)) Employment;~~
- (b) ~~((Self-employed)) Self-employment; or~~
- (c) ~~((Participating in)) The following education programs:~~

~~(i) High school or a general educational development (GED) program for consumers under twenty-two years of age;~~

~~(ii) A vocational education program that is combined with an average of twenty or more employment hours per week or sixteen more work-study hours per week;~~

~~(iii) A vocational education program for consumers who are single parents enrolled full time and in good standing;~~

~~(iv) Supplemental nutrition assistance program employment & training ((services)) (SNAP E&T) ((may be eligible for WCCC benefits for up to a maximum of sixteen hours per day, including travel, study, and sleep time before or after a night shift.~~

(2) Special requirements for education:

~~(a) An applicant or consumer who is under twenty-two years of age:~~

~~(i) May be eligible for WCCC benefits for high school (HS) or general educational development (GED) program without a minimum number of employment hours:~~

~~(ii) May be eligible for WCCC benefits for up to thirty-six months during the consumer's lifetime for participation in vocational education. The consumer must work either an average of twenty or more hours per week of unsubsidized employment or an average of sixteen or more hours per week in a paid federal or state work study program. The vocational education program must lead to a degree or certificate in a specific occupation and be offered by the following accredited entities only:~~

~~(A) Public and private technical college or school;~~

~~(B) Community college; or~~

~~(C) Tribal college.~~

~~(b) An applicant or consumer who is twenty-two years of age or older:~~

~~(i) May be eligible for WCCC benefits up to twenty-four months during the consumer's lifetime for participation in high school/general education development, adult basic education (ABE) or English as a second language (ESL). The consumer must work either an average of twenty or more hours per week of unsubsidized employment, or an average of sixteen or more hours per week in a paid federal or state work study program.~~

~~(ii) May be eligible for WCCC benefits up to thirty-six months during the consumer's lifetime for participation in vocational education. The consumer must work either an average of twenty or more hours per week of unsubsidized employment, or an average of sixteen or more hours per week in a paid federal or state work study program. The vocational education program must lead to a degree or certificate in a specific occupation and be offered by the following accredited entities only:~~

~~(A) Public and private technical college or school;~~

~~(B) Community college; or~~

~~(C) Tribal college.~~

~~(e) An applicant or consumer may be eligible for WCCC benefits up to ten hours per week for study time for approved classes); or~~

~~(v) Adult basic education (ABE) and English as a second language (ESL) for consumers who are at least twenty-two years old.~~

~~(d) Applicants and consumers who meet the requirements of (c) of this subsection are eligible to receive subsidy payment for up to ten hours per week of study time for approved classes.~~

~~(2) Applicants and consumers who are eligible under the terms of this section are eligible to receive subsidy payment for transportation time between the child care location and the consumer's place of employment or approved activity.~~

~~(3) Applicants and consumers who are eligible under the terms of this section are eligible to receive subsidy payment for up to eight hours of sleep time before or after a night shift.~~

WSR 21-01-187**PROPOSED RULES****DEPARTMENT OF****FISH AND WILDLIFE**

[Order 20-265—Filed December 21, 2020, 4:12 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-21-058 on October 14, 2020.

Title of Rule and Other Identifying Information: WAC 220-610-010 Wildlife classified as endangered species.

Hearing Location(s): On January 28-30, 2021, at 8 a.m., webinar. This meeting will take place by webinar. The public may participate in the meeting. Visit our website at <http://wdfw.wa.gov/about/commission/meetings> [<https://wdfw.wa.gov/about/commission/meetings>] or contact the commission office at 360-902-2267 or commission@dfw.wa.gov for instructions on how to join the meeting.

Date of Intended Adoption: February 12, 2021.

Submit Written Comments to: Wildlife Program, P.O. Box 43200, Olympia, WA 98504, email rules.coordinator@dfw.wa.gov, fax 360-902-2162, rule comments <https://www.surveymonkey.com/r/VesperSparrow>, State Environmental Policy Act comments email SEPADesk2@dfw.wa.gov, by January 19, 2021.

Assistance for Persons with Disabilities: Contact Dolores Noyes, phone 360-902-2346, TTY 360-902-2207, email dolores.noyes@dfw.wa.gov, by January 21, 2020 [2021].

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: We are proposing to classify the Oregon vesper sparrow as endangered in the state of Washington under WAC 220-610-010. Anticipated effects include the additional regulation and enforcement of wildlife classified as endangered identified in RCW 77.15.120. The Washington department of fish and wildlife (WDFW) will initiate work on a recovery plan for the species according to WAC 220-610-110.

Reasons Supporting Proposal: The estimated population of Oregon vesper sparrows in Washington is approximately

three hundred birds, with most (~75%) of them on a single site, Joint Base Lewis-McChord's 91st Division Prairie. There have been several recent local extirpations at sites that supported a few pairs, the remaining sites with a few pairs are at great risk, and there has been no recent establishment of populations at sites with remnant prairie or savannah or with ongoing restoration.

The factors of habitat loss and degradation that historically precipitated population declines continue, but populations are now likely affected by demographic and genetic factors related to their small numbers (e.g., isolation of subpopulations, reduced genetic variability, and greater susceptibility to stochastic events). Nest predation has a greater impact in fragmented habitat, and seeds coated with neonicotinoid pesticides may be affecting Washington birds during migration and at wintering sites. Land use and disturbance activities are variable and sometimes intense during the breeding season depending on the site; thus, potentially negatively affecting reproductive success and putting small populations at extreme risk of extirpation.

Research recently initiated on limiting factors will provide essential direction for appropriate conservation actions. However, given the extremely small population size in Washington, the majority of that population at one location, the many recent local extirpations or near-extirpations, and a variety of habitat, disturbance, and potentially demographic factors that continue to negatively affect them, it is recommended that Oregon vesper sparrow be classified as an endangered species in Washington.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.055, and 77.12.020.

Statute Being Implemented: RCW 77.04.012, 77.04.013, 77.04.055, and 77.12.020.

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

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Eric Gardner, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2515; and Enforcement: Steve Bear, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2373.

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

A cost-benefit analysis is not required under RCW 34.05.328.

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

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

December 21, 2020
Ben Power
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-13-013, filed 6/7/19, effective 7/8/19)

WAC 220-610-010 Wildlife classified as endangered species. Endangered species include:

Common Name	Scientific Name
<u>Oregon vesper sparrow</u>	<i>Poocetes gramineus affinis</i>
pygmy rabbit	<i>Brachylagus idahoensis</i>
fisher	<i>Pekania pennanti</i>
gray wolf	<i>Canis lupus</i>
grizzly bear	<i>Ursus arctos</i>
killer whale	<i>Orcinus orca</i>
sei whale	<i>Balaenoptera borealis</i>
fin whale	<i>Balaenoptera physalus</i>
blue whale	<i>Balaenoptera musculus</i>
humpback whale	<i>Megaptera novaeangliae</i>
North Pacific right whale	<i>Eubalaena japonica</i>
sperm whale	<i>Physeter macrocephalus</i>
Columbian white-tailed deer	<i>Odocoileus virginianus leucurus</i>
woodland caribou	<i>Rangifer tarandus caribou</i>
Columbian sharp-tailed grouse	<i>Tympanuchus phasianellus columbianus</i>
sandhill crane	<i>Grus canadensis</i>
snowy plover	<i>Charadrius nivosus</i>
upland sandpiper	<i>Bartramia longicauda</i>
spotted owl	<i>Strix occidentalis</i>
western pond turtle	<i>Clemmys marmorata</i>
leatherback sea turtle	<i>Dermodochelys coriacea</i>
mardon skipper	<i>Polites mardon</i>
Oregon silverspot butterfly	<i>Speyeria zerene hippolyta</i>
Oregon spotted frog	<i>Rana pretiosa</i>
northern leopard frog	<i>Rana pipiens</i>
Taylor's checkerspot	<i>Euphydryas editha taylori</i>
Streaked horned lark	<i>Eremophila alpestris strigata</i>
Tufted puffin	<i>Fratercula cirrhata</i>
North American lynx	<i>Lynx canadensis</i>
marbled murrelet	<i>Brachyramphus marmoratus</i>
Loggerhead sea turtle	<i>Caretta caretta</i>
Yellow-billed cuckoo	<i>Coccyzus americanus</i>
Pinto abalone	<i>Haliotis kamtschatkana</i>

WSR 21-01-190
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed December 22, 2020, 9:12 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-22-078.

Title of Rule and Other Identifying Information: Proposed fee increase for the following factory assembled structures (FAS) rules: WAC 296-150C-3000 Commercial coach fees, 296-150F-3000 Factory-built housing and commercial structure fees, 296-150I-3000 Penalties, fees, and refunds (Manufactured Home Installer Training and Certification Program), 296-150M-3000 Manufactured/mobile home fees, 296-150P-3000 Recreational park trailer fees, 296-150T-3000 Factory-built temporary worker housing fees, and 296-150V-3000 Conversion vendor units and medical units—Fees.

Hearing Location(s): On January 27, 2021, at 9:00 a.m. Telephonic hearing only. Please call 1-866-715-6499. When prompted for the passcode, enter 9862128073# (pound sign must be entered). The telephonic hearing starts at 9:00 a.m. and will continue until all oral comments are received.

Date of Intended Adoption: February 16, 2021.

Submit Written Comments to: Alicia Curry, Department of Labor and Industries (L&I), P.O. Box 44400, Olympia, WA 98504-4400, email Alicia.Curry@Lni.wa.gov, fax 360-902-5292, by 5 p.m., on January 27, 2021.

Assistance for Persons with Disabilities: Alicia Curry, phone 360-902-6244, fax 360-902-5292, email Alicia.Curry@Lni.wa.gov, by January 13, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to propose changes to the FAS rules to increase fees by 5.91 percent. The fee increase is the maximum allowed by the state office of financial management for fiscal year 2021.

Reasons Supporting Proposal: The budget and projected revenue of the FAS program was evaluated and a fee increase is needed to support the cost of ongoing services. A fee increase will enable the program to continue providing quality and timely services to assure [ensure] the health and safety

of Washington state citizens who work and live in factory-built housing and commercial structures.

Statutory Authority for Adoption: Chapter 43.22 RCW, Department of labor and industries; and chapter 43.22A WAC, Mobile and manufactured home installation.

Statute Being Implemented: Chapter 43.22 RCW, Department of Labor and Industries and chapter 43.22A WAC, Mobile and manufactured home installation.

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: Shane Daugherty, Program Manager, Tumwater, Washington, 360-902-5218; Implementation and Enforcement: Steve Reinmuth, Assistant Director, Tumwater, Washington, 360-902-6348.

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

A cost-benefit analysis is not required under RCW 34.05.328. The rule is exempt from the cost-benefit analysis requirement under the Administrative Procedure Act, RCW 34.05.328 (5)(b)(vi) Rules that 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.

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.

December 22, 2020

Joel Sacks

Director

AMENDATORY SECTION (Amending WSR 20-04-081, filed 2/4/20, effective 3/6/20)

WAC 296-150C-3000 Commercial coach fees.

GENERAL INFORMATION	
Manufacture:	Manufacturer #
1. Building use:	2. Building occupancy:
3. Type of construction: VB	4. Square footage of building:
5. Valuation of the building shall be based on the following:	
<ul style="list-style-type: none"> Square footage of the building multiplied by the amount in the BVD valuation table \$ 	
6. Total valuation:	\$
PERMIT FEE	
7. Calculate from building permit fee table using the total valuation	\$
STRUCTURAL PLAN REVIEW FEE*	
8. One year design review: (Valid for one year) multiply the total on line 7 by ((0.382) <u>0.404</u>)	\$
9. Master plan review: (Valid for the code cycle) multiply the total on line 7 by ((0.546) <u>0.578</u>)	\$
* Minimum plan review fee is 2 1/2 hours x ((\$83.00) <u>\$87.90</u>) per hour	

FIRE AND LIFE-SAFETY PLAN REVIEW FEE (if required)	
10. Fire and life-safety plan review:	
a. One year design—Multiply the total on line 7 by ((0.163)) <u>0.173</u>	\$
b. Master plan design—Multiply the total on line 7 by ((0.273)) <u>0.289</u>	\$
• Required for all structures that are more than 4,000 square feet and for all A and I occupancy	
PLUMBING PLAN-REVIEW FEE	
11. Plumbing ((19.60)) <u>\$20.70</u> + ((6.50)) <u>\$6.80</u> per fixture	\$
12. Medical gas ((19.60)) <u>\$20.70</u> + ((6.50)) <u>\$6.80</u> per gas outlet	\$
DESIGN RENEWAL OR ADDENDUM	
13. ((40.92)) <u>11.56%</u> of building permit + ((83.00)) <u>\$87.90</u>	\$
RESUBMITTAL	
14. ((40.92)) <u>11.56%</u> of building permit + ((83.00)) <u>\$87.90</u>	\$
ELECTRICAL PLAN-REVIEW FEE	
15. See WAC 296-46B-906(9) for electrical review fees	
INSIGNIA FEES	
16. FIRST SECTION	\$ ((24.90)) <u>26.30</u>
17. EACH ADDITIONAL SECTION	\$ ((15.30)) <u>16.20</u>
TOTAL FEES	
18. Total plan review fees: Add lines 8 or 9 and 10 through 15	\$
19. Total fees due: Includes plan fees and insignia fees	\$
20. Total amount paid	\$

Square Foot Construction Costs (BVD Table)^{a, b, c, and d}

Group (2009 International Building Code)	IA	IB	IIA	IIB	IIIA	IIIB	IV	VA	VB
A-1 Assembly, theaters, with stage	211.15	203.98	198.73	190.05	178.25	173.30	183.31	162.97	156.05
A-1 Assembly, theaters, without stage	193.16	185.99	180.74	172.06	160.31	155.36	165.32	145.04	138.12
A-2 Assembly, nightclubs	163.22	158.56	154.17	148.00	138.96	135.24	142.52	126.06	121.36
A-2 Assembly, restaurants, bars, banquet halls	162.22	157.56	152.17	147.00	136.96	134.24	141.52	124.06	120.36
A-3 Assembly, churches	195.10	187.93	182.68	174.00	162.21	157.26	167.26	146.94	140.02
A-3 Assembly, general, community halls, libraries, museums	163.81	156.64	150.39	142.71	129.91	125.96	135.97	114.63	108.71
A-4 Assembly, arenas	192.16	184.99	178.74	171.06	158.31	154.36	164.32	143.04	137.12
B Business	164.76	158.78	153.49	145.97	132.45	127.63	139.92	116.43	110.93
E Educational	176.97	170.85	165.64	158.05	146.37	138.98	152.61	127.91	123.09
F-1 Factory and industrial, moderate hazard	97.87	93.28	87.66	84.46	75.44	72.26	80.79	62.17	58.48
F-2 Factory and industrial, low hazard	96.87	92.28	87.66	83.46	75.44	71.26	79.79	62.17	57.48
H-1 High hazard, explosives	91.74	87.15	82.53	78.33	70.49	66.31	74.66	57.22	N.P.
H-2, 3, 4 High hazard	91.74	87.15	82.53	78.33	70.49	66.31	74.66	57.22	52.53
H-5 HPM	164.76	158.78	153.49	145.97	132.45	127.63	139.92	116.43	110.93

Group (2009 International Building Code)	IA	IB	IIA	IIB	IIIA	IIIB	IV	VA	VB
I-1 Institutional, supervised environment	164.82	159.04	154.60	147.90	135.84	132.25	144.15	121.88	117.55
I-2 Institutional, hospitals	277.07	271.09	265.80	258.28	243.90	N.P.	252.23	227.88	N.P.
I-2 Institutional, nursing homes	193.00	187.02	181.74	174.22	160.98	N.P.	168.16	144.96	N.P.
I-3 Institutional, restrained	187.72	181.73	176.45	168.93	156.64	150.82	162.87	140.63	133.13
I-4 Institutional, day care facilities	164.82	159.04	154.60	147.90	135.84	132.25	144.15	121.88	117.55
M Mercantile	121.57	116.92	111.53	106.36	96.96	94.25	100.88	84.07	80.36
R-1 Residential, hotels	166.21	160.43	155.99	149.29	137.39	133.80	145.70	123.43	119.10
R-2 Residential, multiple family	139.39	133.61	129.17	122.47	111.23	107.64	119.54	97.27	92.94
R-3 Residential, one and two family	131.18	127.60	124.36	121.27	116.43	113.53	117.42	108.79	101.90
R-4 Residential, care/assisted living facilities	164.82	159.04	154.60	147.90	135.84	132.25	144.15	121.88	117.55
S-1 Storage, moderate hazard	90.74	86.15	80.53	77.33	68.49	65.31	73.66	55.22	51.53
S-2 Storage, low hazard	89.74	85.15	80.53	76.33	68.49	64.31	72.66	55.22	50.53
U Utility, miscellaneous	71.03	67.02	62.71	59.30	52.86	49.43	56.33	41.00	39.06

- a Private garages use utility, miscellaneous
- b Unfinished basements (all use group) = \$15.00 per sq. ft.
- c For shell only buildings deduct 20 percent
- d N.P. = not permitted

Building Permit Fees

Total Valuation	Fee
\$1.00 to \$500.00	\$23.50
\$501.00 to \$2,000.00	\$23.50 for the first \$500.00 plus \$3.05 for each additional \$100.00, or fraction thereof, to and including \$2,000.00
\$2,001.00 to \$25,000.00	\$69.25 for the first \$2,000.00 plus \$14.00 for each additional \$1,000.00, or fraction thereof, to and including \$25,000.00
\$25,001.00 to \$50,000.00	\$391.25 for the first \$25,000.00 plus \$10.10 for each additional \$1,000.00, or fraction thereof, to and including \$50,000.00
\$50,001.00 to \$100,000.00	\$643.75 for the first \$50,000.00 plus \$7.00 for each additional \$1,000.00, or fraction thereof, to and including \$100,000.00
\$100,001.00 to \$500,000.00	\$993.75 for the first \$100,000.00 plus \$5.60 for each additional \$1,000.00, or fraction thereof, to and including \$500,000.00
\$500,001.00 to \$1,000,000.00	\$3,233.75 for the first \$500,000.00 plus \$4.75 for each additional \$1,000.00, or fraction thereof, to and including \$1,000,000.00
\$1,000,001.00 and up	\$5,608.75 for the first \$1,000,000.00 plus \$3.65 for each additional \$1,000.00, or fraction thereof

INITIAL FILING FEE (first time applicants)	((\$41.00)) \$43.40
DESIGN PLAN FEES:	
INITIAL FEE - MASTER DESIGN (code cycle), 50% of permit fee × ((+092)) 1.156*	
INITIAL FEE - ONE YEAR DESIGN, 35% of permit fee × ((+092)) 1.156*	

RENEWAL FEE - 10% of permit fee × ((1.092)) 1.156 +	((83.00)) \$87.90
RESUBMIT FEE - 10% of permit fee × ((1.092)) 1.156 +	((83.00)) \$87.90
ADDENDUM (approval expires on same date as original plan) - 10% of permit fee × ((1.092)) 1.156 +	((83.00)) \$87.90
ELECTRONIC PLAN SUBMITTAL FEE ((5.80)) \$6.10 per page for the first set of plans and \$1.00 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
PLUMBING PLAN FEE, ((19.60)) \$20.70 + PER FIXTURE FEE of	((6.50)) \$6.80
MEDICAL GAS PLAN FEE, ((19.60)) \$20.70 + PER OUTLET FEE of	((6.50)) \$6.80
Note: Mechanical systems are included in the primary plan fee	
FIRE SAFETY PLAN REVIEW AS REQUIRED (Required for all structures that are more than 4,000 square feet and for all A, I, and H occupancy)	
MASTER DESIGN - 25% of permit fee × ((1.092)) 1.156	
One year design 15% of the permit fee × ((1.092)) 1.156	
ELECTRICAL PLAN REVIEW - Find fee @ http://apps.leg.wa.gov/wac/default.aspx?cite=296-46B-906	
RECIPROCAL PLAN REVIEW:	
INITIAL FEE - MASTER DESIGN (minimum 3 hours)	((83.00)) \$87.90 per hour
INITIAL FEE - ONE YEAR DESIGN (minimum 2 hours)	((83.00)) \$87.90 per hour
RENEWAL FEE (minimum 1 hour)	((83.00)) \$87.90 per hour
ADDENDUM (minimum 1 hour)	((83.00)) \$87.90 per hour
PLANS APPROVED BY PROFESSIONALS - 10% of permit fee × ((1.092)) 1.156 +	((83.00)) \$87.90
APPROVAL OF EACH SET OF DESIGN PLANS BEYOND FIRST TWO SETS - 5% of permit fee × ((1.092)) 1.156 +	((83.00)) \$87.90
DEPARTMENT INSPECTION FEES	
INSPECTION/REINSPECTION (Per hour** plus travel time* and mileage***)	((83.00)) \$87.90
TRAVEL (Per hour)	((83.00)) \$87.90
PER DIEM***	
HOTEL****	
MILEAGE***	
RENTAL CAR****	
PARKING****	
AIRFARE****	
DEPARTMENT AUDIT FEES:	
AUDIT (Per hour*)	((83.00)) \$87.90
TRAVEL (Per hour**)	((83.00)) \$87.90
PER DIEM***	
HOTEL****	
MILEAGE***	
RENTAL CAR****	
PARKING****	
AIRFARE****	
ALTERATION INSPECTION (one hour minimum + alteration insignia fee)	((107.90)) \$114.20

INSIGNIA FEES:	
FIRST SECTION (NEW or ALTERATION)	((\$24.90) \$26.30)
EACH ADDITIONAL SECTION (NEW or ALTERATION)	((\$15.30) \$16.20)
REISSUED-LOST/DAMAGED	((\$15.30) \$16.20)
OTHER FEES:	
FIELD TECHNICAL SERVICE (Per hour** plus travel time** and mileage***)	((\$83.00) \$87.90)
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year upon request)	((\$15.30) \$16.20)
REFUND FEE	((\$27.30) \$28.90)

*Minimum plan review fee is 2 1/2 hours at the field technical service rate
 **Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments
 ***Per state guidelines
 ****Actual charges incurred

AMENDATORY SECTION (Amending WSR 20-04-081, filed 2/4/20, effective 3/6/20)

WAC 296-150F-3000 Factory-built housing and commercial structure fees.

GENERAL INFORMATION	
Manufacture:	Manufacturer #
1. Building use:	2. Building occupancy:
3. Type of construction:	4. Square footage of building:
5. Valuation of the building shall be based on the following:	
• Square footage of the building multiplied by the amount in the BVD valuation table	\$
6. Total valuation:	\$
PERMIT FEE	
7. Calculate from building permit fee table using the total valuation	\$
STRUCTURAL PLAN REVIEW FEE*	
8. One year design review: (Valid for one year) multiply the total on line 7 by (0.382) <u>0.404</u>	\$
9. Master plan review: (Valid for the code cycle) multiply the total on line 7 by (0.546) <u>0.578</u>	\$
* Minimum plan review fee is 2 1/2 hours x ((\$93.40)) <u>\$98.90</u> per hour	
FIRE AND LIFE-SAFETY PLAN REVIEW FEE (if required)	
10. Fire and life-safety plan review:	
a. One year design—Multiply the total on line 7 by (0.163) <u>0.173</u>	\$
b. Master plan design—Multiply the total on line 7 by (0.273) <u>0.289</u>	\$
• Required for all structures that are more than 4,000 square feet and for all A, I, and H occupancy	
PLUMBING PLAN-REVIEW FEE	
11. Plumbing ((\$19.60)) <u>\$20.70</u> + ((\$6.50)) <u>\$6.80</u> per fixture	\$
12. Medical gas ((\$19.60)) <u>\$20.70</u> + ((\$6.50)) <u>\$6.80</u> per gas outlet	\$
DESIGN RENEWAL OR ADDENDUM	
13. ((\$10.92)) <u>11.56%</u> of building permit + ((\$93.40)) <u>\$98.90</u>	\$
RESUBMITTAL	
14. ((\$10.92)) <u>11.56%</u> of building permit + ((\$93.40)) <u>\$98.90</u>	\$

ELECTRICAL PLAN-REVIEW FEE		
15.	See WAC 296-46B-906(9) for electrical review fees	
NOTIFICATION TO LOCAL ENFORCEMENT AGENCY (NLEA)		
16.	Notification to local enforcement agency fee:	\$ ((40.30)) 42.60
INSIGNIA FEES		
17.	FIRST SECTION	\$ ((298.70)) 316.30
18.	EACH ADDITIONAL SECTION	\$ ((26.70)) 28.20
TOTAL FEES		
19.	Total plan review fees: Add lines 8 or 9 and 10 through 15	\$
20.	Total fees due: Includes plan fees, insignia fees, and NLEA fees	\$
21.	Total amount paid	\$

Square Foot Construction Costs (BVD Table)^{a, b, c, and d}

Group (2009 International Building Code)	IA	IB	IIA	IIB	IIIA	IIIB	IV	VA	VB
A-1 Assembly, theaters, with stage	211.15	203.98	198.73	190.05	178.25	173.30	183.31	162.97	156.05
A-1 Assembly, theaters, without stage	193.16	185.99	180.74	172.06	160.31	155.36	165.32	145.04	138.12
A-2 Assembly, nightclubs	163.22	158.56	154.17	148.00	138.96	135.24	142.52	126.06	121.36
A-2 Assembly, restaurants, bars, banquet halls	162.22	157.56	152.17	147.00	136.96	134.24	141.52	124.06	120.36
A-3 Assembly, churches	195.10	187.93	182.68	174.00	162.21	157.26	167.26	146.94	140.02
A-3 Assembly, general, community halls, libraries, museums	163.81	156.64	150.39	142.71	129.91	125.96	135.97	114.63	108.71
A-4 Assembly, arenas	192.16	184.99	178.74	171.06	158.31	154.36	164.32	143.04	137.12
B Business	164.76	158.78	153.49	145.97	132.45	127.63	139.92	116.43	110.93
E Educational	176.97	170.85	165.64	158.05	146.37	138.98	152.61	127.91	123.09
F-1 Factory and industrial, moderate hazard	97.87	93.28	87.66	84.46	75.44	72.26	80.79	62.17	58.48
F-2 Factory and industrial, low hazard	96.87	92.28	87.66	83.46	75.44	71.26	79.79	62.17	57.48
H-1 High hazard, explosives	91.74	87.15	82.53	78.33	70.49	66.31	74.66	57.22	N.P.
H-2, 3, 4 High hazard	91.74	87.15	82.53	78.33	70.49	66.31	74.66	57.22	52.53
H-5 HPM	164.76	158.78	153.49	145.97	132.45	127.63	139.92	116.43	110.93
I-1 Institutional, supervised environment	164.82	159.04	154.60	147.90	135.84	132.25	144.15	121.88	117.55
I-2 Institutional, hospitals	277.07	271.09	265.80	258.28	243.90	N.P.	252.23	227.88	N.P.
I-2 Institutional, nursing homes	193.00	187.02	181.74	174.22	160.98	N.P.	168.16	144.96	N.P.
I-3 Institutional, restrained	187.72	181.73	176.45	168.93	156.64	150.82	162.87	140.63	133.13
I-4 Institutional, day care facilities	164.82	159.04	154.60	147.90	135.84	132.25	144.15	121.88	117.55

Group (2009 International Building Code)	IA	IB	IIA	IIB	IIIA	IIIB	IV	VA	VB
M Mercantile	121.57	116.92	111.53	106.36	96.96	94.25	100.88	84.07	80.36
R-1 Residential, hotels	166.21	160.43	155.99	149.29	137.39	133.80	145.70	123.43	119.10
R-2 Residential, multiple family	139.39	133.61	129.17	122.47	111.23	107.64	119.54	97.27	92.94
R-3 Residential, one and two family	131.18	127.60	124.36	121.27	116.43	113.53	117.42	108.79	101.90
R-4 Residential, care/assisted living facilities	164.82	159.04	154.60	147.90	135.84	132.25	144.15	121.88	117.55
S-1 Storage, moderate hazard	90.74	86.15	80.53	77.33	68.49	65.31	73.66	55.22	51.53
S-2 Storage, low hazard	89.74	85.15	80.53	76.33	68.49	64.31	72.66	55.22	50.53
U Utility, miscellaneous	71.03	67.02	62.71	59.30	52.86	49.43	56.33	41.00	39.06

- a Private garages use utility, miscellaneous
- b Unfinished basements (all use group) = \$15.00 per sq. ft.
- c For shell only buildings deduct 20 percent
- d N.P. = not permitted

Table 1-A - Building Permit Fees

Total Valuation	Fee
\$1.00 to \$500.00	\$23.50
\$501.00 to \$2,000.00	\$23.50 for the first \$500.00 plus \$3.05 for each additional \$100.00, or fraction thereof, to and including \$2,000.00
\$2,001.00 to \$25,000.00	\$69.25 for the first \$2,000.00 plus \$14.00 for each additional \$1,000.00, or fraction thereof, to and including \$25,000.00
\$25,001.00 to \$50,000.00	\$391.25 for the first \$25,000.00 plus \$10.10 for each additional \$1,000.00, or fraction thereof, to and including \$50,000.00
\$50,001.00 to \$100,000.00	\$643.75 for the first \$50,000.00 plus \$7.00 for each additional \$1,000.00, or fraction thereof, to and including \$100,000.00
\$100,001.00 to \$500,000.00	\$993.75 for the first \$100,000.00 plus \$5.60 for each additional \$1,000.00, or fraction thereof, to and including \$500,000.00
\$500,001.00 to \$1,000,000.00	\$3,233.75 for the first \$500,000.00 plus \$4.75 for each additional \$1,000.00, or fraction thereof, to and including \$1,000,000.00
\$1,000,001.00 and up	\$5,608.75 for the first \$1,000,000.00 plus \$3.65 for each additional \$1,000.00, or fraction thereof

INITIAL FILING FEE (first time applicants)	((\$72.90)) \$77.20
DESIGN PLAN FEES:	
INITIAL FEE - MASTER DESIGN (code cycle), 50% of permit fee × ((1.092)) <u>1.156</u> *	
INITIAL FEE - ONE YEAR DESIGN, 35% of permit fee × ((1.092)) <u>1.156</u> *	
RENEWAL FEE - 10% of permit fee × ((1.092)) <u>1.156</u> +	((\$93.40)) \$98.90
RESUBMIT FEE - 10% of permit fee × ((1.092)) <u>1.156</u> +	((\$93.40)) \$98.90
ADDENDUM (approval expires on same date as original plan) - 10% of permit fee × ((1.092)) <u>1.156</u> +	((\$93.40)) \$98.90
ELECTRONIC PLAN SUBMITTAL FEE ((\$5.80)) <u>\$6.10</u> per page for the first set of plans and \$1.00 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
PLUMBING PLAN FEE, ((\$19.60)) <u>\$20.70</u> + PER FIXTURE FEE of	((\$6.50)) \$6.80

MEDICAL GAS PLAN FEE, ((\$19.60)) <u>\$20.70</u> + PER OUTLET FEE of	((\$6.50)) <u>\$6.80</u>
Note: Mechanical systems are included in the primary plan fee	
FIRE SAFETY PLAN REVIEW AS REQUIRED (Required for all structures that are more than 4,000 square feet and for all A, I, and H occupancy)	
MASTER DESIGN - 25% of permit fee × ((1.092)) <u>1.156</u>	
One year design - 15% of the permit fee × ((1.092)) <u>1.156</u>	
ELECTRICAL PLAN REVIEW - Find fees @ http://apps.leg.wa.gov/wac/default.aspx?cite=296-46B-906	
RECIPROCAL PLAN REVIEW:	
INITIAL FEE-MASTER DESIGN (minimum 3 hours)	((\$93.40)) <u>\$98.90</u> per hour
INITIAL FEE-ONE YEAR DESIGN (minimum 2 hours)	((\$93.40)) <u>\$98.90</u> per hour
RENEWAL FEE (minimum 1 hour)	((\$93.40)) <u>\$98.90</u>
ADDENDUM (minimum 1 hour)	((\$93.40)) <u>\$98.90</u> per hour
PLANS APPROVED BY DESIGN PROFESSIONALS - 10% of permit fee × ((1.092)) <u>1.156</u> +	((\$93.40)) <u>\$98.90</u>
APPROVAL OF EACH SET OF DESIGN PLANS BEYOND FIRST THREE SETS - 5% of permit fee × ((1.092)) <u>1.156</u> +	((\$93.40)) <u>\$98.90</u>
DEPARTMENT INSPECTION FEES	
INSPECTION/REINSPECTION (Per hour** plus travel time** and mileage***)	((\$93.40)) <u>\$98.90</u>
TRAVEL (Per hour**)	((\$93.40)) <u>\$98.90</u>
PER DIEM***	
HOTEL****	
MILEAGE***	
RENTAL CAR****	
PARKING****	
AIRFARE****	
DEPARTMENT AUDIT FEES:	
AUDIT (Per hour**)	((\$93.40)) <u>\$98.90</u>
TRAVEL (Per hour**)	((\$93.40)) <u>\$98.90</u>
PER DIEM***	
HOTEL****	
MILEAGE***	
RENTAL CAR****	
PARKING****	
AIRFARE****	
INSIGNIA FEES:	
FIRST SECTION	((\$298.70)) <u>\$316.30</u>
EACH ADDITIONAL SECTION	((\$26.70)) <u>\$28.20</u>
REISSUED-LOST/DAMAGED	((\$72.90)) <u>\$77.20</u>
OTHER FEES:	
FIELD TECHNICAL SERVICE (Per hour** plus travel time** and mileage***)	((\$93.40)) <u>\$98.90</u>
NOTIFICATION TO LOCAL ENFORCEMENT AGENCY (NLEA)	((\$40.30)) <u>\$42.60</u>

PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year upon request)	((\$14.90) \$15.70)
REFUND FEE	((\$27.30) \$28.90)

- *Minimum plan review fee is 2 1/2 hours at the field technical service rate.
- **Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.
- ***Per state guidelines.
- ****Actual charges incurred.

AMENDATORY SECTION (Amending WSR 18-24-102, filed 12/4/18, effective 1/4/19)

WAC 296-150I-3000 Penalties, fees, and refunds.

Penalties

(1) Monetary penalties for infractions listed in WAC 296-150I-0210 shall be assessed for each violation of chapter 43.22A RCW in the following amount:

(a) Failure to have a certified installer on the installation site whenever installation work is being performed:

First Final Violation	\$250.00
Each Additional Final Violation	\$1,000.00

(b) Failure to correct all nonconforming aspects of the installation identified by the local enforcement agency or by an authorized representative of the department within thirty days of issuance of notice of the same:

First Final Violation	Warning
Second Final Violation	\$250.00
Third Final Violation	\$500.00
Each Additional Final Violation	\$1,000.00

(c) Failure by a certified installer to affix a certification tag to an installed manufactured/mobile home:

First Final Violation	Warning
Second Final Violation	\$250.00
Third Final Violation	\$500.00
Each Additional Final Violation	\$1,000.00

(d) Transfer of certification tag(s) from a certified installer to another certified installer without prior written approval of the department:

First Final Violation	Warning
Each Additional Final Violation	\$250.00

(e) Transfer of certification tag(s) from a certified installer to a noncertified installer:

First Final Violation to Each Contractor in Violation	\$250.00
Each Additional Final Violation to Each Contractor in Violation	\$1,000.00

(f) Transfer of unused installer certification tags by a manufactured home retailer to a new ownership without prior written approval of the department:

First Final Violation	Warning
Each Additional Final Violation	\$250.00

Fees and Refunds

The following fees are payable to the department in advance:

Training and certification	((\$270.40) \$286.30)
Training only 10 hours	((\$135.20) \$143.10)
Manufactured/mobile home installation inspector training	((\$135.20) \$143.10)
Refund	((\$27.00) \$28.50)
Certification renewal	((\$135.20) \$143.10)
Continuing education class	((\$54.00) \$57.10)
Retake failed examination and training	((\$40.50) \$42.80)
Manufactured home installer training manual	((\$13.50) \$14.20)
Installer certification tag	((\$9.40) \$9.90)

(2) The department shall refund fees paid for training and certification or certification renewal as a manufactured home installer if the application is denied for failure of the applicant to comply with the requirements of chapter 43.22A RCW or these rules.

(3) If an applicant has paid fees to attend training or to take an examination and is unable to attend the scheduled training or examination, the applicant may:

- (a) Change to another scheduled training and examination; or
- (b) Request a refund.

(4) An applicant who fails the examination shall not be entitled to a refund.

AMENDATORY SECTION (Amending WSR 20-04-081, filed 2/4/20, effective 3/6/20)

WAC 296-150M-3000 Manufactured/mobile home fees.

DESIGN PLAN FEES:	
STRUCTURAL ALTERATION	((\$181.50) <u>\$192.20</u>)
RESUBMITTAL FEE	((\$80.20) <u>\$84.90</u>)
ADDENDUM (Approval expires on the same date as original plan.)	((\$80.20) <u>\$84.90</u>)
ELECTRONIC PLAN SUBMITTAL FEE ((\$5.60) <u>\$5.90</u> per page for the first set of plans and \$1.00 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
DEPARTMENT INSPECTION FEES:	
Combination permit - Mechanical and electrical inspections	((\$198.30) <u>\$210.00</u>)
Heat pump	((\$198.30) <u>\$210.00</u>)
Air conditioning	((\$198.30) <u>\$210.00</u>)
Air conditioning with replacement furnace	((\$198.30) <u>\$210.00</u>)
Gas furnace installation includes gas piping	((\$198.30) <u>\$210.00</u>)
Fire safety inspection	((\$198.30) <u>\$210.00</u>)
MECHANICAL	((\$88.10) <u>\$93.30</u>)
Gas*** Piping	((\$88.10) <u>\$93.30</u>)
Wood Stove	((\$88.10) <u>\$93.30</u>)
Pellet Stove	((\$88.10) <u>\$93.30</u>)
Gas*** Room Heater	((\$88.10) <u>\$93.30</u>)
Gas*** Decorative Appliance	((\$88.10) <u>\$93.30</u>)
Range: Changing from electric to gas***	((\$88.10) <u>\$93.30</u>)
Gas*** Water Heater Replacement	((\$66.00) <u>\$69.90</u>)
ELECTRICAL	((\$110.30) <u>\$116.80</u>)
Electric Water Heater Replacement	((\$110.30) <u>\$116.80</u>)
Electric Water Heater replacing Gas*** Water Heater	((\$110.30) <u>\$116.80</u>)
Each added or modified 120 volt circuit (maximum charge is two circuits)	((\$110.30) <u>\$116.80</u>)
Each added 240 volt circuit (for other than Heat Pumps, Air Conditioners, Furnaces, Water Heaters, Ranges, Hot Tubs or Spas)	((\$110.30) <u>\$116.80</u>)
Hot Tub or Spa (power from home electrical panel)	((\$110.30) <u>\$116.80</u>)
Replace main electrical panel/permanently installed transfer equipment	((\$110.30) <u>\$116.80</u>)
Low voltage fire/intrusion alarm	((\$110.30) <u>\$116.80</u>)
Any combination of Furnace, Range and Water Heater changing from electric to gas***	((\$110.30) <u>\$116.80</u>)
PLUMBING	
Fire sprinkler system	((\$247.80) <u>\$262.40</u>)
Each added fixture	((\$66.00) <u>\$69.90</u>)
Replacement of water piping system (this includes two inspections)	((\$221.20) <u>\$234.20</u>)
STRUCTURAL	
Inspection as part of a mechanical/fire safety installation (cut truss/floor joist, sheet rocking)	((\$98.90) <u>\$104.70</u>)
Reroofs (may require a plan review)	((\$176.70) <u>\$187.10</u>)
Changes to home when additions bear loads on home per the design of a professional (also requires a plan review)	((\$176.70) <u>\$187.10</u>)
Other structural changes (may require a plan review)	((\$176.70) <u>\$187.10</u>)
MISCELLANEOUS	
OTHER REQUIRED INSPECTIONS (Per hour*)	((\$72.40) <u>\$76.60</u>)
ALL REINSPECTIONS (Per hour*)	((\$72.40) <u>\$76.60</u>)
Refund	((\$21.90) <u>\$23.10</u>)
INSIGNIA FEES:	
REISSUED - LOST/DAMAGED	((\$21.90) <u>\$23.10</u>)
IPIA	
DEPARTMENT AUDIT FEES	
REGULARLY SCHEDULED IPIA AUDIT:	
First inspection on each section (one time only)	((\$36.30) <u>\$38.40</u>)
Second and succeeding inspections of unlabeled sections (Per hour*)	((\$80.20) <u>\$84.90</u>)
OTHER IPIA FEES:	

Red tag removal during a regularly scheduled IPIA audit (Per hour*separate from other fees)	((\$80.20) <u>\$84.90</u>)
Red tag removal at a time other than a regularly scheduled IPIA audit (Per hour* plus travel time* and mileage**)	((\$80.20) <u>\$84.90</u>)
Increased frequency surveillance (Per hour* plus travel time* and mileage**)	((\$80.20) <u>\$84.90</u>)
Attendance at manufacturers training classes (Per hour* only)	((\$80.20) <u>\$84.90</u>)
Subpart "I" investigations (Per hour* plus travel time* and mileage**)	((\$80.20) <u>\$84.90</u>)
Alterations to a labeled unit (Per hour* plus travel time* and mileage**)	((\$80.20) <u>\$84.90</u>)
IPIA Issues/Responses (Per hour* Plus travel time* and mileage**)	((\$80.20) <u>\$84.90</u>)
Monthly surveillance during a regularly scheduled IPIA audit (Per hour*plus travel time* and mileage**)	((\$80.20) <u>\$84.90</u>)
Monthly surveillance at a time other than a regularly scheduled IPIA audit (Per hour* plus travel time* and mileage**)	((\$80.20) <u>\$84.90</u>)
Plant certifications, recertifications and addenda updates (Per hour* plus travel time* and mileage** per each inspector)	((\$80.20) <u>\$84.90</u>)
Response to HBT Audit during a regularly scheduled IPIA audit (Per hour*)	((\$80.20) <u>\$84.90</u>)
Response to HBT Audit at a time other than a regularly scheduled IPIA audit (Per hour* plus travel time*and mileage**)	((\$80.20) <u>\$84.90</u>)
Alternative construction (AC) letter inspections at placement site (Per hour* plus travel time*and mileage**)	((\$80.20) <u>\$84.90</u>)
Replacement of HUD labels (Per hour* plus travel time* and mileage**)	((\$80.20) <u>\$84.90</u>)
State Administrative Agency (SAA) inspection fee (Per hour* plus travel time* and mileage**)	((\$80.20) <u>\$84.90</u>)
State Administrative Agency (SAA) dispute resolution filing fee	((\$80.20) <u>\$84.90</u>)
State Administrative Agency (SAA) dispute resolution (Per hour*)	((\$80.20) <u>\$84.90</u>)
OTHER FEES:	
FIELD TECHNICAL SERVICE (Per hour plus travel time* and mileage**)	((\$74.50) <u>\$78.90</u>)
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year upon request)	((\$14.60) <u>\$15.40</u>)
VARIANCE INSPECTION FEE	((\$176.70) <u>\$187.10</u>)
HOMEOWNER REQUESTED INSPECTION	((\$176.70) <u>\$187.10</u>)
DECERTIFICATION OF A MOBILE/MANUFACTURED HOME	((\$176.70) <u>\$187.10</u>)
DEMOLITION OF A MOBILE/MANUFACTURED HOME	((\$176.70) <u>\$187.10</u>)
ENERGY CONSERVATION PERMIT	((\$30.10) <u>\$31.80</u>)

NOTE: Local jurisdictions may have other fees that apply.

*Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.

**Per state guidelines.

***Gas means all gases; natural, propane, etc.

AMENDATORY SECTION (Amending WSR 20-04-081, filed 2/4/20, effective 3/6/20)

WAC 296-150P-3000 Recreational park trailer fees.

INITIAL FILING FEE	((\$37.80) <u>\$40.00</u>)
DESIGN PLAN FEES:	
NEW PLAN REVIEW FEE WITHOUT STRUCTURAL REQUIREMENTS	((\$107.20) <u>\$113.50</u>)
NEW PLAN REVIEW FEE WITH STRUCTURAL REQUIREMENTS	((\$141.80) <u>\$150.10</u>)
RESUBMITTAL FEE	((\$76.70) <u>\$81.20</u>)
ADDENDUM (Approval expires on same date as original plan.)	((\$76.70) <u>\$81.20</u>)
ELECTRONIC PLAN SUBMITTAL FEE ((\$5.60) <u>\$5.90</u> per page for the first set of plans and \$1.00 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
DEPARTMENT AUDIT FEES:	
AUDIT (per hour)*	((\$76.70) <u>\$81.20</u>)
TRAVEL (per hour)*	((\$76.70) <u>\$81.20</u>)
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
DEPARTMENT INSPECTION FEES:	

INSPECTION (per hour)*	((\$76.70) <u>\$81.20</u>)
TRAVEL (per hour)*	((\$76.70) <u>\$81.20</u>)
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
ALTERATION INSPECTION (One hour plus insignia alteration fee)	((\$114.50) <u>\$121.20</u>)
INSIGNIA FEES:	
STATE CERTIFIED	((\$27.30) <u>\$28.90</u>)
ALTERATION	((\$37.80) <u>\$40.00</u>)
REISSUED-LOST/DAMAGED	((\$14.00) <u>\$14.80</u>)
OTHER FEES:	
FIELD TECHNICAL SERVICE (per hour* plus travel time* and mileage**)	((\$76.70) <u>\$81.20</u>)
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year upon request)	((\$14.20) <u>\$15.00</u>)
REFUND FEE	((\$27.30) <u>\$28.90</u>)

*Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.

**Per state guidelines.

***Actual charges incurred.

AMENDATORY SECTION (Amending WSR 20-04-081, filed 2/4/20, effective 3/6/20)

WAC 296-150T-3000 Factory-built temporary worker housing fees.

INITIAL FILING FEE	((\$57.50) <u>\$60.80</u>)
DESIGN PLAN FEES:	
INITIAL ONE YEAR DESIGN	((\$166.80) <u>\$176.60</u>)
RENEWAL FEE	((\$57.50) <u>\$60.80</u>)
RESUBMIT FEE	((\$83.00) <u>\$87.90</u>)
ADDENDUM (Approval expires on same date as original plan)	((\$83.00) <u>\$87.90</u>)
ELECTRONIC PLAN SUBMITTAL FEE ((\$5.70) <u>\$6.00</u> per page for the first set of plans and \$1.00 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
Supplemental submissions of plans (resubmittals, addendums, renewals, code updates, etc.) shall be charged per hour or fraction of an hour*	((\$98.40) <u>\$104.20</u>)
APPROVAL OF EACH SET OF DESIGN PLANS BEYOND FIRST TWO SETS	((\$15.30) <u>\$16.20</u>)
DEPARTMENT INSPECTION FEES:	
INSPECTION/REINSPECTION (Per hour* plus travel time* and mileage**)	((\$83.00) <u>\$87.90</u>)
TRAVEL (Per hour)*	((\$83.00) <u>\$87.90</u>)
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
DEPARTMENT AUDIT FEES:	
AUDIT (Per hour*)	((\$83.00) <u>\$87.90</u>)
TRAVEL (Per hour*)	((\$83.00) <u>\$87.90</u>)
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	

INSIGNIA FEES:	
FIRST SECTION	((\$234.00) <u>\$247.80</u>)
EACH ADDITIONAL SECTION	((\$22.50) <u>\$23.80</u>)
REISSUED-LOST/DAMAGED	((\$57.50) <u>\$60.80</u>)
ELECTRICAL COMMERCIAL/INDUSTRIAL	
Electrical Service/feeders 200 Amperage plus	
Service/feeder	((\$242.40) <u>\$256.70</u>)
Additional Feeder	((\$45.90) <u>\$48.60</u>)
ELECTRICAL MULTIFAMILY RESIDENTIAL	
Electrical Service/feeders 200 Amperage plus	
Service/feeder	((\$128.50) <u>\$136.00</u>)
Additional Feeder	((\$32.50) <u>\$34.40</u>)
OTHER FEES:	
FIELD TECHNICAL SERVICE (Per hour* plus travel time* and mileage**)	((\$83.00) <u>\$87.90</u>)
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free per year)	((\$15.30) <u>\$16.20</u>)
REFUND FEE	((\$27.30) <u>\$28.90</u>)

*Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.

**Per state guidelines.

***Actual charges incurred.

AMENDATORY SECTION (Amending WSR 20-04-081, filed 2/4/20, effective 3/6/20)

WAC 296-150V-3000 Conversion vendor units and medical units—Fees.

INITIAL FILING FEE	((\$41.00) <u>\$43.40</u>)
DESIGN PLAN FEES:	
INITIAL FEE - MASTER DESIGN	((\$284.60) <u>\$301.40</u>)
INITIAL FEE - ONE YEAR DESIGN	((\$116.30) <u>\$123.10</u>)
RENEWAL FEE	((\$49.30) <u>\$52.20</u>)
RESUBMIT FEE	((\$83.00) <u>\$87.90</u>)
ADDENDUM (Approval expires on same date as original plan)	((\$83.00) <u>\$87.90</u>)
ELECTRONIC PLAN SUBMITTAL FEE ((\$5.70) <u>\$6.00</u> per page for the first set of plans and \$1.00 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
ELECTRICAL PLAN REVIEW - For medical units, find fees at http://apps.leg.wa.gov/wac/default.aspx?cite=296-46B-906	
RECIPROCAL PLAN REVIEW:	
INITIAL FEE - MASTER DESIGN	((\$126.80) <u>\$134.20</u>)
INITIAL FEE - ONE YEAR DESIGN	((\$76.60) <u>\$81.10</u>)
RENEWAL FEE	((\$76.60) <u>\$81.10</u>)
ADDENDUM	((\$76.60) <u>\$81.10</u>)
APPROVAL OF EACH SET OF DESIGN PLANS BEYOND FIRST TWO SETS	((\$15.30) <u>\$16.20</u>)
DEPARTMENT INSPECTION FEES:	
INSPECTION/REINSPECTION (Per hour* plus travel time* and mileage**)	((\$83.00) <u>\$87.90</u>)
TRAVEL (Per hour)*	((\$83.00) <u>\$87.90</u>)
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
ALTERATION INSPECTION (One hour plus insignia alteration fee)	((\$124.30) <u>\$131.60</u>)
INSIGNIA FEES:	
FIRST SECTION/ALTERATION	((\$23.80) <u>\$25.20</u>)
REISSUED-LOST/DAMAGED	((\$15.30) <u>\$16.20</u>)

EXEMPT	(((\$41.00)) \$43.40
OTHER FEES:	
FIELD TECHNICAL SERVICE (Per hour* plus travel time* and mileage**)	(((\$83.00)) \$87.90
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year upon request)	(((\$15.30)) \$16.20
REFUND FEE	(((\$27.30)) \$28.90

*Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.

**Per state guidelines.

***Actual charges incurred.

WSR 21-01-205
PROPOSED RULES
DEPARTMENT OF AGRICULTURE

[Filed December 23, 2020, 7:48 a.m.]

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 21-02 issue of the Register.

WSR 21-01-206
PROPOSED RULES
DEPARTMENT OF AGRICULTURE

[Filed December 23, 2020, 7:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-13-093.

Title of Rule and Other Identifying Information: Chapter 16-752 WAC, Noxious weed seed and plant quarantine. As a result of petitions received from the Washington state noxious weed control board (WSNWCB) and the Washington state department of ecology (DOE), the department is proposing to add additional species to the noxious weed seed and plant quarantine, which would prohibit their sale and distribution. These species include: Italian arum (*Arum italicum*); Ravenna grass (*Tripidium ravennae*); spurge laurel (*Daphne laureola*); myrtle spurge (*Euphorbia myrsinites*); annual bugloss (*Lycopsis arvensis*); yellow flag iris (*Iris pseudacorus*); hoary alyssum (*Berteroa incana*); small-flowered jewelweed (*Impatiens parviflora*); South American spongeplant (*Limnobiium laevigatum*); tree-of-heaven (*Ailanthus altissima*); and poison hemlock (*Conium maculatum*). The department is also proposing to add American spongeplant (*Limnobiium spongia*) to the noxious weed seed and plant quarantine, as well as updating the accepted scientific names of several plants that are currently quarantined.

Hearing Location(s): On January 26, 2021, at 9:00 a.m., Skype Conference Line. Join Online: <https://lync.wa.gov/agr.wa.gov/meet/grobinson/77GFSGDC>. Join by phone 360-407-3816, Conference ID: 86838. Due to the mandated social distancing requirements in place during the current COVID-19 pandemic, the public hearing will be held solely over video and teleconference.

Date of Intended Adoption: February 3, 2021.

Submit Written Comments to: Gloriann Robinson, Agency Rules Coordinator, P.O. Box 42560, Olympia, WA

98504-2560, email wsdarulescomments@agr.wa.gov, fax 360-902-2092, by 5:00 p.m., January 26, 2021.

Assistance for Persons with Disabilities: Deanna Painter, phone 360-902-2061, TTY 800-833-6388 or 711, email dpainter@agr.wa.gov, by January 19, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Adding these species to the list of regulated articles in the noxious weed seed and plant quarantine is necessary to meet the primary legislative directive set out in chapters 17.10 and 17.24 RCW, of protecting Washington's environment and agricultural resources by using quarantines to provide a strong system for the exclusion of plant pests.

Most of the species listed in the quarantine are also listed in chapter 16-750 WAC, state noxious weed list, administered by WSNWCB, as a Class A or a Class B noxious weed. This means they require mandatory control by county weed boards. However, designation as a noxious weed on the state noxious weed list doesn't prohibit its sale, allowing consumers to buy a plant species that the county weed board is actively controlling. Adding these plants to the noxious weed seed and plant quarantine will prohibit them from being sold in Washington. This will help support the efforts of county weed boards to control noxious weeds. Prohibiting these species from sale or distribution would support the work of the Washington state department of natural resources (DNR) and county weed boards who have spent large amounts eradicating some of these species from Washington's watersheds and native lands. By adding the proposed species to the quarantine list, Washington's agricultural lands, ecosystem and wildlife habitats will be more protected against the threat these invasive nonnative species pose.

Under the proposed amendment, these plant species could no longer be sold or distributed in Washington state. Nurseries that do so would be required to destroy the plants, return them to an out-of-state source, or dispose of the plants to avoid infestation.

Updating the scientific names by which quarantined species are identified will ensure consistency with recent national taxonomic standards and with the scientific names referenced in chapter 16-750 WAC, state noxious weed list. This component of the amendment is being proposed to ensure that the rule is current and up-to-date with the use of those accepted names.

Reasons Supporting Proposal: The department has received three petitions for rule making to add eleven species to the quarantine list. Some of these eleven species are

already considered Class A noxious weeds by WSNWCB. Others are not yet found in the state but are at high risk for establishment according to pest risk assessments conducted by the United States Department of Agriculture (USDA). One additional species (American spongeplant) is being added due to it being so closely related to the petitioned species South American spongeplant.

Washington agriculture, environmental quality, and natural resources, including waters and wetlands, are threatened by nonnative, aggressive species of noxious weeds. A number of these noxious weeds are transported and sold within the state both as nursery plants and as seeds in packets of flower[s] or "wildflower mixes." Subsequent "escape" of these ornamentals has been a documented source of a number of infestations and resulted in large public and private expenditures by landowners, land managers, weed boards, and weed districts, as well as the department, to achieve mandated control. The quarantine regulates the transport, buying, selling, offering for sale, or distribution of these plants or plant parts into or within the state of Washington. The quarantine also applies to online sales of plants that are being shipped into Washington. Almost all types of plants, including invasive species, can be found for sale online. Adding these species to the quarantine list prohibits them from being offered for sale online or sold in Washington state.

Updating scientific names by which to identify quarantined species will provide clarity and consistency for stakeholders and the nursery industry. This is a clerical change, as all of the species affected are already being regulated.

Statutory Authority for Adoption: RCW 17.10.074, 17.24.011, and 17.24.041.

Statute Being Implemented: Chapters 17.10 and 17.24 RCW.

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

Name of Proponent: WSNWCB, DOE, and Washington state department of agriculture (DOA), governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Cindy Cooper, 1111 Washington Street, Olympia, WA 98504, 360-870-5069.

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. DOA is not a listed agency under RCW 34.05.328 (5)(a)(i).

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of exemptions: The department is proposing to update the scientific name of nine plant species already on the quarantine list. Updating the scientific name by which we identify prohibited species will ensure consistency with recent national taxonomic standards and with the scientific names referenced in chapter 16-750 WAC, state noxious weed list. This is solely a clerical change as all of the species affected are already being regulated. WAC 16-752-610 states

that the "regulated status also applies to all synonyms of these botanical names ... " Therefore, the acceptable scientific name at any one point does not affect the quarantine status of that plant. Updating the scientific name falls under the exemption specified in RCW 19.85.025(3)/34.05.310 (4)(d) because the amendment is simply clarifying language of a rule without changing its effect.

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 department is proposing to add twelve species of plants to the noxious weed seed and plant quarantine. All businesses selling plants in Washington state are required to obtain a nursery dealer's license. Two surveys were sent to licensed nursery dealers within the state to determine the economic impact of the proposed amendment to add additional plant species to the quarantine list. A total of six hundred ninety-four businesses responded to the surveys. Of those businesses that responded, nineteen stated they sell one or more of the plant species proposed for quarantine. The quarantine would prohibit the sale or distribution of the plant species (including any parts capable of propagation). Anyone currently selling these species could see a decrease in sales or revenue. The decrease in sales or revenue reported from survey participants ranged from \$23 to \$850. Minor cost thresholds ranged from \$935.27 to \$32,786.78 for these same businesses. A comparison of the minor cost threshold for each industry by their NAICS code resulted in none of the losses in sales or revenue exceeding the minor cost threshold for that industry type.

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

December 23, 2020

Brad White

Assistant Director

AMENDATORY SECTION (Amending WSR 16-14-003, filed 6/23/16, effective 7/24/16)

WAC 16-752-610 Regulated articles. All plants, plant parts, and seeds in packets, blends, and "wildflower mixes" of the following listed species are designated as regulated articles under the terms of this noxious weed seed and plant quarantine. This list is comprised of the most recent and accepted scientific and common names of the quarantine plant species. Regulated status also applies to all synonyms of these botanical names and interspecies hybrids if both parents are regulated species:

Scientific Name	Common Names
<i>Abutilon theophrasti</i>	velvetleaf
<i>Ailanthus altissima</i>	<u>tree-of-heaven</u>
<i>Alliaria petiolata</i>	garlic mustard
<i>Amorpha fruticosa</i>	indigobush, lead plant
<i>Anchusa officinalis</i>	common bugloss, alkanet, anchusa

Scientific Name	Common Names	Scientific Name	Common Names
<i>Anthriscus sylvestris</i>	wild chervil	<i>Echium vulgare</i>	blueweed, blue thistle, blue devil, viper's bugloss, snake flower
<u><i>Arum italicum</i></u>	<u>Italian arum</u>	<i>Egeria densa</i>	Brazilian elodea
<i>Arundo donax</i> (except variegated cultivars)	giant reed	<i>Epilobium hirsutum</i>	hairy willow herb
<u><i>Bassia scoparia</i> (syn. <i>Kochia scoparia</i>)</u>	<u>kochia, summer-cyprus, burning-bush, fireball, Mexican fireweed</u>	<i>Euphorbia esula</i>	leafy spurge)
<u><i>Berteroa incana</i></u>	<u>hoary alyssum</u>	<i>Euphorbia myrsinites</i>	<u>myrtle spurge</u>
<i>Brachypodium sylvaticum</i>	false brome	<i>Euphorbia oblongata</i>	eggleaf spurge
<i>Buddleia davidii</i> (except accepted sterile cultivars)	butterfly bush	<i>Euphorbia virgate</i> (syn. <i>Euphorbia esula</i>)	<u>leafy spurge</u>
<i>Butomus umbellatus</i>	flowering rush	<u><i>Fallopia japonica</i></u>	<u>Japanese knotweed</u>
<i>Cabomba caroliniana</i>	fanwort	<u><i>Fallopia sachalinensis</i></u>	<u>giant knotweed</u>
<i>Carduus acanthoides</i>	plumeless thistle	<u><i>Fallopia x bohemica</i></u>	<u>Bohemian knotweed</u>
<i>Carduus nutans</i>	musk thistle, nodding thistle	<i>Ficaria verna</i>	lesser celandine
<i>Carduus pycnocephalus</i>	Italian thistle	<i>Galega officinalis</i>	goatsrue
<i>Carduus tenuiflorus</i>	slenderflower thistle	<i>Genista monspessulana</i>	French broom
<i>Centaurea calcitrapa</i>	purple starthistle	<i>Geranium lucidum</i>	shiny geranium
<i>Centaurea diffusa</i>	diffuse knapweed	<i>Glossostigma dianthrum</i>	mud mat
<i>Centaurea jacea</i>	brown knapweed, rayed knapweed, brown centauri horse-knobs, hardheads	<i>Glyceria maxima</i>	reed sweetgrass, tall manna grass
<i>Centaurea jacea x nigra</i>	meadow knapweed	<i>Gymnocoronis spilanthoides</i>	Senegal tea plant
<i>Centaurea stoebe</i>	spotted knapweed)	<i>Helianthus ciliaris</i>	Texas blueweed
<i>Centaurea macrocephala</i>	bighead knapweed	<i>Heracleum mantegazzianum</i>	giant hogweed, giant cow parsnip
<i>Centaurea nigra</i>	black knapweed	<i>Hibiscus trionum</i>	Venice mallow, flower-of-an-hour, bladder ketmia, modesty, shoo-fly
<i>Centaurea nigrescens</i>	Vochin knapweed	<i>Hieracium spp.</i> All nonnative species and hybrids	nonnative hawkweeds
<u><i>Centaurea stoebe</i></u>	<u>spotted knapweed</u>	<i>Hydrilla verticillata</i>	hydrilla
<u><i>Centaurea x gerstlaui</i> (syn. <i>Centaurea jacea x nigra</i>)</u>	<u>meadow knapweed</u>	<i>Hydrocharis morsus-ranae</i>	European frog-bit
<i>Chaenorhinum</i>)	dwarf snapdragon	<i>Impatiens glandulifera</i>	policeman's helmet
<u><i>Chaenorhinum minus</i></u>		<u><i>Impatiens parviflora</i></u>	<u>small-flowered jewelweed</u>
<i>Clematis orientalis</i>	oriental clematis	<u><i>Iris pseudacorus</i></u>	<u>yellow flag iris</u>
<u><i>Conium maculatum</i></u>	<u>poison hemlock</u>	<i>Isatis tinctoria</i>	dyers' woad
<i>Crassula helmsii</i>	Australian swamp stonecrop	<i>Kochia scoparia</i>	kochia, summer-cyprus, burning-bush, fireball, Mexican fireweed)
<i>Crupina vulgaris</i>	common crupina	<u><i>Jacobaea vulgaris</i></u> (syn. <i>Senecio jacobaea</i>)	<u>tansy ragwort</u>
<i>Cyperus rotundus</i>	purple nutsedge	<i>Lagarosiphon major</i>	African elodea
<i>Cytisus scoparius</i>	Scotch broom	<i>Lamiastrum galeobdolon</i>	yellow archangel
<u><i>Daphne laureola</i></u>	<u>spurge laurel</u>		
<i>Daucus carota</i>	wild carrot, Queen Anne's lace		

Scientific Name	Common Names	Scientific Name	Common Names
<i>Lepidium latifolium</i>	perennial pepperweed	<i>Salvia aethiopis</i>	Mediterranean sage
<i>Leucanthemum vulgare</i>	oxeye daisy, white daisy, white-weed, field daisy, marguerite, poorland flower	<i>Salvia pratensis</i>	meadow clary
<i>Limnobium laevigatum</i>	<u>South American spongeplant</u>	<i>Salvia sclarea</i>	clary sage
<i>Limnobium spongia</i>	<u>American spongeplant</u>	<i>Schoenoplectus mucronatus</i>	ricefield bulrush
<i>Linaria dalmatica</i> spp. <i>dalmatica</i>	Dalmatian toadflax	((<i>Senecio jacobaea</i>	tansy ragwort))
<i>Ludwigia hexapetala</i>	water primrose	<i>Silybum marianum</i>	milk thistle
<i>Ludwigia peploides</i>	floating primrose-willow	<i>Solanum elaeagnifolium</i>	silverleaf nightshade
<i>Lycopsis arvensis</i>	<u>annual bugloss</u>	<i>Solanum rostratum</i>	buffaloburr
<i>Lysimachia vulgaris</i>	garden loosestrife	<i>Soliva sessilis</i>	lawnweed
<i>Lythrum salicaria</i>	purple loosestrife	<i>Sorghum halepense</i>	johnsongrass
<i>Lythrum virgatum</i>	wand loosestrife	<i>Spartina alterniflora</i>	smooth cordgrass
<i>Marsilea mutica</i>	Australian water clover	<i>Spartina anglica</i>	common cordgrass
<i>Mirabilis nyctaginea</i>	wild four o'clock, umbrella-wort	<i>Spartina densiflora</i>	dense-flowered cordgrass
<i>Murdannia keisak</i>	marsh dew flower, Asian spider-wort	<i>Spartina patens</i>	salt meadow cordgrass
<i>Myriophyllum aquaticum</i>	parrotfeather	<i>Spartium junceum</i>	Spanish broom
<i>Myriophyllum heterophyllum</i>	variable-leaf milfoil	<i>Stratiotes aloides</i>	water soldier
<i>Myriophyllum spicatum</i>	Eurasian watermilfoil	<i>Tamarix ramosissima</i>	saltcedar
<i>Najas minor</i>	slender-leaved naiad, brittle naiad	<i>Thymelaea passerina</i>	spurge flax
<i>Nymphoides peltata</i>	yellow floating heart	<i>Torilis arvensis</i>	hedgearsley
<i>Onopordum acanthium</i>	Scotch thistle	<i>Trapa natans</i>	water chestnut, bull nut
((<i>Polygonum cuspidatum</i>	Japanese knotweed	<i>Trapa bicornus</i>	water caltrap, devil's pod, bat nut
<i>Polygonum polystachyum</i>	Himalayan knotweed	<i>Tripidium ravennae</i>	<u>Ravenna grass</u>
<i>Polygonum sachalinense</i>	<u>giant knotweed</u>	<i>Ulex europaeus</i>	gorse, furze
<i>Polygonum x bohemicum</i>	Bohemian knotweed, Japanese and giant knotweed hybrid))	<i>Utricularia inflata</i>	swollen bladderwort
<i>Persicaria wallichii</i>	<u>Himalayan knotweed</u>	<i>Zygophyllum fabago</i>	Syrian bean-caper
(<i>syn. Polygonum polystachyum</i>)			
<i>Proboscidea louisianica</i>	unicorn-plant		
<i>Pueraria montana</i> var. <i>lobata</i>	kudzu		
<i>Sagittaria graminea</i>	grass-leaved arrowhead		
<i>Sagittaria platyphylla</i>	delta arrowhead		

WSR 21-01-211
PROPOSED RULES
LIQUOR AND CANNABIS
BOARD

[Filed December 23, 2020, 10:16 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-16-150.

Title of Rule and Other Identifying Information: The Washington state liquor and cannabis board (board) proposes new rule sections and amendments to existing rule sections to align existing rules with and implement the law as established by E2SSB 5549 (chapter 238, Laws of 2020).

The following sections in chapter 314-28 WAC are amended: WAC 314-28-005 Definitions, 314-28-030 What does a distillery license allow?, and 314-28-050 What does a craft distillery license allow?

The following sections in chapter 314-28 WAC are new: WAC 314-28-065 Sampling, service, and sales require-

ments for distillery and craft distillery licensees, 314-28-066 Tasting room age restrictions for distillery and craft distillery licensees, 314-28-067 Food offerings requirements, 314-28-300 Off-site tasting room license, 314-28-310 Jointly operated off-site tasting rooms, and 314-28-320 Jointly operated conjoined consumption areas.

The following section in chapter 314-28 WAC is repealed: WAC 314-28-095 Farmer's market spirits sales.

The following section in chapter 314-29 WAC is amended: WAC 314-29-035 Group 4 nonretail violations.

Hearing Location(s): On February 3, 2021, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the board will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. Board members, presenters, and staff will all participate remotely. The public may login using a computer or device, or call-in using a phone, to listen to the meeting through the 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: No earlier than February 17, 2021.

Submit Written Comments to: Audrey Vasek, 1025 Union Avenue, Olympia, WA 98501, email rules@lcb.wa.gov, fax 360-664-9689, by February 3, 2021.

Assistance for Persons with Disabilities: Claris Nhanabu, Americans with Disabilities Act 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 January 27, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule proposal is to align existing rule language with changes made to the law by E2SSB 5549 and establish new rule sections needed to implement the law. Specifically, the rule proposal:

- Amends WAC 314-28-005, relating to definitions. The proposed revisions include adding a definition of "off-site tasting room" and a cross-reference to RCW 66.24.146. An introductory sentence is added as a technical update, stating that the definitions apply throughout chapter 314-28 RCW [WAC] unless the context clearly requires otherwise.
- Amends WAC 314-28-030, relating to distillery licenses. The proposed revisions include removing language in subsection (1) that corresponds to language that was deleted or amended by E2SSB 5549 and adding a cross-reference to the authorizing statute, RCW 66.24.140. A new subsection (2) is added containing cross-references to applicable laws and rules. A new subsection (4) is added containing language related to obtaining a spirits, beer, and wine restaurant license consistent with RCW 66.24.1474.
- Amends WAC 314-28-050, relating to craft distillery licenses. The proposed revisions include removing language in subsection (1) that corresponds to language that was deleted or amended by E2SSB 5549 and adding a cross-reference to the authorizing statute, RCW 66.24.145. A new subsection (2) is added containing cross-references to applicable laws and rules. A cross-reference to RCW 66.24.140 is added to subsection (3) to provide context for the one hundred fifty thousand proof gallon limit for craft distilleries, and cross-references to RCW 66.24.1474 and 66.24.400 are added to subsection (4) related to obtaining a spirits, beer, and wine restaurant license.
- Creates a new section WAC 314-28-065, relating to sampling, service, and sales requirements. The proposed rule section implements the statutory requirements in RCW 66.24.140 and 66.24.145 applicable to distillery and craft distillery licensees that sell spirits and other authorized alcohol products (such as vermouth or sparkling [sparkling] wine) for off-premises or on-premises consumption, or sell servings of adulterated spirits (mixed drinks) for on-premises consumption. These statutory requirements include, but are not limited to, the alcohol stock-keeping unit requirement and the thirty percent annual limit on revenue derived from sales of adulterated spirits for on-premises consumption.
- Creates a new section WAC 314-28-066, relating to tasting room age restrictions. The proposed rule section implements the statutory requirements related to tasting room age restrictions in RCW 66.24.140 and 66.24.145 applicable to distillery and craft distillery licensees. For example, the requirement that persons under the age of twenty-one be accompanied by their parent or legal guardian in order to enter a tasting room, and that tasting rooms include a designated area for persons under the age of twenty-one.
- Creates a new section WAC 314-28-067, relating to food offerings requirements. The proposed rule section implements RCW 66.24.1471 by describing the food offerings requirements applicable to distilleries, craft distilleries, and off-site tasting rooms.
- Creates a new section WAC 314-28-300, relating to off-site tasting room licenses. The proposed rule section implements RCW 66.24.146, which creates the new off-site tasting room license available to distillery or craft distillery licensees, and includes a reference to the annual fee for the new license, which is set by law at \$2000. The proposed rule section also includes a cross-reference to the limit on the total number of off-site tasting room licenses under RCW 66.24.1473, and includes cross-references to other applicable laws and rules.
- Creates a new section WAC 314-28-310, relating to jointly operated off-site tasting rooms. The proposed rule section implements the statutory requirements in RCW 66.24.1472 related to jointly operated off-site tasting rooms. These requirements are applicable to any distillery, craft distillery, or winery, or any combination of these licenses, who choose to jointly operate an off-site tasting room location. Cross-references to applicable laws and rules are included.
- Creates a new section WAC 314-28-320, relating to jointly operated conjoined consumption areas. The proposed rule section implements the statutory requirements

in RCW 66.24.1472 related to jointly operated conjoined consumption areas. These requirements are applicable to breweries, microbreweries, wineries, distilleries, or craft distilleries, or any combination of these licensees, whose property parcels or buildings are located in direct physical proximity to one another. Cross-references to applicable laws and rules are included.

- Amends WAC 314-29-035, relating to penalties—Group 4 nonretail violations. The proposed revisions to this rule section implement E2SSB 5549 by updating the penalty schedule to include violations of the new statutory requirements. Penalties corresponding to violations of the requirements related to food offerings, alcohol stock-keeping units, and the thirty percent annual limit on revenue derived from sales of adulterated spirits (mixed drinks) for on-premises consumption, are added to the penalty schedule, along with cross-references to the appropriate RCW and WAC.
- Repeals WAC 314-28-095, relating to farmer's market spirits sales. The proposed repeal of this section is necessary to implement E2SSB 5549, which deleted the statutory language creating the distillery and craft distillery farmer's market spirits sales endorsement.

Reasons Supporting Proposal: The proposed rules are needed to align existing rules with and implement the law as established by E2SSB 5549. See purpose.

Statutory Authority for Adoption: RCW 66.24.148, 66.24.1471, and 66.08.030.

Statute Being Implemented: E2SSB 5549 (chapter 238, Laws of 2020); RCW 66.24.140, 66.24.145, 66.24.146, 66.24.1471, 66.24.1472, 66.24.1473, 66.24.1474.

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

Name of Proponent: Washington state liquor and cannabis board, governmental.

Name of Agency Personnel Responsible for Drafting: Audrey Vasek, Policy and Rules Coordinator, 1025 Union Avenue, Olympia, WA 98501, 360-664-1758; **Implementation:** Becky Smith, Director of Licensing, 1025 Union Avenue, Olympia, WA 98501, 360-664-1753; and **Enforcement:** Justin Nordhorn, Chief of Enforcement, 1025 Union Avenue, Olympia, WA 98501, 360-664-1726.

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

A cost-benefit analysis is not required under RCW 34.05.328. Consistent with RCW 34.05.328 (5)(a), these proposed rules are not subject to cost-benefit analysis requirements unless requested by the joint administrative rules review committee or voluntarily applied. Additionally, these proposed rules do not qualify as significant legislative rules under RCW 34.05.328 (5)(c), and are exempt from cost-benefit analysis requirements under RCW 34.05.328 (5)(b):

- The rule proposal creates new rule sections and amends or repeals existing rule sections to implement and align the rules with the law as established and dictated by E2SSB 5549 consistent with RCW 34.05.328 (5)(b)(v).
- The rule proposal also revises and incorporates references to statutory language where necessary and appropriate consistent with RCW 34.05.328 (5)(b)(iii).

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

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 19.85.025(3) by way of RCW 34.05.310 (4)(c) and (e).

Explanation of exemptions: The revisions made to WAC 314-28-005, 314-28-030, 314-28-050, and 314-29-035, the repeal of WAC 314-28-095, and the new rules added as WAC 314-28-065, 314-28-066, 314-28-067, 314-28-300, 314-28-310, and 314-28-320, are exempt from the Regulatory Fairness Act's (RFA) small business economic impact statement (SBEIS) requirement under RCW 34.05.310 (4)(c) and (e). The proposed rules incorporate by reference or explicitly restate statute where appropriate consistent with RCW 34.05.310 (4)(c), and create or amend rule sections to implement and align existing rule language with the law as established and dictated by E2SSB 5549 consistent with RCW 34.05.310 (4)(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.

Estimated Cost of Compliance: The board applied the following estimated costs of compliance when analyzing whether the proposed rules to implement E2SSB 5549 impose more than "minor costs" as defined in RCW 19.85.-020(2) on businesses potentially impacted by the proposed rules:

(1) Estimated annual cost of compliance for distillery or craft distilleries: \$0 to \$1855. E2SSB 5549 permits a wide range of new activities that distillery or craft distillery licensees may choose to engage in, and creates new requirements that licensees must comply with. For example, a combination of indoor and outdoor seating is allowed at the distillery or craft distillery premises, food offerings are required during public service hours, and tasting rooms must include designated areas for minors. Licensees have the option of applying for up to two off-site tasting room licenses, and have the option of jointly operating off-site tasting rooms and conjoined consumption areas. These requirements and optional activities are described in the proposed rules. However, the proposed rules implementing E2SSB 5549 are largely exempt from the minor cost analysis under the RFA to the extent that these new requirements are explicitly dictated by statute. For example, the \$2000 off-site tasting room license fee required by RCW 66.24.146 is not included in the estimated cost of compliance because it is legislatively mandated and therefore exempt from inclusion in the minor cost analysis.

sis under RCW 19.85.025(3) by way of RCW 34.05.310 (4) (e). Similarly, the food offerings and designated area requirements are explicitly dictated by statute, so the costs associated with complying with these rules are exempt from analysis.

Portions of the rules not explicitly dictated by statute, but necessary to implement E2SSB 5549, include licensing and monthly sales summary fee reporting requirements. A breakdown of the estimated costs of compliance associated with these requirements is provided below.

Monthly Production and Sales Summary Fee Reporting—Administrative costs: A distillery or craft distillery licensee that opens an off-site tasting room or sells products not of their own production will have new administrative costs related to recordkeeping and filing the monthly production and sales summary fee reports, which have been revised to include reporting for selling spirits produced by another distillery or craft distillery for consumption, and selling certain other authorized alcohol produces [products] (e.g., vermouth, sparkling wine) as allowed by E2SSB 5549.

Costs of recordkeeping vary widely depending on the method chosen by the licensee. Licensees could purchase and maintain a point of sale accounting system, or could keep receipt books and summary journals. Licensees could choose to hire or outsource accounting or do the work themselves. Time spent is also dependent on methodology. Setting up a system (tracking stock-keeping units and categories in the point of sale system or in spreadsheets) could initially take several hours. Reporting time is dependent upon initial setup. The figures needed to fill out the monthly reporting forms could be retrieved in minutes or hours depending on how an individual licensee's system is set up.

To determine a reasonable range of time that licensees might spend on completing the portions of the monthly reporting forms corresponding to implementation of E2SSB 5549, four licensees were interviewed. One licensee (L1) interviewed stated that, based on a survey they conducted in which three other licensees responded, they believed it would take double the amount [of] time it currently takes them, for around ten hours total per month. A second licensee (L2) interviewed also stated that they believed it would take them double the amount [of] time it currently takes them, for around two hours total per month. A third licensee (L3) interviewed stated that with the extra work in processing, it would take three to four hours per month, and estimated that in a worst-case scenario it might take two to three times more than the amount of time they currently spend. A fourth licensee (L4) interviewed stated that it would take them less than an hour to fill out the additional information required because they have already set up their point of sale system to track the appropriate categories. For the purpose of the minor cost analysis, the board took the average of the time estimates provided by the four licensees interviewed [(L1 and the three other licensees surveyed by L1 (4 x 10 hours) + L2 (2 hours) + L3 (4 hours) + L4 (1 hour))/7 total licensees = 6.71 hours]. For the purpose of estimating compliance costs, this time is rounded up to 7 hours/month.

Based on these licensee interviews, the board estimates that licensees that open an off-site tasting room or sell products not of their own production will spend anywhere

between one to ten hours a month to complete the portions of the monthly reporting forms corresponding to implementation of E2SSB 5549, with an average of approximately seven hours each month, or eighty-four hours annually.

According to the 2019 Occupational Employment Statistics (OES) Databook available in the Employment Security Department (ESD) labor market report library (<https://esd.wa.gov/labormarketinfo/report-library>), the average hourly wage in Washington state for secretaries and administrative assistants, except legal, medical, and executive (using the Standard Occupational Classification (SOC) Code 43-6014) is \$21.31. Based on that data, the estimated cost for the administrative activities related to filing the production and sales summary fee reports is \$1790.04 (\$21.31 avg. hourly wage x 84 hours = \$1790.04). For the purpose of the minor cost calculations, these estimated administrative costs are rounded to \$1790 annually.

A distillery or craft distillery that chooses to jointly operate an off-site tasting room or a conjoined consumption area will not have any additional monthly reporting requirements beyond those associated with the underlying license types.

Licensing—Administrative Costs: A distillery or craft distillery licensee that chooses to apply for the new off-site tasting room license under RCW 66.24.146 will have additional administrative costs related to licensing. The board estimates that applicants will spend approximately three hours in order to complete an initial application for an off-site tasting room license (which includes ninety minutes for the applicant to complete the application and answer follow-up questions, and roughly ninety minutes for interactions with board staff on required information and an investigator interview). For renewals of the license in subsequent years, the board estimates that applicants will spend fifteen to twenty minutes on the licensing process (which includes the online renewal application process and inputting financial information for payment of the fee).

According to the 2019 OES Databook, the average hourly wage in Washington state for secretaries and administrative assistants, except legal, medical, and executive (using the SOC Code 43-6014) is \$21.31. Based on that data, the estimated cost for these administrative activities during the initial application year is \$63.93 (\$21.31 avg. hourly wage x 3 hours = \$63.93), and the estimated cost during subsequent renewal years is \$7.10 (\$21.31 avg. hourly wage x 0.3 hour = approximately \$7.10). For the purpose of the minor cost calculations, these estimated administrative costs are rounded up to \$65 and \$10, respectively.

A distillery or craft distillery that chooses to jointly operate an off-site tasting room will not have any additional licensing costs beyond those associated with the underlying license types.

A distillery or craft distillery that chooses to jointly operate a conjoined consumption area at an existing licensed location will have licensing costs related to an alteration request. The board estimates that the time needed for an alteration request is forty minutes (twenty minutes to submit the request, and twenty minutes for interaction with board staff for follow-up questions). According to the 2019 OES Databook, the average hourly wage in Washington state for secretaries and administrative assistants, except legal, medical,

and executive (using the SOC Code 43-6014) is \$21.31. Based on that data, the estimated cost for these administrative activities is a one-time cost of \$14.21 (\$21.31 avg. hourly wage x 0.6 hour = approximately \$14.21). For the purpose of the minor cost calculations, this estimated administrative cost is rounded up to \$15.

Total Administrative Costs: For the reasons described above, the board estimates that the total annual cost of compliance for distillery or craft distillery licensees will range between \$0 to \$1855. Licensees that choose not to open an off-site tasting room or sell products not of their own production will not have any additional costs (\$0). For licensees that choose to sell products not of their own production, the estimated annual cost of compliance is \$1790 related to filing monthly reports. For licensees that choose to apply for an off-site tasting room license, the estimated annual cost of compliance is \$1855 in the initial application year (\$1790 related to filing monthly reports + \$65 related to licensing) and \$1800 in subsequent renewal years (\$1790 related to filing monthly reports + \$10 related to licensing). For licensees that wish to jointly operate a conjoined consumption area at an existing licensed location where an alteration request is needed, a one-time compliance cost of \$15 should be added to these estimated costs of compliance.

(2) Estimated annual cost of compliance for wineries: \$0 to \$65. There are no new costs for winery licensees that continue operating as usual, without engaging in any of the new privileges allowed by E2SSB 5549, such as jointly operating an off-site tasting room or a conjoined consumption area.

A winery licensee that wishes to jointly operate an off-site tasting room with a distillery or craft distillery licensee will have the same administrative costs related to licensing for the off-site tasting room as described above for distilleries and craft distilleries (\$65 during the initial application year and \$10 in subsequent renewal years).

A winery licensee that wishes to jointly operate a conjoined consumption area at an existing licensed location will have the same administrative costs related to an alteration request as described above for distilleries and craft distilleries (a one-time cost of \$15).

(3) Estimated annual cost of compliance for breweries or microbreweries: \$0 to \$15. There are no new costs for brewery or microbrewery licensees that continue operating as usual, without engaging in any of the new privileges allowed by E2SSB 5549, such as jointly operating a conjoined consumption area. A brewery or microbrewery licensee that wishes to jointly operate a conjoined consumption area at an existing licensed location will have the same administrative costs related to an alteration request as described above for distilleries and craft distilleries (a one-time cost of \$15).

Minor Cost Threshold Estimates: The board applied North American Industry Classification System (NAICS) codes 312140 for Distilleries, 312130 for Wineries, and 312120 for Breweries to estimate the minor cost thresholds for distillery, craft distillery, winery, brewery, and microbrewery licensees. According to the 2017 NAICS Manual (<https://www.census.gov/library/publications/2017/econ/2017-naics-manual.html>), the distillery industry (312140) "comprises establishments primarily engaged in one or more of the following: (1) distilling potable liquors (except brandies); (2) distilling and blending liquors; and (3) blending and mixing liquors and other ingredients." The winery industry (312130) "comprises establishments primarily engaged in one or more of the following: (1) growing grapes and manufacturing wines and brandies; (2) manufacturing wines and brandies from grapes and other fruits grown elsewhere; and (3) blending wines and brandies." The brewery industry (312120) "comprises establishments primarily engaged in brewing beer, ale, lager, malt liquors, and nonalcoholic beer." There are no separate NAICS codes available for craft distilleries or microbreweries.

As shown in the table below, the highest estimated cost of compliance for each of these industries (\$1855 for Distilleries, \$65 for Wineries, and \$15 for Breweries) does not exceed the minor cost estimate for these industries (\$2076.60 for Distilleries, \$3453.63 for Breweries, and \$3581.58 for Wineries), so an SBEIS is not required under RCW 19.85-030.

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)
312140	\$1855	Distilleries	Distilleries	\$2,076.60	\$2,076.60 2018 Dataset pulled from ESD	\$1,471.28 2018 Dataset pulled from DOR
312130	\$65	Wineries	Wineries	\$3,581.58	\$3,581.58 2018 Dataset pulled from ESD	\$3,369.76 2018 Dataset pulled from DOR

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*AvgGB I)
312120	\$15	Breweries	Breweries	\$3,453.63	\$3,244.72 2018 Dataset pulled from ESD	\$3,453.63 2018 Dataset pulled from DOR

December 23, 2020
Jane Rushford
Chair

AMENDATORY SECTION (Amending WSR 14-20-047, filed 9/24/14, effective 10/25/14)

WAC 314-28-005 Definitions. The ~~((following definition applies to distilleries))~~ definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Craft distillery" means any distillery licensed under RCW 66.24.145 and located in the state of Washington.

(2) "Domestic distillery" means any distillery licensed under RCW 66.24.140 and located in the state of Washington.

(3) "Off-site tasting room" means an off-site tasting room licensed under RCW 66.24.146.

AMENDATORY SECTION (Amending WSR 18-02-006, filed 12/20/17, effective 1/20/18)

WAC 314-28-030 ~~((What does a))~~ Distillery license ~~((allow?))~~ (1) A distillery license allows the licensee to(~~:~~

~~(a) Sell spirits of their own production directly to a licensed spirits distributor in the state of Washington and to a licensed spirits retailer in the state of Washington;~~

~~(b) Sell spirits of its own production for consumption off the premises. A distiller selling spirits under this subsection must comply with the applicable laws and rules relating to retailers;~~

~~(c) Provide free or for a charge one half ounce or less samples of spirits of its own production to persons on the premises of the distillery under the following conditions:~~

~~(i) Samples may be altered with nonalcoholic mixers, mixers with alcohol of the distiller's own production, ice, and/or water.~~

~~(ii) The maximum amount of alcohol per person per day is two ounces.~~

~~(iii) Every person who participates in any manner in the service of samples must obtain a class 12 alcohol server permit.~~

~~(d) Contract distilled spirits for, and sell contract distilled spirits to, holders of distillers' or manufacturers' licenses, including licenses issued under RCW 66.24.520, or for export)) engage in activities authorized in RCW 66.24.-140.~~

(2) A distillery licensee must comply with all applicable laws and rules including, but not limited to, the sampling, ser-

vice, and sales requirements in WAC 314-28-065, the tasting room age restrictions in WAC 314-28-066, and the food offerings requirements in WAC 314-28-067. For information on local city or county requirements, licensees need to contact their local government offices.

(3)(a) Contract production is when one distillery, referred to as the "contractor," produces distilled spirits for and sells contract distilled spirits to holders of a distillery license, or manufacturers' license including licenses issued under RCW 66.24.520, referred to as "contractee," and for export from the state. This distilled spirit is referred to as the "product."

~~((a))~~ (i) The contractee is the product owner. The contractee may handle the product under its license as the Revised Code of Washington and the Washington Administrative Code allow.

~~((b))~~ (ii) The contractor is required to physically transport all contracted product to the contractee. The contractor is not allowed to distribute or retail the product.

~~((c))~~ (b) The contractor must submit a copy of the contract to the board prior to production. Any changes in the contract must also be submitted to the board prior to subsequent production. The board may require additional information.

~~((d))~~ (c) The contractor and contractee are required to obtain any federal approvals.

(4) Consistent with RCW 66.24.1474, a distillery licensee may add a spirits, beer, and wine restaurant license as authorized in RCW 66.24.400 at the distillery premises. The licensee must complete an application and submit the application and applicable fees to the board for processing. For more information about spirits, beer, and wine restaurant license requirements, see WAC 314-02-015.

AMENDATORY SECTION (Amending WSR 18-02-006, filed 12/20/17, effective 1/20/18)

WAC 314-28-050 ~~((What does a))~~ Craft distillery license ~~((allow?))~~ (1) A craft distillery license allows a licensee to(~~:~~

~~(a))~~ engage in activities authorized in RCW 66.24.145.

(2) A craft distillery licensee must comply with all applicable laws and rules including, but not limited to, the sampling, service, and sales requirements in WAC 314-28-065, the tasting room age restrictions in WAC 314-28-066, and the

food offerings requirements in WAC 314-28-067. For information on local city or county requirements, licensees need to contact their local government offices.

~~(3) Consistent with RCW 66.24.140, a craft distillery licensee may produce one hundred fifty thousand proof gallons or less of spirits per calendar year. A "proof gallon" is one liquid gallon of spirits that is fifty percent alcohol at sixty degrees Fahrenheit((;~~

~~(b) Sell spirits of its own production directly to a customer for off-premises consumption, provided that the sale occurs when the customer is physically present on the licensed premises. A craft distiller may not sell liquor products of someone else's production;~~

~~(c) Sell spirits of its own production to a licensed spirits distributor;~~

~~(d) Sell spirits of its own production to a licensed spirits retailer in the state of Washington;~~

~~(e) Sell to out-of-state entities;~~

~~(f) Provide, free or for a charge, samples of spirits of its own production to persons on the distillery premises subject to the following conditions:~~

~~(i) The maximum amount of alcohol per person per day is two ounces.~~

~~(ii) Samples may be altered with nonalcoholic mixers, mixers with alcohol of the distiller's own production, ice, and/or water.~~

~~(iii) Anyone involved in the serving of such samples must have a valid Class 12 alcohol server permit.~~

~~(iv) Samples must be in compliance with RCW 66.28.040;~~

~~(g) Provide samples of spirits of its own production to retailers. Samples must be unaltered, and in compliance with RCW 66.28.040, 66.24.310 and WAC 314-64-08001. Samples are considered sales and are subject to taxes;~~

~~(h) Contract produce spirits for holders of a distiller or manufacturer license)).~~

~~((2)) (4) Consistent with RCW 66.24.1474, a craft distillery licensee may add a spirits, beer, and wine restaurant license as authorized in RCW 66.24.400 at the craft distillery premises. The licensee must complete an application and submit the application and applicable fees to the board for processing. For more information about spirits, beer, and wine restaurant license requirements, see WAC 314-02-015.~~

NEW SECTION

WAC 314-28-065 Sampling, service, and sales requirements for distillery and craft distillery licensees.
Consistent with RCW 66.24.140 and 66.24.145:

(1) Distillery and craft distillery licensees may engage in the following sampling, service, and sales activities:

(a) Sell, for off-premises consumption:

(i) Spirits of their own production;

(ii) Spirits produced by another distillery or craft distillery licensed in Washington, subject to the alcohol stock-keeping unit requirements in subsection (2) of this section; and

(iii) Vermouth and sparkling wine produced by a licensee in Washington, subject to the alcohol stock-keeping unit requirements in subsection (2) of this section.

(b) Serve or sell, for on-premises consumption, samples of spirits of their own production or samples of spirits produced by another distillery or craft distillery licensed in Washington, subject to the alcohol stock-keeping unit requirements in subsection (2) of this section and the following requirements:

(i) Samples may be free or for a charge;

(ii) Each sample must be one-half ounce or less of spirits;

(iii) Spirits samples may be adulterated with water, ice, other alcohol allowed to be sold on-site, or nonalcoholic mixers; and

(iv) A licensee may not allow an individual person to receive more than a cumulative total of two ounces of unadulterated spirits for on-premises consumption. Additional spirits purchased for on-premises consumption must be adulterated.

(c) Sell, for on-premises consumption, servings of spirits of their own production or servings of spirits produced by another distillery or craft distillery licensed in Washington, subject to the alcohol stock-keeping unit requirements in subsection (2) of this section and the following requirements:

(i) Servings must be adulterated with water, ice, other alcohol permitted to be sold at the location, or nonalcoholic mixers; and

(ii)(A) The revenue derived from the sale of adulterated products for on-premises consumption under (c) of this subsection must not comprise more than thirty percent of the overall gross revenue earned in the tasting room during the calendar year.

(B) The thirty percent limit described in this subsection is an annual limit. As long as the thirty percent limit is not exceeded on an annual basis, revenue that exceeds the thirty percent limit in any one month does not violate the limit.

(C) The annual reporting requirement for tasting room sales of adulterated products for on-premises consumption is satisfied through cumulative monthly reporting under WAC 314-28-070.

(d) Sell, for on-premises consumption, servings of vermouth or sparkling wine produced by a licensee in this state, subject to the alcohol stock-keeping unit requirements in subsection (2) of this section.

(e) Sell nonalcoholic products at retail.

(2) A distillery or craft distillery licensee that provides or sells, for on-premises or off-premises consumption, spirits, sparkling wine, or vermouth produced by another licensee in this state, must meet the following alcohol stock-keeping unit requirements:

(a) Except as provided in (b) of this subsection, at any one time no more than twenty-five percent of a distillery or craft distillery licensee's total alcohol stock-keeping units, offered or sold at the distillery or craft distillery premises and at any off-site tasting rooms, may be vermouth, sparkling wine, or spirits produced by another licensee in this state.

(b) If a distillery or craft distillery licensee sells fewer than twenty different alcohol stock-keeping units of its own production at any one time, it may sell up to five alcohol stock-keeping units of vermouth, sparkling wine, or spirits that are produced by another licensee in this state.

(3) Any person serving or selling spirits or other alcohol authorized to be served or sold by a distillery or craft distillery licensee must obtain a class 12 alcohol server permit.

NEW SECTION

WAC 314-28-066 Tasting room age restrictions for distillery and craft distillery licensees. Consistent with RCW 66.24.140 and 66.24.145:

(1) A distillery or craft distillery licensee must not allow any person under the age of twenty-one to enter a tasting room unless they are accompanied by their parent or legal guardian.

(2)(a) Every tasting room must include a designated area where persons under the age of twenty-one are allowed to enter.

(b) The designated area may be in a separate room or within the tasting room.

(c) The designated area must be separated from the remainder of the tasting room space by a clear demarcation. "Demarcation" has the same meaning and options as provided in WAC 314-02-025(3).

(3) Persons under the age of twenty-one are not allowed on the premises of a licensed distillery, craft distillery, or off-site tasting room past 9:00 p.m., unless:

(a) They are on the premises during an event where a private party has secured a banquet permit (see chapter 314-18 WAC); or

(b) They are the children of owners, operators, or managers of the licensed distillery, craft distillery, or off-site tasting room, and they are under direct supervision of their parent or legal guardian while on the premises.

(4) For the purposes of this section, "tasting room" includes both off-site tasting rooms in WAC 314-28-300 and on-site tasting rooms operated at a licensed distillery or craft distillery premises.

NEW SECTION

WAC 314-28-067 Food offerings requirements. (1) Consistent with RCW 66.24.1471, licensed distilleries, craft distilleries, and off-site tasting rooms must comply with the food offerings requirements in this section. "Food offerings" has the same meaning as provided in RCW 66.24.1471.

(a) Food offerings may be prepackaged for individual sale and consumption.

(b) Food offerings may be preprepared off-site for plating for the customer.

(c) Food offerings are not required to be warmed, cooked, or heated off-site or on-site prior to service.

(d) Food heating devices or preparation apparatuses are not required to be installed, maintained, or used to prepare any food offerings.

(2) In addition to the food offerings requirements in this section, licensed distilleries, craft distilleries, and off-site tasting rooms must comply with all applicable requirements in RCW 66.24.1471 including, but not limited to, requirements related to posting lists of local restaurants or food trucks and any local city or county health requirements. For information on local city or county health requirements, licensees need to contact their local health department.

NEW SECTION

WAC 314-28-300 Off-site tasting room license. (1) Distillery and craft distillery licensees may apply for an off-site tasting room license as authorized in RCW 66.24.146.

(2) Consistent with RCW 66.24.146:

(a) A distillery or craft distillery licensee is eligible for up to two off-site tasting room licenses located in this state, subject to the limit on the total number of off-site tasting room licenses under RCW 66.24.1473.

(b) Off-site tasting rooms may be indoors, outdoors, or a combined indoor and outdoor area. For requirements related to outside alcohol service, see WAC 314-03-200.

(c) The fee for each off-site tasting room license is two thousand dollars per year.

(3) An off-site tasting room must comply with all applicable requirements in RCW 66.24.146 and any other applicable laws and rules including, but not limited to, the sampling, service, and sales requirements in WAC 314-28-065, the tasting room age restrictions in WAC 314-28-066, and the food offerings requirements in WAC 314-28-067. For information on local city or county requirements, licensees need to contact their local government offices.

(4) RCW 66.24.146 allows an off-site tasting room to have a section identified and separated as a federally bonded space for the storage of bulk or packaged spirits, and allows products of the licensee's own production to be bottled or packaged in the space. A licensee engaging in this activity at an off-site tasting room must comply with all applicable federal laws and regulations and obtain any required federal approvals.

(5) Consistent with RCW 66.24.1474, an off-site tasting room licensee may add a spirits, beer, and wine restaurant license as authorized in RCW 66.24.400 at the off-site tasting room premises. The licensee must complete an application and submit the application and applicable fees to the board for processing. For more information about spirits, beer, and wine restaurant license requirements, see WAC 314-02-015.

NEW SECTION

WAC 314-28-310 Jointly operated off-site tasting rooms. (1) Jointly operated off-site tasting rooms are allowed as authorized in RCW 66.24.1472. Consistent with RCW 66.24.1472:

(a) Any licensed distillery, craft distillery, or domestic winery, or any combination of these licensees, may jointly occupy and co-operate up to two off-site tasting room locations described in WAC 314-28-300. The limit of four winery additional locations in WAC 314-24-161 and RCW 66.24.170 does not apply to the two jointly operated off-site tasting room locations allowed under this section.

(b)(i) At a jointly operated off-site tasting room, distillery and craft distillery licensees may sample, serve, and sell products subject to the requirements in WAC 314-28-065, and domestic winery licensees may sample, serve, and sell products subject to the requirements in chapter 314-24 WAC.

(ii) Consistent with RCW 66.24.140 and 66.24.145, a licensee may not allow an individual person to receive more than a cumulative total of two ounces of unadulterated spirits for on-premises consumption at a jointly operated off-site

tasting room, regardless of the number of licensees operating at a jointly operated off-site tasting room.

(c) At a jointly operated off-site tasting room, licensees must:

(i) Maintain separate storage of products and separate financial records. If licensees share any point of sale system, the licensees must keep complete documentation and records for the shared point of sale system showing clear separation as to what sales items and categories belong to each respective licensee;

(ii) Comply with the applicable laws and rules relating to retailers; and

(iii) Share staffing resources under a written plan. The written plan should demonstrate in general how responsibility for staffing the premises is shared among the licensees. Licensees are not required to submit the written plan to the board at the time of application or alteration but must keep documentation of an up-to-date written plan available for inspection on premises.

(2) In addition to the requirements in this section, jointly operated off-site tasting rooms must comply with all applicable requirements in RCW 66.24.1472 and any other applicable laws and rules including, but not limited to, the tasting room age restrictions in WAC 314-28-066 and the food offerings requirements in WAC 314-28-067. For information on local city or county requirements, licensees need to contact their local government offices.

(3) Responsibility for violations or enforcement issues will be determined consistent with RCW 66.24.1472(5).

NEW SECTION

WAC 314-28-320 Jointly operated conjoined consumption areas. (1) Jointly operated conjoined consumption areas are allowed as authorized in RCW 66.24.1472. Consistent with RCW 66.24.1472:

(a) Any domestic brewery, microbrewery, domestic winery, distillery, or craft distillery, or any combination of these licensees, whose property parcels or buildings are located in direct physical proximity to one another may share a jointly operated conjoined consumption area. "Direct physical proximity" means that the property parcels or buildings are physically connected or touching each other along a boundary or at a point.

(b) The jointly operated conjoined consumption area may be a standing or seated tasting area for patrons to use, which may be indoors, outdoors, or a combined indoor and outdoor area. For requirements related to outside alcohol service, see WAC 314-03-200.

(c)(i) Each licensee may sample, serve, and sell products as authorized under the terms of their respective licenses for on-premises consumption in the jointly operated conjoined consumption area. For the requirements applicable to:

(A) Distillery and craft distillery licensees, see WAC 314-28-065.

(B) Domestic winery licensees, see chapter 314-24 WAC.

(C) Domestic brewery and microbrewery licensees, see chapter 314-20 WAC.

(ii) Consistent with RCW 66.24.140 and 66.24.145, a licensee may not allow an individual person to receive more

than a cumulative total of two ounces of unadulterated spirits for on-premises consumption at a jointly operated conjoined consumption area, regardless of the number of licensees operating at a jointly operated conjoined consumption area.

(ii) Consistent with WAC 314-11-065, a licensee may not permit the removal of liquor in an open container from the jointly operated conjoined consumption area, except to reenter the licensed premises where the liquor was purchased. Signage prohibiting the removal of liquor in an open container must be visible to patrons in the jointly operated conjoined consumption area.

(d) In a jointly operated conjoined consumption area, licensees must:

(i) Maintain separate storage of products and separate financial records. If licensees share any point of sale system, the licensees must keep complete documentation and records for the shared point of sale system showing clear separation as to what sales items and categories belong to each respective licensee;

(ii) Use distinctly marked glassware or serving containers to identify the source of any product being consumed;

(iii) Comply with the applicable laws and rules relating to retailers; and

(iv) Share staffing resources under a written plan. The written plan should demonstrate in general how responsibility for staffing the premises is shared among the licensees. Licensees are not required to submit the written plan to the board at the time of application or alteration but must keep documentation of an up-to-date written plan available for inspection on premises.

(2) In addition to the requirements in this section, licensees at jointly operated conjoined consumption areas must comply with all requirements in RCW 66.24.1472 and any other applicable laws and rules including, but not limited to:

(a) For distillery and craft distillery licensees, the tasting room age restrictions in WAC 314-28-066 and the food offerings requirements in WAC 314-28-067.

(b) For domestic winery licensees, see chapter 314-24 WAC.

(c) For domestic brewery and microbrewery licensees, see chapter 314-20 WAC.

(d) For information on local city or county requirements, licensees need to contact their local government offices.

(3) Responsibility for violations or enforcement issues will be determined consistent with RCW 66.24.1472(5).

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 314-28-095 Farmer's market spirits sales.

AMENDATORY SECTION (Amending WSR 09-21-050, filed 10/14/09, effective 11/14/09)

WAC 314-29-035 Group 4 nonretail violations. Group 4 violations are violations involving the manufacture, supply, and/or distribution of liquor by nonretail licensees and prohibited practices between a nonretail licensee and a retail licensee.

Violation type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th Violation in a two-year window
Providing credit to a retail licensee. RCW 66.28.010 WAC 314-12-140 WAC 314-12-145 WAC 314-13-015 WAC 314-13-020	3 day suspension or \$500 monetary option	5 day suspension or \$2,500 monetary option	10 day suspension or \$5,000 monetary option	20 day suspension or \$10,000 monetary option
Quantity discount. RCW 66.28.170 RCW 66.28.180	3 day suspension or \$500 monetary option	5 day suspension or \$2,500 monetary option	10 day suspension or \$5,000 monetary option	20 day suspension or \$10,000 monetary option
Giving away liquor in violation of liquor law or rule. RCW 66.28.040 WAC 314-64-080 WAC 314-64-08001	3 day suspension or \$500 monetary option	5 day suspension or \$2,500 monetary option	10 day suspension or \$5,000 monetary option	20 day suspension or \$10,000 monetary option
Consignment sales/ return of product in violation of liquor law or rule. RCW 66.28.010 WAC 314-12-140 WAC 314-13-015 WAC 314-20-070 WAC 314-20-090 WAC 314-24-210	3 day suspension or \$500 monetary option	5 day suspension or \$2,500 monetary option	10 day suspension or \$5,000 monetary option	20 day suspension or \$10,000 monetary option
Advertising violations involving prohibited practices between a nonretail and a retail licensee. RCW 66.28.010 RCW 66.24.570 WAC 314-05-030 WAC 314-52-040 WAC 314-52-070 WAC 314-52-080 WAC 314-52-090 WAC 314-52-113	3 day suspension or \$500 monetary option	5 day suspension or \$2,500 monetary option	10 day suspension or \$5,000 monetary option	20 day suspension or \$10,000 monetary option
Price lists/labeling/ packaging violations. RCW 66.24.145 RCW 66.28.100 RCW 66.28.110 RCW 66.28.120 RCW 66.28.180 WAC 314-20-020 WAC 314-20-030 WAC 314-20-100 WAC 314-20-130 WAC 314-24-003 WAC 314-24-006	3 day suspension or \$500 monetary option	5 day suspension or \$2,500 monetary option	10 day suspension or \$5,000 monetary option	20 day suspension or \$10,000 monetary option

Violation type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th Violation in a two-year window
WAC 314-24-040 WAC 314-24-080 WAC 314-24-090 WAC 314-24-190 WAC 314-28-090				
Agents violations: Nonretail licensee employ- ing an unlicensed agent. RCW 66.24.310 RCW 66.28.050 WAC 314-44-005	3 day suspension or \$500 monetary option	5 day suspension or \$2,500 monetary option	10 day suspension or \$5,000 monetary option	20 day suspension or \$10,000 mone- tary option
Unauthorized product/ unapproved storage or delivery. RCW 66.24.140 RCW 66.24.160 RCW 66.24.170 RCW 66.24.185 RCW 66.24.200 RCW 66.24.203 RCW 66.24.206 RCW 66.24.240 RCW 66.24.244 RCW 66.24.250 RCW 66.24.261 RCW 66.24.395 RCW 66.28.010 RCW 66.44.140 RCW 66.44.150 RCW 66.44.160 RCW 66.44.170 WAC 314-20-015 WAC 314-20-017 WAC 314-20-055 WAC 314-20-095 WAC 314-20-120 WAC 314-20-160 WAC 314-20-170 WAC 314-24-070 WAC 314-24-115 WAC 314-24-120 WAC 314-24-140 WAC 314-24-160 ((WAC 312-24-161 [WAC 314-24-161])) <u>WAC 314-24-161</u> WAC 314-24-220 WAC 314-25-020 WAC 314-25-030 WAC 314-25-040 WAC 314-28-050	3 day suspension or \$500 monetary option	5 day suspension or \$2,500 monetary option	10 day suspension or \$5,000 monetary option	20 day suspension or \$10,000 mone- tary option

Violation type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th Violation in a two-year window
Sampling/tasting/food offerings violations. RCW 66.20.010 RCW 66.24.140 RCW 66.24.145 RCW 66.24.1471 RCW 66.24.170 RCW 66.28.040 RCW 66.28.150 WAC 314-20-015 WAC 314-24-160 WAC 314-28-065 WAC 314-28-067 WAC 314-45-010 Chapter 314-64 WAC	3 day suspension or \$500 monetary option	5 day suspension or \$2,500 monetary option	10 day suspension or \$5,000 monetary option	20 day suspension or \$10,000 monetary option
Entertainment/instruction/meeting/trade show violations. RCW 66.20.010 RCW 66.28.010 RCW 66.28.042 RCW 66.28.043 RCW 66.28.150 RCW 66.28.155 WAC 314-45-010	3 day suspension or \$500 monetary option	5 day suspension or \$2,500 monetary option	10 day suspension or \$5,000 monetary option	20 day suspension or \$10,000 monetary option
Providing/accepting money or money's worth: Goods or services worth up to \$1,500. RCW 66.28.010 WAC 314-12-140 WAC 314-44-005	3 day suspension or \$500 monetary option	5 day suspension or \$2,500 monetary option	10 day suspension or \$5,000 monetary option	20 day suspension or \$10,000 monetary option
Providing/accepting money or money's worth: Goods or services worth over \$1,500. RCW 66.28.010 WAC 314-12-140 WAC 314-44-005	Cost of item or service provided plus: 3 day suspension or \$1,000 monetary option	Cost of item or service provided plus: 5 day suspension or \$2,500 monetary option	Cost of item or service provided plus: 10 day suspension or \$5,000 monetary option	Cost of item or service provided plus: 20 day suspension or \$10,000 monetary option
Providing/accepting exclusive or contingency agreements. RCW 66.28.010 RCW 66.24.570 WAC 314-12-140 WAC 314-05-030	3 day suspension or \$1,000 monetary option	10 day suspension or \$6,000 monetary option	20 day suspension or \$12,000 monetary option	30 day suspension or \$20,000 monetary option
Unauthorized interest or ownership in retail license. RCW 66.28.010 WAC 314-12-030	3 day suspension or \$1,000 monetary option	30 day suspension or \$20,000 monetary option	Cancellation of license	

Violation type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th Violation in a two-year window
<u>Failure to follow stock-keeping unit requirements.</u> RCW 66.24.140 RCW 66.24.145 WAC 314-28-065	3 day suspension or \$500 monetary option	5 day suspension or \$2,500 monetary option	10 day suspension or \$5,000 monetary option	20 day suspension or \$10,000 monetary option
<u>Failure to maintain 30% annual limit on overall gross revenue per tasting room derived from sales of adulterated spirits for on-premises consumption.</u> RCW 66.24.140 RCW 66.24.145 WAC 314-28-065	3 day suspension or monetary option of \$100 per percentage point over the 30% limit	5 day suspension or monetary option of \$200 per percentage point over the 30% limit	10 day suspension or monetary option of \$300 per percentage point over the 30% limit	
<u>Failure to obtain surety bond/savings account, if required by the board.</u> RCW 66.24.210 RCW 66.24.290 WAC 314-19-020	Immediate suspension of license until surety bond has been obtained and all missing reports are filed and late taxes are paid.			
<u>Failure to file tax/shipment report.</u> RCW 66.24.210 RCW 66.24.290 WAC 314-19-005 WAC 314-19-010 WAC 314-19-020	3 day suspension or \$250 monetary option	5 day suspension or \$500 monetary option	10 day suspension or \$1,000 monetary option	20 day suspension or \$2,000 monetary option
<u>Certificate of approval (COA) and/or authorized representative violations.</u> RCW 66.24.206 WAC 314-19-005 WAC 314-19-010 WAC 314-19-020	15 day suspension or \$100 monetary option	30 day suspension or \$500 monetary option	180 day suspension or \$1,000 monetary option	Cancellation of license

WSR 21-01-212
PROPOSED RULES
BELLEVUE COLLEGE
[Filed December 23, 2020, 10:34 a.m.]

Hearing Location(s): On Tuesday, February 9, 2021, at 3-4 p.m. Online at <https://bellevuecollege.zoom.us/j/88640505980>. Call-in to +12532158782, 88640505980# US (Tacoma). Public hearing to be held remotely due to COVID-19.

Date of Intended Adoption: March 24, 2021.

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-21-006.

Submit Written Comments to: Nadescha Bunje, Bellevue College, 3000 Landerholm Circle S.E., Bellevue, WA 98007, email nadescha.bunje@bellevuecollege.edu, phone 425-564-5669, by February 9, 2021.

Title of Rule and Other Identifying Information: Revise chapter 132H-121 WAC, General conduct, to include weapons and fireworks rules. Amending WAC 132H-121-010 and 132H-121-020. Adding new WAC 132H-121-030, 132H-121-040, and 132H-121-050.

Assistance for Persons with Disabilities: Contact Nadescha Bunje, phone 425-564-5669, TTY 425-564-6189, email nadescha.bunje@bellevuecollege.edu, by January 25, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Bellevue College plans to codify its weapons and fireworks policy in the Washington Administrative Code under chapter 132H-121 WAC, General conduct, in order to maintain the educational mission and safety of the campus community. Other changes include updating the name of the college and student conduct code WAC section numbers.

Reasons Supporting Proposal: To clarify the rules regarding the possession, holding, wearing, transportation, storing or exhibiting of weapons on college property. To restrict the possession, distribution, or discharge of fireworks on college property in accordance with City of Bellevue regulations.

Statutory Authority for Adoption: RCW 28B.50.140 (13); chapter 34.05 RCW.

Statute Being Implemented: RCW 28B.50.140(13).

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

Name of Proponent: Bellevue College, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Nadescha Bunje, Bellevue College, K100F, 3000 Landerholm Circle S.E., Bellevue, WA 98007, 425-564-5669.

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. Bellevue College is not one of the enumerated agencies required to conduct cost-benefit analyses under RCW 34.05.328(5).

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

Is exempt under RCW 19.85.025(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.

December 23, 2020
Tracy Biga MacLean
Associate Director

AMENDATORY SECTION (Amending WSR 00-21-013, filed 10/6/00, effective 11/6/00)

WAC 132H-121-010 Smoking. It shall be the policy of Bellevue ((Community)) College, consistent with its efforts to promote wellness, fitness, and a campus environment conducive to work, study, and activities for staff, students, and the public, to maintain a smoke/tobacco free indoor campus environment. Smoking and tobacco use is permitted only in designated locations. Receptacles for smoking materials are provided and are required to be used to maintain litter free campus grounds.

Information regarding the Bellevue ((Community)) College smoking policy is available in Campus Operations, located in K100.

AMENDATORY SECTION (Amending WSR 95-19-050, filed 9/14/95, effective 10/15/95)

WAC 132H-121-020 Hazing rules. Community College District VIII board of trustees has authorized the college to adopt rules to regulate hazing activities within college sponsored organizations, associations, or living groups.

(1) Hazing is prohibited. Hazing means any method of initiation into a student organization, association, or living group, or any pastime or amusement engaged in with respect to such an organization or living group that causes, or is likely to cause bodily danger or physical harm, or serious mental or emotional harm, to any student or other person attending any institution of higher education or post-secondary institution.

PENALTIES

(1) Any organization, association, or living group that knowingly permits hazing shall:

(a) Be liable for harm caused to persons or property resulting from hazing, and

(b) Be denied recognition by Bellevue ((Community)) College as an official organization, association or student living group on the Bellevue ((Community)) College campus. If the organization, association or student living group is a corporation, whether for profit or nonprofit, the individual directors of the corporation may be held individually liable for damages.

(2) A person who participates in the hazing of another shall forfeit any entitlement to state-funded grants, scholarships or awards for not less than one academic quarter and up to and including permanent forfeiture, based upon the seriousness of the violation(s).

(3) The student code of Community College District VIII may be applicable to hazing violations, WAC ((~~132H-120-200 (1)(3), 132H-120-210 through 132H-120-475~~)) 132H-126-100(12), 132H-126-010 through 132H-126-340.

(4) Hazing violations are also misdemeanors punishable under state criminal law according to RCW ((~~9A-20-021~~)) 28B.10.901.

SANCTIONS FOR IMPERMISSIBLE CONDUCT NOT AMOUNTING TO HAZING

(1) Impermissible conduct associated with initiation into a student organization or living group or any pastime or amusement engaged in, with respect to the organization or living group, will not be tolerated.

(2) Impermissible conduct which does not amount to hazing may include conduct, not otherwise protected by law, which causes embarrassment, sleep deprivation or personal humiliation, or may include ridicule or unprotected speech amounting to verbal abuse.

(3) Impermissible conduct not amounting to hazing ((is)) and not otherwise protected by law may be subject to sanctions available under WAC ((~~132H-120-200 (1)(3), 132H-120-210 through 132H-120-475~~)) 132H-126-100(12), 132H-126-010 through 132H-126-340, the student code of Community College District VIII, depending upon the seriousness of the violation.

NEW SECTION

WAC 132H-121-030 Definitions. For the purposes of this chapter, the following definition shall apply:

"College property" shall include, but not be limited to, all campuses of the college, wherever located, and all college-controlled land, buildings, facilities, vehicles, equipment, and any other property owned or used by the college, including study abroad program, retreat, and conference sites.

NEW SECTION

WAC 132H-121-040 Weapons. Possessing, holding, wearing, transporting, storing, or exhibiting 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 college property, subject to the following exceptions:

(1) Commissioned law enforcement personnel or legally authorized military personnel are not subject to these restrictions while in performance of their duties;

(2) Bank-related security personnel required by their office to carry such weapons or devices are not subject to these restrictions;

(3) Licensed and bonded third-party security personnel hired for hosted events are not subject to these restrictions, subject to approval by the director of public safety;

(4) An individual with a valid concealed weapons permit may store a pistol in their vehicle parked on college property in accordance with RCW 9.41.050, provided the vehicle is locked and the weapon is concealed from view;

(5) The president or their designee may grant permission to bring a weapon on campus upon a determination that the weapon is reasonable and 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;

(6) Possession of a knife or ceremonial dagger for religious purposes is not prohibited. Maximum length of the knife or ceremonial dagger should not exceed seven inches in length;

(7) Possession and/or use of disabling chemical sprays for purposes of self-defense is not prohibited;

(8) Possession of knives for cooking or cutting instruments used for the purposes of work on campus is not prohibited.

Violations of this section will be subject to appropriate disciplinary and/or legal action.

NEW SECTION

WAC 132H-121-050 Fireworks. The possession, distribution, or discharge of fireworks is prohibited on college property. The city of Bellevue prohibits the discharge of fireworks by ordinance within city limits. Violations of this section will be subject to appropriate disciplinary and/or legal action.