

WSR 21-06-109
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)
[Filed March 3, 2021, 9:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-18-089.

Title of Rule and Other Identifying Information: The department is proposing to repeal and recodify WAC 388-71-0100 through 388-71-01281 to a new chapter 388-103 WAC. The department is also proposing to modify the definition of "willful" under WAC 388-71-0105 in response to *Crosswhite v. DSHS*, 389 P.3d 731, 197 Wn. App. 539 (2017). In addition, the department is proposing to create new WAC sections to memorialize a petition process for certified nursing assistants (CNAs), and update existing WAC sections to make other changes in grammar and structure for improved rule consistency.

Hearing Location(s): On April 27, 2021, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington Street S.E., Olympia, WA 98501. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or by Skype. Due to the COVID-19 pandemic, hearing may be held via Skype, see DSHS website for most up-to-date information.

Date of Intended Adoption: No earlier than April 28, 2021.

Submit Written Comments to: DSHS, Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., April 27, 2021.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email kildaja@dshs.wa.gov, by April 13, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to create a new WAC chapter containing all DSHS adult protective services (APS) regulatory subject matter. The effect of this change is to ensure that it is clear that APS is a division within aging and long-term support administration (ALTSA), and to ensure that it is clear what division is responsible for the chapter. In addition, the purpose of the proposal is to adapt and respond to the *Crosswhite* decision where a previous APS WAC definition was found to exceed the agency's statutory authority. The anticipated effect of this proposal is to adapt the commonly understood meaning of "willful" observed in *Crosswhite*. The purpose of a further proposal is to memorialize a petition process for CNAs. The effects of this are to create a process for CNAs to petition APS for their removal from the CNA registry regarding an instance of neglect. Finally, other purposes of this proposal are to clarify meanings, update grammar, and improve consistency within APS WAC and also between APS WAC and other WAC. The effect would be having WAC that is clearer, easier to understand, and consistent with other chapters of DSHS WAC.

Reasons Supporting Proposal: APS became a new division with ALTSA in 2019, and removing APS rules from home and community services rules ensures there is no confusion as to what division is responsible for the APS rules. Since the *Crosswhite* decision in 2017, there has been no explicit meaning of "willful" in regards to abuse in WAC (where abuse is defined in RCW 74.34.020). It will be defined as it was ob-

served in *Crosswhite*. Although APS does have a process for CNA petitions, having the process in rule better articulates the rights and responsibilities of the petitioners and APS. Finally, some substance in APS WAC is redundant, inconsistent with itself and other DSHS rules, and needs technical corrections.

Statutory Authority for Adoption: RCW 74.34.068, 74.34.165; 42 U.S.C. Sec. 1396r (g)(1)(D), Sec. 1395i-3 (g)(1)(D).

Statute Being Implemented: RCW 74.34.068, 74.34.165; 42 U.S.C. Sec. 1396r (g)(1)(D), Sec. 1395i-3 (g)(1)(D).

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Will Reeves, P.O. Box 45600, Olympia, WA 98504, 360-485-3715.

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. All proposals do the following: Adopt or incorporate by reference without material change federal statutes or regulations or Washington state statutes; clarify language of a rule without changing its effect; or are interpretive rules. The following are incorporated without material change: RCW 74.34.020; 42 C.F.R. 488.301; RCW 74.34.005, 74.34.063, 74.34.068; Part IV of chapter 34.05 RCW; RCW 74.34.095, 74.349A.056; 42 U.S.C. 1396r, 42 U.S.C. 1395i-3.

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

Is exempt under RCW 19.85.030.

Explanation of exemptions: The proposed rules will not impose more-than-minor costs on any business or industry, as APS investigates and makes findings regarding individuals, not entities.

February 25, 2021
Katherine I. Vasquez
Rules Coordinator

SHS-4846.2

**Chapter 388-103 WAC
ADULT PROTECTIVE SERVICES**

NEW SECTION

WAC 388-103-0001 What definitions apply to this chapter? In addition to the definitions found in chapter 74.34 RCW, the following definitions apply to this chapter:

(1) "Adult family home" is defined under chapter 70.128 RCW.

(2) "Alleged perpetrator" means the person who is alleged to have abandoned, abused, financially exploited, neglected, or misappropriated the property of, an alleged victim; and the department has re-

ceived a report of, is investigating, or has made an initial substantiated finding about such allegation.

(3) "Alleged victim" means:

(a) The person who is alleged to have been abandoned, abused, financially exploited, neglected, or had their property misappropriated by an alleged perpetrator; and the department has received a report of, is investigating, or has made an initial substantiated finding about such allegation; or

(b) The person who is alleged to be neglecting themselves; and the department has received a report of, is investigating, or has made an initial substantiated finding about the self-neglect.

(4) "Basic necessities of life" means food, water, shelter, clothing, and medically necessary health care, including but not limited to health-related treatment or activities, hygiene, oxygen, and medication.

(5) "Facility" means a residence licensed or required to be licensed under:

(a) Chapter 18.20 RCW, assisted living facilities;

(b) Chapter 18.51 RCW, nursing homes;

(c) Chapter 70.128 RCW, adult family homes;

(d) Chapter 72.36 RCW, soldiers' homes;

(e) Chapter 71A.20 RCW, residential habilitation centers;

(f) Chapter 70.97 RCW, enhanced services facilities; or

(g) Any other facility licensed or certified by the department.

(6) "Final substantiated finding" means an initial substantiated finding of abandonment, abuse, financial exploitation, misappropriation of resident property, or neglect that:

(a) Has been upheld through the administrative hearing process described in WAC 388-103-0090 through 388-103-0160; or

(b) Is not timely appealed to the office of administrative hearings as required under WAC 388-103-0100.

(7) "Initial substantiated finding" means a finding by the department that, more likely than not, the alleged abandonment, abuse, financial exploitation, misappropriation of resident property, neglect, or self-neglect occurred.

(8) "Legal representative" means a guardian or conservator appointed under either chapter 11.88 RCW or chapter 11.130 RCW; or an agent granted authority under a power of attorney as described under chapter 11.125 RCW.

(9) "Nursing assistant" means as it is defined under chapter 18.88A RCW.

(10) "Nursing facility" means a nursing home, or any portion of a hospital, veterans' home, or residential habilitation center, that is certified to provide nursing services to medicaid recipients under section 1919(a) of the Social Security Act (42 U.S.C. Sec. 1396r).

(11) "Nursing home" means any facility licensed to operate under chapter 18.51 RCW.

(12) "Person with a duty of care," in the context of abandonment and neglect, includes:

(a) A guardian or conservator appointed under chapter 11.88 RCW or chapter 11.130 RCW;

(b) An agent granted authority under a power of attorney as described under chapter 11.125 RCW; or

(c) A person providing the basic necessities of life to a vulnerable adult where:

(i) The person is employed by or on behalf of the vulnerable adult; or

(ii) The person voluntarily agrees to provide, or has been providing, the basic necessities of life to the vulnerable adult on a continuing basis.

(13) "Skilled nursing facility" means a nursing home, a portion of a nursing home, or a long-term care wing or unit of a hospital that has been certified to provide nursing services to medicare recipients under section 1819(a) of the Social Security Act (42 U.S.C. Sec. 1395i-3).

(14) "Vulnerable adult abuse registry" means the registry, established and maintained by the department as required under RCW 74.39A.056, that contains identifying information about people who have final substantiated findings of abandonment, abuse, financial exploitation, misappropriation of resident property, or neglect of a vulnerable adult.

(15) "Willful." A person's action or inaction is willful when the person's action or inaction is intentional or knowing.

(a) **INTENTIONAL.** A person's action or inaction is intentional when the person's objective or purpose is to inflict injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult.

(b) **KNOWING.** A person's action or inaction is knowing when the person is aware that his or her action or inaction would inflict injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult.

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NEW SECTION

WAC 388-103-0002 What additional definitions apply when the facility is a nursing facility or skilled nursing facility? (1) This section incorporates those definitions under 42 C.F.R. Sec. 488.301 into this chapter.

(2) In addition to the definitions in WAC 388-103-0001 and RCW 74.34.020, the definitions in this section apply to this chapter when:

(a) The alleged victim is a resident of a nursing facility or skilled nursing facility; and

(b) The alleged perpetrator is an individual used by such facility to provide services to residents.

(3) Abuse.

(a) Abuse is the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish. Abuse also includes the deprivation by an individual, including a caretaker, of goods or services that are necessary to attain or maintain physical, mental, and psychosocial well-being.

(b) Instances of abuse of all residents, irrespective of any mental or physical condition, cause physical harm, pain or mental anguish.

(c) Abuse includes verbal abuse, sexual abuse, physical abuse, and mental abuse including abuse facilitated or enabled through the use of technology.

(d) Willful, as used in this definition of abuse, means the individual must have acted deliberately, not that the individual must have intended to inflict injury or harm.

(4) "Individual" means a person used by a nursing facility or skilled nursing facility to provide services to residents of such facility.

(5) "Misappropriation of resident property" means the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident's belongings or money without the resident's consent.

(6) "Neglect" means the failure of an individual to provide goods and services to a resident that are necessary to avoid physical harm, pain, mental anguish, or emotional distress.

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NEW SECTION

WAC 388-103-0010 What is the purpose of an adult protective services investigation? The purpose of an adult protective services investigation is to:

(1) Investigate allegations of abandonment, abuse, financial exploitation, misappropriation of resident property, neglect, or self-neglect.

(2) Provide protective services to the alleged victim, with the consent of the alleged victim or their legal representative, when the protective services could assist in ending or preventing of the harm to the alleged victim.

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NEW SECTION

WAC 388-103-0020 When does adult protective services respond to a report? The department will initiate a response to a report of suspected abandonment, abuse, financial exploitation, misappropriation of resident property, neglect, or self-neglect of a vulnerable adult when the alleged facts and circumstances reasonably fit the definition of abandonment, abuse, financial exploitation, misappropriation of resident property, neglect, or self-neglect as defined in RCW 74.34.020 or this chapter.

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NEW SECTION

WAC 388-103-0030 What state-only funded services may be offered to an alleged victim? (1) Subject to available funding, adult protective services (APS) may arrange for, and provide referrals to, state-only funded services for an alleged victim.

(2) Services may include:

(a) In-home personal care, household services, or both; and

(b) Emergency referral options for a department-licensed and -contracted adult family home, assisted living facility, or nursing home.

(3) Services may be offered if:

- (a) The person is the alleged victim in an open APS investigation;
- (b) The services would help protect the alleged victim from harm;
- (c) APS cannot identify alternative resources or options for payment for services available to the alleged victim at the time the services are needed;
- (d) Services are provided in the least restrictive and cost effective manner and setting available to meet the needs of the alleged victim;
- (e) APS is pursuing service alternatives or resolution of the issues that resulted in the need for the services; and
- (f) The services are temporary and provided with the consent of the alleged victim, or their legal representative, only until the situation has stabilized.

(4) Service limitations.

- (a) State-only funded protective services are provided by APS on a discretionary basis, are not a benefit, and are not an entitlement.
- (b) There is no right to notice over an approval, denial, change, termination, or any other action regarding services.
- (c) There is no right to an administrative hearing over an approval, denial, change, termination, or any other action regarding services.
- (d) All services are limited to a cumulative maximum total of ninety days in any twelve-month period, with nursing home services limited to thirty days in the twelve-month period. An exception to rule requested under chapter 388-440 WAC will not be accepted.
- (e) In-home personal care, household services, or both, are provided based on assessed need and limited to one hundred forty-three hours per calendar month.

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NEW SECTION

WAC 388-103-0040 When does adult protective services notify the alleged perpetrator of an initial substantiated finding? (1) Adult protective services (APS) will notify the alleged perpetrator in writing on or before the tenth working day after making an initial substantiated finding.

(2) APS may notify the alleged perpetrator after the tenth working day if time is needed to translate the notification letter, or if time is needed to provide for the safety of the alleged victim.

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NEW SECTION

WAC 388-103-0050 How will adult protective services give the alleged perpetrator notice of the initial substantiated finding? (1) Adult protective services (APS) will notify the alleged perpetrator of the initial substantiated finding using one of the following methods:

(a) Personal service of the notice as described under RCW 4.28.080; or

(b) Sending a copy of the notice by first-class mail and certified mail, return receipt requested, to the alleged perpetrator's last known mailing address.

(2) If APS knows the alleged perpetrator no longer receives mail at their last known mailing address, then APS will give notice by personal service.

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NEW SECTION

WAC 388-103-0060 When is notice to the alleged perpetrator complete? Notice is complete when:

(1) Personal service is made; or

(2) Mail is properly stamped, addressed, and deposited in the United States mail.

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NEW SECTION

WAC 388-103-0070 What proves that adult protective services provided notice of the initial substantiated finding to the alleged perpetrator? Adult protective services may prove notice was provided to the alleged perpetrator by any of the following:

(1) A sworn statement, certification, or declaration of personal service;

(2) A sworn statement, certification, or declaration of mailing; or

(3) The certified mail receipt confirming the notice was delivered.

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NEW SECTION

WAC 388-103-0080 Will adult protective services notify anyone other than the alleged perpetrator of the initial substantiated finding? (1) Facilities.

(a) If the incident occurred in a facility, adult protective services (APS) will inform the facility of the initial substantiated finding.

(b) If abuse, neglect, or misappropriation of resident property occurred in a nursing home, APS will inform the administrator of the nursing home of the initial substantiated finding.

(2) Agencies or programs.

(a) If the alleged perpetrator is an employee, contractor, volunteer, or otherwise related to an agency or program described in RCW

74.34.068, APS may inform such agency or program of the initial substantiated finding; and

(b) APS may also inform appropriate state or local governmental authorities responsible for licensing or certification of such agency or program.

(3) APS may inform law enforcement of the initial substantiated finding.

(4) APS may inform the long-term care ombuds, the developmental disabilities ombuds, or both, of the initial substantiated finding.

(5) Other authorities.

(a) If an alleged perpetrator is professionally licensed, certified, or registered under title 18 RCW, APS may inform the proper authority of the initial substantiated finding.

(b) APS may inform other investigative authorities of the initial substantiated finding.

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NEW SECTION

WAC 388-103-0090 May an alleged perpetrator challenge an initial substantiated finding? An alleged perpetrator may request an administrative hearing to challenge an initial substantiated finding.

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NEW SECTION

WAC 388-103-0100 How does an alleged perpetrator request an administrative hearing to challenge an initial substantiated finding?

(1) To request an administrative hearing, the alleged perpetrator must send, deliver, or fax a written request to the office of administrative hearings (OAH).

(a) OAH must receive the written request no later than the earlier of:

(i) 5:00 p.m. on the thirtieth calendar day after the mailing date on adult protective services' (APS's) letter of notice; or

(ii) 5:00 p.m. on the thirtieth calendar day after the date APS's letter of notice was personally served upon the alleged perpetrator.

(b) Days are counted as described under WAC 388-02-0035.

(c) OAH mailing addresses, fax numbers, and telephone numbers are in WAC 388-02-0025.

(2) The minimum information required to make a request is given by:

(a) Completing the adult protective services administrative hearing request form (DSHS 27-178); or

(b) A written request that includes:

(i) The full legal name, current address, and phone number of the alleged perpetrator;

(ii) A brief explanation of why the alleged perpetrator disagrees with the initial substantiated finding; and

(iii) A description of assistance needed in the administrative appeal process, if any, by the alleged perpetrator, such as a foreign or sign language interpreter, or accommodation for a disability.

(3) Good cause, as described under WAC 388-02-0020, does not apply to the requirements of this section.

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NEW SECTION

WAC 388-103-0110 What laws and rules will control the administrative hearings held regarding initial substantiated findings? (1) Chapters 34.05 and 74.34 RCW, chapters 388-02 and 10-08 WAC, and this chapter govern an administrative hearing regarding an initial substantiated finding.

(2) In the event of a conflict between this chapter and chapter 388-02 or 10-08 WAC, this chapter will prevail; and in the event of a conflict with between chapter 388-02 and 10-08 WAC, chapter 388-02 WAC will prevail.

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Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 388-103-0120 What additional rules apply to administrative hearings regarding initial substantiated findings of abuse, neglect, or misappropriation of resident property, where the alleged perpetrator is an individual used by a nursing facility or skilled nursing facility to provide services to residents of that facility? (1) This section applies to the administrative hearing when an initial substantiated finding of abuse, neglect, or misappropriation of resident property is made against an individual used by a nursing facility or skilled nursing facility to provide services to residents of that facility.

(2) The hearing and the hearing record must be completed within one hundred and twenty days from the day the office of administrative hearings received the request for a hearing under WAC 388-103-0100.

(a) If the administrative law judge (ALJ) finds that extenuating circumstances exist that will make it impossible to render a decision within one hundred and twenty days, then the ALJ may extend the limit by a maximum of sixty days.

(b) The individual must be available for the hearing and other preliminary matters.

(c) If the individual is a nursing assistant, and if the hearing and hearing record cannot be completed within the time limit because of the unavailability of the nursing assistant, then, after the time limit has expired, the nursing assistant's name will be placed on the vulnerable adult abuse registry pending the outcome of the hearing.

(3) The hearing must be held at a reasonable place and time convenient for the individual.

(4) A final substantiated finding of neglect, where neglect is defined under WAC 388-103-0002, may not be made if the individual demonstrates the neglect was caused by factors beyond the control of the individual.

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NEW SECTION

WAC 388-103-0130 How is confidential information protected in the administrative hearing process? (1) All information described under RCW 74.34.095(1) is confidential, and not subject to disclosure in the administrative hearing process, except as described under RCW 74.34.095(3) and this section.

(2) If the administrative law judge (ALJ) determines that disclosure is essential to the administration of justice and will not endanger the life or safety of the alleged victim or the person who made the report, then the ALJ may order disclosure of the information otherwise protected under RCW 74.34.095

(3) Such disclosure may only be made under a protective order agreed to by the parties and entered by the ALJ. The ALJ may place restrictions on such disclosure as the ALJ deems proper.

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NEW SECTION

WAC 388-103-0140 How does the administrative law judge make a decision regarding the initial substantiated finding? (1) If the administrative law judge (ALJ) finds that the preponderance of the evidence supports the initial substantiated finding, the ALJ shall uphold the initial substantiated finding in an initial order.

(2) If the ALJ finds that the initial substantiated finding is not supported by a preponderance of the evidence, the ALJ shall remand the matter to the department to modify the finding consistent with the initial order.

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NEW SECTION

WAC 388-103-0150 What if the alleged perpetrator or the department disagrees with the administrative law judge's initial order? (1) If the alleged perpetrator or the department disagrees with the administrative law judge's (ALJ's) initial order, either party may request review of the initial order with the department's board of appeals as described under chapter 388-02 WAC.

(2) If either party requests review of the ALJ's initial order, the initial order will not be effected.

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Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 388-103-0160 When does the initial substantiated finding become a final substantiated finding? (1) An initial substantiated finding becomes a final substantiated finding when:

(a) The department gives the alleged perpetrator notice of the initial substantiated finding as described under WAC 388-103-0050, and the alleged perpetrator does not request an administrative hearing under WAC 388-103-0100;

(b) The administrative law judge (ALJ) dismisses the alleged perpetrator's request for hearing;

(c) The ALJ issues an initial order upholding the initial substantiated finding and the order becomes a final order under WAC 388-02-0525; or

(d) The department's board of appeals enters a final order upholding the initial substantiated finding.

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NEW SECTION

WAC 388-103-0170 What happens when an initial substantiated finding becomes a final substantiated finding? When an initial substantiated finding becomes a final substantiated finding, identifying information about the perpetrator of the abandonment, abuse, financial exploitation, misappropriation of resident property, or neglect is placed on the vulnerable adult abuse registry that is maintained by the department.

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NEW SECTION

WAC 388-103-0180 Is a final substantiated finding permanent?

(1) A final substantiated finding is permanent, except as described under subsection (2) of this section.

(2) A final substantiated finding may be reversed, and the person's identifying information removed from the vulnerable adult abuse registry, if:

(a) The department determines the final substantiated finding was made in error;

(b) The final substantiated finding is reversed or otherwise overturned upon judicial review; or

(c) The department is notified that a person with a final substantiated finding is deceased.

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NEW SECTION**WAC 388-103-0190 Will adult protective services notify anyone other than the alleged perpetrator of the final substantiated finding?**

(1) Adult protective services (APS) may provide notice of the final substantiated finding to those persons and entities described under WAC 388-103-0080.

(2) Where the perpetrator of a final substantiated finding is an individual used by a nursing home to provide services to residents of such nursing home, APS will notify the following on or before the tenth working day of the final substantiated finding:

- (a) The perpetrator;
- (b) The current administrator of the nursing home in which the incident occurred;
- (c) The administrator of the nursing home in which the perpetrator is currently employed, if known by APS and if different than the nursing home in which the incident occurred; and
- (d) The Washington state department of health.

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NEW SECTION

WAC 388-103-0200 Does the department disclose information contained in the vulnerable adult abuse registry about final substantiated findings of abandonment, abuse, financial exploitation, misappropriation of resident property, and neglect? Upon request of any person, the department shall disclose the identity of a person on the vulnerable adult abuse registry with a final substantiated finding of abandonment, abuse, financial exploitation, misappropriation of resident property, or neglect.

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NEW SECTION**WAC 388-103-0210 May a nursing assistant petition the department to have their name removed from the vulnerable adult abuse registry?**

(1) This section implements 42 U.S.C. Sec. 1396r (g) (1) (D) and Sec. 1395i-3 (g) (1) (D).

(2) A nursing assistant may petition the department to have their name removed from the vulnerable adult abuse registry, subject to the requirements of this section.

(3) Preliminary requirements for the department to accept a petition:

- (a) At least one year must have elapsed between the date of the final substantiated finding and the date the department receives the petition;
- (b) The final substantiated finding was a singular occurrence of neglect; and
- (c) The petition must be in writing and contain the following information:
 - (i) About the petitioner:

- (A) Name;
- (B) Date of birth;
- (C) Social security number;
- (D) Mailing address; and
- (E) Phone number;

(ii) The final substantiated finding;

(iii) All documents regarding any disciplinary action, or any other negative action, taken against the petitioner under chapter 18.88A RCW;

(iv) A background check through the Washington state patrol that was completed no earlier than thirty days prior to the date the department accepts the petition;

(v) An affidavit stating why the petitioner believes the department should grant the petition. The statement must include whether the petitioner has abused or neglected a vulnerable adult since the final substantiated finding was entered;

(vi) A list of three references for the department to contact regarding the petitioner's employment and personal history, where two references must be professional references; and

(vii) Any other relevant information the petitioner wants the department to consider.

(4) Standard for removal.

(a) The department will accept a petition if the requirements of subsection (3) of this section are met.

(b) Once the petition is accepted, the petitioner must attend an in-person interview with the department. "In-person" means either physical presence with department personnel, or visual presence through electronic means.

(c) Once the petition is accepted and the interview is completed, the department will determine whether the petitioner's employment and personal history reflects a pattern of abusive behavior or neglect:

(i) If the department determines the petitioner's employment and personal history does not reflect a pattern of abusive behavior or neglect, the department approves the petition, and removes the petitioner's name from the vulnerable adult abuse registry.

(ii) If the department determines the petitioner's employment and personal history does reflect a pattern of abusive behavior or neglect, the department denies the petition.

(iii) If the department is unable to determine whether the petitioner's employment and personal history reflects a pattern of abusive behavior or neglect, the department denies the petition.

(5) Other information.

(a) The department will act with reasonable promptness upon receiving a petition that contains the information required under subsection (3) of this section, and make its decision within sixty days of accepting a petition.

(b) If the department requires additional information to make its determination, a letter will be sent to the petitioner requesting the additional information. The petitioner has ten business days to provide the information. If the department does not receive the requested information, it may be unable to determine whether petitioner's employment and personal history reflects a pattern of abusive behavior or neglect, and deny the petition.

(c) Decisions and other correspondence regarding the petition will be mailed to the petitioner. At the petitioner's request, correspondence may also be sent via email.

(d) A petitioner does not have a right to an administrative hearing regarding any department action taken on a petition.

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REPEALER

The following sections of the Washington Administrative Code are repealed:

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| WAC 388-71-0100 | What are the statutory references for WAC 388-71-0100 through 388-71-01281? |
| WAC 388-71-0105 | What definitions apply to adult protective services? |
| WAC 388-71-0110 | What is the purpose of an adult protective services investigation? |
| WAC 388-71-0115 | When is an investigation conducted? |
| WAC 388-71-01201 | What state-only funded services may be offered to a vulnerable adult victim of abandonment, abuse, financial exploitation, neglect or self-neglect? |
| WAC 388-71-01202 | When does the department make a substantiated initial finding of an individual used by a nursing facility or skilled nursing facility to provide services to vulnerable adults? |
| WAC 388-71-01205 | When does APS notify the alleged perpetrator of a substantiated initial finding? |
| WAC 388-71-01210 | How may APS give the alleged perpetrator notice of the substantiated initial finding? |
| WAC 388-71-01215 | When is notice to the alleged perpetrator complete? |
| WAC 388-71-01220 | What proves that APS provided notice of the substantiated initial finding to the alleged perpetrator? |
| WAC 388-71-01225 | What information must not be in the APS finding notice to the alleged perpetrator? |
| WAC 388-71-01230 | Will APS notify anyone other than the alleged perpetrator of the substantiated initial finding of abandonment, abuse, financial exploitation or neglect? |
| WAC 388-71-01235 | Can an alleged perpetrator challenge a substantiated initial finding of abandonment, abuse, financial exploitation or neglect? |

- WAC 388-71-01240 How does an alleged perpetrator request an administrative hearing to challenge a substantiated initial finding of abandonment, abuse, financial exploitation or neglect?
- WAC 388-71-01245 What laws and rules will control the administrative hearings held regarding substantiated initial findings?
- WAC 388-71-01247 What additional rules apply to administrative hearings held regarding substantiated initial findings made against a nursing assistant employed in a nursing facility or skilled nursing facility?
- WAC 388-71-01250 How is confidential information protected in the appeal process?
- WAC 388-71-01255 How does the administrative law judge make a decision regarding the substantiated initial finding?
- WAC 388-71-01260 When is the alleged perpetrator notified of the administrative law judge's decision?
- WAC 388-71-01265 What if the alleged perpetrator or the department disagrees with the decision?
- WAC 388-71-01270 What happens if the administrative law judge rules against the department?
- WAC 388-71-01275 When does the APS substantiated initial finding become a final finding?
- WAC 388-71-01280 Does the department disclose information about final findings of abuse, abandonment, neglect and financial exploitation?
- WAC 388-71-01281 To whom does the department report a final substantiated finding against a nursing assistant employed in a nursing facility or skilled nursing facility?

WSR 21-07-006

WITHDRAWAL OF PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed March 4, 2021, 10:51 a.m.]

The health care authority (HCA) is withdrawing the CR-102 Proposed rule making for WAC 182-543-2200, DME, proof of delivery, published by the code reviser in WSR 21-06-114, and scheduled for a virtual public hearing on April 6, 2021.

HCA plans to refile the proposed rule under issue 21-07 with a corrected hyperlink for the virtual public hearing and a new public hearing date of April 27, 2021.

Wendy Barcus
Rules Coordinator

WSR 21-07-009
PROPOSED RULES
OFFICE OF THE
CORRECTIONS OMBUDS

[Filed March 4, 2021, 11:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-24-012.

Title of Rule and Other Identifying Information: Confidentiality and investigations rules for the office of the corrections ombuds.

Hearing Location(s): On April 29, 2021, at 4:30 p.m. Microsoft Teams meeting; join on your computer or mobile app, click here to join meeting [contact agency for link], or call in (audio only) +1 253-372-2181,,571052512# United States, Tacoma, phone conference ID 571 052 512#. Please go to <https://oco.wa.gov/public-meetings> to access the link.

Date of Intended Adoption: April 30, 2021, or later.

Submit Written Comments to: Joanna Carns, Director, 2700 Evergreen Parkway N.W., Olympia, WA 98505, email Joanna.carns@gov.wa.gov, by April 22, 2021.

Assistance for Persons with Disabilities: Contact Joanna Carns, director, phone 360-764-3168, email Joanna.carns@gov.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to implement rules that are required under chapter 43.06C RCW related to confidentiality and investigations. No changes or other impacts to existing rules.

Reasons Supporting Proposal: Establishment of rules is required under chapter 43.06C RCW.

Statutory Authority for Adoption: RCW 43.06C.040 (1)(k), (2)(c), and 43.06C.060(2).

Statute Being Implemented: RCW 43.06C.040 (1)(k), (2)(c), and 43.06C.060(2).

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

Name of Proponent: Joanna Carns, office of the corrections ombuds, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Joanna Carns, 2700 Evergreen Parkway N.W., Olympia, WA 98505, 360-764-3168.

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; and rule content is explicitly and specifically dictated by statute.

March 4, 2021
Joanna Carns
Director

OTS-2714.2

Chapter 138-10 WAC
OFFICE OF THE CORRECTIONS OMBUDS

NEW SECTION

WAC 138-10-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

- (1) "Abuse" means any act or failure to act by a department employee, subcontractor, or volunteer which was performed, or which was failed to be performed, knowingly, recklessly, or intentionally, and which caused, or may have caused, injury or death to an inmate.
- (2) "Corrections ombuds" or "ombuds" means the corrections ombuds, staff of the corrections ombuds, and volunteers with the office of the corrections ombuds.
- (3) "Complaint" means communication relayed to the ombuds through the ombuds' online complaint form or through use of the ombuds' review request form.
- (4) "Department" means the department of corrections.
- (5) "Inmate" means a person committed to the physical custody of the department, including persons residing in a correctional institution or facility and persons received from another state, another state agency, a county, or the federal government.
- (6) "Neglect" means a negligent act or omission by any department employee, subcontractor, or volunteer which caused, or may have caused, injury or death to an inmate.
- (7) "Office" means the office of the corrections ombuds.
- (8) "Secretary" means the secretary of the department of corrections.
- (9) "Statewide family council" means the family council maintained by the department that is comprised of representatives from local family councils.

[]

NEW SECTION

WAC 138-10-020 Authority. Office of the corrections ombuds was created and receives its authority from chapter 43.06C RCW.

[]

NEW SECTION

WAC 138-10-030 Duties. Office of the corrections ombuds shall:

- (1) Establish priorities for use of the limited resources available to the ombuds;
- (2) Maintain a statewide toll-free telephone number, a collect telephone number, a website, and a mailing address for the receipt of complaints and inquiries;

(3) Provide information, as appropriate, to inmates, family members, representatives of inmates, department employees, and others regarding the rights of inmates;

(4) Provide technical assistance to support inmate participation in self-advocacy;

(5) Monitor department compliance with applicable federal, state, and local laws, rules, regulations, and policies as related to the health, safety, welfare, and rehabilitation of inmates;

(6) Monitor and participate in legislative and policy developments affecting correctional facilities;

(7) Establish a statewide uniform reporting system to collect and analyze data related to complaints received by the ombuds regarding the department;

(8) Establish procedures to receive, investigate, and resolve complaints;

(9) Establish procedures to gather stakeholder input into the ombuds' activities and priorities, which must include, at a minimum, quarterly public meetings;

(10) Submit annually to the governor's office, the legislature, and the statewide family council, by November 1st of each year, a report that includes, at a minimum, the following information:

(a) The budget and expenditures of the ombuds;

(b) The number of complaints received and resolved by the ombuds;

(c) A description of significant systemic or individual investigations or outcomes achieved by the ombuds during the prior year;

(d) Any outstanding or unresolved concerns or recommendations of the ombuds; and

(e) Input and comments from stakeholders, including the statewide family council, regarding the ombuds' activities during the prior year.

(11) Adopt and comply with rules, policies, and procedures necessary to implement this chapter.

[]

NEW SECTION

WAC 138-10-040 Investigations. (1) The ombuds may initiate and attempt to resolve an investigation upon his or her own initiative, or upon receipt of a complaint from an inmate, a family member, a representative of an inmate, a department employee, or others, regarding any of the following that may adversely affect the health, safety, welfare, and rights of inmates:

(a) Abuse or neglect;

(b) Department decisions or administrative actions;

(c) Inactions or omissions;

(d) Policies, rules, or procedures; or

(e) Alleged violations of law by the department that may adversely affect the health, safety, welfare, and rights of inmates.

(2) Prior to filing a complaint with the ombuds, a person shall have reasonably pursued resolution of the complaint through the internal grievance, administrative, or appellate procedures with the department. However, in no event may an inmate be prevented from filing a complaint more than ninety business days after filing an internal grievance, regardless of whether the department has completed the

grievance process. This subsection does not apply to complaints related to threats of bodily harm including, but not limited to, sexual or physical assaults or the denial of necessary medical treatment.

(3) The ombuds may decline to investigate any complaint or may close any investigation of any complaint for any of the following reasons:

(a) Lack jurisdiction over the complaint. At a minimum, complaints should meet the requirements in RCW 43.06C.040 and be:

(i) About an inmate;

(ii) About an alleged department action; and

(iii) Made after the inmate has reasonably pursued resolution of the issue through the internal grievance, administrative, or appellate procedures with the department.

(b) Department took action to resolve any alleged violations;

(c) The nature and quality of evidence;

(d) The complaint does not allege violation of policy, procedure, or law;

(e) The requested resolution is not within the ombuds' statutory power and authority;

(f) The alleged violation is a past rather than ongoing issue; or

(g) Any other reasons the ombuds deems relevant to the complaint including, but not limited to, the priority and weight given to these and other relevant factors.

(4) If the ombuds does not investigate a complaint, the ombuds shall notify the complainant of the decision not to investigate and the reasons for the decision.

(5) The ombuds may not investigate any complaints relating to an inmate's underlying criminal conviction.

(6) The ombuds may not investigate a complaint from a department employee that relates to the employee's employment relationship with the department or the administration of the department, unless the complaint is related to the health, safety, welfare, and rehabilitation of inmates.

[]

NEW SECTION

WAC 138-10-050 Confidentiality. (1) Ombuds' investigative records are confidential and exempt from disclosure under the Public Records Act, chapter 42.56 RCW, and RCW 43.06C.060, except so far as disclosures may be necessary to enable the office to perform its duties and to support recommendations resulting from an investigation.

(2) The ombuds shall treat all correspondence and communication as confidential and protect it in the same manner as legal correspondence or communication pursuant to the Public Records Act, chapter 42.56 RCW, and RCW 43.06C.060(1).

(3) All records exchanged and communications between the ombuds and the department to include the investigative record are confidential and are exempt from public disclosure under chapter 42.56 RCW and RCW 43.06C.060(3).

(4) Confidential records received by the ombuds shall be maintained as provided for under the law.

(5) To the extent the ombuds reasonably believes necessary, the ombuds:

(a) Must reveal information obtained in the course of providing ombuds services to prevent reasonably certain death or substantial bodily harm; and

(b) May reveal information obtained in the course of providing ombuds services to prevent the commission of a crime.

[]

WSR 21-07-012

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed March 4, 2021, 3:34 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-24-086.

Title of Rule and Other Identifying Information: WAC 182-543-2200
Proof of delivery.

Hearing Location(s): On April 27, 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/181514389970288398>, Webinar ID 554-761-747. After registering, you will receive a confirmation email containing the information about joining the webinar.

Date of Intended Adoption: Not sooner than April 28, 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 April 27, 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 April 9, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is revising this section to eliminate the requirement for date and signature from the medicaid client or the client's designee upon delivery of medical equipment and supplies in order to avoid contact between the client and delivery person. HCA currently has emergency rules, filed under WSR 20-23-038, striking this requirement. Once the public health emergency ends, HCA will conduct rule making to add this requirement back into the rule.

HCA previously filed a proposed rule making (CR-102) under WSR 21-06-114, with a public hearing scheduled for April 6, 2021. Due to an error with the webinar registration link for the public hearing, HCA withdrew the proposal under WSR 21-07-0006 [21-07-006]. This filing reschedules the public hearing to April 27, 2021.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Valerie Freudenstein, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1344; Implementation and Enforcement: Erin Mayo, P.O. Box 45506, Olympia, WA 98504-5506, 360-725-1729.

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.

March 4, 2021
Wendy Barcus
Rules Coordinator

OTS-2149.1

AMENDATORY SECTION (Amending WSR 18-24-021, filed 11/27/18, effective 1/1/19)

WAC 182-543-2200 Proof of delivery. (1) When a provider delivers an item directly to the client or the client's authorized representative, the provider must furnish the proof of delivery when the medicaid agency requests that information. All of the following apply:

(a) The agency requires a delivery slip as proof of delivery. The proof of delivery slip must:

(i) ~~((Be signed and dated by the client or the client's authorized representative (the date of signature must be the date the item was received by the client);~~

~~(ii))~~ Include the client's name and a detailed description of the item(s) delivered, including the quantity and brand name; and

~~((iii))~~ (ii) For medical equipment that may require future repairs, include the serial number.

(b) When the provider or supplier submits a claim for payment to the agency, the date of service on the claim must be one of the following:

(i) For a one-time delivery, the date the item was received by the client or the client's authorized representative; or

(ii) For nondurable medical supplies for which the agency has established a monthly maximum, on or after the date the item was received by the client or the client's authorized representative.

(2) When a provider uses a delivery/shipping service to deliver items which are not fitted to the client, the provider must furnish proof of delivery that the client received the equipment and/or supply, when the agency requests that information.

(a) If the provider uses a delivery/shipping service, the tracking slip is the proof of delivery. The tracking slip must include:

(i) The client's name or a reference to the client's package or packages;

(ii) The delivery service package identification number; and

(iii) The delivery address.

(b) If the provider/supplier does the delivering, the delivery slip is the proof of delivery. The delivery slip must include:

(i) The client's name;

(ii) The shipping service package identification number;

(iii) The quantity, detailed description(s), and brand name or names of the items being shipped; and

(iv) For medical equipment that may require future repairs, the serial number.

(c) When billing the agency, use:

(i) The shipping date as the date of service on the claim if the provider uses a delivery/shipping service; or

(ii) The actual date of delivery as the date of service on the claim if the provider/supplier does the delivery.

(3) A provider must not use a delivery/shipping service to deliver items which must be fitted to the client.

(4) Providers must obtain prior authorization when required before delivering the item to the client. The item must be delivered to the client before the provider bills the agency.

(5) The agency does not pay for medical equipment and related items furnished to the agency's clients when:

(a) The medical professional who provides medical justification to the agency for the item provided to the client is an employee of, has a contract with, or has any financial relationship with the provider of the item; or

(b) The medical professional who performs a client evaluation is an employee of, has a contract with, or has any financial relationship with a provider of medical equipment and related items.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 42 C.F.R. Part 440.70; 42 U.S.C. section 1396 (b) (i) (27). WSR 18-24-021, § 182-543-2200, filed 11/27/18, effective 1/1/19. Statutory Authority: RCW 41.05.021 and 2013 c 178. WSR 14-08-035, § 182-543-2200, filed 3/25/14, effective 4/25/14. WSR 11-14-075, recodified as § 182-543-2200, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090 and 74.04.050. WSR 11-14-052, § 388-543-2200, filed 6/29/11, effective 8/1/11. Statutory Authority: RCW 74.08.090, 74.09.530. WSR 02-16-054, § 388-543-2200, filed 8/1/02, effective 9/1/02; WSR 01-01-078, § 388-543-2200, filed 12/13/00, effective 1/13/01.]

WSR 21-07-024

PROPOSED RULES

GRAYS HARBOR COLLEGE

[Filed March 8, 2021, 1:53 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-20-090.

Title of Rule and Other Identifying Information: Repeal chapter 132B-120 WAC. Revising student conduct code and making emergency rules for new Title IX regulations into permanent rules. Adding new chapter to Title 132B WAC.

Hearing Location(s): On April 27, 2021, at 12:00 p.m., online via Zoom, <https://ghc.zoom.us/j/82234139332>.

Date of Intended Adoption: April 28, 2021.

Submit Written Comments to: Richard Arquette, 1620 Edward P. Smith Drive, Aberdeen, WA 98520, email richard.arquette@ghc.edu, by April 22, 2021, at 5 p.m. PST.

Assistance for Persons with Disabilities: Rhonda Riggs, phone 360-538-4099, email Rhonda.riggs@ghc.edu, by April 22, by 5 p.m. PST.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Updating the student conduct code and complying with Title IX regulations.

Reasons Supporting Proposal: Updating the student conduct code to current practices and updating Title IX regulations in compliance with the updated United States Department of Education Title IX policies.

Statutory Authority for Adoption: RCW 28B.50.130.

Rule is necessary because of federal law, Federal Register printed amendments to Title IX regulations (85 F.R. 30575).

Name of Proponent: Grays Harbor College, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Richard Arquette, 1620 Edward P. Smith Drive, Aberdeen, WA 98520, 360-538-4078.

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 is not financial impact of these changes.

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: Federal Register printed amendments to Title IX regulations (85 F.R. 30575). This policy specifically impacts current WAC 132B-120-300, 132B-120-305, 132B-120-310, and 132B-120-315.

March 8, 2021

Darin Jones

Human Resources Chief

OTS-2751.1

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 132B-120-010	Definitions.
WAC 132B-120-020	Statement of policy and community philosophy.
WAC 132B-120-030	Jurisdiction.
WAC 132B-120-035	Interpretations.
WAC 132B-120-040	Authority.
WAC 132B-120-045	Loss of eligibility—Student athletic participation.
WAC 132B-120-055	Trespass.
WAC 132B-120-065	Student rights.
WAC 132B-120-075	Student responsibilities.
WAC 132B-120-085	Groups and organizations.
WAC 132B-120-120	Disciplinary process.
WAC 132B-120-130	Sanctions.
WAC 132B-120-135	Summary suspension.
WAC 132B-120-143	Brief adjudicative proceedings—Review of an initial decision.
WAC 132B-120-145	Brief adjudicative proceedings—Review of an initial decision.
WAC 132B-120-155	Appeal from disciplinary action.
WAC 132B-120-170	Student conduct committee.
WAC 132B-120-180	Student conduct committee procedures.
WAC 132B-120-181	Student conduct appeals committee hearings—Presentations of evidence.
WAC 132B-120-185	Student conduct committee—Initial decision.
WAC 132B-120-190	Appeal from student conduct committee's initial decision.
WAC 132B-120-200	Reporting, recording and maintaining records.
WAC 132B-120-210	Hazing sanctions.
WAC 132B-120-220	Student complaint, grievance and grade appeal processes.
WAC 132B-120-300	Supplemental sexual misconduct procedures.
WAC 132B-120-305	Supplemental definitions.
WAC 132B-120-310	Supplemental complaint process (sexual misconduct).
WAC 132B-120-315	Supplemental appeal rights.

OTS-2752.1

**Chapter 132B-125 WAC
STUDENT CONDUCT CODE****PART 1 - CONDUCT CODE**NEW SECTION

WAC 132B-125-100 Purpose. The purpose of these rules is to prescribe standards of conduct for students of Grays Harbor College. Violations of these standards may be cause for disciplinary action as described in this code. This code will be made available to students online or, when requested, paper copies will be made available.

[]

NEW SECTION

WAC 132B-125-105 Authority. The board of trustees, acting pursuant to RCW 28B.50.140(14), delegates to the president of the college the authority to administer disciplinary action. Administration of the disciplinary procedures is the responsibility of the student conduct officer or their designee. Unless otherwise specified, the student conduct officer or designee shall serve as the principal investigator and administrator for alleged violations of this code.

[]

NEW SECTION

WAC 132B-125-110 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 federal and state law and college rules, policies, and procedures:

(1) **Academic freedom.**

(a) Students are guaranteed rights of free inquiry, expression and peaceful 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) (College board—Powers and duties), available space in the class, and meeting any required prerequisites.

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

(d) Students are 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.

(2) **Nondiscrimination.** Students have the right not to be discriminated against on the basis of age, color, creed, disability, gender, gender identity and expression, marital status, national origin or ancestry, race, religion, sexual orientation, or veteran status, or any other legally protected class.

(3) **Due process.**

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

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

(4) **Right to assembly.** Students shall have the right of assembly upon college facilities that are generally available to the public provided such assemblies are in compliance with procedures established in Administrative Procedure 516.03, Rules for Use of Campus as Public Forums, and other behavioral expectations outlined in the code of conduct.

(5) **Grievances.** Students have the right to express and resolve misunderstandings, complaints and grievances according to the stated process in WAC 132B-125-500 Student complaint, grievance, and grade appeal policy and procedures.

(6) **Conduct code revision.** The associated students of Grays Harbor College has the right to participate in the formulation and review of all policies and rules pertaining to student conduct.

[]

NEW SECTION

WAC 132B-125-115 Student responsibilities. Students who choose to attend Grays Harbor College also choose to participate actively in the learning process offered by the college. The college is responsible for providing its students with an educational environment rich in the high quality resources needed by students to attain their educational goals. In return, the college expects each student assume responsibility to:

- (1) Participate actively in the learning process, both in and out of the classroom;
- (2) Seek timely assistance in meeting educational goals;
- (3) Attend all class sessions;
- (4) Prepare adequately to participate fully in class activities;
- (5) Participate actively in the academic advising system;
- (6) Develop skills required for learning, e.g., basic skills, time management, and study skills;
- (7) Assume final responsibility for the selection of appropriate educational goals;
- (8) Select courses appropriate and required for meeting chosen educational goals;
- (9) Make appropriate use of services;
- (10) Contribute towards improving the college;
- (11) Become knowledgeable of and adhere to the college's policies, practices and procedures; and
- (12) Abide by the standards set forth in the code of conduct.

[]

NEW SECTION

WAC 132B-125-120 Prohibited student conduct. The college may impose disciplinary sanctions against a student who commits, attempts to commit, aids, abets, incites, encourages, or assists another person to commit, an act(s) of misconduct which include, but are not limited to, the following:

- (1) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication.
 - (a) Cheating: Includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.
 - (b) Plagiarism: Includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.
 - (c) Fabrication: Includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment, including submitting for credit without authorization academic work also submitted for credit in another course.
 - (d) Academic consequences for academic dishonesty or abetting in academic dishonesty may be imposed at the discretion of a faculty member up to and including a failing grade for the course. Students should refer to each faculty member's course syllabus. Further academic consequences may follow consistent with the provisions in any program handbook. Incidents of academic dishonesty may also be referred to the student conduct officer for disciplinary action consistent with this chapter in addition to the academic consequences identified above.
 - (e) This section shall not be construed as preventing an instructor from taking immediate disciplinary action as provided herein where the instructor is required to act upon such breach of academic dishonesty in order to preserve order and prevent disruptive conduct in the classroom.

(2) **Alcohol, drug, and tobacco violations.**

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

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

(c) Drugs. The use, possession, delivery, sale, or being observably under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, Legend drugs—Prescription drugs, or any other controlled substance under chapter 69.50 RCW, Uniform Controlled Substances Act, 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, water pipes, 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) **Classroom conduct.** Classroom conduct that seriously interferes with either the instructor's ability to conduct the class or the ability of other students to profit from the instructional program.

(a) Faculty have the authority to take appropriate action to maintain proper conduct in the classroom and to maintain the effective cooperation of the class in fulfilling the objectives of the course.

(b) A faculty member may order a student removed for the single class session in which disruptive conduct occurs. The instructor will report any such removal from the class to the student conduct officer, or their designee, immediately following the class. The student conduct officer services or designee may initiate further conduct proceedings as provided in this procedure.

(c) The student is automatically permitted to return to the next class session pending the outcome of any investigation or disciplinary hearings by the student conduct officer. If the student repeats behavior in any class session that again disrupts the normal classroom procedure, the student may be ordered removed again for that class session by the instructor who shall again report the infraction to the student conduct officer in writing. In all cases involving classroom disruption, the student conduct officer will proceed with the investi-

gation and any disciplinary actions as quickly as possible consistent with the procedural requirements established in this code.

(d) The student conduct officer or designee may set conditions for the student to meet upon return to the classroom or may enforce a continued removal from class pending an investigation. 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.

(5) **Cyber misconduct.** Cyberstalking, cyberbullying or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, texting, electronic bulletin boards, social media sites, and other communication apps, 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 or malware, sending false messages to third parties using another's identity, non-consensual recording of sexual activity or sexually explicit or intimate images as defined in RCW 9A.86.010, and nonconsensual distribution or disclosing of a recording of sexual activity or sexually explicit or intimate images as defined in RCW 9A.86.010.

(6) **Discriminatory conduct.** Conduct which harms or adversely affects any member of the college community because of their race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age (40+); religion; creed; sexual orientation; gender identity and expression; veteran's status; or any other legally protected classification.

(7) **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.

(8) **Failure to comply with directive.** Failure to comply with the direction of college officer or employee acting in the legitimate performance of their duties, including failure to properly identify oneself to such a person when requested to do so.

(9) **Harassment.**

(a) 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.

(b) 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 and expression; 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.

(10) **Hazing.** Hazing includes, but is not limited to, any initiation into a student organization, or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to

cause, bodily danger or physical harm, or serious mental or emotional harm to any student, regardless of whether the victim has consented.

(11) **Lewd conduct.** Conduct which is lewd or obscene that is not otherwise protected under the law.

(12) **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, abusive, threatening, or harassing message, text, or image;

(f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(g) Use of such time or resources in violation of applicable copyright or other law;

(h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization;

(i) Use of college electronic resources to intentionally disseminate viruses, destructive, malicious or invasive programs;

(j) Failure to comply with the college's electronic use policy;

or

(k) Illegal peer-to-peer file sharing or distribution of copyrighted works using campus resources. In addition to code of conduct sanctions, students may be subject to criminal and civil penalties if they engage in such unauthorized activity.

(13) **Motor vehicle operation.** Operation of any motor vehicle on college property in an unsafe manner or contrary to posted signs or college procedures.

(14) **Obstructive or disruptive conduct.** Conduct, not otherwise protected by law, that interferes with, impedes, or otherwise unreasonably hinders:

(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.

(c) The person in charge of any college office, department, or facility is responsible for conduct in that office, department, or facility and is authorized to take such steps as are necessary when behavior of the student disrupts the normal operations. The person in charge may order a student removed for up to the full day in which such disruptive behavior occurs. When such behavior results in such removal from an office, department, or facility, the person in charge must report the infraction in writing to the student conduct officer at the earliest opportunity. The student is automatically permitted to return the next day pending the outcome of any investigation or disciplinary hearings by the student conduct officer. If the student repeats behavior at any time in the future that again disrupts the normal operations, the student may be ordered removed again for a single

day by the person in charge who shall again report the infraction to the student conduct officer in writing. In all cases involving office, department, or facility disruption, the student conduct officer will proceed with the investigation and any disciplinary actions as quickly as possible consistent with the procedural requirements established in this code.

(d) The student has the right to appeal any disciplinary action of a college employee to the student conduct officer in accordance with the procedures set forth in this code.

(15) **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.

(16) **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.

(17) **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.

(18) **Safety violations.** Nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms, or other emergency response systems.

(19) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX is defined in WAC 132B-125-405 Prohibited conduct under Title IX.

(a) Sexual harassment. The term "sexual harassment" means unwelcome sexual or gender based conduct, including unwelcome sexual advances, requests for sexual favors, quid pro quo harassment, and other verbal, nonverbal, or physical conduct of a sexual or a gendered nature that is sufficiently severe, persistent, or pervasive as to:

(i) Deny or limit the ability of a student to participate in or benefit from the college's educational program;

(ii) Alter the terms or conditions of employment for a college employee(s); and/or

(iii) Create an intimidating, hostile, or offensive environment for other campus community members.

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

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

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

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

(iii) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren, and adopted children under the 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 rea-

son, 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.

(20) **Student procedure violations.** 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 other disciplinary official; or
- (g) Failure to comply with any disciplinary sanction(s), action, term, or condition imposed under this chapter.

(21) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, code or other restricted means of access to college property, unauthorized entry onto or into college property, or entering or remaining in any closed college facility or entering after closing time of the college facility without permission of a college official. In situations of apparent misconduct or apparent unauthorized presence in a college facility, it may be necessary for properly identified college personnel to ask a person to produce evidence of being a currently enrolled student at the college. Failure to comply with a legitimate request for identification from properly identified college personnel is a violation of this code and may result in a disciplinary action if the person is found to be a student. In emergency situations, cases of misconduct, or where there is a substantial danger to the college community or college property, failure to produce identification by a student may result in the assumption by college personnel that the person questioned is not a student and may result in direct civil or criminal action.

(22) **Unauthorized use.** Unauthorized use of college equipment, facilities or supplies. Use of college equipment, facilities, supplies, or computer systems for personal gain without proper authority.

(23) **Weapons.** Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

- (a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties;
- (b) A student with a valid concealed weapons permit may store a pistol in their vehicle parked on campus in accordance with RCW 9.41.050 Carrying firearms, 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.

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

(24) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college traffic and parking rules.

(25) Intentionally encouraging, compelling, attempting, aiding, abetting, conspiring, hiring or being an accessory to commit any of the foregoing acts of misconduct.

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

[]

NEW SECTION

WAC 132B-125-125 Disciplinary sanctions. More than one sanction may be imposed for any single violation as appropriate. The following disciplinary sanctions may be imposed upon students found to have violated the student conduct code:

(1) **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) **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.

(3) **Disciplinary probation.** Formal action placing 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 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.

(4) **Disciplinary suspension.** Dismissal from the college and from student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action is taken. Access may be denied to all or part of college facilities.

(5) **Discretionary sanctions.** These may include, but are not limited to:

- (a) Work assignments;
- (b) Service to college or community;
- (c) Class/workshop attendance; or

(d) Other discretionary assignments, such as educational interventions intended as learning experiences.

(6) **Loss of recognition.** A student organization's recognition may be withheld permanently or for a specific period of time. Loss of recognition is defined as withholding college services or administrative approval for a student organization. Loss of recognition may include, but is not limited to, withdrawal of use of information technology resources, funding, college facility use and rental, and involvement in organizational activities.

(7) **Loss of privileges.** Loss of specific college privileges for a specified period of time. These may include, but are not limited to, student activities, athletic events, drama or music performances, or club participation.

(8) **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.

(9) **No trespass.** A student may be prohibited from entering upon or remaining upon college facilities and premises. Refer to WAC 132B-125-205 Trespass.

(10) **Revocation of admission or degree.** Admission to or a degree awarded from the college may be revoked for fraud, misrepresentation or for other serious violations committed by a student.

(11) **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.

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:

(1) **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.

(2) **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.

(3) **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:

(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) **Disqualification from athletics.** Any student found by the college to have violated this is subject to additional sanctions, including disqualification from college-sponsored athletic events.

(5) **Hazing sanction.** Any student found to have violated RCW 28B.10.900 related to hazing, by virtue of a criminal conviction or by final decision of the college president or designee shall, in lieu of, or in addition to, any other disciplinary action which may be imposed under this chapter, forfeit any entitlement to state-funded grants, scholarships, or awards of a period of time determined by the college.

In addition, any organization or association found to have knowingly permitted 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.

[]

PART 2 - PRELIMINARY MEASURES

NEW SECTION

WAC 132B-125-200 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. Summary suspension may include no contact orders.

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

(a) Has been alleged of violating 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. 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 student conduct 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 com-

munity. If the respondent has been trespassed from the campus, a notice against trespass shall be included that warns the student that 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.

(4) **Summary suspension hearing.**

(a) The student conduct officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension. The hearing will be conducted as a brief adjudicative proceeding.

(b) During the summary suspension hearing, the issue before the student conduct 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 student fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.

(e) As soon as practicable following the hearing, the student conduct 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 student conduct officer shall provide a copy of the decision to all persons or offices that may be bound or protected by it.

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

[]

NEW SECTION

WAC 132B-125-205 Trespass. The president, the student conduct officer, their designee(s), or the student conduct committee shall have the authority and power to prohibit the entry or withdraw the license or privilege of any person or group of persons to enter into or remain on any college property or facility. Such power and authority may be exercised to halt any event or activity which is deemed to be unreasonably disruptive of order or impedes the movement of persons or vehicles or which disrupts or threatens to disrupt the ingress and/or egress of persons from facilities owned and/or operated by the college. Any person remaining on or reentering college property after receiving notice that their license or privilege to be on that property has been revoked shall be subject to arrest for criminal trespass under the provisions of chapter 9A.52 RCW, Burglary and trespass.

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PART 3 - STUDENT CONDUCT PROCEDURESNEW SECTION

WAC 132B-125-300 Jurisdiction. (1) This chapter shall apply to student conduct that occurs:

(a) On college premises and/or in college facilities;
(b) At or in connection with college-sponsored activities; and
(c) Off-campus student conduct that, in the judgment of the college, adversely affects the well-being of the college community and/or the pursuit of its objectives. The college has sole discretion, on a case-by-case basis, to determine whether the code of student conduct will be applied to conduct occurring off campus.

(2) Jurisdiction includes, 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 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. These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending.

(4) The student conduct officer and the student conduct committee shall have the authority to interpret and apply the standards of conduct for students.

(5) 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 may proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil proceedings or criminal prosecution.

[]

NEW SECTION

WAC 132B-125-305 Definitions. As used in this document the following words and phrases shall mean:

(1) **"Assembly"** shall mean any 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.

(2) **"Board"** shall mean the board of trustees of Community College District No. 2, state of Washington.

(3) **"College"** shall mean Grays Harbor College or any additional community college hereafter established within Community College District No. 2, state of Washington.

(4) **"College community"** shall mean all employees and students of the college.

(5) **"College facilities"** shall mean and include any or all real property owned, rented, leased, controlled or operated by the college and shall include all buildings and appurtenances affixed thereon or attached thereto. College facilities extend to affiliated websites, distance learning classroom environments and agencies or institutions that have educational agreements with Grays Harbor College.

(6) **"College official"** shall mean any person employed by the college performing assigned duties.

(7) **"Day"** means a calendar day, except when a "business day" is specified. "Business day" means a weekday, excluding weekends and college holidays.

(8) **"Disciplinary action"** is the process by which discipline is imposed against a student for a violation of the student conduct code by the student conduct officer.

(9) **"Disciplinary appeal"** is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer as provided in WAC 132B-125-320 Appeal from disciplinary action. The student conduct committee hears disciplinary appeals from a suspension in excess of ten instructional days or a dismissal/expulsion. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

(10) **"Employee"** shall mean any classified, faculty, administrator, exempt, student worker or volunteer person of the college or an affiliated institution.

(11) **"Faculty"** shall mean any person employed on a full- or part-time basis as a teacher, instructor, counselor, coach or librarian for the college or an affiliated institution. Includes faculty of other colleges (whether or not employed by Grays Harbor College (GHC)) that provide instruction to GHC students through distance education.

(12) **"Filing"** is the process by which a document is officially delivered to a school official responsible for facilitating a disciplinary review or a presiding officer. Unless expressly specified otherwise, filing shall be accomplished by:

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

(b) By sending the document by email and/or first-class mail to the recipient's college email and office address. Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified official or presiding officer.

(13) **"President"** is the president of the college appointed by the board of trustees. The president is authorized to delegate any of their responsibilities as set forth in this chapter as they deem appropriate.

(14) **"RCW"** shall mean the Revised Code of Washington.

(15) **"Respondent"** is the student against whom disciplinary action is initiated.

(16) **"Service"** is the process by which a document is officially delivered to a party. Unless expressly specified otherwise, 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/or by certified mail or first-class mail to the party's last known address. Service is deemed complete upon hand delivery of the document or upon the date the document is emailed and deposited into the mail.

(17) **"Student"** shall mean and include any person who is enrolled in courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered "students."

(18) **"Student conduct officer"** is a college administrator designated by the president to be responsible for implementing and enforcing the student conduct code. The student conduct officer is authorized to delegate any and all of their responsibilities as set forth in this chapter as may be reasonably necessary.

(19) **"Vice president for student services"** is the administrator responsible for implementing and enforcing the student conduct code. The vice president is authorized to delegate any and all of their responsibilities as set forth in this chapter as may be reasonably necessary.

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NEW SECTION

WAC 132B-125-310 Groups and organizations. Recognized student groups and organizations may be charged with violations of this code. Such a group or organization and its officers may be held collectively or individually responsible when violations of this code by those associated with the group or organization have received the tacit or overt consent or encouragement of the organization, its leaders, officers or spokespersons.

Sanctions for group or organization misconduct may include, but are not limited to, loss of recognition, as well as other appropriate sanctions permitted under this code. Sanctions of groups or organizations are subject to the appeal process upon request.

[]

NEW SECTION

WAC 132B-125-315 Disciplinary process. (1) Initiating disciplinary action (except summary suspension).

(a) All disciplinary actions will be initiated by the student conduct officer. If that person 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 complaint.

(b) The student conduct officer shall initiate disciplinary action by notifying the respondent to attend a disciplinary meeting. At the meeting, the student will be presented with the allegations, the provisions of the conduct code the respondent is alleged to have violated; and the range of possible sanctions for the alleged violation. This information will be provided in writing, either at the meeting or within three business days of the meeting. The respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting, the student conduct officer may take disciplinary action based upon the available information.

(c) 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 disciplinary decision letter 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.

(d) The student conduct officer may take any of the following disciplinary actions:

(i) Exonerate the respondent and terminate the proceedings;

(ii) Impose a disciplinary sanction(s), as described in WAC 132B-125-125;

(iii) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate.

(e) Sexual harassment complaints or concerns may be directed to the Title IX coordinator or human resources office.

(f) A student formally charged or under investigation for a violation of this code may not excuse himself or herself from disciplinary hearings by withdrawing from the college.

(2) In cases involving allegations of sexual misconduct, the student conduct officer, on the same date that a disciplinary decision letter 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.

[]

NEW SECTION

WAC 132B-125-320 Appeal from disciplinary action. (1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the student conduct officer within ten calendar 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 student conduct 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 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; and

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

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

[]

NEW SECTION

WAC 132B-125-325 Brief adjudicative proceedings—Initial hearing. (1) Brief adjudicative proceedings shall be conducted by the 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.

(a) 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 an opportunity to be informed of the college's view of the matter; and

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

(2) The conduct review officer shall serve an initial decision 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 ten business days of service of the initial decision, the initial decision shall be deemed the final decision.

(3) 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.

(4) If the conduct review officer upon review determines that the respondent's conduct may warrant imposition of a disciplinary sanction of dismissal, the matter shall be referred to the student conduct committee for a disciplinary hearing.

[]

NEW SECTION

WAC 132B-125-330 Brief adjudicative proceedings—Review of an initial decision. (1) An initial decision is subject to review by the president, provided the respondent files a written request for review with the student conduct officer within ten calendar days of service of the initial decision.

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

(3) During the review, the president shall give each party 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 ten business days. 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 ten 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 or dismissal, the matter shall be referred to the student conduct committee for a disciplinary hearing.

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

[]

NEW SECTION

WAC 132B-125-335 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; and
(c) One administrative staff member (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 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 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 for disqualification of a committee member pursuant to RCW 34.05.425(4).

[]

NEW SECTION

WAC 132B-125-340 Student conduct committee process. (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 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) Each party may be accompanied at the hearing by a nonattorney assistant of their choice. A respondent 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 132B-125-345 Student conduct committee hearings—Presentations of evidence.

(1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

(a) Proceed with the hearing and issuance of its decision; or

(b) Serve a decision of default in accordance with RCW 34.05.440.

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

(3) The chair shall cause the hearing to be recorded by a method that they select, in accordance with RCW 34.05.449 Procedure at hearing. 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 Agency record, 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 Adjudicative proceedings—Cameras—Recording devices.

(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 Rules of evidence—Cross-examination.

(7) In cases involving allegations of sexual misconduct, neither the complainant nor the respondent shall directly question or cross-examine one another. Attorneys or advisors 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 132B-125-350 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 business days following the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 Entry of orders, and WAC 10-08-210 Adjudicative proceedings—Initial or final order. 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 conduct code. If the matter is an appeal by the respondent, 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 in-

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 132B-125-355 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 twenty-one calendar days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

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

(3) The president shall provide a written decision to all parties within twenty 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) 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 may, at their discretion, suspend any disciplinary action pending review of the merits of the findings, conclusions, and disciplinary actions imposed.

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

[]

NEW SECTION

WAC 132B-125-360 Readmission after dismissal. A student dismissed 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 132B-125-365 Sexual misconduct proceedings—Dual procedural rights. 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.

[]

NEW SECTION

WAC 132B-125-370 Reporting, recording and maintaining records. The office of the student conduct officer shall keep records of all disciplinary cases. Except in proceedings where the student is exonerated, all documentary or other physical evidence produced or considered in disciplinary proceedings and all recorded testimony shall be preserved; insofar as possible, for not more than six years. No other records of proceedings wherein the student is exonerated, other than the fact of exoneration, shall be maintained in the student's file or other college repository after the date of the student's graduation or not more than six years.

[]

PART 4 - SEXUAL MISCONDUCTNEW SECTION

WAC 132B-125-400 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 Grays Harbor College's standard disciplinary procedures, chapter 132B-125 WAC, Student conduct code, these supplemental procedures shall take precedence.

[]

NEW SECTION

WAC 132B-125-405 Prohibited conduct under Title IX. Pursuant to RCW 28B.50.140(13) Boards of trustees—Powers and duties, and Title IX

of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, Grays Harbor 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 Grays Harbor College employee conditioning the provision of an aid, benefit, or service of Grays Harbor 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 Grays Harbor 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 132B-125-410 Title IX jurisdiction. (1) This supplemental procedure applies only if the alleged misconduct:

- (a) Occurred in the United States;
- (b) Occurred during a Grays Harbor 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 Grays Harbor 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 Grays Harbor 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 Grays Harbor College from pursuing other disciplinary action based on allegations that the respondent violated other provisions of Grays Harbor College's student conduct code, WAC 132B-125-120 Prohibited student conduct.

(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 in part to both parties explaining why some or all of the Title IX claims have been dismissed.

[]

NEW SECTION

WAC 132B-125-415 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 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) Grays Harbor 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 132B-125-420 Prehearing procedure. (1) Upon receiving the disciplinary notice, the chair of the Title IX conduct committee will send a hearing notice to all parties, in compliance with WAC 132B-125-340 Student conduct committee process. 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 132B-125-425 Rights of parties. (1) Grays Harbor College's student conduct procedures, chapter 132B-125 WAC, Student conduct code and this supplemental procedure shall apply equally to all parties.

(2) Grays Harbor 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 ad-

visor, 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 132B-125-430 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 Who is disqualified—Privileged communications.

[]

NEW SECTION

WAC 132B-125-435 Initial order. (1) In addition to complying with WAC 132B-125-340 Student conduct committee procedures, the Title IX conduct committee:

(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 Grays Harbor College's educational programs or activities; and

(h) Describes the process for appealing the initial order to the Grays Harbor College president.

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

[]

NEW SECTION

WAC 132B-125-440 Title IX 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 132B-125-320 Appeal from disciplinary action.

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

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

[]

PART 5 - STUDENT COMPLAINT, GRIEVANCE, AND GRADE APPEAL POLICY AND PROCEDURES

NEW SECTION

WAC 132B-125-500 Student complaint, grievance, and grade appeal policy and procedures. The purpose of these procedures is to provide guidelines, which enable a student to express and resolve misunderstandings, complaints, or grievances in a fair and equitable manner. Students have the right to receive clear information and fair application of college policies, standards, rules and requirements and are responsible for complying with them in their relationships with college personnel. This grievance procedure emphasizes an informal resolution, which promotes constructive dialogue and understanding.

(1) **Complaint process.**

(a) A complaint is any expression of dissatisfaction with the performance of a college employee or with the implementation of policy and procedure. The goal is to informally resolve the complaint with the employee most closely responsible for the policy, procedure or action. The college employee and student shall make a good faith effort to resolve the issue on a one-to-one basis. (If the complaint is about a grade, follow the grade appeal process below.) Both parties should openly discuss the concern, attempt to understand the other's perspective, explore alternatives and attempt to arrive at a satisfactory resolution.

(b) The college recognizes that in some cases a student will be unwilling or unable to speak directly with the employee. In such cases, the student may proceed to step one of the grievance process. In general, a student wishing to express a complaint should do so no later than three weeks from the time the student became aware of the concern.

(c) For assistance in identifying the appropriate person a student should contact, the office of the vice president for student services is available to assist in that determination.

(d) The following are guidelines for determining who a student should contact with a complaint regarding:

- (i) **Academic/instruction:** Faculty/dean/vice president instruction;
- (ii) **Accommodations:** Coordinator of disability support services/dean of student access and support;
- (iii) **Bookstore:** Bookstore manager/vice president administrative services;
- (iv) **Problem student conduct:** Student conduct officer;
- (v) **Discrimination/harassment:** Title IX coordinator/human resources;
- (vi) **Facilities:** Chief of campus operations/vice president for administrative services;
- (vii) **Financial aid:** Assistant dean of financial aid/dean of student access and support;
- (viii) **Other:** Vice president for student services office for most appropriate contact.

(2) **Grievance process.**

(a) A grievance is a formal procedure instituted when a complaint is not resolved through the informal complaint process. It involves taking the concern to a person other than the employee involved such as a supervisor, dean or vice president. For assistance in identifying the specific person, a student should contact the vice president for student services office. The following procedures shall be used when a student initiates the grievance process.

(b) A discussion with the dean/vice president or supervisor who shall attempt to resolve the matter promptly and fairly. The student may be asked to express the grievance in writing. Written grievances should include an explanation of what has happened, the nature of the student's concern, what the student and/or others have done about it to date and what resolution the student seeks.

(c) The supervisor will investigate and may:

(i) Render an immediate decision;

(ii) Ask the staff members for a written response;

(iii) Request a meeting of one or both parties individually or together; and/or

(iv) Request supporting materials prior to rendering a decision.

In the case of a written grievance, the supervisor will provide a written decision within fifteen instructional days of receipt of the written grievance. If an investigation requires more time, the deadline may be extended to a mutually agreed future date.

(A) If the student feels a satisfactory resolution was not achieved in step two, they may appeal to the president of the college within five instructional days of receipt of the written decision. The president may amend, modify, reverse or accept the recommendation of the vice president. The decision of the president shall be final.

(B) In general, a student wishing to express a complaint should do so no later than three weeks from the time the student became aware of the concern. In any event, with the exception of discrimination and harassment, informal complaints and formal grievances must be filed within one academic quarter of the inciting event. Timely initiation of a complaint rests with the student.

(C) The appropriate vice president may suspend this rule under exceptional circumstances such as extended illness or leave of a party to the complaint. When either party to the complaint is no longer present at the college and does not expect to return, the vice president will give the absent party reasonable opportunity to reply to the complaint before making a decision.

(3) **Grade appeal process.**

(a) Before a student can file a formal or written grade appeal, they should try to resolve the issue directly with the instructor. Grade appeals should occur within one quarter of issuance of the grade. In any event, appeals will not be considered beyond one year of the grade report.

(b) If direct discussion with the faculty does not resolve the grade dispute to the student's satisfaction the student, within ten instructional days after meeting with the faculty, shall take the matter to the vice president for instruction. The student shall express the appeal in writing. The written appeal should include the course and instructor involved, an explanation of why the student believes the grade received is unfair or unwarranted, what steps the student has taken with the faculty member to resolve the issue, and what resolution the student seeks.

(c) The vice president for instruction will attempt to investigate the appeal and will:

(i) Review the course syllabus;

(ii) Meet with the course instructor; and

(iii) May request and review other supporting documentation prior to rendering a decision. Within ten instructional days of receiving the written appeal, the vice president of instruction will provide a written decision. If an investigation requires more time, the deadline may be extended to a mutually agreed future date.

(d) If the student feels satisfactory resolution was not achieved in step three, they may, within five instructional days of receipt of the written decision, notify the vice president for instruction to request a hearing before the academic review committee. The vice president for student services or designee will chair the committee.

(i) If anyone on the academic review committee perceives a conflict of interest, they will recuse themselves from the committee for the duration of the appeal. Students are to be given an opportunity to talk with the committee chairperson regarding any concerns about committee membership.

(ii) As soon as possible, the academic review committee (with a minimum attendance of six individuals) will meet with the student, instructor, the vice president of instruction and relevant parties to hear the points at issue in the appeal. The committee will provide its written decision to all parties within five instructional days following the hearing. The decision is final and may not be reviewed further.

(4) Grievances excluded.

(a) The student grievance procedure described in this section is not intended to cover complaints of discrimination or sexual harassment. The college has separate specific procedures for such complaints. See the vice president for student services for information on those specific procedures.

(b) A student may not use the provisions of these sections as the basis for filing a grievance based on the outcome of summary or other disciplinary proceedings described in earlier sections of this student rights and responsibilities code or for resolution of specific categories of student complaints where other procedures are required.

(c) Federal and state laws, rules and regulations, in addition to policies, regulations and procedures adopted by the state board for community college education or the board of trustees of Community College District No. 2 shall not be grievable matters.

(5) **Records.** The appropriate supervisor shall keep all written statements or transcripts as follows:

(a) Complaints for one year from the initial complaint;

(b) Grievances for six years from the initial complaint;

(c) Grade appeals for five years following the last quarter attended by the student. At that time, the files shall be destroyed.

[]

WSR 21-07-027

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed March 8, 2021, 2:30 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

246-282-990(4) Sanitary control of shellfish—Fees, department of health (DOH) annual paralytic shellfish poisoning (PSP) testing fee redistribution.

Hearing Location(s): On April 28, 2021, at 1:30 p.m. In response to the coronavirus disease 2019 (COVID-19), DOH 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. Please register at <https://attendee.gotowebinar.com/register/5291559551359614734>. After registering, you will receive a confirmation email containing information about joining the webinar. Participants can use their telephone or computer mic and speakers (VoIP), United States +1 (914) 614-3221.

Date of Intended Adoption: May 5, 2021.

Submit Written Comments to: Peter Beaton, Division of Environmental Public Health, P.O. Box 47820, Olympia, WA 98504-7820, email <https://fortress.wa.gov/doh/policyreview>, by April 28, 2021.

Assistance for Persons with Disabilities: Contact April Gilreath, phone 360-236-3301, TTY 711, email april.gilreath@doh.wa.gov, by April 20, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to equitably assess the costs of commercial geoduck PSP testing. Geoduck PSP testing generates \$58,000 in testing fees annually. The fees are calculated by determining the cost per sample and multiplying this value by how many samples each harvester had tested in the previous year. The PSP testing, which is based on the department's risk assessment of the growing areas, is essential to public health as it is the only way to determine if dangerous levels of PSP exist in commercial geoduck clams and ensure toxic shellfish do not reach the public.

Reasons Supporting Proposal: The proposed geoduck PSP fee redistribution is based on the 2020 total cost of service for the harvesters that submitted geoduck samples (\$58,000) and is based on the cost per sample multiplied by the number of tests done for each harvester.

Statutory Authority for Adoption: RCW 43.70.250, 43.20B.020.

Statute Being Implemented: RCW 43.70.250, 43.20B.020.

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

Name of Proponent: DOH, governmental.

Name of Agency Personnel Responsible for Drafting: Peter Beaton, 111 Israel Road S.E., Tumwater, 360-236-4031; Implementation and Enforcement: Jerry Borchert, 243 Israel Road S.E., Tumwater, WA 98501, 360-236-3328.

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 agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5) (b) (vi) exempts rules that set or adjust fees or rates pursuant to legislative standards.

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

Is exempt under RCW 19.85.025(3) as the 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.

March 4, 2021
 Lauren Jenks
 Assistant Secretary

OTS-2918.1

AMENDATORY SECTION (Amending WSR 20-22-001, filed 10/21/20, effective 11/21/20)

WAC 246-282-990 Fees. (1) Annual shellfish operation license fees are:

<u>Type of Operation</u>	<u>Annual Fee</u>
Harvester	\$263
Shellstock Shipper	
0 - 49 Acres	\$297
50 or greater Acres	\$476
Scallop Shellstock Shipper	\$297
Shucker-Packer	
Plants with floor space < 2000 sq. ft.	\$542
Plants with floor space 2000 sq. ft. to 5000 sq. ft.	\$656
Plants with floor space > 5000 sq. ft.	\$1,210

(2) The fee for each export certificate is \$55.00.

(3) Annual biotoxin testing fees for companies harvesting species other than geoduck intertidally (between the extremes of high and low tide) are as follows:

Fee Category		
<u>Type of Operation</u>	<u>Number of Harvest Sites</u>	<u>Fee</u>
Harvester	≤ 2	\$353
Harvester	3 or more	\$535
Shellstock Shipper		\$198
Wholesale Company		
Shellstock Shipper	≤ 2	\$393
0 - 49 acres		
Shellstock Shipper	3 or more	\$610
0 - 49 acres		
Shellstock Shipper	N/A	\$961
50 or greater acres		

Fee Category

Type of Operation	Number of Harvest Sites	Fee
Shucker-Packer (plants < 2000 ft ²)	≤ 2	\$752
Shucker-Packer (plants < 2000 ft ²)	3 or more	\$1,076
Shucker-Packer (plants 2000 - 5000 ft ²)	≤ 2	\$882
Shucker-Packer (plants 2000 - 5000 ft ²)	3 or more	\$1,297
Shucker-Packer (plants > 5000 ft ²)	N/A	\$2,412

(a) The number of harvest sites will be the total number of harvest sites on the licensed company's harvest site certificate:

- (i) At the time of first licensure; or
- (ii) January 1st of each year for companies licensed as harvesters; or
- (iii) July 1st of each year for companies licensed as shellstock shippers and shucker packers.

(b) Two or more contiguous parcels with a total acreage of one acre or less is considered one harvest site.

(4) Annual PSP testing fees for companies harvesting geoduck are as follows:

Harvester	Cert #	Fee
<u>Chuckanut Shellfish, Inc.</u>	<u>WA-1350-HA</u>	<u>\$626</u>
Department of Natural Resources	NA	(\$10,584)) <u>\$11,266</u>
Jamestown S'Klallam Tribe	WA-0588-SS	(\$2,964)) <u>\$4,590</u>
Lower Elwha Klallam Tribe	WA-0587-HA	(\$3,810)) <u>\$6,468</u>
Lummi Indian Business Council	WA-0098-SS	(\$635)) <u>\$209</u>
<u>Nisqually Indian Tribe</u>	<u>WA-1268-HA</u>	<u>\$209</u>
Port Gamble S'Klallam Tribe	WA-0859-HA	(\$2,540)) <u>\$2,295</u>
Puyallup Tribe of Indians	WA-1137-HA	(\$9,949)) <u>\$7,302</u>
<u>Seaproducts, Inc.</u>	<u>WA-1416-SS</u>	<u>\$417</u>
Skokomish Indian Tribe	WA-0577-HA	(\$1,270)) <u>\$1,878</u>
Suquamish Tribe	WA-0694-SS	(\$13,971)) <u>\$7,719</u>
Swinomish Indian Tribal Community	WA-1420-SS	(\$423)) <u>\$1,043</u>
Taylor Shellfish Company, Inc.	WA-0046-SP	(\$7,409)) <u>\$6,468</u>
The Tulalip Tribes	WA-0997-HA	(\$4,445)) <u>\$7,511</u>

(5) Fees must be paid in full to department of health before a commercial shellfish license is issued or renewed.

(6) Refunds for fees will be given only if the applicant withdraws a new or renewal license application prior to the effective date of the new or renewed license.

[Statutory Authority: RCW 43.70.250 and 69.30.050. WSR 20-22-001, § 246-282-990, filed 10/21/20, effective 11/21/20; WSR 19-10-026, § 246-282-990, filed 4/23/19, effective 5/24/19; WSR 18-09-067, § 246-282-990, filed 4/16/18, effective 5/17/18; WSR 17-06-062, § 246-282-990, filed 2/28/17, effective 3/31/17. Statutory Authority: RCW 43.70.250 and 60.30.005. WSR 16-07-094, § 246-282-990, filed 3/18/16, effective 4/18/16. Statutory Authority: RCW 43.70.250 and 77.32.555. WSR 16-01-041, § 246-282-990, filed 12/9/15, effective 1/9/16. Statutory Authority: RCW 43.70.250. WSR 15-11-053, § 246-282-990, filed 5/15/15, effective 6/15/15; WSR 14-12-082, § 246-282-990, filed 6/3/14, effective 7/4/14; WSR 13-11-038, § 246-282-990, filed 5/10/13, effective 6/10/13; WSR 12-14-073, § 246-282-990, filed 7/2/12, effective 8/2/12. Statutory Authority: RCW 69.30.030 and 43.20.030. WSR 11-19-011, § 246-282-990, filed 9/7/11, effective 10/8/11. Statutory Authority: RCW 43.70.250. WSR 10-19-034, § 246-282-990, filed 9/9/10, effective 10/10/10; WSR 09-19-067, § 246-282-990, filed 9/14/09, effective 10/15/09; WSR 08-13-067, § 246-282-990, filed 6/13/08, effective 7/14/08; WSR 07-17-159, § 246-282-990, filed 8/21/07, effective 9/21/07; WSR 06-15-131, § 246-282-990, filed 7/19/06, effective 8/19/06; WSR 05-17-120, § 246-282-990, filed 8/17/05, effective 9/17/05; WSR 04-15-154, § 246-282-990, filed 7/21/04, effective 8/21/04; WSR 03-18-093, § 246-282-990, filed 9/2/03, effective 10/3/03. Statutory Authority: RCW 43.70.250 and 34.70.250 [43.70.250]. WSR 03-14-037, § 246-282-990, filed 6/23/03, effective 7/24/03. Statutory Authority: RCW 43.70.250 and the 2002 supplemental operating budget. WSR 02-15-094, § 246-282-990, filed 7/16/02, effective 8/16/02. Statutory Authority: RCW 43.70.250, 70.90.150, and 43.20B.250. WSR 01-14-047, § 246-282-990, filed 6/29/01, effective 7/30/01. Statutory Authority: RCW 69.30.030 and 43.20.030. WSR 01-04-054, § 246-282-990, filed 2/5/01, effective 3/8/01. Statutory Authority: RCW 43.70.250. WSR 00-02-016, § 246-282-990, filed 12/27/99, effective 1/27/00; WSR 99-12-022, § 246-282-990, filed 5/24/99, effective 6/24/99. Statutory Authority: RCW 43.20B.020 and 69.30.030. WSR 98-12-068, § 246-282-990, filed 6/1/98, effective 7/2/98. Statutory Authority: RCW 43.203.020 [43.20B.020]. WSR 97-12-031, § 246-282-990, filed 5/30/97, effective 6/30/97. Statutory Authority: RCW 43.20B.020 and 69.30.030. WSR 96-16-073, § 246-282-990, filed 8/6/96, effective 10/1/96. Statutory Authority: RCW 43.70.040. WSR 93-17-096 (Order 389), § 246-282-990, filed 8/17/93, effective 9/17/93; WSR 91-02-049 (Order 121), recodified as § 246-282-990, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 43.20A.055. WSR 85-12-029 (Order 2236), § 440-44-065, filed 5/31/85; WSR 84-13-006 (Order 2109), § 440-44-065, filed 6/7/84; WSR 83-15-021 (Order 1991), § 440-44-065, filed 7/14/83. Statutory Authority: 1982 c 201. WSR 82-13-011 (Order 1825), § 440-44-065, filed 6/4/82.]

WSR 21-07-033

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed March 9, 2021, 3:59 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-03-069.

Title of Rule and Other Identifying Information: WAC 182-513-1100 Definitions related to long-term services and supports (LTSS), 182-513-1215 Community first choice (CFC)—Eligibility, 182-513-1220 Community first choice (CFC)—Spousal impoverishment protections for noninstitutional Washington apple health clients, 182-513-1235 Roads to community living (RCL), and 182-513-1660 Medicaid alternative care (MAC) and tailored supports for older adults (TSOA)—Spousal impoverishment.

Hearing Location(s): On April 27, 2021, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-196 [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/181514389970288398>, Webinar ID 554-761-747. After registering, you will receive a confirmation email containing the information about joining the webinar.

Date of Intended Adoption: Not sooner than April 28, 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 April 27, 2021.

Assistance for Persons with Disabilities: Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email amber.lougheed@hca.wa.gov, by April 9, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is revising these sections as allowed in the Consolidated Appropriations Act of 2021 extension of spousal impoverishment protections through September 30, 2023, and updating the timeframe for institutionalization for RCL from ninety days to sixty days.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; Consolidated Appropriations Act of 2021, H.R. 133, Division CC, Title II, Sec. 204 (b) (1) (A) and Sec. 205.

Statute Being Implemented: RCW 41.05.021, 41.05.160; Consolidated Appropriations Act of 2021, H.R. 133, Division CC, Title II, Sec. 204 (b) (1) (A) and Sec. 205.

Rule is necessary because of federal law, [no information supplied by agency].

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Valerie Freudenstein, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1344; Implementation and Enforcement: Stephen Kozak, P.O. Box 45534, Olympia, WA 98504-5534, 360-725-1343.

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

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

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

Is exempt under RCW 19.85.061 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: Section 6071 (b) (2) of the Deficit Reduction Act of 2005 42 U.S.C. 1396a, Section 2404 of the Patient Protection and Affordable Care Act 42 U.S.C. 1396r-5.

March 9, 2021
Wendy Barcus
Rules Coordinator

OTS-2912.1

AMENDATORY SECTION (Amending WSR 19-24-065, filed 11/27/19, effective 12/28/19)

WAC 182-513-1100 Definitions related to long-term services and supports (LTSS). This section defines the meaning of certain terms used in chapters 182-513 and 182-515 WAC. Within these chapters, institutional, home and community based (HCB) waiver, program of all-inclusive care for the elderly (PACE), and hospice in a medical institution are referred to collectively as long-term care (LTC). Long-term services and supports (LTSS) is a broader definition which includes institutional, HCB waiver, and other services such as medicaid personal care (MPC), community first choice (CFC), PACE, and hospice in the community. See chapter 182-500 WAC for additional definitions.

"Adequate consideration" means that the fair market value (FMV) of the property or services received, in exchange for transferred property, approximates the FMV of the property transferred.

"Administrative costs" or **"costs"** means necessary costs paid by the guardian including attorney fees.

"Aging and long-term support administration (ALTSA)" means the administration within the Washington state department of social and health services (DSHS).

"Alternate living facility (ALF)" is not an institution under WAC 182-500-0050; it is one of the following community residential facilities:

- (a) An adult family home (AFH) licensed under chapter 70.128 RCW.
- (b) An adult residential care facility (ARC) licensed under chapter 18.20 RCW.
- (c) A behavioral health adult residential treatment facility licensed under chapter 246-337 WAC.
- (d) An assisted living facility (AL) licensed under chapter 18.20 RCW.

(e) A developmental disabilities administration (DDA) group home (GH) licensed as an adult family home under chapter 70.128 RCW or an assisted living facility under chapter 18.20 RCW.

(f) An enhanced adult residential care facility (EARC) licensed as an assisted living facility under chapter 18.20 RCW.

(g) An enhanced service facility (ESF) licensed under chapter 70.97 RCW.

(h) A staffed residential facility licensed under chapter 74.15 RCW.

(i) A group care facility for medically complex children licensed under chapter 74.15 RCW.

(j) A facility for children and youth twenty years of age and younger where a state-operated living alternative program, as defined under chapter 71A.10 RCW, is operated.

"Assets" means all income and resources of a person and of the person's spouse, including any income or resources which that person or that person's spouse would otherwise currently be entitled to but does not receive because of action:

(a) By that person or that person's spouse;

(b) By another person, including a court or administrative body, with legal authority to act in place of or on behalf of the person or the person's spouse; or

(c) By any other person, including any court or administrative body, acting at the direction or upon the request of the person or the person's spouse.

"Authorization date" means the date payment begins for long-term services and supports (LTSS) under WAC 388-106-0045.

"Clothing and personal incidentals (CPI)" means the cash payment (under WAC 388-478-0090, 388-478-0006, and 388-478-0033) issued by the department for clothing and personal items for people living in an ALF or medical institution.

"Community first choice (CFC)" means a medicaid state plan home and community based service developed under the authority of section 1915(k) of the Social Security Act under chapter 388-106 WAC.

"Community options program entry system (COPES)" means a medicaid HCB waiver program developed under the authority of section 1915(c) of the Social Security Act under chapter 388-106 WAC.

"Community spouse (CS)" means the spouse of an institutionalized spouse.

"Community spouse resource allocation (CSRA)" means the resource amount that may be transferred without penalty from:

(a) The institutionalized spouse (IS) to the community spouse (CS); or

(b) The spousal impoverishment protections institutionalized (SIPI) spouse to the spousal impoverishment protections community (SIPC) spouse.

"Community spouse resource evaluation" means the calculation of the total value of the resources owned by a married couple on the first day of the first month of the institutionalized spouse's most recent continuous period of institutionalization.

"Comprehensive assessment reporting evaluation (CARE) assessment" means the evaluation process defined under chapter 388-106 WAC used by a department designated social services worker or a case manager to determine a person's need for long-term services and supports (LTSS).

"Continuing care contract" means a contract to provide a person, for the duration of that person's life or for a term in excess of one year, shelter along with nursing, medical, health-related, or personal

care services, which is conditioned upon the transfer of property, the payment of an entrance fee to the provider of such services, or the payment of periodic charges for the care and services involved.

"Continuing care retirement community" means an entity which provides shelter and services under continuing care contracts with its members and which sponsors or includes a health care facility or a health service.

"Dependent" means a minor child, or one of the following who meets the definition of a tax dependent under WAC 182-500-0105: Adult child, parent, or sibling.

"Developmental disabilities administration (DDA)" means an administration within the Washington state department of social and health services (DSHS).

"Developmental disabilities administration (DDA) home and community based (HCB) waiver" means a medicaid HCB waiver program developed under the authority of section 1915(c) of the Social Security Act under chapter 388-845 WAC authorized by DDA. There are five DDA HCB waivers:

- (a) Basic Plus;
- (b) Core;
- (c) Community protection;
- (d) Children's intensive in-home behavioral support (CIIBS); and
- (e) Individual and family services (IFS).

"Equity" means the fair market value of real or personal property less any encumbrances (mortgages, liens, or judgments) on the property.

"Fair market value (FMV)" means the price an asset may reasonably be expected to sell for on the open market in an agreement, made by two parties freely and independently of each other, in pursuit of their own self-interest, without pressure or duress, and without some special relationship (arm's length transaction), at the time of transfer or assignment.

"Guardianship fees" or "fees" means necessary fees charged by a guardian for services rendered on behalf of a client.

"Home and community based (HCB) waiver programs authorized by home and community services (HCS)" means medicaid HCB waiver programs developed under the authority of Section 1915(c) of the Social Security Act under chapter 388-106 WAC authorized by HCS. There are three HCS HCB waivers: Community options program entry system (COPES), new freedom consumer directed services (New Freedom), and residential support waiver (RSW).

"Home and community based services (HCBS)" means LTSS provided in the home or a residential setting to persons assessed by the department.

"Institutional services" means services paid for by Washington apple health, and provided:

- (a) In a medical institution;
- (b) Through an HCB waiver; or
- (c) Through programs based on HCB waiver rules for post-eligibility treatment of income under chapter 182-515 WAC.

"Institutionalized individual" means a person who has attained institutional status under WAC 182-513-1320.

"Institutionalized spouse" means a person who, regardless of legal or physical separation:

- (a) Has attained institutional status under WAC 182-513-1320; and
- (b) Is legally married to a person who is not in a medical institution.

"Life care community" see continuing care community.

"Likely to reside" means the agency or its designee reasonably expects a person will remain in a medical institution for thirty consecutive days. Once made, the determination stands, even if the person does not actually remain in the facility for that length of time.

"Long-term care services" see "Institutional services."

"Long-term services and supports (LTSS)" includes institutional and noninstitutional services authorized by the department.

"Medicaid personal care (MPC)" means a medicaid state plan home and community based service under chapter 388-106 WAC.

"Most recent continuous period of institutionalization (MRCPI)" means the current period an institutionalized spouse has maintained uninterrupted institutional status when the request for a community spouse resource evaluation is made. Institutional status is determined under WAC 182-513-1320.

"Noninstitutional medicaid" means any apple health program not based on HCB waiver rules under chapter 182-515 WAC, or rules based on a person residing in an institution for thirty days or more under chapter 182-513 WAC.

"Nursing facility level of care (NFLOC)" is under WAC 388-106-0355.

"Participation" means the amount a person must pay each month toward the cost of long-term care services received each month; it is the amount remaining after the post-eligibility process under WAC 182-513-1380, 182-515-1509, or 182-515-1514. Participation is not room and board.

"Penalty period" or **"period of ineligibility"** means the period of time during which a person is not eligible to receive services that are subject to transfer of asset penalties.

"Personal needs allowance (PNA)" means an amount set aside from a person's income that is intended for personal needs. The amount a person is allowed to keep as a PNA depends on whether the person lives in a medical institution, ALF, or at home.

"Room and board" means the amount a person must pay each month for food, shelter, and household maintenance requirements when that person resides in an ALF. Room and board is not participation.

"Short stay" means residing in a medical institution for a period of twenty-nine days or fewer.

"Special income level (SIL)" means the monthly income standard that is three hundred percent of the supplemental security income (SSI) federal benefit rate.

"Spousal impoverishment protections" means the financial provisions within Section 1924 of the Social Security Act that protect income and assets of the community spouse through income and resource allocation. The allocation process is used to discourage the impoverishment of a spouse due to the other spouse's need for LTSS. This includes services provided in a medical institution, HCB waivers authorized under 1915(c) of the Social Security Act, and through (~~December 31, 2018~~) September 30, 2023, services authorized under 1115 and 1915(k) of the Social Security Act.

"Spousal impoverishment protections community (SIPC) spouse" means the spouse of a SIPI spouse.

"Spousal impoverishment protections institutionalized (SIPI) spouse" means a legally married person who qualifies for the noninstitutional categorically needy (CN) Washington apple health SSI-related program only because of the spousal impoverishment protections under WAC 182-513-1220.

"State spousal resource standard" means the minimum CSRA standard for a CS or SIPC spouse.

"Third-party resource (TPR)" means funds paid to or on behalf of a person by a third party, where the purpose of the funds is for payment of activities of daily living, medical services, or personal care. The agency does not pay for these services if there is a third-party resource available.

"Transfer" means, in the context of long-term care eligibility, the changing of ownership or title of an asset, such as income, real property, or personal property, by one of the following:

- (a) An intentional act that changes ownership or title; or
- (b) A failure to act that results in a change of ownership or title.

"Uncompensated value" means the fair market value (FMV) of an asset on the date of transfer, minus the FMV of the consideration the person receives in exchange for the asset.

"Undue hardship" means a person is not able to meet shelter, food, clothing, or health needs. A person may apply for an undue hardship waiver based on criteria under WAC 182-513-1367.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 19-24-065, § 182-513-1100, filed 11/27/19, effective 12/28/19. Statutory Authority: RCW 41.05.021, 41.05.160, P.L. 111-148, 42 C.F.R. §§ 431, 435, and 457, and 45 C.F.R. § 155. WSR 17-03-116, § 182-513-1100, filed 1/17/17, effective 2/17/17.]

AMENDATORY SECTION (Amending WSR 18-06-031, filed 2/28/18, effective 3/31/18)

WAC 182-513-1215 Community first choice (CFC)—Eligibility. (1)

A client who is determined functionally eligible for community first choice (CFC) services under WAC 388-106-0270 through 388-106-0295 is financially eligible to receive CFC services if the client is:

(a) Eligible for a noninstitutional Washington apple health (medicaid) program which provides categorically needy (CN) or alternative benefits plan (ABP) scope of care;

(b) Through (~~December 31, 2018~~) September 30, 2023, a spousal impoverishment protections institutional (SIPI) spouse under WAC 182-513-1220; or

(c) Determined eligible for a home and community based (HCB) waiver program under chapter 182-515 WAC.

(2) A client whose only coverage is through one of the following programs is not eligible for CFC:

- (a) Medically needy program under WAC 182-519-0100;
- (b) Premium-based children's program under WAC 182-505-0215;
- (c) Medicare savings programs under WAC 182-517-0300;
- (d) Family planning program under WAC 182-505-0115;
- (e) Take charge program under WAC 182-532-0720;
- (f) Medical care services program under WAC 182-508-0005;
- (g) Pregnant minor program under WAC 182-505-0117;
- (h) Alien emergency medical program under WAC 182-507-0110

through 182-507-0120;

(i) State-funded long-term care (LTC) for noncitizens program under WAC 182-507-0125; or

(j) Kidney disease program under chapter 182-540 WAC.

(3) Transfer of asset penalties under WAC 182-513-1363 do not apply to CFC applicants, unless the client is applying for long-term services and supports (LTSS) that are available only through one of the HCB waivers under chapter 182-515 WAC.

(4) Home equity limits under WAC 182-513-1350 do apply.

(5) Post-eligibility treatment of income rules do not apply if the client is eligible under subsection (1)(a) or (b) of this section.

(6) Clients eligible under subsection (1)(a) or (b) of this section, who reside in an alternate living facility (ALF):

(a) Keep a personal needs allowance (PNA) under WAC 182-513-1105; and

(b) Pay up to the room and board standard under WAC 182-513-1105 except when CN eligibility is based on the rules under WAC 182-513-1205.

(7) A client who receives CFC services under the health care for workers with disabilities (HWD) program under chapter 182-511 WAC must pay the HWD premium in addition to room and board under WAC 182-513-1105, if residing in an ALF.

(8) Post-eligibility treatment of income rules do apply if a client is eligible under subsection (1)(c) of this section.

(9) A client may have to pay third-party resources as defined under WAC 182-513-1100 in addition to the room and board and participation.

(10) PNA, MNIL, and room and board standards are found at (~~www.hea.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources~~) www.hca.wa.gov/health-care-services-supports/program-standard-income-and-resources.

[Statutory Authority: RCW 41.05.021, 41.05.160 and P.L. 111-148, Title II, § 2404. WSR 18-06-031, § 182-513-1215, filed 2/28/18, effective 3/31/18. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 c 270. WSR 17-23-039, § 182-513-1215, filed 11/8/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160, P.L. 111-148, 42 C.F.R. §§ 431, 435, and 457, and 45 C.F.R. § 155. WSR 17-03-116, § 182-513-1215, filed 1/17/17, effective 2/17/17.]

AMENDATORY SECTION (Amending WSR 18-06-031, filed 2/28/18, effective 3/31/18)

WAC 182-513-1220 Community first choice (CFC)—Spousal impoverishment protections for noninstitutional Washington apple health clients. (1) This section is effective through (~~December 31, 2018~~) September 30, 2023.

(2) The agency or its designee determines eligibility for community first choice (CFC) using spousal impoverishment protections under this section, when an applicant:

(a) Is married to, or marries, a person not in a medical institution;

(b) Meets institutional level of care and eligibility for CFC services under WAC 388-106-0270 through 388-106-0295;

(c) Is ineligible for a noninstitutional categorically needy (CN) SSI-related program:

(i) Due to spousal deeming rules under WAC 182-512-0920, or due to exceeding the resource limit in WAC 182-512-0010, or both; or

(ii) In an ALF due to combined spousal resources exceeding the resource limit in WAC 182-512-0010; and

(d) Meets the aged, blindness, or disability criteria under WAC 182-512-0050.

(3) The agency or its designee determines countable income using the SSI-related income rules under chapter 182-512 WAC but uses only the applicant's or recipient's separate income and not the income of the applicant's or recipient's spouse.

(4) The agency or its designee determines countable resources using the SSI-related resource rules under chapter 182-512 WAC, except pension funds owned by the spousal impoverishment protections community (SIPC) spouse are not excluded as described under WAC 182-512-0550:

(a) For the applicant or recipient, the resource standard is \$2000.

(b) Before determining countable resources used to establish eligibility for the applicant, the agency allocates the state spousal resource standard to the SIPC spouse.

(c) The resources of the SIPC spouse are unavailable to the spousal impoverishment protections institutionalized (SIPI) spouse the month after eligibility for CFC services is established unless subsection (9) of this section applies.

(5) The SIPI spouse has until the end of the month of the first regularly scheduled eligibility review to transfer countable resources in excess of \$2000 to the SIPC spouse.

(6) A redetermination of the couple's resources under subsection (4) of this section is required if:

(a) The SIPI spouse has a break in CFC services of at least thirty consecutive days;

(b) The SIPI spouse's countable resources exceed the standard under subsection (4)(a) of this section; or

(c) The SIPI spouse does not transfer the amount under subsection (5) of this section to the SIPC spouse by the end of the month of the first regularly scheduled eligibility review.

(7) If the applicant lives at home and the applicant's separate countable income is at or below the SSI categorically needy income level (CNIL) and the applicant is resource eligible, the applicant is a SIPI spouse and is financially eligible for noninstitutional CN coverage and CFC services.

(8) If the applicant lives in an ALF, has separate countable income at or below the standard under WAC 182-513-1205(2), and is resource eligible, the applicant is a SIPI spouse and is financially eligible for noninstitutional CN coverage and CFC services.

(9) If the applicant is employed and has separate countable income at or below the standard under WAC 182-511-1060, the applicant is a SIPI spouse and is financially eligible for noninstitutional CN coverage and CFC services.

(10) Once a person no longer receives CFC services for thirty consecutive days, the agency redetermines eligibility without using spousal impoverishment protection, under WAC 182-504-0125.

(11) If the applicant's separate countable income is above the standards under subsections (7), (8), and (9) of this section, the applicant is not eligible for CFC services under this section.

(12) The spousal impoverishment protections under this section expire on (~~December 31, 2018~~) September 30, 2023.

(13) Standards are found at (~~(http://www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources)~~) www.hca.wa.gov/health-care-services-supports/program-standard-income-and-resources.

[Statutory Authority: RCW 41.05.021, 41.05.160 and P.L. 111-148, Title II, § 2404. WSR 18-06-031, § 182-513-1220, filed 2/28/18, effective 3/31/18. Statutory Authority: RCW 41.05.021, 41.05.160, P.L. 111-148, 42 C.F.R. §§ 431, 435, and 457, and 45 C.F.R. § 155. WSR 17-03-116, § 182-513-1220, filed 1/17/17, effective 2/17/17.]

AMENDATORY SECTION (Amending WSR 17-03-116, filed 1/17/17, effective 2/17/17)

WAC 182-513-1235 Roads to community living (RCL). (1) Roads to community living (RCL) is a demonstration project authorized under Section 6071 of the Deficit Reduction Act of 2005 (P.L. 109-171) and extended through the Patient Protection and Affordable Care Act (P.L. 111-148).

(2) Program rules governing functional eligibility for RCL are described in WAC 388-106-0250 through 388-106-0265. RCL services are authorized by the department.

(3) A person must have a stay of at least (~~ninety~~) sixty consecutive days in a qualified institutional setting such as a hospital, nursing home, or residential habilitation center, to be eligible for RCL. The (~~ninety-day~~) sixty-day count excludes days paid solely by medicare, must include at least one day of medicaid paid inpatient services immediately prior to discharge, and the person must be eligible to receive any categorically needy (CN), medically needy (MN), or alternate benefit plan (ABP) medicaid program on the day of discharge. In addition to meeting the (~~ninety-day~~) sixty-day criteria, a person who is being discharged from a state psychiatric hospital must be under age twenty-two or over age sixty-four.

(4) Once a person is discharged to home or to a residential setting under RCL, the person remains continuously eligible for medical coverage for three hundred sixty-five days unless the person:

- (a) Returns to an institution for thirty days or longer;
- (b) Is incarcerated in a public jail or prison;
- (c) No longer wants RCL services;
- (d) Moves out-of-state; or
- (e) Dies.

(5) Changes in income or resources during the continuous eligibility period do not affect eligibility for RCL services. Changes in income or deductions may affect the amount a person must pay toward the cost of care.

(6) A person approved for RCL is not subject to transfer of asset provisions under WAC 182-513-1363 during the continuous eligibility period, but transfer penalties may apply if the person needs HCB waiver or institutional services once the continuous eligibility period has ended.

(7) A person who is not otherwise eligible for a noninstitutional medical program must have eligibility determined using the same rules used to determine eligibility for HCB waivers. If HCB rules are used to establish eligibility, the person must pay participation toward the

cost of RCL services. HCB waiver eligibility and cost of care calculations are under:

(a) WAC 182-515-1508 and 182-515-1509 for home and community services (HCS); and

(b) WAC 182-515-1513 and 182-515-1514 for development disabilities administration (DDA) services.

(8) At the end of the continuous eligibility period, the agency or its designee redetermines a person's eligibility for other programs under WAC 182-504-0125.

[Statutory Authority: RCW 41.05.021, 41.05.160, P.L. 111-148, 42 C.F.R. §§ 431, 435, and 457, and 45 C.F.R. § 155. WSR 17-03-116, § 182-513-1235, filed 1/17/17, effective 2/17/17.]

AMENDATORY SECTION (Amending WSR 17-12-019, filed 5/30/17, effective 7/1/17)

WAC 182-513-1660 Medicaid alternative care (MAC) and tailored supports for older adults (TSOA)—Spousal impoverishment. (1) The medicaid agency or the agency's designee determines financial eligibility for medicaid alternative care (MAC) or tailored supports for older adults (TSOA) using spousal impoverishment protections under this section, when an applicant or recipient:

(a) Is married to, or marries, a person who is not in a medical institution; and

(b) Is ineligible for a noninstitutional categorically needy (CN) SSI-related program or the TSOA program due to:

(i) Spousal deeming rules under WAC 182-512-0920 for MAC;

(ii) Exceeding the resource limit in WAC 182-512-0010 for MAC, or the limit under WAC 182-513-1640 for TSOA; or

(iii) Both (b)(i) and (ii) of this subsection.

(2) When a resource test applies, the agency or the agency's designee determines countable resources using the SSI-related resource rules under chapter 182-512 WAC, except pension funds owned by the spousal impoverishment protections community (SIPC) spouse are not excluded as described under WAC 182-512-0550:

(a) Resource standards:

(i) For MAC, the resource standard is \$2,000; or

(ii) For TSOA, the resource standard is \$53,100.

(b) Before determining countable resources used to establish eligibility for the applicant, the agency or the agency's designee allocates the state spousal resource standard to the SIPC spouse.

(c) The resources of the SIPC spouse are unavailable to the spousal impoverishment protections institutionalized (SIPI) spouse the month after eligibility for MAC or TSOA services is established.

(3) The SIPI spouse has until the end of the month of the first regularly scheduled eligibility review to transfer countable resources in excess of \$2,000 (for MAC) or \$53,100 (for TSOA) to the SIPC spouse.

(4) Income eligibility:

(a) For MAC:

(i) The agency or the agency's designee determines countable income using the SSI-related income rules under chapter 182-512 WAC, but uses only the applicant or recipient's income;

(ii) If the applicant's or recipient's countable income is at or below the SSI categorically needy income level (CNIL), the applicant or recipient is considered a SIPI spouse and is income eligible for noninstitutional CN coverage and MAC services;

(iii) If the applicant is employed and the applicant's countable income is at or below the standard under WAC 182-511-1060, the applicant is considered a SIPI spouse and is income eligible for noninstitutional CN coverage under the health care for workers with disabilities (HWD) program and MAC services.

(b) For TSOA, see WAC 182-513-1635.

(5) Once a person no longer receives MAC services, eligibility is redetermined without using spousal impoverishment protections under WAC 182-504-0125.

(6) If the applicant's separate countable income is above the standards described in subsection (4) of this section, the applicant is not income eligible for MAC or TSOA services.

(7) The spousal impoverishment protections described in this section are time-limited and expire on (~~December 31, 2018~~) September 30, 2023.

(8) Standards described in this chapter are located at (~~www.hea.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources~~) www.hca.wa.gov/health-care-services-supports/program-standard-income-and-resources.

[Statutory Authority: RCW 41.05.021, 41.05.160, 2016 1st sp.s. c 36 § 213 (1)(e), section 1115 of the Social Security Act, and 42 C.F.R. §§ 431.400 through 431.428. WSR 17-12-019, § 182-513-1660, filed 5/30/17, effective 7/1/17.]

WSR 21-07-048

PROPOSED RULES

EASTERN WASHINGTON UNIVERSITY

[Filed March 12, 2021, 7:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-03-032.

Title of Rule and Other Identifying Information: WAC 172-108-050 and 172-108-100, adjudicative proceedings.

Hearing Location(s): On May 12, 2021, at 9:00 a.m., at Eastern Washington University (EWU), Main Campus, 526 5th Street, Cheney, WA 99004. This will be a virtual meeting via Zoom. The link to participate in the Zoom meeting is <https://ewu.zoom.us/j/94220953157>.

Date of Intended Adoption: May 21, 2021.

Submit Written Comments to: Annika Scharosch, EWU, 526 5th Street, 211 Tawanka Hall, Cheney, WA 99004, email ascharosch@ewu.edu, fax 509-359-6724, by May 12, 2021.

Assistance for Persons with Disabilities: Contact Annika Scharosch, phone 509-359-6724, fax 509-359-2874, email ascharosch@ewu.edu, by May 12, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: A new regulation is being added, WAC 172-108-100, to identify the process for requesting a hearing to appeal the athletic department's decision to reduce, revoke, or not renew athletic aid.

Reasons Supporting Proposal: Process is being updated in light of the court of appeals' decision in *Webb v. Washington State University*.

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

Rule is necessary because of state court decision, *Webb v. Washington State University*, Slip Op. 37051-8-III (Div. 3; November 17, 2020).

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).

March 12, 2021
Annika Scharosch
Associate Vice President

OTS-2949.1

AMENDATORY SECTION (Amending WSR 21-01-104, filed 12/11/20, effective 1/11/21)

WAC 172-108-050 Brief adjudicative proceedings. In accordance with RCW 34.05.410 (1)(a), the procedures identified in RCW 34.05.482 through 34.05.494 apply to all brief adjudicative proceedings at Eastern Washington University. All applications for a brief adjudicative proceeding shall be in writing. Application forms are available from: University Policy Administration; Tawanka 211; Eastern Washington University; Cheney, WA 99004-2496. Written application for a brief adjudicative proceeding in response to the institution's action must be submitted to the university within twenty-one calendar days of the action, unless a different time frame is specified in the regulations identified below that apply to the type of decision being challenged. When required by law or constitutional right, brief adjudicative proceedings shall be used in all matters of appeal related to:

- (1) Residency determinations made pursuant to RCW 28B.15.013 and chapter 250-18 WAC;
- (2) Challenges to contents of education records, review of the denial to inspect such records, or challenges to the disclosure of such records. In addition to the rules identified below, these challenges are governed by chapter 172-191 WAC;
- (3) Student conduct proceedings, if the potential sanction for the alleged misconduct does not include suspension, expulsion, formal Title IX complaints, or an allegation of felony-level sexual misconduct. In addition to the rules identified below, these proceedings are governed by chapter 172-121 WAC;
- (4) Outstanding debts owed by students or employees, pursuant to chapters 172-124 and 172-144 WAC;
- (5) Traffic and parking violations and revocations of any parking permit pursuant to chapter 172-100 WAC;
- (6) Student academic integrity proceedings, if the potential sanction for the alleged misconduct does not include suspension or expulsion. In addition to the rules identified in this section, these proceedings are governed by chapter 172-90 WAC;
- (7) Library fines and charges;
- (8) Reduction, cancellation, or nonrenewal of institutional financial aid when based in any degree on athletics ability per National Collegiate Athletic Association rules as detailed in WAC 172-108-100;
- (9) Administrative decisions regarding statutorily mandated tuition and/or fee waivers;
- (10) Research integrity violations in accordance with EWU Policy 302-05 when required by federal law;
- (11) Citations issued by university police regarding the use of golf carts and utility vehicles, in accordance with EWU Policy 603-06;
- (12) Fines imposed for impermissible use of tobacco, electronic cigarettes, and related products in accordance with WAC 172-122-310;
- (13) Financial aid appeals as provided for by federal law and in accordance with EWU policies for satisfactory academic progress for undergraduate, post-baccalaureate, and graduate students;
- (14) Denial of work study or termination from a work study position when required by federal law;
- (15) Notice against trespass issued per WAC 172-122-200;
- (16) Denial of request to waive undergraduate housing requirement under chapter 172-130 WAC;
- (17) Fines assessed under a university housing agreement; and

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

[Statutory Authority: RCW 28B.35.120(12). WSR 21-01-104, § 172-108-050, filed 12/11/20, effective 1/11/21; WSR 17-11-051, § 172-108-050, filed 5/15/17, effective 6/15/17; WSR 14-24-038, § 172-108-050, filed 11/24/14, effective 12/25/14; WSR 92-09-100, § 172-108-050, filed 4/20/92, effective 5/21/92.]

NEW SECTION

WAC 172-108-100 Procedures for reduction, revocation, or of athletic scholarships. In accordance with NCAA requirements, a student athlete who is receiving athletic aid based in any degree on athletic ability has the right to request an appeal hearing when the athletic aid is reduced, revoked, or not renewed and the student has remaining athletic eligibility. The following process governs the student athlete's appeal of the athletic department's decision to reduce, revoke, or not renew athletic aid.

(1) The athletic department makes the initial decision to reduce, revoke, or not renew the student's athletic aid. Before making such decision, the athletic department should provide the student athlete with notice that such a decision may be made and give the student an opportunity to respond. If the decision is made to reduce, revoke, or not renew the aid, the athletic department should convey such information to the financial aid and scholarship office with a brief statement of the reason for the decision.

(2) EWU's financial aid and scholarship office will then formally notify the student athlete of the athletic department's decision to reduce, revoke, or not renew the student's athletic aid. This notification will be sent via email to the student's official university email account and will include information about how to appeal the decision.

(3) The student will have twenty-one calendar days from the date the email is sent to request an appeal. Any request for appeal must be directed to the director of financial aid and sent via email to [fi-
naid@ewu.edu](mailto:fi-
naid@ewu.edu). Requests for appeal must be received within twenty-one days or they will be dismissed as untimely.

(4) Upon timely receipt of an appeal, the director of financial aid will convene the athletic aid appeals committee. The committee shall consist of four people who represent various areas of the university. The director serves as the presiding officer and a voting member of the committee. The director will schedule a hearing with the student, head coach or other athletics department representative, and the committee.

(5) Prior to the hearing, the student and head coach, or designee, should provide the committee with a written statement outlining the reasons they agree or disagree with the decision to reduce, revoke, or not renew athletic aid, along with any supporting documentation. The documentation may include statements from witnesses. These statements and documentation are reviewed by the committee in advance of the hearing.

(6) At the hearing, the director will ask the head coach or other athletics representative to explain the basis for their decision regarding athletic aid. The committee and athlete may ask questions of

this head coach/athletics representative. The athlete will then have the opportunity to explain why they disagree with the decision. The committee and head coach may ask questions of the athlete. The head coach/athletics representative will then have the opportunity to provide a rebuttal statement.

(7) Either party in the hearing may be represented by an advisor as set forth in WAC 172-108-035. The hearing will be recorded and retained in accordance with EWU's records retention schedule.

(8) The student has the burden of proving by a preponderance of the evidence that the athletic department's decision to reduce, revoke, or not renew athletic aid was not supported by substantial evidence or is arbitrary or capricious. The committee may affirm, reverse, or modify the athletic department's decision regarding athletic aid eligibility. The committee's decision must be supported by a majority of committee members.

(9) Within twenty days of the hearing, the presiding officer will issue a written order containing a brief statement of the reasons for the committee's decision. The decision should be communicated in writing to both parties and should indicate that it is the final decision of the university and judicial review may be available under chapter 34.05 RCW.

[]

WSR 21-07-049

PROPOSED RULES

EASTERN WASHINGTON UNIVERSITY

[Filed March 12, 2021, 7:34 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-07-172 [21-01-172].

Title of Rule and Other Identifying Information: Chapter 172-10 WAC, public records.

Hearing Location(s): On May 12, 2021, at 9:00 a.m., at Eastern Washington University (EWU), Main Campus, 526 5th Street, Cheney, WA 99004. This will be a virtual meeting via Zoom. The link to participate in the Zoom meeting is <https://ewu.zoom.us/j/94220953157>.

Date of Intended Adoption: May 21, 2021.

Submit Written Comments to: Annika Scharosch, EWU, 526 5th Street, 211 Tawanka Hall, Cheney, WA 99004, email ascharosch@ewu.edu, fax 509-359-6724, by May 12, 2021.

Assistance for Persons with Disabilities: Contact Annika Scharosch, phone 509-359-6724, fax 509-359-2874, email ascharosch@ewu.edu, by May 12, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Updates the contact information for the public records coordinator. Adds a provision notifying the public that they may be charged for the redaction of body camera footage in accordance with the Public Records Act.

Reasons Supporting Proposal: Due to personnel changes, the contact information for the public records officer needs to be updated. EWU's law enforcement department has also recently started using body cameras, so information is added about requests for recordings from such cameras.

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).

March 12, 2021
Annika Scharosch
Associate Vice President

OTS-2950.1

AMENDATORY SECTION (Amending WSR 14-24-034, filed 11/24/14, effective 12/25/14)

WAC 172-10-020 Public records officer. (1) Any person wishing to request access to public records of Eastern Washington University, or seeking assistance in making such a request should contact the public records officer of Eastern Washington University. Throughout this chapter, references to the public records officer shall mean the public records officer or his/her designee.

(2) Contact information:

Public Records Officer
 Eastern Washington University
 Business and Finance Office
 ((307 Showalter Hall))
211 Tawanka Commons
 Cheney, WA 99004
 Phone: ((509-359-4210)) 509-359-7496
 Fax: ((509-359-6705)) 509-359-2266
 Email: prr@ewu.edu

(3) Information is also available at the Eastern Washington University website at ((<http://access.ewu.edu/public-records>)) <https://inside.ewu.edu/records-management/>.

(4) The public records officer and Eastern Washington University shall assist requestors, comply with the Public Records Act, and provide public records training and assistance to university employees.

[Statutory Authority: RCW 28B.35.120(12). WSR 14-24-034, § 172-10-020, filed 11/24/14, effective 12/25/14.]

AMENDATORY SECTION (Amending WSR 14-24-034, filed 11/24/14, effective 12/25/14)

WAC 172-10-030 Availability of public records. (1) Hours for inspection of records. Public records are available for inspection and copying during normal business hours of Eastern Washington University, Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding legal holidays, unless the requestor and the public records officer agree on a different time. Records must be inspected at the offices of Eastern Washington University.

(2) *University Policy Index.* An index of Eastern Washington University's generally applicable rules, policies, and procedures is available for use by members of the public and may be accessed online at www.ewu.edu/policy.

(3) Organization of records. Eastern Washington University will maintain its records in a reasonably organized manner. Eastern Washington University will take reasonable actions to protect records from damage and disorganization. A requestor shall not take Eastern Washington University records from Eastern Washington University offices without the permission of the public records officer. A variety of records are available on the Eastern Washington University website at

www.ewu.edu. Requestors are encouraged to view the documents available on the website prior to submitting a records request.

(4) Making a request for public records.

(a) Any person wishing to inspect or copy public records of Eastern Washington University should make the request in writing on the Eastern Washington University public records request form, or by letter, fax, or email addressed to the public records officer and including the following information:

(i) Name of requestor;

(ii) Address of requestor;

(iii) Other contact information, including telephone number and any email address;

(iv) Adequate identification of the public records for the public records officer to locate the records;

(v) The date and time of day of the request; and

(vi) A verification that the records requested shall not be used to compile a commercial sales list.

(b) If the requestor wishes to have copies of the records made instead of simply inspecting them, he or she should so indicate and make arrangements to pay for copies of the records or a deposit. Pursuant to WAC 172-10-080, standard photocopies will be provided at fifteen cents per page.

(c) A form is available for use by requestors at the office of the public records officer and online at (~~(<http://access.ewu.edu/Documents/Public%20Records/public-records-request-form.pdf>)~~) <https://inside.ewu.edu/records-management/>.

(d) The public records officer may accept requests for public records that contain the above information by telephone or in person, but is not required to do so. If the public records officer accepts such a request, he or she will confirm receipt of the information and the substance of the request in writing.

[Statutory Authority: RCW 28B.35.120(12). WSR 14-24-034, § 172-10-030, filed 11/24/14, effective 12/25/14.]

AMENDATORY SECTION (Amending WSR 18-06-019, filed 2/27/18, effective 3/30/18)

WAC 172-10-080 Costs of providing copies of public records. (1)

~~((The following copy fees and payment procedures apply to requests under chapter 42.56 RCW received on or after July 23, 2017.))~~ Pursuant to RCW 42.56.120 (2)(b), Eastern Washington University is not calculating all actual costs for copying records because to do so would be unduly burdensome as the university does not have the resources to conduct a study to determine all actual copying costs, it is difficult to calculate all costs directly incident to copying records, and to conduct such a study would interfere with other essential university functions. In addition, the university may charge the requestor the reasonable costs of redacting, altering, distorting, pixelating, suppressing or otherwise obscuring any portion of body camera recordings in accordance with RCW 42.56.240 regardless of whether or not the requestor asks for a copy of such recordings or asks to view them in person.

(2) Costs for copies. The university will charge for copies of records pursuant to the default fees in RCW 42.56.120 (2)(b) and (c).

The university may also use any other method authorized by the Public Records Act for imposing charges for public records including, but not limited to, charging a flat fee, charging a customized service charge, or charging based on a contract or other agreement with a requestor. A copy of the university's fee schedule will be available on its public records website.

(3) The university may waive charges assessed for records when the public records officer determines collecting a fee is not cost effective.

(4) There is no fee for inspecting public records, unless it requires customized access to a database or the redaction of body camera footage. Before beginning to make the copies, the public records officer may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. Eastern Washington University will not charge sales tax when it makes copies of public records.

(5) Costs of mailing. Eastern Washington University may also charge actual costs of mailing, including the cost of the shipping container.

(6) Payment. Payment may be made by cash, check, or money order to Eastern Washington University.

[Statutory Authority: RCW 28B.35.120(12) and 42.56.070. WSR 18-06-019, § 172-10-080, filed 2/27/18, effective 3/30/18. Statutory Authority: RCW 28B.35.120(12). WSR 14-24-034, § 172-10-080, filed 11/24/14, effective 12/25/14.]

WSR 21-07-050

PROPOSED RULES

EASTERN WASHINGTON UNIVERSITY

[Filed March 12, 2021, 7:39 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-03-031.

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

Hearing Location(s): On May 12, 2021, at 9:00 a.m., at Eastern Washington University (EWU), Main Campus, 526 5th Street, Cheney, WA 99004. This will be a virtual meeting via Zoom. The link to participate in the Zoom meeting is <https://ewu.zoom.us/j/94220953157>.

Date of Intended Adoption: May 21, 2021.

Submit Written Comments to: Annika Scharosch, EWU, 526 5th Street, 211 Tawanka Hall, Cheney, WA 99004, email ascharosch@ewu.edu, fax 509-359-6724, by May 12, 2021.

Assistance for Persons with Disabilities: Contact Annika Scharosch, phone 509-359-6724, fax 509-359-2874, email ascharosch@ewu.edu, by May 12, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Clarifies that parties are only allowed to ask questions of witnesses in full adjudicative hearings. Modifies the language of some of the violations of the student conduct code, including the addition of reckless endangerment.

Reasons Supporting Proposal: Clarifies the procedures for brief adjudicative hearings and violations of the code. Adds a provision prohibiting students from engaging in reckless endangerment to add additional clarification for students.

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).

March 12, 2021

Annika Scharosch
Associate Vice President

OTS-2948.1

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

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

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

[Statutory Authority: RCW 28B.35.120(12). WSR 20-19-046, § 172-121-030, filed 9/10/20, effective 10/11/20. Statutory Authority: RCW 28B.35.120(12) and 42.56.070. WSR 19-01-047, § 172-121-030, filed 12/13/18, effective 1/13/19. Statutory Authority: RCW 28B.35.120(12). WSR 13-24-123, § 172-121-030, filed 12/4/13, effective 1/4/14; WSR 09-12-001, § 172-121-030, filed 5/20/09, effective 6/20/09.]

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

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

- (1) **Acts of academic dishonesty.** University policy regarding academic dishonesty is governed by the university academic integrity policy.
- (2) **Abuse, threats and harassment.**
 - (a) Abuse. Assault and other forms of physical abuse.
 - (b) Threats. Any conduct or statement that, when viewed objectively, threatens bodily harm to another person or that endangers the health or safety of another person.
 - (c) Bullying. Bullying is behavior that is:
 - (i) Intentional;
 - (ii) Targeted at an individual or group;
 - (iii) Repeated;
 - (iv) Hostile or offensive; and

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

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

(c) (i) or (ii) of this subsection are present:

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

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

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

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

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

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

(B) The type of relationship; and

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

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

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

(ii) Suffer substantial emotional distress.

(g) Retaliation. Any intimidation, threat, coercion, or discrimination against a person for the purpose of interfering with a person's rights under this code or because a person has made a report, complaint, testified, assisted, or participated or refused to participate in an investigation, proceeding, or hearing under this code is prohibited and is a separate violation of this code. Any actual or threatened retaliation is prohibited and is a separate violation of this code.

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

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

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

(ii) Unwelcome conduct on the basis of sex that is determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies the complainant equal access to the university's programs or activities.

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

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

Sexual assault includes:

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

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

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

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

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

(5) **Unauthorized use of electronic or other devices.** Making an audio or video recording of any person while on university premises without the person's prior knowledge or without their effective consent, when such a recording is of a private conversation or of images taken of a person(s) at a time and place where the person would reasonably expect privacy and where such recordings are likely to cause

injury or distress. This includes, but is not limited to, surreptitiously taking pictures of another person in a gym, locker room, or restroom, but does not include taking pictures of persons in areas which are considered by the reasonable person to be open to public view.

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

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

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

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

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

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

(8) **Failure to comply.**

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

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

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

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

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

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

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

(a) Knowingly furnishing false information to the university.

(b) Forgery, alteration, or misuse of ((~~university~~)) documents, records, or instruments of identification. This includes situations of identity theft where a person knowingly uses or transfers another person's identification for any purpose. It also includes situations where a student knowingly obtains, possesses, or uses another person's identification or financial information with the intent to commit a crime.

(c) Forgery ((~~of~~)), issuing a bad check, or use of another person's access device, such as a debit card, credit card, EBT, or gift card, with intent to defraud.

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

(11) **Safety.**

(a) Intentionally activating a false fire alarm.

(b) Making a bomb threat.

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

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

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

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

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

(b) Drugs and paraphernalia.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(17) **Reckless endangerment.** Engaging in conduct that creates an unreasonable risk of harm to self, another person, or property, regardless of whether or not a person or property is actually harmed. This includes, but is not limited to, operating a motor vehicle or having control over a motor vehicle while under the influence of alcohol, drugs, or both.

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

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

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

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

~~((18))~~ (19) **Other responsibilities.**

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

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

(i) The laws of the host country;

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

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

(iv) The student conduct code.

~~((19))~~ (20) **Student organization and/or group offenses.** Clubs, organizations, societies or similarly organized groups in or recognized by the university and/or ASEWU are subject to the same standards as are individuals in the university community. The commission of any of the offenses in this section by such groups or the knowing failure of any organized group to exercise preventive measures relative to violations of the code by their members shall constitute a group offense.

[Statutory Authority: RCW 28B.35.120(12). WSR 20-19-046, § 172-121-200, filed 9/10/20, effective 10/11/20; WSR 20-01-032, § 172-121-200, filed 12/6/19, effective 1/6/20. Statutory Authority: RCW 28B.35.120(12) and 42.56.070. WSR 19-01-047, § 172-121-200, filed 12/13/18, effective 1/13/19. Statutory Authority: RCW 28B.35.120(12). WSR 17-17-031, § 172-121-200, filed 8/9/17, effective 9/9/17; WSR 15-24-050, § 172-121-200, filed 11/23/15, effective 12/24/15; WSR 15-14-078, § 172-121-200, filed 6/29/15, effective 7/30/15; WSR 14-24-039, § 172-121-200, filed 11/24/14, effective 12/25/14; WSR

13-24-123, § 172-121-200, filed 12/4/13, effective 1/4/14; WSR
09-12-001, § 172-121-200, filed 5/20/09, effective 6/20/09.]

WSR 21-07-060
PROPOSED RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES

[Filed March 15, 2021, 1:37 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 110-03-0530
Requesting review of the initial order, and 110-03-0590 Judicial re-
view.

Hearing Location(s): On April 27, 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 department of children, youth, and families (DCYF) will send its response. Comments received through and including April 6, 2021, will be considered.

Date of Intended Adoption: April 28, 2021.

Submit Written Comments to: DCYF rules coordinator, P.O. Box 40975, Olympia, WA 98504-0975, email dcyf.rulescoordinator@dcyf.wa.gov, submit comments online at <https://dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/online>, by April 27, 2021.

Assistance for Persons with Disabilities: Contact DCYF rules coordinator, phone 360-902-7956, email dcyf.rulescoordinator@dcyf.wa.gov, by April 23, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: 1. Remove the requirement that petitions for administrative review of initial hearing orders specify disputed issues. The anticipated effect is that petitions made defective by the current rule for failing to identify specific issues will be cured under the proposed rule, and department's review judges will be authorized to review entire hearing records when petitions do not identify specific disputed issues.

2. Emphasize secure email as a method for filing petitions for administrative review. The anticipated effect is petitioners have an additional, convenient method for filing petitions with the department's board of appeals.

3. Allow service of a petition for review on the department by secure email. The anticipated effect is petitioners will have a third method for service in addition to personal service and mailing.

Reasons Supporting Proposal: The proposed rule promotes access to justice by removing a procedural barrier to filing complete petitions for administrative review, offering an additional convenient method for filing petitions for administrative review, and offering an additional convenient service method for petitions for judicial review.

Statutory Authority for Adoption: RCW 34.05.220, 43.216.020, and 43.216.065.

Statute Being Implemented: RCW 34.05.464.

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

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Laura Farris, Chief Review Judge, Olympia, Washington, 360-485-7621; 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 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.

March 15, 2021
Brenda Villarreal
Rules Coordinator

OTS-2772.6

AMENDATORY SECTION (Amending WSR 20-02-031, filed 12/19/19, effective 1/19/20)

WAC 110-03-0530 Requesting review of the initial order. (1) A party must file the review request (petition for review) in writing and it (~~must~~) should:

(a) Clearly identify the parts of the initial order with which the party disagrees; and

(b) Clearly present arguments and refer to evidence in the record supporting the party's position.

(2) The petition for review must be filed with the BOA and the party requesting review must serve copies on the other parties and their representatives and OAH at the same time the petition is filed.

(3) (~~The petition for review must be filed with the BOA at the address stated in the~~) Instructions for obtaining a review will be sent with the initial order (~~or using~~). Depending on how the petition is filed, use the following contact information (~~appropriate to the method of filing used~~):

(a) Mailing address:

DCYF Board of Appeals
P.O. Box 40982
Olympia, WA 98504-0982;

(b) Fax: 360-586-5934;

(c) Email: Call the BOA at 360-902-0278 and request access to the secure email portal; or

(d) Physical address:

DCYF Board of Appeals
1115 Washington Street Southeast
Olympia, WA 98501
(~~Fax: 360-586-5934~~

~~This~~) (4) The contact information in this subsection is current as of the effective date of these rules; however, parties should file documents using the address or fax information received with the initial order if it is different from the information provided here.

((4)) (5) The DCYF board of appeals can be contacted by phone at: 360-902-0278.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0530, filed 12/19/19, effective 1/19/20.]

AMENDATORY SECTION (Amending WSR 20-02-031, filed 12/19/19, effective 1/19/20)

WAC 110-03-0590 Judicial review. (1) Judicial review is the process of appealing a final agency order to a superior court.

(2) Any party, except DCYF, may appeal a final order by filing a written petition for judicial review in superior court pursuant to RCW 34.05.514 that meets the requirements of RCW 34.05.546. The petition must be properly filed and served, as required by RCW 34.05.542, within thirty calendar days of the date the review judge serves the final order in the case. However, as provided by RCW 34.05.470, if a petition for reconsideration has been properly filed, the thirty day period does not commence until the agency disposes of the petition for reconsideration. Copies of the petition must be served on DCYF, the office of the attorney general, and all other parties at the same time the petition is filed.

(3) To serve DCYF, a copy of the petition must be delivered to the secretary of DCYF or to the DCYF BOA. The petition must be hand delivered (~~or~~), mailed with proof of receipt, or sent by secure email.

(a) The physical location of the secretary is:

DCYF Office of the Secretary
1500 Jefferson Street Southeast
Olympia, WA 98501

The mailing address of the secretary is:

DCYF Office of the Secretary
P.O. Box 40975
Olympia, WA 98504-0975

(b) The physical location and mailing address for the DCYF BOA are as stated in WAC 110-03-0530.

(c) To serve by email, call the BOA at 360-902-0278 and request access to the secure email portal.

(4) Service on the office of the attorney general and other parties of a copy of the petition for judicial review may be made at the following locations:

(a) The office of the attorney general may be served personally or by delivery at:

Office of the Attorney General
7141 Cleanwater Drive S.W.
Tumwater, WA 98501

The mailing address of the office of the attorney general is:

Office of the Attorney General
P.O. Box 40124
Olympia, WA 98504-0124

(b) Each party must be served at each party's address of record.

(5) A party may file a petition for judicial review only after it has exhausted administrative remedies, as provided under RCW 34.05.534.

(6) Filing a petition for judicial review of a final order does not stay the effectiveness of the final order.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0590, filed 12/19/19, effective 1/19/20.]

WSR 21-07-061

PROPOSED RULES

DEPARTMENT OF ECOLOGY

[Order 19-10—Filed March 15, 2021, 1:50 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-23-022.

Title of Rule and Other Identifying Information: Chapter 173-224 WAC, Water quality permit fees, the purpose of this chapter is to establish a fee system for state waste discharge and National Pollutant Discharge Elimination System (NPDES) permits issued by ecology pursuant to RCW 90.48.160, 90.48.162, or 90.48.260.

For more information on this rule making visit <https://ecology.wa.gov/WQFeeRule>.

Hearing Location(s): On April 27, 2021, at 10 a.m., webinar at <https://watech.webex.com/watech/onstage/g.php?MTID=ec3beb4fbfef353f3322cf683a624f606>, event number 133 070 2140, event password Ecology1. Presentation, question and answer session followed by the hearing. We are holding this hearing via webinar. This is an online meeting that you can attend from any computer using internet access. Join online and see instructions <https://watech.webex.com/watech/onstage/g.php?MTID=ec3beb4fbfef353f3322cf683a624f606>.

For audio call US Toll number 1-415-655-0001 and enter access code 133 070 2140. Or to receive a free call back, provide your phone number when you join the event.

Date of Intended Adoption: June 1, 2021.

Submit Written Comments to: Ligeia Heagy, send US mail at Department of Ecology, Water Quality Permit Fee Unit, P.O. Box 47600, Olympia, WA 98504-7600; or send parcel delivery services to Department of Ecology, Water Quality Permit Fee Unit, 300 Desmond Drive S.E., Lacey, WA 98503, submit comments by mail, online, or at the hearing, online <http://wq.ecology.commentinput.com/?id=QaPSW>, by May 4, 2021.

Assistance for Persons with Disabilities: Contact ecology ADA coordinator, phone 360-407-6831, people with speech disability may call TTY at 877-833-6341. People with impaired hearing may call Washington relay service at 711, email ecyADACoordinator@ecy.wa.gov, by April 22, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 173-224 WAC implements RCW 90.48.465 that requires ecology to establish, by rule, annual fees to recover the cost of administering the wastewater and stormwater permit programs. The rule amendment considers the economic impact on small discharges and public entities, and provide[s] appropriate adjustments where applicable.

Following is a brief explanation of the specific sections in chapter 173-224 WAC that will be updated for this rule making:

WAC 173-224-030 Definitions, update "RCRA" definition to reflect recodified RCW chapter numbers.

WAC 173-224-040 Permit fee schedule, adjusts fees to reflect rollover of most fiscal year (FY) 2021 fees to FY 2022 and 2023, addition of a new permit fee category for the Puget Sound Nutrient General Permit, additional permit fee subcategories for vessel deconstruction, and several technical corrections.

WAC 173-224-050 Permit fee computation and payments, aligning language with RCW 19.16.500.

WAC 173-224-080 Transfer of permit coverage, clarification of responsibilities and liabilities language.

WAC 173-224-090 Permit fee reductions, technical corrections.

Reasons Supporting Proposal: RCW 90.48.465 requires ecology to establish, by rule, annual permit fees to recover the cost of administering the wastewater and stormwater permit programs. Ecology adopted chapter 173-224 WAC, Water quality permit fees, in response to this law in 1999.

This proposed rule amendment allows ecology to continue recovering expenses in operating and managing the permit programs. Given the unprecedented changes to our state and the economy during the pandemic, ecology is proposing to maintain permit fees at their current rate for the next two years. Ecology is also proposing a new permit fee category for the Puget Sound Nutrient General Permit, changes to the structure of the vessel deconstruction permit fee category, and technical changes.

Statutory Authority for Adoption: Chapter 90.48 RCW, Water pollution control; RCW 90.48.465 Water discharge fees—Report to the legislature.

Statute Being Implemented: RCW 90.48.465 Water discharge fees—Report to the legislature.

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: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Ligeia Heagy, 300 Desmond Drive S.E., Lacey, WA 98503, 360-280-3697.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Ligeia Heagy, Department of Ecology, Water Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-280-3697, people with speech disability may call TTY at 877-833-6341. People with impaired hearing may call Washington relay service at 711, email wqfee_unit@ecy.wa.gov.

Is exempt under RCW 19.85.030 (1)(a)(i) and 19.85.025(4).

Explanation of exemptions: RCW 19.85.030 (1)(a)(i) states "an agency shall prepare a small business economic impact statement if the proposed rule will impose **more-than-minor costs** on businesses in an industry." The preliminary regulatory analysis developed for this rule proposal determined that it would result in a reduction in compliance costs, and inherently imposes **less-than-minor costs** to small businesses.

As the proposed rule does not impose compliance costs on any small businesses, this rule making is exempt from the requirements of the Regulatory Fairness Act according to RCW 19.85.025(4), which states, "This chapter does not apply to the adoption of a rule if an agency is able to demonstrate that the proposed rule does not affect small businesses."

A copy of the statement may be obtained by contacting Ligeia Heagy, Department of Ecology, Water Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-280-3697, people with speech disability may call TTY at 877-833-6341. People with impaired hearing may call Washington relay service at 711. To request ADA accommodation for disabilities, or printed materials in a format for the visually im-

paired, call ecology at 360-407-7668 or visit <https://ecology.wa.gov/accessibility>, email wqfee_unit@ecy.wa.gov.

March 15, 2021
Heather Bartlett
Deputy Director

OTS-2935.1

AMENDATORY SECTION (Amending WSR 19-14-040, filed 6/26/19, effective 7/27/19)

WAC 173-224-030 Definitions. "Administrative expenses" means those costs associated with issuing and administering permits under RCW 90.48.160, 90.48.162, and 90.48.260.

"Aluminum and magnesium reduction mills" means the electrolytic reduction of alumina or magnesium salts to produce aluminum or magnesium metal.

"Animal unit" means the following:

Animal Type	Number of Animals per Animal Unit
Dairy Cows	
Jersey Breed	
Milking Cow	0.900
Dry Cow	0.900
Heifer	0.220
Calf	0.220
Other Breeds	
Milking Cow	1.400
Dry Cow	1.000
Heifer	0.800
Calf	0.500
Feedlot Beef	0.877
Horses	0.500
Sheep	0.100
Swine for breeding	0.375
Swine for slaughter	0.110
Laying hens & pullets > 3 months	0.004
Broilers & pullets < 3 months	0.002

For those concentrated animal feeding operations not listed on the above table, the department will use 1,000 pounds of live animal weight and the weight of the type of animal in determining the number of animal units.

"Annual permit fee" means the fee charged by the department for annual expenses associated with activities specified in RCW 90.48.465. This annual fee is based on the state's fiscal year (July 1 - June 30).

"bbls/d" means barrels per day of feedstock for petroleum refineries.

"bins/yr" means total standard bins used during the last complete calendar year by a facility in the fruit packing industry. The bins measure approximately 47.5 inches x 47.4 inches x 29.5 inches and hold approximately 870 pounds of fruit.

"Chemical pulp mill w/chlorine bleaching" means any pulp mill that uses chlorine or chlorine compounds in their bleaching process.

"Combined food processing waste treatment facility" means a facility that treats wastewater from more than one separately permitted food processor and receives no domestic wastewater or waste from industrial sources other than food processing.

"Combined industrial waste treatment" means a facility which treats wastewater from more than one industry in any of the following categories: Inorganic chemicals, metal finishing, ore concentration, organic chemicals, or photofinishers.

"Combined sewer overflow (CSO)" means the event during which excess combined sewage flow caused by inflow is discharged from a combined sewer, rather than conveyed to the sewage treatment plant because either the capacity of the treatment plant or the combined sewer is exceeded.

"Concentrated animal feeding operation" means an "animal feeding operation" that meets the criteria in Appendix B of 40 C.F.R. 122 as presently enacted and any subsequent modifications thereto.

"Contaminants of concern" means a chemical for which an effluent limit is established (this does not include pH, flow, temperature, or other "nonchemical parameters"). Petroleum constituents are considered as one contaminant of concern even if more than one effluent limit is established (e.g., Total Petroleum Hydrocarbons and BTEX).

"Crane" means a machine used for hoisting and lifting ship hulls.

"cu. yds/yr" means the cubic yards per year for total production from a sand and gravel facility during the most recent completed calendar year.

"Department" means the department of ecology.

"Director" means the director of the department of ecology.

"Disturbed acres" means the total area which will be disturbed during all phases of the construction project or common plan of development or sale. This includes all clearing, grading, and excavating, and any other activity which disturbs the surface of the land.

"Domestic wastewater" means water carrying human wastes, including kitchen, bath, and laundry wastes from residences, buildings, industrial establishments or other places, together with any groundwater infiltration or surface waters that may be present.

"Domestic wastewater facility" means all structures, equipment, or processes required to collect, carry away, treat, reclaim or dispose of domestic wastewater together with such industrial waste as may be present.

"EPA" means the United States Environmental Protection Agency.

"Fin fish rearing and hatching" means the raising of fin fish for fisheries enhancement or sale, by means of hatcheries, net pens, or other confined fish facilities.

"Flavor extraction" means the recovery of flavors or essential oils from organic products by steam distillation.

"Food processing" means the preparation of food for human or animal consumption or the preparation of animal by-products, excluding fruit packing. This category includes, but is not limited to, fruit and vegetable processing, meat and poultry products processing, dairy products processing, beer production, rendering and animal feed production. Food processing wastewater treatment plants that treat wastes

from only one separately permitted food processor must be treated as one facility for billing purposes.

"Fruit packing" means preparing fruit for wholesale or retail sale by washing and/or other processes in which the skin of the fruit is not broken and in which the interior part of the fruit does not come in direct contact with the wastewater.

"gpy" means gallons per year and is used to calculate winery production levels for the most recent completed calendar year.

"Gross revenue for business" means the gross income from Washington business activities.

"Hazardous waste clean up sites" means any facility where there has been confirmation of a release or threatened release of a hazardous substance that requires remedial action other than RCRA corrective action sites.

"Industrial facility" means any facility not included in the definition of municipal/domestic facility.

"Industrial gross revenue" means the annual amount of the sales of goods and services produced using the processes regulated by the wastewater discharge permit.

"Industrial stormwater" means a stormwater discharge from an operation required to be covered under ecology's NPDES and state waste discharge general permit for stormwater discharges associated with industrial activities or modifications to that permit or having an individual wastewater permit for stormwater only.

"Manufacturing" means making goods and articles by hand or machine into a manufactured product.

"Median household income" means the most recent available census data, updated yearly based on inflation rates as measured by the Federal Bureau of Labor Statistics and published as the Consumer Price Index.

"Metal finishing" means preparing metal surfaces by means of electroplating, electroless plating, anodizing, coating (chromating, phosphating and coloring), chemical etching and milling, and printed circuit board manufacture.

"MGD" means million gallons per day.

"Municipal/domestic facility" means a publicly owned facility treating domestic wastewater together with any industrial wastes that may be present, or a privately owned facility treating solely domestic wastewater.

"Municipal gross revenue" means gross receipts from monthly, bi-monthly, and/or quarterly user charges for sewer services received from all classes of customers;

Included in these user charges are user charges and fees based on wastewater constituents' strengths and characteristics including high-strength surcharges and charges based on biochemical oxygen demand, suspended solids, oil and grease, toxicants, heavy metals, and flow, etc.

Municipal gross revenue includes charges for receipt and treatment of septic tank wastes, holding tank wastes, chemical toilet wastes, etc.

Municipal gross revenue includes all amounts received from other municipalities for sewage interception, treatment, collection, or disposal.

Gross revenue excludes:

Amounts derived by municipalities directly from taxes levied for the support or maintenance of sewer services.

Late charges, penalties for nontimely payment by customers, interest on late payments, and all other penalties and fines.

Permit fees and compliance monitoring fees for wastewater discharge permits issued by municipalities with local pretreatment programs. Permit fees which are charged to cover the cost of providing sewer service are not excluded from municipal gross revenue.

Receipts by a municipality of special assessments or installments thereof and interests and penalties thereon, and charges in lieu of assessments.

Connection charges.

Revenues from sales of by-products such as sludge, processed wastewater, etc.

"Municipality" means a city, town, county, district, association, or other public body created by or in accordance with state law and that has jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under 33 U.S.C. Sec. 1288. State government agencies are not included in this definition.

"Noncontact cooling water with additives" means water used for cooling that does not come into direct contact with any raw materials, intermediate product, waste product or finished product, but which may contain chemicals or additives added by the permittee to control corrosion or fouling of the cooling system.

"Noncontact cooling water without additives" means water used for cooling that does not come into direct contact with any raw material, intermediate product, waste product or finished product, and which does not contain chemicals added by the permittee. The noncontact cooling water fee without additives category applies to those facilities which discharge only noncontact cooling water and which have no other wastewater discharges required to be permitted under RCW 90.48.160, 90.48.162, and 90.48.260.

"Nonferrous metals forming" means manufacturing semifinished products from pure metal or metal alloys other than iron or steel or of metals not otherwise classified in WAC 173-224-040(2).

"Nonoperating sand and gravel site" means a location where previous mining or processing has occurred; that has not been fully reclaimed; that conducts mining or processing fewer than ninety days per year, and that may include stockpiles of raw materials or finished products. The permittee may add or withdraw raw materials or finished products from the stockpiles for transportation off-site for processing, use, or sale and still be considered a nonoperating site.

"NPDES permit" means a National Pollutant Discharge Elimination System permit issued by the department under Section 402 of the federal Clean Water Act and RCW 90.48.260.

"Person" means any political subdivision, government agency, municipality, industry, public or private corporation, partnership, association, firm, individual, or any other entity whatever.

"Portable facility" means a facility that is designed for mobility and is moved from site to site for short term operations. A portable facility applies only to an asphalt batch plant, portable concrete batch plant and portable rock crusher.

"RCRA" means Resource Conservation Recovery Act clean up sites required to have a wastewater discharge permit resulting from a corrective action under relevant federal authorities or under chapters (~~(70.105 and 70.105D)~~) 70A.300 and 70A.305 RCW including chapters 173-303 and 173-340 WAC, and are not subject to cost recovery.

"Residential equivalent" means a single-family residence or a unit of sewer service that yields an amount of gross revenue equal to the annual user charge for a single-family residence. In cases where the permit holder does not maintain data on gross revenue, user charges, and/or the number of single-family residences that it serves, "residential equivalent" means an influent flow of two hundred fifty gallons per day.

"Sand and gravel" means mining or quarrying sand, gravel, or rock, or producing concrete, asphalt, or a combination thereof.

"Seafood processing" means:

(a) Preparing fresh, cooked, canned, smoked, preserved, or frozen seafoods, including marine and freshwater animals (fish, shellfish, crustaceans, etc.) and plants, for human or animal consumption; or

(b) Washing, shucking, and/or packaging of mollusks or crustaceans.

"Sewer service" means receiving sewage deposited into and transported by a system of sewers, drains, and pipes to a common point, or points, for disposal or for transfer to treatment for disposal, and activities involving the interception, transfer, storage, treatment, and/or disposal of sewage, or any of these activities.

"State waste discharge permit" means a permit required under RCW 90.48.160 or 90.48.162.

"Stormwater" means precipitation that flows from an industrial operation or construction activity discharging stormwater runoff as defined in 40 C.F.R. 122.26 (b) (14) or facilities that are permitted as a significant contributor of pollutants as allowed in the federal Clean Water Act at Section 402 (p) (2) (E).

"Tons/yr." means the total production from an asphalt production facility in tons during the most recent completed calendar year.

"Vegetable/bulb washing" means washing, packing, and/or shipping fresh vegetables and bulbs when there is no cooking or cutting of the product before packing.

[Statutory Authority: RCW 90.48.465. WSR 19-14-040 (Order 18-01), § 173-224-030, filed 6/26/19, effective 7/27/19; WSR 17-16-005 (Order 16-11), § 173-224-030, filed 7/20/17, effective 8/20/17; WSR 13-22-051 (Order 13-02), § 173-224-030, filed 11/1/13, effective 12/2/13. Statutory Authority: Chapter 90.48 RCW. WSR 08-16-109 (Order 08-05), § 173-224-030, filed 8/5/08, effective 9/5/08. Statutory Authority: RCW 90.48.465. WSR 04-15-046, § 173-224-030, filed 7/13/04, effective 8/13/04. Statutory Authority: Chapter 90.48 RCW. WSR 02-12-059, § 173-224-030, filed 5/30/02, effective 6/30/02; WSR 00-02-031 (Order 99-03), § 173-224-030, filed 12/28/99, effective 1/28/00; WSR 98-03-046 (Order 97-27), § 173-224-030, filed 1/15/98, effective 2/15/98; WSR 94-10-027 (Order 93-08), § 173-224-030, filed 4/28/94, effective 5/29/94; WSR 92-03-131 (Order 91-45), § 173-224-030, filed 1/21/92, effective 2/21/92. Statutory Authority: Chapter 43.21A RCW. WSR 89-12-027 and 90-07-015 (Order 89-8 and 89-8A), § 173-224-030, filed 5/31/89 and 3/13/90, effective 4/13/90.]

AMENDATORY SECTION (Amending WSR 19-14-040, filed 6/26/19, effective 7/27/19)

WAC 173-224-040 Permit fee schedule. (1) Application fee. In addition to the annual fee, first time applicants (except those apply-

ing for coverage under a general permit) will pay a one time application fee of twenty-five percent of the annual permit fee, or \$250.00, whichever is greater. An application fee is assessed for RCRA sites regardless of whether a new permit is issued or an existing permit for other than the discharge resulting from the RCRA corrective action, is modified.

(2) (~~Industrial facility categories.~~) INDUSTRIAL FACILITY CATEGORIES.

<u>INDUSTRIAL FACILITY CATEGORIES</u>	<u>FY ((2020)) 2022 ANNUAL PERMIT FEE</u>	<u>FY ((2021)) 2023 ANNUAL PERMIT FEE & BEYOND</u>
Aluminum Alloys	((\$21,768.00)) <u>\$22,950.00</u>	\$22,950.00
Aluminum and Magnesium Reduction Mills		
a. NPDES Permit	115,785.00	115,785.00
b. State Permit	57,895.00	57,895.00
Aluminum Forming	((65,304.00)) <u>68,850.00</u>	68,850.00
Aquaculture		
a. Finfish hatching and rearing - Individual Permit	5,889.00	5,889.00
b. Finfish hatching and rearing - General Permit Coverage	4,125.00	4,125.00
c. Shellfish hatching	223.00	223.00
Aquatic Pest Control		
a. Irrigation Districts	((647.00)) <u>682.00</u>	682.00
b. Mosquito Control Districts	((647.00)) <u>682.00</u>	682.00
c. Invasive Moth Control	((647.00)) <u>682.00</u>	682.00
d. Aquatic Species Control & Eradication	((647.00)) <u>682.00</u>	682.00
e. Oyster Growers	((647.00)) <u>682.00</u>	682.00
f. Rotenone Control	((647.00)) <u>682.00</u>	682.00
Boat Yards - Individual Permit Coverage		
a. With stormwater only discharge	((558.00)) <u>588.00</u>	588.00
b. All others	((1,113.00)) <u>1,173.00</u>	1,173.00
Boat Yards - General Permit Coverage		
a. With stormwater only discharge	((509.00)) <u>537.00</u>	537.00
b. All others	((1,031.00)) <u>1,087.00</u>	1,087.00
Bridge Washing		
a. Single-site Permit	((3,839.00)) <u>4,047.00</u>	4,047.00
b. WSDOT Annual Fee	((12,757.00)) <u>13,450.00</u>	13,450.00
Coal Mining and Preparation		
a. < 200,000 tons per year	((8,702.00)) <u>9,175.00</u>	9,175.00

INDUSTRIAL FACILITY CATEGORIES	FY ((2020)) 2022 ANNUAL PERMIT FEE	FY ((2021)) 2023 ANNUAL PERMIT FEE & BEYOND
b. 200,000 - < 500,000 tons per year	((19,593.00)) 20,657.00	20,657.00
c. 500,000 - < 1,000,000 tons per year	((34,827.00)) 36,718.00	36,718.00
d. 1,000,000 tons per year and greater	((65,304.00)) 68,850.00	68,850.00
Combined Industrial Waste Treatment		
a. < 10,000 gpd	3,972.00	3,972.00
b. 10,000 - < 50,000 gpd	9,816.00	9,816.00
c. 50,000 - < 100,000 gpd	19,636.00	19,636.00
d. 100,000 - < 500,000 gpd	39,266.00	39,266.00
e. 500,000 gpd and greater	58,901.00	58,901.00
Combined Food Processing Waste Treatment Facilities	18,797.00	18,797.00
Combined Sewer Overflow System		
a. < 50 acres	3,927.00	3,927.00
b. 50 - < 100 acres	9,816.00	9,816.00
c. 100 - < 500 acres	11,783.00	11,783.00
d. 500 acres and greater	15,704.00	15,704.00
Commercial Laundry	((526.00)) 555.00	555.00
Concentrated Animal Feeding Operation		
a. <u>Nondairy CAFOs</u>		
<u>1.</u> < 200 Animal Units	((292.00)) 308.00	308.00
((b-)) <u>2.</u> 200 - < 400 Animal Units	((732.00)) 772.00	772.00
((e-)) <u>3.</u> 400 - < 600 Animal Units	((1,466.00)) 1,546.00	1,546.00
((d-)) <u>4.</u> 600 - < 800 Animal Units	((2,198.00)) 2,317.00	2,317.00
((e-)) <u>5.</u> 800 Animal Units and greater	((2,935.00)) 3,094.00	3,094.00
b. ((Dairies)) Dairy CAFOs \$.50 per Animal Unit for FY 2022, FY 2023 and beyond, not to exceed (((\$1,969.00 for FY 2020 and)) \$2,076.00 ((for FY 2021 & beyond))		
Facilities Not Otherwise Classified - Individual Permit Coverage		
a. < 1,000 gpd	1,963.00	1,963.00
b. 1,000 - < 10,000 gpd	3,927.00	3,927.00
c. 10,000 - < 50,000 gpd	9,817.00	9,817.00
d. 50,000 - < 100,000 gpd	15,704.00	15,704.00
e. 100,000 - < 500,000 gpd	31,258.00	31,258.00
f. 500,000 - < 1,000,000 gpd	39,266.00	39,266.00
g. 1,000,000 gpd and greater	58,900.00	58,900.00
((Facilities Not Otherwise Classified - General Permit Coverage		
a. < 1,000 gpd	1,377.00	1,377.00
b. 1,000 - < 10,000 gpd	2,849.00	2,849.00
e. 10,000 - < 50,000 gpd	6,874.00	6,874.00
d. 50,000 - < 100,000 gpd	10,997.00	10,997.00

INDUSTRIAL FACILITY CATEGORIES		FY ((2020)) 2022 ANNUAL PERMIT FEE	FY ((2021)) 2023 ANNUAL PERMIT FEE & BEYOND
e.	100,000 - < 500,000 gpd	21,987.00	21,987.00
f.	500,000 - < 1,000,000 gpd	27,484.00	27,484.00
g.	1,000,000 gpd and greater	41,232.00	41,232.00))
Flavor Extraction			
a.	Steam Distillation	202.00	202.00
Food Processing			
a.	< 1,000 gpd	1,961.00	1,961.00
b.	1,000 - < 10,000 gpd	5,003.00	5,003.00
c.	10,000 - < 50,000 gpd	8,934.00	8,934.00
d.	50,000 - < 100,000 gpd	14,036.00	14,036.00
e.	100,000 - < 250,000 gpd	19,633.00	19,633.00
f.	250,000 - < 500,000 gpd	25,819.00	25,819.00
g.	500,000 - < 750,000 gpd	32,393.00	32,393.00
h.	750,000 - < 1,000,000 gpd	39,266.00	39,266.00
i.	1,000,000 - < 2,500,000 gpd	48,374.00	48,374.00
j.	2,500,000 - < 5,000,000 gpd	53,993.00	53,993.00
k.	5,000,000 gpd and greater	58,901.00	58,901.00
Fruit Packing - Individual Permit Coverage			
a.	0 - < 1,000 bins/yr.	392.00	392.00
b.	1,000 - < 5,000 bins/yr.	786.00	786.00
c.	5,000 - < 10,000 bins/yr.	1,570.00	1,570.00
d.	10,000 - < 15,000 bins/yr.	3,144.00	3,144.00
e.	15,000 - < 20,000 bins/yr.	5,199.00	5,199.00
f.	20,000 - < 25,000 bins/yr.	7,264.00	7,264.00
g.	25,000 - < 50,000 bins/yr.	9,717.00	9,717.00
h.	50,000 - < 75,000 bins/yr.	10,800.00	10,800.00
i.	75,000 - < 100,000 bins/yr.	12,564.00	12,564.00
j.	100,000 - < 125,000 bins/yr.	15,704.00	15,704.00
k.	125,000 - < 150,000 bins/yr.	19,633.00	19,633.00
l.	150,000 bins/yr. and greater	23,524.00	23,524.00
Fruit Packing - General Permit Coverage			
a.	0 - < 1,000 bins/yr.	274.00	274.00
b.	1,000 - < 5,000 bins/yr.	550.00	550.00
c.	5,000 - < 10,000 bins/yr.	1,100.00	1,100.00
d.	10,000 - < 15,000 bins/yr.	2,201.00	2,201.00
e.	15,000 - < 20,000 bins/yr.	3,643.00	3,643.00
f.	20,000 - < 25,000 bins/yr.	5,085.00	5,085.00
g.	25,000 - < 50,000 bins/yr.	6,800.00	6,800.00
h.	50,000 - < 75,000 bins/yr.	7,557.00	7,557.00
i.	75,000 - < 100,000 bins/yr.	8,788.00	8,788.00
j.	100,000 - < 125,000 bins/yr.	10,997.00	10,997.00
k.	125,000 - < 150,000 bins/yr.	13,744.00	13,744.00
l.	150,000 bins/yr. and greater	16,491.00	16,491.00
Fuel and Chemical Storage			
a.	< 50,000 bbls	1,963.00	1,963.00

INDUSTRIAL FACILITY CATEGORIES	FY ((2020)) 2022 ANNUAL PERMIT FEE	FY ((2021)) 2023 ANNUAL PERMIT FEE & BEYOND
b. 50,000 - < 100,000 bbls	3,927.00	3,927.00
c. 100,000 - < 500,000 bbls	9,816.00	9,816.00
d. 500,000 bbls and greater	19,636.00	19,636.00
Hazardous Waste Clean Up Sites		
a. Leaking Underground Storage Tanks (LUST)		
1. State Permit	5,149.00	5,149.00
2. NPDES Permit Issued pre 7/1/94	5,148.00	5,148.00
3. NPDES Permit Issued post 7/1/94	10,298.00	10,298.00
b. Non-LUST Sites		
1. 1 or 2 Contaminants of concern	10,069.00	10,069.00
2. > 2 Contaminants of concern	20,137.00	20,137.00
Ink Formulation and Printing		
a. Commercial Print Shops	3,021.00	3,021.00
b. Newspapers	5,035.00	5,035.00
c. Box Plants	8,055.00	8,055.00
d. Ink Formulation	10,070.00	10,070.00
Inorganic Chemicals Manufacturing		
a. Lime Products	9,816.00	9,816.00
b. Fertilizer	11,816.00	11,816.00
c. Peroxide	15,704.00	15,704.00
d. Alkaline Earth Salts	19,636.00	19,636.00
e. Metal Salts	27,482.00	27,482.00
f. Acid Manufacturing	38,942.00	38,942.00
g. Chlor-alkali	78,533.00	78,533.00
Iron and Steel		
a. Foundries	((21,768.00)) <u>22,950.00</u>	22,950.00
b. Mills	((43,573.00)) <u>45,939.00</u>	45,939.00
Metal Finishing		
a. < 1,000 gpd	((2,609.00)) <u>2,751.00</u>	2,751.00
b. 1,000 - < 10,000 gpd	((4,351.00)) <u>4,587.00</u>	4,587.00
c. 10,000 - < 50,000 gpd	((10,879.00)) <u>11,470.00</u>	11,470.00
d. 50,000 - < 100,000 gpd	((21,767.00)) <u>22,949.00</u>	22,949.00
e. 100,000 - < 500,000 gpd	((43,530.00)) <u>45,894.00</u>	45,894.00
f. 500,000 gpd and greater	((65,299.00)) <u>68,845.00</u>	68,845.00
Noncontact Cooling Water With Additives - Individual Permit Coverage		
a. < 1,000 gpd	1,229.00	1,229.00
b. 1,000 - < 10,000 gpd	((1,713.00)) <u>1,716.00</u>	((1,713.00)) <u>1,716.00</u>
c. 10,000 - < 50,000 gpd	3,685.00	3,685.00
d. 50,000 - < 100,000 gpd	8,593.00	8,593.00

INDUSTRIAL FACILITY CATEGORIES		FY ((2020)) 2022 ANNUAL PERMIT FEE	FY ((2021)) 2023 ANNUAL PERMIT FEE & BEYOND
e.	100,000 - < 500,000 gpd	14,721.00	14,721.00
f.	500,000 - < 1,000,000 gpd	20,863.00	20,863.00
g.	1,000,000 - < 2,500,000 gpd	27,001.00	27,001.00
h.	2,500,000 - < 5,000,000 gpd	32,993.00	32,993.00
i.	5,000,000 gpd and greater	39,266.00	39,266.00
Noncontact Cooling Water With Additives - General Permit Coverage			
a.	< 1,000 gpd	861.00	861.00
b.	1,000 - < 10,000 gpd	1,716.00	1,716.00
c.	10,000 - < 50,000 gpd	2,579.00	2,579.00
d.	50,000 - < 100,000 gpd	6,015.00	6,015.00
e.	100,000 - < 500,000 gpd	10,307.00	10,307.00
f.	500,000 - < 1,000,000 gpd	14,606.00	14,606.00
g.	1,000,000 - < 2,500,000 gpd	18,899.00	18,899.00
h.	2,500,000 - < 5,000,000 gpd	23,191.00	23,191.00
i.	5,000,000 gpd and greater	27,484.00	27,484.00
Noncontact Cooling Water Without Additives - Individual Permit Coverage			
a.	< 1,000 gpd	984.00	984.00
b.	1,000 - < 10,000 gpd	1,963.00	1,963.00
c.	10,000 - < 50,000 gpd	2,948.00	2,948.00
d.	50,000 - < 100,000 gpd	6,874.00	6,874.00
e.	100,000 - < 500,000 gpd	11,783.00	11,783.00
f.	500,000 - < 1,000,000 gpd	16,687.00	16,687.00
g.	1,000,000 - < 2,500,000 gpd	21,511.00	21,511.00
h.	2,500,000 - < 5,000,000 gpd	26,503.00	26,503.00
i.	5,000,000 gpd and greater	31,414.00	31,414.00
Noncontact Cooling Water Without Additives - General Permit Coverage			
a.	< 1,000 gpd	688.00	688.00
b.	1,000 - < 10,000 gpd	1,377.00	1,377.00
c.	10,000 - < 50,000 gpd	2,064.00	2,064.00
d.	50,000 - < 100,000 gpd	4,811.00	4,811.00
e.	100,000 - < 500,000 gpd	8,246.00	8,246.00
f.	500,000 - < 1,000,000 gpd	11,683.00	11,683.00
g.	1,000,000 - < 2,500,000 gpd	15,117.00	15,117.00
h.	2,500,000 - < 5,000,000 gpd	18,554.00	18,554.00
i.	5,000,000 gpd and greater	21,987.00	21,987.00
Nonferrous Metals Forming		((21,768.00)) <u>22,950.00</u>	22,950.00
Ore Mining			
a.	Ore Mining	((4,352.00)) <u>4,588.00</u>	4,588.00
b.	Ore mining with physical concentration processes	((8,704.00)) <u>9,177.00</u>	9,177.00
c.	Ore mining with physical and chemical concentration processes	((34,827.00)) <u>36,718.00</u>	36,718.00
Organic Chemicals Manufacturing			
a.	Fertilizer	19,636.00	19,636.00

INDUSTRIAL FACILITY CATEGORIES	FY ((2020)) 2022 ANNUAL PERMIT FEE	FY ((2021)) 2023 ANNUAL PERMIT FEE & BEYOND
b. Aliphatic	39,266.00	39,266.00
c. Aromatic	58,901.00	58,901.00
Petroleum Refining		
a. < 10,000 bbls/d	39,266.00	39,266.00
b. 10,000 - < 50,000 bbls/d	77,853.00	77,853.00
c. 50,000 bbls/d and greater	157,075.00	157,075.00
Photofinishers		
a. < 1,000 gpd	1,570.00	1,570.00
b. 1,000 gpd and greater	3,927.00	3,927.00
Power and/or Steam Plants		
a. Steam Generation - Nonelectric	7,924.00	7,924.00
b. Hydroelectric	7,924.00	7,924.00
c. Nonfossil Fuel	11,781.00	11,781.00
d. Fossil Fuel	31,414.00	31,414.00
Pulp, Paper and Paper Board		
a. Fiber Recyclers/Nonwood Pulp Mills	19,632.00	19,632.00
b. Paper Mills	39,266.00	39,266.00
c. Groundwood Pulp Mills		
1. < 300 tons per day	58,901.00	58,901.00
2. > 300 tons per day	117,813.00	117,813.00
d. Chemical Pulp Mills w/o Chlorine Bleaching	157,068.00	157,068.00
e. Chemical Pulp Mills w/Chlorine Bleaching	176,697.00	176,697.00
Radioactive Effluents and Discharges (RED)		
a. < 3 waste streams	37,986.00	37,986.00
b. 3 - < 8 waste streams	65,965.00	65,965.00
c. 8 waste streams and greater	108,648.00	108,648.00
RCRA Corrective Action Sites		
	27,597.00	27,597.00
Sand and Gravel - Individual Permit Coverage		
a. Mining Activities		
1. Mining, screening, washing and/or crushing	3,581.00	3,581.00
2. Nonoperating site (fee per site)	147.00	147.00
b. Asphalt Production		
1. 1 - < 50,000 tons/yr.	1,492.00	1,492.00
2. 50,000 - < 300,000 tons/yr.	3,582.00	3,582.00
3. 300,000 tons/yr. and greater	4,480.00	4,480.00
4. Nonoperating Asphalt	147.00	147.00
c. Concrete Production		
1. 1 - < 25,000 cu. yds/yr.	1,492.00	1,492.00
2. 25,000 - < 200,000 cu. yds/yr.	3,582.00	3,582.00
3. 200,000 cu. yds/yr. and greater	4,480.00	4,480.00
4. Nonoperating Concrete	147.00	147.00
The fee for a facility in the sand and gravel production category is the sum of the applicable fees in the mining activities and concrete and asphalt production categories.		

INDUSTRIAL FACILITY CATEGORIES	FY ((2020)) 2022 ANNUAL PERMIT FEE	FY ((2021)) 2023 ANNUAL PERMIT FEE & BEYOND
d. Portable Operations		
1. Rock Crushing	3,581.00	3,581.00
2. Asphalt	3,581.00	3,581.00
3. Concrete	3,581.00	3,581.00
4. Nonoperating Site	147.00	147.00
Sand and Gravel - General Permit Coverage		
a. Mining Activities		
1. Mining, screening, washing and/or crushing	2,505.00	2,505.00
2. Nonoperating site (fee per site)	103.00	103.00
b. Asphalt Production		
1. 0 - < 50,000 tons/yr.	1,046.00	1,046.00
2. 50,000 - < 300,000 tons/yr.	2,507.00	2,507.00
3. 300,000 tons/yr. and greater	3,135.00	3,135.00
4. Nonoperating Asphalt	103.00	103.00
c. Concrete Production		
1. 0 - < 25,000 cu. yds/yr.	1,046.00	1,046.00
2. 25,000 - < 200,000 cu. yds/yr.	2,507.00	2,507.00
3. 200,000 cu. yds/yr. and greater	3,135.00	3,135.00
4. Nonoperating Concrete	103.00	103.00
<p>The fee for a facility in the sand and gravel production category is the sum of the applicable fees in the mining activities and concrete and asphalt production categories.</p>		
d. Portable Operations		
1. Rock Crushing	2,507.00	2,507.00
2. Asphalt	2,507.00	2,507.00
3. Concrete	2,507.00	2,507.00
4. Nonoperating	103.00	103.00
Seafood Processing		
a. < 1,000 gpd	1,963.00	1,963.00
b. 1,000 - < 10,000 gpd	5,003.00	5,003.00
c. 10,000 - < 50,000 gpd	8,934.00	8,934.00
d. 50,000 - < 100,000 gpd	14,036.00	14,036.00
e. 100,000 gpd and greater	19,636.00	19,636.00
Shipyards		
a. Per crane, travel lift, small boat lift	((4,352.00)) <u>4,588.00</u>	4,588.00
b. Per drydock under 250 ft in length	((4,352.00)) <u>4,588.00</u>	4,588.00
c. Per graving dock	((4,352.00)) <u>4,588.00</u>	4,588.00
d. Per marine way/ramp	((6,528.00)) <u>6,882.00</u>	6,882.00
e. Per syncrolift	((6,528.00)) <u>6,882.00</u>	6,882.00
f. Per drydock 250 ft and over in length	((8,704.00)) <u>9,177.00</u>	9,177.00
g. In-water vessel maintenance	((8,704.00)) <u>9,177.00</u>	9,177.00

INDUSTRIAL FACILITY CATEGORIES	FY ((2020)) 2022 ANNUAL PERMIT FEE	FY ((2021)) 2023 ANNUAL PERMIT FEE & BEYOND
The fee for a facility in the shipyard category is the sum of the fees for the applicable units in the facility.		
Solid Waste Sites (nonstormwater)		
a. Nonputrescible	7,850.00	7,850.00
b. < 50 acres	15,703.00	15,703.00
c. 50 - < 100 acres	31,414.00	31,414.00
d. 100 - < 250 acres	39,266.00	39,266.00
e. 250 acres and greater	58,901.00	58,901.00
Textile Mills	78,533.00	78,533.00
Timber Products		
a. Log Storage	3,927.00	3,927.00
b. Veneer	7,850.00	7,850.00
c. Sawmills	15,704.00	15,704.00
d. Hardwood, Plywood	27,482.00	27,482.00
e. Wood Preserving	37,706.00	37,706.00
Vegetable/Bulb Washing Facilities		
a. < 1,000 gpd	130.00	130.00
b. 1,000 - < 5,000 gpd	262.00	262.00
c. 5,000 - < 10,000 gpd	517.00	517.00
d. 10,000 - < 20,000 gpd	1,042.00	1,042.00
e. 20,000 and greater	1,721.00	1,721.00
Vehicle Maintenance and Freight Transfer		
a. < 0.5 acre	3,927.00	3,927.00
b. 0.5 - < 1.0 acre	7,850.00	7,850.00
c. 1.0 acre and greater	11,781.00	11,781.00
Vessel Deconstruction	((19,157.00	20,197.00))
a. <u>Base fee</u>	<u>3,100.00</u>	<u>3,100.00</u>
b. <u>On land (per project)</u>	<u>3,500.00</u>	<u>3,500.00</u>
c. <u>On barge or drydock (per project)</u>	<u>4,800.00</u>	<u>4,800.00</u>
d. <u>In-water (per project)</u>	<u>18,700.00</u>	<u>18,700.00</u>
<u>The fee for a facility in the vessel deconstruction category is the sum of the base fee and number and type of projects completed in the previous calendar year.</u>		
Water Plants - Individual Permit Coverage	5,359.00	5,359.00
Water Plants - General Permit Coverage	3,752.00	3,752.00
Wineries - Individual Permit Coverage		
a. < 24,999 gallons per year (gpy)	423.00	423.00
b. 25,000 - < 39,999 gpy	621.00	621.00
c. 40,000 - < 54,999 gpy	960.00	960.00
d. 55,000 - < 69,999 gpy	1,297.00	1,297.00
e. 70,000 - < 99,999 gpy	1,636.00	1,636.00
f. 100,000 - < 299,999 gpy	2,370.00	2,370.00
g. 300,000 - < 699,999 gpy	7,111.00	7,111.00
h. 700,000 - < 999,999 gpy	16,594.00	16,594.00
i. 1,000,000 - < 1,999,999 gpy	23,762.00	23,762.00
j. 2,000,000 gpy and greater	47,470.00	47,470.00

INDUSTRIAL FACILITY CATEGORIES	FY ((2020)) 2022 ANNUAL PERMIT FEE	FY ((2021)) 2023 ANNUAL PERMIT FEE & BEYOND
Wineries - General Permit Coverage		
a. < 24,999 gpy	296.00	296.00
b. 25,000 - < 39,999 gpy	434.00	434.00
c. 40,000 - < 54,999 gpy	671.00	671.00
d. 55,000 - < 69,999 gpy	907.00	907.00
e. 70,000 - < 99,999 gpy	1,144.00	1,144.00
f. 100,000 - < 299,999 gpy	1,657.00	1,657.00
g. 300,000 - < 699,999 gpy	4,973.00	4,973.00
h. 700,000 - < 999,999 gpy	11,604.00	11,604.00
i. 1,000,000 - < 1,999,999 gpy	16,617.00	16,617.00
j. 2,000,000 gpy and greater	33,196.00	33,196.00

(a) Facilities other than those in the sand and gravel, shipyard, or RCRA categories that operate within several fee categories or sub-categories, shall be charged from that category or subcategory with the highest fee.

(b) The total annual permit fee for a water treatment plant that primarily serves residential customers may not exceed three dollars per residential equivalent. The number of residential equivalents is determined by dividing the facility's annual gross revenue in the previous calendar year by the annual user charge for a single family residence that uses nine hundred cubic feet of water per month.

(c) Fruit packer, sand and gravel, and winery permit holders are required to submit information to the department certifying annual production (calendar year) or unit processes. The permit holder shall submit the information to the department by the required due date. Failure to provide this information results in a fee determination based on the highest subcategory the facility has received permit coverage in.

(i) Information submitted shall bear a certification of correctness and be signed:

(A) In the case of a corporation, by an authorized corporate officer;

(B) In the case of a limited partnership, by an authorized partner;

(C) In the case of a general partnership, by an authorized general partner; or

(D) In the case of a sole proprietorship, by the proprietor.

(ii) The department may verify information submitted and, if it determines that false or inaccurate statements have been made, it may, in addition to taking other actions provided by law, revise both current and previously granted fee determinations.

(d) Fees for fruit packers discharging only noncontact cooling water without additives shall pay the lesser of the applicable fee in the fruit packing or noncontact cooling water without additives categories.

(e) Where no clear industrial facility category exists for placement of a permit holder, the department may elect to place the permit holder in a category with dischargers or permit holders that contain or use similar properties or processes and/or a category which contains similar permitting complexities to the department.

(f) Hazardous waste cleanup sites and EPA authorized RCRA corrective action sites with whom the department has begun cost recovery through chapter ((70.105D)) 70A.305 RCW shall not pay a permit fee under chapter 173-224 WAC until such time as the cost recovery under chapter ((70.105D)) 70A.305 RCW ceases.

(g) Any permit holder, with the exception of nonoperating sand and gravel operations or a permitted portable facility, who has not been in continuous operation within a consecutive eighteen-month period or who commits to not being in operation for a consecutive eighteen-month period or longer can have their permit fee reduced to twenty-five percent of the fee that they would be otherwise assessed. This nonoperating mode may be verified by the appropriate ecology staff. Once operations resume, the permit fee returns to the full amount.

Facilities who commit to the minimum eighteen-month nonoperating mode but go back into operation during the same eighteen-month period are assessed permit fees as if they were active during the entire period.

(h) Facilities with subcategories based on gallons per day (gpd) shall have their annual permit fee determined by using the maximum daily flow or maximum monthly average permitted flow in gallons per day as specified in the waste discharge permit, whichever is greater.

(i) RCRA corrective action sites requiring a waste discharge permit are assessed a separate permit fee regardless of whether the discharge is authorized by a separate permit or by a modification to an existing permit for a discharge other than that resulting from the corrective action.

(3) MUNICIPAL/DOMESTIC FACILITIES

(a) The annual permit fee for a permit held by a municipality for a domestic wastewater facility issued under RCW 90.48.162 or 90.48.260 is determined as follows:

Residential Equivalents (RE)	FY ((2020)) 2022 Annual Permit Fee	FY ((2021)) 2023 Annual Permit Fee & Beyond
< 250,000	\$2.16	\$2.16
> 250,000	((2.07)) <u>2.16</u>	2.16

(b) The annual permit fee under RCW 90.48.162 or 90.48.260 that is held by a municipality which:

(i) Holds more than one permit for domestic wastewater facilities; and

(ii) Treats each domestic wastewater facility as a separate accounting entity, is determined as in (a) of this subsection.

A separate accounting entity is one that maintains separate funds or accounts for each domestic wastewater facility. Revenues are received from the users to pay for the costs of operating that facility.

(c) The sum of the annual permit fees for permits held by a municipality that:

(i) Holds more than one permit for domestic wastewater facilities issued under RCW 90.48.162 or 90.48.260; and

(ii) Does not treat each domestic wastewater facility as a separate accounting entity, as described in (b) of this subsection, is determined as in (a) of this subsection.

(d) The permit fee for a privately owned and public-owned domestic wastewater facility that primarily serves residential customers is

determined as in (a) of this subsection. Residential customers are those whose lot, parcel or real estate, or building is primarily used for domestic dwelling purposes.

(e) The annual permit fee for privately owned or public-owned domestic wastewater facilities must be determined by using the maximum daily flow or maximum monthly average permitted flow in million gallons per day, whichever is greater, as specified in the waste discharge permit. Permit fees for privately owned or public-owned domestic wastewater facilities that do not serve primarily residential customers and for state-owned domestic wastewater facilities are the following:

Permitted Flows	FY ((2020)) 2022 Annual Permit Fee	FY ((2021)) 2023 Annual Permit Fee & Beyond
.1 MGD and Greater	(((\$14,299.00)) <u>15,075.00</u>	\$15,075.00
.05 MGD to < .1 MGD	(((\$5,721.00)) <u>6,032.00</u>	6,032.00
.0008 MGD to < .05 MGD	(((\$2,861.00)) <u>3,016.00</u>	3,016.00
< .0008 MGD	(((\$863.00)) <u>910.00</u>	910.00

(f) The number of residential equivalents is calculated in the following manner:

(i) If the facility serves only single-family residences, the number of residential equivalents is the number of single-family residences that it served on January 1 of the previous calendar year.

(ii) If the facility serves both single-family residences and other classes of customers, the number of residential equivalents is calculated in the following manner:

(A) Calculation of the number of residential equivalents that the facility serves in its own service area. Subtract from the previous calendar year's gross revenue:

(I) Any amounts received from other municipalities for sewage interception, treatment, collection, or disposal; and

(II) Any user charges received from customers for whom the permit holder pays amounts to other municipalities for sewage treatment or disposal services. Divide the resulting figure by the annual user charge for a single-family residence.

(B) Calculation of the number of residential equivalents that the facility serves in other municipalities which pay amounts to the facility for sewage interception, treatment, collection, or disposal:

(I) Divide any amounts received from other municipalities during the previous calendar year by the annual user charge for a single-family residence. In this case "annual user charge for a single-family residence" means the annual user charge that the facility charges other municipalities for sewage interception, treatment, collection, or disposal services for a single-family residence. If the facility charges different municipalities different single-family residential user fees, then the charge used in these calculations must be that which applies to the largest number of single-family residential customers. Alternatively, if the facility charges different municipalities different single-family residential user fees, the permit holder

may divide the amount received from each municipality by the annual user charge that it charges that municipality for a single-family residence and sum the resulting figures.

(II) If the facility does not charge the other municipality on the basis of a fee per single-family residence, the number of residential equivalents in the other municipality is calculated by dividing its previous calendar year's gross revenue by its annual user fee for a single-family residence. If the other municipality does not maintain data on its gross revenue, user fees, and/or the number of single-family residences that it serves, the number of residential equivalents is calculated as in (f)(iv) of this subsection.

(III) If the other municipality serves only single-family residences, the number of residential equivalents may be calculated as in (f)(i) of this subsection.

The sum of the resulting figures is the number of residential equivalents that the facility serves in other municipalities.

(C) The number of residential equivalents is the sum of the number of residential equivalents calculated in (f)(ii)(A) and (B) of this subsection.

(iii) The annual user fee for a single-family residence is calculated by either of the following methods, at the choice of the permit holder:

(A) The annual user fee for a single-family residence using nine hundred cubic feet of water per month. If users are billed monthly, this is calculated by multiplying by twelve the monthly user fee for a single-family residence using nine hundred cubic feet of water per month. If users are billed bimonthly, the annual user fee is calculated by multiplying by six the bimonthly user fee for a single-family residence using one thousand eight hundred cubic feet of water per two-month period. If the user fee for a single-family residence varies, depending on age, income, location, etc., then the fee used in these calculations must be that which applies to the largest number of single-family residential customers.

(B) The average annual user fee for a single-family residence. This average is calculated by dividing the previous calendar year's gross revenue from provision of sewer services to single-family residences by the number of single-family residences served on January 1 of the previous calendar year. If the user fee for a single-family residence varies, depending on age, income, location, etc., then the gross revenue and number of single-family residences used in making this calculation must be those for all the single-family residential customers.

In either case, (f)(iii)(A) or (B) of this subsection, the permit holder must provide the department with a copy of its complete sewer rate schedule for all classes of customers.

(iv) If a permit holder does not maintain data on its gross revenue, user fees, and/or the number of single-family residences that it serves, and therefore cannot use the methods described in (f)(i) or (ii) of this subsection to calculate the number of residential equivalents that it serves, then the number of residential equivalents that it serves is calculated by dividing the average daily influent flow to its facility for the previous calendar year by two hundred fifty gallons. This average is calculated by summing all the daily flow measurements taken during the previous calendar year and then dividing the resulting sum by the number of days on which flow was measured. Data for this calculation must be taken from the permit holder's discharge monitoring reports. Permit holders using this means of calculating the

number of their residential equivalents must submit with their application a complete set of copies of their discharge monitoring reports for the previous calendar year.

(g) Fee calculation procedures for holders of permits for domestic wastewater facilities.

(i) Municipalities holding permits for domestic wastewater facilities issued under RCW 90.48.162 and 90.48.260, and holders of permits for privately owned domestic wastewater facilities that primarily serve residential customers must complete a form certifying the number of residential equivalents served by their domestic wastewater system. The form must be completed and returned to the department within thirty days after it is mailed to the permit holder by the department. Failure to return the form could result in permit termination.

(ii) The form shall bear a certification of correctness and be signed:

(A) In the case of a corporation, by an authorized corporate officer;

(B) In the case of a limited partnership, by an authorized partner;

(C) In the case of a general partnership, by an authorized partner;

(D) In the case of a sole proprietorship, by the proprietor; or

(E) In the case of a municipal or other public facility, by either a ranking elected official or a principal executive officer.

(iii) The department may verify the information contained in the form and, if it determines that the permit holder has made false statements, may, in addition to taking other actions provided by law, revise both current and previously granted fee determinations.

(h) The annual permit fee for a domestic wastewater facility with a Puget Sound nutrient general permit will be calculated at the rate of \$0.31 per residential equivalent per year. The number of residential equivalents will be calculated as described in (g) of this subsection.

(4) STORMWATER PERMIT COVERAGES (UNLESS SPECIFICALLY CATEGORIZED ELSEWHERE IN WAC

173-224-040 (2))

	FY ((2020)) 2022 Annual Permit Fee	FY ((2021)) 2023 Annual Permit Fee & Beyond
a. Individual Construction or Industrial Stormwater Permits		
1. < 50 acres	((\$5,721.00)) <u>6,032.00</u>	\$6,032.00
2. 50 - < 100 acres	((11,433.00)) <u>12,054.00</u>	12,054.00
3. 100 - < 500 acres	((17,163.00)) <u>18,095.00</u>	18,095.00
4. 500 acres and greater	((22,880.00)) <u>24,122.00</u>	24,122.00
b. Facilities Covered Under the Industrial Stormwater General Permit		
1. Municipalities and state agencies	((1,874.00)) <u>1,976.00</u>	1,976.00
2. New permit holders without historical gross revenue information	((982.00)) <u>1,035.00</u>	1,035.00
3. The permit fee for all other permit holders shall be based on the gross revenue of the business for the previous calendar year		

	<u>FY ((2020)) 2022</u> <u>Annual Permit</u> <u>Fee</u>	<u>FY ((2021)) 2023</u> <u>Annual Permit</u> <u>Fee & Beyond</u>
Gross Revenue		
Less than \$100,000	((182.00)) <u>192.00</u>	192.00
\$100,000 - < \$1,000,000	((789.00)) <u>832.00</u>	832.00
\$1,000,000 - < \$2,500,000	((944.00)) <u>995.00</u>	995.00
\$2,500,000 - < \$5,000,000	((1,577.00)) <u>1,663.00</u>	1,663.00
\$5,000,000 - < \$10,000,000	((2,365.00)) <u>2,493.00</u>	2,493.00
\$10,000,000 and greater	((2,857.00)) <u>3,012.00</u>	3,012.00

To be eligible for less than the maximum permit fee, the permit holder must provide documentation to substantiate the gross revenue claims. Documentation shall be provided annually in a manner prescribed by the department. The documentation shall bear a certification of correctness and be signed:

- (a) In the case of a corporation, by an authorized corporate officer;
- (b) In the case of a limited partnership, by an authorized general partner;
- (c) In the case of a general partnership, by an authorized partner; or
- (d) In the case of a sole proprietorship, by the proprietor.

The department may verify the information contained in the submitted documentation and, if it determines that the permit holder has made false statements, may deny the adjustment, revoke previously granted fee adjustments, and/or take such other actions deemed appropriate or required under state or federal law.

<u>Permitted Amount of Disturbed Acreage</u>	<u>FY 2022</u> <u>Annual Permit</u> <u>Fee</u>	<u>FY 2023</u> <u>Annual Permit</u> <u>Fee & Beyond</u>
c. Construction Activities Covered Under the Construction Stormwater General Permit(s)		
1. Less than 5 acres disturbed area	((740.00)) <u>780.00</u>	780.00
2. 5 - < 7 acres of disturbed area	((1,203.00)) <u>1,268.00</u>	1,268.00
3. 7 - < 10 acres of disturbed area	((1,624.00)) <u>1,712.00</u>	1,712.00
4. 10 - < 20 acres of disturbed area	((2,216.00)) <u>2,336.00</u>	2,336.00
5. 20 acres and greater of disturbed area	((2,756.00)) <u>2,906.00</u>	2,906.00

(5) MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMITS

(a) Except as provided for in (d) of this subsection, the municipal stormwater permit annual fee for the entities listed below is:

Name of Entity	FY ((2020)) 2022 Annual Permit Fee	FY ((2021)) 2023 Annual Permit Fee & Beyond
King County	(((\$65,157.00)) \$68,695.00)	\$68,695.00
Snohomish County	((65,157.00)) 68,695.00)	68,695.00
Pierce County	((65,157.00)) 68,695.00)	68,695.00
Tacoma, City of	((65,157.00)) 68,695.00)	68,695.00
Seattle, City of	((65,157.00)) 68,695.00)	68,695.00
Washington Department of Transportation	((65,157.00)) 68,695.00)	68,695.00
Clark County	((65,157.00)) 68,695.00)	68,695.00

(b) Municipal stormwater general permit fees for cities and counties, except as otherwise provided for in (a), (c), and (d) of this subsection, are determined in the following manner: ~~((For fiscal year 2020, ecology will charge \$1.89 per housing unit inside the geographic area covered by the permit for those cities and counties whose median household income exceeds the state average. Cities and counties whose median household income is less than the state average will have their fee per housing unit reduced to \$.93 per housing unit inside the geographic area covered by the permit.))~~ For fiscal years ((2021)) 2022 and 2023 and beyond, ecology will charge \$1.99 per housing unit inside the geographic area covered by the permit for those cities and counties whose median household income exceeds the state average. Cities and counties whose median household income is less than the state average will have their fee per housing unit reduced to \$.98 per housing unit inside the geographic area covered by the permit. Fees will not exceed ~~(((\$65,157.00 for fiscal year 2020 and))~~ \$68,695.00 for fiscal years ((2021)) 2022 and 2023 and beyond. The minimum annual fee will not be lower than ~~(((\$2,709.00 for fiscal year 2020 and))~~ \$2,856.00 for fiscal years ((2021)) 2022 and 2023 and beyond unless the permitted city or county has a median household income less than the state average. In this case, the city or county will pay a fee totaling ~~((\$.93))~~ \$.98 per housing unit for fiscal years ((2020. The fee amount for FY 2021 is \$.98 per housing unit)) 2022 and 2023 and beyond.

(c) Other entities required to have permit coverage under a municipal stormwater general permit will pay an annual fee based on the entities' previous year's annual operating budget as follows:

Annual Operating Budget	FY ((2020)) 2022 Annual Permit Fee	FY ((2021)) 2023 Annual Permit Fee & Beyond
Less than \$100,000	(((\$189.00)) \$199.00)	\$199.00
\$100,000 - < \$1,000,000	((764.00)) 805.00)	805.00

Annual Operating Budget	FY ((2020)) 2022 Annual Permit Fee	FY ((2021)) 2023 Annual Permit Fee & Beyond
\$1,000,000 - < \$5,000,000	((1,906.00)) <u>2,009.00</u>	2,009.00
\$5,000,000 - < \$10,000,000	((2,860.00)) <u>3,015.00</u>	3,015.00
\$10,000,000 and greater	((4,765.00)) <u>5,024.00</u>	5,024.00

For the purposes of determining the annual permit fee category, the annual operating budget shall be the entities' annual operating budget for the entities' previous fiscal year and shall be determined as follows:

(i) For diking, drainage, irrigation, and flood control districts, the district's annual operating budget.

(ii) For ports, the annual operating budget for the port district.

(iii) For colleges, schools, and universities, the portion of the operating budget related to plant or facilities operation and maintenance for the site or sites subject to the permit.

(iv) For state agencies, the annual operating budget for the site or sites subject to the permit.

(v) For other entities not listed, ecology will consider annual revenue, and the noncapital operating budget for the site subject to the permit.

(d) Municipal stormwater permits written specifically for a single entity, such as a single city, county, or agency, issued after the effective date of this rule will have its annual fee determined in the following manner:

(i) For cities and counties listed in (a) of this subsection, the fee shall be five times the amount identified.

(ii) For cities and counties whose median household income exceeds the state average, the fee shall be the higher of either five times the otherwise applicable general permit fee or \$30,000. For municipalities whose median household income is less than the state average, the fee shall be the higher of 2.5 times the otherwise applicable general permit fee or \$15,000.

(iii) For entities that would otherwise be covered under a municipal stormwater general permit as determined in (c) of this subsection, the fiscal years ~~((2020))~~ 2022 and 2023 annual fee and beyond for a permit written for a specific entity is ~~((~~\$13,554.00~~. For fiscal year 2021, the annual fee is))~~ \$14,290.00.

(e) Ecology will assess a single permit fee for entities which apply only as copermittees or coapplicants. The permit fee shall be equal to the highest single permit fee which would have been assessed if the copermittees had applied separately.

[Statutory Authority: RCW 90.48.465. WSR 19-14-040 (Order 18-01), § 173-224-040, filed 6/26/19, effective 7/27/19; WSR 17-16-005 (Order 16-11), § 173-224-040, filed 7/20/17, effective 8/20/17; WSR 15-23-110 (Order 15-02), § 173-224-040, filed 11/18/15, effective 12/19/15; WSR 13-22-051 (Order 13-02), § 173-224-040, filed 11/1/13, effective 12/2/13. Statutory Authority: RCW 90.48.465 and 2011 c 50 § 302(2). WSR 11-20-035 (Order 11-02), § 173-224-040, filed 9/27/11, effective

10/28/11. Statutory Authority: RCW 90.48.465. WSR 09-20-020 (Order 09-06), § 173-224-040, filed 9/28/09, effective 10/29/09. Statutory Authority: Chapter 90.48 RCW. WSR 08-16-109 (Order 08-05), § 173-224-040, filed 8/5/08, effective 9/5/08. Statutory Authority: RCW 90.48.465. WSR 06-12-028 (Order 05-17), § 173-224-040, filed 5/30/06, effective 6/30/06; WSR 04-15-046, § 173-224-040, filed 7/13/04, effective 8/13/04. Statutory Authority: Chapter 90.48 RCW. WSR 02-12-059, § 173-224-040, filed 5/30/02, effective 6/30/02; WSR 00-13-010 (Order 00-06), § 173-224-040, filed 6/9/00, effective 7/10/00; WSR 00-02-031 (Order 99-03), § 173-224-040, filed 12/28/99, effective 1/28/00; WSR 98-03-046 (Order 97-27), § 173-224-040, filed 1/15/98, effective 2/15/98; WSR 96-03-041 (Order 94-21), § 173-224-040, filed 1/10/96, effective 2/10/96; WSR 94-10-027 (Order 93-08), § 173-224-040, filed 4/28/94, effective 5/29/94; WSR 92-03-131 (Order 91-45), § 173-224-040, filed 1/21/92, effective 2/21/92. Statutory Authority: Chapter 43.21A RCW. WSR 89-12-027 and 90-07-015 (Order 89-8 and 89-8A), § 173-224-040, filed 5/31/89 and 3/13/90, effective 4/13/90.]

AMENDATORY SECTION (Amending WSR 19-14-040, filed 6/26/19, effective 7/27/19)

WAC 173-224-050 Permit fee computation and payments. (1) The department shall charge permit fees based on the permit fee schedule contained in WAC 173-224-040. The department may charge fees at the beginning of the fiscal year to which they apply. The department shall notify permit holders of fee charges by sending an invoice to the permittee on record. The department must receive permit fee payments within forty-five days after the department sends a billing statement. The department may elect to bill permit holders a prorated portion of the annual fee on a monthly, quarterly, or other periodic basis.

(2) Permit fee computation shall begin on the first day of each fiscal year. In the case of facilities or activities not previously covered by permits, fee computation begins on the permit issuance date. In the case of applicants for state waste discharge permits who are deemed to have a temporary permit under RCW 90.48.200, computation shall begin on the sixty-first day after the department accepts a completed application. In the case of NPDES permit holders who submit a new, updated permit application containing information that could change their assigned permit fee, computation and permit fee category reassignment begins upon the date the department accepts the application. Any facility that obtains permit coverage but fails to operate will still be obligated to pay the annual permit fee assessment until the department terminates permit coverage. Permits terminated during the fiscal year will pay the annual fee assessment regardless of the permit termination date.

(3) Permit fees for sand and gravel general permit holders are assessed as in subsection (2) of this section and:

(a) Nonoperating sites. A facility conducting mining, screening, washing and/or crushing activities excluding portable rock crushing operations is considered nonoperating for fee purposes if they are conducting these activities for less than ninety cumulative days during a calendar year. A facility producing no asphalt and/or concrete during the calendar year is also considered nonoperating for fee purposes.

(b) Nonoperating sites that become active for only concrete and/or asphalt production are assessed a prorated fee for the actual time inactive. For the actual time a concrete and/or asphalt facility is active excluding asphalt portable batch plants and concrete portable batch plants, fees are based on total production of concrete and/or asphalt.

(c) Fees for continuously active sites that produce concrete and/or asphalt excluding asphalt portable batch plants and concrete portable batch plants, are based on the previous calendar year production totals. Existing facilities must provide the department with the production totals for concrete and/or asphalt produced during the previous calendar year. New facilities with no historical asphalt and/or concrete production data will have their first year fee based on the production levels reported on the application for coverage under the National Pollutant Discharge Elimination System and State Waste Discharge Permit for Process Water, Stormwater, and Mine Dewatering Water Discharges Associated with Sand and Gravel Operations, Rock Quarries and Similar Mining Facilities including Stockpiles of Mined Materials, Concrete Batch Operations and Asphalt Batch Operations general permit.

(4) Fees for fruit packer general permit holders are assessed as in subsection (2) of this section and are computed based on the three previous calendar years production totals. Existing facilities must provide the department with the production totals in the manner described in WAC 173-224-040 (2)(c). New facilities with no historical production data will have their first year fee based on the estimated production level for that year. The second year fee is determined based on the actual production during the first year. Fee calculation for subsequent years will be based on the average production values of previous years.

(5) Facilities with construction and industrial stormwater general permit coverage will have their annual permit fees begin on the permit issuance date.

(6) Permit fee accrual will continue until the permit has been terminated by the department regardless if the activity covered under the permit has already ceased.

(7) Facilities with an existing NPDES and/or state wastewater discharge permit who also have obtained industrial and/or construction stormwater general permit coverage shall only pay an annual fee based on the permit with the highest permit fee category assessment.

(8) Computation of fees shall end on June 30th, the last day of the state's fiscal year regardless of the permit termination date.

(9) The applicable permit fee shall be paid using ecology's on-line payment software or by check or money order payable to the "Department of Ecology" and mailed to the Water Quality Permit Fee Program, P.O. Box 47611, Olympia, Washington 98504-7611.

(10) In the event a check is returned due to insufficient funds, the department shall consider the permit fee to be unpaid.

(11) Delinquent accounts. Permit holders are considered delinquent in the payment of fees if the fees are not received by the first invoice billing due date. Delinquent accounts are processed in the following manner:

(a) Municipal and government entities shall be notified by regular mail that they have forty-five days to bring the delinquent account up-to-date. Accounts that remain delinquent after forty-five days may receive a permit revocation letter for nonpayment of fees.

(b) Nonmunicipal or nongovernment permit holders shall be notified by the department by regular mail that they have forty-five days

to bring the delinquent account up-to-date. Accounts that remain delinquent after forty-five days may be turned over for collection. In addition to the amount owed, the collection agent (~~(will)~~) may add a (~~(surcharge totaling twenty percent of)~~) fee to the delinquent amount owed as authorized by RCW 19.16.500. (~~(The surcharge is to recover the costs for collection.)~~) If the collection agency fails to recover the delinquent fees after twelve months, the permit holder may receive a permit revocation letter for nonpayment of fees.

[Statutory Authority: RCW 90.48.465. WSR 19-14-040 (Order 18-01), § 173-224-050, filed 6/26/19, effective 7/27/19; WSR 17-16-005 (Order 16-11), § 173-224-050, filed 7/20/17, effective 8/20/17; WSR 13-22-051 (Order 13-02), § 173-224-050, filed 11/1/13, effective 12/2/13; WSR 09-20-020 (Order 09-06), § 173-224-050, filed 9/28/09, effective 10/29/09. Statutory Authority: Chapter 90.48 RCW. WSR 08-16-109 (Order 08-05), § 173-224-050, filed 8/5/08, effective 9/5/08. Statutory Authority: RCW 90.48.465. WSR 04-15-046, § 173-224-050, filed 7/13/04, effective 8/13/04. Statutory Authority: Chapter 90.48 RCW. WSR 02-12-059, § 173-224-050, filed 5/30/02, effective 6/30/02; WSR 00-02-031 (Order 99-03), § 173-224-050, filed 12/28/99, effective 1/28/00; WSR 98-03-046 (Order 97-27), § 173-224-050, filed 1/15/98, effective 2/15/98; WSR 96-03-041 (Order 94-21), § 173-224-050, filed 1/10/96, effective 2/10/96; WSR 94-10-027 (Order 93-08), § 173-224-050, filed 4/28/94, effective 5/29/94; WSR 92-03-131 (Order 91-45), § 173-224-050, filed 1/21/92, effective 2/21/92. Statutory Authority: Chapter 43.21A RCW. WSR 89-12-027 and 90-07-015 (Order 89-8 and 89-8A), § 173-224-050, filed 5/31/89 and 3/13/90, effective 4/13/90.]

AMENDATORY SECTION (Amending WSR 89-12-027 and 90-07-015, filed 5/31/89 and 3/13/90, effective 4/13/90)

WAC 173-224-080 Transfer of (~~ownership or control~~) permit coverage. (~~(The department shall charge permit fees from the permit holder on record with the department.)~~) In the event that (~~ownership or control of a permitted facility or activity~~) a permit is transferred, (~~it shall not be the responsibility of the department to transfer funds between a new and previous permit holder, and~~) the department shall not refund permit fees (~~charges prospectively in the event of a transfer~~). Fees paid by a previous permit holder shall be (~~deemed~~) applied to (~~satisfy~~) the corresponding fee payment requirements of a new permit holder. Unpaid permit fees owed by a previous permit holder are the liability of a new permit holder. Agreements between a new and previous permit holder are not binding on the department.

[Statutory Authority: Chapter 43.21A RCW. WSR 89-12-027 and 90-07-015 (Order 89-8 and 89-8A), § 173-224-080, filed 5/31/89 and 3/13/90, effective 4/13/90.]

AMENDATORY SECTION (Amending WSR 19-14-040, filed 6/26/19, effective 7/27/19)

WAC 173-224-090 Permit fee reductions. With the exception of facilities covered under the construction and industrial stormwater general permits who are not eligible to apply for a fee reduction, any business required to pay a fee may receive a reduction of its permit fee.

(1) Market research and development.

(a) To qualify for the fee reduction, the operation under permit must be:

(i) A research facility with the primary purpose of researching market viability for products and/or processes that reduce or eliminate wastewater pollutants or wastewater pollutant generating activity;

(ii) Covered under an individual permit issued within the past three fiscal years;

(iii) Assessed a fee under an established fee category, excluding facility not otherwise classified.

(b) To receive a fee reduction, the permit holder must submit an application in a manner prescribed by the department demonstrating that the conditions in (a) of this subsection are met. The application shall bear a certification of correctness and be signed:

(i) In the case of a corporation, by an authorized corporate officer;

(ii) In the case of a limited partnership, by an authorized general partner;

(iii) In the case of a general partnership, by an authorized partner;

(iv) In the case of a sole proprietorship, by the proprietor; or

(v) In the case of a municipality, state, or other public entity, by either a principal executive officer or a ranking elected official.

(c) The department may verify the information contained in the application and, if it determines that the permit holder has made false statements, may deny the fee reduction request and revoke previously granted fee reductions.

(d) The permit fee for market research and development determined to be eligible under (a) of this subsection shall be reduced to twenty-five percent of the assessed annual permit fee.

(e) A site can only be eligible for this reduction for three consecutive fiscal years.

(2) Small business fee reduction.

(a) To qualify for the fee reduction, a business must:

(i) Be a corporation, partnership, sole proprietorship, or other legal entity formed for the purpose of making a profit;

(ii) Be independently owned and operated from all other businesses (i.e., not a subsidiary of a parent company);

(iii) Have annual sales of one million dollars or less of the goods or services produced using the processes regulated by the waste discharge or individual stormwater discharge permit; and

(iv) Have an original annual fee assessment totaling five hundred dollars or greater.

(b) To receive a fee reduction, the permit holder must submit an application in a manner prescribed by the department demonstrating that the conditions in (a) of this subsection are met. The application shall bear a certification of correctness and be signed:

(i) In the case of a corporation, by an authorized corporate officer;

(ii) In the case of a limited partnership, by an authorized general partner;

(iii) In the case of a general partnership, by an authorized partner; or

(iv) In the case of a sole proprietorship, by the proprietor.

(c) The department may verify the information contained in the application and, if it determines that the permit holder has made false statements, may deny the fee reduction request and revoke previously granted fee reductions.

(d) The permit fee for small businesses determined to be eligible under (a) of this subsection shall be reduced to fifty percent of the assessed annual permit fee.

Extreme hardship fee reduction. Any small business with annual gross revenue totaling one hundred thousand dollars or less from goods and services produced using the processes regulated by the waste discharge or individual stormwater discharge permit may apply for an extreme hardship fee reduction. The small business must provide sufficient evidence to support its claim of an extreme hardship. In no case will a permit fee be reduced below \$128.00.

[Statutory Authority: RCW 90.48.465. WSR 19-14-040 (Order 18-01), § 173-224-090, filed 6/26/19, effective 7/27/19; WSR 13-22-051 (Order 13-02), § 173-224-090, filed 11/1/13, effective 12/2/13. Statutory Authority: RCW 90.48.465 and 2011 c 50 § 302(2). WSR 11-20-035 (Order 11-02), § 173-224-090, filed 9/27/11, effective 10/28/11. Statutory Authority: RCW 90.48.465. WSR 09-20-020 (Order 09-06), § 173-224-090, filed 9/28/09, effective 10/29/09. Statutory Authority: Chapter 90.48 RCW. WSR 08-16-109 (Order 08-05), § 173-224-090, filed 8/5/08, effective 9/5/08. Statutory Authority: RCW 90.48.465. WSR 04-15-046, § 173-224-090, filed 7/13/04, effective 8/13/04. Statutory Authority: Chapter 90.48 RCW. WSR 96-03-041 (Order 94-21), § 173-224-090, filed 1/10/96, effective 2/10/96; WSR 94-10-027 (Order 93-08), § 173-224-090, filed 4/28/94, effective 5/29/94; WSR 92-03-131 (Order 91-45), § 173-224-090, filed 1/21/92, effective 2/21/92. Statutory Authority: Chapter 43.21A RCW. WSR 89-12-027 and 90-07-015 (Order 89-8 and 89-8A), § 173-224-090, filed 5/31/89 and 3/13/90, effective 4/13/90.]

WSR 21-07-062
PROPOSED RULES
GAMBLING COMMISSION
[Filed March 15, 2021, 1:50 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-15-158.

Title of Rule and Other Identifying Information: Amending WAC 230-15-030 Authorized nonhouse-banked card games, 230-15-035 Authorizing new games or changing game rules, 230-15-040 Requirements for authorized card games, 230-15-055 Limit on number of players at each table, 230-15-060 Posting rules for play, 230-15-065 Enforcement of card game rules of play, 230-15-140 Wagering limits for house-banked card games, 230-15-141 Additional merchandise of cash prizes for card games, 230-15-455 Keeping funds to pay prizes, progressive jackpot prizes, and odds-based wager prizes, 230-15-490 Limiting pay outs for odds-based wagers, 230-15-491 Limiting payouts to dealers for tip or "toke" wagers for odds-based payouts, 230-15-680 Operating progressive jackpot prizes, 230-15-685 Restrictions on progressive jackpots, 230-15-695 Adjusting progressive jackpot amounts, 230-15-700 Merchandise prizes for progressive jackpots, 230-15-710 Permanently removing a progressive jackpot or a portion of a progressive jackpot from play, 230-15-715 Tax authorities seizing all, or a portion, of a progressive jackpot, and 230-15-720 Deposit and reconciliation requirements for progressive jackpot prizes.

Repealing WAC 230-15-105 Only authorized cards or chips may be used, and 230-15-705 Temporarily removing a progressive jackpot from play.

Adopting WAC 230-15-671 Jackpot prizes.

Hearing Location(s): On May 13, 2021, at 9:00 a.m., at Washington State Gambling Commission, 4565 7th Avenue S.E., Lacey, WA 98503. Public hearings will take place at scheduled commission meetings. The meeting dates, times, and locations are tentative. Visit our website at www.wsgc.wa.gov approximately seven days prior to the meeting, select "The Commission," and then select "Public Meetings" to confirm the hearing date, location, start time, and agenda items.

Date of Intended Adoption: May 13, 2021.

Submit Written Comments to: Ashlie Laydon, P.O. Box 42400, Olympia, WA 98504-2400, email rules.coordinator@wsgc.wa.gov, fax 360-486-3632, by May 3, 2021.

Assistance for Persons with Disabilities: Contact Julie Anderson, phone 360-486-3453, TTY 360-486-3637, email julie.anderson@wsgc.wa.gov, by May 3, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The gambling commission is considering amending current, and adopting new, house-banked card game rules to address and clarify the offering of jackpot prizes with approved house-banked card games, authorizing new card games, authorizing changes to existing card games, requirements for card games, wagering, adding merchandise and cash to card games, minimum cash on hand requirements, paying out prizes for card games, and maintaining funds to pay prizes.

Reasons Supporting Proposal: Current rules generally allow house-banked card rooms to offer and operate jackpot prizes; however, rules need to be adopted and/or current rules amended to define "jackpot" prizes and outline procedures for operation of these jackpots and current card game procedures.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: RCW 9.46.070.

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

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Considine, LLM, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3469; Implementation: David Trujillo, Director, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3512; and Enforcement: Tina Griffin, Assistant Director, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3546.

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

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required per RCW 34.05.328 (5)(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.

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. None of the proposed changes are new requirements nor do they impose new or additional costs to licensees. These changes define terms used in rule and outline and/or clarify operational requirements.

March 15, 2021
Ashlie Laydon
Rules Coordinator

OTS-2933.2

AMENDATORY SECTION (Amending WSR 14-17-053, filed 8/15/14, effective 9/15/14)

WAC 230-15-030 Authorized nonhouse-banked card games. (1) The following nonhouse-banked card games are authorized:

- (a) Poker;
- (b) Hearts;
- (c) Pinochle;
- (d) Cribbage;
- (e) Rummy;
- (f) Panguingue (Pan);
- (g) Pitch; and
- (h) Bid Whist (~~and~~

~~(i) Other games approved by the director or the director's designee).~~

(2) Card (~~game~~) room licensees must operate these games in the manner explained in the most current version of *The New Complete Hoyle, Revised* or *Hoyle's Modern Encyclopedia of Card Games*, or similar authoritative book on card games we have approved, or when operated as described in the commission approved game rules on our website.

Card (~~(game)~~) room licensees may make immaterial modifications to the games.

(3) Authorization of a nonhouse-banked card game other than those listed in subsection (1) of this section requires approval from the director or director's designee. In order for a nonhouse-banked card game to be authorized, it must:

(a) Be played with standard playing cards. Authorized card games may:

(i) Use more than one deck of cards; and

(ii) Remove cards to comply with rules of a specific game.

(b) Not allow side bets between players; and

(c) Describe player requirements. Players must:

(i) Compete solely as a player in the card game; and

(ii) Compete against all other players on an equal basis; and

(iii) Receive their own hand of cards and be responsible for decisions regarding such hand, such as whether to fold, discard, draw additional cards, or raise the wager.

(d) Require the player's win or loss to be determined during the course of play of a single deal of cards.

(4) Approved game rules under subsection (3) of this section will be posted on the commission's website. Licensee's must operate these games as described in the commission approved game rules on our website.

[Statutory Authority: RCW 9.46.070 and 9.46.0282. WSR 14-17-053 (Order 702), § 230-15-030, filed 8/15/14, effective 9/15/14. Statutory Authority: RCW 9.46.070. WSR 07-09-033 (Order 608), § 230-15-030, filed 4/10/07, effective 1/1/08.]

AMENDATORY SECTION (Amending WSR 08-21-086, filed 10/14/08, effective 1/1/09)

WAC 230-15-035 Authorizing new games or changing game rules.

~~((Card game licensees must operate only the card games the director or the director's designee has specifically authorized.))~~ All new card games and changes to existing card games must be approved by the director or director's designee prior to implementation at a card room licensee. The director or the director's designee authorizes each new card game or changes to existing card games on an individual basis. A list of all authorized games and the rules of play are available ~~((at all commission offices and))~~ on the commission website.

(1) ((Card game)) Licensees approved to market, sell, rent, or otherwise supply card games to card room licensees must submit, in the format we require, requests for:

(a) ((Requests for)) Authorizing new card games ((in the format we require)); and

(b) Changes to ((an)) existing card games in writing.

(2) The director or the director's designee will notify the licensee in writing if the request is approved or denied. The notification for denial will include reasons for the denial and provide the licensee all information necessary to file a petition to the commission for rule making.

(3) Card room licensees must operate only the card games the director or the director's designee has specifically authorized.

[Statutory Authority: RCW 9.46.070. WSR 08-21-086 (Order 632), § 230-15-035, filed 10/14/08, effective 1/1/09; WSR 07-21-116 (Order 617), § 230-15-035, filed 10/22/07, effective 1/1/08; WSR 07-09-033 (Order 608), § 230-15-035, filed 4/10/07, effective 1/1/08.]

AMENDATORY SECTION (Amending WSR 14-05-056, filed 2/14/14, effective 3/17/14)

WAC 230-15-040 Requirements for authorized house-banked card games. ~~((1))~~ In order for a house-banked card game to be authorized, it must be approved by the director or the director's designee and must:

~~((a))~~ (1) Be played with standard playing cards or with electronic card facsimiles approved by the director or the director's designee~~(; and~~

~~(b) Offer no more than four "separate games" with a single hand of cards and no more than three of the "separate games" may offer a wager that exceeds five dollars each).~~

~~((i))~~ Authorized house-banked card games may:

(a) Use more than one deck of cards; and

(b) Remove cards to comply with rules of a specific game; and

(2) Limit the number of wagering areas to nine or less.

(a) "Wagering area" means identified areas on the layout to place wagers;

(b) All wagering areas must be identical to each other; and

(3) Identify all separate games in the card game:

(a) "Separate game" means each individual objective to be achieved within a card game that requires a separate wager and results in a distinct and separate pay out based upon the outcome~~((; and~~

~~((ii) Progressive jackpots are considered "separate games."))~~

(b) Separate games may incorporate bonus features; and

(c) Progressive jackpots and house jackpots are considered separate games; and

(4) Describe player requirements. Players must:

(a) Compete solely as a player in the card game, except as authorized in the approved card game rules for variations of Pai Gow poker where a player may bank the game every other hand; and

(b) Receive their own hand of cards and be responsible for decisions regarding such hand, such as whether to fold, discard, draw additional cards, or raise the wager except for separate games that:

(i) Use cards shared by all players (i.e., community cards); or

(ii) Allow players to wager on the outcome of the dealer's hand;

or

(iii) Allow players to win a prize if any players' hand, including the dealer's hand, achieves a predetermined outcome at the same table; and

(5) Identify ~~((; bonus features~~ ~~((;))~~ to be allowed in each ~~((card))~~ separate game:

~~((i))~~ (a) "Bonus feature" means an ~~((added prize and/or variation based on achieving the predetermined specific hand required to win the prize and does not require a separate wager. More than one "bonus feature" may be offered per card game. A "bonus feature" must not be combined with a progressive jackpot. Examples include, but are not limited to, "envy" and "share the wealth" "bonus features" when))~~

opportunity within a separate game whereby a player may win additional prizes. Bonus features must be operated as described below((-)):

~~((ii) A ") (i) A bonus feature(") is not considered a separate game((-~~

~~(d) Operate "envy" and "share the wealth" "bonus features" as follows:~~

~~(i) If a player makes a wager that qualifies for an "envy" "bonus feature" pay out, they are entitled to); and~~

(ii) Players must not place wagers on bonus features. However, players may be required to place a minimum wager on a separate game to qualify for a bonus feature; and

(iii) Players may receive a prize if their hand or another player's hand at the same table achieves ((the)) a predetermined specific hand. If a player is playing more than one wagering area ((or if a hand they are playing is split into two or more hands)) and any one of their hands achieves the predetermined specific hand, their other hand with a qualifying wager is entitled to receive a prize also((-

~~(ii) If a player makes a wager that qualifies for a "share the wealth" pay out, they are entitled to receive a prize if their hand(s) or another player's hand(s) achieves the predetermined specific hand.~~

~~(e)); and~~

(iv) A bonus feature cannot be a progressive jackpot; and

(6) Not allow side bets between players((-

~~(2) Card game licensees may use more than one deck of cards for a specific game. They also may remove cards to comply with rules of a specific game, such as Pinochle or Spanish 21.~~

~~(3) Players must:~~

~~(a) Compete against all other players on an equal basis for non-house-banked games or against the house for house-banked games. All players must compete solely as a player in the card game, except as authorized in approved card game rules for variations of the game of Pai Gow poker where a player may bank the game every other hand; and~~

~~(b) Receive their own hand of cards and be responsible for decisions regarding such hand, such as whether to fold, discard, draw additional cards, or raise the wager; and~~

~~(c) Not place wagers on any other player's or the house's hand or make side wagers with other players, except for:~~

~~(i) An insurance wager placed in the game of Blackjack; or~~

~~(ii) "Envy" or "share the wealth" "bonus features"; or~~

~~(iii) A tip wager made on behalf of a dealer.~~

~~(4) Mini-Baccarat is authorized when operated as described in the commission approved game rules on our web site. However:~~

~~(a) Card game licensees may make immaterial modifications to the game; and~~

~~(b) Subsection (3) of this section does not apply; and~~

~~(c) The number of players is limited under WAC 230-15-055.~~

~~(5)); and~~

(7) Use only authorized gambling equipment; and

(8) A player's win or loss must be determined during the course of ((play of)) a single ((card game,)) deal of cards except for:

(a) A carryover pot game. A carryover pot is an optional pot that accumulates as a dealer and participating players contribute to the pot. The winner of the pot is not necessarily determined after one game and the pot can be carried over to more than one game. Carryover pots must not carryover more than ten games. Participants must include at least one player and the dealer competing for the highest qualifying winning hand. Game rules must state how the pot is distributed. If

the carryover pot has not been won by the tenth game, the dealer will divide it equally between the remaining players still participating in the pot and the house or, if allowed by game rules, only the players still participating in the pot; and

(b) In the game of Mini-Baccarat, a player may make an optional wager on the player hand winning the next three consecutive games, or the banker hand winning the next three consecutive games.

[Statutory Authority: RCW 9.46.070 and 9.46.0282. WSR 14-05-056 (Order 694), § 230-15-040, filed 2/14/14, effective 3/17/14; WSR 14-03-099 (Order 693), § 230-15-040, filed 1/17/14, effective 2/17/14; WSR 12-15-044 (Order 678), § 230-15-040, filed 7/13/12, effective 8/13/12; WSR 09-17-076 and 09-17-105 (Orders 656 and 656-A), § 230-15-040, filed 8/14/09 and 8/18/09, effective 9/14/09 and 9/18/09. Statutory Authority: RCW 9.46.070. WSR 08-21-086 (Order 632), § 230-15-040, filed 10/14/08, effective 1/1/09; WSR 07-09-033 (Order 608), § 230-15-040, filed 4/10/07, effective 1/1/08.]

AMENDATORY SECTION (Amending WSR 15-15-065, filed 7/10/15, effective 8/9/15)

WAC 230-15-055 Limit on number of players at each table. Card ((game)) room licensees must only allow:

(1) Up to nine players (~~or areas for wagering~~) at any table in house-banked card games.

(a) Only one player can place a wager in a wagering area.

(b) This section does not apply to Mini-Baccarat when the game is operated without any modification according to the nonpatented approved game rules posted on the agency's website (~~and without any modifications as allowed in WAC 230-15-040~~).

(2) Up to ten players at any table in nonhouse-banked card games.

[Statutory Authority: RCW 9.46.070 and 9.46.0282. WSR 15-15-065 (Order 714), § 230-15-055, filed 7/10/15, effective 8/9/15. Statutory Authority: RCW 9.46.070. WSR 08-23-079 (Order 637), § 230-15-055, filed 11/18/08, effective 1/1/09; WSR 07-09-033 (Order 608), § 230-15-055, filed 4/10/07, effective 1/1/08.]

AMENDATORY SECTION (Amending WSR 07-09-033, filed 4/10/07, effective 1/1/08)

WAC 230-15-060 Posting rules for play. Card ((game)) room licensees must:

(1) Prominently post:

(a) Wagering limits for each type of game, including (~~the ante~~) all fees to play; and

(b) (~~Prize pay outs~~) Jackpot prize amounts and any prize-related restrictions; and

(c) All (~~fees to play~~) odds-based and fixed prizes; and

(d) Policies on employees being allowed to play; and

(e) Procedures for resolving player disputes; and

(2) Prominently post any general rules, or a sign stating that these rules are available immediately on request. These rules must include, at least:

- (a) Rules of play; and
- (b) ~~((Methods of making wagers; and~~
- ~~(c) Procedures for misdeals; and~~
- ~~(d) Procedures for betting irregularities; and~~
- ~~(e) Procedures for splitting pots; and~~
- ~~(f)) Internal controls related to the operation of card games;~~

and

(c) Any rules that may restrict a player's right to win a hand, pot, or jackpot prize; and

(3) Post at the gambling table any aggregate payout limits, procedures, or restrictions that differ from the general rules of play that have been posted.

[Statutory Authority: RCW 9.46.070. WSR 07-09-033 (Order 608), § 230-15-060, filed 4/10/07, effective 1/1/08.]

AMENDATORY SECTION (Amending WSR 07-10-034, filed 4/24/07, effective 1/1/08)

WAC 230-15-065 Enforcement of card game rules of play. Card ~~((game))~~ room licensees must conduct card games according to the approved rules of play. We enforce rules of play in the following order:

- (1) **First priority:** Rules explained in Title 230 WAC; and
- (2) **Second priority:** ~~((Rules explained by a licensed manufacturer of a patented game))~~ Proprietary and nonproprietary game rules explained on the commission website that we have approved; and
- (3) **Third priority:** House rules card ~~((game))~~ room licensees have developed and we have approved; and
- (4) **Fourth priority:** Rules explained in the most current version of *The New Complete Hoyle, Revised* or *Hoyle's Modern Encyclopedia of Card Games*, or a similar authoritative book on card games which we have approved.

[Statutory Authority: RCW 9.46.070. WSR 07-10-034 (Order 611), § 230-15-065, filed 4/24/07, effective 1/1/08.]

AMENDATORY SECTION (Amending WSR 08-20-025, filed 9/19/08, effective 1/1/09)

WAC 230-15-140 Wagering limits for house-banked card games. (1) A single wager ~~((or a bonus wager for an odds-based pay out))~~ must not exceed three hundred dollars.

(2) A player may make a single wager for each decision before the dealer deals or reveals additional cards. ~~((For Blackjack, the player may place an additional wager for doubling down or splitting pairs.~~

~~(3) Bonus wagers for progressive jackpots must not exceed manufacturer's rules or limits listed in subsection (1) of this section.))~~ Wagers must be placed on the table layout on an approved betting spot, except for:

- (a) In Blackjack games, players may place an additional wager next to their original wager when doubling down or splitting pairs; or
(b) Tip wagers made on behalf of a dealer; or
(c) As authorized in approved card games rules.

[Statutory Authority: RCW 9.46.070. WSR 08-20-025 (Order 631), § 230-15-140, filed 9/19/08, effective 1/1/09; WSR 07-09-033 (Order 608), § 230-15-140, filed 4/10/07, effective 1/1/08.]

AMENDATORY SECTION (Amending WSR 08-17-066, filed 8/18/08, effective 9/18/08)

WAC 230-15-141 Additional merchandise or cash prizes for card games.

Nonproprietary games.

(1) Card room licensees may add additional merchandise or cash prizes to nonproprietary games like Blackjack or Pai Gow. We consider these additional prizes a gambling promotion and they must meet all requirements of WAC 230-06-030.

Proprietary games.

(2) Card room licensees must not add additional merchandise or cash prizes to proprietary games without the approval of the company that owns the rights to the games. ~~((3) To indicate their approval, the owner of the rights to a proprietary game must:~~

~~(a) Submit an alternative pay-table that includes the additional or revised prize payout to us for review and approval; or~~

~~(b) Send an authorization letter to us allowing the addition of gambling promotions to their game.~~

~~(4) Once we approve the changes, the revised pay-tables are available to all card game licensees. The prizes become a part of the game rules and we consider them prize payouts on the game. Because of this, we do not consider the prizes a gambling promotion.)) Any additional prizes approved by the company that owns the rights to the game will be considered a gambling promotion and they must meet all requirements of WAC 230-06-030.~~

[Statutory Authority: RCW 9.46.070. WSR 08-17-066 (Order 629), § 230-15-141, filed 8/18/08, effective 9/18/08; WSR 07-21-116 (Order 617), § 230-15-141, filed 10/22/07, effective 1/1/08.]

AMENDATORY SECTION (Amending WSR 09-15-070, filed 7/13/09, effective 1/1/10)

WAC 230-15-455 Keeping funds to pay prizes ~~((, progressive jackpot prizes, and odds-based wager prizes))~~. ~~((1))~~ House-banked card ~~((game))~~ room licensees must ensure that they have sufficient funds available to redeem all chips and pay out all prizes ~~((7))~~ including, but not limited to, progressive jackpot prizes, house jackpot prizes, and odds-based ((wager)) prizes. ~~((An "odds-based wager" means a wager where the player wins an amount over and above the amount he or she~~

wagered if a fixed pattern or combination of cards occurs, for example, a royal flush, four aces, or a pair.

~~(2) Licensees must not offer card games until they have met all of these requirements:~~

~~(a) Progressive jackpot prizes.~~

~~(i) Keep a separate bank account for progressive jackpot prizes. The account must be kept in a bank, mutual savings bank, or credit union located in Washington state;~~

~~(ii) Deposit all funds accrued for progressive jackpot prizes at least weekly; and~~

~~(iii) If the prize bank account is reduced below the level required, licensees must immediately stop operating games until they are in compliance.~~

~~(b) Odds-based wager prizes.~~

~~(i) Licensees offering more than one individual odds-based wager prize greater than twenty-five thousand dollars must keep an amount equal to the second highest odds-based wager prize offered in a bank, mutual savings bank, or a credit union located in Washington state; or possess a verifiable line of credit from a Washington state financial institution for at least the amount required; and~~

~~(ii) Use the highest wager they allow to calculate the individual odds-based wager prize amount to determine the amount for this requirement.~~

~~(3) Licensees may limit pay outs by using table and/or individual player aggregates.~~

~~(4) A licensee's failure to keep funds as required in this rule is prima facie evidence of defrauding the public and a) Failure to keep funds to cash in chips, pay prizes, or redeem gambling related checks is prima facie evidence of fraud and in violation of RCW 9.46.190.~~

[Statutory Authority: RCW 9.46.070. WSR 09-15-070 (Order 654), § 230-15-455, filed 7/13/09, effective 1/1/10; WSR 07-09-033 (Order 608), § 230-15-455, filed 4/10/07, effective 1/1/08.]

AMENDATORY SECTION (Amending WSR 07-09-033, filed 4/10/07, effective 1/1/08)

WAC 230-15-490 ((Limiting pay outs for odds-based wagers.)) Aggregate payout limits for odds-based prizes. ((~~(1) House-banked card game licensees may create pay out limits for odds-based wagers made in card games.~~

~~(2) Licensees may limit the pay out for odds-based wagers if we approve all pay out limits and their procedures for computing limits.~~

~~(3) Individual players' winnings must not be less than the higher of:~~

~~(a) The maximum wager allowed for the game times the highest odds offered up to fifty-to-one (50 to 1). For example: If the maximum wager is one hundred dollars (\$100) and the odds are fifty-to-one (50 to 1); then the per player limit is five thousand dollars (\$100 x 50 = \$5,000); or~~

~~(b) The house minimum required wager for the game times the highest odds offered for any wager in the game. The "minimum required wager" means the least amount a player must wager in order to win. For example: If the minimum required wager is ten dollars (\$10) and the~~

maximum odds are one thousand to one (1,000 to 1); then the per player limit is ten thousand dollars ($\$10 \times 1,000 = \$10,000$).

~~(4) Table limits (aggregate pay out) must not be less than two times the individual player limit, as computed in subsection (3) of this section; and~~

~~(5) Licensees must clearly disclose all procedures for computing any per player or table limit (aggregate pay outs). This explanation must be available to players in a brochure or other printed material.)~~ (1) House-banked card room licensees may impose aggregate payout limits if we approve for odds-based prizes.

(2) "Aggregate payout limit" means the maximum payout by a licensee to one or more players as the result of winning wagers from a single deal of cards.

(3) Aggregate payout limits must not be:

(a) Combined with different types of odds-based prizes; and

(b) Less than the maximum wager allowed for the game times the highest odds offered up to fifty to one. For example, if the maximum wager is three hundred dollars and the highest odds offered are five thousand to one, the aggregate payout limit cannot be less than fifteen thousand dollars (three hundred dollars times fifty); and

(c) Imposed upon any odds-based prize where the highest payoff odds on a winning wager are less than fifty to one; and

(4) All aggregate payout limits must be prominently displayed on the table layout or a sign placed on the table.

[Statutory Authority: RCW 9.46.070. WSR 07-09-033 (Order 608), § 230-15-490, filed 4/10/07, effective 1/1/08.]

AMENDATORY SECTION (Amending WSR 07-21-116, filed 10/22/07, effective 1/1/08)

WAC 230-15-491 Limiting payouts to dealers for tip or "toke" wagers for odds-based payouts. (1) A "toke" is a wager made by a player as a tip for the dealer and it is treated as a separate bet.

(2) House-banked card (~~game~~) room licensees may:

(a) Establish a separate, individual limit on the amount of the payout on a toke for odds-based payouts within the requirements of WAC 230-15-490; and

(b) Restrict the types of wagers tokens are allowed on and the amounts of tokens.

(3) Tokens are not included in the calculation of the (~~player or table~~) aggregate payout limits.

[Statutory Authority: RCW 9.46.070. WSR 07-21-116 (Order 617), § 230-15-491, filed 10/22/07, effective 1/1/08.]

AMENDATORY SECTION (Amending WSR 07-09-033, filed 4/10/07, effective 1/1/08)

WAC 230-15-680 Operating progressive jackpot prizes. House-banked card (~~game~~) room licensees may operate progressive jackpot prizes with certain approved house-banked card games.

(1) To participate in a progressive jackpot, a player places a separate wager, part of which accrues to the progressively increasing prize.

(2) ~~((Manufacturer's))~~ The company that owns the rights to the approved game rules must determine or establish the:

(a) Winning patterns or combinations of cards to win the progressive jackpot prize(s); and

(b) Pay tables to include a description of any fixed payouts, odds-based payouts, or percentage-based payouts of the total prize amount displayed.

(3) Licensees must offer a primary jackpot prize and may ~~((have a))~~ also offer secondary ~~((or reserve))~~ jackpot prizes.

(4) Licensees must ~~((adequately disclose to players the))~~ conspicuously and prominently disclose at the gaming table all prizes available and how they are won.

(5) Licensees must ensure that they closely control progressive jackpot games and account for all the funds collected.

(6) Licensees may take a portion of each progressive bet to be retained in the progressive account for the purposes of reseeding primary and secondary jackpot prizes after they are won.

[Statutory Authority: RCW 9.46.070. WSR 07-09-033 (Order 608), § 230-15-680, filed 4/10/07, effective 1/1/08.]

AMENDATORY SECTION (Amending WSR 15-21-005, filed 10/8/15, effective 11/8/15)

WAC 230-15-685 Restrictions on progressive jackpots. House-banked card ~~((game))~~ room licensees operating progressive jackpots must follow these restrictions and procedures:

(1) Progressive jackpot funds must accrue according to the rules of the game ~~((; and))~~.

(2) At each gambling table, licensees must prominently post the amount of the progressive jackpot that players can win ~~((; and))~~ along with any associated pay tables.

~~(3) ((Licensees must record the beginning amount of each progressive jackpot offered, including explanations for any increases or decreases in the prize amount offered. Licensees must keep this documentation with the progressive jackpot records; and~~

~~(4))~~ Licensees may establish a maximum limit on a progressive jackpot prize. If licensees establish a limit, they must make the amount equal to, or greater than, the amount of the jackpot when they imposed the limit. They must prominently post a notice of the limit at or near the game ~~((; and))~~.

~~((5))~~ (4) Licensees may connect progressive jackpots. Progressive jackpots are considered "connected" when jackpot prize displays at gaming tables incrementally increase at the same time after players place jackpot wagers. Connected progressive jackpot displays must show the same prize amounts. Licensees may only connect progressive jackpots:

(a) When offered on the same card game on multiple tables within the same licensed location ~~((-~~

~~(6) Licensees may connect progressive jackpots)); or~~

(b) When offered on different card games on multiple tables within the same licensed location when the following requirements are met.

Only one progressive jackpot may be operated on a card game at a time and the card games must have:

- ~~((a))~~ (i) The same probability of winning the jackpot prize;
and
~~((b))~~ (ii) The same winning hand ~~(; and~~
~~(c) A progressive meter on each table that increases incrementally each time a wager is made).~~
~~((7))~~ (5) When gambling equipment will allow a progressive jackpot between different manufacturers, the gambling equipment must be submitted for testing for interoperability in accordance with WAC 230-06-050.

[Statutory Authority: RCW 9.46.070 and 9.46.0282. WSR 15-21-005 (Order 715), § 230-15-685, filed 10/8/15, effective 11/8/15; WSR 13-13-060 (Order 688), § 230-15-685, filed 6/18/13, effective 7/19/13. Statutory Authority: RCW 9.46.070. WSR 07-09-033 (Order 608), § 230-15-685, filed 4/10/07, effective 1/1/08.]

AMENDATORY SECTION (Amending WSR 10-17-089, filed 8/16/10, effective 1/1/11)

WAC 230-15-695 Adjusting progressive jackpot amounts. House-banked card ~~((game))~~ room licensees must not reduce the amount of a progressive jackpot prize accrued or displayed except for the following reasons:

- (1) To reduce the primary or secondary jackpot(s) and the ~~((advertised))~~ displayed amount by the amount won; or
- (2) To correct an amount displayed incorrectly because of malfunctioning equipment; or
- (3) To correct the display when the amount displayed is greater than the predetermined maximum prize limit; or
- (4) To reduce ~~((a reserve or secondary jackpot))~~ the progressive account for nondisplayed prizes as long as they record the funds removed as gross receipts and properly documented that in their records; or
- (5) To reduce ~~((a reserve or secondary jackpot))~~ the progressive account or displayed amount to recover seed money ~~((that was not taken from gross receipts, if they properly document those funds in their records));~~ or
- (6) ~~((To reduce the jackpot by the dollar amount they paid for merchandise they award as prizes.~~
- ~~(7) To reduce a reserve or secondary jackpot to immediately seed a different progressive jackpot if the licensee properly documents this transfer in their records.)~~ Any adjustment to the progressive account or displayed prizes must be properly documented in card room records.

[Statutory Authority: RCW 9.46.070, 9.46.0282. WSR 10-17-089 (Order 671), § 230-15-695, filed 8/16/10, effective 1/1/11. Statutory Authority: RCW 9.46.070. WSR 07-09-033 (Order 608), § 230-15-695, filed 4/10/07, effective 1/1/08.]

AMENDATORY SECTION (Amending WSR 07-09-033, filed 4/10/07, effective 1/1/08)

WAC 230-15-700 Merchandise prizes for progressive jackpots.

House-banked card (~~game~~) room licensees (~~offering merchandise prizes for progressive jackpots~~) may use only nondisplayed progressive jackpot funds to purchase merchandise prizes to be offered on a progressive jackpot game in lieu of fixed prizes as set out in the approved pay table for the card game as posted on the commission's web-site. The merchandise purchased must be of equal or greater value to the fixed prizes offered in approved pay tables. Licensees must:

(1) Obtain approval from the company that owns the rights to the progressive jackpot card game to offer merchandise prizes; and

(2) Submit internal controls for review and approval; and

(3) Own the merchandise prizes and pay for them in full, without lien or interest of others, before they award the merchandise as prizes. If the winner has an option to receive a cash prize instead of the merchandise, licensees may enter into a contract to immediately purchase a merchandise prize after the winner chooses their option; and

~~((2) Disclose that they used)~~ (4) Prominently post a notice at the progressive jackpot gaming table describing:

(a) A specific portion of the jackpot funds were used to buy merchandise to be awarded as prizes, as well as the specific merchandise prizes to be awarded; and

~~((3) Disclose)~~ (b) The value of the merchandise they plan to award. This value must be accurate and verifiable; and

~~((4) Award the merchandise on the specific outcome of a game and include the outcome in the game rules)~~ (c) The predetermined designated hand needed to win the merchandise prize; and

(d) Fees or restrictions associated with ownership of the merchandise prize; and

(5) Display merchandise prize or an accurate description or photograph of the merchandise prize for the public to view; and

~~((5))~~ (6) Keep detailed records, including the purchase invoice, on premises and make them available for our review.

[Statutory Authority: RCW 9.46.070. WSR 07-09-033 (Order 608), § 230-15-700, filed 4/10/07, effective 1/1/08.]

AMENDATORY SECTION (Amending WSR 07-09-033, filed 4/10/07, effective 1/1/08)

WAC 230-15-710 Permanently removing a progressive jackpot (~~or a portion of a progressive jackpot~~) game from play. ~~((1))~~ Players have a vested interest in the (~~posted or advertised~~) displayed progressive jackpot prize.

~~((2))~~ (1) House-banked card room licensees must not remove a progressive jackpot game from play without written approval. Licensees must:

(a) Submit a detailed distribution plan to us in writing and receive written approval before removing any progressive jackpot prizes from play; and

(b) Prominently post a notice and the approved distribution plan at the progressive jackpot gambling table, including if they plan to

close the business, at least ten days before they begin the process of removing the jackpot and distributing the funds; and

(c) ~~((Distribute the funds in one or more of the following ways:~~

~~(i) Offering the prize on a different house-banked game; or~~

~~(ii) Offering the prize in an approved free tournament in which funds must be distributed within sixty days from the date of approval; or~~

~~(iii) Donating the money to the Washington State Council on Problem Gambling.)~~ Not make any changes to the approved distribution plan after it is posted at the progressive jackpot gambling table without written approval from us.

(2) Licensees must distribute the amount of the posted progressive jackpot prizes using one of these authorized methods:

(a) Transfer the progressive jackpot prize to a different house-banked progressive jackpot game; or

(b) Give away the progressive jackpot prize through an approved gambling promotion within sixty days of the effective date of the distribution plan. Licensees must:

(i) Operate the gambling promotion on the same game the funds were collected on; and

(ii) Receive approval from the owner of the game in accordance with WAC 230-15-141; or

(c) Offer the progressive jackpot prize in an approved free tournament on the same progressive jackpot game the funds were collected on within sixty days of the effective date of the distribution plan; or

(d) Donate the money to a nonprofit gambling organization in Washington state.

[Statutory Authority: RCW 9.46.070. WSR 07-09-033 (Order 608), § 230-15-710, filed 4/10/07, effective 1/1/08.]

AMENDATORY SECTION (Amending WSR 07-09-033, filed 4/10/07, effective 1/1/08)

WAC 230-15-715 Tax authorities seizing all, or a portion, of a progressive jackpot. If a taxing authority seizes jackpot funds, the house-banked card ~~((game))~~ room licensee must immediately cease operating the progressive jackpot game and collecting funds for the progressive jackpot until the amount that was posted as the prize has been replaced in the bank account. Licensees may either replace ~~((reserve or secondary funds))~~ nondisplayed prizes retained in the progressive account that were seized or record the funds as gross receipts.

[Statutory Authority: RCW 9.46.070. WSR 07-09-033 (Order 608), § 230-15-715, filed 4/10/07, effective 1/1/08.]

AMENDATORY SECTION (Amending WSR 10-11-087, filed 5/17/10, effective 7/1/10)

WAC 230-15-720 Deposit and reconciliation requirements for progressive jackpot prizes. (1) House-banked card ~~((game))~~ room licen-

sees must deposit all progressive jackpot funds in a separate bank account at least weekly. The account must be kept in a bank, mutual savings bank, or credit union located in Washington state. If the progressive bank account is reduced below the progressive jackpot prize posted at the gambling table, licensees must immediately stop operating the progressive game until they are in compliance.

(2) Licensees must:

(a) Keep a record of all deposits; and

(b) For each progressive jackpot prize, identify the deposits by game name (~~and number~~) and dates of collection; and

(c) Maintain validated deposit slips as part of their records or have online access to their progressive jackpot prize bank accounts.

(3) (~~At the end of the month,~~) Licensees must:

(a) Reconcile the account balance with the bank statement to the progressive jackpot fund balances. "Reconcile" means the licensee must compare the two balances, resolve any differences, and document the comparison and the differences in writing; and

(b) Complete the reconciliation within seven days following the end of the month; and

(c) Keep the reconciliation as part of their records.

[Statutory Authority: RCW 9.46.070. WSR 10-11-087 (Order 669), § 230-15-720, filed 5/17/10, effective 7/1/10; WSR 07-09-033 (Order 608), § 230-15-720, filed 4/10/07, effective 1/1/08.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 230-15-105 Only authorized cards or chips may be used.

WAC 230-15-705 Temporarily removing a progressive jackpot from play.

OTS-2834.2

NEW SECTION

WAC 230-15-671 Jackpot prizes. House-banked card room licensees may offer and operate "jackpot" prizes with approved house-banked card games.

(1) "Jackpot" prizes are cash prizes displayed at house-banked card game tables. Jackpot prizes are won by achieving a predetermined specific hand. There are two types of "jackpot" prize schemes:

(a) **Progressive jackpots:** A jackpot prize which increases in real-time based on each wager placed. Licensees must:

(i) Collect players' wagers to allocate towards a separate progressive jackpot prize. Approved game rules determine how a progressive jackpot accrues; and

(ii) Adjust the master games report in the prescribed format to reflect daily accrued prizes; and

(iii) Act only as the custodian of the progressive jackpot funds; and

(iv) Maintain no legal right to funds collected for the posted progressive jackpot prize or reserve funds which have not been recorded as gross receipts; and

(v) Strictly account for all funds collected.

(b) **House jackpots:** A fixed prize amount funded by the licensee that does not accrue or incrementally increase each time a wager is made to any guaranteed player fund or prize. Licensees must:

(i) Follow approved game rules related to house jackpots; and

(ii) Not adjust the master games report for house jackpot prizes; and

(iii) Award the posted house jackpot prize to each player achieving the predetermined winning hand; and

(iv) Conspicuously post the following at the table:

(A) The fixed prize amount; and

(B) A disclosure defining the jackpot prize as a house jackpot which involves no player funded money; and

(C) A disclosure to the players stating that the house jackpot may be removed without prior notice.

(2) Only progressive jackpots may use approved gambling equipment where the jackpot meter shows a real-time incrementally increasing progressive jackpot prize amount.

(3) House jackpots may use approved gambling equipment. Displayed prize amounts may only be adjusted manually by the licensee.

[]

WSR 21-07-063

PROPOSED RULES

EASTERN WASHINGTON UNIVERSITY

[Filed March 16, 2021, 10:21 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-01-171.

Title of Rule and Other Identifying Information: Chapter 172-123 WAC, Scholarships.

Hearing Location(s): On May 12, 2021, at 9:00 a.m., on Eastern Washington University (EWU), Main Campus, 526 5th Street, Cheney, WA 99004. This will be a virtual meeting via Zoom. The link to participate in the Zoom meeting is <https://ewu.zoom.us/j/94220953157>.

Date of Intended Adoption: May 21, 2021.

Submit Written Comments to: Annika Scharosch, EWU, 526 5th Street, 211 Tawanka Hall, Cheney, WA 99004, email ascharosch@ewu.edu, fax 509-359-6724, by May 12, 2021.

Assistance for Persons with Disabilities: Contact Annika Scharosch, phone 509-359-6724, fax 509-359-2874, email ascharosch@ewu.edu, by May 12, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: EWU is requesting to repeal this chapter as information about scholarships is now contained in new chapter 172-10 WAC.

Reasons Supporting Proposal: EWU is requesting to repeal this chapter as information about scholarships is now contained in a new chapter 172-10 WAC.

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).

March 16, 2021
Annika Scharosch
Associate Vice President

OTS-2962.1

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 172-123-010 Scholarships.

WSR 21-07-065

PROPOSED RULES

DEPARTMENT OF REVENUE

[Filed March 16, 2021, 11:26 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-22-090.

Title of Rule and Other Identifying Information: WAC 458-20-282
Marketplace tax collection and reporting.

Hearing Location(s): On April 28, 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: May 24, 2021.

Submit Written Comments to: Darius Massoudi, P.O. Box 47453, Olympia, WA 98504-7453, email DariusM@dor.wa.gov, fax 360-534-1606, 360-534-1572.

Assistance for Persons with Disabilities: Contact Julie King or Renee Cosare, phone 360-704-5733 or 360-704-5734, TTY 800-833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule clarifies the reporting responsibilities of a marketplace facilitator required to collect sales and use tax on behalf of marketplace sellers making retail sales through the facilitator's marketplace.

Reasons Supporting Proposal: The department of revenue intends to provide guidance to taxpayers regarding EHB 2163, which was enacted by the legislature during the third special session of 2017, and SSB 5581, which was enacted by the legislature during the regular session of 2019.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060(2).

Statute Being Implemented: RCW 82.08.0531, 82.08.010, 82.08.052, 82.02.250, 82.02.260, 82.32.762.

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: Darius Massoudi, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1572; 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 language for WAC 458-20-282 provides clarification to marketplace facilitators regarding their existing reporting responsibilities under EHB 2163 (2017) and SSB 5581 (2019). The proposed rule does not impose more-than-minor costs on businesses, as it does not propose any new tax rate, tax measure, reporting or recordkeeping requirements not already established by this statute.

March 16, 2021
Atif Aziz
Rules Coordinator

OTS-2750.2

NEW SECTION**WAC 458-20-282 Marketplace tax collection and reporting.** (1)

Introduction. This rule explains the reporting responsibilities of a marketplace facilitator required to collect sales and use tax on behalf of marketplace sellers making retail sales through the facilitator's marketplace. See Substitute Senate Bill 5581 (2019). This rule presumes the marketplace facilitator has substantial nexus with Washington to incur a sales or use tax collection obligation.

(2) **Other rules.** In addition to this rule, readers may want to refer to the following rules for additional information:

- WAC 458-20-103 Gift certificates—Sale deemed to occur and retail sales tax collected at time of redemption.
- WAC 458-20-108 Selling price—Credit card service fees, foreign currency, discounts, patronage dividends.
- WAC 458-20-145 Local sales and use tax.
- WAC 458-20-193 Interstate sales of tangible personal property.
- WAC 458-20-193C Imports and exports—Sales of goods from or to persons in foreign countries.
- WAC 458-20-221 Collection of use tax by retailers and selling agents.

(3) **Rule examples.** This rule includes examples that identify a set of facts and then state a conclusion. These examples are only a general guide. The department will evaluate each case on its particular facts and circumstances.

(4) **Organization of rule.** This rule is divided into six parts:

- Part I - Definitions.
- Part II - Defining a Marketplace Facilitator.
- Part III - Tax Collection Responsibilities.
- Part IV - Liability Relief.
- Part V - Providing Sales Information to Marketplace Sellers.
- Part VI - Marketplace Audits.

Part I - Definitions

The definitions in this part are provided in RCW 82.08.010 and apply throughout this rule unless the context clearly requires otherwise.

(101) (a) "Affiliated person" means a person that, with respect to another person:

- (i) Has an ownership interest of more than five percent, whether direct or indirect, in the other person; or
- (ii) Is related to the other person because a third person, or group of third persons who are affiliated persons with respect to each other, holds an ownership interest of more than five percent, whether direct or indirect, in the related persons.

(b) For purposes of this subsection:

- (i) "Ownership interest" means the possession of equity in the capital, the stock, or the profits of the other person; and
- (ii) An indirect ownership interest in a person is an ownership interest in an entity that has an ownership interest in the person or in an entity that has an indirect ownership interest in the person.

(102) "Consumer" has the same meaning as provided in chapters 82.04, 82.08, and 82.12 RCW.

(103) "Marketplace" means a physical or electronic place including, but not limited to, a store, a booth, an internet website, a catalog or a dedicated sales software application, where tangible personal property, digital codes and digital products, or services are offered for sale.

(104) (a) "Marketplace facilitator" means a person that:

(i) Contracts with sellers to facilitate for consideration, regardless of whether deducted as fees from the transaction, the sale of the seller's products through a marketplace owned or operated by the person (collectively "facilitates sales for consideration");

(ii) Engages directly or indirectly, through one or more affiliated persons, in transmitting or otherwise communicating the offer or acceptance between the buyer and seller (collectively "transmits offer or acceptance"). For purposes of this subsection, mere advertising does not constitute transmitting or otherwise communicating the offer or acceptance between the buyer and seller; and

(iii) Engages directly or indirectly, through one or more affiliated persons, in any of the following activities with respect to the seller's products:

(A) Payment processing services;

(B) Fulfillment or storage services;

(C) Listing products for sale;

(D) Setting prices;

(E) Branding sales as those of the marketplace facilitator;

(F) Taking orders; or

(G) Providing customer service or accepting or assisting with returns or exchanges (collectively "specified activities").

(b) (i) "Marketplace facilitator" does not include:

(A) A person who provides internet advertising services, including listing products for sale, so long as the person does not also transmit offer or acceptance and engage in any specified activities; or

(B) A person with respect to the provision of travel agency services or the operation of a marketplace or that portion of a marketplace that enables consumers to purchase transient lodging accommodations in a hotel or other commercial transient lodging facility.

(ii) The exclusion in (b) of this subsection does not apply to a marketplace or that portion of a marketplace that facilitates the retail sale of transient lodging accommodations in homes, apartments, cabins, or other residential dwelling units.

(iii) For purposes of (b) of this subsection, the following definitions apply:

(A) "Hotel" has the same meaning as in RCW 19.48.010.

(B) "Travel agency services" means arranging or booking, for a commission, fee or other consideration, vacation or travel packages, rental car or other travel reservations or accommodations, tickets for domestic or foreign travel by air, rail, ship, bus, or other medium of transportation, or hotel or other lodging accommodations.

(105) "Marketplace seller" means a seller that makes retail sales through any marketplaces operated by a marketplace facilitator, regardless of whether the seller is required to be registered with the department as provided in RCW 82.32.030.

(106) "Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political subdivision of the state of Washington, corporation, limited liability company, association, soci-

ety, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise and the United States or any instrumentality thereof.

(107) "Product" has the same meaning as provided in RCW 82.32.023.

(108) "Purchaser" means any consumer who purchases or leases a product sourced to this state under RCW 82.32.730.

(109) "Retail sale" and "sale" have the same meaning as provided in chapter 82.04 RCW.

(110) "Seller" has the same meaning as provided in RCW 82.08.010.

Part II - Defining A Marketplace Facilitator

(201) (a) **Who is a marketplace facilitator?** A marketplace facilitator is a person who facilitates sales for consideration of a marketplace seller's products through a marketplace, transmits offer or acceptance between the buyer and seller, and engages in at least one of the specified activities listed in subsection (104) (a) (iii) of this rule. A person must meet all three parts of the definition to be a marketplace facilitator. Generally, a person is facilitating a sale when the sale is conducted through the person's marketplace.

(b) **Who is not a marketplace facilitator?**

(i) **Advertisers.** Persons that merely advertise goods for sale, including listing products for sale in the advertisement, and do not handle transactions do not meet the definition of a marketplace facilitator, as long as those persons do not meet the other requirements of the marketplace facilitator definition. Additionally, mere advertising does not constitute transmitting or otherwise communicating the offer or acceptance between the buyer and seller for the purposes of subsection (104) (a) (ii) of this rule of the marketplace facilitator definition.

(ii) **Travel agents and hotel marketplaces.** A person operating a marketplace is not considered a marketplace facilitator for any portion of its marketplace that provides travel agency services or enables consumers to purchase transient lodging accommodations in a hotel or other commercial transient lodging facility. This exclusion does not apply to any portion of a marketplace that facilitates the retail sale of transient lodging accommodations in homes, apartments, cabins, or other residential dwelling units.

(c) **Responsibilities depend on role in transaction.** A person can be a retailer for some transactions and a marketplace facilitator for some transactions, but it can only be one of these designations in any particular transaction. A person's specific reporting responsibilities as a retailer or marketplace facilitator depends on its particular role in the transaction.

Example 1. Intergalactic Fulfillment Portal (IFP) lists products sold by third parties at retail on its website. IFP communicates the offer and acceptance between the seller and buyer for the sale of these third-party products. IFP completes the sales transactions on its website, processes the payments, and is paid a percentage of the sales price. IFP is a marketplace facilitator, as it meets all three parts of the marketplace facilitator definition (facilitates sales for consideration, transmits offer or acceptance, and engages in at least one specified activity--processing payments).

Example 2. Same facts as Example 1, except IFP uses a third party to process the payments. IFP still meets the definition of a marketplace facilitator, as it still meets all three parts of the marketplace facilitator definition (facilitates sales for consideration,

transmits the offer or acceptance, and engages in a specified activity--listing products for sale). A person does not need to process payments to meet the definition of a marketplace facilitator, as any one of the specified activities listed in subsection (104)(a)(iii) of this rule is sufficient.

Example 3. Taste of Andromeda (TOA) is a business that contracts with various restaurants to allow them to prepare and sell food (all of which is subject to retail sales tax) in the business's food court. Customers order and collect their food from the restaurants, but TOA, not the third-party restaurants, completes the sale and accepts payment for the prepared food. TOA gives the third-party restaurants the remaining proceeds of the sale net of the amount TOA retains for itself. TOA meets the definition of a marketplace facilitator, as it meets all three parts of the marketplace facilitator definition (facilitates sales for consideration, transmits offer or acceptance, and engages in a specified activity--processing payments).

Example 4. First Alpha Centauri Technology (FACT) performs the payment processing for an online marketplace. Neither FACT nor any of FACT's affiliates performs any other function related to the operation or sale of products on the marketplace. FACT does not meet the definition of a marketplace facilitator, as it only satisfies one of the three parts of the marketplace facilitator definition, in this case engaging in a specified activity. FACT does not meet the other two parts of the marketplace facilitator definition (it is neither facilitating sales for consideration, nor is it transmitting offer or acceptance).

Example 5. Neptunian Connection (NC) is a business that lists products sold by third parties on its website. NC does not facilitate the sale of these products for consideration. When purchasers want to purchase a listed product, NC transfers the purchaser to the third-party seller's website to complete the sale. NC has no involvement in the sales transaction. NC does not meet the definition of a marketplace facilitator (NC neither gets paid to facilitate a sale for consideration on a marketplace, nor transmits offer or acceptance).

Example 6. Antares Travel Solutions (ATS) owns and operates a marketplace for used teleporters and gets paid for facilitating sales of used teleporters by third-party sellers. ATS facilitates sales for consideration, but neither transmits offers or acceptances, nor engages in a specified activity. However, ATS owns 19% of the capital stock of the Scorpius-Centaurus Association (SCA). SCA owns 11% of the capital stock of Mahtab Affiliated Technologies (MAT), which transmits the offers and acceptances on the ATS marketplace, and processes payments for the ATS marketplace. Since ATS has an indirect ownership interest in MAT, MAT is an affiliated person with respect to ATS. As a result, ATS meets all three parts of the definition of a marketplace facilitator (facilitates sales for consideration, transmits offers or acceptances indirectly through an affiliated person, and engages in a specified activity indirectly through affiliated person--payment processing services).

Example 7. Triangulum Transient Geological Excursions (TTGE) operates a marketplace specializing in transient lodging for individuals interested in geology. TTGE's marketplace facilitates the retail sale of transient lodging accommodations in residential cabins offering views of volcanoes. TTGE's marketplace also allows for the sale of transient lodging located in a hotel next to a tectonic fault. TTGE is a marketplace facilitator for the sales of transient lodging located in the residential cabins, but is not a marketplace facilitator for

the sales of the transient lodging located in the hotel. TTGE does not need to report its sales of the transient lodging located in the hotel.

Part III - Tax Collection Responsibilities

(301) What must be collected and remitted?

(a) **Requirement to collect and remit sales or use tax.** A marketplace facilitator must collect and remit sales or use tax on all taxable retail sales sourced to Washington on behalf of any marketplace seller making retail sales through the marketplace facilitator's marketplace.

(i) **Determining the correct combined state and local sale of use tax rate.** The marketplace facilitator must determine the correct combined state and local sales or use tax rate to charge for sales sourced to Washington. The state tax rate is established in RCW 82.08.020. For information on determining the applicable local tax rate, see WAC 458-20-145.

(ii) **Relief for marketplace seller.** Except as otherwise provided in subsection (401)(b) of this rule, a marketplace seller is not required to collect or remit sales or use tax on taxable retail sales through a marketplace facilitator's marketplace if the marketplace seller has obtained documentation from the marketplace facilitator indicating that the marketplace facilitator is registered with the department and will collect all applicable taxes due under chapters 82.08 and 82.12 RCW on all taxable retail sales made on behalf of the marketplace seller through the facilitator's marketplace. The required documentation must be in writing, but may be transmitted electronically. The required documentation may be included in agreements between the marketplace seller and the marketplace facilitator or in information distributed or accessible to marketplace sellers through the facilitator's marketplace. Marketplace sellers should retain this documentation with their own tax records. The documentation must clearly state the marketplace facilitator's intention to collect sales or use tax on behalf of the marketplace seller, along with the department-issued tax account ID number that the marketplace facilitator will use to report and remit the sales or use tax collected on behalf of the marketplace seller. If the marketplace seller does not obtain documentation from the marketplace facilitator, then it may be held liable for any uncollected sales tax on sales through that facilitator's marketplace.

(b) Requirement to collect and remit other taxes and fees.

(i) (A) **Taxes and fees authorized in chapter 82.08 RCW.** In addition to collecting and remitting sales or use tax, a marketplace facilitator must also collect and remit all other applicable taxes and fees authorized in chapter 82.08 RCW on all retail sales sourced to Washington on behalf of any marketplace seller making retail sales through the marketplace facilitator's marketplace.

(B) **Taxes and fees in chapter 82.08 RCW.** Applicable taxes and fees in chapter 82.08 RCW may include, but are not limited to:

(I) Motor vehicle sales tax (see RCW 82.08.020(2)).

(II) Spirits taxes (see RCW 82.08.150).

(ii) (A) **Other applicable taxes and fees.** Beginning January 1, 2020, a marketplace facilitator must also collect and remit all other applicable taxes and fees on all retail sales sourced to Washington on behalf of any marketplace seller making retail sales through the marketplace facilitator's marketplace. For the purposes of this subsection, "taxes and fees" means any monetary exaction, regardless of its

label, imposed on a buyer and that the seller is required to collect and pay over to the department.

(B) **Examples of taxes and fees.** Other applicable taxes and fees may include, but are not limited to:

(I) Lodging taxes and charges (see WAC 458-20-166).

(II) Solid fuel burning device fee (see RCW 70A.15.3620).

(III) Tire fees (see RCW 70A.205.405, 46.37.427, and WAC 458-20-272).

(302) **Exemptions.**

(a) **Verification.** In cases where a marketplace facilitator seeks to determine whether an exemption applies to a particular retail sale, the marketplace facilitator may request required documentation from the marketplace seller or purchaser to determine whether the exemption applies. This subsection does not obligate a marketplace facilitator to accept a purchaser's claim of an exempt sale.

(b) **Documentation.** The marketplace facilitator must retain any documentation from the marketplace seller or purchaser needed to verify any exemption claimed. See RCW 82.08.050. Exemption certificates provided by purchasers may designate either the name of the marketplace facilitator or the marketplace seller in the field referring to the seller in order to ensure there is a properly completed exemption certificate.

(c) **Common exemptions.** Applicable exemptions may include, but are not limited to:

(i) Sales of food and food ingredients (see RCW 82.08.0293 and 82.12.0293 and WAC 458-20-244).

(ii) Sales of prescription drugs and prosthetic devices (see RCW 82.08.0281 and WAC 458-20-18801).

(iii) Sales to an Indian tribal member in Indian country (see WAC 458-20-192).

(iv) Sales to the United States government (see WAC 458-20-190).

(d) **Sales for resale.** If a marketplace facilitator chooses to make a sale for resale, it must also accept and retain any documentation from the purchaser needed to verify that a sale is for resale rather than for end use by the purchaser (see RCW 82.04.060 and WAC 458-20-102).

(303) **Tax return reporting.**

(a) **Remitting tax.** A marketplace facilitator may report the sales or use tax, along with any other applicable taxes and fees, collected on behalf of marketplace sellers separately from the sales or use tax collected on its own sales into Washington under a separate tax reporting account or separate legal entity account. Alternatively, a marketplace facilitator may report all such taxes on the same tax reporting account as it reports its own direct sales.

(b) **Business and occupation tax.** Generally, marketplace facilitators do not owe retailing business and occupation (B&O) tax on retail sales facilitated on its marketplace, but do owe retailing B&O tax on products they sell in their own name (see RCW 82.04.480). A marketplace facilitator may be subject to B&O tax under the service and other activities classification on the gross income from any commission, fee, or other compensation earned from facilitating a sale. See WAC 458-20-19401 and 458-20-19402 for more information on when such B&O tax is due.

Part IV - Liability Relief

(401) **Incorrect information provided by marketplace seller.**

(a) **Marketplace facilitator relief.** A marketplace facilitator is relieved of liability for failure to collect the correct amount of sales or use tax, with respect to sales on behalf of marketplace sellers, to the extent that the marketplace facilitator can show to the department's satisfaction that the error was due to incorrect information given to the marketplace facilitator by the marketplace seller, unless the marketplace facilitator and the marketplace seller are affiliated persons. To qualify for the liability relief under this subsection, a marketplace facilitator must have received erroneous information from a marketplace seller that prevented the marketplace facilitator from properly determining the correct tax amount owed. A marketplace facilitator does not qualify for the liability relief under this subsection when a marketplace seller provided information that was correct, but was incomplete or insufficient to make the proper taxability determination.

(b) **Marketplace seller liability.** Where the marketplace facilitator is relieved of liability under (a) of this subsection, the marketplace seller is solely liable for the amount of uncollected tax due.

(402) **Percentage of tax due.**

(a) **Conditions for relief.** Subject to the limits detailed below in (b) and (c) of this subsection, and subsection (403) of this rule, a marketplace facilitator is relieved of liability for the failure to collect sales and use tax on taxable retail sales to the extent that the marketplace facilitator can show to the department's satisfaction that:

(i) The taxable retail sale was made through the marketplace facilitator's marketplace;

(ii) The taxable retail sale was made solely as the agent of a marketplace seller, and the marketplace facilitator and the marketplace seller are not affiliated persons; and

(iii) The failure to collect sales or use tax was not due to an error in sourcing the sale under RCW 82.32.730.

(b) **Limitations on relief.** Liability relief for a marketplace facilitator under (a) of this subsection is limited as follows:

(i) For calendar year 2018, the liability relief may not exceed ten percent of the total tax due under chapters 82.08 and 82.12 RCW on taxable retail sales by the marketplace facilitator and collected on behalf of a marketplace seller and sourced to this state under RCW 82.32.730 during the same calendar year.

(ii) For calendar year 2019, the liability relief may not exceed five percent of the total tax due under chapters 82.08 and 82.12 RCW on taxable retail sales by the marketplace facilitator and collected on behalf of a marketplace seller and sourced to this state under RCW 82.32.730 during the same calendar year.

(c) **Situations when relief is not available.** The liability relief identified in this subsection is not available for retail sales that a marketplace facilitator determined were subject to sales or use tax but chose not to collect the tax, or where the marketplace facilitator otherwise acts fraudulently to avoid collecting tax. Liability relief is also not available when the failure to collect sales or use tax was contrary to specific written instructions provided by the department.

(d) **Marketplace seller relief.** Where the marketplace facilitator is relieved of liability under (a) of this subsection, the marketplace seller is also relieved of liability for the amount of uncollected tax due.

(e) **How to claim the relief.** The liability relief provided in (a) of this subsection may be claimed when the department determines that

additional sales or use tax is due for a particular calendar year on sales meeting the criteria of (a)(i) through (iii) of this subsection. Upon such a determination by the department, the marketplace facilitator may claim relief from liability on such additional tax, subject to the limitations in (b) and (c) of this subsection, and subsection (403) of this rule. Any amounts remaining after application of these limitations are due in full by the taxpayer and subject to any applicable penalty and interest as provided in chapter 82.32 RCW.

(f) **When is a sale facilitated?** For purposes of this subsection, a retail sale is deemed to be facilitated by a marketplace facilitator when the marketplace facilitator either:

(i) Accepts the order for the product;

(ii) Communicates to the marketplace seller the buyer's offer to purchase the product;

(iii) Accepts the buyer's payment for the product; or

(iv) Delivers or arranges for delivery of the product.

(403) **Loss of liability relief.** A marketplace facilitator that does not provide the reports required under subsection (501) of this rule is not eligible for the liability relief provided under subsections (401) and (402) of this rule.

Part V - Providing Sales Information to Marketplace Sellers

(501) **Facilitated Washington sales.**

(a) **Monthly access.** Beginning July 1, 2019, a marketplace facilitator must provide each of its marketplace sellers with access, through a written report or other means, to gross sales information for all Washington sales facilitated on behalf of the marketplace seller during the immediately preceding month. Marketplace facilitators must provide such written report or access within fifteen calendar days following the end of each month. The report must include all information required by the marketplace seller to fulfill its tax reporting obligations with the department, including any delivery charges, fees, or other charges on sales facilitated by the marketplace facilitator.

(b) **Reasonable method of estimating sales.** If a marketplace seller does not receive the gross sales information for all Washington sales through a marketplace facilitator, the marketplace seller may determine its business and occupation tax liability under chapter 82.04 RCW based on a reasonable method of estimating Washington sales as may be required or approved by the department.

(c) **What are Washington sales?** For purposes of this subsection, "Washington sales" means any sale sourced to this state under RCW 82.32.730, regardless of whether the sale is a retail sale or wholesale sale.

(502) **Loss of liability relief.** A marketplace facilitator that does not comply with subsection (501)(a) of this rule is not eligible for the sales tax liability relief provided in subsections (401) and (402) of this rule.

Part VI - Marketplace Audits

(601) **Marketplace audit.** A marketplace facilitator is subject to audit in order to ensure tax is properly reported and remitted on all sales occurring on the marketplace, including sales facilitated on behalf of marketplace sellers.

(602) **Additional documentation.**

(a) **Verifying tax collection and exemptions.** A marketplace facilitator may be required to provide documentation for all sales occurring on its marketplace to verify that the marketplace facilitator:

(i) Remitted all tax charged to customers, charged the correct amount of tax on all taxable retail transactions, and properly sourced all taxable retail sales pursuant to RCW 82.32.730; and

(ii) Properly granted exemptions, if applicable, verified the type of exemption granted, and retained the appropriate supporting documentation to substantiate the exemption as required under RCW 82.32.070 and subsection (302) of this rule.

(b) **Electronic format.** The marketplace facilitator must provide this information electronically, in agreed upon format, at the department's request.

(c) **Frequency.** The department may request this information on a more frequent or periodic basis to supplement its routine audit effort.

(603) **Information from marketplace sellers.** The marketplace facilitator may request additional information from a marketplace seller making sales on its marketplace in order to comply with these audit requirements.

[]

WSR 21-07-067

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed March 16, 2021, 12:56 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-10-012.

Title of Rule and Other Identifying Information: WAC 182-502-0016
Continuing requirements.

Hearing Location(s): On April 27, 2021, at 10:00 a.m. As the governor's Safe Start plan progresses, it is yet unknown whether by the date of this public hearing restrictions of meeting in public places will be eased. To continue to be safe, this hearing is being scheduled as a virtual only hearing. This will not be an in-person hearing and there is not a physical location available. To attend, you must register prior to the virtual public hearing (April 27, 2021, 10:00 a.m. Pacific Time).

Registration URL <https://attendee.gotowebinar.com/register/181514389970288398>, Webinar ID 554-761-747. After registering, you will receive a confirmation email containing the information about joining the webinar.

Date of Intended Adoption: Not sooner than April 28, 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 April 27, 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 April 9, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending this section to meet the Centers for Medicare and Medicaid Services milestone requirement 3 regarding the agency's Section 1115 Substance Use Disorder (SUD) Waiver Implementation Plan. Milestone 3 requires the adoption of rules reflecting the requirement that residential treatment facilities that provide SUD services offer medication assisted treatment access on-site or facilitate off-site access.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, 71.24.035, 71.24.520, 71.24.585, and 42 U.S.C. 1315 (Sec. 1115).

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Michael Williams, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1346; Implementation and Enforcement: Jessica Blose, P.O. Box 45506, Olympia, WA 98504-2716, 360-725-1088.

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 a disproportionate cost impact on small businesses or nonprofits.

March 16, 2021
Wendy Barcus
Rules Coordinator

OTS-2523.5

AMENDATORY SECTION (Amending WSR 19-20-060, filed 9/26/19, effective 10/27/19)

WAC 182-502-0016 Continuing requirements. (1) To continue to provide services for eligible clients and be paid for those services, a provider must:

(a) Provide all services without discriminating on the grounds of race, creed, color, age, sex, sexual orientation, religion, national origin, marital status, the presence of any sensory, mental or physical handicap, or the use of a trained dog guide or service animal by a person with a disability;

(b) Provide all services according to federal and state laws and rules, medicaid agency billing instructions, provider alerts issued by the agency, and other written directives from the agency;

(c) Inform the agency of any changes to the provider's application or contract including, but not limited to, changes in:

(i) Ownership (see WAC 182-502-0018);

(ii) Address or telephone number;

(iii) The professional practicing under the billing provider number; or

(iv) Business name.

(d) Retain a current professional state license, registration, certification or applicable business license for the service being provided, and update the agency of all changes;

(e) Inform the agency in writing within seven calendar days of changes applicable to the provider's clinical privileges;

(f) Inform the agency in writing within seven business days of receiving any informal or formal disciplinary order, disciplinary decision, disciplinary action or other action(s) including, but not limited to, restrictions, limitations, conditions and suspensions resulting from the practitioner's acts, omissions, or conduct against the provider's license, registration, or certification in any state;

(g) Screen employees and contractors with whom they do business prior to hiring or contracting, and on a monthly ongoing basis thereafter, to assure that employees and contractors are not excluded from receiving federal funds as required by 42 U.S.C. 1320a-7 and 42 U.S.C. 1320c-5;

(h) Report immediately to the agency any information discovered regarding an employee's or contractor's exclusion from receiving federal funds in accordance with 42 U.S.C. 1320a-7 and 42 U.S.C. 1320c-5. See WAC 182-502-0010 (2)(j) for information on the agency's screening process;

(i) Pass any portion of the agency's screening process as specified in WAC 182-502-0010 (2)(j) when the agency requires such information to reassess a provider;

(j) Maintain professional and general liability coverage to the extent the provider is not covered:

(i) Under agency, center, or facility professional and general liability coverage; or

(ii) By the Federal Tort Claims Act, including related rules and regulations.

(k) Not surrender, voluntarily or involuntarily, the provider's professional state license, registration, or certification in any state while under investigation by that state or due to findings by that state resulting from the practitioner's acts, omissions, or conduct;

(l) Furnish documentation or other assurances as determined by the agency in cases where a provider has an alcohol or chemical dependency problem, to adequately safeguard the health and safety of medical assistance clients that the provider:

(i) Is complying with all conditions, limitations, or restrictions to the provider's practice both public and private; and

(ii) Is receiving treatment adequate to ensure that the dependency problem will not affect the quality of the provider's practice.

(m) Submit to a revalidation process at least every five years. This process includes, but is not limited to:

(i) Updating provider information including, but not limited to, disclosures;

(ii) Submitting forms as required by the agency including, but not limited to, a new core provider agreement; and

(iii) Passing the agency's screening process as specified in WAC 182-502-0010 (2)(j).

(n) Comply with the employee education requirements regarding the federal and the state false claims recovery laws, the rights and protections afforded to whistleblowers, and related provisions in Section 1902 of the Social Security Act (42 U.S.C. 1396a(68)) and chapter 74.66 RCW when applicable. See WAC 182-502-0017 for information regarding the agency's requirements for employee education about false claims recovery.

(2) A provider may contact the agency with questions regarding its programs. However, the agency's response is based solely on the information provided to the agency's representative at the time of inquiry, and in no way exempts a provider from following the laws and rules that govern the agency's programs.

(3) The agency may refer the provider to the appropriate state health professions quality assurance commission.

(4) In addition to the requirements in subsections (1), (2), and (3) of this section, to continue to provide services for eligible clients and be paid for those services, residential treatment facilities that provide substance use disorder (SUD) services (also see chapter 246-337 WAC) must:

(a) Not deny entry or acceptance of clients into the facility solely because the client is prescribed medication to treat SUD;

(b) Facilitate access to medications specific to the client's diagnosed clinical needs, including medications used to treat SUD;

(c) Make any decisions regarding adjustments to medications used to treat SUD after individual assessment by a prescribing provider;

(d) Coordinate care upon discharge for the client to continue without interruption the medications specific to the client's diag-

nosed clinical needs, including medications used to treat SUD. See RCW 71.24.585.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 42 U.S.C. Sec. 1396 (a) (68). WSR 19-20-060, § 182-502-0016, filed 9/26/19, effective 10/27/19. Statutory Authority: RCW 41.05.021, 41.05.160 and 42 C.F.R. 455.432. WSR 15-10-003, § 182-502-0016, filed 4/22/15, effective 5/23/15. Statutory Authority: RCW 41.05.021 and 42 C.F.R. 455. WSR 13-03-068, § 182-502-0016, filed 1/14/13, effective 2/14/13. WSR 11-14-075, recodified as § 182-502-0016, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, 74.09.080, and 74.09.290. WSR 11-11-017, § 388-502-0016, filed 5/9/11, effective 6/9/11.]

WSR 21-07-071
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed March 16, 2021, 2:15 p.m.]

Supplemental Notice to WSR 20-24-056.

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

Title of Rule and Other Identifying Information: The department is proposing amendments to WAC 388-450-0185 What income deductions does the department allow when determining if I am eligible for food benefits and the amount of my monthly benefits?, 388-450-0190 How does the department figure my shelter cost income deduction for basic food?, 388-450-0195 Does the department use my utility costs when calculating my basic food or WASHCAP benefits?, and 388-478-0060 What are the income limits and maximum benefit amounts for basic food?

Hearing Location(s): On April 27, 2021, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington Street S.E., Olympia, WA 98501. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or by Skype. Due to the COVID-19 pandemic, hearing may be held via Skype, see DSHS website for most up-to-date information.

Date of Intended Adoption: Not earlier than April 28, 2021.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., April 27, 2021.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by April 13, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Federal Supplemental Nutrition Assistance Program regulations (7 C.F.R. § 273.9) require the department to use federally prescribed income eligibility standards, which are revised effective October 1 of each year, and make annual adjustments to standard utility allowances. Additionally, H.R.133 Consolidated Appropriations Act 2021, signed into law on December 27, 2020, increased maximum food assistance allotments by fifteen percent for January 1 through June 30, 2021. This federally prescribed increase in the maximum allotment has been added to the proposed amendments to WAC 388-478-0060.

These amendments are currently in place under emergency rule filed as WSR 21-04-060.

Reasons Supporting Proposal: These amendments align department rule with current federal regulations.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120.

Rule is necessary because of federal law, 7 C.F.R. 273.9.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Angela Aikins, P.O. Box 45470, Olympia, WA 98504-5470, 360-725-4784.

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

A cost-benefit analysis is not required under RCW 34.05.328. This amendment is exempt as allowed under RCW 34.05.328 (5)(b)(vii) which

states in part, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents.["

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

Is exempt under RCW 34.05.328 (5) (b) (vii).

Explanation of exemptions: These amendments do not impact small businesses. They only impact DSHS clients.

March 15, 2021
 Katherine I. Vasquez
 Rules Coordinator

SHS-4829.3

AMENDATORY SECTION (Amending WSR 20-04-021, filed 1/27/20, effective 2/27/20)

WAC 388-450-0185 What income deductions does the department allow when determining if I am eligible for food benefits and the amount of my monthly benefits? (1) We determine if your assistance unit (AU) is eligible for basic food and calculate your monthly benefits according to requirements of the Food and Nutrition Act of 2008 and federal regulations related to the supplemental nutrition assistance program (SNAP).

(2) Under these federal laws, we subtract the following amounts from your AU's total monthly income to determine your countable monthly income under WAC 388-450-0162:

(a) A standard deduction based on the number of eligible people in your AU under WAC 388-408-0035:

Eligible AU members	Standard deduction
3 or less	\$167
4	(((\$178)) <u>\$181</u>)
5	(((\$209)) <u>\$212</u>)
6 or more	(((\$240)) <u>\$243</u>)

(b) Twenty percent of your AU's gross earned income (earned income deduction);

(c) Your AU's expected monthly dependent care expense needed for an AU member to:

(i) Keep work, look for work, or accept work;

(ii) Attend training or education to prepare for employment; or

(iii) Meet employment and training requirements under chapter 388-444 WAC;

(d) Medical expenses over thirty-five dollars a month owed or anticipated by an elderly or disabled person in your AU as allowed under WAC 388-450-0200; and

(e) A portion of your shelter costs as described in WAC 388-450-0190.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and P.L. 115-334 § 4004. WSR 20-04-021, § 388-450-0185, filed 1/27/20, effective 2/27/20. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and 7 C.F.R. §§ 273.1, 273.9 (d)(iii)(B); SNAP - FY 2019 COLAS dated July 27, 2018; and SNAP UA 2019 dated August 23, 2018. WSR 19-01-031, § 388-450-0185, filed 12/12/18, effective 1/12/19. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 74.08A.120, 7 C.F.R. §§ 273.1 and 273.9 (d)(iii)(B), SNAP Administrative Notice 17-30, and SNAP memo dated August 28, 2017. WSR 18-02-043, § 388-450-0185, filed 12/26/17, effective 1/26/18. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and SNAP Administrative Notice 16-38, dated August 12, 2016, 7 C.F.R. § 273.9 (d)(iii)(B), SNAP 10-6-WA-SUA, dated August 15, 2016. WSR 16-24-051, § 388-450-0185, filed 12/1/16, effective 1/1/17. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, FNS per SNAP Administrative Notice 15-28: SNAP - FY 2016, FNS 7 C.F.R. § 273.9 (d)(iii)(B)), and SNAP 10-6-WA-SUA dated August 18, 2015. WSR 15-24-075, § 388-450-0185, filed 11/25/15, effective 12/26/15. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120. WSR 15-02-041, § 388-450-0185, filed 1/2/15, effective 2/2/15. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and USDA, FNS, per SNAP Administrative Notice 13-26, SNAP - FY 2014 COLAS and ARRA Sunset Impact on Allotments dated August 2, 2013, and USDA SNAP 10-6-WA-SUA dated August 8, 2013, approving the proposed SUA. WSR 14-04-050, § 388-450-0185, filed 1/27/14, effective 2/27/14. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and Supplemental Nutrition Assistance Program Administrative Notice 12-28 - Fiscal Year 2013 cost-of-living adjustments dated August 6, 2012. WSR 12-24-018, § 388-450-0185, filed 11/27/12, effective 12/28/12. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, "Supplemental Nutrition Assistance Program Fiscal Year 2012 Cost of Living Adjustments" memo dated August 2, 2011, and "SNAP Standard Utility (SUA) Annual Review and Adjustment Waiver for Certain States—Modification and Extension" memo dated December 2, 2010. WSR 11-24-027, § 388-450-0185, filed 12/1/11, effective 1/1/12. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 7 C.F.R. 273.9. WSR 10-23-114, § 388-450-0185, filed 11/17/10, effective 12/18/10. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 7 U.S.C. 2014 (a) and (e) (1); 7 C.F.R. §§ 273.1 and 273.9 (d) (1). 10-16-104, § 388-450-0185, filed 8/2/10, effective 9/2/10. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and P.L. 107 - 171 § 4101. WSR 09-23-004, § 388-450-0185, filed 11/5/09, effective 11/15/09. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08A.120, and Food and Nutrition Act of 2008, Title 7 Part 273 of the C.F.R. WSR 09-07-054, § 388-450-0185, filed 3/11/09, effective 4/11/09. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090. WSR 08-24-051, § 388-450-0185, filed

11/25/08, effective 12/26/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510 and 7 C.F.R. § 273.9. WSR 07-22-035, § 388-450-0185, filed 10/30/07, effective 11/30/07. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090 and 7 C.F.R. § 273.9. WSR 06-21-012, § 388-450-0185, filed 10/6/06, effective 11/6/06. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090. WSR 05-21-101, § 388-450-0185, filed 10/18/05, effective 11/18/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057. WSR 04-23-025, § 388-450-0185, filed 11/8/04, effective 12/9/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. WSR 03-21-030, § 388-450-0185, filed 10/7/03, effective 12/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and H.R. 2646 Farm Security and Rural Investment Act of 2002. WSR 02-22-044, § 388-450-0185, filed 10/30/02, effective 12/1/02. Statutory Authority: RCW 74.08.090 and 74.04.510. WSR 99-16-024, § 388-450-0185, filed 7/26/99, effective 9/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-450-0185, filed 7/31/98, effective 9/1/98.]

AMENDATORY SECTION (Amending WSR 20-04-021, filed 1/27/20, effective 2/27/20)

WAC 388-450-0190 How does the department figure my shelter cost income deduction for basic food? The department calculates your shelter cost income deduction for basic food as follows:

(1) First, we add up the amounts your assistance unit (AU) must pay each month for shelter. We do not count any overdue amounts, late fees, penalties, or mortgage payments you make ahead of time as allowable shelter costs. We count the following expenses as an allowable shelter cost in the month the expense is due:

- (a) Monthly rent, lease, and mortgage payments;
- (b) Property taxes;
- (c) Homeowner's association or condo fees;
- (d) Homeowner's insurance for the building only;
- (e) Utility allowance your AU is eligible for under WAC

388-450-0195;

(f) Out-of-pocket repairs for the home if it was substantially damaged or destroyed due to a natural disaster such as a fire or flood;

(g) Expense of a temporarily unoccupied home because of employment, training away from the home, illness, or abandonment caused by a natural disaster or casualty loss if your:

(i) AU intends to return to the home;

(ii) AU has current occupants who are not claiming the shelter costs for basic food purposes; and

(iii) AU's home is not being leased or rented during your AU's absence.

(h) A homeless AU with shelter costs is eligible for a homeless shelter expense deduction of one hundred (~~(fifty-two)~~) fifty-seven dollars. If the homeless AU has shelter costs in excess of one hundred (~~(fifty-two)~~) fifty-seven dollars, the AU has the option to claim either:

- (i) The homeless shelter deduction; or
- (ii) Actual shelter costs.

(2) Second, we subtract all deductions your AU is eligible for under WAC 388-450-0185 (2) (a) through (2) (d) from your AU's gross income. The result is your AU's countable income.

(3) Finally, we subtract one-half of your AU's countable income from your AU's total shelter costs. The result is your excess shelter costs. Your AU's shelter cost deduction is the excess shelter costs:

(a) Up to a maximum of five hundred (~~(sixty-nine)~~) eighty-six dollars if no one in your AU is elderly or disabled; or

(b) The entire amount if an eligible person in your AU is elderly or disabled, even if the amount is over five hundred (~~(sixty-nine)~~) eighty-six dollars.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and P.L. 115-334 § 4004. WSR 20-04-021, § 388-450-0190, filed 1/27/20, effective 2/27/20. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and 7 C.F.R. §§ 273.1, 273.9 (d) (iii) (B); SNAP - FY 2019 COLAS dated July 27, 2018; and SNAP UA 2019 dated August 23, 2018. WSR 19-01-031, § 388-450-0190, filed 12/12/18, effective 1/12/19. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 74.08A.120, 7 C.F.R. §§ 273.1 and 273.9 (d) (iii) (B), SNAP Administrative Notice 17-30, and SNAP memo dated August 28, 2017. WSR 18-02-043, § 388-450-0190, filed 12/26/17, effective 1/26/18. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and SNAP Administrative Notice 16-38, dated August 12, 2016, 7 C.F.R. § 273.9 (d) (iii) (B), SNAP 10-6-WA-SUA, dated August 15, 2016. WSR 16-24-051, § 388-450-0190, filed 12/1/16, effective 1/1/17. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, FNS per SNAP Administrative Notice 15-28: SNAP - FY 2016, FNS 7 C.F.R. § 273.9 (d) (iii) (B)), and SNAP 10-6-WA-SUA dated August 18, 2015. WSR 15-24-075, § 388-450-0190, filed 11/25/15, effective 12/26/15. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120. WSR 15-02-041, § 388-450-0190, filed 1/2/15, effective 2/2/15. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and USDA, FNS, per SNAP Administrative Notice 13-26, SNAP - FY 2014 COLAS and ARRA Sunset Impact on Allotments dated August 2, 2013, and USDA SNAP 10-6-WA-SUA dated August 8, 2013, approving the proposed SUA. WSR 14-04-050, § 388-450-0190, filed 1/27/14, effective 2/27/14. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 7 C.F.R. § 273.10. WSR 13-11-103, § 388-450-0190, filed 5/20/13, effective 6/20/13. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and Supplemental Nutrition Assistance Program Administrative Notice 12-28 - Fiscal Year 2013 cost-of-living adjustments dated August 6, 2012. WSR 12-24-018, § 388-450-0190, filed 11/27/12, effective 12/28/12. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, "Supplemental Nutrition Assistance Program Fiscal Year 2012 Cost of Living Adjustments" memo dated August 2, 2011, and "SNAP Standard Utility (SUA) Annual Review and Adjustment Waiver for Certain States—Modification and Extension" memo dated December 2, 2010. WSR 11-24-027, § 388-450-0190, filed 12/1/11, effective 1/1/12. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057,

74.04.500, 74.04.510, 74.08.090, and 7 C.F.R. 273.9. WSR 10-23-114, § 388-450-0190, filed 11/17/10, effective 12/18/10; WSR 09-24-001, § 388-450-0190, filed 11/18/09, effective 12/19/09. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090. WSR 08-24-050, § 388-450-0190, filed 11/25/08, effective 12/26/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510 and 7 C.F.R. § 273.9. WSR 07-22-035, § 388-450-0190, filed 10/30/07, effective 11/30/07. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090 and 7 C.F.R. § 273.9. WSR 06-21-012, § 388-450-0190, filed 10/6/06, effective 11/6/06. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090. WSR 05-21-101, § 388-450-0190, filed 10/18/05, effective 11/18/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057. WSR 04-23-025, § 388-450-0190, filed 11/8/04, effective 12/9/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. WSR 04-07-138, § 388-450-0190, filed 3/22/04, effective 5/1/04; WSR 03-21-030, § 388-450-0190, filed 10/7/03, effective 12/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. WSR 02-22-045, § 388-450-0190, filed 10/30/02, effective 12/1/02. Statutory Authority: RCW 74.04.057, 74.04.500, 74.04.510. WSR 01-21-059, § 388-450-0190, filed 10/16/01, effective 12/1/01. Statutory Authority: RCW 74.08.090 and 74.04.510. WSR 01-06-030, § 388-450-0190, filed 3/2/01, effective 4/2/01; WSR 99-16-024, § 388-450-0190, filed 7/26/99, effective 9/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-450-0190, filed 7/31/98, effective 9/1/98.]

AMENDATORY SECTION (Amending WSR 20-04-021, filed 1/27/20, effective 2/27/20)

WAC 388-450-0195 Does the department use my utility costs when calculating my basic food or WASHCAP benefits? (1) The department uses utility allowances instead of the actual utility costs your assistance unit (AU) pays when we determine your:

(a) Monthly benefits under WAC 388-492-0070 if you receive Washington state combined application project (WASHCAP); or

(b) Shelter cost income deduction under WAC 388-450-0190 for basic food.

(2) We use the following amounts if you have utility costs separate from your rent or mortgage payment:

(a) If your AU has heating or cooling costs or receives more than twenty dollars in low income home energy assistance program (LIHEAP) benefits each year, you get a standard utility allowance (SUA) of four hundred (~~(thirty-seven)~~) forty-nine dollars.

(b) If your household does not receive a LIHEAP payment and the reason is solely because of your immigration status, you get a SUA of four hundred (~~(thirty-seven)~~) forty-nine dollars.

(c) If your AU does not qualify for the SUA and you have any two utility costs listed in subsection (3) of this section, you get a limited utility allowance (LUA) of three hundred (~~(forty-three)~~) fifty-two dollars.

(d) If your AU has only telephone costs and no other utility costs, you get a telephone utility allowance (TUA) of (~~(fifty-eight)~~) fifty-nine dollars.

(3) "Utility costs" include the following:

- (a) Heating or cooling fuel;
- (b) Electricity or gas;
- (c) Water;
- (d) Sewer;
- (e) Well installation/maintenance;
- (f) Septic tank installation/maintenance;
- (g) Garbage/trash collection; and
- (h) Telephone service.

(4) If you do not have a utility cost separate from your rent or mortgage payment and do not receive low income energy assistance program (LIHEAP), you do not receive a utility allowance.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and P.L. 115-334 § 4004. WSR 20-04-021, § 388-450-0195, filed 1/27/20, effective 2/27/20. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and 7 C.F.R. §§ 273.1, 273.9 (d)(iii)(B); SNAP - FY 2019 COLAS dated July 27, 2018; and SNAP UA 2019 dated August 23, 2018. WSR 19-01-031, § 388-450-0195, filed 12/12/18, effective 1/12/19. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 74.08A.120, 7 C.F.R. §§ 273.1 and 273.9 (d)(iii)(B), SNAP Administrative Notice 17-30, and SNAP memo dated August 28, 2017. WSR 18-02-043, § 388-450-0195, filed 12/26/17, effective 1/26/18. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, 7 C.F.R. 273.9 (d)(6)(iii)(B). WSR 17-10-069, § 388-450-0195, filed 5/3/17, effective 6/3/17. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and SNAP Administrative Notice 16-38, dated August 12, 2016, 7 C.F.R. § 273.9 (d)(iii)(B), SNAP 10-6-WA-SUA, dated August 15, 2016. WSR 16-24-051, § 388-450-0195, filed 12/1/16, effective 1/1/17. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, FNS per SNAP Administrative Notice 15-28: SNAP - FY 2016, FNS 7 C.F.R. § 273.9 (d)(iii)(B)), and SNAP 10-6-WA-SUA dated August 18, 2015. WSR 15-24-075, § 388-450-0195, filed 11/25/15, effective 12/26/15. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120. WSR 15-02-041, § 388-450-0195, filed 1/2/15, effective 2/2/15. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090 and Agricultural Act of 2014. WSR 14-12-085, § 388-450-0195, filed 6/3/14, effective 7/4/14. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and USDA, FNS, per SNAP Administrative Notice 13-26, SNAP - FY 2014 COLAS and ARRA Sunset Impact on Allotments dated August 2, 2013, and USDA SNAP 10-6-WA-SUA dated August 8, 2013, approving the proposed SUA. WSR 14-04-050, § 388-450-0195, filed 1/27/14, effective 2/27/14. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, "Supplemental Nutrition Assistance Program Fiscal Year 2012 Cost of Living Adjustments" memo dated August 2, 2011, and "SNAP Standard Utility (SUA) Annual Review and Adjustment Waiver for Certain States—Modification and Extension" memo dated December 2, 2010. WSR 11-24-027, § 388-450-0195, filed 12/1/11, effective 1/1/12. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 7 C.F.R. § 273.9 (d)(6)(3). WSR 10-18-050, § 388-450-0195, filed

8/26/10, effective 10/1/10. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 7 C.F.R. 273.9. WSR 09-24-001, § 388-450-0195, filed 11/18/09, effective 12/19/09. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 7 C.F.R. 273.9. WSR 08-21-106, § 388-450-0195, filed 10/16/08, effective 11/16/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510 and 7 C.F.R. § 273.9. WSR 07-22-036, § 388-450-0195, filed 10/30/07, effective 11/30/07. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090 and 7 C.F.R. 273.9 (d)(6)(iii)(b). WSR 06-21-011, § 388-450-0195, filed 10/6/06, effective 11/6/06. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090. WSR 06-10-056, § 388-450-0195, filed 5/1/06, effective 6/1/06. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 7 C.F.R. § 273.9. WSR 05-19-062, § 388-450-0195, filed 9/16/05, effective 10/17/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090. WSR 05-09-087, § 388-450-0195, filed 4/19/05, effective 6/1/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057. WSR 04-23-025, § 388-450-0195, filed 11/8/04, effective 12/9/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. WSR 03-21-030, § 388-450-0195, filed 10/7/03, effective 12/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. WSR 02-22-045, § 388-450-0195, filed 10/30/02, effective 12/1/02. Statutory Authority: RCW 74.04.057, 74.04.500, 74.04.510. WSR 01-21-059, § 388-450-0195, filed 10/16/01, effective 12/1/01. Statutory Authority: RCW 74.04.510. WSR 00-22-065, § 388-450-0195, filed 10/27/00, effective 11/1/00. Statutory Authority: RCW 74.040.510 [74.04.510]. WSR 99-24-052, § 388-450-0195, filed 11/29/99, effective 12/1/99. Statutory Authority: RCW 74.04.510. WSR 99-09-055, § 388-450-0195, filed 4/19/99, effective 5/20/99. Statutory Authority: RCW 74.04.510 and 7 C.F.R. 273.9 (d)(6). WSR 99-01-069, § 388-450-0195, filed 12/14/98, effective 1/14/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-450-0195, filed 7/31/98, effective 9/1/98.]

AMENDATORY SECTION (Amending WSR 20-04-021, filed 1/27/20, effective 2/27/20)

WAC 388-478-0060 What are the income limits and maximum benefit amounts for basic food? (1) If your assistance unit (AU) meets all other eligibility requirements for basic food, your AU must have income at or below the limits in columns B and C of this subsection to get basic food, unless you meet one of the exceptions listed below in subsection (2) of this section.

(a) The maximum monthly food assistance benefit your AU could receive is listed in column D of this subsection.

(b) From January 1, 2021 through June 30, 2021, the maximum monthly food assistance benefit your AU could receive is listed in column E of this subsection.

EFFECTIVE ((10/1/2019)) 10/1/2020

Column A Number of Eligible AU Members	Column B Maximum Gross Monthly Income	Column C Maximum Net Monthly Income	Column D Maximum Allotment	Column E <u>115% Max Allotment</u>	Column (E) F 165% of Poverty Level
1	(((\$1,354)) <u>\$1,383</u>)	(((\$1,041)) <u>\$1,064</u>)	(((\$194)) <u>\$204</u>)	<u>\$234</u>	(((\$1,718)) <u>\$1,755</u>)
2	(((\$1,832)) <u>1,868</u>)	(((\$1,410)) <u>1,437</u>)	(((\$355)) <u>374</u>)	<u>430</u>	(((\$2,326)) <u>2,371</u>)
3	(((\$2,311)) <u>2,353</u>)	(((\$1,778)) <u>1,810</u>)	(((\$509)) <u>535</u>)	<u>616</u>	(((\$2,933)) <u>2,987</u>)
4	(((\$2,790)) <u>2,839</u>)	(((\$2,146)) <u>2,184</u>)	(((\$646)) <u>680</u>)	<u>782</u>	(((\$3,541)) <u>3,603</u>)
5	(((\$3,269)) <u>3,324</u>)	(((\$2,515)) <u>2,557</u>)	(((\$768)) <u>807</u>)	<u>929</u>	(((\$4,149)) <u>4,219</u>)
6	(((\$3,748)) <u>3,809</u>)	(((\$2,883)) <u>2,930</u>)	(((\$921)) <u>969</u>)	<u>1,114</u>	(((\$4,757)) <u>4,835</u>)
7	(((\$4,227)) <u>4,295</u>)	(((\$3,251)) <u>3,304</u>)	(((\$1,018)) <u>1,071</u>)	<u>1,232</u>	(((\$5,364)) <u>5,451</u>)
8	(((\$4,705)) <u>4,780</u>)	(((\$3,620)) <u>3,677</u>)	(((\$1,164)) <u>1,224</u>)	<u>1,408</u>	(((\$5,972)) <u>6,067</u>)
9	(((\$5,184)) <u>5,266</u>)	(((\$3,989)) <u>4,051</u>)	(((\$1,310)) <u>1,377</u>)	<u>1,584</u>	(((\$6,580)) <u>6,683</u>)
10	(((\$5,663)) <u>5,752</u>)	(((\$4,358)) <u>4,425</u>)	(((\$1,456)) <u>1,530</u>)	<u>1,760</u>	(((\$7,188)) <u>7,299</u>)
Each Additional Member	(((\$479)) <u>+486</u>)	(((\$369)) <u>+374</u>)	(((\$146)) <u>+153</u>)	<u>+176</u>	(((\$608)) <u>+616</u>)

(2) Exceptions:

(a) If your AU is categorically eligible as under WAC 388-414-0001, your AU does not have to meet the gross or net income standards in columns B and C of subsection (1) of this section. We budget your AU's income to decide the amount of basic food your AU will receive.

(b) If your AU includes a member who is sixty years of age or older or has a disability, your AU's income must be at or below the limit in column C of subsection (1) of this section.

(c) If you are sixty years of age or older and cannot buy and cook your own meals because of a permanent disability, we will use column E of subsection (1) of this section to decide if you can be a separate AU.

(d) If your AU has zero income, your benefits are the maximum allotment in column D of subsection (1) of this section, based on the number of eligible members in your AU.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and P.L. 115-334 § 4004. WSR 20-04-021, § 388-478-0060, filed 1/27/20, effective 2/27/20. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and 7 C.F.R. §§ 273.1, 273.9 (d) (iii) (B); SNAP - FY 2019 COLAS dated July 27, 2018; and SNAP UA 2019 dated August 23, 2018. WSR 19-01-031, § 388-478-0060, filed 12/12/18, effective 1/12/19. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 74.08A.120, 7 C.F.R. §§ 273.1 and 273.9 (d) (iii) (B), SNAP Administrative Notice 17-30, and SNAP memo dated August 28, 2017. WSR 18-02-043, § 388-478-0060, filed 12/26/17, effective 1/26/18. Statutory Authority:

ty: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and SNAP Administrative Notice 16-38, dated August 12, 2016, 7 C.F.R. § 273.9 (d)(iii)(B), SNAP 10-6-WA-SUA, dated August 15, 2016. WSR 16-24-051, § 388-478-0060, filed 12/1/16, effective 1/1/17. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, FNS per SNAP Administrative Notice 15-28: SNAP - FY 2016, FNS 7 C.F.R. § 273.9 (d)(iii)(B)), and SNAP 10-6-WA-SUA dated August 18, 2015. WSR 15-24-075, § 388-478-0060, filed 11/25/15, effective 12/26/15. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120. WSR 15-02-041, § 388-478-0060, filed 1/2/15, effective 2/2/15. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and USDA, FNS, per SNAP Administrative Notice 13-26, SNAP - FY 2014 COLAS and ARRA Sunset Impact on Allotments dated August 2, 2013, and USDA SNAP 10-6-WA-SUA dated August 8, 2013, approving the proposed SUA. WSR 14-04-050, § 388-478-0060, filed 1/27/14, effective 2/27/14. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and Supplemental Nutrition Assistance Program Administrative Notice 12-28 - Fiscal Year 2013 cost-of-living adjustments dated August 6, 2012. WSR 12-24-018, § 388-478-0060, filed 11/27/12, effective 12/28/12. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, "Supplemental Nutrition Assistance Program Fiscal Year 2012 Cost of Living Adjustments" memo dated August 2, 2011, and "SNAP Standard Utility (SUA) Annual Review and Adjustment Waiver for Certain States—Modification and Extension" memo dated December 2, 2010. WSR 11-24-027, § 388-478-0060, filed 12/1/11, effective 1/1/12. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 7 C.F.R. 273.9. WSR 09-24-001, § 388-478-0060, filed 11/18/09, effective 12/19/09. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.04.500, 74.08A.120, and American Recovery and Reinvestment Act of 2009. WSR 09-14-018, § 388-478-0060, filed 6/22/09, effective 7/23/09. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090. WSR 08-24-050, § 388-478-0060, filed 11/25/08, effective 12/26/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510 and 7 C.F.R. § 273.9. WSR 07-22-035, § 388-478-0060, filed 10/30/07, effective 11/30/07. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090 and 7 C.F.R. § 273.9. WSR 06-21-012, § 388-478-0060, filed 10/6/06, effective 11/6/06. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090. WSR 05-21-101, § 388-478-0060, filed 10/18/05, effective 11/18/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057. WSR 04-23-025, § 388-478-0060, filed 11/8/04, effective 12/9/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. WSR 03-21-030, § 388-478-0060, filed 10/7/03, effective 12/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. WSR 02-21-050, § 388-478-0060, filed 10/14/02, effective 12/1/02. Statutory Authority: RCW 74.04.057, 74.04.500, 74.04.510. WSR 01-21-059, § 388-478-0060, filed 10/16/01, effective 12/1/01. Statutory Authority: RCW 74.04.510, 74.08.090. WSR 00-23-013, § 388-478-0060, filed 11/3/00, effective 12/4/00. Statutory Authority: RCW 74.04.510. WSR 99-24-053, § 388-478-0060, filed 11/29/99, effective 12/30/99. Statutory Authority: RCW 74.08.090 and 74.04.510. WSR 99-16-024, §

388-478-0060, filed 7/26/99, effective 9/1/99. Statutory Authority:
RCW 74.04.050, 74.04.500, 74.04.510, 74.08.090. WSR 99-05-074, §
388-478-0060, filed 2/17/99, effective 3/20/99. Statutory Authority:
RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, §
388-478-0060, filed 7/31/98, effective 9/1/98.]

WSR 21-07-072
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed March 16, 2021, 2:41 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-20-138.

Title of Rule and Other Identifying Information: The department is proposing amendments to WAC 388-310-1600 WorkFirst—Sanctions.

Hearing Location(s): On April 27, 2021, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS), Headquarters, 1115 Washington Street S.E., Olympia, WA 98501. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or by Skype. Due to the COVID-19 pandemic, hearing may be held via Skype, see DSHS website for most up-to-date information.

Date of Intended Adoption: Not earlier than April 28, 2021.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., April 27, 2021.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 771 relay service, email Kildaja@dshs.wa.gov, by April 13, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed amendments to WAC 388-310-1600 will support implementation of SHB 2441 (chapter 338, Laws of 2020), effective July 1, 2021, which extends the amount of time a temporary assistance for needy families program recipient can remain in sanction status due to noncompliance with WorkFirst activities before the assistance grant is terminated.

Reasons Supporting Proposal: See purpose statement above.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.025, 74.08.090, 74.09.035, 74.09.530, 74.62.030; chapters 74.08A and 74.12 RCW.

Statute Being Implemented: RCW 74.08A.260.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jake Deskins, P.O. Box 45470, Olympia, WA 98504-5770, 360-480-3411.

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

A cost-benefit analysis is not required under RCW 34.05.328. This amendment is exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

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

Is exempt under RCW 34.05.328 (5)(b)(vii).

Explanation of exemptions: These amendments do not impact small businesses. They only affect DSHS clients.

March 15, 2021

Katherine I. Vasquez
Rules Coordinator

SHS-4844.2

AMENDATORY SECTION (Amending WSR 20-05-046, filed 2/13/20, effective 3/15/20)

WAC 388-310-1600 WorkFirst—Sanctions. (1) What WorkFirst requirements do I have to meet?

You must do the following when you are a mandatory WorkFirst participant:

- (a) Give the department the information we need to develop your individual responsibility plan (IRP) (see WAC 388-310-0500);
- (b) Show that you are participating fully to meet all of the requirements listed on your individual responsibility plan;
- (c) Go to scheduled appointments listed in your individual responsibility plan;
- (d) Follow the participation and attendance rules of the people who provide your assigned WorkFirst services or activities; and
- (e) Accept available paid employment when it meets the criteria in WAC 388-310-1500.

(2) What happens if I don't meet WorkFirst requirements?

(a) If you do not meet WorkFirst requirements, we will send you a letter telling you what you did not do, and inviting you to a noncompliance case staffing. ~~((The letter will also schedule a home visit that will happen if you don't attend your noncompliance case staffing. We may schedule an alternative meeting, instead of a home visit, when there are safety or access issues.))~~

(i) A noncompliance case staffing is a meeting with you, your case manager, and other people who are working with your family, such as representatives from tribes, community or technical colleges, employment security, ~~((the children's administration))~~ department of children, youth, and families, family violence advocacy providers or limited-English proficient (LEP) pathway providers to review your situation and compliance with your participation requirements.

(ii) You will be notified when your noncompliance case staffing is scheduled so you can attend.

(iii) You may invite anyone you want to come with you to your noncompliance case staffing.

(b) You will have ten days to contact us so we can talk with you about your situation. You can contact us in writing, by phone, by going to the noncompliance case staffing ~~((appointment))~~ described in the letter, or by asking for an individual appointment.

(c) If you do not contact us within ten days, we will make sure you have been screened for family violence and other barriers to participation and that we provided necessary supplemental accommodations as required by chapter 388-472 WAC. We will use existing information to decide whether:

- (i) You were unable to do what was required; or
- (ii) You were able, but refused, to do what was required.

(d) If you had a good reason not to do a required activity we will work with you and may change the requirements in your individual responsibility plan if a different WorkFirst activity would help you move towards independence and employment sooner. If you have been unable to meet your WorkFirst requirements because of family violence, you and your case manager will develop an individual responsibility plan to help you with your situation, including referrals to appropriate services.

~~((e) If you do not attend your noncompliance case staffing, and we determine you did not have a good reason, we will conduct the home visit (or alternative meeting) to review your circumstances and discuss next steps and options.))~~

(3) What is considered a good reason for not doing what WorkFirst requires?

You have a good reason if you were not able to do what WorkFirst requires (or get an excused absence, described in WAC 388-310-0500(5)) due to a significant problem or event outside your control. Some examples of good reasons include, but are not limited to:

- (a) You had an emergent or severe physical, mental or emotional condition, confirmed by a licensed health care professional that interfered with your ability to participate;
- (b) You were threatened with or subjected to family violence;
- (c) You could not locate child care for your children under thirteen years that was:

- (i) Affordable (did not cost you more than your copayment would under the working connections child care program in chapter 110-15 WAC);

- (ii) Appropriate (licensed, certified or approved under federal, state or tribal law and regulations for the type of care you use and you were able to choose, within locally available options, who would provide it); and

- (iii) Within a reasonable distance (within reach without traveling farther than is normally expected in your community).

- (d) You could not locate other care services for an incapacitated person who lives with you and your children.

- (e) You had an immediate legal problem, such as an eviction notice; or

- (f) You are a person who gets necessary supplemental accommodation (NSA) services under chapter 388-472 WAC and your limitation kept you from participating. If you have a good reason because you need NSA services, we will review your accommodation plan.

(4) What happens in my noncompliance case staffing?

- (a) At your noncompliance case staffing we will ensure you were offered the opportunity to participate and discuss with you:

- (i) Whether you had a good reason for not meeting WorkFirst requirements.

- (ii) What happens if you are sanctioned;

- (iii) How you can participate and get out of sanction status;

- (iv) How you and your family benefit when you participate in WorkFirst activities;

- (v) That your case may be closed after you have been in grant reduction sanction status for ~~((two))~~ ten months in a row;

- (vi) How you plan to care for and support your children if your case is closed. We will also discuss the safety of your family, as needed, using the guidelines under RCW 26.44.030; and

- (vii) How to reapply if your case is closed.

(b) If you do not come to your noncompliance case staffing, we will make a decision based on the information we have ~~((and))~~. We will send you a letter letting you know whether we found that you had a good reason for not meeting WorkFirst requirements.

~~(5) ((What happens if we do a home visit because you didn't attend your noncompliance case staffing?~~

~~If you didn't attend your noncompliance case staffing, and we determined you did not have a good reason for failure to meet WorkFirst requirements, we will attempt to contact you during your scheduled home visit (or alternative meeting).~~

~~(a) If we are able to contact you, we will review the information that we planned to discuss at your noncompliance case staffing, including whether you had a good reason for failing to meet WorkFirst requirements and how you can participate and get out of sanction status. If you don't have a good reason, we will follow the process to place you in sanction status.~~

~~(b) If we are unable to contact you, we will follow the process to place you in sanction status based on the determination we made at your noncompliance case staffing.~~

~~(6-))~~ **What if we decide that you did not have a good reason for not meeting WorkFirst requirements?**

(a) Before you are placed in sanction, a supervisory level employee will review your case to make sure:

(i) You knew what was required;

(ii) You were told how you can resume WorkFirst participation to avoid or end your sanction;

(iii) We tried to talk to you and encourage you to participate; and

(iv) You were given a chance to tell us if you were unable to do what we required.

(b) If we decide that you did not have a good reason for not meeting WorkFirst requirements, and a supervisory level employee approves the sanction and sanction penalties, we will send you a letter that tells you:

(i) What you failed to do;

(ii) That you are in sanction status;

(iii) Penalties that will be applied to your grant;

(iv) When the penalties will be applied;

(v) How to request an administrative hearing if you disagree with this decision; and

(vi) How to end the penalties and get out of sanction status.

~~(c) ((If your case is closed because you failed to attend your noncompliance case staffing and home visit (or alternative meeting), this information will be included in your termination letter.~~

~~(d-))~~ We will also provide you with information about resources you may need if your case is closed. If you are sanctioned, then we will actively attempt to contact you another way so we can talk to you about the benefits of participation and how to end your sanction.

~~((7-))~~ **(6) What is sanction status?**

When you are a mandatory WorkFirst participant, you must follow WorkFirst requirements to qualify for your full grant. If you or someone else on your grant doesn't do what is required and you can't prove that you had a good reason, you are placed in WorkFirst sanction status.

~~((8-))~~ **(7) Are there penalties when you or someone in your household goes into sanction status?**

When you or someone in your household is in sanction status, we impose penalties. The penalties last until you or the household member meet WorkFirst requirements. ~~((There are different penalties depending on if you attended your noncompliance case staffing or home visit (or alternative meeting).))~~ Your household will only enter sanction status if we determine that you or someone else in your household did not have a good reason for failing to meet the WorkFirst requirements.

~~(a) ((If you attended your noncompliance case staffing or home visit (or alternative meeting) and entered sanction status,))~~ You will receive a grant reduction sanction penalty following two months of noncompliance.

~~((i))~~ (b) Your grant is reduced by one person's share or forty percent, whichever is more.

~~((ii))~~ (c) The reduction is effective the first of the month following ten-day notice from the department; and

~~((iii))~~ (d) Your case may be closed effective the first of the month after your grant has been reduced for ~~((two))~~ ten months in a row.

~~((b) If you did not attend your noncompliance case staffing or home visit (or alternative meeting) and entered sanction status you will receive a case closure sanction penalty.~~

~~(i) Your case may be closed the first of the month following the ten-day notice from the department.~~

~~(ii) If your case is reopened under subsection (14)(b), you will remain in sanction status and receive a grant reduction sanction penalty.~~

~~(A) Your grant is reduced by one person's share or forty percent, whichever is more.~~

~~(B) The reduction is effective the first of the month that your grant is reopened; and~~

~~(C) Your case may be closed effective the first of the month after your grant has been reduced for two months in a row.)) ((~~

~~((9))~~ **(8) What happens before your case is closed due to sanction?**

(a) Before we close your case due to sanction status, we will send you a letter to tell you:

~~((a))~~ (i) What you failed to do;

~~((b))~~ (ii) When your case will be closed;

~~((c))~~ (iii) How you can request an administrative hearing if you disagree with this decision;

~~((d))~~ (iv) How you can end your penalties and keep your case open (if you are able to participate for four weeks in a row before we close your case); and

~~((e))~~ (v) How your participation before your case is closed can be used to meet the participation requirement in subsection ~~((13))~~ (12).

(b) Attempt to contact you each month to begin the process of ending penalties and getting out of sanction status.

~~((10))~~ **(9) What happens ((if)) to my WorkFirst sanction ((grant reduction penalty started before November)) before July 1, ((2014)) 2021?**

(a) If your case is open and in sanction status as of June 30th, 2021, your case will no longer be in sanction status.

(b) If ((you are in)) your case enters sanction ((and entered sanction before November)) status after July 1, ((2014)) 2021, your case may be closed after you have been in grant reduction sanction status for ~~((four))~~ ten months in a row.

~~((11))~~ **(10) How do I resume participation to avoid or end (the penalties and get out of) sanction status?**

~~(To end the penalties and get out of sanction status:)~~

(a) You must provide the information we requested to develop your individual responsibility plan; and/or

(b) Start and continue to do your required WorkFirst activities for four weeks in a row (that is, twenty-eight calendar days). The four weeks starts on the day you complete your comprehensive evaluation and you agree to your individual responsibility plan activities.

~~((12))~~ **(11) What happens when I get out of sanction status before my case is closed?**

When you get out of sanction status before your case is closed, your grant will be restored to the level you are eligible for beginning the first of the month following your four weeks of participation. For example, if you finished your four weeks of participation on June 15, your grant would be restored on July 1.

~~((13))~~ **(12) What if I reapply for TANF or SFA and I was in sanction status when my case closed?**

(a) For cases that close on or after July 1, 2021:

(i) If your case closed due to sanction, you will need to follow the sanction reapplication process in subsection ~~((14))~~ (13).

(ii) If your case closed for another reason while you were in sanction status and is reopened, you will reopen in ~~((month two of))~~ grant reduction sanction status. For example, if you closed while you were in month four of grant reduction sanction status, your grant will be opened in month five of grant reduction sanction status.

(b) For cases that closed prior to July 1, 2021, your case will not open in sanction status, and subsection (13) will not apply.

~~((14))~~ **(13) What if I reapply for TANF or SFA after my case is closed due to sanction?**

~~((a) Except as specified in subsection (14)(b))~~ If you reapply for TANF or SFA after your case is closed due to sanction, you must participate for four weeks in a row before you can receive cash. Once you have met your four week participation requirement, your cash benefits will start, going back to the date we had all the other information we needed to make an eligibility decision.

~~((b) We will take the actions below if you received the sanction penalty in subsection (8)(b), you reapply for TANF or SFA after your case is closed due to sanction and you complete the interview required under WAC 388-452-0005 by the end of the month that your benefits stopped. For example, if your benefits stop effective July 1, you must reapply and complete the interview by July 31. If you meet this time-frame:~~

~~(i) We will undo your case closure sanction penalty; and~~

~~(ii) If you are determined eligible, we will reopen your grant in sanction status with a grant reduction sanction penalty, going back to the effective date of your case closure.)~~

[Statutory Authority: RCW 41.05.021, 74.04.050, 74.04.055, 74.04.057, 74.08.025, 74.08.090, 74.09.035, 74.09.530, 74.62.030, chapters 74.08A, and 74.12 RCW. WSR 20-05-046, § 388-310-1600, filed 2/13/20, effective 3/15/20. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08.025, chapters 74.08A and 74.12 RCW, and 2014 c 221. WSR 14-20-104, § 388-310-1600, filed 9/30/14, effective 11/1/14. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.025, 74.08.090, chapters 74.08A and 74.12 RCW, and 2011 c 42. WSR 11-22-042, § 388-310-1600, filed 10/27/11, effective 12/1/11.]

Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and chapters 74.08A and 74.12 RCW. WSR 10-24-069, § 388-310-1600, filed 11/30/10, effective 12/31/10. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 34.05.310, and chapters 74.08A and 74.12 RCW. WSR 10-12-044, § 388-310-1600, filed 5/26/10, effective 7/1/10. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 34.05.310 (4)(c). WSR 08-15-136, § 388-310-1600, filed 7/22/08, effective 8/22/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.500, 74.04.510, 74.08.090. WSR 07-09-081, § 388-310-1600, filed 4/17/07, effective 6/1/07. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.260, chapter 74.08A RCW. WSR 06-10-035, § 388-310-1600, filed 4/27/06, effective 6/1/06. Statutory Authority: RCW 74.08.090, 74.04.050, and 74.08A.340. WSR 04-07-025, § 388-310-1600, filed 3/8/04, effective 5/1/04. Statutory Authority: RCW 74.08A.010(4), 74.08A.340, 74.08.090, 74.04.050. WSR 02-15-067, § 388-310-1600, filed 7/11/02, effective 8/1/02. Statutory Authority: RCW 74.08.090 and 74.04.050. WSR 99-10-027, § 388-310-1600, filed 4/28/99, effective 5/29/99; WSR 98-23-037, § 388-310-1600, filed 11/10/98, effective 12/11/98; WSR 97-20-129, § 388-310-1600, filed 10/1/97, effective 11/1/97.]

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

WSR 21-07-075
PROPOSED RULES
SPOKANE REGIONAL
CLEAN AIR AGENCY

[Filed March 17, 2021, 10:15 a.m.]

Original Notice.

Proposal is exempt under RCW 70A.15.2040(1).

Title of Rule and Other Identifying Information: Amend Spokane Regional Clean Air Agency (SRCAA) Regulation I, Article VI, Section 6.13, and Article X, Section 10.08.

Hearing Location(s): On Thursday, May 6, 2021, at 9:30 a.m., at 3104 East Augusta Avenue, Spokane, WA 99207 or remote hearing. Comment period April 4 through May 6, 2021, ending at the close of the May 6, 2021, hearing.

Date of Intended Adoption: May 6, 2021.

Submit Written Comments to: Margee Chambers, 3104 East Augusta Avenue, Spokane, WA 99207, email PublicComment@spokanecleanair.org, fax 509-477-6828, by May 6, 2021, close of hearing. Note, please submit written comments by April 28, 2021, for comments to be included in the May 6, 2021, prehearing presentation.

Assistance for Persons with Disabilities: Contact Mary Kataoka, phone 509-477-4727 ext. 100, fax 509-477-6828, email mkataoka@spokanecleanair.org, by May 3, 2020 [2021].

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SRCAA is proposing to update the surface coating regulation in Article VI, Section 6.13.

- Applicability, add "commercial" to this section to clarify the regulations are applicable to commercial surface coating operations, therefore excluding noncommercial operations such as hobbyists.
- Definitions, add several new terms: Commercial surface coating; general surface coating; motor vehicle/motor vehicle component surface coating; nonspray application; portable surface coating; potential to emit; spray application.
- Requirements, simplify and clarify regulatory requirements including equipment clean up; general clean up; record keeping and adding text from Article IV that requires enclosure and control equipment be operated and maintained according to manufacturer recommendations and operations manuals.
- Exemptions, add powder coating that does not exhaust outside to process exemption; update low usage exemption to be based on emissions (potential to emit below 100 lbs/yr and toxics below small quantity emission rate) and exempt from enclosure and control requirements; eliminate hobbyist exemption; add portable surface coating that complies with general orders of approval to enclosure exemption; reorder exemptions list by like exemptions.
- Improve consistency with federal regulations that were implemented in 2008 and local new source review (NSR) regulation updates in July 2020. SRCAA is also updating Section 6.13 citing in Article X, Section 10.08.

Purpose and anticipated effects: Improved implementation and compliance by the regulated community. By establishing emissions based thresholds for surface coating operations, SRCAA recognizes that low usage surface coating operations with lower emissions should be exclu-

ded from certain regulatory requirements, lowering costs for small businesses.

Reasons Supporting Proposal: The amendments will clarify requirements, align the twenty-five year old surface coating regulation with the federal regulations adopted in 2008 and local NSR regulations adopted in July 2020. The amendments will close the loop with the NSR regulations by including a low usage threshold in the surface coating regulation. Small, low usage operations below the threshold will be exempt from enclosure and control requirements, reducing the regulatory burden for the small business and help to conserve agency resources by focusing on sources with the potential to have increased emissions or nuisance concerns. The amendments will not change fees or add new requirements for businesses to meet.

Statutory Authority for Adoption: RCW 70A.15.2040.

Statute Being Implemented: The Washington Clean Air Act, chapter 70A.15 RCW; the Federal Clean Air Act, 42 U.S.C. 7401 et seq.

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

Name of Proponent: SRCAA, governmental.

Name of Agency Personnel Responsible for Drafting: Margee Chambers, SRCAA, 509-477-4727; Implementation: April Westby, SRCAA, 509-477-4727; and Enforcement: Lori Rodriguez, SRCAA, 509-477-4727.

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. SRCAA is a local air pollution control agency. Per RCW 70A.15.2040, a cost-benefit analysis under RCW 34.05.328 does not apply to local air pollution control agencies.

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

Is exempt under RCW 70A.15.2040.

Explanation of exemptions: SRCAA is a local air pollution control agency. Per RCW 70A.15.2040, a small business economic impact statement does not apply to local air pollution control agencies.

March 17, 2021
Margee Chambers
Rule Writer
SIP Planner

AMMENDATORY SECTION

SECTION 6.13 ((GENERAL)) SURFACE COATING

(A) Purpose. SRCAA Regulation I, Article VI, Section 6.13 establishes controls on surface coating operations in Spokane County ((in order)) to:

- (1) Reduce particulate emissions from coating overspray;
- (2) Reduce public exposure to Toxic Air Pollutants as listed in Chapter 173-460 WAC;
- (3) Reduce emissions of precursors to the formation of tropospheric ozone and other photochemical oxidants; and
- (4) Encourage pollution prevention.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~((11))~~ (13) *High Volume, Low Pressure (HVLP) or Low Volume, Low Pressure (LVLP) coating system* means equipment used to apply coatings by means of a spray gun which operates between 0.1 and 10.0 psig air pressure measured at the nozzle and that exhibits a minimum transfer efficiency of 65%, as applied.

~~((12))~~ (14) *Light Duty Vehicle* means a passenger car, truck, van, or other motor vehicle which has a gross vehicle weight of eight thousand-five hundred (8,500) pounds or less, or components thereof.

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

homes, and other recreational vehicles (including camping trailers and fifth wheels).

~~((13))~~ (16) Multi-Coat System means a coating system where more than one product or coat is sequentially applied to the same surface and generally consists of a pigmented base coat, one or more semi-transparent mid-coats, and a transparent clear coat. The VOC content for a multi-coat system shall be calculated as follows:

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

where:

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

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

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

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

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

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

(18) Portable Surface Coating means an operation that travels with coating equipment and moves between customer locations to apply coatings to motor vehicles, motor vehicle components, and mobile equipment. The site where the coating takes place is not used by the coating operator as a fixed operating location.

(19) Potential-to-Emit (PTE) means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is enforceable. Secondary emissions are not included in determining the PTE of a stationary source.

~~((14))~~ (20) Pre-packaged Aerosol Can Application means application of coatings from cans which are sold by the coating supplier as non-reusable, hand-held pressurized containers. The coating is expelled as a finely divided spray when a valve on the container is depressed.

~~((15))~~ (21) Primer means any coating that is applied to a surface to enhance corrosion resistance, protection from the environment, functional fluid resistance, and adhesion of subsequently applied coatings.

~~((16))~~ (22) Reducer means any solvent added to a coating which has the effect of reducing the viscosity of the coating or shortening the drying time.

~~((17))~~ (23) Refinishing means reapplying coating to a surface to repair, restore, or alter the finish.

~~((18))~~ (24) Roll Coat Application means manual application of coatings by the use of a paint roller.

~~((19))~~ (25) Solvent Consumption means the volume of solvent purchased or otherwise procured, less the volume recycled or disposed. In

the absence of records which document the transfer of solvent to an authorized recycler or waste hauler, solvent consumption means the volume of solvent purchased or otherwise procured.

(26) Spray Application means coatings that are applied using a device that creates an atomized mist of coating and deposits the coating on a substrate.

~~((20))~~ (27) Standard Engineering Practices means that accepted, peer reviewed sets of criteria are used in designing equipment (i.e. Uniform Building, Electrical, and Fire Codes, recommendations of the American Conference of Governmental Industrial Hygienists, guidelines of the Department of Labor and Industry, etc.).

~~((21))~~ (28) Surface Coating means the application of coating to a surface.

~~((22))~~ (29) VOC Content means pounds of VOC per gallon of coating (Lb/Gal) or grams of VOC per liter of coating (G/L), minus water and exempt solvents. The VOC content is calculated as follows:

$$\text{VOC}_{\text{CT}} = \frac{W_V}{V_M - V_W - V_{\text{ES}}}$$

where:

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

WV is the weight of VOC per unit volume of coating, as applied to the surface; ~~((and))~~

VM is the unit volume of coating, as applied to the surface; ~~((and))~~

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

VES is the volume of exempt solvents per unit volume of coating, as applied to the surface.

~~((23))~~ (30) Wash Solvent means any solution, solvent, suspension, compound, or other material, excluding water, which is used to clean spray equipment, spray equipment lines, containers, and any other equipment associated with the application of coatings.

~~((24))~~ (31) Wipe-Down Agent means any solution, solvent, suspension, compound, or other material that is applied to a surface exclusively for cleaning the surface or preparing the surface for coating.

(D) Prohibitions on Emissions.

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

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

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

(1) Enclosure and ~~((€))~~ controls. Spray application ~~((shall))~~ must be conducted in a booth or area which is vented to ~~((an))~~ a properly operating particulate control system. The particulate control system, including filtration, ducting, and fan ~~((shall))~~ must be installed and sized according to standard engineering practices and operated and

maintained according to the manufacturer's recommendations and operating manuals.

(a) Acceptable filtration methods include:

~~((a))~~ 1. Filter banks supplied with filter media designed for spray booth applications.

~~((b))~~ 2. Water baths where the inlet air flow to the water bath is submerged.

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

~~((d))~~ 4. Other filtration methods that have received the prior written approval of the Control Officer.

~~((1.))~~ (b) The control system ~~((shall))~~ must be equipped with a fan which is capable of capturing all visible overspray.

(c) Emissions ~~((from the booth/area shall))~~ must be vented to the atmosphere through a vertical stack. The top of the exhaust stack ~~((/vent shall))~~ must be at least six (6) feet above the penetration point of the roof, or if the exhaust stack ~~((/vent))~~ exits horizontally out the side of the building, then the exhaust stack ~~((/vent shall))~~ must vent vertically at least six (6) feet above the eaves of the roof. A higher stack ~~((/vent))~~ may be required if the Agency determines that it is necessary for compliance with Article VI, Section 6.04. ~~((There shall be no f))~~ Flow obstructions (elbows, tees, or stack caps) are prohibited inside of, or at the top of, the stack that will impede upward vertical flow of the exhausted air.

~~((2.))~~ (d) It ~~((shall be))~~ is the owner ~~((/))~~ and operator's responsibility to comply with other applicable federal, state, and local regulations for the stack ~~((/vent))~~.

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

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

(a) High Volume, Low Pressure coating system;

(b) Low Volume, Low Pressure coating system;

(c) Wet or Dry electrostatic application;

(d) Flow coat application;

(e) Dip coat application;

(f) Brush coat application;

(g) Pre-packaged aerosol can application;

(h) Roll coat application;

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

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

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

a. ~~((w))~~ When the volatile organic compound (VOC) emissions are determined by the Control Officer to be no more than VOC emissions

that would be generated by a spray application with a transfer efficiency of 65%;

b. ~~((w))~~ When the spraying operation is automated;

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

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

(4) ~~((Equipment))~~ Cleanup.

(a) Spray guns and paint equipment must be cleaned in an enclosed gun cleaner/washer; or if not using an enclosed gun cleaner, after wash solvent has made contact with the equipment being cleaned, the wash solvent must be immediately drained into a container that is kept closed. ((Equipment cleanup and any other use of wash solvent shall be totally enclosed during washing, rinsing, and draining; or wash solvent, after making contact with the equipment being cleaned, shall be immediately drained to a closed sump which is an integral part of the cleaning system.))

~~((5) General Clean-up.))~~

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

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

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

~~((6)) (5) Recordkeeping. All persons subject to Section 6.13 ((shall)) must maintain the following records for the previous twenty-four (24) month period at the place of business where surface coating is performed:~~

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

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

~~(1. Light duty vehicle refinishing. Annual purchases or usage of total primers, total top coats, total clear coats, and total gun cleaner. Usage shall be reported "as applied", i.e. after reducing and catalyzing, if applicable.~~

~~2. Other surface coating facilities. Annual purchases or usage of individual coatings, coating additives, wipe-down agents, wash solvents, reducers, and other materials containing volatile organic compounds or volatile toxic air pollutants.))~~

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

(F) ~~((Exceptions))~~ Exemptions. Exceptions to all or parts of Article VI, Section 6.13: ((shall be made as follows:))

~~((1) Noncommercial exemption. Nothing in Section 6.13 shall apply to surface coating operations conducted solely for personal, non-commercial purposes if, on a facility-wide basis, less than five (5) gallons of surface coatings are applied per year.))~~

~~((2))~~ (1) Coating process exemptions. Nothing in Section 6.13 ((shall)) appl((y))ies to the following coating processes:

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

(b) Fiberglass resin application operations;

(c) Gel coating operations;

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

(e) Spray plasma plating operations; ((or))

(f) Application of coatings to farming equipment((-)); and

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

~~((3))~~ (2) Low usage exemption. ~~((Nothing in))~~ Section((s)) 6.13 (E) (1) ((3 and 4)) does not ((shall)) apply to low usage surface coating operations with PTE emissions less than one hundred (100) pounds per year, except as follows:

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

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

~~((which, on a facility-wide basis, apply less than ten (10) gallons per year of surface coatings.))~~

~~((4))~~ (3) Large object exemption. ~~((Exemption for large objects. Nothing in))~~ Section 6.13 (E) (1) ((shall)) does not apply to the infrequent outdoor surface coating of large objects, where the Control Officer determines that it is impractical to totally enclose the object inside a booth or vented area. The request for this exemption must be made in writing to the Control Officer and the approval must be in writing. Infrequent means outdoor spray surface coating that amounts to 10% or less of the total annual gallons of paint applied at the facility in the previous twelve (12) months. Annual records must be kept of the number of gallons of paint that are sprayed outdoors. In such case, a temporary enclosure (tarps) ((shall)) must be maintained around the object during the surface coating operation, sufficient at all times to prevent overspray from remaining airborne beyond the property line of the facility.

(4) Stack exemption. The stack requirements in Section 6.13

(E) (1) does not apply to surface coating operations where the owner or operator can demonstrate to the satisfaction of the Control Officer that emissions of Toxic Air Pollutants (TAP) will not exceed the Acceptable Source Impact Levels (ASIL) as defined in WAC 173-460-150 & 160 and emissions will not create a nuisance.

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

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

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

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

~~((5) Wash solvent exemption. Nothing in Section 6.13 (E) (4) shall apply to:~~

~~(a) The use of wash solvents with composite vapor pressure of organic compounds less than 45 mm Hg at 20°C as determined by ASTM Method D-2306-81; or~~

~~(b) Wash solvent operations if total wash solvent consumption does not exceed ten (10) gallons per year.~~

~~(6) Stack exemption. The stack/vent requirements in Section 6.13 (E) (1) shall not apply to surface coating operations where the owner or operator can demonstrate to the satisfaction of the Control Officer that emissions of toxic air pollutants will not exceed the Acceptable Source Impact Levels as defined in WAC 173-460-150 & 160 and emissions will not create a nuisance.~~

~~(7) Non-spray and aerosol can application exemption. Nothing in Section 6.13 (E) (1) shall apply to the application of any coating or other agent from pre-packaged aerosol cans, flow coat, dip coat, brush coat, or roll coat applications.)~~

~~((8)) (7) Low VOC content exemption. ((Nothing in)) Section 6.13 (E) (3) ((shall)) does not apply to the application of coatings where the VOC content does not exceed 2.1 Lb/Gal or 250 G/L.~~

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

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

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

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

~~((10) Enclosure and/or particulate control exemption. The enclosure and/or particulate control requirements of Section 6.13 (E) (1) shall not apply to a surface coating operation where the Control Officer determines that such requirements would be ineffective, or unreasonable in capturing or controlling particulate or volatile organic compounds emissions from the facility.~~

~~(11) Inside exhaust exemption. If the Department of Labor & Industries or another agency of jurisdiction determines that the emissions from a surface coating operation to an inside work area are below the threshold where an exhaust system is required and the Fire Department or District of jurisdiction has no objection, then the Control Officer may grant an exemption to Section 6.13 (E) (1).)~~

(G) Compliance with ((e))Other ((t))Laws and ((r))Regulations. Compliance with Section 6.13 or qualifying for an exemption in Section 6.13(F) does not ((necessarily mean that the surface coating operation complies with fire protection, waste disposal, or)) constitute an exemption from compliance with SRCAA Regulation I, or other federal, state, or local ((applicable)) laws or regulations.

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The spelling error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

SECTION 10.08 MISCELLANEOUS FEES

(A) Miscellaneous Fees.

(1) Emission Reduction Credit Fee.

(a) Review of emission reduction credits per WAC 173-400-131 shall require the applicant to pay an emission reduction credit fee per the Consolidated Fee Schedule.

(b) The fee is calculated by multiplying the total staff time spent reviewing and processing the request, rounded-up to the nearest half-hour, by the hourly rate, per the Consolidated Fee Schedule.

(c) Hourly Rate. The hourly rate is calculated by:

$$\text{Hourly Rate} = \frac{\text{Total NOC and PSP Program Costs}}{\text{Total NOC and PSP Program Hours}}$$

(d) Hourly Rate Revision. Revisions to the hourly rate are based on a three (3) year average of the three (3) most representative fiscal years out of the four (4) preceding fiscal years, rounded-up to the nearest one (1) dollar.

(2) Variance Request Fee.

(a) Processing a variance request per RCW 70.94.181 or SRCAA Regulation I, Article III, shall require the applicant to pay a variance request fee per the Consolidated Fee Schedule. The fee will be assessed each time a request is submitted and will be invoiced to the applicant with the final determination.

(b) The variance request fee is calculated by adding all of the applicable fees described below:

1. Filing fee per the Consolidated Fee Schedule.
2. Agency legal fees related to the variance request.
3. Public notice fees.

4. Hourly fee. The hourly fee is calculated by multiplying the total staff time spent in reviewing and processing the request, rounded-up to the nearest half-hour, by the hourly rate, as listed in the Consolidated Fee Schedule.

(c) Fee Determination.

1. The hourly rate is calculated by:

$$\text{Hourly Rate} = \frac{\text{Total Program Costs}}{\text{Total Program Hours}}$$

2. Revisions to the hourly rate are based on a three (3) year average of the three (3) most representative fiscal years out of the four (4) preceding fiscal years, rounded-up to the nearest one (1) dollar.

(3) Alternate Opacity Fee.

(a) Review of an alternate opacity limit per RCW 70.94.331(2)(c) shall require the applicant to pay an alternate opacity fee per the Consolidated Fee Schedule.

(b) The fee is calculated by multiplying the total staff time spent in reviewing and processing the request, rounded-up to the nearest half-hour, by the hourly rate, as listed in the Consolidated Fee Schedule.

(c) Hourly Rate. The hourly rate is determined by:

$$\text{Hourly Rate} = \frac{\text{Total NOC and PSP Program Costs}}{\text{Total NOC and PSP Program Hours}}$$

(d) Hourly Rate Revision. Revisions to the hourly rate are based on a three (3) year average of the three (3) most representative fis-

cal years out of the four (4) preceding fiscal years, rounded-up to the nearest one (1) dollar.

(4) Other Services Fee.

(a) Applicants of other services including:

1. Requests under the following sections of Regulation I, Article VI, Sections 6.13 (E) (3) (j); 6.13 (F) (3); 6.13 (F) (4); 6.13 (F) (6) (~~((6.13 (F)10))~~) and 6.13 (F) (9) (~~((6.13 (F)11))~~).

2. Registration exemption requests.

3. Other.

(b) Applicants shall pay a fee per the Consolidated Fee Schedule.

(c) The fee is calculated by multiplying the total staff time spent in reviewing and processing the request, rounded-up to the nearest half-hour, by the hourly rate, as listed in the Fee Schedule.

(d) Hourly Rate. The hourly rate is calculated by:

$$\text{Hourly Rate} = \frac{\text{Total NOC and PSP Program Costs}}{\text{Total NOC and PSP Program Hours}}$$

(e) Hourly Rate Revision. Revisions to the hourly rate are based on a three (3) year average of the three (3) most representative fiscal years out of the four (4) preceding fiscal years, rounded-up to the nearest one (1) dollar.

(B) Payment of Fees. The Agency will invoice the owner, operator, or both, for all applicable fees. The fees shall be paid without regard to whether the request(s) associated with Article X, Section 10.08 (A) (1), (2), (3) and (4) are approved or denied; except Section 10.08 (A) (2) as provided in Article III, Section 3.02.B.

WSR 21-07-078
PROPOSED RULES
LIQUOR AND CANNABIS
BOARD

[Filed March 17, 2021, 11:32 a.m.]

Supplemental Notice to WSR 21-01-211.

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 requirements 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 April 28, 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/Boardmeetings>.

Date of Intended Adoption: No earlier than May 12, 2021.

Submit Written Comments to: Audrey Vasek, 1025 Union Avenue, Olympia, WA 98501, email rules@lcb.wa.gov, fax 360-704-5027, by April 28, 2021.

Assistance for Persons with Disabilities: Contact Claris Nhanabu, ADA coordinator, human resources, phone 360-664-1642, fax 360-664-9689, TTY 711 or 1-800-833-6388, email Claris.Nhanabu@lcb.wa.gov, by April 21, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this supplemental 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 supplemental rule proposal:

- Amends **WAC 314-28-005**, relating to definitions. The proposed revisions include adding a definition of "off-site tasting room," a cross-reference to RCW 66.24.146, and a definition of "tasting room." An introductory sentence is added as a technical update,

stating that the definitions apply throughout chapter 314-28 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 **WAC 314-28-065**, relating to sampling, service, and sales requirements, and the annual report on revenue from tasting room sales of adulterated spirits for on-premises consumption. 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 **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 **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 **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 **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 **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, including the distinctly marked glassware requirement. 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, filing the annual report on revenue from tasting room sales of adulterated spirits for on-premises consumption, and maintaining 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 supplemental 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 supplemental proposed rules

are not subject to cost-benefit analysis requirements unless requested by the joint administrative rules review committee or voluntarily applied. Additionally, these supplemental 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 supplemental 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 supplemental 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 distilleries and craft distilleries: \$0 to \$65. 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 under RCW 19.85.025(3) by way of RCW 34.05.310 (4)(e). Similarly, the annual report on revenue derived from sales of adulterated spirits for on-premises consumption is required by RCW 66.24.140 (2)(c)(ii) and 66.24.145 (3)(b), the food offerings requirements are explicitly dictated by RCW 66.24.1471, and the designated area requirements are dictated by RCW 66.24.140 (3)(c)(ii) and 66.24.145 (7)(b), 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 requirements. A breakdown of the estimated costs of compliance associated with these requirements is provided below.

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 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 these administrative activities during the initial application year is \$63.93 ($\$21.31 \text{ avg. hourly wage} \times 3 \text{ hours} = \63.93), and the estimated cost during subsequent renewal years is \$7.10 ($\$21.31 \text{ avg. hourly wage} \times 0.3 \text{ hour} = \text{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 execu-

tive (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 \text{ avg. hourly wage} \times 0.6 \text{ hour} = \text{approximately } \14.21). For the purpose of the minor cost calculations, this estimated administrative cost is rounded up to \$15.

Total estimated annual cost of compliance: 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 \$65. Licensees that choose not to open an off-site tasting room will not have any additional costs (\$0). For licensees that choose to apply for an off-site tasting room license, the estimated annual cost of compliance is \$65 for licensing in the initial application year and \$10 for licensing in subsequent renewal years. 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.

Note: The original CR-102 included estimates of administrative costs related to recordkeeping and filing monthly production and sales summary fee reports. Since the supplemental rule proposal no longer requires distilleries and craft distilleries to submit monthly reports, these cost estimates have been removed from the supplemental CR-102 and the estimated cost of compliance has decreased.

(2) Estimated annual cost of compliance for wineries: \$0 to \$65. There are no new costs for winery licensees that continue operating 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 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 indus-

try (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 (\$65 for Distilleries, \$65 for Wineries, and \$15 for Breweries) does not exceed the minor cost estimate for these industries (\$2,076.60 for Distilleries, \$3,453.63 for Breweries, and \$3,581.58 for Wineries), so a small business economic impact statement (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*AvgG BI)
312140	\$65	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
312120	\$15	Breweries	Breweries	\$3,453.63	\$3,244.72 2018 Dataset pulled from ESD	\$3,453.63 2018 Dataset pulled from DOR

March 17, 2021
David Postman
Chair

OTS-2748.3

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.

(4) "Tasting room" includes both off-site tasting rooms operated by, and on-site tasting rooms operated at, a licensed distillery or craft distillery premises.

[Statutory Authority: RCW 66.24.145, and 66.08.030. WSR 14-20-047, § 314-28-005, filed 9/24/14, effective 10/25/14. Statutory Authority: RCW 66.08.030 and 66.28.320. WSR 10-01-090, § 314-28-005, filed 12/16/09, effective 1/16/10.]

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, 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) (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.
 - ~~((3))~~ (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.
 - ~~((4))~~ (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.

[Statutory Authority: RCW 66.24.170, 66.24.640, 66.24.695, and 66.08.030. WSR 18-02-006, § 314-28-030, filed 12/20/17, effective 1/20/18. Statutory Authority: RCW 66.08.030, 66.24.145. WSR 15-16-049, § 314-28-030, filed 7/29/15, effective 8/29/15; WSR 14-20-047, § 314-28-030, filed 9/24/14, effective 10/25/14. Statutory Authority: RCW 66.08.030, 66.24.055, 66.24.160, 66.24.630, and 66.24.640. WSR 12-12-065, § 314-28-030, filed 6/5/12, effective 7/6/12.]

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 (~~al-~~
~~low?~~)).**

(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.

[Statutory Authority: RCW 66.24.170, 66.24.640, 66.24.695, and 66.08.030. WSR 18-02-006, § 314-28-050, filed 12/20/17, effective 1/20/18. Statutory Authority: RCW 66.08.030, 66.24.145. WSR 15-16-049, § 314-28-050, filed 7/29/15, effective 8/29/15; WSR 14-20-047, § 314-28-050, filed 9/24/14, effective 10/25/14. Statutory Authority: RCW 66.08.030, 66.24.055, 66.24.160, 66.24.630, and 66.24.640. WSR 12-12-065, § 314-28-050, filed 6/5/12, effective 7/6/12. Statutory Authority: RCW 66.24.145 and 66.08.030. WSR 10-19-066, § 314-28-050, filed 9/15/10, effective 10/16/10; WSR 09-02-011, § 314-28-050, filed 12/29/08, effective 1/29/09.]

NEW SECTION

WAC 314-28-065 Sampling, service, and sales requirements for distillery and craft distillery licensees—Annual report on revenue from tasting room sales of adulterated spirits for on-premises consumption. 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 al-

cohol 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 spirits 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) Consistent with RCW 66.24.140 (2)(c)(ii) and 66.24.145

(3)(b), distilleries and craft distilleries that sell adulterated spirits for on-premises consumption under (c) of this subsection must file an annual report summarizing their revenue sources. The annual report on revenue from tasting room sales of adulterated spirits for on-premises consumption must be filed on a form furnished by the board or in a format approved by the board. The annual report must be submitted to the board by January 25th following the end of the calendar year for the reporting period. (For example, an annual report listing revenue sources for 2021 is due by January 25, 2022.)

(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.

[]

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.

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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).

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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 num-

ber of licensees operating at a jointly operated conjoined consumption area.

(iii) 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. The distinctive markings may be either permanent or temporary. Any temporary markings must remain on the glassware or serving containers through the duration of use by the customer;

(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).

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REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 314-28-095 Farmer's market spirits sales.

OTS-2747.3

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

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
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 WAC 314-24-040 WAC 314-24-080 WAC 314-24-090 WAC 314-24-190 WAC 314-28-090	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
Agents violations: Nonretail licensee employing 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 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
<p>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 314-24-161 [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</p>	<p>3 day suspension or \$500 monetary option</p>	<p>5 day suspension or \$2,500 monetary option</p>	<p>10 day suspension or \$5,000 monetary option</p>	<p>20 day suspension or \$10,000 monetary option</p>
<p>Sampling/tasting/food offerings violations. RCW 66.20.010 <u>RCW 66.24.140</u> RCW 66.24.145 <u>RCW 66.24.1471</u> RCW 66.24.170 RCW 66.28.040 RCW 66.28.150 WAC 314-20-015 WAC 314-24-160 <u>WAC 314-28-065</u> <u>WAC 314-28-067</u> WAC 314-45-010 Chapter 314-64 WAC</p>	<p>3 day suspension or \$500 monetary option</p>	<p>5 day suspension or \$2,500 monetary option</p>	<p>10 day suspension or \$5,000 monetary option</p>	<p>20 day suspension or \$10,000 monetary option</p>

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
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	
<u>Failure to follow stock-keeping unit requirements.</u> <u>RCW 66.24.140</u> <u>RCW 66.24.145</u> <u>WAC 314-28-065</u>	<u>3 day suspension or \$500 monetary option</u>	<u>5 day suspension or \$2,500 monetary option</u>	<u>10 day suspension or \$5,000 monetary option</u>	<u>20 day suspension or \$10,000 monetary option</u>
<u>Failure to file annual report on revenue from tasting room sales of adulterated spirits for on-premises consumption.</u> <u>RCW 66.24.140</u> <u>RCW 66.24.145</u> <u>WAC 314-28-065</u>	<u>3 day suspension or \$250 monetary option</u>	<u>5 day suspension or \$500 monetary option</u>	<u>10 day suspension or \$1,000 monetary option</u>	

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
Failure to maintain 30% annual limit on overall gross revenue per tasting room derived from sales of adulterated spirits for on-premises consumption. RCW 66.24.140 RCW 66.24.145 WAC 314-28-065	<u>3 day suspension or monetary option of \$100 per percentage point over the 30% limit</u>	<u>5 day suspension or monetary option of \$200 per percentage point over the 30% limit</u>	<u>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. 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.			
Failure to file tax/shipment report. 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
Certificate of approval (COA) and/or authorized representative violations. 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

[Statutory Authority: RCW 66.08.030. WSR 09-21-050, § 314-29-035, filed 10/14/09, effective 11/14/09. Statutory Authority: RCW 66.08.030, 66.24.010, 66.24.120. WSR 03-09-015, § 314-29-035, filed 4/4/03, effective 5/5/03.]

WSR 21-07-087

PROPOSED RULES

PIERCE COLLEGE

[Filed March 18, 2021, 2:52 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-03-039 [21-03-027].

Title of Rule and Other Identifying Information: Pierce College student conduct code.

Hearing Location(s): On April 27, 2021, at 3:30 p.m., Zoom, <https://pierce-college.zoom.us/j/87280651105>.

Date of Intended Adoption: May 13, 2021.

Submit Written Comments to: Julie Draper Davis, 9401 Farwest Drive S.W., Lakewood, WA 98498, email jdraperdavis@pierce.ctc.edu, by April 27, 2021.

Assistance for Persons with Disabilities: Contact Hope Stout, phone 253-964-6246, email JStout@pierce.ctc.edu, by April 23, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Address state and federal law compliance requirements and general updates to organization and usefulness of the student conduct code for students and the campus community.

Statutory Authority for Adoption: RCW 28B.50.140(13).

Statute Being Implemented: RCW 28B.50.140(13).

Rule is necessary because of federal law, Title IX Regulations, August 14, 2020; and *Nelson v. Spokane Community College*, August 4, 2020.

Name of Proponent: Public.

Name of Agency Personnel Responsible for Drafting and Implementation: Julie Draper Davis, Associate Dean, Student Conduct, Pierce College District, 253-912-2331; Enforcement: Vice President of Learning and Student Success, Pierce College District, 253-912-2331.

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 proposed rule will not impose any costs for the institution.

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 will not impose any costs for the institution.

March 18, 2021
Michele L. Johnson
Chancellor and CEO

OTS-2961.1

AMENDATORY SECTION (Amending WSR 17-13-102, filed 6/20/17, effective 7/21/17)

WAC 132K-135-020 Authority. The ((board)) Pierce College board of trustees, acting pursuant to RCW 28B.50.140(14), delegates to the chancellor of the college the authority to administer disciplinary action. The chancellor is authorized to delegate or reassign any and all

duties and responsibilities as set forth in this chapter as may be reasonably necessary. Administration of the disciplinary procedures is the responsibility of the vice president of learning and student success or their designee. The student conduct officer shall serve as the principal investigator and administrator for alleged violations of this code.

[Statutory Authority: RCW 28B.50.140(13). WSR 17-13-102, § 132K-135-020, filed 6/20/17, effective 7/21/17.]

AMENDATORY SECTION (Amending WSR 17-13-102, filed 6/20/17, effective 7/21/17)

WAC 132K-135-030 Definitions. The following definitions shall apply for the purposes of this student conduct code:

~~(1) ("Assembly" means any overt activity engaged in by one or more persons, the object of which is to gain publicity, advocate a view, petition for a cause, or disseminate information to any person, persons, or group of persons.~~

~~(2) "Board" means the board of trustees of Community College District No. 11, state of Washington.~~

~~(3) "Calendar day" means days will be counted by excluding the first day and including the last day of timelines. When the last day falls on a Saturday, Sunday, or holiday, the last day will be the next day which is not a Saturday, Sunday, or holiday. When the period of time prescribed or allowed is less than seven days, Saturdays, Sundays, and holidays are not included in the count.~~

~~(4)) "Business day" means a weekday, excluding weekends, college holidays, and college closures unless otherwise specified.~~

~~(2) "College" means Pierce College district and any other community college centers or ((facilities)) premises established within Washington State Community College District No. 11.~~

~~((5)) (3) "College community" means students, employees, trustees, and volunteers.~~

~~((6) "College facilities" and "college facility" mean and include any and all real and personal property owned, rented, leased, or operated by the board of Washington state Community College District No. 11, and shall include all buildings and appurtenances attached thereto and all parking lots and other grounds. College facilities extend to distance education classroom environments, and agencies or institutions that have educational agreement with the college.~~

~~(7)) (4) "College official" includes any person employed by the college performing assigned duties.~~

~~((8)) (5) "College premises" shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, rented, leased, operated or controlled by the college. College premises extends to distance education classroom environments, and agencies or institutions that have educational agreements with the college.~~

~~((9)) (6) "Complainant" ((is any person who submits a complaint alleging that a student violated the student conduct code, or in matters of sexual misconduct, a complainant is an alleged victim of sexual misconduct)) is a student or another member of the college community who is allegedly directly affected by a reported violation of this student conduct code. The complainant may be the reporting party, but~~

not necessarily; witnesses or other third parties may report concerns. In any case involving a report of sexual misconduct as defined in this student conduct code, a complainant is afforded certain rights under this student conduct code including, but not limited to:

(a) The right to be informed of all orders issued in the disciplinary case in which this person is a complainant;

(b) The right to appeal a disciplinary decision; and

(c) The right to be accompanied by a process advisor.

~~((10))~~ (7) "Conduct review officer" is the dean of student success or other college administrator designated by the chancellor to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code.

~~((11) "Controlled substance" means and includes any drug or substance as defined in chapter 69.50 RCW as now law or hereafter amended.~~

~~(12) "Day" means a weekday, excluding weekends, college holidays, and college closures unless otherwise specified.~~

~~(13))~~ (8) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.

~~((14))~~ (9) "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 days or a dismissal are heard by the student conduct committee. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

~~((15))~~ (10) "Faculty member" and "instructor" are any employee of Community College District No. 11 who is employed on a full-time or part-time basis as a teacher, instructor, counselor, faculty advisor, or librarian.

~~((16))~~ (11) "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 email address and official's office address.

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

~~((17))~~ (12) "President" is the president of a college campus. The president is authorized to delegate any and all responsibilities as set forth in the chapter as may be reasonably necessary.

~~((18) "RCW" means Revised Code of Washington which can be accessed at <http://apps.leg.wa.gov/rew/>.~~

~~(19))~~ (13) "Respondent" is the student against whom disciplinary action is initiated.

~~((20))~~ (14) "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 both email, and by either 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.

~~((21))~~ (15) "Sexual misconduct" has the meaning ascribed to this term in WAC 132K-135-070(15).

~~((22))~~ (16) "Student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term, but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered "students."

~~((23))~~ (17) "Student conduct officer" is a college administrator designated by the president or vice president of learning and student success to be responsible for implementing and enforcing the student conduct code.

~~((24))~~ (18) "Student organization" means any number of students who have met the college's formal requirements of clubs or organizations.

~~((25))~~ "WAC" means Washington Administrative Code which can be accessed at <http://app.leg.wa.gov/wac/>.

~~(26))~~ (19) "Visitors" means guests, applicants, contractors, vendors, advisory board members, foundation board members, and members of the public on college premises.

[Statutory Authority: RCW 28B.50.140(13). WSR 17-13-102, § 132K-135-030, filed 6/20/17, effective 7/21/17.]

AMENDATORY SECTION (Amending WSR 17-13-102, filed 6/20/17, effective 7/21/17)

WAC 132K-135-040 Statement of jurisdiction. (1) The student conduct code shall apply to student conduct that occurs:

(a) On college premises ~~((, to conduct that occurs))~~;

(b) At or in connection with college-sponsored activities ~~((, or to))~~; or

(c) Off-campus ~~((conduct))~~ that in the judgment of the college adversely affects the college community ~~((and/or))~~, visitors, or the pursuit of ~~((its))~~ the college's 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 notification of acceptance at the college through the actual receipt of a degree or certificate, 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.

(5) 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.

[Statutory Authority: RCW 28B.50.140(13). WSR 17-13-102, § 132K-135-040, filed 6/20/17, effective 7/21/17.]

AMENDATORY SECTION (Amending WSR 17-13-102, filed 6/20/17, effective 7/21/17)

WAC 132K-135-060 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)~~) premises that are generally open and available to the public.

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

(c) Students shall be protected from academic evaluation (~~(which)~~) that 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)~~) that 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 student conduct code is entitled, upon request, to procedural due process as set forth in this chapter.

[Statutory Authority: RCW 28B.50.140(13). WSR 17-13-102, § 132K-135-060, filed 6/20/17, effective 7/21/17.]

AMENDATORY SECTION (Amending WSR 17-13-102, filed 6/20/17, effective 7/21/17)

WAC 132K-135-070 Prohibited student conduct. The college may impose disciplinary sanctions against a student who commits, attempts

to commit, aids, abets, incites, encourages, or assists another person to commit, an act(s) of misconduct which include, but are not limited to, the following:

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

~~(a) Cheating includes using or any attempt to use, 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. Plagiarism 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) No student shall be allowed to withdraw from a course or from the college to avoid the consequences of academic dishonesty.~~

~~(2) **Other dishonesty.** Any other acts of dishonesty, such acts include, but are not limited to:~~

~~(a) Forgery, alteration, submission of falsified documents, or misuse of any college document, record, or instrument of identification;~~

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

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

~~(3) **Obstruction or disruption.** Obstruction or disruption of:~~

~~(a) Any instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or~~

~~(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.~~

~~(4) **Assault, intimidation, harassment.** Assault, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, stalking, or other conduct, which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property.~~

~~(5) **Bullying is severe or pervasive physical or verbal (written or oral) abuse.**~~

~~(6) **Cyber misconduct.** Cyberstalking, cyberbullying, or online harassment. Use of electronic communications including, but not limited to, email, instant messaging, online bulletin boards, and social media sites to harass, abuse, bully, or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.~~

~~(7) **Property violation.** Damage to, or theft or misuse of, real or personal property or money of:~~

~~(a) The college or state;~~
~~(b) Any student or college officer, employee, or organization;~~
~~(c) Any other member of the college community, visitors, or organization; or~~
~~(d) Possession of such property or money after it has been stolen.~~

~~(8) **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 duties, including failure to properly identify oneself to such a person when requested to do so.~~

~~(9) **Weapons.** Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:~~

~~(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties;~~

~~(b) A student with a valid concealed weapons permit may store a pistol in the student's 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 or chancellor may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission.~~

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

~~(10) **Hazing.** Hazing includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm to any student.~~

~~(11) **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 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.~~

~~(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 college community and visitors will abide by all Washington state laws and college policy as it relates to the use of tobacco, electronic cigarettes, and related products.~~

~~(12) **Lewd conduct.** Conduct which is lewd, obscene, or indecent.~~

~~(13) **Disorderly conduct.** Conduct which disrupts campus operations or the educational, social, or housing programs, or assisting or encouraging another person to engage in such conduct.~~

~~(14) **Discriminatory conduct.** Discriminatory conduct which harms or adversely affects any member of the college community and/or visitors because of 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; veteran's status; or any other legally protected classification.~~

~~(15) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence.~~

~~(a) **Sexual harassment.** The term "sexual harassment" means unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature that is sufficiently serious as to deny or limit, and that does deny or limit, based on sex, the ability of a student to participate in or benefit from the college's educational, social, or housing programs or that creates an intimidating, hostile, or offensive environment for other college community members and/or visitors.~~

~~(b) **Sexual intimidation.** The term "sexual intimidation" 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 sexual harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, intimate partner violence, and stalking are all types of sexual violence.~~

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

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

~~(iii) Domestic violence includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.~~

~~(iv) Intimate partner violence is violence by a person who is or has been in a dating, romantic, or intimate relationship with the victim.~~

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

~~(vi) **Consent.** Knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact ac-~~

~~tual words or action indicating freely given agreement to have sexual intercourse or sexual contact.~~

~~A person may be incapable of giving consent by reason of age, threat or intimidation, lack of opportunity to object, disability, drug or alcohol consumption, or other cause. 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. Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual activity.~~

~~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 activity.~~

~~(16) **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, social, or housing programs or that creates an intimidating, hostile, or offensive environment for other college community members and/or visitors. Harassing conduct may include, but is not limited to, physical, verbal, written, social media, and electronic communications.~~

~~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; veteran's status; or any other legally protected classification. See "sexual misconduct" for the definition of "sexual harassment."~~

~~(17) **Retaliation.** Any intentional, adverse action taken by an accused individual or allied third party, absent legitimate nondiscriminatory purposes, as reprisal 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. Retaliatory actions include, but are not limited to, threats or actual violence against the person or their property, adverse educational or employment consequences, ridicule, intimidation, bullying, or ostracism.~~

~~(18) **Theft or 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 student computing resources policy.~~

~~(19) **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.~~

~~(20) **Safety violations.** Safety violations include any nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the college community and/or visitors, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.~~

~~(21) **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.~~

~~(22) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.~~

In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.) (1) Abuse of others. Assault, physical abuse, verbal abuse, threat(s), intimidation, or other conduct, which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property unless otherwise protected by law.

(2) Academic dishonesty. Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication. The decision to bring a student conduct proceeding under this code for academic dishonesty is at the sole discretion of the student conduct officer. Nothing in this code prohibits instructors and/or academic divisions or departments from imposing academic consequences in response to academic dishonesty. Faculty may impose up to and including a failing grade in an academic class and academic divisions or departments may impose up to and including dismissal from an academic program. Policies and procedures governing the imposition of academic consequences for academic dishonesty can be found in the class syllabus and applicable program handbook.

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

(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. Plagiarism 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) Multiple submissions includes submitting the same work in separate classes without the express permission of the instructor(s).

(e) Deliberate damage includes taking deliberate action to destroy or damage another's academic work or college property.

(f) No student shall be allowed to withdraw from a course or from the college to avoid the consequences of academic dishonesty.

(3) **Acts of dishonesty.** Acts of dishonesty 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.

(4) **Alcohol.** The use, possession, manufacture, distribution, sale, or being under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(5) **Cyber misconduct.** Cyberstalking, cyberbullying, or online harassment. Use of electronic communications including, but not limited to, electronic mail (email), text messaging, social media sites, or applications (apps), 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 electronic communications or computer activities directly or through spyware, sending threatening emails or texts, disrupting electronic communications with spam or by sending a computer virus, or sending false messages to third parties using another's identity (spoofing).

(6) **Discriminatory harassment.**

(a) Unwelcome and offensive conduct, not otherwise protected by law, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently severe, persistent, or pervasive as to:

(i) Limit the ability of a student to participate in or benefit from the college's educational, social, or housing programs; or

(ii) Create an intimidating, hostile, or offensive environment for other college community members and/or visitors.

(b) Discriminatory harassment may include, but is not limited to, physical, verbal, written, social media, and electronic communications.

(c) 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; veteran's status; or any other legally protected classification.

(7) **Disorderly conduct.** Conduct, or assisting or encouraging another person to engage in such conduct, which disrupts campus operations or the college's educational, social, or housing programs.

(8) **Disruption or obstruction.** Disruption or obstruction of instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college premises or at a college activity, or any activity that is authorized to occur on college premises, whether or not actually conducted or sponsored by the college.

(9) **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.

(10) **Failure to comply with directive.** Failure to comply with the reasonable direction of a college officer or employee who is acting in the legitimate performance of their duties, including failure to properly identify oneself to such a person when requested to do so.

(11) **Harassment or bullying.** Conduct unrelated to a protected class that is unwelcome and sufficiently severe, persistent, or pervasive such that it could reasonably be expected to create an intimidating, hostile or offensive environment, or has the purpose or effect of unreasonably interfering with a person's academic or work performance, or a person's ability to participate in or benefit from the college's programs, services, opportunities, or activities.

(a) Harassing conduct may include, but is not limited to, physical, verbal, or nonverbal conduct, including written, social media and electronic communications unless otherwise protected by law.

(b) For purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior not otherwise protected by law when a reasonable person would feel humiliated, harmed, or intimidated.

(c) For purposes of this code, "intimidation" is an implied threat. Intimidation exists when a reasonable person would feel threatened or coerced even though an explicit threat or display of physical force has not been made. Intimidation is evaluated based on the intensity, frequency, or duration of the comments or actions.

(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) **Lewd conduct.** Conduct which is vulgar, obscene, or indecent, unless otherwise protected by law.

(14) **Marijuana or other drugs.**

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

(b) Drugs. The use, possession, delivery, sale, or being observably under the influence of any legend or prescription drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance, including narcotic drugs or opiates, under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

(15) **Misuse of computer time or 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 unauthorized 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, harassing, 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 computer information systems resources acceptable use or subsequent similar policy.

(16) **Property violation.** Damage to, theft of, misappropriation of, unauthorized use or possession of, vandalism of, or other nonaccidental damaging or destruction of, real or personal property or money of:

(a) The college or state;

(b) Any student or college officer, employee, or student organization;

(c) Any other member of the college community, or visitors.

(17) **Retaliation.** Any intentional, adverse action taken by an accused individual or allied third party, absent legitimate nondiscriminatory purposes, as reprisal 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. Retaliatory actions include, but are not limited to, threats or actual violence against the person or their property, adverse educational or employment consequences, ridicule, intimidation, bullying, or ostracism.

(18) **Safety violations.** Safety violations include committing any reckless or unsafe act that endangers others, failing to follow established safety procedures, or interfering with or otherwise compromising any college policy, equipment, or procedure relating to the safety and security of the college community or visitors including, but not limited to, tampering with fire safety equipment or triggering false alarms and other emergency response systems.

(19) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX defined in the supplemental procedures to this code. See WAC 132K-135-300, et seq.

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome sexual or gender-based conduct, including unwelcome sexual advances, requests for sexual favors, quid pro quo harassment, and other verbal, nonverbal, or physical conduct of a sexual or a gendered nature that is sufficiently severe, persistent, or pervasive as to:

(i) Deny or limit the ability of a student to participate in or benefit from the college's educational program;

(ii) Alter the terms or conditions of employment for a college employee(s); and/or

(iii) Creates an intimidating, hostile, or offensive environment for other campus community members.

(b) **Sexual intimidation.** The term "sexual intimidation" 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 sexual harassment. Nonconsensual sexual intercourse,

nonconsensual sexual contact, domestic violence, intimate partner 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 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 conduct.

(20) **Tobacco, electronic cigarettes, and related products.** The college community and visitors will abide by all Washington state laws and college policy as it relates to the use of tobacco, electronic cigarettes, and related products, including chapter 70.160 RCW.

(21) **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. Providing keys to an unauthorized person or providing access to an unauthorized person is also prohibited.

(22) **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.

(23) **Weapons.** Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties;

(b) A student with a valid concealed weapons permit may store a pistol in the student's 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 or chancellor may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission.

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

[Statutory Authority: RCW 28B.50.140(13). WSR 17-13-102, § 132K-135-070, filed 6/20/17, effective 7/21/17.]

AMENDATORY SECTION (Amending WSR 17-13-102, filed 6/20/17, effective 7/21/17)

WAC 132K-135-090 Disciplinary sanctions—(~~Terms~~) Conditions.

The following disciplinary sanctions may be imposed upon students found to have violated the student conduct code. Depending upon the misconduct, more than one sanction may be imposed. Other than college dismissal or revocation or withholding of a degree, disciplinary sanctions are not made part of the student's academic record, but are part of the student's disciplinary record. Violation of any (~~term or condition of any~~) disciplinary sanction or condition constitutes a new violation and may subject the student to additional sanctions and/or conditions.

(1) **Disciplinary warning.** A verbal statement to a student that there is a violation and that continued violations may be cause for further disciplinary action.

(2) **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.

(3) **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.

(a) 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.

(b) Probation may be for a limited period of time or may be for the duration of the student's attendance at the college.

(4) **Disciplinary suspension.** (~~Dismissal~~) Separation 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.

(5) **Dismissal.** The revocation of all rights and privileges of membership in the college community and exclusion from all college campuses and college-owned or controlled (~~facilities~~) premises without any possibility of return. There will be no refund of tuition or fees for the quarter in which the action is taken.

Disciplinary terms and conditions that may be imposed in conjunction with the imposition of a disciplinary sanction include, but are not limited to, the following:

(6) **Educational sanction.** The college may require the student to complete an educational activity or experience directly related to the violation committed, at the student's expense.

(7) **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.

(8) **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:

(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.

(9) **Restitution or monetary fine.** 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, monetary fine, or other compensation.

(10) **Hold on transcript or registration.** This is a temporary measure restricting release of a student's transcript or access to registration. Upon satisfactory completion of the conditions of the sanction, the hold will be released.

(11) **Revocation of admission or degree.** Admission to or a degree awarded from the college may be revoked for fraud, misrepresentation, or other violation of standards of conduct for students in obtaining the degree, or for other serious violations committed by a student prior to graduation.

(12) **Withholding degree.** The college may withhold awarding a degree otherwise earned until the completion of the process set forth in this chapter, including the completion of all sanctions imposed.

(13) **No trespass order.** A student may be restricted from college property based on misconduct.

(14) **No contact order.** An order directing a student to have no contact with a specified member of the college community, visitor, or a particular college facility.

[Statutory Authority: RCW 28B.50.140(13). WSR 17-13-102, § 132K-135-090, filed 6/20/17, effective 7/21/17.]

((HEARING PROCEDURES))

AMENDATORY SECTION (Amending WSR 17-13-102, filed 6/20/17, effective 7/21/17)

WAC 132K-135-100 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 complaint.

(2) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing the student to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the student 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 sexual misconduct, will make a reasonable effort to contact the complainant to discuss the results of the investi-

gation 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 the 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) and/or condition(s) as described in WAC 132K-135-090.

(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 and ensure prompt notice of the protective disciplinary sanctions and/or conditions.

[Statutory Authority: RCW 28B.50.140(13). WSR 17-13-102, § 132K-135-100, filed 6/20/17, effective 7/21/17.]

AMENDATORY SECTION (Amending WSR 17-13-102, filed 6/20/17, effective 7/21/17)

WAC 132K-135-110 Appeal from disciplinary action. (1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within ten business 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. Interim measures, including no contact orders, may remain in place pending appeal if the student conduct officer determines they are necessary.

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

(a) The imposition of disciplinary suspensions in excess of ten 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 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 a respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as are afforded the respondent.

[Statutory Authority: RCW 28B.50.140(13). WSR 17-13-102, § 132K-135-110, filed 6/20/17, effective 7/21/17.]

AMENDATORY SECTION (Amending WSR 17-13-102, filed 6/20/17, effective 7/21/17)

WAC 132K-135-120 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 involved as a complainant or witness, or in which there is direct or personal interest, prejudice, or bias, or in which previous actions have been taken in an advisory capacity.

(2) The parties to a brief adjudicative proceeding are the respondent, the student conduct officer, and the complainant in cases involving sexual misconduct. Before taking action, the conduct review officer shall conduct an informal hearing and provide each party:

(a) An opportunity to be informed of the 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 the respondent and the student conduct officer within ten business days of the completion of the informal hearing. 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 business 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 days or dismissal, the matter shall be referred to the student conduct committee for a disciplinary hearing.

[Statutory Authority: RCW 28B.50.140(13). WSR 17-13-102, § 132K-135-120, filed 6/20/17, effective 7/21/17.]

AMENDATORY SECTION (Amending WSR 17-13-102, filed 6/20/17, effective 7/21/17)

WAC 132K-135-130 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 business days of service of the initial decision.

(2) The president shall not participate in any case in which involved as a complainant or witness, or in which there is direct or personal interest, prejudice, or bias, or in which previous actions have been taken in an advisory capacity.

(3) During the review, the president shall give each party 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 reason for the decision and must be served on the parties within twenty (~~calendar~~) business 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 ((calendar)) 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 days or dismissal, the matter shall be referred to the student conduct committee for a disciplinary hearing.

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

[Statutory Authority: RCW 28B.50.140(13). WSR 17-13-102, § 132K-135-130, filed 6/20/17, effective 7/21/17.]

AMENDATORY SECTION (Amending WSR 17-13-102, filed 6/20/17, effective 7/21/17)

WAC 132K-135-150 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 ((calendar)) business 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 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 the 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) Each party may be accompanied at the hearing by a nonattorney assistant of the party's choice. A respondent, or complainant in a case involving allegations of sexual misconduct, 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 or the complainant is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened assistant attorney general.

[Statutory Authority: RCW 28B.50.140(13). WSR 17-13-102, § 132K-135-150, filed 6/20/17, effective 7/21/17.]

AMENDATORY SECTION (Amending WSR 17-13-102, filed 6/20/17, effective 7/21/17)

WAC 132K-135-170 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 thirty (~~calendar~~) business 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 decision 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 condition(s), if any, as authorized in the student conduct code. If the matter is an appeal by the respondent, the committee may affirm, reverse, or modify the disciplinary sanction(s) and/or condition(s) imposed by the student conduct officer and/or impose additional disciplinary sanction(s) or condition(s) as authorized herein.

(4) The committee's initial decision shall also include a statement of the available procedures and time frames for seeking reconsideration or appeal.

(5) 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.

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

[Statutory Authority: RCW 28B.50.140(13). WSR 17-13-102, § 132K-135-170, filed 6/20/17, effective 7/21/17.]

AMENDATORY SECTION (Amending WSR 17-13-102, filed 6/20/17, effective 7/21/17)

WAC 132K-135-180 Appeal from student conduct committee initial decision. (1) A respondent who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's initial decision to the president by filing a written notice of appeal with the president's office within 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 written notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain argument why the appeal should be granted. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the notice of appeal. If necessary to aid review, the president may ask for additional briefing from the parties on issues raised on appeal.

(3) The president shall provide a written decision to the respondent and the student conduct officer within thirty (~~calendar~~) 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) 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 has discretion to suspend any disciplinary action, summary suspension, or interim measures, pending review of the merits of the findings, conclusions, and disciplinary actions imposed.

(6) Per RCW 34.05.455 the president shall not engage in any improper "ex parte" communication with any of the parties regarding an appeal.

[Statutory Authority: RCW 28B.50.140(13). WSR 17-13-102, § 132K-135-180, filed 6/20/17, effective 7/21/17.]

AMENDATORY SECTION (Amending WSR 17-13-102, filed 6/20/17, effective 7/21/17)

WAC 132K-135-190 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, a temporary no trespass order, while an investigation and/or formal disciplinary procedure is pending.

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

- (a) Has violated any provision of the student conduct code; and
- (b) Presents an immediate danger to the health, safety, or welfare of members of the college community or visitors; 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 college premises or communicate with members of the college community and visitors. If the respondent has been temporarily trespassed from the college premises, a notice against trespass shall be included that warns the respondent that 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 the respondent enters the college premises other than for a scheduled meeting 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.

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

(b) 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.

(c) 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.

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

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

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

[Statutory Authority: RCW 28B.50.140(13). WSR 17-13-102, § 132K-135-190, filed 6/20/17, effective 7/21/17.]

AMENDATORY SECTION (Amending WSR 17-13-102, filed 6/20/17, effective 7/21/17)

WAC 132K-135-200 Classroom misconduct and authority to suspend for no more than one day. (1) Faculty members have the authority to take appropriate action to maintain order and proper conduct in their classroom and to maintain the effective cooperation of students in fulfilling the objectives of the course.

(2) Bringing any person, thing, or object to a teaching and learning environment that may disrupt the environment or cause a safety or health hazard, without the express approval of the faculty member is prohibited.

(3) Faculty members have the right to temporarily suspend any student(s) from a single class or related activity for the remainder of that 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 (~~shall~~) must report this temporary suspension to the student conduct officer or designee on the same day. (~~In consultation with the faculty member, the student conduct officer~~) The student conduct officer, in accordance with this code and following due process, may set conditions for the student upon return to the class or activity.

[Statutory Authority: RCW 28B.50.140(13). WSR 17-13-102, § 132K-135-200, filed 6/20/17, effective 7/21/17.]

NEW SECTION

WAC 132K-135-220 Interim measures. (1) After receiving a report of sexual misconduct or other student misconduct, a student conduct officer or designee may implement interim measures which may include, but are not limited to:

(a) A no-contact order prohibiting direct or indirect contact, by any means, with a complainant, a respondent, a reporting party, or other specified persons;

(b) Reassignment of college associated housing;

(c) Changes to class schedules, assignments, test schedules, or other academic related activities;

(d) Modified on-campus employment schedule or location; or

(e) Restrictions on access to portions of college premises.

(2) If an interim measure is put in place pending or during a conduct proceeding, the student will be notified of the interim measure and be advised how to raise an objection about the interim measure or request that it be made less restrictive. The student conduct officer will consider any objections and requests regarding interim measures, make a determination whether to make any changes, and provide notice of the decision to the student. The student conduct officer may adjust or modify interim measures as students' situations and schedules change and evolve over time. Interim measures will remain in place until the student receives notice they have been lifted or modified from the student conduct officer.

(3) Implementation of any interim measure does not assume any determination of, or create any presumption regarding responsibility for, a violation under this student conduct code.

[]

NEW SECTION

WAC 132K-135-230 Amnesty. (1) Pierce College values the health, safety and wellness of those in our college community. Students are encouraged to report crimes, share concerns, and seek medical attention for themselves or others in need.

(2) A student conduct officer may elect not to initiate disciplinary action against a student who, while in the course of helping another person seek medical or other emergency assistance, admits to a possible policy violation under this student conduct code, provided that any such violations did not and do not place the health or safety of any other person at risk.

(3) A student conduct officer may elect not to initiate disciplinary action against a student who, while in the course of reporting violence, sexual misconduct, or a crime in progress, admits to personal consumption of alcohol or drugs at or near the time of the incident, provided that any such use did not place the health or safety of any other person at risk.

(4) While policy violations cannot be overlooked, the college may elect to offer educational options or referrals, rather than initiating disciplinary action against students who report crimes, serve as witnesses, or seek medical attention as described in this section.

(5) This amnesty policy may not apply to students who repeatedly violate college policies in regards to alcohol, drugs, or other prohibited conduct.

[]

NEW SECTION

WAC 132K-135-240 Conduct hold on student records. (1) A student conduct officer or other designated college official may place a conduct hold on the student's record if the student is the respondent in a pending complaint of prohibited conduct, a pending conduct proceeding under this code, or in conjunction with a disciplinary sanction or condition under this code.

(2) A conduct hold may restrict the student from registering for classes, requesting an official transcript, or receiving a degree from the college until the hold has been removed.

(3) If the conduct hold is placed pending or during a conduct proceeding, the student will be notified of the hold and be advised how to raise an objection about the hold or request that it be made less restrictive. The student conduct officer will consider any objections and requests regarding the conduct hold, make a determination whether to make any changes, and provide notice of the decision to the student. The hold will remain in place until lifted by the student conduct officer or other designated college official with authority to do so.

(4) Implementation of any conduct hold prior to disciplinary action does not assume any determination of, or create any expectation of, responsibility for prohibited conduct under this conduct code.

[]

SUPPLEMENTAL TITLE IX STUDENT CONDUCT PROCEDURES

NEW SECTION

WAC 132K-135-300 Order of precedence. This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with the college's standard disciplinary procedures, WAC 132K-135-020 through 132K-135-250, these supplemental procedures shall take precedence.

[]

NEW SECTION

WAC 132K-135-310 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 132K-135-320 Title IX jurisdiction. (1) The 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, chapter 132K-135 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 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 132K-135-330 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);
- (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 132K-135-340 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 132K-135-150. 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 132K-135-350 Rights of parties. (1) The college's student conduct procedures, chapter 132K-135 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 132K-135-360 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 132K-135-370 Initial order. (1) In addition to complying with WAC 132K-135-170, 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 132K-135-380 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 132K-135-180.

(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 21-07-090

PROPOSED RULES

DEPARTMENT OF HEALTH

(Board of Optometry)

[Filed March 19, 2021, 9:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-17-025.

Title of Rule and Other Identifying Information: Chapter 246-851 WAC, Optometrists, the board of optometry (board) is proposing to create a new section, WAC 246-851-245, for suicide prevention education and repeal WAC 246-851-430 AIDS prevention education requirements. The proposed rule requires optometrists to take a one-time, three-hour training in suicide assessment and removes references to AIDS education and training in response to ESHB 1551, chapter 76, Laws of 2020.

Hearing Location(s): On May 3, 2021, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the board of optometry 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. Webinar only, link <https://www.gotomeet.me/LoraleiWalker>, phone 312-757-3121, Access Code 564-442-941.

Date of Intended Adoption: May 3, 2021.

Submit Written Comments to: Lorelei Walker, Program Manager, Department of Health, Board of Optometry, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, by April 26, 2021.

Assistance for Persons with Disabilities: Contact Lorelei Walker, phone 360-236-4947, TTY 711, email loralei.walker@doh.wa.gov, by April 26, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule implements ESHB 2411 (chapter 229, Laws of 2020) codified in RCW 43.70.442. The law amended RCW 43.70.442 adding optometrists to the list of professionals required to complete a one-time continuing education course in suicide prevention. The proposed rule requires optometrists to take a one-time, three-hour training in suicide assessment.

ESHB 1551, (chapter 76, Laws of 2020) removes the requirement for healthcare practitioners to take AIDS training. The proposed rule repeals requirements for licensed optometrist[s] to complete AIDS education and training in support of ESHB 1551. New optometry licensees would no longer need to take this training as a condition of licensure.

Reasons Supporting Proposal: The suicide training and education requirements proposed in this new rule would increase optometrists' knowledge and understanding of suicidal ideation and better prepare optometrists when they encounter suicidal patients. The board is proposing to no longer require AIDS education and training in rule in support of ESHB 1551 and reducing stigma towards people living with AIDS.

Statutory Authority for Adoption: RCW 18.54.070; ESHB 1551 (chapter 76, Laws of 2020); ESHB 2411 (chapter 229, Laws of 2020).

Statute Being Implemented: ESHB 1551 (chapter 76, Laws of 2020); ESHB 2411 (chapter 229, Laws of 2020).

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

Name of Proponent: Department of health, board of optometry, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Lorelei Walker, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4947.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Lorelei Walker, Department of Health, Board of Optometry, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4947, fax 360-236-2901, TTY 711, email lorelei.walker@doh.wa.gov.

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

March 19, 2021
William Prothero, OD, Chair
Board of Optometry

OTS-2817.3

NEW SECTION

WAC 246-851-245 Optometrist suicide prevention education. A licensed optometrist or a retired active licensed optometrist shall complete a board-approved, one-time training in suicide prevention that is at least three hours in length. Training must include screening and referral.

(1) This training must be completed by the end of the first full continuing education reporting period after August 1, 2021, or during the first full continuing education reporting period after initial licensure, whichever is later.

(2) Training accepted by the board must be on the department's model list as authorized in WAC 246-12-601 through 246-12-650.

(3) Training completed between June 11, 2020, and August 1, 2021, that meets the requirements of subsection (2) of this section, is accepted as meeting the one-time training requirement of this section.

(4) The hours spent completing the training in suicide assessment under this section count toward meeting applicable continuing education requirements for optometrist license renewal.

[]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-851-430

AIDS prevention and information
education requirements.

WSR 21-07-099
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Developmental Disabilities Administration)
[Filed March 22, 2021, 9:21 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-01-118.

Title of Rule and Other Identifying Information: The developmental disabilities administration (DDA) is proposing to amend WAC 388-829-0005 Who do the training requirements in this chapter apply to?

Hearing Location(s): On April 27, 2021, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington Street S.E., Olympia, WA 98501. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or by Skype. Due to the COVID-19 pandemic, hearing may be held via Skype, see DSHS website for most up-to-date information.

Date of Intended Adoption: Not earlier than April 28, 2021.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., March 23, 2021.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by April 13, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments add more providers to the scope of chapter 388-829 WAC, thus requiring the providers to complete training under that chapter.

Reasons Supporting Proposal: These changes ensure various providers (both state-operated and privately contracted) receive the same DDA-required trainings.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: RCW 71A.12.030, 74.39A.074, 74.39A.341, and 18.88B.041.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1589; Implementation and Enforcement: AnnMarie DeGroot, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1584.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, fax 360-407-0955, TTY 1-800-833-6388, email Chantelle.Diaz@dshs.wa.gov.

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

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

March 19, 2021

Katherine I. Vasquez
Rules Coordinator

SHS-4854.2

AMENDATORY SECTION (Amending WSR 18-18-020, filed 8/24/18, effective 9/24/18)

WAC 388-829-0005 Who do the training requirements in this chapter apply to? (1) The training requirements in this chapter apply to:

(a) Community residential service businesses under RCW 74.39A.009;

(b) Alternative living providers under chapter 388-829A WAC;

(c) ~~((Community crisis stabilization services providers under chapter 388-833 WAC; and~~

~~(d-)) Companion home providers under chapter 388-829C WAC;~~

(d) Intensive habilitation services for children providers under chapter 388-833 WAC;

(e) Overnight planned respite service providers;

(f) Stabilization, assessment, and intervention facility providers;

(g) State-operated living alternatives for adults; and

(h) State-operated living alternatives for children.

(2) Under this chapter, the term "service provider" includes:

~~(a) ((Supported living service providers;~~

~~(b) State-operated living alternatives;~~

~~(c) DDA group homes;~~

~~(d) Licensed staffed residential homes;~~

~~(e-)) Alternative living providers;~~

~~((f) Community crisis stabilization services for children; and~~

~~(g-)) (b) Companion home providers;~~

(c) DDA group homes;

(d) Group training homes;

(e) Intensive habilitation services for children;

(f) Licensed staffed residential homes;

(g) Overnight planned respite service providers;

(h) Stabilization, assessment, and intervention facility providers;

(i) State-operated living alternatives for adults;

(j) State-operated living alternatives for children; and

(k) Supported living service providers.

(3) A DDA group home licensed as an adult family home or assisted living facility must meet the training requirements in this chapter and the home care aide certification requirements under chapter 388-112A WAC.

(4) All other service providers listed in subsection (2) of this section ~~((must meet the training requirements in this chapter but))~~ are exempt from home care aide certification through the department of health.

[Statutory Authority: RCW 71A.12.030 and RCW 74.39A.009. WSR 18-18-020, § 388-829-0005, filed 8/24/18, effective 9/24/18. Statutory Authority: RCW 71A.12.030, 74.39A.074, 74.39A.341, 74.39A.351, and

18.88B.041. WSR 17-14-090, § 388-829-0005, filed 6/30/17, effective 8/1/17. Statutory Authority: RCW 71A.12.030, 71A.12.120, and chapter 74.39A RCW. WSR 15-20-045, § 388-829-0005, filed 9/29/15, effective 1/1/16.]

WSR 21-07-101

PROPOSED RULES

WASHINGTON STATE PATROL

[Filed March 22, 2021, 11:17 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-19-074.

Title of Rule and Other Identifying Information: Chapter 212-10 WAC, Smoke detection devices in dwelling unit.

Hearing Location(s): On April 28, 2021, at 1:00 - 2:00 p.m., call-in 1-253-215-8782, Meeting ID 944 6781 4436, Passcode 951694.

Date of Intended Adoption: April 29, 2021.

Submit Written Comments to: Kimberly Mathis, Agency Rules Coordinator, 106 11th Street S.E., Olympia, WA 98507, email wsprules@wsp.wa.gov, by April 26, 2021.

Assistance for Persons with Disabilities: Contact Kimberly Mathis, phone 360-596-4017, by April 26, 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 and nationally recognized standards.

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

Statutory Authority for Adoption: RCW 43.44.110.

Statute Being Implemented: RCW 43.44.110.

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 and 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.

March 22, 2021
John R. Batiste
Chief

OTS-2718.1

AMENDATORY SECTION (Amending WSR 81-04-058, filed 2/4/81)

WAC 212-10-010 Administration, authority. These rules are adopted pursuant to chapter 50, Laws of 1980, entitled smoke detection devices in dwelling units, and to RCW ((48.48.140)) 43.44.110 to provide for the installation and maintenance of smoke detection devices inside all dwelling units:

- (1) Occupied by persons other than the owner((r)); or
- (2) Built or manufactured in this state.

[Statutory Authority: RCW 48.48.140. WSR 81-04-058 (Order FM 81-2), § 212-10-010, filed 2/4/81.]

AMENDATORY SECTION (Amending WSR 81-04-058, filed 2/4/81)

WAC 212-10-015 Application and scope. (1) The provisions of these rules shall apply to:

- (a) All dwelling units occupied by persons other than the owner after December 31, 1981((r-and));
- (b) All dwelling units built or manufactured in this state after December 31, 1980; and
- (c) All dwelling units sold on or after July 1, 2019.

(2) Notwithstanding the provisions of chapter 19.27 RCW, RCW 43.22.340 through 43.22.434 and 43.22.450 through 43.22.490, the provisions of these rules shall also apply to all buildings or structures, mobile homes and factory built housing used as dwelling units.

[Statutory Authority: RCW 48.48.140. WSR 81-04-058 (Order FM 81-2), § 212-10-015, filed 2/4/81.]

AMENDATORY SECTION (Amending WSR 81-04-058, filed 2/4/81)

WAC 212-10-020 Definitions. (1) **Smoke detection device.** A self-contained alarm for detecting visible or invisible particles of combustion, which consists of an assembly of electrical components including a smoke chamber, alarm sounding appliance, and provision for connection to a power supply source, either by splice leads or a cord and plug arrangement or containing integral batteries. A supplemental heat detector may be included as part of the appliance. Terminals may be included for connection to a remote, audible signaling appliance or accessory. An integral transmitter may also be included to energize a remote audible signaling appliance. The smoke detection device may be of the photoelectric and/or ionization type.

(2) **Photoelectric detector.** A smoke detection device which activates when visible smoke from a fire enters the detector. Sensitive to smoldering fires as well as smoke generated by an open flame fire.

(3) **Ionization detector.** A smoke detection device which activates in response to invisible particles created by combustion. Sensitive to open flame fire.

(4) **Combination photoelectric/ionization detector.** A smoke detection device containing both an ionization and a photoelectric element.

(5) **Dwelling unit.** A single unit providing complete, independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation.

(6) **Sleeping room.** A room or area of the dwelling unit which is ordinarily used for sleeping.

(7) **Factory built housing.** For the purpose of these rules, factory built housing is considered as any structure designed primarily for human occupancy other than a mobile home, the structure of any room of which is either entirely or substantially prefabricated or assembled

at a place other than a building site, and which is subject to regulation by the Washington department of labor and industries pursuant to RCW 43.22.450 through 43.22.490.

~~((7))~~ (8) Mobile home. For the purpose of these rules, a mobile home is considered as a factory-assembled structure or structures assembled with the necessary service connections and made so as to be readily movable as a unit or units on its (their) own running gear and designed to be used as a dwelling unit without a permanent foundation, and which is subject to regulation by the Washington department of labor and industries pursuant to RCW 43.22.340 through 43.22.434.

~~((8))~~ (9) New building. For the purpose of these rules, a new building is considered as any structure constructed, erected or moved onto a permanent site on or after December 31, 1980, any portion of which is used or intended for use as a dwelling unit by any person or persons.

~~((9))~~ (10) Existing building. For the purpose of these rules an existing building is considered as any structure in existence prior to December 31, 1981, any portion of which is used, intended for use or thereafter converted for use as a dwelling unit by any person or persons other than the owner who do not otherwise qualify as a guest or member of the household of the owner.

[Statutory Authority: RCW 48.48.140. WSR 81-04-058 (Order FM 81-2), § 212-10-020, filed 2/4/81.]

AMENDATORY SECTION (Amending WSR 81-04-058, filed 2/4/81)

WAC 212-10-025 Conformance with nationally accepted standards.

All smoke detection devices shall be designed ~~((and))~~, manufactured, and installed in conformance with the requirements of Underwriters Laboratories, Inc. Standard UL 217 or ~~((International Conference of Building Officials Standard 43-6))~~ codes adopted by chapter 19.27 RCW, and shall be approved or listed for the purposes for which they are intended.

Exception: Smoke detection devices in dwelling units built or manufactured in this state after December 31, 1980, shall receive their primary power from the building wiring when such wiring is served from a commercial source. Wiring shall be permanent without a disconnecting switch other than those required for overcurrent protection.

[Statutory Authority: RCW 48.48.140. WSR 81-04-058 (Order FM 81-2), § 212-10-025, filed 2/4/81.]

AMENDATORY SECTION (Amending WSR 81-04-058, filed 2/4/81)

WAC 212-10-035 Number of smoke detection devices. ~~((1))~~

At least one smoke detection device shall be installed to protect ~~((the))~~ each sleeping ~~((area))~~ room within each dwelling unit. ~~((A sleeping area is defined as the area or areas of the dwelling unit in which the bedrooms (or sleeping rooms) are located.))~~ Where bedrooms or rooms ordinarily used for sleeping are separated by other-use areas (such as kitchens or living rooms but not bathrooms or closets), or are located on different stories or floor levels, they shall be considered as separate sleeping ~~((areas))~~ rooms for the purposes of these rules.

~~((2) Dwelling units with more than one sleeping area shall require the installation of additional smoke detection devices to protect each sleeping area.))~~

[Statutory Authority: RCW 48.48.140. WSR 81-04-058 (Order FM 81-2), § 212-10-035, filed 2/4/81.]

AMENDATORY SECTION (Amending WSR 81-04-058, filed 2/4/81)

WAC 212-10-045 Installation responsibility. (1) It is the responsibility of the builder or manufacturer of each new building, mobile home or factory built housing to install smoke detection devices within each dwelling unit.

(2) It is the responsibility of the owner of each existing building, mobile home or factory built housing to install smoke detection devices within each dwelling unit occupied by persons other than the owner.

(3) It is the responsibility of the owner of each new or existing building, mobile home or factory built housing, containing dwelling units occupied by persons other than the owner, to inspect and test all smoke detection devices at the time of vacancy or at time of sale and make the necessary repairs or replacements to insure that the smoke detection devices are operational prior to reoccupancy, and to instruct the occupants of the purpose, operation and maintenance of the smoke detection device(s).

[Statutory Authority: RCW 48.48.140. WSR 81-04-058 (Order FM 81-2), § 212-10-045, filed 2/4/81.]

AMENDATORY SECTION (Amending WSR 81-04-058, filed 2/4/81)

WAC 212-10-050 Maintenance responsibility. It is the responsibility of the occupant of all new or existing dwelling units, owned by other than the occupant, to maintain and test all smoke detection devices installed within the dwelling unit by the owner. Actual costs of maintenance, repair or replacement of smoke detection devices shall be as agreed beforehand by the occupant and owner. However, failure of the owner to abide by the terms of any such agreement does not relieve the occupant of the responsibility to maintain the smoke detection devices in a fully operational condition at all times. Failure to do so can subject the occupant to the penalty provisions of WAC 212-10-055.

[Statutory Authority: RCW 48.48.140. WSR 81-04-058 (Order FM 81-2), § 212-10-050, filed 2/4/81.]

AMENDATORY SECTION (Amending WSR 81-04-058, filed 2/4/81)

WAC 212-10-055 Penalties. Any person who violates any of the provisions of RCW ~~((48.48.140))~~ 43.44.110 or these rules shall be punished by a fine ~~((of not more than fifty dollars))~~ as defined in RCW 43.44.110(5).

[Statutory Authority: RCW 48.48.140. WSR 81-04-058 (Order FM 81-2), § 212-10-055, filed 2/4/81.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 212-10-030 Primary power supply.
- WAC 212-10-040 Location of smoke detection devices.

WSR 21-07-112
PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed March 23, 2021, 8:28 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-01-199.

Title of Rule and Other Identifying Information: WAC 182-513-1620
Tailored supports for older adults (TSOA)—Presumptive eligibility
(PE).

Hearing Location(s): On April 27, 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/181514389970288398>, Webinar ID 554-761-747. After registering, you will receive a confirmation email containing the information about joining the webinar.

Date of Intended Adoption: Not sooner than April 28, 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 April 27, 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 April 9, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is revising this section to mirror language in WAC 388-106-1910 to alleviate confusion caused by the discrepancies in the language between the two sections.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Jason Crabbe, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-9563; Implementation and Enforcement: Mark Westenhaver, 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.

March 23, 2021
Wendy Barcus
Rules Coordinator

OTS-2940.1

AMENDATORY SECTION (Amending WSR 19-11-123, filed 5/22/19, effective 6/22/19)

WAC 182-513-1620 Tailored supports for older adults (TSOA)—Presumptive eligibility (PE). (1) A person may be determined presumptively eligible for tailored supports for older adults (TSOA) services upon completion of a prescreening interview.

(2) The prescreening interview may be conducted by either:

(a) The area agency on aging (AAA); or

(b) A home and community services intake case manager or social worker.

(3) To receive services under presumptive eligibility (PE), the person must meet:

(a) Nursing facility level of care under WAC 388-106-0355;

(b) TSOA income limits under WAC 182-513-1635; and

(c) TSOA resource limits under WAC 182-513-1640.

(4) The PE period begins on the date the determination is made and:

(a) Ends on the last day of the month following the month of the PE determination if a full TSOA application is not completed and submitted by that date; or

(b) Continues through the date the final TSOA eligibility determination is made if a full TSOA application is submitted before the last day of the month following the month of the PE determination.

(5) If the person applies and is not determined financially eligible for TSOA, there is no overpayment or liability on the part of the applicant for services received during the PE period.

(6) The medicaid agency or the agency's designee sends written notice as described in WAC 182-518-0010 when PE for TSOA is approved or denied.

(7) A person may receive ~~((only one PE period))~~ services under presumptive eligibility only once within a ~~((consecutive))~~ twenty-four-month period.

(8) If the department of social and health services establishes a waitlist for TSOA services under WAC 388-106-1975, then PE does not apply.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 19-11-123, § 182-513-1620, filed 5/22/19, effective 6/22/19. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 1st sp.s. c 36 § 213 (1)(e), section 1115 of the Social Security Act, and 42 C.F.R. §§ 431.400 through 431.428. WSR 17-12-019, § 182-513-1620, filed 5/30/17, effective 7/1/17.]

WSR 21-07-118

PROPOSED RULES

WHATCOM COMMUNITY COLLEGE

[Filed March 23, 2021, 11:03 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-03-060.

Title of Rule and Other Identifying Information: Chapter 132U-305 WAC, Whatcom Community College Supplemental Title IX procedures, permanently implement emergency rule chapter 132U-305 WAC based on new Title IX regulations requiring substantial updates to investigative procedures, as well as changes to definitions of key terms.

Hearing Location(s): On April 27, 2021, at 14:00, Zoom. People can attend the meeting by using the following link <https://us02web.zoom.us/j/81756159620?pwd=V2FsOXRqTEV4Ry9EY2hid29BQU1Hdz09>.

Date of Intended Adoption: May 25, 2021.

Submit Written Comments to: Benjamin Reed, 237 West Kellogg Road, Laidlaw 208, Bellingham, WA 98226, email breed@whatcom.edu, fax 360-383-4000, by March 8, 2020.

Assistance for Persons with Disabilities: Contact Kerri Holferty, phone 360-383-3043, fax 360-383-4000, TTY 360-225-7182, email ADS@whatcom.edu, by March 5, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The existing chapter 132U-305 WAC, Supplemental Title IX procedures, do not meet current Title IX regulations including investigative procedures and definitions of key terms.

Reasons Supporting Proposal: The existing WAC does not address the recent federal and state regulations.

Statutory Authority for Adoption: Chapter 28B.50 RCW.

Rule is necessary because of federal law, [no information supplied].

Name of Proponent: Whatcom Community College, governmental.

Name of Agency Personnel Responsible for Drafting: Benjamin Reed, Laidlaw 208, 360-383-3074; Implementation and Enforcement: Benjamin Reed/Becky Rawlings, Laidlaw 208/Laidlaw 235, 360-383-3074/360-383-3400.

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 rule content is explicitly and specifically dictated by statute.

March 23, 2021

Barbara Nolze

Administrative Assistant to the
Vice President for Student Services

OTS-2556.2

**Chapter 132U-305 WAC
SUPPLEMENTAL TITLE IX PROCEDURES**

NEW SECTION

WAC 132U-305-005 Introduction. Whatcom Community College recognizes its responsibility for investigation, resolution, implementation of corrective measures, and monitoring the educational environment and workplace to stop, remediate, and prevent sexual misconduct and harassment as outlined in the Title IX of the Educational Amendments Act of 1972. This policy reflects the Department of Education's final rule, which went into effect August 14, 2020. Whatcom Community College is committed to addressing all allegations of misconduct and harassment, and as such the Title IX coordinator will evaluate each allegation to determine if it fits under the jurisdiction of this policy, this chapter, or chapter 132U-126 WAC.

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NEW SECTION

WAC 132U-305-010 Definitions. (1) **Actual knowledge:** Notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient.

(2) **Complainant:** Employee(s), applicant(s), student(s), or visitors(s) of Whatcom Community College who alleges that she or he has been subjected to discrimination or harassment due to his or her membership in a protected class.

(3) **Complaint:** A description of facts filed by a complainant or signed by the Title IX coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment. In complaints where the Title IX coordinator signs a formal complaint, the Title IX coordinator is not a complainant or otherwise a party and must otherwise comply with their regulatory duties.

(4) **Consent:** Knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact. A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct. Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(5) **Decision maker:** The individual that leads and coordinates the disciplinary phase of these procedures, following a full investigation as outlined below. In cases involving only students as complainants and respondents the decision maker will be the director for student conduct or designee. In cases involving employees as either complainants, respondents, or both the decision maker will be the executive director for human resources or designee. The decision maker cannot be the Title IX coordinator involved in the case, or the investigator.

(6) **Resolution:** The means by which the complaint is finally addressed. This may be accomplished through informal or formal processes, including counseling, mediation, or the formal imposition of discipline.

(7) **Respondent:** Person or persons who are members of the campus community who allegedly discriminated against or harassed another person or persons. Any person alleged to have violated this policy is presumed not responsible until the resolution of the formal or informal process.

(8) **Retaliation:** Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because the person reported an alleged violation of this policy or other college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in an investigation or disciplinary proceeding.

(9) **Supportive measures:** Nondisciplinary, nonpunitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. The Title IX coordinator is responsible for coordinating these measures. Supportive measures may include: Counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus safety escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures (See VAWA Section 304 for additional measures that may be required). These measures are available to complainants without the filing of a formal complaint.

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NEW SECTION

WAC 132U-305-015 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 or employee 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 policy, "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.

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NEW SECTION

WAC 132U-305-020 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 policy.

(2) For purposes of this policy, 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 policy must be dismissed if the Title IX coordinator or designee determines that one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Dismissal under this policy 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, chapter 132U-126 WAC, or the college's discrimination and harassment policy, chapter 132U-300 WAC.

(4) If the Title IX coordinator or designee 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.

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NEW SECTION

WAC 132U-305-025 Confidentiality and right to privacy. (1)

Whatcom Community College will seek to protect the privacy of the complainant and respondent to the fullest extent possible, consistent with the legal obligation to investigate, take appropriate remedial and/or disciplinary action, and comply with the federal and state law, as well as Whatcom Community College policies and procedures. Although Whatcom Community College will attempt to honor requests for confidentiality, it cannot guarantee complete confidentiality. Determinations regarding how to handle requests for confidentiality will be made by the Title IX coordinator/designee.

(2) **Confidentiality requests and sexual violence complaints:** The Title IX coordinator/designee will inform and obtain consent from the complainant before commencing an investigation into a sexual violence complaint. If a sexual violence complainant asks that his or her name not be revealed to the respondent or that the college not investigate the allegation, the Title IX coordinator/designee will inform the complainant that maintaining confidentiality may limit the college's ability to respond fully to the allegations and that retaliation by the respondent and/or others is prohibited. If the complainant still insists that his or her name not be disclosed or that the college not investigate, the Title IX coordinator/designee will determine whether the college can honor the request and at the same time maintain a safe and nondiscriminatory environment for all members of the college community, including the complainant. Factors to be weighed during this determination may include, but are not limited to:

- (a) The seriousness of the alleged sexual violence;
- (b) The age of the complainant;
- (c) Whether the sexual violence was perpetrated with a weapon;
- (d) Whether the respondent has a history of committing acts of sexual violence or has been the subject of other sexual violence complaints;
- (e) Whether the respondent threatened to commit additional acts of sexual violence against the complainant or others; and

(f) Whether relevant evidence can be obtained through other means (e.g., security cameras, other witnesses, physical evidence).

(3) If the college is unable to honor a complainant's request for confidentiality, the Title IX coordinator/designee will notify the complainant of the decision and ensure that complainant's identity is disclosed only to the extent reasonably necessary to effectively conduct and complete the investigation.

(4) If the college decides not to conduct an investigation or take disciplinary action because of a request for confidentiality, the Title IX coordinator/designee will evaluate whether other measures are available to limit the effects of the harassment and prevent its recurrence and implement such measures if reasonably feasible.

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NEW SECTION

WAC 132U-305-030 Initiation of investigation. Any employee, student, applicant, or visitor who believes that he or she has been the subject of discrimination or harassment should report the incident or incidents to the college's Title IX coordinator identified below. If the complaint is against that coordinator, the complainant should report the matter to the president's office for referral to an alternative designee.

The college encourages the timely reporting of any incidents of discrimination or harassment. Complaints may be submitted in writing or verbally. For complainants who wish to submit a written complaint, a formal complaint form is available online at <http://www.whatcom.edu/home/showdocument?id=360>. Hardcopies of the complaint form are available in the Human Resource Office, Laidlaw Center (LDC) 235.

The following college officials are designated to handle inquiries regarding this policy:

Name: Benjamin Reed
 Title: Title IX & ADA Coordinator
 Office: Laidlaw Center (LDC) 208
 Contact: breed@whatcom.edu
 Address: 237 W. Kellogg Rd., Bellingham, WA 98226

Name: Becky Rawlings
 Title: Executive Director for Human Resources, Title IX/EEO Coordinator
 Office: Laidlaw Center (LDC) 235
 Contact: brawlings@whatcom.edu
 Address: 237 W. Kellogg Rd., Bellingham, WA 98226

The Title IX coordinator(s) or designee:

- Will accept all complaints and referrals from college employees, applicants, students, and visitors;
- Will make determinations regarding how to handle requests by complainants for confidentiality;
- Will keep accurate records of all complaints and referrals for the required time period;

- May conduct investigations or delegate and oversee investigations conducted by a designee;
- May impose interim remedial measures to protect parties during investigations of discrimination or harassment;
- May recommend specific corrective measure to stop, remediate, and prevent the recurrence of inappropriate conduct.

Any employee, applicant, student, or visitor of Whatcom Community College may file a complaint. Complaints may be submitted in writing or verbally. The college encourages the timely reporting of any incidents of discrimination or harassment. Complaints may be submitted in writing or verbally. For complainants who wish to submit a written complaint, a formal complaint form is available online at <http://www.whatcom.edu/home/showdocument?id=360>. Hardcopies of the complaint form are available in the Human Resource Office, Laidlaw Center (LDC) 235. Any person submitting a discrimination complaint shall be provided with a written copy of the college's antidiscrimination policies and procedures, as well as a copy of this policy.

Upon receiving a discrimination complaint, and determining that the requirements of WAC 132U-305-020 (1)(a) through (c) have been met, the college shall commence an impartial investigation. The Title IX coordinator/designee shall be responsible for overseeing all investigations. Investigations may not be conducted by the Title IX coordinator, and the college may contract with a third-party as investigator. Once the investigation is assigned to someone other than the Title IX coordinator, the Title IX coordinator shall inform the complainant and respondent(s) of the appointment of an investigator.

(1) **Supportive measures:** The Title IX coordinator/designee will promptly contact all necessary parties to coordinate supportive measures.

(2) **Interim measures:** The Title IX coordinator/designee may impose measures to protect the complainant and/or respondent pending the conclusion of the investigation. Interim measures may include, but are not limited to, imposition of no contact orders, rescheduling classes, temporary work reassignments, referrals for counseling or medical assistance, and imposition of summary discipline on the respondent consistent with the college's student conduct code or the college's employment policies and collective bargaining agreements.

(3) **Investigation:** Complaints shall be thoroughly and impartially investigated. The investigation shall include, but is not limited to, interviewing the complainant and the respondent, relevant witnesses, and reviewing relevant documents. The investigation shall be concluded within a reasonable time, normally ninety days barring exigent circumstances. At the conclusion of the investigation, the investigator shall set forth his or her findings and recommendations in writing. The investigator shall send a copy of the findings and recommendations to the Title IX coordinator/designee. The Title IX coordinator/designee shall send that final investigation report to the decision maker.

(4) **Written notice of conclusion:** The Title IX coordinator/designee will provide each party and the appropriate student services administrator or appointing authority with written notice of investigative findings, along with access to the report. All parties will have up to ten days to submit, in writing, a meaningful response to the findings of fact in the report.

(5) **Final investigation report:** Ten days after the written notice of conclusion, the investigator will submit the final investigation report, with findings of fact using a preponderance of evidence standard, to the Title IX coordinator.

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NEW SECTION

WAC 132U-305-035 Initiation of discipline. (1) Upon receiving the final investigation report from the investigator, the Title IX coordinator/designee will forward the report to the decision maker, who 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 decision maker determines that there are sufficient grounds to proceed under these supplemental procedures, the decision maker will initiate a Title IX disciplinary proceeding by 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.

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NEW SECTION

WAC 132U-305-040 Prehearing procedure. (1) Upon sending the disciplinary notice, the decision maker will send a hearing notice to all parties, in compliance with WAC 132U-300-090. In no event will the hearing date be set less than ten days after the Title IX coordinator or designee 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 decision maker. The decision maker will then forward copies to all parties.

(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.

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NEW SECTION

WAC 132U-305-045 Rights of parties. (1) The college's student conduct procedures, chapter 132U-126 WAC, as well as college policies, practices, faculty negotiated agreements, and collective bargaining agreements and this policy 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 or designee will appoint an advisor of the college's choosing on the party's behalf at no expense to the party.

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NEW SECTION

WAC 132U-305-050 Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

(1) Relevance: The decision maker or designee 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 decision maker must not rely on any statement by that party or witness in reaching a determination of responsibility.

(5) No negative inference: The decision maker 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 decision maker 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.

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NEW SECTION

WAC 132U-305-055 Initial order. (1) In addition to complying with chapter 132U-126 WAC, the decision maker 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 decision maker'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.

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NEW SECTION

WAC 132U-305-060 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 132U-126-090.

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

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

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NEW SECTION**WAC 132U-305-065 Nonretaliation, intimidation, and coercion.**

Retaliation by, for, or against any participant (including complainant, respondent, witness, Title IX coordinator/designee, or investigator) is expressly prohibited. Retaliatory action of any kind taken against individual(s) as a result of seeking redress under the applicable procedures or serving as a witness in a subsequent investigation or any resulting disciplinary proceedings is prohibited and is conduct subject to discipline. Any person who thinks he/she has been the victim of retaliation should contact the Title IX coordinator/designee immediately.

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WSR 21-07-119

PROPOSED RULES

WHATCOM COMMUNITY COLLEGE

[Filed March 23, 2021, 11:03 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-03-059.

Title of Rule and Other Identifying Information: Chapter 132U-300 WAC, Whatcom Community College (WCC) discrimination and harassment, edit chapter 132U-300 WAC based on new Title IX regulations requiring substantial updates to investigative procedures, as well as changes to definitions of key terms.

Hearing Location(s): On April 27, 2021, at 14:00, Zoom. People can attend the meeting by using the following link <https://us02web.zoom.us/j/81756159620?pwd=V2FsOXRqTEV4Ry9EY2hid29BQU1Hdz09>.

Date of Intended Adoption: May 25, 2021.

Submit Written Comments to: Benjamin Reed, 237 West Kellogg Road, Laidlaw 208, Bellingham, WA 98226, email breed@whatcom.edu, fax 360-383-4000, by March 8, 2020.

Assistance for Persons with Disabilities: Contact Kerri Holferty, phone 360-383-3043, fax 360-383-4000, TTY 360-225-7182, email ADS@whatcom.edu, by March 5, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The existing chapter 132U-300 WAC, Discrimination and harassment, do not meet current Title IX regulations including investigative procedures and definitions of key terms.

Reasons Supporting Proposal: The existing WAC does not address the recent federal and state regulations.

Statutory Authority for Adoption: Chapter 28B.50 RCW.

Rule is necessary because of federal law, [no information supplied].

Name of Proponent: Whatcom Community College, governmental.

Name of Agency Personnel Responsible for Drafting: Benjamin Reed, Laidlaw 208, 360-383-3074; Implementation and Enforcement: Benjamin Reed/Becky Rawlings, Laidlaw 208/Laidlaw 235, 360-383-3074/360-383-3400.

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 rule content is explicitly and specifically dictated by statute.

March 23, 2021

Barbara Nolze

Administrative Assistant to the
Vice President for Student Services

OTS-2968.1

AMENDATORY SECTION (Amending WSR 18-17-025, filed 8/6/18, effective 9/6/18)

WAC 132U-300-040 Introduction. Whatcom Community College recognizes its responsibility for investigation, resolution, implementation of corrective measures, and monitoring the educational environment and workplace to stop, remediate, and prevent discrimination on the basis of race, color, national origin, age, perceived or actual physical or mental disability, pregnancy, genetic information, sex, sexual orientation, gender identity, marital status, creed, religion, or honorably discharged veteran or military status, or the use of trained guide dog or service animal, as required by Title VI of the Civil Rights Act of 1964, Title VII of the Civil Rights Act of 1964, Title IX of the Educational Amendments of 1972, Sections 504 and 508 of the Rehabilitation Act of 1973, the Americans with Disabilities Act and ADA Amendment Act, the Age Discrimination Act of 1975, the Violence Against Women Reauthorization Act and Washington state's law against discrimination, chapter 49.60 RCW and their implementing regulations. Employees are also protected from discrimination for filing a whistleblower complaint with the Washington state auditor.

For complaints involving sexual misconduct and sex-based discrimination, the Title IX coordinator or designee will evaluate the complaint according to Policy 616, chapter 132U-305 WAC. Complaints that fit the jurisdictional requirements of chapter 132U-305 WAC will follow the investigative and discipline procedures outlined in that policy, which follows the requirements of the 2020 final rules under Title IX, which went into effect August 14, 2020. All complaints that do not fit the jurisdictional requirements of chapter 132U-305 WAC will use the procedures outlined in this policy.

[Statutory Authority: Chapter 28B.50 RCW. WSR 18-17-025, § 132U-300-040, filed 8/6/18, effective 9/6/18.]

AMENDATORY SECTION (Amending WSR 18-17-025, filed 8/6/18, effective 9/6/18)

WAC 132U-300-060 Complaint procedure. Whatcom Community College has enacted policies prohibiting discrimination against, and harassment of members of protected classes. Any individual found to be in violation of this policy will be subject to disciplinary action up to and including dismissal from the college or from employment.

Any employee, student, applicant, or visitor who believes that he or she has been the subject of discrimination or harassment should report the incident or incidents to the college's Title IX/EEO coordinator identified below. If the complaint is against that coordinator, the complainant should report the matter to the president's office for referral to an alternate designee.

The college encourages the timely reporting of any incidents of discrimination or harassment. Complaints may be submitted in writing or verbally. For complainants who wish to submit a written complaint, a formal complaint form is available online at <http://www.whatcom.edu/home/showdocument?id=360>. Hard copies of the complaint form are available in the Human Resource Office, Laidlaw Center (LDC) 235.

The following college officials (~~is~~) are designated to handle inquiries regarding this policy:

Name: Benjamin Reed
Title: Title IX & ADA Coordinator
Office: Laidlaw Center (LDC) 208
Contact: breed@whatcom.edu
Address: 237 W. Kellogg Rd., Bellingham, WA 98226

Name: Becky Rawlings
 Title: Executive Director for Human Resources, Title IX/EEO Coordinator
 Office: Laidlaw Center (LDC) 235
 Contact: brawlings@whatcom.edu
 Address: 237 W. Kellogg Rd., Bellingham, WA 98226

The Title IX/EEO coordinators or designee:

- Will accept all complaints and referrals from college employees, applicants, students, and visitors;
- Will make determinations regarding how to handle requests by complainants for confidentiality;
- Will keep accurate records of all complaints and referrals for the required time period;
- May conduct investigations or delegate and oversee investigations conducted by a designee;
- May impose interim remedial measures to protect parties during investigations of discrimination or harassment;
- Will issue written findings and recommendations upon completion of an investigation; and
- May recommend specific corrective measures to stop, remediate, and prevent the recurrence of inappropriate conduct.

[Statutory Authority: Chapter 28B.50 RCW. WSR 18-17-025, § 132U-300-060, filed 8/6/18, effective 9/6/18.]

AMENDATORY SECTION (Amending WSR 18-17-025, filed 8/6/18, effective 9/6/18)

WAC 132U-300-130 Criminal complaints. Discriminatory or harassing conduct may also be, or occur in conjunction with, criminal conduct. Criminal complaints may be filed with the following law enforcement authorities:

Bellingham Police Department
 505 Grand Avenue
 Bellingham, WA 98225
 360-778-8800
<https://www.cob.org/gov/dept/police>

Blaine Public Safety Department
 322 H Street
 Blaine, WA 98230
 360-332-6769
<http://www.ci.blaine.wa.us/171/Public-Safety>

Everson Police Department
 111 W Main Street
 Everson, WA 98247
 360-966-4212
<http://www.ci.everson.wa.us/police-department.html>

Ferndale Police Department

2220 Main Street
Ferndale, WA 98248
360-384-3390
<http://www.ferndalepd.org/>

Lummi Nation Police Department

2665 Kwina Road
Bellingham, WA 98226
360-312-2000
<http://www.lummi-nsn.gov/Website.php?PageID=397>

Lynden Police Department

203 19th Street
Lynden, WA 98264
360-354-2828
<http://www.lyndenwa.org/departments/police/>

Nooksack Tribal Police Department

5061 Deming Road
Deming, WA 98244
360-592-5176
<https://nooksacktribe.org/departments/law-enforcement>

Sumas Police Department

433 Cherry Street
Sumas, WA 98295
360-988-5711
<http://www.sumaspolice.com/>

Western Washington University

Department of Public Safety
516 High Street
Bellingham, WA 98225
360-650-3911
<http://www.wwu.edu/ps/police/index.shtml>

Whatcom County Sheriff's Office

Public Safety Building
311 Grand Avenue
Bellingham, WA 98225
360-676-6650
<http://www.whatcomcounty.us/200/Sheriff>

The college will proceed with an investigation of harassment and discrimination complaints regardless of whether the underlying conduct is subject to civil criminal prosecution.

[Statutory Authority: Chapter 28B.50 RCW. WSR 18-17-025, § 132U-300-130, filed 8/6/18, effective 9/6/18.]

WSR 21-07-122

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed March 23, 2021, 1:18 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-02-042.

Title of Rule and Other Identifying Information: WAC 182-512-0550 SSI-related medical—All other excluded resources.

Hearing Location(s): On April 27, 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, you must register prior to the virtual public hearing (April 27, 2021, 10:00 a.m. Pacific Time). Registration URL <https://attendee.gotowebinar.com/register/181514389970288398>. Webinar ID 554-761-747. After registering, you will receive a confirmation email containing the information about joining the webinar.

Date of Intended Adoption: Not sooner than April 28, 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 April 27, 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 April 9, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending this section due to some clients receiving long-term services and supports who have accumulated resources under requirements described in section 6008 of the Families First Coronavirus Response Act (FFCRA) that may result in their loss of coverage when the public health emergency (PHE) ends. The proposed rules allow the client to spend down these excess resources over twelve months beginning the month following the end of the PHE. Additionally, the interim rule with comment published by the Centers for Medicare and Medicaid Services that is being codified in 42 C.F.R. 433.400 requires action on changes in circumstances for these clients, which had been prohibited under FFCRA.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; 42 C.F.R. 433.400.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Michael Williams, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1346; Implementation and Enforcement: Steve Kozak, P.O. Box 45534, Olympia, WA 98504-2716, 360-725-1343.

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.

March 23, 2021
Wendy Barcus
Rules Coordinator

OTS-2893.2

AMENDATORY SECTION (Amending WSR 19-23-063, filed 11/15/19, effective 1/1/20)

WAC 182-512-0550 SSI-related medical—All other excluded resources. All resources described in this section are excluded resources for SSI-related medical programs. Unless otherwise stated, interest earned on the resource amount is counted as unearned income.

(1) Resources necessary for a person who is blind or disabled to fulfill a self-sufficiency plan approved by the agency.

(2) Retroactive payments from SSI or old age, survivors, and disability insurance (OASDI), including benefits a person receives under the interim assistance reimbursement agreement with the Social Security Administration, are excluded for nine months following the month of receipt. This exclusion applies to:

(a) Payments received by the person, the person's spouse, or any other person financially responsible for the person;

(b) SSI payments for benefits due for the month(s) before the month of continuing payment;

(c) OASDI payments for benefits due for a month that is two or more months before the month of continuing payment; and

(d) Proceeds from these payments as long as they are held as cash, or in a checking or savings account. The funds may be commingled with other funds, but must remain identifiable from the other funds for this exclusion to apply. This exclusion does not apply once the payments have been converted to any other type of resource.

(3) All resources specifically excluded by federal law, such as those described in subsections (4) through (11) of this section as long as such funds are identifiable.

(4) Payments made under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

(5) The excluded resources described in WAC 182-512-0770 and other resources of American Indians/Alaska Natives that are excluded by federal law.

(6) Restitution payment and any interest earned from this payment to persons of Japanese or Aleut ancestry who were relocated and interned during war time under the Civil Liberties Act of 1988 and the Aleutian and Pribilof Islands Restitution Act.

(7) Funds received from the Agent Orange Settlement Fund or any other funds established to settle Agent Orange liability claims.

(8) Payments or interest accrued on payments received under the Radiation Exposure Compensation Act received by the injured person, the surviving spouse, children, grandchildren, or grandparents.

(9) Payments or interest accrued on payments received under the Energy Employees Occupational Illness Compensation Act of 2000 (EEOICA) received by the injured person, the surviving spouse, children, grandchildren, or grandparents.

(10) Payments from:

(a) The Dutch government under the Netherlands' Act on Benefits for Victims of Persecution (WUV).

(b) The Victims of Nazi Persecution Act of 1994 to survivors of the Holocaust.

(c) Susan Walker vs. Bayer Corporation, et al., 96-C-5024 (N.D. Ill.) (May 8, 1997) settlement funds.

(d) Ricky Ray Hemophilia Relief Fund Act of 1998 P.L. 105-369.

(11) The unspent social insurance payments received due to wage credits granted under sections 500 through 506 of the Austrian General Social Insurance Act.

(12) Tax refunds and earned income tax credit refunds and payments are excluded as resources for twelve months after the month of receipt.

(13) Payments from a state administered victim's compensation program for a period of nine calendar months after the month of receipt.

(14) Cash or in-kind items received as a settlement for the purpose of repairing or replacing a specific excluded resource are excluded:

(a) For nine months. This includes relocation assistance provided by state or local government.

(b) Up to a maximum of thirty months, when:

(i) The person intends to repair or replace the excluded resource; and

(ii) Circumstances beyond the control of the settlement recipient prevented the repair or replacement of the excluded resource within the first or second nine months of receipt of the settlement.

(c) For an indefinite period, if the settlement is from federal relocation assistance.

(d) Permanently, if the settlement is assistance received under the Disaster Relief and Emergency Assistance Act or other assistance provided under a federal statute because of a catastrophe which is declared to be a major disaster by the President of the United States, or is comparable assistance received from a state or local government or from a disaster assistance organization. Interest earned on this assistance is also excluded from resources. Any cash or in-kind items received as a settlement and excluded under this subsection are available resources when not used within the allowable time periods.

(15) Insurance proceeds or other assets recovered by a Holocaust survivor.

(16) Pension funds owned by an ineligible spouse. Pension funds are defined as funds held in a(n):

(a) Individual retirement account (IRA) as described by the IRS code; or

(b) Work-related pension plan (including plans for self-employed persons, known as Keogh plans).

(17) Cash payments received from a medical or social service agency to pay for medical or social services are excluded for one calendar month following the month of receipt.

(18) SSA- or division of vocational rehabilitation (DVR)-approved plans for achieving self-support (PASS) accounts, allowing blind or

disabled persons to set aside resources necessary for the achievement of the plan's goals, are excluded.

(19) Food and nutrition programs with federal involvement. This includes Washington Basic Food, school reduced and free meals and milk programs and WIC.

(20) Gifts to, or for the benefit of, a person under eighteen years old who has a life-threatening condition, from an organization described in section 501 (c) (3) of the Internal Revenue Code of 1986 which is exempt from taxation under section 501(a) of that code, as follows:

(a) In-kind gifts that are not converted to cash; or

(b) Cash gifts up to a total of two thousand dollars in a calendar year.

(21) Veteran's payments made to, or on behalf of, natural children of Vietnam veterans regardless of their age or marital status, for any disability resulting from spina bifida suffered by these children.

(22) The following are among assets that are not resources and as such are neither excluded nor counted:

(a) Home energy assistance/support and maintenance assistance;

(b) Retroactive in-home supportive services payments to ineligible spouses and parents; and

(c) Gifts of domestic travel tickets.

(23) Resources accumulated in a separate account, designated by the client, that result from work activity during the client's enrollment in apple health for workers with disabilities (HWD) program under chapter 182-511 WAC.

(24) Limited to clients who have been or continue to be subject to participation as defined in WAC 182-513-1100 during the public health emergency (PHE), resources accumulated due to not increasing participation in response to section 6008(b) of the Families First Coronavirus Response Act (FFCRA) are excluded for:

(a) The duration of the PHE; and

(b) A period of twelve months after the PHE ends.

(25) Resources listed in the program operations manual system (POMS), not otherwise excluded under this section, are excluded (see SSA POMS Section SI 01130.050 <http://secure.ssa.gov/apps10/poms.nsf/lrx/0501130050>).

[Statutory Authority: RCW 41.05.021, 41.05.160 and 2019 c 70. WSR 19-23-063, § 182-512-0550, filed 11/15/19, effective 1/1/20. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 19-13-010, § 182-512-0550, filed 6/6/19, effective 7/7/19. Statutory Authority: RCW 41.05.021 and Patient Protection and Affordable Care Act (Public Law 111-148), 42 C.F.R. §§ 431, 435, 457 and 45 C.F.R. § 155. WSR 14-07-059, § 182-512-0550, filed 3/14/14, effective 4/14/14. WSR 11-24-018, recodified as § 182-512-0550, filed 11/29/11, effective 12/1/11. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, chapter 74.12 RCW, and The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010. WSR 11-21-025, § 388-475-0550, filed 10/11/11, effective 10/29/11. Statutory Authority: RCW 74.08.090 and ARRA of 2009, Public Law 111-5, Section 5006(b); 42 C.F.R. 435.601, EEOICPA of 2000, Public Law 106398, Sec. 1, app., Title XXXVI (Oct. 30, 2000) (section 1 adopting as Appendix H.R. 5408), Section 3646 of the Appendix. WSR 10-15-069, § 388-475-0550, filed 7/16/10, effective 8/16/10. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, and 74.09.500, and Social Security Act as amended by P.L. 108-203. WSR

06-04-046, § 388-475-0550, filed 1/26/06, effective 2/26/06. Statutory Authority: RCW 74.04.050, 74.08.090. WSR 04-09-004, § 388-475-0550, filed 4/7/04, effective 6/1/04.]

WSR 21-07-133

PROPOSED RULES

UNIVERSITY OF WASHINGTON

[Filed March 23, 2021, 4:28 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-16-123.

Title of Rule and Other Identifying Information: The university is repealing chapter 478-160 WAC, Admission and registration procedures for the University of Washington; and creating new chapter 478-161 WAC, Student Enrollment for the University of Washington.

Hearing Location(s): On April 27, 2021, at 9:00-10:00 a.m. This will be held via video and phone conference and the link will be available on the University Policy and Rules website at <https://www.washington.edu/rules>. Due to the governor's restrictions on in-person gatherings, the University of Washington (UW) will hold the public hearing via video and phone conference and will have the link and details located on the university policy and rules website at <https://www.washington.edu/rules/>.

Date of Intended Adoption: May 13, 2021.

Submit Written Comments to: Barbara Lechtanski, Director of the University Policy and Rules Office and State Rules Coordinator for the UW, University Policy and Rules Office, Box 351210, Seattle, WA 98195-1210, email rules@uw.edu, by April 27, 2021, end of business.

Assistance for Persons with Disabilities: Contact disability services office, phone 206-543-6450, fax 206-685-7264, TTY 206-543-6452, email dso@uw.edu, by April 20, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to remove outdated and inaccurate information in the current chapter 478-160 WAC and create a concise new chapter 478-161 WAC.

Reasons Supporting Proposal: UW is proposing these actions to keep the university's information accurate and up-to-date for current and incoming students. This is part of a comprehensive effort to update policy and information across the WAC, UW administrative policy, and website information.

Statutory Authority for Adoption: RCW 28B.20.130.

Statute Being Implemented: Chapter 28B.15 RCW; and RCW 28B.20.130.

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

Name of Proponent: UW, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Helen Garrett, University Registrar and Chief Officer of Enrollment Information Services, 1410 N.E. Campus Parkway, Seattle, WA 98195, 206-543-9686; Enforcement: Philip J. Reid, Vice Provost for Academic and Student Affairs, 340 Gerberding Hall, UW Seattle Campus, 206-685-8583.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to the university, and the university has not voluntarily decided to apply it.

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rule has no impact on small businesses.

March 23, 2021
Barbara Lechtanski
Director of the University Policy
and Rules Office and State
Rules Coordinator for the UW

OTS-2926.2

Chapter 478-161 WAC
STUDENT ENROLLMENT FOR THE UNIVERSITY OF WASHINGTON

NEW SECTION

WAC 478-161-010 Admission to specific undergraduate majors.

Criteria for acceptance to undergraduate majors may vary from department to department. Department admission policies are binding if they are the result of action by the faculty of the department concerned and have also been approved by the dean of that school or college, the designated faculty governing council or body, and the president of the university.

[]

NEW SECTION

WAC 478-161-015 Registration eligibility. (1) **Continuing students.** Continuing students at the university who remain in good standing are in compliance with other rules and regulations will have the opportunity to register at the same campus each quarter as long as they maintain continuous enrollment. A "continuing student" is one who has registered at the same University of Washington campus in the same degree level (i.e., undergraduate to undergraduate) or degree level program (i.e., graduate to graduate) the preceding quarter, or preceding spring quarter, if registering for autumn quarter.

(2) **Newly admitted students.** Newly admitted students are eligible to register for the quarter for which they have been offered admission when the applicable registration period(s) open and only after they have confirmed their enrollment and intention to attend the university beginning that quarter. Confirmation usually requires an advance payment on tuition and/or a confirmation fee. A "newly admitted student" is either one who has not previously registered for credit courses at the university or one who will be in their first quarter in a status different from that in which they last attended.

(3) **Quarter-off, on-leave status and returning students.**

(a) **Quarter-off eligibility for undergraduate and professional students.**

(i) Subject to college, school, and departmental enrollment policies, undergraduate and professional students who have completed a quarter at the University of Washington may take the following quarter off and remain eligible to register for the subsequent quarter without reapplying as returning students. Any quarter from which a student has completely withdrawn or been canceled does not constitute a completed quarter. Summer quarter enrollment is not required to maintain continuous registration eligibility.

(ii) Undergraduate and professional students who have taken more than one consecutive quarter off (not including summer) and who wish to return to the university in the degree or certificate program for which they were last registered must submit a "returning student re-enrollment" form to the university registration office.

(b) **Graduate students.** Graduate students are required either to be registered each quarter (except summer) or to be officially on leave until the completion of all requirements for the graduate degree toward which such a student is working. Graduate students who do not maintain continuous enrollment must file an on-leave application with the graduate school. An "on-leave graduate student" is a graduate student in good standing who is away from the university and has been granted on-leave status. Failure to register each quarter (except summer) or to go on leave will constitute presumptive evidence that the student has withdrawn and resigned from the graduate school. The quarter-off eligibility is not available to graduate students.

(4) **Enrollment in a different campus or different program.** Current students who wish to attend the university at a different campus or in a different program than they are currently enrolled in must complete the application of and be accepted into the campus or program in which they would like to enroll.

(5) **Enrollment after program completion.** All undergraduate and graduate students who completed a degree or certificate program at the time they were last enrolled must apply as new students if they wish to continue or return to the university. For students completing a master's degree, it is sometimes possible to return into the PhD program without a new student application.

[]

NEW SECTION

WAC 478-161-020 Waiver of tuition and fees. (1) The board of regents is authorized to grant tuition and fee 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 regents to grant waivers for different categories of students and provide for waivers of different fees. For the waivers that are authorized but not required by state law, the board of regents must affirmatively act to implement the legislature's grant of authority under each individual law. The permissive waivers that the board has implemented are noted in subsections (5) and (6) of this section. Permissive waivers not listed in subsection (5) or (6) have not been implemented. A full list of permissive waivers adopted by the board of regents and a list of mandatory waivers can be found online on the University of Washing-

ton's office of the university registrar website. Mandatory waivers are also listed in university policy.

(2) Even when it has decided to implement a permissive waiver listed in RCW 28B.15.910, 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. The university's description of the factors it may consider to adjust a waiver program to meet emergent or changing needs is found in subsection (7) of this section. All permissive waivers are subject to subsection (7) of this section.

(3) The board of regents also has the authority under RCW 28B.15.915 to grant waivers of all or a portion of operating fees as defined in RCW 28B.15.031. Waivers granted under RCW 28B.15.915 are subject to subsection (7) of this section.

(4) No waivers contained in this section will be awarded to students participating in self-sustaining courses or programs.

(5) Pursuant to its authority to grant permissive waivers under RCW 28B.15.910 and the laws cited in this subsection, the board of regents adopts the waivers of all or a portion of nonresident tuition fees differential contained in the subsections listed below, with the accompanying noted limitations. These limitations are in addition to any limitations set forth in RCW.

(a) RCW 28B.15.014(1);

(b) RCW 28B.15.014(2). Waivers under this subsection shall be restricted to four consecutive quarters from the employee's initial date of employment with the University of Washington. The employee must be employed on or before the first day of the quarter for which the waiver is awarded;

(c) RCW 28B.15.014(3). Waivers under this subsection shall be restricted to persons who reside in Washington state;

(d) RCW 28B.15.225; and

(e) RCW 28B.15.544 and chapter 28B.70 RCW.

(6) Pursuant to its authority to grant permissive waivers under RCW 28B.15.910 and the laws cited in this subsection, the board of regents adopts the following waivers contained in the sections listed below, with the accompanying noted limitations. These limitations are in addition to any limitations set forth in RCW.

(a) RCW 28B.15.100(3);

(b) RCW 28B.15.540(2);

(c) RCW 28B.15.555 and 28B.15.556;

(d) RCW 28B.15.558. All waivers authorized by RCW 28B.15.558 shall be subject to such additional limitations as determined by the provost, pursuant to the terms of subsection (7) of this section. These limitations on employee and course eligibility can be found in university policy in administrative policy statement (APS) 22.1. The office of the university registrar also maintains a list of excluded courses and programs. As authorized by RCW 28B.15.558(5) waivers shall be awarded to eligible University of Washington employees before considering waivers for eligible persons who are not employed by the institution;

(e) RCW 28B.15.615;

(f) RCW 28B.15.621(2). The university adopts this waiver only as to:

(i) Undergraduate students pursuing their first bachelor's degree to a maximum of 225 college-level credits, including credits transferred from other institutions of higher education; and

(ii) Full-time graduate or professional degree students, provided however, that the waiver may be applied only toward a single degree program at the University of Washington, and provided further, that graduate and professional degree students who received a waiver authorized by RCW 28B.15.621(2) as undergraduates at the University of Washington shall not be eligible for this waiver.

To qualify an individual as an "eligible veteran or National Guard member," the person seeking the waiver must present proof of domicile in Washington state and either a DD Form 214 (report of separation) or other documentation indicating they meet the criteria in RCW 28B.15.621(8).

(g) RCW 28B.15.740(1); and

(h) RCW 28B.15.740(2).

(7) 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 initiatives to modify enrollment demand for specific programs and management decisions to eliminate or modify academic programs. 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.

[]

NEW SECTION

WAC 478-161-030 Change of residence application. Nonresident students who desire to apply for a change in resident status must complete and submit a Washington institutions of higher education residence questionnaire or a Washington higher education residency affidavit, whichever is appropriate to the student's circumstances, and submit all requested supporting documentation to the University of Washington, residence classification office at the student's home campus.

Residence questionnaire and additional instructions are available on the residence classification office website. Within ten days of taking action on the residence questionnaire, the residence classification office shall provide to the student a written statement of the reasons for any decision it makes. This statement may be transmitted electronically (e.g., by email). This rule is adopted in accordance with RCW 34.05.482 through 34.05.494, governing brief adjudicatory proceedings, the provisions of which are hereby adopted.

[]

NEW SECTION

WAC 478-161-031 Appeal of change of residence determination. Any student wishing to appeal a decision of the residence classification office may request administrative review through the University of Washington, residence classification review committee. The residence classification review committee shall be composed of at least

four persons appointed by the vice provost for academic and student affairs or designee.

Appeals may be submitted by written or oral request to the residence classification office within twenty-one days from the date of the emailed residency decision required by WAC 478-161-030. Written appeals are strongly preferred, and may be made by the student submitting a written statement describing why the student believes the decision was incorrect. The residence classification review committee will consider the student's statement of appeal and the student's residency file as of the time of the residence classification office's decision. Decisions of the residence classification review committee shall be rendered within twenty days of the request for the review. Decisions shall be in writing, and may be transmitted electronically (e.g., by email). The residence classification review committee shall issue the institution's final decision.

[]

NEW SECTION

WAC 478-161-040 International students—Accident insurance requirement. All F-1 and J-1 eligible international students enrolled in a program of study with an I-20 or DS 2019 issued by the University of Washington are required to purchase the UW International Student Health Insurance Plan (ISHIP) while attending the University of Washington.

[]

WSR 21-07-136

PROPOSED RULES

UNIVERSITY OF WASHINGTON

[Filed March 23, 2021, 5:37 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-03-049.

Title of Rule and Other Identifying Information: Chapter 478-116 WAC, Parking and traffic rules of the University of Washington, Seattle.

Hearing Location(s): On April 27, 2021, at 9:00 - 10:00 a.m. This will be held via video and phone conference and the link will be available on the university policy and rules website at <https://www.washington.edu/rules>. Due to the governor's restrictions on in-person gatherings, the University of Washington (UW) will hold the public hearing via video and phone conference and will have the link and details located on the university policy and rules website at <https://www.washington.edu/rules/>.

Date of Intended Adoption: May 13, 2021.

Submit Written Comments to: Barbara Lechtanski, Director and State Rules Coordinator for the UW, University Policy and Rules Office, Box 351210, Seattle, WA 98195-1210, email rules@uw.edu, by April 27, 2021, end of business.

Assistance for Persons with Disabilities: Contact disability services office, phone 206-543-6450, fax 206-685-7264, TTY 206-543-6452, email dso@uw.edu, by April 20, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to add and update definitions and information for future transportation needs and inclusivity. Some of the changes will also allow for improved regulation of shared micromobility companies, both existing and possible future developments.

Reasons Supporting Proposal: UW is proposing these actions to keep the university's information nimble and up-to-date. This is part of a comprehensive effort to update policy and information across the WAC, UW administrative policy, and website information.

Statutory Authority for Adoption: RCW 28B.10.560 and 28B.20.130.

Statute Being Implemented: RCW 28B.10.560 and 28B.20.130.

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

Name of Proponent: UW, governmental.

Name of Agency Personnel Responsible for Drafting: Mahala Willard, TSD Program Operations Specialist, 1320 N.E. Campus Parkway, Seattle, 98195, 206-221-3701; Implementation: Anne Eskridge, UW Director of Transportation Services, 1320 N.E. Campus Parkway, Seattle, 98195, 206-221-3701; and Enforcement: Lou Cariello, Vice President for University of Washington Facilities, 1320 N.E. Campus Parkway, Seattle, 98195, 206-221-3701.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to the university, and the university has not voluntarily decided to apply it.

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rule has no impact on small businesses.

March 23, 2021
Barbara Lechtanski
Director of the University Policy
and Rules Office and State
Rules Coordinator for the UW

OTS-2934.1

AMENDATORY SECTION (Amending WSR 19-11-046, filed 5/10/19, effective 6/10/19)

WAC 478-116-024 Definitions. (1) **Authorized agent.** An entity or individual authorized by the director of transportation services to facilitate services provided by the department.

(2) **Automatic license plate recognition.** (Also referred to as ALPR.) A system which automatically captures an image of a vehicle's license plate to assist in streamlined enforcement of parking by authorized agents.

(3) **Automatic vehicle identification.** (Also referred to as AVI.) A system to support vehicle access control and vehicle identification.

(4) **Bicycle.** A device with two or three wheels, a saddle, fully operative pedals propelled solely by human power.

(5) **Campus.** The University of Washington, Seattle, and those lands and leased facilities of the university within UWPD jurisdiction and where parking is managed by transportation services.

(6) **Disability parking.** See "persons with disability."

(7) **Disability zone/area.** A parking zone designated for exclusive use by persons with a disability and identified with a sign bearing the associated international symbol.

(8) **Electric-assisted bicycle (class 1, 2, and 3).** A bicycle with two or three wheels, a saddle, fully operative pedals for human propulsion, and an electric motor. The electric-assisted bicycle's electric motor must have a power output of no more than seven hundred fifty watts. The electric-assisted bicycle must meet the requirements of one of the following three classifications:

(a) Class 1: The motor provides assistance only when the rider is pedaling and ceases to provide assistance when the bicycle reaches the speed of twenty miles per hour;

(b) Class 2: The motor may be used exclusively to propel the bicycle and is not capable of providing assistance when the bicycle reaches the speed of twenty miles per hour; or

(c) Class 3: The motor provides assistance only when the rider is pedaling and ceases to provide assistance when the bicycle reaches the speed of twenty-eight miles per hour and is equipped with a speedometer.

(9) **Electric scooter.** A stand-up or seated motor vehicle consisting of a footboard mounted on two wheels and a long steering handle, propelled by an electric motor.

(10) **Fee.** The charge for the use of services provided and facilities managed by transportation services.

(11) **Fine.** The charge associated with a parking citation.

(12) **Immobilization.** The attachment of a device to a parked car, motorcycle, bicycle, electric-assisted bicycle, motor scooter, or electric scooter so that the vehicle cannot be moved.

(13) **Impoundment.** The removal of the vehicle, bicycle, electric-assisted bicycle, or electric scooter to a storage facility either by an authorized agent of transportation services or UWPD.

(14) **Load zone.** A stall or area signed for loading and unloading purposes, adjacent to a facility or loading dock, or in a parking area or lot.

(15) **Meter.** See "parking meter."

(16) **Micromobility device.** A compact device designed for personal mobility which is not considered a vehicle per RCW 46.04.670 including, but not limited to, roller skates, scooters, and skateboards. This term does not describe electric personal assistive mobility devices, such as electric wheelchairs or other medical mobility devices.

(17) **Mobile payment.** Payment service performed from or via a mobile device.

~~((17))~~ (18) **Motorcycle.** Motor vehicle designed to travel with not more than three wheels in contact with the ground, on which the driver rides astride the motor unit or power train and which is designed to be steered with a handle bar.

~~((18))~~ (19) **Motorized micromobility device.** A device fitting the description of a micromobility device that is powered by a motor.

(20) **Motor scooter.** A light two-wheeled or three-wheeled open motor vehicle with a step-through frame on which the driver sits over an enclosed engine with legs together and feet resting on a floorboard.

~~((19))~~ (21) **Motor vehicle.** An automobile, truck, motorcycle, motor scooter, or electric-assisted bicycle that is assisted by an engine or other mechanism, or a vehicle without motor power designed to be drawn or used in conjunction with the aforementioned vehicles including, but not limited to, trailers, travel trailers, and campers.

~~((20))~~ (22) **Nonmotorized vehicle.** A device other than a motor vehicle used to transport persons including, but not limited to, bicycles, skateboards, in-line skates, and roller skates.

~~((21))~~ (23) **No parking zone/area.** Any area not specifically marked and/or signed and designed for parking.

~~((22))~~ (24) **Operator or driver.** Every person who drives or is in actual physical control of a motor vehicle or nonmotorized vehicle.

~~((23))~~ (25) **Overtime parking.** The occupation by a vehicle of a time-limited space beyond the posted time limit or time provided on a permit issuance system including, but not limited to, a permit, parking meter, mobile device, or permit-issuance machine.

~~((24))~~ (26) **Park/parking.** Refers to the placement or standing of a motorized vehicle or a nonmotorized vehicle, with or without a driver in attendance, and with or without the engine running.

~~((25))~~ (27) **Parking citation.** The notice of a parking violation.

~~((26))~~ (28) **Parking credential.** See parking product.

~~((27))~~ (29) **Parking meter.** (Also referred to as a meter.) A single fixed device that registers and collects payment for a specified length of time for a vehicle to occupy a single parking space. A parking meter does not produce a receipt. A parking meter is not a permit-issuance machine.

~~((28))~~ (30) **Parking product.** A product issued by transportation services to manage motorized and nonmotorized access to university parking. Parking products include, but are not limited to, permits,

virtual permits, access to bicycle lockers and other bicycle parking facilities, and parking access cards.

~~((29))~~ (31) Parking space. A space for parking one motor vehicle designated by lines painted on either side of the space, and/or a wheel stop positioned in the front of the space, and/or a sign or signs, or other markings.

~~((30))~~ (32) Parking system. A parking management system that includes parking related products and technologies. This includes, but is not limited to, web-based and online technologies to purchase virtual products, enforce parking permits, issue parking citations, and the administration of parking citation payments and appeals.

~~((31))~~ (33) Permit. A document approved by and/or issued by transportation services that when properly displayed authorizes a person to park.

~~((32))~~ (34) Permit-issuance machine. A transportation services deployed and managed machine that issues physical or virtual permits for designated spaces. A permit-issuance machine is not a parking meter.

~~((33))~~ (35) Persons with disability. For the purposes of this chapter, persons with disability refers to a person who meets one or more of the criteria of RCW 46.19.010(1) for the issuance of a state disability permit. A vehicle displaying a validly issued state department of transportation disability placard or a valid disability parking permit initiated through the University of Washington disability office shall be permitted to park in designated disability parking spaces, subject to payment of all applicable parking fees.

~~((34))~~ (36) Registered owner. The person who has the lawful right of possession of a vehicle most recently recorded with any state department of licensing.

~~((35))~~ (37) Roller skate/in-line skate. A device used to attach wheels to the foot or feet of a person.

~~((36))~~ (38) Scooter. A ~~(nonmotorized)~~ vehicle consisting of a footboard mounted on two wheels and a long steering handle, propelled by resting one foot on the footboard and pushing the other against the ground.

~~((37))~~ (39) Skateboard. Any oblong board of whatever composition, with a pair of wheels at each end, which may be ridden by a person.

~~((38))~~ (40) Traffic. The movement of motorized vehicles, nonmotorized vehicles, and pedestrians in an area or along a street as is defined in chapter 46.04 RCW.

~~((39))~~ (41) Transportation services. The university department that manages and maintains University of Washington vehicles and shuttles, promotes alternate commute options, manages and maintains parking facilities, issues parking products, issues citations, processes citation appeals, and collects fees and fines.

~~((40))~~ (42) University. The University of Washington, Seattle, and collectively those responsible for its control and operation.

~~((41))~~ (43) UWPD. University of Washington police department.

~~((42))~~ (44) Virtual permit. A permit stored within a permit-issuance machine or permitting system that authorizes a person to park in a designated space. Virtual permits are valid for a space through the date or time recorded in the permit system.

(45) Visitor. A person who is neither an employee nor a student of the university. May also pertain to an employee or student who has not purchased a long-term product.

~~((43) **Virtual permit.** A permit stored within a permit-issuance machine or permitting system that authorizes a person to park in a designated space. Virtual permits are valid for a space through the date or time recorded in the permit system.))~~

[Statutory Authority: RCW 28B.10.560 and 28B.20.130. WSR 19-11-046, § 478-116-024, filed 5/10/19, effective 6/10/19; WSR 11-13-058, § 478-116-024, filed 6/14/11, effective 8/8/11.]

AMENDATORY SECTION (Amending WSR 19-11-046, filed 5/10/19, effective 6/10/19)

WAC 478-116-199 Bicycle, electric-assisted bicycle and ~~((electric scooter))~~ motorized micromobility device parking. (1) Bicycles, electric-assisted bicycles, and ~~((electric scooters))~~ motorized micromobility devices shall be parked only in ~~((bicycle racks or))~~ designated ~~((bicycle))~~ parking facilities and locations. ~~((Without limiting the generality of the foregoing,))~~ At no time shall a bicycle, electric-assisted bicycle, or ~~((electric scooter))~~ motorized micromobility device be parked:

(a) In a building or residence hall, except where ~~((bicycle storage rooms))~~ designated parking facilities are provided;

(b) ~~((Near a building exit,))~~ Blocking or hindering access to any stairway, ramp, or doorway;

(c) On a path or sidewalk unless attached to a university ~~((bike))~~ designated parking rack;

(d) In planted areas; or

(e) Chained or otherwise secured to trees, lamp standards, railings, garbage receptacles, fencing, or sign posts.

(2) ~~((Bicycle racks))~~ Designated parking facilities in campus areas are ~~((for parking and shall not be used for overnight storage))~~ intended for short-term parking not to exceed five business days, except for those racks adjacent to residence halls, which may be used for storage when the owner/operator is a current resident of that hall. ~~((Bicycle lockers on campus are to be used for bicycle parking and may not be used for overnight storage of a bicycle. Bicycle houses on campus are to be used for bicycle parking and may not be used for overnight storage of a bicycle.))~~

(3) Locks and other accessories may not be left attached to university parking facilities. Locks that are left are assumed to be abandoned and may be removed without warning.

[Statutory Authority: RCW 28B.10.560 and 28B.20.130. WSR 19-11-046, § 478-116-199, filed 5/10/19, effective 6/10/19; WSR 11-13-058, § 478-116-199, filed 6/14/11, effective 8/8/11.]

NEW SECTION

WAC 478-116-202 Micromobility device storage and parking (nonmotorized). (1) Storage of micromobility devices within residence halls is determined by housing and food services.

(2) Micromobility devices that are nonmotorized and cannot be secured to a rack or within a designated parking facility may be taken into buildings so long as they are not:

(a) Blocking or hindering access to any stairway, ramp, or doorway;

(b) Obstructing access or mobility within a building; and

(c) Are stored within close proximity of the owner/operator and can be moved at the request of authorized agents.

(3) Long-term storage and parking of micromobility devices exceeding five business days is not permitted within university facilities.

[]

AMENDATORY SECTION (Amending WSR 19-11-046, filed 5/10/19, effective 6/10/19)

WAC 478-116-221 Use of motorcycles, motor scooters, electric-assisted bicycles (~~(, and electric scooters)~~). (1) Motorcycles, motor scooters, and class 3 electric-assisted bicycles powered or assisted by combustible engines or engaged electric motors are considered motor vehicles and subject to all traffic rules. These vehicles shall not be (~~permitted~~) operated on paths, sidewalks, authorized bicycle or pedestrian areas, or in buildings.

(2) Class 1 and 2 electric-assisted bicycles are subject to all of the restrictions set forth in WAC 478-116-232 relating to the use of bicycles and micromobility devices.

~~((3) Electric scooters are permitted on campus paths where bicycles are permitted to travel with the exception of sidewalks, unless there is no alternative for an electric scooter to travel over a sidewalk as part of a bicycle or pedestrian path. It shall be a violation of this section for any electric scooter rider to fail to yield to pedestrians or to ride an electric scooter on paths, sidewalks, or streets where signs indicate it is prohibited. An audible signal or warning must be given by the electric scooter rider whenever there is any appreciable risk of injury to a pedestrian not otherwise aware of the presence of the electric scooter.~~

~~(4) Class 1 and 2 electric-assisted bicycles and electric scooters operated on paths, sidewalks, and roadways shall be subject to all relevant state statutes regulating class 1 and 2 bicycle and electric scooter use. Violation of those statutes shall be considered a violation of this section.)~~

[Statutory Authority: RCW 28B.10.560 and 28B.20.130. WSR 19-11-046, § 478-116-221, filed 5/10/19, effective 6/10/19; WSR 11-13-058, § 478-116-221, filed 6/14/11, effective 8/8/11; WSR 97-14-005, § 478-116-221, filed 6/19/97, effective 9/15/97.]

AMENDATORY SECTION (Amending WSR 11-13-058, filed 6/14/11, effective 8/8/11)

WAC 478-116-232 Use of bicycles and micromobility devices (non-motorized and motorized). (1) (~~The primary aim of the bicycle con-~~

trol program is safety. All bicycle owners are encouraged to register their bicycles at UWPD.

~~(2))~~ Bicycles and motorized and nonmotorized micromobility devices may be ridden any ~~((plac))~~ where vehicles are permitted. ~~((They may be ridden on most sidewalks, though pedestrians always have the right of way.))~~ It shall be a violation of this section for any ~~((bi-eye-ele rider))~~ device operator to fail to yield to pedestrians, or to ride ~~((a bicycle))~~ on paths, sidewalks, or streets where ~~((signs indicate it is))~~ it is indicated as prohibited (i.e., signs, in-app technology, on-site measures). Pedestrians always have the right of way. An audible signal or warning must be given by the ~~((bicyclist))~~ operator whenever there is any appreciable risk of injury to a pedestrian not otherwise aware of the presence of the ~~((bicycle))~~ device.

~~((3) Bicycles operated on paths, sidewalks, and roadways shall be subject to all relevant state statutes regulating bicycle use. Violation of those statutes shall be considered a violation of this section.~~

~~(4) Bicycles))~~ (2) All devices shall be operated in a controlled and safe manner at all times. Riding at speeds too fast for conditions, weaving in and out of vehicular or pedestrian traffic, or similar unsafe actions shall be considered "negligent riding." Negligent riding shall be a violation of this section.

~~((5))~~ (3) Any use of devices that poses a risk to other individuals or university property is strictly prohibited. Moving or riding a ~~((bicycle))~~ device into any unauthorized area such as a building ~~((or construction)), restricted access zone, or parking garage~~ is prohibited.

(4) Bicycles and micromobility devices operated on campus shall be subject to all relevant state and local statutes regulating bicycle use. Violation of those statutes shall be considered a violation of this section.

[Statutory Authority: RCW 28B.10.560 and 28B.20.130. WSR 11-13-058, § 478-116-232, filed 6/14/11, effective 8/8/11.]

WSR 21-07-141

PROPOSED RULES

DEPARTMENT OF REVENUE

[Filed March 24, 2021, 9:16 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-02-051.

Title of Rule and Other Identifying Information: WAC 458-20-277

Certified service providers—Compensation.

Hearing Location(s): On April 29, 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: May 6, 2021.

Submit Written Comments to: Matthew Largent, P.O. Box 47453, Olympia, WA 98504-7453, email MatthewL@dor.wa.gov, fax 360-534-1606.

Assistance for Persons with Disabilities: Contact Julie King or Renee Cosare, phone 360-704-5733 or 360-704-5734, TTY 800-833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing amending WAC 458-20-277 to incorporate changes to the certified service provider (CSP) contract adopted by the streamlined sales tax governing board that became effective January 1, 2021.

Reasons Supporting Proposal: To explain the role and responsibilities of a CSP and to explain the monetary allowances due to a CSP with respect to specified sellers collecting and remitting retail sales and use tax in Washington.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060(2), and 82.32.715.

Statute Being Implemented: RCW 82.32.020, 82.32.715, 82.58.030, and 82.58.080.

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: Matthew Largent, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1590; Implementation and Enforcement: John Ryser, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1605.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Matthew Largent, 6400 Linderson Way S.W., Tumwater, WA 98504, phone 360-534-1590, fax 360-534-1606, email MatthewL@dor.wa.gov.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. This rule making does not impose any costs on businesses not otherwise imposed by statute or by businesses voluntarily agreeing to perform obligations in exchange for the compensation described in this rule making.

March 24, 2021
Atif Aziz
Rules Coordinator

OTS-2801.1

AMENDATORY SECTION (Amending WSR 16-06-040, filed 2/24/16, effective 3/26/16)

WAC 458-20-277 Certified service provider(s)—Compensation.

(1) **Introduction.**

(a) Washington has entered into the streamlined sales and use tax agreement (SSUTA) pursuant to RCW 82.58.030. Washington became an associate member state on July 1, 2007, and was granted full membership status as of July 1, 2008.

(b) This rule explains ~~((compensation paid to))~~ the monetary allowances for certified service providers (CSPs) ~~((as defined in RCW))~~ with respect to CSP-compensated sellers (also referred to as "model 1 sellers"). See RCW 82.32.020, 82.32.715, and 82.58.080. The rule also lists rights and responsibilities applicable to these CSPs when collecting and remitting retail sales and use taxes in Washington.

~~((Washington became a full member state on July 1, 2008. See SSB 5089 (chapter 6, Laws of 2007). The websites referenced in this rule are))~~

(c) This rule is effective for periods beginning January 1, 2021, and is guided by the terms specified in the CSP contract approved by the streamlined sales tax governing board as of August 31, 2020, to be effective January 1, 2021, (CSP contract). The CSP contract is the agreement executed between each CSP and the streamlined sales tax governing board under which CSPs perform services in SSUTA associate and member states. To the extent there is a conflict between RCW 82.32.715 and the CSP contract, RCW 82.32.715 controls.

(d) For periods prior to January 1, 2021, refer to terms of the applicable CSP contract in effect for such prior period.

(e) For more information concerning SSUTA visit the SSUTA website located at: <http://www.streamlinedsalestax.org>. The SSUTA website may include a list of the current member and associate states, information concerning the CSP contract, CSP certification, and a list of current CSPs, and other information referenced in this rule. The SSUTA website is not maintained by Washington or the department of revenue (department) ~~((. These referenced websites))~~ and may contain recommendations or provisions that require a change to Washington law prior to becoming effective in Washington.

(2) ~~((CSP compensation for volunteer sellers.))~~ **Definitions.**

(a) **What is a CSP for purposes of this rule?** A CSP is an agent of the CSP-compensated seller certified under the SSUTA to perform ~~((all of))~~ a seller's retail sales and use tax functions, other than the seller's obligation to remit retail sales and use tax on its own purchases. ~~((For more information concerning CSP certification or a list of current CSPs, visit the SSUTA website located at: <http://www.streamlinedsalestax.org>))~~ The sales and use tax functions contemplated are those services necessary to:

(i) Set up and integrate a CSP's certified automated system with a seller's system, including a product mapping process;

(ii) Calculate the amount of tax due on a transaction at the time of sale, including determining the jurisdiction to which each of a seller's transactions is sourced, determining whether the transaction is subject to tax, and determining the amount of state and local sales or use tax due on the transaction;

(iii) Generate and file the required sales and use tax returns, including compiling and maintaining the required data, preparing the simplified electronic return (SER), filing the required SER, and remitting tax funds;

(iv) Respond to and provide supporting documentation with respect to notices and sales tax and use tax audits;

(v) Protect the privacy of tax information it obtains; and

(vi) Maintain compliance with the streamlined organization's minimum standards for certification.

(b) **What is a ((volunteer)) CSP-compensated seller?** A ((volunteer)) CSP-compensated seller is ((any)) a seller that has selected a CSP, as agent, to perform ((all of)) that seller's retail sales and use tax functions as described in subsection (2)(a) of this rule, ((other than the obligation to remit retail sales and use tax on the seller's own purchases and)) who has ((voluntarily)) registered through the ((SSUTA central registration system (CRS) in accordance with the terms of the CSP contract (CSP contract). The CSP contract is the agreement executed between each CSP and the streamlined sales tax governing board under which CSPs perform services in SSUTA associate and member states)) streamlined sales tax registration system (SSTRS), and meets all of the criteria to qualify as a CSP-compensated seller under the terms of Section D.2(b) of the CSP contract.

(c) **What are member states and associate member states?** Member states are those states that have petitioned and been granted full membership under the SSUTA. Associate member states are those states that have petitioned and been designated associate member status under the SSUTA. ((Washington became an associate member state on July 1, 2007. Washington has been granted full membership status as of July 1, 2008. For a list of the current member and associate member states, visit the SSUTA website at: <http://www.streamlinedsalestax.org>.)

(d) **What are monetary allowances?** As a condition of becoming an associate member and member state, Washington has agreed to permit CSPs to act as agents for sellers in collecting and remitting sales and use taxes in Washington. Washington has agreed to provide monetary allowances to CSPs acting as agents for ((volunteer)) CSP-compensated sellers. A CSP will obtain these monetary allowances by retaining a portion of the Washington retail sales and use ((tax)) taxes covered by the SSUTA that they collect. However, monetary allowances will not reduce the retail sales and use taxes collected for and remitted to local taxing jurisdictions. The calculation of these monetary allowances is discussed in subsection (3) of this rule.

(e) **What is a certified automated system (CAS)?** A certified automated system is software certified by Washington under the SSUTA: To calculate the sales and use tax imposed by each taxing jurisdiction on a transaction; to determine the amount of tax to remit; and to maintain a record of the transaction.

(3) **How are monetary allowances calculated?** The formula for determining monetary allowances ((is set forth)) in this rule is guided by the compensation formula set out in Section D.5 of the CSP contract. This monetary allowance is the CSP's sole form of compensation with respect to ((volunteer)) CSP-compensated sellers ((during the term of the CSP contract and)). The formula is the same with respect to all CSPs.

((This)) The monetary allowance is calculated ((by using the following formula: (The combined volume of taxes due to all member and associate member states from a volunteer seller in such capacity) multiplied by (the applicable base rate). Simply stated, the formula is (combined collected taxes) x (base rate). Affiliated volunteer sellers will be treated as a single volunteer seller if they are related persons under 267(b) or 707(b) of the United States Internal Revenue Code. The base rate resets annually. Table A below sets forth the

schedule for "combined collected taxes" and the applicable "base rate":

Table A

Combined Collected Taxes:		Base Rate:
\$0.00	- \$250,000	8%
\$250,000.01	- \$1,000,000	7%
\$1,000,000.01	- \$2,500,000	6%
\$2,500,000.01	- \$5,000,000	5%
\$5,000,000.01	- \$10,000,000	4%
\$10,000,000.01	- \$25,000,000	3%
Over \$25,000,000.01		2%))

as a percentage of the taxes that are covered by the SSUTA due to Washington:

(a) CSP-compensated sellers with gross sales in preceding calendar year less than or equal to \$100,000. For CSP-compensated sellers with gross sales in Washington less than or equal to \$100,000 in the preceding calendar year, the allowance equals six percent of the first \$8,000 of taxes due in Washington in the calendar year. Thereafter, the allowance is five percent of taxes due in Washington that exceed \$8,000 but do not exceed \$500,000 in the calendar year, and two percent of the taxes due in Washington in excess of the first \$500,000 in the current calendar year.

(b) CSP-compensated sellers with gross sales in the preceding calendar year exceeding \$100,000. For CSP-compensated sellers who had gross sales in Washington exceeding \$100,000 in the preceding calendar year, the allowance equals five percent of the first \$500,000 of taxes due in Washington and two percent of the taxes due in Washington in excess of the first \$500,000 in the current calendar year.

(4) Change in status of CSP-compensated sellers.

(a) Can ((volunteer)) CSP-compensated sellers lose ((volunteer seller)) CSP-compensated seller status? ((Volunteer)) CSP-compensated seller status ceases when ((the seller conducts)), as a result of activities the seller conducts in Washington ((that would require the seller to legally register in Washington as described in the CSP contract)), the seller fails to meet one or more of the criteria required for qualification as a CSP-compensated seller identified in subsection (2) of this rule.

(b) Seller statements. Each ((volunteer)) CSP-compensated seller must periodically send written statements or written representations (statement) to the CSP verifying that the seller continues to qualify as a ((volunteer)) CSP-compensated seller in Washington. The ((volunteer)) CSP-compensated seller must send the first statement twenty-four consecutive months from the date on which the CSP began remitting sales and use taxes for the ((volunteer)) CSP-compensated seller in Washington. Subsequently, ((volunteer)) CSP-compensated sellers will send a statement every ((twelve consecutive months thereafter)) year. A CSP may request a statement verifying a seller's ((volunteer)) CSP-compensated seller status at any time. ((The CSP must notify the department when a seller loses volunteer seller status and this notification must be sent no later than ten business days after receipt of a seller's statement indicating the seller is no longer a volunteer seller. Notice to the department must be provided consistent with the notice provisions contained in the CSP contract. Entitlement to none-

~~tary allowances will be terminated after a seller sends a statement that the seller is no longer a volunteer seller.))~~ If the statement indicates a seller is no longer a CSP-compensated seller, the CSP must provide notice of the change in status. The change in status is then effective on the first day of the month following the calendar month the statement was obtained. A CSP-compensated seller's failure to respond to CSP may result in that person losing its status as a CSP-compensated seller.

(c) **When will monetary allowances terminate?** Generally, a CSP is entitled to retain monetary allowances granted prior to receiving a statement indicating that the seller has lost ((volunteer)) CSP-compensated seller status. However, entitlement to monetary allowances will end on the first day of the month following ((receipt of such statement)) notice of change in status. Regardless, a CSP will be entitled to monetary allowances for services performed under this rule with respect to a ((volunteer)) CSP-compensated seller for a period of twenty-four months (beginning on the date the CSP commenced remitting sales and use taxes for the ((volunteer)) CSP-compensated seller in Washington and ending twenty-four consecutive months later). If a CSP fails to obtain a statement and the seller is determined not to be a CSP-compensated seller, the CSP will forfeit compensation and such compensation will be forfeited to the later of the due date of the missing statement or the date the seller lost its status as a CSP-compensated seller. Additionally, Washington may also challenge the status of a CSP-compensated seller if the state believes it does not meet the requirements for a CSP-compensated seller.

~~((4))~~ (5) CSP rights and responsibilities.

(a) **Responsibility for retail sales and use taxes.** A CSP is liable to the member states and associate member states for the retail sales and use taxes on the sales transactions that it processes.

If the CSP does not remit the collected retail sales and use taxes when due, those taxes are delinquent. Washington may send a notice of delinquency to a CSP for these delinquent taxes. The CSP must then remit the delinquent taxes within ten business days of that notification. If the CSP does not remit the delinquent taxes within those ten business days, the CSP is not entitled to monetary allowances with respect to the delinquent taxes and is liable for the payment of the taxes along with penalties and interest. However, if the taxes are delinquent because a seller has not remitted part or all of the delinquent taxes to the CSP, the CSP will be given relief if it properly notifies the department and timely files the required return. In order to obtain this relief, the CSP must notify the department of the seller's failure to remit the retail sales and use taxes to the CSP and file the required return within ten business days of the date on which those delinquent taxes should have been remitted to the department. If the CSP has timely filed the return without payment and provided the notice required under the CSP contract, and the seller subsequently remits the taxes due to the CSP within sixty days of the due date of the remittance, the CSP will still be entitled to the monetary allowance provided in the CSP contract for those taxes, provided the CSP remits the taxes due to Washington within ten business days after receiving the taxes due from the seller. Notice by the CSP under this subsection must be provided consistent with the notice provisions contained in the CSP contract.

(b) **CSP liability relief.** The department is responsible for maintaining the state's taxability matrix.

(i) A CSP is not liable for charging or collecting the incorrect amount of sales or use tax where that error results from reliance on incorrect data provided in the department's taxability matrix, or from tax rates, boundaries, and taxing jurisdiction assignments listed in Washington's rates and boundaries databases.

(ii) Beginning July 1, 2015, if the taxability matrix is amended, sellers and certified service providers are relieved from liability to the state and to local jurisdictions to the extent that the seller or certified service provider relied on the immediately preceding version of the state's taxability matrix. Relief under this subsection (~~((4))~~) (5)(b) of this rule is available until the first day of the calendar month that is at least thirty days after the department submits notice of a change to the state's taxability matrix to the streamlined sales tax governing board.

(iii) To obtain a copy of the taxability matrix, visit the SSUTA website located at: streamlinedsalestax.org. Additionally, CSPs will be held harmless and not liable for sales and use taxes, interest, and penalties on those taxes not collected due to reliance on Washington's certification of the CSP's CAS. Pursuant to RCW 82.58.080, sellers that contract with a CSP are not liable to Washington for sales or use tax due on transactions processed by the certified service provider unless the seller misrepresents the type of items it sells or commits fraud.

(c) **Seller's contract with the CSP.** A CSP must provide the department with a copy of its agreement with contracting sellers if requested.

(d) **Credits or refunds with respect to bad debt.** A CSP may, on the behalf of a seller, claim credits or refunds for sales taxes paid on bad debts. Bad debts have the same meaning provided in 26 U.S.C. Section 166, as amended in 2003. Bad debts do not include expenses incurred in collecting bad debts; repossessed property; and amounts due on property in the possession of the seller until the full purchase price has been paid. See RCW 82.08.037, 82.12.037, and WAC 458-20-196 for more information regarding bad debts.

(e) **Retention of personally identifiable consumer information.** With limited exceptions, CSPs must perform their services without retaining personally identifiable consumer information. A CSP may retain personally identifiable consumer information only as long as it is needed to ensure the validity of tax exemptions or to show the intended use of the goods or services purchased. See RCW 82.32.735 for more information regarding personally identifiable consumer information.

(f) **Filing of tax returns and remittance of retail sales and use taxes.** CSP will file retail sales and use excise tax returns using Washington's electronic filing system (E-file). CSPs will remit retail sales and use taxes due with respect to these returns using ACH Debit, ACH Credit, or the Fedwire Funds Transfer System.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 16-06-040, § 458-20-277, filed 2/24/16, effective 3/26/16. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.32.715. WSR 08-01-017, § 458-20-277, filed 12/7/07, effective 1/7/08.]

WSR 21-07-143
PROPOSED RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed March 24, 2021, 9:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-01-182.

Title of Rule and Other Identifying Information: New WAC 415-02-260 What happens to my monthly retirement benefit when I die?; and repealing WAC 415-112-715 Who gets the balance of my monthly retirement allowance if I die partway through a month?

Hearing Location(s): On April 27, 2021, at 3:30 p.m. The hearing will be conducted by telephone conference only 360-407-3830 or 855-682-0796 (toll free), Conference ID 72278684.

Date of Intended Adoption: April 28, 2021.

Submit Written Comments to: Jilene Siegel, Department of Retirement Systems (DRS), P.O. Box 48380, Olympia, WA 98504-8380, email drs.rules@drs.wa.gov, by April 26, 2021.

Assistance for Persons with Disabilities: Contact Jilene Siegel, phone 360-664-7291, TTY 711, email drs.rules@drs.wa.gov, by April 21, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To clarify how any remaining contributions and prorated monthly benefit will be distributed following a member's death, if there is no ongoing survivor benefit.

Reasons Supporting Proposal: This new rule will cover all retirement systems, replacing a rule that applied only to the teachers' retirement system.

Statutory Authority for Adoption: RCW 41.50.050.

Statute Being Implemented: Chapters 2.10, 2.12, 41.26, 41.32, 41.35, 41.37, 41.40, and 43.43 RCW.

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

Name of Proponent: DRS, governmental.

Name of Agency Personnel Responsible for Implementation: Seth Miller, DRS, P.O. Box 48380, Olympia, WA 98504-8380, 360-664-7304.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(a)(i) does not apply to this proposed rule and is not voluntarily made applicable by the agency.

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.

March 24, 2021
Jilene Siegel
Rules Coordinator

OTS-2688.1

NEW SECTION

WAC 415-02-260 What happens to my monthly retirement benefit when I die? If a survivor benefit will not be paid on your account, a prorated portion of your defined benefit for the month of your death will be paid to your estate. Any contributions that have not been paid in retirement benefits will be paid to your beneficiary. If your named beneficiaries have all predeceased you, remaining contributions will be paid to your estate. Amounts you owe the department, if any, will be subtracted from your account prior to payments being made to your beneficiary or estate.

[]

OTS-2689.1REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 415-112-715 Who gets the balance of my monthly retirement allowance if I die partway through a month?

WSR 21-07-144

PROPOSED RULES

DEPARTMENT OF ECOLOGY

[Order 20-01—Filed March 24, 2021, 9:34 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-22-036.

Title of Rule and Other Identifying Information: The department of ecology (ecology) proposes to amend the water quality standards for surface waters of the state of Washington, chapter 173-201A WAC.

We propose the following changes:

- Amending WAC 173-201A-440 [173-201A-020] Definitions.
- Amending WAC 173-201A-440 Use attainability analysis.
- Changing the designated use for the Chelan River in WAC 173-201A-602.
- Changing water quality criteria for temperature and dissolved oxygen levels in the water, to go along with the change in aquatic life designated use in WAC 173-201A-602.

For more information on this rule making visit <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC173-201A-Chelan-UAA>.

Hearing Location(s): On May 11, 2021, at 1:30 p.m., webinar <https://watech.webex.com/watech/onstage/g.php?MTID=ea8ccc727dbcd9540b136e892291526b7>. Presentation, question and answer session followed by the hearing. We are holding this hearing via webinar. This is an online meeting that you can attend from any computer using internet access. Join online and see instructions <https://watech.webex.com/watech/onstage/g.php?MTID=ea8ccc727dbcd9540b136e892291526b7>. For audio call US Toll number 1-415-655-0001 and enter access code 133 517 6336; and on May 13, 2021, at 5:30 p.m., webinar <https://watech.webex.com/watech/onstage/g.php?MTID=e83ed47fcc65fd51f269ddf583197f035>.

Presentation, question and answer session followed by the hearing.

We are holding this hearing via webinar. This is an online meeting that you can attend from any computer using internet access. Join online and see instructions <https://watech.webex.com/watech/onstage/g.php?MTID=e83ed47fcc65fd51f269ddf583197f035>. For audio call US Toll number 1-415-655-0001 and enter access code 133 215 6435.

Date of Intended Adoption: August 4, 2021.

Submit Written Comments to: Marla Koberstein, send US mail to: Department of Ecology, Water Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, or send parcel delivery services to: Department of Ecology, Water Quality Program, 300 Desmond Drive S.E., Lacey, WA 98503, submit comments by mail, online, or at the hearing(s), online <https://wq.ecology.commentinput.com/?id=NGpTD>, by May 21, 2021.

Assistance for Persons with Disabilities: Contact ecology ADA coordinator, phone 360-407-6831, for Washington relay service or TTY call 711 or 877-833-6341, email ecyADAcordinator@ecy.wa.gov, visit <https://ecology.wa.gov/accessibility> for more information, by May 6, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: We are proposing changing the aquatic life designated use in the Chelan River from "salmonid spawning, rearing, and migration," which currently applies to all sections of the river, to "migration for naturally limited waters" in the upper rea-

ches of the river, and to "salmonid spawning, rearing, and migration for naturally limited waters" to the lower part of the river.

We have added definitions of the new proposed designated uses to WAC 173-201A-020 Definitions.

We are also proposing corresponding site-specific criteria (SSC) for temperature and dissolved oxygen, to align with the highest achievable water quality.

We are proposing these changes to the aquatic life designated use of salmonid spawning, rearing, and migration on the Chelan River using a use attainability analysis (UAA). A UAA is an approved water quality tool in Washington's surface water quality standards (WAC 173-201A-440) and is used for removing or revising a designated use for a water body only if that use is not existing or attainable. A UAA is a scientific assessment of the physical, chemical, biological, and economic factors that may affect the attainment of the use.

Reasons Supporting Proposal: On December 20, 2019, Public Utility District No. 1 of Chelan County (Chelan PUD) submitted a proposal for a UAA for the aquatic life designated use on the Chelan River to better reflect current and historical uses. The current use designation includes salmonid spawning, rearing, and migration for the entire river.

The Lake Chelan hydroelectric project was relicensed by the Federal Energy Regulatory Commission (FERC) in 2006. As part of the relicensing, ecology issued a 401 Water Quality Certification (401 Certification). The FERC license required Chelan PUD to rewater the river from which flows had been diverted for hydropower for over eighty years.

The returned waters now flow year-round through the four miles of the Chelan River to the confluence with the Columbia River. The Chelan River travels through a naturally steep canyon that acts as a barrier to salmonid migration to most of the river. However, salmonids now return to spawn in the lowest half-mile reach near the confluence with the Columbia [River].

In response to new license conditions, the Chelan PUD implemented a series of fishery studies as well as habitat and flow improvement projects to meet salmonid spawning, survival, and habitat use objectives in the lower reach of the river, and to assess the potential for resident fish habitat in the upper reaches. After ten years of monitoring, adaptive management, and consultation with the Chelan River Fishery Forum, Chelan PUD reported on what biological objectives were met and why some other objectives were not met. The final report proposed changes to the Chelan River aquatic life designated uses, including corresponding temperature and dissolved oxygen criteria, to align with the highest achievable water quality.

Ecology's 401 Certification of Chelan's FERC license provides that ecology make a determination, based on the outcome of the evaluation of the monitoring and adaptive management program, to modify the water quality standards to reflect the objectives achieved.

Based on the previous research and consultation with ecology and the Environmental Protection Agency (EPA), Chelan PUD submitted a UAA proposal. We responded to the UAA request on February 18, 2020, and confirmed that the information provided is sufficient to proceed toward rule making in accordance with WAC 173-201A-440. We have considered the UAA submittal to assign more accurate aquatic life designated uses to the Chelan River and evaluated the SSC for temperature and dissolved oxygen.

In addition to Washington state rules, the process to amend the uses must be consistent with federal EPA regulations on designating and protecting uses under 40 C.F.R. 131.10. The results of a UAA and SSC will not be in effect for federal Clean Water Act actions until they have been incorporated into the water quality standards (WAC 173-201A) and approved by EPA.

Statutory Authority for Adoption: RCW 90.48.035 provides clear and direct authority to ecology to revise the surface water quality standards (SWQS). Additionally, 40 C.F.R. 131.20 requires states and tribes with Federal Clean Water Act authority to periodically review and update the SWQS.

Statute Being Implemented: Chapter 90.48 RCW, Water pollution control.

Rule is necessary because of federal law, Federal Water Pollution Control Act - 33 U.S.C. 1251 et seq. and 40 C.F.R. Part 131 - Water Quality Standards.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: For more information, see the technical support document, Ecology Publication 21-10-008, and the preliminary regulatory analyses, Ecology Publication 21-10-005.

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Bryson Finch, Headquarters, Lacey, 360-407-7158; Implementation: Chad Brown, Headquarters, Lacey, 360-407-6128; and Enforcement: Vincent McGowan, Headquarters, Lacey, 360-407-6405.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Marla Koberstein, Department of Ecology, Water Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-628-6376, for Washington relay service or TTY call 711 or 877-833-6341, email marla.koberstein@ecy.wa.gov.

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rule affects only one covered party: Public Utility District No. 1 of Chelan County (Chelan PUD). The Chelan PUD is the only discharger on the river, and employs between two hundred fifty and four hundred ninety-nine employees. The proposed rule is therefore exempt from the Regulatory Fairness Act (chapter 19.85 RCW) under RCW 19.85.020(4), which states, "This chapter does not apply to the adoption of a rule if an agency is able to demonstrate that the proposed rule does not affect small businesses. ["

March 24, 2021
Heather Bartlett
Deputy Director

OTS-2958.1

AMENDATORY SECTION (Amending WSR 19-04-007, filed 1/23/19, effective 2/23/19)

WAC 173-201A-020 Definitions. The following definitions are intended to facilitate the use of chapter 173-201A WAC:

"1-DMax" or "1-day maximum temperature" is the highest water temperature reached on any given day. This measure can be obtained using calibrated maximum/minimum thermometers or continuous monitoring probes having sampling intervals of thirty minutes or less.

"7-DADMax" or "7-day average of the daily maximum temperatures" is the arithmetic average of seven consecutive measures of daily maximum temperatures. The 7-DADMax for any individual day is calculated by averaging that day's daily maximum temperature with the daily maximum temperatures of the three days prior and the three days after that date.

"Action value" means a total phosphorus (TP) value established at the upper limit of the trophic states in each ecoregion (see Table 230(1)). Exceedance of an action value indicates that a problem is suspected. A lake-specific study may be needed to confirm if a nutrient problem exists.

"Actions" refers broadly to any human projects or activities.

"Acute conditions" are changes in the physical, chemical, or biologic environment which are expected or demonstrated to result in injury or death to an organism as a result of short-term exposure to the substance or detrimental environmental condition.

"AKART" is an acronym for "all known, available, and reasonable methods of prevention, control, and treatment." AKART shall represent the most current methodology that can be reasonably required for preventing, controlling, or abating the pollutants associated with a discharge. The concept of AKART applies to both point and nonpoint sources of pollution. The term "best management practices," typically applied to nonpoint source pollution controls is considered a subset of the AKART requirement.

"Ambient water quality" refers to the conditions and properties of a surface water of the state as determined by the results of water samples, measurements, or observations.

"Background" means the biological, chemical, and physical conditions of a water body, outside the area of influence of the discharge under consideration. Background sampling locations in an enforcement action would be up-gradient or outside the area of influence of the discharge. If several discharges to any water body exist, and enforcement action is being taken for possible violations to the standards, background sampling would be undertaken immediately up-gradient from each discharge.

"Best management practices (BMP)" means physical, structural, and/or managerial practices approved by the department that, when used singularly or in combination, prevent or reduce pollutant discharges.

"Biological assessment" is an evaluation of the biological condition of a water body using surveys of aquatic community structure and function and other direct measurements of resident biota in surface waters.

"Bog" means those wetlands that are acidic, peat forming, and whose primary water source is precipitation, with little, if any, outflow.

"Carcinogen" means any substance or agent that produces or tends to produce cancer in humans. For implementation of this chapter, the term carcinogen will apply to substances on the United States Environ-

mental Protection Agency lists of A (known human) and B (probable human) carcinogens, and any substance which causes a significant increased incidence of benign or malignant tumors in a single, well conducted animal bioassay, consistent with the weight of evidence approach specified in the United States Environmental Protection Agency's Guidelines for Carcinogenic Risk Assessment as set forth in 51 FR 33992 et seq. as presently published or as subsequently amended or republished.

"Chronic conditions" are changes in the physical, chemical, or biologic environment which are expected or demonstrated to result in injury or death to an organism as a result of repeated or constant exposure over an extended period of time to a substance or detrimental environmental condition.

"Combined sewer overflow (CSO) treatment plant" is a facility that provides at-site treatment as provided for in chapter 173-245 WAC. A CSO treatment plant is a specific facility identified in a department-approved CSO reduction plan (long-term control plan) that is designed, operated and controlled by a municipal utility to capture and treat excess combined sanitary sewage and stormwater from a combined sewer system.

"Compliance schedule" or **"schedule of compliance"** is a schedule of remedial measures included in a permit or an order, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with an effluent limit, other prohibition, or standard.

"Created wetlands" means those wetlands intentionally created from nonwetland sites to produce or replace natural wetland habitat.

"Critical condition" is when the physical, chemical, and biological characteristics of the receiving water environment interact with the effluent to produce the greatest potential adverse impact on aquatic biota and existing or designated water uses. For steady-state discharges to riverine systems the critical condition may be assumed to be equal to the 7Q10 flow event unless determined otherwise by the department.

"Damage to the ecosystem" means any demonstrated or predicted stress to aquatic or terrestrial organisms or communities of organisms which the department reasonably concludes may interfere in the health or survival success or natural structure of such populations. This stress may be due to, but is not limited to, alteration in habitat or changes in water temperature, chemistry, or turbidity, and shall consider the potential build up of discharge constituents or temporal increases in habitat alteration which may create such stress in the long term.

"Department" means the state of Washington department of ecology.

"Designated uses" are those uses specified in this chapter for each water body or segment, regardless of whether or not the uses are currently attained.

"Director" means the director of the state of Washington department of ecology.

"Drainage ditch" means that portion of a designed and constructed conveyance system that serves the purpose of transporting surplus water; this may include natural water courses or channels incorporated in the system design, but does not include the area adjacent to the water course or channel.

"Ecoregions" are defined using EPA's *Ecoregions of the Pacific Northwest* Document No. 600/3-86/033 July 1986 by Omernik and Gallant.

"Enterococci" refers to a subgroup of fecal streptococci that includes *S. faecalis*, *S. faecium*, *S. gallinarum*, and *S. avium*. The enterococci are differentiated from other streptococci by their ability to grow in 6.5% sodium chloride, at pH 9.6, and at 10°C and 45°C.

"E. coli" is a bacterium in the family Enterobacteriaceae named *Escherichia coli* and is a common inhabitant of the intestinal tract of warm-blooded animals, and its presence in water samples is an indication of fecal pollution and the possible presence of enteric pathogens.

"Existing uses" means those uses actually attained in fresh or marine waters on or after November 28, 1975, whether or not they are designated uses. Introduced species that are not native to Washington, and put-and-take fisheries comprised of nonself-replicating introduced native species, do not need to receive full support as an existing use.

"Fecal coliform" means that portion of the coliform group which is present in the intestinal tracts and feces of warm-blooded animals as detected by the product of acid or gas from lactose in a suitable culture medium within twenty-four hours at 44.5 plus or minus 0.2 degrees Celsius.

"Geometric mean" means either the n th root of a product of n factors, or the antilogarithm of the arithmetic mean of the logarithms of the individual sample values.

"Ground water exchange" means the discharge and recharge of ground water to a surface water. Discharge is inflow from an aquifer, seeps or springs that increases the available supply of surface water. Recharge is outflow downgradient to an aquifer or downstream to surface water for base flow maintenance. Exchange may include ground water discharge in one season followed by recharge later in the year.

"Hardness" means a measure of the calcium and magnesium salts present in water. For purposes of this chapter, hardness is measured in milligrams per liter and expressed as calcium carbonate (CaCO_3).

"Intake credit" is a procedure for establishing effluent limits that takes into account the amount of a pollutant that is present in waters of the state, at the time water is removed from the same body of water by the discharger or other facility supplying the discharger with intake water.

"Irrigation ditch" means that portion of a designed and constructed conveyance system that serves the purpose of transporting irrigation water from its supply source to its place of use; this may include natural water courses or channels incorporated in the system design, but does not include the area adjacent to the water course or channel.

"Lakes" shall be distinguished from riverine systems as being water bodies, including reservoirs, with a mean detention time of greater than fifteen days.

"Lake-specific study" means a study intended to quantify existing nutrient concentrations, determine existing characteristic uses for lake class waters, and potential lake uses. The study determines how to protect these uses and if any uses are lost or impaired because of nutrients, algae, or aquatic plants. An appropriate study must recommend a criterion for total phosphorus (TP), total nitrogen (TN) in $\mu\text{g}/\text{l}$, or other nutrient that impairs characteristic uses by causing excessive algae blooms or aquatic plant growth.

"Mean detention time" means the time obtained by dividing a reservoir's mean annual minimum total storage by the thirty-day ten-year low-flow from the reservoir.

"Migration" or **"translocation"** means any natural movement of an organism or community of organisms from one locality to another locality.

"Migration for naturally limited waters" is a subcategory of the aquatic life use of salmonid rearing and migration that is limited by the natural physical, chemical, or biological characteristics of the water body.

"Mixing zone" means that portion of a water body adjacent to an effluent outfall where mixing results in the dilution of the effluent with the receiving water. Water quality criteria may be exceeded in a mixing zone as conditioned and provided for in WAC 173-201A-400.

"Natural conditions" or **"natural background levels"** means surface water quality that was present before any human-caused pollution. When estimating natural conditions in the headwaters of a disturbed watershed it may be necessary to use the less disturbed conditions of a neighboring or similar watershed as a reference condition. (See also WAC 173-201A-260(1).)

"New or expanded actions" mean human actions that occur or are regulated for the first time, or human actions expanded such that they result in an increase in pollution, after July 1, 2003, for the purpose of applying this chapter only.

"Nonpoint source" means pollution that enters any waters of the state from any dispersed land-based or water-based activities including, but not limited to, atmospheric deposition; surface water runoff from agricultural lands, urban areas, or forest lands; subsurface or underground sources; or discharges from boats or marine vessels not otherwise regulated under the National Pollutant Discharge Elimination System program.

"Permit" means a document issued pursuant to chapter 90.48 RCW specifying the waste treatment and control requirements and waste discharge conditions.

"pH" means the negative logarithm of the hydrogen ion concentration.

"Pollution" means such contamination, or other alteration of the physical, chemical, or biological properties, of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental, or injurious to the public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

"Primary contact recreation" means activities where a person would have direct contact with water to the point of complete submergence including, but not limited to, skin diving, swimming, and water skiing.

"Salmonid spawning, rearing, and migration for naturally limited waters" is a subcategory of the aquatic life use of salmonid spawning, rearing, and migration that is limited by the natural physical, chemical, or biological characteristics of the water body.

"Shoreline stabilization" means the anchoring of soil at the water's edge, or in shallow water, by fibrous plant root complexes; this

may include long-term accretion of sediment or peat, along with shoreline progradation in such areas.

"Stormwater" means that portion of precipitation that does not naturally percolate into the ground or evaporate, but flows via overland flow, interflow, pipes, and other features of a stormwater drainage system into a defined surface water body, or a constructed infiltration facility.

"Stormwater attenuation" means the process by which peak flows from precipitation are reduced and runoff velocities are slowed as a result of passing through a surface water body.

"Surface waters of the state" includes lakes, rivers, ponds, streams, inland waters, saltwaters, wetlands and all other surface waters and water courses within the jurisdiction of the state of Washington.

"Temperature" means water temperature expressed in degrees Celsius (°C).

"Treatment wetlands" means those wetlands intentionally constructed on nonwetland sites and managed for the primary purpose of wastewater or stormwater treatment. Treatment wetlands are considered part of a collection and treatment system, and generally are not subject to the criteria of this chapter.

"Trophic state" means a classification of the productivity of a lake ecosystem. Lake productivity depends on the amount of biologically available nutrients in water and sediments and may be based on total phosphorus (TP). Secchi depth and chlorophyll-a measurements may be used to improve the trophic state classification of a lake. Trophic states used in this rule include, from least to most nutrient rich, ultra-oligotrophic, oligotrophic, lower mesotrophic, upper mesotrophic, and eutrophic.

"Turbidity" means the clarity of water expressed as nephelometric turbidity units (NTU) and measured with a calibrated turbidimeter.

"Upwelling" means the natural process along Washington's Pacific Coast where the summer prevailing northerly winds produce a seaward transport of surface water. Cold, deeper more saline waters rich in nutrients and low in dissolved oxygen, rise to replace the surface water. The cold oxygen deficient water enters Puget Sound and other coastal estuaries at depth where it displaces the existing deep water and eventually rises to replace the surface water. Such surface water replacement results in an overall increase in salinity and nutrients accompanied by a depression in dissolved oxygen. Localized upwelling of the deeper water of Puget Sound can occur year-round under influence of tidal currents, winds, and geomorphic features.

"USEPA" means the United States Environmental Protection Agency.

"Variance" is a time-limited designated use and criterion as defined in 40 C.F.R. 131.3, and must be adopted by rule.

"Wetlands" means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intention-

ally created from nonwetland areas to mitigate the conversion of wetlands. (Water bodies not included in the definition of wetlands as well as those mentioned in the definition are still waters of the state.)

"Wildlife habitat" means waters of the state used by, or that directly or indirectly provide food support to, fish, other aquatic life, and wildlife for any life history stage or activity.

[Statutory Authority: RCW 90.48.035 and 40 C.F.R. 131.20. WSR 19-04-007 (Order 16-07), § 173-201A-020, filed 1/23/19, effective 2/23/19. Statutory Authority: RCW 90.48.035, 90.48.605 and section 303(c) of the Federal Water Pollution Control Act (Clean Water Act), C.F.R. 40, C.F.R. 131. WSR 16-16-095 (Order 12-03), § 173-201A-020, filed 8/1/16, effective 9/1/16. Statutory Authority: RCW 90.48.035. WSR 11-09-090 (Order 10-10), § 173-201A-020, filed 4/20/11, effective 5/21/11. Statutory Authority: Chapters 90.48 and 90.54 RCW. WSR 03-14-129 (Order 02-14), § 173-201A-020, filed 7/1/03, effective 8/1/03. Statutory Authority: Chapter 90.48 RCW and 40 C.F.R. 131. WSR 97-23-064 (Order 94-19), § 173-201A-020, filed 11/18/97, effective 12/19/97. Statutory Authority: Chapter 90.48 RCW. WSR 92-24-037 (Order 92-29), § 173-201A-020, filed 11/25/92, effective 12/26/92.]

OTS-2909.2

AMENDATORY SECTION (Amending WSR 03-14-129, filed 7/1/03, effective 8/1/03)

WAC 173-201A-440 Use attainability analysis. (1) Removal of a designated use for a water body assigned in this chapter must be based on a use attainability analysis (UAA). A UAA is a structured scientific assessment of the factors affecting the attainment of the use which may include physical, chemical, biological, and economic factors. A use can only be removed through a UAA if it is not existing or attainable.

(2) A UAA proposing to remove a designated use on a water body must be submitted to the department in writing and include sufficient information to demonstrate that the use is neither existing nor attainable.

(3) A UAA must be consistent with the federal regulations on designating and protecting uses (currently 40 C.F.R. 131.10).

(4) Subcategories of use protection that reflect the lower physical potential of the water body for protecting designated uses must be based upon federal regulations (currently 40 C.F.R. 131.10(c)).

(5) Allowing for seasonal uses where doing so would not harm existing or designated uses occurring in that or another season must be based upon federal regulations (currently 40 C.F.R. 131.10(f)).

(6) After receiving a proposed UAA, the department will respond within sixty days of receipt with a decision on whether to proceed toward rule making.

(7) The decision to approve a UAA is subject to a public involvement and intergovernmental coordination process, including tribal consultation.

(8) The department will maintain a list of federally recognized tribes in the state of Washington. During all stages of development and review of UAA proposals, the department will provide notice and consult with representatives of the interested affected Indian tribes on a government-to-government basis, and carefully consider their recommendations.

(9) The results of a UAA are not in effect until they have been incorporated into this chapter and approved by the USEPA. Any designated uses established through the UAA process are included in WAC 173-201A-602 and 173-201A-612.

[Statutory Authority: Chapters 90.48 and 90.54 RCW. WSR 03-14-129 (Order 02-14), § 173-201A-440, filed 7/1/03, effective 8/1/03.]

AMENDATORY SECTION (Amending WSR 19-04-007, filed 1/23/19, effective 2/23/19)

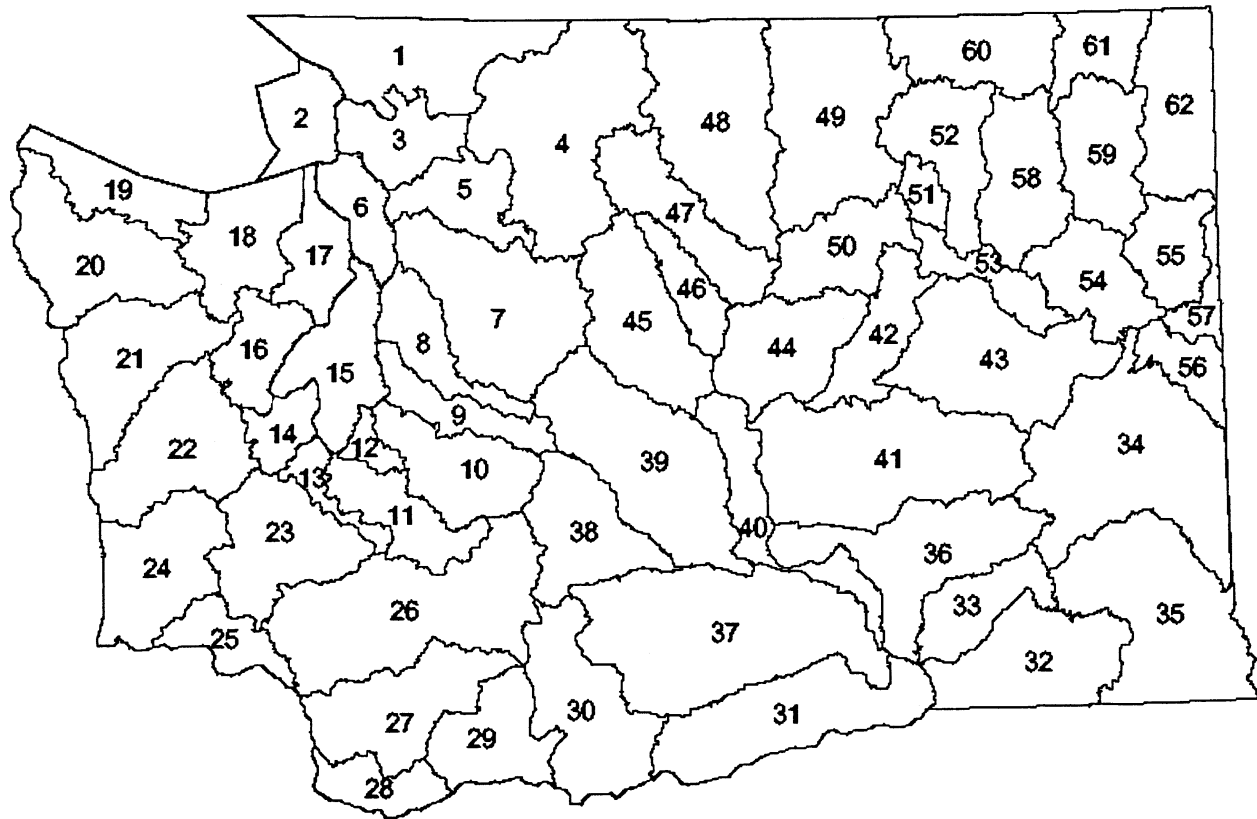
WAC 173-201A-602 Table 602—Use designations for fresh waters by water resource inventory area (WRIA). (1) Table 602 lists uses for fresh waters. All surface waters of the state have designated uses assigned to them for protection under this chapter. Table 602 lists use designations for specific fresh waters. Fresh waters not assigned designated uses in Table 602 have their designated uses assigned in accordance with WAC 173-201A-600 and 173-201A-260(3). In Table 602, the Columbia River is listed first, followed by other water bodies listed by WRIA. Only the uses with the most stringent criteria are listed. The criteria notes in Table 602 take precedence over the criteria in WAC 173-201A-200 for same parameter.

(2) Table 602 is necessary to determine and fully comply with the requirements of this chapter. If you are viewing a paper copy of the rule from the office of the code reviser or are using their website, Table 602 may be missing (it will instead say "place illustration here"). In this situation, you may view Table 602 at the department of ecology's website at www.ecology.wa.gov, or request a paper copy of the rule with Table 602 from the department of ecology or the office of the code reviser.

(3) The department has identified waterbodies, or portions thereof, in Table 602 use designations which have additional requirements for supplemental spawning and incubation protection for salmonid species. See WAC 173-201A-200 (1)(c)(iv) for more information.

(4) The coordinates listed in Table 602 are defined in the North American 1983 Datum High Accuracy Reference Network (NAD83 HARN).

Illustration 1: Water Resources Inventory Area Map



Key:			
1. Nooksack	21. Queets/Quinault	41. Lower Crab	61. Upper Lake Roosevelt
2. San Juan	22. Lower Chehalis	42. Grand Coulee	62. Pend Oreille
3. Lower Skagit/Samish	23. Upper Chehalis	43. Upper Crab/Wilson	
4. Upper Skagit	24. Willapa	44. Moses Coulee	
5. Stillaguamish	25. Grays/Elochoman	45. Wenatchee	
6. Island	26. Cowlitz	46. Entiat	
7. Snohomish	27. Lewis	47. Chelan	
8. Cedar/Sammamish	28. Salmon/Washougal	48. Methow	
9. Duwamish/Green	29. Wind/White Salmon	49. Okanogan	
10. Puyallup/White	30. Klickitat	50. Foster	
11. Nisqually	31. Rock/Glade	51. Nespelem	
12. Chambers/Clover	32. Walla Walla	52. Sanpoil	
13. Deschutes	33. Lower Snake	53. Lower Lake Roosevelt	
14. Kennedy/Goldsborough	34. Palouse	54. Lower Spokane	
15. Kitsap	35. Middle Snake	55. Little Spokane	
16. Skokomish/Dosewallips	36. Esquatzel Coulee	56. Hangman	
17. Quilcene/Snow	37. Lower Yakima	57. Middle Spokane	
18. Elwha/Dungeness	38. Naches	58. Middle Lake Roosevelt	
19. Lyre/Hoko	39. Upper Yakima	59. Colville	
20. Soleduck/Hoh	40. Alkaki/Squilchuck	60. Kettle	

Table 602: Columbia River	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Columbia River: From mouth (latitude 46.2502, longitude -124.0829) to the Washington-Oregon border (latitude 46.0002, longitude -118.9809). ¹	Spawning /Rearing	Primary Contact	All	All	-
Columbia River: From Washington-Oregon border (latitude 46.0002, longitude -118.9809) to Grand Coulee Dam (latitude 47.957, longitude -118.9825). ^{2,3}	Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Columbia River: From Grand Coulee Dam (latitude 47.957, longitude -118.9825) to Canadian border (latitude 49.007, longitude -117.6313).	Core Summer Habitat	Primary Contact	All	All	-

Notes for Columbia River:

1. Temperature shall not exceed a 1-day maximum (1-DMax) of 20.0°C due to human activities. When natural conditions exceed a 1-DMax of 20.0°C, no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C; nor shall such temperature increases, at any time, exceed 0.3°C due to any single source or 1.1°C due to all such activities combined. Dissolved oxygen shall exceed 90 percent of saturation. Special condition - Special fish passage exemption as described in WAC 173-201A-200 (1)(f).
2. From Washington-Oregon border (latitude 46.0002, longitude -118.9809) to Priest Rapids Dam (latitude 46.6443, longitude -119.9103). Temperature shall not exceed a 1-DMax of 20.0°C due to human activities. When natural conditions exceed a 1-DMax of 20.0°C, no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C; nor shall such temperature increases, at any time, exceed $t = 34/(T + 9)$.
3. From Washington-Oregon border (latitude 46.0002, longitude -118.9809) to Grand Coulee Dam (latitude 47.957, longitude -118.9825). Special condition - Special fish passage exemption as described in WAC 173-201A-200 (1)(f).
4. This WRIA contains waters requiring supplemental spawning and incubation protection for salmonid species per WAC 173-201A-200 (1)(c)(iv). See ecology publication 06-10-038 for further information.

Table 602: WRIA 1 - Nooksack	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Bertrand Creek: Upstream from the mouth (latitude 48.9121, longitude -122.5352) to Canadian border.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Breckenridge Creek: Upstream from the mouth (latitude 48.9267, longitude -122.3129), including tributaries.	Core Summer Habitat	Primary Contact	All	All	-
Chilliwack River and Little Chilliwack River: All waters above the confluence (latitude 48.9929, longitude -121.4086), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Chuckanut Creek: Upstream from the mouth (latitude 48.7002, longitude -122.4949) to headwaters.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Colony Creek: Upstream from the mouth (latitude 48.5966, longitude -122.4193) to headwaters, including tributaries.	Core Summer Habitat	Primary Contact	All	All	-
Dakota Creek: Upstream from the mouth (latitude 48.9721, longitude -122.7291), including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Dale Creek: Upstream from the mouth (latitude 48.8938, longitude -122.3023).	Core Summer Habitat	Primary Contact	All	All	-
Deer Creek (tributary to Barrett Lake): Upstream from the mouth (latitude 48.8471, longitude -122.5615), including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Depot Creek: Upstream from the mouth (latitude 49.0296, longitude -121.4021), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Fishtrap Creek: Upstream from the mouth (latitude 48.912, longitude -122.5229) to Canadian border.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)

Table 602: WRIA 1 - Nooksack	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Hutchinson Creek: Upstream from the mouth (latitude 48.7078, longitude -122.1812), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Johnson Creek's unnamed tributary: Upstream from the mouth (latitude 48.978, longitude -122.3223) just north of Pangborn Road.	Core Summer Habitat	Primary Contact	All	All	-
Nooksack River mainstem: Upstream from the mouth to the confluence with Anderson Creek (latitude 48.8646, longitude -122.3157).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Nooksack River: Upstream from, and including, Anderson Creek (latitude 48.8646, longitude -122.3157) to the confluence with South Fork (latitude 48.8094, longitude -122.2039) except where otherwise designated char, including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Nooksack River, North Fork: Upstream from the confluence with South Fork (latitude 48.8094, longitude -122.2039) upstream to the confluence with Maple Creek (latitude 48.9119, longitude -122.0792), including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Nooksack River, North Fork: Upstream from and including Maple Creek (latitude 48.9119, longitude -122.0792), including all tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Nooksack River, Middle Fork: Upstream from the confluence with mainstem (latitude 48.8341, longitude -122.1549) to headwaters, including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Nooksack River, South Fork: Upstream from the mouth (latitude 48.8075, longitude -122.2024) to Skookum Creek (latitude 48.6701, longitude -122.1417).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Nooksack River, South Fork: Upstream from Skookum Creek (latitude 48.6701, longitude -122.1417) to Fobes Creek (latitude 48.6237, longitude -122.1123).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Nooksack River, South Fork: Upstream from the confluence with Fobes Creek (latitude 48.6237, longitude -122.1123), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Padden Creek: Upstream from the mouth (latitude 48.7202, longitude -122.5073) to headwaters, including tributaries.	Core Summer Habitat	Primary Contact	All	All	-
Pepin Creek: From the mouth (latitude 48.9417, longitude -122.4748) to Canadian border (latitude 49.0023, longitude -122.4738).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Saar Creek: From the mouth (latitude 48.9818, longitude -122.2386) to headwaters.	Core Summer Habitat	Primary Contact	All	All	-
Silesia Creek: South of Canadian border (latitude 48.9985, longitude -121.6125), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Skookum Creek: Upstream from the mouth (latitude 48.6702, longitude -122.1417), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Squaw Creek: Upstream from the mouth (latitude 48.969, longitude -122.3291).	Core Summer Habitat	Primary Contact	All	All	-

Table 602: WRIA 1 - Nooksack	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Squalicum Creek's unnamed tributary: Upstream from latitude 48.7862, longitude -122.4864 to headwaters.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Stickney Creek (Slough) and Kamm Ditch: Upstream from the confluence with mainstem Nooksack River (latitude 48.938, longitude -122.441) to headwaters.	Core Summer Habitat	Primary Contact	All	All	-
Sumas River: From the Canadian border (latitude 49.0024, longitude -122.2324) to headwaters (latitude 48.888, longitude -122.3087) except where designated otherwise.	Spawning /Rearing	Primary Contact	All	All	-
Tenmile Creek: Upstream from the mouth (latitude 48.8559, longitude -122.5771) to Barrett Lake (latitude 48.8513, longitude -122.5718).	Core Summer Habitat	Primary Contact	All	All	-
Tomyhoi Creek: From the Canadian border (latitude 48.9991, longitude -121.7318) to headwaters.	Char Spawning /Rearing	Primary Contact	All	All	-
Whatcom Creek: Upstream from the mouth (latitude 48.7549, longitude -122.4824) to outlet of Lake Whatcom (latitude 48.7575, longitude -122.4226), including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)

Note for WRIA 1:

1. This WRIA contains waters requiring supplemental spawning and incubation protection for salmonid species per WAC 173-201A-200 (1)(c)(iv). See ecology publication 06-10-038 for further information.

Table 602: WRIA 2 - San Juan	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
There are no specific waterbody entries for this WRIA.	-	-	-	-	-

Table 602: WRIA 3 - Lower Skagit-Samish	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Fisher and Carpenter creeks: Upstream from the mouth (latitude 48.3222, longitude -122.3363), including tributaries.	Core Summer Habitat	Primary Contact	All	All	-
Hansen Creek: Upstream from the mouth (latitude 48.4902, longitude -122.2086), including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Nookachamps Creek: Upstream from the mouth (latitude 48.4709, longitude -122.2954) except where designated char, including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Nookachamps Creek, East Fork, and unnamed creek: Upstream from the confluence (latitude 48.4091, longitude -122.1702), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Samish River: Upstream from latitude 48.547, longitude -122.3373, including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Skagit River mainstem: Upstream from the mouth to Skiyou Slough-lower end (latitude 48.4974, longitude -122.1811).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Skagit River, all tributaries to the mainstem: Upstream from the mouth to Skiyou Slough-lower end (latitude 48.4974, longitude -122.1811); except where designated otherwise.	Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)

Table 602: WRIA 3 - Lower Skagit-Samish	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Skagit River: Upstream Skiyou Slough-lower end (latitude 48.4974, longitude -122.1811) to the boundary of WRIA 3 and 4 (latitude 48.5106, longitude -121.8973), except the other waters listed for this WRIA, including tributaries. ¹	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Walker Creek and unnamed creek: Upstream of the confluence (latitude 48.3808, longitude -122.164), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-

Notes for WRIA 3:

1. Skagit River (Gorge bypass reach) from Gorge Dam (latitude 48.6978, longitude -121.2082) to Gorge Powerhouse (latitude 48.677, longitude -121.2422). Temperature shall not exceed a 1-DMax of 21°C due to human activities. When natural conditions exceed a 1-DMax of 21°C, no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C, nor shall such temperature increases, at any time, exceed $t = 34/(T + 9)$.
2. This WRIA contains waters requiring supplemental spawning and incubation protection for salmonid species per WAC 173-201A-200 (1)(c)(iv). See ecology publication 06-10-038 for further information.

Table 602: WRIA 4 - Upper Skagit	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Bacon Creek: Upstream from the mouth (latitude 48.5858, longitude -121.3934), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Baker Lake: From dam (latitude 48.649, longitude -121.6906), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Bear Creek and the unnamed outlet creek of Blue Lake: Upstream of the confluence (latitude 48.6204, longitude -121.7488), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Big Beaver Creek: Upstream from the mouth (latitude 48.7747, longitude -121.065), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Big Creek: Upstream from the mouth (latitude 48.3457, longitude -121.451), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Buck Creek: Upstream from the mouth (latitude 48.2635, longitude -121.3374), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Cascade River and Boulder Creek: All waters above the confluence (latitude 48.5177, longitude -121.3643), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Circle Creek: Upstream from the mouth (latitude 48.2593, longitude -121.339), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Clear Creek: Upstream from the mouth (latitude 48.2191, longitude -121.5684), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Diobsud Creek and unnamed tributary: All waters above the confluence (latitude 48.5846, longitude -121.4422), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Goodell Creek: Upstream from the mouth (latitude 48.6725, longitude -121.2649), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Hozomeen Creek: Upstream from the mouth (latitude 48.9869, longitude -121.0717), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-

Table 602: WRIA 4 - Upper Skagit	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Illabot Creek: Upstream from the mouth (latitude 48.49597, longitude -121.53164), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Jordan Creek: Upstream from the mouth (latitude 48.5228, longitude -121.4229), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Lightning Creek: Upstream from the mouth, including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Little Beaver Creek: Upstream from the mouth (latitude 48.9162, longitude -121.0825), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Murphy Creek: Upstream from the mouth (latitude 48.191, longitude -121.5157), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Newhalem Creek: Upstream from the mouth (latitude 48.6714, longitude -121.2561), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Rocky Creek: Upstream from the mouth (latitude 48.6461, longitude -121.702), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Ruby Creek: Upstream from the mouth (latitude 48.7125, longitude -120.9868), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Sauk River and Dutch Creek: All waters above the confluence (latitude 48.1812, longitude -121.488), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Silver Creek: Upstream from the mouth (latitude 48.9702, longitude -121.1039), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Skagit River: Upstream from latitude 48.5106, longitude -121.8973, including tributaries, except where listed otherwise for this WRIA. ¹	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Stetattle Creek: Upstream from the mouth (latitude 48.7172, longitude -121.1498), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Straight Creek: Upstream from the mouth (latitude 48.2719, longitude -121.4004), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Suiattle River: Above the confluence with Harriet Creek (latitude 48.2507, longitude -121.3018), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Sulphur Creek: Upstream of the mouth (latitude 48.6482, longitude -121.6997), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Tenas Creek: Upstream of the mouth (latitude 48.3236, longitude -121.4395), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Thunder Creek: Upstream of Lake Shannon (latitude 48.5978, longitude -121.7138), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Thunder Creek: Upstream of Diablo Lake (latitude 48.69469, longitude -121.09830), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-

Table 602: WRIA 4 - Upper Skagit	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
White Chuck River: Upstream of the mouth (latitude 48.1729, longitude -121.4723), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)

Notes for WRIA 4:

- Skagit River (Gorge bypass reach) from the Gorge Dam (river mile 96.6) to the Gorge Powerhouse (river mile 94.2). Temperature shall not exceed a 1-DMax of 21°C due to human action. When natural conditions exceed a 1-DMax of 21°C, no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C, nor shall such temperature increases, at any time, exceed $t = 34/(T + 9)$.
- This WRIA contains waters requiring supplemental spawning and incubation protection for salmonid species per WAC 173-201A-200 (1)(c)(iv). See ecology publication 06-10-038 for further information.

Table 602: WRIA 5 - Stillaguamish	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Brooks Creek and unnamed tributary: Upstream of the confluence (latitude 48.296, longitude -121.905), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Canyon Creek: Upstream of the confluence with unnamed tributary (latitude 48.1245, longitude -121.8892) to headwaters, including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Canyon Creek's unnamed tributaries: Upstream from latitude 48.1516, longitude -121.9677.	Char Spawning /Rearing	Primary Contact	All	All	-
Unnamed tributaries: Upstream from the mouth of tributary (latitude 48.1463, longitude -121.9653) of unnamed tributary of Canyon Creek (latitude 48.12145, longitude -121.94482).	Char Spawning /Rearing	Primary Contact	All	All	-
Crane Creek and unnamed tributary: Upstream of the confluence (latitude 48.3298, longitude -121.1005), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Crane Creek's unnamed tributaries: Upstream of the confluence (latitude 48.3324, longitude -122.1059), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Cub Creek and unnamed tributary: Upstream of the confluence (latitude 48.1677, longitude -121.9428), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Deer Creek (on N.F. Stillaguamish) and unnamed tributary: Upstream of the confluence (latitude 48.3194, longitude -121.9582), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Dicks Creek and unnamed outlet of Myrtle Lake: Upstream of the confluence (latitude 48.3185, longitude -121.8147), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Jim Creek and Little Jim Creek: Upstream of the confluence (latitude 48.1969, longitude -121.902), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Jorgenson Slough: Upstream from the confluence with Church Creek (latitude 48.2341, longitude -122.3235), between West Pass and Hat Slough, including tributaries.	Core Summer Habitat	Primary Contact	All	All	-
Lake Cavanaugh and all tributaries: All waters above the outlet (latitude 48.3126, longitude -121.9803).	Char Spawning /Rearing	Primary Contact	All	All	-
Pilchuck Creek and Bear Creek: Upstream of the confluence (latitude 48.3444, longitude -122.0691), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-

Table 602: WRIA 5 - Stillaguamish	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Pilchuck Creek's unnamed tributaries: Upstream of the confluence (latitude 48.309, longitude -122.1303), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Pilchuck Creek: Upstream from latitude 48.2395, longitude -122.2015 (above 268 th St) to headwaters, including tributaries (except where designated char).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Unnamed tributary to Portage Creek: Upstream of the confluence (latitude 48.1836, longitude -122.2314), including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Stillaguamish River: Upstream from the mouth (latitude 48.2082, longitude -122.323) to confluence of north and south forks (latitude 48.2036, longitude -122.1279).	Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Stillaguamish River, North Fork: Upstream from the mouth (latitude 48.2039, longitude -122.128) to Boulder River (latitude 48.2822, longitude -121.7876), including tributaries (except where designated char).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Stillaguamish River, North Fork, and Boulder River: Upstream from the confluence (latitude 48.2822, longitude -121.7876) to Squire Creek (latitude 48.2802, longitude -121.686), and downstream of the Mt. Baker Snoqualmie National Forest, including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Stillaguamish River, North Fork, and Boulder River: Upstream from the confluence (latitude 48.2802, longitude -121.686) up to Squire Creek (latitude 48.2802, longitude -121.686) that are in or above the Mt. Baker Snoqualmie National Forest, including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Stillaguamish River, North Fork: Upstream from the confluence with Squire Creek (latitude 48.2802, longitude -121.686) to headwaters, including all tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Stillaguamish River, South Fork: Upstream from the mouth (latitude 48.2034, longitude -122.1277) to Canyon Creek (latitude 48.0972, longitude -121.9711).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Stillaguamish River, South Fork: Upstream from Canyon Creek (latitude 48.0972, longitude -121.9711) to the unnamed tributary at latitude 48.092 longitude -121.8812 (near Cranberry Creek).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Stillaguamish River, South Fork, and the unnamed tributary: Upstream of the confluence (latitude 48.092, longitude -121.8812) near Cranberry Creek, including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)

Note for WRIA 5:

- This WRIA contains waters requiring supplemental spawning and incubation protection for salmonid species per WAC 173-201A-200 (1)(c)(iv). See ecology publication 06-10-038 for further information.

Table 602: WRIA 6 - Island	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
There are no specific waterbody entries for this WRIA.	-	-	-	-	-

Table 602: WRIA 7 - Snohomish	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Cherry Creek: Upstream from the mouth (latitude 47.7684, longitude -121.9603) to headwaters, including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Cripple Creek: Upstream from the mouth (latitude 47.523, longitude -121.4728), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Kelly Creek: Upstream from the mouth (latitude 47.9849, longitude -121.5034), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Miller River, East Fork, and West Fork Miller River: Upstream of the confluence (latitude 47.675, longitude -121.3892), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
North Fork Creek and unnamed creek: Upstream of the confluence (latitude 47.7406, longitude -121.8246), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Pilchuck River: Upstream from the mouth (latitude 47.9006, longitude -122.0919) to the confluence with Boulder Creek (latitude 48.0248, longitude -121.8217).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Pilchuck River and Boulder Creek: Upstream on the confluence (latitude 48.0248, longitude -121.8217), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Pratt River: Upstream from the mouth (latitude 47.5261, longitude -121.5873), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Skykomish River: Upstream from the mouth (latitude 47.8213, longitude -122.0327) to May Creek (above Gold Bar at latitude 47.8471, longitude -121.6954), including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Skykomish River and May Creek: Upstream from the confluence above Gold Bar at latitude 47.8471, longitude -121.6954, including tributaries (except where designated char).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Skykomish River, North Fork: Upstream from below Salmon Creek at latitude 47.8790, longitude -121.4594 to headwaters, including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Skykomish River, South Fork, and Beckler River: Upstream from the confluence (latitude 47.715, longitude -121.3398), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Snohomish River: Upstream from the mouth (latitude 48.0202, longitude -122.1989) to the southern tip of Ebey Island (latitude 47.942, longitude -122.1719). ¹	Spawning /Rearing	Primary Contact	All	All	-
Snohomish River: Upstream the southern tip of Ebey Island (latitude 47.942, longitude -122.1719) to below Pilchuck Creek at (latitude 47.9005, longitude -122.0925).	Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Snohomish River: Upstream from below Pilchuck Creek (latitude 47.9005, longitude -122.0925) to the confluence with Skykomish and Snoqualmie River (latitude 47.8212, longitude -122.0331).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)

Table 602: WRIA 7 - Snohomish	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Snoqualmie River: Upstream from the mouth (latitude 47.8208, longitude -122.0321) to the confluence with Harris Creek (latitude 47.6772, longitude -121.9382).	Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Snoqualmie River and Harris Creek: Upstream from the confluence (latitude 47.6772, longitude -121.9382) to west boundary of Twin Falls State Park on south fork (latitude 47.4525, longitude -121.7063).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Snoqualmie River, South Fork: Upstream from the west boundary of Twin Falls State Park (latitude 47.4525, longitude -121.7063) to headwaters, including tributaries.	Core Summer Habitat	Primary Contact	All	All	-
Snoqualmie River, North Fork: Upstream from the mouth (latitude 47.5203, longitude -121.7746) to Sunday Creek (latitude 47.6556, longitude -121.6419).	Core Summer Habitat	Primary Contact	All	All	-
Snoqualmie River, North Fork, and Sunday Creek: Upstream of the confluence (latitude 47.6556, longitude -121.6419), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Snoqualmie River, Middle Fork: Upstream from the mouth (latitude 47.52, longitude -121.7767) to Dingford Creek at latitude 47.5156, longitude -121.4545 (except where designated char).	Core Summer Habitat	Primary Contact	All	All	-
Snoqualmie River, Middle Fork, and Dingford Creek: Upstream of the confluence (latitude 47.5156, longitude -121.4545), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Snoqualmie River's Middle Fork's unnamed tributaries: Upstream of the mouth at latitude 47.539, longitude -121.5645.	Char Spawning /Rearing	Primary Contact	All	All	-
Sultan River: Upstream from the mouth (latitude 47.8605, longitude -121.8206) to Chaplain Creek (latitude 47.9211, longitude -121.8033), including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Sultan River: From the confluence with Chaplain Creek (latitude 47.9211, longitude -121.8033) to headwaters, including tributaries. ²	Core Summer Habitat	Primary Contact	All	All	-
Taylor River: Upstream from the mouth (latitude 47.5468, longitude -121.5355), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Tolt River, North Fork, and unnamed creek: Upstream from the confluence (latitude 47.718, longitude -121.7788), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Tolt River, South Fork: Upstream from the mouth (latitude 47.6957, longitude -121.8213) to the unnamed creek at latitude 47.6921, longitude -121.7408, including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Tolt River, South Fork, and unnamed creek: Upstream of the confluence (latitude 47.6921, longitude -121.7408), including tributaries. ³	Char Spawning /Rearing	Primary Contact	All	All	-
Tolt River's South Fork's unnamed tributaries: Upstream of the mouth at latitude 47.6888, longitude -121.7869.	Char Spawning /Rearing	Primary Contact	All	All	-

Table 602: WRIA 7 - Snohomish	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Trout Creek: Upstream from the mouth (latitude 47.8643, longitude -121.4877), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)

Notes for WRIA 7:

1. Fecal coliform organism levels shall both not exceed a geometric mean value of 200 colonies/100 mL and not have more than 10 percent of the samples obtained for calculating the mean value exceeding 400 colonies/100 mL.
2. No waste discharge will be permitted above city of Everett Diversion Dam (latitude 47.9599, longitude -121.7962).
3. No waste discharge will be permitted for the South Fork Tolt River and tributaries from latitude 47.6957, longitude -121.8213 to headwaters.
4. This WRIA contains waters requiring supplemental spawning and incubation protection for salmonid species per WAC 173-201A-200 (1)(c)(iv). See ecology publication 06-10-038 for further information.

Table 602: WRIA 8 - Cedar-Sammamish	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Cedar River: Upstream from the confluence with Lake Washington (latitude 47.5005, longitude -122.2159) to the Maplewood Bridge (latitude 47.4693, longitude -122.1596).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Cedar River: Upstream from the Maplewood Bridge (latitude 47.4693, longitude -122.1596) to Landsburg Dam (latitude 47.3759, longitude -121.9615), including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Cedar River: From Landsburg Dam (latitude 47.3759, longitude -121.9615) to Chester Morse Lake (latitude 47.4121, longitude -121.7526), including tributaries. ¹	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Cedar River at Chester Morse Lake Cedar Falls Dam: All waters above the dam (latitude 47.4121, longitude -121.7526) to headwaters, including tributaries. ²	Char Spawning /Rearing	Primary Contact	All	All	-
Holder Creek and unnamed tributary: Upstream from the confluence (latitude 47.4576, longitude -121.9505), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Issaquah Creek: Upstream from the confluence with Lake Sammamish (latitude 47.562, longitude -122.0651) to headwaters, including tributaries (except where designated char).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Lake Washington Ship Canal: From Government Locks (latitude 47.6652, longitude -122.3973) to Lake Washington (latitude 47.6471, longitude -122.3003). ^{3,4}	Core Summer Habitat	Primary Contact	All	All	-

Notes for WRIA 8:

1. No waste discharge will be permitted.
2. No waste discharge will be permitted.
3. Salinity shall not exceed one part per thousand (1.0 ppt) at any point or depth along a line that transects the ship canal at the University Bridge (latitude 47.65284, longitude -122.32029).
4. This waterbody is to be treated as a lake for purposes of applying this chapter.
5. This WRIA contains waters requiring supplemental spawning and incubation protection for salmonid species per WAC 173-201A-200 (1)(c)(iv). See ecology publication 06-10-038 for further information.

Table 602: WRIA 9 - Duwamish-Green	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Duwamish River: From mouth south of a line bearing 254° true from the NW corner of berth 3, terminal No. 37 to the Black River (latitude 47.4737, longitude -122.2521) (Duwamish River continues as the Green River above the Black River).	Rearing/ Migration Only	Primary Contact	All, Except Domestic Water	All	-

Table 602: WRIA 9 - Duwamish-Green	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Green River: From and including the Black River (latitude 47.4737, longitude -122.2521, and point where Duwamish River continues as the Green River) to latitude 47.3699, longitude -122.246 above confluence with Mill Creek.	Spawning /Rearing	Primary Contact	All	All	-
Green River: Upstream from above confluence with Mill Creek at latitude 47.3699, longitude -122.2461 (east of the West Valley highway) to west boundary of Flaming Geyser State Park, including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Green River: Upstream from the west boundary of Flaming Geyser State Park (latitude 47.2805, longitude -122.0379) to headwaters, including tributaries (except where designated char and core).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Green River and Sunday Creek: Upstream from the confluence (latitude 47.2164, longitude -121.4494), including tributaries. ¹	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Smay Creek and West Fork Smay Creek: Upstream from the confluence, (latitude 47.2458, longitude -121.592) including tributaries. ¹	Char Spawning /Rearing	Primary Contact	All	All	-

Notes for WRIA 9:

1. No waste discharge will be permitted for the Green River and tributaries (King County) from west boundary of Sec. 13-T21N-R7E (river mile 59.1) to headwaters.
2. This WRIA contains waters requiring supplemental spawning and incubation protection for salmonid species per WAC 173-201A-200 (1)(c)(iv). See ecology publication 06-10-038 for further information.

Table 602: WRIA 10 - Puyallup-White	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Carbon River: Waters above latitude 47.0001, longitude -121.9796, downstream of the Snoqualmie National Forest or Mt. Rainier National Park, including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Carbon River: Waters upstream from latitude 47.0001, longitude -121.9796 that are in or above the Snoqualmie National Forest or Mt. Rainier National Park, including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Clarks Creek: Upstream from the mouth (latitude 47.2137, longitude -122.3415), including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Clear Creek: Upstream from the mouth (latitude 47.2342, longitude -122.3942), including tributaries.	Core Summer Habitat	Primary Contact	All	All	-
Clearwater River and Milky Creek: Upstream from the confluence (latitude 47.0978, longitude -121.7835), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Greenwater River: Upstream from the confluence with White River (latitude 47.1586, longitude -121.6596) to headwaters, including all tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Puyallup River: Upstream from the mouth (latitude 47.2685, longitude -122.4269) to river mile 1.0 (latitude 47.2562, longitude -122.4173). ¹	Rearing/ Migration Only	Primary Contact	All, Except Domestic Water	All	-
Puyallup River: Upstream from river mile 1.0 (latitude 47.2562, longitude -122.4173) to the confluence with White River (latitude 47.1999, longitude -122.2591). ¹	Core Summer Habitat	Primary Contact	All	All	-

Table 602: WRIA 10 - Puyallup-White	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Puyallup River: Upstream from the confluence with White River (latitude 47.1999, longitude -122.2591) to Mowich River (latitude 46.9005, longitude -122.031), including tributaries (except where designated char).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Puyallup River at and including Mowich River: All waters upstream from the confluence (latitude 46.9005, longitude -122.031), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
South Prairie Creek: Upstream from the Kepka Fishing Pond (latitude 47.1197, longitude -122.0128), including tributaries, except those waters in or above the Snoqualmie National Forest.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
South Prairie Creek: Upstream from the Kepka Fishing Pond (latitude 47.1197, longitude -122.0128) in or above the Snoqualmie National Forest, including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Swam Creek: Upstream from the mouth (latitude 47.2361, longitude -122.3928).	Core Summer Habitat	Primary Contact	All	All	-
Voight Creek and Bear Creek: Upstream from the confluence (latitude 47.0493, longitude -122.1173) and downstream of the Snoqualmie National Forest or Mt. Rainier National Park, including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Voight Creek and Bear Creek: Upstream from the confluence (latitude 47.0493, longitude -122.1173) and in or above the Snoqualmie National Forest or Mt. Rainier National Park, including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
White River: Upstream from the mouth (latitude 47.2001, longitude -122.2585) to latitude 47.2438, longitude -122.2422.	Spawning /Rearing	Primary Contact	All	All	-
White River: Upstream from latitude 47.2438, longitude -122.2422 to Mud Mountain dam (latitude 47.1425, longitude -121.931), including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
White River: Upstream from the Mud Mountain Dam (latitude 47.1425, longitude -121.931) to West Fork White River (latitude 47.1259, longitude -121.62), except where designated char.	Core Summer Habitat	Primary Contact	All	All	-
White River and West Fork White River: Upstream from the confluence (latitude 47.1259, longitude -121.62), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Wilkeson Creek and Gale Creek: Upstream from the confluence (latitude 47.0897, longitude -122.0171), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)

Notes for WRIA 10:

1. The Puyallup Tribe regulates water quality from the mouth of the Puyallup River to the up-river boundary of the 1873 Survey Area of the Puyallup Reservation.
2. This WRIA contains waters requiring supplemental spawning and incubation protection for salmonid species per WAC 173-201A-200 (1)(c)(iv). See ecology publication 06-10-038 for further information.

Table 602: WRIA 11 - Nisqually	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Big Creek: Upstream from the mouth (latitude 46.7424, longitude -122.0396), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Copper Creek: Upstream from the mouth (latitude 46.7542, longitude -121.9615), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
East Creek: Upstream from the mouth (latitude 46.761, longitude -122.2078), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Horn Creek: Upstream from the mouth (latitude 46.9048, longitude -122.4945), including tributaries.	Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Little Nisqually River: Upstream from the mouth (latitude 46.7945, longitude -122.3123), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Mashel River and Little Mashel River: Upstream from the confluence (latitude 46.8574, longitude -122.2802), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Mineral Creek: Upstream from the mouth (latitude 46.7522, longitude -122.1462), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Muck Creek: Upstream from the mouth (latitude 46.9971, longitude -122.6293), including tributaries.	Core Summer Habitat	Primary Contact	All	All	-
Murray Creek: Upstream from the mouth (latitude 46.9234, longitude -122.5269), including tributaries.	Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Nisqually River mainstem: Upstream from the mouth (latitude 47.0858, longitude -122.7075) to Alder Dam (latitude 46.801, longitude -122.3106).	Core Summer Habitat	Primary Contact	All	All	-
Nisqually River: Upstream from the Alder Dam (latitude 46.801, longitude -122.3106) to Tahoma Creek (latitude 46.7372, longitude -121.9022), including tributaries (except where designated char).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Nisqually River and Tahoma Creek: Upstream from the confluence (latitude 46.7372, longitude -121.9022), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Rocky Slough: From latitude 46.8882, longitude -122.4339 to latitude 46.9109, longitude -122.4012.	Spawning /Rearing	Primary Contact	All	All	-
Tanwax Creek: Upstream from the mouth (latitude 46.8636, longitude -122.4582) and downstream of lakes, including tributaries.	Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)

Note for WRIA 11:

1. This WRIA contains waters requiring supplemental spawning and incubation protection for salmonid species per WAC 173-201A-200 (1)(c)(iv). See ecology publication 06-10-038 for further information.

Table 602: WRIA 12 - Chambers-Clover	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Clover Creek: Upstream from the inlet to Lake Steilacoom (latitude 47.1569, longitude -122.5287), including Spanaway Creek to the outlet of Spanaway Lake (latitude 47.1209, longitude -122.4464).	Spawning /Rearing	Primary Contact	All	All	-

Table 602: WRIA 13 - Deschutes	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Deschutes River: Upstream from the mouth (latitude 47.0436, longitude -122.9091) to, and including, the tributary to Offutt Lake at latitude 46.9236, longitude -122.8123.	Spawning /Rearing	Primary Contact	All	All	-
Deschutes River: Upstream of the tributary to Offutt Lake at latitude 46.9236, longitude -122.8123. All waters in or above the national forest boundary, including tributaries.	Core Summer Habitat	Primary Contact	All	All	-
Deschutes River: Upstream of the tributary to Offutt Lake at latitude 46.9236, longitude -122.8123. All waters below the national forest boundary, including tributaries.	Core Summer Habitat	Primary Contact	All	All	-
McLane Creek: Upstream from the mouth (latitude 47.0347, longitude -122.9904), including tributaries.	Core Summer Habitat	Primary Contact	All	All	-

Table 602: WRIA 14 - Kennedy-Goldsborough	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Campbell Creek: Upstream from the mouth (latitude 47.2221, longitude -123.0252), including tributaries.	Core Summer Habitat	Primary Contact	All	All	-
Coffee Creek: Upstream from the mouth (latitude 47.2093, longitude -123.1248), including tributaries.	Core Summer Habitat	Primary Contact	All	All	-
Cranberry Creek: Upstream from the mouth (latitude 47.2625, longitude -123.0159), including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Deer Creek: Upstream from the mouth (latitude 47.2594, longitude -123.0094), including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Goldsborough Creek: Upstream from the mouth (latitude 47.2095, longitude -123.0952), including tributaries.	Core Summer Habitat	Primary Contact	All	All	-
Hiawata Creek: Upstream from the mouth (latitude 47.2877, longitude -122.9204), including tributaries.	Spawning /Rearing	Primary Contact	All	All	-
Jarrell Creek: Upstream from the mouth (latitude 47.2771, longitude -122.8909), including tributaries.	Spawning /Rearing	Primary Contact	All	All	-
John's Creek: Upstream from the mouth (latitude 47.2461, longitude -123.043), including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Jones Creek: Upstream from the mouth (latitude 47.263, longitude -122.9321), including tributaries.	Spawning /Rearing	Primary Contact	All	All	-
Malaney Creek: Upstream from the mouth (latitude 47.2514, longitude -123.0197).	Core Summer Habitat	Primary Contact	All	All	-
Mill Creek: Upstream from the mouth (latitude 47.1955, longitude -122.9964), including tributaries.	Core Summer Habitat	Primary Contact	All	All	-
Perry Creek: Upstream from the mouth (latitude 47.0492, longitude -123.0052), including tributaries.	Core Summer Habitat	Primary Contact	All	All	-

Table 602: WRIA 14 - Kennedy-Goldsborough	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Shelton Creek: Upstream from the mouth (latitude 47.2139, longitude -123.0952), including tributaries.	Core Summer Habitat	Primary Contact	All	All	-
Uncle John Creek: Upstream from the mouth (latitude 47.2234, longitude -123.029), including tributaries.	Core Summer Habitat	Primary Contact	All	All	-
Unnamed stream at Peale Passage inlet, on west side of Hartstene Island: Upstream from the mouth (latitude 47.2239, longitude -122.9135).	Spawning /Rearing	Primary Contact	All	All	-

Note for WRIA 14:

- This WRIA contains waters requiring supplemental spawning and incubation protection for salmonid species per WAC 173-201A-200 (1)(c)(iv). See ecology publication 06-10-038 for further information.

Table 602: WRIA 15 - Kitsap	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Anderson Creek: Upstream from the mouth (latitude 47.5278, longitude -122.6831), including tributaries.	Core Summer Habitat	Primary Contact	All	All	-
Barker Creek: Upstream from Dyes Inlet (latitude 47.6378, longitude -122.6701) to Island Lake (latitude 47.6781, longitude -122.6603), including tributaries.	Core Summer Habitat	Primary Contact	All	All	-
Blackjack Creek: Upstream from the mouth (latitude 47.5422, longitude -122.6272) and downstream of Square Lake (latitude 47.4826, longitude -122.6847), including tributaries.	Core Summer Habitat	Primary Contact	All	All	-
Chico Creek: Above confluence with Kitsap Creek (latitude 47.5869, longitude -122.7127), including tributaries.	Core Summer Habitat	Primary Contact	All	All	-
Clear Creek: Upstream from Dyes Inlet (latitude 47.6524, longitude -122.6863) to headwaters, including tributaries.	Core Summer Habitat	Primary Contact	All	All	-
Gamble Creek: Upstream from the mouth (latitude 47.8116, longitude -122.5797), including tributaries.	Core Summer Habitat	Primary Contact	All	All	-
Gorst Creek: Upstream from the mouth (latitude 47.5279, longitude -122.6979), including tributaries.	Core Summer Habitat	Primary Contact	All	All	-
Martha John Creek: Upstream from the mouth (latitude 47.8263, longitude -122.5637), including tributaries.	Core Summer Habitat	Primary Contact	All	All	-
Ross Creek: Upstream from the mouth (latitude 47.5387, longitude -122.6565), including tributaries.	Core Summer Habitat	Primary Contact	All	All	-
Strawberry Creek: Upstream from the mouth (latitude 47.6459, longitude -122.6939), including tributaries.	Core Summer Habitat	Primary Contact	All	All	-
Union River: From the Bremerton Waterworks Dam (latitude 47.5371, longitude -122.7796) to headwaters, including tributaries. ¹	Core Summer Habitat	Primary Contact	All	All	-
Unnamed tributary to Sinclair Inlet (between Gorst and Anderson Creeks): Upstream from the mouth (latitude 47.5270, longitude -122.6932).	Core Summer Habitat	Primary Contact	All	All	-

Table 602: WRIA 15 - Kitsap	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Unnamed tributary to Sinclair Inlet, east of Blackjack Creek): Upstream from the mouth (latitude 47.5468, longitude -122.6131).	Spawning /Rearing	Primary Contact	All	All	-
Unnamed tributary, west of Port Gamble Bay: Upstream from the mouth (latitude 47.8220, longitude -122.5831).	Core Summer Habitat	Primary Contact	All	All	-

Notes for WRIA 15:

1. No waste discharge will be permitted.
2. This WRIA contains waters requiring supplemental spawning and incubation protection for salmonid species per WAC 173-201A-200 (1)(c)(iv). See ecology publication 06-10-038 for further information.

Table 602: WRIA 16 - Skokomish-Dosewallips	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Dosewallips River: Upstream from the mouth (latitude 47.6852, longitude -122.8965), including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Duckabush River: Upstream from the mouth (latitude 47.6501, longitude -122.936), including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Hamma Hamma River: Upstream from the mouth (latitude 47.547, longitude -123.0453), including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Rock Creek and unnamed tributary: Upstream from the confluence (latitude 47.3894, longitude -123.3512), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Skokomish River: Upstream from the mouth (latitude 47.3294, longitude -123.1189), including tributaries, except where designated char.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Skokomish River, North Fork: Upstream from latitude 47.416, longitude -123.2151 (below Cushman Upper Dam) to headwaters, including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Skokomish River, South Fork, and Brown Creek: Upstream from the confluence (latitude 47.4113, longitude -123.3188), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Vance Creek and Cabin Creek: Upstream from the confluence (latitude 47.3651, longitude -123.3837).	Char Spawning /Rearing	Primary Contact	All	All	-

Note for WRIA 16:

1. This WRIA contains waters requiring supplemental spawning and incubation protection for salmonid species per WAC 173-201A-200 (1)(c)(iv). See ecology publication 06-10-038 for further information.

Table 602: WRIA 17 - Quilcene-Snow	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Big Quilcene River: Upstream from the mouth (latitude 47.8186, longitude -122.8618), including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)

Note for WRIA 17:

1. This WRIA contains waters requiring supplemental spawning and incubation protection for salmonid species per WAC 173-201A-200 (1)(c)(iv). See ecology publication 06-10-038 for further information.

Table 602: WRIA 18 - Elwha-Dungeness	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Boulder Creek and Deep Creek: Upstream from the confluence (latitude 47.9835, longitude -123.6441), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-

Table 602: WRIA 18 - Elwha-Dungeness	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Dungeness River mainstem: Upstream from the mouth (latitude 48.1524, longitude -123.1294) to Canyon Creek (latitude 47.0254, longitude -123.137).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Dungeness River, tributaries to mainstem: Above and between confluence with Matriotti Creek (latitude 48.1384, longitude -123.1349) to Canyon Creek (latitude 47.0254, longitude -123.137).	Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Dungeness River and Canyon Creek: Upstream from the confluence (latitude 47.0254, longitude -123.137), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Elwha River: Upstream from the mouth (latitude 48.1421, longitude -123.5646) to Cat Creek (latitude 47.9729, longitude -123.5919), including tributaries, except where designated char.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Elwha River and Cat Creek: Upstream from the confluence (latitude 47.9729, longitude -123.5919), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Ennis Creek and White Creek: Upstream from the confluence with the Strait of Juan De Fuca (latitude 48.1172, longitude -123.4051) to the Olympic National Park Boundary, including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Ennis Creek: All waters lying above the Olympic National Park Boundary, including tributaries.	Core Summer Habitat	Primary Contact	All	All	-
Griff Creek and unnamed tributary: All waters above the confluence (latitude 48.0134, longitude -123.5455), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Hughes Creek and unnamed tributary: All waters above the confluence (latitude 48.0297, longitude -123.6335), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Little River: Upstream from the mouth (latitude 48.063, longitude -123.5772), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Matriotti Creek: Upstream from the mouth (latitude 48.1385, longitude -123.1352).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Wolf Creek and unnamed tributary: All waters above the confluence (latitude 47.9652, longitude -123.5386), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-

Note for WRIA 18:

- This WRIA contains waters requiring supplemental spawning and incubation protection for salmonid species per WAC 173-201A-200 (1)(c)(iv). See ecology publication 06-10-038 for further information.

Table 602: WRIA 19 - Lyre-Hoko	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
There are no specific waterbody entries for this WRIA.	-	-	-	-	-

Table 602: WRIA 20 - Sol Duc	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Dickey River: Upstream from the mouth (latitude 47.9208, longitude -124.6209), including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Hoh River: Upstream from the mouth (latitude 47.749, longitude -124.429) to the confluence with the South Fork Hoh River (latitude 47.8182, longitude -124.0207).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Hoh River and South Fork Hoh River: All waters above the confluence (latitude 47.8182, longitude -124.0207).	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Quillayute and Bogachiel rivers: Upstream from the mouth (latitude 47.9198, longitude -124.633).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Sol Duc River: Upstream from the mouth (latitude 47.9147, longitude -124.542) to Canyon Creek (latitude 47.9513, longitude -123.8271), including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Sol Duc River: Upstream from the confluence with Canyon Creek (latitude 47.9513, longitude -123.8271), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)

Note for WRIA 20:

1. This WRIA contains waters requiring supplemental spawning and incubation protection for salmonid species per WAC 173-201A-200 (1)(c)(iv). See ecology publication 06-10-038 for further information.

Table 602: WRIA 21 - Queets-Quinault	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Clearwater River and unnamed tributary: All waters above the confluence (latitude 47.7272, longitude -124.0365), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Kunamakst Creek and unnamed tributary: All waters above the confluence (latitude 47.7284, longitude -124.0793), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Matheny Creek and unnamed tributary: All waters above the confluence (latitude 47.5589, longitude -123.9548), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Queets River: Upstream from the mouth (latitude 47.535, longitude -124.3463) to Tshletshy Creek (latitude 47.6659, longitude -123.9277).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Queets River: Upstream from the confluence with Tshletshy Creek (latitude 47.6659, longitude -123.9277).	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Quinault River: Upstream from the mouth (latitude 47.3488, longitude -124.2926) to the confluence with the North Fork Quinault River (latitude 47.5369, longitude -123.6718).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Quinault River and North Fork Quinault: All waters above the confluence (latitude 47.5369, longitude -123.6718), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Salmon River, Middle Fork, and unnamed tributary: All waters above the confluence (latitude 47.5206, longitude -123.9908), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Sams River and unnamed tributary: All waters above the confluence (latitude 47.6055, longitude -123.8939), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-

Table 602: WRIA 21 - Queets-Quinault	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Solleks River and unnamed tributary: All waters above the confluence (latitude 47.694, longitude -124.0135), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Stequaleho Creek and unnamed tributary: All waters above the confluence (latitude 47.662, longitude -124.0439), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Tshletshy Creek and unnamed tributary: All waters above the confluence (latitude 47.6586, longitude -123.868), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-

Note for WRIA 21:

- This WRIA contains waters requiring supplemental spawning and incubation protection for salmonid species per WAC 173-201A-200 (1)(c)(iv). See ecology publication 06-10-038 for further information.

Table 602: WRIA 22 - Lower Chehalis	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Andrews Creek: Upstream from the confluence with West Fork (latitude 46.823, longitude -124.0234), including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Baker Creek and unnamed tributary: All waters above the confluence (latitude 47.3302, longitude -123.4142), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Big Creek and Middle Fork Big Creek: All waters above the confluence (latitude 47.4041, longitude -123.6583), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Canyon River and unnamed tributary: All waters above the confluence (latitude 47.3473, longitude -123.4949), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Chehalis River: From upper boundary of Grays Harbor at Cosmopolis (latitude 46.9579, longitude -123.7625) to latitude 46.6004, longitude -123.1472 on main stem and to latitude 46.6013, longitude -123.1253 on South Fork.	Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Chester Creek and unnamed tributary: All waters above the confluence (latitude 47.4192, longitude -123.7856), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Cloquallum Creek: Upstream from the mouth (latitude 46.986, longitude -123.3951).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Decker Creek: Upstream from the mouth (latitude 47.0964, longitude -123.4735).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Delezene Creek: Upstream from the mouth (latitude 46.9413, longitude -123.3893).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Elk River, West Branch: Upstream from latitude 46.8111, longitude -123.9774.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Goforth Creek and unnamed tributary: All waters above the confluence (latitude 47.3559, longitude -123.7325), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Hoquiam River, East Fork: Upstream from the confluence with Lytle Creek (latitude 47.0523, longitude -123.8428), including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)

Table 602: WRIA 22 - Lower Chehalis	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Hoquiam River: Upstream from latitude 47.0573, longitude -123.9278 (the approximate upper limit of tidal influence at Dekay Road Bridge), including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Hoquiam River, Middle Fork: Upstream from latitude 47.0418, longitude -123.9052, including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Hoquiam River mainstem (continues as west fork above east fork): Upstream from the mouth (latitude 46.9825, longitude -123.8781) to latitude 47.0573, longitude -123.9278 (the approximate upper limit of tidal influence at Dekay Road Bridge).	Rearing/ Migration Only	Primary Contact	All, Except Domestic Water	All	173-201A-200 (1)(c)(iv)
Humtulpips River: Upstream from the mouth (latitude 47.0413, longitude -124.0522) to latitude 47.0810, longitude -124.0655, including tributaries.	Spawning /Rearing	Primary Contact	All	All	-
Humtulpips River: Upstream from latitude 47.0810, longitude -124.0655 to Olympic National Forest boundary, including tributaries (except where designated char).	Core Summer Habitat	Primary Contact	All	All	-
Humtulpips River: Upstream from Olympic National Forest boundary to headwaters, including tributaries (except where designated char).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Humtulpips River, East Fork, and unnamed tributary: All waters above the confluence (latitude 47.3816, longitude -123.7175), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Humtulpips River, West Fork, and Petes Creek: All waters above the confluence (latitude 47.4487, longitude -123.7257), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Johns River and North Fork Johns River: All waters above the confluence (latitude 46.8597, longitude -123.9049).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Little Hoquiam River, North Fork: Upstream from latitude 47.0001, longitude -123.9269, including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Little Hoquiam River: Upstream from latitude 46.9934, longitude -123.9364, including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Mox Chehalis Creek: Upstream from latitude 46.9680, longitude -123.3083, including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Newskah Creek: Upstream from latitude 46.9163, longitude -123.8235, including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Satsop River: Upstream from latitude 46.9828, longitude -123.4887 to headwaters, including tributaries (except where designated char).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Satsop River, West Fork, and Robertson Creek: All waters above the confluence (latitude 47.3324, longitude -123.5557), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-

Table 602: WRIA 22 - Lower Chehalis	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Satsop River, Middle Fork, and unnamed tributary: All waters above the confluence (latitude 47.3333, longitude -123.4463), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Wildcat Creek: Upstream from the confluence with Cloquallum Creek (latitude 47.0204, longitude -123.3619), including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Wishkah River, East Fork: Upstream from above latitude 47.0801, longitude -123.7560, including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Wishkah River: Upstream from the mouth (latitude 46.9739, longitude -123.8092) to river mile 6 (latitude 47.0337, longitude -123.8023).	Rearing/ Migration Only	Primary Contact	All, Except Domestic Water	All	-
Wishkah River: Upstream from river mile 6 (latitude 47.0337, longitude -123.8023) to latitude 47.1089, longitude -123.7908.	Spawning /Rearing	Primary Contact	All	All	-
Wishkah River: From latitude 47.1089, longitude -123.7908 to confluence with West Fork (latitude 47.1227, longitude -123.7779), including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Wishkah River and West Fork: Upstream from the confluence (latitude 47.1227, longitude -123.7779) to headwaters, including tributaries. ¹	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Wynoochee River: Upstream from latitude 46.9709, longitude -123.6252 (near railroad crossing) to Olympic National Forest boundary (latitude 47.3452, longitude -123.6452), including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Wynoochee River: Upstream from Olympic National Forest boundary (latitude 47.3452, longitude -123.6452) to Wynoochee Dam (latitude 47.3851, longitude -123.6055), including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Wynoochee River: Above Wynoochee Dam (latitude 47.3851, longitude -123.6055), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)

Notes for WRIA 22:

1. No waste discharge will be permitted from south boundary of Sec. 33-T21N-R8W (river mile 32.0) to headwaters.
2. This WRIA contains waters requiring supplemental spawning and incubation protection for salmonid species per WAC 173-201A-200 (1)(c)(iv). See ecology publication 06-10-038 for further information.

Table 602: WRIA 23 - Upper Chehalis	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Bunker Creek: Upstream from the mouth (latitude 46.6438, longitude -123.1092), including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Cedar Creek: Upstream from latitude 46.8795, longitude -123.2714 (near intersection with Highway 12), including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Chehalis River, South Fork: Upstream from latitude 46.6018, longitude -123.1251 (near junction with State Route 6), including tributaries (except where specifically designated char).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Chehalis River: Upstream from latitude 46.6004, longitude -123.1473, including tributaries (except where specifically designated char).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)

Table 602: WRIA 23 - Upper Chehalis	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Chehalis River mainstem: Upstream from the upper boundary of Grays Harbor at Cosmopolis (latitude 46.95801, longitude -123.76252) to latitude 46.6004, longitude -123.1473 on main stem and to latitude 46.6018, longitude -123.125 on South Fork. ¹	Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Chehalis River, South Fork, and unnamed tributary: All waters above the confluence (latitude 46.4514, longitude -123.2919), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Chehalis River, West Fork, and East Fork Chehalis River: All waters above the confluence (latitude 46.4514, longitude -123.2919), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Coffee Creek: Upstream from the mouth (latitude 46.7313, longitude -122.9658), including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Eight Creek and unnamed tributary: All waters above the confluence (latitude 46.621, longitude -123.4137), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Fall Creek and unnamed tributary: All waters above the confluence (latitude 46.7669, longitude -122.6741), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Garrard Creek, South Fork: Upstream from latitude 46.8013, longitude -123.3060, including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Hanaford Creek: Upstream from the mouth to (latitude 46.7604, longitude -122.8662), including tributaries. ²	Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Hanaford Creek: Upstream from (latitude 46.7604, longitude -122.8662) to the unnamed tributary at latitude 46.7301, longitude -122.6829, including tributaries (except where designated char).	Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Hanaford Creek and unnamed tributary: All waters above the confluence (latitude 46.7301, longitude -122.6829), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Kearney Creek and unnamed tributary: All waters above the confluence (latitude 46.6255, longitude -122.5699), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Laramie Creek and unnamed tributary: All waters above the confluence (latitude 46.7902, longitude -122.5914), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Lincoln Creek, North Fork: Upstream from latitude 46.7371, longitude -123.2462, including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Lincoln Creek, South Fork: Upstream from latitude 46.7253, longitude -123.2306, including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Mima Creek: Upstream from latitude 46.8588, longitude -123.0856, including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Newaukum River: Upstream from the mouth (latitude 46.6512, longitude -122.9815), including tributaries (except where designated char).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)

Table 602: WRIA 23 - Upper Chehalis	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Newaukum River, North Fork, and unnamed tributary: All waters above the confluence (latitude 46.6793, longitude -122.6685), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Newaukum River, South Fork, and Frase Creek: All waters above the confluence (latitude 46.6234, longitude -122.6321), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Pheeny Creek and unnamed tributary: All waters above the confluence (latitude 46.7834, longitude -122.6291), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Porter Creek and Jamaica Day Creek: All waters above the confluence (latitude 46.9416, longitude -123.3011).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Rock Creek (upstream of Callow): All waters above confluence with Chehalis River (latitude 46.8805, longitude -123.2946), except where designated otherwise in this table.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Rock Creek (upstream of Pe Ell) and unnamed tributary: All waters above the confluence (latitude 46.5283, longitude -123.3791), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Scatter Creek: Upstream from latitude 46.8025, longitude -123.0863 (near mouth) to headwaters, including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Seven Creek and unnamed tributary: All waters above the confluence (latitude 46.6192, longitude -123.3736), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Skookumchuck River: Upstream from the confluence with Hanaford Creek (latitude 46.7446, longitude -122.9402) to headwaters, including tributaries (except where designated char).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Skookumchuck River mainstem: Upstream from the mouth (latitude 46.7194, longitude -122.9803) to Hanaford Creek (latitude 46.7446, longitude -122.9402).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Skookumchuck River and Hospital Creek: All waters above the confluence (latitude 46.7194, longitude -122.9803), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Stearns Creek's unnamed tributary: Upstream from the mouth (latitude 46.5713, longitude -122.9698).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Stearns Creek's unnamed tributary to West Fork: Upstream from the mouth (latitude 46.5824, longitude -123.0226).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Stillman Creek and Little Mill Creek: All waters above the confluence (latitude 46.5044, longitude -123.1407), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Thrash Creek: Upstream from the mouth (latitude 46.4751, longitude -123.2996), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Waddel Creek: Upstream from the mouth (latitude 46.9027, longitude -123.024), including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)

Notes for WRIA 23:

1. Chehalis River from Scammon Creek (RM 65.8) to Newaukum River (RM 75.2): dissolved oxygen shall exceed 5.0 mg/L from June 1st to September 15th. For the remainder of the year, the dissolved oxygen shall meet standard criteria.
2. Dissolved oxygen shall exceed 6.5 mg/L.
3. This WRIA contains waters requiring supplemental spawning and incubation protection for salmonid species per WAC 173-201A-200 (1)(c)(iv). See ecology publication 06-10-038 for further information.

Table 602: WRIA 24 - Willapa	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Bear River's unnamed south flowing tributary: Upstream from the mouth at latitude 46.3342, longitude -123.9394.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Bear River: Upstream from latitude 46.3284, longitude -123.9172 to headwaters, including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Canon River: Upstream from latitude 46.5879, longitude -123.8672, including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Lower Salmon Creek: Upstream from the mouth (latitude 46.7937, longitude -123.851), including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Middle Nemah River: Upstream from latitude 46.4873, longitude -123.8855, including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Mill Creek: Upstream from latitude 46.6448, longitude -123.6251, including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Naselle River: Upstream from O'Conner Creek (latitude 46.3746, longitude -123.7971) to headwaters, including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
North Nemah River: Upstream from latitude 46.5172, longitude -123.8665, including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
North River and Fall River: All waters above the confluence (latitude 46.7773, longitude -123.5038).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Pioneer Creek: Upstream from latitude 46.8147, longitude -123.5498, including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Salmon Creek: Upstream from latitude 46.8905, longitude -123.6828, including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Smith Creek: Upstream from latitude 46.7554, longitude -123.8424, including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
South Naselle River: upstream from latitude 46.3499, longitude -123.8093.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
South Nemah River: Upstream from latitude 46.4406, longitude -123.8630.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Stringer Creek: Upstream from the mouth (latitude 46.5905, longitude -123.6316), including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Willapa River South Fork: Upstream from latitude 46.6479, longitude -123.7267, including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Willapa River and Oxbow Creek: All waters upstream of the confluence (latitude 46.5805, longitude -123.6343).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)

Table 602: WRIA 24 - Willapa	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Williams Creek: Upstream from latitude 46.5284, longitude -123.8668, including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)

Note for WRIA 24:

1. This WRIA contains waters requiring supplemental spawning and incubation protection for salmonid species per WAC 173-201A-200 (1)(c)(iv). See ecology publication 06-10-038 for further information.

Table 602: WRIA 25 - Grays-Elochoman	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Abernathy Creek and Cameron Creek: All waters above the confluence (latitude 46.197, longitude -123.1632).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Coal Creek: Upstream from latitude 46.1836, longitude -123.0338 (just below Harmony Creek), including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Elochoman River: Upstream from the mouth (latitude 46.2267, longitude -123.4008) to latitude 46.2292, longitude -123.3606, including tributaries.	Spawning /Rearing	Primary Contact	All	All	-
Elochoman River: Upstream from latitude 46.2292, longitude -123.3606 to headwaters.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Germany Creek: Upstream from latitude 46.1946, longitude -123.1259 (near mouth) to headwaters.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Grays River: Upstream from latitude 46.3454, longitude -123.6099 to headwaters.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Hull Creek: Upstream from the mouth (latitude 46.3533, longitude -123.6088), including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Mill Creek: Upstream from latitude 46.1906, longitude -123.1802 (near mouth), including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Skomokawa Creek and Wilson Creek: All waters above the confluence (latitude 46.2889, longitude -123.4456).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)

Note for WRIA 25:

1. This WRIA contains waters requiring supplemental spawning and incubation protection for salmonid species per WAC 173-201A-200 (1)(c)(iv). See ecology publication 06-10-038 for further information.

Table 602: WRIA 26 - Cowlitz	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Cispus River: Upstream from the mouth (latitude 46.4713, longitude -122.0727), including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Coweeman River: Upstream from the mouth (latitude 46.1076, longitude -122.8901) to latitude 46.1405, longitude -122.8532, including tributaries.	Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Coweeman River: Upstream from latitude 46.1405, longitude -122.8532 to Mulholland Creek (latitude 46.1734, longitude -122.7152), including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)

Table 602: WRIA 26 - Cowlitz	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Coweeman River: Upstream from Mulholland Creek (latitude 46.1734, longitude -122.7152) to headwaters.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Cowlitz River: Upstream from the mouth (latitude 46.0967, longitude -122.9173) to latitude 46.2622, longitude -122.9001, including tributaries.	Spawning /Rearing	Primary Contact	All	All	-
Cowlitz River: Upstream from latitude 46.2622, longitude -122.9001 to the base of Mayfield Dam (latitude 46.5031, longitude -122.5883).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Cowlitz River: Upstream from the base of Mayfield Dam (latitude 46.5031, longitude -122.5883) to headwaters, including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Green River: Upstream from the mouth (latitude 46.3717, longitude -122.586), including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Toutle River: Upstream from the mouth (latitude 46.3101, longitude -122.9196) to Green River (latitude 46.3717, longitude -122.586) on North Fork, including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Toutle River, North Fork: Upstream from the Green River (latitude 46.3717, longitude -122.586) to headwaters, including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Toutle River, South Fork: Upstream from the mouth (latitude 46.3286, longitude -122.7211), including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)

Note for WRIA 26:

1. This WRIA contains waters requiring supplemental spawning and incubation protection for salmonid species per WAC 173-201A-200 (1)(c)(iv). See ecology publication 06-10-038 for further information.

Table 602: WRIA 27 - Lewis	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Alec Creek: Upstream from the mouth (latitude 46.1757, longitude -121.8534), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Big Creek: Upstream from the mouth (latitude 46.097, longitude -121.921), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Chickoon Creek: Upstream from the mouth (latitude 46.1534, longitude -121.8843), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Clear Creek: Upstream from the mouth (latitude 46.1133, longitude -122.0048), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Clearwater Creek and unnamed creek: All waters above the confluence (latitude 46.1666, longitude -122.0322), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Curly Creek: Upstream from the mouth (latitude 46.0593, longitude -121.9732), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Cussed Hollow Creek: Upstream from the mouth (latitude 46.144, longitude -121.9015), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-

Table 602: WRIA 27 - Lewis	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Kalama River: Upstream of Interstate 5 (latitude 46.035, longitude -122.8571) to Kalama River Falls (latitude 46.0207, longitude -122.7323), including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Kalama River: Upstream of the lower Kalama River Falls (latitude 46.0207, longitude -122.7323) to headwaters, including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Lewis River: Upstream from Houghton Creek (latitude 45.9374, longitude -122.6698) to Lake Merwin (latitude 45.9568, longitude -122.5562), including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Lewis River and Pass Creek (alternately known as Swamp Creek): All waters above the confluence (latitude 46.201, longitude -121.7085), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Lewis River's unnamed tributaries: Upstream from latitude 46.112, longitude -121.9188.	Char Spawning /Rearing	Primary Contact	All	All	-
Lewis River, East Fork: Upstream from, and including, Mason Creek (latitude 45.8366, longitude -122.6435) to Multon Falls (latitude 45.8314, longitude -122.3896), including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Lewis River, East Fork: Upstream from Multon Falls (latitude 45.8314, longitude -122.3896) to headwaters, including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Little Creek: Upstream from the mouth (latitude 46.0821, longitude -121.9235), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Panamaker Creek: Upstream from the mouth (latitude 46.0595, longitude -122.2936), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Pin Creek: Upstream from the mouth (latitude 46.2002, longitude -121.712), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Pine Creek: Upstream from the mouth (latitude 46.0718, longitude -122.0173), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Quartz Creek: Upstream from the mouth (latitude 46.1795, longitude -121.847), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Rush Creek: Upstream from the mouth (latitude 46.0746, longitude -121.9378), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Spencer Creek: Upstream from the mouth (latitude 46.1397, longitude -121.9063), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Steamboat Creek: Upstream from the mouth (latitude 46.1945, longitude -121.7293), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Tillicum Creek: Upstream from the mouth (latitude 46.1803, longitude -121.8329), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-

Note for WRIA 27:

1. This WRIA contains waters requiring supplemental spawning and incubation protection for salmonid species per WAC 173-201A-200 (1)(c)(iv). See ecology publication 06-10-038 for further information.

Table 602: WRIA 28 - Salmon-Washougal	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Burnt Bridge Creek: Upstream from the mouth (latitude 45.6752, longitude -122.6925).	Spawning /Rearing	Primary Contact	All	All	-
Duncan Creek and unnamed tributary just east of Duncan Creek: All waters north of highway 14 (latitude 45.6133, longitude -122.0549).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Green Leaf Creek and Hamilton Creek: All waters above the confluence (latitude 45.6416, longitude -121.9775).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Hardy Creek: Upstream of the lake inlet (latitude 45.6331, longitude -121.9969), including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Lawton Creek: Upstream from latitude 45.5707, longitude -122.2574, including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Salmon Creek: Upstream from latitude 45.7176, longitude -122.6958 (below confluence with Cougar Creek), including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Washougal River: Upstream from latitude 45.5883, longitude -122.3711, including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Woodward Creek: Upstream of highway 14 (latitude 45.6214, longitude -122.0297), including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)

Note for WRIA 28:

1. This WRIA contains waters requiring supplemental spawning and incubation protection for salmonid species per WAC 173-201A-200 (1)(c)(iv). See ecology publication 06-10-038 for further information.

Table 602: WRIA 29 - Wind-White Salmon	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Bear Creek (tributary to White Salmon River): Upstream from latitude 45.98290, longitude -121.52946, and below National Forest boundary.	Spawning /Rearing	Primary Contact	All	All	-
Buck Creek: Upstream from the mouth (latitude 46.0754, longitude -121.5667), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Carson Creek: Upstream from the mouth (latitude 45.7134, longitude -121.823).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Catherine Creek: Upstream from the mouth (latitude 45.7071, longitude -121.3582), including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Cave Creek: Upstream from the mouth (latitude 45.9886, longitude -121.4928), and below National Forest boundary.	Spawning /Rearing	Primary Contact	All	All	-
Gilmer Creek: Upstream from the mouth (latitude 45.8569, longitude -121.5085), including tributaries, except as noted otherwise.	Char Spawning /Rearing	Primary Contact	All	All	-
Gilmer Creek's unnamed tributary: Upstream from the mouth (latitude 45.8733, longitude -121.4587).	Spawning /Rearing	Primary Contact	All	All	-
Gotchen Creek: Upstream from the mouth (latitude 46.0013, longitude -121.5051), including tributaries, except those waters in or above the Gifford Pinchot National Forest.	Char Spawning /Rearing	Primary Contact	All	All	-

Table 602: WRIA 29 - Wind-White Salmon	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Gotchen Creek: Upstream from latitude 46.04409 longitude -121.51538 (in or above the Gifford Pinchot National Forest), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Green Canyon Creek: Upstream from the mouth (latitude 46.0489, longitude -121.5485), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Jewett Creek: Upstream from the mouth (latitude 45.7164, longitude -121.4773), including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Killowatt Canyon Creek: Below National Forest Boundary and unnamed creek at latitude 45.963, longitude -121.5154.	Spawning /Rearing	Primary Contact	All	All	-
Little White Salmon River: Upstream from the mouth (latitude 45.72077, longitude -121.64081), and downstream of National Forest boundary, including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Little White Salmon River (mouth at latitude 45.72077, longitude -121.64081): Waters in or above National Forest boundary, including tributaries.	Core Summer Habitat	Primary Contact	All	All	-
Major Creek: Upstream from the mouth (latitude 45.709, longitude -121.3515), including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Morrison Creek: Upstream from the mouth (latitude 46.0744, longitude -121.5351), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Rattlesnake Creek and unnamed tributary: All waters above the confluence (latitude 45.8471, longitude -121.4123), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Rock Creek: Upstream from the mouth (latitude 45.69020, longitude -121.88923) and downstream of Gifford Pinchot National Forest boundaries, including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Spring Creek: Upstream from the mouth (latitude 45.9908, longitude -121.5687), and below National Forest boundary.	Spawning /Rearing	Primary Contact	All	All	-
Trout Lake Creek: Upstream from the mouth (latitude 45.9948, longitude -121.5019), and below Trout Lake (latitude 46.0072, longitude -121.5455), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Trout Lake Creek: At and above Trout Lake (latitude 46.0072, longitude -121.5455), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
White Salmon River: Upstream from the mouth (latitude 45.7283, longitude -121.5219), and downstream of the National Forest boundary, including all natural tributaries (not otherwise designated char).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
White Salmon River (mouth at latitude 45.7283, longitude -121.5219): Occurring in or upstream of National Forest boundary, including all natural tributaries (not otherwise designated char).	Core Summer Habitat	Primary Contact	All	All	-

Table 602: WRIA 29 - Wind-White Salmon	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
White Salmon River drainage's unnamed tributaries: Waters originating in Section 13 T6N R10E; all portions occurring downstream of the Gifford Pinchot National Forest boundary.	Char Spawning /Rearing	Primary Contact	All	All	-
White Salmon River drainage's unnamed tributaries: Waters originating in Section 13 T6N R10E; all portions occurring upstream of the Gifford Pinchot National Forest boundary.	Char Spawning /Rearing	Primary Contact	All	All	-
White Salmon River and Cascade Creek: All waters above the confluence (latitude 46.1042, longitude -121.6081), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Wind River: Upstream from the mouth (latitude 45.718, longitude -121.7908) and downstream of Gifford Pinchot National Forest boundaries, including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Wind River (mouth at latitude 45.718, longitude -121.7908): Waters in or upstream of Gifford Pinchot National Forest, including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)

Note for WRIA 29:

1. This WRIA contains waters requiring supplemental spawning and incubation protection for salmonid species per WAC 173-201A-200 (1)(c)(iv). See ecology publication 06-10-038 for further information.

Table 602: WRIA 30 - Klickitat	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Clearwater Creek and Trappers Creek: All waters above the confluence (latitude 46.2788, longitude -121.3325), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Cougar Creek and Big Muddy Creek: All waters above the confluence (latitude 46.1294, longitude -121.2895), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Diamond Fork and Cuitin Creek: All waters above the confluence (latitude 46.451, longitude -121.1729), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Diamond Fork's unnamed tributaries: Upstream from latitude 46.4205, longitude -121.1562.	Char Spawning /Rearing	Primary Contact	All	All	-
Diamond Fork's unnamed tributaries (outlet of Maiden Springs): Upstream from the mouth (latitude 46.4353, longitude -121.16).	Char Spawning /Rearing	Primary Contact	All	All	-
Fish Lake Stream: Upstream from the mouth (latitude 46.2749, longitude -121.3126), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Frasier Creek and Outlet Creek: All waters above the confluence (latitude 45.9953, longitude -121.2569), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Klickitat River mainstem: Upstream from the mouth (latitude 45.6961, longitude -121.292) to the Little Klickitat River (latitude 45.845, longitude -121.0636).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Klickitat River from Little Klickitat River: Upstream from the confluence (latitude 45.845, longitude -121.0636) to Diamond Fork (latitude 46.374, longitude -121.1943).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Klickitat River: Upstream from the confluence with Diamond Fork (latitude 46.374, longitude -121.1943), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-

Table 602: WRIA 30 - Klickitat	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Little Klickitat River: Upstream from the confluence with Cozy Nook Creek (latitude 45.8567, longitude -120.7701), including tributaries.	Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Little Muddy Creek: Upstream from the mouth (latitude 46.2769, longitude -121.3386), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
McCreedy Creek: Upstream from the mouth (latitude 46.323, longitude -121.2527), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-

Note for WRIA 30:

1. This WRIA contains waters requiring supplemental spawning and incubation protection for salmonid species per WAC 173-201A-200 (1)(c)(iv). See ecology publication 06-10-038 for further information.

Table 602: WRIA 31 - Rock-Glade	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Squaw Creek and unnamed tributary: All waters above confluence (latitude 45.8761, longitude -120.4324).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Rock Creek and Quartz Creek: All waters above confluence (latitude 45.8834, longitude -120.5569).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)

Note for WRIA 31:

1. This WRIA contains waters requiring supplemental spawning and incubation protection for salmonid species per WAC 173-201A-200 (1)(c)(iv). See ecology publication 06-10-038 for further information.

Table 602: WRIA 32 - Walla Walla	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Blue Creek and tributaries: Waters above latitude 46.0581, longitude -118.0971.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Coppei Creek, North and South Forks: Upstream from the confluence (latitude 46.1906, longitude -118.1113), including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Dry Creek and tributaries: Upstream from the confluence with unnamed creek at latitude 46.1195, longitude -118.1375 (Seaman Rd).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Mill Creek: Upstream from the mouth (latitude 46.0383, longitude -118.4795) to 13th Street Bridge in Walla Walla (latitude 46.0666, longitude -118.3565). ¹	Rearing/ Migration Only	Primary Contact	All, Except Domestic Water	All	173-201A-200 (1)(c)(iv)
Mill Creek: Upstream from the 13th Street Bridge in Walla Walla (latitude 46.0666, longitude -118.3565) to diversion structure at confluence of Mill Creek and unnamed creek (latitude 46.0798, longitude -118.2541).	Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Mill Creek: Upstream from latitude 46.0798, longitude -118.2541 to headwaters, including tributaries (except where otherwise designated char).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Mill Creek and Railroad Canyon: All waters above the confluence (latitude 46.0066, longitude -118.1185) to the Oregon state line (latitude 46.00061, longitude -118.11525), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)

Table 602: WRIA 32 - Walla Walla	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Mill Creek: Waters within Washington that are above the city of Walla Walla Waterworks Dam (latitude 45.9896, longitude -118.0525) to headwaters, including tributaries. ²	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Touchet River: Upstream from latitude 46.3172, longitude -118.0000, including tributaries (not otherwise designated char).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Touchet River, North Fork, and Wolf Creek: All waters above the confluence (latitude 46.2922, longitude -117.9397), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Touchet River, South Fork, and unnamed tributary: All waters above the confluence (latitude 46.2297, longitude -117.9412), except those waters in or above the Umatilla National Forest, including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Touchet River, South Fork, and unnamed tributary: All waters above the confluence (latitude 46.2297, longitude -117.9412) that are in or above the Umatilla National Forest, including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Walla Walla River: Upstream from the mouth (latitude 46.0642, longitude -118.9152) to Lowden (Dry Creek at latitude 46.0506, longitude -118.5944).	Rearing/ Migration Only	Primary Contact	All, Except Domestic Water	All	-
Walla Walla River: From Lowden (Dry Creek at latitude 46.0506, longitude -118.5944) to Oregon border (latitude 46, longitude -118.3796). ³	Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Whiskey Creek and unnamed tributary system: All waters above confluence (latitude 46.2176, longitude -118.0661).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)

Notes for WRIA 32:

1. Dissolved oxygen concentration shall exceed 5.0 mg/L.
2. No waste discharge will be permitted for Mill Creek and tributaries in Washington from city of Walla Walla Waterworks Dam (latitude 45.9896, longitude -118.0525) to headwaters.
3. Temperature shall not exceed a 1-DMax of 20.0°C due to human activities. When natural conditions exceed a 1-DMax of 20.0°C, no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C; nor shall such temperature increases, at any time, exceed $t = 34/(T + 9)$.
4. This WRIA contains waters requiring supplemental spawning and incubation protection for salmonid species per WAC 173-201A-200 (1)(c)(iv). See ecology publication 06-10-038 for further information.

Table 602: WRIA 33 - Lower Snake	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Snake River: Upstream from the mouth (latitude 46.1983, longitude -119.0368) to Washington-Idaho-Oregon border (latitude 45.99599, longitude -116.91705). ¹	Spawning /Rearing	Primary Contact	All	All	-

Note for WRIA 33:

1. Below Clearwater River (latitude 46.42711, longitude -119.04021). Temperature shall not exceed a 1-DMax of 20.0°C due to human activities. When natural conditions exceed a 1-DMax of 20.0°C, no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C; nor shall such temperature increases, at any time, exceed $t = 34/(T + 9)$. Special condition - Special fish passage exemption as described in WAC 173-201A-200 (1)(f).

Table 602: WRIA 34 - Palouse	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Palouse River mainstem: Upstream from the mouth (latitude 46.5909, longitude -118.2153) to Palouse Falls (latitude 46.6635, longitude -118.2236).	Spawning /Rearing	Primary Contact	All	All	-

Table 602: WRIA 34 - Palouse	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Palouse River: Upstream from Palouse Falls (latitude 46.6635, longitude -118.2236) to south fork (Colfax, latitude 46.8898, longitude -117.3675).	Rearing/ Migration Only	Primary Contact	All, Except Domestic Water	All	-
Palouse River mainstem: Upstream from the confluence with south fork (Colfax, latitude 46.8898, longitude -117.3675) to Idaho border (latitude 46.9124, longitude -117.0395). ¹	Spawning /Rearing	Primary Contact	All	All	-

Note for WRIA 34:

1. Temperature shall not exceed a 1-DMax of 20.0°C due to human activities. When natural conditions exceed a 1-DMax of 20.0°C, no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C; nor shall such temperature increases, at any time, exceed $t = 34/(T + 9)$.

Table 602: WRIA 35 - Middle Snake	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
All streams flowing into Oregon: From North Fork Wenaha River (upstream from latitude 46.00025, longitude -117.85942) east to, and including, Fairview Creek (upstream from latitude 45.999, longitude -117.60893).	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Asotin River and Charley Creek: Upstream from the confluence (latitude 46.2887, longitude -117.2785) to the headwaters, including tributaries (not otherwise designated char).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Asotin River, North Fork: Upstream of the confluence with Lick Creek (latitude 46.2621, longitude -117.2969), except those waters in or above the Umatilla National Forest, including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Asotin River, North Fork: Upstream from the confluence with Lick Creek (latitude 46.2621, longitude -117.2969) and that are in or above the Umatilla National Forest, including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Charley Creek and unnamed tributary: All waters above the confluence (latitude 46.2846, longitude -117.321), except those waters in or above the Umatilla National Forest, including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Charley Creek and unnamed tributary: All waters above the confluence (latitude 46.2846, longitude -117.321) that are in or above the Umatilla National Forest, including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Cottonwood Creek and unnamed tributary: All waters above the confluence (latitude 46.0677, longitude -117.3011).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Crooked Creek: Upstream from the Oregon Border (latitude 46, longitude -117.5553) to headwaters, including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Cummings Creek: Upstream from the mouth (latitude 46.3326, longitude -117.675) except those waters in or above the Umatilla National Forest, including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Cummings Creek (mouth at latitude 46.3326, longitude -117.675): Waters that are in or above the Umatilla National Forest, including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)

Table 602: WRIA 35 - Middle Snake	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
George Creek: Upstream from (latitude 46.1676, longitude -117.2543) and including Coombs Canyon, including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
George Creek and unnamed tributary: All waters above confluence (latitude 46.2293, longitude -117.1879) not otherwise designated Char.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Grande Ronde River: Upstream from the mouth (latitude 46.08, longitude -116.9802) to the Oregon border (latitude 46, longitude 117.3798). ¹	Spawning /Rearing	Primary Contact	All	All	-
Grouse Creek: Upstream from the Oregon border (latitude 46, longitude -117.413), including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Grub Canyon: Upstream from the mouth (latitude 46.2472, longitude -117.6795), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Hixon Canyon: Upstream from the mouth (latitude 46.2397, longitude -117.6924), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Little Tucannon River: Upstream from the mouth (latitude 46.2283, longitude -117.7226), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Menatchee Creek and West Fork Menatchee Creek: All waters above the confluence (latitude 46.0457, longitude -117.386), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Pataha Creek and Dry Pataha Creek: All waters above the confluence (latitude 46.3611, longitude -117.5562), except those waters in or above the Umatilla National Forest, including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Pataha Creek and Dry Pataha Creek: All waters above the confluence (latitude 46.3611, longitude -117.5562) that are in or above the Umatilla National Forest, including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Snake River: From mouth (latitude 45.99900, longitude -117.60893) to Washington-Idaho-Oregon border (latitude 45.99599, longitude -116.91705). ²	Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Tenmile Creek: All waters above confluence with unnamed creek (latitude 46.2154, longitude -117.0388).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Tucannon River: Upstream from latitude 46.4592, longitude -117.8461 to Panjab Creek (latitude 46.2046, longitude -117.7061), including tributaries (except where designated char).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Tucannon River mainstem: Upstream from the confluence with Little Tucannon River (latitude 46.2284, longitude -117.7223) to the confluence with Panjab Creek (latitude 46.2046, longitude -117.7061).	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Tucannon River and Panjab Creek: All waters above the confluence (latitude 46.2046, longitude -117.7061), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Tucannon River's unnamed tributaries (South of Marengo): All waters in Sect. 1 T10N R40E and in Sect. 35 T11N R40E above their forks.	Char Spawning /Rearing	Primary Contact	All	All	-

Table 602: WRIA 35 - Middle Snake	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Tumalum Creek and unnamed tributary: All waters above the confluence (latitude 46.3592, longitude -117.6498), except those waters in or above the Umatilla National Forest including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Tumalum Creek and unnamed tributary: All waters above the confluence (latitude 46.3592, longitude -117.6498) that are in or above the Umatilla National Forest including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Willow Creek and unnamed tributary: All waters above the confluence (latitude 46.4181, longitude -117.8328) including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-

Notes for WRIA 35:

1. Temperature shall not exceed a 1-DMax of 20.0°C due to human activities. When natural conditions exceed a 1-DMax of 20.0°C, no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C; nor shall such temperature increases, at any time, exceed $t = 34/(T + 9)$.
2. The following two notes apply:
 - a. Below Clearwater River (latitude 46.4269, longitude -117.0372). Temperature shall not exceed a 1-DMax of 20.0°C due to human activities. When natural conditions exceed a 1-DMax of 20.0°C, no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C; nor shall such temperature increases, at any time, exceed $t = 34/(T + 9)$. Special condition - Special fish passage exemption as described in WAC 173-201A-200 (1)(f).
 - b. Above Clearwater River (latitude 46.4269, longitude -117.0372). Temperature shall not exceed a 1-DMax of 20.0°C due to human activities. When natural conditions exceed a 1-DMax of 20.0°C, no temperature increases will be allowed which will raise the receiving water temperature by greater than 0.3°C; nor shall such temperature increases, at any time, exceed 0.3°C due to any single source or 1.1°C due to all such activities combined.
3. This WRIA contains waters requiring supplemental spawning and incubation protection for salmonid species per WAC 173-201A-200 (1)(c)(iv). See ecology publication 06-10-038 for further information.

Table 602: WRIA 36 - Esquatzel Coulee	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
There are no specific waterbody entries for this WRIA.	-	-	-	-	-

Table 602: WRIA 37 - Lower Yakima	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Ahtanum Creek North Fork's unnamed tributaries: Upstream from the mouth (latitude 46.5458, longitude -120.8869).	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Ahtanum Creek North Fork's unnamed tributaries: Upstream from the mouth (latitude 46.5395, longitude -120.9864).	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Ahtanum Creek: Between confluence with South Fork (latitude 46.5232, longitude -120.8548) and confluence of North and Middle Forks (latitude 46.5177, longitude -121.0152), including tributaries (except where designated char).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Ahtanum Creek, North Fork, and Middle Fork Ahtanum Creek: All waters above the confluence (latitude 46.5177, longitude -121.0152), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Ahtanum Creek, South Fork: Upstream from the mouth (latitude 46.5232, longitude -120.8548), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Carpenter Gulch: Upstream from the mouth (latitude 46.5432, longitude -120.9671), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Foundation Creek: Upstream from the mouth (latitude 45.5321, longitude -120.9973), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)

Table 602: WRIA 37 - Lower Yakima	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Nasty Creek: Upstream from the mouth (latitude 46.5641, longitude -120.918), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Sulphur Creek: Upstream from the mouth (latitude 46.3815, longitude -119.9584).	Rearing/ Migration Only	Primary Contact	All, Except Domestic Water	All	-
Yakima River: Upstream from the mouth (latitude 46.248, longitude -119.2422) to Cle Elum River (latitude 47.17683, longitude -120.99756) except where specifically designated otherwise in Table 602. ¹	Spawning /Rearing	Primary Contact	All	All	-

Notes for WRIA 37:

- Temperature shall not exceed a 1-DMax of 21.0°C due to human activities. When natural conditions exceed a 1-DMax of 21.0°C, no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C; nor shall such temperature increases, at any time, exceed $t = 34/(T + 9)$.
- This WRIA contains waters requiring supplemental spawning and incubation protection for salmonid species per WAC 173-201A-200 (1)(c)(iv). See ecology publication 06-10-038 for further information.

Table 602: WRIA 38 - Naches	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
American River: Upstream from the mouth (latitude 46.9756, longitude -121.1574), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Barton Creek: Upstream from the mouth (latitude 46.8725, longitude -121.2934), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Bumping Lake's unnamed tributaries: Upstream from the mouth (latitude 46.8464, longitude -121.3106).	Char Spawning /Rearing	Primary Contact	All	All	-
Bumping River's unnamed tributaries: Upstream from latitude 46.9316, longitude -121.2078 (outlet of Flat Iron Lake).	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Bumping River: Upstream from the mouth (latitude 46.9853, longitude -121.0931) to the upper end of Bumping Lake (latitude 46.8394, longitude -121.3662), including tributaries (except where designated char).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Bumping River: Upstream of Bumping Lake (latitude 46.8394, longitude -121.3662), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Cedar Creek: Upstream from the mouth (latitude 46.8411, longitude -121.3644), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Clear Creek: Upstream from the mouth (latitude 46.6352, longitude -121.2856), including tributaries (including Clear Lake).	Char Spawning /Rearing	Primary Contact	All	All	-
Crow Creek: Upstream from the mouth (latitude 47.0153, longitude -121.1341), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Deep Creek: Upstream from the mouth (latitude 46.8436, longitude -121.3175), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Goat Creek: Upstream from the mouth (latitude 46.9173, longitude -121.2243), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)

Table 602: WRIA 38 - Naches	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Granite Creek: Upstream from the mouth (latitude 46.8414, longitude -121.3253), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Indian Creek: Upstream from the mouth (latitude 46.6396, longitude -121.2487), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Little Naches River and Bear Creek: All waters above the confluence (latitude 47.0732, longitude -121.2413), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Little Naches River, South Fork: Upstream from the mouth (latitude 47.0659, longitude -121.2265), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Naches River: Upstream from latitude 46.7641, longitude -120.8284 (just upstream of Cougar Canyon) to the Snoqualmie National Forest boundary (latitude 46.9007, longitude -121.0135), including tributaries (except where designated char).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Naches River: Upstream from the Snoqualmie National Forest boundary (latitude 46.9007, longitude -121.0135) to headwaters (except where designated char).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Pileup Creek: Upstream from the mouth (latitude 47.0449, longitude -121.1829), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Quartz Creek: Upstream from the mouth (latitude 47.0169, longitude -121.1351), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Rattlesnake Creek: All waters above the confluence with North Fork Rattlesnake Creek (latitude 46.8096, longitude -121.0679).	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Rattlesnake Creek, North Fork: All waters above latitude 46.8107, longitude 121.0694 (from and including the unnamed tributary just above confluence with mainstem).	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Sand Creek: Upstream from the mouth (latitude 47.0432, longitude -121.1923), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Sunrise Creek: Upstream from the mouth (latitude 46.9045, longitude -121.2431), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Tieton River: Upstream from the mouth (latitude 46.7463, longitude -120.7871), including tributaries (except where otherwise designated).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Tieton River, North Fork: Upstream from the confluence with Clear Lake (latitude 46.6278, longitude -121.2711), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Tieton River, South Fork: Upstream from the mouth (latitude 46.6261, longitude -121.133), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)

Note for WRIA 38:

1. This WRIA contains waters requiring supplemental spawning and incubation protection for salmonid species per WAC 173-201A-200 (1)(c)(iv). See ecology publication 06-10-038 for further information.

Table 602: WRIA 39 - Upper Yakima	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Cle Elum River: Upstream from the mouth (latitude 47.1771, longitude -120.9982) to latitude 47.3805 longitude -121.0979 (above Little Salmon la Sac Creek).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Cle Elum River: Upstream from the confluence with unnamed tributary (latitude 47.3807, longitude -121.0975) to headwaters, including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Indian Creek: Upstream from the mouth (latitude 47.2994, longitude -120.8581) and downstream of Wenatchee National Forest boundary, including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Indian Creek (mouth at latitude 47.2994, longitude -120.8581): Waters in or above the National Forest boundary, including tributaries.	Core Summer Habitat	Primary Contact	All	All	-
Jack Creek: Upstream from the mouth (latitude 47.3172, longitude -120.8561) and downstream of Wenatchee National Forest boundary, including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Jack Creek (mouth at latitude 47.3172, longitude -120.8561): Waters in or above National Forest boundary, including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Little Kachess Lake: Upstream from the narrowest point dividing Kachess Lake from Little Kachess Lake (latitude 47.3542, longitude -121.2378), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Manastash Creek mainstem: Upstream from the mouth (latitude 46.9941, longitude -120.5814) to confluence of North and South Forks (latitude 46.9657, longitude -120.7359).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Manastash Creek, tributaries to mainstem: Between the mouth (latitude 46.9941, longitude -120.5814) and the confluence of North and South Forks (latitude 46.9657, longitude -120.7359).	Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Manastash Creek: All waters above the confluence of the North and South Forks (latitude 46.9657, longitude -120.7359) and downstream of the Wenatchee National Forest boundary.	Core Summer Habitat	Primary Contact	All	All	-
Manastash Creek: All waters above the confluence of the North and South Forks (latitude 46.9657, longitude -120.7359) that are in or above the Wenatchee National Forest.	Core Summer Habitat	Primary Contact	All	All	-
Swauk Creek mainstem: Upstream from the mouth (latitude 47.1239, longitude -120.7381) to confluence with First Creek (latitude 47.2081, longitude -120.7007).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Swauk Creek: Upstream from the confluence with First Creek (latitude 47.2081, longitude -120.7007) to Wenatchee National Forest, including tributaries.	Core Summer Habitat	Primary Contact	All	All	-
Taneum Creek mainstem: Upstream from the mouth (latitude 47.0921, longitude -120.7092) to Wenatchee National Forest boundary (latitude 47.1134, longitude -120.8997).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)

Table 602: WRIA 39 - Upper Yakima	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Taneum Creek, tributaries to mainstem: Between the mouth (latitude 47.0921, longitude -120.7092) and Wenatchee National Forest boundary (latitude 47.1134, longitude -120.8997).	Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Teanaway River mainstem: Upstream from the mouth (latitude 47.1672, longitude -120.835) to West Fork Teanaway River (latitude 47.2567, longitude -120.8981).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Teanaway River, tributaries to mainstem: Between the mouth (latitude 47.1672, longitude -120.835) and West Fork Teanaway River (latitude 47.2567, longitude -120.8981).	Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Teanaway River, West Fork and Middle Fork: Upstream from the mouth (latitude 47.2567, longitude -120.8981) and downstream of the Wenatchee National Forest, including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Teanaway River, West Fork and Middle Fork (confluence at latitude 47.2567, longitude -120.8981): Upstream of the Wenatchee National Forest, including tributaries.	Core Summer Habitat	Primary Contact	All	All	-
Teanaway River, North Fork: Upstream from mouth (latitude 47.2514, longitude -120.8785) to Jungle Creek (latitude 47.3328, longitude -120.8564) and downstream of the Wenatchee National Forest boundary, including tributaries (except where designated otherwise).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Teanaway River, North Fork: Upstream from the mouth (latitude 47.2514, longitude -120.8785) to Jungle Creek (latitude 47.3328, longitude -120.8564) and in or above the Wenatchee National Forest boundary, including tributaries (except where designated otherwise).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Teanaway River, North Fork, and Jungle Creek: Upstream from the confluence (latitude 47.3328, longitude -120.8564), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Yakima River mainstem: Upstream from the mouth (latitude 46.25010, longitude -119.24668) to the confluence with the Cle Elum River (latitude 47.1768, longitude -120.9976) except where specifically designated otherwise in Table 602. ¹	Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Yakima River: Upstream from the confluence with the Cle Elum River (latitude 47.1768, longitude -120.9976) to headwaters, including tributaries (except where designated otherwise).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Yakima River: Upstream from the confluence with, but not including, Cedar Creek (latitude 47.2892, longitude -121.2947) including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)

Notes for WRIA 39:

- Temperature shall not exceed a 1-DMax of 21.0°C due to human activities. When natural conditions exceed a 1-DMax of 21.0°C, no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C; nor shall such temperature increases, at any time, exceed $t = 34/(T + 9)$.
- This WRIA contains waters requiring supplemental spawning and incubation protection for salmonid species per WAC 173-201A-200 (1)(c)(iv). See ecology publication 06-10-038 for further information.

Table 602: WRIA 40 - Alkaki-Squilchuck	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
There are no specific water body entries for this WRIA.	-	-	-	-	-
Table 602: WRIA 41 - Lower Crab	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Crab Creek: Upstream from the mouth (latitude 47.1452, longitude -119.2655), including tributaries.	Rearing/Migration Only	Primary Contact	All, Except Domestic Water	All	-
Table 602: WRIA 42 - Grand Coulee	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Crab Creek: Upstream from the mouth (latitude 47.1452, longitude -119.2655), including tributaries.	Rearing/Migration Only	Primary Contact	All, Except Domestic Water	All	-
Table 602: WRIA 43 - Upper Crab-Wilson	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Crab Creek: Upstream from the mouth (latitude 47.1452, longitude -119.2655), including tributaries.	Rearing/Migration Only	Primary Contact	All, Except Domestic Water	All	-
Table 602: WRIA 44 - Moses Coulee	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
There are no specific waterbody entries for this WRIA.	-	-	-	-	-
Table 602: WRIA 45 - Wenatchee	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Chiwaukum Creek: Upstream from the confluence with Skinney Creek (latitude 47.6865, longitude -120.7351) to headwaters, including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Chiwawa River: Upstream from the mouth (latitude 47.7883, longitude -120.6594) to Chikamin Creek (latitude 47.9036, longitude -120.7307), including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Chiwawa River and Chikamin Creek: Upstream from the confluence (latitude 47.9036, longitude -120.7307), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Chumstick Creek: Upstream from the mouth (latitude 47.6026, longitude -120.6444) and downstream of the National Forest boundary, including tributaries (not otherwise designated char).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Chumstick Creek (mouth at latitude 47.6026, longitude -120.6444): In or above the National Forest boundary, including tributaries (not otherwise designated char).	Core Summer Habitat	Primary Contact	All	All	-
Dry Creek and Chumstick Creek: All waters above the confluence (latitude 47.7151, longitude -120.5734), except those waters in or above the Wenatchee National Forest, including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-

Table 602: WRIA 45 - Wenatchee	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Dry Creek and Chumstick Creek: All waters above the confluence (latitude 47.7151, longitude -120.5734) that are in or above the Wenatchee National Forest, including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Eagle Creek and unnamed tributary: All waters above the confluence (latitude 47.6544, longitude -120.5165) except those waters in or above the Wenatchee National Forest, including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Eagle Creek and unnamed tributary: All waters above the confluence (latitude 47.6544, longitude -120.5165) that are in or above the Wenatchee National Forest, including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Icicle Creek: Upstream from the mouth (latitude 47.5799, longitude -120.6664) to the National Forest boundary, including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Icicle Creek: Upstream from the National Forest boundary to confluence with Jack Creek (latitude 47.6081, longitude -120.8991), including tributaries.	Core Summer Habitat	Primary Contact	All	All	-
Icicle Creek and Jack Creek: Upstream from the confluence (latitude 47.6081, longitude -120.8991), including all tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Ingalls Creek: Upstream from the mouth (latitude 47.4635, longitude -120.6611), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Mission Creek: Upstream from latitude 47.4496, longitude -120.4944 to headwaters and downstream of the National Forest boundary, including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Mission Creek: Upstream from latitude 47.4496, longitude -120.4944 to headwaters and in, or above, the National Forest boundary, including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Peshastin Creek: Upstream from the National Forest boundary (latitude 47.4898, longitude -120.6502) to headwaters, including tributaries (except where designated char).	Core Summer Habitat	Primary Contact	All	All, Except Aesthetics	173-201A-200 (1)(c)(iv)
Peshastin Creek: Upstream from the confluence with Mill Creek (latitude 47.5105, longitude -120.6319) to the National Forest boundary, including tributaries.	Core Summer Habitat	Primary Contact	All	All, Except Aesthetics	173-201A-200 (1)(c)(iv)
Second Creek and unnamed tributary: All waters above the confluence (latitude 47.7384, longitude -120.5946), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Van Creek and unnamed tributary: All waters above the confluence (latitude 47.6719, longitude -120.5385), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Wenatchee River mainstem: Between Peshastin Creek (latitude 47.5573, longitude -120.5741) and the boundary of the Wenatchee National Forest (latitude 47.5851, longitude -120.6902).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Wenatchee River: From Wenatchee National Forest boundary (latitude 47.5851, longitude -120.6902) to Chiwawa River (latitude 47.7883, longitude -120.6594), including tributaries (except where designated otherwise).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)

Table 602: WRIA 45 - Wenatchee	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Wenatchee River: Upstream from the confluence with Chiwawa River (latitude 47.7883, longitude -120.6594), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)

Note for WRIA 45:

- This WRIA contains waters requiring supplemental spawning and incubation protection for salmonid species per WAC 173-201A-200 (1)(c)(iv). See ecology publication 06-10-038 for further information.

Table 602: WRIA 46 - Entiat	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Brennegan Creek and unnamed tributary: All waters above the confluence (latitude 47.9096, longitude -120.4199), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Entiat River: Occurring below the National Forest boundary from, and including, the Mad River (latitude 47.7358, longitude -120.3633) to Wenatchee National Forest boundary on the mainstem Entiat River (latitude 47.84815, longitude -120.42051), including tributaries.	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Entiat River: Upstream from the unnamed creek at latitude 47.9135, longitude -120.4942 (below Fox Creek), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Entiat River's unnamed tributaries: Upstream of latitude 47.9107, longitude -121.5012 (below Fox Creek).	Char Spawning /Rearing	Primary Contact	All	All	-
Gray Canyon, North Fork, and South Fork Gray Canyon: All waters above the confluence (latitude 47.8133, longitude -120.399), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Hornet Creek: Upstream from the mouth (latitude 47.771, longitude -120.4332), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Mad River: Upstream from latitude 47.8015 longitude -120.4920 (below Young Creek), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Mud Creek and Switchback Canyon: All waters above the confluence (latitude 47.7802, longitude -120.3073), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Potato Creek and Gene Creek: All waters above the confluence (latitude 47.8139, longitude -120.3424).	Char Spawning /Rearing	Primary Contact	All	All	-
Preston Creek and South Fork Preston Creek: All waters above the confluence (latitude 47.8835, longitude -120.4241), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Stormy Creek and unnamed tributary: All waters above the confluence (latitude 47.8383, longitude -120.3877), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Tillicum Creek and Indian Creek: All waters above the confluence (latitude 47.7291, longitude -120.4322), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-

Note for WRIA 46:

- This WRIA contains waters requiring supplemental spawning and incubation protection for salmonid species per WAC 173-201A-200 (1)(c)(iv). See ecology publication 06-10-038 for further information.

Table 602: WRIA 47 - Chelan	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Stehekin River: Upstream from the mouth (latitude 48.3202, longitude -120.6791).	Core Summer Habitat	Primary Contact	All	All	-
Chelan River: Downstream from the Lake Chelan Dam outlet (latitude 47.8338, longitude -120.0112) to the fish passage barrier at the end of the canyon (latitude 47.8117, longitude -119.9848). ^{1, 4}	<u>Migration in Naturally Limited Waters</u> ²	<u>Primary Contact</u>	<u>All</u>	<u>All</u>	<u>173-201A-440 (9)</u>
Chelan River: From the fish passage barrier at the end of the canyon (latitude 47.8117, longitude -119.9848) to the confluence with the Columbia River (latitude 47.8044, longitude -119.9842). ^{3, 4}	<u>Salmonid Spawning, Rearing, and Migration in Naturally Limited Waters</u>	<u>Primary Contact</u>	<u>All</u>	<u>All</u>	<u>173-201A-440 (9)</u>

Notes for WRIA 47:

1. The temperature criterion is 17.5°C as a 7-DADMax. When water temperature is greater than 17.5°C as a daily maximum at the end of the canyon (compliance point), the temperature within the water body segment may not exceed a 7-DADMax increase of 3.75°C above temperature measured at the dam outlet. The dissolved oxygen criteria are 8.0 mg/L or 90% saturation. The 7-DADMax temperature increase and dissolved oxygen criteria are not to be exceeded at a frequency of more than once every ten years on average.
2. Migration is generally limited to downstream.
3. The temperature criterion is 17.5°C as a 7-DADMax. When water temperature is greater than 17.5°C as a daily maximum above the confluence with powerhouse channel (compliance point), the temperature within the water body segment may not exceed a 7-DADMax increase of 1.25°C above temperature measured at the end of canyon. The dissolved oxygen criteria are 8.0 mg/L or 95% saturation. The 7-DADMax temperature increase and dissolved oxygen criteria are not to be exceeded at a frequency of more than once every ten years on average.
4. No anthropogenic heat source inputs are allowed downstream of the Lake Chelan Dam outlet to the Chelan River confluence with the Columbia River.

Table 602: WRIA 48 - Methow	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Bear Creek: Upstream from the mouth (latitude 48.4484, longitude -120.161) to the headwaters and in or above the National Forest boundary, including tributaries.	Core Summer Habitat	Primary Contact	All	All	-
Bear Creek: Upstream from the mouth (latitude 48.4484, longitude -120.161) to the headwaters and downstream of the National Forest boundary, including tributaries.	Core Summer Habitat	Primary Contact	All	All	-
Beaver Creek and South Fork Beaver Creek: All waters above the confluence (latitude 48.435, longitude -120.0215), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Big Hidden Lake and outlet stream to the East Fork Pasayten River: Upstream from the mouth (latitude 48.9375, longitude -120.509), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Boulder Creek and Pebble Creek: All waters above the confluence (latitude 48.5878, longitude -120.1069), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Buttermilk Creek: Upstream from the mouth (latitude 48.3629, longitude -120.3392), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Chewuch River: Upstream from the mouth (latitude 48.4753, longitude -120.1808) to headwaters, including tributaries (except where designated otherwise).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Chewuch River: Upstream from the confluence with Buck Creek (latitude 48.7572, longitude -120.1317), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)

Table 602: WRIA 48 - Methow	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Eagle Creek: Upstream from the mouth (latitude 48.359, longitude -120.3907), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Early Winters Creek: Upstream from the mouth (latitude 48.6013, longitude -120.4389) to headwaters, including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Eureka Creek: Upstream from the mouth (latitude 48.7004, longitude -120.4921), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Goat Creek: Upstream from the confluence with Roundup Creek (latitude 48.6619, longitude -120.3282) to headwaters, including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Gold Creek: Upstream from the mouth (latitude 48.1879, longitude -120.0953), except those waters in or above the Okanogan National Forest, including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Gold Creek: Upstream from the mouth (latitude 48.1879, longitude -120.0953) and in, or above, the Okanogan National Forest, including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Lake Creek: Upstream from the mouth (latitude 48.7513, longitude -120.1371), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Libby Creek and Hornel Draw: All waters above the confluence (latitude 48.2564, longitude -120.1879), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Little Bridge Creek: Upstream of the mouth (latitude 48.379, longitude -120.286), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Lost River Gorge: Upstream from the confluence with Sunset Creek (latitude 48.728, longitude -120.4518), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Methow River: Upstream from the mouth (latitude 48.0505, longitude -119.9025) to the confluence with Twisp River (latitude 48.368, longitude -120.1188).	Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Methow River: Upstream from the confluence with Twisp River (latitude 48.368, longitude -120.1188) to Chewuch River (latitude 48.475, longitude -120.1812).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Methow River: Upstream from the confluence with Chewuch River (latitude 48.475, longitude -120.1812) to headwaters, including tributaries (except where designated char).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Methow River, West Fork: Upstream from the confluence with, and including, Robinson Creek (latitude 48.6595, longitude -120.5389) to headwaters, including tributaries (except unnamed tributary above mouth at latitude 48.6591, longitude -120.5493).	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Pipestone Canyon Creek: Upstream from the mouth (latitude 48.397, longitude -120.058) and below Campbell Lake (latitude 48.4395, longitude -120.0656), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Pipestone Canyon Creek: Upstream from, and including, Campbell Lake (latitude 48.4395, longitude -120.0656), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-

Table 602: WRIA 48 - Methow	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Smith Canyon Creek and Elderberry Canyon: All waters above the confluence (latitude 48.2618, longitude -120.1682), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Twisp River: Upstream from the mouth (latitude 48.368, longitude -120.1188) to War Creek (latitude 48.3612, longitude -120.396).	Core Summer Habitat	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Twisp River and War Creek: All waters above the confluence (latitude 48.3612, longitude -120.396), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)
Wolf Creek and unnamed tributary: Upstream from the confluence (latitude 48.4848, longitude -120.3178) to headwaters, including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)

Note for WRIA 48:

- This WRIA contains waters requiring supplemental spawning and incubation protection for salmonid species per WAC 173-201A-200 (1)(c)(iv). See ecology publication 06-10-038 for further information.

Table 602: WRIA 49 - Okanogan	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Okanogan River: Upstream from the mouth (latitude 48.1011, longitude -119.7207).	Spawning /Rearing	Primary Contact	All	All	173-201A-200 (1)(c)(iv)

Note for WRIA 49:

- This WRIA contains waters requiring supplemental spawning and incubation protection for salmonid species per WAC 173-201A-200 (1)(c)(iv). See ecology publication 06-10-038 for further information.

Table 602: WRIA 50 - Foster	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
There are no specific waterbody entries for this WRIA.	-	-	-	-	-

Table 602: WRIA 51 - Nespelem	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
There are no specific waterbody entries for this WRIA.	-	-	-	-	-

Table 602: WRIA 52 - Sanpoil	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
There are no specific waterbody entries for this WRIA.	-	-	-	-	-

Table 602: WRIA 53 - Lower Lake Roosevelt	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
There are no specific waterbody entries for this WRIA.	-	-	-	-	-

Table 602: WRIA 54 - Lower Spokane	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Spokane River: Upstream from the mouth (latitude 47.8937, longitude -118.3345) to Long Lake Dam (latitude 47.837, longitude -117.8394). ¹	Spawning /Rearing	Primary Contact	All	All	-

Table 602: WRIA 54 - Lower Spokane	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Spokane River: Upstream from Long Lake Dam (latitude 47.837, longitude -117.8394) to Nine Mile Bridge (latitude 47.777, longitude -117.5449). ²	Core Summer Habitat	Primary Contact	All	All	-
Spokane River: Upstream from Nine Mile Bridge (latitude 47.777, longitude -117.5449) to the Idaho border (latitude 47.69747, longitude -117.04185). ³	Spawning /Rearing	Primary Contact	All	All	-

Notes for WRIA 54:

- Temperature shall not exceed a 1-DMax of 20.0°C due to human activities. When natural conditions exceed a 1-DMax of 20.0°C, no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C; nor shall such temperature increases, at any time, exceed $t = 34/(T + 9)$.
- The average euphotic zone concentration of total phosphorus (as P) shall not exceed 25µg/L during the period of June 1st to October 31st.
 - Temperature shall not exceed a 1-DMax of 20.0°C, due to human activities. When natural conditions exceed a 1-DMax of 20.0°C, no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C; nor shall such temperature increases, at any time, exceed $t = 34/(T + 9)$.
- Temperature shall not exceed a 1-DMax of 20.0°C due to human activities. When natural conditions exceed a 1-DMax of 20.0°C no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C; nor shall such temperature increases, at any time exceed $t = 34/(T + 9)$.

Table 602: WRIA 55 - Little Spokane	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
There are no specific waterbody entries for this WRIA.	-	-	-	-	-

Table 602: WRIA 56 - Hangman	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
There are no specific waterbody entries for this WRIA.	-	-	-	-	-

Table 602: WRIA 57 - Middle Spokane	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Lake Creek: Upstream from the Idaho border (latitude 47.5603, longitude -117.0409), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Spokane River: Upstream from Nine Mile Bridge (latitude 47.777, longitude -117.5449) to the Idaho border (latitude 47.69747, longitude -117.04185). ¹	Spawning /Rearing	Primary Contact	All	All	-

Note for WRIA 57:

- Temperature shall not exceed a 1-DMax of 20.0°C due to human activities. When natural conditions exceed a 1-DMax of 20.0°C no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C; nor shall such temperature increases, at any time exceed $t = 34/(T + 9)$.

Table 602: WRIA 58 - Middle Lake Roosevelt	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
There are no specific waterbody entries for this WRIA.	-	-	-	-	-

Table 602: WRIA 59 - Colville	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Colville River: Upstream from the mouth (latitude 48.5738, longitude -118.1115).	Spawning /Rearing	Primary Contact	All	All	-

Table 602: WRIA 60 - Kettle	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
There are no specific waterbody entries for this WRIA.	-	-	-	-	-
Table 602: WRIA 61 - Upper Lake Roosevelt	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
There are no specific waterbody entries for this WRIA.	-	-	-	-	-
Table 602: WRIA 62 - Pend Oreille	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
All streams flowing into Idaho: From Bath Creek (latitude 48.5866, longitude 117.0346) to the Canadian border (latitude 49.000, longitude -117.0308).	Char Spawning /Rearing	Primary Contact	All	All	-
Calispell Creek: Upstream from the confluence with Small Creek (latitude 48.3205, longitude -117.3081) to Calispell Lake (latitude 48.2902, longitude -117.3212), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Calispell Lake: Upstream from (latitude 48.2902, longitude -117.3212), ((including)) including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Cedar Creek: Upstream from the mouth (latitude 48.7432, longitude -117.4176) to latitude 48.7502, longitude -117.4346, in or above Colville National Forest boundary, including tributaries.	Core Summer Habitat	Primary Contact	All	All	-
Cedar Creek: Upstream from the mouth (latitude 48.7432, longitude -117.4176) to latitude 48.7502, longitude -117.4346, and downstream of the Colville National Forest, including tributaries.	Core Summer Habitat	Primary Contact	All	All	-
Cedar Creek: Upstream from latitude 48.7502, longitude -117.4346 to headwaters, and in the Colville National Forest, including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Cedar Creek: Upstream from latitude 48.7502, longitude -117.4346 to headwaters, and outside the Colville National Forest, including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Harvey Creek (also called Outlet Creek) and Paupac Creek: All waters above the confluence (latitude 48.7708, longitude -117.2978), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Indian Creek: Upstream from the mouth (latitude 48.2445, longitude -117.1515) to headwaters.	Char Spawning /Rearing	Primary Contact	All	All	-
Le Clerc Creek, East Branch, and West Branch Le Clerc Creek: All waters above the confluence (latitude 48.5337, longitude -117.2827), except those waters in or above the Colville National Forest, including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Le Clerc Creek, East Branch, and West Branch Le Clerc Creek: All waters above the confluence (latitude 48.5337, longitude -117.2827) that are in or above the Colville National Forest, including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-

Table 602: WRIA 62 - Pend Oreille	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Le Clerc Creek: Upstream from the mouth (latitude 48.5189, longitude -117.2821) to the confluence with West Branch Le Clerc Creek (latitude 48.5337, longitude -117.2827), including tributaries.	Core Summer Habitat	Primary Contact	All	All	-
Mill Creek: From mouth (latitude 48.4899, longitude -117.2645) to headwaters, including tributaries.	Core Summer Habitat	Primary Contact	All	All	-
Pend Oreille River: From Canadian border (latitude 49.000, longitude -117.3534) to Idaho border (latitude 48.1998, longitude -117.0389). ¹	Spawning /Rearing	Primary Contact	All	All	-
Slate Creek: From mouth (latitude 48.924, longitude -117.3292) to headwaters, including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Small Creek: From mouth (latitude 48.3206, longitude -117.3087) to the National Forest (latitude 48.8462, longitude -117.2884), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Small Creek: In or above the National Forest (latitude 48.32680, longitude -117.39423), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
South Salmo River: Upstream from latitude 48.9990, longitude -117.1365, including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Sullivan Creek: Upstream of confluence with Harvey Creek (latitude 48.8462, longitude -117.2884) to headwaters, including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Tacoma Creek, South Fork: Upstream of confluence with Tacoma Creek (latitude 48.3938, longitude -117.3238) and downstream of the Colville National Forest boundary (latitude 48.3989, longitude -117.3487), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
Tacoma Creek, South Fork: Upstream of the Colville National Forest boundary (latitude 48.3989, longitude -117.3487), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-

Note for WRIA 62:

1. Temperature shall not exceed a 1-DMax of 20.0°C due to human activities. When natural conditions exceed a 1-DMax of 20.0°C, no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C; nor shall such temperature increases, at any time, exceed $t = 34/(T + 9)$.

[Statutory Authority: RCW 90.48.035 and 40 C.F.R. 131.20. WSR 19-04-007 (Order 16-07), § 173-201A-602, filed 1/23/19, effective 2/23/19. Statutory Authority: RCW 90.48.035. WSR 11-09-090 and 11-11-022 (Order 10-10), § 173-201A-602, filed 4/20/11 and 5/9/11, effective 5/21/11 and 6/9/11; WSR 06-23-117 (Order 06-04), § 173-201A-602, filed 11/20/06, effective 12/21/06. Statutory Authority: Chapters 90.48 and 90.54 RCW. WSR 03-14-129 (Order 02-14), § 173-201A-602, filed 7/1/03, effective 8/1/03.]

WSR 21-07-150

PROPOSED RULES

DEPARTMENT OF COMMERCE

[Filed March 24, 2021, 11:08 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-14-050.

Title of Rule and Other Identifying Information: Chapter 194-40 WAC, Clean Energy Transformation Act (CETA).

Hearing Location(s): On April 28, 2021, at 1:00 p.m. Zoom meeting. This hearing will be virtual only. Please check the CETA web page for meeting information <https://www.commerce.wa.gov/growing-the-economy/energy/ceta/>.

Date of Intended Adoption: May 21, 2021.

Submit Written Comments to: Sarah Vorpahl, P.O. Box 42525, Olympia, WA 98504, email ceta@commerce.wa.gov, by April 28, 2021.

Assistance for Persons with Disabilities: Contact Austin Scharff, phone 360-764-9632, email ceta@commerce.wa.gov, by April 28, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule establishes definitions for energy assistance need and low-income in WAC 194-40-030. The definitions affect requirements for electric utilities in RCW 19.405.120 and are proposed to ensure proper implementation of CETA. These definitions do not limit any utility from designing a program that uses values below the defined threshold for energy assistance need and low-income to define eligible participants.

Reasons Supporting Proposal: The rule implements commerce's statutory directive to adopt rules establishing reporting requirements for electric utilities to demonstrate compliance with CETA and to ensure proper implementation of CETA. Both of the statutory definitions of energy assistance need and low-income in RCW 19.405.020 direct commerce to provide specific thresholds for the terms. The proposed regulatory definitions provide the thresholds for those terms. These definitions are identical to definitions already adopted by the utilities and transportation commission.

Statutory Authority for Adoption: RCW 19.405.100, 19.405.120.

Statute Being Implemented: Chapter 19.405 RCW.

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

Name of Proponent: Department of commerce, governmental.

Name of Agency Personnel Responsible for Drafting: Sarah Vorpahl, 1011 Plum Street S.E., P.O. Box 42525, Olympia, WA 98504-2525, 360-688-6000; Implementation: Department of Commerce, 1011 Plum Street S.E., P.O. Box 42525, Olympia, WA 98504-2525, 360-407-6000; and Enforcement: Attorney General, 1125 Washington Street S.E., P.O. Box 40100, Olympia, WA 98504-0100, 360-725-6200.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to the department of commerce.

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 additional cost on any person. It establishes definitions, as required by RCW 19.405.020, used in the implementation of RCW 19.405.120.

March 24, 2021

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OTS-2972.1

AMENDATORY SECTION (Amending WSR 21-02-039, filed 12/29/20, effective 1/29/21)

WAC 194-40-030 Definitions. Unless specifically provided otherwise, the terms defined in RCW 19.405.020 have the same meaning in this chapter.

"100% Clean electricity standard" means the standard established in RCW 19.405.050(1) and any requirements necessary for compliance with that standard.

"BPA" means the Bonneville Power Administration.

"CEIP" means a clean energy implementation plan prepared in compliance with RCW 19.405.060.

"Energy assistance need" means the amount of assistance necessary to achieve an energy burden equal to six percent for utility customers.

"GHG neutral compliance period" means each of the periods identified in RCW 19.405.040 (1) (a).

"GHG neutral standard" means the standard established in RCW 19.405.040(1) and any requirements necessary for compliance with that standard.

"Indicator" means an attribute, either quantitative or qualitative, of a condition, resource, program or related distribution investment that is tracked for the purpose of evaluating change over time.

"Interim performance period" means either of the following periods:

- (a) From January 1, 2022, until December 31, 2025; and
- (b) From January 1, 2026, until December 31, 2029.

"Interim target" means a target established in compliance with RCW 19.405.060 (2) (a) (i). An interim target may cover an interim performance period or a GHG neutral compliance period.

"Low-income" means household incomes that do not exceed the higher of eighty percent of area median income or two hundred percent of federal poverty level, adjusted for household size.

"REC" means renewable energy credit.

"Retail revenue requirement" means that portion of a utility's annual budget approved by its governing body that is intended to be recovered through retail electricity sales in the state of Washington in the applicable year. It includes revenues from any retail rate or charge that is necessary to receive electric service from the utility and does not include the effect of taxes imposed directly on retail customers.

"Verification protocol" means a procedure or method used, consistent with industry standards, to establish with reasonable certainty that a conservation, energy efficiency, or demand response measure was installed and is in service. Industry standards include a range of appropriate protocols reflecting a balance of cost and accuracy, such as tracking installation of measures through incentive payments and the

use of on-site inspection of measures installed as part of a customer-specific project.

"WREGIS" means the Western Renewable Energy Generation Information System.

[Statutory Authority: RCW 19.405.100 and 19.405.060. WSR 21-02-039, § 194-40-030, filed 12/29/20, effective 1/29/21.]