

WSR 21-17-054
PERMANENT RULES
SOUTHWEST CLEAN
AIR AGENCY

[Filed August 10, 2021, 1:37 p.m., effective September 10, 2021]

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

Purpose: SWCAA 400-025 Adoption of Federal Rules. The proposed rule changes update the adoption by reference date for federal regulations cited in other sections of Southwest Clean Air Agency (SWCAA) 400.

SWCAA 400-030 Definitions. The proposed rule changes revise references to chapter 70.94 RCW, add a definition for diesel and revise definitions for distillate oil, new source, and volatile organic compound, and make administrative edits.

SWCAA 400-036 Portable Sources From Other Washington Jurisdictions. The proposed rule changes revise requirements for relocation noticing and emission unit registration and make administrative edits.

SWCAA 400-040 General Standards for Maximum Emissions. The proposed rule changes revise references to chapter 70.94 RCW, revise opacity standards to incorporate alternative standards for boiler startup/shutdown and kiln/boiler refractory curing and make administrative edits.

SWCAA 400-045 Permit Application for Nonroad Engines. The proposed rule changes make administrative edits.

SWCAA 400-046 Application Review Process for Nonroad Engines. The proposed rule changes add language for presumptive application withdrawal, revise registration fee citations and make administrative edits.

SWCAA 400-050 Emission Standards for Combustion and Incineration Units. The proposed rule changes adopts the federal plan in 40 C.F.R. 62 Subpart III and make administrative edits.

SWCAA 400-070 General Requirements for Certain Source Categories. The proposed rule changes remove opacity exception for boiler soot blowing and grate cleaning, adopt the federal plan in 40 CFR 62 Subpart LLL, prohibit cyclonic burn barrels and make administrative edits.

SWCAA 400-072 Emission Standards for Selected Small Source Categories. The proposed rule changes remove Environmental Protection Agency (EPA) test method citation for small boilers/heaters, clarify exemption under SWCAA 400-109 and make administrative edits.

SWCAA 400-075 Emission Standards for Stationary Sources Emitting Hazardous Air Pollutants. The proposed rule changes add exceptions to federal National Emission Standards for Hazardous Air Pollutants adoption, update exceptions to federal Maximum Available Control Technology adoptions and make administrative edits.

SWCAA 400-081 Startup and Shutdown. The proposed rule changes remove citation for technology-based emission standards and make administrative edits.

SWCAA 400-091 Voluntary Limits on Emissions. The proposed rule changes revise references to chapter 70.94 RCW and make administrative edits.

SWCAA 400-100 Registration Requirements. The proposed rule changes revise references to chapter 70.94 RCW and make administrative edits.

SWCAA 400-103 Operating Permit Fees. The proposed rule changes revise references to chapter 70.94 RCW and add a procedure for review of program fee determinations.

SWCAA 400-105 Records, Monitoring and Reporting. The proposed rule changes revise references to chapter 70.94 RCW, add a separate emission inventory submittal deadline for gasoline stations and make administrative edits.

SWCAA 400-106 Emission Testing and Monitoring at Air Contaminant Sources. The proposed rule changes revise requirement to test to include periodic and ongoing testing and revise required items for monitoring reports.

SWCAA 400-107 Excess Emissions. The proposed rule changes revise unavoidable excess emission criteria to be consistent with federal court rulings and EPA guidance.

SWCAA 400-109 Air Discharge Permit Applications. The proposed rule changes add an application procedure for permit extensions and make administrative edits.

SWCAA 400-110 Application Review Process for Stationary Sources (New Source Review). The proposed rule changes revise references to chapter 70.94 RCW, add language for presumptive application withdrawal, clarify supersession of previous permits in new permitting actions, add reference to SWCAA 400-036, add notification and public involvement requirements for reopening for cause actions and make administrative edits.

SWCAA 400-111 Requirements for New Sources in a Maintenance Plan Area. The proposed rule changes revise reference to chapter 70.94 RCW and make administrative edits.

SWCAA 400-112 Requirements for New Sources in Nonattainment Areas. The proposed rule changes revise reference to chapter 70.94 RCW and make administrative edits.

SWCAA 400-113 Requirements for New Sources in Attainment or Non-classifiable Areas. The proposed rule changes revise reference to chapter 70.94 RCW and make administrative edits.

SWCAA 400-114 Requirements for Replacement or Substantial Alteration of Emission Control Technology at an Existing Stationary Source. The proposed rule changes add a reference to T-RACT and an anti-backsliding requirement and make administrative edits.

SWCAA 400-115 Standards of Performance for New Sources. The proposed rule changes update exceptions to New Source Performance Standards adoption and make administrative edits.

SWCAA 400-136 Maintenance of Emission Reduction Credits in Bank. The proposed rule changes revise reference to chapter 70.94 RCW.

SWCAA 400-151 Retrofit Requirements for Visibility Protection. The proposed rule change makes administrative edits.

SWCAA 400-171 Public Involvement. The proposed rule changes revise references to chapter 70.94 RCW and make administrative edits.

SWCAA 400-180 Variance. The proposed rule changes revise reference to chapter 70.94 RCW.

SWCAA 400-230 Regulatory Actions and Civil Penalties. The proposed rule changes revise references to chapter 70.94 RCW.

SWCAA 400-235 Credible Evidence. The proposed rule changes add a new rule section addressing the use of credible evidence in determining compliance.

SWCAA 400-240 Criminal Penalties. The proposed rule changes revise reference to chapter 70.94 RCW.

SWCAA 400-260 Conflict of Interest. The proposed rule changes revise federal regulation citations.

SWCAA 400-265 Duty to Provide Information. The proposed rule changes add a new rule section regarding SWCAA's authority to request information relevant to air emissions.

SWCAA 400-270 Confidentiality of Records and Information. The proposed rule changes revise references to chapter 70.94 RCW.

SWCAA 400-280 Powers of Agency. The proposed rule changes revise references to chapter 70.94 RCW and make administrative edits.

SWCAA 400-810 Major Stationary Source and Major Modification Definitions. The proposed rule changes make administrative edits.

SWCAA 400—Appendix C—FEDERAL STANDARDS ADOPTED BY REFERENCE. The proposed rule changes update lists of adopted federal regulations and make administrative edits.

Citation of Rules Affected by this Order: New SWCAA 400-235 and 400-265; and amending SWCAA 400-025, 400-030, 400-036, 400-040, 400-045, 400-046, 400-050, 400-070, 400-072, 400-075, 400-081, 400-091, 400-100, 400-103, 400-105, 400-106, 400-107, 400-109, 400-110, 400-111, 400-112, 400-113, 400-114, 400-115, 400-136, 400-151, 400-171, 400-180, 400-230, 400-240, 400-260, 400-270, 400-280, 400-810, and 400 Appendix C.

Statutory Authority for Adoption: RCW 70.94.141.

Adopted under notice filed as WSR 21-09-012 on April 8, 2021.

Changes Other than Editing from Proposed to Adopted Version: One change - an exemption clause for special circumstances was added to the new language prohibiting cyclonic burn barrels in SWCAA 400-070(16).

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

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

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 35, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 35, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 35, Repealed 0.

Date Adopted: August 5, 2021.

Uri Papish
Executive Director

AMENDATORY SECTION (Amending WSR 20-06-003 filed 2/19/20, effective 3/21/20)

SWCAA 400-025 Adoption of Federal Rules

Federal rules cited in this rule are adopted by reference as in effect on (~~July 1, 2019~~) May 1, 2021.

AMENDATORY SECTION (Amending WSR16-19-009 filed 9/8/16, effective 10/9/16)

SWCAA 400-030 Definitions

Except as provided elsewhere in this regulation the following definitions apply throughout the regulation:

(1) **"Actual emissions"** means the actual rate of emissions of a pollutant from an "emission unit", as determined in accordance with (a) through (c) of this subsection.

(a) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the "emission unit" actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal "source" operation. The Agency shall allow the use of a different time period upon a determination that it is more representative of normal "source" operation. Actual emissions shall be calculated using the "emission unit's" actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(b) The Agency may presume that "source" specific allowable emissions for the unit are equivalent to the actual emissions of the "emission unit".

(c) For any "emission unit" that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the "emission unit" on that date.

(2) **"Adverse impact on visibility"** means visibility impairment that interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of a Federal Class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of visibility impairment, and how these factors correlate with: (a) times of visitor use of the Federal Class I area and (b) the frequency and timing of natural conditions that reduce visibility.

(3) **"Agency"** means the Southwest Clean Air Agency (SWCAA).

(4) **"Air contaminant"** or **"air pollutant"** means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof. For the purposes of regulation under the Washington SIP, "air contaminant" means only:

(a) Those air contaminants for which EPA has established National Ambient Air Quality Standards (NAAQS) and precursors to such NAAQS pollutants as determined by EPA for the applicable geographic area; and

(b) Any additional air contaminants that are required to be regulated under Part C of Title I of the Federal Clean Air Act, but only for the purpose of meeting the requirements of Part C or to the extent those additional air contaminants are regulated in order to avoid such requirements.

(5) **"Air discharge permit"** means the same as "Order of Approval." This term does not apply to any permitting action conducted pursuant to 40 CFR Part 70 or Chapter 173-401 WAC.

(6) **"Air discharge permit application"** means the same as "Notice of Construction application." This term does not apply to any permitting action conducted pursuant to 40 CFR Part 70 or Chapter 173-401 WAC.

(7) **"Air pollution"** means the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities, and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interferes with enjoyment of life and property. For the purposes of this regulation, air pollution shall not include air contaminants emitted in compliance with Chapter 17.21 RCW, the Washington Pesticide Application Act, which regulates the application and control of various pesticides.

(8) **"Allowable emissions"** means the emission rate of a "stationary source" calculated using the maximum rated capacity of the "stationary source" (unless the "stationary source" is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(a) The applicable standards in 40 CFR Parts 60, 61, 62, or 63;

(b) Any applicable State Implementation Plan (SIP) emission limitation including those with a future compliance date;

(c) The emission rate specified as a federally enforceable permit condition, including those with a future compliance date; or

(d) The emission rate specified by a federally enforceable regulatory order.

(9) **"Alteration"** means the act of altering, which means to change or make different. Alteration includes, but is not limited to, any enlargement, replacement, or change in the design, operation, capacity, or arrangement of a process; any increase in the connected loading of process or control equipment; and any change in fuels, method of operation or hours of operation not previously approved by the Agency.

(10) **"Ambient air"** means the surrounding outside air.

(11) **"Ambient air quality standard"** (AAQS) means an established concentration, exposure time, and frequency of occurrence of an air contaminant or multiple air contaminants in the ambient air that shall not be exceeded.

(12) **"Attainment area"** means a geographic area designated by EPA at 40 CFR Part 81 as having attained the National Ambient Air Quality Standard for a given criteria pollutant.

(13) **"Authority"** means any air pollution control agency whose jurisdictional boundaries are coextensive with the boundaries of one or more counties.

(14) **"Begin actual construction"** means, in general, initiation of physical on-site construction activities on an "emission unit", which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipe work and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than preparatory activities that mark the initiation of the change.

(15) **"Best available control technology"** (BACT) means an emission limitation (including a visible emission standard) based on the maximum degree of reduction for each air pollutant subject to regulation under Chapter ((70.94)) 70A.15 RCW which would be emitted from or which results from any new or modified "stationary source," which the Agency, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such "stationary source" or modification through application of production processes and available methods, systems, and techniques, including fuel cleaning or treatment, clean fuels, or innovative fuel combustion techniques for control of each such pollutant. In no event shall application of "best available control technology" result in emissions of any air pollutants which will exceed the emissions allowed by any applicable standard under 40 CFR Parts 60, 61, 62 and 63. Emissions from any "stationary source" utilizing clean fuels, or any other means, to comply with this paragraph shall not be allowed to increase above levels that would have been required under the definition of BACT in the Federal Clean Air Act as it existed prior to enactment of the Clean Air Act Amendments of 1990.

(16) "**Best available retrofit technology**" (BART) means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant that is emitted by an existing stationary facility. The emission limitation must be established, on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and non-air quality environmental impacts of compliance, any pollution control equipment in use or in existence at the "stationary source," the remaining useful life of the "stationary source," and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.

(17) "**Board**" means the Board of Directors of the Southwest Clean Air Agency.

(18) "**Bubble**" means a set of emission limits which allows an increase in emissions from a given "emission unit" in exchange for a decrease in emissions from another "emission unit", pursuant to RCW ((70.94.155)) 70A.15.2240 and SWCAA 400-120.

(19) "**Capacity factor**" means the ratio of the average load on a machine or piece of equipment to the manufacturer's capacity rating of the machine or equipment for the period of time considered.

(20) "**Class I area**" means any area designated pursuant to Sections 162 or 164 of the Federal Clean Air Act as a Class I area. The following areas are the Class I areas located within Washington state:

- (a) Alpine Lakes Wilderness;
- (b) Glacier Peak Wilderness;
- (c) Goat Rocks Wilderness;
- (d) Mount Adams Wilderness;
- (e) Mount Rainier National Park;
- (f) North Cascades National Park;
- (g) Olympic National Park;
- (h) Pasayten Wilderness; and
- (i) Spokane Indian Reservation.

(21) "**Climate change**" means any long-term significant change over durations ranging from decades to millions of years in the "average weather" of a region or the earth as a whole.

(22) "**Combustion and incineration units**" means emission units using combustion for waste disposal, steam production, chemical recovery or other process requirements, but excludes open or outdoor burning.

(23) "**Commenced**" as applied to construction, means that an owner or operator has all the necessary preconstruction approvals or permits and either has:

(a) Begun, or caused to begin, a continuous program of actual on-site construction of the "stationary source," to be completed within a reasonable time; or

(b) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the "stationary source" to be completed within a reasonable time.

(c) For the purposes of this definition, "necessary preconstruction approvals" means those permits or orders of approval required under federal air quality control laws and regulations, including state, local, and federal regulations and orders contained in the Washington SIP.

(24) "**Composting**" means the biological degradation and transformation of organic solid waste under controlled conditions designed to promote aerobic decomposition. Natural decay of organic solid waste under uncontrolled conditions is not composting.

(25) "**Concealment**" means any action taken to reduce the observed or measured concentrations of a pollutant in a gaseous effluent while, in fact, not reducing the total amount of pollutant discharged.

(26) "**Construction**" means any physical change or change in method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions. (ref. 40 CFR 52.21)

(27) "**Continuous emission monitoring system**" (**CEMS**) means all of the equipment that may be required to meet the data acquisition and availability requirements of this section, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis. (ref. 40 CFR 51.166 (b) (43))

(28) "**Continuous emission rate monitoring system**" (**CERMS**) means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time). (ref. 40 CFR 51.166 (b) (46))

(29) "**Continuous parameter monitoring system**" (**CPMS**) means all of the equipment necessary to meet the data acquisition and availability requirements of this section, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂ or CO₂ concentrations), and to record average operational parameter value(s) on a continuous basis. (ref. 40 CFR 51.166 (b) (45))

(30) "**Criteria pollutant**" or "**criteria air pollutant**" means an air pollutant for which a criteria document has been prepared by EPA and has a primary or secondary ambient air quality standard. These pollutants are identified in 40 CFR Part 50 and include sulfur oxides (measured as sulfur dioxide), particulate matter, carbon monoxide, ozone, oxides of nitrogen (measured as nitrogen dioxide), and lead. Although volatile organic compounds are no longer identified as a criteria pollutant category, they are regulated together with oxides of nitrogen as a precursor to ozone.

(31) "**Control Officer**" means the Executive Director of the Southwest Clean Air Agency.

(32) "**Deviation from permit requirements**" means an instance when any permit requirement is not met, including, but not limited to, conditions that establish emission limitations, emission standards, control equipment requirements, work practices, parameter ranges, and those designed to assure compliance with such requirements, such as monitoring, recordkeeping, and reporting. A deviation does not necessarily constitute a violation.

(33) "**Diesel**" means fuel oil that complies with the specifications for diesel fuel oil numbers 1 or 2, as defined by the American Society for Testing and Materials in ASTM D975.

~~((33))~~ (34) "**Director**" means the director of the Washington State Department of Ecology or duly authorized representative.

~~((34))~~ (35) "**Dispersion technique**" means a method that attempts to affect the concentration of a pollutant in the ambient air other than by the use of pollution abatement equipment or integral process pollution controls.

~~((35))~~ (36) "**Distillate oil**" means fuel oil that complies with the specifications for fuel oil numbers 1 or 2, as defined by the American Society for Testing and Materials in ASTM D396 (~~01~~ "**Standard Specification for Fuel Oils.**"), diesel fuel oil numbers 1 or 2, as defined by the American Society for Testing and Materials in ASTM D975, kerosene, as defined by the American Society of Testing and Ma-

terials in ASTM D3699, biodiesel as defined by the American Society of Testing and Materials in ASTM D6751, or biodiesel blends as defined by the American Society of Testing and Materials in ASTM D7467.

~~((36))~~ (37) "**Ecology**" means the Washington State Department of Ecology.

~~((37))~~ (38) "**Emergency service**" means operation that is limited solely to emergency situations and required testing and maintenance. Emergency situations are those which occur without significant warning and are beyond the control of the permittee, owner or operator.

~~((38))~~ (39) "**Emission**" means a release of air contaminants into the ambient air.

~~((39))~~ (40) "**Emission control technology**" means emission control equipment integral or in addition to the "emission unit" or other technology, device, component or control parameter that is integral to the basic design of an "emission unit" (i.e., low NO_x burner for a boiler or turbine).

~~((40))~~ (41) "**Emission reduction credit**" (ERC) means a credit granted pursuant to SWCAA 400-131. This is a voluntary reduction in emissions beyond required levels of control.

~~((41))~~ (42) "**Emission standard**" and "**emission limitation**" mean a requirement established under the Federal Clean Air Act, Chapter ~~((70.94))~~ 70A.15 RCW or a local regulation that limits the quantity, rate, or concentration of air contaminant emissions on a continuous basis, including any requirement relating to the operation or maintenance of a "stationary source" to assure continuous emission reduction and any design, equipment, work practice, or operational standard adopted under the Federal Clean Air Act or Chapter ~~((70.94))~~ 70A.15 RCW.

~~((42))~~ (43) "**Emission unit**" means any part of a "stationary source" that emits or would have the potential to emit any air pollutant subject to regulation under the Federal Clean Air Act, Chapter ~~((70.94))~~ 70A.15 RCW, or Chapter 70.98 RCW.

~~((43))~~ (44) "**Excess emissions**" means emissions of an air pollutant in excess of any applicable emission standard or emission limit.

~~((44))~~ (45) "**Excess stack height**" means that portion of a stack which exceeds the greater of sixty-five meters (213.25 feet) or the calculated stack height described in SWCAA 400-200(3).

~~((45))~~ (46) "**Executive Director**" means the Control Officer of the Southwest Clean Air Agency.

~~((46))~~ (47) "**Existing stationary facility**" means a "stationary source" that meets all of the following conditions:

(a) The "stationary source" was not in operation prior to August 7, 1962, and was in existence on August 7, 1977;

(b) The "stationary source" is one of the following:

(i) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input,

(ii) Coal cleaning plants (thermal dryers),

(iii) Kraft pulp mills,

(iv) Portland cement plants,

(v) Primary zinc smelters,

(vi) Iron and steel mills,

(vii) Primary aluminum ore reduction plants,

(viii) Primary copper smelters,

(ix) Municipal incinerators capable of charging more than 250 tons of refuse per day,

(x) Hydrofluoric, sulfuric, or nitric acid plants,

- (xi) Petroleum refineries,
- (xii) Lime plants,
- (xiii) Phosphate rock processing plants,
- (xiv) Coke oven batteries,
- (xv) Sulfur recovery plants,
- (xvi) Carbon black plants (furnace process),
- (xvii) Primary lead smelters,
- (xviii) Fuel conversion plants,
- (xix) Sintering plants,
- (xx) Secondary metal production plants,
- (xxi) Chemical process plants,
- (xxii) Fossil-fuel boilers of more than 250 million British thermal units per hour heat input,
- (xxiii) Petroleum storage and transfer units with a total capacity exceeding 300,000 barrels,
- (xxiv) Taconite ore processing plants,
- (xxv) Glass fiber processing plants,
- (xxvi) Charcoal production plants; and

(c) The "stationary source" has the potential to emit 250 tons per year or more of any air contaminant. Fugitive emissions, to the extent quantifiable, must be counted in determining the potential to emit.

(d) For purposes of determining whether a stationary source is an existing stationary facility the term "building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant emitting activities shall be considered as part of the same major group (i.e., which have the same two digit code) as described in the *Standard Industrial Classification Manual (1972)*, as amended by the 1977 supplement.

~~((47))~~ (48) "**Federal Clean Air Act**" (FCAA) means the Federal Clean Air Act, also known as Public Law 88-206, 77 Stat. 392, December 17, 1963, 42 U.S.C. 7401 et seq., as last amended by the Clean Air Act Amendments of 1990, P.L. 101-549, November 15, 1990.

~~((48))~~ (49) "**Federal Class I area**" means any federal land that is classified or reclassified as Class I. The Federal Class I areas in Washington State are as follows:

- (a) Alpine Lakes Wilderness;
- (b) Glacier Peak Wilderness;
- (c) Goat Rocks Wilderness;
- (d) Mount Adams Wilderness;
- (e) Mount Rainier National Park;
- (f) North Cascades National Park;
- (g) Olympic National Park; and
- (h) Pasayten Wilderness.

~~((49))~~ (50) "**Federal land manager**" means the secretary of the department with authority over federal lands in the United States. This includes, but is not limited to, the U.S. Department of the Interior-National Park Service, the U.S. Department of Agriculture-Forest Service, and/or the U.S. Department of the Interior-Bureau of Land Management.

~~((50))~~ (51) "**Federally enforceable**" means all limitations and conditions which are enforceable by the EPA, including those requirements developed under 40 CFR Parts 60, 61, 62 and 63, requirements within the Washington SIP, requirements within any permit established

under 40 CFR 52.21 or any order of approval established under a SIP approved new source review regulation, or any voluntary limits on emissions pursuant to WAC 173-400-091 or SWCAA 400-091.

~~((51))~~ (52) "**Fossil fuel-fired steam generator**" means a device, furnace, or boiler used in the process of burning fossil fuel for the primary purpose of producing steam by heat transfer.

~~((52))~~ (53) "**Fugitive dust**" means a type of particulate emission made airborne by forces of wind, human activity, or both. Unpaved roads, construction sites, and tilled land are examples of areas that originate fugitive dust. Fugitive dust is a type of fugitive emission.

~~((53))~~ (54) "**Fugitive emissions**" means emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

~~((54))~~ (55) "**General process unit**" means an "emission unit" using a procedure or a combination of procedures for the purpose of causing a change in material by either chemical or physical means, excluding combustion.

~~((55))~~ (56) "**Good agricultural practices**" means economically feasible practices that are customary among or appropriate to farms and ranches of a similar nature in the local area.

~~((56))~~ (57) "**Good engineering practice**" (GEP) refers to a calculated stack height based on the equation specified in SWCAA 400-200 (2) (a) (ii).

~~((57))~~ (58) "**Greenhouse gas**" means, for the purpose of these regulations, any or all of the following gases: carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), sulfur hexafluoride (SF₆), hydrofluorocarbons (HFCs), and perfluorocarbons (PFCs).

~~((58))~~ (59) "**Incinerator**" means a furnace used primarily for the thermal destruction of waste.

~~((59))~~ (60) "**In operation**" means engaged in activity related to the primary design function of a "stationary source."

~~((60))~~ (61) "**Installation**" means the act of installing, placing, assembling or constructing process equipment or control equipment at the premises where the equipment will be used. Installation includes all preparatory work at such premises.

~~((61))~~ (62) "**Lowest achievable emission rate**" (LAER) means for any "stationary source" that rate of emissions which reflects the more stringent of:

(a) The most stringent emission limitation which is contained in the implementation plan of any state for such class or category of "stationary source," unless the owner or operator of the proposed new or modified "stationary source" demonstrates that such limitations are not achievable; or

(b) The most stringent emission limitation which is achieved in practice by such class or category of "stationary source." In no event shall the application of this term permit a proposed new or modified "stationary source" to emit any pollutant in excess of the amount allowable under applicable new source performance standards.

~~((62))~~ (63) "**Maintenance Area**" or "**Maintenance Plan Area**" means a geographical area within the jurisdiction of SWCAA which was formerly designated as a nonattainment area and which has been redesignated as an attainment area as provided under Section 107(d) of the Federal Clean Air Act. The maintenance area designation shall be in effect as long as there is a federal or state requirement to have a maintenance plan in effect.

~~((63))~~ (64) "**Maintenance pollutant**" means a pollutant for which a maintenance plan area was formerly designated as a nonattainment area.

~~((64))~~ (65)(a) "**Major modification**," as it applies to "stationary sources" subject to requirements for "new sources" in nonattainment areas means the same as the definition found in SWCAA 400-810.

(b) "**Major modification**," as it applies to "stationary sources" subject to requirements for "new sources" in maintenance plan, attainment, or unclassified areas, means the same as the definition found in WAC 173-400-710.

~~((65))~~ (66)(a) "**Major stationary source**," as it applies to "stationary sources" subject to requirements for "new sources" in nonattainment areas, means the same as the definition found in SWCAA 400-810.

(b) "**Major stationary source**," as it applies to "stationary sources" subject to requirements for "new sources" in maintenance plan, attainment or unclassified areas, means the same as the definition found in WAC 173-400-710.

~~((66))~~ (67) "**Malfunction**" means any sudden, infrequent, and not reasonably preventable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner which causes, or has the potential to cause, the emission limitations in an applicable standard to be exceeded. Failures that are caused in part by poor maintenance or careless operation are not considered to be malfunctions.

~~((67))~~ (68) "**Mandatory Class I federal area**" means any area defined in Section 162(a) of the Federal Clean Air Act. The mandatory Class I federal areas potentially affected by emissions from "sources" within SWCAA jurisdiction include the following:

- (a) Alpine Lakes Wilderness;
- (b) Glacier Peak Wilderness;
- (c) Goat Rocks Wilderness;
- (d) Mount Adams Wilderness;
- (e) Mount Rainier National Park;
- (f) Mt. Hood Wilderness Area;
- (g) Mt. Jefferson Wilderness Area;
- (h) North Cascades National Park;
- (i) Olympic National Park; and
- (j) Pasayten Wilderness.

~~((68))~~ (69) "**Masking**" means the mixing of a chemically nonreactive control agent with a malodorous gaseous effluent to change the perceived odor.

~~((69))~~ (70) "**Materials handling**" means the handling, transporting, loading, unloading, storage, and transfer of materials with no significant alteration of the chemical or physical properties of the material.

~~((70))~~ (71) "**Modification**" means any physical change in, or change in the method of operation of, a "stationary source" that increases the amount of any air contaminant emitted by such "stationary source" or that results in the emissions of any air contaminant not previously emitted. The term modification shall be construed consistent with the definitions of modification in Section 7411, Title 42, United States Code, and with rules implementing that section.

~~((71))~~ (72) "**Motor vehicle**" means any vehicle which is self-propelled and capable of transporting a person or persons or any material or any permanently or temporarily affixed apparatus shall be deemed a motor vehicle, unless any one or more of the criteria set

forth below are met, in which case the vehicle shall be deemed not a motor vehicle:

(1) The vehicle cannot exceed a maximum speed of 25 miles per hour over level, paved surfaces; or

(2) The vehicle lacks features customarily associated with safe and practical street or highway use, such features including, but not being limited to, a reverse gear (except in the case of motorcycles), a differential, or safety features required by state and/or federal law; or

(3) The vehicle exhibits features which render its use on a street or highway unsafe, impractical, or highly unlikely, such features including, but not being limited to, tracked road contact means, an inordinate size, or features ordinarily associated with military combat or tactical vehicles such as armor and/or weaponry.

~~((72))~~ (73) **"National Ambient Air Quality Standard"** (NAAQS) means an ambient air quality standard set forth in 40 CFR Part 50, which includes standards for carbon monoxide (CO), particulate matter (PM₁₀, PM_{2.5}), ozone (O₃), sulfur dioxide (SO₂), lead (Pb), and nitrogen dioxide (NO₂).

~~((73))~~ (74) **"National Emission Standards for Hazardous Air Pollutants"** (NESHAPS) means the federal rules in 40 CFR Part 61.

~~((74))~~ (75) **"National Emission Standards for Hazardous Air Pollutants for Source Categories"** means the federal rules in 40 CFR Part 63. These rules are commonly referred to as Maximum Available Control Technology (MACT) standards.

~~((75))~~ (76) **"Natural conditions"** means naturally occurring phenomena that reduce visibility as measured in terms of light extinction, visual range, contrast, or coloration.

~~((76))~~ (77)(a) **"Net emissions increase,"** as it applies to "stationary sources" subject to requirements for "new sources" in nonattainment areas, means the same as the definition found in SWCAA 400-810.

(b) **"Net emissions increase,"** as it applies to "stationary sources" subject to requirements for "new sources" in maintenance plan, attainment or unclassified areas, means the same as the definition found in WAC 173-400-710.

~~((77))~~ (78) **"New source"** means one or more of the following:

(a) The construction or modification of a "stationary source" that increases the amount of any air contaminant emitted by such "stationary source" or that results in the emission of any air contaminant not previously emitted;

(b) Any other project that constitutes a "new source" under the Federal Clean Air Act;

(c) Restart of a "stationary source" after permanent shutdown;

(d) The installation or construction of a new "emission unit";

(e) Relocation of a "stationary source" to a new location, except in the case of portable sources operating under a valid portable source permit as provided in SWCAA 400-036 and 400-110(6);

(f) Replacement or modification of the burner(s) in a combustion source;

(g) Nonroutine replacement or modification of a boiler shell and/or tubes without replacement of the associated burner(s); or

~~((g))~~ (h) Modification of a combustion source to fire a fuel that the source was not previously capable of firing.

~~((78))~~ (79) **"New Source Performance Standards"** (NSPS) means the federal rules in 40 CFR Part 60.

~~((79))~~ (80) **"Nonattainment area"** means a geographic area designated by EPA in 40 CFR Part 81 as exceeding a National Ambient Air Quality Standard (NAAQS) for a given criteria air pollutant. An area is nonattainment only for the pollutants for which the area has been designated nonattainment.

~~((80))~~ (81) **"Nonroad engine"** means:

(a) Except as discussed in (b) of this subsection, a nonroad engine is any internal combustion engine:

(i) In or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers); or

(ii) In or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers); or

(iii) That, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indications of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

(b) An internal combustion engine is not a nonroad engine if:

(i) The engine is used to propel a motor vehicle or a vehicle used solely for competition, or is subject to standards promulgated under Section 202 of the Federal Clean Air Act; or

(ii) The engine is regulated by a New Source Performance Standard promulgated under Section 111 of the Federal Clean Air Act; or

(iii) The engine otherwise included in (a)(iii) of this subsection remains or will remain at a location for more than twelve consecutive months or a shorter period of time for an engine located at a seasonal source. A location is any single site at a building, structure, facility, or installation. Any engine(s) that replace(s) an engine at a location and that is intended to perform the same or similar function as the engine(s) replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a "stationary source" that remains in a single location on a permanent basis (i.e., two seasons or more) and that operates at that single location approximately three months (or more) each year. This paragraph does not apply to an engine after the engine is removed from the location. (ref. 40 CFR 89.2)

~~((81))~~ (82) **"Nonroad engine permit"** means a regulatory order issued by the Agency to approve the installation, replacement or alteration of a nonroad engine. This term does not apply to any permitting action conducted pursuant to SWCAA 400-110 or Chapter 173-401 WAC.

~~((82))~~ (83) **"Nonroad engine permit application"** means a written application for installation, replacement or alteration of a nonroad engine. This term does not apply to any permitting action conducted pursuant to SWCAA 400-110 or Chapter 173-401 WAC.

~~((83))~~ (84) **"Notice of Construction application"** (NOC) means a written application requesting approval for installation, replacement, modification, or other alteration of an "emission unit" at an air contaminant source or replacement or substantial alteration of control technology at an existing "stationary source." Affected activities include, but are not limited to, equipment modifications or alterations, changes to process or control equipment, establishment of emission

limits, installation of "new sources," control technology determinations, PSD determinations, and other items specified by the Agency. "Notice of Construction application" means the same as "air discharge permit application." (For more information refer to SWCAA 400-109.)

~~((84))~~ (85) "**Opacity**" means the degree to which an object seen through a plume is obscured, stated as a percentage.

~~((85))~~ (86) "**Open burning**" or "**outdoor burning**" means the combustion of material in an open fire or in an outdoor container, without providing for the control of combustion or the control of the emissions from the combustion. Open burning includes all forms of outdoor burning except those listed as exempt in SWCAA 425-020. Wood waste disposal in wigwam burners is not considered open or outdoor burning.

~~((86))~~ (87) "**Operating permit**" means a permit issued pursuant to 40 CFR Part 70 or Chapter 173-401 WAC.

~~((87))~~ (88) "**Operating permit application**" means the same as "application" as described in WAC 173-401-500 and -510.

~~((88))~~ (89) "**Order**" means any regulatory order issued by the Agency or Ecology pursuant to Chapter ~~((70.94))~~ 70A.15 RCW, including, but not limited to RCW ~~((70.94.332, 70.94.152, 70.94.153 and 70.94.141(3))~~ 70A.15.3010, 70A.15.2220, 70A.15.2210 and 70A.15.2040(3), and includes, where used in the generic sense, the terms order, corrective action order, order of approval, air discharge permit, nonroad engine permit, compliance schedule order, consent order, order of denial, order of violation, order of prevention, order of discontinuance, administrative order, and regulatory order.

~~((89))~~ (90) "**Order of Approval**" means a regulatory order issued by the Agency or Ecology to approve a Notice of Construction or air discharge permit application. "Order of Approval" means the same as "air discharge permit." Note: For more information refer to SWCAA 400-230.

~~((90))~~ (91) "**Ozone depleting substance**" means any substance listed in Appendices A and B to Subpart A of 40 CFR Part 82.

~~((91))~~ (92) "**Particulate matter**" (PM) means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.

~~((92))~~ (93) "**Particulate matter emissions**" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in Title 40, Chapter I of the Code of Federal Regulations or by a test method specified in the Washington SIP.

~~((93))~~ (94) "**Parts per million by volume**" (ppmv) means parts of a contaminant per million parts of gas or carrier medium, by volume, exclusive of water or particulates.

~~((94))~~ (95) "**Permanent shutdown**" means permanently stopping or terminating the operation of a "stationary source" or "emission unit." Except as provided in subsections (a), (b) and (c), whether a shutdown is permanent depends on the intention of the owner or operator at the time of the shutdown as determined from all facts and circumstances, including the cause of the shutdown and the payment status of registration fees.

(a) A shutdown is permanent if the owner or operator files a report of shutdown, as provided in SWCAA 400-100(5). Failure to file such a report does not mean that a shutdown was not permanent.

(b) Failure to pay registration fees for greater than two consecutive years is presumed to constitute a permanent shutdown.

(c) Any actual shutdown lasting two or more years is presumed to be permanent.

~~((95))~~ (96) "**Permitting agency**" means Ecology or the local air pollution control agency with jurisdiction over a "source."

~~((96))~~ (97) "**Person**" means an individual, firm, public or private corporation, owner, owner's agent, operator, contractor, association, partnership, political subdivision, municipality, or government agency.

~~((97))~~ (98) "**Pipeline quality natural gas**" means natural gas fuel with a total fuel sulfur content of 0.5 grains per 100 standard cubic feet or less.

~~((98))~~ (99) "**PM₁₀**" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on 40 CFR Part 50 Appendix J and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53.

~~((99))~~ (100) "**PM₁₀ emissions**" means finely divided solid or liquid material, including condensable particulate matter, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate method, specified in Appendix M of 40 CFR Part 51 or by a test method specified in the Washington SIP.

~~((100))~~ (101) "**PM_{2.5}**" means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by a reference method based on 40 CFR Part 50 Appendix L and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53.

~~((101))~~ (102) "**PM_{2.5} emissions**" means finely divided solid or liquid material, including condensable particulate matter, with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate method, specified in 40 CFR Part 51 or by a test method specified in the Washington SIP.

~~((102))~~ (103) "**Pollutant**" means the same as air contaminant, air pollutant and air pollution. (Refer to definitions (4) and (7))

~~((103))~~ (104) "**Portable source**" means a "stationary source" consisting of one or more "emission units" that is portable or transportable and capable of being operated at multiple locations. Portable source includes, but is not limited to, rock crushers, portable asphalt plants, soil/water remediation plants, and portable concrete mixing plants (Portland cement).

~~((104))~~ (105) "**Potential to emit**" means the maximum capacity (i.e., design 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 federally enforceable. Secondary emissions do not count in determining the potential to emit of a "stationary source."

~~((105))~~ (106) "**Predictive emissions monitoring system (PEMS)**" means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂ or CO₂ concentrations), and calculate and record the

mass emissions rate (for example, lb/hr) on a continuous basis. (ref 40 CFR 51.166 (b)(44))

~~((106))~~ (107) "**Prevention of Significant Deterioration**" (PSD) means the program set forth in WAC 173-400-700 through WAC 173-400-750 (~~(and adopted by reference in SWCAA 400-141)~~).

~~((107))~~ (108) "**Projected width**" means that dimension of a structure determined from the frontal area of the structure, projected onto a plane perpendicular to a line between the center of the stack and the center of the building.

~~((108))~~ (109) "**Reasonably attributable**" means attributable by visual observation or any other technique the Agency deems appropriate.

~~((109))~~ (110) "**Reasonably available control technology**" (RACT) means the lowest emission limit that a particular "stationary source" or source category is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. RACT is determined on a case-by-case basis for an individual "stationary source" or source category taking into account the impact of the "stationary source" upon air quality, the availability of additional controls, the emission reduction to be achieved by additional controls, the impact of additional controls on air quality, and the capital and operating costs of the additional controls. RACT requirements for any "stationary source" or source category shall be adopted only after public notice and opportunity for comment are afforded. RACT shall apply to existing "stationary sources."

~~((110))~~ (111) "**Regulatory order**" means an order issued by the Agency or Ecology to an air contaminant source to achieve compliance with any applicable provision of Chapter ~~((70.94))~~ 70A.15 RCW, rules adopted thereunder, or the regulations of the Agency. Note: For further clarification, refer to the definitions of "Order," "Order of Approval," "air discharge permit," "nonroad engine permit," and SWCAA 400-230.

~~((111))~~ (112) "**Residual Oil**" means crude oil, fuel oil that does not comply with the specifications for "distillate oil," and all fuel oil numbers 4, 5, and 6 as defined by the American Society for Testing and Materials in ASTM D396-01.

~~((112))~~ (113) "**Secondary emissions**" means emissions which would occur as a result of the construction or operation of a "major stationary source" or "major modification," but do not come from the "major stationary source" or "major modification" itself. Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the "major stationary source" or "major modification" which causes the secondary emissions. Secondary emissions include emissions from any off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the "major stationary source" or "major modification." Secondary emissions do not include any emissions that come directly from a mobile source, such as tailpipe emissions from a motor vehicle, train, or vessel.

~~((113))~~ (114) "**Shutdown**" means the cessation of operation of an affected source or portion of an affected source for any purpose.

~~((114))~~ (115) (a) "**Significant**," as it applies to "stationary sources" subject to requirements for "new sources" in nonattainment areas, means the same as the definition found in SWCAA 400-810.

(b) "**Significant**," as it applies to "stationary sources" subject to requirements for "new sources" in maintenance plan, attainment, or

unclassified areas, means the same as the definition found in WAC 173-400-710.

~~((115))~~ (116) "**SIP**" means the same as "State Implementation Plan".

~~((116))~~ (117) "**Source**" means all of the "emission units" (including quantifiable fugitive emissions) that are located on one or more contiguous and adjacent properties, and are under the control of the same person (or persons under common control), whose activities are ancillary to the production of a single product or functionally related groups of products. Activities shall be considered ancillary to the production of a single product or functionally related group of products if they belong to the same major group (i.e., which have the same two-digit code) as described in the *Standard Industrial Classification Manual (1972)*, as amended by the 1977 supplement.

~~((117))~~ (118) "**Source category**" means all "sources" or "stationary sources" of the same type or classification as described in the *Standard Industrial Classification Manual 1972*, as amended by the 1977 supplement.

~~((118))~~ (119) "**Southwest Clean Air Agency**" (SWCAA) means the local clean air agency empowered to enforce and implement the Federal Clean Air Act 42 U.S.C. 7401, et seq.) and the Clean Air Washington Act Chapter ~~((70.94))~~ 70A.15 RCW in Clark, Cowlitz, Lewis, Skamania, and Wahkiakum Counties of Washington State.

~~((119))~~ (120) "**Stack**" means any emission point in a "stationary source" designed to emit solids, liquids, or gases into the air, including a pipe or duct.

~~((120))~~ (121) "**Stack height**" means the height of an emission point measured from the round-level elevation at the base of the stack.

~~((121))~~ (122) "**Standard conditions**" means a temperature of 20 degrees C (68 degrees F) and a pressure of 29.92 inches (760 mm) of mercury.

~~((122))~~ (123) "**Startup**" means the setting in operation of an affected source or portion of an affected source for any purpose.

~~((123))~~ (124) "**State Implementation Plan**" or "**Washington SIP**" means the Washington SIP in 40 CFR Part 52, Subpart WW. The SIP contains federal, state and local regulations and orders, the state plan and compliance schedules approved and promulgated by EPA, for the purpose of implementing, maintaining, and enforcing the National Ambient Air Quality Standards.

~~((124))~~ (125) "**Stationary source**" means any building, structure, facility, or installation that emits or may emit any air contaminant. This term does not include emissions resulting directly from an internal combustion engine for transportation purposes or from a non-road engine or non-road vehicle as defined in Section 216(11) of the Federal Clean Air Act.

~~((125))~~ (126) "**Sulfuric acid plant**" means any facility producing sulfuric acid by the contact process by burning elemental sulfur, alkylation acid, hydrogen sulfide, or acid sludge.

~~((126))~~ (127) "**Synthetic minor**" means any "stationary source" whose potential to emit has been limited below applicable air operating permit program (40 CFR Part 70) thresholds by means of a federally enforceable order, rule or permit condition.

~~((127))~~ (128) "**Total reduced sulfur**" (TRS) means the sum of the sulfur compounds hydrogen sulfide, mercaptans, dimethyl sulfide, dimethyl disulfide, and any other organic sulfides emitted and measured

by EPA Method 16 in 40 CFR Part 60, Appendix A or an EPA approved equivalent method and expressed as hydrogen sulfide.

~~((128))~~ (129) "**Total suspended particulate**" (TSP) means particulate matter as measured by the method described in 40 CFR Part 50 Appendix B.

~~((129))~~ (130) "**Toxic air pollutant**" (TAP) means any Class A or B toxic air pollutant listed in WAC 173-460-150 or -160 as in effect on August 21, 1998. The term toxic air pollutant may include particulate matter and volatile organic compounds if an individual substance or a group of substances within either of these classes is listed in WAC 173-460-150 or -160. The term toxic air pollutant does not include particulate matter and volatile organic compounds as generic classes of compounds.

~~((130))~~ (131) "**Unclassifiable area**" means an area that cannot be designated attainment or nonattainment on the basis of available information as meeting or not meeting the National Ambient Air Quality Standard for the criteria pollutant and that is listed by EPA in 40 CFR Part 81.

~~((131))~~ (132) "**United States Environmental Protection Agency**" (USEPA) means the federal agency empowered to enforce and implement the Federal Clean Air Act (42 USC 7401, et seq.) and shall be referred to as EPA.

~~((132))~~ (133) "**Upgraded**" is defined only for gasoline dispensing facilities and means the modification of a gasoline storage tank or piping to add cathodic protection, tank lining or spill and overfill protection that involves removal of ground or ground cover above a portion of the product piping.

~~((133))~~ (134) "**Upset condition**" means a failure, breakdown, or malfunction of any piece of process equipment or pollution control equipment that causes, or has the potential to cause, excess emissions.

~~((134))~~ (135) "**Visibility impairment**" means any humanly perceptible change in visibility (light extinction, visual range, contrast, or coloration) from that which would have existed under natural conditions.

~~((135))~~ (136) "**Visibility impairment of Class I areas**" means visibility impairment within the Class I area and visibility impairment of any formally designated integral vista associated with the Class I area.

~~((136))~~ (137) "**Volatile organic compound**" (VOC) means:

(a) Any carbon compound that participates in atmospheric photochemical reactions. Exceptions: The following compounds are not a VOC: acetone; ammonium carbonate; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates; ethane; methane; methyl acetate; methylene chloride (dichloromethane); methyl formate; dimethyl carbonate; propylene carbonate; 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro 1,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,2-dichloro 1,1,2,2 tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1,-dichloro 1-fluoroethane (HCFC-141b); 1-chloro 1,1-difluoroethane (HCFC-142b); 2-chloro 1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; perchloroethylene

(tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC-43-10mee); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1-chloro-1-fluoroethane (HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (C₄F₉OCH₃); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CF₂OCH₃); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C₄F₉OC₂H₅); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CF₂OC₂H₅); 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane (HFE-7000); 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE-7500); 1,1,1,2,3,3,3-heptafluoropropane (HFC-227ea); 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300); trans 1-chloro-3,3,3-trifluoroprop-1-ene; 2,3,3,3-tetrafluoropropene; 2-amino-2-methyl-1-propanol; 1,1,2,2-Tetrafluoro-1-(2,2,2-trifluoroethoxy) ethane (HFE-347pcf2); cis-1,1,1,4,4,4-hexafluorobut-2-ene (HFO-1336mzz-Z) and perfluorocarbon compounds that fall into these classes:

- (i) Cyclic, branched, or linear, completely fluorinated alkanes;
- (ii) Cyclic, branched, or linear, completely fluorinated ethers with no saturations;
- (iii) Cyclic, branched, or linear, completely fluorinated tertiary amines with no saturations; and
- (iv) Sulfur containing perfluorocarbons with no saturations and with sulfur bonds only to carbon and fluorine.

(b) For the purpose of determining compliance with emission limits, VOCs will be measured by the appropriate methods in 40 CFR Part 60 Appendix A. Where the method also measures compounds with negligible photochemical reactivity, these negligibly-reactive compounds may be excluded as VOC if the amount of the compounds is accurately quantified, and the exclusion is approved by the Agency or EPA.

(c) As a precondition to excluding negligibly-reactive compounds as VOC, or at any time thereafter, the Agency may require an owner or operator to provide monitoring or testing methods and results demonstrating to the satisfaction of the Agency or EPA the amount of negligibly-reactive compounds in the "source's" emissions.

(d) The following compound(s) are VOC for purposes of all record-keeping, emissions reporting, photochemical dispersion modeling and inventory requirements which apply to VOC and shall be uniquely identified in emission reports, but are not VOC for purposes of VOC emissions limitations or VOC content requirements:

- (i) Tertiary butyl acetate.

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.

AMENDATORY SECTION (Amending WSR 17-11-078 filed 5/18/17, effective 6/18/17)

SWCAA 400-036 Portable Sources From Other Washington Jurisdictions

(1) **Applicability.** Portable sources that do not have a valid air discharge permit issued by SWCAA may operate within SWCAA jurisdiction without filing an air discharge permit application pursuant to SWCAA

400-109 or obtaining an air discharge permit pursuant to SWCAA 400-110 provided the requirements of this section are met. If the owner or operator of such a portable source does not wish to utilize the provisions of this section, an air discharge permit application must be filed for the portable source pursuant to SWCAA 400-109. Portable sources that have a valid air discharge permit issued by SWCAA must operate in accordance with the SWCAA permit, and may not use the provisions of this section. This section does not apply to nonroad engines of any type.

(2) **Nonattainment areas.** If a portable source is locating in a nonattainment area and emits the pollutant(s) or pollutant precursors for which the area is classified as nonattainment, the source must acquire a site-specific air discharge permit from SWCAA.

(3) **Major Stationary Source.** If a portable source is a major stationary source then the source must also comply with applicable requirements from WAC 173-400-700 through 173-400-750.

(4) **General Requirements.** Portable sources must comply with the requirements listed below in order to gain coverage under this section.

(a) The portable source must possess a valid approval issued by a Washington air pollution control authority after July 1, 2010. The approval must identify the affected "emission units" as a portable source.

(b) Approval for the portable source must contain emission limitations and operational requirements that are consistent with BACT as determined by SWCAA for similar sources.

(c) The owner/operator of the portable source must pay a review fee as provided in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098.

(d) The owner/operator must obtain written confirmation from SWCAA that the portable source complies with the provisions of this section prior to commencing operation within SWCAA jurisdiction.

(e) The owner/operator of the portable source must submit a relocation notice and a copy of the applicable order of approval or air discharge permit to SWCAA at least 15 calendar days prior to commencing operation within SWCAA jurisdiction. An additional relocation notice shall be submitted for each subsequent location at which the source operates, including departure from SWCAA's jurisdiction.

(f) The owner/operator shall register the portable source with SWCAA and pay a registration fee as provided in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098 (~~prior to commencement of operation~~) concurrent with submission of the relocation notice cited in section (e). For the purposes of this registration, (~~the term~~) each "emission unit" (~~means each rock crusher and aggregate screen and associated haul roads~~) shall be registered. Registration expires at the end of the Agency's fiscal year. If a permitted unit is still operating after its registration expires, it shall be reregistered including payment of the annual registration fee.

(g) The owner/operator must submit an emission inventory report to SWCAA as described in SWCCA 400-105(1). The inventory report must contain information sufficient to enable calculation of air emissions from operation of the portable source within SWCAA jurisdiction. If the portable source operated at multiple locations, the inventory report must identify emissions specific to each location.

(5) **Enforcement of approval conditions.** SWCAA will enforce all terms and conditions contained in the portable source's order of ap-

proval or air discharge permit, regardless of which permitting authority approved the portable source.

(6) **Modification of approval conditions.** Terms and conditions contained in the portable source's order of approval or air discharge permit may only be modified by obtaining a new air discharge permit from SWCAA.

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.

AMENDATORY SECTION (Amending WSR 16-19-009 filed 9/8/16, effective 10/9/16)

SWCAA 400-040 General Standards for Maximum Emissions

All "sources" and "emission units" are required to meet the emission standards of this section. Where an emission standard listed in another section is applicable to a specific "emission unit", such standard shall take precedent over a general emission standard listed in this section. When two or more "emission units" are connected to a common stack and the operator elects not to provide the means or facilities to sample emissions from the individual "emission units", and the relative contributions of the individual "emission units" to the common discharge are not readily distinguishable, then the emissions of the common stack must meet the most restrictive standard of any of the connected "emission units".

All "emission units" are required to use reasonably available control technology (RACT) that may be determined for some "stationary sources" or "source categories" to be more stringent than the applicable emission limitations of this regulation or any Chapter of Title 173 WAC. Where current controls are determined to be less than RACT, the Agency shall, as provided in RCW ((70.94.154)) 70A.15.2230, define RACT for each "stationary source" or "source category" and issue a rule or regulatory order requiring the installation of RACT.

(1) **Visible emissions.** No person shall cause or ((~~permit~~)) allow the emission for more than three minutes, in any one hour, of an air contaminant which at the emission point, or within a reasonable distance of the emission point, exceeds twenty percent opacity as determined in accordance with SWCAA Method 9, Ecology Method 9A or 9A-Alternate 1 (LIDAR) except as follows:

(a) Soot blowing/grate cleaning. When ((~~the~~)) emissions occur due to soot blowing/grate cleaning ((~~and the operator can demonstrate that the emissions will~~)) of a hog fuel or wood-fired boiler, visible emissions shall not exceed ((~~twenty~~) forty percent opacity for more than fifteen minutes in any eight consecutive hours. The intent of this provision is to permit the soot blowing and grate cleaning necessary to the operation of boiler facilities. Except for testing and troubleshooting, soot blowing/grate cleaning is to be scheduled for the same approximate times each day. The boiler operator shall maintain a written schedule on file with the Agency and provide updates as necessary.

(b) When the owner or operator of an "emission unit" supplies valid data to show that the presence of uncombined water is the only reason for the opacity to exceed twenty percent or an alternative opacity standard established in this section.

(c) When two or more "emission units" are connected to a common stack, the Agency may allow or require the use of an alternate time period if it is more representative of normal operations.

(d) When an alternate opacity limit has been established per RCW ((70.94.331 (2) (e))) 70A.15.3000 (2) (c).

(e) Alternative Standard for Boiler Startup or Shutdown. Hog fuel or wood-fired boiler in operation before January 24, 2018. For emissions that occur due to planned startup or shutdown of a hog fuel or wood-fired boiler with dry particulate matter controls, an owner or operator may use the alternative standard in this subsection when all of the requirements below are met.

(i) The owner or operator notifies the permitting authority at least twenty-four hours prior to the planned boiler startup or shutdown or within two hours of restarting the boiler within twenty-four hours after the end of an unplanned shutdown (i.e., malfunction or upset).

(ii) Startup begins when fuel is ignited in the boiler fire box.

(iii) Startup ends when the boiler starts supplying useful thermal energy or four hours after the boiler starts supplying useful thermal energy if the facility follows the work practices in (e)(vi)(B) of this subsection.

(iv) Shutdown begins when the boiler no longer supplies useful thermal energy or when no fuel is being fed to the boiler or process heater, whichever is earlier.

(v) Shutdown ends when the boiler or process heater no longer supplies useful thermal energy and no fuel is being combusted in the boiler.

(vi) Alternative standard.

(A) Visible emissions during startup or shutdown shall not exceed forty percent opacity for more than three minutes in any hour, as determined by SWCAA Method 9; or

(B) During startup or shutdown, the owner or operator shall:

(I) Operate all continuous monitoring systems;

(II) Use only clean fuel as identified in 5.b. in Table 3 of 40 CFR Part 63, Subpart DDDDD;

(III) Engage all applicable control devices so as to comply with the twenty percent opacity standard within four hours of the start of supplying useful thermal energy;

(IV) Engage and operate particulate matter control devices within one hour of first feeding fuels that are not clean fuels; and

(V) Develop and implement a written startup and shutdown plan. The plan must minimize the startup period according to the manufacturer's recommended procedure. In the absence of manufacturer's recommendation, the owner or operator shall use the recommended startup procedure for a unit of a similar design. The plan must be maintained on-site and available upon request for public inspection.

(vii) The owner or operator maintains records sufficient to demonstrate compliance with (e)(i) through (vi) of this subsection. The records must include the following:

(A) The date and time of notification of the permitting authority;

(B) The date and time when startup and shutdown began;

(C) The date and time when startup and shutdown ended; and

(D) The compliance option in (e)(vi) of this subsection that was chosen and documentation of how the conditions of that option were met.

(f) Furnace refractory curing. For emissions that occur during curing of furnace refractory in a lime kiln or boiler, visible emissions (as determined by SWCAA Method 9A) shall not exceed forty percent opacity for more than three minutes in any hour, except when (b) of this subsection applies. For this provision to apply, the owner or operator shall meet all of the following requirements:

(i) The total duration of refractory curing shall not exceed thirty-six hours;

(ii) Use only clean fuel identified in 5.b. in Table 3 in 40 CFR Part 63, Subpart DDDDD;

(iii) Provide a copy of the manufacturer's instructions on curing refractory to the permitting authority;

(iv) Follow the manufacturer's instructions on curing refractory, including all instructions on temperature increase rates and holding temperatures and time;

(v) Engage the emission controls as soon as possible during the curing process; and

(vi) Notify the permitting authority at least one working day prior to the start of the refractory curing process.

~~((e)) (g) ((Exemptions from the twenty percent opacity standard.))~~

~~((i))~~ Military training. Visible emissions resulting from military obscurant training exercises ~~((is))~~ are exempt from compliance with the twenty percent opacity limitation provided the following criteria are met:

~~((A))~~ (i) No visible emissions shall cross the boundary of the military training site/reservation.

~~((B))~~ (ii) The operation shall have in place methods, which have been reviewed and approved by the permitting agency, to detect changes in weather that would cause the obscurant to cross the site boundary either during the course of the exercise or prior to the start of the exercise. The approved methods shall include provisions that cancel the training exercise or cease the use of obscurant during the training exercise until weather conditions would allow such training to occur without causing obscurant to leave the site boundary of the military site/reservation.

~~((ii))~~ (h) Certification testing. Visible emissions from the "smoke generator" used for testing and certification of visible emissions readers per the requirements of 40 CFR 60, Appendix A, Reference Method 9 and Ecology Methods 9A and 9B shall be exempt from compliance with the twenty percent opacity limitation while being used for certifying visible emission readers.

~~((iii))~~ (i) Firefighter training. Visible emissions from fixed and mobile firefighter training facilities are exempt while being used to train firefighters and while complying with the requirements of WAC 173-425.

(2) **Fallout.** No person shall cause or permit the emission of particulate matter from any "stationary source" to be deposited beyond the property under direct control of the owner or operator of the "stationary source" in sufficient quantity to interfere unreasonably with the use and enjoyment of the property upon which the material is deposited.

(3) **Fugitive emissions.** The owner or operator of any "emission unit" engaging in materials handling, construction, demolition or any other operation that emits fugitive emissions:

(a) If located in an attainment area and not impacting any nonattainment area, shall take reasonable precautions to prevent the release of air contaminants from the operation.

(b) If the "emission unit" has been identified as a significant contributor to the nonattainment status of a designated nonattainment area, shall be required to use reasonable and available control methods, which shall include any necessary changes in technology, process,

or other control strategies to control emissions of the air contaminants for which nonattainment has been designated.

(4) **Odors.**

(a) No person shall cause or allow the generation of any odor from any "source" or activity, which may unreasonably interfere with any other property owner's use and enjoyment of his property. (~~Recognized good practice and procedures must be used to reduce odors to a reasonable minimum.~~) The Agency may take enforcement action under this section if it documents the following:

(i) The detection by the Executive Director or a duly authorized representative of an odor at Level 3 or greater, according to the following odor scale:

Level 0 No odor detected,

Level 1 Odor barely detected,

Level 2 Odor is distinct and definite, any unpleasant characteristics recognizable,

Level 3 Odor is objectionable enough or strong enough to cause attempts at avoidance, and

Level 4 Odor is so strong that a person does not want to remain present; and

(ii) An affidavit from a person making a complaint that demonstrates that they have experienced odor emissions in sufficient quantities and of such characteristics and duration so as to unreasonably interfere with their enjoyment of life and property.

(b) When the "source" is using "good agricultural practices," as provided in RCW (~~70.94.640~~) 70A.15.4530, no violation of this section shall have occurred.

(5) **Emissions detrimental to persons or property.** No person shall cause or permit the emission of any air contaminant from any "source" if it is detrimental to the health, safety, or welfare of any person, or causes damage to property or business.

(6) **Sulfur dioxide.** No person shall cause or permit the emission of a gas containing sulfur dioxide from any "emission unit" in excess of one thousand ppm of sulfur dioxide on a dry basis, corrected to seven percent oxygen or twelve percent carbon dioxide as required by the applicable emission standard for combustion sources, and based on the average of any period of sixty consecutive minutes.

(7) **Concealment and masking.** No person shall cause or permit the installation or use of any means that conceals or masks an emission of an air contaminant which would otherwise violate any provisions of this section.

(8) **Fugitive dust sources.**

(a) The owner or operator of any "source" of or activity that generates fugitive dust shall take reasonable precautions to prevent fugitive dust from becoming airborne and shall maintain and operate the "source" to minimize emissions.

(b) The owner(s) or operator(s) of any existing "stationary source(s)" of fugitive dust that has been identified as a significant contributor to a PM₁₀ or PM_{2.5} nonattainment area shall be required to use reasonably available control technology (RACT) to control emissions. The status of a "stationary source" as a significant contributor will be determined by the criteria found in SWCAA 400-113(3).

AMENDATORY SECTION (Amending WSR 17-11-078 filed 5/18/17, effective 6/18/17)

SWCAA 400-045 Permit Application for Nonroad Engines

(1) **Purpose.** A nonroad engine permit application is the document used by the Agency to record and track requests to approve the installation, replacement, or other alteration of a nonroad engine.

(2) **Applicability.** The requirements of this section apply to all nonroad engines as defined in SWCAA 400-030 except for ~~((the following:))~~ those identified in section (3) below.

(3) Exemptions

(a) Engines ~~((put into service))~~ operating in SWCAA jurisdiction prior to November 9, 2003;

(b) Nonroad engine installations with an aggregate power rating less than 500 horsepower not associated with stationary sources;

(c) Individual nonroad engines with a power rating less than 50 horsepower;

(d) Small/residential water well drilling rigs;

(e) Portable firefighting equipment;

(f) Mobile cranes and pile drivers;

(g) Engines used for emergency flood control;

(h) Engines used to power carnival or amusement rides;

(i) Engines used to power portable equipment (sign boards, lights, compressors, etc.) operating in support of short term construction or maintenance projects (< 1 year in duration);

(j) Engines used to replace utility power or utility powered equipment on a temporary basis (< 30 days in duration) provided that such engines are EPA Tier certified and use fuel with a maximum sulfur content of 0.0015% by weight;

(k) Engines used in, or on, a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (e.g., mobile cranes, bulldozers, forklifts, etc.); or

(l) Engines integral to a stationary source (e.g., portable power units dedicated to supporting sources such as rock crushers, asphalt plants, rock screens, etc.). These engines are subject to permitting under SWCAA 400-109.

~~((3))~~ (4) Application Submittal. The owner or operator shall submit a complete nonroad engine permit application for each new installation, replacement, or other alteration of a nonroad engine.

~~((4))~~ (5) Application Fees. A filing fee plus a review fee, as provided in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098, shall be submitted with the application prior to Agency review.

Expedited Application Review. An applicant may request expedited processing of a permit application. The Agency shall, at its own discretion, determine if available permitting resources are sufficient to support expedited processing. If the application is accepted for expedited review, the applicant must pay double the normal application and review fee. An expedited permit application will be processed as soon as possible and will receive priority over non-expedited applications.

~~((5))~~ (6) Agency actions. Each acceptable and complete nonroad engine permit application shall result in the issuance of a nonroad engine permit or other regulatory order by the Agency in accordance with SWCAA 400-046. The requirements of SEPA (State Environmental Policy Act) shall be complied with for each application.

~~((6))~~ (7) Withdrawn or exempt applications.

(a) An applicant may withdraw an application at any time prior to issuance of a final nonroad engine permit. The applicant must provide a written and signed request to the Agency indicating their desire to

withdraw the application and certification that the proposed equipment or alteration will not be installed or operated without prior review and approval from the Agency. The Agency shall provide written response to acknowledge withdrawal of the application.

(b) After review by the Agency, an application may be determined to be exempt from the requirements of SWCAA 400-046 and 400-100. The Agency shall provide written notification to the applicant for all applications that are determined to be exempt. Exemption status shall not take effect until confirmed in writing.

(c) For withdrawn or exempt applications, filing fees will not be refunded to the applicant. Review fees may be refunded upon request, provided that substantial time has not been expended by the Agency for review of the application.

AMENDATORY SECTION (Amending WSR 20-06-003 filed 2/19/20, effective 3/21/20)

SWCAA 400-046 Application Review Process for Nonroad Engines

(1) Applicability.

(a) All nonroad engine permit applications submitted to the Agency pursuant to SWCAA 400-045 shall be reviewed and processed as described in this section.

(b) Review of a permit application shall be limited to the nonroad engine proposed to be installed, replaced or altered and the air contaminants whose emissions would increase as a result.

(c) The requirements of this section do not apply to "stationary sources" as defined in SWCAA 400-030(115). Permit applications for "stationary sources" are reviewed and processed in accordance with SWCAA 400-110.

(2) Requirements.

(a) Provided that all review requirements are met, a nonroad engine permit shall be issued by the Agency prior to the installation, replacement or alteration of any nonroad engine subject to the requirements of SWCAA 400-045 and this section.

(b) A completed environmental checklist or a completed determination, as provided in Chapter 197-11 WAC, shall be submitted with each application.

(c) Each nonroad engine permit application shall demonstrate that the proposed nonroad engine complies with applicable ambient air quality standards. Regulation of nonroad engines pursuant to this section shall be consistent with Appendix A of 40 CFR 89 Subpart A (as in effect on the date cited in SWCAA 400-025). If the ambient impact of a proposed project could potentially exceed an applicable ambient air standard, the Agency may require that the applicant demonstrate compliance with ~~((available ambient air increments and))~~ applicable Ambient Air Quality Standards (AAQS) using a modeling technique consistent with 40 CFR Part 51, Appendix W (as in effect on the date cited in SWCAA 400-025). Monitoring of existing ambient air quality may be required if data sufficient to characterize background air quality are not available.

(3) Application processing/completeness determination. Within 30 calendar days of receipt of a nonroad engine permit application, the Agency shall either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application.

(4) Final determination.

(a) Within 60 calendar days of receipt of a complete nonroad engine permit application, the Agency shall either issue a final decision on the application or initiate public notice on a proposed decision, followed as promptly as possible by a final decision. All actions taken under this subsection must meet the public involvement requirements of SWCAA 400-171(1). An owner or operator seeking approval of a project involving applications pursuant to both SWCAA 400-045 and 400-109 may elect to combine the applications into a single permit.

(b) Nonroad engine permits issued under this section shall be reviewed and signed prior to issuance by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the Agency.

(c) Nonroad engine permits issued under this section become effective on the date of issuance unless otherwise specified.

(d) If an applicant fails to respond to Agency information requests within 60 calendar days, the Agency may presume the nonroad engine permit application is being withdrawn. The Agency will issue written notice of application withdrawal. No fees will be refunded if an application is withdrawn.

(5) **Appeals.** A nonroad engine permit, any conditions contained in a nonroad engine permit, the denial of a nonroad engine permit application, or any other regulatory order issued pursuant to this section, may be appealed to the Pollution Control Hearings Board within 30 calendar days of receipt as provided in Chapter 43.21B RCW and Chapter 371-08 WAC. The Agency shall promptly mail copies of each nonroad engine permit or order to the applicant and any other party who submitted timely comments on the application, along with a notice advising the parties of their rights of appeal to the Pollution Control Hearings Board.

(6) **Compliance.** Noncompliance with any term or condition identified in a nonroad engine permit issued pursuant to this section shall be considered a violation of this section.

(7) **Expiration.** Nonroad engine permits issued pursuant to this section shall become invalid if installation or alteration does not occur within eighteen months after the date of issuance of a permit or if installation or alteration is discontinued for a period of eighteen months or more. The Agency may extend the eighteen-month period upon a satisfactory demonstration that an extension is justified. The Agency may specify an earlier date for installation or alteration in a nonroad engine permit.

If a nonroad engine remains in use at the same location for more than 12 months, approval under this section expires and the nonroad engine becomes a stationary source subject to the provisions of SWCAA 400-109 and 400-110. The owner or operator shall maintain records of the length of use at each location for the purpose of documenting compliance with this requirement.

(8) **Change of conditions.**

(a) The owner or operator may request, at any time, a change in conditions of an existing nonroad engine permit. The request may be approved provided the Agency finds that:

(i) No ambient air quality standard will be exceeded as a result of the change;

(ii) The change will not adversely impact the ability of the Agency to determine compliance with an applicable permit term or condition; and

(iii) The revised permit meets the requirements of SWCAA 400-046.

(b) A request to change existing approval conditions shall be filed as a nonroad engine permit application. The application shall demonstrate compliance with the requirements of subsection (2) of this section, and be acted upon according to the timelines in subsections (3) and (4) of this section. The current Consolidated Fee Schedule established in accordance with SWCAA 400-098 shall apply to these requests.

(c) Actions taken under this subsection may be subject to the public involvement provisions of SWCAA 400-171.

(9) **Engine registration.** The owner or operator of nonroad engines approved pursuant to this section shall notify the Agency within 10 calendar days of engine installation. Subsequent to notification, each permitted unit shall be registered with the Agency and the owner or operator shall pay a registration fee (~~(according to the schedule below)~~) as provided in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098. Registration expires after a period of 12 consecutive months. If a permitted unit is still operating after its registration expires, it shall be reregistered and a second registration fee (~~(, as provided in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098,)~~) must be paid.

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.

AMENDATORY SECTION (Amending WSR 20-06-003 filed 2/19/20, effective 3/21/20)

SWCAA 400-050 Emission Standards for Combustion and Incineration Units

(1) **Particulate matter emissions.** Combustion and incineration "emission units" shall meet all requirements of SWCAA 400-040 and, in addition, no person shall cause or permit emissions of particulate matter in excess of 0.23 gram per dry cubic meter at standard conditions (0.1 grain/dscf), except, for an "emission unit" combusting wood derived fuels for the production of steam. No person shall allow or permit the emission of particulate matter from an "emission unit" combusting wood derived fuels for the production of steam in excess of 0.46 gram per dry cubic meter at standard conditions (0.2 grain/dscf), as measured by EPA Method 5 in 40 CFR Part 60, Appendix A (as in effect on the date cited in SWCAA 400-025) or other acceptable sampling methods approved in advance by both the Agency and EPA.

(2) **Fuel oil sulfur content limit.** Effective January 1, 2015, combustion and/or incineration units shall not be fired on a fuel oil with a sulfur content greater than 15 ppm by weight (ppmw). Affected "emission units" include, but are not limited to, process boilers, aggregate dryers, internal combustion engines, small incinerators, and space heaters. This prohibition supersedes existing permit terms allowing the use of fuel oil with higher sulfur contents. Noncompliant fuel purchased prior to the effective date of this requirement may be fired in affected units.

(3) **Incinerators.**

(a) For any incinerator, no person shall cause or permit emissions in excess of one hundred (100) ppm of total carbonyls as measured by Ecology Test Method 14. Total carbonyls means the concentration of organic compounds containing the =C=O radical. An applicable EPA reference method or other procedures approved in advance by the Agency may be used to collect and analyze for the same compounds collected in Ecology Test Method 14.

(b) Incinerators shall be operated only during daylight hours unless written permission to operate at other times is received from the Agency.

(4) **Measurement correction.** Measured concentrations for combustion and incineration units shall be corrected to 7% oxygen, except when the Agency determines that an alternate oxygen correction factor is more representative of normal operations such as the correction factor included in an applicable NSPS or NESHAP, actual operating characteristics, or the manufacturer's specifications for the "emission unit".

(5) **Commercial and industrial solid waste incineration units constructed on or before November 30, 1999.** (See SWCAA 400-115(1) for the requirements for a commercial and industrial solid waste incineration unit constructed after November 30, 1999, or modified or reconstructed after June 1, 2001.)

(a) Definitions.

(i) "Commercial and industrial solid waste incineration (CISWI) unit" means any combustion device that combusts commercial and industrial waste, as defined in this subsection. The boundaries of a CISWI unit are defined as, but not limited to, the commercial or industrial solid waste fuel feed system, grate system, flue gas system, and bottom ash. The CISWI unit does not include air pollution control equipment or the stack. The CISWI unit boundary starts at the commercial and industrial solid waste hopper (if applicable) and extends through two areas:

(A) The combustion unit flue gas system, which ends immediately after the last combustion chamber.

(B) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

(ii) "Commercial and industrial solid waste" means solid waste combusted in an enclosed device using controlled flame combustion without energy recovery that is a distinct operating unit of any commercial or industrial facility (including field erected, modular, and custom built incineration units operating with starved or excess air), or solid waste combusted in an air curtain incinerator without energy recovery that is a distinct operating unit of any commercial or industrial facility.

(b) Applicability. This section applies to incineration units that meet all three criteria:

(i) The incineration unit meets the definition of CISWI unit in this subsection.

(ii) The incineration unit commenced construction on or before November 30, 1999.

(iii) The incineration unit is not exempt under (4)(c) of this subsection.

(c) Exempted units. The following types of incineration units are exempt from this subsection:

(i) Pathological waste incineration units. Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste as defined in 40 CFR 60.2265 (as in effect on the date cited in SWCAA 400-025) that meet the two requirements specified in (c)(i)(A) and (B) of this subsection.

- (A) Notify the permitting agency that the unit meets these criteria.
- (B) Keep records on a calendar quarter basis of the weight of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste burned, and the weight of all other fuels and wastes burned in the unit.
- (ii) Agricultural waste incineration units. Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of agricultural wastes as defined in 40 CFR 60.2265 (as in effect on the date cited in SWCAA 400-025) that meet the two requirements specified in (c)(ii)(A) and (B) of this subsection.
- (A) Notify the permitting agency that the unit meets these criteria.
- (B) Keep records on a calendar quarter basis of the weight of agricultural waste burned, and the weight of all other fuels and wastes burned in the unit.
- (iii) Municipal waste combustion units. Incineration units that meet either of the two criteria specified in (c)(iii)(A) and (B) of this subsection.
- (A) Units regulated under 40 CFR Part 60, Subpart Ea or Subpart Eb (as in effect on the date cited in SWCAA 400-025); 40 CFR Part 60, Subpart AAAA (as in effect on the date cited in SWCAA 400-025); or WAC 173-400-050(5).
- (B) Units burning greater than 30 percent municipal solid waste or refuse-derived fuel, as defined in 40 CFR Part 60, Subparts Ea (as in effect on the date cited in SWCAA 400-025), Eb (as in effect on the date cited in SWCAA 400-025), and AAAA (as in effect on the date cited in SWCAA 400-025), and SWCAA 400-050(5), and that have the capacity to burn less than 35 tons (32 megagrams) per day of municipal solid waste or refuse-derived fuel, if the two requirements in (c)(iii)(B)(I) and (II) of this subsection are met.
- (I) Notify the Agency that the unit meets these criteria.
- (II) Keep records on a calendar quarter basis of the weight of municipal solid waste burned and the weight of all other fuels and wastes burned in the unit.
- (iv) Medical waste incineration units. Incineration units regulated under 40 CFR Part 60, Subpart Ec (Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996) (as in effect on the date cited in SWCAA 400-025);
- (v) Small power production facilities. Units that meet the three requirements specified in (c)(v)(A) through (C) of this subsection.
- (A) The unit qualifies as a small power-production facility under section 3(17)(C) of the Federal Power Act (16 U.S.C. 796 (17)(C)).
- (B) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity.
- (C) The owner or operator of the unit has notified the permitting agency that the unit meets all of these criteria.
- (vi) Cogeneration facilities. Units that meet the three requirements specified in (c)(vi)(A) through (C) of this subsection.
- (A) The unit qualifies as a cogeneration facility under section 3(18)(B) of the Federal Power Act (16 U.S.C. 796 (18)(B)).
- (B) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(C) The owner or operator of the unit has notified the permitting agency that the unit meets all of these criteria.

(vii) Hazardous waste combustion units. Units that meet either of the two criteria specified in (c)(vii)(A) or (B) of this subsection.

(A) Units for which you are required to get a permit under Section 3005 of the Solid Waste Disposal Act.

(B) Units regulated under Subpart EEE of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors) (as in effect on the date cited in SWCAA 400-025).

(viii) Materials recovery units. Units that combust waste for the primary purpose of recovering metals, such as primary and secondary smelters;

(ix) Air curtain incinerators. Air curtain incinerators that burn only the materials listed in (c)(ix)(A) through (C) of this subsection are only required to meet the requirements under "Air Curtain Incinerators" in 40 CFR 60.2245 through 60.2260 (as in effect on the date cited in SWCAA 400-025).

(A) 100 percent wood waste.

(B) 100 percent clean lumber.

(C) 100 percent mixture of only wood waste, clean lumber, and/or yard waste.

(x) Cyclonic barrel burners. See 40 CFR 60.2265 (as in effect on the date cited in SWCAA 400-025).

(xi) Rack, part, and drum reclamation units. See 40 CFR 60.2265 (as in effect on the date cited in SWCAA 400-025).

(xii) Cement kilns. Kilns regulated under Subpart LLL of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry) (as in effect on the date cited in SWCAA 400-025).

(xiii) Sewage sludge incinerators. Incineration units regulated under 40 CFR Part 60, (Standards of Performance for Sewage Treatment Plants) (as in effect on the date cited in SWCAA 400-025).

(xiv) Chemical recovery units. Combustion units burning materials to recover chemical constituents or to produce chemical compounds where there is an existing commercial market for such recovered chemical constituents or compounds. The seven types of units described in (c)(xiv)(A) through (G) of this subsection are considered chemical recovery units.

(A) Units burning only pulping liquors (i.e., black liquor) that are reclaimed in a pulping liquor recovery process and reused in the pulping process.

(B) Units burning only spent sulfuric acid used to produce virgin sulfuric acid.

(C) Units burning only wood or coal feedstock for the production of charcoal.

(D) Units burning only manufacturing by-product streams/residues containing catalyst metals which are reclaimed and reused as catalysts or used to produce commercial grade catalysts.

(E) Units burning only coke to produce purified carbon monoxide that is used as an intermediate in the production of other chemical compounds.

(F) Units burning only hydrocarbon liquids or solids to produce hydrogen, carbon monoxide, synthesis gas, or other gases for use in other manufacturing processes.

(G) Units burning only photographic film to recover silver.

(xv) Laboratory analysis units. Units that burn samples of materials for the purpose of chemical or physical analysis.

(d) Exceptions.

(i) Physical or operational changes to a CISWI unit made primarily to comply with this section do not qualify as a "modification" or "reconstruction" (as defined in 40 CFR 60.2815 (as in effect on the date cited in SWCAA 400-025)).

(ii) Changes to a CISWI unit made on or after June 1, 2001, that meet the definition of "modification" or "reconstruction" as defined in 40 CFR 60.2815 (as in effect on the date cited in SWCAA 400-025) mean the CISWI unit is considered a new unit and subject to SWCAA 400-115(1), which adopts 40 CFR Part 60, Subpart CCCC by reference.

(e) A CISWI unit must comply with 40 CFR 60.2575 through 60.2875 (as in effect on the date cited in SWCAA 400-025).

(i) The federal rule contains these major components:

(A) Increments of progress towards compliance in 60.2575 through 60.2630;

(B) Waste management plan requirements in 60.2620 through 60.2630;

(C) Operator training and qualification requirements in 60.2635 through 60.2665;

(D) Emission limitations and operating limits in 60.2670 through 60.2685;

(E) Performance testing requirements in 60.2690 through 60.2725;

(F) Initial compliance requirements in 60.2700 through 60.2725;

(G) Continuous compliance requirements in 60.2710 through 60.2725;

(H) Monitoring requirements in 60.2730 through 60.2735;

(I) Recordkeeping and reporting requirements in 60.2740 through 60.2800;

(J) Title V operating permits requirements in 60.2805;

(K) Air curtain incinerator requirements in 60.2810 through 60.2870;

(L) Definitions in 60.2875; and

(M) Tables in 60.2875. In Table 1, the final control plan must be submitted before June 1, 2004, and final compliance must be achieved by June 1, 2005.

(ii) Exception to adopting the federal rule. For purposes of this section, "administrator" includes the Agency.

(iii) Exception to adopting the federal rule. For purposes of this section, "you" means the owner or operator.

(iv) Exception to adopting the federal rule. For purposes of this section, each reference to "the effective date of state plan approval" means July 1, 2002.

(v) Exception to adopting the federal rule. The Title V operating permit requirements in 40 CFR 60.2805(a) are not adopted by reference. Each CISWI unit, regardless of whether it is a major or nonmajor unit, is subject to the air operating permit regulation, Chapter 173-401 WAC, beginning on July 1, 2002. See WAC 173-401-500 for the permit application requirements and deadlines.

(vi) Exception to adopting the federal rule. The following compliance dates apply:

(A) The final control plan (Increment 1) must be submitted no later than July 1, 2003. (See Increment 1 in Table 1.)

(B) Final compliance (Increment 2) must be achieved no later than July 1, 2005. (See Increment 2 in Table 1.)

(f) Federal plan. The federal plan found under 40 CFR 62 Subpart III is adopted by reference (as in effect on the date cited in SWCAA 400-025).

(6) **Small municipal waste combustion units.** Small Municipal waste combustion units constructed on or before August 30, 1999. (See SWCAA 400-115(1) for the requirements for a municipal waste combustion unit constructed after August 30, 1999, or reconstructed or modified after June 6, 2001.)

(a) Definition. "Municipal waste combustion unit" means any setting or equipment that combusts, liquid, or gasified municipal solid waste including, but not limited to, field-erected combustion units (with or without heat recovery), modular combustion units (starved-air or excess-air), boilers (for example, steam generating units), furnaces (whether suspension-fired, grate-fired, mass-fired, air-curtain incinerators, or fluidized bed-fired), and pyrolysis/combustion units. Two criteria further define municipal waste combustion units:

(i) Municipal waste combustion units do not include the following units:

(A) Pyrolysis or combustion units located at a plastics or rubber recycling unit as specified under the exemptions in (c)(viii) and (ix) of this subsection.

(B) Cement kilns that combust municipal solid waste as specified under the exemptions in (c)(x) of this subsection.

(C) Internal combustion engines, gas turbines, or other combustion devices that combust landfill gases collected by landfill gas collection systems.

(ii) The boundaries of a municipal waste combustion unit are defined as follows. The municipal waste combustion unit includes, but is not limited to, the municipal solid waste fuel feed system, grate system, flue gas system, bottom ash system, and the combustion unit water system. The municipal waste combustion unit does not include air pollution control equipment, the stack, water treatment equipment, or the turbine-generator set. The municipal waste combustion unit boundary starts at the municipal solid waste pit or hopper and extends through three areas:

(A) The combustion unit flue gas system, which ends immediately after the heat recovery equipment or, if there is no heat recovery equipment, immediately after the combustion chamber.

(B) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

(C) The combustion unit water system, which starts at the feed water pump and ends at the piping that exits the steam drum or superheater.

(b) Applicability. This section applies to a municipal waste combustion unit that meets these three criteria:

(i) The municipal waste combustion unit has the capacity to combust at least 35 tons per day of municipal solid waste but no more than 250 tons per day of municipal solid waste or refuse-derived fuel.

(ii) The municipal waste combustion unit commenced construction on or before August 30, 1999.

(iii) The municipal waste combustion unit is not exempt under (c) of this section.

(c) Exempted units. The following municipal waste combustion units are exempt from the requirements of this section:

(i) Small municipal waste combustion units that combust less than 11 tons per day. Units are exempt from this section if four requirements are met:

(A) The municipal waste combustion unit is subject to a federally enforceable permit limiting the amount of municipal solid waste combusted to less than 11 tons per day.

(B) The owner or operator notifies the permitting agency that the unit qualifies for the exemption.

(C) The owner or operator of the unit sends a copy of the federally enforceable permit to the permitting agency.

(D) The owner or operator of the unit keeps daily records of the amount of municipal solid waste combusted.

(ii) Small power production units. Units are exempt from this section if four requirements are met:

(A) The unit qualifies as a small power production facility under Section 3 (17)(C) of the Federal Power Act (16 U.S.C. 796 (17)(C)).

(B) The unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity.

(C) The owner or operator notifies the permitting agency that the unit qualifies for the exemption.

(D) The owner or operator submits documentation to the permitting agency that the unit qualifies for the exemption.

(iii) Cogeneration units. Units are exempt from this section if four requirements are met:

(A) The unit qualifies as a small power production facility under Section 3 (18)(C) of the Federal Power Act (16 U.S.C. 796 (18)(C)).

(B) The unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(C) The owner or operator notifies the permitting agency that the unit qualifies for the exemption.

(D) The owner or operator submits documentation to the permitting agency that the unit qualifies for the exemption.

(iv) Municipal waste combustion units that combust only tires. Units are exempt from this section if three requirements are met:

(A) The municipal waste combustion unit combusts a single-item waste stream of tires and no other municipal waste (the unit can co-fire coal, fuel oil, natural gas, or other nonmunicipal solid waste).

(B) The owner or operator notifies the permitting agency that the unit qualifies for the exemption.

(C) The owner or operator submits documentation to the permitting agency that the unit qualifies for the exemption.

(v) Hazardous waste combustion units. Units are exempt from this section if the units have received a permit under Section 3005 of the Solid Waste Disposal Act.

(vi) Materials recovery units. Units are exempt from this section if the units combust waste mainly to recover metals. Primary and secondary smelters may qualify for the exemption.

(vii) Co-fired units. Units are exempt from this section if four requirements are met:

(A) The unit has a federally enforceable permit limiting municipal solid waste combustion to no more than 30 percent of total fuel input by weight.

(B) The owner or operator notifies the permitting agency that the unit qualifies for the exemption.

(C) The owner or operator submits a copy of the federally enforceable permit to the permitting agency.

(D) The owner or operator records the weights, each quarter, of municipal solid waste and of all other fuels combusted.

(viii) Plastics/rubber recycling units. Units are exempt from this section if four requirements are met:

(A) The pyrolysis/combustion unit is an integrated part of a plastics/rubber recycling unit as defined in 40 CFR 60.1940 (as in effect on the date cited in SWCAA 400-025).

(B) The owner or operator of the unit records the weight, each quarter, of plastics, rubber, and rubber tires processed.

(C) The owner or operator of the unit records the weight, each quarter, of feed stocks produced and marketed from chemical plants and petroleum refineries.

(D) The owner or operator of the unit keeps the name and address of the purchaser of the feed stocks.

(ix) Units that combust fuels made from products of plastics/rubber recycling plants. Units are exempt from this section if two requirements are met:

(A) The unit combusts gasoline, diesel fuel, jet fuel, fuel oils, residual oil, refinery gas, petroleum coke, liquefied petroleum gas, propane, or butane produced by chemical plants or petroleum refineries that use feed stocks produced by plastics/rubber recycling units.

(B) The unit does not combust any other municipal solid waste.

(x) Cement kilns. Cement kilns that combust municipal solid waste are exempt.

(xi) Air curtain incinerators. If an air curtain incinerator as defined under 40 CFR 60.1910 (as in effect on the date cited in SWCAA 400-025) combusts 100 percent yard waste, then those units must only meet the requirements under 40 CFR 60.1910 through 60.1930 (as in effect on the date cited in SWCAA 400-025).

(d) Exceptions.

(i) Physical or operational changes to an existing municipal waste combustion unit made primarily to comply with this section do not qualify as a modification or reconstruction, as those terms are defined in 40 CFR 60.1940 (as in effect on the date cited in SWCAA 400-025).

(ii) Changes to an existing municipal waste combustion unit made on or after June 6, 2001, that meet the definition of modification or reconstruction, as those terms are defined in 40 CFR 60.1940 (as in effect on the date cited in SWCAA 400-025), mean the unit is considered a new unit and subject to SWCAA 400-115(1), which adopts 40 CFR Part 60, Subpart AAAAA (as in effect on the date cited in SWCAA 400-025).

(e) Municipal waste combustion units are divided into two subcategories based on the aggregate capacity of the municipal waste combustion plant as follows:

(i) Class I units. Class I units are small municipal waste combustion units that are located at municipal waste combustion plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. See the definition of "municipal waste combustion plant capacity" in 40 CFR 60.1940 (as in effect on the date cited in SWCAA 400-025) for the specification of which units are included in the aggregate capacity calculation.

(ii) Class II units. Class II units are small municipal waste combustion units that are located at municipal waste combustion plants with an aggregate plant combustion capacity less than or equal to 250 tons per day of municipal solid waste. See the definition of "municipal waste combustion plant capacity" in 40 CFR 60.1940 (as in effect on the date cited in SWCAA 400-025) for the specification of which units are included in the aggregate capacity calculation.

(f) Compliance option 1.

(i) A municipal solid waste combustion unit may choose to reduce, by the final compliance date of June 1, 2005, the maximum combustion capacity of the unit to less than 35 tons per day of municipal solid waste. The owner or operator must submit a final control plan and the notifications of achievement of increments of progress as specified in 40 CFR 60.1610 (as in effect on the date cited in SWCAA 400-025).

(ii) The final control plan must, at a minimum, include two items:

(A) A description of the physical changes that will be made to accomplish the reduction.

(B) Calculations of the current maximum combustion capacity and the planned maximum combustion capacity after the reduction. Use the equations specified in 40 CFR 60.1935 (d) and (e) (as in effect on the date cited in SWCAA 400-025) to calculate the combustion capacity of a municipal waste combustion unit.

(iii) A permit restriction or a change in the method of operation does not qualify as a reduction in capacity. Use the equations specified in 40 CFR 60.1935 (d) and (e) (as in effect on the date cited in SWCAA 400-025) to calculate the combustion capacity of a municipal waste combustion unit.

(g) Compliance option 2. The municipal waste combustion unit must comply with 40 CFR 60.1585 through 60.1905, and 60.1935 (as in effect on the date cited in SWCAA 400-025).

(i) The rule contains these major components:

(A) Increments of progress towards compliance in 60.1585 through 60.1640;

(B) Good combustion practices operator training in 60.1645 through 60.1670;

(C) Good combustion practices operator certification in 60.1675 through 60.1685;

(D) Good combustion practices operating requirements in 60.1690 through 60.1695;

(E) Emission limits in 60.1700 through 60.1710;

(F) Continuous emission monitoring in 60.1715 through 60.1770;

(G) Stack testing in 60.1775 through 60.1800;

(H) Other monitoring requirements in 60.1805 through 60.1825;

(I) Recordkeeping reporting in 60.1830 through 60.1855;

(J) Reporting in 60.1860 through 60.1905;

(K) Equations in 60.1935; and

(L) Tables 2 through 8.

(ii) Exception to adopting the federal rule. For purposes of this section, each reference to the following is amended in the following manner:

(A) "State plan" in the federal rule means SWCAA 400-050(5);

(B) "You" in the federal rule means the owner or operator;

(C) "Administrator" includes the permitting agency;

(D) Table 1 in (h)(ii) of this subsection substitutes for Table 1 in the federal rule; and

(E) "The effective date of the state plan approval" in the federal rule means December 6, 2002.

(h) Compliance schedule.

(i) Small municipal waste combustion units must achieve final compliance or cease operation not later than December 1, 2005.

(ii) Small municipal waste combustion units must achieve compliance by May 6, 2005 for all Class II units, and by November 6, 2005 for all Class I units.

(iii) Class I units must comply with these additional requirements:

(A) The owner or operator must submit the dioxins/furans stack test results for at least one test conducted during or after 1990. The stack test must have been conducted according to the procedures specified under 40 CFR 60.1790 (as in effect on the date cited in SWCAA 400-025).

(B) Class I units that commenced construction after June 26, 1987, must comply with the dioxins/furans and mercury limits specified in Tables 2 and 3 in 40 CFR Part 60, Subpart BBBB (as in effect on the date cited in SWCAA 400-025) by the later of two dates:

(I) December 6, 2003; or

(II) One year following the issuance of an order of approval (revised construction permit or operation permit) if a permit modification is required.

(i) Air operating permit. Chapter 173-401 WAC, the air operating permit regulation, applicability begins on July 1, 2002. See WAC 173-401-500 for permit application requirements and deadlines.

(j) Federal plan. The federal plan found under 40 CFR 62 Subpart JJJ is adopted by reference (as in effect on the date cited in SWCAA 400-025).

(7) **Hospital/Medical/Infectious Waste Incinerators.** Hospital/medical/infectious waste incinerators constructed on or before December 1, 2008, must comply with the requirements in 40 CFR 62 Subpart HHH (as in effect on the date cited in SWCAA 400-025).

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.

AMENDATORY SECTION (Amending WSR 20-06-003 filed 2/19/20, effective 3/21/20)

SWCAA 400-070 General Requirements for Certain Source Categories

(1) **Wigwam burners.** The use of wigwam ("tee-pee", "conical", or equivalent type) burners is prohibited effective January 1, 1994.

(2) **Hog fuel boilers.**

(a) Hog fuel boilers shall meet all provisions of SWCAA 400-040 and SWCAA 400-050(1) (~~(, except that emissions may exceed twenty percent opacity for up to fifteen consecutive minutes once in any consecutive eight hours. The intent of this provision is to permit the soot blowing and grate cleaning necessary for efficient operation of these units. Soot blowing and grate cleaning is to be scheduled for the same specific times each day. The boiler operator shall maintain a written schedule on file with the Agency, and provide updates as necessary)~~).

(b) All hog fuel boilers shall utilize RACT and shall be operated and maintained to minimize emissions.

(3) **Orchard heating.**

(a) Burning of rubber materials, asphaltic products, crankcase oil or petroleum wastes, plastic, or garbage is prohibited.

(b) It is unlawful to burn any material or operate any orchard-heating device that causes a visible emission exceeding twenty percent opacity, except during the first thirty minutes after such device or material is ignited.

(4) **Catalytic cracking units.** All new catalytic cracking units shall install BACT and meet all requirements applicable to a new "stationary source." As of January 1, 2002, there are no existing catalytic cracking units in SWCAA's jurisdiction.

(5) **Sulfuric acid plants.** No person shall cause to be discharged into the atmosphere from a sulfuric acid plant, any gases which contain acid mist, expressed as H₂SO₄, in excess of 0.15 pounds per ton of acid produced. Sulfuric acid production shall be expressed as one hundred percent H₂SO₄.

(6) **Gasoline dispensing facilities.**

(a) All gasoline dispensing facilities shall meet all the provisions of SWCAA 491 "Emission Standards and Controls for Sources Emitting Gasoline Vapors."

(b) Methyl tertiary-butyl ether (MTBE) may not be intentionally added to any gasoline, motor fuel, or clean fuel produced for sale or use in the state of Washington after December 31, 2003, and in no event may MTBE be knowingly mixed in gasoline above six-tenths of one percent by volume. [RCW 19.112.100]

(c) Each nozzle from which gasoline is dispensed shall have a maximum fuel flow rate not to exceed 10 gallons per minute. [40 CFR 80.22(j)]

(7) **Perchloroethylene dry cleaners.**

(a) New installations prohibited. Effective July 1, 2010, the installation of new perchloroethylene dry cleaning systems or reinstallation of existing perchloroethylene dry cleaning systems is prohibited.

(b) Applicability.

(i) This section applies to all dry cleaning systems that use perchloroethylene (PCE). Table 1 divides dry cleaning facilities into 3 source categories by the type of equipment they use and the volume of PCE purchased.

TABLE 1. PCE Dry Cleaner Source Categories

Dry cleaning facilities with:	Small area source purchases less than:	Large area source purchases between:	Major source purchases more than:
(1) Only Dry-to-Dry Machines	140 gallons PCE/yr	140-2,100 gallons PCE/yr	2,100 gallons PCE/yr
(2) Only Transfer Machines	200 gallons PCE/yr	200-1,800 gallons PCE/yr	1,800 gallons PCE/yr
(3) Both Dry-to-Dry and Transfer Machines	140 gallons PCE/yr	140-1,800 gallons PCE/yr	1,800 gallons PCE/yr

(ii) Major sources. In addition to the requirements in this section, a dry cleaning system that is considered a major source according to Table 1 must follow the federal requirements for major sources in 40 CFR Part 63, Subpart M (in effect on July 1, 2002).

(c) Operations and maintenance record.

(i) Each dry cleaning facility must keep an operations and maintenance record that is available upon request.

(ii) The information in the operations and maintenance record must be kept on-site for five years.

(iii) The operations and maintenance record must contain the following information:

(A) Inspection. The date and result of each inspection of the dry cleaning system. The inspection must note the condition of the system and the time any leaks were observed;

(B) Repair. The date, time, and result of each repair of the dry cleaning system;

(C) Refrigerated condenser information. If a refrigerated condenser is being used, record the following information:

(I) The air temperature at the inlet of the refrigerated condenser,

(II) The air temperature at the outlet of the refrigerated condenser,

(III) The difference between the inlet and outlet temperature readings, and

(IV) The date the temperature was taken;

(D) Carbon adsorber information. If a carbon adsorber is being used, record the following information:

(I) The concentration of PCE in the exhaust of the carbon adsorber, and

(II) The date the concentration was measured;

(E) A record of the volume of PCE purchased each month must be entered by the first of the following month;

(F) A record of the total amount of PCE purchased over the previous twelve months must be entered by the first of each month;

(G) All receipts of PCE purchases; and

(H) A record of any pollution prevention activities that have been accomplished.

(d) General operations and maintenance requirements:

(i) Drain cartridge filters in their housing or other sealed container for at least twenty-four hours before discarding the cartridges.

(ii) Close the door of each dry cleaning machine except when transferring articles to or from the machine.

(iii) Store all PCE, and wastes containing PCE, in a closed container with no perceptible leaks.

(iv) Operate and maintain the dry cleaning system according to the manufacturer's specifications and recommendations.

(v) Keep a copy on-site of the design specifications and operating manuals for all dry cleaning equipment.

(vi) Keep a copy on-site of the design specifications and operating manuals for all emissions control devices.

(vii) Route the PCE gas-vapor stream from the dry cleaning system through the applicable equipment in Table 2:

TABLE 2. Minimum PCE Vapor Vent Control Requirements

Small area source	Large area source	Major source
Refrigerated condenser for all machines installed after September 21, 1993.	Refrigerated condenser for all machines.	Refrigerated condenser with a carbon adsorber for all machines installed after September 21, 1993.

(e) Inspection.

(i) The owner or operator must inspect the dry cleaning system at a minimum following the requirements in Table 3:

TABLE 3. Minimum Inspection Frequency

Small area source	Large area source	Major source
Once every 2 weeks.	Once every week.	Once every week.

(ii) An inspection must include an examination of these components for condition and perceptible leaks:

- (A) Hose and pipe connections, fittings, couplings, and valves;
- (B) Door gaskets and seatings;
- (C) Filter gaskets and seatings;
- (D) Pumps;
- (E) Solvent tanks and containers;
- (F) Water separators;
- (G) Muck cookers;
- (H) Stills;
- (I) Exhaust dampers; and
- (J) Cartridge filter housings.

(iii) The dry cleaning system must be inspected while it is operating.

(iv) The date and result of each inspection must be entered in the operations and maintenance record at the time of the inspection.

(f) Repair requirements:

(i) Leaks must be repaired within twenty-four hours of detection if repair parts are available.

(ii) If repair parts are unavailable, they must be ordered within 2 business days of detecting the leak.

(iii) Repair parts must be installed as soon as possible, and no later than 5 business days after arrival.

(iv) The date and time each leak was discovered must be entered in the operations and maintenance record.

(v) The date, time, and result of each repair must be entered in the operations and maintenance record at the time of the repair.

(g) Requirements for systems with refrigerated condensers. A dry cleaning system using a refrigerated condenser must meet all of the following requirements:

(i) Outlet air temperature requirements:

(A) Each week the air temperature sensor at the outlet of the refrigerated condenser must be checked.

(B) The air temperature at the outlet of the refrigerated condenser must be less than or equal to 45°F (7.2°C) during the cool-down period.

(C) The air temperature must be entered in the operations and maintenance record manual at the time it is checked.

(D) The air temperature sensor must meet these requirements:

(I) An air temperature sensor must be permanently installed on a dry-to-dry machine, dryer or reclaimer at the outlet of the refrigerated condenser. The air temperature sensor must be installed by September 23, 1996, if the dry cleaning system was constructed before December 9, 1991;

(II) The air temperature sensor must be accurate to within 2°F (1.1°C);

(III) The air temperature sensor must be designed to measure at least a temperature range from 32°F (0°C) to 120°F (48.9°C); and

(IV) The air temperature sensor must be labeled "RC outlet."

(ii) Inlet air temperature requirements:

(A) Each week the air temperature sensor at the inlet of the refrigerated condenser installed on a washer must be checked.

(B) The inlet air temperature must be entered in the operations and maintenance record at the time it is checked.

(C) The air temperature sensor must meet these requirements:

(I) An air temperature sensor must be permanently installed on a washer at the inlet of the refrigerated condenser. The air temperature sensor must be installed by September 23, 1996, if the dry cleaning system was constructed before December 9, 1991;

(II) The air temperature sensor must be accurate to within 2°F (1.1°C);

(III) The air temperature sensor must be designed to measure at least a temperature range from 32°F (0°C) to 120°F (48.9°C); and

(IV) The air temperature sensor must be labeled "RC inlet."

(iii) For a refrigerated condenser used on the washer unit of a transfer system, the following are additional requirements:

(A) Each week the difference between the air temperature at the inlet and outlet of the refrigerated condenser must be calculated.

(B) The difference between the air temperature at the inlet and outlet of a refrigerated condenser installed on a washer must be greater than or equal to 20°F (11.1°C).

(C) The difference between the inlet and outlet air temperature must be entered in the operations and maintenance record each time it is checked.

(iv) A converted machine with a refrigerated condenser must be operated with a diverter valve that prevents air drawn into the dry cleaning machine from passing through the refrigerated condenser when the door of the machine is open;

(v) The refrigerated condenser must not vent the air-PCE gas-vapor stream while the dry cleaning machine drum is rotating or, if installed on a washer, until the washer door is opened; and

(vi) The refrigerated condenser in a transfer machine may not be coupled with any other equipment.

(h) Requirements for systems with carbon adsorbers. A dry cleaning system using a carbon adsorber must meet all of the following requirements:

(i) Each week the concentration of PCE in the exhaust of the carbon adsorber must be measured at the outlet of the carbon adsorber using a colorimetric detector tube.

(ii) The concentration of PCE must be recorded in the operations and maintenance record each time the concentration is checked.

(iii) If the dry cleaning system was constructed before December 9, 1991, monitoring must begin by September 23, 1996.

(iv) The colorimetric tube must meet these requirements:

(A) The colorimetric tube must be able to measure a concentration of 100 parts per million of PCE in air.

(B) The colorimetric tube must be accurate to within 25 parts per million.

(C) The concentration of PCE in the exhaust of the carbon adsorber must not exceed 100 ppm while the dry cleaning machine is venting to the carbon adsorber at the end of the last dry cleaning cycle prior to desorption of the carbon adsorber.

(v) If the dry cleaning system does not have a permanently fixed colorimetric tube, a sampling port must be provided within the exhaust outlet of the carbon adsorber. The sampling port must meet all of these requirements:

(A) The sampling port must be easily accessible.

(B) The sampling port must be located eight stack or duct diameters downstream from a bend, expansion, contraction or outlet.

(C) The sampling port must be two stack or duct diameters upstream from a bend, expansion, contraction, inlet or outlet.

(8) **Abrasive blasting.**

(a) Abrasive blasting shall be performed inside a fully enclosed booth or structure designed to capture the blast grit, overspray, and removed material. Outdoor blasting of structures or items too large to be reasonably handled indoors shall employ control measures such as

curtailment during windy periods, wet blasting, and/or enclosure of the area being blasted with tarps. Blasting operations shall comply with the general regulations found in SWCAA 400-040 at all times.

(b) Outdoor blasting shall be performed with either steel shot, wet blasting methods, or an abrasive material containing less than one percent (by mass) of material that would pass through a No. 200 sieve.

(c) All abrasive blasting of materials that contain, or have a coating that may contain, a substance that is identified as a toxic air pollutant in Chapter 173-460 WAC or a hazardous substance shall be analyzed prior to blast operations. If a toxic or hazardous material is present in the blast media or removed media, all material shall be handled and disposed of in accordance with applicable regulations.

(9) **Sewage sludge incinerators.**

(a) Standards for the incineration of sewage sludge found in 40 CFR 503, Subparts A (General Provisions) and E (Incineration) are adopted by reference (as in effect on the date cited in SWCAA 400-025).

(b) The federal plan found under 40 CFR 62 Subpart LLL is adopted by reference (as in effect on the date cited in SWCAA 400-025).

(10) **Municipal solid waste landfills constructed, reconstructed, or modified before May 30, 1991.** A municipal solid waste landfill (MSW landfill) is an entire disposal facility in a contiguous geographical space where household waste is placed in or on the land. A MSW landfill may also receive other types of waste regulated under Subtitle D of the Federal Resource Conservation and Recovery Act including the following: Commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be either publicly or privately owned. An MSW landfill may be a new MSW landfill, an existing MSW landfill, or a lateral expansion. All references in this subsection to 40 CFR Part 60 rules mean those rules in effect on the date cited in SWCAA 400-025.

(a) Applicability. These rules apply to each MSW landfill constructed, reconstructed, or modified before May 30, 1991; and the MSW landfill accepted waste at any time since November 8, 1987 or the landfill has additional capacity for future waste deposition. (See SWCAA 400-115(1) for the requirements for MSW landfills constructed, reconstructed, or modified on or after May 30, 1991.) Terms in this subsection have the meaning given them in 40 CFR 60.751, except that every use of the word "administrator" in the federal rules referred to in this subsection includes the Agency.

(b) Exceptions. Any physical or operational change to an MSW landfill made solely to comply with these rules is not considered a modification or rebuilding.

(c) Standards for MSW landfill emissions:

(i) An MSW landfill having a design capacity less than 2.5 million megagrams or 2.5 million cubic meters must comply with the requirements of 40 CFR 60.752(a) in addition to the applicable requirements specified in this section.

(ii) An MSW landfill having design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters must comply with the requirements of 40 CFR 60.752(b) in addition to the applicable requirements specified in this section.

(d) Recordkeeping and reporting. An MSW landfill must follow the recordkeeping and reporting requirements in 40 CFR 60.757 (submission of an initial design capacity report) and 40 CFR 60.758 (recordkeeping

requirements), as applicable, except as provided for under (d) (i) and (ii).

(i) The initial design capacity report for the facility is due before September 20, 2001.

(ii) The initial nonmethane organic compound (NMOC) emissions rate report is due before September 20, 2001.

(e) Test methods and procedures:

(i) An MSW landfill having a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters must calculate the landfill nonmethane organic compound emission rates following the procedures listed in 40 CFR 60.754, as applicable, to determine whether the rate equals or exceeds 50 megagrams per year.

(ii) Gas collection and control systems must meet the requirements in 40 CFR 60.752 (b) (2) (ii) through the following procedures:

(A) The systems must follow the operational standards in 40 CFR 60.753.

(B) The systems must follow the compliance provisions in 40 CFR 60.755 (a) (1) through (a) (6) to determine whether the system is in compliance with 40 CFR 60.752 (b) (2) (ii).

(C) The system must follow the applicable monitoring provisions in 40 CFR 60.756.

(f) Conditions. Existing MSW landfills that meet the following conditions must install a gas collection and control system:

(i) The landfill accepted waste at any time since November 8, 1987, or the landfill has additional design capacity available for future waste deposition;

(ii) The landfill has a design capacity greater than or equal to 2.5 million megagrams or 2.5 million cubic meters. The landfill may calculate design capacity in either megagrams or cubic meters for comparison with the exception values. Any density conversions shall be documented and submitted with the report; and

(iii) The landfill has an NMOC emission rate of 50 megagrams per year or greater.

(g) Change in conditions. After the adoption date of this rule, a landfill that meets all three conditions in (e) of this subsection must comply with all the requirements of this section within thirty months of the date when the conditions were met. This change will usually occur because the NMOC emission rate equaled or exceeded the rate of 50 megagrams per year.

(h) Gas collection and control systems:

(i) Gas collection and control systems must meet the requirements in 40 CFR 60.752 (b) (2) (ii).

(ii) The design plans must be prepared by a licensed professional engineer and submitted to the Agency within one year after the adoption date of this section.

(iii) The system must be installed within eighteen months after the submittal of the design plans.

(iv) The system must be operational within thirty months after the adoption date of this section.

(v) The emissions that are collected must be controlled in one of three ways:

(A) An open flare designed and operated according to 40 CFR 60.18;

(B) A control system designed and operated to reduce NMOC by 98 percent by weight; or

(C) An enclosed combustor designed and operated to reduce the outlet NMOC concentration to 20 parts per million as hexane by volume, dry basis corrected to three percent oxygen or less.

(i) Air operating permit:

(i) An MSW landfill that has a design capacity less than 2.5 million megagrams or 2.5 million cubic meters on January 7, 2000, is not subject to the air operating permit regulation, unless the landfill is subject to WAC 173-401 for some other reason. If the design capacity of an exempted MSW landfill subsequently increases to equal or exceed 2.5 million megagrams or 2.5 million cubic meters by a change that is not a modification or reconstruction, the landfill is subject to Chapter 173-401 WAC on the date the amended design capacity report is due.

(ii) An MSW landfill that has a design capacity equal to or greater than 2.5 million megagrams or 2.5 million cubic meters on January 7, 2000, is subject to Chapter 173-401 WAC beginning on the effective date of this section. (Note: Under 40 CFR 62.14352(e), an applicable MSW landfill must have submitted its application so that by April 6, 2001, the permitting agency was able to determine that it was timely and complete. Under 40 CFR 70.7(b), no "source" may operate after the time that it is required to submit a timely and complete application.)

(iii) When an MSW landfill is closed, the owner or operator is no longer subject to the requirement to maintain an operating permit for the landfill if the landfill is not subject to Chapter 173-401 WAC for some other reason and if either of the following conditions are met:

(A) The landfill was never subject to the requirement for a control system under 40 CFR 62.14353; or

(B) The landfill meets the conditions for control system removal specified in 40 CFR 60.752 (b) (2) (v).

(11) **Used oil burners.**

(a) Applicability. The requirements of this section (~~do not~~) apply to all combustion sources except the following:

(i) Facilities operating in accordance with an air discharge permit or other regulatory order issued by the Agency;

(ii) Used oil burned in used oil fired space heaters (40 CFR 279.23) provided that:

(a) The space heater burns only used oil that the owner or operator generates or used oil received from household do-it-yourself used oil generators,

(b) The space heater is designed to have a maximum heat output of not more than 0.5 million Btu per hour, and

(c) Combustion gases from the space heater are vented to the ambient air;

(iii) Ocean-going vessels (40 CFR 279.20 (a) (2)); and

(iv) Mixtures of used oil and diesel fuel mixed by the generator of the used oil for use in the generator's own vehicles (40 CFR 279.20 (a) (3)).

(b) Requirements. No person shall burn as fuel used oil that exceeds any of the following specification levels:

(i) Arsenic - 5 ppm maximum;

(ii) Ash - 0.1 percent maximum;

(iii) Cadmium - 2 ppm maximum;

(iv) Chromium - 10 ppm maximum;

(v) Lead - 100 ppm maximum;

(vi) Polychlorinated biphenyls (PCB's) - 2 ppm maximum;

(vii) Sulfur - 1.0 percent maximum;

(viii) Flash point - 100°F minimum; and

(ix) Total halogens - 1,000 ppm maximum.

(12) **Coffee roasters.**

(a) Applicability. The following equipment is subject to the provisions of SWCAA 400-109 and 400-110:

(i) All batch process coffee roasters with a capacity of 10 pounds or greater of green coffee beans per batch;

(ii) Batch process coffee roasters with a capacity of 10 pounds or less of green coffee beans per batch on a case-by-case basis;

(iii) Continuous process coffee roasters regardless of capacity; and

(iv) Coffee roasting processes involving decaffeination regardless of capacity.

(b) Requirements. Batch coffee roasters with a capacity of 10 pounds or greater of green coffee beans per batch shall install and operate an afterburner or equivalent control device that treats all roasting (~~and cooling~~) exhaust streams prior to discharge to the ambient air.

(13) **Natural gas fired water heaters.**

(a) Applicability. The requirements of this section apply to all natural gas fired water heaters with a rated heat input less than 400,000 Btu/hr. For the purposes of this subsection, the term "water heater" means a closed vessel in which water is heated by combustion of gaseous fuel and is withdrawn for use external to the vessel at pressures not exceeding 160 psig, including the apparatus by which heat is generated and all controls and devices necessary to prevent water temperatures from exceeding 210°F.

(b) Requirements.

(i) On or after January 1, 2010, no person shall offer for sale, or install, a water heater that emits NO_x at levels in excess of 55 ppmv at 3% O₂, dry (0.067 lb per million Btu of heat input).

(ii) On or after January 1, 2013, no person shall offer for sale, or install, a water heater that emits NO_x at levels in excess of 20 ppmv at 3% O₂, dry (0.024 lb per million Btu of heat input).

(14) **Rendering plants.**

(a) Applicability. The requirements of this section apply to any equipment or process used for the reduction of animal matter. For the purpose of this section, reduction is defined as any heated process (i.e., rendering, cooking, drying, dehydration, digesting, evaporating or protein concentrating). The requirements of this section shall not apply to any equipment or process used exclusively for the processing of food for human consumption.

(b) Requirements. All gases, vapors, and gas-entrained effluents emitted by reduction operations shall be captured and:

(i) Incinerated at temperatures of not less than 1,400 degrees F for a period of not less than 0.5 seconds; or

(ii) Processed in a manner determined by the Agency to be equal to or more effective than the method specified in section (i) above.

(15) **Outdoor wood-fired boilers.**

(a) Applicability. For the purposes of this subsection, the term "outdoor wood-fired boiler" means an outdoor wood-fired hydronic heater or outdoor wood-fired furnace that is an accessory outdoor structure, designed and intended, through the burning of wood, to heat the principal structure or any other site, building, or structure on the premises. The requirements of this subsection shall apply to units with rated heat inputs of 1,000,000 Btu/hr or less.

(b) No person shall sell, install, or operate an outdoor wood-fired boiler unless the affected unit meets the applicable requirements of WAC 173-433.

(c) Outdoor wood-fired boilers shall only be installed:

(i) For use outside urban growth areas as defined in chapter 36.70A RCW;

(ii) A minimum of fifty feet from the residence it is serving;

(iii) A minimum of two hundred feet from the nearest residence or commercial establishment that is not located on the same property as the outdoor wood-fired boiler; and

(iv) With a minimum chimney height of fifteen feet. If there is a residence that is not located on the same property within five hundred feet of the outdoor wood-fired boiler, the chimney must extend at least as high as the roof height of all such residences.

(d) Outdoor wood-fired boilers shall only be fired on clean dry wood, wood pellets made from clean wood, or fuels recommended by the manufacturer of the outdoor wood-fired boiler. The owner or operator of an outdoor wood-fired boiler shall follow manufacturer-recommended fuel loading times and amounts. In no case, shall a boiler be fired on any prohibited fuel cited in WAC 173-433.

(16) Cyclonic Burn Barrel Type Incinerators.

Use of cyclonic burn barrel type incinerators is prohibited effective January 1, 2022 except for special circumstances approved in advance by SWCAA.

Reviser's note: The brackets and enclosed material in the text of 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 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.

AMENDATORY SECTION (Amending WSR 20-06-003 filed 2/19/20, effective 3/21/20)

SWCAA 400-072 Small Unit Notification for Selected Source Categories

Purpose. The standards and requirements contained in this section are intended to be representative of BACT for the affected source categories. Submission of a small unit notification (SUN) pursuant to section 400-072(2) is intended to take the place of an air discharge permit application in regards to approval of new "emission units". An air discharge permit application as described in SWCAA 400-109 is not required for an affected "emission unit" if the owner or operator submits proper notification to the Agency and maintains compliance with the emission standards and other requirements specified for the applicable source category. No SUN is required if a source is exempt under SWCAA 400-109. "Emission units" subject to the provisions of this section may be incorporated into a facility's Air Discharge Permit during subsequent permitting actions.

The provisions of this section do not apply to emission units that are (~~part of a major stationary source or major modification~~) subject to major New Source Review.

Registration. All "emission units" subject to the provisions of this section are also subject to registration pursuant to SWCAA 400-100 and periodic inspection by Agency representatives.

(1) Exceptions.

(a) The owner or operator of an "emission unit" meeting any of the applicability criteria listed below may voluntarily elect to file an air discharge permit application pursuant to SWCAA 400-109.

(b) If an "emission unit" subject to the provisions of this section is located at a "stationary source" that is otherwise required to

be permitted pursuant to SWCAA 400-109, the Agency may require that the emission unit be included in the permit for the affected "stationary source".

(c) SWCAA may require any "emission unit" that fails to maintain ongoing compliance with the applicable requirements of this section to submit an air discharge permit application pursuant to SWCAA 400-109.

(2) **Agency notification.** An owner or operator who wishes to install and operate a new "emission unit" under the provisions of this section must file a formal notification with the Agency for each "emission unit". Notification shall be performed using forms developed by the Agency for that purpose. The notification must include documentation sufficient to positively identify the affected "emission unit", establish applicability under this section, and demonstrate compliance with applicable requirements.

A complete notification includes, but is not limited to, the following:

- (a) Location of installation and/or operation;
- (b) Identification of responsible party (owner or operator);
- (c) Applicable processing fee;
- (d) Purpose of installation and/or operation (e.g., replace an existing unit, expansion of facility, new facility, etc.). If intended as a replacement for an existing unit, the existing unit must be clearly identified in the notification to allow SWCAA to make necessary changes in the registration program;
- (e) Equipment specifications (equipment type, make, model number, serial number, year of manufacture, rated capacity, exhaust stack configuration, fuel type, etc.);
- (f) Control equipment specifications;
- (g) Vendor performance guarantees; and
- (h) Operational information (hours of operation, maximum product throughput, fuel type, fuel consumption, etc.).

(3) **Processing fee.** Each notification shall be accompanied by the payment of a processing fee as provided in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098 for each piece of equipment subject to notification.

(4) **Effective date.** "Emission units" subject to the provisions of this section shall not be installed or operated until the Agency provides written confirmation that the affected "emission units" are capable of complying with applicable requirements.

(5) **Source categories.**

(a) **Coffee roasters.**

(i) **Applicability.** The provisions of this section apply to batch configuration coffee roasters with a capacity of less than 100 pounds of green coffee beans per batch.

(ii) **Emission limits and standards.**

(A) Visible emissions from the coffee roaster exhaust stack shall not exceed five percent opacity for more than 3 minutes in any one hour period as determined in accordance with SWCAA Method 9 (SWCAA 400, Appendix A).

(B) Operations that cause or contribute to odors that could unreasonably interfere with any other property owner's use and enjoyment of their property shall use recognized good practice and procedures to reduce those odors to a reasonable minimum, consistent with the requirements of SWCAA 400-040(4).

(iii) **General requirements.**

(A) Each coffee roaster shall be equipped with an afterburner designed for a minimum residence time of 0.5 seconds, and capable of maintaining an operating temperature of not less than 1,200°F.

(B) Each coffee roaster shall have an operable temperature gauge capable of monitoring afterburner operating temperature on a continual basis.

(C) Each coffee roaster shall be exhausted to the afterburner whenever smoke or odors are generated by roasting and cooling activities.

(D) Afterburners shall be operated whenever the associated coffee roaster is in operation. The afterburner shall be operated and maintained in accordance with the manufacturer's specifications. Furthermore, the afterburner shall be operated in a manner that minimizes emissions.

(E) The exhaust point for each coffee roaster shall be a minimum of 200 feet from the nearest residential structure.

(F) Each coffee roaster and afterburner shall only be fired on natural gas or propane.

(G) Afterburner exhaust shall be discharged vertically at least four feet above the roof peak of the building containing the afterburner, and at a point higher than surrounding buildings. Any device that obstructs or prevents vertical discharge is prohibited.

(iv) **Monitoring and recordkeeping requirements.** The information listed below shall be recorded at the specified intervals, and maintained in a readily accessible form for a minimum of 3 years. With the exception of data logged by a computerized data acquisition system, each required record shall include the date and the name of the person making the record entry.

(A) Afterburner operating temperature shall be recorded weekly;

(B) Quantity of coffee roasted shall be recorded weekly;

(C) Upset conditions that cause excess emissions shall be recorded for each occurrence; and

(D) All air quality related complaints, including odor complaints, received by the permittee and the results of any subsequent investigation or corrective action shall be recorded promptly after each occurrence.

(v) **Testing requirements.** None.

(vi) **Reporting requirements.**

(A) The owner or operator of an affected "emission unit" shall provide written notification of initial operation to SWCAA within 10 days of occurrence.

(B) All air quality related complaints, including odor complaints, received by the owner or operator shall be reported to SWCAA within 3 business days of receipt.

(C) The owner or operator of an affected coffee roaster shall report the following information to the Agency no later than March 15th for the preceding calendar year:

(I) Quantity of natural gas consumed by the roaster and afterburner;

(II) Quantity of coffee roasted; and

(III) Air emissions of criteria air pollutants, VOCs, and toxic air pollutants (TAPs).

(b) **Small gas fired boilers/heaters.**

(i) **Applicability.** The provisions of this section apply to gas fired (natural gas/propane/LPG) boilers and heaters with individual rated heat inputs equal to or greater than 0.4 MMBtu/hr and equal to or less than 2.0 MMBtu/hr. For the purposes of this subsection, the

term "boiler" means any combustion equipment designed to produce steam or to heat water that is not used exclusively to produce electricity for sale.

(ii) **Emission limits and standards.**

(A) Visible emissions from the boiler/heater exhaust stack shall not exceed zero percent opacity for more than 3 minutes in any one hour period as determined in accordance with SWCAA Method 9. (SWCAA 400, Appendix A).

(B) Each boiler/heater shall be equipped with combustion technology capable of maintaining NO_x and CO emissions at, or below, 30 ppmv and 50 ppmv, respectively (corrected to 3% O₂, dry, 1-hr avg). (~~EPA test methods from 40 CFR 60 (as in effect on the date cited in SWCAA 400-025) shall be used to determine compliance.~~)

(iii) **General requirements.**

(A) Each boiler/heater shall only be fired on natural gas, propane, or LPG.

(iv) **Monitoring and recordkeeping requirements.** The information listed below shall be recorded at the specified intervals and maintained in a readily accessible form for a minimum of 3 years. With the exception of data logged by a computerized data acquisition system, each required record shall include the date and the name of the person making the record entry.

(A) Quantity of fuel consumed by the boiler/heater shall be recorded for each calendar month;

(B) Maintenance activities for the boiler/heater shall be logged for each occurrence;

(C) Upset conditions that cause excess emissions shall be recorded for each occurrence; and

(D) All air quality related complaints received by the permittee and the results of any subsequent investigation or corrective action shall be recorded promptly after each occurrence.

(v) **Testing requirements.**

(A) Each boiler/heater shall undergo emission monitoring no later than 60 calendar days after commencing initial operation. Subsequent monitoring shall be conducted annually thereafter no later than the end of the month in which the original monitoring was conducted. All emission monitoring shall be conducted in accordance with the requirements of SWCAA 400-106(2) unless otherwise approved by the Agency.

(B) If emission monitoring results for a boiler/heater indicate that emission concentrations may exceed 30 ppmvd NO_x or 50 ppmvd CO, corrected to 3% O₂, the owner or operator shall either perform 60 minutes of additional monitoring to more accurately quantify CO and NO_x emissions, or initiate corrective action. Corrective action shall be initiated as soon as practical but no later than 3 business days after the potential exceedance is identified. Corrective action includes burner tuning, maintenance by service personnel, limitation of unit load, or other action taken to lower emission concentrations. Corrective action shall be pursued until observed emission concentrations no longer exceed 30 ppmvd NO_x or 50 ppmvd CO, corrected to 3% O₂.

(vi) **Reporting requirements.**

(A) The owner or operator of an affected "emission unit" shall provide written notification of initial operation to SWCAA within 10 days of occurrence.

(B) All air quality related complaints received by the owner or operator shall be reported to the Agency within 3 business days of receipt.

(C) Emission monitoring results for each boiler/heater shall be reported to the Agency within 15 calendar days of completion on forms provided by the Agency unless otherwise approved by the Agency.

(D) The owner or operator of an affected boiler/heater shall report the following information to the Agency no later than March 15th for the preceding calendar year:

(I) Quantity of fuel consumed; and

(II) Air emissions of criteria air pollutants, VOCs, and toxic air pollutants (TAPs).

(c) **Emergency service internal combustion engines.**

(i) **Applicability.** The provisions of this section apply to emergency service internal combustion engines with a rating of 50 or more, but less than 1,000 horsepower (e.g., emergency generators, fire pumps, sewer lift stations, etc.).

(ii) **Emission limits and standards.**

(A) Visible emissions from diesel fired engine exhaust stacks shall not exceed ten percent opacity for more than 3 minutes in any one hour period as determined in accordance with SWCAA Method 9 (See SWCAA 400, Appendix A). This limitation shall not apply during periods of cold (~~start-up~~) startup.

(iii) **General requirements.**

(A) Liquid fueled engines shall only be fired on #2 diesel or bi-odiesel. Fuel sulfur content of liquid fuels shall not exceed 0.0015% by weight (15 ppmw). A fuel certification from the fuel supplier may be used to demonstrate compliance with this requirement.

(B) Gaseous fueled engines shall only be fired on natural gas or propane.

(C) Each compression ignition engine shall be EPA Tier certified and manufactured no earlier than January 1, 2008.

(D) Engine operation shall be limited to maintenance checks, readiness testing, and actual emergency use.

(E) Engine operation for maintenance checks and readiness testing shall not exceed 100 hours per year. Actual emergency use is unrestricted.

(F) Each engine shall be equipped with a nonresettable hour meter for the purpose of documenting hours of operation.

(G) Engine exhaust shall be discharged vertically. Any device that obstructs or prevents vertical discharge is prohibited.

(iv) **Monitoring and recordkeeping requirements.** The information listed below shall be recorded at the specified intervals and maintained in a readily accessible form for a minimum of 3 years. With the exception of data logged by a computerized data acquisition system, each required record shall include the date and the name of the person making the record entry.

(A) Total hours of operation for each engine shall be recorded annually;

(B) Hours of emergency use for each engine shall be recorded annually;

(C) Fuel sulfur certifications shall be recorded for each shipment of liquid fuel;

(D) Maintenance activities shall be recorded for each occurrence consistent with the provisions of 40 CFR 60.4214;

(E) Upset conditions that cause excess emissions shall be recorded for each occurrence; and

(F) All air quality related complaints received by the permittee and the results of any subsequent investigation or corrective action shall be recorded promptly after each occurrence.

(v) **Testing requirements.** None.

(vi) **Reporting requirements.**

(A) The owner or operator of an affected "emission unit" shall provide written notification of initial operation to SWCAA within 10 days of occurrence.

(B) All air quality related complaints received by the owner or operator shall be reported to SWCAA within three calendar days of receipt.

(C) The owner or operator of an affected emergency engine shall report the following information to the Agency no later than March 15th for the preceding calendar year:

(I) Hours of engine operation; and

(II) Air emissions of criteria air pollutants, VOCs, and toxic air pollutants (TAPs).

(d) **((Petroleum)) Non-perchloroethylene dry cleaners.**

(i) **Applicability.** The provisions of this section apply to dry cleaning facilities that use ((petroleum)) a solvent other than perchloroethylene and have a total manufacturer's rated dryer capacity less than 38 kilograms (84 pounds). The total manufacturers' rated dryer capacity is the sum of the manufacturers' rated dryer capacity for each existing and proposed petroleum solvent dryer at the facility.

(ii) **Emission limits and standards.**

(A) VOC emissions from each dry cleaning facility shall not exceed 1.0 ton per year. Emissions shall be calculated using a mass balance approach assuming that all cleaning fluid utilized at the facility is emitted to the ambient air. Documented quantities of cleaning fluid shipped offsite as waste may be deducted from the amount of cleaning fluid purchased to calculate((d)) actual emissions.

(B) Operations which cause or contribute to odors that unreasonably interfere with any other property owner's use and enjoyment of their property shall use recognized good practice and procedures to reduce these odors to a reasonable minimum, consistent with the requirements of SWCAA 400-040(4).

(iii) **General requirements.**

(A) Each dry cleaning facility shall be operated in a business space zoned for commercial activity, located a minimum of 200 feet from the nearest residential structure.

(B) Dry cleaning machines shall use DF-2000 cleaning fluid or an equivalent solvent.

(C) Solvent or waste containing solvent shall be stored in closed solvent tanks or containers with no perceptible leaks.

(D) All cartridge filters shall be drained in their sealed housing or other enclosed container for 24 hours prior to disposal.

(E) Perceptible leaks shall be repaired within twenty-four hours unless repair parts must be ordered. If parts must be ordered to repair a leak, the parts shall be ordered within 2 business days of detecting the leak and repair parts shall be installed within 5 business days after receipt.

(F) Pollution control devices associated with each piece of dry cleaning equipment shall be operated whenever the equipment served by that control device is in operation. Control devices shall be operated and maintained in accordance with the manufacturer's specifications.

(iv) **Monitoring and recordkeeping requirements.** The information listed below shall be recorded at the specified intervals and maintained in a readily accessible form for a minimum of 3 years. Each re-

quired record shall include the date and the name of the person making the record entry.

(A) Each dry cleaning machine shall be visually inspected at least once per week for perceptible leaks. The results of each inspection shall be recorded in an inspection log and maintained on-site.

The inspection shall include, but not be limited to the following:

- (I) Hose connections, unions, couplings and valves;
- (II) Machine door gaskets and seating;
- (III) Filter gaskets and seating;
- (IV) Pumps;
- (V) Solvent tanks and containers;
- (VI) Water separators;
- (VII) Distillation units;
- (VIII) Diverter valves; and
- (IX) Filter housings.

(B) The amount of cleaning fluid (e.g., DF-2000) purchased, used, and disposed of shall be recorded monthly.

(C) Upset conditions that cause excess emissions shall be recorded for each occurrence; and

(D) All air quality related complaints, including odor complaints, received by the owner or operator and the results of any subsequent investigation or corrective action shall be recorded promptly after each occurrence.

(v) **Testing requirements.** None.

(vi) **Reporting requirements.**

(A) The owner or operator of an affected "emission unit" shall provide written notification of initial operation to SWCAA within 10 days of occurrence.

(B) All air quality related complaints, including odor complaints, received by the permittee shall be reported to SWCAA within 3 calendar days of receipt.

(C) The owner or operator of an affected petroleum dry cleaner shall report the following information to the Agency no later than March 15th for the preceding calendar year:

(I) Quantity of cleaning fluid (e.g., DF-2000) consumed; and

(II) Air emissions of criteria air pollutants, VOCs, and toxic air pollutants (TAPs).

(e) **Rock (~~crushers and aggregate screens~~) Crushing Operations.**

(i) **Applicability.** The provisions of this section apply to individual rock crushers and aggregate screens proposed for installation at existing rock crushing operations subject to facilitywide emission limits established by SWCAA. The affected rock crushing operation, including the new rock crusher and/or aggregate screen, must continue to comply with existing emission and/or process limits subsequent to installation.

The provisions of this section do not apply to internal combustion engines associated with proposed rock crushers or aggregate screens. Such engines are subject to the requirements of SWCAA 400-045 or 400-109, as applicable.

(ii) **Emission limits and standards.**

(A) Visible emissions from rock crushing operations shall not exceed 0% opacity for more than three (3) minutes in any one hour period as determined in accordance with SWCAA Method 9 (SWCAA 400, Appendix A).

(iii) **General requirements.**

(A) Each rock crusher and aggregate screen shall be equipped with a high pressure water spray system for the control of fugitive PM

emissions. Operating pressure in each spray system shall be maintained at 80 psig or greater. A functional pressure gauge shall be maintained onsite with a connection point provided for the purpose of demonstrating compliance with the minimum pressure requirement.

(B) Spray/fog nozzles in the high pressure water spray system shall be visually inspected a minimum of once per week when in operation to ensure proper function. Clogged or defective nozzles shall be replaced or repaired prior to subsequent operation.

(C) Material handling points including, but not limited to, conveyor transfer points, aggregate storage piles, and haul roads shall be watered at reasonable intervals as necessary to control fugitive dust emissions.

(D) Additional wet suppression measures shall be employed, as necessary, to control fugitive dust from haul roads, rock crushing, and material handling equipment in the event that process changes or weather patterns result in insufficient water application to control fugitive dust from plant operations.

(E) Each rock crusher and/or aggregate screen subject to 40 CFR 60, Subpart 000 "Standards of Performance for Nonmetallic Mineral Processing Plants" shall comply with the applicable requirements of that regulation (as in effect on the date cited in SWCAA 400-025).

(F) For portable rock crushing operations, the owner or operator shall notify the Agency in advance of relocating approved equipment and shall submit operational information (such as production quantities, hours of operation, location of nearest neighbor, etc.) sufficient to demonstrate that proposed operation will comply with the emission standards for a new source, and will not cause a violation of applicable ambient air quality standards, and if in a nonattainment area, will not interfere with scheduled attainment of ambient standards.

(iv) **Monitoring and recordkeeping requirements.** The information listed below shall be recorded at the specified intervals and maintained in a readily accessible form for a minimum of 3 years. Each required record shall include the date and the name of the person making the record entry.

(A) Visual inspection of spray/fog nozzles shall be recorded weekly;

(B) Maintenance, repair, or replacement of affected equipment shall be recorded for each occurrence;

(C) Quantity and size of crushed/screened material shall be recorded monthly;

(D) Relocation of rock crushing equipment shall be recorded for each occurrence.

(E) Upset conditions that cause excess emissions shall be recorded for each occurrence; and

(F) All air quality related complaints received by the owner or operator and the results of any subsequent investigation or corrective action shall be recorded promptly after each occurrence.

(v) **Testing requirements.** An initial emissions test shall be conducted for each rock crusher and/or aggregate screen subject to 40 CFR 60, Subpart 000 "Standards of Performance for Nonmetallic Mineral Processing Plants" that has not previously been tested. Testing shall be conducted within 90 calendar days of commencing operation. All emission testing shall be conducted in accordance with the requirements of that regulation (as in effect on the date cited in SWCAA 400-025).

(vi) **Reporting requirements.**

(A) The owner or operator of an affected "emission unit" shall provide written notification of initial operation to SWCAA within 10 days of occurrence.

(B) All air quality related complaints received by the owner or operator shall be reported to SWCAA within 3 business days of receipt.

(C) The owner or operator of an affected rock crusher or aggregate screen shall report the following information to the Agency no later than March 15th for the preceding calendar year:

(I) Quantity and size of crushed/screened material throughput;

(II) Air emissions of criteria air pollutants.

(D) Emission testing results for each rock crusher and/or aggregate screen subject to 40 CFR 60, Subpart 000 shall be reported to the Agency within 45 calendar days of test completion.

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.

AMENDATORY SECTION (Amending WSR 20-06-003 filed 2/19/20, effective 3/21/20)

SWCAA 400-075 Emission Standards for Stationary Sources Emitting Hazardous Air Pollutants

(1) ~~((The))~~ National emission standards for hazardous air pollutants ~~((contained in))~~ have been promulgated by EPA.

(a) 40 CFR Part 61 and appendices are hereby adopted by reference (as in effect on the date cited in SWCAA 400-025). A list of adopted standards is provided in SWCAA 400, Appendix C for informational purposes.

(b) Exceptions to 40 CFR Part 61 adoption by reference.

(i) The term "Administrator" in 40 CFR Part 61 shall mean the Administrator of EPA and the Executive Director of the Agency. ~~((A list of adopted standards is provided in SWCAA 400, Appendix C for informational purposes.))~~

(ii) The following subparts of 40 CFR Part 61 are not adopted by reference:

(A) Subpart B, Radon Emissions from Underground Uranium Mines;

(B) Subpart H, Radionuclides other than Radon from Department of Energy Facilities;

(C) Subpart I, Radionuclide Emissions from Federal Facilities other than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H;

(D) Subpart K, Radionuclide Emissions from Elemental Phosphorus Plants;

(E) Subpart Q, Radon Emissions from Department of Energy Facilities;

(F) Subpart R, Radon Emissions from Phosphogypsum Stacks;

(G) Subpart T, Radon Emissions from the Disposal of Uranium Mill Tailings; and

(H) Subpart W, Radon Emissions from Operating Mill Tailings.

(2) The Agency may require that emission tests be conducted and require access to records, books, files, and other information specific to the control, recovery, or release of those pollutants regulated under 40 CFR Part 61, Part 62, Part 63, or Part 65, as applicable, in order to determine the status of compliance of sources of these contaminants and to carry out its enforcement responsibilities.

(3) Emission testing, monitoring, and analytical methods for sources of hazardous air pollutants shall conform with the require-

ments of 40 CFR Part 51, Part 60, Part 61, Part 63 and/or Part 65 (as in effect on the date cited in SWCAA 400-025).

(4) This section shall not apply to any "stationary source" operating pursuant to a waiver granted by EPA or an exemption granted by the President of the United States during the effective life of such waiver or exemption.

(5) Specific standards of performance referred to as Maximum Achievable Control Technology (MACT) have been promulgated by EPA.

(a) 40 CFR Part 63 and appendices are hereby adopted by reference (as in effect on the date cited in SWCAA 400-025). A list of adopted standards is provided in SWCAA 400, Appendix C for informational purposes.

(b) Exceptions to 40 CFR Part 63 adoption by reference.

(i) The term "administrator" in 40 CFR Part 63 includes the Executive Director of the Agency.

(ii) The following subparts of 40 CFR Part 63 are not adopted by reference:

(A) Subpart B, Requirements for Control Technology Determinations for Major Sources in Accordance with Clean Air Act Sections, Sections 112(g) and 112(j);

~~((A))~~ (B) Subpart C, List of Hazardous Air Pollutants, Petition Process, Lesser Quantity Designations, Source Category List;

(C) Subpart D, Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants;

~~((B))~~ (D) Subpart E, Approval of State Programs and Delegation of Federal Authorities;

~~((C))~~ (E) Subpart M, National Perchloroethylene Emission Standards for Dry Cleaning Facilities - as it applies to non-Title V sources;

(F) Subpart LL, Primary Aluminum Reduction Plants NESHAP;

~~((D))~~ (G) Subpart ZZZZ, Stationary Reciprocating Internal Combustion Engines - as it applies to non-Title V sources;

~~((E))~~ (H) Subpart HHHHHH, Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources - as it applies to non-Title V sources;

~~((F))~~ (I) Subpart JJJJJJ, Industrial, Commercial, and Institutional Boilers Area Sources - as it applies to non-Title V sources;
and

~~((G))~~ (J) Subpart XXXXXX, Area Source Standards for Nine Metal Fabrication and Finishing Source Categories - as it applies to non-Title V sources.

(6) **Consolidated requirements for the synthetic organic chemical manufacturing industry.** (SOCMI) 40 CFR Part 65 is hereby adopted by reference (as in effect on the date cited in SWCAA 400-025).

AMENDATORY SECTION (Amending WSR 16-19-009 filed 9/8/16, effective 10/9/16)

SWCAA 400-081 Startup and Shutdown

(1) In ~~((promulgating technology-based emission standards and))~~ making control technology determinations (e.g., BACT, RACT, LAER, BART) the Agency shall consider any physical and operational constraints on the ability of a "stationary source" or source category to comply with the applicable technology based standard during startup or shutdown. Where the Agency determines that the "stationary source" or source category, operated and maintained in accordance with good air pollution control practice, is not capable of achieving continuous

compliance with a technology based standard during startup or shutdown, the Agency shall include in the technology based standard appropriate emission limitations, operating parameters, or other criteria to regulate the performance of the "stationary source" or source category during startup or shutdown conditions. No provision of this rule section shall be construed to authorize emissions in excess of SIP approved emission standards unless previously approved by EPA as a SIP amendment.

(2) In modeling the emissions of a "stationary source" for purposes of demonstrating attainment or maintenance of national ambient air quality standards, the Agency shall take into account any incremental increase in allowable emissions under startup or shutdown conditions authorized by an emission limitation or other operating parameter adopted under this rule section. The review of a major source nonattainment permit must also include a determination of additional emission offsets required for allowable emissions occurring during stationary source startup and shutdown.

AMENDATORY SECTION (Amending WSR 16-19-009 filed 9/8/16, effective 10/9/16)

SWCAA 400-091 Voluntary Limits on Emissions

(1) Voluntary limits on emissions and limitations on potential to emit or process parameters or throughputs may be requested by the owner or operator of any source or "stationary source" by submittal of a complete air discharge permit application as provided in SWCAA 400-109. Confidential information shall be identified as set forth in SWCAA 400-270. Upon completion of review of the application, the Agency shall issue a regulatory order or air discharge permit limiting that source's or "stationary source's" potential to emit to an amount agreed to by the owner or operator and the Agency.

(2) A condition contained in an order or air discharge permit issued under this section shall limit operation to a level less than the "stationary source's" otherwise allowable annual emissions of that air contaminant, process parameters or throughputs under all applicable requirements of Chapter ((70.94)) 70A.15 RCW and the Federal Clean Air Act, including any standard or other requirement provided for in the Washington SIP.

(3) Any regulatory order or air discharge permit issued under this section shall include monitoring, recordkeeping and reporting requirements sufficient to ensure that the source or "stationary source" complies with any emission limit, process parameter, or throughput limitation established under this section. Monitoring requirements shall use terms, test methods, units, averaging periods, and other statistical conventions consistent with the requirements of SWCAA 400-105.

(4) Any regulatory order or air discharge permit issued under this section shall be subject to the requirements of SWCAA 400-171.

(5) The terms and conditions of a regulatory order or air discharge permit issued under this section shall be federally enforceable, upon approval of this section as an element of the Washington SIP. Any proposed change in a term or condition contained in an order or air discharge permit issued under this section shall require revision or revocation of the order or air discharge permit prior to taking effect.

(6) Noncompliance with any emission limit, test requirement, reporting requirement or other requirement identified in a regulatory

order or air discharge permit issued pursuant to this section shall be considered a violation of this section.

AMENDATORY SECTION (Amending WSR 17-11-078 filed 5/18/17, effective 6/18/17)

SWCAA 400-100 Registration Requirements

The registration program is intended to develop and maintain a current and accurate record of air contaminant sources. Information collected through the registration program is used to evaluate the effectiveness of air pollution control strategies and to verify "source" compliance with applicable air pollution requirements.

(1) **Applicability.** All "sources" or "emission units" shall be registered with the Agency in accordance with this section as set forth in RCW ((70.94.151)) 70A.15.2200. A "source" or "emission unit" is subject to registration from the time it is approved by the Agency until the time at which it permanently ceases operation. "Emission units" that are part of a portable stationary source must register upon initiation of operation within the Agency's jurisdiction and every year thereafter.

(a) Registration requirements are not applicable to the following:

(a) (i) "Emission units" or activities exempted under SWCAA 400-101; and

(b) (ii) "Stationary sources" required to apply for, or to maintain, an operating permit under Chapter 173-401 WAC.

(b) Regardless of the exemptions provided above, the following "sources" must be registered with the Agency:

(i) Gasoline stations with an annual throughput of 200,000 gallons or more (highest annual throughput in last 3 calendar years) and

(ii) ((all)) Dry cleaners with VOC or TAP emissions ((shall be registered)).

(2) **General requirements.**

(a) The owner or operator of a "source" for which registration is required shall initially register affected "emission units" with the Agency. A unique identification number shall be assigned to each "source" and a separate registration fee shall be provided for each "emission unit"; provided that, an owner may request to register a process with a detailed inventory of air contaminant sources and emissions related to the process as a single unit. A registration fee shall not be collected for exempt "emission units" identified in SWCAA 400-101.

(b) The owner or operator of a registered "source" shall submit annual reports to the Agency. Each report shall contain information as may be required by the Agency concerning location, size and height of contaminant outlets, processes employed, nature and quantity of the air contaminant emission and such other information as is relevant to air pollution and available or reasonably capable of being assembled. Relevant information may include air pollution requirements established by rule, regulatory order, air discharge permit or ordinance pursuant to Chapter ((70.94)) 70A.15 RCW. The owner, operator, or their designated representative shall sign the annual report for each "source," and be responsible for the accuracy, completeness, and timely submittal of all required information.

(3) **Registration fees.** An annual registration fee shall be paid before the Agency may register any "emission unit". Annual registration fees are based on the number of registered "emission units" and

the quantity of "source" emissions during the previous calendar year. Collected registration fees are used by the Agency in the next fiscal year (July 1 through June 30). "Sources" or "emission units" that permanently shutdown prior to January 1 of the current registration period shall not be liable for registration fees. This provision does not apply to "temporary sources" or portable sources. Operation of equipment subject to registration without payment of applicable registration fees shall be considered a violation of this section. Annual registration fees shall be paid according to the current Consolidated Fee Schedule established in accordance with SWCAA 400-098.

Exceptions:

(a) An annual registration fee shall be charged to each gasoline transport tank as provided in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098.

(b) The registration fee for a (~~small operation~~) source may be waived or reduced provided sufficient demonstration of circumstances is presented, subject to the discretion of the Executive Director.

(c) "Stationary sources" subject to the Operating Permit Program, as defined in RCW (~~(70.94.030(17))~~) 70A.15.1030(17), are not subject to Registration and shall pay an operating permit fee in accordance with SWCAA 400-103.

(4) **Delinquent registration fees.** Annual registration fees that are unpaid after June 30 for the effective year shall be considered delinquent. Pursuant to RCW (~~(70.94.431(7))~~) 70A.15.3160(7), "sources" with delinquent registration fees may be subject to a penalty equal to three times the amount of the original fee owed. If registration fees for an "emission unit" are delinquent for two consecutive years or more, the Agency may revoke the affected "emission unit's" air discharge permit or Order of Approval.

(5) **Reporting requirements for transfer or permanent shutdown of registered emission units.**

(a) The registered owner or operator shall report the transfer of ownership or permanent shutdown of registered "emission units" to the Agency within 90 calendar days of shutdown or transfer. The report shall contain the following information:

(i) Legal name of the registered owner or operator;

(ii) Effective date of the shutdown or transfer;

(iii) Comprehensive description of the affected "emission units";

and

(iv) Name and telephone number of the registered owner's or operator's authorized representative.

(b) Any party that assumes ownership and/or operational control of registered "emission units" shall file a written report with the Agency within 90 calendar days of completing transfer of ownership and/or assuming operational control. The report shall contain the following information:

(i) Legal name of the company or individual involved in the transfer;

(ii) Effective date of the transfer;

(iii) Description of the affected "emission units"; and

(iv) Name and telephone number of the owner's or operator's authorized representative.

(c) In the case of a permanent shutdown, affected process and air pollution control equipment may remain in place and on site, but shall be configured such that the equipment or processes are incapable of generating emissions to the atmosphere (e.g.; disconnection of power

to equipment, mechanical positioning that inhibits processing, placing of padlocks on equipment to prevent operation).

(6) **Inspections.**

(a) Periodic onsite inspections of "emission units" and "sources" shall be allowed to verify compliance with applicable requirements, regulations, orders or rules governing the processes, equipment, or emissions from a "source" as set forth in RCW (~~(70.94.200)~~) 70A.15.2500.

(b) Agency personnel or representatives shall have the authority to enter at reasonable times upon any private or public property excepting non-multiple unit private dwellings housing two families or less for the purpose of investigating conditions specific to the control, recovery, or release of air contaminants to the atmosphere.

(c) No person shall refuse entry or access to Agency personnel who present appropriate credentials and request entry for the purpose of inspection.

(d) No person shall obstruct, hamper or interfere with any such inspection.

AMENDATORY SECTION (Amending WSR 17-11-078 filed 5/18/17, effective 6/18/17)

SWCAA 400-103 Operating Permit Fees

(1) **Applicability.** The owner or operator of all "stationary sources" required to obtain an Operating Permit under 40 CFR Part 70, Chapter 173-401 WAC or RCW (~~(70.94.161)~~) 70A.15.2260, shall pay an annual fee as specified in this section, or the equivalent over some other time period as approved by the Executive Director, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the Operating Permit Program.

(2) **Fee applicable pollutants.** The following pollutants shall be considered fee applicable for the purposes of fee assessment.

(a) A volatile organic compound.

(b) Each pollutant regulated under Section 7411 or 7412 of the 1990 Federal Clean Air Act Amendments.

(c) Each pollutant for which a national primary ambient air quality standard (NAAQS) has been promulgated except that carbon monoxide shall be excluded from this reference. PM₁₀ emissions will be utilized for purposes of calculating particulate matter emissions when such data is provided by the "stationary source." Emission test data is required to demonstrate the PM₁₀ portion of total particulate matter emissions.

Fugitive pollutant emissions shall be included in determining the fee assessment for a "stationary source." Emissions of each fee applicable pollutant emitted in excess of 7,500 tons from a "stationary source" shall be excluded from fee assessment.

(3) **Program cost projections.** The Agency shall prepare an Operating Permit Program budget each year based on a projected workload evaluation. Only fee eligible activities as specified in SWCAA 400-103(6), Ecology's development and oversight costs, as provided in RCW (~~(70.94.162)~~) 70A.15.2270, and the program reserve fund shall be considered in the workload analysis. The Executive Director shall submit the proposed budget to the Board of Directors for approval. The approved budget shall be used in the equations below to determine Operating Permit Program fees.

(4) **Three part fee assessment methodology.** Operating Permit Program fees shall be determined using a three-part fee assessment meth-

odology as described in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098.

A permit program source or other individual may request to review the accuracy of the data used in determining applicable program fees for each fiscal year. Such request shall be submitted in writing on or before August 31. The request shall indicate clearly the data to be reviewed, the specific action that the source or petitioning individual is requesting be taken and may, if the source or individual desires, be accompanied by written documentation supporting the request for review. The request shall, in addition, state the name, address and telephone number of the person or persons to whom the Agency may direct inquiries regarding the request. Upon receipt of such a request, the Agency shall issue a written response to the requesting party and any other affected party on or before September 30. The Agency response shall state the results of the review and, if warranted, contain a revised fee statement.

(5) **Accountability.**

(a) The sum of the fees assessed by the Agency to all "stationary sources" required to obtain Operating Permits within the Agency's jurisdiction shall not exceed the cost of developing and administering the program and maintaining a program reserve fund. All fees collected from permit program "stationary sources" as provided in RCW ((70.94.162)) 70A.15.2270, shall be deposited in a dedicated air operating permit account. Such fees shall be used exclusively to support and administer the operating permit program. The purpose of the program reserve fund is to ensure that permit program costs are not funded by fees from "stationary sources" not participating in the operating permit program. The value of monies held in the program reserve fund shall not exceed 15 percent of the average permit program budget over the most recent three-year period.

(b) The Agency shall keep a record of all reasonable (direct and indirect) costs to develop and administer the Operating Permit Program as specified in 40 CFR Part 70. This information shall be used by the Agency to develop the Operating Permit Program budget specified in section (3) above. The information obtained from tracking revenues, time and expenditures shall not provide a basis for challenge to the amount of an individual "stationary source's" fee.

(c) In the event that the assessed fees exceed the cost of developing and administering the Operating Permit Program, including the program reserve fund, such excess fees shall be used to develop and administer the Operating Permit Program in the next subsequent year. The amount of the excess fees shall be deducted from the projected budget of the next subsequent year prior to fee assessment for the subsequent year.

(6) **Fee eligible activities.**

(a) Preapplication assistance and review of an application and proposed compliance plan for a permit, permit revision or permit renewal;

(b) Inspections, testing and other data gathering activities necessary for development of a permit, permit revision or renewal;

(c) Acting on an application for a permit, permit revision or renewal, including the costs of developing an applicable requirement as part of the processing of a permit, permit revision or renewal, preparing a draft permit and fact sheet and preparing a final permit, but excluding the costs of developing BACT, LAER, BART, or RACT requirements for criteria and toxic air pollutants;

(d) Notifying and soliciting, reviewing and responding to comment from the public and contiguous states and tribes, conducting public hearings regarding the issuance of a draft permit and other costs of providing information to the public regarding operating permits and the permit issuance process;

(e) Modeling necessary to establish permit limits or to determine compliance with permit limits;

(f) Reviewing compliance certifications and emission reports, conducting related compilation and reporting activities;

(g) Conducting compliance inspections, complaint investigations and other activities necessary to ensure that a "stationary source" is complying with permit conditions;

(h) Administrative enforcement activities and penalty assessment, excluding the costs of proceedings before the Pollution Control Hearings Board (PCHB) and all costs of judicial enforcement;

(i) The share attributable to permitted "stationary sources" for the development and maintenance of emissions inventories;

(j) The share attributable to permitted "stationary sources" of ambient air quality monitoring and associated recording and reporting activities;

(k) Training for permit administration and enforcement;

(l) Fee determination, assessment and collection, including the costs of necessary administrative dispute resolution and enforcement;

(m) Required fiscal audits, periodic performance audits and reporting activities;

(n) Tracking of time, revenues and expenditures and accounting activities;

(o) Administering the permit program including costs of clerical support, supervision and management;

(p) Provision of assistance to small business under jurisdiction of SWCAA as required under Section 507 of the Federal Clean Air Act; and

(q) Other activities required by operating permit regulations issued by EPA under the Federal Clean Air Act.

(7) Activities not eligible for fee.

(a) New Source Review activity that does not include processing or preparing an operating permit;

(b) Development of BACT, LAER, BART, or RACT requirements for criteria and toxic air pollutants; and

(c) Acting on an application for a PSD permit.

(8) Schedules of payment. Fees shall be paid in accordance with the schedule of payment agreed upon in advance by the Control Officer and each operating permit "stationary source." An operating permit "stationary source" shall be allowed to pay its annual operating permit fees in one, two, or four installments. Each schedule of payment shall specify the terms and dates of payments.

(9) Late fee payments. Delinquent fees are subject to a late fee equal to three times the operating permit fee as provided under RCW (~~(70.94.431(7))~~) 70A.15.3160(7). The penalties authorized by this subsection are additional to and in no way prejudice SWCAA's ability to exercise other civil and criminal remedies, including authority to revoke a "stationary source's" operating permit for failure to pay all or part of its permit fee.

(10) Transfer of ownership. Transfer of ownership of a source shall not affect that "stationary source's" obligation to pay operating permit fees. Any liability for fee payment, including payment of

delinquent fees and other penalties shall survive any transfer of ownership of a "stationary source."

AMENDATORY SECTION (Amending WSR 20-06-003 filed 2/19/20, effective 3/21/20)

SWCAA 400-105 Records, Monitoring and Reporting

The owner or operator of each registered or Title V "source" shall maintain records of the type and quantity of emissions from the "source" and other information deemed necessary to determine whether the "source" is in compliance with applicable emission limitations, operating limitations, and control measures. "Sources" that are not subject to the registration requirements of SWCAA 400-100 because they are exempt under SWCAA 400-101 shall maintain records and other information necessary and sufficient to substantiate that their small quantity emissions are less than the applicable thresholds.

(1) **Emission inventory.** The owner(s) or operator(s) of all registered and Title V "sources" shall submit an inventory of emissions from the "source" each year to the Agency. The inventory shall include stack and fugitive emissions of particulate matter, PM₁₀, PM_{2.5}, sulfur dioxide, oxides of nitrogen, carbon monoxide, total reduced sulfur (TRS), ammonia, sulfuric acid mist, hydrogen sulfide, reduced sulfur compounds, fluorides, lead, VOCs, and toxic air pollutants identified in WAC 173-460. The owner(s) or operator(s) shall maintain records of information necessary to substantiate any reported emissions, consistent with the averaging times for the applicable standards.

(a) Gasoline Stations. Emission reports shall be submitted to the Agency no later than January 31 of each year for the previous calendar year. Upon written request, the Executive Director may allow an extension of the January 31 emission submittal deadline on a case-by-case basis. Extension of the emission submittal deadline shall not exceed a maximum period of 60 calendar days.

~~((a))~~ (b) Small "sources." Emission reports shall be submitted to the Agency no later than March 15 of each year for the previous calendar year. Upon written request, the Executive Director may allow an extension of the March 15 emission submittal deadline on a case-by-case basis. Extension of the emission submittal deadline shall not exceed a maximum period of 60 calendar days.

~~((b))~~ (c) Large "sources." At a minimum, "sources" satisfying the criteria of 40 CFR 51, Subpart A will be submitted to EPA by the Agency for inclusion in the national emission database. Emission reports shall be submitted to the Agency no later than March 15 of each year for the previous calendar year. Upon request, the "sources" described below shall complete and return the emission inventory form supplied by the Agency for this purpose by March 15. An extension of the March 15 emission submittal deadline may be allowed by the Executive Director on a case-by-case basis provided the affected source makes a written request. Extension of the emission submittal deadline shall not exceed a maximum period of 60 calendar days.

(i) "Stationary sources" with the potential to emit over 100 tons of criteria pollutants per year, 10 tons of a single hazardous air pollutant per year or 25 tons of combined hazardous air pollutants per year are required to submit an emissions inventory. Only the hazardous air pollutants listed in Section 112 of the FCAA are considered for the purpose of determining those "stationary sources" required to submit an emissions inventory under this section.

(ii) In ozone nonattainment or maintenance plan areas, those "stationary sources" with the potential to emit over 10.0 tons of VOCs per year or over 25.0 tons per year of NO_x are also required to submit emission inventories. "Stationary sources" subject to this section are also required to submit average daily emissions or process throughput data for NO_x and VOCs for ozone season in preparation for the SIP update.

(iii) "Stationary sources" with the potential to emit greater than 50 percent of the Title V permit thresholds as identified in (i) above.

(iv) "Synthetic minor" or Title V opt out "stationary sources."

~~((e))~~ (d) Greenhouse gases. The Agency may require that "sources" submit an inventory of greenhouse gas emissions. Affected "sources" shall be notified of the inventory requirement and submittal deadline in writing.

(2) **Monitoring.** The Agency shall conduct a continuous surveillance program to monitor the quality of the ambient atmosphere as to concentrations and movements of air contaminants. As a part of this program, the Executive Director or an authorized representative may require any "source" under the jurisdiction of the Agency to conduct stack and/or ambient air monitoring and to report the results to the Agency.

(3) **Investigation of conditions.** Upon presentation of appropriate credentials, for the purpose of investigating conditions specific to the control, recovery, or release of air contaminants into the atmosphere, personnel from the Agency shall have the power to enter at reasonable times upon any private or public property, excepting non-multiple unit private dwellings housing one or two families.

(4) **Continuous monitoring and recording.** Owners and operators of the following "source categories" shall install, calibrate, maintain and operate equipment for continuously monitoring and recording those emissions specified.

(a) Fossil fuel-fired steam generators:

(i) Opacity, except where:

(A) Steam generator capacity is less than two hundred fifty million Btu per hour heat input; or

(B) Only gaseous fuel is burned.

(ii) Sulfur dioxide, except where steam generator capacity is less than two hundred fifty million Btu per hour heat input or if sulfur dioxide control equipment is not required.

(iii) Percent oxygen or carbon dioxide where such measurements are necessary for the conversion of sulfur dioxide continuous emission monitoring data.

(iv) General exception. These requirements do not apply to a fossil fuel-fired steam generator with an annual average capacity factor of less than thirty percent, as reported to the Federal Power Commission for calendar year 1974, or as otherwise demonstrated to the Agency by the owner(s) or operator(s).

(b) Sulfuric acid plants. Sulfur dioxide where production capacity is more than three hundred tons per day, expressed as one hundred percent acid, except for those facilities where conversion to sulfuric acid is utilized primarily as a means of preventing emissions to the atmosphere of sulfur dioxide or other sulfur compounds.

(c) Fluidized bed catalytic cracking units catalyst regenerators at petroleum refineries. Opacity where fresh feed capacity is more than twenty thousand barrels per day.

(d) Wood residue (~~(fuel-)~~)fired steam generators:

(i) Opacity, except where steam generator capacity is less than one hundred million Btu per hour heat input.

(ii) Continuous monitoring equipment. The requirements of SWCAA 400-105 (4) (e) do not apply to wood residue (~~(fuel-)~~)fired steam generators, but continuous monitoring equipment required by SWCAA 400-105 (4) (d) shall be subject to approval by the Agency.

(e) Owners and operators of those "sources" required to install continuous monitoring equipment under this section shall demonstrate to the Agency, compliance with the equipment and performance specifications and observe the reporting requirements contained in 40 CFR Part 51, Appendix P, Sections 3, 4 and 5 (as in effect on the date cited in SWCAA 400-025), and 40 CFR Part 60, Appendices B through F, as appropriate, as adopted by reference in SWCAA 400-115.

(f) Special considerations. If for reason of physical plant limitations or extreme economic situations, the Agency determines that continuous monitoring is not a reasonable requirement, alternative monitoring and reporting procedures shall be established on an individual basis. Alternative monitoring and reporting procedures may include continuous monitoring of process/operational parameters as a surrogate to continuous emissions monitoring and/or stack tests conducted at a frequency sufficient to determine compliance with applicable regulations and permit requirements as well as to quantify emissions.

(g) Exemptions. This subsection (SWCAA 400-105(4)) does not apply to any "stationary source" pollutant emission that is:

(i) Required to be continuously monitored due to a standard or requirement contained in 40 CFR Parts 60, 61, 62, 63 or 75.

(ii) Not subject to an applicable emission standard.

(5) **Misrepresentation.** No person shall make any false material statement, representation or certification in any form, notice, or report required under Chapter (~~(70.94 or 70.120)~~) 70A.15 RCW, or any ordinance, resolution, regulation, permit or order in force pursuant thereto.

(6) **Tampering.** No person shall render inaccurate any monitoring device or method required under Chapter (~~(70.94 or 70.120)~~) 70A.15 RCW, or any ordinance, resolution, regulation, permit, or order in force pursuant thereto.

(7) **Requirements for Continuous Emission Monitoring Systems.** The Agency may require any continuous emission monitoring system (CEMS) installed pursuant to an air discharge permit, PSD permit, or agency regulation, and not subject to CEMS requirements imposed by 40 CFR Parts 60, 61, 62, 63, or 75, to meet the following requirements:

(a) Quality Assurance. The owner or operator shall install a continuous emission monitoring system that meets the performance specification in 40 CFR Part 60, Appendix B in effect at the time of its installation, and shall operate this monitoring system in accordance with the quality assurance procedures in Appendix F of 40 CFR Part 60 (as in effect on the date cited in SWCAA 400-025), and the U.S. Environmental Protection Agency's "Recommended Quality Assurance Procedures for Opacity Continuous Monitoring Systems" (EPA) 340/1-86-010.

(b) Data Availability. Except for system breakdowns, repairs, calibration checks, and zero and span adjustments, continuous monitoring systems shall be in operation whenever the associated generating equipment is in operation.

(i) Continuous monitoring systems for measuring opacity shall complete a minimum of one cycle of sampling and analyzing for each

successive ten second period and one cycle of data recording for each successive six minute period.

(ii) Continuous monitoring systems for measuring emissions other than opacity shall complete a minimum of one cycle of sampling, analyzing, and recording for each successive fifteen minute period.

(c) Data Recovery. The owner or operator shall recover valid hourly monitoring data for at least 95 percent of the hours that the associated generating equipment is operated during each calendar month except for periods of monitoring system downtime, provided that the owner or operator demonstrates that the downtime was not a result of inadequate design, operation, or maintenance, or any other reasonable preventable condition, and any necessary repairs to the monitoring system are conducted in a timely manner.

(d) Data Recording. Monitoring data commencing on the clock hour and containing at least forty-five minutes of monitoring data must be reduced to one hour averages. Monitoring data for opacity is to be reduced to six minute block averages unless otherwise specified in the order of approval, permit, or regulation. All monitoring data will be included in these averages except for data collected during calibration drift tests and cylinder gas audits, and for data collected subsequent to a failed quality assurance test or audit. After a failed quality assurance test or audit, no valid data is collected until the monitoring system passes a quality assurance test or audit.

(e) Data Retention. The owner or operator shall retain all monitoring data averages for at least five years, including copies of all reports submitted to the permitting authority and records of all repairs, adjustments, and maintenance performed on the monitoring system.

(f) Data Reporting. The owner or operator shall submit a report to SWCAA within thirty days after the end of each month in which data were recorded or as otherwise directed by the terms of the applicable air discharge permit, PSD permit, or regulation. The report required by this section may be combined with an excess emission report required by SWCAA 400-107. The report shall include the following information:

(i) The number of hours that the monitored "emission unit" operated during the month and the number of valid hours of monitoring data that the monitoring system recovered during the month;

(ii) The date, time period, and cause of each failure to meet the data recovery requirements of section (c) above and any actions taken to ensure adequate collection of such data;

(iii) The date, time period, and cause of each failure to recover valid hourly monitoring data for at least 90 percent of the hours that the associated generating equipment was operated each day;

(iv) The results of all cylinder gas audits (CGA) and relative accuracy test audits (RATA) conducted during the month; and

(v) A certification of truth, accuracy, and completeness signed by an authorized representative of the owner or operator.

AMENDATORY SECTION (Amending WSR 20-06-003 filed 2/19/20, effective 3/21/20]

SWCAA 400-106 Emission Testing and Monitoring at Air Contaminant Sources

(1) Emission testing requirements.

(a) **Requirement to test.** The Agency may conduct or require that emission testing be conducted of any "source" or "emission unit" with-

in the jurisdiction of the Agency to determine compliance, evaluate control equipment performance, evaluate RACT or quantify emissions. Required testing may be periodic and ongoing. Periodic emission testing conducted more than three months prior to an established due date does not fulfill the affected testing requirement unless approved in advance by the Agency.

(b) **Test methods.** Any required emission testing shall be performed using appropriate sampling and analytical methods as approved in advance by the Agency including, but not limited to, approved EPA test methods from 40 CFR Parts 51, 60, 61, and 63 which are hereby adopted by reference (as in effect on the date cited in SWCAA 400-025), approved test methods from Ecology's Test Manual Procedures for Compliance Testing, Opacity Determination Method (SWCAA Method 9 - Appendix A to SWCAA 400), Oregon Department of Environmental Quality (DEQ) Method 8 "Sampling Particulate Emissions from Stationary Sources (High Volume Method)" hereby adopted by reference, or alternate procedures approved by both the Agency and EPA.

(c) **Accommodations for sampling.** The operator of a "source" shall provide the necessary platform and sampling ports for Agency personnel or others to perform a test of an "emission unit". The Agency shall be allowed to obtain a sample from any "emission unit". The operator of the "source" shall be given an opportunity to observe the sampling and to obtain a sample at the same time.

(d) **Notification/test plan submission.** The owner or operator of a "source" shall submit a test plan to the Agency in writing at least 10 business days prior to any required emissions test or as otherwise approved by the Agency. Agency personnel shall be informed at least 3 business days prior to testing so that they have an opportunity to be present during testing.

(e) **Test duration.** A minimum of 3 test runs, at least 1 hour in length, shall be performed at maximum achievable operating conditions unless otherwise approved in advance to establish that collected data is representative of normal operations. The results of the individual test runs shall be averaged together for the purpose of demonstrating compliance with applicable emission limits.

(f) **Test records.** A complete record of production related parameters including startups, shutdowns, and adjustments shall be kept during emissions testing to correlate operations with emissions and shall be recorded in the final test report.

(g) **Test reports.** Results of all required emission testing shall be submitted to the Agency within 45 calendar days of test completion or as specified in the applicable air discharge permit. Test reports shall be submitted in both printed and electronic formats. Measured concentrations for combustion and incineration "emission units" shall be corrected as provided in the applicable air discharge permit or nonroad engine permit, or as specified in SWCAA 400-050(3). The Agency may reject test reports that do not contain the information listed below, and require resubmittal of a complete report. Test reports shall include the following information:

(i) A description of the "emission unit" including manufacturer, model number and design capacity of the equipment, and the location of the sample ports or test locations;

(ii) Time and date of the test and identification and qualifications of the personnel involved;

(iii) A summary of results, reported in units and averaging periods consistent with the applicable emission standard or limit, or as specified in the applicable air discharge permit. Where applicable,

results shall be reported both as measured and as corrected to the appropriate oxygen correction;

(iv) A summary of control system or equipment operating conditions;

(v) A summary of production related parameters;

(vi) A description of the test methods or procedures used including all field data, quality assurance/quality control procedures and documentation;

(vii) A description of the analytical procedures used including all laboratory data; quality assurance/quality control procedures and documentation;

(viii) Copies of field data and example calculations;

(ix) Chain of custody information;

(x) Calibration documentation;

(xi) Discussion of any abnormalities associated with the results;

and

(xii) A statement signed by the senior management official of the testing firm certifying the validity of the emission test report.

(2) **Emission monitoring requirements for combustion sources.**

(a) **Requirement to monitor.** The Agency may require in an air discharge permit or nonroad engine permit that emission monitoring be conducted for any "source" within the jurisdiction of the Agency to evaluate process equipment operation or control equipment performance.

(b) **Monitoring method.** Emission monitoring may be performed with a portable analyzer or EPA reference methods. Alternative methodologies may be used if approved by both EPA and SWCAA.

(i) For any portable analyzer used to perform emission monitoring pursuant to this section, the response of the analyzer to a calibration gas of known concentration shall be determined before sampling commences and after sampling has concluded. These "calibration error" measurements shall be conducted as close as practical to the time of the monitoring event, but in no case on a different day than the event. At a minimum, the calibration error procedure shall include a two point (zero/span gas) calibration error check using EPA Protocol 1 reference gases. Results of the sampling shall not be valid if the pre and post calibration error check results vary by more than 10 percent of the span value; and

(ii) Span gas concentrations shall be no less than 50 percent and no more than 200 percent of the emission concentration corresponding to the permitted emission limit. When actual emission concentrations are significantly less than the permitted emission limit, a lower concentration span gas may be used if it is more representative of measured concentrations. Ambient air may be used to zero CO and NO_x cells/analyzer(s) and span oxygen cells/analyzer.

(c) **Accommodations for sampling.** The owner or operator of a "source" shall provide the necessary platform and sampling ports for Agency personnel or others to perform monitoring of an "emission unit".

(d) **Data collection.** Emission data shall be collected for at least five minutes following a "ramp-up" phase. The "ramp-up" phase ends when analyzer readings have stabilized (less than five percent per minute change in emission concentration value). Emission concentrations shall be recorded every 30 seconds during data collection. All emission data collected following the ramp-up phase(s) shall be reported to the Agency.

(e) **Monitoring records.** A complete record of production related parameters shall be kept during emission monitoring to correlate operations with emissions and shall be recorded in the final monitoring report. Typical production parameters include, but are not limited to, startups, shutdowns, unit load, fuel flow, operating temperature, etc.

(f) **Monitoring reports.** Results of all required emission monitoring shall be submitted to the Agency within 15 calendar days of completion or as specified in the applicable regulatory order or air discharge permit. Results shall be submitted on forms provided by the Agency or in an alternative format approved by the Agency. The report shall include the following information:

- (i) A description of the "emission unit" including manufacturer, model number and facility designation;
- (ii) Time and date of the emission monitoring;
- (iii) Identification of the personnel involved;
- (iv) A summary of results, reported in units consistent with the applicable emission standard or limit;
- (v) A summary of control system or equipment operating conditions, including firing rate at time of monitoring;
- (vi) A description of the evaluation methods or procedures used including all field data, quality assurance/quality control procedures and documentation; (~~and~~)
- (vii) Calibration error check documentation, and
- (viii) Copy of calibration gas certificates.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

Reviser's note: The brackets and enclosed material in the text of 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.

AMENDATORY SECTION (Amending WSR 16-19-009 filed 9/8/16, effective 10/9/16)

SWCAA 400-107 Excess Emissions

(1) **Excess emission recordkeeping and reporting.** Excess emissions shall be reported to SWCAA as follows:

(a) Excess emissions that represent a potential threat to human health or safety shall be reported as soon as possible, but no later than 12 hours after discovery.

(b) Excess emissions which the owner or operator wishes to be considered as unavoidable, shall be reported to the Agency as soon as possible, but no later than 48 hours after discovery.

(c) All other excess emissions shall be reported within 30 calendar days after the end of the month during which the event is discovered, or for Air Operating Permit sources, as provided in WAC 173-401-615(3).

(d) Excess emission reports shall contain the following information:

- (i) Identification of the "emission unit(s)" involved;
- (ii) A brief description of the event including identification of known causes;
- (iii) Date, time and duration of the event;
- (iv) For exceedances of non-opacity emission limitations, an estimate of the quantity of excess emissions;
- (v) Corrective action taken in response to the event; and
- (vi) Preventive measures taken or planned to minimize future recurrence.

(e) For any excess emissions the owner or operator wishes to be considered as unavoidable, the excess emission report must include the following information in addition to that listed in subsection (d) above:

(i) Properly signed, contemporaneous records documenting the owner or operator's actions in response to the excess emissions event;

(ii) Information on whether installed emissions monitoring and pollution control systems were operating at the time of the exceedance. If either or both systems were not operating, information on the cause and duration of the outage; and

(iii) All additional information required by section (2) below supporting the claim that the excess emissions were unavoidable.

(2) **Unavoidable excess emissions.** Excess emissions determined to be unavoidable under the procedures and criteria in this section are violations of the applicable statute, rule, permit or regulatory order. (~~Unavoidable excess emissions are subject to injunctive relief but not penalty.~~) The decision that excess emissions are unavoidable is made by the permitting authority. Excess emissions determined by the permitting authority to be unavoidable are a violation subject to SWCAA 400-230 (3), (4) and (6), but not subject to civil penalty under SWCAA 400-230(2). In a federal enforcement action filed under 42 USC 7413 or 7604 the decision-making authority shall determine what weight, if any, to assign to the permitting authority's determination that an excess emissions event does or does not qualify as unavoidable under the criteria in subsections (c) (~~(7)~~) and (d) (~~(7 and (e))~~) below.

(a) **Burden of proof.** The owner or operator of a "source" shall have the burden of proving to the Agency or decision-making authority in an enforcement action that excess emissions were unavoidable. This demonstration shall be a condition to obtaining relief under this section.

(b) **Applicability.** This section does not apply to excess emissions that:

(i) Cause a monitored exceedance of any relevant ambient air quality standard;

(ii) Exceed emission standards promulgated under 40 CFR Parts 60, 61, 62, 63, 72, or a permitting authority's adoption by reference of such federal standards; and

(iii) Exceed emission limits and standards contained in a PSD permit issued solely by EPA.

(c) **Startup or shutdown.** Excess emissions due to an upset or malfunction during a startup or shutdown event shall be treated as an upset or malfunction under subsection (d) of this section. (~~conditions shall be considered unavoidable provided the "source" reports as required under section (1) and adequately demonstrates that:~~

~~(i) Excess emissions could not have been prevented through careful planning and design;~~

~~(ii) Startup or shutdown was done as expeditiously as practicable;~~

~~(iii) All emission monitoring systems were kept in operation unless their shutdown was necessary to prevent loss of life, personal injury, or severe property damage;~~

~~(iv) The emissions were minimized consistent with safety and good air pollution control practice during the startup or shutdown period;~~

~~(v) If a bypass of control equipment occurs, that such bypass was necessary to prevent loss of life, personal injury, or severe property damage; and~~

~~(vi) Excess emissions that occur due to upsets or malfunctions during routine startup or shutdown are treated as upsets or malfunctions under section (e) below.~~

~~(d) **Maintenance.** Excess emissions due to scheduled maintenance shall be considered unavoidable if the "source" reports as required under section (1) and adequately demonstrates that the excess emissions could not have been avoided through reasonable design, better scheduling for maintenance or through better operation and maintenance practices.)~~

~~((e))~~ (d) Upsets or malfunctions. Excess emissions due to upsets or equipment malfunctions shall be considered unavoidable provided the "source" reports as required under section (1) and adequately demonstrates that:

(i) The event was not caused by poor or inadequate design, operation, maintenance, or any other reasonably preventable condition;

(ii) The event was not of a recurring pattern indicative of inadequate design, operation, or maintenance;

(iii) The operator took immediate and appropriate corrective action in a manner consistent with safety and good air pollution control practice for minimizing emissions during the event, taking into account the total emissions impact of the corrective action, including slowing or shutting down the "emission unit" as necessary to minimize emissions, when the operator knew or should have known that an emission standard or permit condition was being exceeded;

(iv) Repairs were made in an expeditious fashion if the emitting equipment could not be shutdown during the malfunction or upset to prevent the loss of life, prevent personal injury or severe property damage, or to minimize overall emissions;

~~((iv))~~ (v) All emission monitoring systems and pollution control systems were kept operating to the extent possible unless their shutdown was necessary to prevent loss of life, personal injury, or severe property damage; (and)

~~((v))~~ (vi) The amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent possible; and

(vii) All practicable steps were taken to minimize the impact of the excess emissions on ambient air quality.

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.

AMENDATORY SECTION (Amending WSR 17-11-078 filed 5/18/17, effective 6/18/17)

SWCAA 400-109 Air Discharge Permit Applications

(1) **Purpose.** An air discharge permit application is the document used by the Agency to record and track requests from individual "stationary sources," registered and non-registered, for the purpose of obtaining information regarding proposed changes or activities at a "stationary source." Confidential information shall be identified as set forth in SWCAA 400-270.

(2) **Applicability.**

(a) An air discharge permit application shall be submitted for all new installations, modifications, changes, and alterations to process and emission control equipment consistent with the definition of "new source." The application must be submitted and an air discharge permit must be issued or written confirmation of exempt status must be received before the proposed installations, modifications, changes, or alterations may ~~((begin actual))~~ commence construction.

Activities that typically require the submission of a permit application include, but are not limited to, the following:

- (i) New construction or installation;
- (ii) Change of existing air discharge permit conditions or terms (including Title V opt-out requests - SWCAA 400-091);
- (iii) Review of existing or installed equipment operating without prior approval;
- (iv) Modification, alteration or replacement of existing process or control equipment;
- (v) Relocation of existing equipment;
- (vi) Review of existing equipment with an expired or lapsed approval or registration;
- (vii) Review of case-by-case control technology determinations (e.g., RACT, BACT, MACT, BART, LAER) or
- (viii) Administrative amendment of an existing air discharge permit.

(b) Submittal of an air discharge permit application shall not automatically impose review requirements pursuant to SWCAA 400-110.

(c) Stationary sources subject to the PSD program (WAC 173-400-700 through -750) shall submit a PSD application to Ecology for air pollutants subject to PSD permitting, and submit an air discharge permit application to SWCAA for air pollutants that are not subject to PSD permitting. A copy of the PSD application shall also be submitted to SWCAA.

(d) Air discharge permit applications for new major stationary sources and major modifications located in a designated nonattainment area that emit the air pollutant or precursors of the air pollutant for which the area is designated nonattainment, and meet the applicability criteria in SWCAA 400-820, shall include all information necessary to meet the requirements of SWCAA 400-800 through -860.

(e) Applicability determination. If the owner or operator of a "new source" is unable to determine the applicability of this section, a formal determination may be requested from the Agency. A formal determination requires the submission of project related documentation sufficient for the Agency to identify affected "emission units" and quantify potential emissions, and the payment of a fee as described in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098. This fee provides for up to 4 hours of staff time to review and/or consult with the owner or operator regarding the submitted documentation. If more than 4 hours of staff time are needed to make a determination, additional staff time will be invoiced to the owner or operator at the rate as described in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098. The Agency will provide written applicability determination to the owner or operator subsequent to reviewing the submitted documentation.

(f) Permit Extension. A permittee may request extension of a permit's eighteen-month construction period. To request an extension, the permittee must submit a complete application to the Agency at least 60 calendar days prior to permit expiration. The application shall clearly identify the justification for extension and include relevant supporting information. The permittee shall also pay a fee as described in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098. The Agency will process the application as described in SWCAA 400-110(9).

(3) **Exemptions.** The owner or operator of any "new source" that meets the exemption criteria specified below may provide written notification to SWCAA in lieu of a permit application. The Agency will re-

view each notification, and provide written confirmation of exempt status to the owner or operator of the affected "new source" within 30 calendar days of receiving a complete notification. To be considered complete, written notification shall, at a minimum, contain the following information:

- Name and location of "stationary source";
- Description of primary processes at the "stationary source";
- Description of "emission units" at the "stationary source"; and
- Estimated air contaminant emissions from "stationary source" operations.

Exempt status is not effective until confirmed by the Agency, and actual construction of the "new source" shall not begin prior to that time. No further action is required from "stationary sources" deemed to be exempt. However, if the Agency determines that the "new source" does not meet the exemption criteria specified below, an air discharge permit application shall be submitted pursuant to this section.

(a) **Sources subject to SWCAA 400-072.** A "new source" (~~is exempt from~~) may choose to comply with the requirements of SWCAA 400-072 in lieu of this section if it meets ((the)) applicable category criteria contained in SWCAA 400-072 and SWCAA has confirmed compliance in writing prior to installation or operation.

(b) **Sources subject to SWCAA 400-036.** Portable stationary sources that meet the criteria provided in SWCAA 400-036(1) are exempt from the requirements of this section. Sources subject to SWCAA 400-036 must maintain compliance with all provisions of that section and applicable out of jurisdiction requirements in order to remain exempt.

(c) **Greenhouse gas emission sources.** Greenhouse gas emissions are exempt from new source review requirements except to the extent required under WAC 173-400-720 for major stationary sources. However, the owner or operator of a source or "emission unit" may request that the permitting authority impose emission limits and/or operational limitations for greenhouse gas (~~in any new air discharge permit~~) emissions as part of a permitting action.

(d) **Exempt emission thresholds.** A "new source" is exempt from this section if uncontrolled potential emissions from all "emission units" at the affected site or facility are less than all of the following exemption emission thresholds.

<u>Pollutant</u>	<u>Exemption Threshold</u>
NO _x , CO, SO ₂	1.0 tpy (individual pollutant)
PM ₁₀	0.75 tpy
PM _{2.5}	0.5 tpy
VOC	1.0 tpy
Lead	0.005 tpy
Ozone depleting substances	1.0 tpy (combined)
Toxic air pollutants	The lesser of 1.0 tpy (combined) or the individual SQER per WAC 173-460 (effective 8/21/98)

(e) **Exempt equipment and activities.**

(i) The equipment and/or activities listed below are exempt from this section:

- (A) Relocation of a portable source that has an active air discharge permit from SWCAA allowing portable operation,
- (B) Wastewater treatment plants with a design annual average capacity of less than 1 million gallons per day,
- (C) Natural gas or propane fired water heaters with individual rated heat inputs of less than 400,000 Btu per hour. Standards for these units are contained in SWCAA 400-070,
- ~~((D)) Emergency service internal combustion engines located at a facility where the aggregate power rating of all internal combustion engines is less than 200 horsepower. In determining the aggregate power rating of a facility, individual units with a rating of less than 50 horsepower shall not be considered,))~~
- ~~((E))~~ (D) Asphalt roofing and application equipment (not manufacturing or storage equipment),
- ~~((F))~~ (E) Fuel burning equipment unless waste-derived fuel is burned, which is used solely for a private dwelling serving less than five families,
- ~~((G))~~ (F) Application and handling of insecticide, pesticide or fertilizer for agricultural purposes,
- ~~((H))~~ (G) Laundering devices, dryers, extractors or tumblers for fabrics using water solutions of bleach and/or detergents at commercial laundromats,
- ~~((I))~~ (H) Portable, manually operated welding, brazing or soldering equipment when used at locations other than the owner's principal place of business,
- ~~((J))~~ (I) Welding stations involved solely in the repair and maintenance of a facility. This exemption does not extend to manufacturing operations where welding is an integral part of the manufacturing process (e.g., truck mounted equipment),
- ~~((K))~~ (J) Retail paint sales establishments (not including manufacturing),
- ~~((L))~~ (K) Sampling connections used exclusively to withdraw materials for laboratory analyses and testing,
- ~~((M))~~ (L) Sewing equipment,
- ~~((N))~~ (M) Spray painting or blasting equipment used at a temporary location to clean or paint bridges, water towers, buildings, or other permanent structures provided operations are in compliance with the provisions of SWCAA 400-070(8),
- ~~((O))~~ (N) Chemical and physical laboratory operations or equipment, including fume hoods and vacuum producing devices provided the emissions do not exceed those listed in SWCAA 400-109 (3) ~~((+))~~ (d). This exemption applies to incidental fume hoods or laboratory equipment used by a "stationary source" to perform in-house analyses. This exemption does not apply to "stationary sources" whose primary activity is chemical or physical laboratory operations,
- ~~((P))~~ (O) Residential wood heaters (e.g., fireplaces and woodstoves),
- ~~((Q))~~ (P) Office equipment, operations and supplies,
- ~~((R))~~ (Q) Steam cleaning equipment used exclusively for that purpose,
- ~~((S))~~ (R) Refrigeration systems that are not in air pollution control service,
- ~~((T))~~ (S) Housekeeping activities and equipment,
- ~~((U))~~ (T) Natural draft hoods, natural draft stacks, or natural draft ventilators for sanitary and storm drains, safety valves and storage tanks,

~~((V))~~ (U) Natural and forced air vents and stacks for bathroom/toilet facilities,
~~((W))~~ (V) Personal care activities,
~~((X))~~ (W) Lawn and landscaping activities,
~~((Y))~~ (X) Flares used to indicate danger to the public,
~~((Z))~~ (Y) Fire fighting and similar safety equipment and equipment used to train fire fighters. Burns conducted for fire fighting training purposes are regulated under SWCAA 425,

~~((AA))~~ (Z) Materials and equipment used by, and activities related to, operation of an infirmary provided that operation of an infirmary is not the primary business activity at the "stationary source" in question, ~~((and))~~

~~((AB))~~ (AA) Emergency service internal combustion engines individually rated at less than 50 horsepower, and

(AB) Emergency service internal combustion engines located at a facility where the aggregate power rating of all internal combustion engines is less than 200 horsepower. In determining the aggregate power rating of a facility, individual units with a rating of less than 50 horsepower shall not be considered,

(ii) The equipment and/or activities listed below are exempt from this section for the purposes of reviewing toxic air pollutant emissions:

(A) Emergency service internal combustion engines,

(B) Non-emergency internal combustion engines manufactured after January 1, 2008 in use at facilities with total engine capacity less than 500,000 horsepower-hours,

(C) Gasoline dispensing facilities regulated under SWCAA 491, and

(D) Asbestos projects as defined in SWCAA 476-030.

(4) **Fees.** Before the Agency may review a permit application or issue a permit, the applicant shall submit all applicable fees as detailed in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098.

(5) **Final determination.**

(a) Each complete air discharge permit application shall result in the issuance of a final determination to approve or deny consistent with the requirements of SWCAA 400-110 or confirmation of exempt status by the Agency.

(b) The requirements of SEPA (State Environmental Policy Act) shall be complied with for each air discharge permit application. Air discharge permit applications for actions that are subject to SEPA review shall include a completed environmental checklist as provided in WAC 197-11 or a copy of another agency's SEPA determination for the same action. A list of actions exempt from SEPA is found in WAC 197-11-800.

(6) **Withdrawn or exempt applications.**

(a) An air discharge permit application may be withdrawn by the applicant at any time prior to issuance of an air discharge permit or regulatory order. The applicant must provide a written and signed request to the Agency indicating their desire to withdraw the application, and certification that the proposed equipment or modification will not be installed, constructed, or operated without prior review and approval from the Agency. The Agency shall provide written response to acknowledge withdrawal of the application.

(b) After review by the Agency, a permit application may be determined to be exempt from the requirements of SWCAA 400-110 if it meets the exemption criteria provided in SWCAA 400-109(3). The Agency shall provide written notification to the applicant for all applica-

tions that are determined to be exempt. Exempt status is not effective until confirmed by the Agency, and actual construction of the "new source" shall not begin prior to that time.

(c) For withdrawn or exempt applications, filing fees will not be refunded to the applicant. Review fees, if provided with the application, may be refunded upon request, provided that substantial time has not been expended by the Agency for review of the application.

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.

AMENDATORY SECTION (Amending WSR 20-06-003 filed 2/19/20, effective 3/21/20)

SWCAA 400-110 Application Review Process for Stationary Sources (New Source Review)

(1) **Applicability.**

(a) Air discharge permit applications submitted to the Agency pursuant to SWCAA 400-109 shall be reviewed and approved in accordance with the requirements of this section.

(b) Review of a modification shall be limited to the "emission unit(s)" proposed to be added to an existing "stationary source" or modified and the air contaminants whose emissions would increase as a result of the modification except that review of a "major modification" shall comply with the requirements of SWCAA 400-111, 400-112, 400-113, 400-800 through -860, and/or WAC 173-400-700 through -750.

(c) The requirements of this section are not applicable to:

(i) "Stationary sources" that meet the exemption criteria specified in SWCAA 400-109(3). The owner or operator of an exempt facility shall maintain sufficient documentation acceptable to the Agency to substantiate that the "stationary source" is entitled to exemption under this section;

(ii) Nonroad engines subject to the requirements of SWCAA 400-045 and 400-046; and

(iii) Portable stationary sources subject to the provisions of SWCAA 400-036.

(d) Review is not required for the following:

(i) A process change that does not result in the emission of a type of toxic air pollutant, as provided in Chapter 173-460 WAC (as in effect 8/21/98), not previously approved and individual toxic air pollutant emissions do not exceed the Small Quantity Emission Rates specified in WAC 173-460-150. The process change may not cause an existing emission limit to be exceeded; or

(ii) A raw material composition change that does not result in individual toxic air pollutant emissions that exceed the applicable Small Quantity Emission Rate specified in WAC 173-460-150. The material change may not cause an existing emission limit to be exceeded.

(2) **Application completeness determination.** Within 30 calendar days of receipt of an air discharge permit application, the Agency shall either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application as provided under RCW (~~(70.94.152)~~) 70A.15.2210.

(a) Each application shall provide information on the nature and amounts of emissions to be emitted by the proposed new source or increased as part of a modification. The application shall identify the location, design, construction, and operation the new source as neces-

sary to enable the Agency to determine that the new source will meet applicable requirements.

(b) An application for a new major stationary source or major modification shall provide all information required for review pursuant to WAC 173-400-700 through -750 or SWCAA 400-800 through -860, as applicable.

(c) An application for a source subject to the Special Protection requirements for federal Class I areas in WAC 173-400-117(2) shall include all information required for review of the project under WAC 173-400-117(3).

(d) A completed SEPA checklist or relevant SEPA determination for the proposed action shall be submitted with each application, as provided in WAC 197-11. If a proposed action is exempt from SEPA, sufficient documentation shall be provided to confirm its exempt status.

(e) If an applicant fails to respond to Agency information requests within 60 calendar days, the Agency may presume the air discharge permit application is being withdrawn. The Agency will issue written notice of application withdrawal. No fees will be refunded if an application is withdrawn.

(3) Requirements.

(a) All review requirements shall be met, and an air discharge permit shall be issued by the Agency, prior to construction of any "new source," new "emission unit", or modification.

(b) All review requirements shall be met, and an air discharge permit shall be issued by the Agency, prior to construction of any modification to a "stationary source" that requires an increase in an existing plantwide emissions cap or unit specific emission limit.

(c) Air discharge permit applications must demonstrate that all applicable emission standards have been or will be met by the proposed modification or "new source." Examples of applicable emissions standards include, but are not limited to: RACT, BACT, LAER, BART, MACT, NSPS, NESHAPS and applicable ambient air quality standards. Additional requirements for new and modified "stationary sources" and replacement or alteration of control equipment are addressed in SWCAA 400-111, 400-112, 400-113, 400-114, and 400-151. If the ambient impact of a proposed project could potentially exceed an applicable ambient air increment, the Agency may require that the applicant demonstrate compliance with available ambient air increments and Ambient Air Quality Standards (AAQS) using a modeling technique consistent with 40 CFR Part 51, Appendix W (as in effect on the date cited in SWCAA 400-025). Monitoring of existing ambient air quality may be required if data sufficient to characterize background air quality are not available.

(d) PSD applicability. Air discharge permit applications for "major stationary sources" or "major modifications" that meet the applicability criteria of WAC 173-400-720 shall demonstrate that all applicable requirements of WAC 173-400-700 through 750 have been met.

(e) Air discharge permit applications for "major stationary sources" or "major modifications" that are located within a designated nonattainment area and meet the applicability criteria of SWCAA 400-820 shall demonstrate that all applicable requirements of SWCAA 400-800 through -860 have been met.

(f) An applicant filing an air discharge application for a project described in WAC 173-400-117(2), Special Protection Requirements for Federal Class I Areas, must send a copy of the application to the responsible federal land manager and EPA.

(4) Final determination.

(a) Within 60 calendar days of receipt of a complete application, the Agency, Control Officer, or designated representative shall either issue a final decision approving or denying the application or initiate public notice on a proposed decision, followed as promptly as possible by a final decision. All actions taken under this subsection must meet the public involvement requirements of SWCAA 400-171. The Agency will promptly (~~(mail)~~) provide copies of each order approving or denying an air discharge permit application to the applicant and to any other party who submitted timely comments on the application, along with a notice advising the parties of their rights of appeal to the Pollution Control Hearings Board.

An owner or operator seeking to construct or modify a "stationary source" that requires an operating permit may elect to integrate review of the operating permit application or amendment required under RCW (~~(70.94.161)~~) 70A.15.2260 and the application required by this section. An application designated for integrated review shall be processed in accordance with Chapter 173-401 WAC procedures and deadlines and must comply with SWCAA 400-171. A PSD permit application subject to WAC 173-400-700 through -750 shall comply with the public process requirements of those sections.

(b) An owner or operator who submits applications pursuant to both SWCAA 400-045 and 400-109 may elect to combine the applications into a single permit.

(c) Permits issued pursuant to this section become effective on the date of issuance unless otherwise specified.

(d) Permits issued pursuant to this section may supersede previously issued permits provided existing terms and conditions not affected by the permitting action or requested to be changed by the applicant are carried forward unchanged.

(e) Every final determination on an air discharge permit application that results in the issuance of an air discharge permit by the Agency shall be reviewed and signed prior to issuance by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the Agency.

~~((e))~~ (f) If the "new source" is a "major stationary source" or the proposed modification is a "major modification" as those terms are defined in SWCAA 400-810, the Agency shall submit any control technology determination(s) included in a final air discharge permit to the RACT/BACT/LAER clearinghouse maintained by EPA and submit a copy of the final permit to EPA.

~~((f))~~ (g) If SWCAA is the lead SEPA agency for the proposed action and mitigation measures are required as a result of the SEPA review, applicable mitigation measures shall be included in the final determination.

(5) **Appeals.** An air discharge permit, any conditions contained in an air discharge permit, the denial of an air discharge permit application, or any other regulatory order issued by the Agency, may be appealed to the Pollution Control Hearings Board within 30 calendar days of receipt as provided in Chapter 43.21B RCW and Chapter 371-08 WAC.

(6) **Portable sources.** The owner(s) or operator(s) of portable sources, as defined in SWCAA 400-030, shall be allowed to operate at temporary locations without filing an air discharge permit application for each location provided that:

(a) The affected "emission units" are registered with the Agency pursuant to SWCAA 400-100.

(b) The affected "emission units" have an air discharge permit as a portable "stationary source" issued by SWCAA.

(c) The owner(s) or operator(s) notifies the Agency of intent to operate at the new location prior to starting the operation. This rule section supersedes corresponding notification requirements contained in existing air discharge permits.

(d) The owner(s) or operator(s) supplies sufficient information including production quantities and hours of operation, to enable the Agency to determine that the operation will comply with applicable emission standards, and will not cause a violation of applicable ambient air quality standards and, if in a nonattainment area, will not interfere with scheduled attainment of ambient standards.

Portable sources that do not have a valid air discharge permit issued by SWCAA may operate within SWCAA jurisdiction as provided in SWCAA 400-036.

A portable source that does not operate within the jurisdiction of the Agency for a period of more than 5 years shall be removed from active registration unless the owner or operator demonstrates a need to maintain the registration. Any portable source removed from active registration shall submit a new permit application pursuant to SWCAA 400-109 and undergo review as a "new source" prior to operating again within the jurisdiction of the Agency.

(7) **Compliance.** Noncompliance with any emission limit, test requirement, reporting requirement or other requirement identified in a regulatory order or an air discharge permit issued pursuant to this section shall be considered a violation of this section. Noncompliance with any term of a regulatory order or air discharge permit used to satisfy the criteria of SWCAA 400-036 shall be considered a violation of this section.

(8) **Expiration.** Approval to construct or modify a "stationary source" shall become invalid if construction is not commenced within eighteen months after the date of issuance of an air discharge permit, if construction is discontinued for a period of eighteen months or more, or if construction is not completed within a reasonable time. This provision does not apply to the time period between construction of the approved phases of a phased construction project. Each phase must commence construction within eighteen months of the projected and approved commencement date. On a permit specific basis, the Agency may specify an earlier date for commencement of construction in an air discharge permit.

(9) **Extension.** If construction has not commenced within eighteen months of permit issuance, the Agency may extend the ((eighteen-month)) start of construction period upon a satisfactory demonstration that an extension is justified. To obtain an extension the permittee must submit a ((written request to the Agency at least 60 calendar days prior to permit expiration. The request shall clearly identify the justification for an extension and include relevant supporting information)) complete application as described in SWCAA 400-109 (2)(f). The Agency will review all submitted information, and then approve or deny the ((request)) extension in writing. If the original permit action required a public comment period pursuant to SWCAA 400-171, the Agency shall provide an additional public comment period prior to approving an extension. An extension for a PSD permit must be approved by Ecology. The extension of a project that is either a major stationary source or a major modification, as those terms are defined in SWCAA 400-810, shall also require determination of LAER as it exists at the time of the extension for the pollutants that were subject to LAER in the original approval.

(10) Revocation. The Agency may revoke a source's Order of Approval or air discharge permit if applicable registration fees are delinquent for 2 or more consecutive years.

~~((9))~~ (11) Change of conditions.

(a) The owner or operator may request, at any time, a change in existing approval/permit conditions. The Agency may approve the request provided that:

(i) The change will not cause an applicable emissions standard set by regulation or rule to be exceeded;

(ii) No ambient air quality standard or ambient air increment will be exceeded as a result of the change;

(iii) The change will not adversely impact the ability of the Agency to determine compliance with an emissions standard;

(iv) The revised approval conditions will continue to require BACT, as defined at the time of the original approval, for each approved "stationary source" except where the Federal Clean Air Act requires LAER (e.g., any change that meets the definition of a "new source" must complete a new BACT determination); and

(v) The revised approval conditions meet the requirements of SWCAA 400-110, 400-111, 400-112, 400-113, and 400-830(3) as applicable.

(b) Requests for a change in PSD permit conditions must be made directly to Ecology. The Agency does not have authority to issue or modify PSD permits.

(c) Actions taken under this subsection are subject to the public involvement provisions of SWCAA 400-171 as applicable.

(d) The criteria in 40 CFR 52.21 (r)(4), as adopted by reference in WAC 173-400-720 or SWCAA 400-830(3) as applicable, shall be considered when determining which new source review approvals are required.

(e) A request to change approval/permit conditions shall be filed as an air discharge permit application in accordance with SWCAA 400-109. The application shall meet the requirements of subsection (2) of this section, and be acted upon according to the timelines in subsections (3) and (4) of this section. The fee schedule found in SWCAA 400-109(4) shall apply to these requests.

~~((10))~~ (12) Reopening for cause.

(a) The Agency may, on its own initiative, reopen any order or permit issued pursuant to this section under the following circumstances:

~~((a))~~ (i) The order or permit contains a material mistake. Typographical errors are presumed to constitute a material mistake.

~~((b))~~ (ii) Inaccurate statements were made in establishing the emission standards and/or conditions of the order or permit.

~~((e))~~ (iii) The permit does not meet minimum federal standards.

(b) The Agency shall inform the permittee of its intent to reopen for cause and the reason for the action. Agency actions taken under this subsection are subject to the public involvement provisions of SWCAA 400-171 as applicable.

AMENDATORY SECTION (Amending WSR 20-06-003 filed 2/19/20, effective 3/21/20)

SWCAA 400-111 Requirements for New Sources in a Maintenance Plan Area

For the purposes of this section, "major modification," "major stationary source," "net emissions increase," and "significant," shall have the same meaning as the definitions found in WAC 173-400-710.

"New sources" or modifications within a designated maintenance plan area, including "stationary sources" that emit VOC or NO_x in a designated ozone maintenance plan area, shall meet the following requirements:

(1) **Emission standards.** The proposed "new source" or modification shall:

(a) Comply with all applicable New Source Performance Standards, National Emission Standards for Hazardous Air Pollutants, National Emission Standards for Hazardous Air Pollutants for Source Categories, emission standards adopted under Chapter ((~~70.94~~) 70A.15 RCW, and the applicable emission standards of the Agency; and

(b) Not cause any ambient air quality standard as provided in SWCAA 400-113(3) to be violated; and

(c) Not violate the requirements for reasonable further progress established by the Washington State Implementation Plan; and

(d) Minimize emissions to the extent that the "new source" or modification will not delay the attainment date for a nonattainment area, exceed emission levels or other requirements provided in a maintenance plan for an area that was previously identified as a nonattainment area, nor cause or contribute to a violation of any ambient air quality standard.

(2) **Control Technology Requirements - BACT/LAER.** Except as provided below, the owner or operator of the proposed "new source", "emission unit" or modification shall apply BACT for each pollutant. In the case of a modification, the requirement for BACT shall apply to each new or modified "emission unit" which increases emissions. For phased construction projects, the determination of BACT shall be reviewed at the latest reasonable time prior to commencement of construction of each independent phase. If a violation of an ozone ambient air quality standard or a second violation of the CO ambient air quality standard has occurred, the Agency may require the application of LAER for the maintenance pollutant(s) and any pollutant for which the proposed "new source" or modification is major.

(3) **Source compliance.** The owner or operator of the proposed "new source", "emission unit" or modification shall certify that all "stationary sources" owned or operated by such person (or by an entity controlling, controlled by, or under common control with such person) in Washington are in compliance or on a schedule for compliance, with all applicable emission limitations and standards under the Washington Clean Air Act Chapter ((~~70.94~~) 70A.15 RCW.

(4) **Alternative analysis.**

(a) Except as provided in subsection (c) of this section, the owner or operator of a proposed "major stationary source" or "major modification" shall conduct an alternatives analysis;

(b) This analysis shall include an evaluation of alternative sites, sizes, production processes, and environmental control techniques for such proposed "stationary source" or modification that demonstrates that benefits of the proposed "stationary source" or modification significantly outweigh the environmental and social costs imposed as a result of its location, construction or modification;

(c) This analysis shall not be required for a "major stationary source" or "major modification" that is subject to this rule due to emissions of particulate matter in a designated TSP maintenance area.

(5) **Emission offsets and industrial growth allowances.** The owner or operator of a proposed new "major stationary source" or "major modification" shall provide emission offsets that satisfy the require-

ments of this section. Except as provided in subsection (a) of this section, the offset requirements of this section may be met in whole, or in part, by an allocation from an industrial growth allowance, if available. Industrial growth allowances for "stationary sources" in a maintenance plan area are identified in and governed by the Washington SIP and the maintenance plan for the applicable maintenance plan area. All growth allowance allocations for the maintenance plan areas within the Agency's jurisdiction shall be made in accordance with this section.

(a) Available growth allowances may be increased or decreased as provided in a revision to the maintenance plan submitted to and approved by EPA. If a violation of an ozone ambient air quality standard or a second violation of the CO ambient air quality standard has occurred, the Agency may suspend the use of growth allowances, and require the proposed new "major stationary source" or "major modification" to provide offsets as described in subsection (c) below.

(b) The owner or operator of a proposed new "major stationary source" or "major modification" emitting VOCs, NO_x, or CO may obtain a portion of any remaining emissions in the respective growth allowance in accordance with the following process:

(i) Access is on a first-come-first-served basis, based on the date of a complete application and allowance allocation request;

(ii) Growth allowances shall be used to satisfy offset requirements at a ratio of 1 to 1 for new VOC and/or NO_x emissions.

(iii) No single "stationary source" may receive an emissions allocation of more than 50 percent of the available growth allowance, or up to 10.0 tons per year, whichever is greater. On a case-by-case basis, the SWCAA Board of Directors may approve an emissions allocation of greater than 50 percent upon consideration of the following:

(A) Information submitted by the "stationary source" to SWCAA justifying its request for exceeding the 50 percent emissions allocation, based on significant economic, employment, or other benefits to the maintenance plan area that will result from the proposed new "major stationary source" or "major modification";

(B) Information provided by SWCAA on other known new "major stationary sources" or "major modifications" seeking an emissions allocation from the same growth allowance; and

(C) Other relevant information submitted by the "stationary source" or SWCAA.

(iv) To avoid jeopardizing maintenance of the ozone standard during the interim years of the ozone maintenance plan, SWCAA may limit the quantity of VOC and NO_x growth allowances made available each year. SWCAA will track use of VOC and NO_x allocations from the growth allowances.

(v) The amount of the CO growth allowance that can be allocated is identified in the applicable CO maintenance plan, if any.

(c) If no emissions remain in the respective growth allowance, or the Agency has suspended the use of growth allowances, the owner or operator of the proposed "major stationary source" or "major modification" shall provide offsets.

(i) A demonstration shall be provided showing that the proposed offsets will improve air quality in the same geographical area affected by the "new source" or modification. This demonstration may require that air quality modeling be conducted according to the procedures specified in 40 CFR Part 51, Appendix W, Guideline on Air Quality Models (as in effect on the date cited in SWCAA 400-025).

(ii) Offsets for VOCs or nitrogen oxides shall be within the same maintenance plan area as the proposed "stationary source." Offsets for particulate matter, PM₁₀, sulfur dioxide, carbon monoxide, nitrogen dioxide, lead, and other pollutants may be from inside or outside of the same maintenance plan area.

(iii) "New sources" or modifications shall meet the following offset requirements:

(A) Within a designated maintenance plan area, the offsets shall provide reductions that are equivalent or greater than the proposed increases. The offsets shall be appropriate in terms of short term, seasonal, and yearly time periods to mitigate the impacts of the proposed emissions;

(B) Outside a designated maintenance plan area, owners or operators of "new sources" or modifications which have a significant air quality impact on the maintenance plan area as provided in SWCAA 400-113(3) shall provide emission offsets which are sufficient to reduce impacts to levels below the significant air quality impact level within the maintenance plan area; and

(C) The emission reductions must provide for a net air quality benefit.

(I) New "major stationary sources" within an ozone maintenance plan area shall:

(a) Offset the new VOC emissions at a ratio of 1.1 to 1, if the VOC emissions exceed either 100 tons per year or 700 pounds per day.

(b) Offset the new NO_x emissions at a ratio of 1.1 to 1, if the NO_x emissions exceed either 100 tons per year or 700 pounds per day.

(II) "Stationary sources" within an ozone maintenance plan area undergoing "major modifications" shall:

(a) Offset the entire VOC emissions increase at a ratio of 1.1 to 1, if such increase exceeds either 40 tons per year or 290 pounds per day.

(b) Offset the entire NO_x emissions increase at a ratio of 1.1 to 1, if such increase exceeds either 40 tons per year or 290 pounds per day.

(III) New "major stationary sources" within a carbon monoxide maintenance plan area shall:

(a) Offset the new carbon monoxide emissions at a ratio of 1 to 1, if the carbon monoxide emissions exceed either 100 tons per year or 700 pounds per day.

(IV) "Stationary sources" within a carbon monoxide maintenance plan area undergoing "major modifications" shall:

(a) Offset the entire carbon monoxide emissions increase at a ratio of 1 to 1, if such increase exceeds either 100 tons per year or 700 pounds per day.

(iv) Emission reductions shall be of the same type of pollutant as the emissions from the "new source" or modification. Sources of PM₁₀ shall be offset with particulate in the same size range.

(v) Emission reductions shall be contemporaneous, that is, the reductions shall take effect prior to the time of startup but not more than two years prior to the submittal of a complete application for the "new source" or modification. This time limitation may be extended through banking, as provided in SWCAA 400-130, 400-131 and 400-136 for banking activities approved after the effective date of this regulation. In the case of replacement facilities, SWCAA may allow simultaneous operation of the old and new facilities during the startup peri-

od of the new facility provided that emissions do not exceed the new emission limits.

(vi) Offsets for new "major stationary sources" or "major modifications" in a maintenance plan area shall meet the following requirements:

(A) The proposed new level of allowable emissions of the "stationary source" or "emission unit" providing the reduction must be less than the current level of actual emissions of that "stationary source" or "emission unit". No emission reduction can be credited for actual emissions that exceed the current allowable emissions of the "stationary source" or "emission unit" providing the reduction. Emission reductions imposed by local, state, or federal regulations, regulatory orders or permits cannot be credited.

(B) If the offsets are provided by another "stationary source," the reductions in emissions from that "stationary source" must be federally enforceable by the time the new or modified "stationary source" commences operation. The "new source" may not commence operation before the date such reductions are actually achieved. SWCAA may allow simultaneous operation of the old and new facilities during the start-up period of the new facility provided that the facilitywide emissions do not exceed the new emission limit.

(6) **PSD applicability.** If the proposed "new source" is a "major stationary source" or the proposed modification is a "major modification" for the purposes of the PSD program as described in WAC 173-400-700 through 173-400-750, the "new source" or modification shall meet the requirements of that program for all pollutants. For maintenance plan pollutants, the "new source" shall meet all PSD requirements in addition to the requirements of this section.

(7) **Toxics.** If the proposed "new source" or modification will emit any toxic air pollutants regulated under Chapter 173-460 WAC (as in effect 8/21/98), the "new source" shall meet all applicable requirements of that regulation.

(8) **Visibility.** If the proposed "new source" is a "major stationary source" or the proposed modification is a "major modification," the "new source" shall meet all the visibility protection requirements of WAC 173-400-117.

(9) **Noncompliance.** Noncompliance with any emission limit, test requirement, reporting requirement or other requirement identified in a regulatory order issued pursuant to this section shall be considered a violation of this section.

AMENDATORY SECTION (Amending WSR 16-19-009 filed 9/8/16, effective 10/9/16)

SWCAA 400-112 Requirements for New Sources in Nonattainment Areas

"New sources" or modifications within a designated nonattainment area shall meet the following requirements:

(1) **Emission standards.** The proposed "new source" or modification will comply with all applicable New Source Performance Standards, National Emission Standards for Hazardous Air Pollutants, National Emission Standards for Hazardous Air Pollutants for source categories, emission standards adopted under Chapter ((70-94)) 70A.15 RCW and the applicable emission standards of the Agency.

(2) **Control technology requirement.** The proposed "new source" or modification will employ BACT for all air contaminants not subject to LAER that the "new source" will emit or for which the modification will cause an emissions increase. If the "new source" is a "major sta-

tionary source" or the proposed modification is a "major modification" it will achieve LAER for the air contaminants for which the area has been designated nonattainment and for which the proposed "new source" is major or for which the existing source is major and the modification is significant.

(3) **Ambient air quality standards.** The proposed "new source" or modification will not cause any ambient air quality standard to be exceeded, will not violate the requirements for reasonable further progress established by the Washington SIP and will comply with SWCAA 400-113(3) for all air contaminants for which the area has not been designated nonattainment.

(4) **Noncompliance.** Noncompliance with any emission limit, test requirement, reporting requirement or other requirement identified in a regulatory order issued pursuant to this section shall be considered a violation of this section.

(5) **Major new source review.** If the proposed "new source" is a "major stationary source" or the proposed modification is a "major modification" as those terms are defined in SWCAA 400-810, it shall meet the requirements of SWCAA 400-800 through 400-860.

(6) **Toxics.** If the proposed "new source" or modification will emit any toxic air pollutants regulated under Chapter 173-460 WAC (as in effect 8/21/98), it shall meet all applicable requirements of that chapter.

(7) **Visibility.** If the proposed "new source" is a "major stationary source," or the proposed modification is a "major modification," it shall meet the special protection requirements for federal Class I areas found in WAC 173-400-117.

AMENDATORY SECTION (Amending WSR 16-19-009 filed 9/8/16, effective 10/9/16)

SWCAA 400-113 Requirements for New Sources in Attainment or Nonclassifiable Areas

"New sources" or modifications in an area that is in attainment or unclassifiable shall meet the following requirements:

(1) **Emission standards.** The proposed "new source", "emission unit" or modification shall comply with all applicable New Source Performance Standards, National Emission Standards for Hazardous Air Pollutants, National Emission Standards for Hazardous Air Pollutants for source categories, emission standards adopted under Chapter ((70-94)) 70A.15 RCW and the applicable emission standards of the Agency.

(2) **Control technology requirement.** The proposed "new source" or modification shall employ BACT for all pollutants not previously emitted or whose emissions would increase as a result of the "new source" or modification.

(3) **Allowable impact levels.** Allowable emissions from the proposed "new source", "emission unit" or modification shall not delay the attainment date for an area not in attainment, nor cause or contribute to a violation of any ambient air quality standard. This requirement will be met if the projected impact of the allowable emissions from the proposed "new source" or the projected impact of the increase in allowable emissions from the proposed modification at any location within a nonattainment or maintenance plan area does not exceed the following impact levels for the pollutant(s) for which the area has been designated nonattainment or maintenance:

Pollutant	Annual Average	24-Hour Average	8-Hour Average	3-Hour Average	1-Hour Average
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CO	-	-	0.5 mg/m ³	-	2 mg/m ³
SO ₂	1.0 µg/m ³	5 µg/m ³	-	25 µg/m ³	30 µg/m ³
PM ₁₀	1.0 µg/m ³	5 µg/m ³	-	-	-
PM _{2.5}	0.3 µg/m ³	1.2 µg/m ³	-	-	-
NO ₂	1.0 µg/m ³	-	-	-	-

If the projected impact of the proposed "new source" or modification exceeds an applicable value from the table above, the owner or operator shall provide offsetting emission reductions sufficient to reduce the projected impact to below the allowable impact level. For a proposed "new source" or modification with a projected impact within a maintenance area, this offset requirement may be met in whole, or in part, by an allocation from an industrial growth allowance. Emission offsets and growth allowance allocations used to satisfy the requirements of this section shall comply with the provisions of SWCAA 400-840.

(4) **PSD applicability.** If the proposed "new source" is a "major stationary source" or the proposed modification is a "major modification", as those terms are defined in WAC 173-400-710, it shall meet all applicable requirements of WAC 173-400-700 through 173-400-750.

(5) **Toxics.** If the proposed "new source" or the proposed modification will emit any toxic air pollutants regulated under Chapter 173-460 WAC (as in effect 8/21/98), it shall meet all applicable requirements of that chapter.

(6) **Visibility.** If the proposed "new source" is a "major stationary source," or the proposed modification is a "major modification," it shall meet the special protection requirements for federal Class I areas found in WAC 173-400-117.

(7) **Noncompliance.** Noncompliance with any emission limit, test requirement, reporting requirement or other requirement identified in a regulatory order issued pursuant to this section shall be considered a violation of this section.

AMENDATORY SECTION (Amending WSR 03-21-045 filed 10/9/03, effective 11/9/03)

SWCAA 400-114 Requirements for Replacement or Substantial Alteration of Emission Control Technology at an Existing Stationary Source

(1) Any person proposing to replace or substantially alter the emission control technology installed on an existing "stationary source" or "emission unit" shall file an air discharge permit application with the Agency and shall be subject to the review process of SWCAA 400-110. If the replacement or substantial alteration meets the definition of "new source" or "modification", then the "new source" emissions standards of SWCAA 400-111, 400-112 or 400-113 shall apply. If the replacement or substantial alteration does not meet the definition of "new source" or "modification", then RACT or other requirements shall apply. Replacement or substantial alteration of control technology does not include routine maintenance, repair or parts replacement.

(2) For projects not otherwise reviewable under SWCAA 400-110, the Agency may:

(a) Require that the owner or operator employ RACT and/or T-RACT for the affected "emission unit";

(b) Require that the owner or operator employ a level of emission control equivalent to the existing emission control technology;

~~((b))~~ (c) Prescribe reasonable operation and maintenance conditions for the control equipment; and

~~((e))~~ (d) Prescribe other requirements authorized by Chapter ~~((70.94))~~ 70A.15 RCW.

(3) Within thirty calendar days of receipt of an air discharge permit application under this section the Agency shall either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application. Within thirty calendar days of receipt of a complete application under this section, the Agency shall either issue an air discharge permit or a proposed RACT determination for the proposed project.

(4) Construction shall not commence on a project subject to review under this section until the Agency issues a final air discharge permit or other regulatory order. However, any air discharge permit application filed under this section shall be deemed to be approved without conditions if the Agency takes no action within thirty days of receipt of a complete application. The Agency may request clarification of information submitted in support of the application after the application has been determined to be complete.

(5) An air discharge permit to replace or substantially alter emission control technology shall become invalid if construction is not commenced within eighteen months from the date of issuance, if construction is discontinued for a period of eighteen months or more, or if construction is not completed within a reasonable time. The Agency may extend the eighteen-month period upon a satisfactory demonstration that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within eighteen months of the projected and approved commencement date. The Agency may specify an earlier date for commencement of construction in an air discharge permit.

(6) Noncompliance with any emission limit, test requirement, reporting requirement or other requirement identified in a regulatory order issued pursuant to this section shall be considered a violation of this section.

AMENDATORY SECTION (Amending WSR 20-06-003 filed 2/19/20, effective 3/21/20)

SWCAA 400-115 Standards of Performance for New Sources

(1) **Adoption by reference.** The standards of performance for "new sources" presented in 40 CFR Part 60 and appendices are hereby adopted by reference (as in effect on the date cited in SWCAA 400-025). The term "Administrator" in 40 CFR Part 60 shall mean the Administrator of EPA and the Control Officer of the Agency. Exceptions to this adoption by reference are listed in subsection (2). A list of adopted standards is provided in SWCAA 400, Appendix C for informational purposes.

Pursuant to RCW 80.50.020(14), larger energy facilities subject to subparts D, Da, GG, J, K, Kb, Y, KKK, LLL, and QQQ are regulated by the Energy Facility Site Evaluation Council (EFSEC) under WAC 463-39-115.

(2) **Exceptions.** The following sections and subparts of 40 CFR 60 are not adopted by reference:

(a) 40 CFR 60.5 Determination of construction or modification

(b) 40 CFR 60.6 Review of plans

(c) Subpart B Adoption and Submittal of State Plans for Designated Facilities (ref. 40 CFR 60.20 et seq.)

(d) Subpart Ba Adoption and Submittal of State Plans for Designated Facilities (ref. 40 CFR 60.20a et seq.)

~~((d))~~ (e) Subpart C Emission guidelines and compliance times (ref. 40 CFR 60.30 et seq.)

~~((e))~~ (f) Subpart Cb Emissions guidelines and compliance times for large municipal waste combustors that are constructed on or before September 20, 1994 (ref. 40 CFR 60.30b et seq.)

~~((f))~~ (g) Subpart Cc Emission guidelines and compliance times for municipal solid waste landfills (ref. 40 CFR 60.30c et seq.)

~~((g))~~ (h) Subpart Cd Emissions guidelines and compliance times for sulfuric acid production units (ref. 40 CFR 60.30d et seq.)

~~((h))~~ (i) Subpart Ce Emission guidelines and compliance times for hospital/medical/infectious waste incinerators (ref. 40 CFR 60.30e et seq.)

~~((i))~~ (j) Subpart Cf Emission guidelines and compliance times for municipal solid waste landfills (ref. 40 CFR 60.30f et seq.)

(k) Subpart BBBB Emission guidelines and compliance times for small municipal waste combustion units constructed on or before August 30, 1999 (ref. 40 CFR 60.1500 et seq.)

Note: These sources are regulated under SWCAA 400-050(4)

~~((j))~~ (l) Subpart DDDD Emissions guidelines and compliance times for commercial and industrial solid waste incineration units that commenced construction on or before November 30, 1999 (ref. 40 CFR 60.2500 et seq.)

Note: These sources are regulated under SWCAA 400-050(4)

~~((k))~~ (m) Subpart FFFF Emission guidelines and compliance times for other solid waste incineration units that commenced construction on or before December 9, 2004 (ref. 40 CFR 60.2980 et seq.)

~~((l))~~ (n) Subpart JJJJ Stationary Spark Ignition Internal Combustion Engines (ref. 40 CFR 60.4230 et seq.)

~~((m))~~ (o) Subpart MMMM Emission guidelines and compliance times for existing sewage sludge incineration units (ref. 40 CFR 60.5000 et seq.)

~~((n))~~ (p) Subpart TTTT Greenhouse Gas Emissions for Electric Generating Units (ref. 40 CFR 60.5508 et seq.)

~~((o))~~ (q) Subpart UUUU_a Greenhouse Gas Emissions and Compliance Times for Electric Utility Generating Units (ref. 40 CFR 60.5700_a et seq.)

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.

AMENDATORY SECTION (Amending WSR 16-19-009 filed 9/8/16, effective 10/9/16)

SWCAA 400-136 Maintenance of Emission Reduction Credits in Bank

(1) **Applicability.** The Agency shall maintain a bank for the purpose of administering emission reduction credits (ERCs) pursuant to the provisions of RCW ~~((70.94.850))~~ 70A.15.6230.

(2) **Conditions for ERC bank.**

(a) ERCs established under SWCAA 400-131 shall be available for said credit bank.

(b) ERCs shall not have been used, sold or transferred to another entity for use; e.g. ERCs cannot be banked or used by two "sources" at one time.

(c) ERCs established under SWCAA 400-131 or used under SWCAA 400-130 for a specific "source" shall be allocated privately and not be available for public allocation unless specifically requested by the owner(s) of the ERCs.

(3) Maintenance of the bank.

(a) The Agency shall maintain an emission inventory of all allowed and actual emissions (including any growth allowances identified in a maintenance plan) in each of the nonattainment or maintenance areas by pollutant or in the case of ozone, it shall be volatile organic compounds and oxides of nitrogen.

(b) The ERCs contained in the bank shall be discounted by 10 percent to allow for minor emission increases in nonattainment areas by minor "sources" each of which would emit less than one ton per year. Minor emitting "sources" shall be ineligible to receive or expend an emission reduction credit as identified in SWCAA 400-131 or 400-130. ERCs shall be discounted at the applicable ratio on a one-time basis at the time of deposit into the bank. ERCs shall not be discounted each time a transaction is completed. If reductions in emission beyond those identified in the Washington SIP are required to meet an ambient air quality standard, if the standard cannot be met through controls on operating "sources," and if the plan must be revised, ERCs may be discounted by the Agency over and above the initial 10 percent without compensation to the holder after public involvement pursuant to SWCAA 400-171. Any such discount shall not exceed the percentage of additional emission reduction needed to reach or maintain attainment status.

(c) The Agency shall not provide greater than 25 percent of the available emission credit in the bank to a single applicant. Any exceptions shall be considered on a case-by-case basis by the Board of Directors after a public notice at the next regularly scheduled meeting.

(d) When the Agency issues credits for a new or modified "stationary source," the amount of emission credits shall be removed from the bank and a regulatory order allocating the emission credits shall be issued. The applicant shall start a continuous program of construction or process modification within 18 months. If the applicant does not exercise the approval, the emission credit allocation shall expire and revert to the bank. If there is a six month delay in construction after the start of a continuous program to construct or modify a "stationary source" or "emission unit" the remaining amount of the emission reduction credit shall be reviewed by the Agency and if it is determined that the unused portion of the credit will not, in all likelihood be used in the next year, the Agency shall notify the applicant that the credit allocation has expired and shall revert to the bank. The applicant shall reapply, as needed, for use of the emission reduction credits when a continuous program of construction or modification begins.

(4) **Annual review.** The Agency shall review the content and administration of this section annually to ensure regulatory consistency and equity of impact as a portion of the Washington SIP review. The results of the review shall be reported to the Board with recommendations for correction if the Agency deems that such corrections are necessary to properly administer the emission credit bank.

(5) **Issuance and use of ERCs.** The Agency has established its policy and procedure for deposit of ERCs in SWCAA 400-131. The Agency has established its policy and procedure for use of ERCs in SWCAA 400-130.

(6) **Expiration of public credits.**

(a) Each "stationary source" which had credits assigned from the public bank by issuance of a regulatory order shall be approved for the total of previous emissions plus any additional amount approved under a regulatory order assigning public credits to that "stationary source" effective July 8, 1996.

(b) Emission reduction credits deposited into the public bank shall not be available to be assigned to any "stationary source" after July 8, 1996.

AMENDATORY SECTION (Amending WSR 03-21-045 filed 10/9/03, effective 11/9/03)

SWCAA 400-151 Retrofit Requirements for Visibility Protection

(1) The requirements of this section apply to any "existing stationary facility" as defined in SWCAA 400-030.

(2) SWCAA shall identify each "existing stationary facility" within its jurisdiction, which may reasonably be anticipated to cause or contribute to visibility impairment in any mandatory Class I federal area in Washington and any adjacent state.

(3) For each "existing stationary facility" identified under subsection (2) of this section, SWCAA shall determine Best Available Retrofit Technology (BART) for the air contaminant of concern and any additional air pollution control technologies that are to be required to reduce impairment from the "existing stationary facility."

(4) Each "existing stationary facility" shall apply BART as new technology for control of the air contaminant when it becomes reasonably available if:

(a) The "existing stationary facility" emits the air contaminant contributing to visibility impairment;

(b) Controls representing BART for that air contaminant have not previously been required under this section; and

(c) The impairment of visibility in any mandatory Class I federal area is reasonably attributable to the emissions of the air contaminant.

AMENDATORY SECTION (Amending WSR 20-06-003 filed 2/19/20, effective 3/21/20)

SWCAA 400-171 Public Involvement

(1) **Public notice/application notice.**

(a) Notice shall be published on the SWCAA Internet website announcing the receipt of air discharge permit applications, nonroad engine permit applications and other proposed actions (e.g., open for cause, permit extension, etc.). Notice shall be published for a minimum of 15 calendar days. Publication of a notice on the SWCAA website at the time of application receipt is not required for any application or proposed action that automatically requires a public comment period pursuant to subsection (2) of this section. In the event that publication on the SWCAA Internet website does not occur for the prescribed time period, notice will be published for a minimum of one (1) day in a newspaper of general circulation in the area of the proposed action. When notice is published via newspaper, the Agency shall not issue a final determination on the affected action for a minimum of 15 calen-

dar days following the date of publication. Each notice shall, at a minimum, include the following information:

- (i) The name and address of the owner or operator and the affected facility;
- (ii) A brief description of the proposed action;
- (iii) Agency contact information;
- (iv) A statement that a public comment period will be provided upon request pursuant to SWCAA 400-171(3); and
- (v) The date by which a request for a public comment period is due.

(b) Requests for a public comment period shall be submitted to the Agency in writing via letter or fax. A request may be submitted via electronic mail provided the sender confirms receipt by the Agency via telephone or electronic receipt confirmation. A public comment period shall be provided pursuant to subsection (3) of this section for any application or proposed action that receives such a request. Any application or proposed action for which a public comment period is not provided may be processed without further public involvement.

(2) **Provision of public comment period.**

(a) A public comment period shall be provided pursuant to subsection (3) of this section before approving or denying any of the following:

(i) Any use of a modified or substituted air quality model, other than a guideline model in Appendix W of 40 CFR Part 51 (as in effect on the date cited in SWCAA 400-025) as part of review under SWCAA 400-046, 400-110, or WAC 173-400-117;

(ii) Any order or permit to determine RACT;

(iii) Any order or permit to establish a compliance schedule pursuant to SWCAA 400-161 or a variance pursuant to SWCAA 400-180;

(iv) Any order to demonstrate the creditable height of a stack which exceeds the GEP formula height and sixty-five meters, by means of a fluid model or a field study, for the purposes of establishing an emission limitation;

(v) Any order or permit to authorize a bubble;

(vi) Any order or permit used to establish a creditable emission reduction;

(vii) An Order of Discontinuance as provided in SWCAA 400-230

(1) (g);

(viii) Any order or permit used to establish a "synthetic minor" or modification thereof;

(ix) Any extension of the deadline to begin actual construction of a "major stationary source" or "major modification" in a nonattainment area;

(x) Any application or other proposed action which has received a request for public notice pursuant to subsection (1) of this section; or

(xi) Any proposed action for which the Executive Director determines there is a substantial public interest including:

- Air discharge permit applications
- Nonroad engine permit applications
- Other actions of significance

(xii) Any order or permit to approve a new or modified source if the associated increase in emissions of any toxic air pollutant is greater than the applicable acceptable source impact level specified in WAC 173-460, as in effect 8/21/98.

(b) Any air discharge permit application designated for integrated review that includes a PSD permit application must comply with the public notice requirements of WAC 173-400-740.

(3) **Public comment period requirements.** A public comment period shall be provided only after all information required by the Agency has been submitted and after applicable preliminary determinations, if any, have been made.

(a) Availability for public inspection. The information submitted by the applicant, and any applicable preliminary determinations, including analyses of the effect(s) on air quality, shall be available for public inspection in at least one location near the proposed project. Exemptions from this requirement include information protected from disclosure under any applicable law, including, but not limited to, RCW ((~~70.94.205~~)) 70A.15.2510 and SWCAA 400-270.

(b) Publication of comment period notice. Notice shall be given by prominent advertisement in the area of the proposed project. Notice for a public comment period shall include the following information:

(i) The name and address of the owner or operator and the affected facility;

(ii) A brief description of the proposal, including a description of the processes subject to permitting;

(iii) A description of the air pollutant emissions associated with the proposal;

(iv) Identification of Agency staff from whom interested persons may obtain additional information;

(v) The location of the documents made available for public inspection;

(vi) Identification of a 30 calendar day period for submitting written comment to the Agency;

(vii) A statement that a public hearing may be held if the Agency determines within a 30 calendar day period that significant public interest exists;

(viii) The length of the public comment period in the event of a public hearing; and

(ix) For projects subject to special protection requirements for federal Class I areas in WAC 173-400-117 (5)(c), the comment period notice shall explain the Agency's draft decision.

(c) EPA Notification. A copy of each comment period notice shall be sent to the EPA Region 10 Regional Administrator.

(d) Consideration of public comment. The Agency shall make no final decision on any application or other action for which a public comment period has been provided until the public comment period has ended and any comments received during the public comment period have been considered.

(e) Public hearings. Any person may request a public hearing within the thirty-day public comment period. Each request shall indicate the interest of the party filing it and why a hearing is warranted. The Agency may hold a public hearing if the Executive Director determines significant public interest exists. The Agency will determine the location, date, and time of the public hearing. If a public hearing is held, a minimum of 30 days notice will be provided to the public prior to the hearing date. The public comment period for the affected action shall extend through the hearing date and thereafter for such period, if any, as the notice of public hearing may specify.

(4) **Public involvement for integrated review with an operating permit.** Any air discharge permit application designated for integrated review with an application to issue or modify an operating permit

shall be processed in accordance with the operating permit program procedures and deadlines (Chapter 173-401 WAC).

(5) **Other requirements of law.** Whenever procedures permitted or mandated by law will accomplish the objectives of public notice and opportunity for comment, those procedures may be used in lieu of the provisions of this section (e.g., SEPA). This subsection does not apply to PSD permit applications processed by Ecology.

(6) **Public information.** All information is available for public inspection at the Agency, except information protected from disclosure under any applicable law, including, but not limited to, RCW ((70.94.205)) 70A.15.2510 and SWCAA 400-270. Such information includes copies of Notice of Construction applications, orders of approval, regulatory orders, and modifications thereof.

AMENDATORY SECTION (Amending WSR 03-21-045 filed 10/9/03, effective 11/9/03)

SWCAA 400-180 Variance

Any person who owns or is in control of a plant, building, structure, establishment, process, or equipment may apply to the Agency for a variance from provisions of SWCAA regulations governing the quality, nature, duration, or extent of discharges of air contaminants in accordance with the provisions of RCW ((70.94.181)) 70A.15.2310.

(1) **Jurisdiction.** "Stationary sources" in any area over which the Agency has jurisdiction shall make application to the Agency. Variances to State rules shall require approval of Ecology prior to being issued by the Agency. The Board of Directors may grant a variance only after public involvement per SWCAA 400-171.

(2) **Full faith and credit.** Variances granted in compliance with state and federal laws by the Agency for "sources" under its jurisdiction shall be accepted as variances to this regulation.

(3) **EPA concurrence.** No variance or renewal shall be construed to set aside or delay any requirements of the Federal Clean Air Act except with the approval and written concurrence of the EPA.

AMENDATORY SECTION (Amending WSR 16-19-009 filed 9/8/16, effective 10/9/16)

SWCAA 400-230 Regulatory Actions and Civil Penalties

(1) The Agency shall have the power to issue such orders as necessary to effectuate the purpose of Chapter 70A.15 RCW ((70.94)) and Chapter 43.21B RCW ((43.21B)) as provided in, but not limited to: RCW ((70.94.141)) 70A.15.2040, RCW ((70.94.152)) 70A.15.2210, RCW ((70.94.153)) 70A.15.2220, RCW ((70.94.332)) 70A.15.3010 and RCW 43.21B.300. For informational purposes, a list of specific regulatory orders issued by the Agency in the past is presented below.

(a) **Order of Approval.** An order issued by the Agency to provide approval for an air discharge permit or ERC application. Orders of Approval are also known as air discharge permits.

(b) **Order of Denial.** An order issued by the Agency in response to an air discharge permit application that is incomplete, not feasible, proposes inadequate control technology, or otherwise would result in violation of any ambient air quality regulation, control technology requirement, or applicable emission standard.

(c) **Order of Violation.** An order issued by the Agency to document specific regulation(s) alleged to be violated and establish the facts surrounding a violation.

(d) **Order of Prevention.** An order issued by the Agency to prevent installation or construction of an "emission unit", performance of an activity, or actions that may otherwise endanger public health that are on site, in the process of being installed, or have been installed, constructed or operated without prior Agency review and approval, or actions being conducted in addition to a previous Agency approval without prior approval.

(e) **Consent Order.** An order issued by the Agency to establish emission limits, operation and maintenance limits or controls, monitoring or reporting requirements, testing requirements, or other limits or controls that are determined by the Agency to be necessary. Actions identified in a Consent Order may be necessary to demonstrate compliance with applicable regulations, provide measures whereby a "source" may take the necessary steps to achieve compliance, establish a schedule for activities, or provide other information that the Control Officer deems appropriate. Consent Orders are agreed to and signed by an appropriate officer of the company or "source" for which the Consent Order is prepared and the Control Officer, or designee, of the Agency. A Consent Order does not sanction noncompliance with applicable requirements.

(f) **Compliance Schedule Order.** An order issued by the Agency to a "source" to identify specific actions that must be implemented to establish, maintain, and/or demonstrate compliance with applicable regulations and identify the schedule by which these actions must be completed.

(g) **Order of Discontinuance.** An order issued by the Agency for any "source" that has permanently shutdown, has not maintained registration for affected "emission units", or that continues to operate in violation of applicable regulations and requirements.

(h) **Corrective Action Order.** An order issued by the Agency to any "source" to provide measures to correct or rectify a situation that is an immediate or eminent threat to person(s) or the public or that may be in violation or have the potential of being in violation of federal, state and local regulations or may pose a threat to the public health, welfare or enjoyment of personal or public property.

(i) **Administrative Order.** An order issued by the Agency to provide for implementation of items not addressed above, that are identified by the Control Officer. An Administrative Order may contain emission limits, operating and maintenance limitations and actions, schedules, resolutions by the Board of Directors, provide for establishing attainment or nonattainment boundaries, establish working relationships with other regulatory agencies, establish authority for enforcement of identified actions, and other activities identified by the Agency.

(j) **Resolutions.** A document issued by the Agency as a means to record a Board of Directors decision, authorize or approve budget transactions, establish Agency policies, or take other actions as determined by the Agency.

(2) The Agency may take any of the following regulatory actions to enforce its regulations to meet the provisions of RCW 43.21B.300 which is incorporated herein by reference.

(a) **Notice of Violation.** At least thirty days prior to the commencement of any formal enforcement action under RCW ((~~70.94.430~~) 70A.15.3150 and ((~~70.94.431~~) RCW 70A.15.3160, the Agency shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of this regulation, or the rule, regulation, regulatory order or permit requirement alleged to be

violated, and the facts alleged to constitute a violation thereof, and may include an order that necessary corrective action be taken within a reasonable time. In lieu of an order, the Agency may require that the alleged violator or violators appear before it for the purpose of providing the Agency information pertaining to the violation or the charges complained of. Every Notice of Violation shall offer to the alleged violator an opportunity to meet with the Agency prior to the commencement of enforcement action.

(b) **Civil penalties.**

(i) In addition to or as an alternate to any other penalty provided by law, any person (e.g., owner, owner's agent, contractor, operator) who violates any of the provisions of Chapter ((70.94)) 70A.15 RCW or any of the rules in force under such chapters may incur a civil penalty in an amount as set forth in RCW ((70.94.431)) 70A.15.3160. Each such violation shall be a separate and distinct offense, and in case of a continuing violation, each day's continuance shall be a separate and distinct violation. Any person who fails to take action as specified by an order issued pursuant to this regulation shall be liable for a civil penalty as set forth by RCW ((70.94.431)) 70A.15.3160 for each day of continued noncompliance.

(ii) Penalties incurred but not paid shall accrue interest, beginning on the ninety-first day following the date that the penalty becomes due and payable, at the highest rate allowed by RCW 19.52.020 on the date that the penalty becomes due and payable. If violations or penalties are appealed, interest shall not begin to accrue until the thirty-first day following final resolution of the appeal. The maximum penalty amounts established in RCW ((70.94.431)) 70A.15.3160 may be increased annually to account for inflation as determined by the State Office of the Economic and Revenue Forecast Council.

(iii) Each act of commission or omission that procures, aids, or abets in the violation shall be considered a violation under the provisions of this section and subject to the same penalty. The penalties provided in this section shall be imposed pursuant to RCW 43.21B.300.

(iv) All penalties recovered under this section by the Agency, shall be paid into the treasury of the Agency and credited to its funds.

(v) To secure the penalty incurred under this section, the Agency shall have a lien on any equipment used or operated in violation of its regulations which shall be enforced as provided in RCW 60.36.050. The Agency shall also be authorized to utilize a collection agency for nonpayment of penalties and fees.

(vi) In addition to other penalties provided by this regulation, persons knowingly under-reporting emissions or other information used to set fees, or persons required to pay emission or permit fees who are more than ninety days late with such payments may be subject to a penalty equal to three times the amount of the original fee owed.

(3) **Assurance of Discontinuance.** The Control Officer may accept an assurance of discontinuance as provided in RCW ((70.94.435)) 70A.15.3170 of any act or practice deemed in violation of this regulation as written and certified to by the "source." Any such assurance shall specify a time limit during which discontinuance or corrective action is to be accomplished. Failure to perform the terms of any such assurance shall constitute prima facie proof of a violation of its regulations or any order issued thereunder which make the alleged act or practice unlawful for the purpose of securing an injunction or other relief from the Superior Court.

(4) **Restraining orders & injunctions.** Whenever any person has engaged in, or is about to engage in, any acts or practices which constitute or will constitute a violation of any provision of its regulations, the Control Officer, after notice to such person and an opportunity to comply, may petition the superior court of the county wherein the violation is alleged to be occurring or to have occurred for a restraining order or a temporary or permanent injunction or another appropriate order.

(5) **Emergency episodes.** The Agency may issue such orders as authorized by SWCAA 435 whenever an air pollution episode forecast is declared.

(6) **Compliance Orders.** The Agency may issue a Compliance Order in conjunction with a Notice of Violation or when the Control Officer has reason to believe a regulation is being violated, or may be violated. The order shall require the recipient of the Notice of Violation either to take necessary corrective action or to submit a plan for corrective action and a date when such action will be initiated and completed. Compliance Orders are not subject to the public notice requirements of SWCAA 400-171.

NEW SECTION

SWCAA 400-235 Credible Evidence

For the purpose of establishing whether or not a person has violated or is in violation of any provision of Chapter 70A.15 RCW, any rule enacted pursuant to that chapter, or any permit or order issued thereunder, nothing in this regulation precludes the use, including the exclusive use, of any credible evidence or information relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test procedures or methods had been performed.

Reviser's note: The unnecessary underscoring 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 (Amending WSR 01-05-057 filed 2/15/01, effective 3/18/01)

SWCAA 400-240 Criminal Penalties

Persons in violation of the Agency's regulations or Title 173 WAC may be subject to the provisions of RCW (~~(70.94.430)~~) 70A.15.3150.

AMENDATORY SECTION (Amending WSR 01-05-057 filed 2/15/01, effective 3/18/01)

SWCAA 400-260 Conflict of Interest

All board members and officials acting or voting on decisions affecting air pollution sources, must comply with the Federal Clean Air Act (Section 128), as it pertains to conflict of interest (~~(, and 40 CFR 103(d) which is incorporated by reference)~~).

NEW SECTION

SWCAA 400-265 Duty to Provide Information

The owner or operator of a "source" must furnish, within a time frame specified by the Agency, any information requested by the Agency in writing specific to the control, recovery or release of air contaminants into the atmosphere. The Executive Director may allow an extension of the submittal deadline on a case-by-case basis.

Reviser's note: The unnecessary underscoring 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 (Amending WSR 03-21-045 filed 10/9/03, effective 11/9/03)

SWCAA 400-270 Confidentiality of Records and Information

(1) The owner or operator of a "source" (or the agent submitting the information) is responsible for clearly identifying information that is considered proprietary and confidential prior to submittal to the Agency. Information submitted to the Agency that has not been identified as confidential at the time of submittal may not be classified as confidential at a later date.

(2) Confidential information submitted to the Agency by an owner, operator or agent shall be stamped or clearly marked in red ink at the time of submittal. Such information considered to be confidential or proprietary by the owner or operator will be handled as such, and will be maintained by the Agency, to the extent that release of such information may provide unfair economic advantage or compromise processes, products, or formulations to competitors as provided under RCW (~~(70.94.205)~~) 70A.15.2510. Such information shall be released to the public only after:

(a) Legal opinion by the Agency's legal counsel, and

(b) Notice to the source of the intent to either release or deny the release of information.

(3) Records or other information, other than ambient air quality data or emission data, furnished to or obtained by the Agency, related to processes or production unique to the owner or operator, or likely to affect adversely the competitive position of such owner or operator if released to the public or to a competitor, and the owner or operator of such processes or production so certifies, shall be only for the confidential use of the Agency as provided in RCW (~~(70.94.205)~~) 70A.15.2510.

(4) Emissions data furnished to or obtained by the Agency shall be correlated with applicable emission limitations and other control measures and shall be available for public inspection during normal business hours at the office of the Agency.

AMENDATORY SECTION (Amending WSR 01-05-057 filed 2/15/01, effective 3/18/01)

SWCAA 400-280 Powers of Agency

In addition to any other powers vested in the Agency, consistent with RCW (~~(70.94.141)~~) 70A.15.2040, the Agency shall have the power to:

(1) Adopt, amend, and repeal its own rules and regulations, implementing Chapter 70A.15 RCW (~~(70.94)~~) and consistent with it, after consideration at a public hearing held in accordance with Chapter 42.30 RCW (~~(42.30)~~). Rules and regulations shall also be adopted in accordance with the notice and adoption procedures set forth in RCW 34.05.320, those provisions of RCW 34.05.325 that are not in conflict with Chapter 42.30 RCW (~~(42.30)~~), and with the procedures of RCW 34.05.340, 34.05.355 through 34.05.380, and with Chapter 34.08 RCW (~~(34.08)~~), except that rules shall not be published in the Washington Administrative Code. Judicial review of rules adopted by the Agency shall be in accordance with Part V of Chapter 34.05 RCW (~~(34.05)~~).

(2) Hold hearings relating to any aspect of or matter in the administration of Chapter 70A.15 RCW (~~(70.94)~~) not prohibited by the

provisions of Chapter 62, Laws of 1970 ex. sess. and in connection therewith issue subpoenas to compel the attendance of witnesses and the production of evidence, administer oaths and take the testimony of any person under oath.

(3) Issue such orders as may be necessary to effectuate Chapter 70A.15 RCW ((~~70.94~~)) and enforce the same by all appropriate administrative and judicial proceedings subject to the rights of appeal as provided in Chapter 62, Laws of 1970 ex. sess.

(4) Require access to records, books, files and other information specific to the control, recovery or release of air contaminants into the atmosphere.

(5) Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract, or otherwise.

(6) Prepare and develop a comprehensive plan or plans for the prevention, abatement and control of air pollution within the jurisdiction of the Agency.

(7) Encourage voluntary cooperation by persons or affected groups to achieve the purposes of Chapter 70A.15 RCW ((~~70.94~~)).

(8) Encourage and conduct studies, investigations and research relating to air pollution and its causes, effects, prevention, abatement and control.

(9) Collect and disseminate information and conduct educational and training programs relating to air pollution.

(10) Advise, consult, cooperate and contract with agencies and departments and the educational institutions of the state, other political subdivisions, industries, other states, interstate or interlocal agencies, and the United States government, and with interested persons or groups.

(11) Consult, upon request, with any person proposing to construct, install, or otherwise acquire an air contaminant source or device or system, concerning the efficacy of such device or system, or the air pollution problems which may be related to the source, device or system. Nothing in any such consultation shall be construed to relieve any person from compliance with Chapter 70A.15 RCW ((~~70.94~~)), ordinances, resolutions, rules and regulations in force pursuant thereto, or any other provision of law.

(12) Accept, receive, disburse and administer grants or other funds or gifts from any source, including public and private agencies and the United States government for the purpose of carrying out any of the functions of Chapter 70A.15 RCW ((~~70.94~~)).

except:

(13) SWCAA may not hold adjudicative proceedings pursuant to the Administrative Procedures Act (Chapter 34.05 RCW ((~~34.05~~))). Such hearings shall be held by the Pollution Control Hearings Board as provided at RCW 43.21B.240.

AMENDATORY SECTION (Amending WSR 16-19-009 filed 9/8/16, effective 10/9/16)

SWCAA 400-810 Major Stationary Source and Major Modification Definitions

The definitions in this section must be used in the major stationary source nonattainment area permitting requirements in SWCAA 400-800 through 400-860. If a term is defined differently in the federal program requirements for issuance, renewal and expiration of a Plant Wide Applicability Limit which are adopted by reference in SWCAA

400-850, then that definition is to be used for purposes of the Plant Wide Applicability Limit (PAL) program.

(1) **"Actual emissions"** means:

(a) The actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with (b) through (d) of this subsection. This definition does not apply when calculating whether a significant emissions increase has occurred, or for establishing a PAL under SWCAA 400-850. Instead, "projected actual emissions" and "baseline actual emissions" as defined in subsections (24) and (2) (~~((and 23))~~) of this section apply for those purposes.

(b) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24 month period which precedes the particular date and which is representative of normal source operation. The permitting authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(c) The permitting authority may presume that source specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(d) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(2) **"Baseline actual emissions"** means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with (a) through (d) of this subsection.

(a) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24 month period selected by the owner or operator within the 5 year period immediately preceding when the owner or operator begins actual construction of the project. The permitting authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(i) The average rate shall include emissions associated with startups, shutdowns, and malfunctions; and, for an emissions unit that is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or for an emissions unit that is located at a major stationary source that belongs to one of the listed source categories, the average rate shall include fugitive emissions (to the extent quantifiable).

(ii) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24 month period.

(iii) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24 month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24 month period can be used for each regulated NSR pollutant.

(iv) The average rate shall not be based on any consecutive 24 month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by (a)(ii) of this subsection.

(b) For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24 month period selected by the owner or operator within the ten-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the permitting authority for a permit required either under SWCAA 400-800 through 400-860 or under a plan approved by the administrator, whichever is earlier, except that the 10 year period shall not include any period earlier than November 15, 1990.

(i) The average rate shall include emissions associated with startups, shutdowns, and malfunctions; and, for an emissions unit that is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or for an emissions unit that is located at a major stationary source that belongs to one of the listed source categories, the average rate shall include fugitive emissions (to the extent quantifiable).

(ii) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24 month period.

(iii) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24 month period. However, if an emission limitation is part of a maximum achievable control technology standard that the administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the state has taken credit for such emissions reductions in an attainment demonstration or maintenance plan as part of the demonstration of attainment or as reasonable further progress to attain the NAAQS.

(iv) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24 month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24 month period can be used for each regulated NSR pollutant.

(v) The average rate shall not be based on any consecutive 24 month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required under (b)(ii) and (iii) of this subsection.

(c) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit. In the latter case, fugitive emissions, to the extent quantifiable, shall be included only if the emissions unit is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or if the emissions unit is located at a major stationary source that belongs to one of the listed source categories.

(d) For a PAL for a major stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in (a) of this subsection, for other existing emissions units in accordance with the procedures contained in (b) of this subsection, and for a new

emissions unit in accordance with the procedures contained in (c) of this subsection, except that fugitive emissions (to the extent quantifiable) shall be included regardless of the source category.

(3) "**Best available control technology**" (BACT) means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each regulated NSR pollutant which would be emitted from any proposed major stationary source or major modification which the reviewing authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines if it is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR Part 60 or 61. If the reviewing authority determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of BACT. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

(4) "**Building, structure, facility, or installation**" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same two-digit code) as described in the *Standard Industrial Classification Manual*, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0065 and 003-005-00176-0, respectively).

(5) "**Clean coal technology**" means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

(6) "**Clean coal technology demonstration project**" means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of two and one-half billion dollars for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The federal contribution for a qualifying project shall be at least twenty percent of the total cost of the demonstration project.

(7) "**Construction**" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

(8) "**Continuous emissions monitoring system**" (CEMS) means all of the equipment that may be required to meet the data acquisition and

availability requirements of this section, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

(9) "**Continuous parameter monitoring system**" (CPMS) means all of the equipment necessary to meet the data acquisition and availability requirements of this section, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂ or CO₂ concentrations), and to record average operational parameter value(s) on a continuous basis.

(10) "**Continuous emissions rate monitoring system**" (CERMS) means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

(11) "**Electric utility steam generating unit**" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

(12) "**Emissions unit**" means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric steam generating unit. For purposes of this section, there are two types of emissions units:

(a) A new emissions unit is any emissions unit which is (or will be) newly constructed and which has existed for less than 2 years from the date such emissions unit first operated.

(b) An existing emissions unit is any emissions unit that is not a new emissions unit. A replacement unit, as defined in subsection (25) of this section is an existing emissions unit.

(13) "**Fugitive emissions**" means those emissions which could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening. Fugitive emissions, to the extent quantifiable, are addressed as follows for the purposes of this section:

(a) In determining whether a stationary source or modification is major, fugitive emissions from an emissions unit are included only if the emissions unit is part of one of the source categories listed in subsection ~~((14))~~ (15)(e) of this section, the definition of major stationary source, or the emissions unit is located at a stationary source that belongs to one of those source categories. Fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection ~~((14))~~ (15)(e) of this section, the definition of major stationary source and that are not, by themselves, part of a listed source category.

(b) For purposes of determining the net emissions increase associated with a project, an increase or decrease in fugitive emissions is creditable only if it occurs at an emissions unit that is part of one of the source categories listed in subsection ~~((14))~~ (15)(e) of this section, the definition of major stationary source, or if the emission unit is located at a major stationary source that belongs to one of the listed source categories. Fugitive emission increases or decreases are not creditable for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection ~~((14))~~ (15)(e) of this sec-

tion, the definition of major stationary source, and that are not, by themselves, part of a listed source category.

(c) For purposes of determining the projected actual emissions of an emissions unit after a project, fugitive emissions are included only if the emissions unit is part of one of the source categories listed in subsection ~~((14))~~ (15)(e) of this section, the definition of major stationary source, or if the emission unit is located at a major stationary source that belongs to one of the listed source categories. Fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection ~~((14))~~ (15)(e) of this section, the definition of major stationary source, and that are not, by themselves, part of a listed source category.

(d) For purposes of determining the baseline actual emissions of an emissions unit, fugitive emissions are included only if the emissions unit is part of one of the source categories listed in subsection ~~((14))~~ (15)(e) of this section, the definition of major stationary source, or if the emission unit is located at a major stationary source that belongs to one of the listed source categories, except that, for a PAL, fugitive emissions shall be included regardless of the source category. With the exception of PALs, fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection ~~((14))~~ (15)(e) of this section, the definition of major stationary source, and that are not, by themselves, part of a listed source category.

(e) In calculating whether a project will cause a significant emissions increase, fugitive emissions are included only for those emissions units that are part of one of the source categories listed in subsection ~~((14))~~ (15)(e) of this section, the definition of major stationary source, or for any emissions units that are located at a major stationary source that belongs to one of the listed source categories. Fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection ~~((14))~~ (15)(e) of this section, the definition of major stationary source, and that are not, by themselves, part of a listed source category.

(f) For purposes of monitoring and reporting emissions from a project after normal operations have been resumed, fugitive emissions are included only for those emissions units that are part of one of the source categories listed in subsection ~~((14))~~ (15)(e) of this section, the definition of major stationary source, or for any emissions units that are located at a major stationary source that belongs to one of the listed source categories. Fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection ~~((14))~~ (15)(e) of this section, the definition of major stationary source, and that are not, by themselves, part of a listed source category.

(g) For all other purposes of this section, fugitive emissions are treated in the same manner as other, nonfugitive emissions. This includes, but is not limited to, the treatment of fugitive emissions for offsets (see SWCAA 400-840(7)) and for PALs (see SWCAA 400-850).

(14) "**Lowest achievable emission rate**" (LAER) means, for any source, the more stringent rate of emissions based on the following:

(a) The most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of

stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

(b) The most stringent emissions limitation which is achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within a stationary source. In no event shall the application of the term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

(15) **"Major stationary source"** means:

(a) Any stationary source of air pollutants that emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant, except that lower emissions thresholds apply in areas subject to sections 181-185B, sections 186 and 187, or sections 188-190 of the Federal Clean Air Act. In those areas the following thresholds apply:

(i) 50 tons per year of volatile organic compounds in any serious ozone nonattainment area;

(ii) 50 tons per year of volatile organic compounds in an area within an ozone transport region, except for any severe or extreme ozone nonattainment area;

(iii) 25 tons per year of volatile organic compounds in any severe ozone nonattainment area;

(iv) 10 tons per year of volatile organic compounds in any extreme ozone nonattainment area;

(v) 50 tons per year of carbon monoxide in any serious nonattainment area for carbon monoxide, where stationary sources contribute significantly to carbon monoxide levels in the area (as determined under rules issued by the administrator);

(vi) 70 tons per year of PM-10 in any serious nonattainment area for PM-10.

(b) For the purposes of applying the requirements of SWCAA 400-830 to stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, any stationary source which emits, or has the potential to emit, 100 tons per year or more of nitrogen oxides emissions, except that the emission thresholds in (b) (i) through (vi) of this subsection shall apply in areas subject to sections 181-185B of the Federal Clean Air Act.

(i) 100 tons per year or more of nitrogen oxides in any ozone nonattainment area classified as marginal or moderate.

(ii) 100 tons per year or more of nitrogen oxides in any ozone nonattainment area classified as a transitional, submarginal, or incomplete or no data area, when such area is located in an ozone transport region.

(iii) 100 tons per year or more of nitrogen oxides in any area designated under section 107(d) of the Federal Clean Air Act as attainment or unclassifiable for ozone that is located in an ozone transport region.

(iv) 50 tons per year or more of nitrogen oxides in any serious nonattainment area for ozone.

(v) 25 tons per year or more of nitrogen oxides in any severe nonattainment area for ozone.

(vi) 10 tons per year or more of nitrogen oxides in any extreme nonattainment area for ozone.

(c) Any physical change that would occur at a stationary source not qualifying under (a) and (b) of this subsection as a major stationary source, if the change would constitute a major stationary source by itself.

(d) A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

(e) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of subsection ~~((14))~~ (15) of this section whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

- (i) Coal cleaning plants (with thermal dryers);
- (ii) Kraft pulp mills;
- (iii) Portland cement plants;
- (iv) Primary zinc smelters;
- (v) Iron and steel mills;
- (vi) Primary aluminum ore reduction plants;
- (vii) Primary copper smelters;
- (viii) Municipal incinerators capable of charging more than 50 tons of refuse per day;
- (ix) Hydrofluoric, sulfuric, or nitric acid plants;
- (x) Petroleum refineries;
- (xi) Lime plants;
- (xii) Phosphate rock processing plants;
- (xiii) Coke oven batteries;
- (xiv) Sulfur recovery plants;
- (xv) Carbon black plants (furnace process);
- (xvi) Primary lead smelters;
- (xvii) Fuel conversion plants;
- (xviii) Sintering plants;
- (xix) Secondary metal production plants;
- (xx) Chemical process plants - the term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;
- (xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
- (xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (xxiii) Taconite ore processing plants;
- (xxiv) Glass fiber processing plants;
- (xxv) Charcoal production plants;
- (xxvi) Fossil fuel-fired steam electric plants of more than two hundred fifty million British thermal units per hour heat input; and
- (xxvii) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Federal Clean Air Act.

(16) **"Major modification"** means:

(a) Any physical change in or change in the method of operation of a major stationary source that would result in:

- (i) A significant emissions increase of a regulated NSR pollutant; and
- (ii) A significant net emissions increase of that pollutant from the major stationary source.

(b) Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds shall be considered significant for ozone.

(c) A physical change or change in the method of operation shall not include:

(i) Routine maintenance, repair and replacement;

(ii) Use of an alternative fuel or raw material by reason of an order under sections 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(iii) Use of an alternative fuel by reason of an order or rule section 125 of the Federal Clean Air Act;

(iv) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(v) Use of an alternative fuel or raw material by a stationary source which:

(A) The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 12, 1976, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I or section 51.166; or

(B) The source is approved to use under any permit issued under regulations approved by the administrator implementing 40 CFR 51.165.

(vi) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or regulations approved pursuant to 40 CFR Part 51, Subpart I or 40 CFR 51.166;

(vii) Any change in ownership at a stationary source;

(viii) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(A) The state implementation plan for the state in which the project is located; and

(B) Other requirements necessary to attain and maintain the National Ambient Air Quality Standard during the project and after it is terminated.

(d) This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements for a PAL for that pollutant. Instead, the definitions in 40 CFR Part 51, Appendix S adopted by reference in SWCAA 400-850 shall apply.

(e) For the purpose of applying the requirements of SWCAA 400-830 (1)(i) to modifications at major stationary sources of nitrogen oxides located in ozone nonattainment areas or in ozone transport regions, whether or not subject to sections 181-185B, Part D, Title I of the Federal Clean Air Act, any significant net emissions increase of nitrogen oxides is considered significant for ozone.

(f) Any physical change in, or change in the method of operation of, a major stationary source of volatile organic compounds that results in any increase in emissions of volatile organic compounds from any discrete operation, emissions unit, or other pollutant emitting activity at the source shall be considered a significant net emissions increase and a major modification for ozone, if the major stationary source is located in an extreme ozone nonattainment area that is subject to sections 181-185B, Part D, Title I of the Federal Clean Air Act.

(g) Fugitive emissions shall not be included in determining for any of the purposes of this section whether a physical change in or

change in the method of operation of a major stationary source is a major modification, unless the source belongs to one of the source categories listed in subsection ~~((14))~~ (15) (e) of this section, the definition of major stationary source.

(17) **"Necessary preconstruction approvals or permits"** means those permits or orders of approval required under federal air quality control laws and regulations or under air quality control laws and regulations which are part of the applicable state implementation plan.

(18) **"Net emissions increase"** means:

(a) With respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

(i) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to SWCAA 400-820(2) and (3); and

(ii) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. In determining the net emissions increase, baseline actual emissions for calculating increases and decreases shall be determined as provided in the definition of baseline actual emissions, except that subsection (2)(a)(iii) and (b)(iv) of this section, in the definition of baseline actual emissions, shall not apply.

(b) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs before the date that the increase from the particular change occurs;

(c) An increase or decrease in actual emissions is creditable only if:

(i) It occurred no more than 1 year prior to the date of submittal of a complete notice of construction application for the particular change, or it has been documented by an emission reduction credit (ERC). Any emissions increases occurring between the date of issuance of the ERC and the date when a particular change becomes operational shall be counted against the ERC; and

(ii) The permitting authority has not relied on it in issuing a permit for the source under regulations approved pursuant to 40 CFR 51.165, which permit is in effect when the increase in actual emissions from the particular change occurs; and

(iii) As it pertains to an increase or decrease in fugitive emissions (to the extent quantifiable), it occurs at an emissions unit that is part of one of the source categories listed in subsection ~~((14))~~ (15) (e) of this section, the definition of major stationary source, or it occurs at an emissions unit that is located at a major stationary source that belongs to one of the listed source categories. Fugitive emission increases or decreases are not creditable for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection ~~((14))~~ (15) (e) of this section, the definition of major stationary source, and that are not, by themselves, part of a listed source category.

(d) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level;

(e) A decrease in actual emissions is creditable only to the extent that:

(i) The old level of actual emission or the old level of allowable emissions whichever is lower, exceeds the new level of actual emissions;

(ii) It is enforceable as a practical matter at and after the time that actual construction on the particular change begins;

(iii) The permitting authority has not relied on it as part of an offsetting transaction under SWCAA 400-113(3) or 400-830 or in issuing any permit under regulations approved pursuant to 40 CFR Part 51, Subpart I or the state has not relied on it in demonstrating attainment or reasonable further progress;

(iv) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; and

(f) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant.

(g) Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed one hundred eighty days.

(h) Subsection (1)(b) of this section, in the definition of actual emissions, shall not apply for determining creditable increases and decreases or after a change.

(19) **"Nonattainment major new source review (NSR) program"** means the major source preconstruction permit program that has been approved by the administrator and incorporated into the plan to implement the requirements of 40 CFR 51.165, or a program that implements 40 CFR Part 51 Appendix S, sections I through VI. Any permit issued under either program is a major NSR permit.

(20) **"Pollution prevention"** means any activity that through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants (including fugitive emissions) and other pollutants to the environment prior to recycling, treatment, or disposal; it does not mean recycling (other than certain "in-process recycling" practices), energy recovery, treatment, or disposal.

(21) **"Predictive emissions monitoring system"** (PEMS) means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂ or CO₂ concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

(22) **"Prevention of significant deterioration (PSD) permit"** means any permit that is issued under the major source preconstruction permit program that has been approved by the administrator and incorporated into the plan to implement the requirements of 40 CFR 51.166, or under the program in 40 CFR 52.21.

(23) **"Project"** means a physical change in, or change in the method of operation of, an existing major stationary source.

(24) **"Projected actual emissions"** means:

(a) The maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the five years (12 month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit of that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.

(b) In determining the projected actual emissions before beginning actual construction, the owner or operator of the major stationary source:

(i) Shall consider all relevant information including, but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the approved plan; and

(ii) Shall include emissions associated with startups, shutdowns, and malfunctions; and, for an emissions unit that is part of one of the source categories listed in subsection ~~((14))~~ (15)(e) of this section, the definition of major stationary source, or for an emissions unit that is located at a major stationary source that belongs to one of the listed source categories, shall include fugitive emissions (to the extent quantifiable); and

(iii) Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24 month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or

(iv) In lieu of using the method set out in (b) of this subsection, the owner or operator may elect to use the emissions unit's potential to emit, in tons per year. For this purpose, if the emissions unit is part of one of the source categories listed in subsection ~~((14))~~ (15)(e) of this section, the definition of major stationary source or if the emissions unit is located at a major stationary source that belongs to one of the listed source categories, the unit's potential to emit shall include fugitive emissions (to the extent quantifiable).

(25) **"Regulated NSR pollutant"** means the following pollutants:

(a) (i) Nitrogen oxides or any volatile organic compounds;

(ii) Any pollutant for which a National Ambient Air Quality Standard has been promulgated;

(iii) Any pollutant that is identified under this subsection as a constituent or precursor of a general pollutant listed in (a) (i) or (ii) of this subsection, provided that such constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant. For purposes of NSR precursor pollutants are the following:

(A) Volatile organic compounds and nitrogen oxides are precursors to ozone in all ozone nonattainment areas.

(B) Sulfur dioxide and nitrogen oxides are precursors to PM-2.5 in all PM-2.5 nonattainment areas.

(b) PM-2.5 emissions and PM-10 emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. On or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM-2.5 in nonattainment major NSR permits. Compliance with emissions limitations for PM-2.5 issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations for PM-2.5 made prior to the effective date of SWCAA 400-800 through 400-850 made without accounting for condensable particulate

matter shall not be considered in violation of SWCAA 400-800 through 400-850.

(26) **"Replacement unit"** means:

(a) An emissions unit for which all the criteria listed below are met:

(i) The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15 (b)(1), or the emissions unit completely takes the place of an existing emissions unit.

(ii) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

(iii) The replacement does not alter the basic design parameters of the process unit. Basic design parameters are:

(A) Except as provided in (a)(iii)(C) of this subsection, for a process unit at a steam electric generating facility, the owner or operator may select as its basic design parameters either maximum hourly heat input and maximum hourly fuel consumption rate or maximum hourly electric output rate and maximum steam flow rate. When establishing fuel consumption specifications in terms of weight or volume, the minimum fuel quality based on British thermal units content must be used for determining the basic design parameter(s) for a coal-fired electric utility steam generating unit.

(B) Except as provided in (a)(iii)(C) of this subsection, the basic design parameter(s) for any process unit that is not at a steam electric generating facility are maximum rate of fuel or heat input, maximum rate of material input, or maximum rate of product output. Combustion process units will typically use maximum rate of fuel input. For sources having multiple end products and raw materials, the owner or operator should consider the primary product or primary raw material of the process unit when selecting a basic design parameter.

(C) If the owner or operator believes the basic design parameter(s) in (a)(iii)(A) and (B) of this subsection is not appropriate for a specific industry or type of process unit, the owner or operator may propose to the reviewing authority an alternative basic design parameter(s) for the source's process unit(s). If the reviewing authority approves of the use of an alternative basic design parameter(s), the reviewing authority will issue a new permit or modify an existing permit that is legally enforceable that records such basic design parameter(s) and requires the owner or operator to comply with such parameter(s).

(D) The owner or operator shall use credible information, such as results of historic maximum capability tests, design information from the manufacturer, or engineering calculations, in establishing the magnitude of the basic design parameter(s) specified in (a)(iii)(A) and (B) of this subsection.

(E) If design information is not available for a process unit, then the owner or operator shall determine the process unit's basic design parameter(s) using the maximum value achieved by the process unit in the five-year period immediately preceding the planned activity.

(F) Efficiency of a process unit is not a basic design parameter.

(iv) The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

(b) No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

(27) "**Reviewing authority**" means the same as "permitting authority" as defined in SWCAA 400-030.

(28) "**Significant**" means:

(a) In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

<i>Pollutant</i>	<i>Emission Rate</i>
Carbon monoxide	100 tpy
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
Ozone	40 tpy of volatile organic compounds; or 40 tpy of nitrogen oxides
Lead	0.6 tpy
PM-10	15 tpy
PM-2.5	10 tpy of direct PM-2.5 emissions; or 40 tpy of nitrogen oxide emissions; or 40 tpy of sulfur dioxide emissions

(b) Notwithstanding the significant emissions rate for ozone, significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of volatile organic compounds that would result from any physical change in, or change in the method of operation of, a major stationary source located in a serious or severe ozone nonattainment area that is subject to sections 181-185B, of the Federal Clean Air Act, if such emissions increase of volatile organic compounds exceeds 25 tons per year.

(c) For the purposes of applying the requirements of SWCAA 400-830 (1)(i) to modifications at major stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, the significant emission rates and other requirements for volatile organic compounds in (a), (b), and (e) of this subsection, of the definition of significant, shall apply to nitrogen oxides emissions.

(d) Notwithstanding the significant emissions rate for carbon monoxide under (a) of this subsection, the definition of significant, significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of carbon monoxide that would result from any physical change in, or change in the method of operation of, a major stationary source in a serious nonattainment area for carbon monoxide if such increase equals or exceeds 50 tons per year, provided the administrator has determined that stationary sources contribute significantly to carbon monoxide levels in that area.

(e) Notwithstanding the significant emissions rates for ozone under (a) and (b) of this subsection, the definition of significant, any increase in actual emissions of volatile organic compounds from any emissions unit at a major stationary source of volatile organic compounds located in an extreme ozone nonattainment area that is subject to sections 181-185B of the Federal Clean Air Act shall be considered a significant net emissions increase.

(29) "**Significant emissions increase**" means, for a regulated NSR pollutant, an increase in emissions that is significant for that pollutant.

(30) "**Source**" and "stationary source" means any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant.

(31) "**Temporary clean coal technology demonstration Project**" means a clean coal technology demonstration project that is operated for a period of five years or less, and which complies with the state implementation plan for the state in which the project is located and other requirements necessary to attain and maintain the National Ambient Air Quality Standards during the project and after it is terminated.

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.

AMENDATORY SECTION (Amending WSR 16-19-009 filed 9/8/16, effective 10/9/16)

**APPENDIX C
FEDERAL STANDARDS ADOPTED BY REFERENCE**

The following lists of affected subparts are provided for informational purposes only.

STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES (NSPS) 40 CFR 60

Subpart A General Provisions (rel105f. 40 CFR 60.1 et seq.)

Subpart D Fossil Fuel-fired Steam Generators (~~((for Which Construction is Commenced After August 17, 1971, and Prior to September 19, 1978, Which Have a Heat Input Greater Than 73 Megawatts but not Greater Than 250 Megawatts))~~) (ref. 40 CFR 60.40 et seq.)

Subpart Da Electric Utility Steam Generating Units (~~((for Which Construction Commenced After September 18, 1978, Which Have a Heat Input Greater Than 73 Megawatts but not Greater Than 250 Megawatts))~~) (ref. 40 CFR 60.40a et seq.)

Subpart Db Industrial-Commercial-Institutional Steam Generating Units (~~((for Which Construction Commenced After June 19, 1984, and Prior to June 19, 1986, Which Have a Heat Input Greater Than 29 Megawatts but less Than 73 Megawatts))~~) (ref. 40 CFR 60.40b et seq.)

Subpart Dc Small Industrial-Commercial-Institutional Steam Generating Units (ref. 40 CFR 60.40c et seq.)

Subpart E Incinerators (ref. 40 CFR 60.50 et seq.)

Subpart Ea Municipal Waste Combustors for Which Construction Commenced After December 20, 1989 and on or Before September 20, 1994 (ref. 40 CFR 60.50a et seq.)

Subpart Eb Large Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994 or for Which Modification of Reconstruction is Commenced After June 19, 1996 (ref. 40 CFR 60.50b et seq.)

Subpart Ec Hospital/Medical/Infectious Waste Incinerators (~~((for Which Construction is Commenced After June 20, 1996))~~) (ref. 40 CFR 60.50c et seq.)

Subpart F Portland Cement Plants (ref. 40 CFR 60.60 et seq.)

Subpart G Nitric Acid Plants (ref. 40 CFR 60.70 et seq.)

Subpart Ga Nitric Acid Plants for Which Construction, Reconstruction, or Modification Commenced After October 14, 2011 (ref. 40 CFR 60.70a et seq.)

Subpart H Sulfuric Acid Plants (ref. 40 CFR 60.80 et seq.)

Subpart I Hotmix Asphalt Facilities (ref. 40 CFR 60.90 et seq.)

Subpart J Petroleum Refineries (~~((Which Produce Less Than 25,000 Barrels per Day of Refined Products))~~) (ref. 40 CFR 60.100 et seq.)

Subpart Ja Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007 (ref. 40 CFR 60.100a et seq.)

Subpart K ~~Storage Vessels for Petroleum Liquids ((Constructed) for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978, ((Which Have a Capacity Greater Than 40,000 Gallons))~~ (ref. 40 CFR 60.110 et seq.)

Subpart Ka Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction or Modification Commenced After May 18, 1978, and Prior to July 23, 1984 (ref. 40 CFR 60.110a et seq.)

Subpart Kb Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984 (ref. 40 CFR 60.110b et seq.)

Subpart L Secondary Lead Smelters (ref. 40 CFR 60.120 et seq.)

Subpart M Secondary Brass and Bronze ((Ingot)) Production Plants (ref. 40 CFR 60.130 et seq.)

Subpart N ~~((Iron and Steel Plants))~~ Primary Emissions From Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973 (ref. 40 CFR 60.140 et seq.)

Subpart Na Secondary Emissions From Basic Oxygen Process Steel-making Facilities for Which Construction is Commenced After January 20, 1983 (ref. 40 CFR 60.140 et seq.)

Subpart O Sewage Treatment Plants (ref. 40 CFR 60.150 et seq.)

Subpart P Primary Copper Smelters (ref. 40 CFR 60.160 et seq.)

Subpart Q Primary Zinc Smelters (ref. 40 CFR 60.170 et seq.)

Subpart R Primary Lead Smelters (ref. 40 CFR 60.180 et seq.)

Subpart S Primary Aluminum Reduction Plants (ref. 40 CFR 60.190 et seq.)

Subpart T Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants (ref. 40 CFR 60.200 et seq.)

Subpart U Phosphate Fertilizer Industry: Superphosphoric Acid Plants (ref. 40 CFR 60.210 et seq.)

Subpart V Phosphate Fertilizer Industry: Diammonium Phosphate Plants (ref. 40 CFR 60.220 et seq.)

Subpart W Phosphate Fertilizer Industry: Triple Superphosphate Plants (ref. 40 CFR 60.230 et seq.)

Subpart X Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities (ref. 40 CFR 60.240 et seq.)

Subpart Y Coal Preparation and Processing Plants (ref. 40 CFR 60.250 et seq.)

Subpart Z Ferroalloy Production Facilities (ref. 40 CFR 60.260 et seq.)

Subpart AA Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974, and on or Before August 17, 1983 (ref. 40 CFR 60.270 et seq.)

Subpart AAa Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 17, 1983 (ref. 40 CFR 60.270a et seq.)

Subpart BB Kraft Pulp Mills (ref. 40 CFR 60.280 et seq.)

Subpart BBa Kraft Pulp Mill Affected Sources for Which Construction, Reconstruction, or Modification Commenced After May 23, 2013 (ref. 40 CFR 60.280a et seq.)

Subpart CC Glass Manufacturing Plants (ref. 40 CFR 60.290 et seq.)

Subpart DD Grain Elevators (ref. 40 CFR 60.300 et seq.)

- Subpart EE (~~(Industrial)~~) Surface Coating(~~(*)~~) of Metal Furniture (ref. 40 CFR 60.310 et seq.)
- Subpart GG Stationary Gas Turbines (ref. 40 CFR 60.330 et seq.)
- Subpart HH Lime Manufacturing Plants (ref. 40 CFR 60.340 et seq.)
- Subpart KK Lead-Acid Battery Manufacturing Plants (ref. 40 CFR 60.370 et seq.)
- Subpart LL Metallic Mineral Processing Plants (ref. 40 CFR 60.380 et seq.)
- Subpart MM Automobile and Light Duty Truck Surface Coating Operations (ref. 40 CFR 60.390 et seq.)
- Subpart NN Phosphate Rock Plants (ref. 40 CFR 60.400 et seq.)
- Subpart PP Ammonium Sulfate Manufacture (ref. 40 CFR 60.420 et seq.)
- Subpart QQ Graphic Arts Industry: Publication Rotogravure Printing (ref. 40 CFR 60.430 et seq.)
- Subpart RR Pressure Sensitive Tape and Label Surface Coating Operations (ref. 40 CFR 60.440 et seq.)
- Subpart SS Industrial Surface Coating: Large Appliances (ref. 40 CFR 60.450 et seq.)
- Subpart TT (~~(Industrial Surface Coating*)~~) Metal Coil(~~(*)~~) Surface Coating (ref. 40 CFR 60.460 et seq.)
- Subpart UU Asphalt Processing and Asphalt Roofing Manufacture (ref. 40 CFR 60.470 et seq.)
- Subpart VV Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After January 5, 1981, and on or before November 7, 2006 (ref. 40 CFR 60.480 et seq.)
- Subpart VVa Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006 (ref. 40 CFR 60.480a et seq.)
- Subpart WW Beverage Can Surface Coating (~~(Operations)~~) Industry (ref. 40 CFR 60.490 et seq.)
- Subpart XX Bulk Gasoline Terminals (ref. 40 CFR 60.500 et seq.)
- Subpart AAA New Residential Wood Heaters (ref. 40 CFR 60.530 et seq.)
- Subpart BBB Rubber Tire Manufacturing Industry (ref. 40 CFR 60.540 et seq.)
- Subpart DDD VOC Emissions From the Polymer Manufacturing Industry (ref. 40 CFR 60.560 et seq.)
- Subpart FFF Flexible Vinyl and Urethane Coating and Printing (ref. 40 CFR 60.580 et seq.)
- Subpart GGG Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After January 4, 1983, and on or before November 7, 2006 (ref. 40 CFR 60.590 et seq.)
- Subpart GGGa Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006 (ref. 40 CFR 60.590a et seq.)
- Subpart HHH Synthetic Fiber Production Facilities (ref. 40 CFR 60.600 et seq.)
- Subpart III VOC Emissions From Synthetic Organic Chemical Manufacturing Industry Air Oxidation Unit Processes (ref. 40 CFR 60.610 et seq.)
- Subpart JJJ Petroleum Dry Cleaners (ref. 40 CFR 60.620 et seq.)
- Subpart KKK Equipment Leaks of VOC From Onshore Natural Gas Processing Plants for Which Construction, Reconstruction, or Modification

Commenced After January 20, 1984, and on or Before August 23, 2011
(ref. 40 CFR 60.630 et seq.)

Subpart LLL (~~(Onshore Natural Gas Processing)~~) SO₂ Emissions From Onshore Natural Gas Processing for Which Construction, Reconstruction, or Modification Commenced After January 20, 1984, and on or Before August 23, 2011 (ref. 40 CFR 60.640 et seq.)

Subpart NNN VOC Emissions From Synthetic Organic Chemical Manufacturing Industry Distillation Operations (ref. 40 CFR 60.660 et seq.)

Subpart OOO Nonmetallic Mineral Processing Plants (ref. 40 CFR 60.670 et seq.)

Subpart PPP Wool Fiberglass Insulation Manufacturing Plants (ref. 40 CFR 60.680 et seq.)

Subpart QQQ VOC Emissions From Petroleum Refinery Wastewater (~~(Emissions)~~) Systems (ref. 40 CFR 60.690 et seq.)

Subpart RRR (~~(Volatile Organic Compound)~~) VOC Emissions From Synthetic Organic Chemical Manufacturing Industry (~~(SOCMI)~~) Reactor Processes (ref. 40 CFR 60.700 et seq.)

Subpart SSS Magnetic Tape Coating Facilities (ref. 40 CFR 60.710 et seq.)

Subpart TTT Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines (ref. 40 CFR 60.720 et seq.)

Subpart UUU Calciners and Dryers in Mineral Industries (ref. 40 CFR 60.730 et seq.)

Subpart VVV Polymeric Coating of Supporting Substrates Facilities (ref. 40 CFR 60.740 et seq.)

Subpart WWW Municipal Solid Waste Landfills that Commenced Construction, Reconstruction or Modification on or After May 30, 1991, but Before July 18, 2014 (ref. 40 CFR 60.750 et seq.)

(See SWCAA 400-070(8) for rules regulating MSW landfills constructed or modified before May 30, 1991)

Subpart XXX Municipal Solid Waste Landfills that Commenced Construction, Reconstruction, or Modification After July 17, 2014 (ref. 40 CFR 60.760 et seq.)

Subpart AAAA Small Municipal Waste Combustion Units (~~(Constructed)~~) for Which Construction is Commenced After August 30, 1999, or (~~(Modified or Reconstructed)~~) for Which Modification or Reconstruction is Commenced After June 6, 2001 (ref. 40 CFR 60.1000 et seq.)

(See SWCAA 400-050(5) for rules regulating small municipal waste combustion units constructed on or before August 30, 1999)

Subpart CCCC Commercial and Industrial Solid Waste (~~(Incinerators Constructed After November 30, 1999; or Modified or Reconstructed on or After June 1, 2001)~~) Incineration Units (ref. 40 CFR 60.2000 et seq.)

(See SWCAA 400-050(4) for Rules Regulating Commercial and Industrial Solid Waste Incinerators Constructed on or Before November 30, 1999)

Subpart EEEE Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006. (ref. 40 CFR 60.2880 et seq.)

Subpart IIII Stationary Compression Ignition Internal Combustion Engines (ref. 40 CFR 60.4200 et seq.)

Subpart JJJJ Stationary Spark Ignition Internal Combustion Engines (ref. 40 CFR 60.4230 et seq.) Title V Sources Only

Subpart KKKK Stationary Combustion Turbines (ref. 40 CFR 60.4300 et seq.)

Subpart LLLL New Sewage Sludge Incineration Units (ref. 40 CFR 60.4760 et seq.)

Subpart OOOO Crude Oil and Natural Gas Production, Transmission and Distribution for Which Construction, Modification or Reconstruction Commenced After August 23, 2011, and on or Before September 18, 2015 (ref. 40 CFR 60.5360 et seq.)

Subpart OOOOa Crude Oil and Natural Gas Facilities for Which Construction, Modification or Reconstruction Commenced After September 18, 2015 (ref. 40 CFR 60.5360a et seq.)

Subpart QQQQ New Residential Hydronic Heaters and Forced-air Furnaces (ref. 40 CFR 60.5472 et seq.)

Appendix A Test Methods (ref. 40 CFR 60, Appendix A)

Appendix B Performance Specifications (ref. 40 CFR 60, Appendix B)

Appendix C Determination of Emission Rate Change (ref. 40 CFR 60, Appendix C)

Appendix D Required Emission Inventory Information (ref. 40 CFR 60, Appendix D)

Appendix F Quality Assurance Procedures (ref. 40 CFR 60, Appendix F)

Appendix I Removable Label and Owner's Manual (ref. 40 CFR 60, Appendix I)

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.

NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS (NESHAPS) 40 CFR 61

Subpart A General Provisions (ref. 40 CFR 61.01 et seq.)

~~((Subpart B Radon Emissions from Underground Uranium Mines (ref. 40 CFR 61.20 et seq.))~~

Subpart C Beryllium (ref. 40 CFR 61.30 et seq.)

Subpart D Beryllium Rocket Motor Firing (ref. 40 CFR 61.40 et seq.)

Subpart E Mercury (ref. 40 CFR 61.50 et seq.)

Subpart F Vinyl Chloride (ref. 40 CFR 61.60 et seq.)

~~((Subpart H Emissions of Radionuclides Other Than Radon from Department of Energy Facilities (ref. 40 CFR 61.90 et seq.))~~

~~Subpart I Radionuclide Emissions from Federal Facilities Other Than Nuclear Regulatory Commission Licensees and not Covered by Subpart H (ref. 40 CFR 61.100 et seq.))~~

Subpart J Equipment Leaks (Fugitive Emission Sources) of Benzene (ref. 40 CFR 61.110 et seq.)

~~((Subpart K Radionuclide Emissions from Elemental Phosphorus Plants (ref. 40 CFR 61.120 et seq.))~~

Subpart L Benzene Emissions from Coke by Product Recovery Plants (ref. 40 CFR 61.130 et seq.)

Subpart M Asbestos (ref. 40 CFR 61.140 et seq.)

Subpart N Inorganic Arsenic Emissions from Glass Manufacturing Plants (ref. 40 CFR 61.160 et seq.)

Subpart O Inorganic Arsenic Emissions from Primary Copper Smelters (ref. 40 CFR 61.170 et seq.)

Subpart P Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic Production Facilities (ref. 40 CFR 61.180 et seq.)

~~((Subpart Q Radon Emissions from Department of Energy Facilities (ref. 40 CFR 61.190 et seq.))~~

~~Subpart R Radon Emissions from Phosphogypsum Stacks (ref. 40 CFR 61.200 et seq.)~~

~~Subpart T Radon Emissions from the Disposal of Uranium Mill Tailings (ref. 40 CFR 61.220 et seq.)~~

Subpart V Equipment Leaks (Fugitive Emission Sources) (ref. 40 CFR 61.240 et seq.)

~~((Subpart W Radon Emissions from Operating Mill Tailings (ref. 40 CFR 61.250 et seq.))~~

Subpart Y Benzene Emissions from Benzene Storage Vessels (ref. 40 CFR 61.270 et seq.)

Subpart BB Benzene Emissions from Benzene Transfer Operations (ref. 40 CFR 61.300 et seq.)

Subpart FF Benzene Waste Operations (ref. 40 CFR 61.340 et seq.)

NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES (MACT) 40 CFR 63

Subpart A General Provisions (ref. 40 CFR 63.1 et seq.)

~~((Subpart B Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections 112(G) and 112(J) (ref. 40 CFR 63.50 et seq.)~~

~~Subpart D Compliance Extensions for Early Reductions of Hazardous Air Pollutants (ref. 40 CFR 63.70 et seq.))~~

Subpart F Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry (ref. 40 CFR 63.100 et seq.)

Subpart G Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater (ref. 40 CFR 63.110 et seq.)

Subpart H Organic Hazardous Air Pollutants for Equipment Leaks (ref. 40 CFR 63.160 et seq.)

Subpart I Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks (ref. 40 CFR 60.190 et seq.)

Subpart J Polyvinyl Chloride and Copolymers Production (ref. 40 CFR 60.210 et seq.)

Subpart L Coke Oven Batteries (ref. 40 CFR 63.300 et seq.)

Subpart M Perchloroethylene ((~~Air Emission Standards for~~) Dry Cleaning Facilities (~~((as it applies to major sources only))~~) (ref. 40 CFR 63.320 et seq.) Title V Sources Only

Subpart N Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing ((~~Operations~~) Tanks) (ref. 40 CFR 63.340 et seq.)

Subpart O Ethylene Oxide Emissions Standards for Sterilization Facilities (ref. 40 CFR 63.360 et seq.)

Subpart Q Industrial Process Cooling Towers (ref. 40 CFR 63.400 et seq.)

Subpart R Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations) (ref. 40 CFR 63.420 et seq.)

Subpart S Pulp and Paper Industry (ref. 40 CFR 63.440 et seq.)

Subpart T Halogenated Solvent Cleaning (ref. 40 CFR 63.460 et seq.)

Subpart U Group I Polymers and Resins (ref. 40 CFR 63.480 et seq.)

Subpart W Epoxy Resins Production and Non-Nylon Polyamides Production (ref. 40 CFR 63.520 et seq.)

Subpart X Secondary Lead Smelting (ref. 40 CFR 63.541 et seq.)

Subpart Y Marine Tank Vessel Loading Operations (ref. 40 CFR 63.560 et seq.)

Subpart AA Phosphoric Acid Manufacturing Plants (ref. 40 CFR 63.600 et seq.)

Subpart BB Phosphate Fertilizers Production Plants (ref. 40 CFR 63.620 et seq.)

Subpart CC Petroleum Refineries (ref. 40 CFR 63.640 et seq.)

Subpart DD Off-Site Waste and Recovery Operations (ref. 40 CFR 63.680 et seq.)

Subpart EE Magnetic Tape Manufacturing Operations (ref. 40 CFR 63.701 et seq.)

Subpart GG Aerospace Manufacturing and Rework Facilities (ref. 40 CFR 63.741 et seq.)

Subpart HH Oil and Natural Gas Production Facilities (ref. 40 CFR 63.760 et seq.)

Subpart II Shipbuilding and Ship Repair (Surface Coating) (ref. 40 CFR 63.780 et seq.)

Subpart JJ Wood Furniture Manufacturing Operations (ref. 40 CFR 63.800 et seq.)

Subpart KK Printing and Publishing Industry (ref. 40 CFR 63.820 et seq.)

Subpart LL Primary Aluminum Reduction Plants (ref. 40 CFR 63.840 et seq.)

Subpart MM Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-alone Semichemical Pulp Mills (ref. 40 CFR 63.860 et seq.)

Subpart NN Wool Fiberglass Manufacturing at Area Sources (ref. 40 CFR 63.880 et seq.)

Subpart OO Tanks - Level 1 (ref. 40 CFR 63.900 et seq.)

Subpart PP Containers (ref. 40 CFR 63.920 et seq.)

Subpart QQ Surface Impoundments (ref. 40 CFR 63.940 et seq.)

Subpart RR Individual Drain Systems (ref. 40 CFR 63.960 et seq.)

Subpart SS Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process (ref. 40 CFR 63.980 et seq.)

Subpart TT Equipment Leaks - Control Level 1 (ref. 40 CFR 63.1000 et seq.)

Subpart UU Equipment Leaks - Control Level 2 (ref. 40 CFR 63.1019 et seq.)

Subpart VV Oil-Water Separators and Organic-Water Separators (ref. 40 CFR 63.1040 et seq.)

Subpart WW Storage Vessels (Tanks) - Control Level 2 (ref. 40 CFR 63.1060 et seq.)

Subpart XX Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations (ref. 40 CFR 63.1080 et seq.)

Subpart YY Generic Maximum Achievable Control Technology Standards (ref. 40 CFR 63.1100 et seq.)

Subpart CCC Steel Pickling - HCL Process Facilities and Hydrochloric Acid Regeneration Plants (ref. 40 CFR 63.1155 et seq.)

Subpart DDD Mineral Wool Production (ref. 40 CFR 63.1175 et seq.)

Subpart EEE Hazardous Waste Combustors (ref. 40 CFR 63.1200 et seq.)

Subpart GGG Pharmaceuticals Production (ref. 40 CFR 63.1250 et seq.)

Subpart HHH Natural Gas Transmission and Storage Facilities (ref. 40 CFR 63.1270 et seq.)

Subpart III Flexible Polyurethane Foam Production (ref. 40 CFR 63.1290 et seq.)

Subpart JJJ Group IV Polymers and Resins (ref. 40 CFR 63.1310 et seq.)

Subpart LLL Portland Cement Manufacturing Industry (ref. 40 CFR 63.1340 et seq.)

Subpart MMM Pesticide Active Ingredient Production (ref. 40 CFR 63.1360 et seq.)

Subpart NNN Wool Fiberglass Manufacturing (ref. 40 CFR 63.1380 et seq.)

Subpart OOO Manufacture of Amino/Phenolic Resins (ref. 40 CFR 63.1400 et seq.)

Subpart PPP Polyether Polyols Production (ref. 40 CFR 63.1420 et seq.)

Subpart QQQ Primary Copper Smelting (ref. 40 CFR 63.1440 et seq.)

Subpart RRR Secondary Aluminum Production (ref. 40 CFR 63.1500 et seq.)

Subpart TTT Primary Lead Smelting (ref. 40 CFR 63.1541 et seq.)

Subpart UUU Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units (ref. 40 CFR 63.1560 et seq.)

Subpart VVV Publicly Owned Treatment Works (ref. 40 CFR 63.1580 et seq.)

Subpart XXX Ferroalloys Production: Ferromanganese and Silicomanganese (ref. 40 CFR 63.1650 et seq.)

Subpart AAAA Municipal Solid Waste Landfills (ref. 40 CFR 63.1930 et seq.)

Subpart CCCC Manufacturing of Nutritional Yeast (ref. 40 CFR 63.2130 et seq.)

Subpart DDDD Plywood and Composite Wood Products (ref. 40 CFR 63.2230 et seq.)

Subpart EEEE Organic Liquids Distribution (Non-Gasoline) (ref. 40 CFR 63.2330 et seq.)

Subpart FFFF Miscellaneous Organic Chemical Manufacturing (ref. 40 CFR 63.2430 et seq.)

Subpart GGGG Solvent Extraction for Vegetable Oil Production (ref. 40 CFR 63.2830 et seq.)

Subpart HHHH Wet-Formed Fiberglass Mat Production (ref. 40 CFR 63.2980 et seq.)

Subpart IIII Surface Coating of Automobiles and Light-Duty Trucks (ref. 40 CFR 63.3080 et seq.)

Subpart JJJJ Paper and Other Web Coating (ref. 40 CFR 63.3280 et seq.)

Subpart KKKK Surface Coating of Metal Cans (ref. 40 CFR 63.3480 et seq.)

Subpart MMMM Surface Coating of Miscellaneous Metal Parts and Products (ref. 40 CFR 63.3880 et seq.)

Subpart NNNN Surface Coating of Large Appliances (ref. 40 CFR 63.4080 et seq.)

Subpart OOOO Printing, Coating, and Dyeing of Fabrics and Other Textiles (ref. 40 CFR 63.4280 et seq.)

Subpart PPPP Surface Coating of Plastic Parts and Products (ref. 40 CFR 63.4480 et seq.)

Subpart QQQQ Surface Coating of Wood Building Products (ref. 40 CFR 63.4680 et seq.)

Subpart RRRR Surface Coating of Metal Furniture (ref. 40 CFR 63.4880 et seq.)

Subpart SSSS Surface Coating of Metal Coil (ref. 40 CFR 63.5080 et seq.)

Subpart TTTT Leather Finishing Operations (ref. 40 CFR 63.5280 et seq.)

Subpart UUUU Cellulose Products Manufacturing (ref. 40 CFR 63.5480 et seq.)

Subpart VVVV Boat Manufacturing (ref. 40 CFR 63.5680 et seq.)

Subpart WWWW Reinforced Plastic Composites Production (ref. 40 CFR 63.5780 et seq.)

Subpart XXXX Rubber Tire Manufacturing (ref. 40 CFR 63.5980 et seq.)

Subpart YYYY Stationary Combustion Turbines (ref. 40 CFR 63.6080 et seq.)

Subpart ZZZZ Stationary Reciprocating Internal Combustion Engines (ref. 40 CFR 63.6580 et seq.) *Title V Sources Only*

Subpart AAAAA Lime Manufacturing Plants (ref. 40 CFR 63.7080 et seq.)

Subpart BBBB Semiconductor Manufacturing (ref. 40 CFR 63.7180 et seq.)

Subpart CCCC Coke Ovens: Pushing, Quenching, and Battery Stacks (ref. 40 CFR 63.7280 et seq.)

Subpart DDDD Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters (ref. 40 CFR 63.7480 et seq.)

Subpart EEEE Iron and Steel Foundries (ref. 40 CFR 63.7680 et seq.)

Subpart FFFF Integrated Iron and Steel Manufacturing Facilities (ref. 40 CFR 63.7780 et seq.)

Subpart GGGG Site Remediation (ref. 40 CFR 63.7880 et seq.)

Subpart HHHH Miscellaneous Coating Manufacturing (ref. 40 CFR 63.7980 et seq.)

Subpart IIIII Mercury Emissions from Mercury Cell Chlor-Alkali Plants (ref. 40 CFR 63.8180 et seq.)

Subpart JJJJJ Brick and Structural Clay Products Manufacturing (ref. 40 CFR 63.8380 et seq.)

Subpart KKKKK Clay Ceramics Manufacturing (ref. 40 CFR 63.8530 et seq.)

Subpart LLLLL Asphalt Processing and Asphalt Roofing Manufacturing (ref. 40 CFR 63.8680 et seq.)

Subpart MMMMM Flexible Polyurethane Foam Fabrication Operations (ref. 40 CFR 63.8780 et seq.)

Subpart NNNNN Hydrochloric Acid Production (ref. 40 CFR 63.8980 et seq.)

Subpart PPPPP Engine Test Cells/Stands (ref. 40 CFR 63.9280 et seq.)

Subpart QQQQQ Friction Materials Manufacturing Facilities (ref. 40 CFR 63.9480 et seq.)

Subpart RRRRR Taconite Iron Ore Processing (ref. 40 CFR 63.9580 et seq.)

Subpart SSSSS Refractory Products Manufacturing (ref. 40 CFR 63.9780 et seq.)

Subpart TTTTT Primary Magnesium Refining (ref. 40 CFR 63.9880 et seq.)

Subpart UUUUU Coal and Oil Fired Electric Utility Steam Generating Units (ref. 40 CFR 63.9980 et seq.)

Subpart WWWW Hospital Ethylene Oxide Sterilizers (ref. 40 CFR 63.10382 et seq.)

Subpart YYYYY Area Sources: Electric Arc Furnace Steelmaking Facilities (ref. 40 CFR 63.10680 et seq.)

Subpart ZZZZZ Iron and Steel Foundries Area Sources (ref. 40 CFR 63.10880 et seq.)

Subpart BBBBBB Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities (ref. 40 CFR 63.11080 et seq.)

Subpart CCCCC Gasoline Dispensing Facilities (ref. 40 CFR 63.11110 et seq.)

Subpart DDDDD Polyvinyl Chloride and Copolymers Production Area Sources (ref. 40 CFR 63.11140 et seq.)

Subpart EEEEE Primary Copper Smelting Area Sources (ref. 40 CFR 63.11146 et seq.)

Subpart FFFFF Secondary Copper Smelting Area Sources (ref. 40 CFR 63.11153 et seq.)

Subpart GGGGG Primary Nonferrous Metals Area Sources - Zinc, Cadmium, and Beryllium (ref. 40 CFR 63.11160 et seq.)

Subpart HHHHH Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources (ref. 40 CFR 63.11169 et seq.) *Title V Sources Only*

Subpart JJJJJ Industrial, Commercial, and Institutional Boilers Area Sources (ref. 40 CFR 63.11193 et seq.) *Title V Sources Only*

Subpart LLLLL Acrylic and Modacrylic Fibers Production Area Sources (ref. 40 CFR 63.11393 et seq.)

Subpart MMMMM Carbon Black Production Area Sources (ref. 40 CFR 63.11400 et seq.)

Subpart NNNNN Chemical Manufacturing Area Sources: Chromium Compounds (ref. 40 CFR 63.11407 et seq.)

Subpart OOOOO Flexible Polyurethane Foam Production and Fabrication Area Sources (ref. 40 CFR 63.11414 et seq.)

Subpart PTTTT Lead Acid Battery Manufacturing Area Sources (ref. 40 CFR 63.11421 et seq.)

Subpart QQQQQ Wood Preserving Area Sources (ref. 40 CFR 63.11428 et seq.)

Subpart RRRRR Clay Ceramics Manufacturing Area Sources (ref. 40 CFR 63.11435 et seq.)

Subpart SSSSS Glass Manufacturing Area Sources (ref. 40 CFR 63.11448 et seq.)

Subpart TTTTT Secondary Nonferrous Metals Processing Area Sources (ref. 40 CFR 63.11462 et seq.)

Subpart VVVVV Chemical Manufacturing Area Sources (ref. 40 CFR 63.11494 et seq.)

Subpart WWWW Area Source Standards for Plating and Polishing Operations (ref. 40 CFR 63.11504 et seq.)

Subpart XXXXX Area Source Standards for Nine Metal Fabrication and Finishing Source Categories (ref. 40 CFR 63.11514 et seq.) *Title V Sources Only*

Subpart YYYYY Area Sources: Ferroalloys Production Facilities (ref. 40 CFR 63.11524 et seq.)

Subpart ZZZZZ Area Source Standards for Aluminum, Copper, and Other Nonferrous Foundries (ref. 40 CFR 63.11544 et seq.)

Subpart AAAAA Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing (ref. 40 CFR 63.11559 et seq.)

Subpart BBBBBB Area Sources: Chemical Preparations Industry (ref. 40 CFR 63.11579 et seq.)

Subpart CCCCC Area Sources: Paints and Allied Products Manufacturing (ref. 40 CFR 63.11599 et seq.)

Subpart DDDDD Area Sources: Prepared Feeds Manufacturing (ref. 40 CFR 63.11619 et seq.)

Subpart EEEEEEE Gold Mine Ore Processing and Production Area
Source Category (ref. 40 CFR 63.11640 et seq.)

Subpart HHHHHHH Polyvinyl Chloride and Copolymers Production
(ref. 40 CFR 63.11860 et seq.)

Appendix A Test Methods (ref. 40 CFR 63, Appendix A)

Appendix B Sources Defined for Early Reduction Provisions (ref.
40 CFR 63, Appendix B)

Appendix C Determination of the Fraction Biodegraded in a Biolog-
ical Treatment Unit (ref. 40 CFR 63, Appendix C)

Appendix D Alternative Validation procedure for EPA Waste and
Wastewater Methods (ref. 40 CFR 63, Appendix D)

Appendix E Monitoring Procedures for Nonthoroughly Mixed Open Bi-
ological Treatment Systems at Kraft Pulp Mills Under Unsafe Sampling
Conditions (ref. 40 CFR 63, Appendix E)

WSR 21-19-005

PERMANENT RULES

WASHINGTON STATE PATROL

[Filed September 2, 2021, 2:22 p.m., effective October 3, 2021]

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

Purpose: 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 national[ly] recognized standards.

Citation of Rules Affected by this Order: Repealing WAC 212-10-030, 212-10-035 and 212-10-040; and amending chapter 212-10 WAC.

Statutory Authority for Adoption: RCW 43.44.110.

Adopted under notice filed as WSR 21-15-035 on July 13, 2021.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 7, Repealed 3.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 7, Repealed 3.

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

Date Adopted: September 2, 2021.

John R. Batiste
Chief

OTS-2718.2

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 ~~((, 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 212-10-045 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 212-10-035	Number of smoke detection devices.
WAC 212-10-040	Location of smoke detection devices.

WSR 21-19-013
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)
 [Filed September 3, 2021, 2:17 p.m., effective October 4, 2021]

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

Purpose: The department is amending WAC 388-106-0250 to ensure that roads to community living eligibility aligns with the federal Money Follows the Person (MFP) demonstration eligibility criteria. The Consolidated Appropriations Act of 2021, Section 204, outlines an extension of MFP rebalancing demonstration and changes the institutional residency period requirement, striking the 90-day institutional eligibility period and inserting a 60-day institutional period. It also generalizes the settings where MFP participants may receive services striking through the qualified community setting with four of [or] less unrelated individuals and inserting home and community-based setting.

Citation of Rules Affected by this Order: Amending WAC 388-106-0250.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520; Affordable Care Act (ACA), Deficit Reduction Act of 2005 (P.L. 209-171), and Consolidate[d] Appropriations Act of 2021 (Section 204).

Other Authority: ESSB 6199 in 2018.

Adopted under notice filed as WSR 21-14-082 on July 6, 2021.

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

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

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

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

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

Date Adopted: September 3, 2021.

Katherine I. Vasquez
 Rules Coordinator

SHS-4878.1

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

WAC 388-106-0250 What is the roads to community living (RCL) demonstration project and who is eligible? (1) Roads to community living (RCL) is a demonstration project, funded by a "money follows the person" grant originally authorized under section 6071 of the Deficit Reduction Act of 2005 (P.L. 109-171) and extended through the Pa-

tient Affordable Care Act (P.L. 111-148). It is designed to test services and supports which help customers move from institutional settings into the community if they wish to.

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

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

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

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

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

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

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

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

WSR 21-19-018

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed September 7, 2021, 11:37 a.m., effective October 8, 2021]

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

Purpose: WAC 246-470-037 Prescription monitoring program—Electronic health record (PMP-EHR) mandate waiver. The department of health (department) has adopted a new section of rule to outline the PMP-EHR mandate waiver process and criteria as required by SSB 5380 passed during the 2019 legislative session.

Citation of Rules Affected by this Order: New WAC 246-470-037.

Statutory Authority for Adoption: RCW 70.225.025; and SSB 5380 (chapter 314, Laws of 2019) codified as RCW 70.225.090 (2) (b).

Adopted under notice filed as WSR 21-08-048 on April 2, 2021.

Changes Other than Editing from Proposed to Adopted Version: In subsection (3) (a) (iv) "December 31, 2021" was changed to "December 31, 2022." The rules were originally drafted prior to the onset of the COVID-19 pandemic and the resulting waiver issued by the secretary of health to help relieve pressure on the health care system during the pandemic response. Staff updated this language to align with the expiration of the secretary's waiver. Without making this change, the economic hardship criteria under subsection (3) (a) (iv) would expire before the department expects compliance.

In subsection (3) (c), after "circumstances" staff added the word "include." This is a clarifying edit that structurally aligns that clause with the other clauses in this section and makes clear the department and commission's intent that subsection (3) (c) is an exclusive list.

A final cost-benefit analysis is available by contacting Carly Bartz-Overman, P.O. Box 47852, Olympia, WA 98504, phone 360-236-3044, TTY 711, email carly.bartz-overman@doh.wa.gov.

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

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

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

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

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

Date Adopted: September 6, 2021.

Kristin Peterson, JD
Deputy Secretary
Policy and Planning
for Umair A. Shah, MD, MPH
Secretary

OTS-2913.2

NEW SECTION

WAC 246-470-037 Waiver for integrating electronic health record system with the prescription monitoring program. (1) A facility, entity, office, or provider group that is subject to the prescription monitoring program integration mandate requirement in RCW 70.225.090 (2)(a), and is experiencing an economic hardship, technological limitation, or other exceptional circumstances as stated in RCW 70.225.090 (2)(b), may submit an attestation to the department for a waiver from the integration mandate. The attestation must be submitted on forms provided by the department. The waiver is deemed granted upon submission.

(2) A facility, entity, office, or provider group that has been granted a waiver from the mandate in RCW 70.225.090 (2)(a) shall be exempt from the prescription monitoring program integration mandate for the calendar year in which the attestation is received by the department beginning with the effective date of this section.

(a) For economic hardship and technical limitation, a facility, entity, office, or provider group may submit up to three annual attestations, giving the facility, entity, office, or provider group up to three years to integrate its electronic health record with the prescription monitoring program.

(b) There is no limit on the number of other exceptional circumstance waivers under subsection (3)(c) of this section that a facility, entity, office, or provider group may submit.

(3) A facility, entity, office, or provider group may submit an attestation for a waiver from the mandate due to:

(a) Economic hardship in the following circumstances:

(i) A bankruptcy in the previous year or a waiver submitted under this chapter due to bankruptcy in the previous year;

(ii) Opening a new practice after January 1, 2020;

(iii) Operating a low-income clinic, that is defined as a clinic serving a minimum of thirty percent medicaid patients; or

(iv) Intent to discontinue operating in Washington prior to December 31, 2022;

(b) Technological limitations outside the control of the facility, entity, office, or provider group in the following circumstance: Integration of electronic health records system with the PMP through a method approved by the department is in process but has not yet been completed;

(c) Other exceptional circumstances include:

(i) Providing services as a free clinic;

(ii) The internet speed or bandwidth required to integrate an electronic health record with the prescription monitoring program through a method approved by the department is not available;

(iii) The technology to connect the electronic health record of the entity requesting the waiver to the prescription monitoring program through a method approved by the department does not exist;

(iv) Fewer than one hundred prescriptions for Schedule II-V drugs are generated in a calendar year; or

(v) Unforeseen circumstances that stress the practitioner or health care system in such a way that compliance is not possible. Examples may include, but are not limited to, natural disasters, widespread health care emergencies, unforeseen barriers to integration, or unforeseen events that result in a statewide emergency.

[]

WSR 21-19-029

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed September 9, 2021, 2:04 p.m., effective October 10, 2021]

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

Purpose: The agency is amending this section to align with the Consolidated Appropriations Act, 2021 (Sec. 208) which restored eligibility for medicaid benefits for individuals from the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia.

Citation of Rules Affected by this Order: Amending WAC 182-503-0535.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 21-16-065 on July 30, 2021.

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

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

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

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

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

Date Adopted: September 9, 2021.

Wendy Barcus
Rules Coordinator

OTS-3108.2

AMENDATORY SECTION (Amending WSR 15-10-002, filed 4/22/15, effective 5/23/15)

WAC 182-503-0535 Washington apple health—Citizenship and immigration status. (1) Definitions.

(a) **Nonqualified alien** means someone who is lawfully present in the United States (U.S.) but who is not a qualified alien, a U.S. citizen, a U.S. national, or a qualifying American Indian born abroad.

(b) **Qualified alien** means someone who is lawfully present in the United States and who is one or more of the following:

(i) A person lawfully admitted for permanent residence (LPR).

(ii) An abused spouse or child, a parent of an abused child, or a child of an abused spouse who no longer resides with the person who committed the abuse, and who has one of the following:

(A) A pending or approved I-130 petition or application to immigrate as an immediate relative of a U.S. citizen or as the spouse of an unmarried LPR younger than twenty-one years of age.

(B) Proof of a pending application for suspension of deportation or cancellation of removal under the Violence Against Women Act (VAWA).

(C) A notice of prima facie approval of a pending self-petition under VAWA. An abused spouse's petition covers his or her child if the child is younger than twenty-one years of age. In that case, the child retains qualified alien status even after he or she turns twenty-one years of age.

(iii) A person who has been granted parole into the U.S. for one year or more, under the Immigration and Nationality Act (INA) Section 212 (d) (5), including public interest parolees.

(iv) A member of a Hmong or Highland Laotian tribe that rendered military assistance to the U.S. between August 5, 1964, and May 7, 1975, including the spouse, unremarried widow or widower, and unmarried dependent child of the tribal member.

(v) A person who was admitted into the U.S. as a conditional entrant under INA Section 203 (a) (7) before April 1, 1980.

(vi) A person admitted to the U.S. as a refugee under INA Section 207.

(vii) A person who has been granted asylum under INA Section 208.

(viii) A person granted withholding of deportation or removal under INA Section 243(h) or 241 (b) (3).

(ix) A Cuban or Haitian national who was paroled into the U.S. or given other special status.

(x) An Amerasian child of a U.S. citizen under 8 C.F.R. Section 204.4(a).

(xi) A person from Iraq or Afghanistan who has been granted special immigrant status under INA Section 101 (a) (27).

(xii) A person who has been certified or approved as a victim of trafficking by the federal office of refugee resettlement, or who is:

(A) The spouse or child of a trafficking victim of any age; or

(B) The parent or minor sibling of a trafficking victim who is younger than twenty-one years of age.

(xiii) A person from the Federated States of Micronesia, the Republic of Palau, or the Republic of the Marshall Islands living in the United States in accordance with the Compacts of Free Association.

(c) **U.S. citizen** means someone who is a United States citizen under federal law.

(d) **U.S. national** means someone who is a United States national under federal law.

(e) **Undocumented person** means someone who is not lawfully present in the U.S.

(f) **Qualifying American Indian born abroad** means someone who:

(i) Was born in Canada and has at least fifty percent American Indian blood, regardless of tribal membership; or

(ii) Was born outside of the United States and is a member of a federally recognized tribe or an Alaska Native enrolled by the Secretary of the Interior under the Alaska Native Claims Settlement Act.

(2) **Eligibility.**

(a) A U.S. citizen, U.S. national or qualifying American Indian born abroad may be eligible for:

(i) Apple health for adults;

(ii) Apple health for kids;

(iii) Apple health for pregnant women; or

(iv) Classic medicaid.

(b) A qualified alien who meets or is exempt from the five-year bar may be eligible for:

- (i) Apple health for adults;
 - (ii) Apple health for kids;
 - (iii) Apple health for pregnant women; or
 - (iv) Classic medicaid.
- (c) A qualified alien who neither meets nor is exempt from the five-year bar may be eligible for:
- (i) Alien medical programs;
 - (ii) Apple health for kids;
 - (iii) Apple health for pregnant women; or
 - (iv) Medical care services.
- (d) A nonqualified alien may be eligible for:
- (i) Alien medical programs;
 - (ii) Apple health for kids;
 - (iii) Apple health for pregnant women; or
 - (iv) Medical care services.
- (e) An undocumented person may be eligible for:
- (i) Alien medical programs;
 - (ii) State-only funded apple health for kids; or
 - (iii) State-only funded apple health for pregnant women.
- (3) **The five-year bar.**
- (a) A qualified alien meets the five-year bar if he or she:
- (i) Continuously resided in the U.S. for five years or more from the date he or she became a qualified alien; or
 - (ii) Entered the U.S. before August 22, 1996, and:
 - (A) Became a qualified alien before August 22, 1996; or
 - (B) Became a qualified alien on or after August 22, 1996, and has continuously resided in the U.S. between the date of entry into the U.S. and the date he or she became a qualified alien.
- (b) A qualified alien is exempt from the five-year bar if he or she is:
- (i) A qualified alien as defined in subsection ~~((s))~~ (1)(b)(vi) through ~~((xii))~~ (xiii) of this section;
 - (ii) An LPR, parolee, or abused person, who is also an armed services member or veteran, or a family member of an armed services member or veteran, as described below:
 - (A) An active-duty member of the U.S. military, other than active-duty for training;
 - (B) An honorably discharged U.S. veteran;
 - (C) A veteran of the military forces of the Philippines who served before July 1, 1946, as described in Title 38 U.S.C. Section 107; or
 - (D) The spouse, unremarried widow or widower, or unmarried dependent child of an honorably discharged U.S. veteran or active-duty member of the U.S. military.

[Statutory Authority: RCW 41.05.021, 41.05.160. WSR 15-10-002, § 182-503-0535, filed 4/22/15, effective 5/23/15. Statutory Authority: RCW 41.05.021, 41.05.160, Public Law 111-148, 42 C.F.R. § 431, 435, and 457, and 45 C.F.R. § 155. WSR 14-16-052, § 182-503-0535, filed 7/29/14, effective 8/29/14.]

WSR 21-19-031
PERMANENT RULES

DEPARTMENT OF TRANSPORTATION

[Filed September 10, 2021, 4:10 p.m., effective October 11, 2021]

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

Purpose: This proposal amends chapter 468-17 WAC to simplify the process, and clarify the language, regarding contract goals for the small and veteran-owned business enforceable goals program. This rule simplification will refine the WAC definition of "contract goal" to apply only to the contract amount alternative public works procurement delivery methods and remove references to the terminology "condition of award" for these alternative public works projects.

Program participants will benefit from increased clarity in both the application of the goals and the terminology regarding goal settings. Striking condition of award language relative to these delivery models will reduce confusion and streamline program implementation.

The revisions include: (5) "Contract goal" means a percentage of the contract award amount the prime contractor or prime consultant must meet with small, mini, micro and veteran-owned businesses. ~~in order to receive award of the contract:~~

~~(a) For design-bid-build contracts, the contract goal is a percentage of the prime contractor's total bid plus any executed change orders;~~

~~(b) For design-build and consulting agreements, the contract goal is a percentage of the original contract amount plus any executed change orders or supplements;~~

~~(c) For general contractor/construction manager contracts, the contract goal is a percentage of the maximum allowable contract cost (MACC) plus any executed change orders or supplements.~~

Additional modifications include the striking of all usage of the term "condition of award."

Citation of Rules Affected by this Order: Amending WAC 468-17-030 (5) (a), (b), (c), 468-17-050, 468-17-060, 468-17-090(1).

Statutory Authority for Adoption: RCW 39.04.155, 43.19.727, 47.01.101, 47.28.030.

Adopted under notice filed as WSR 21-13-017 [21-15-050] on June 8, 2021 [July 14, 2021].

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

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

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

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

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

Date Adopted: September 10, 2021.

Shannon Gill
Interim Director
Risk Management and
Legal Services

OTS-3193.1

AMENDATORY SECTION (Amending WSR 21-07-127, filed 3/23/21, effective 4/23/21)

WAC 468-17-030 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Award" means the formal decision by the department to accept a bid and the intent to enter into a contract with the bidder.

(2) "Commercially useful function" means the activity conducted by a firm responsible for the execution of the work of the contract and that is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. Additional requirements are discussed in WAC 468-17-060.

(3) "Condition of award (COA)" means that a prime contractor or consultant, on a design-bid-build or consultant agreement, commits to subcontracting with a small business enterprise (SBE) or veteran-owned business (VOB). On design-build or general contractor/construction manager contracts, all SBEs and VOBs in the quarterly small and veteran business plans are considered COA firms.

(4) "Consultant agreement" means a contract entered into by a public body for architectural and engineering services (performed pursuant to chapter 39.80 RCW) with another party, i.e., an independent individual or firm, in which the other party agrees to perform a service, render an opinion, or recommendations according to the consultant's methods and without being subject to the control of the public body except as to the result of the work.

(5) "Contract goal" means a percentage of the contract ((award)) amount the prime contractor or prime consultant must meet with small, mini, micro and veteran-owned businesses ((in order to receive award of the contract):

~~(a) For design-bid-build contracts, the contract goal is a percentage of the prime contractor's total bid plus any executed change orders;~~

~~(b) For design-build and consulting agreements, the contract goal is a percentage of the original contract amount plus any executed change orders or supplements;~~

~~(c) For general contractor/construction manager contracts, the contract goal is a percentage of the maximum allowable contract cost (MACC) plus any executed change orders or supplements).~~

(6) "Department" means the Washington state department of transportation (WSDOT).

(7) "Design-bid-build (DBB) contract" means a contract between a public body and another party in which the public body contracts separately with a designer and a contractor for the design and construction of a facility, portion of the facility, or other item specified in the contract. Designers and contractors bear no contractual obligation to one another under a DBB contract.

(8) "Design-build (DB) contract" means a contract between a public body and another party in which the party agrees to both design

and build the facility, portion of the facility, or other item specified in the contract as defined in chapter 39.10 RCW.

(9) "General contractor/construction manager (GC/CM)" means a contract between a public body and another party in which the party agrees to both build and manage the construction of the facility, portion of the facility, or other item specified in the contract as defined in chapter 39.10 RCW.

(10) "Good faith efforts (GFE)" means efforts to achieve a goal or other requirement of this chapter which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement. GFE is not necessary when a contract goal has been met.

(11) "Mini-business" means any business that:

(a) Is owned and operated independently from all other businesses;

(b) Has a gross revenue of less than three million dollars annually as reported on its federal tax return or on its return filed with the department of revenue;

(c) Is self-certified as a "mini-business" through the Washington state department of enterprise services (DES); and

(d) Is listed as a "mini-business" on the Washington electronic business service (WEBS).

(12) "Micro-business" means any business that:

(a) Is owned and operated independently from all other businesses;

(b) Has a gross revenue of less than one million dollars annually as reported on its federal tax return or on its return filed with the department of revenue;

(c) Is self-certified as a "micro-business" through the Washington state department of enterprise services (DES); and

(d) Is listed as a "micro-business" on the WEBS.

(13) "Quarterly small and veteran business plans" means documents design-builders are required to submit which outline the strategies the organization will be utilizing to meet the established contract goals.

(14) "Small business enterprise (SBE)" means an in-state business that:

(a) Is owned and operated independently from all other businesses and has either:

(i) Fifty or fewer employees; or

(ii) A gross revenue of less than seven million dollars annually as reported on its federal income tax return or its return filed with the department of revenue over the previous three consecutive years; or

(b) Is self-certified as a "small business enterprise (SBE)" through the Washington state department of enterprise services and is listed as a SBE on the WEBS.

(15) "Tiered participation" means the amount of additional contract goal credit the prime contractor or prime consultant may receive for using SBE and VOBs of different designations, as detailed in WAC 468-17-080.

(16) "Veteran-owned businesses (VOB)" means a business certified by the Washington state department of veterans affairs, pursuant to RCW 43.60A.190.

[Statutory Authority: RCW 34.05.310. WSR 21-07-127, § 468-17-030, filed 3/23/21, effective 4/23/21. Statutory Authority: RCW 39.04.155,

43.19.727, 47.01.101, and 47.28.030. WSR 19-12-026, § 468-17-030, filed 5/29/19, effective 6/29/19.]

AMENDATORY SECTION (Amending WSR 19-12-026, filed 5/29/19, effective 6/29/19)

WAC 468-17-050 ((Condition of award)) Goals. On solely state-funded projects, the small and veteran business goals for participation of small and veteran-owned enterprises shall be as directed by the department or other state agencies conducting disparity studies. Presently these goals are set as follows:

- (1) Veteran business goal of five percent; and
- (2) Small business goal of five percent.

[Statutory Authority: RCW 39.04.155, 43.19.727, 47.01.101, and 47.28.030. WSR 19-12-026, § 468-17-050, filed 5/29/19, effective 6/29/19.]

AMENDATORY SECTION (Amending WSR 19-12-026, filed 5/29/19, effective 6/29/19)

WAC 468-17-060 Commercially useful function. Under the enforceable goals program, commercially useful function (CUF) restrictions apply to all SBEs, mini-businesses, micro-businesses and VOBs. These businesses must perform a CUF in order for their participation to be counted against any ((condition of award)) goal. A business performs a CUF when it is both responsible for the execution of the work of the contract and it meets its responsibility under the contract by actually performing, managing, and supervising the work involved. If any materials or supplies are needed to perform the contract, the business must negotiate price, determine quality and quantity, order the material, install (if applicable), and pay for those materials or supplies itself.

Additional considerations when making a determination on a CUF are as follows:

- (1) A SBE, VOB, micro-business or mini-business does not perform a CUF if its role is limited to that of an extra participant in a transaction or contract or it is involved in a project for the purposes of creating a semblance of SBE, VOB, micro-business or mini-business participation.
- (2) Other relevant factors that may be considered when evaluating whether a SBE, VOB, micro-business or mini-business is performing a CUF include industry practices, the amount of work subcontracted and whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing.
- (3) In addition, a business that functions as a supplier shall:
 - (a) Be the manufacturer of the goods or materials or assume the actual and contractual responsibility for furnishing the goods or materials and executing material changes in the configuration of those goods or materials; or
 - (b) Secure a contract or distributor agreement with a manufacturer to act as an independent authorized representative capable of passing on product warranties to the purchaser.

(4) Factors which may indicate that a supplier is not performing a commercially useful function include, but are not limited to, the following:

- (a) A minimum amount of inventory is not maintained;
- (b) Billing and shipping arrangements are performed by nonowners or staff of nonowners;
- (c) A significant amount of deliveries are shipped directly from the producer or manufacturer to the end user;
- (d) The firm does not take ownership of the product.

[Statutory Authority: RCW 39.04.155, 43.19.727, 47.01.101, and 47.28.030. WSR 19-12-026, § 468-17-060, filed 5/29/19, effective 6/29/19.]

AMENDATORY SECTION (Amending WSR 19-12-026, filed 5/29/19, effective 6/29/19)

WAC 468-17-090 Small and veteran business plans. (1) Prime contractors, design-builders, general contractors/construction managers and consultants must submit a small and veterans' business plan that specifies how the contractor will meet SBE and VOB participation goals, prior to the award of any contract. The small and veteran business plan for design-bid-build and consultant contracts must list all of the SBEs, VOBs, mini-businesses and micro-businesses that will participate in the contract; a description of the work that each SBE, VOB, micro-business or mini-business will perform; the dollar amount of the participation of each SBE, VOB, micro-business or mini-business; the contractor's written commitment to use the SBE, VOB, micro-business or mini-business submitted; and written confirmation from each SBE or VOB firm that it is participating in the contract in the kind and amount of work provided in the inclusion plan. The small and veteran business plan for design-build and general contractor/construction manager contracts must list in detail the contractor's means and methods that it will use to meet the goal and a commitment by the contractor to attempt to meet the goal. If the total SBE and VOB participation in the small and veteran business plan does not meet the ~~((condition of award))~~ goal, then the contractor must also submit evidence of good faith efforts (GFEs) ~~((to meet the contract goal))~~. A contractor may be awarded a project only after WSDOT has approved its small and veteran business plan or confirmed its GFEs. Revisions of small and veteran business plans may be necessary prior to plan approvals.

(2) Quarterly small and veteran business plans are required for design-build and general contractor/construction manager projects. The first quarterly small and veteran business plan shall be submitted prior to contract award and must be approved by the department prior to contract execution. Subsequent small and veteran business plans must include information, as applicable, regarding:

- (a) Small and veteran business goal attainment;
- (b) A list all of the SBEs, VOBs, mini-businesses or micro-businesses that have been contracted to date;
- (c) A description of the work that each SBE, VOB, micro-business or mini-business will perform;
- (d) The dollar amount of the participation of each SBE, VOB, micro-business or mini-business;

(e) The contractor's written commitment to use the SBE, VOB, micro-business or mini-business submitted;

(f) Written confirmation from each SBE, VOB, micro-business or mini-business firm that it is participating in the contract in the kind and amount of work provided in the small and veteran business plan;

(g) Corrective actions necessary to meet the established goals;

(h) Outreach strategies;

(i) Innovative approaches to secure goal(s); and

(j) Other evidence of GFES to meet the contract goal.

[Statutory Authority: RCW 39.04.155, 43.19.727, 47.01.101, and 47.28.030. WSR 19-12-026, § 468-17-090, filed 5/29/19, effective 6/29/19.]

WSR 21-19-034
PERMANENT RULES
GAMBLING COMMISSION

[Filed September 9, 2021, 4:51 p.m., effective October 10, 2021]

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

Purpose: The gambling commission is repealing this rule as circumstances have changed. The gambling commission no longer uses the effective date timelines outlined in the rule, rather it identifies the effective date on the Rule-making order (CR-103P for permanent rules or a CR-103E for emergency rules) in accordance with RCW 34.05.380, 34.05.350, and 34.05.360.

Citation of Rules Affected by this Order: Repealing WAC 230-01-015 Effective dates for rule-making orders.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 21-11-050 on May 13, 2021.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 1.

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

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

Date Adopted: September 9, 2021.

Ashlie Laydon
Rules Coordinator

OTS-3073.1

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 230-01-015 Effective dates for rule-making orders.

WSR 21-19-040
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed September 10, 2021, 10:44 a.m., effective October 11, 2021]

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

Purpose: The department is amending WAC 388-444-0015 How can the basic food employment and training (BF E&T) program help me find work? and 388-444-0025 What expenses will the department pay to help me participate in BF E&T? These amendments better align basic food employment and training (BFET) rule language with federal regulations and clarify eligibility rules and services available through the program.

Citation of Rules Affected by this Order: Amending WAC 388-444-0015 and 388-444-0025.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.515, 74.04.535, 74.08.090, 74.08A.120, 74.08A.903; 7 U.S.C. 2015 (d)(1), and 7 C.F.R. § 273.7.

Adopted under notice filed as WSR 21-09-075 on April 20, 2021.

Changes Other than Editing from Proposed to Adopted Version: The department is not proceeding with adoption of proposed subsection (1)(b)(iii) of WAC 388-444-0015, "participation in a job club" as this activity is no longer allowed in SNAP employment and training programs.

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

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

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

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

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

Date Adopted: September 10, 2021.

Katherine I. Vasquez
Rules Coordinator

SHS-4845.5

AMENDATORY SECTION (Amending WSR 13-24-043, filed 11/26/13, effective 1/1/14)

WAC 388-444-0015 How can the basic food employment and training ((~~BF E&T~~)) (BFET) program help me find work? The basic food employment and training ((~~BF E&T~~)) (BFET) program is the name for Washington's voluntary supplemental nutrition assistance program (SNAP) employment and training program.

(1) If you receive federally funded basic food benefits and are at least sixteen years of age or older (see additional requirements to serve sixteen to seventeen year olds below) and are able to work at least twenty hours per week (see additional requirements below), you may choose to receive services through the ((BF-E&T)) BFET program in one or more of the following activities, if we currently provide the service in the county where you live:

(a) Job search((+)) and training, which may include:

- (i) Labor market information;
- (ii) Job seeking skills instruction;
- (iii) Resume writing;
- (iv) Job skills assessment;
- (v) Coaching;
- (vi) Work ethic training; or
- (vii) Job placement services.

(b) Supervised job search, which may include:

- (i) Use of computer, email, fax, telephone;
- (ii) Search of job listings; and
- (iii) Securing identification, professional license, or certifications.

(c) Basic education, which may include:

- (i) Education in basic computer skills;
- (ii) Literacy or math training;
- (iii) High school equivalency (formerly GED);
- (iv) Basic education for adults (BEA); or
- (v) English as a second language (ESL).

(d) Life skills, which may include:

- (i) Work preparation;
- (ii) Health and well-being;
- (iii) Effective communication;
- (iv) Personal strength builders;
- (v) Community engagement.

(e) Vocational education, which may be:

- (i) Credentialed;
- (ii) Recognized by an independent third party; or
- (iii) Accepted by local industry employers.

(f) Job retention services, which may include:

- (i) Counseling;
- (ii) Coaching;
- (iii) Case management; and
- (iv) Participant reimbursements.

(g) Paid or unpaid work((+)

- ~~(c) Training or work experience;~~
- ~~(d) High school equivalency classes; or~~
- ~~(e) English as a second language (ESL) classes)).~~

(2) If you are eligible to participate in ((a BF-E&T activity, there is no limit to the number of hours you can participate)) BFET activities, you must be able to participate in BFET twenty hours per week, up to forty hours per week.

(a) Youth ages sixteen to seventeen may participate in BFET programs, whether they receive basic food benefits independently or through their parents basic food case.

(i) The participation exception for youth are secondary education, or high school equivalency classes.

(ii) Youth may participate in vocational education programs if they have received or in the process of receiving their high school equivalency.

(iii) Youth sixteen years and older do not require parental consent to participate in BFET.

(iv) Persons with a verified disability (which may include those receiving services from the division of vocational rehabilitation) may be eligible for BFET services.

(3) If you are an able bodied adult without dependents (ABAWD) and able to work, you may be eligible for BFET services.

(4) If you receive employment and training services within multiple department of social and health services administrations, you cannot receive duplication of services, nor duplication of support services.

(5) If you receive benefits under the state-funded food assistance program (FAP), you are not eligible to participate in ((BF-E&T)) BFET.

(6) If you receive temporary assistance to needy families (TANF), you are not eligible to participate in BFET.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.250, and 2013 c 39. WSR 13-24-043, § 388-444-0015, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.515, 74.08.090, 74.08A.120, 74.08A.903, and 7 U.S.C. 2015 (d) (1); 7 C.F.R. § 273.7. WSR 10-18-048, § 388-444-0015, filed 8/26/10, effective 10/1/10. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 7 C.F.R. 273.7 and 273.25. WSR 06-24-026, § 388-444-0015, filed 11/29/06, effective 1/1/07. Statutory Authority: RCW 74.04.050 and 74.04.510. WSR 00-04-006, § 388-444-0015, filed 1/20/00, effective 3/1/00. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-444-0015, filed 7/31/98, effective 9/1/98.]

AMENDATORY SECTION (Amending WSR 10-18-048, filed 8/26/10, effective 10/1/10)

WAC 388-444-0025 What ~~((expenses will))~~ support services may the ~~((department))~~ basic food employment and training (BFET) program pay to help me participate ~~((in BF-E&T))~~? ~~((+1))~~ The ~~((department pays))~~ BFET program may pay certain actual expenses needed for you to participate in the ~~((BF-E&T))~~ BFET program. ~~((We will))~~ The BFET program may pay for the following expenses:

~~((+a))~~ (1) Transportation related costs; ~~((and~~

~~((+b))~~ (2) Books and training supplies;

(3) Clothing;

(4) Educational or credential testing;

(5) Housing or utilities;

(6) Personal hygiene; or

(7) Child care or medical;

(a) Dependent care costs for each dependent through twelve years of age.

~~((+2))~~ (b) We do not pay your dependent care costs if:

~~((+a))~~ (i) The child is thirteen years of age or older unless they are:

~~((+i))~~ (A) Physically and/or mentally unable to care for themselves; or

~~((+ii))~~ (B) Under court order requiring adult supervision; or

~~((b))~~ (C) Any member in the food assistance unit provides the dependent care.

~~((3))~~ (ii) We do not use the cost of dependent care the department pays for under subsection (1) of this section as an income deduction for your household's dependent care costs under WAC 388-450-0185.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.515, 74.08.090, 74.08A.120, 74.08A.903, and 7 U.S.C. 2015 (d) (1); 7 C.F.R. § 273.7. WSR 10-18-048, § 388-444-0025, filed 8/26/10, effective 10/1/10. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, and 74.08.090. WSR 07-21-075, § 388-444-0025, filed 10/16/07, effective 11/16/07; WSR 98-16-044, § 388-444-0025, filed 7/31/98, effective 9/1/98.]

WSR 21-19-049

PERMANENT RULES

THE EVERGREEN STATE COLLEGE

[Filed September 13, 2021, 11:47 a.m., effective October 14, 2021]

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

Purpose: The college has moved parking services to a different organizational division and will be implementing parking permits by license plate number versus physical decals and permits. Rules reflect updated processes and procedures that align with the new organizational structure and procedures.

Citation of Rules Affected by this Order: Amending 13.

Statutory Authority for Adoption: RCW 28B.10.560.

Adopted under notice filed as WSR 21-13-087 on June 17, 2021.

Changes Other than Editing from Proposed to Adopted Version: WAC 174-116-280 was modified to include ability for payments and appeals to be made in-person as well as via the online parking customer portal.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 13, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 13, Repealed 0.

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

Date Adopted: September 13, 2021.

Daniel B. Ralph
Rules Coordinator

OTS-3151.2

AMENDATORY SECTION (Amending WSR 17-02-076, filed 1/3/17, effective 2/3/17)

WAC 174-116-220 Authority. (1) The college through its board of trustees is authorized to establish traffic and parking regulations as stated in RCW 28B.10.560.

(2) The college is authorized to issue permits, as defined in WAC 174-116-240, to park on the campus. All outstanding (~~campus~~) college parking violations must be satisfactorily settled before a quarterly, academic, or annual permit will be issued or renewed.

[Statutory Authority: RCW 28B.40.120. WSR 17-02-076, § 174-116-220, filed 1/3/17, effective 2/3/17.]

AMENDATORY SECTION (Amending WSR 17-02-076, filed 1/3/17, effective 2/3/17)

WAC 174-116-225 Emergencies. The vice president for (~~student affairs,~~) finance and operations or their designee, has the authority to suspend, modify or repeal any or all provisions in this chapter for an authorized college event or in the event of an emergency, disaster or other like contingency. Such action must be limited in duration and scope to meet the institutional needs of the college and/or address the dangers of the contingency.

[Statutory Authority: RCW 28B.40.120. WSR 17-02-076, § 174-116-225, filed 1/3/17, effective 2/3/17.]

AMENDATORY SECTION (Amending WSR 17-02-076, filed 1/3/17, effective 2/3/17)

WAC 174-116-230 Liability of college. The college assumes no liability for motor vehicles or their contents when such motor vehicles are on campus. The college offers parking permits to those desiring to park on campus. A parking permit licenses the holder (licensee) to park one motor vehicle (~~(in the lots designated on the permit)~~) on campus within the respective designated parking area. The college is not responsible for fire, theft, damage, or loss of vehicle or any article left in such vehicle. A parking permit is a license to park and no bailment is created. A "motor vehicle" is defined as a vehicle that is self-propelled; for example cars, trucks, and motorcycles. Motor vehicles include a neighborhood electric vehicle as defined in RCW 46.04.357 and a medium-speed electric vehicle as defined in RCW 46.04.295. Electric personal assistive mobility devices and power wheelchairs are not considered motor vehicles.

[Statutory Authority: RCW 28B.40.120. WSR 17-02-076, § 174-116-230, filed 1/3/17, effective 2/3/17.]

AMENDATORY SECTION (Amending WSR 17-02-076, filed 1/3/17, effective 2/3/17)

WAC 174-116-235 Enforcement. (1) Whenever an unattended vehicle is parked in violation of these regulations, the college may take the registration number and other identifiable information and may affix to such vehicle a parking citation in a conspicuously visible location.

(2) When an attended vehicle is parked in violation of these regulations, and upon request of a (~~designated college official~~) parking enforcement officer or police services officer, the driver may be required to move the vehicle immediately to a designated parking area or off (~~college property~~) campus. Refusal to move the vehicle is a violation of these regulations and may warrant a parking citation.

[Statutory Authority: RCW 28B.40.120. WSR 17-02-076, § 174-116-235, filed 1/3/17, effective 2/3/17.]

AMENDATORY SECTION (Amending WSR 17-02-076, filed 1/3/17, effective 2/3/17)

WAC 174-116-240 Parking permits—General information. (1) Parking permits are issued by the college following application and the payment of the appropriate fees. A permit is defined as an authorization to park in designated areas and issued by the parking services office and associated with a vehicle's license plate number. All privately owned motor vehicles parked or left unattended on ~~((college property))~~ campus are required to ~~((display a currently))~~ have a valid Evergreen parking permit during specified days and hours. These hours are posted in each parking area at the entrance to the parking areas, or along the roadways where parking is indicated. The college maintains the authority to sell and require ~~((the display of))~~ special event parking permits during times and days, including weekends, as established by the college. Vehicles parked on campus are required to ~~((display))~~ have valid parking permits at all times and days of the week as established by these rules. A complete list of parking permits issued by the college is available in the parking services office and on the ~~((college))~~ college's parking services website.

(2) Fees for parking and the effective date thereof, will be approved by the president of the college. ~~((Prior to approval by the president, the college will, after notice, hold a hearing on the proposed fee schedule. The hearing will be open to the public, and will be presided over by a presiding officer designated by the president. The presiding officer will prepare a memorandum for consideration by the president, summarizing the contents of the presentations made at the hearing.))~~ Approved fee schedules will be available in the public area of the parking services office and on the college's parking services website.

[Statutory Authority: RCW 28B.40.120. WSR 17-02-076, § 174-116-240, filed 1/3/17, effective 2/3/17.]

AMENDATORY SECTION (Amending WSR 17-02-076, filed 1/3/17, effective 2/3/17)

WAC 174-116-241 Parking permits—Special exceptions. All persons parking vehicles on campus will park in an available space as established by the college parking regulations and will pay the established parking fee except as follows:

(1) Vehicles with government tax exempt licenses will be allowed to park without charge.

~~((2))~~ ~~((Members of the press, television, radio and wire services, on official business, after obtaining a permit from the parking office, may park without charge.~~

~~((3))~~ Taxis and commercial delivery vehicles may enter the campus without payment of the parking fee only for pick-up and delivery of passengers, supplies and equipment.

~~((4))~~ (3) Permanently and temporarily disabled persons may request a disability parking placard from the parking office. Vehicles parked in handicapped-accessible spaces must ~~((display))~~ have a paid parking permit and a state of Washington or college-issued temporary disabled parking placard to be valid.

[Statutory Authority: RCW 28B.40.120. WSR 17-02-076, § 174-116-241, filed 1/3/17, effective 2/3/17.]

AMENDATORY SECTION (Amending WSR 17-02-076, filed 1/3/17, effective 2/3/17)

WAC 174-116-242 Parking permits—Issuance and display. (1) All ~~((parking permits must be entirely visible and displayed on the vehicle in accordance with the instructions printed on the permit, with permit numbers and relevant dates visible. Vehicles that do not have visible and properly displayed permits may be cited for the violation of improperly displaying a))~~ vehicles, attended or unattended, must be associated with a valid parking permit. Vehicles that are not associated with a valid permit may be cited for violation of a no paid permit.

(2) Ownership of permits is not transferable except when approved by parking services. If a registered vehicle is sold, the ~~((permit must be removed and returned to parking services for a replacement or any refund))~~ selling party should notify parking services so the vehicle can be disassociated with the permit holder. The permit holder may associate a different vehicle to the permit upon disassociation of the sold vehicle.

(3) Persons not residing on campus may apply for a ~~((duplicate))~~ second vehicle permit for a second car either personally, family, or employer owned. Proof of ownership or appropriate authorization must be presented prior to issuance of a second permit. Two vehicles ~~((displaying))~~ using the same ~~((numbered))~~ permit may not be parked on campus at the same time unless one is also ~~((displays))~~ associated with a valid daily permit.

(4) Vehicles ~~((displaying))~~ with a valid permit may be parked in any designated campus parking lot authorized by the permit. ~~((Vehicle parking in the modular housing area is restricted to residents and other users authorized by parking services. F lot parking permits are valid in B, C, and F lots. Modular housing permits are valid in all of the campus parking lots.))~~

(5) Permit holders may obtain a complimentary temporary daily permit for a vehicle being used as a temporary replacement.

(6) No vehicle may be parked on campus for the purpose of using such vehicle as a living unit. Any exception must be approved by the director of police services or their designee.

[Statutory Authority: RCW 28B.40.120. WSR 17-02-076, § 174-116-242, filed 1/3/17, effective 2/3/17.]

AMENDATORY SECTION (Amending WSR 17-02-076, filed 1/3/17, effective 2/3/17)

WAC 174-116-243 Parking permits—Validity and revocation. (1) Parking permits will be valid from the date of purchase through the expiration date and/or time stated on the permit or expiration of time

purchased from short term parking pay station, coin-operated parking meter, or mobile parking payment application.

(2) Parking permits are licenses and remain the property of the college. Parking permits may be revoked for any of the following reasons:

(a) When the purpose for which the permit was issued changes or no longer exists.

(b) When a permit is used in an unauthorized manner.

(c) Falsification of a second car parking permit application.

~~((d) Counterfeiting or altering a permit.))~~

[Statutory Authority: RCW 28B.40.120. WSR 17-02-076, § 174-116-243, filed 1/3/17, effective 2/3/17.]

AMENDATORY SECTION (Amending WSR 17-02-076, filed 1/3/17, effective 2/3/17)

WAC 174-116-250 Responsibility and presumption in reference to illegal parking. (1) The registered owner or permit holder will be responsible for all parking violations involving the vehicle (~~on which the permit is displayed~~).

(2) In any review, appeal or hearing alleging the violation of any parking regulation, proof of the following will create a presumption that the registered owner or permit holder was the person who parked or placed the vehicle in the location where the violation occurred:

(a) Proof that the vehicle described was stopped, standing or parked in violation of a regulation; and

(b) Proof that the person named in the citation was the registered owner or permit holder of the vehicle when the citation was issued.

[Statutory Authority: RCW 28B.40.120. WSR 17-02-076, § 174-116-250, filed 1/3/17, effective 2/3/17.]

AMENDATORY SECTION (Amending WSR 17-02-076, filed 1/3/17, effective 2/3/17)

WAC 174-116-255 Designated and assigned parking areas. (1) The motor vehicle laws of the state of Washington and these rules will be applicable at all times in areas covered under the scope of this policy including all college-owned property.

(2) No vehicle may be parked on the campus except in those areas set aside and designated as parking areas.

(3) No vehicle may be parked in any parking area without a valid, current permit for that area issued by parking services.

(4) Vehicles may park only within marked spaces provided in each parking lot.

(5) Metered parking spaces require appropriate payment in the corresponding parking meter for valid parking, regardless of any ~~((passes or))~~ permits ~~((displayed on))~~ associated with the vehicle.

(6) Vehicles parked in electric vehicle charging spaces are required to ~~((display))~~ have a valid parking permit~~((r))~~ and must be actively charging as indicated by the charging station.

[Statutory Authority: RCW 28B.40.120. WSR 17-02-076, § 174-116-255, filed 1/3/17, effective 2/3/17.]

AMENDATORY SECTION (Amending WSR 17-02-076, filed 1/3/17, effective 2/3/17)

WAC 174-116-262 Impounding and immobilization of vehicles. (1)

The expense of such impounding and storage will rest solely on the owner or permit holder of the vehicle. Neither the college nor its employees will be liable for loss or damage of any kind resulting from impounding and/or storage services provided by a private vendor.

(2) Any vehicle parked upon property of the college in violation of these regulations, including the motor vehicle and other traffic laws of the state of Washington, with at least three unpaid citations, with the oldest being at least thirty days old, may be either immobilized or impounded and removed for storage.

(3) Notice of intent to impound will be posted on the vehicle twenty-four hours prior to impound.

(4) If the vehicle is parked in a metered or timed space, notice of intent to impound will be posted on the vehicle for four hours prior to impound.

(5) Any vehicle that blocks, hinders, or obstructs a legally parked vehicle, crosswalk, sidewalk, disability access area, service drive, or loading zone may be cited, and after the college has made a reasonable attempt to contact the owner, the vehicle may be impounded immediately.

(6) Immobilization is defined as impounding the vehicle in place through the installation of a wheel boot, which is a device designed to prevent vehicles from being moved. It consists of a clamp that surrounds a vehicle wheel, and designed to prevent removal of both itself and the wheel. Immobilization may also be defined as impounding the vehicle in place through the use of a windshield covering device that uses powerful suction cups to adhere to the windshield and is designed to prevent unauthorized removal as well as preventing a clear view through the windshield prohibiting lawful driving of the vehicle. Release from in-place immobilization is contingent on payment of all outstanding fines and charges.

[Statutory Authority: RCW 28B.40.120. WSR 17-02-076, § 174-116-262, filed 1/3/17, effective 2/3/17.]

AMENDATORY SECTION (Amending WSR 17-02-076, filed 1/3/17, effective 2/3/17)

WAC 174-116-266 Disabled or inoperative vehicle. No disabled or inoperative vehicle will be parked on the campus for a period in excess of seventy-two hours without approval of parking services. Vehicles which have been parked for periods in excess of seventy-two hours and which appear to be disabled or inoperative may be impounded and

stored at the expense of the registered owner. It is the responsibility of the owner or permit holder of a disabled vehicle to notify police or parking services of the vehicle's location and estimated time of removal or repair. A valid parking permit (~~or pass~~) must be (~~displayed on~~) associated to the disabled vehicle while it is parked on campus.

[Statutory Authority: RCW 28B.40.120. WSR 17-02-076, § 174-116-266, filed 1/3/17, effective 2/3/17.]

AMENDATORY SECTION (Amending WSR 17-02-076, filed 1/3/17, effective 2/3/17)

WAC 174-116-280 Citations, late fees and fines. (1) Payment.

(a) Persons cited for violation of these regulations are required to pay a fine within ten days of the date of issuance of the citation. All parking fines and fees are due upon issuance. Thirty days after the issuance of the citation, a late fee will be added to the unpaid parking fine. For example, a parking citation issued on May 1st would be assessed a late fee on May 31st.

(b) All fines are payable (~~at the cashier's office or other designated locations on campus. Fines may be paid in person or by telephone during normal business hours or by mail or online~~) via the parking services website or in person at the parking services office during normal business hours or other designated locations on campus. The notice of citation, citation number or vehicle license plate number must accompany any fine payment.

(2) Types of citations:

- (a) No valid permit;
- (b) Overtime parking;
- (c) Improper position;
- (d) Parking in a restricted space;
- (e) Disabled zone;
- (f) Parked at painted curb;
- (g) Prohibited zone;
- (h) Obstructing traffic;
- (i) Parking in bus zone;
- (j) Fire lane;
- (k) Parked on grass;
- (l) Altered permit;
- (m) Nondesignated parking space;
- (n) Expired meter; (~~and~~)
- (o) Wheel-lock; and
- (p) Expired hourly parking.

(3) Fine amounts:

(a) When a citation is issued, fines are determined in accordance with a fine schedule. The fine schedule and the effective date thereof is approved by the vice president for (~~student affairs~~) finance and operations or their designee, and available in the parking services office and on the (~~college~~) college's parking services website.

(b) Adjustments: When mitigating circumstances exist, the vice president for (~~student affairs~~) finance and operations or their designee may reduce or dismiss fines.

(4) Unpaid fines. If any fine remains unpaid after sixty days from the date of the notice of citation, the account may be referred

for collection and subject to the college policy for accounts receivable collection process.

(5) Appeals: Citations may be appealed by submitting a written appeal to parking services within ten calendar days of the date the citation was issued. Appeals must be submitted to parking services ~~((in person, mail, or using the college))~~ via the citation appeal link on the parking services website or in person at the parking services office during business hours. If a timely appeal is not filed, the citation becomes final. Appeals ~~((will be reviewed by a board consisting of voting members from the following groups: Students, classified staff, faculty, and exempt staff. A parking services representative will act as a consultant to the board and will vote only to break a tie. The board may uphold or dismiss the citation. If the board upholds the citation, it may reduce the fine amount. In no event may the board impose a fine exceeding the amount set forth in the fine schedule. Within ten calendar days following the board's review, parking services will notify the appellant, by mail or by email, of the board's determination))~~ decisions may dismiss, uphold the fine, reduce the fine amount if upheld, or turn the citation to a warning without a fine. Within ten calendar days following the appeal being reviewed, parking services will notify the appellant of the appeal decision. The appellant may request a second level review of the citation appeal within ten days notice of the initial appeal decision. The second level review will be conducted by the conference and parking services manager. The appellant must pay all fines before the secondary appeal will be reviewed. The citation may be dismissed, upheld, upheld with reduction in fines, or converted to a warning with no fines. If the secondary appeal decision results in citation dismissal or reduction in fines, a refund will be issued to the appellant in the amount paid. Additional appeal rights are governed by RCW 28B.10.560.

[Statutory Authority: RCW 28B.40.120. WSR 17-02-076, § 174-116-280, filed 1/3/17, effective 2/3/17.]

WSR 21-19-050
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed September 13, 2021, 2:14 p.m., effective November 1, 2021]

Effective Date of Rule: November 1, 2021.

Purpose: The developmental disabilities administration amended this section to: Require approval of a community protection (CP) client's home location by the CP provider's administrator; and require documentation of the administrator's approval, the client's new address, and the security precautions the provider will implement.

Citation of Rules Affected by this Order: Amending WAC 388-101D-0500.

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: RCW 71A.12.280.

Adopted under notice filed as WSR 21-13-082 on June 16, 2021.

A final cost-benefit analysis is available 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.

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

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

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

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

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

Date Adopted: September 13, 2021.

Donald L. Clintsman
Acting Secretary

SHS-4871.1

AMENDATORY SECTION (Amending WSR 16-14-058, filed 6/30/16, effective 8/1/16)

WAC 388-101D-0500 Community protection—((Program residential))
Client home location. ((Before securing and using a residence to provide support to the community protection program)) (1) When assisting a client in selecting a home, the ((community protection service)) provider must((=

(1)) conduct and document site checks of the proposed residence at different days and times of the week((=).

(2) ((Consider)) After selecting a home, and before the client moves into the home, the provider must document and provide to DDA:

(a) The address of the home;

(b) The reasons the home is appropriate considering the client's specific ((~~offense patterns~~)) risk factors;

((~~(3) Determine appropriate and necessary~~)) (c) Restrictive procedures ((~~, including security precautions~~)) and security precautions the provider will implement; and

((~~(4) Obtain written~~)) (d) Approval ((~~for the residential site from the division of developmental disabilities~~)) from the provider's administrator.

[WSR 16-14-058, recodified as § 388-101D-0500, filed 6/30/16, effective 8/1/16. Statutory Authority: Chapter 71A.12 RCW. WSR 08-02-022, § 388-101-4040, filed 12/21/07, effective 2/1/08.]

WSR 21-19-061
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed September 14, 2021, 12:49 p.m., effective October 15, 2021]

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

Purpose: The department is amending WAC 388-480-0001 Does being on strike impact my eligibility for the Washington basic food program? This housekeeping amendment to WAC 388-480-0001 corrects a typographical error without changing the effect of the rule.

Citation of Rules Affected by this Order: Amending WAC 388-480-0001.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090.

Adopted under notice filed as WSR 21-12-066 on May 28, 2021.

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

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

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

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

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

Date Adopted: September 14, 2021.

Katherine I. Vasquez
Rules Coordinator

SHS-4870.1

AMENDATORY SECTION (Amending WSR 03-22-037, filed 10/28/03, effective 12/1/03)

WAC 388-480-0001 Does being on strike impact my eligibility for the Washington basic food program? (1) A strike is a work stoppage, slowdown or other interruption of work caused by employees. This includes when a stoppage happens because a collective bargaining agreement has expired.

(2) We do not consider you to be on strike if you:

- (a) Are locked out by your employer;
- (b) Do not have work available as a result of striking employees;
- (c) Are not a member of the bargaining unit on strike and you fear someone may physically hurt you if you cross a picket line; or
- (d) Would have been exempt from work registration under WAC ((388-444-0015)) 388-444-0010 the day before the strike for any reason other than being employed at least thirty hours per week.

(3) If a person in your assistance unit (AU) is a striker, your AU is not eligible for Basic Food unless:

(a) Your AU met all income requirements the day before the strike; and

(b) You meet all other requirements of the Basic Food program as described in WAC 388-400-0040.

(4) If someone in your AU is on strike, your AU cannot receive a higher amount of Basic Food benefits solely because the person receives less income as a direct result of being on strike. We count the larger of the two following amounts to determine if your AU is eligible and calculate your benefits:

(a) The striker's income before they went on strike; or

(b) The striker's current income.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, and 74.04.510. WSR 03-22-037, § 388-480-0001, filed 10/28/03, effective 12/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.04.510. WSR 00-05-007, § 388-480-0001, filed 2/4/00, effective 3/6/00. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-480-0001, filed 7/31/98, effective 9/1/98.]

WSR 21-19-065
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed September 14, 2021, 1:35 p.m., effective October 15, 2021]

Effective Date of Rule: Thirty-one days after filing, except for WAC 392-172A-01035, 392-172A-02076, 392-172A-02105, 392-172A-02110 which are effective January 1, 2022, to align with federal data collection and reporting requirements, and provide additional time for school districts to train school personnel.

Purpose: The purpose for the new and amended regulations, as well as for repealing existing regulations, is to (1) address changes to federal law and requirements; (2) clarify existing requirements under current state law that impact the free appropriate public education (FAPE) of students eligible for special education services; (3) add requirements from ESHB 1130 (2020); and (4) make housekeeping changes to correct typographical errors, reorganize and remove outdated WAC in these chapters for ease of reference, and other rule changes that are technical in nature.

Citation of Rules Affected by this Order: New WAC 392-172A-01152, 392-172A-01197 and 392-172A-07057; repealing chapter 392-173 WAC and WAC 392-172A-07065; and amending chapter 392-172A WAC and WAC 392-140-60105 through 392-140-60685.

Statutory Authority for Adoption: RCW 28A.155.090.

Adopted under notice filed as WSR 21-09-088 on April 21, 2021.

Changes Other than Editing from Proposed to Adopted Version: Language was added and/or amended after initial public comments were received under notice filed November 18, 2020 (WSR 20-23-116) and supplemental notice filed on April 21, 2021 (WSR 21-09-088). The following final language for the following sections was added and/or amended in response to substantive comments and to clarify for readability processes for consistent implementation:

- WAC 392-172A-01152 defining "regular early childhood program" was revised to include "transitional kindergarten."
- WAC 392-172A-02050 regarding "least restrictive environment" was revised under subsection (3) to clarify that "... Least restrictive environment must be determined based on each individual child's needs and should not automatically be developmental preschool."
- WAC 392-172A-02050 regarding "least restrictive environment" was revised under subsection (4) to add clarity by stating "... as defined in WAC 392-172A-01152."
- WAC 392-172A-02090 regarding personnel qualifications was revised to include "... (or early childhood special education endorsement, deaf education endorsement, deaf education with American Sign Language proficiency endorsement, teacher of the visually impaired endorsement) ..." under subsection (1)(b) and to include "... (or early childhood special education certificated staff, deaf education certificated staff, deaf education with American Sign Language proficiency certificated staff, teacher of the visually impaired certificated staff) ..." under subsection (1)(i) for consistency with rules established by the Washington professional educator standards board.
- WAC 392-172A-02105 regarding emergency response protocols was revised under subsection (1)(d) to state "(d) Any staff member or other adults using isolation, restraint, or a restraint device must be trained and currently certified by a qualified provider

in the use of trauma-informed crisis intervention (including de-escalation techniques) and the safe use of isolation, restraint, or a restraint device."

- WAC 392-172A-02110 regarding conditions for the use of restraint or isolation was revised under subsection (1) to read "(f) Any staff member or other adults using isolation must be trained and currently certified by a qualified provider in the use of trauma-informed crisis intervention (including de-escalation techniques), and also trained by the district in isolation requirements, ..." revised under subsection (2)(c) to read "(c) Any staff member or other adults using a restraint must be trained and currently certified by a qualified provider in the use of trauma-informed crisis intervention (including de-escalation techniques) and such restraints, ..." and revised under subsection (3)(d) to read "(d) Any staff member or other adults using a restraint device must be trained and currently certified by a qualified provider in the use of such restraint devices, ..."
- WAC 392-172A-03005 regarding referrals and timelines for initial evaluations was amended under subsection (3) to state "(3) When the student is to be evaluated to determine eligibility for special education services and the educational needs of the student, the school district shall provide prior written notice to the parent, attempt without unnecessary delay to obtain consent, fully evaluate the student and arrive at a decision regarding eligibility within: ..."
- WAC 392-172A-03100 regarding parent participation was revised under subsection (3)(c) to read "(c) Include whatever action is necessary to ensure that the parent understands the notification being provided, including but not limited to, providing the notification in writing in a parent's native language when necessary for the parent's understanding and arranging for an interpreter for parents who are deaf or hard of hearing or whose native language is other than English" and under subsection (7) to read "(7) The school district must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting, including but not limited to: ..."
- WAC 392-172A-05001 regarding parent participation in meetings was revised under section (4) to read "(4) For any meeting under this subsection, including meetings related to a student's IEP, school discipline, and truancy, in accordance with RCW 28A.155.230, each school district must take whatever action is necessary to ensure that the parent understands the proceedings of the meeting, including but not limited to: (a) Notifying parents in advance in the parent's native language of the availability of interpretation and translation services at no cost to the parents; (b) Arranging for an interpreter for parents who are deaf or hard of hearing or whose native language is other than English; and (c) Documenting the language in which families prefer to communicate and whether a qualified interpreter for the student's family was provided."
- WAC 392-172A-07060 regarding the state special education advisory council was revised under subsection (2)(b) to state "(b) A majority of the members of the council shall be individuals with disabilities or parents of students eligible for special education services who are not also employed by a school district, educational service district, or the office of the superintendent of public instruction."

- WAC 392-140-60105 defining a "high need student" was revised back to the current language to maintain alignment with RCW 28A.150.392(6) since no other changes were enacted by the state legislature: "(2) For state special education funding, the multiple of the statewide average per pupil expenditure shall be the ~~((multiple of the statewide average per pupil amount established by the office of the superintendent of public instruction in consultation with the office of financial management and the fiscal committees of the legislature, and published in the annual Safety Net Bulletin))~~ ~~lesser of: (a) Two and three-tenths times the statewide average per pupil expenditure excluding provided state safety net funding; or (b) The average per pupil expenditure calculated using the methodology defined in 20 U.S.C. Sec. 7801, the Every Student Succeeds Act of 2015, excluding provided state safety net funding, using only the expenditure and average daily attendance data for the subset of districts receiving the same salary regionalization factor as the high need student's district, as determined under RCW 28A.150.412 and the Omnibus Operating Appropriations Act."~~

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 128, Repealed 0; Federal Rules or Standards: New 3, Amended 128, Repealed 17; or Recently Enacted State Statutes: New 0, Amended 3, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 6, Repealed 0.

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

Date Adopted: September 14, 2021.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

OTS-2406.2

AMENDATORY SECTION (Amending WSR 19-01-039, filed 12/13/18, effective 1/13/19)

WAC 392-140-60120 Definition—Capacity for funding. For the purpose of state special education safety net funding, potential capacity for funding exists when an applicant's net special education expenditures exceed total resources available demonstrating a fiscal capacity in excess of all available revenue to the applicant for special education services, including state and federal revenue, program income generated by such state and/or federally funded special education programs, and all carryover of state and federal special education revenue. Local education agencies with demonstrated capacity and approved applications may access safety net award regardless of the

percentage of the local education agency's enrollment of students with disabilities. Beginning in ~~((2019-2020))~~ 2020-21, applicants must either submit ~~((verification of medicaid billing for each high need student application,))~~ high need student applications with adjustments for medicaid billing, if applicable~~((,))~~ or receive a deduction calculated by office of the superintendent of public instruction as a percentage of the billing rates published by the health care authority to compensate for the local education agency's decision not to pursue medicaid reimbursement.

[Statutory Authority: RCW 28A.155.090 and 28A.150.290. WSR 19-01-039, § 392-140-60120, filed 12/13/18, effective 1/13/19.]

AMENDATORY SECTION (Amending WSR 19-01-039, filed 12/13/18, effective 1/13/19)

- WAC 392-140-602 Special education safety net—Eligible applicants.** (1) An individual school district of the state of Washington is eligible to apply for special education safety net awards on behalf of its resident students. Resident students include those students as defined by state law. Resident students exclude those residing in another district and enrolled as part of an interdistrict cooperative program (RCW 28A.225.250).
- (2) An interdistrict cooperative or educational service agency consistent with WAC 392-172A-01055 and 392-172A-01115 of at least fifteen districts in which all excess cost services for special education students of the member districts are provided by the cooperative or educational agency is eligible to apply for special education safety net awards. Member districts shall be treated as a single school district for the purposes of this chapter and are not eligible to apply for safety net awards individually.
- (3) The Washington ~~((state))~~ center for ~~((childhood deafness and hearing loss))~~ deaf and hard of hearing youth and the Washington state school for the blind are eligible to apply for high need students under WAC 392-140-616.
- (4) Individual charter schools are eligible to apply for special education safety net awards under WAC 392-140-616.
- (5) Tribal compact schools are eligible to apply for special education safety net award under WAC 392-140-616.

[Statutory Authority: RCW 28A.155.090 and 28A.150.290. WSR 19-01-039, § 392-140-602, filed 12/13/18, effective 1/13/19. Statutory Authority: RCW 28A.150.290 and 28A.710.220. WSR 15-18-078, § 392-140-602, filed 8/28/15, effective 9/28/15. Statutory Authority: RCW 28A.150.290. WSR 13-05-054, § 392-140-602, filed 2/13/13, effective 3/16/13; WSR 08-03-096, § 392-140-602, filed 1/17/08, effective 2/17/08; WSR 06-01-017, § 392-140-602, filed 12/9/05, effective 1/9/06. Statutory Authority: RCW 28A.150.290 and 1997 c 149 § 507(8). WSR 98-08-013 (Order 98-05), § 392-140-602, filed 3/18/98, effective 4/18/98. Statutory Authority: RCW 28A.150.290 and 1995 2nd sp.s. c 18 as modified by 1996 c 283. WSR 96-19-095 (Order 96-15), § 392-140-602, filed 9/18/96, effective 10/19/96.]

AMENDATORY SECTION (Amending WSR 19-01-039, filed 12/13/18, effective 1/13/19)

WAC 392-140-616 Special education safety net—Standards—High need student applications. For applicants requesting safety net awards to meet the needs of an eligible high need student, the applicant shall convincingly demonstrate to a majority of the state oversight committee members at a minimum that:

(1) (a) The reviewed individualized education program demonstrates compliance with federal and state procedural requirements, in the office of superintendent of public instruction—selected applicable reviewed areas; or

(b) The local education agency has corrected any noncompliance identified through general supervision processes, including monitoring or during a review of a sample of individualized education programs; and

(2) Costs eligible for safety net consideration are associated with providing direct special education and related services identified in implementation of an individualized education program and quantifiable by the committee on worksheet C; and

(3) In order to deliver appropriate special education and related services to the student, the applicant is providing services which incur costs exceeding:

(a) The annual threshold as established in WAC 392-140-60105 by the office of superintendent of public instruction for state safety net awards.

(b) Threshold amounts shall be adjusted pro rata for eligible students not served by the applicant on all nine enrollment count dates (October through June). For example, for a student served six of the nine count dates, the threshold amount shall be reduced to two-thirds of the full amount.

(4) The state safety net oversight committee shall adapt the worksheet A for the Washington state school for the blind, the Washington ((state)) center for ((childhood deafness and hearing loss)) deaf and hard of hearing youth, and tribal compact schools.

[Statutory Authority: RCW 28A.155.090 and 28A.150.290. WSR 19-01-039, § 392-140-616, filed 12/13/18, effective 1/13/19. Statutory Authority: RCW 28A.150.290. WSR 13-05-054, § 392-140-616, filed 2/13/13, effective 3/16/13; WSR 08-03-096, § 392-140-616, filed 1/17/08, effective 2/17/08; WSR 06-01-017, § 392-140-616, filed 12/9/05, effective 1/9/06. Statutory Authority: RCW 28A.150.290 and 1999 c 309 § 507(7). WSR 03-02-053, § 392-140-616, filed 12/26/02, effective 1/26/03. Statutory Authority: RCW 28A.150.290. WSR 02-05-036, § 392-140-616, filed 2/12/02, effective 2/13/02; WSR 01-04-023, § 392-140-616, filed 1/30/01, effective 1/30/01. Statutory Authority: RCW 28A.150.290 and 1997 c 149 § 507(8). WSR 98-08-013 (Order 98-05), § 392-140-616, filed 3/18/98, effective 4/18/98. Statutory Authority: RCW 28A.150.290 and 1995 2nd sp.s. c 18 as modified by 1996 c 283. WSR 96-19-095 (Order 96-15), § 392-140-616, filed 9/18/96, effective 10/19/96.]

AMENDATORY SECTION (Amending WSR 19-01-039, filed 12/13/18, effective 1/13/19)

WAC 392-140-650 Special education safety net—Withdrawal of application. If at any time an applicant wishes to withdraw an application submitted prior to the committee vote, the superintendent or designee of the applicant district, or lead administrator or designee of the applicant charter school, tribal compact school, Washington ((state)) center for ((~~childhood deafness and hearing loss~~)) deaf and hard of hearing youth, and the Washington state school for the blind, must submit a letter requesting withdrawal to the state oversight committee manager.

[Statutory Authority: RCW 28A.155.090 and 28A.150.290. WSR 19-01-039, § 392-140-650, filed 12/13/18, effective 1/13/19. Statutory Authority: RCW 28A.150.290 and 28A.710.220. WSR 15-18-078, § 392-140-650, filed 8/28/15, effective 9/28/15. Statutory Authority: RCW 28A.150.290. WSR 13-05-054, § 392-140-650, filed 2/13/13, effective 3/16/13; WSR 02-05-036, § 392-140-650, filed 2/12/02, effective 2/13/02. Statutory Authority: RCW 28A.150.290 and 1995 2nd sp.s. c 18 as modified by 1996 c 283. WSR 96-19-095 (Order 96-15), § 392-140-650, filed 9/18/96, effective 10/19/96.]

AMENDATORY SECTION (Amending WSR 19-01-039, filed 12/13/18, effective 1/13/19)

WAC 392-140-685 Special education safety net—Recovery of state and/or federal award. High need student state and/or federal special education safety net award and state community impact safety net award shall be recovered or award reduced for the following reasons:

(1) The application omits pertinent information and/or contains a falsification or misrepresentation of information in the application.

(2) The award is unexpended for the purpose allocated including, but not limited to, situations where the student leaves a school district, charter school, tribal compact school, Washington ((state)) center for ((~~childhood deafness and hearing loss~~)) deaf and hard of hearing youth, and the Washington state school for the blind, or has a change in services. For students who transfer to another Washington public school district or enroll in a charter school or tribal compact school located in Washington state, expenditures for specialized equipment purchased with these funds shall not be recovered provided the district, charter school or tribal compact school transfers the equipment to the other school district, charter school or tribal compact school.

(3) The applicant has carryover of state and/or federal flow-through special education funding from the school year for which the award was made.

(4) The applicant's available revenues are significantly higher than estimated revenues on which the award was based or the applicant's legitimate expenditures are significantly lower than the estimated expenditures on which the award was based.

(5) The state oversight committee finds grounds for adjustment in the special education program audit team's review pursuant to WAC 392-140-630.

[Statutory Authority: RCW 28A.155.090 and 28A.150.290. WSR 19-01-039, § 392-140-685, filed 12/13/18, effective 1/13/19. Statutory Authority: RCW 28A.150.290 and 28A.710.220. WSR 15-18-078, § 392-140-685, filed 8/28/15, effective 9/28/15. Statutory Authority: RCW 28A.150.290. WSR 13-05-054, § 392-140-685, filed 2/13/13, effective 3/16/13; WSR 08-03-096, § 392-140-685, filed 1/17/08, effective 2/17/08; WSR 06-01-017, § 392-140-685, filed 12/9/05, effective 1/9/06. Statutory Authority: RCW 28A.150.290 and 1997 c 149 § 507(8). WSR 98-08-013 (Order 98-05), § 392-140-685, filed 3/18/98, effective 4/18/98. Statutory Authority: RCW 28A.150.290 and 1995 2nd sp.s. c 18 as modified by 1996 c 283. WSR 96-19-095 (Order 96-15), § 392-140-685, filed 9/18/96, effective 10/19/96.]

OTS-2405.6

Chapter 392-172A WAC (~~(RULES FOR THE)~~) PROVISION OF SPECIAL EDUCATION SERVICES

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-01005 Purposes. The purposes of this chapter are to:

- (1) Implement chapter 28A.155 RCW consistent with the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq.;
- (2) Ensure that all students eligible for special education services have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;
- (3) Ensure that the rights of students eligible for special education services and their parents are protected;
- (4) Assist school districts, educational service agencies and federal and state agencies to provide for the education of all students eligible for special education services; and
- (5) Assess and ensure the effectiveness of efforts to educate students eligible for special education services.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-01005, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-01010 Applicability. (1)(a) The provisions of this chapter apply to all political subdivisions and public institutions of

the state that are involved in the education of students eligible for special education services, including:

(i) The office of superintendent of public instruction (OSPI) to the extent that it receives payments under Part B and exercises supervisory authority over the provision of the delivery of special education services by school districts and other public agencies;

(ii) School districts, charter schools, educational service agencies, and educational service districts; and

(iii) State residential education programs established and operated pursuant to chapter 28A.190 RCW, the Washington state school for the blind and the ((center for childhood deafness and hearing loss)) Washington center for deaf and hard of hearing youth established and operated pursuant to chapter 72.40 RCW, and education programs for juvenile inmates established and operated pursuant to chapters 28A.193 and 28A.194 RCW; and

(b) Are binding on each public agency or public institution in the state that provides special education and related services to students eligible for special education services, regardless of whether that agency is receiving funds under Part B of the act.

(2) Each school district, charter school, and educational service agency is responsible for ensuring that the rights and protections under Part B of the act are given to students eligible for special education services who are referred to or placed in private schools and facilities by that public agency under the provisions of WAC 392-172A-04080 through 392-172A-04110.

(3) Each school district and educational service agency is responsible for ensuring that the rights and protections under Part B of the act are given to students eligible for special education services who are placed in private schools by their parents under the provisions of WAC 392-172A-04000 through 392-172A-04060.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 13-20-034, § 392-172A-01010, filed 9/24/13, effective 10/25/13. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-01010, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-01020 Act. Act means Part B of the Individuals with Disabilities Education Act, as amended.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-01020, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-01025 Assistive technology device. Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a student eligible for special education services. The term

does not include a medical device that is surgically implanted, or the replacement of such device.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-01025, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-01030 Assistive technology service. Assistive technology service means any service that directly assists a student eligible for special education services in the selection, acquisition, or use of an assistive technology device. The term includes:

- (1) The evaluation of the needs of a student, including a functional evaluation of the student in the student's customary environment;
- (2) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by students eligible for special education services;
- (3) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
- (4) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
- (5) Training or technical assistance for a student eligible for special education services or, if appropriate, that student's family; and
- (6) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that student.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-01030, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 17-23-054, filed 11/9/17, effective 12/10/17)

WAC 392-172A-01035 Child with a disability or student eligible for special education services. (1)(a) Child with a disability or as used in this chapter, a student eligible for special education services means a student who has been evaluated and determined to need special education services because of having a disability in one of the following eligibility categories: Intellectual disability, ((a hearing impairment (including deafness))) deafness (including hard of hearing), a speech or language impairment, a visual impairment (including blindness), an emotional/behavioral disability, an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, ((deaf-blindness)) deafblindness, multiple disabilities, or for students, three through ((eight)) nine, a developmental delay and who, because of the disability and ad-

verse educational impact, has unique needs that cannot be addressed exclusively through education in general education classes with or without individual accommodations, and needs special education and related services.

(b) For purposes of providing a student with procedural safeguard protections identified in WAC 392-172A-05015, the term, "student eligible for special education services" also includes a student whose identification, evaluation or placement is at issue.

(c) If it is determined, through an appropriate evaluation, that a student has one of the disabilities identified in (a) of this subsection, but only needs a related service and not special education services, the student is not a student eligible for special education services under this chapter. School districts and other public agencies must be aware that they have obligations under other federal and state civil rights laws and rules, including 29 U.S.C. 764, RCW 49.60.030, and 43 U.S.C. 12101 that apply to students who have a disability regardless of the student's eligibility for special education and related services.

(d) Speech and language pathology, audiology, physical therapy, and occupational therapy services, may be provided as specially designed instruction, if the student requires those therapies as specially designed instruction, and meets the eligibility requirements which include a disability, adverse educational impact and need for specially designed instruction. They are provided as a related service under WAC 392-172A-01155 when the service is required to allow the student to benefit from specially designed instruction.

(e) Special education services may not be solely based on the disability category for which the student is eligible.

(2) The terms used in subsection (1)(a) of this section are defined as follows:

(a)(i) Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a student's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

(ii) Autism does not apply if a student's educational performance is adversely affected primarily because the student has an emotional/behavioral disability, as defined in subsection (2)(e) of this section.

(iii) A student who manifests the characteristics of autism after age three could be identified as having autism if the criteria in (a)(i) of this subsection are satisfied.

(b) (~~((Deaf-blindness))~~) Deafblindness means concomitant (~~((hear- ing))~~) deafness and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that (~~((they))~~) a student's educational performance is adversely affected and the student cannot be accommodated in special education programs solely for students with deafness or students with blindness (~~((and adversely affect a student's educational performance))~~).

(c) Deafness means a (~~((hearing impairment that is so))~~) student who is deaf or hard of hearing which manifests in severe (~~((that the student is impaired in))~~) difficulty processing linguistic information through hearing, with or without amplification, that adversely affects a student's educational performance.

(d) (i) Developmental delay means a student three through ~~((eight))~~ nine who is experiencing developmental delays that adversely affect the student's educational performance in one or more of the following areas: Physical development, cognitive development, communication development, social or emotional development or adaptive development and who demonstrates a delay on a standardized norm referenced test, with a test-retest or split-half reliability of .80 that is at least:

(A) Two standard deviations below the mean in one or more of the five developmental areas; or

(B) One and one-half standard deviations below the mean in two or more of the five developmental areas.

(ii) The five developmental areas for students with a developmental delay are:

(A) Cognitive development: Comprehending, remembering, and making sense out of one's experience. Cognitive ability is the ability to think and is often thought of in terms of intelligence;

(B) Communication development: The ability to effectively use or understand age-appropriate language, including vocabulary, grammar, and speech sounds;

(C) Physical development: Fine and/or gross motor skills requiring precise, coordinated, use of small muscles and/or motor skills used for body control such as standing, walking, balance, and climbing;

(D) Social or emotional development: The ability to develop and maintain functional interpersonal relationships and to exhibit age appropriate social and emotional behaviors; and

(E) Adaptive development: The ability to develop and exhibit age-appropriate self-help skills, including independent feeding, toiletting, personal hygiene and dressing skills.

(iii) A school district is not required to adopt and use the category "developmentally delayed" for students, three through ~~((eight))~~ nine.

(iv) If a school district uses the category "developmentally delayed," the district must conform to both the definition and age range of three through ~~((eight))~~ nine, established under this section.

(v) School districts using the category "developmentally delayed," for students three through ~~((eight))~~ nine may also use any other eligibility category.

(vi) Students who qualify under the developmental delay eligibility category must be reevaluated before age ~~((nine))~~ ten and determined eligible for services under one of the other eligibility categories in order to continue receiving special education services.

(vii) The term "developmentally delayed, birth to three years" are those infants and toddlers under three years of age who:

(A) Meet the eligibility criteria established by the state lead agency under Part C of IDEA; and

(B) Are in need of early intervention services under Part C of IDEA. Infants and toddlers who qualify for early intervention services must be evaluated prior to age three in order to determine eligibility for special education and related services.

(e) (i) Emotional/behavioral disability means a condition where the student exhibits one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a student's educational performance:

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(C) Inappropriate types of behavior or feelings under normal circumstances.

(D) A general pervasive mood of unhappiness or depression.

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) Emotional/behavioral disability includes schizophrenia and other psychiatric conditions. The term does not apply to students who are socially maladjusted, unless it is determined that they have an (~~emotional disturbance~~) emotional/behavioral disability under (e) (i) of this subsection.

(f) Hard of hearing (~~(impairment)~~) means (~~(an impairment in)~~) difficulty hearing, whether permanent or fluctuating, that adversely affects a student's educational performance but that is not included under the definition of deafness in this section.

(g) Intellectual disability means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a student's educational performance.

(h) Multiple disabilities means concomitant impairments, the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term, multiple disabilities does not include (~~deaf-blindness~~) deafblindness.

(i) Orthopedic impairment means a severe orthopedic impairment that adversely affects a student's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

(j) Other health impairment means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that:

(i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and

(ii) Adversely affects a student's educational performance.

(k) (i) Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia, that adversely affects a student's educational performance.

(ii) Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(l) Speech or language impairment means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a student's educational performance.

(m) Traumatic brain injury means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a student's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

(n) Visual impairment including blindness means an impairment in vision that, even with correction, adversely affects a student's educational performance. The term includes both partial sight and blindness.

[Statutory Authority: RCW 28A.155.090. WSR 17-23-054, § 392-172A-01035, filed 11/9/17, effective 12/10/17. Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 13-20-034, § 392-172A-01035, filed 9/24/13, effective 10/25/13. Statutory Authority: RCW 28A.155.090, 20 U.S.C. 1400 (c) (12) (C), 20 U.S.C. 1401 (3) (A) (i), and 20 U.S.C. 1401 (30) (C). WSR 11-06-052, § 392-172A-01035, filed 3/1/11, effective 4/1/11. Statutory Authority: RCW 28A.155.090 (7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-01035, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-01055 Educational service agency. Educational service agency means:

(1) A regional public multiservice agency:

(a) Authorized to develop, manage, and provide services or programs to students eligible for special education services within school districts;

(b) Recognized as an administrative agency by the OSPI for purposes of the provision of special education and related services provided within public elementary schools and secondary schools; and

(2) Includes any other public institution or agency having administrative control and direction over a public elementary school or secondary school.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 13-20-034, § 392-172A-01055, filed 9/24/13, effective 10/25/13. Statutory Authority: RCW 28A.155.090 (7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-01055, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 16-02-034, filed 12/29/15, effective 1/29/16)

WAC 392-172A-01092 Imminent. Imminent as defined in RCW ((70.96B.010)) 71.05.020 means: The state or condition of being likely to occur at any moment or near at hand, rather than distant or remote.

[Statutory Authority: RCW 28A.155.090, 42 U.S.C. 1400 et seq. and 34 C.F.R. Part 300. WSR 16-02-034, § 392-172A-01092, filed 12/29/15, effective 1/29/16.]

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-01100 Individualized education program. Individualized education program or IEP means a written statement of an educational program for a student eligible for special education services that is developed, reviewed, and revised in accordance with WAC 392-172A-03090 through 392-172A-03135.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et seq. WSR 07-14-078, § 392-172A-01100, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 16-02-034, filed 12/29/15, effective 1/29/16)

WAC 392-172A-01109 Likelihood of serious harm. Likelihood of serious harm as defined in RCW ((70.96B.010)) 71.05.020 means:

(1) A substantial risk that:

(a) Physical harm will be inflicted by a person upon his or her own person, as evidenced by threats or attempts to ((commit)) die by suicide, or inflict physical harm on oneself;

(b) Physical harm will be inflicted by a person upon another, as evidenced by behavior that has caused such harm or that places another person or persons in reasonable fear of sustaining such harm; or

(c) Physical harm will be inflicted by a person upon the property of others, as evidenced by behavior that has caused substantial loss or damage to the property of others; or

(2) The person has threatened the physical safety of another and has a history of one or more violent acts.

[Statutory Authority: RCW 28A.155.090, 42 U.S.C. 1400 et seq. and 34 C.F.R. Part 300. WSR 16-02-034, § 392-172A-01109, filed 12/29/15, effective 1/29/16.]

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-01115 Local educational agency or school district.

(1) Local educational agency or the term "school district" as used in this chapter, means a public board of education or other public authority legally constituted for either administrative control or direction of, or to perform a service function for, any combination of public elementary and secondary schools, or for a combination of school districts.

(2) The term includes any other public institution or agency having administrative control and direction of a public elementary school

or secondary school, including charter schools, educational service agencies, the ((center for childhood hearing loss and deafness)) Washington center for deaf and hard of hearing youth, and the Washington state school for the blind.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 13-20-034, § 392-172A-01115, filed 9/24/13, effective 10/25/13. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-01115, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 17-23-054, filed 11/9/17, effective 12/10/17)

WAC 392-172A-01120 Native language. (1) Native language, when used with respect to an individual who is an English learner, means the following:

(a) The language normally used by that individual, or, in the case of a student, the language normally used by the parents of the student, except as provided in (b) of this subsection.

(b) In all direct contact with a student (including evaluation of the student), the language normally used by the student in the home or learning environment.

(2) For an individual with ((deafness or)) blindness or who is deaf or hard of hearing, or for an individual with no written language, the mode of communication is that normally used by the individual, such as sign language, Braille, or oral communication.

[Statutory Authority: RCW 28A.155.090. WSR 17-23-054, § 392-172A-01120, filed 11/9/17, effective 12/10/17. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-01120, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-01135 Part-time enrollment. Part-time enrollment means a student eligible for special education services who is home schooled or attends private school, and whose parent chooses to enroll the student in his or her resident school district for special education or related services pursuant to RCW 28A.150.350 and chapter 392-134 WAC.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-01135, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-01150 Public agency. Public agency includes school districts, educational service agencies, charter schools, state operated programs identified in WAC 392-172A-02000 and any other political

subdivisions of the state that are responsible for providing special education or related services or both to students eligible for special education services.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 13-20-034, § 392-172A-01150, filed 9/24/13, effective 10/25/13. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-01150, filed 6/29/07, effective 7/30/07.]

NEW SECTION

WAC 392-172A-01152 Regular early childhood program. Regular early childhood program means a program that includes fifty percent or more children who do not have an IEP. Programs may include, but are not limited to, the following: Head start; early childhood education and assistance program (ECEAP); transitional kindergarten; kindergarten; preschool classes offered to an eligible prekindergarten population by the public school system; private kindergartens or preschools; group child development centers; or child care.

[]

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-01155 Related services. (1) Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a student eligible for special education services to benefit from special education services, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in students, counseling services, including rehabilitation counseling, orientation and mobility services, behavioral services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.

(2) Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device. Nothing in this subsection:

(a) Limits the right of a student with a surgically implanted device (e.g., cochlear implant) to receive related services (as listed in paragraph (a) of this section) that are determined by the IEP team to be necessary for the student to receive FAPE;

(b) Limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the student, including breathing, nutrition, or operation of other bodily functions, while the student is transported to and from school or is at school; or

(c) Prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly.

(3) Individual related services terms used in this definition are defined as follows:

(a) Audiology includes:

- (i) Identification of students with hearing loss;
- (ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;
- (iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip reading), hearing evaluation, and speech conservation;

(iv) Creation and administration of programs for prevention of hearing loss;

(v) Counseling and guidance of students, parents, and teachers regarding hearing loss; and

(vi) Determination of students' needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(b) Counseling services means services provided by qualified social workers, psychologists, (~~guidance~~) school counselors, or other qualified personnel.

(c) Early identification and assessment of disabilities in students means the implementation of a formal plan for identifying a disability as early as possible in a student's life.

(d) Interpreting services includes:

(i) Oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell for students who are deaf or hard of hearing; and

(ii) Special interpreting services for students who are (~~deaf-blind~~) deafblind.

(e) Medical services means services provided by a licensed physician to determine a student's medically related disability that results in the student's need for special education and related services.

(f) Occupational therapy means services provided by a qualified occupational therapist and includes:

(i) Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;

(ii) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and

(iii) Preventing through early intervention, initial or further impairment or loss of function.

(g) Orientation and mobility services means services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and can include teaching the student:

(i) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);

(ii) To use the long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision;

(iii) To understand and use remaining vision and distance low vision aids; and

(iv) Other concepts, techniques, and tools.

(h) Parent counseling and training means assisting parents in understanding the special needs of their child; providing parents with information about child development; and helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP.

(i) Physical therapy means services provided by a qualified physical therapist.

(j) Psychological services includes:

(i) Administering psychological and educational tests, and other assessment procedures;

(ii) Interpreting assessment results;

(iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;

(iv) Consulting with other staff members in planning school programs to meet the special educational service needs of students as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;

(v) Planning and managing a program of psychological services, including psychological counseling for students and parents; and

(vi) Assisting in developing positive behavioral intervention strategies.

(k) Recreation includes:

(i) Assessment of leisure function;

(ii) Therapeutic recreation services;

(iii) Recreation programs in schools and community agencies; and

(iv) Leisure education.

(l) Rehabilitation counseling services means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended, 29 U.S.C. Sec. 701 et seq.

(m) School health services and school nurse services means health services that are designed to enable a student eligible for special education services to receive FAPE as described in the student's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.

(n) Social work services in schools includes:

(i) Preparing a social or developmental history on a student eligible for special education services;

(ii) Group and individual counseling with the student and family;

(iii) Working in partnership with parents and others on those problems in a student's living situation (home, school, and community) that affect the student's adjustment in school;

(iv) Mobilizing school and community resources to enable the student to learn as effectively as possible in his or her educational program; and

(v) Assisting in developing positive behavioral intervention strategies.

(o) Speech-language pathology services includes:

(i) Identification of children with speech or language impairments;

- (ii) Diagnosis and appraisal of specific speech or language impairments;
 - (iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;
 - (iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and
 - (v) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.
- (p) Transportation includes:
- (i) Travel to and from school and between schools;
 - (ii) Travel in and around school buildings; and
 - (iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a student eligible for special education services.
- (q) Behavioral services means any services described in an IEP that specifically supports a student's behavioral needs.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-01155, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-01170 Services plan. Services plan means a written statement that describes the special education and related services the school will provide to a parentally placed student eligible for special education services who is enrolled in ((a)) an approved, non-profit private elementary or secondary school who has been designated to receive services. The plan will include the location of the services and any transportation necessary. The plan will be developed using the procedures for development and implementation of an IEP.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-01170, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-01175 Special education services. (1) Special education services means specially designed instruction, at no cost to the parents, to meet the unique needs of a student eligible for special education services, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and instruction in physical education.

(2) Special education services includes:

- (a) The provision of speech-language pathology, occupational therapy, audiology, and physical therapy service as defined in WAC 392-172A-01155 when it meets the criteria in WAC 392-172A-01035

(1) (c);

- (b) Travel training; and
- (c) Vocational education.

(3) The terms in this section are defined as follows:

(a) At no cost means that all specially designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the general education program.

(b) Physical education means the development of:

- (i) Physical and motor fitness;
- (ii) Fundamental motor skills and patterns; and
- (iii) Skills in aquatics, dance, and individual and group games and sports including intramural and lifetime sports; and
- (iv) Includes special physical education, adapted physical education, movement education, and motor development.

(c) Specially designed instruction means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction:

(i) To address the unique needs of the student that result from the student's disability; and

(ii) To ensure access of the student to the general curriculum, so that the student can meet the educational standards within the jurisdiction of the public agency that apply to all students.

(d) Travel training means providing instruction, as appropriate, to students with significant cognitive disabilities, and any other eligible students who require this instruction, to enable them to:

(i) Develop an awareness of the environment in which they live; and

(ii) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).

(e) Vocational education means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-01175, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-01185 Supplementary aids and services. The term "supplementary aids and services" means aids, services, and other supports that are provided in (~~general education classes or other~~) education-related settings to enable students eligible for special education services to be educated with nondisabled students to the maximum extent appropriate in accordance with the least restrictive environment requirements in WAC 392-172A-02050 through 392-172A-02065.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-01185, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-01190 Transition services. (1) Transition services means a coordinated set of activities for a student eligible for special education services that:

(a) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the student to facilitate his or her movement from school to post-school activities, including postsecondary education, vocational education, integrated employment, supported employment, continuing and adult education, adult services, independent living, or community participation;

(b) Is based on the individual student's needs, taking into account the student's strengths, preferences, and interests; and includes:

(i) Instruction;

(ii) Related services;

(iii) Community experiences;

(iv) The development of employment and other post-school adult living objectives; and

(v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

(2) Transition services for students eligible for special education services may be special education services, if provided as specially designed instruction, or a related service, if required to assist a student eligible for special education services to benefit from special education services.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-01190, filed 6/29/07, effective 7/30/07.]

NEW SECTION

WAC 392-172A-01197 Universal design for learning. Universal design for learning (UDL) is a framework to improve and optimize teaching and learning for all students based on research showing how students learn. The goal of UDL is to use a variety of teaching methods to remove and reduce barriers to learning and provide each student with opportunities to be successful through instructional flexibility that can be adjusted.

[]

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-01200 Ward of the state. Ward of the state means a student within the jurisdiction of the department of (~~social and health services~~) children, youth, and families, children's administration through shelter care, dependency or other proceedings to protect abused and neglected children, except that it does not include a

foster child who has a foster parent who meets the definition of a parent in WAC 392-172A-01125.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-01200, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-02000 Students' rights to a free appropriate public education (FAPE). (1) Each school district and residential or day schools operated under chapters 28A.190 and 72.40 RCW shall provide every student who is eligible for special education services between the age of three and twenty-one years, a free appropriate public education program (FAPE). The right to a FAPE includes special education services for students who have been suspended or expelled from school. A FAPE is also available to any student determined eligible for special education services even though the student has not failed or been retained in a course or grade and is advancing from grade to grade. The right to special education services for eligible students starts on their third birthday with an IEP in effect by that date. If an eligible student's third birthday occurs during the summer, the student's IEP team shall determine the date when services under the individualized education program will begin.

(2) A student who is determined eligible for special education services shall remain eligible until one of the following occurs:

(a) A group of qualified professionals and the parent of the student, based on a reevaluation, determines the student is no longer eligible for special education services; or

(b) The student has met high school graduation requirements established by the school district pursuant to rules of the state board of education, and the student has graduated from high school with a regular high school diploma. A regular high school diploma does not include a certificate of high school completion, or a general educational development credential. Graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice in accordance with WAC 392-172A-05010; or

(c) The student enrolled in the public school system or is receiving services pursuant to chapter 28A.190 or 72.40 RCW has reached age twenty-one. The student whose twenty-first birthday occurs on or before August 31 would no longer be eligible for special education services. The student whose twenty-first birthday occurs after August 31, shall continue to be eligible for special education and any necessary related services for the remainder of the school year; or

(d) The student stops receiving special education services based upon a parent's written revocation to a school district pursuant to WAC 392-172A-03000 (2) (e).

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 13-20-034, § 392-172A-02000, filed 9/24/13, effective 10/25/13; WSR 09-20-053, § 392-172A-02000, filed 10/1/09, effective 11/1/09. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-02000, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-02005 Exceptions to a student's right to FAPE. (1)

A student eligible for special education services residing in a state adult correctional facility is eligible for special education services pursuant to chapter 28A.193 RCW. The department of corrections is the agency assigned supervisory responsibility by the governor's office for any student not served pursuant to chapter 28A.193 RCW.

(2) (a) Students determined eligible for special education services and incarcerated in other adult correctional facilities will be provided special education and related services under chapter 28A.194 RCW.

(b) Subsection (2) (a) of this section does not apply to students aged eighteen to twenty-one if they:

(i) Were not actually identified as being a student eligible for special education services; and

(ii) Did not have an IEP; unless the student:

(A) Had been identified as a student eligible for special education services and had received services in accordance with an IEP, but who left school prior to incarceration; or

(B) Did not have an IEP in his or her last education setting, but who had actually been identified as a student eligible for special education services.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 13-20-034, § 392-172A-02005, filed 9/24/13, effective 10/25/13. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-02005, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-02010 Methods of payment for FAPE. (1) If the delivery of services in a public or private residential educational program is necessary to provide special education services to an eligible student, the program, including nonmedical care and room and board, must be at no cost to the parents of the student. Nothing in this chapter limits the responsibility of agencies other than educational agencies for providing or paying some or all of the costs of a FAPE to students eligible for special education services.

(2) Nothing in this chapter relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to students eligible for special education services.

(3) Consistent with the IEP provisions in this chapter, the OSPI shall ensure that there is no delay in implementing a student's IEP, including any case in which the payment source for providing or paying for special education and related services to the student is being determined.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-02010, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-02015 Availability of assistive technology. (1)

Each school district shall ensure that assistive technology devices or assistive technology services, or both, are made available to a student eligible for special education services if required as part of the student's:

- (a) Special education services;
- (b) Related services; or
- (c) Supplementary aids and services.

(2) On a case-by-case basis, the use of school-purchased assistive technology devices in a student's home or in other settings is required if the student's IEP team determines that the student needs access to those devices in order to receive FAPE.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-02015, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-02020 Extended school year services. (1) Extended

school year services means services meeting state standards contained in this chapter that are provided to a student eligible for special education services:

- (a) Beyond the normal school year;
- (b) In accordance with the student's IEP; and
- (c) Are provided at no cost to the parents of the student.

(2) School districts must ensure that extended school year services are available when necessary to provide a FAPE to a student eligible for special education services.

(3) Extended school year services must be provided only if the student's IEP team determines on an individual basis that the services are necessary for the provision of FAPE to the student.

(4) A school district may not limit extended school year services to particular categories of disability or unilaterally limit the type, amount or duration of those services.

(5) The purpose of extended school year services is the maintenance of the student's learning skills or behavior, not the teaching of new skills or behaviors.

(6) School districts must develop criteria for determining the need for extended school year services that include regression and recoupment time based on documented evidence, or on the determinations of the IEP team, based upon the professional judgment of the team and consideration of factors including the nature and severity of the student's disability, rate of progress, and emerging skills, with evidence to support the need.

(7) For the purposes of subsection (6) of this section:

(a) Regression means significant loss of skills or behaviors if educational services are interrupted in any area specified on the IEP;

(b) Recoupment means the recovery of skills or behaviors to a level demonstrated before interruption of services specified on the IEP.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-02020, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-02025 Nonacademic services. (1) Each school district must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the student's IEP team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford students eligible for special education services an equal opportunity for participation in those services and activities.

(2) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the school district, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-02025, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-02030 Physical education. (1) Physical education services, specially designed if necessary, must be made available to every student receiving FAPE.

(2) Each student eligible for special education services must be afforded the opportunity to participate in the general physical education program available to students who are not disabled unless:

(a) The student is enrolled full time in a separate facility; or

(b) The student needs specially designed physical education, as described in the student's individualized education program.

(3) If specially designed physical education is required in a student's individualized education program, the school district shall ensure that the public agency responsible for the education of that student provides the service directly, or makes arrangements for it to be provided through other public or private programs.

(4) The school district shall ensure that any student eligible for special education services who is enrolled in a separate facility will be provided with appropriate physical education services.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-02030, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-02035 Program options. Each school district shall ensure that its students eligible for special education services have available to them the variety of educational programs and services available to nondisabled students in the school district's area, including art, music, ~~((industrial arts, consumer and homemaking education, and vocational education))~~ and career and technical education.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-02035, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-02040 Child find. (1) School districts shall conduct child find activities calculated to reach all students with a suspected disability for the purpose of locating, evaluating and identifying students who are in need of special education and related services, regardless of the severity of their disability. The child find activities shall extend to students residing within the school district boundaries whether or not they are enrolled in the public school system; except that students attending approved nonprofit private elementary or secondary schools located within the school district boundaries shall be located, identified and evaluated consistent with WAC 392-172A-04005. School districts will conduct any required child find activities for infants and toddlers, consistent with the child find requirements of the lead agency for Part C of the act.

(2) Child find activities must be calculated to reach students who are homeless, wards of the state, highly mobile students with disabilities, such as homeless and migrant students and students who are suspected of being a student with a disability and in need of special education services, even though they are advancing from grade to grade.

(3) The school district shall have policies and procedures in effect that describe the methods it uses to conduct child find activities in accordance with subsections (1) and (2) of this section. Methods used may include, but are not limited to, activities such as:

(a) Providing written notification to all parents of students in the school district's jurisdiction regarding access to and the use of its child find system;

(b) Posting notices in school buildings, other public agency offices, medical facilities, and other public areas, describing the availability of child find;

(c) Offering preschool developmental screenings;

(d) Conducting local media informational campaigns;

(e) Coordinating distribution of information with other child find programs within public and private agencies; and

(f) Using internal district child find methods such as screening, reviewing district-wide test results, providing in-service education to staff, and other methods developed by the school district to identify, locate and evaluate students including a systematic, intervention based, process within general education for determining the need for a special education services referral.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 13-20-034, § 392-172A-02040, filed 9/24/13, effective 10/25/13; WSR 09-20-053, § 392-172A-02040, filed 10/1/09, effective 11/1/09. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-02040, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-02045 Routine checking of hearing aids and external components of surgically implanted medical devices. (1) Hearing aids. Each school district must ensure that hearing aids worn in school by students (~~(with hearing impairments, including deafness,)~~) who are deaf or hard of hearing are functioning properly.

(2) External components of surgically implanted medical devices. Each school district must ensure that the external components of surgically implanted medical devices are functioning properly.

(3) A school district is not responsible for the postsurgical maintenance, programming, or replacement of the medical device that has been surgically implanted or of an external component of the surgically implanted medical device.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-02045, filed 6/29/07, effective 7/30/07.]

LEAST RESTRICTIVE ENVIRONMENT AND PLACEMENT

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-02050 Least restrictive environment. Subject to the exceptions for students in adult correctional facilities, school districts shall ensure that the provision of services to each student eligible for special education services, including preschool students and students in public or private institutions or other care facilities, shall be provided:

(1) To the maximum extent appropriate in the general education environment with students who are nondisabled; and

(2) Special classes, separate schooling or other removal of students eligible for special education services from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(3) The public agency responsible for providing FAPE to a preschool child with a disability must ensure that FAPE is provided in

the least restrictive environment where the child's unique needs (as described in the child's IEP) can be met, regardless of whether the local education agency operates public preschool programs for children without disabilities. Least restrictive environment must be determined based on each individual child's needs and should not automatically be developmental preschool.

(4) For children ages three to five, a general education environment is a regular early childhood program as defined in WAC 392-172A-01152.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-02050, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-02055 Continuum of alternative placements. (1)

Each school district shall ensure that a continuum of alternative placements is available to meet the special education and related services needs of students eligible for special education services between the ages of three and twenty-one years old.

(2) The continuum required in this section for eligible students kindergarten (including five year olds in kindergarten) through age twenty-one must:

(a) Include the ((alternative)) placements listed in the definition of special education services in WAC 392-172A-01175, such as instruction in general education classes, special education classes, special schools, home instruction, and instruction in hospitals and institutions; and

(b) Make provision for supplementary services such as resource room or itinerant instruction to be provided in conjunction with general education classroom placement.

(3) The continuum of alternative placements a public agency providing special education and related services to a preschool child with a disability may include, but is not limited to, the following:

(a) Providing opportunities for the participation of preschool children with disabilities in preschool programs operated by public agencies other than school districts (such as head start or community-based child care);

(b) Enrolling preschool children with disabilities in private preschool programs for nondisabled preschool children;

(c) Locating classes for preschool children with disabilities in regular public elementary schools; and

(d) Providing services and instruction in the home.

(4) If a public agency determines that placement in a private preschool program is necessary for a child with a disability to receive FAPE, the public agency must make that program available at no cost to the parent.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-02055, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-02060 Placements. (1) When determining the educational placement of a student eligible for special education services including a preschool student, the placement decision shall be determined annually and made by a group of persons, including the parents, and other persons knowledgeable about the student, the evaluation data, and the placement options.

(2) The selection of the appropriate placement for each student shall be based upon:

(a) The student's IEP;

(b) The least restrictive environment requirements contained in WAC 392-172A-02050 through 392-172A-02070, including this section;

(c) The placement option(s) that provides a reasonably high probability of assisting the student to attain his or her annual goals; and

(d) A consideration of any potential harmful effect on the student or on the quality of services which he or she needs.

(3) Unless the IEP of a student requires some other arrangement, the student shall be educated in the school that he or she would attend if nondisabled. In the event the student needs other arrangements, placement shall be as close as possible to the student's home.

(4) A student shall not be removed from education in age-appropriate general classrooms solely because of needed modifications in the general education curriculum.

(5) Notwithstanding subsections (1) through (4) of this section, an IEP team, or other team making placement decisions for a student convicted as an adult and receiving educational services in an adult correctional facility, may modify the student's placement if there is a demonstrated bona fide security or compelling penological interest that cannot otherwise be accommodated.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-02060, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-02065 Nonacademic settings. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, each public agency must ensure that each student eligible for special education services participates with nondisabled students in the extracurricular services and activities to the maximum extent appropriate to the needs of that student. The public agency must ensure that each student eligible for special education services has the supplementary aids and services determined by the student's IEP team to be appropriate and necessary for the student to participate in nonacademic settings.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-02065, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 16-02-034, filed 12/29/15, effective 1/29/16)

WAC 392-172A-02076 Prohibited practices. (1) School district personnel are prohibited from using aversive interventions with a student eligible for special education services, and are prohibited from physically restraining or isolating any student, except when the student's behavior poses an imminent likelihood of serious harm as defined in WAC 392-172A-01092 and 392-172A-01109.

(2) There are certain practices that are manifestly inappropriate by reason of their offensive nature or their potential negative physical consequences, or their illegality. The purpose of this section is to prohibit the use of certain practices with students eligible for special education services as follows:

(a) Electric current. No student may be stimulated by contact with electric current including, but not limited to, tasers.

(b) Food services. A student who is willing to consume subsistence food or liquid when the food or liquid is customarily served must not be denied or subjected to an unreasonable delay in the provision of the food or liquid.

(c) (i) Force and restraint in general. A district must not use force or restraint that is either unreasonable under the circumstances or deemed to be an unreasonable form of corporal punishment as a matter of state law. See RCW 9A.16.100, which prohibits the following uses of force or restraint including:

(A) Throwing, kicking, burning, or cutting a student.

(B) Striking a student with a closed fist.

(C) Shaking a student under age three.

(D) Interfering with a student's breathing.

(E) Threatening a student with a deadly weapon.

(F) Doing any other act that is likely to cause bodily harm to a student greater than transient pain or minor temporary marks.

(ii) The statutory listing of worst case uses of force or restraint described in this subsection may not be read as implying that all unlisted uses (e.g., shaking a four year old) are permissible. Whether or not an unlisted use of force or restraint is permissible depends upon such considerations as the balance of these rules, and whether the use is reasonable under the circumstances.

(d) Hygiene care. A student must not be denied or subjected to an unreasonable delay in the provision of common hygiene care.

(e) Isolation. A student must not be excluded from his or her regular instructional or service area and isolated within a room or any other form of enclosure, except under the conditions set forth in WAC 392-172A-02110.

(f) Medication. A student must not be denied or subjected to an unreasonable delay in the provision of medication.

(g) Noise. A student must not be forced to listen to noise or sound that the student finds painful.

(h) Noxious sprays. A student must not be forced to smell or be sprayed in the face with a noxious or potentially harmful substance.

(i) Physical restraints. A student must not be physically restrained or immobilized by binding or otherwise attaching the student's limbs together or by binding or otherwise attaching any part of the student's body to an object or against a wall or the floor, except under the conditions set forth in WAC 392-172A-02110.

(j) Prone, supine, and wall restraints. A student must not be subjected to the use of prone (lying face-down) and supine (lying

face-up) restraint, wall restraint, or any restraint that interferes with the student's breathing.

(k) Taste treatment. A student must not be forced to taste or ingest a substance which is not commonly consumed or which is not commonly consumed in its existing form or concentration.

~~((k))~~ (l) Water treatment. A student's head must not be partially or wholly submerged in water or any other liquid.

[Statutory Authority: RCW 28A.155.090, 42 U.S.C. 1400 et seq. and 34 C.F.R. Part 300. WSR 16-02-034, § 392-172A-02076, filed 12/29/15, effective 1/29/16.]

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-02080 Transition of children from the Part C program to preschool programs. Each school district shall have policies and procedures for transition to preschool programs to ensure that:

(1) Students participating in early intervention programs assisted under Part C of the IDEA, and who will participate in preschool programs assisted under Part B of the IDEA, experience a smooth and effective transition to those preschool programs in a manner consistent with the Part C requirements.

(2) (a) Each school district will participate in transition planning conferences arranged by the designee of the lead agency for Part C in the state. A transition planning conference will be convened for each student who may be eligible for preschool services at least ninety days prior to the student's third birthday.

(b) Within twenty-five school days following the transition planning conference, a determination whether or not to evaluate the student for Part B will be made. The district will provide prior written notice of the decision that complies with the requirements of WAC 392-172A-05010.

(3) By the third birthday of a student described in subsection (1) of this section, an IEP has been developed and is being implemented for the student consistent with WAC 392-172A-02000(1).

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-02080, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 17-23-054, filed 11/9/17, effective 12/10/17)

WAC 392-172A-02090 Personnel qualifications. (1) All school district personnel providing special education services and/or related services shall meet the following qualifications:

(a) All employees shall hold such credentials, licenses, certificates, endorsements or permits as are now or hereafter required by the professional educator standards board for the particular position of employment and shall meet such supplemental standards as may be established by the school district of employment. Supplemental standards established by a district or other public agency may exceed, but not

be less than, those established by the professional educator standards board in accordance with Title 181 WAC and this section.

(b) In addition to the requirement in (a) of this subsection, all special education (~~teachers~~) personnel providing, designing, supervising, monitoring or evaluating the provision of special education services shall possess "substantial professional training." "Substantial professional training" as used in this section shall be evidenced by issuance of an appropriate special education endorsement (or early childhood special education endorsement, deaf education endorsement, deaf education with American sign language proficiency endorsement, teacher of the visually impaired endorsement) on an individual teaching certificate issued by the OSPI, professional education and certification section.

(c) A teacher will be considered to meet the applicable requirements in (a) and (b) of this subsection if that teacher is participating in an alternative route to a special education certification program under which the teacher:

(i) Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching;

(ii) Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;

(iii) Assumes functions as a teacher only for a specified period of time not to exceed three years; and

(iv) Demonstrates satisfactory progress toward full certification according to the state professional educator standards board rules, and the state ensures, through its certification and endorsement process, that the provisions of subsection (2) of this section are met.

(d) Other certificated related services school personnel providing specially designed instruction or related services as defined in this chapter, shall meet standards established under the educational staff associate rules of the professional educator standards board, as now or hereafter amended.

(e) Employees with only an early childhood special education endorsement may be assigned to programs that serve students birth through eight. Preference for an early childhood special education assignment must be given first to employees having early childhood special education endorsement, but may be assigned to an individual with a special education endorsement.

(f) Certified and/or classified staff assigned to provide instruction in Braille, the use of Braille, or the production of Braille must demonstrate competency (~~(with grade two standard literary Braille code)~~) by successful completion of a test approved by the professional educator standards board pursuant to WAC 181-82-130.

(g) Certified and/or classified staff assigned as educational interpreters, must meet the performance standards outlined in RCW 28A.410.271 by passing an educational interpreter assessment approved by the professional educator standards board.

(h) (~~Paraprofessional~~) Paraeducator staff and aides shall present evidence of skills and knowledge established under the rules of the professional educator standards board, necessary to meet the needs of students eligible for special education services, and shall be under the supervision of a certificated teacher with a special education endorsement, or a certificated educational staff associate or a licensed staff, as provided in (i) of this subsection. (~~Paraprofes-~~

sional)) Paraeducator staff assigned to Title 1 ((~~school-wide~~)) schoolwide programs shall also meet ESEA standards for ((~~paraprofessionals~~)) paraeducators.

(i) Special education and related services must be provided by appropriately qualified staff. Other staff including general education teachers and ((~~paraprofessionals~~)) paraeducators may assist in the provision of special education and related services, provided that the instruction is designed and supervised by special education certificated staff (or early childhood special education certificated staff, deaf education certificated staff, deaf education with American sign language proficiency certificated staff, teacher of the visually impaired certificated staff), or for related services by a certificated educational staff associate. Student progress must be monitored and evaluated by special education certificated staff or for related services, a certificated educational staff associate.

(2) School districts must take measurable steps to recruit, hire, train, and retain personnel, who meet the applicable requirements described in subsection (1)(a) of this section, to provide special education and related services to students eligible for special education services. There may be occasions when, despite efforts to hire or retain teachers who meet the applicable requirements, they are unable to do so. The following options are available in these situations:

(a) Teachers who meet ((~~state~~)) professional educator standards board criteria pursuant to WAC 181-82-110(3) as now or hereafter amended, are eligible for a preendorsement waiver. Application for the special education preendorsement waiver shall be made to the special education ((~~section~~)) division at the OSPI.

(b) In order to temporarily assign a classroom teacher without a special education endorsement to a special education position, the district or other public agency must keep written documentation on the following:

(i) The school district must make one or more of the following factual determinations:

(A) The district or other public agency was unable to recruit a teacher with the proper endorsement who was qualified for the position;

(B) The need for a teacher with such an endorsement could not have been reasonably anticipated and the recruitment of such a classroom teacher at the time of assignment was not reasonably practicable; and/or

(C) The reassignment of another teacher within the district or other public agency with the appropriate endorsement to such assignment would be unreasonably disruptive to the current assignments of other classroom teachers or would have an adverse effect on the educational program of the students assigned such other classroom teachers.

(ii) Upon determination by a school district that one or more of these criteria can be documented, and the district determines that a teacher has the competencies to be an effective special education teacher but does not have endorsement in special education, the district can so assign the teacher to special education. The school district is responsible for determining that the assigned teacher must have completed ((~~nine quarter hours~~ (~~six semester hours~~))) ninety continued education credit hours of course work applicable to an endorsement in special education.

(iii) Pursuant to WAC 181-82-110, if teachers are so assigned, the following requirements apply:

(A) A designated representative of the district and any such teacher shall mutually develop a written plan which provides for necessary assistance to the teacher, and which provides for a reasonable amount of planning and study time associated specifically with the out-of-endorsement assignment;

(B) Such teachers shall not be subject to nonrenewal or probation based on evaluations of their teaching effectiveness in the out-of-endorsement assignments; and

(C) Such teaching assignments shall be approved by a formal vote of the local school board for each teacher so assigned.

(3) Teachers placed under the options described in subsection (2) of this section do not meet the definition of substantial professional training.

(4) Notwithstanding any other individual right of action that a parent or student may maintain under this chapter, nothing in this section shall be construed to create a right of action on behalf of an individual student or a class of students for the failure of a particular school district employee to meet the applicable requirements described in subsection (1)(a) of this section, or to prevent a parent from filing a state complaint about staff qualifications with the OSPI under WAC 392-172A-05025 through 392-172A-05040.

(5) School districts and other public agencies that are recipients of funding under Part B of the act must make positive efforts to employ, and advance in employment, qualified individuals with disabilities in programs assisted under Part B of the act.

[Statutory Authority: RCW 28A.155.090. WSR 17-23-054, § 392-172A-02090, filed 11/9/17, effective 12/10/17. Statutory Authority: RCW 28A.155.090, 20 U.S.C. 1400 (c) (12) (C), 20 U.S.C. 1401 (3) (A) (i), and 20 U.S.C. 1401 (30) (C). WSR 11-06-052, § 392-172A-02090, filed 3/1/11, effective 4/1/11. Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 09-20-053, § 392-172A-02090, filed 10/1/09, effective 11/1/09. Statutory Authority: RCW 28A.155.090 (7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-02090, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 17-23-054, filed 11/9/17, effective 12/10/17)

WAC 392-172A-02095 Transportation. (1) Methods. Transportation options for students eligible for special education services shall include the following categories and shall be exercised in the following sequence:

(a) A scheduled school bus;

(b) Contracted transportation, including public transportation;

and

(c) Other transportation arrangements, including that provided by parents. Board and room cost in lieu of transportation may be provided whenever the above stated transportation options are not feasible because of the need(s) of the student or because of the unavailability of adequate means of transportation, in accordance with rules of the superintendent of public instruction.

(2) Welfare of the student. The transportation of the student shall be in accordance with chapters 392-143, 392-144, and 392-145 WAC.

(3) Bus aides and drivers. Training and supervision of bus aides and drivers shall be the responsibility of the school district.

(4) Special equipment. Special equipment may include lifts, wheelchair holders, restraints, and two-way radios. All such special equipment shall comply with specifications contained in the specifications for school buses as now or hereafter established by the OSPI.

(5) Transportation time on bus. Wherever reasonably possible, no student should be required to ride more than sixty minutes one way.

(6) Transportation for state residential school students to and from the residential school and the sites of the educational program shall be the responsibility of the department of social and health services and each state residential school pursuant to law.

(7) Transportation for a state residential school student, including students attending the Washington state school for the deaf and the Washington state school for the blind, to and from such school and the residency of such student shall be the responsibility of the district of residency only if the student's placement was made by such district or other public agency pursuant to an interagency agreement—i.e., an appropriate placement in the least restrictive environment.

[Statutory Authority: RCW 28A.155.090. WSR 17-23-054, § 392-172A-02095, filed 11/9/17, effective 12/10/17. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-02095, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 17-23-054, filed 11/9/17, effective 12/10/17)

WAC 392-172A-02100 Home/hospital instruction. (1) Home or hospital instruction shall be provided to students eligible for special education services and other students who are unable to attend school for an estimated period of four weeks or more because of disability or illness.

(2) As a condition to such services, the parent of a student shall request the services and provide a written statement to the school district from a qualified medical practitioner that states the student will not be able to attend school for an estimated period of at least four weeks.

(3) A student who is not determined eligible for special education services, but who qualifies pursuant to this subsection shall be deemed "~~((disabled))~~ as having a disability" only for the purpose of home/hospital instructional services and funding and may not otherwise qualify as a student eligible for special education services for the purposes of generating state or federal special education funds.

(4) A school district shall not pay for the cost of the statement from a qualified medical practitioner for the purposes of qualifying a student for home/hospital instructional services pursuant to this section.

(5) Home/hospital instructional services funded in accordance with the provisions of this section shall not be used for the initial or ongoing delivery of services to students eligible for special education services in a homebound or hospital placement pursuant to a student's individualized education program.

(6) Home/hospital instruction shall be limited to services necessary to provide temporary intervention as a result of a physical disability or illness.

(7) A student eligible for special education services who qualifies for home/hospital instruction must continue to receive IEP team determined educational services that provide a FAPE, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP. (~~(The IEP team determines the appropriate services.)~~)

[Statutory Authority: RCW 28A.155.090. WSR 17-23-054, § 392-172A-02100, filed 11/9/17, effective 12/10/17. Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 09-20-053, § 392-172A-02100, filed 10/1/09, effective 11/1/09. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-02100, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 16-02-034, filed 12/29/15, effective 1/29/16)

WAC 392-172A-02105 Emergency response protocols. (1) If the parent and the school district determine that a student requires advanced educational planning, the parent and the district may develop emergency response protocols to be used in the case of emergencies that pose an imminent likelihood of serious harm, as defined in this section. Emergency response protocols, if developed, must be incorporated into a student's IEP. Emergency response protocols shall not be used as a substitute for the systematic use of a behavioral intervention plan that is designed to change, replace, modify, or eliminate a targeted behavior. Emergency response protocols are subject to the conditions and limitations as follows:

(a) The student's parent provides consent, as defined in WAC 392-172A-01040, in advance, to the emergency response protocols to be adopted;

(b) The emergency response protocols specify:

(i) The emergency conditions under which isolation, restraint, or restraint devices, if any, may be used;

(ii) The type of isolation, restraint, and/or restraint device, if any, that may be used;

(iii) The staff members or contracted positions permitted to use isolation, restraint, or restraint devices with the student, updated annually, and identify any required training associated with the use of isolation, restraint, or restraint device for each staff member or contracted position;

(iv) Any other special precautions that must be taken.

(c) Any use of isolation, restraint, and/or restraint device must be discontinued as soon as the likelihood of serious harm has dissipated.

(d) Any staff member or other adults using isolation, restraint, or a restraint device must be trained and currently certified by a qualified provider in the use of trauma-informed crisis intervention (including de-escalation techniques) and the safe use of isolation, restraint, or a restraint device.

(2) School districts must follow the documentation and reporting requirements for any use of isolation, restraint, or restraint device consistent with RCW 28A.600.485, regardless of whether the use of isolation, restraint, or restraint device is included in the student's emergency response protocols.

(3) Nothing in this section is intended to limit the application of a school district's policy developed under RCW 28A.600.485 to protect the general safety of students and staff from an imminent likelihood of serious harm.

(4) Nothing in this section is intended to limit the provision of a free and appropriate public education under Part B of the federal Individuals with Disabilities Education Act or Section 504 of the federal Rehabilitation Act of 1973.

[Statutory Authority: RCW 28A.155.090, 42 U.S.C. 1400 et seq. and 34 C.F.R. Part 300. WSR 16-02-034, § 392-172A-02105, filed 12/29/15, effective 1/29/16.]

AMENDATORY SECTION (Amending WSR 16-02-034, filed 12/29/15, effective 1/29/16)

WAC 392-172A-02110 Isolation ((and)) or restraint—Conditions.

Any use of isolation, restraint, and/or a restraint device shall be used only when a student's behavior poses an imminent likelihood of serious harm. The limited use of isolation, restraint, or restraint device not prohibited in WAC 392-172A-02076 is conditioned upon compliance with the following procedural and substantive safeguards:

(1) Isolation. The use of isolation as defined by RCW 28A.600.485 is subject to each of the following conditions:

(a) The isolation must be discontinued as soon as the likelihood of serious harm has dissipated.

(b) The isolation enclosure shall be ventilated, lighted, and temperature controlled from inside or outside for purposes of human occupancy.

(c) The isolation enclosure shall permit continuous visual monitoring of the student from outside the enclosure.

(d) An adult responsible for supervising the student shall remain in visual (~~or auditory~~) range of the student at all times.

(e) Either the student shall be capable of releasing himself or herself from the enclosure, or the student shall continuously remain within view of an adult responsible for supervising the student.

(f) Any staff member or other adults using isolation must be trained and currently certified by a qualified provider in the use of trauma-informed crisis intervention (including de-escalation techniques), and also trained by the district in isolation requirements, or otherwise available in the case of an emergency when trained personnel are not immediately available due to the unforeseeable nature of the emergency.

(2) Restraint. The use of restraint as defined by RCW 28A.600.485 is subject to each of the following conditions:

(a) The restraint must be discontinued as soon as the likelihood of serious harm has dissipated.

(b) The restraint shall not interfere with the student's breathing.

(c) Any staff member or other adults using a restraint must be trained and currently certified by a qualified provider in the use of trauma-informed crisis intervention (including de-escalation techniques) and such restraints, or otherwise available in the case of an emergency when trained personnel are not immediately available due to the unforeseeable nature of the emergency.

(3) Restraint device. The use of a restraint device as defined by RCW 28A.600.485 is subject to each of the following conditions:

(a) The restraint device must be discontinued as soon as the likelihood of serious harm has dissipated.

(b) The restraint device shall not interfere with the student's breathing.

(c) Either the student shall be capable of releasing himself or herself from the restraint device or the student shall continuously remain within view of an adult responsible for supervising the student.

(d) Any staff member or other adults using a restraint device must be trained and currently certified by a qualified provider in the use of such restraint devices, or otherwise available in the case of an emergency when trained personnel are not immediately available due to the unforeseeable nature of the emergency.

(4) School districts must follow the documentation and reporting requirements for any use of isolation, restraint, or restraint device consistent with RCW 28A.600.485.

[Statutory Authority: RCW 28A.155.090, 42 U.S.C. 1400 et seq. and 34 C.F.R. Part 300. WSR 16-02-034, § 392-172A-02110, filed 12/29/15, effective 1/29/16.]

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-03000 Parental consent for initial evaluations, initial services and reevaluations. (1)(a) A school district proposing to conduct an initial evaluation to determine if a student is eligible for special education services must provide prior written notice consistent with WAC 392-172A-05010 and obtain informed consent from the parent before conducting the evaluation.

(b) Parental consent for an initial evaluation must not be construed as consent for initial provision of special education and related services.

(c) The school district must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the student is eligible for special education services.

(d) If the student is a ward of the state and is not residing with the student's parent, the school district or public agency is not required to obtain informed consent from the parent for an initial evaluation to determine eligibility for special education services if:

(i) Despite reasonable efforts to do so, the school district cannot discover the whereabouts of the parent of the child;

(ii) The rights of the parents of the child have been terminated; or

(iii) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent

for an initial evaluation has been given by an individual appointed by the judge to represent the child.

(e) If the parent of a student enrolled in public school or seeking to be enrolled in public school does not provide consent for an initial evaluation under subsection (1) of this section, or the parent fails to respond to a request to provide consent, the school district may, but is not required to, pursue the initial evaluation of the student by using due process procedures or mediation.

(f) The school district does not violate its child find and evaluation obligations, if it declines to pursue the initial evaluation when a parent refuses to provide consent under (e) of this subsection.

(2) (a) A school district that is responsible for making FAPE available to a student must obtain informed consent from the parent of the student before the initial provision of special education and related services to the student.

(b) The school district must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the student.

(c) If the parent of a student fails to respond to a request for or refuses to consent to the initial provision of special education and related services, the school district may not use the due process procedures or mediation in order to obtain agreement or a ruling that the services may be provided to the student.

(d) If the parent of the student refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide consent for the initial provision of special education and related services, the school district:

(i) Will not be considered to be in violation of the requirement to make available FAPE to the student for the failure to provide the student with the special education and related services for which the school district requests consent; and

(ii) Is not required to convene an IEP team meeting or develop an IEP.

(e) If at any time after the initial provision of special education and related services, the parent revokes consent in writing for the continued provision of special education and related services, the school district:

(i) Must provide prior written notice to the parent in accordance with WAC 392-172A-05010 before ceasing to provide special education and related services and may not continue to provide special education and related services after the effective date of the prior written notice;

(ii) May not use mediation or the due process procedures in order to obtain an agreement or a ruling that the services may be provided to the student;

(iii) Will not be considered to be in violation of the requirement to make FAPE available to the student because of the failure to provide the student with further special education and related services; and

(iv) Is not required to convene an IEP team meeting or develop an IEP for the student for further provision of special education services.

(3) (a) A school district must obtain informed parental consent, prior to conducting any reevaluation of a student eligible for special education services, subject to the exceptions in (d) of this subsection and subsection (4) of this section.

(b) If the parent refuses to consent to the reevaluation, the school district may, but is not required to, pursue the reevaluation by using the due process procedure to override the parent's refusal to provide consent or mediation to obtain an agreement from the parent to provide consent.

(c) The school district does not violate its child find obligations or the evaluation and reevaluation procedures if it declines to pursue the evaluation or reevaluation.

(d) A school district may proceed with a reevaluation and does not need to obtain informed parental consent if the school district can demonstrate that:

- (i) It made reasonable efforts to obtain such consent; and
- (ii) The child's parent has failed to respond.

(4)(a) Parental consent for an initial or a reevaluation is not required before:

(i) Reviewing existing data as part of an evaluation or a reevaluation; or

(ii) Administering a test or other evaluation that is administered to all students unless, before administration of that test or evaluation, consent is required of parents of all students.

(b) A school district may not use a parent's refusal to consent to one service or activity of an initial evaluation or reevaluation to deny the parent or student any other service, benefit, or activity of the school district, except as required by this chapter.

(c) If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the public agency may not use the consent override procedures and the public agency is not required to consider the student as eligible for special education services.

(d) To meet the reasonable efforts requirements to obtain consent for an evaluation or reevaluation the school district must document its attempts to obtain parental consent using the procedures in WAC 392-172A-03100(6).

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 13-20-034, § 392-172A-03000, filed 9/24/13, effective 10/25/13; WSR 09-20-053, § 392-172A-03000, filed 10/1/09, effective 11/1/09. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-03000, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-03005 Referral and timelines for initial evaluations. (1)(a) A parent of a child, a school district, a public agency, or other persons knowledgeable about the child may initiate a referral request for an initial evaluation to determine if the student is eligible for special education services.

(b) The request (~~(will)~~) must be in writing, unless the person is unable to write and/or communicate orally.

(c) Each school district must have an optional referral form for requesting an initial evaluation available to the general public and provide it upon receipt of any referral request in the requestor's na-

tive language or with the support of a qualified interpreter when needed.

(2) The school district must document the request for an initial evaluation, including the date the request is received, and:

(a) Notify the parent that the student has been referred because of a suspected disability and that the district, with parental input, will determine whether or not to evaluate the student;

(b) Collect and examine existing school, medical and other records in the possession of the parent and the school district; and

(c) Within twenty-five school days after receipt of the request for an initial evaluation, make a determination whether or not to evaluate the student. The school district will provide prior written notice of the decision that complies with the requirements of WAC 392-172A-05010.

(d) Exception: Referral requests received through IDEA Part C notification of toddlers potentially eligible for Part B special education preschool services are subject to the timelines described under WAC 392-172A-02080 and not the timeline described in (c) of this subsection.

(3) When the student is to be evaluated to determine eligibility for special education services and the educational needs of the student, the school district shall provide prior written notice to the parent, attempt without unnecessary delay to obtain consent, fully evaluate the student and arrive at a decision regarding eligibility within:

(a) Thirty-five school days after the date written consent for an evaluation has been provided to the school district by the parent; or

(b) Thirty-five school days after the date the consent of the parent is obtained by agreement through mediation, or the refusal to provide consent is overridden by an administrative law judge following a due process hearing; or

(c) Such other time period as may be agreed to by the parent and documented by the school district, including specifying the reasons for extending the timeline.

(d) Exception. The thirty-five school day time frame for evaluation does not apply if:

(i) The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or

(ii) A student enrolls in another school district after the consent is obtained and the evaluation has begun but not yet been completed by the other school district, including a determination of eligibility.

(e) The exception in (d)(ii) of this subsection applies only if the subsequent school district is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent school district agree to a specific time when the evaluation will be completed.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 13-20-034, § 392-172A-03005, filed 9/24/13, effective 10/25/13. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-03005, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 17-23-054, filed 11/9/17, effective 12/10/17)

WAC 392-172A-03015 Reevaluation timelines. (1) A school district must ensure that a reevaluation of each student eligible for special education services is conducted in accordance with WAC 392-172A-03020 through 392-172A-03080 when:

(a) The school district determines that the educational or related services needs, including improved academic achievement and functional performance, of the student warrant a reevaluation; or

(b) If the child's parent or teacher requests a reevaluation.

(2) A reevaluation conducted under subsection (1) of this section:

(a) May occur not more than once a year, unless the parent and the school district agree otherwise; and

(b) Must occur at least once every three years, unless the parent and the school district agree that a reevaluation is unnecessary.

(3) Reevaluations shall be completed within:

(a) Thirty-five school days after the date written consent for an evaluation has been provided to the school district by the parent;

(b) Thirty-five school days after the date the refusal of the parent was overridden through due process procedures or agreed to using mediation; or

(c) Such other time period as may be agreed to by the parent and documented by the school district, including specifying the reasons for extending the timeline.

[Statutory Authority: RCW 28A.155.090. WSR 17-23-054, § 392-172A-03015, filed 11/9/17, effective 12/10/17. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-03015, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-03020 Evaluation procedures. (1) The school district must provide prior written notice to the parents of a student, in accordance with WAC 392-172A-05010, that describes any evaluation procedures the district proposes to conduct.

(2) In conducting the evaluation, the group of qualified professionals selected by the school district must:

(a) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent, that may assist in determining:

(i) Whether the student is eligible for special education services as defined in WAC 392-172A-01175; and

(ii) The content of the student's IEP, including information related to enabling the student to be involved in and progress in the general education curriculum, or for a preschool child, to participate in appropriate activities;

(b) Not use any single measure or assessment as the sole criterion for determining whether a student's eligibility for special education services and for determining an appropriate educational program for the student; and

(c) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(3) Each school district must ensure that:

(a) Assessments and other evaluation materials used to assess a student:

(i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;

(ii) Are provided and administered in the student's native language or other mode of communication and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally unless it is clearly not feasible to so provide or administer;

(iii) Are used for the purposes for which the assessments or measures are valid and reliable. If properly validated tests are unavailable, each member of the group shall use professional judgment to determine eligibility based on other evidence of the existence of a disability and need for special education services. Use of professional judgment shall be documented in the evaluation report;

(iv) Are administered by trained and knowledgeable personnel; and

(v) Are administered in accordance with any instructions provided by the producer of the assessments.

(b) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(c) Assessments are selected and administered so as best to ensure that if an assessment is administered to a student with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

(d) If necessary as part of a complete assessment, the school district obtains a medical statement or assessment indicating whether there are any other factors that may be affecting the student's educational performance.

(e) The student is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

(f) Assessments of students eligible for special education services who transfer from one school district to another school district in the same school year are coordinated with those students' prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.

(g) In evaluating each student to determine eligibility or continued eligibility for special education services, the evaluation is sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified.

(h) Assessment tools and strategies are used that provide relevant information that directly assists persons in determining the educational needs of the student.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-03020, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-03025 Review of existing data for evaluations and reevaluations. As part of an initial evaluation, if appropriate, and as part of any reevaluation, the IEP team and other qualified professionals, as appropriate, must:

(1) Review existing evaluation data on the student, including:

(a) Evaluations and information provided by the parents of the student;

(b) Current classroom-based, local, or state assessments, and classroom-based observations; and

(c) Observations by teachers and related services providers.

(2) (a) On the basis of that review, and input from the student's parents, identify what additional data, if any, are needed to determine:

(i) Whether the student is eligible for special education services, and what special education and related services the student needs; or

(ii) In case of a reevaluation, whether the student continues to meet eligibility, and whether the educational needs of the student including any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set out in the IEP of the student and to participate, as appropriate, in the general education curriculum; and

(b) The present levels of academic achievement and related developmental needs of the student.

(3) The group described in this section may conduct its review without a meeting.

(4) The school district must administer such assessments and other evaluation measures as may be needed to produce the data identified in subsection (2) of this section.

(5) (a) If the IEP team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the student continues to be a student eligible for special education services, and to determine the student's educational needs, the school district must notify the student's parents of:

(i) That determination and the reasons for the determination; and

(ii) The right of the parents to request an assessment to determine whether the student continues to be a student eligible for special education services, and to determine the student's educational needs.

(b) The school district is not required to conduct the assessment described in this subsection (5) unless requested to do so by the student's parents.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 13-20-034, § 392-172A-03025, filed 9/24/13, effective 10/25/13. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-03025, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-03030 Evaluations before change in eligibility.

(1) Except as provided in subsection (2) of this section, school districts must evaluate a student eligible for special education services in accordance with WAC 392-172A-03020 through 392-172A-03080 before determining that the student is no longer eligible for special education services.

(2) A reevaluation is not required before the termination of a student's eligibility due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under WAC 392-172A-02000 (2) (c).

(3) For a student whose eligibility terminates under circumstances described in subsection (2) of this section, a public agency must provide the student with a summary of the student's academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting the student's postsecondary goals.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-03030, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-03035 Evaluation report. (1) The evaluation report shall be sufficient in scope for the IEP team to develop an IEP, and at a minimum, must include:

(a) A statement of whether the student has a disability that meets the eligibility criteria in this chapter;

(b) A discussion of the assessments and review of data that supports the conclusion regarding eligibility including additional information required under WAC 392-172A-03080 for students with specific learning disabilities;

(c) How the student's disability affects the student's involvement and progress in the general education curriculum or for preschool children, in appropriate activities;

(d) The recommended special education ((and related)) services ((needed by the student)), and any related services the evaluation group determines the student needs in order to benefit from special education services;

(e) Other information, as determined through the evaluation process and parental input, needed to develop an IEP;

(f) The date and signature of each professional member of the group certifying that the evaluation report represents his or her conclusion. If the evaluation report does not reflect his or her conclusion, the professional member of the group must include a separate statement representing his or her conclusions.

(2) Individuals contributing to the report must document the results of their individual assessments or observations.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-03035, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-03040 Determination of eligibility. (1) Upon completion of the administration of assessments and other evaluation measures:

(a) A group of qualified professionals and the parent of the student determine whether the student is eligible for special education services and the educational needs of the student; and

(b) The school district must provide a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

(2) (a) A student must not be determined to be eligible for special education services if the determinant factor is:

(i) Lack of appropriate instruction in reading, based upon the state's grade level standards;

(ii) Lack of appropriate instruction in math; or

(iii) Limited English proficiency; and

(b) If the student does not otherwise meet the eligibility criteria including presence of a disability, adverse educational impact and need for specially designed instruction.

(3) In interpreting evaluation data for the purpose of determining eligibility for special education services, each school district must:

(a) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the student's physical condition, social or cultural background, and adaptive behavior; and

(b) Ensure that information obtained from all of these sources is documented and carefully considered.

(4) If a determination is made that a student is eligible for special education services, an IEP must be developed for the student in accordance with WAC 392-172A-03090 through 392-172A-03135.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-03040, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 09-20-053, filed 10/1/09, effective 11/1/09)

WAC 392-172A-03045 District procedures for specific learning disabilities. In addition to the evaluation procedures for determining whether students are eligible for special education services, school districts must follow additional procedures for identifying whether a student has a specific learning disability. Each school district shall develop procedures for the identification of students with specific learning disabilities which may include the use of:

(1) A severe discrepancy between intellectual ability and achievement; or

(2) A process based on the student's response to scientific, research-based intervention; or

(3) A combination of both within a school district, provided that the evaluation process used is the same for all students within the selected grades or buildings within the school district and is in accordance with district procedures.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 09-20-053, § 392-172A-03045, filed 10/1/09, effective 11/1/09. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-03045, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 16-02-034, filed 12/29/15, effective 1/29/16)

WAC 392-172A-03090 Definition of individualized education program. (1) The term IEP means a written statement for each student eligible for special education services that is developed, reviewed, and revised in a meeting in accordance with WAC 392-172A-03095 through 392-172A-03100, and that must include:

(a) A statement of the student's present levels of academic achievement and functional performance, including:

(i) How the student's disability affects the student's involvement and progress in the general education curriculum (the same curriculum as for nondisabled students); or

(ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

(b) (i) A statement of measurable annual goals, including academic and functional goals designed to:

(A) Meet the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general education curriculum; and

(B) Meet each of the student's other educational needs that result from the student's disability; and

(ii) For students who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives (+) for the areas in which the alternate assessment will be administered; and

(iii) Documentation that the parent(s) were informed, as part of the IEP process, that their student's academic achievement will be measured on alternate standards and how participation in an alternate assessment may delay or otherwise affect the student from completing the requirements for a regular high school diploma.

(c) A description of:

(i) How the district will measure the student's progress toward meeting the annual goals described in (b) of this subsection; and

(ii) When the district will provide periodic reports on the progress the student is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards);

(d) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, evaluation data, and input from IEP team members, to be provided to the student, or on behalf of the student, and a statement of the program modifications or supports for school personnel that will be provided to enable the student:

(i) To advance appropriately toward attaining the annual goals;

(ii) To be involved in and make progress in the general education curriculum, and to participate in extracurricular and other nonacademic activities; and

(iii) To be educated and participate with other students including nondisabled students in the activities described in this section;

(e) An explanation of the extent, if any, to which the student will not participate with nondisabled students in the general education classroom and extracurricular and nonacademic activities;

(f) (i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the student on state and district-wide assessments; and

(ii) If the IEP team determines that the student must take an alternate assessment instead of a particular regular state or district-wide assessment of student achievement, a statement of why:

(A) The student cannot participate in the regular assessment; and

(B) The particular alternate assessment selected is appropriate for the student;

(g) Extended school year services, if determined necessary by the IEP team for the student to receive FAPE.

(h) Behavioral intervention plan, if determined necessary by the IEP team for the student to receive FAPE.

(i) Emergency response protocols, if determined necessary by the IEP team for the student to receive FAPE, and the parent provides consent, as defined in WAC 392-172A-01040.

(j) The projected date for the beginning of the services and modifications described in (d) of this subsection, and the anticipated frequency, location, and duration of those services and modifications.

(k) Beginning not later than the first IEP to be in effect when the student turns sixteen, or younger if determined appropriate by the IEP team, and updated annually, thereafter, the IEP must include:

(i) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; ~~(and)~~

(ii) The transition services including courses of study needed to assist the student in reaching those goals; and

(iii) A description of how the postsecondary goals and transition services align with the high school and beyond plan.

(l) Transfer of rights at age of majority. Beginning not later than one year before the student reaches the age of eighteen, the IEP must include a statement that the student has been informed of the student's rights under the act, if any, that will transfer to the student on reaching the age of majority.

(m) The school district's procedures for notifying a parent regarding the use of isolation, restraint, or a restraint device as required by RCW 28A.155.210.

(2) Construction. Nothing in this section shall be construed to require:

(a) Additional information be included in a student's IEP beyond what is explicitly required by the federal regulations implementing the act or by state law; or

(b) The IEP team to include information under one component of a student's IEP that is already contained under another component of the student's IEP.

[Statutory Authority: RCW 28A.155.090, 42 U.S.C. 1400 et seq. and 34 C.F.R. Part 300. WSR 16-02-034, § 392-172A-03090, filed 12/29/15, effective 1/29/16. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-03090, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-03095 IEP team membership. (1) School districts must ensure that the IEP team for each student eligible for special education services includes:

- (a) The parents of the student;
- (b) Not less than one general education teacher of the student if the student is, or may be, participating in the general education environment;
- (c) Not less than one special education teacher of the student, or where appropriate, not less than one special education provider of the student;
- (d) A representative of the public agency who:
 - (i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students eligible for special education services;
 - (ii) Is knowledgeable about the general education curriculum; and
 - (iii) Is knowledgeable about the availability of resources of the school district.
- (e) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in (b) through (e) of this subsection;
- (f) At the discretion of the parent or the school district, other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate; and
- (g) Whenever appropriate, the student.

(2) (a) The student must be invited to the IEP team meeting when the purpose of the meeting will be the consideration of the postsecondary goals for the student and the transition services needed to assist the student in reaching those goals.

(b) If the student does not attend the IEP team meeting, the school district must take other steps to ensure that the student's preferences and interests are considered.

(c) To the extent appropriate, with the consent of the parents or a student who has reached the age of majority, the public agency must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

(3) The determination of the knowledge or special expertise of any individual invited pursuant to subsection (1)(f) of this section must be made by the party who invited the individual to be a member of the IEP team.

(4) A school district may designate one of the members of the IEP team identified in subsection (1)(b), (c), or (e) of this section to also serve as the district representative, if the criteria in subsection (1)(d) of this section are satisfied.

(5) (a) A school district member of the IEP team is not required to attend a meeting, in whole or in part, if the parent of a student eligible for special education services and the school district agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

(b) A member of the IEP team described in (a) of this subsection may be excused from attending an IEP team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if:

(i) The parent, in writing, and the public agency consent to the excusal; and

(ii) The member submits written input into the development of the IEP prior to the meeting and provides the input to the parent and other IEP team members.

(6) In the case of a student who was previously served under Part C of the act, an invitation to the initial IEP team meeting must, at the request of the parent, be sent to the Part C service coordinator or other representatives as specified by the state lead agency for Part C to assist with the smooth transition of services.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-03095, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-03100 Parent participation. A school district must ensure that one or both of the parents of a student eligible for special education services are present at each IEP team meeting or are afforded the opportunity to participate, including:

(1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and

(2) Scheduling the meeting at a mutually agreed on time and place.

(3) The notification required under subsection (1) of this subsection must:

(a) Indicate the purpose, time, and location of the meeting and who will be in attendance; (~~and~~)

(b) Inform the parents about the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the student, and participation of the Part C service coordinator or other designated representatives of the Part C system as specified by the state lead agency for Part C at the initial IEP team meeting for a child previously served under Part C of IDEA; and

(c) Include whatever action is necessary to ensure that the parent understands the notification being provided including, but not limited to, providing the notification in writing in a parent's native language when necessary for the parent's understanding and arranging for an interpreter for parents who are deaf or hard of hearing or whose native language is other than English.

(4) Beginning not later than the first IEP to be in effect when the student turns sixteen, or younger if determined appropriate by the IEP team, the notice also must:

(a) Indicate that a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the student and that the agency will invite the student; and

(b) Identify any other agency that (~~will be invited to send a representative~~) may be responsible for providing or paying for transition services and request consent as defined in WAC 392-172A-01040 from the parent/adult student to invite a representative from the outside agency to the IEP meeting.

(5) If neither parent can attend an IEP team meeting, the school district must use other methods to ensure parent participation, including video or telephone conference calls.

(6) A meeting may be conducted without a parent in attendance if the school district is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as:

(a) Detailed records of telephone calls made or attempted and the results of those calls;

(b) Copies of correspondence sent to the parents and any responses received; and

(c) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(7) The school district must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting ~~((7))~~ including, but not limited to:

(a) Notifying parents in advance in the parent's native language of the availability of interpretation and translation services at no cost to the parents;

(b) Arranging for an interpreter for parents ((with deafness)) who are deaf or hard of hearing or whose native language is other than English; and

(c) Documenting the language in which families prefer to communicate and whether a qualified interpreter for the student's family was provided in accordance with RCW 28A.155.230.

(8) The school district must give the parent a copy of the student's IEP at no cost to the parent.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-03100, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 17-23-054, filed 11/9/17, effective 12/10/17)

WAC 392-172A-03105 When IEPs must be in effect. (1) At the beginning of each school year, each school district must have an IEP in effect for each student eligible for special education services that it is serving through enrollment in the district.

(2) For an initial IEP, a school district must ensure that:

(a) The school district holds a meeting to develop the student's IEP within thirty days of a determination that the student is eligible for special education and related services; and

(b) As soon as possible following development of the IEP, special education and related services are made available to the student in accordance with the student's IEP.

(3) Each school district must ensure that:

(a) The student's IEP is accessible to each general education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and

(b) Each teacher and provider described in (a) of this subsection is informed in a timely manner of:

(i) His or her specific responsibilities related to implementing the student's IEP; and

(ii) The specific accommodations, modifications, and supports that must be provided for the student in accordance with the IEP.

(4) If a student eligible for special education services transfers from one school district to another school district within Washington state and had an IEP that was in effect in the previous school district, the new school district, in consultation with the parents, must provide FAPE to the student including services comparable to those described in the student's IEP, until the new school district either:

(a) Adopts the student's IEP from the previous school district;

or

(b) Develops and implements a new IEP that meets the applicable requirements in WAC 392-172A-03090 through 392-172A-03110.

(5) If a student eligible for special education services transfers from a school district located in another state to a school district within Washington state and had an IEP that was in effect in the previous school district, the new school district, in consultation with the parents, must provide FAPE to the student including services comparable to those described in the student's IEP, until the new school district:

(a) Conducts an evaluation to determine whether the student is eligible for special education services in Washington state, if the school district determines an evaluation is necessary to establish eligibility requirements under Washington state standards; and

(b) Develops and implements a new IEP, if appropriate, that meets the applicable requirements in WAC 392-172A-03090 through 392-172A-03110.

(6) To facilitate the transition for a student described in subsections (4) and (5) of this section:

(a) The new school in which the student enrolls must take reasonable steps to promptly obtain the student's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the student, from the school district in which the student was previously enrolled, pursuant to RCW 28A.225.330 and consistent with applicable Family Education Rights and Privacy Act (FERPA) requirements; and

(b) The school district in which the student was enrolled must take reasonable steps to promptly respond to the request from the new school district, pursuant to RCW 28A.225.330 and applicable FERPA requirements.

[Statutory Authority: RCW 28A.155.090. WSR 17-23-054, § 392-172A-03105, filed 11/9/17, effective 12/10/17. Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 13-20-034, § 392-172A-03105, filed 9/24/13, effective 10/25/13. Statutory Authority: RCW 28A.155.090, 20 U.S.C. 1400 (c) (12) (C), 20 U.S.C. 1401 (3) (A) (i), and 20 U.S.C. 1401 (30) (C). WSR 11-06-052, § 392-172A-03105, filed 3/1/11, effective 4/1/11. Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 09-20-053, § 392-172A-03105, filed 10/1/09, effective 11/1/09. Statutory Authority: RCW 28A.155.090 (7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-03105, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 16-02-034, filed 12/29/15, effective 1/29/16)

WAC 392-172A-03110 Development, review, and revision of IEP.

- (1) In developing each student's IEP, the IEP team must consider:
- (a) The strengths of the student;
 - (b) The concerns of the parents for enhancing the education of their student;
 - (c) The results of the initial or most recent evaluation of the student; and
 - (d) The academic, developmental, and functional needs of the student.
- (2) (a) When considering special factors unique to a student, the IEP team must:
- (i) Consider the use of positive behavioral interventions and supports, to address behavior, in the case of a student whose behavior impedes the student's learning or that of others; and
 - (ii) Consider the language needs of the student as those needs relate to the student's IEP, for a student with limited English proficiency;
 - (iii) In the case of a student who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the student's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the student's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the student;
 - (iv) Consider the communication needs of the student, and in the case of a student who is deaf or hard of hearing, consider the student's language and communication needs, opportunities for direct communications with peers and professional personnel in the student's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the student's language and communication mode; and
 - (v) Consider whether the student needs assistive technology devices and services.
- (b) A general education teacher of a student eligible for special education services, as a member of the IEP team, must, to the extent appropriate, participate in the development of the student's IEP, including the determination of:
- (i) Appropriate positive behavioral interventions and supports for the student; and
 - (ii) Supplementary aids and services, program modifications, and support for school personnel consistent with WAC 392-172A-01185.
- (c) After the annual IEP team meeting for a school year, the parent of a student eligible for special education services and the school district may agree not to convene an IEP team meeting for the purposes of making changes to the IEP, and instead may develop a written document to amend or modify the student's current IEP. If changes are made to the student's IEP the school district must ensure that the student's IEP team is informed of those changes and that other providers responsible for implementing the IEP are informed of any changes that affect their responsibility to the student, consistent with WAC 392-172A-03105(3).
- (d) Changes to the IEP may be made either by the entire IEP team at an IEP team meeting, or as provided in (c) of this subsection, by amending the IEP rather than by redrafting the entire IEP. Upon re-

quest, a parent must be provided with a revised copy of the IEP with the amendments incorporated.

(e) To the extent possible, the school districts must encourage the consolidation of reevaluation meetings and other IEP team meetings for the student.

(3) Each public agency must ensure that, subject to subsections (4) and (5) of this section the IEP team:

(a) Reviews the student's IEP periodically, but not less than annually, to determine whether the annual goals for the student are being achieved; and

(b) Revises the IEP, as appropriate, to address:

(i) Any lack of expected progress toward the annual goals described in WAC 392-172A-03090 (1)(b) and in the general education curriculum, if appropriate;

(ii) The results of any reevaluations;

(iii) Information about the student provided to, or by, the parents, as described under WAC 392-172A-03025;

(iv) The student's anticipated needs; or

(v) Other matters.

(4) In conducting a review of the student's IEP, the IEP team must consider the special factors described in subsection (2)(a) of this section.

(5) A general education teacher of the student, as a member of the IEP team, must, consistent with subsection (2)(b) of this section, participate in the review and revision of the IEP of the student.

(6)(a) If a participating agency, other than the school district, fails to provide the transition services described in the IEP in accordance with WAC 392-172A-03090 (1)(j), the school district must reconvene the IEP team to identify alternative strategies to meet the transition objectives for the student set out in the IEP.

(b) Nothing in this chapter relieves any participating agency, including a state vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students eligible for special education services who meet the eligibility criteria of that agency.

(7)(a) The following requirements do not apply to students eligible for special education services who are convicted as adults under state law and incarcerated in adult prisons:

(i) The requirement that students eligible for special education services participate in district or statewide assessments.

(ii) The requirements related to transition planning and transition services, if the student's eligibility for special education services will end because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

(b)(i) Subject to (b)(ii) of this subsection, the IEP team of a student with a disability who is convicted as an adult under state law and incarcerated in an adult prison may modify the student's IEP or placement if the state has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

(ii) Contents of the IEP and LRE (least restrictive environment) requirements do not apply with respect to the modifications described in (b)(i) of this subsection.

[Statutory Authority: RCW 28A.155.090, 42 U.S.C. 1400 et seq. and 34 C.F.R. Part 300. WSR 16-02-034, § 392-172A-03110, filed 12/29/15, effective 1/29/16. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C.

1400 et. seq. WSR 07-14-078, § 392-172A-03110, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-03115 Educational placements. Consistent with WAC 392-172A-05000 (3) (a), each school district must ensure that the parents of each student eligible for special education services are members of any group that makes decisions on the educational placement of the student.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-03115, filed 6/29/07, effective 7/30/07.]

~~((STUDENTS IN PRIVATE SCHOOLS))~~

~~((Students Eligible for Special Education Enrolled by Their Parents in Private Schools))~~ STUDENTS ELIGIBLE FOR SPECIAL EDUCATION SERVICES ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOLS

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-04000 Definition of parentally placed private school students. Parentally placed private school students means students eligible for special education services enrolled by their parents in approved, nonprofit private, including religious, elementary or secondary schools. It does not include students receiving home-based instruction under RCW 28A.225.010(4) or students placed by a school district in a nonpublic agency for the provision of FAPE.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-04000, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-04005 Child find for parentally placed private school students eligible for special education services. (1) Each school district must locate, identify, and evaluate all students who may be eligible for special education services who are enrolled by their parents in approved, nonprofit private, including religious, elementary and secondary schools located in the school district, in accordance with general child find procedures and subsections (2) through (5) of this section.

(2) The child find process must be designed to ensure:

(a) The equitable participation of parentally placed private school students; and

(b) An accurate count of those students.

(3) In carrying out the requirements of this section, the school district must undertake activities similar to the activities undertaken for the school district's public school students.

(4) The cost of carrying out the child find requirements in this section, including individual evaluations, may not be considered in determining if the school district has met its proportional share obligation under WAC 392-172A-04015.

(5) The child find process must be completed in a time period comparable to that for students attending public schools in the school district, for both initial evaluations and reevaluations.

(6) Each school district in which approved, nonprofit private, including religious, elementary schools and secondary schools are located must include parentally placed private school students who reside in another state but attend the private school located within the school district boundaries.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-04005, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-04010 Provision of services for parentally placed private school students eligible for special education services. (1) In addition to the provisions addressed in this section, parents who have placed their children in a for profit or nonprofit private school are entitled to enroll their children part-time in their resident district for any course, activity or ancillary service, not provided by the private school under chapter 392-134 WAC and pursuant to WAC 392-172A-01135. Parents who elect to enroll part-time in their resident district in order to receive special education and/or related services are served through an IEP and are counted for federal and state special education reimbursement.

(2) To the extent consistent with the number and location of students eligible for special education services who are enrolled by their parents in approved, nonprofit private, including religious, elementary and secondary schools located in the school district boundaries, and who are not part-time enrolled for special education services under chapter 392-134 WAC, districts must allow for the participation of those students by providing them with special education and

related services, including direct services determined in accordance with WAC 392-172A-04035.

(3) In accordance with subsection (2) of this section and WAC 392-172A-04035 through 392-172A-04070, a services plan must be developed and implemented for each nonprofit private school student eligible for special education services who has been designated by the school district to receive special education and related services.

(4) Each school district must maintain in its records, and provide to the OSPI, the following information related to parentally placed nonprofit private school students:

(a) The number of students evaluated, including initial evaluations and reevaluations;

(b) The number of students determined eligible for special education services; and

(c) The number of students served through a services plan.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-04010, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 09-20-053, filed 10/1/09, effective 11/1/09)

WAC 392-172A-04015 Expenditures. (1) To meet the requirement of WAC 392-172A-04010(2), each school district must make available the following amounts for providing special education and related services, including direct services to parentally placed nonprofit private school students eligible for special education services.

(a) For students eligible for special education services aged three through twenty-one, an amount that is the same proportion of the school district's total subgrant under section 611(f) of the act as the number of private school students eligible for special education services aged three through twenty-one who are enrolled by their parents in approved, nonprofit private, including religious, elementary schools and secondary schools located in the school district, is to the total number of students eligible for special education services in its jurisdiction aged three through twenty-one.

(b) (i) For children aged three through five, an amount that is the same proportion of the school district's total subgrant under section 619(g) of the act as the number of parentally placed nonprofit private school students eligible for special education services aged three through five who are enrolled by their parents in ((a)) ap- proved, nonprofit private, including religious, elementary schools located in the school district, is to the total number of students eligible for special education services in its jurisdiction aged three through five.

(ii) As described in (b) (i) of this subsection, students aged three through five are considered to be parentally placed private school students enrolled by their parents in private, including religious, elementary schools, if they are enrolled in ((a)) an approved, nonprofit private school at the kindergarten level or above.

(c) If a school district has not expended all of the funds for equitable services described in (a) and (b) of this subsection by the end of the fiscal year for which Congress appropriated the funds, the remaining funds must be obligated for special education and related services to parentally placed nonprofit private school students eligi-

ble for special education services during a carry-over period of one additional year.

(2) In calculating the proportionate amount of federal funds to be provided for parentally placed nonprofit private school students eligible for special education services, the school district, after timely and meaningful consultation with representatives of approved, nonprofit private schools under WAC 392-172A-04020, must conduct a thorough and complete child find process to determine the number of parentally placed students eligible for special education services attending nonprofit private schools located in the school district.

(3) (a) After timely and meaningful consultation with representatives of parentally placed nonprofit private school students eligible for special education services, school districts must:

(i) Determine the number of parentally placed private school students eligible for special education services attending approved, nonprofit private schools located in the school district; and

(ii) Ensure that the count is conducted on any date between October 1 and December 1, inclusive, of each year.

(b) The count must be used to determine the amount that the school district must spend on providing special education and related services to parentally placed nonprofit private school students eligible for special education services in the next subsequent fiscal year.

(4) State and local funds may supplement and in no case supplant the proportionate amount of federal funds required to be expended for parentally placed nonprofit private school students eligible for special education services to the extent consistent with state law.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 09-20-053, § 392-172A-04015, filed 10/1/09, effective 11/1/09. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-04015, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-04020 Consultation. To ensure timely and meaningful consultation, a school district must consult with private school representatives and representatives of parents of parentally placed nonprofit private school students eligible for special education services during the design and development of special education and related services for the students regarding the following:

(1) The child find process, including:

(a) How parentally placed private school students suspected of having a disability can participate equitably; and

(b) How parents, teachers, and private school officials will be informed of the process.

(2) The determination of the proportionate share of federal funds available to serve parentally placed nonprofit private school students eligible for special education services including the determination of how the district calculated the proportionate share of those funds.

(3) The consultation process among the school district, private school officials, and representatives of parents of parentally placed private school students eligible for special education services, including how the process will operate throughout the school year to ensure that parentally placed students eligible for special education

services identified through the child find process can meaningfully participate in special education and related services.

(4) How, where, and by whom special education and related services will be provided for parentally placed private school students eligible for special education services, including a discussion about:

(a) The types of services, including direct services and alternate service delivery mechanisms; and

(b) How special education and related services will be apportioned if funds are insufficient to serve all parentally placed private school students; and

(c) How and when those decisions will be made.

(5) How, if the school district disagrees with the views of the private school officials on the provision of services or the types of services, the school district will provide to the private school officials a written explanation of the reasons why the school district chose not to provide services directly or through a contract.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-04020, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-04025 Written affirmation. (1) When timely and meaningful consultation has occurred, the school district must obtain a written affirmation signed by the representatives of participating nonprofit private schools after timely and meaningful consultation.

(2) If the representatives do not provide the affirmation within a reasonable period of time, the school district must forward the documentation of the consultation process to the OSPI.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-04025, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-04030 Compliance with procedures for consultation.

(1) A private school official has the right to submit a complaint to the OSPI, special education (~~section~~) division that the school district:

(a) Did not engage in consultation that was meaningful and timely; or

(b) Did not give due consideration to the views of the private school official.

(2) (a) If the private school official wishes to submit a complaint, the official must provide to the OSPI special education (~~section~~) division, the basis of the noncompliance by the school district with the applicable private school provisions in this part; and

(b) The school district must forward the appropriate documentation to OSPI.

(3) If the private school official is dissatisfied with the decision of the OSPI, the official may submit a complaint to the Secretary

of the United States Department of Education by providing the information on noncompliance described in subsections (1) and (2) of this section and the OSPI must forward the appropriate documentation to the secretary.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-04030, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-04035 Determination of equitable services. (1) A parentally placed private school student does not have an individual right to receive some or all of the special education and related services that the student would receive if enrolled full- or part-time in a public school.

(2) Decisions about the services that will be provided to parentally placed private school students eligible for special education ((disabilities)) services under WAC 392-172A-04010 through 392-172A-04070 must be made in accordance with subsection (4) of this section and the consultation process.

(3) The school district must make the final decisions with respect to the services to be provided to eligible parentally placed private school students eligible for special education services.

(4) If a student eligible for special education services is enrolled in a religious or other private school by the student's parents and will receive special education or related services from a school district, the school district must:

(a) Initiate and conduct meetings to develop, review, and revise a services plan for the student; and

(b) Ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the school district shall use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-04035, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 17-23-054, filed 11/9/17, effective 12/10/17)

WAC 392-172A-04040 Equitable services provided. (1) The services provided to parentally placed nonprofit private school students eligible for special education services must be provided by personnel meeting the same standards as personnel providing services in the public schools.

(2) Parentally placed private school students eligible for special education services may receive a different amount of services than students eligible for special education services attending public schools.

(3) Each parentally placed private school student eligible for special education services who has been designated to receive services

must have a services plan that describes the specific special education and related services that the school district will provide in light of the services that the school district has determined, it will make available to parentally placed private school students eligible for special education services.

(4) The services plan must, to the extent appropriate:

(a) Meet the requirements of WAC 392-172A-03090, with respect to the services provided; and

(b) Be developed, reviewed, and revised consistent with WAC 392-172A-03090 through 392-172A-03110.

(5) The provision of services must be provided:

(a) By employees of a school district or ESD; or

(b) Through contract by the school district with an individual, association, agency, organization, or other entity.

(6) Special education and related services provided to parentally placed nonprofit private school students eligible for special education services, including materials and equipment, must be secular, neutral, and nonideological.

[Statutory Authority: RCW 28A.155.090. WSR 17-23-054, § 392-172A-04040, filed 11/9/17, effective 12/10/17. Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 09-20-053, § 392-172A-04040, filed 10/1/09, effective 11/1/09. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-04040, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 09-20-053, filed 10/1/09, effective 11/1/09)

WAC 392-172A-04045 Location of services and transportation. (1)

Services to parentally placed nonprofit private school students eligible for special education services may be provided on the premises of private schools.

(2) If necessary for the student to benefit from or participate in the services provided, a parentally placed private school student eligible for special education services must be provided transportation:

(a) From the student's school or the student's home to a site other than the private school; and

(b) From the service site to the private school, or to the student's home, depending on the timing of the services.

(3) School districts are not required to provide transportation from the student's home to the private school.

(4) The cost of the transportation described in subsection (2) of this section may be included in calculating whether the school district has met its proportional share requirement.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 09-20-053, § 392-172A-04045, filed 10/1/09, effective 11/1/09. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-04045, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-04055 Requirement that funds not benefit a private school. Public funds provided and property derived from those funds shall not benefit any private school or agency.

A school district must use funds provided under the act to meet the special education and related services needs of students enrolled in nonprofit private schools, but not for:

- (1) The needs of a private school; or
- (2) The general needs of the students enrolled in the private school.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-04055, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-04080 Applicability and authorization. (1) The provisions of WAC 392-172A-04080 through 392-172A-04095 apply to students eligible for special education services who have been placed in or referred to ((a)) an in-state private elementary or secondary school or facility, or placed in or referred to a public or private out-of-state elementary or secondary school or facility meeting non-public agency (NPA) approval by the student's school district as a means of providing special education and related services when the school district cannot provide an appropriate education for the student within the district.

(2) (a) School districts are also authorized to (~~enter into interdistrict agreements with other school districts pursuant to chapter 392-135 WAC or~~) contract with other public and private agencies under WAC 392-121-188 to provide special education or related services, or both to eligible students when the private or public agency does not meet the criteria for nonpublic agencies under WAC 392-172A-04090 and 392-172A-04095, but the school district determines that the private or public agency can provide the student with a free appropriate public education (FAPE).

(b) When a district contracts with other public or private agencies to provide special education or related services or both, under subsection (2) (a) of this section, the school district shall notify in writing the OSPI special education division of its intent to serve a student under this section and ensure that it follows the requirements under WAC 392-172A-04085.

(3) The provisions of this section do not apply to the authority of school districts to enter into interdistrict agreements with other Washington state school districts pursuant to chapter 392-135 WAC.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 13-20-034, § 392-172A-04080, filed 9/24/13, effective 10/25/13. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-04080, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 17-23-054, filed 11/9/17, effective 12/10/17)

WAC 392-172A-04085 Responsibility of the school district. (1) A school district that places a student eligible for special education services with a nonpublic agency or with another private or public agency under WAC 392-172A-04080(2) for special education and related services shall develop a written contract (~~or interdistrict agreement which will~~) which must include, but not be limited to, the following elements:

- (a) The names of the parties involved;
- (b) The name(s) of the student(s);
- (c) The location(s) and setting(s) of the services to be provided;
- (d) A description of services provided, program administration and supervision, including access to state learning standards;
- (e) The charges and reimbursement including billing and payment procedures;
- (f) The total contract cost;
- (g) A description of the district responsibility and process of data collection and reporting for the student(s), including the data required under IDEA, restraint or isolation (RCW 28A.600.485) reports to parents and the OSPI, and school discipline;
- (h) Assurance that the requirements of WAC 392-172A-02105 through 392-172A-02110 are met (including requirements for parental consent, notification, and reporting);
- (i) Assurance that the agency will notify the school district and OSPI of program changes within the agency that may affect the agency's ability to contract or any complaints against the agency regarding services to students eligible for special education services; and
- (j) Any other contractual elements including those identified in WAC 392-121-188 that may be necessary to assure compliance with state and federal rules.

(2) Each school district must ensure that a student eligible for special education services placed in or referred to a nonpublic agency under WAC 392-172A-04080(1) or with another private or public agency under WAC 392-172A-04080(2) is provided special education and related services:

- (a) In conformance with an IEP developed by the school district that meets the requirements of this chapter; and
- (b) At no cost to the parents.

(3) Each school district remains responsible for ensuring that the student (~~shall be~~) is provided (~~with a~~) FAPE.

(4) The school district remains responsible for evaluations and IEP meetings for the student. If the school district requests that the nonpublic agency conduct evaluations or IEP meetings, the school district will ensure that all applicable requirements of Part B of the act are met.

(5) The student (~~has~~) retains all of the rights of a student eligible for special education services who is served within the school district.

(6) The student must be provided with an opportunity to participate in state and district assessments.

(7) The student must be provided with an opportunity to fulfill the requirements to receive a Washington state diploma.

[Statutory Authority: RCW 28A.155.090. WSR 17-23-054, § 392-172A-04085, filed 11/9/17, effective 12/10/17. Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 13-20-034, § 392-172A-04085, filed 9/24/13, effective 10/25/13. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-04085, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-04090 Approval of nonpublic agencies. (1) The school district shall notify the special education (~~(section)~~) division of the OSPI, in writing, of their intent to serve a student through contract with a nonpublic agency.

(2) The school district and the nonpublic agency will review the requirements for approval and complete the application for nonpublic agency approval. In addition, the school district shall conduct an on-site visit of the nonpublic agency.

(3) Upon review of the completed application which includes the results of the on-site visit, the OSPI may conduct an independent on-site visit, if appropriate, and will determine whether the application will be approved or disapproved.

(4) The OSPI makes information regarding currently approved nonpublic agencies available on its website.

(5) School districts shall ensure that an approved nonpublic agency is able to provide the services required to meet the unique needs of any student being placed according to the provisions of WAC 392-172A-04080 through 392-172A-04095.

(6) Private schools or facilities located in other states must first be approved by the state education agency of the state in which the educational institution is located to provide FAPE to students referred by school districts. Documentation of the approval shall be provided to OSPI. In the event the other state does not have a formal approval process, the private school or facility shall meet the requirements for approval in this state under the provisions of this chapter.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 13-20-034, § 392-172A-04090, filed 9/24/13, effective 10/25/13. Statutory Authority: RCW 28A.155.090, 20 U.S.C. 1400 (c) (12) (C), 20 U.S.C. 1401 (3) (A) (i), and 20 U.S.C. 1401 (30) (C). WSR 11-06-052, § 392-172A-04090, filed 3/1/11, effective 4/1/11. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-04090, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-04095 Application requirements for nonpublic agency approval. (1) A nonpublic agency must meet the following requirements to be approved:

(a) The nonpublic agency is approved by the state board as a private school, and has at least one certificated teacher with a special education endorsement, other certificated teachers who meet state standards, and related services staff meeting state licensure requirements for their profession. If the education program is associated with a facility, such as a hospital mental health, or treatment facility, and the program is not an approved private school, the program must comply with the licensing requirements for the facility, such as the department of health, and the facility will assure that it has teachers who meet certification requirements developed by the professional educators standards board, related services staff meeting state licensure requirements for their profession as applicable, and at least one certificated teacher with a special education endorsement.

(b) The private school or facility meets applicable fire codes of the local or state fire marshal, including inspections and documentation of corrections of violation.

(c) The private school or facility meets applicable health and safety standards.

(d) The private school or facility can demonstrate through audits that it is financially stable, and has accounting systems that allow for separation of school district funds.

(e) The private school or facility has procedures in place that address staff hiring and evaluation including:

(i) Checking personal and professional references for employees;

(ii) Criminal background checks in accordance with state rules for public school employees;

(iii) Regular scheduling of staff evaluations of the competencies that enable the staff to work with students.

(f) The private school or facility has a policy of nondiscrimination.

(g) The private school or facility meets state education rules for hours and days of instruction.

(h) The private school or facility understands and has procedures in place to protect the procedural safeguards of the students eligible for special education services and their families.

(2) After approval as a nonpublic agency, the private school or facility must provide annual review information to the OSPI and school districts with whom they contract the following two years. The nonpublic agency must complete a renewal application, including scheduling a site visit by a contracting school district every third year following approval.

(3) OSPI may modify, substitute, add, or waive as necessary any requirements for nonpublic agency approval under this section, and provide an indication of a change to the approval requirements for any nonpublic agency on the list of currently approved nonpublic agencies available to the public maintained on the OSPI website.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 13-20-034, § 392-172A-04095, filed 9/24/13, effective 10/25/13. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-04095, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-04100 Notification of nonpublic agency program changes. (1) An approved nonpublic agency must notify any school districts with whom they contract and the OSPI of any major program changes that occur during the approval period, including adding additional services or changing the type of programs available to students. OSPI will review these program changes with affected districts to determine whether the nonpublic agency remains able to provide contracted services to public school students eligible for special education services.

(2) An approved nonpublic agency must promptly notify any school districts with whom they contract and the OSPI of any conditions that would affect their ability to continue to provide contracted services to public school students eligible for special education services.

(3) An approved nonpublic agency must promptly notify any school districts with whom they contract and the OSPI of any complaints it receives regarding services to students.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-04100, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-04105 Suspension, revocation or refusal to renew approval. OSPI may suspend, revoke or refuse to renew its approval of a nonpublic agency to contract with school districts for the provision of special education services if the nonpublic agency:

(1) Fails to maintain the approval standards in WAC 392-172A-04090 through 392-172A-04100;

(2) Violates the rights of students eligible for special education services; or

(3) Refuses to implement any corrective actions ordered by the OSPI.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-04105, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-04110 State responsibility for nonpublic agency placements. In implementing the nonpublic agency provisions of WAC 392-172A-04080 through 392-172A-04105, the state shall:

(1) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;

(2) Disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a (~~special education~~) student eligible for special education services; and

(3) Provide an opportunity for those private schools and facilities to participate in the development and revision of state standards that apply to them.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-04110, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 11-06-052, filed 3/1/11, effective 4/1/11)

WAC 392-172A-04115 Placement of students when FAPE is at issue.

(1) If a student eligible for special education services has a FAPE available and the parents choose to place the student in a private school or facility, the school district is not required by this chapter to pay for the student's education, including special education and related services, at the private school or facility. However, the school district shall include that student in the population whose needs are addressed consistent with WAC 392-172A-04000 through 392-172A-04070.

(2) Disagreements between the parents and a school district regarding the availability of a program appropriate for the student and the question of financial reimbursement are subject to the due process procedures at WAC 392-172A-05080 through 392-172A-05125.

(3) If the parents of a student, who previously received special education and related services under the authority of a school district, enroll the student in a private preschool, elementary or secondary school, or other facility without the consent of or referral by a school district or other public agency, a court or an administrative law judge may require a school district or other public agency to reimburse the parents for the cost of that enrollment if the court or administrative law judge finds that a school district or other public agency had not made a free appropriate public education available to the student in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the state standards that apply to education provided by a school district or other public agency.

(4) The cost of reimbursement may be reduced or denied if:

(a) (i) At the most recent individualized education program meeting that the parents attended prior to removal of the student from the public school, the parents did not inform the team that they were rejecting the placement proposed by a school district to provide a FAPE to their student, including stating their concerns and their intent to enroll their student in a private school at public expense; or

(ii) At least ten business days (including any holidays that occur on a business day) prior to the removal of the student from the public school, the parents did not give written notice to a school district of the information described in (a)(i) of this subsection; or

(b) Prior to the parents' removal of the student from the public school, a school district informed the parents, through the notice requirements described in this chapter, of its intent to evaluate the student (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the student available for the evaluation; or

(c) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

(5) Notwithstanding the notice requirement in subsection (4)(a)(i) of this section, the cost of reimbursement must not be reduced or denied for failure to provide the notice if:

(a) The school district prevented the parent from providing the notice; or

(b) The parent had not received the procedural safeguards containing notice of the requirement to notify a school district of the information required in subsection (4)(a)(i) of this section.

(6) An administrative law judge or court may, in its discretion, determine that the cost of reimbursement will not be reduced or denied for failure to provide the notice in subsection (4)(a)(i) of this section if:

(a) The parents are not literate or cannot write in English; or

(b) Compliance with subsection (4)(a)(i) of this section would likely result in serious emotional harm to the student.

[Statutory Authority: RCW 28A.155.090, 20 U.S.C. 1400 (c)(12)(C), 20 U.S.C. 1401 (3)(A)(i), and 20 U.S.C. 1401 (30)(C). WSR 11-06-052, § 392-172A-04115, filed 3/1/11, effective 4/1/11. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-04115, filed 6/29/07, effective 7/30/07.]

PROCEDURAL SAFEGUARDS

AMENDATORY SECTION (Amending WSR 17-23-054, filed 11/9/17, effective 12/10/17)

WAC 392-172A-05000 Opportunity to examine records. The parents of a student eligible for special education services must be afforded an opportunity to inspect and review all education records. Inspection and review of education records is provided consistent with WAC 392-172A-05180 through 392-172A-05245.

[Statutory Authority: RCW 28A.155.090. WSR 17-23-054, § 392-172A-05000, filed 11/9/17, effective 12/10/17. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-05000, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 17-23-054, filed 11/9/17, effective 12/10/17)

WAC 392-172A-05001 Parent participation in meetings. (1)(a) The parents of a student eligible for special education services must be afforded an opportunity to participate in meetings with respect to the

identification, evaluation, educational placement and the provision of FAPE to the student.

(b) Each school district must provide notice consistent with WAC 392-172A-03100 (1) and (3) to ensure that parents of students eligible for special education services have the opportunity to participate in meetings described in (a) of this subsection.

(c) A meeting does not include informal or unscheduled conversations involving school district personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that school district personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

(2)(a) Each school district must ensure that a parent of each student eligible for special education services is a member of any group that makes decisions on the educational placement of the parent's child.

(b) In implementing the requirements of (a) of this subsection, the school district must use procedures consistent with the procedures described in WAC 392-172A-03100 (1) through (3).

(c) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the school district must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.

(d) A placement decision may be made by a group without the involvement of a parent, if the school district is unable to obtain the parent's participation in the decision. In this case, the school district must have a record of its attempt to ensure their involvement.

(e) A parent of a student eligible for special education services may request permission to observe their student's current educational placement, and to observe any educational placement proposed or under consideration either by a parent or a group that makes decisions on the educational placement of the parent's child, in accordance with applicable school district policy and state law.

(3) When conducting IEP team meetings and placement meetings and in carrying out administrative matters such as scheduling, exchange of witness lists and status conferences for due process hearing requests, the parent and the district may agree to use alternative means of meeting participation such as video conferences and conference calls.

(4) For any meeting under this section, including meetings related to a student's IEP, school discipline, and truancy, in accordance with RCW 28A.155.230, each school district must take whatever action is necessary to ensure that the parent understands the proceedings of the meeting including, but not limited to:

(a) Notifying parents in advance in the parent's native language of the availability of interpretation and translation services at no cost to the parents;

(b) Arranging for an interpreter for parents who are deaf or hard of hearing or whose native language is other than English; and

(c) Documenting the language in which families prefer to communicate and whether a qualified interpreter for the student's family was provided.

(5) A parent may request consent to record meetings under this section, in accordance with applicable school district policies and state law. Any recording that is maintained by the school district is an "education record" within the meaning under the Family Educational Rights and Privacy Act, 34 C.F.R. Part 99.

[Statutory Authority: RCW 28A.155.090. WSR 17-23-054, § 392-172A-05001, filed 11/9/17, effective 12/10/17.]

AMENDATORY SECTION (Amending WSR 09-20-053, filed 10/1/09, effective 11/1/09)

WAC 392-172A-05005 Independent educational evaluation. (1) (a) Parents of a student eligible for special education services have the right under this chapter to obtain an independent educational evaluation of the student if the parent disagrees with the school district's evaluation subject to subsections (2) through (7) of this section.

(b) Each school district shall provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in subsection (7) of this section.

(c) For the purposes of this section:

(i) Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the education of the student in question; and

(ii) Public expense means that the school district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with this chapter.

(2) (a) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation conducted or obtained by the school district.

(b) A parent is entitled to only one independent educational evaluation at public expense each time the school district conducts an evaluation with which the parent disagrees.

(c) If a parent requests an independent educational evaluation at public expense consistent with (a) of this subsection, the school district must either:

(i) Initiate a due process hearing within fifteen days to show that its evaluation is appropriate; or

(ii) Ensure that an independent educational evaluation is provided at public expense without unnecessary delay, unless the school district demonstrates in a hearing under this chapter that the evaluation obtained by the parent did not meet agency criteria.

(3) If the school district initiates a hearing and the final decision is that the district's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(4) If a parent requests an independent educational evaluation, the school district may ask for the parent's reason why he or she objects to the school district's evaluation. However, the explanation by the parent may not be required and the school district must either provide the independent educational evaluation at public expense or initiate a due process hearing to defend the educational evaluation.

(5) If the parent obtains an independent educational evaluation at public or private expense, the results of the evaluation:

(a) Must be considered by the school district, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the student; and

(b) May be presented as evidence at a hearing under this chapter regarding that student.

(6) If an administrative law judge requests an independent educational evaluation as part of a due process hearing, the cost of the evaluation must be at public expense.

(7) (a) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the school district uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

(b) Except for the criteria described in (a) of this subsection, a school district may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 09-20-053, § 392-172A-05005, filed 10/1/09, effective 11/1/09. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-05005, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-05010 Prior notice and contents. (1) Written notice that meets the requirements of subsection (2) of this section must be provided to the parents of a student eligible for special education services, or referred for special education services a reasonable time before the school district:

(a) Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student; or

(b) Refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student.

(2) The notice required under this section must include:

(a) A description of the action proposed or refused by the agency;

(b) An explanation of why the agency proposes or refuses to take the action;

(c) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;

(d) A statement that the parents of a student eligible or referred for special education services have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;

(e) Sources for parents to contact to obtain assistance in understanding the procedural safeguards and the contents of the notice;

(f) A description of other options that the IEP team considered and the reasons why those options were rejected; and

(g) A description of other factors that are relevant to the agency's proposal or refusal.

(3) (a) The notice required under subsections (1) and (2) of this section must be:

(i) Written in language understandable to the general public; and
 (ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(b) If the native language or other mode of communication of the parent is not a written language, the school district must take steps to ensure:

(i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

(ii) That the parent understands the content of the notice; and

(iii) That there is written evidence that the requirements in (b) of this subsection have been met.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-05010, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-05015 Procedural safeguards notice. (1) School districts must provide a copy of the procedural safeguards that are available to the parents of a student eligible for special education services one time a school year, and:

(a) Upon initial referral or parent request for evaluation;

(b) Upon receipt of the first state complaint and receipt of the first due process complaint in a school year;

(c) When a decision is made to remove a student for more than ten school days in a year, and that removal constitutes a change of placement; and

(d) Upon request by a parent.

(2) A school district may place a current copy of the procedural safeguards notice on its internet website if a website exists.

(3) The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under this chapter that relate to:

(a) Independent educational evaluations;

(b) Prior written notice;

(c) Parental consent;

(d) Access to education records;

(e) An opportunity to present and resolve complaints through the due process hearing request and state complaint procedures, including:

(i) The time period in which to file a state complaint and due process hearing request;

(ii) The opportunity for the school district to resolve the due process hearing request; and

(iii) The difference between the due process hearing request and the state complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decision timelines, and relevant procedures;

(f) The availability of mediation;

(g) The student's placement during the pendency of any due process hearing;

(h) Procedures for students who are subject to placement in an interim alternative educational setting;

- (i) Requirements for unilateral placement by parents of students in private schools at public expense;
 - (j) Hearings on due process hearing requests, including requirements for disclosure of evaluation results and recommendations;
 - (k) Civil actions, including the time period in which to file those actions; and
 - (l) Attorneys' fees.
- (4) (a) The procedural safeguards notice must be:
- (i) Written in language understandable to the general public; and
 - (ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.
- (b) If the native language or other mode of communication of the parent is not a written language, the school district must take steps to ensure:
- (i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;
 - (ii) That the parent understands the content of the notice; and
 - (iii) That there is written evidence that the requirements in (b) of this subsection have been met.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-05015, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-05020 Electronic mail. A parent of a student eligible for special education services may elect to receive prior written notices, procedure safeguards notices and notices relating to due process hearing requests by an electronic mail communication, if the school district makes that option available.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-05020, filed 6/29/07, effective 7/30/07.]

STATE ((CITIZEN)) COMMUNITY COMPLAINT PROCEDURES

AMENDATORY SECTION (Amending WSR 17-23-054, filed 11/9/17, effective 12/10/17)

WAC 392-172A-05025 Procedures for filing a complaint. (1) An organization or individual, including an organization or individual from another state, may file with the OSPI((7)) special education ((section)) division, a written, signed complaint that the OSPI, or a subgrantee of the OSPI including, but not limited to, an ESD, school district, or other subgrantee is violating or has violated Part B of

the Individuals with Disabilities Education Act or regulations implementing the act.

(2) (a) A written complaint filed with OSPI will include:

(i) (A) A statement that the agency has violated or is violating one or more requirements of Part B of IDEA including the state and federal regulations implementing the act; or

(B) A statement that the school district is not implementing a mediation agreement or a resolution agreement;

(ii) The facts on which the statement is based;

(iii) The signature and contact information, including an address of the complainant; and

(iv) The name and address of the school district, or other agency subject to the complaint.

(b) If the allegations are with respect to a specific student the information must also include:

(i) The name and address of the student, or in the case of a homeless child or youth, contact information for the student;

(ii) The name of the school the student attends and the name of the school district;

(iii) A description of the nature of the problem of the student, including the facts relating to the problem; and

(iv) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

(c) The complainant must send a copy of the complaint to the agency serving the student at the same time the complainant files the complaint with OSPI. Complaints under this chapter are filed with the assistant superintendent of special education, OSPI.

(d) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received.

(e) The OSPI has developed a form for use by persons or organizations filing a complaint. Use of the form is not required, but the complaint must contain the elements addressed in (a) and (b) of this subsection.

[Statutory Authority: RCW 28A.155.090. WSR 17-23-054, § 392-172A-05025, filed 11/9/17, effective 12/10/17. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-05025, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-05030 Investigation of the complaint and decision.

(1) Upon receipt of a properly filed complaint, the OSPI shall send a copy of the complaint to the school district or other agency for their investigation of the alleged violations. A complaint against OSPI shall be investigated pursuant to WAC 392-172A-05040.

(2) The OSPI will provide the complainant the opportunity to submit additional information, either orally or in writing, about the allegations contained in the complaint. If the additional information contains new information, the OSPI may, in its discretion, either notify the district of the additional issues or inform the parent of the option to open a new complaint.

(3) The school district or other agency shall respond in writing to the OSPI with documentation of the investigation, no later than

((twenty)) seventeen calendar days after the date of receipt of the complaint.

(4) The response to the OSPI shall clearly state whether:

(a) The allegations contained in the complaint are denied and the basis for such denial; or

(b) The allegations are admitted and with proposed reasonable corrective action(s) deemed necessary to correct the violation.

(5) The OSPI will provide the complainant a copy of the school district's or other agency's response to the complaint and provide the complainant an opportunity to reply. If the complainant is not authorized to review personally identifiable information, that information will not be provided to the complainant.

(6) Upon review of all relevant information including, if necessary, information obtained through an independent on-site investigation by the OSPI, the OSPI will make an independent determination as to whether the school district or other public agency has or is violating a requirement of Part B of the act, the federal regulations implementing the act, this chapter, or whether the public agency is not implementing a mediation or resolution agreement.

(7) The OSPI shall issue a written decision to the complainant that addresses each allegation in the complaint including findings of fact, conclusions, and the reasons for the decision. The decision will be issued within sixty days after receipt of the complaint unless:

(a) Exceptional circumstances related to the complaint require an extension; or

(b) The complainant and school district or other agency agrees in writing to extend the time to use mediation or an alternative dispute resolution method.

(8) If the OSPI finds a violation, the decision will include any necessary corrective action to be undertaken and any documentation to be provided to ensure that the corrective action is completed. If the decision is that a school district or other public agency has failed to provide appropriate services, the decision will address:

(a) How to remediate the failure to provide those services, including, as appropriate, compensatory education, monetary reimbursement, or other corrective action appropriate to the needs of the student; and

(b) Appropriate future provision of services for all students eligible for special education services.

(9) Corrective action ordered by OSPI must be completed within the timelines established in the written decision, unless another time period is established through an extension of the timeline. If compliance by a school district or other public agency is not achieved pursuant to subsection (8) of this section, the OSPI will initiate fund withholding, fund recovery, or any other sanction deemed appropriate.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 13-20-034, § 392-172A-05030, filed 9/24/13, effective 10/25/13. Statutory Authority: RCW 28A.155.090, 20 U.S.C. 1400 (c) (12) (C), 20 U.S.C. 1401 (3) (A) (i), and 20 U.S.C. 1401 (30) (C). WSR 11-06-052, § 392-172A-05030, filed 3/1/11, effective 4/1/11. Statutory Authority: RCW 28A.155.090 (7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-05030, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-05035 ((Citizen)) Community complaints and due process hearings. (1) If a written complaint is received that is also the subject of a due process hearing under this chapter or contains multiple issues, of which one or more are part of that hearing, the OSPI must set aside any part of the complaint that is being addressed in the due process hearing, until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process hearing must be resolved using the time limit and procedures described in this section.

(2) If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties:

(a) The hearing decision is binding; and

(b) The OSPI must inform the complainant to that effect.

(3) A complaint alleging a school district's failure to implement a due process decision must be resolved by the OSPI.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-05035, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-05045 Informing ((citizens)) the public about complaint procedures. The OSPI shall inform parents and other interested individuals about the ((citizen)) community complaint procedures in this chapter. Specific actions to be taken by the superintendent of public instruction include:

(1) Widely disseminating copies of the state's procedures to parents and other interested individuals, including protection and advocacy agencies, parent training and information centers, independent living centers, and other appropriate entities;

(2) Posting information about the complaint procedures on the website;

(3) Conducting in-service training sessions on the complaint process through educational service districts; and

(4) Including information about the complaint procedures at statewide conferences.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-05045, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-05060 Mediation purpose—Availability. (1) The purpose of mediation is to offer both the parent and the school district an opportunity to resolve disputes and reach a mutually acceptable agreement concerning the identification, evaluation, educational

placement or provision of FAPE to the student through the use of an impartial mediator.

(2) Mediation is voluntary and requires the agreement of both parties. It may be terminated by either party at any time during the mediation process.

(3) Mediation cannot be used to deny or delay a parent's right to a due process hearing under this chapter, or to deny any other rights afforded under this chapter.

(4) Mediation services are provided by the OSPI at no cost to either party, including the costs of meetings described in WAC 392-172A-05075. To access the statewide mediation system, a request for mediation services may be made in writing or verbally to administrative agents for the OSPI. Written confirmation of the request shall be provided to both parties by an intake coordinator and a mediator shall be assigned to the case.

(5) The OSPI will provide mediation services for individuals whose primary language is not English or who use another mode of communication when requested unless it is clearly not feasible to do so. Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-05060, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-05085 Due process hearing request filing and response. (1) (a) To file a due process hearing request, the parent or the school district (party), or the attorney representing a party, must ~~((file))~~:

(i) Serve the request, which must remain confidential, directly with the other party; and

(ii) File a copy of the request via mail, fax, or electronically directly with the OSPI's designee, the office of administrative hearings, at the following:

Mail:

Office of Administrative Hearings

600 University Street, Suite 1500

Seattle, WA 98101-3126

Fax: 206-587-5135

Electronically: Successfully uploading documents through the filing portal operated by the office of administrative hearings.

~~(b) ((The party filing the due process hearing request must also mail or provide a copy of the due process hearing request directly to OSPI, Administrative Resources Section, Old Capitol Building, P.O. Box 47200, Olympia, WA 98504.))~~ Due process hearing timelines will begin upon receipt of the request by both the other party and the office of administrative hearings, whichever date is later.

(c) When a parent is filing a due process hearing request, the party to be served is the superintendent of the school district, or public agency responsible for the student.

(2) The due process hearing request required in subsection (1) of this section must include:

(a) The name of the student;

(b) The address of the residence of the student;

(c) The name of the school the student is attending, and the name of the district or public agency that is responsible for the student's special education program in the school;

(d) In the case of a homeless child or youth, available contact information for the student in addition to the information in (c) of this subsection;

(e) A description of the nature of the problem of the student related to the proposed or refused initiation or change, including facts relating to the problem; and

(f) A proposed resolution of the problem to the extent known and available to the party at the time.

(3) OSPI has developed a due process hearing request form to assist parents and school districts filing a due process hearing. Parents and school districts are not required to use this form, and may use the form, or another form or other document, so long as the form or document that is used, meets the requirements in subsection (2) of this section.

(4) A party may not have a hearing on a due process hearing request until the party, or the attorney representing the party, files a due process hearing request that meets the requirements of subsection (2) of this section.

(5) (a) The due process hearing request will be deemed sufficient unless the party (~~(receiving)~~) served with the due process hearing request notifies the administrative law judge and the other party in writing, within fifteen days of receipt of the due process hearing request, that the receiving party believes the due process hearing request does not meet the requirements in subsection (2) of this section.

(b) Within five days of receipt of notification that a due process hearing request is not sufficient, the administrative law judge must make a determination on the face of the due process hearing request of whether the request meets the requirements of subsection (2) of this section, and must immediately notify the parties in writing of that determination.

(6) A party may amend its due process hearing request only if:

(a) The other party consents in writing to the amendment and is given the opportunity to resolve the due process hearing request through a resolution meeting held pursuant to the procedures in WAC 392-172A-05090; or

(b) The administrative law judge grants permission, except that the administrative law judge may only grant permission to amend not later than five days before the due process hearing begins.

If a party is allowed to amend the due process hearing request under (a) or (b) of this subsection, the timelines for the resolution meeting in WAC 392-172A-05090 (2)(a) and the time period to resolve in WAC 392-172A-05090 (2)(b) begin again with the filing of the amended due process hearing request.

(7) (a) If the school district has not sent a prior written notice under WAC 392-172A-05010 to the parent regarding the subject matter contained in a parent's due process hearing request, the school must send the parent a response, within ten days of receiving the due process hearing request, that includes:

- (i) An explanation of why the agency proposed or refused to take the action raised in the due process hearing request;
 - (ii) A description of other options that the IEP team or evaluation group considered and the reasons why those options were rejected;
 - (iii) A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and
 - (iv) A description of the other factors that are relevant to the district's proposed or refused action.
- (b) A response by a school district under subsections (7) and (8) of this section shall not be construed to preclude the school district from asserting that the parent's due process hearing request was insufficient, where appropriate.
- (8) Except as provided in subsection (7)(a) of this section, the party receiving a due process hearing request must send the party a response that specifically addresses the issues raised in the due process hearing request within ten days of receiving the due process hearing request.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-05085, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-05090 Resolution process. (1)(a) Within fifteen days of receiving notice that a parent has ~~((filed))~~ served a due process hearing request ~~((with))~~ on the district and ~~((provided))~~ filed a copy of the due process request ~~((to the OSPI administrative resources section))~~ with the office of administrative hearings, and prior to the initiation of a due process hearing under WAC 392-172A-05100, the school district must convene a meeting with the parent and the relevant member or members of the IEP team who have specific knowledge of the facts identified in the due process hearing request and that:

- (i) Includes a representative of the school district who has decision-making authority on behalf of that district; and

- (ii) May not include an attorney of the school district unless the parent is accompanied by an attorney.

(b) The purpose of the meeting is for the parent of the child to discuss the due process hearing request, and the facts that form the basis of the request, so that the school district has the opportunity to resolve the dispute that is the basis for the due process hearing request.

(c) The meeting described in (a) of this subsection need not be held if:

- (i) The parent and the school district agree in writing to waive the meeting; or

- (ii) The parent and the school district agree to use the mediation process described in WAC 392-172A-05060.

(d) The parent and the school district determine the relevant members of the IEP team to attend the meeting.

(2)(a) If the school district has not resolved the due process hearing request to the satisfaction of the parent within thirty days

of the parent's filing of the due process hearing request under WAC 392-172A-05085, the due process hearing may occur.

(b) Except as provided in subsection (3) of this section, the timeline for issuing a final decision under WAC 392-172A-05105 begins at the expiration of this thirty-day period.

(c) Unless the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding (a) and (b) of this subsection, the failure of the parent filing a due process hearing request to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

(d) If the school district is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented using the procedures in WAC 392-172A-03100(6), the school district may, at the conclusion of the thirty-day period, request that an administrative law judge dismiss the parent's due process hearing request.

(e) If the school district fails to hold the resolution meeting within fifteen days as specified in subsection (1) of this section or fails to participate in the resolution meeting, the parent may seek the intervention of an administrative law judge to begin the due process hearing timeline.

(3) The forty-five day timeline for the due process hearing starts the day after one of the following events:

(a) Both parties agree in writing to waive the resolution meeting;

(b) After either the mediation or resolution meeting starts but before the end of the thirty-day period, the parties agree in writing that no agreement is possible;

(c) If both parties agree in writing to continue the mediation at the end of the thirty-day resolution period, but later, the parent or school district withdraws from the mediation process.

(4)(a) If a resolution to the dispute is reached at the meeting described in subsection (1)(a) and (b) of this section, the parties must execute a legally binding agreement that is:

(i) Signed by both the parent and a representative of the school district who has the authority to bind the district; and

(ii) Enforceable in any state court of competent jurisdiction or in a district court of the United States.

(b) If the parties execute an agreement pursuant this section, a party may void the agreement within three business days of the agreement's execution.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 13-20-034, § 392-172A-05090, filed 9/24/13, effective 10/25/13. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-05090, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-05100 Hearing rights. These hearing rights govern both due process hearings conducted pursuant to WAC 392-172A-05080 through 392-172A-05125 and hearings for disciplinary matters conducted pursuant to WAC 392-172A-05160 ((and ~~392-172A-05165~~)).

(1) Any party to a due process hearing has the right to:

(a) Be represented by counsel and accompanied and advised by individuals with special knowledge or training with respect to the problems of students eligible for special education services;

(b) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(c) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing (~~(, or two business days if the hearing is expedited pursuant to WAC 392-172A-05160)~~);

(d) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and

(e) Obtain written, or, at the option of the parents, electronic findings of fact and decisions.

(2) (a) At least five business days prior to a due process hearing conducted pursuant to this section, (~~(or two business days prior to a hearing conducted pursuant to WAC 392-172A-05165,)~~) each party must disclose to all other parties all evaluations completed by that date and the recommendations based on the offering party's evaluations that the party intends to use at the hearing.

(b) An administrative law judge may bar any party that fails to comply with (a) of this subsection from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(3) The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process hearing request unless the other party agrees otherwise.

(4) Either party may file a separate due process hearing request on an issue separate from a due process hearing request already filed.

(5) Parents involved in hearings must be given the right to:

(a) Have the student who is the subject of the hearing present;

(b) Open the hearing to the public; and

(c) Have the record of the hearing and the findings of fact and decisions described in subsection (1)(d) and (e) of this section provided to the parent at no cost.

(6) To the extent not modified by the hearing procedures addressed in this section, the timelines addressed in WAC 392-172A-05110, and the timelines and procedures for civil actions addressed in WAC 392-172A-05115, the general rules applicable for administrative hearings contained in chapter 10-08 WAC govern the conduct of the due process hearing.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 13-20-034, § 392-172A-05100, filed 9/24/13, effective 10/25/13; WSR 09-20-053, § 392-172A-05100, filed 10/1/09, effective 11/1/09. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-05100, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-05120 Attorneys' fees. (1) In any action or proceeding brought under 20 U.S.C. Sec. 1415 of the act, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to:

(a) The prevailing party who is the parent of a student eligible or referred for special education services;

(b) To a prevailing party who is a school district, or OSPI, against the attorney of a parent who files a due process request or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

(c) To a prevailing school district or OSPI against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

(2) (a) Funds under Part B of the act may not be used to pay attorneys' fees or costs of a party related to any action or proceeding under section 20 U.S.C. Sec. 1415 and 34 C.F.R. Secs. 300.500 through 300.599.

(b) Subsection (2) (a) of this section does not preclude a school district or OSPI from using funds under Part B of the act for conducting an action or proceeding under 20 U.S.C. Sec. 1415.

(3) (a) Fees awarded under subsection (1) of this section must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded.

(b) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under 20 U.S.C. Sec. 1415 for services performed after a written offer of settlement to a parent if:

(i) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than ten days before the proceeding begins;

(ii) The offer is not accepted within ten days; and

(iii) The court or administrative law judge finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

(c) Attorneys' fees may not be awarded relating to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial action.

(i) A resolution session meeting shall not be considered a meeting convened as a result of an administrative hearing or judicial action; or

(ii) An administrative hearing or judicial action for purposes of this section.

(4) Notwithstanding subsection (3) (b) of this section an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

(5) Except as provided in subsection (5) of this section, the court will reduce, accordingly, the amount of the attorneys' fees awarded under this section if the court finds that:

(a) The parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

(b) The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the commun-

ity for similar services by attorneys of reasonably comparable skill, reputation, and experience;

(c) The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

(d) The attorney representing the parent did not provide to the school district the appropriate information in the due process request notice in accordance with WAC 392-172A-06085(2).

(6) The provisions of subsection (4) of this section do not apply in any action or proceeding if the court finds that the school district unreasonably protracted the final resolution of the action or proceeding or there was a violation under the provisions of 20 U.S.C. Sec. 1415.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-05120, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 16-02-034, filed 12/29/15, effective 1/29/16)

WAC 392-172A-05125 Student's status during proceedings. (1)(a) Except for due process hearings involving special education discipline procedures, during the pendency of any administrative hearing or judicial proceeding regarding the due process hearing proceedings, the student involved in the hearing request must remain in his or her current educational placement, unless the school district and the parents of the child agree otherwise.

(b) The student's status during the pendency of any proceedings does not preclude the IEP team from meeting, as needed or as required under this chapter, and updating and implementing the student's IEP, unless those changes are in dispute.

(2) If the hearing request involves an application for initial admission to public school, the student, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.

(3) If the hearing request involves an application for initial Part B services for a child who is transitioning from Part C of the act to Part B and is no longer eligible for Part C services because the child has turned three, the school district is not required to provide the Part C services that the child had been receiving. If the student is found eligible for special education and related services and the parent consents to the initial provision of special education and related services, then the school district must provide those special education and related services that are not in dispute between the parent and the school district.

(4) If the administrative law judge agrees with the student's parents that a change of placement is appropriate, that placement must be treated as an agreement between the school district and the parents for purposes of subsection (1) of this section.

[Statutory Authority: RCW 28A.155.090, 42 U.S.C. 1400 et seq. and 34 C.F.R. Part 300. WSR 16-02-034, § 392-172A-05125, filed 12/29/15, effective 1/29/16. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-05125, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 09-20-053, filed 10/1/09, effective 11/1/09)

WAC 392-172A-05135 Transfer of parental rights to the student at age of majority. (1) Subject to subsections (4) and (5) of this section, when a student eligible for special education services reaches the age of eighteen or is deemed to have reached the age of majority, consistent with RCW 26.28.010 through 26.28.020:

(a) The school district shall provide any notices required under this chapter to both the student and the parents; and

(b) All other rights accorded to parents under the act and this chapter transfer to the student.

(2) All rights accorded to parents under the act transfer to students at the age of majority who are incarcerated in an adult or juvenile, state, or local correctional institution.

(3) Whenever a school district transfers rights under this section, it shall notify the student and the parents of the transfer of rights.

(4) Students who have been determined to be incapacitated pursuant to chapter 11.88 RCW shall be represented by the legal guardian appointed under that chapter.

(5) Students over the age of eighteen who have not been determined incapacitated under chapter 11.88 RCW, may be certified as unable to provide informed consent or to make educational decisions, and have an educational representative appointed for them pursuant to the following procedures:

(a) Two separate professionals must state in writing they have conducted a personal examination or interview with the student, the student is incapable of providing informed consent to make educational decisions, and the student has been informed of this decision. The professionals must be:

(i) A medical doctor licensed in the state where the doctor practices medicine;

(ii) A physician's assistant whose certification is countersigned by a supervising physician;

(iii) A certified nurse practitioner;

(iv) A licensed clinical psychologist; or

(v) A guardian ad litem appointed for the student.

(b) When it receives the required written certification, the school district will designate an educational representative from the following list and in the following order of representation:

(i) The student's spouse;

(ii) The student's parent(s);

(iii) Another adult relative willing to act as the student's educational representative; or

(iv) A surrogate educational representative appointed pursuant to and acting in accordance with WAC 392-172A-05130.

(c) A student shall be certified as unable to provide informed consent pursuant to this section for a period of one year. However, the student, or an adult with a bona fide interest in and knowledge of the student, may challenge the certification at any time. During the pendency of any challenge, the school district may not rely on the educational representative under this section until the educational representative obtains a new certification under the procedures outlined in (a) of this subsection. If a guardianship action is filed on behalf of the student while a certification is in effect, the school district

must follow any court orders in the guardianship proceeding regarding the student's capacity.

(6) Nothing within this section shall prevent a student, who has reached the age of majority, from authorizing another adult to make educational decisions on that student's behalf using a power of attorney consistent with the requirements in chapter ((11.94)) 11.125 RCW.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 09-20-053, § 392-172A-05135, filed 10/1/09, effective 11/1/09. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-05135, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 17-23-054, filed 11/9/17, effective 12/10/17)

WAC 392-172A-05140 Purpose. The purpose of WAC 392-172A-05140 through 392-172A-05175 is to ensure that students eligible for special education services are not improperly excluded from school for disciplinary reasons and are provided services in accordance with WAC 392-172A-05145, 392-172A-05148, and 392-172A-05149. Each school district shall take steps to ensure that each employee, contractor, and other agent is knowledgeable of the disciplinary procedures to be followed for students eligible for special education services and students who may be deemed to be eligible for special education services, and knowledgeable of the rules and procedures contained in chapter 392-400 WAC governing discipline for all students.

[Statutory Authority: RCW 28A.155.090. WSR 17-23-054, § 392-172A-05140, filed 11/9/17, effective 12/10/17. Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 13-20-034, § 392-172A-05140, filed 9/24/13, effective 10/25/13. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-05140, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 17-23-054, filed 11/9/17, effective 12/10/17)

WAC 392-172A-05145 Authority of school personnel. (1) School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a student eligible for special education services, who violates a code of student conduct.

(2) (a) School personnel may remove a student eligible for special education services who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten consecutive school days to the extent those alternatives are applied to students without disabilities under this section, and for additional removals of not more than ten consecutive school days in that same school year for separate incidents of misconduct as long as those removals do not constitute a change of placement under WAC 392-172A-05155.

(b) A school district is only required to provide services during periods of removal to a student eligible for special education services who has been removed from his or her current placement for ten school days or less in that school year, if it provides services to a student without disabilities who is similarly removed. The services may be provided in an interim alternative educational setting.

(3) After a student eligible for special education services has been removed from his or her current placement for ten school days in the same school year, and the removal is a change of placement under WAC 392-172A-05155, during any subsequent days of removal the student must continue to receive educational services, that provide a FAPE, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP. The student's IEP team determines appropriate services. The services may be provided in an interim alternative educational setting.

(4) After a student eligible for special education services has been removed from his or her current placement for ten school days in the same school year, if the current removal is for not more than ten consecutive school days and is not a change of placement under WAC 392-172A-05155, during any subsequent days of removals, school personnel, in consultation with at least one of the student's teachers, determine the extent to which services are needed, to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP. The services may be provided in an interim alternative educational setting.

[Statutory Authority: RCW 28A.155.090. WSR 17-23-054, § 392-172A-05145, filed 11/9/17, effective 12/10/17. Statutory Authority: RCW 28A.155.090, 20 U.S.C. 1400 (c) (12) (C), 20 U.S.C. 1401 (3) (A) (i), and 20 U.S.C. 1401 (30) (C). WSR 11-06-052, § 392-172A-05145, filed 3/1/11, effective 4/1/11. Statutory Authority: RCW 28A.155.090 (7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-05145, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 17-23-054, filed 11/9/17, effective 12/10/17)

WAC 392-172A-05146 Manifestation determination. (1) Within ten school days of any decision to change the placement of a student eligible for special education services because of a violation of a code of student conduct, the school district, the parent, and relevant members of the student's IEP team (as determined by the parent and the school district) must review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents to determine:

(a) If the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or

(b) If the conduct in question was the direct result of the school district's failure to implement the IEP.

(2) The conduct must be determined to be a manifestation of the student's disability if the school district, the parent, and relevant members of the student's IEP team determine that a condition in subsection (1) (a) or (b) of this section was met.

If the school district, the parent, and relevant members of the student's IEP team determine the conduct was manifestation of the student's disability, the school district must take immediate steps to remedy those deficiencies.

[Statutory Authority: RCW 28A.155.090. WSR 17-23-054, § 392-172A-05146, filed 11/9/17, effective 12/10/17.]

AMENDATORY SECTION (Amending WSR 17-23-054, filed 11/9/17, effective 12/10/17)

WAC 392-172A-05148 Conduct is not a manifestation of student's disability. (1) When disciplinary changes in placement exceed ten consecutive school days, and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the student's disability pursuant to WAC 392-172A-05146, school personnel may apply the relevant disciplinary procedures to students eligible for special education services in the same manner and for the same duration as a district would apply discipline procedures to students without disabilities, except that services shall be provided in accordance with subsection (2) of this section.

(2) A student who is removed from the student's current placement pursuant to subsection (1) of this section must:

(a) Continue to receive educational services, that provide a FAPE, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP; and

(b) Receive, as appropriate when a student's removal is not a manifestation of the student's disability, a functional behavioral assessment, and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur.

(3) The student's IEP team determines appropriate services.

(4) The services required may be provided in an interim alternative educational setting.

(5) The student's IEP team determines the interim alternative educational setting.

[Statutory Authority: RCW 28A.155.090. WSR 17-23-054, § 392-172A-05148, filed 11/9/17, effective 12/10/17.]

AMENDATORY SECTION (Amending WSR 17-23-054, filed 11/9/17, effective 12/10/17)

WAC 392-172A-05150 Notification of change of placement. On the date on which the decision is made to make a removal that constitutes a change of placement of a student eligible for special education services because of a violation of a code of student conduct, the school district must notify the parents of that decision, and provide the parents the procedural safeguards notice.

[Statutory Authority: RCW 28A.155.090. WSR 17-23-054, § 392-172A-05150, filed 11/9/17, effective 12/10/17. Statutory Authori-

ty: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 13-20-034, § 392-172A-05150, filed 9/24/13, effective 10/25/13; WSR 09-20-053, § 392-172A-05150, filed 10/1/09, effective 11/1/09. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-05150, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-05155 Change of placement because of disciplinary removals. (1) For purposes of removals of a student eligible for special education services from the student's current educational placement, because of disciplinary removals, a change of placement occurs if:

- (a) The removal is for more than ten consecutive school days; or
 - (b) The student has been subjected to a series of removals that constitute a pattern:
 - (i) Because the series of removals total more than ten school days in a school year;
 - (ii) Because the student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals; and
 - (iii) Because of such additional factors as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another.
- (2) The school district determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.
- (3) The determination regarding a disciplinary change of placement is subject to review through due process and judicial proceedings.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 13-20-034, § 392-172A-05155, filed 9/24/13, effective 10/25/13. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-05155, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 17-23-054, filed 11/9/17, effective 12/10/17)

WAC 392-172A-05160 Appeal of placement decisions and manifestation determinations. (1) The parent of a student eligible for special education services who disagrees with any decision regarding placement under WAC 392-172A-05145 and 392-172A-05155, or the manifestation determination under WAC 392-172A-05146, or a school district that believes that maintaining the current placement of the student is substantially likely to result in injury to the student or others, may appeal the decision by requesting a due process hearing. The hearing is requested by filing a due process hearing request pursuant to WAC 392-172A-05080 and 392-172A-05085.

(2) (a) An administrative law judge under WAC 392-172A-05095 hears, and makes a determination regarding an appeal under subsection (1) of this section.

(b) In making the determination under (a) of this subsection, the administrative law judge may:

(i) Return the student to the placement from which the student was removed if the administrative law judge determines that the removal was a violation of WAC 392-172A-05145 through 392-172A-05155 or that the student's behavior was a manifestation of the student's disability; or

(ii) Order a change of placement of the student to an appropriate interim alternative educational setting for not more than forty-five school days if the administrative law judge determines that maintaining the current placement of the student is substantially likely to result in injury to the student or to others.

(c) The procedures under subsection (1) of this section and (b) of this subsection may be repeated, if the school district believes that returning the student to the original placement is substantially likely to result in injury to the student or to others.

(3) Whenever a hearing is requested under subsection (1) of this section, the parents and the school district involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of WAC 392-172A-05080 through 392-172A-05090 and 392-172A-05100 through 392-172A-05110, except:

(a) The due process hearing must be expedited, and must occur within twenty school days of the date the due process hearing request is filed. The administrative law judge must make a determination within ten school days after the hearing.

(b) Unless the parents and school district agree in writing to waive the resolution meeting described in (b) (i) of this subsection, or agree to use the mediation process:

(i) A resolution meeting must occur within seven days of (~~receiving notice of~~) the date the due process hearing request is filed; and

(ii) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within fifteen days of the (~~receipt of~~) date the due process hearing request is filed.

(4) The administrative hearing decisions on expedited due process hearings may be appealed, by initiating a civil action consistent with WAC 392-172A-05115.

[Statutory Authority: RCW 28A.155.090. WSR 17-23-054, § 392-172A-05160, filed 11/9/17, effective 12/10/17. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-05160, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 17-23-054, filed 11/9/17, effective 12/10/17)

WAC 392-172A-05170 Protections for students not determined eligible for special education and related services. (1) A student who has not been determined to be eligible for special education and related services under this chapter and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this chapter if the school district had knowledge as determined in accordance with subsection (2) of this section that the student was a student eligible for special education services before the behavior that precipitated the disciplinary action occurred.

(2) Basis of knowledge. A school district must be deemed to have knowledge that a student is eligible for special education services if before the behavior that precipitated the disciplinary action occurred:

(a) The parent of the student expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the student, that the student is in need of special education and related services;

(b) The parent of the student requested an evaluation of the student pursuant to WAC 392-172A-03005; or

(c) The teacher of the student, or other personnel of the school district, expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education or to other supervisory personnel of the school district.

(3) A school district would not be deemed to have knowledge under subsection (2) of this section if:

(a) The parent of the student:

(i) Has not allowed an evaluation of the student pursuant to WAC 392-172A-03000 through 392-172A-03080; or

(ii) Has refused services under this chapter; or

(b) The student has been evaluated in accordance with WAC 392-172A-03005 through 392-172A-03080 and determined to not be eligible for special education and related services under this part.

(4) (a) If a school district does not have knowledge that a student is eligible for special education services prior to taking disciplinary measures against the student, the student may be disciplined using the same disciplinary measures applied to students without disabilities who engage in comparable behaviors consistent with (b) of this subsection.

(b) (i) If a request is made for an evaluation of a student during the time period in which the student is subjected to disciplinary measures under WAC 392-172A-05145, 392-172A-05148, or 392-172A-05149 the evaluation must be conducted in an expedited manner.

(ii) Until the evaluation is completed, the student remains in the educational placement determined by school authorities, which can include suspension or expulsion.

(iii) If the student is determined to be eligible for special education services, taking into consideration information from the evaluation conducted by the school district and information provided by the parents, the agency must provide special education and related services in accordance with this chapter and follow the discipline requirements, including the provision of a free appropriate public education for students suspended or expelled from school.

[Statutory Authority: RCW 28A.155.090. WSR 17-23-054, § 392-172A-05170, filed 11/9/17, effective 12/10/17. Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 09-20-053, § 392-172A-05170, filed 10/1/09, effective 11/1/09. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-05170, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-05175 Referral to and action by law enforcement and judicial authorities. (1) Nothing in this chapter prohibits a school district or other agency from reporting a crime committed by a student to appropriate authorities or prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a student eligible for special education services.

(2) An agency reporting a crime committed by a student eligible for special education services must ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom the agency reports the crime, to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-05175, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 17-23-054, filed 11/9/17, effective 12/10/17)

WAC 392-172A-05185 Notice to parents. (1) Parents of students eligible for special education services have rights regarding the protection of the confidentiality of any personally identifiable information collected, used, or maintained under WAC 392-172A-05180 through 392-172A-05240, the Family Educational Rights and Privacy Act of 1974, as amended, state laws contained in Title 28A RCW that address personally identifiable information, regulations implementing state law, and Part B of IDEA.

(2) State forms, procedural safeguards and parent handbooks regarding special education services are available in multiple languages, and alternate formats upon request.

(3) Personally identifiable information about students for use by the OSPI(~~(7)~~) special education (~~(section)~~) division, may be contained in state complaints, due process hearing requests and decisions, monitoring, safety net applications, and mediation agreements. The state may also receive personally identifiable information as a result of grant evaluation performance. This information is removed before forwarding information to other agencies or individuals requesting the information, unless the parent or adult student consents to release the information or the information is allowed to be released without parent consent under the regulations implementing the Family Educational Rights and Privacy Act, 34 C.F.R. Part 99.

(4) School districts are responsible for child find activities for students who may be eligible for special education services. If the state were to conduct any major identification, location, or evaluation activity, the state would publish notices in newspapers with circulation adequate to notify parents throughout the state of the activity, notify school districts and post information on its website.

[Statutory Authority: RCW 28A.155.090. WSR 17-23-054, § 392-172A-05185, filed 11/9/17, effective 12/10/17. Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 13-20-034, §

392-172A-05185, filed 9/24/13, effective 10/25/13. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-05185, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-05190 Access rights. (1) Each participating agency shall permit parents of students eligible for special education services to inspect and review, during school business hours, any educational records relating to the student which are collected, maintained, or used by the district or other public agency under this chapter. The school district shall comply with a request promptly and before any meeting regarding an individualized education program or hearing or resolution session relating to the identification, evaluation, educational placement of the student or provision of FAPE to the student, including disciplinary proceedings. The school district shall respond, in no case, more than forty-five calendar days after the request has been made.

(2) The right to inspect and review educational records under this section includes:

(a) The right to a response from the school district to reasonable requests for explanations and interpretations of the records;

(b) The right to request that the school district provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(c) The right to have a representative of the parent or adult student inspect and review records.

(3) A participating agency may presume that a parent has authority to inspect and review records relating to his or her student unless the school district or other public agency has been advised that the parent does not have the authority under applicable state law governing such matters as guardianship, separation, and divorce.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-05190, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-05245 District procedures for confidential information. (1) School districts must ensure that their policies and procedures for protection of confidential information comply with WAC 392-172A-05180 through 392-172A-05240.

(2) OSPI reviews compliance through targeted monitoring activities, and state complaints.

(3) If school districts do not have procedures in place that comply with subsection (1) of this section, OSPI will require the school district to correct noncompliance through corrective actions that include, but are not limited to:

(a) Review and revision of district procedures; and

(b) Technical assistance.

(4) To the extent that any violations that exist under this section are also violations under 34 C.F.R. Part 99, complaints regarding a participating agency's failure to comply may be addressed to the United States Department of Education, Family Policy Compliance Office.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-05245, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-06000 Condition of assistance. As a condition of receipt and expenditure of federal special education funds, a school district or other public agency shall annually submit a request for federal funds to the OSPI, and conduct its special education and related services program in compliance with the requirements of this chapter. The request shall be made through an application that includes, but is not limited to, the following assurances and types of information:

- (1) Assurances that: The school district or other public agency meets each of the conditions contained in 34 C.F.R. 300.201 through 300.213 relating to:
 - (a) Development of policies and procedures consistent with this chapter and Part B of the act;
 - (b) The provision of FAPE to students;
 - (c) Child find requirements for students, including evaluations;
 - (d) Development of an IEP;
 - (e) The provision of services in the least restrictive environment, and the availability of a continuum of services, including access to extracurricular and nonacademic activities;
 - (f) The provision of procedural safeguard protections and implementation of the procedural safeguards notices;
 - (g) Confidentiality of records and information;
 - (h) Transition of children from Part C to Part B services;
 - (i) Participation of students enrolled in private school programs, using a proportional share of Part B funds;
 - (j) Placement of students in private school programs to provide FAPE or placement of students in private school programs by their parents when FAPE is at issue;
 - (k) Use of funds;
 - (l) Personnel preparation;
 - (m) Availability of documents relating to the eligibility of the school district;
 - (n) Provision to OSPI of all necessary information and data for the state's performance goals;
 - (o) Provision of instructional materials to blind persons or persons with print disabilities;
 - (p) Timely correction of noncompliance; and
 - (q) A goal and detailed timetable for providing full educational opportunity to all (~~special education~~) students eligible for special education services.

(2) Identification of the school district designee responsible for child identification activities and confidentiality of information.

(3) Information that addresses the school district's progress or slippage in meeting the state's performance goals and in addressing the state's annual performance plan.

(4) A description of the use of funds received under Part B of the act.

(5) Any other information requested by the OSPI which is necessary for the management of the special education program, including compliance with enforcement activities related to monitoring, due process, (~~(citizen)~~) community complaints, or determinations status.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 13-20-034, § 392-172A-06000, filed 9/24/13, effective 10/25/13; WSR 09-20-053, § 392-172A-06000, filed 10/1/09, effective 11/1/09. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-06000, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 09-20-053, filed 10/1/09, effective 11/1/09)

WAC 392-172A-06005 Consistency with state policies. The school district or other public agency, in providing for the education of students eligible for special education services must have in effect policies, procedures, and programs that are consistent with the state policies and procedures established in this chapter.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 09-20-053, § 392-172A-06005, filed 10/1/09, effective 11/1/09. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-06005, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-06010 School district use of funds. (1) Part B funds provided to school districts:

(a) Must be expended in accordance with the applicable provisions of this chapter;

(b) Must be used only to pay the excess costs of providing special education and related services to students eligible for special education (~~(students)~~) services, consistent with this chapter; and

(c) Must be used to supplement state, local and other federal funds and not to supplant those funds.

(2) The excess cost requirement prevents a school district from using funds provided under Part B of the act to pay for all of the costs directly attributable to the education of a student eligible for special education services.

(3) (a) A school district meets the excess cost requirement if it has spent at least a minimum average amount for the education of its students eligible for special education services before funds under Part B of the act are used.

(b) The excess cost amount is determined in accordance with the definition of excess costs in WAC 392-172A-01075. That amount may not include capital outlay or debt service.

(4) If two or more school districts jointly establish eligibility in accordance with WAC 392-172A-06075 and 392-172A-06080, the minimum average amount is the average of the combined minimum average amounts determined in accordance with the definition of excess costs in those school districts for elementary or secondary school students, as the case may be.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-06010, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 15-18-077, filed 8/28/15, effective 9/28/15)

WAC 392-172A-06015 Maintenance of effort. (1)(a) Eligibility standard. For purposes of establishing the school district's eligibility for an award for a fiscal year, the OSPI must determine that the school district budgets, for the education of students eligible for special education services, at least the same amount, from at least one of the following sources, as the school district spent for that purpose from the same source for the most recent fiscal year for which information is available:

- (i) Local funds only;
- (ii) The combination of state and local funds;
- (iii) Local funds only on a per capita basis; or
- (iv) The combination of state and local funds on a per capita basis.

(b) When determining the amount of funds that the school district must budget to meet the requirement in (a) of this subsection, the school district may take into consideration, to the extent the information is available, the exceptions and adjustment provided in WAC 392-172A-06020 and 392-172A-06025 that the school district:

- (i) Took in the intervening year or years between the most recent fiscal year for which information is available and the fiscal year for which the school district is budgeting; and
- (ii) Reasonably expects to take in the fiscal year for which the school district is budgeting.

(c) Expenditures made from funds provided by the federal government for which the OSPI is required to account to the federal government or for which the school district is required to account to the federal government directly or through the OSPI may not be considered in determining whether a school district meets the standard in (a) of this subsection.

(2)(a) Compliance standard. Except as provided under WAC 392-172A-06020 and 392-172A-06025, funds provided to school districts or other public agencies under Part B of the IDEA may not be used to reduce the level of expenditures for the education of students eligible for special education services made by it from local funds below the level of those expenditures for the preceding fiscal year.

(b) A school district meets this standard if it does not reduce the level of expenditures made by the school district for the education of students eligible for special education services from at least one of the following sources below the level of those expenditures from the same source for the preceding year except as provided under WAC 392-172A-06020 and 392-172A-06025:

- (i) Local funds only.

(ii) The combination of state and local funds.
(iii) Local funds only on a per capita basis; or
(iv) The combination of state and local funds on a per capita basis.

(c) The OSPI may not consider any expenditures made from funds provided by the federal government for which the OSPI is required to account to the federal government or for which the school district is required to account to the federal government directly or through the OSPI in determining a school district's compliance with the requirement in subsection (1)(a) and (b) of this section.

(3)(a) Subsequent years. If, in the fiscal year beginning on July 1, 2013, or July 1, 2014, a school district fails to meet the requirements of 34 C.F.R. 300.203 in effect at that time, the level of expenditures required of the school district for the fiscal year subsequent to the year of the failure is the amount that would have been required in the absence of that failure, not the school district's reduced levels of expenditures.

(b) If, in any fiscal year beginning on July 1, 2015, a school district fails to meet the requirement of subsection (1)(a)(i) or (iii) of this section and the school district is relying on local funds only, or local funds only on a per capita basis, to meet the requirements of 34 C.F.R. 203 (a) and (b), the level of expenditures required of the school district for the fiscal year subsequent to the year of the failure is the amount that would have been required under subsection (1)(a)(i) or (iii) of this section in the absence of that failure, not the school district's reduced level of expenditures.

(c) If, in any fiscal year beginning on July 1, 2015, a school district fails to meet the requirement of subsection (1)(a)(ii) or (iv) of this section and the school district is relying on the combination of state and local funds or the combination of state and local funds on a per capita basis, to meet the requirements of 34 C.F.R. 203 (a) and (b), the level of expenditures required of the school district for the fiscal year subsequent to the year of the failure is the amount that would have been required under subsection (1)(a)(ii) or (iv) of this section in the absence of that failure, not the school district's reduced level of expenditures.

(4) If a school district fails to maintain its level of expenditures for the education of student's eligible for special education services in accordance with subsection (1) of this section, OSPI is liable in a recovery action under 20 U.S.C. 1234a to return to the United States Department of Education, using nonfederal funds, an amount equal to the amount by which the school district failed to maintain its level of expenditures in accordance with this subsection (1) of this section in that fiscal year, or the amount of the school district's Part B subgrant, in that fiscal year, whichever is lower.

[Statutory Authority: RCW 28A.150.290. WSR 15-18-077, § 392-172A-06015, filed 8/28/15, effective 9/28/15. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-06015, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-06020 Exception to maintenance of effort. A school district or other public agency may reduce the level of expenditures made by it under Part B of the IDEA below the level of those expenditures for the preceding fiscal year if the reduction is attributable to:

- (1) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel;
- (2) A decrease in the enrollment of students eligible for special education services;
- (3) The termination of the obligation of the district or agency, consistent with this chapter, to provide a program of special education services to a particular student that is an exceptionally costly program as determined by the state, because the student:
 - (a) Has left the jurisdiction of the district or agency;
 - (b) Has reached the age at which the obligation of the district or agency to provide a free appropriate public education to the student has terminated; or
 - (c) No longer needs the program of special education services.
- (4) The termination of costly expenditures for long-term purchases such as the acquisition of equipment or the construction of school facilities.
- (5) The assumption of costs by the high needs safety net fund operated by the OSPI.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 13-20-034, § 392-172A-06020, filed 9/24/13, effective 10/25/13. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-06020, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 17-23-054, filed 11/9/17, effective 12/10/17)

WAC 392-172A-06030 School wide programs under Title 1 of the ES-SA. (1) A school district may use funds received under Part B of the act for any fiscal year to carry out a school wide program under 20 U.S.C. Section 6314, except that the amount used in any school wide program may not exceed:

- (a) The amount received by the school district under Part B for that fiscal year; divided by the number of students eligible for special education services in the jurisdiction; multiplied by
- (b) The number of students eligible for special education services participating in the school wide program.

(2) The funds described in subsection (1) of this section may be used without regard to WAC 392-172A-06010 (1)(a).

(3) The funds described in subsection (1) of this section must be considered as federal Part B funds for purposes of the calculations in WAC 392-172A-06015(2).

(4) Except as provided in subsections (2) and (3) of this section, all other requirements of Part B must be met, including ensuring that students eligible for special education services in school wide program schools:

- (a) Receive services in accordance with a properly developed IEP; and
- (b) Are afforded all of the rights and services guaranteed to students eligible for special education services under the IDEA.

[Statutory Authority: RCW 28A.155.090. WSR 17-23-054, § 392-172A-06030, filed 11/9/17, effective 12/10/17. Statutory Authority: RCW 28A.150.290. WSR 15-18-077, § 392-172A-06030, filed 8/28/15, effective 9/28/15. Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 13-20-034, § 392-172A-06030, filed 9/24/13, effective 10/25/13. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-06030, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-06035 Permissive use of funds. (1) Funds provided to a school district under Part B of the act may be used for the following activities:

(a) For the costs of special education and related services, and supplementary aids and services, provided in a general education class or other education-related setting to a (~~special education~~) student eligible for special education services in accordance with the IEP of the student, even if one or more nondisabled students benefit from these services.

(b) To develop and implement coordinated, early intervening educational services in accordance with WAC 392-172A-06085.

(c) To establish and implement cost or risk sharing funds, consortia, or cooperatives for the school district itself, or for school districts working in a consortium of which the district is a part, to pay for high cost special education and related services.

(2) A school district may use funds received under Part B of the act to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the IEP of students eligible for special education services, that are needed for the implementation of those case management activities.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-06035, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-06040 Purchase of and access to instructional materials. The OSPI has elected to coordinate with the National Instructional Materials Access Center (NIMAC). School districts have the option of coordinating with NIMAC.

(1) Not later than December 3, 2006, a school district that chooses to coordinate with NIMAC, when purchasing print instructional materials, including digital instructional materials, must acquire those

instructional materials in accordance with subsection (2) of this section.

(2) If a school district chooses to coordinate with the NIMAC, as of December 3, 2006, it must:

(a) As part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, must enter into a written contract with the publisher of the print instructional materials to:

(i) Require the publisher to prepare and, on or before delivery of the print instructional materials, provide to NIMAC electronic files containing the contents of the print instructional materials using the NIMAS; or

(ii) Purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.

(b) Make all reasonable attempts to provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

(c) In carrying out this section, the school district, to the maximum extent possible, must work with the state instructional resources center.

(3) For the purposes of this section:

(a) Blind persons or other persons with print disabilities means students served under this part who may qualify to receive books and other publications produced in specialized formats in accordance with the act entitled "An Act to provide books for adult blind," approved March 3, 1931, 2 U.S.C. 135a;

(b) National Instructional Materials Access Center or NIMAC means the center established pursuant to section 674(e) of the act;

(c) National Instructional Materials Accessibility Standard or NIMAS has the meaning given the term in section 674 (e) (3) (B) of the act;

(d) Specialized formats has the meaning given the term in section 674 (e) (3) (D) of the act.

(4) The definitions in subsection (3) of this section apply to each school district, whether or not the school district chooses to coordinate with the NIMAC.

(5) Nothing in this section shall be construed to require a school district to coordinate with the NIMAC.

(6) If a school district chooses not to coordinate with the NIMAC, the school district must provide an assurance to the OSPI that the school district will provide instructional materials to blind persons or other persons with print disabilities by other means in a timely manner.

(7) Nothing in this section relieves a school district of its responsibility to ensure that students eligible for special education services who need instructional materials in accessible formats but are not included under the definition of blind or other persons with print disabilities or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 13-20-034, § 392-172A-06040, filed 9/24/13, effective 10/25/13. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-06040, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-06045 School district information for the OSPI.

(1) The school district must provide the OSPI with information that is necessary to enable the OSPI to carry out its duties under Part B of the act and state law((7)) including, but not limited to, child count, least restrictive environment, suspension and expulsion rates, disproportionality, and other information relating to the performance of students eligible for special education services participating in programs carried out under Part B of the act.

(2) The information will be provided to the OSPI in the form and by the timelines specified for a particular report.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 13-20-034, § 392-172A-06045, filed 9/24/13, effective 10/25/13. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-06045, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-06050 Public information. The school district must make available to parents of students eligible for special education services and to the general public all documents relating to the eligibility of the school district under Part B of the act.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 13-20-034, § 392-172A-06050, filed 9/24/13, effective 10/25/13. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-06050, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 17-23-054, filed 11/9/17, effective 12/10/17)

WAC 392-172A-06055 Records regarding migratory students eligible for special education services. The school district must cooperate in the secretary's efforts under 20 U.S.C. Section 6398 to ensure the linkage of records pertaining to migratory students eligible for special education services for the purpose of electronically exchanging, among the states, health and educational information regarding those students.

[Statutory Authority: RCW 28A.155.090. WSR 17-23-054, § 392-172A-06055, filed 11/9/17, effective 12/10/17. Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 13-20-034, § 392-172A-06055, filed 9/24/13, effective 10/25/13. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-06055, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-06065 Notification of a school district in case of ineligibility. (1) In the event the OSPI determines that a school district is not eligible under Part B of the act, or is not complying with corrective actions as a result of monitoring, state complaints, or due process decisions and the OSPI intends to withhold or recover funds in whole or in part, the school district shall be provided:

(a) Written notice of intent to withhold or recover funds and the reasons supporting its notice;

(b) The school district's opportunity for a hearing before the superintendent of public instruction's designee prior to a denial of the request.

(2) The OSPI shall provide an opportunity for a hearing before (~~the~~) it disapproves the request in accordance with the following procedures:

(a) The applicant shall request the hearing within thirty days of receiving notice of the action of the OSPI.

(b) Within thirty days after it receives a request, the OSPI shall hold a hearing to review its action. At the hearing, the district shall have the opportunity to provide the superintendent's designee with documentary evidence demonstrating that the OSPI erred in reaching its determination.

(c) The superintendent's designee shall consider any new evidence provided and respond in writing to the school district within thirty days, by affirming the initial determination, rescinding its initial determination, or issuing a revised determination.

(d) If the district remains unsatisfied with the OSPI's determination, it may file an appeal of OSPI's determination with the office of administrative hearings within thirty days of receiving OSPI's final determination. Procedures for filing an appeal of a determination under this section shall be in accordance with the Administrative Procedure Act, chapter 34.05 RCW and chapter 10-08 WAC.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 13-20-034, § 392-172A-06065, filed 9/24/13, effective 10/25/13. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-06065, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-06075 Collaborative requests. (1) The OSPI may require districts to submit a collaborative request for payments under Part B of the act if it is determined that a single district would be disapproved because the district is unable to establish and maintain programs of sufficient size and scope to effectively meet the educational needs of students eligible for special education services. Districts that apply for Part B funds in a collaborative request must meet the same minimum requirements as a single school district applicant. The request must be signed by the superintendent of each participating school district. The districts are jointly responsible for implementing programs receiving payments under Part B of the act. The

total amount of funds made available to the affected school districts will be equal to the sum each would have received separately.

(2) The OSPI may not require a charter school to jointly establish its eligibility under subsection (1) of this section unless the charter school is explicitly permitted to do so under chapter 28A.710 RCW.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 13-20-034, § 392-172A-06075, filed 9/24/13, effective 10/25/13. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-06075, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 09-20-053, filed 10/1/09, effective 11/1/09)

WAC 392-172A-06085 Coordinated early intervening services. (1)

A school district may (~~not use more than~~) use up to fifteen percent of the amount the school district receives under Part B of the act for any fiscal year, less any amount reduced by the school district pursuant to WAC 392-172A-06015 if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated early intervening services (CEIS), which may include interagency financing structures. Those services are for students in kindergarten through grade twelve, with a particular emphasis on students in kindergarten through grade three, who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.

(2) In implementing coordinated early intervening services under this section, a school district may carry out activities that include:

(a) Professional development, which may be provided by entities other than the school district, for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and

(b) Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

(3) Nothing in this section shall be construed to either limit or create a right to FAPE under Part B of the act or to delay appropriate evaluation of a student suspected of having a disability.

(4) Each school district that (~~develops and maintains~~) implements coordinated early intervening services under this section must annually report to the OSPI on:

(a) The number of students served under this section who received coordinated early intervening services; and

(b) The number of students served under this section who received coordinated early intervening services and later (~~receive~~) received special education and related services within the following two year period.

(5) Funds made available to carry out this section may be used to carry out coordinated early intervening services aligned with activities funded by, and carried out under the ESEA if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under this section.

(6) Districts who have been (~~determined to have~~) identified as having significant disproportionality will be required to reserve the maximum amount of fifteen percent of its Part B funds to develop and implement comprehensive coordinated early intervening ((funds)) services (CCEIS) for students, in accordance with WAC 392-172A-07040.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 09-20-053, § 392-172A-06085, filed 10/1/09, effective 11/1/09. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-06085, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-06090 Direct services by the OSPI. (1) OSPI must use the payments that would otherwise have been available to a school district to provide special education and related services directly to students eligible for special education services in the area served by that school district, if the OSPI determines that the school district:

(a) Has not provided the information needed to establish the eligibility of the school district, or elected not to apply for its Part B allotment, under Part B of the act;

(b) Is unable to establish and maintain programs of FAPE that meet the requirements of this part;

(c) Is unable or unwilling to be consolidated with one or more school districts in order to establish and maintain the programs; or

(d) Has one or more students eligible for special education services who can best be served by a regional or state program or service delivery system designed to meet the needs of these students.

(2) (a) In meeting the requirements in subsection (1) of this section, the OSPI may provide special education and related services directly, by contract, or through other arrangements.

(b) The excess cost requirements of WAC 392-172A-01075 do not apply to the OSPI.

(3) The OSPI may provide special education and related services in the manner and at the location as the OSPI considers appropriate. The education and services must be provided in accordance with this chapter.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-06090, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-07000 Methods of ensuring services. (1) The OSPI must ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each noneducational public agency described in this section and the OSPI, in order to ensure that all services that are needed to ensure FAPE are provided, including the provision of these services during the pendency of any dispute under (c) of this subsection. The agreement or mechanism shall contain:

(a) An identification of, or a method of defining, the financial responsibility of each agency for providing services to ensure FAPE to students eligible for special education services. The financial responsibility of each noneducational public agency, including the state medicaid agency and other public insurers of students eligible for special education services, must precede the financial responsibility of the school district.

(b) The conditions, terms, and procedures under which a school district must be reimbursed by other agencies.

(c) Procedures for resolving interagency disputes (including procedures under which school districts may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.

(d) Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in subsection (2)(a) of this section.

(2)(a) If any public agency other than an educational agency is otherwise obligated under federal or state law, or assigned responsibility under state policy or pursuant to subsection (1) of this section, to provide or pay for any services that are also considered special education or related services such as, but not limited to, assistive technology devices and services, related services, whether provided as specially designed instruction or related services; supplementary aids and services, and transition services that are necessary for ensuring FAPE to students eligible for special education services, the noneducational public agency must fulfill that obligation or responsibility, either directly or through contract or other arrangement pursuant to subsection (1) of this section.

(b) A noneducational public agency described in subsections (1)(a) and (2) of this section may not disqualify an eligible service for medicaid reimbursement because that service is provided in a school context.

(c) If a noneducational public agency other than a school district fails to provide or pay for the special education and related services described in (a) of this subsection, the school district developing the student's IEP must provide or pay for these services to the student in a timely manner. The school district is authorized to claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services and that agency must reimburse the school district or state agency in accordance with the terms of the interagency agreement or other mechanism described in subsection (1) of this section.

(3) The requirements of subsection (1) of this section may be met through:

(a) State statute or regulation;

(b) Signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or

(c) Other appropriate written methods determined by the superintendent of the office of public instruction.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 13-20-034, § 392-172A-07000, filed 9/24/13, effective 10/25/13. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-07000, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-07005 Students eligible for special education services who are covered by public benefits or insurance or private insurance.

(1) A school district may use the medicaid or other public benefits or insurance programs in which a student participates to provide or pay for services required under Part B of the act, as permitted under the public benefits or insurance program, except as provided under subsection (2) of this section.

(2) With regard to services required to provide FAPE to an eligible student, the school district:

(a) May not require parents to sign up for or enroll in public benefits or insurance programs in order for their student to receive FAPE under Part B of the act;

(b) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this part, but may pay the cost that the parents otherwise would be required to pay;

(c) May not use a student's benefits under a public benefits or insurance program if that use would:

(i) Decrease available lifetime coverage or any other insured benefit;

(ii) Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the student outside of the time the student is in school;

(iii) Increase premiums or lead to the discontinuation of benefits or insurance; or

(iv) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures; and

(d) Prior to accessing a student's or parent's public benefits or insurance for the first time, and after providing notification to the student's parents consistent with subsection (3) of this section, the school district must obtain written, parental consent that:

(i) Meets the requirements of 34 C.F.R. Sec. 99.30 and WAC 392-172A-05225, which consent must specify:

(A) The personally identifiable information that may be disclosed, such as records or information about the services that may be provided to a particular student;

(B) The purpose of the disclosure, such as billing for services under the act; and

(C) The agency to which the disclosure may be made such as the health care authority; and

(ii) Specifies that the parent understands and agrees that the public agency may access the parent's or student's public benefits or insurance to pay for services under the act.

(3) Prior to accessing a student's or parent's public benefits or insurance for the first time, and annually thereafter, the school district must provide written notification, consistent with WAC 392-172A-05010(3) to the student's parents, that includes:

(a) A statement of the parental consent provisions in subsection (2)(d)(i) of this section;

(b) A statement of the "no cost" provisions in subsection (2)(b) and (c) of this section;

(c) A statement that the parents have the right under 34 C.F.R. Part 99 and WAC 392-172A-05225 to withdraw their consent to disclosure

of their child's personally identifiable information to the agency responsible for the administration of the state's public benefits or insurance program at any time; and

(d) A statement that the withdrawal of consent or refusal to provide consent under 34 C.F.R. Part 99 and WAC 392-172A-05225 to disclose personally identifiable information to the agency responsible for the administration of the state's public benefits or insurance program does not relieve the school district of its responsibility to ensure that all required services are provided at no cost to the parents.

(4) With regard to services required to provide FAPE to an eligible student under this part, a school district may access the parents' private insurance proceeds only if the parents provide consent. Each time the public agency proposes to access the parents' private insurance proceeds, the school district must:

(a) Obtain parental consent; and

(b) Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the school district of its responsibility to ensure that all required services are provided at no cost to the parents.

(5) (a) If a school district is unable to obtain parental consent to use the parents' private insurance, or public benefits or insurance when the parents would incur a cost for a specified service required under this part, to ensure FAPE the public agency may use its Part B funds to pay for the service.

(b) To avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parents would incur a cost, the school district may use its Part B funds to pay the cost that the parents otherwise would have to pay to use the parents' benefits or insurance such as deductible or co-pay amounts.

(6) Proceeds from public benefits or insurance or private insurance will not be treated as program income for purposes of 34 C.F.R. 80.25.

(7) If a school district spends reimbursements from federal funds such as medicaid, for services under this part, those funds will not be considered state or local funds for purposes of the maintenance of effort provisions.

(8) Nothing in this part should be construed to alter the requirements imposed on a state medicaid agency, or any other agency administering a public benefits or insurance program by federal statute, regulations or policy under Title XIX, or Title XXI of the Social Security Act, 42 U.S.C. Secs. 1396 through 1396v and 42 U.S.C. Secs. 1397aa through 1397jj, or any other public benefits or insurance program.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 13-20-034, § 392-172A-07005, filed 9/24/13, effective 10/25/13. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-07005, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-07010 Monitoring. (1) The OSPI monitors school districts' special education programs to:

(a) Improve educational results and functional outcomes for all students eligible for special education services;

(b) Ensure that school districts meet the program requirements under Part B of the act with a particular emphasis on those requirements that are most closely related to improving educational results for students eligible for special education services;

(c) Determine the school district's compliance with this chapter, chapter 28A.155 RCW, and federal regulations implementing 20 U.S.C. Sec. 1400, et seq.;

(d) Validate information included in school district requests for federal funds; and

(e) Measure and report school district performance on relative targets and priorities from federally approved state performance plans.

(2) Procedures for monitoring school districts and other public agencies may include any or all of the following:

~~(a) ((Collection, review, and analysis of quantitative and qualitative data and other information;~~

~~(b) Conduct of)) Conducting on-site visits, off-site desk reviews, and/or district self-assessments;~~

~~((e)) (b) Collection, review, and analysis of such ((quantifiable)) quantitative and qualitative data and ((indicators as are needed)) other information as OSPI determines necessary to measure performance in the following areas:~~

(i) Provision of a FAPE in the least restrictive environment;

(ii) State exercise of general supervision, including child find, effective monitoring, and the use of resolution meetings, mediation, and a system of transition services; and

~~(iii) ((Disproportionate representation of racial and ethnic groups in special education and related services to the extent the representation is the result of inappropriate identification.)) Racial and ethnic disproportionality with regard to the identification, placement, or discipline of students receiving special education services.~~

(3) As part of the monitoring process, a notification of identified noncompliance shall be issued to the school district. This notification will initiate a process of correction~~((s))~~, verification, and validation to ensure that the noncompliance is corrected as soon as possible, but no later than one year from the identification of noncompliance. If noncompliance is systemic in nature, a systemic corrective action plan ~~((is))~~ may be required.

(4) If the school district does not timely address compliance with corrective actions, the OSPI shall institute procedures to ensure compliance with applicable state and federal rules and priorities and targets from the state performance plan. Such procedures may include one or more of the following:

(a) Verification visits by the OSPI staff, or its designee, to:

(i) Determine whether the school district is taking the required corrective action~~(s)~~; and/or

(ii) Provide any necessary technical assistance to the school district or other public agency in its efforts to comply.

(b) Withhold, in whole or part, a specified amount of state and/or federal special education funds, to address noncompliance.

(c) Request assistance from the state auditor's office.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 13-20-034, § 392-172A-07010, filed 9/24/13, effective 10/25/13; WSR 09-20-053, § 392-172A-07010, filed 10/1/09, effective 11/1/09. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-07010, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-07012 Determinations. (1) The OSPI annually reviews the data it obtains from school districts through monitoring, submission of other required data reports, required by the district, and other public information provided by the district. Based on the data and information provided, OSPI determines if the school district:

(a) Meets the requirements and purposes of Part B of the act;

(b) Needs assistance in implementing the requirements of Part B of the act;

(c) Needs intervention in implementing the requirements of Part B of the act; or

(d) Needs substantial intervention in implementing the requirements of Part B of the act.

(2) If the OSPI determines, for two or more consecutive years, that a district needs assistance in implementing the OSPI's annual performance requirements, OSPI will advise the district of available sources of technical assistance that may help the district address the areas in which the district needs assistance, which may include assistance from the OSPI, office of special education programs, other offices of the United States Department of Education, other federal agencies, technical assistance providers approved by the Department of Education, and other federally or state funded nonprofit agencies, and require the district to work with appropriate entities. Such technical assistance may include:

(a) The provision of advice by experts to address the areas in which the district needs assistance, including explicit plans for addressing the areas of concern within a specified period of time;

(b) Assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on scientifically based research;

(c) Designating and using distinguished superintendents, principals, special education administrators, special education teachers, and other teachers to provide advice, technical assistance, and support; and

(d) Devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service districts, national centers of technical assistance, and private providers of scientifically based technical assistance.

(3) If the OSPI determines, for three or more consecutive years, that a district needs intervention in implementing the OSPI's annual performance requirements, OSPI may take actions described under sub-

section (2) of this section and will take one or more of the following actions:

(a) Require the district to prepare a corrective action plan or improvement plan if the OSPI determines that the district should be able to correct the problem within one year;

(b) Withhold, in whole or in part, any further payments to the district under Part B of the act;

(4) Notwithstanding subsection((s)) (2) or (3) of this section, at any time that the OSPI determines that a district needs substantial intervention in implementing the requirements of Part B of the act or that there is a substantial failure to comply with any condition of a school district's eligibility under Part B of the act, OSPI will withhold, in whole or in part, any further payments to the district under Part B of the act, in addition to any other actions taken under subsection((s)) (2) or (3) of this section.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 13-20-034, § 392-172A-07012, filed 9/24/13, effective 10/25/13; WSR 09-20-053, § 392-172A-07012, filed 10/1/09, effective 11/1/09.]

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-07015 Performance goals and indicators. (1) The OSPI has established goals for the performance of students eligible for special education services that promote the purposes of the act, and are consistent, to the maximum extent appropriate, with the state's learning goals for all students under section 1111 (b) (2) (C) of the ESEA, 20 U.S.C. Sec. 6311. The performance goals are identified in the state's performance plan, which is based upon district data provided to the OSPI.

(2) In addition, the OSPI has established performance indicators that are used to assess the state's and school districts' progress toward achieving those goals that at a minimum address the performance of eligible students on assessments, dropout rates, transition, and graduation rates.

(3) The state reports annually to the United States Department of Education and to the public through its annual performance report on the progress of the state, and of students eligible for special education services in the state, toward meeting the goals established under subsection (1) of this section.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 13-20-034, § 392-172A-07015, filed 9/24/13, effective 10/25/13. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-07015, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-07020 State performance plans and data collection.

(1) The OSPI has established and provided to the United States Department of Education a performance plan that evaluates the state's ef-

forts to implement the requirements and purposes of Part B of the act, and describes how the state will improve such implementation. The plan is reviewed annually and rewritten every six years (~~(, with any amendments provided to the)~~) or other timeline established by the United States Department of Education.

(2) (a) As part of the state performance plan, the OSPI has established measurable and rigorous targets for indicators established by the department of education under the priority areas of general supervision including child find, effective monitoring, use of resolution meetings, mediation, and a system of transition services.

(b) The OSPI must collect valid and reliable information from ~~((the))~~ districts, monitoring, and state data, as needed to report annually to the United States Department of Education on ~~((their))~~ these indicators.

(c) Data collected on specific indicators through state monitoring or sampling are collected on those indicators for each school district at least once during the six year period of the state performance plan ~~((s))~~ or other timeline established by the United States Department of Education.

(3) Nothing in Part B of the act shall be construed to authorize the development of a statewide or nationwide database of personally identifiable information on individuals involved in studies or other collections of data under Part B of the act.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-07020, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-07025 State use of targets and reporting. (1) The OSPI uses the targets established in the state's performance plan and the priority areas to analyze the performance of each school district.

(2) (a) The OSPI reports annually to the public on the performance of each school district ~~((located in the targets))~~ on the indicators in the state's performance plan; and makes the state's performance plan available through public means, including posting on the website of the OSPI, distribution to the media, and distribution through public agencies, subject to subsection (4) of this section.

(b) If the OSPI collects performance data through monitoring or sampling, the OSPI includes the most recently available performance data on each school district and the date the data were obtained.

(3) The OSPI must report annually to the United States Department of Education on the performance of the state under its performance plan.

(4) The OSPI does not report any information to the public or to the department of education on performance that would result in the disclosure of personally identifiable information about individual students, or where the available data are insufficient to yield statistically reliable information.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-07025, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 17-23-054, filed 11/9/17, effective 12/10/17)

WAC 392-172A-07035 Child count. The OSPI reports to the Secretary of the ~~((U.S.))~~ United States Department of Education annually as required by the office of special education programs the number of students aged three through twenty-one residing in the state who are receiving special education and related services. This report is based on the school districts' annual federal count of eligible students provided to OSPI on a date selected by OSPI between October 1st and December 1st of each year.

(1) Information required in the report includes:

(a) The number of students receiving special education and related services;

(b) The number of students aged three through five receiving special education and related services in an early childhood setting within each disability category;

(c) The number of students aged ~~((six))~~ five (and are also in kindergarten) through ~~((seventeen, and eighteen through))~~ twenty-one within each disability category; and

(d) The number of students aged three through twenty-one for each year of age (three, four, five, etc.).

(2) For the purpose of this part, a student's age is the student's actual age on the date of the child count.

(3) A student may not be reported under more than one disability category.

(4) If a ~~((special education))~~ student eligible for special education services has more than one disability, the student is reported as follows:

(a) A student with ~~((deaf-blindness))~~ deafblindness and not reported as having a developmental delay must be reported under the category "~~((deaf-blindness))~~ deafblindness."

(b) A student who has more than one disability (other than ~~((deaf-blindness))~~ deafblindness or developmental delay) must be reported under the category "multiple disabilities."

(5) School districts must provide OSPI a certification signed by an authorized official of the district, stating that the information provided by the district is an accurate and unduplicated count of ~~((special education))~~ students receiving special education and related services on the dates in question.

[Statutory Authority: RCW 28A.155.090. WSR 17-23-054, § 392-172A-07035, filed 11/9/17, effective 12/10/17. Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 09-20-053, § 392-172A-07035, filed 10/1/09, effective 11/1/09. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-07035, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 09-20-053, filed 10/1/09, effective 11/1/09)

WAC 392-172A-07040 Significant disproportionality. (1) The state collects and examines data annually from school districts to determine if significant disproportionality based on race or ethnicity is occurring in the state with respect to:

- (a) The identification of children as students eligible for special education services;
- (b) The identification of students with a particular disability;
- (c) The placement of students in particular educational settings;
- or
- (d) The incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

(2) ~~((a))~~ In the case of a determination of significant disproportionality with respect to the identification of students eligible for special education services including those with a particular disability, the placement in particular educational settings of these students, or discipline, the OSPI shall ~~((provide for the))~~:

(a) Require the school district to review and, if appropriate, ~~((revision of))~~ revise the policies, procedures, and practices used in the identification ~~((of))~~, placement, or discipline of students receiving special education services to ensure that the policies, procedures, and practices comply with the requirements of the act;

(b) Require the school district to publicly report on any changes made to its policies, practices, and procedures described under (a) of this subsection; and

(c) Require any school district identified under this section to reserve the maximum amount of fifteen percent of its federal funds under WAC 392-172A-06085 to provide comprehensive coordinated early intervening services (CCEIS) to serve students in the school district, particularly, but not exclusively, students in those groups that were significantly over identified ~~((; and~~

~~((e) Require the school district to publicly report on the revision of policies, practices, and procedures described under (b) of this subsection)).~~

(3) Each school district that implements CCEIS under this section must annually report to the OSPI on:

(a) The number of students served under this section who received CCEIS; and

(b) The number of students served under this section who received CCEIS and later received special education and related services within the following two-year period.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 09-20-053, § 392-172A-07040, filed 10/1/09, effective 11/1/09. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-07040, filed 6/29/07, effective 7/30/07.]

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-07045 Suspension and expulsion rates for students eligible for special education services. (1) ~~((Annually,))~~ School districts shall report to the state ~~((on the rates of long-term suspensions and expulsions))~~ all incidents of disciplinary removals of students eligible for special education services and nondisabled students ~~((for the preceding school year))~~. The state shall examine this data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring:

- (a) Among school districts or other public agencies; or

(b) Between nondisabled students and students eligible for special education services within school districts or other public agencies.

(2) If discrepancies are occurring, the state shall review and if appropriate, require revisions in state, school district or other public agency policies, procedures, and practices to ensure compliance with the act.

(3) Policies, procedures, and practices to be reviewed and, if appropriate, revised, include:

(a) The development and implementation of individualized education programs;

(b) The use of positive behavioral interventions and supports; and

(c) Procedural safeguards.

[Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-07045, filed 6/29/07, effective 7/30/07.]

SPECIAL EDUCATION FUNDS

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-07055 State safety net fund for high need students.

(1) The state has established a special education safety net fund for students eligible for special education services. The rules for applying for reimbursement for the fund are contained in WAC 392-140-600 through 392-140-685 or as may be amended.

(2) Part B funding is available through the safety net fund to reimburse costs associated with the provision of services identified in ((a properly formulated)) an IEP consistent with federal and state procedural requirements and WAC 392-140-609 for applicants with eligible high need students whose cost is at least three times the average per pupil expenditure; and whose placement is consistent with least restrictive environment provisions and other applicable rules regarding placement, including placement in nonpublic agencies.

(3) Disbursements provided under subsection (2) of this section must not be used to pay costs that otherwise would be reimbursed as medical assistance for a student eligible for special education services under the state medicaid program under Title XIX of the Social Security Act.

(4) The costs associated with educating a high need student eligible for special education services, in subsections (2) and (3) of this section, are only those costs associated with providing direct special education and related services to the student that are identified in that student's IEP, including the cost of room and board for a residential placement determined necessary, consistent to implement a student's IEP.

(5) The disbursements to an applicant must not be used to support legal fees, court costs, or other costs associated with a cause of action brought on behalf of a student to ensure FAPE for such student.

(6) Federal funds reserved for the safety net fund from the appropriation for any fiscal year, but not expended to eligible applicants for safety net funding must be allocated to school districts in the same manner as other funds from the appropriation for that fiscal year are allocated to school districts during their final year of availability.

(7) The funds in the high cost fund remain under the control of the state until disbursed to a school district to support a specific child who qualifies under this section and the state regulations for safety net funding described in subsection (1) of this section.

(8) Nothing in this section:

(a) Limits or conditions the right of a student eligible for special education services who is assisted under Part B of the act to receive a FAPE in the least restrictive environment; or

(b) Authorizes the state or a school district to establish a limit on what may be spent on the education of a student eligible for special education services.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 13-20-034, § 392-172A-07055, filed 9/24/13, effective 10/25/13; WSR 09-20-053, § 392-172A-07055, filed 10/1/09, effective 11/1/09. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-07055, filed 6/29/07, effective 7/30/07.]

NEW SECTION

WAC 392-172A-07057 Records related to grant funds. (1) The superintendent of public instruction and districts shall keep records that show:

- (a) The amount of funds under the grant;
- (b) How the funds were used;
- (c) The total cost of the project;
- (d) The share of that cost provided from other sources; and
- (e) Other records to facilitate an effective audit.

(2) Records shall be maintained to show program compliance, including records related to the location, evaluation, and placement of students eligible for special education services and the development and implementation of individualized education programs. Program and fiscal information records shall be available to authorized representatives of the OSPI for the purpose of compliance monitoring.

(3) Records shall be retained for six years after completion of the activities for which grant funds were used.

[]

STATE SPECIAL EDUCATION ADVISORY COUNCIL

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-07060 State special education advisory council.

(1) The state special education (~~((state))~~) advisory council (SEAC) is established in order to help facilitate the provision of special education and related services to meet the unique needs of students receiving special education (~~((students))~~) services.

(2) (a) The membership of the council is appointed by the superintendent of the office of public instruction and shall include at least one representative of each of the following groups or entities:

~~((a))~~ (i) Parents of children, aged birth to twenty-six, with disabilities;

~~((b))~~ (ii) Individuals with disabilities;

~~((c))~~ (iii) Teachers;

~~((d))~~ (iv) Institutions of higher education that prepare special education and related services personnel;

~~((e))~~ (v) State and local district officials who carry out activities under subtitle B of Title VII of the McKinney-Vento Homeless Assistance Act;

~~((f))~~ (vi) Local administrators of special education programs;

~~((g))~~ (vii) State agencies involved in the financing or delivery of related services to students eligible for special education (~~((students))~~) services;

~~((h))~~ (viii) Representatives of private schools and public charter schools;

~~((i))~~ (ix) Not less than one vocational, community, or business organization concerned with the provision of transition services to students eligible for special education services;

~~((j))~~ (x) A state child welfare agency employee responsible for services to children in foster care;

~~((k))~~ (xi) State juvenile and adult corrections agencies;

~~((l))~~ (xii) Other individuals or groups as may hereafter be designated and approved by the superintendent of public instruction.

(b) A majority of the members of the (~~((advisory))~~) council shall be individuals with disabilities or parents of students eligible for special education (~~((students))~~) services who are not also employed by a school district, educational service district, or the office of the superintendent of public instruction.

(3) The council's purposes are to:

(a) Advise the superintendent of public instruction and make recommendations on all matters related to special education and specifically advise the superintendent of unmet needs within the state in the education of students eligible for special education (~~((students))~~) services;

(b) Comment publicly on any rules or regulations proposed by the state regarding the education of (~~((special education))~~) students eligible for special education services;

(c) Advise the state in developing evaluations and reporting such information as may assist the state in its data requirements under section 618 of the act;

(d) Advise the state in developing corrective action plans to address findings identified in federal monitoring reports under Part B of the Individuals with Disabilities Education Act; and

(e) Advise the state in developing and implementing policies relating to the coordination of services for students eligible for special education ((students)) services.

(f) Review state due process findings and decisions.

(g) In the event that the state submits a waiver under 34 C.F.R. Sec. 300.164 regarding state-level nonsupplanting, the OSPI must consult with the SEAC prior to the submission.

(4) The council shall follow the procedures in this subsection.

(a) The ((~~advisory~~)) council shall meet as often as necessary to conduct its business.

(b) By July 1st of each year, the ((~~advisory~~)) council shall submit an annual report of council activities and suggestions to the superintendent of public instruction. This report must be made available to the public in a manner consistent with other public reporting requirements of this chapter.

(c) Official minutes will be kept on all council meetings and shall be made available to the public on request to the OSPI.

[Statutory Authority: RCW 28A.155.090 and 34 C.F.R. Part 300. WSR 13-20-034, § 392-172A-07060, filed 9/24/13, effective 10/25/13. Statutory Authority: RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq. WSR 07-14-078, § 392-172A-07060, filed 6/29/07, effective 7/30/07.]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 392-172A-07065 Records related to grant funds.

OTS-2726.1

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 392-173-003	Authority.
WAC 392-173-005	Purpose.
WAC 392-173-010	Definitions.
WAC 392-173-015	General duties of the department of social and health services and the superintendent of public instruction.

WAC 392-173-020	Referral and admission to a residential school—Eligibility for immediate placement.
WAC 392-173-025	Assessment, individual education plan, least restrictive environment, placement options, annual review of placement, and notice.
WAC 392-173-030	Medical evaluation.
WAC 392-173-035	Education records.
WAC 392-173-040	Annual application.
WAC 392-173-045	Staff qualifications.
WAC 392-173-047	Interagency agreements.
WAC 392-173-050	Monitoring.
WAC 392-173-055	Audits.
WAC 392-173-065	Program length.
WAC 392-173-075	Transportation and facilities.
WAC 392-173-080	Decisions, appeals and citizen complaints regarding educational programming and exclusion from an educational program.

WSR 21-19-084

PERMANENT RULES

BELLINGHAM TECHNICAL COLLEGE

[Filed September 16, 2021, 7:36 a.m., effective October 17, 2021]

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

Purpose: All public institutions must update their policies and procedures to comply with the recently adopted Title IX regulations, which took effect on August 14, 2020. In order to comply, Bellingham Technical College must update portions of its student conduct code with certain procedures required by Title IX that the college must take in response to allegations of sexual harassment. Bellingham Technical College is also updating other sections of its student conduct code procedures.

Citation of Rules Affected by this Order: Amending WAC 495B-121-350, 495B-121-365, 495B-121-370, and 495B-121-385.

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

Adopted under notice filed as WSR 21-13-092 on June 18, 2021.

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

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

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

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

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

Date Adopted: September 16, 2021.

Ronda Laughlin
Executive Assistant
to the President

OTS-3036.1

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

WAC 495B-121-350 Order of precedence. This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with the Bellingham Technical College's standard disciplinary procedures, WAC 495B-121-230 through 495B-121-345, these supplemental procedures shall take precedence. Bellingham Technical College may, at its discretion, contract with an administrative law judge or other person to act as presiding officer

and assign such presiding officer to exercise any or all of the duties in lieu of the student conduct committee and committee chair.

[Statutory Authority: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.; RCW 28B.50.130. WSR 21-07-085, § 495B-121-350, filed 3/18/21, effective 4/18/21.]

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

WAC 495B-121-365 Initiation of discipline. (1) Upon receiving the Title IX investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

(2) If the student conduct officer determines that there are sufficient grounds to proceed under these supplemental procedures, the student conduct officer will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice with the chair of the ((Title IX hearing)) student conduct committee and serving the notice on the respondent and the complainant, and their respective advisors. The notice must:

- (a) Set forth the basis for Title IX jurisdiction;
- (b) Identify the alleged Title IX violation(s);
- (c) Set forth the facts underlying the allegation(s);
- (d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s); and
- (e) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:
 - (i) The advisors will be responsible for questioning all witnesses on the party's behalf;
 - (ii) An advisor may be an attorney; and
 - (iii) The college will appoint the party an advisor of the college's choosing at no cost to the party, if the party fails to do so; and
- (f) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

[Statutory Authority: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.; RCW 28B.50.130. WSR 21-07-085, § 495B-121-365, filed 3/18/21, effective 4/18/21.]

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

WAC 495B-121-370 Prehearing procedure. (1) Upon receiving the disciplinary notice, the chair of the ((Title IX hearing)) student conduct committee will send a hearing notice to all parties, in compliance with WAC 495B-121-315. In no event will the hearing date be

set less than ten days after the Title IX coordinator provided the final investigation report to the parties.

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

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

[Statutory Authority: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.; RCW 28B.50.130. WSR 21-07-085, § 495B-121-370, filed 3/18/21, effective 4/18/21.]

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

WAC 495B-121-385 Initial order. (1) In addition to complying with WAC 495B-121-325 the (~~Title IX hearing~~) 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, the complainant is entitled to remedies designed to restore or preserve complainant's equal access to the college educational programs or activities; and
- (h) Describes the process for appealing the initial order to the college president.

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

[Statutory Authority: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.; RCW 28B.50.130. WSR 21-07-085, § 495B-121-385, filed 3/18/21, effective 4/18/21.]

**WSR 21-19-089
PERMANENT RULES
OLYMPIC REGION
CLEAN AIR AGENCY**

[Filed September 16, 2021, 4:07 p.m., effective October 17, 2021]

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

Purpose: This action updates the effective date of the federal regulations that have been adopted by the agency.

Citation of Rules Affected by this Order: Amending ORCAA Regulations Rule 1.11.

Statutory Authority for Adoption: Chapter 70A.15 RCW.

Adopted under notice filed as WSR 21-15-049 on July 14, 2021.

Date Adopted: September 8, 2021.

Francia L. McNair
Executive Director

AMENDED SECTION RULE 1.11 FEDERAL REGULATION REFERENCE DATE

Whenever federal regulations are referenced in ORCAA's rules, the effective date shall be July 1, 202((~~0~~))1.

WSR 21-19-093
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

[Filed September 17, 2021, 8:01 a.m., effective October 18, 2021]

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

Purpose: The developmental disabilities administration (DDA) amended this chapter to update the DDA assessment rules to reflect the switch from a desktop application to a web-based application. These changes do not affect any algorithms in the assessment that determine eligibility for a service or a client's benefit level.

DDA also amended the definition of "contracted provider" to include CDE-employed individual providers. Additional amendments replace outdated terminology, such as "DDD," "ISP," "ADSA," "ICF/MR," "SSPS," etc., and update and clarify language that was inaccurate or ambiguous.

Citation of Rules Affected by this Order: New WAC 388-828-1345; repealing WAC 388-828-1160, 388-828-1200, 388-828-1220, 388-828-1300, 388-828-1360, 388-828-1380, 388-828-1400, 388-828-1560, 388-828-1620, 388-828-1640 and 388-828-8020; and amending WAC 388-828-1000, 388-828-1020, 388-828-1040, 388-828-1060, 388-828-1080, 388-828-1100, 388-828-1120, 388-828-1140, 388-828-1180, 388-828-1320, 388-828-1340, 388-828-1420, 388-828-1440, 388-828-1460, 388-828-1500, 388-828-1540, 388-828-1580, 388-828-1600, 388-828-2000, 388-828-2020, 388-828-2040, 388-828-2060, 388-828-2080, 388-828-3020, 388-828-3040, 388-828-3060, 388-828-3080, 388-828-4020, 388-828-4400, 388-828-6020, 388-828-7000, 388-828-7020, 388-828-8000, 388-828-8040, 388-828-8060, 388-828-8500, 388-828-8505, 388-828-8510, 388-828-8515, 388-828-8520, 388-828-9000, 388-828-9020, 388-828-9040, 388-828-9060, 388-828-9100, 388-828-9120, 388-828-9140, 388-828-9200, 388-828-9205, 388-828-9210, 388-828-9215, 388-828-9220, 388-828-9225, 388-828-9230, 388-828-9235, 388-828-9240, 388-828-9245, 388-828-9250, 388-828-9255, 388-828-9260, 388-828-9265, 388-828-9270, 388-828-9275, 388-828-9280, 388-828-9325, 388-828-9355, 388-828-9500, 388-828-9520, 388-828-9530, 388-828-9540, 388-828-9550, 388-828-9570, and 388-828-9640.

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: RCW 71A.16.050.

Adopted under notice filed as WSR 21-12-048 on May 26, 2021.

Changes Other than Editing from Proposed to Adopted Version: DDA will not adopt the proposed changes to the definition of "client." The definition that is currently enacted will remain without amendment.

DDA added "of denial or termination of eligibility for services" to WAC 388-828-1600 to clarify the types of notices DDA sends.

A final cost-benefit analysis is available 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.

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

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 73, Repealed 11.
Date Adopted: September 17, 2021.

Donald L. Clintsman
Acting Secretary

SHS-4866.4

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-1000 What is the purpose and scope of this chapter?

This chapter establishes rules governing the ~~((administration of the division of))~~ developmental disabilities ~~((DDD))~~ administration (DDA) assessment ~~((to persons))~~ of people determined eligible to be clients of the ~~((division))~~ administration per chapter 71A.16 RCW.

[Statutory Authority: RCW 71A.12.030 and Title 71A RCW. WSR 07-10-029, § 388-828-1000, filed 4/23/07, effective 6/1/07.]

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-828-1020 What definitions apply to this chapter? The following definitions apply to this chapter:

"AAIDD" means the American Association on Intellectual and Developmental Disabilities.

"Acuity Scale" refers to an assessment tool that is intended to provide a framework for documenting important assessment elements and for standardizing the key questions that should be asked as part of a professional assessment. The design helps provide consistency from client to client by minimizing subjective bias and assists in promoting objective assessment of a person's support needs.

"Administration" ~~((or "DDA"))~~ means the developmental disabilities administration of the department of social and health services.

"Adult family home" or "AFH" means a residential home in which a person or persons provide personal care, special care, room and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services per chapter 388-76 WAC.

"Agency provider" means a business that is licensed, certified, or both, and that is contracted with the department or a county to provide DDA services ~~((such as personal care, respite care, residential services, therapy, nursing, and employment))~~.

"Algorithm" means a numerical formula used by the DDA assessment for one or more of the following:

(1) Calculation of assessed information to identify a client's relative level of need; and

(2) ~~((Determination regarding which assessment modules a client receives as part of his or her DDA assessment; and~~
~~(3))~~ Assignment of a service level to support a client's assessed need.

"Authorization" means DDA approval of funding for a service as identified in the ~~((individual support))~~ person-centered service plan or evidence of payment for a service.

"CARE" refers to the comprehensive assessment reporting evaluation assessment per chapter 388-106 WAC.

"Client" means a person who has a developmental disability as defined in RCW 71A.10.020(3) who also has been determined eligible to receive services by the administration under chapter 71A.16 RCW.

"Collateral contact" means a person or agency that is involved in the client's life such as legal guardian, family member, care provider, or friend.

"Companion home" is a DDA contracted residential service that provides twenty-four hour training, support, and supervision, to one adult living with a paid provider.

"Contracted provider" means an individual provider contracted with the department, individual provider employed by the consumer directed employer, or an individual or agency who is one or more of the following: Licensed, certified, or contracted by the department to provide services to DDA clients.

"DDA" means the developmental disabilities administration of the department of social and health services.

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

"Group home" or "GH" means a licensed adult family home or assisted living facility contracted and certified to provide residential services and support to adults with developmental disabilities.

"ICF/IID" means a facility certified as an intermediate care facility for individuals with intellectual disabilities to provide habilitation services to DDA clients.

"ICF/IID level of care" is a standardized assessment of a client's need for ICF/IID level of care per 42 C.F.R. Sec. 440 and 42 C.F.R. Sec. 483. In addition, ICF/IID level of care refers to one of the standards used by DDA to determine whether a client meets minimum eligibility criteria for one of the DDA HCBS waivers or the community first choice program.

"Legal guardian" means a person/agency, appointed by a court, who is authorized to make some or all decisions for a person determined by the court to be incapacitated. In the absence of court intervention, parents remain the legal guardians for their child until the child reaches the age of eighteen.

"LOC score" means a level of care score for answers to questions in the support needs assessment for children that are used in determining if a client meets eligibility requirements for ICF/IID level of care.

~~(("Modules" refers to three sections of the DDA assessment. They are: The support assessment, the service level assessment, and the person-centered service plan/individual support plan (ISP).))~~

"Panel" refers to the visual user-interface in the DDA assessment computer application where assessment questions are typically organized by topic and you and your respondents' answers are recorded.

"Person-centered service plan ~~(/individual support plan)~~ (PCSP)" ~~((or "ISP"))~~ is a document that identifies your goals and assessed health and welfare needs. Your person-centered service plan ~~(/individ-~~

ual support plan)) also indicates the paid services and natural supports that will assist you to achieve your goals and address your ((addressed)) assessed needs.

(("Plan of care" or "POC" refers to the paper-based assessment and service plan for clients receiving services on one of the DDA HCBS waivers prior to June 1, 2007.))

"Raw score" means the numerical value when adding a person's "frequency of support," "daily support time," and "type of support" scores for each activity in the support needs and supplemental protection and advocacy scales of the supports intensity scale (SIS) assessment.

"Residential habilitation center" or "RHC" is a state-operated facility certified to provide ICF/IID ((and/or)) or nursing facility level of care for persons with developmental disabilities per chapter 71A.20 RCW.

"Respondent" means the adult client ((and/or)) or another person familiar with the client who participates in the client's DDA assessment by answering questions and providing information. Respondents may include DDA contracted providers.

"SIS" means the supports intensity scale developed by the American Association of Intellectual and Developmental Disabilities (AAIDD). ((The SIS is in the support assessment module of the DDA assessment.))

"Service provider" refers to a department contracted agency or person who provides services to DDA clients. Also refers to state operated living alternative programs (SOLA).

"SOLA" means a state operated living alternative program for adults that is operated by DDA.

"State supplementary payment" or "SSP" is the state paid cash assistance program for certain DDA eligible Social Security income clients per chapter 388-827 WAC.

"Supported living" or "SL" refers to residential services provided by DDA certified residential agencies to clients living in homes that are owned, rented, or leased by the clients or their legal representatives.

(("Waiver personal care" means physical or verbal assistance with activities of daily living (ADL) and instrumental activities of daily living (IADL) due to your functional limitations per chapter 388-106 WAC to individuals who are authorized to receive services available in the basic plus waiver per chapter 388-845 WAC.))

"Waiver respite care" means short-term intermittent relief for persons normally providing care to individuals who are authorized to receive services available in the individual and family services (IFS), children's intensive in-home behavioral support (CIIBS), basic plus, and core waivers per chapter 388-845 WAC.

"You((/You))" and "your" means the client.

[Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-828-1020, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and Title 71A RCW. WSR 07-10-029, § 388-828-1020, filed 4/23/07, effective 6/1/07.]

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-1040 What is the ~~((DDD))~~ DDA assessment? (1) The ~~((DDD))~~ DDA assessment is an assessment tool designed to measure the support needs of persons with developmental disabilities.

(2) The ~~((DDD))~~ DDA assessment ~~((has three modules))~~ consists of:

(a) The support assessment (see WAC 388-828-2000 to 388-828-6020);

(b) The service level assessment (see WAC 388-828-7000 to 388-828-7080); and

(c) The ~~((individual support plan (ISP)))~~ person-centered service plan (PCSP) (see WAC 388-828-8000 to 388-828-8060).

(3) The ~~((DDD))~~ DDA assessment is part of the ~~((aging and disability services administration's (ADSA)))~~ comprehensive assessment reporting evaluation system (CARE).

[Statutory Authority: RCW 71A.12.030 and Title 71A RCW. WSR 07-10-029, § 388-828-1040, filed 4/23/07, effective 6/1/07.]

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-828-1060 What is the purpose of the DDA assessment? The purpose of the DDA assessment is to provide a comprehensive assessment process that:

(1) Collects a common set of assessment information for reporting purposes to the legislature and the department.

(2) Promotes consistency in evaluating client support needs for purposes of planning, budgeting, and resource management.

(3) Identifies a level of service ~~((and/or))~~ or number of hours that is used to support the assessed needs of clients who have been authorized ~~((by DDA))~~ to receive ~~((one or more of the following:~~

~~(a) Medicaid personal care services or community first choice services per chapter 388-106 WAC;~~

~~(b) Waiver respite care services per chapter 388-845 WAC;~~

~~(c) Services in the voluntary placement program (VPP) per chapter 388-826 WAC;~~

~~(d) Supported living residential services per chapter 388-101 WAC;~~

~~(e) Group home residential services per chapter 388-101 WAC;~~

~~(f) Group training home residential services per chapter 388-101 WAC;~~

~~(g) Companion home residential services per chapter 388-829C WAC;~~

~~(h) Individual and family services per chapter 388-832 WAC;~~

~~(i) Individual and family services waiver per chapter 388-845 WAC;~~

~~(j) State supplementary program per chapter 388-827 WAC.~~

(4) Records your service requests) DDA services.

[Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-828-1060, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.30 [71A.12.030] and Title 71A RCW. WSR 08-12-037, § 388-828-1060, filed

5/30/08, effective 7/1/08; WSR 07-10-029, § 388-828-1060, filed 4/23/07, effective 6/1/07.]

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-1080 Who must administer the ((DD)) DDA assessment?

Only ((DD)) DDA employees can administer the ((DD)) DDA assessment.

[Statutory Authority: RCW 71A.12.030 and Title 71A RCW. WSR 07-10-029, § 388-828-1080, filed 4/23/07, effective 6/1/07.]

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-1100 Who receives the ((DD)) DDA assessment?

((DD)) DDA must administer a ((DD)) DDA assessment when you meet any of the following conditions:

(1) You are currently approved by ((DD)) DDA to receive a ((DD)) DDA paid service evidenced by meeting one of the conditions in WAC 388-828-1440;

(2) You request enrollment in one of the ((DD)) DDA HCBS waivers per chapter 388-845 WAC;

(3) You ~~((are age three or older))~~ have been determined to be DDA eligible and request a ((DD)) DDA assessment;

(4) You have been determined eligible for categorically needy medical coverage per WAC 388-475-0100 and requested one of the following medicaid state plan services:

(a) You are under age eighteen and have requested an assessment for community first choice or medicaid personal care services ~~((per))~~ under chapter 388-106 WAC; or

(b) You have been approved to receive private duty nursing services for clients seventeen years of age and younger per WAC 388-551-3000.

(5) You are receiving SSP in lieu of a ((DD)) DDA paid service per chapter 388-827 WAC;

(6) You request admission to ((a)) an RHC per Title 42 C.F.R. 440, Title 42 C.F.R. 483, and Title 71A RCW;

(7) You reside in ((a)) an RHC or community ~~((ICF/MR))~~ ICF/IID and you are involved in discharge planning for community placement; or

(8) You do not meet any of the conditions listed in WAC 388-828-1120.

[Statutory Authority: RCW 71A.12.030 and Title 71A RCW. WSR 07-10-029, § 388-828-1100, filed 4/23/07, effective 6/1/07.]

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-1120 Who does not receive the ((DD)) DDA assessment? ((DD)) DDA will not administer the ((DD)) DDA assessment when you meet any of the following conditions:

(1) You have not identified a person willing to receive notice or correspondence on your behalf regarding specific ((DD)) DDA decisions as required per RCW 71A.10.060 and ((DD)) DDA does not believe you are capable of understanding department decisions that may affect your care (see WAC 388-828-1140); ((or))

(2) A respondent cannot be identified to participate in your ((DD)) DDA assessment (see WAC 388-828-1540(c));

(3) You reside in ((a)) an RHC and are not currently involved in discharge planning for community placement; or

(4) You reside in a community ((ICF/MR)) ICF/IID and are not authorized by ((DD)) DDA to receive employment/community services paid through the counties((; or

~~(5) You are under the age of three and do not meet any of the conditions in WAC 388-828-1100).~~

[Statutory Authority: RCW 71A.12.030 and Title 71A RCW. WSR 07-10-029, § 388-828-1120, filed 4/23/07, effective 6/1/07.]

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-1140 What will ((DD)) DDA do if there is no one willing to receive notice on your behalf regarding specific ((DD)) DDA decisions? If there is no one available to receive notice or correspondence on your behalf regarding specific ((DD)) DDA decisions, ((DD)) DDA will do all of the following:

(1) Consult with the assistant attorney general to determine if:

(a) You are able to represent yourself; or

(b) You require a legal representative/guardian.

(2) Continue current services until the issue is resolved per section (1) above.

[Statutory Authority: RCW 71A.12.030 and Title 71A RCW. WSR 07-10-029, § 388-828-1140, filed 4/23/07, effective 6/1/07.]

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-1180 How will your assessed unmet need(s) be met if there is no approved funding to provide a ((DD)) DDA paid service? If you complete the ((DD)) DDA assessment and are assessed to have an unmet need and there is no approved funding to support that need, ((DD)) DDA will offer you referral information for ((ICF/MR)) ICF/IID services per Title 71A RCW, chapter 388-825 WAC, and chapter 388-837 WAC. In addition, ((DD)) DDA may:

(1) Provide information and referral for ((non-DD)) non-DDA community based supports; and

(2) Add your name to the waiver database, if you have requested enrollment in a ~~((DDD))~~ DDA HCBS waiver per chapter 388-845 WAC ~~((; and~~
~~(3) Authorize short-term emergency services as an exception to rule (ETR) per WAC 388-440-0001)).~~

[Statutory Authority: RCW 71A.12.030 and Title 71A RCW. WSR 07-10-029, § 388-828-1180, filed 4/23/07, effective 6/1/07.]

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-1320 What happens if you are approved to receive a ~~((DDD))~~ DDA paid service and you refuse to have a ~~((DDD))~~ DDA assessment administered? If you are approved to receive a ~~((DDD))~~ DDA paid service and refuse to have a ~~((DDD))~~ DDA assessment administered, ~~((DDD))~~ DDA is unable to authorize new or current ~~((DDD))~~ DDA paid services and will do all of the following:

(1) Explain what happens if you refuse to allow ~~((DDD))~~ DDA to administer the ~~((DDD))~~ DDA assessment to you, your respondents, and the person you have identified to receive notice on your behalf per RCW 71A.10.060.

(2) Consult with the assistant attorney general when you have not identified a person to receive notice on your behalf per RCW 71A.10.060 to determine if:

- (a) You are able to represent yourself; or
- (b) You require a legal representative/guardian.

(3) Terminate existing ~~((DDD))~~ DDA paid services when they reach their authorized end date.

(4) Provide you notice and appeal rights for a denied ~~((and/or))~~ or terminated ~~((service(s) per))~~ service under WAC 388-825-100 and 388-825-120.

(5) Provide you with information on how to contact ~~((DDD))~~ DDA in case you later decide you want a ~~((DDD))~~ DDA assessment administered.

[Statutory Authority: RCW 71A.12.030 and Title 71A RCW. WSR 07-10-029, § 388-828-1320, filed 4/23/07, effective 6/1/07.]

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-1340 After administering the ~~((DDD))~~ DDA assessment, ~~((how long does DDD have to complete your DDD assessment))~~ when will DDA inform me of the services I am eligible to receive? ~~((+1- DDD))~~ DDA will ~~((complete your DDD assessment as soon as possible after it is administered.~~

~~(2) DDD will complete your DDD assessment no later))~~ inform you of the services you are eligible to receive no more than thirty days ~~((from the date it was created in CARE))~~ after DDA administers your assessment.

[Statutory Authority: RCW 71A.12.030 and Title 71A RCW. WSR 07-10-029, § 388-828-1340, filed 4/23/07, effective 6/1/07.]

NEW SECTION

WAC 388-828-1345 When will I receive the services for which I have been determined eligible? You will begin receiving a service for which you have been determined eligible after:

- (1) Your DDA assessment is complete;
- (2) You are found financially and functionally eligible for services;
- (3) You have given consent for services and approved your plan of care;
- (4) You have chosen a qualified provider; and
- (5) DDA has authorized the qualified provider to provide services.

[]

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-1420 What is your responsibility when selecting ((an ADSA contracted agency)) a provider? You or your legal representative/guardian has the responsibility of choosing ((an agency)) a provider. ((DDD or the county)) DDA will provide you information on contracted and qualified ((agency)) providers. If you are receiving services through a county, the county will provide you with information on contracted providers.

[Statutory Authority: RCW 71A.12.030 and Title 71A RCW. WSR 07-10-029, § 388-828-1420, filed 4/23/07, effective 6/1/07.]

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-1440 What is the definition of ((DDD)) DDA "paid service" in chapter 388-828 WAC? For the purpose of this chapter, a ((DDD)) DDA paid service is defined as an authorization of a program and/or service as evidenced by one or more of the following:

- (1) An open ((social service payment system (SSPS))) ProviderOne authorization within the past ninety days used for payment of a service or SSP; ((or))
- (2) A current county service authorization ((for one of the following services:
 - (a) Person to person; or
 - (b) Individual employment; or
 - (c) Group supported employment; or
 - (d) Prevocational/specialized industries; or
 - (e) Community access); ((or
 - (f) Individual and family assistance.))
- (3) ((A current waiver POC or waiver ISP; or
- (4) Residence in a state operated living alternative (SOLA) program; or
- (5) Authorization of family support services within the last twelve months per chapter 388-825 WAC; or

~~(6)) Documentation of ((DDD)) DDA approval of your absence from ((DDD)) DDA paid services for more than ninety days with available funding for your planned return to services; ((~~or~~~~

~~(7)) (4) Evidence of approval for funding of a ((DDD)) DDA service or enrollment in a ((DDD)) DDA HCBS waiver; or~~

~~((8)) (5) Authorization and payment of services using form A-19 state of Washington invoice voucher ((for receipt of:~~

~~(a) Dangerous mentally ill offender funds;~~

~~(b) Crisis stabilization services;~~

~~(c) Specialized psychiatric services; or~~

~~(d) Diversion bed services)).~~

[Statutory Authority: RCW 71A.12.030 and Title 71A RCW. WSR 07-10-029, § 388-828-1440, filed 4/23/07, effective 6/1/07.]

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-1460 When will you receive ((an initial DDD)) a DDA assessment? ((DDD intends to assess all clients per WAC 388-828-1100 by June 30, 2008. DDD)) DDA must administer ((an initial DDD)) a DDA assessment when:

(1) You are receiving a ((DDD)) DDA paid service and your annual reassessment is due for continuation of the ((DDD)) DDA paid service; ((~~or~~

(2) You are receiving a ((DDD)) DDA paid service and a reassessment is needed due to a significant change that may affect your support needs; ((~~or~~

(3) You are receiving SSP in lieu of a ((DDD)) DDA paid service and your eligibility for SSP needs to be redetermined per WAC 388-827-0120;

(4) You are approved for funding of a ((DDD)) DDA paid service and an assessment must be performed prior to the authorization of services; ((~~or~~

(5) You make a request to have a ((DDD)) DDA assessment administered and meet the criteria in WAC 388-828-1100; or

(6) You are contacted by ((DDD)) DDA and offered an opportunity to have a ((DDD)) DDA assessment.

[Statutory Authority: RCW 71A.12.030 and Title 71A RCW. WSR 07-10-029, § 388-828-1460, filed 4/23/07, effective 6/1/07.]

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-828-1500 When does DDA conduct a reassessment? (1) DDA must conduct a reassessment:

(a) On an annual basis if you are receiving a paid service ((~~or~~ SSP));

(b) When a significant change is reported that may affect your need for support; ((~~or~~

(c) Before the next ((ISP)) person-centered service plan date of your current assessment; or

(d) At your request.

(2) DDA will provide you with notice in advance of your next ((ISP)) person-centered service plan date so you may schedule the assessment at a time that is convenient to you.

[Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-828-1500, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and Title 71A RCW. WSR 07-10-029, § 388-828-1500, filed 4/23/07, effective 6/1/07.]

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-828-1540 Who participates in your DDA assessment? (1)

You choose the people who participate in your assessment and person-centered service plan (~~(individual support plan)~~) meeting.

(2) DDA requires that at a minimum: You, one of your respondents, and a DDA employee participate in your DDA assessment interview. In addition:

(a) If you are under the age of eighteen, your parent(s) or legal guardian(s) must participate in your DDA assessment interview.

(b) If you are age eighteen or older, your court appointed legal representative/guardian must be consulted if he/she does not attend your DDA assessment interview.

(c) If you are age eighteen and older and have no legal representative/guardian, DDA will assist you to identify a respondent.

(d) DDA may consult with other people who were not present at your DDA assessment interview, if needed, to obtain complete and accurate information.

[Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-828-1540, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.30 [71A.12.030] and Title 71A RCW. WSR 08-12-037, § 388-828-1540, filed 5/30/08, effective 7/1/08; WSR 07-10-029, § 388-828-1540, filed 4/23/07, effective 6/1/07.]

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-1580 Why does ((DDD)) DDA require ((all questions on mandatory panels to be answered in the DDD)) an assessment? ((DDD)) DDA requires ((that all questions on mandatory panels be answered)) an assessment because:

(1) ((The legislature has directed DDD to assess all eligible)) DDA assesses clients with a common, standardized assessment process that measures the support needs of individuals with developmental disabilities.

(2) The ((DDD)) DDA assessment algorithms ((in the support assessment module)) are designed to:

(a) Determine acuity scores and acuity levels for a variety of client needs; and

(b) Provide a valid measure of each client's support needs relative to the support needs of other clients who have received the ~~((DDD))~~ DDA assessment.

[Statutory Authority: RCW 71A.12.030 and Title 71A RCW. WSR 07-10-029, § 388-828-1580, filed 4/23/07, effective 6/1/07.]

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-1600 What happens if you refuse to answer a question ~~((on a mandatory panel))~~ in the ~~((DDD))~~ DDA assessment? If you refuse to answer a DDA assessment question ~~((on a mandatory panel in the DDD assessment, DDD))~~ that is necessary to determine your service level and DDA is unable to complete your ~~((DDD))~~ DDA assessment ~~((and will do all of the following:~~

- ~~(1) Explain what happens if you refuse to answer a question on a mandatory panel to you, your respondents, and the person you have identified to receive notice on your behalf per RCW 71A.10.060.~~
- ~~(2) Consult with the assistant attorney general when you have not identified a person to receive notice on your behalf per RCW 71A.10.060 to determine if:~~
 - ~~(a) You are able to represent yourself; or~~
 - ~~(b) You require a legal representative/guardian.~~
- ~~(3) Terminate existing DDD paid services when they reach their authorized end date;~~
- ~~(4) Provide you notice and appeal rights for denied and/or terminated service(s) per WAC 388-825-100 and 388-825-120; and~~
- ~~(5) Provide you with information on how to contact DDD in case you later decide you want a DDD assessment administered), DDA will send you or your legal representative notice of denial or termination of eligibility for services as required under chapter 388-825 WAC.~~

[Statutory Authority: RCW 71A.12.030 and Title 71A RCW. WSR 07-10-029, § 388-828-1600, filed 4/23/07, effective 6/1/07.]

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-2000 What is the support assessment ~~((module))~~? The support assessment ~~((module))~~ is the ~~((first section of the DDD assessment and is administered to all DDD clients))~~:

- (1) Supports intensity scale for clients sixteen and older; and
- (2) Support assessment for children under sixteen.

[Statutory Authority: RCW 71A.12.030 and Title 71A RCW. WSR 07-10-029, § 388-828-2000, filed 4/23/07, effective 6/1/07.]

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-2020 What is the purpose of the support assessment ((module))? The purpose of the support assessment ((module)) is to:

- (1) Collect a common set of assessment information that is scored for all persons who are eligible to receive a ((DDD)) DDA assessment per WAC 388-828-1100;
- (2) Promote a consistent process to evaluate client support needs; and
- (3) Determine whether a person meets the ((ICF/MR)) ICF/IID level of care standard for potential waiver eligibility(;; and
- ~~(4) Identify the persons receiving, or approved for, DDD paid services or SSP who will need the additional two assessment modules:~~
 - ~~(a) The service level assessment module; and~~
 - ~~(b) The individual support plan module).~~

[Statutory Authority: RCW 71A.12.030 and Title 71A RCW. WSR 07-10-029, § 388-828-2020, filed 4/23/07, effective 6/1/07.]

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-2040 What components are contained in the support assessment ((module))? The support assessment ((module)) contains the following components:

- (1) The support assessment for children;
- (2) The supports intensity scale (SIS) assessment;
- (3) ((DDD)) DDA protective supervision acuity scale;
- (4) ((DDD)) DDA caregiver status acuity scale;
- (5) ((DDD)) DDA activities of daily living (ADL) acuity scale;
- (6) ((DDD)) DDA behavioral acuity scale;
- (7) ((DDD)) DDA medical acuity scale;
- (8) ((DDD)) DDA interpersonal support acuity scale;
- (9) ((DDD)) DDA mobility acuity scale;
- (10) ((DDD)) DDA respite assessment; and
- (11) Programs and services component.

[Statutory Authority: RCW 71A.12.030 and Title 71A RCW. WSR 07-10-029, § 388-828-2040, filed 4/23/07, effective 6/1/07.]

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-2060 How does your assessment age affect the support assessment ((module))? Age guidelines are incorporated into the support assessment ((module)) to exclude age appropriate supports unrelated to a disability. The following table illustrates which components ((DDD)) DDA includes in your support assessment ((module)) based on your assessment age:

Components contained in the Support Assessment ((module))	Age (0-15)	Age (16+)
The Support Assessment for Children	Yes	No
SIS Support Needs and Supplemental Protection and Advocacy Scales	No	Yes
SIS Exceptional Medical and Behavior Support Needs Scales	Yes	Yes
((DD)) <u>DDA</u> Protective Supervision Acuity Scale	Yes	Yes
((DD)) <u>DDA</u> Caregiver Status Acuity Scale	Yes	Yes
((DD)) <u>DDA</u> Activities of Daily Living Acuity Scale	Yes	Yes
((DD)) <u>DDA</u> Behavioral Acuity Scale	Yes	Yes
((DD)) <u>DDA</u> Medical Acuity Scale	Yes	Yes
((DD)) <u>DDA</u> Interpersonal Support Acuity Scale	Yes	Yes
((DD)) <u>DDA</u> Mobility Scale	Yes	Yes
Current Programs and Services component	Yes	Yes

[Statutory Authority: RCW 71A.12.030 and Title 71A RCW. WSR 07-10-029, § 388-828-2060, filed 4/23/07, effective 6/1/07.]

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-2080 How does ((DD)) DDA determine your assessment age? If you are within thirty calendar days of your next birthday, ((DD)) DDA determines your assessment age to be that of your next birthday.

[Statutory Authority: RCW 71A.12.030 and Title 71A RCW. WSR 07-10-029, § 388-828-2080, filed 4/23/07, effective 6/1/07.]

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-3020 What is the purpose of the support assessment for children? The purpose of the support assessment for children ages fifteen or younger is to determine:

(1) Your ((ICF/MR)) ICF/IID level of care score for ((DD)) DDA HCBS waiver eligibility;

(2) The health and welfare needs that must be addressed in your individual support plan if you are enrolled in a ((DD)) DDA HCBS waiver; and

(3) Your support need levels for:

(a) The ((DD)) DDA activities of daily living acuity scale;

(b) The ((DD)) DDA interpersonal support acuity scale; and

(c) The ((DD)) DDA mobility acuity scale.

[Statutory Authority: RCW 71A.12.030 and Title 71A RCW. WSR 07-10-029, § 388-828-3020, filed 4/23/07, effective 6/1/07.]

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-3040 What questions are asked in the support assessment for children and how are they scored? ((~~DD~~)) DDA scores the answers to each of the following questions in the support assessment for children based on the respondent information:

(1) Dress and groom self: What support does the child need to dress and groom self as expected of others of same age?

Answers	Definitions	LOC Score	Acuity Score
Physical Assistance	Needs major support in the form of total physical assistance, intensive training and/or therapy for dressing and grooming.	1	4
Training	Needs moderate support in the form of some physical assistance and/or training and/or therapies to dress and groom self.	0	3
Reminders/Prompts	Needs reminders or prompts to dress and groom self appropriately.	0	2
No support needed or at age level	At age level (may have physical supports) in dressing and grooming.	0	0

(2) Toilet self: What support does the child need to toilet self as expected of others in his/her age group?

Answers	Definitions	LOC Score	Acuity Score
Total physical support	Needs major support in the form of total physical support. Intensive training intervention and/or daily therapy to toilet self.	1	4
Partial physical assistance, training	Needs moderate support in the form of some physical assistance, standard training and/or regular therapy.	0	3
Reminders/prompts	Needs reminders or prompts.	0	2
No support needed or at age level	Toilets self or has physical support in place to toilet self.	0	0

(3) Eat at age level: What support does the child need to eat at age level?

Answers	Definitions	LOC Score	Acuity Score
Total physical support	Needs major support in the form of total physical assistance, intensive training and/or daily therapy.	1	4
Partial physical assistance, training	Needs moderate support in the form of some physical assistance, standard training, and/or regular therapy.	1	3
Reminders/prompts	Needs help with manners and appearance when eating, in the form of reminders and prompts.	0	2
No support needed or at age level	At age level (may have physical supports) in eating.	0	0

(4) Move around: What support does the child need to move around in the same ways as other children of same age?

Answers	Definitions	LOC Score	Acuity Score
Total physical support	Needs major intervention in the form of total physical support to move around, intensive training and/or daily therapy.	1	4
Partial physical assistance, training	Needs moderate support such as someone's help to move around or may use or learn to use adaptive device or may require standard training.	1	3
Reminders/prompts	Needs mild intervention in the form of training and physical prompting for scooting/crawling/walking behaviors.	0	2
No support needed or at age level	No supports needed - child is scooting/crawling/walking at age level	0	0

(5) Communicate: What support does the child need to communicate as others of same age?

Answers	Definitions	LOC Score	Acuity Score
Total physical support	Currently someone else must always determine and communicate child's needs.	1	4
Training/therapy	With intensive training or therapy support, child may learn sufficient verbal and/or signing skills to make self easily understandable to others. May include partial physical support.	1	3
Adaptive device/interpreter	With physical support (adaptive device, interpreter), child is always able to communicate.	0	2
No support needed or at age level	No supports needed and/or at age level.	0	0

(6) Learn about and use money: What support does the child need to learn about and use money?

Answers	Definitions	LOC Score	Acuity Score
Total physical support	Child is not old enough to know about money.	0	4
Partial physical assistance, training	Family must devise special opportunities for child to earn/or spend money.	0	3
Create opportunities, reminders/prompts	Needs to learn about earning and/or spending money in typical age-level ways.	0	2
No support needed or at age level	Needs no support. Independently uses opportunities typical to his/her age group to earn and/or spend money.	0	0

(7) Make choices and take responsibility: What support does the child need to make choices and take responsibility?

Answers	Definitions	LOC Score	Acuity Score
Total physical support	Needs major support in the form of special and/or technical help to and from family/teachers to create opportunities for making choices and taking responsibility.	1	4
Partial physical assistance, training	Needs moderate support in the form of family/teachers creating and explaining a variety of opportunities for making choices and taking responsibility.	1	3
Create opportunities, reminders/prompts	Needs some support in the form of explanation of available options for making choices and taking responsibility.	1	2
No support needed or at age level	Needs no support. Readily uses a variety of opportunities to indicate choices (activity, food, etc.) and take responsibility for tasks, self, etc.	0	0

(8) Explore environment: What support does the child need to explore environment?

Answers	Definitions	LOC Score	Acuity Score
Total physical support	Needs major support in the form of specialized technical help to and from family/teachers to create ways which support/encourage child to explore and reach out.	1	4
Partial physical assistance, training	Needs moderate support in the form of some training/physical help to and from family and teachers to create ways and opportunities for child to explore environment and reach out.	1	3
Reminders/prompts	Needs some support in the form of verbal encouragement or presence of someone child trusts to explore environment and reach out.	0	2
No support needed or at age level	Needs no support and/or is at age level. Readily explores environment (may have adaptive device) and reaches out in ways typical to child's age group.	0	0

(9) Meet therapy health needs: What supports are necessary to get child's therapy health needs met?

Answers	Definitions	LOC Score	Acuity Score
Daily intervention by professionals	Child requires medical/health intervention or monitoring by professionals at least daily.	1	4
Monitoring by health professionals	Child needs regular (weekly, monthly) monitoring by health professionals.	1	3
Monitoring by trained others	Child needs daily support and/or monitoring by training others.	1	2
Community health system	Needs regular on-going therapy and/or monitoring of health needs through typical community health systems.	0	1
No support needed or at age level	No specialized supports or ongoing therapies necessary.	0	0

(10) Help family continue to meet child's needs: What support services should the system provide to help family continue to meet child's needs?

Answers	Definitions	LOC Score	Acuity Score
Urgent extensive support	Substantial significant supports to child and parents needed. Child in, or at risk of, out-of-home placement at this time.	1	4
Substantial support/referrals needed	Substantial support needed/requested; (e.g., requests for more than two days per month respite, referral to homemakers, homebuilders; request for long term behavior management training, need extensive and/or expensive environmental modification or equipment; request frequent contact with case manager.)	1	3
Moderate support	Moderate external support needed/requested; (e.g., requests for regular respite, intensive but short-term behavior management, referral for parent training help, referral to day care services; and/or request for regular contact with case manager.)	0	2
Minimal support	Minimal external support needed/requested; (e.g., requests for occasional respite, referrals to parent support group, and/or case manager helps obtain adaptive equipment.)	0	1
No support needed or at age level	No external supports are necessary. Family has obtained any necessary adaptive equipment.	0	0

(11) Have relationships with family members: What support does the child need to make the kind of relationships with family members expected of nondisabled children of the same age?

Answers	Definitions	LOC Score	Acuity Score
Total physical support	Opportunities for contributing to family life totally dependent on others to maintain, interpret child's role to other family members.	0	4
Partial physical assistance, training	Requires major support in the form of daily/weekly creation of opportunities to be seen as a contributing member and assume typical family responsibilities.	0	3
Reminders/prompts	Requires moderate support in the form of adaptive device, training and/or reminders to be seen as contributing member and assume typical family responsibilities.	0	2
No support needed or at age level	Needs no support to form positive family relationship.	0	0

(12) Explore and use typical community resources: What support does the child need to explore and use typical community resources such as stores, parks, and playgrounds?

Answers	Definitions	LOC Score	Acuity Score
Total physical support	Family needs major support (perhaps respite) to continue to provide child total physical support to use typical resources.	0	4
Partial physical assistance, training	Moderate support is needed - family must create ways for child to use these resources in ways typical to child's age group.	0	3
Reminders/prompts	Minimal support needed - family may wish suggestions or some support on ways to enable child's regular use of typical resources.	0	2
No support needed or at age level	Needs no support and/or at age level. Uses these resources regularly.	0	0

(13) Play with others: What supports are needed for the child to develop age-level skills in playing with others?

Answers	Definitions	LOC Score	Acuity Score
Total physical support	Major support needed by others to help child play. Parents may request special adaptive equipment and training to foster child's playing skills.	0	4
Partial physical assistance training	Moderate support needed in the form of a verbal and/or some physical intervention to help child play. Parents may be requesting suggestions instruction in ways to help child develop playing skills.	0	3
Reminders/prompts	Minimal support needed.	0	2
No support needed or at age level	No supports needed and/or at age level. Child's playing skills developing at age level.	0	0

(14) Have opportunities to play with typically developing children: What supports does the child need to have opportunities to play with typically developing children?

Answers	Definitions	LOC Score	Acuity Score
Total physical support	Substantial system support (e.g., system must set up "programs" that allow for interaction with typically developing children and the "programs").	0	4
Partial physical assistance, training	Moderate supports (e.g., parents have to create opportunities for contacts). Parents may ask for instruction in how to facilitate such contacts. System may need to provide structural supports (e.g., transportation, barrier-free public play environments, etc).	0	3
Reminders/prompts	Minimal support (e.g., some monitoring). Parents may request help on how to broaden child's range of contacts or to increase the age appropriateness of contacts.	0	2
No support needed or at age level	No support needed.	0	0

(15) Identify and respond safely to emergencies: What support does the child need to identify and respond safely to emergencies?

Answers	Definitions	LOC Score	Acuity Score
Total physical support	Needs total physical support to respond to emergencies.	1	4
Always needs help to identify and respond	Needs help all of the time to identify emergencies and to respond.	1	3
Sometimes needs help to identify and respond	Needs help some of the time to identify emergencies and to respond.	1	2
Can identify, needs help to respond	Independently identifies emergencies; needs help from others to respond.	1	1
No help needed or at age level	Needs no help from others in emergencies.	0	0

(16) Practice age-level safety measures: What support does the child need to practice age-level safety measures?

Answers	Definitions	LOC Score	Acuity Score
Total physical support	Needs total physical support for safety measures in daily activities and routines.	1	4
Partial physical assistance, training	Does not recognize own safety needs and requires help in most safety areas.	1	3
Reminders/prompts	Knows importance of safety measures. Needs training and/or physical support in many areas.	1	2
No support needed or at age level	Needs no support in providing for own safety.	0	0

(17) Effectively relate to other students/peers: What support does the child need to most effectively relate to fellow students and/or peers?

Answers	Definitions	LOC Score	Acuity Score
Total physical support	Needs physical support by others in the form of interpretation of self to others to interact with peers.	1	4
Partial physical assistance, training	Needs physical intervention in the form of modeling to enable child to reach out to peers to give and take support.	1	3
Reminders/prompts	Needs much encouragement, supervision and guidance in how to give and ask for support and interact with peers.	0	2
No support needed or at age level	Without support, child relates to others as a valued member of work/learning unit.	0	0

(18) Have behaviors which promote being included: What support is needed for this child to have behaviors which promote being included?

Answers	Definitions	LOC Score	Acuity Score
Continuous behavioral interventions	Needs major tolerance and control. Could include being dangerous to self and/or others.	1	4
Major behavior modifications	Needs major behavior modifications to be perceived as typical. Child's behaviors are extremely disagreeable to others.	1	3
Modeling, reminders, prompts	Needs participation in typical settings with typically developing others to model desirable behaviors. Child's behaviors cause him/her to be easily recognized as different from others.	0	2
Minor support	Needs interactions with typically developing others. Child's behaviors are different from others in minor ways and the child may not immediately be perceived as different.	0	1
No support needed or at age level	Needs no support. Behaviors are similar to others in general community of same age and culture.	0	0

[Statutory Authority: RCW 71A.12.030 and Title 71A RCW. WSR 07-10-029, § 388-828-3040, filed 4/23/07, effective 6/1/07.]

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-3060 How does ((DDD)) DDA determine your total LOC score for ((ICF/MR)) ICF/IID level of care if you are age birth through fifteen years old? ((DDD)) DDA determines your total LOC score for ((ICF/MR)) ICF/IID level of care by adding all of your LOC

scores on questions one through eighteen in the support assessment for children.

[Statutory Authority: RCW 71A.12.030 and Title 71A RCW. WSR 07-10-029, § 388-828-3060, filed 4/23/07, effective 6/1/07.]

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-3080 How does ((DDD)) DDA determine if you meet the eligibility requirements for ((ICF/MR)) ICF/IID level of care (LOC) if you are age birth through fifteen years old? ((DDD)) DDA determines you are eligible for ((ICF/MR)) ICF/IID level of care when:

- (1) You are age birth through five years old and the total of your LOC scores is five or more; or
- (2) You are age six through fifteen years old and the total of your LOC scores is seven or more.

[Statutory Authority: RCW 71A.12.030 and Title 71A RCW. WSR 07-10-029, § 388-828-3080, filed 4/23/07, effective 6/1/07.]

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-4020 What is the purpose of the supports intensity scale (SIS) assessment? The purpose of the supports intensity scale assessment in the ((DDD)) DDA assessment is to determine all of the following:

- (1) Your ((ICF/MR)) ICF/IID level of care score for ((DDD)) DDA HCBS waiver eligibility;
- (2) The health and welfare needs that must be addressed in your individual support plan if you are enrolled in a ((DDD)) DDA HCBS waiver;
- (3) Your ((DDD)) DDA behavioral and medical acuity levels regardless of your age; and
- (4) Your support need acuity levels specific to the:
 - (a) ((DDD)) DDA activities of daily living acuity scale;
 - (b) ((DDD)) DDA interpersonal support acuity scale; and
 - (c) ((DDD)) DDA mobility acuity scale.

[Statutory Authority: RCW 71A.12.030 and Title 71A RCW. WSR 07-10-029, § 388-828-4020, filed 4/23/07, effective 6/1/07.]

AMENDATORY SECTION (Amending WSR 19-02-020, filed 12/21/18, effective 2/1/19)

WAC 388-828-4400 How does DDA determine if you meet the eligibility requirements for ICF/IID level-of-care if you are age sixteen or older? If you are age sixteen or older, DDA determines you to be eligible for ICF/IID level-of-care from your SIS scores. Eligibility

for ICF/IID level-of-care requires that your scores meet at least one of the following:

- (1) You have a percentile rank over nine percent for three or more of the six subscales in the SIS support needs scale;
- (2) You have a percentile rank over twenty-five percent for two or more of the six subscales in the SIS support needs scale;
- (3) You have a percentile rank over fifty percent in at least one of the six subscales in the SIS support needs scale;
- (4) You have a support score of one or two for any of the questions listed in the SIS exceptional medical support needs scale;
- (5) You have a support score of one or two for at least one of the following items in the SIS exceptional behavior support needs scale:
 - (a) Prevention of assaults or injuries to others;
 - (b) Prevention of property destruction (e.g., fire setting, breaking furniture);
 - (c) Prevention of self-injury;
 - (d) Prevention of PICA (ingestion of inedible substances);
 - (e) Prevention of suicide attempts;
 - (f) Prevention of sexual aggression; or
 - (g) Prevention of wandering.
- (6) You have a support score of two for any of the questions listed in the SIS exceptional behavior support needs scale; or
- (7) You meet or exceed any of the qualifying scores for one or more of the following SIS questions:

Question # of SIS support needs scale	Text of question	Your score for "Type of support" is:	And your score for "Frequency of support" is:
A2	Bathing and ((take)) taking care of personal hygiene and grooming needs	2 or more	4
		3 or more	2
A3	Using the toilet	2 or more	4
		3 or more	2
A4	Dressing	2 or more	4
		3 or more	2
A5	Preparing food	2 or more	4
		3 or more	2
A6	Eating food	2 or more	4
		3 or more	2
A7	Taking care of clothes, including laundering	2 or more	2 or more
		3 or more	1
A8	Housekeeping and cleaning	2 or more	2 or more
		3 or more	1
B6	Shopping and purchasing goods and services	2 or more	2 or more
		3 or more	1
C1	Learning and using problem-solving strategies	2 or more	3 or more
		3 or more	2
C5	Learning self-management strategies	2 or more	3 or more
		3 or more	2
E1	Taking medications	2 or more	4
		3 or more	2
E2	Ambulating and moving about	2 or more	4
		3 or more	2

Question # of SIS support needs scale	Text of question	Your score for "Type of support" is:	And your score for "Frequency of support" is:
E3	Avoiding health and safety hazards	2 or more	3 or more
		3 or more	2
E6	Maintaining a nutritious diet	2 or more	2 or more
		3 or more	1
E8	Maintaining emotional well-being	2 or more	3 or more
		3 or more	2
F1	Using appropriate social skills	2 or more	3 or more
		3 or more	2
G7	Managing money and personal finances	2 or more	2 or more
		3 or more	1

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 19-02-020, § 388-828-4400, filed 12/21/18, effective 2/1/19. Statutory Authority: RCW 71A.12.030 and Title 71A RCW. WSR 07-10-029, § 388-828-4400, filed 4/23/07, effective 6/1/07.]

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-6020 What is the purpose of the programs and services component? The purpose of the programs and services component is to document:

- (1) ~~((DDD))~~ DDA services you are currently receiving;
- (2) ~~((DDD))~~ DDA services you have been approved to receive; and
- (3) ~~((If))~~ Whether you currently meet the ~~((ICF/MR))~~ ICF/IID level of care requirements for ~~((continued DDD))~~ CFC or for DDA HCBS waiver eligibility ~~((or for potential DDD HCBS waiver services if resources become available))~~.

[Statutory Authority: RCW 71A.12.030 and Title 71A RCW. WSR 07-10-029, § 388-828-6020, filed 4/23/07, effective 6/1/07.]

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-7000 What is the purpose of the service level assessment ((module))? The purpose of the service level assessment ~~((module))~~ is to determine a service level and the number of hours you are eligible to receive for medicaid ~~((or waiver))~~ personal care services ~~((per))~~ or community first choice under chapter 388-106 WAC.

[Statutory Authority: RCW 71A.12.030 and Title 71A RCW. WSR 07-10-029, § 388-828-7000, filed 4/23/07, effective 6/1/07.]

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-7020 What components contained in the service level assessment (~~module~~) determine a service level (~~and/or~~) or number of hours? The service level assessment (~~module~~) contains two components that are used to determine a service level (~~and/or~~) or number of hours for the following:

(1) The CARE assessment for medicaid (~~or waiver~~) personal care services(~~r~~) or community first choice as defined in chapter 388-106 WAC; and

(2) The (~~DDD~~) DDA seizure acuity scale as defined in WAC 388-828-7040 through 388-828-7080.

[Statutory Authority: RCW 71A.12.030 and Title 71A RCW. WSR 07-10-029, § 388-828-7020, filed 4/23/07, effective 6/1/07.]

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-828-8000 What is the purpose of the person-centered service plan (~~/individual support plan (ISP) module~~)? The purpose of the person-centered service plan (~~/individual support plan module~~) is to create a written plan that includes:

(1) Your goals and desired outcomes;

(2) The services and supports, both paid and unpaid, that will assist you to achieve your identified goals;

(3) Your acuity scores generated from the support assessment;

(4) Referral information;

(5) The SSP, if any, you are approved to receive in lieu of a DDA paid service; (~~and~~)

(6) DDA paid services you are authorized to receive(~~+~~); and

(~~(a)~~) (7) If you are enrolled in a DDA waiver, (~~the ISP must address all the~~) your PCSP must address all of your assessed health and welfare needs (~~identified in your ICF/IID level of care assessment and the supports used to meet your assessed needs; or~~

~~(b) If you are not enrolled in a DDA waiver, DDA is only required to address the DDA paid services you are approved to receive~~)).

[Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-828-8000, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and Title 71A RCW. WSR 07-10-029, § 388-828-8000, filed 4/23/07, effective 6/1/07.]

AMENDATORY SECTION (Amending WSR 19-02-020, filed 12/21/18, effective 2/1/19)

WAC 388-828-8040 How does DDA determine which health and welfare needs must be addressed in your (~~individual support~~) person-centered service plan if you are age birth through fifteen? If you are age birth through fifteen and are receiving DDA HCBS waiver services or reside in a state only residential setting, DDA uses the following ta-

bles to determine the health and welfare needs that must be addressed in your ~~((individual support))~~ person-centered service plan:

(1) Activities from the support needs assessment for children:

#	Questions in the Support Needs Assessment for Children:	DDA must address in your PSCP if you have an acuity score of:	Health and Welfare Category
1	Dress and groom self	2 or more	Home Living
2	Toilet self	2 or more	Home Living
3	Eat at age level	3 or more	Home Living
4	Move around	3 or more	Home Living
5	Communicate	2 or more	Home Living
7	Make choices and take responsibility	2 or more	Protection and Advocacy
8	Explore environment	3 or more	Community Living
9	Meet therapy health needs	1 or more	Medical Supports
10	Help family continue to meet child's needs	1 or more	Protection and Advocacy
15	Identify and respond safely to emergencies	1 or more	Health and Safety
16	Practice age-level safety measures	2 or more	Protection and Advocacy
17	Effectively relate to other students/peers	3 or more	Employment
18	Have behaviors which promote being included	3 or more	Behavior Supports

(2) Medical supports from the SIS exceptional medical support needs scale

#	Questions in the Exceptional Medical Support Needs Scale	DDA must address in your PSCP if you have an acuity score of:	Health and Welfare Category
1	Inhalation or oxygen therapy	1 or more	Medical Supports
2	Postural drainage	1 or more	Medical Supports
3	Chest PT	1 or more	Medical Supports
4	Suctioning	1 or more	Medical Supports
5	Oral Stimulation or Jaw Repositioning	1 or more	Medical Supports
6	Tube feeding (e.g., nasogastric)	1 or more	Medical Supports
7	Parenteral feeding (e.g., IV)	1 or more	Medical Supports
8	Turning or positioning	1 or more	Medical Supports
9	Dressing of open wound(s)	1 or more	Medical Supports
10	Protection from infectious diseases due to immune system impairment	1 or more	Medical Supports
11	Seizure management	1 or more	Medical Supports
12	Dialysis	1 or more	Medical Supports
13	Ostomy care	1 or more	Medical Supports
14	Lifting and/or transferring	1 or more	Medical Supports
15	Therapy services	1 or more	Medical Supports
16	Hypertension	1 or more	Medical Supports
17	Allergies	1 or more	Medical Supports
18	Diabetes	1 or more	Medical supports
19	Other(s)-Specify	1 or more	Medical Supports

(3) Behavioral supports from the SIS exceptional behavior support needs scale

#	Questions in the Exceptional Behavior Support Needs Scale:	DDA must address in your PSCP if you have an acuity score of:	Health and Welfare Category
1	Prevention of emotional outbursts	1 or more	Behavioral Supports
2	Prevention of assault or injury to others	1 or more	Behavioral Supports
3	Prevention of property destruction (e.g., fire setting, breaking furniture)	1 or more	Behavioral Supports
4	Prevention of stealing	1 or more	Behavioral Supports
5	Prevention of self-injury	1 or more	Behavioral Supports
6	Prevention of suicide attempts	1 or more	Behavioral Supports
7	Prevention of PICA (ingestion of inedible substances)	1 or more	Behavioral Supports
8	Prevention of nonaggressive but inappropriate behavior (e.g., exposes self in public, exhibitionism, inappropriate touching or gesturing)	1 or more	Behavioral Supports
9	Prevention of sexual aggression	1 or more	Behavioral Supports
10	Prevention of substance abuse	1 or more	Behavioral Supports
11	Prevention of wandering	1 or more	Behavioral Supports
12	Maintenance of mental health treatments	1 or more	Behavioral Supports
13	Managing attention-seeking behavior	1 or more	Behavioral Supports
14	Managing uncooperative behavior	1 or more	Behavioral Supports
15	Managing agitated/over-reactive behavior	1 or more	Behavioral Supports
16	Managing obsessive/repetitive behavior	1 or more	Behavioral Supports
17	Prevention of other serious behavior problem(s)-Specify	1 or more	Behavioral Supports

(4) Caregiver from the SIS exceptional behavior support needs scale

#	Question in the DDA Caregiver Status Acuity Scale:	DDA must address in your PSCP if you have a score:	Health and Welfare Category
6	How long do you think you expect to continue providing care?	1 to 6 months or less than 1 month	DDA Caregiver Status

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 19-02-020, § 388-828-8040, filed 12/21/18, effective 2/1/19. Statutory Authority: RCW 71A.12.030 and Title 71A RCW. WSR 07-10-029, § 388-828-8040, filed 4/23/07, effective 6/1/07.]

AMENDATORY SECTION (Amending WSR 19-02-020, filed 12/21/18, effective 2/1/19)

WAC 388-828-8060 How does DDA determine which health and welfare needs must be addressed in your ((~~individual support~~)) person-centered service plan if you are age sixteen or older? (1) If you are age sixteen or older and receiving DDA HCBS waiver services or reside in a state-only residential setting, DDA uses the following table to determine the health and welfare needs that must be addressed in your ((~~individual support~~)) person-centered service plan:

#	SIS Activity	DDA must address in the PSCP if your Type of Support score is:	Health and Welfare Category
A1	Operating home appliances	3 or more	Home Living
A2	Bathing and taking care of personal hygiene and grooming needs	3 or more	
A3	Using the toilet	3 or more	
A4	Dressing	3 or more	
A5	Preparing food	3 or more	
A6	Eating food	3 or more	
A7	Taking care of clothes, including laundering	3 or more	
A8	Housekeeping and cleaning	3 or more	
A9	Using currently prescribed equipment or treatment	3 or more	
B1	Getting from place to place throughout the community (transportation)	2 or more	Community Living
B2	Participating in recreation/leisure activities in the community	2 or more	
B4	Accessing public buildings and settings	2 or more	
B5	Using public services in the community	2 or more	
B6	Shopping and purchasing goods and services	2 or more	
B7	Interacting with community members	4	
B8	Going to visit friends and family	4	
D3	Interacting with co-workers	3 or more	
D4	Interacting with supervisors and or coaches	3 or more	
E1	Taking medications	2 or more	Health ((antd)) and Safety
E2	Ambulating and moving about	3 or more	
E3	Avoiding health and safety hazards	3 or more	
E4	Obtaining health care services	3 or more	
E6	Maintaining a nutritious diet	3 or more	
E7	Maintaining physical health and fitness	3 or more	
F2	Participating in recreation/leisure activities with others	2 or more	
F4	Making and keeping friends	4	
F6	Socializing within the household	4	
G2	Making choices and decisions	2 or more	Protection and Advocacy
G3	Protecting self from exploitation	2 or more	
G7	Managing money and personal finances	2 or more	

(2) If you have a support score of one or more for any of the questions in the SIS exceptional medical support needs scale, DDA must address your support need using the medical supports category.

(3) If you have a support score of one or more for any of the questions in the SIS exceptional behavior support needs scale, DDA must address your support need using the behavior supports category.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 19-02-020, § 388-828-8060, filed 12/21/18, effective 2/1/19. Statutory Authority: RCW 71A.12.030 and Title 71A RCW. WSR 07-10-029, § 388-828-8060, filed 4/23/07, effective 6/1/07.]

AMENDATORY SECTION (Amending WSR 10-07-019, filed 3/8/10, effective 4/8/10)

WAC 388-828-8500 What is the children's intensive in-home behavioral support (CIIBS) program algorithm? The children's intensive in-home behavioral support (CIIBS) program algorithm is a formula in the ((~~DD~~)) DDA assessment that calculates your out-of-home placement risk score to determine your eligibility for the CIIBS waiver per chapter 388-845 WAC.

[Statutory Authority: RCW 71A.12.010, 71A.12.030, and Title 71A RCW. WSR 10-07-019, § 388-828-8500, filed 3/8/10, effective 4/8/10.]

AMENDATORY SECTION (Amending WSR 10-07-019, filed 3/8/10, effective 4/8/10)

WAC 388-828-8505 When does the ((~~DD~~)) DDA assessment run the CIIBS algorithm to determine your eligibility for the CIIBS waiver? The ((~~DD~~)) DDA assessment runs the CIIBS algorithm to determine your eligibility for the CIIBS waiver when your support assessment is moved to current and:

- (1) You are the assessed age of eight or older and under age eighteen;
- (2) Your behavior acuity level is high per WAC 388-828-5640;
- (3) Your caregiver's risk score is medium, high or immediate per WAC 388-828-5300; and
- (4) Your ((~~ICF/MR~~)) ICF/IID score is eligible per WAC 388-828-4400 (~~and~~
- ~~(5) You are not enrolled in the CIIBS waiver).~~

[Statutory Authority: RCW 71A.12.010, 71A.12.030, and Title 71A RCW. WSR 10-07-019, § 388-828-8505, filed 3/8/10, effective 4/8/10.]

AMENDATORY SECTION (Amending WSR 10-07-019, filed 3/8/10, effective 4/8/10)

WAC 388-828-8510 What elements does the CIIBS algorithm use to calculate your out-of-home placement risk score? The CIIBS algorithm uses the following elements to determine your out-of-home placement risk score:

- (1) The ((~~DD~~)) DDA protective supervision acuity scale (WAC 388-828-5000 to 388-828-5100);
- (2) The ((~~DD~~)) DDA caregiver status acuity scale (WAC 388-828-5120 to 388-828-5360);
- (3) The ((~~DD~~)) DDA behavioral acuity scale (WAC 388-828-5500 to 388-828-5640);
- (4) The ((~~DD~~)) DDA activities of daily living (ADL) acuity scale (WAC 388-828-5380 to 388-828-5480);
- (5) The ((~~DD~~)) DDA mobility acuity scale (WAC 388-828-5380 to 388-828-5480); and
- (6) Eligible condition of "autism" as indicated in the ((~~DD~~)) DDA determination (WAC 388-823-0500).

[Statutory Authority: RCW 71A.12.010, 71A.12.030, and Title 71A RCW. WSR 10-07-019, § 388-828-8510, filed 3/8/10, effective 4/8/10.]

AMENDATORY SECTION (Amending WSR 10-07-019, filed 3/8/10, effective 4/8/10)

WAC 388-828-8515 How does ((DD)) DDA determine your CIIBS out-of-home placement risk score? Your CIIBS out-of-home placement risk score is calculated using the following table:

Section and WAC reference	If you meet the following criteria:	Then adjust your score by:	Score if you meet criteria
	Clients meeting eligibility criteria in WAC 388-828-8505		Beginning Score = 0
((DD)) DDA Determination WAC 388-823-0500	Eligible condition of autism in the ((DD)) DDA determination.	Adding 40 points	=
ADL Acuity Level WAC 388-828-5480	Your ADL support needs level = high, medium or low	Subtracting 54 points	=
Behavior Acuity Scale WAC 388-828-5500 through 388-828-5640	Your most prominent behavior = assault/injury and Severity of your most prominent behavior = "potentially dangerous" or "life threatening"	Adding 14 points	=
Protective Supervision Acuity Scale WAC 388-828-5060	Your answer to the following question: "What level of monitoring does the client typically require during awake hours?" = "Line of sight/earshot"	Adding 13 points	=
((DD)) DDA Caregiver Status Acuity WAC 388-828-5300	Your caregiver risk level = high or immediate	Adding 136 points	=
Backup Caregiver Status WAC 388-828-5320	Your answer to the following question: "Under what conditions are other caregiver(s) available?" = "No other caregiver available"	Adding 33 points	=
Mobility Acuity Scale WAC 388-828-5900	Your mobility acuity level = high, medium or low	Subtracting 15 points	=
		Sum of all of scores above is your CIIBS out-of-home placement risk score	=

[Statutory Authority: RCW 71A.12.010, 71A.12.030, and Title 71A RCW. WSR 10-07-019, § 388-828-8515, filed 3/8/10, effective 4/8/10.]

AMENDATORY SECTION (Amending WSR 10-07-019, filed 3/8/10, effective 4/8/10)

WAC 388-828-8520 How does ((DD)) DDA determine if I am eligible for the CIIBS waiver? ((DD)) DDA uses the following table to determine if you are eligible for the CIIBS waiver based on your CIIBS out-of-home placement risk score per WAC 388-828-8510:

If your CHBS out-of-home placement risk score is:	Then your CHBS eligibility is:
96 or greater	Yes - Severe
17 through 95	Yes - High
Less than 17	No - (not eligible)

[Statutory Authority: RCW 71A.12.010, 71A.12.030, and Title 71A RCW. WSR 10-07-019, § 388-828-8520, filed 3/8/10, effective 4/8/10.]

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-828-9000 What is the individual and family services assessment? The individual and family services assessment is an algorithm in the ((DDD)) DDA assessment that determines an award amount that you may receive if ((DDD)) DDA has authorized you to receive individual and family services per chapter 388-832 WAC.

[Statutory Authority: RCW 71A.12.030, 71A.12.040, and 2007 c 283. WSR 08-16-121, § 388-828-9000, filed 8/5/08, effective 9/5/08.]

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-828-9020 What is the purpose of the individual and family services assessment? The purpose of the individual and family services assessment is to determine your individual and family services level and score using your assessed support levels from:

- (1) The ((DDD)) DDA protective supervision acuity scale (See WAC 388-828-5000 to 388-828-5100);
- (2) The ((DDD)) DDA caregiver status acuity scale (See WAC 388-828-5120 to 388-828-5360);
- (3) The ((DDD)) DDA behavioral acuity scale((+)) (See WAC 388-828-5500 to 388-828-5640);
- (4) The ((DDD)) DDA medical acuity scale((+)) (See WAC 388-828-5660 to 388-828-5700); and
- (5) The ((DDD)) DDA activities of daily living (ADL) acuity scale (See WAC 388-828-5380 to 388-828-5480).

[Statutory Authority: RCW 71A.12.030, 71A.12.040, and 2007 c 283. WSR 08-16-121, § 388-828-9020, filed 8/5/08, effective 9/5/08.]

AMENDATORY SECTION (Amending WSR 09-21-033, filed 10/13/09, effective 11/13/09)

WAC 388-828-9040 How does ((DDD)) DDA determine your individual and family services level? (1) ((DDD)) DDA determines your individual and family services level using the following table:

If your protective supervision support level is:	And your primary caregiver risk level is:	And your backup caregiver risk score is:	And your behavioral acuity level is:	Then your unadjusted individual and family services level is:
0	None	1	None	1
0	None	1	Low	1
0	None	1	Medium	1
0	None	1	High	2
0	None	2 or 3	None	1
0	None	2 or 3	Low	1
0	None	2 or 3	Medium	2
0	None	2 or 3	High	2
0	Low	1	None	1
0	Low	1	Low	1
0	Low	1	Medium	1
0	Low	1	High	2
0	Low	2 or 3	None	1
0	Low	2 or 3	Low	1
0	Low	2 or 3	Medium	2
0	Low	2 or 3	High	2
0	Medium	1	None	1
0	Medium	1	Low	1
0	Medium	1	Medium	1
0	Medium	1	High	2
0	Medium	2 or 3	None	1
0	Medium	2 or 3	Low	1
0	Medium	2 or 3	Medium	2
0	Medium	2 or 3	High	2
0	High	1	None	1
0	High	1	Low	1
0	High	1	Medium	2
0	High	1	High	2
0	High	2 or 3	None	2
0	High	2 or 3	Low	2
0	High	2 or 3	Medium	2
0	High	2 or 3	High	3
0	Immediate	1	None	1
0	Immediate	1	Low	1
0	Immediate	1	Medium	2
0	Immediate	1	High	2
0	Immediate	2 or 3	None	2
0	Immediate	2 or 3	Low	2
0	Immediate	2 or 3	Medium	2
0	Immediate	2 or 3	High	3
1	None	1	None	1
1	None	1	Low	1
1	None	1	Medium	1
1	None	1	High	2

If your protective supervision support level is:	And your primary caregiver risk level is:	And your backup caregiver risk score is:	And your behavioral acuity level is:	Then your unadjusted individual and family services level is:
1	None	2 or 3	None	1
1	None	2 or 3	Low	1
1	None	2 or 3	Medium	2
1	None	2 or 3	High	3
1	Low	1	None	1
1	Low	1	Low	1
1	Low	1	Medium	1
1	Low	1	High	2
1	Low	2 or 3	None	1
1	Low	2 or 3	Low	1
1	Low	2 or 3	Medium	2
1	Low	2 or 3	High	3
1	Medium	1	None	1
1	Medium	1	Low	1
1	Medium	1	Medium	2
1	Medium	1	High	3
1	Medium	2 or 3	None	1
1	Medium	2 or 3	Low	2
1	Medium	2 or 3	Medium	2
1	Medium	2 or 3	High	3
1	High	1	None	2
1	High	1	Low	2
1	High	1	Medium	2
1	High	1	High	3
1	High	2 or 3	None	2
1	High	2 or 3	Low	2
1	High	2 or 3	Medium	3
1	High	2 or 3	High	4
1	Immediate	1	None	2
1	Immediate	1	Low	2
1	Immediate	1	Medium	2
1	Immediate	1	High	3
1	Immediate	2 or 3	None	2
1	Immediate	2 or 3	Low	2
1	Immediate	2 or 3	Medium	3
1	Immediate	2 or 3	High	4
2 or 3	None	1	None	1
2 or 3	None	1	Low	1
2 or 3	None	1	Medium	2
2 or 3	None	1	High	3
2 or 3	None	2 or 3	None	2
2 or 3	None	2 or 3	Low	2
2 or 3	None	2 or 3	Medium	2
2 or 3	None	2 or 3	High	4

If your protective supervision support level is:	And your primary caregiver risk level is:	And your backup caregiver risk score is:	And your behavioral acuity level is:	Then your unadjusted individual and family services level is:
2 or 3	Low	1	None	1
2 or 3	Low	1	Low	1
2 or 3	Low	1	Medium	2
2 or 3	Low	1	High	3
2 or 3	Low	2 or 3	None	2
2 or 3	Low	2 or 3	Low	2
2 or 3	Low	2 or 3	Medium	2
2 or 3	Low	2 or 3	High	4
2 or 3	Medium	1	None	2
2 or 3	Medium	1	Low	2
2 or 3	Medium	1	Medium	2
2 or 3	Medium	1	High	3
2 or 3	Medium	2 or 3	None	2
2 or 3	Medium	2 or 3	Low	2
2 or 3	Medium	2 or 3	Medium	3
2 or 3	Medium	2 or 3	High	4
2 or 3	High	1	None	2
2 or 3	High	1	Low	2
2 or 3	High	1	Medium	2
2 or 3	High	1	High	3
2 or 3	High	2 or 3	None	2
2 or 3	High	2 or 3	Low	2
2 or 3	High	2 or 3	Medium	3
2 or 3	High	2 or 3	High	4
2 or 3	Immediate	1	None	2
2 or 3	Immediate	1	Low	2
2 or 3	Immediate	1	Medium	2
2 or 3	Immediate	1	High	3
2 or 3	Immediate	2 or 3	None	2
2 or 3	Immediate	2 or 3	Low	2
2 or 3	Immediate	2 or 3	Medium	3
2 or 3	Immediate	2 or 3	High	4
4	None	1	None	2
4	None	1	Low	2
4	None	1	Medium	2
4	None	1	High	3
4	None	2 or 3	None	2
4	None	2 or 3	Low	2
4	None	2 or 3	Medium	3
4	None	2 or 3	High	4
4	Low	1	None	2
4	Low	1	Low	2
4	Low	1	Medium	2
4	Low	1	High	3

If your protective supervision support level is:	And your primary caregiver risk level is:	And your backup caregiver risk score is:	And your behavioral acuity level is:	Then your unadjusted individual and family services level is:
4	Low	2 or 3	None	2
4	Low	2 or 3	Low	2
4	Low	2 or 3	Medium	3
4	Low	2 or 3	High	4
4	Medium	1	None	2
4	Medium	1	Low	2
4	Medium	1	Medium	3
4	Medium	1	High	3
4	Medium	2 or 3	None	2
4	Medium	2 or 3	Low	3
4	Medium	2 or 3	Medium	3
4	Medium	2 or 3	High	4
4	High	1	None	2
4	High	1	Low	2
4	High	1	Medium	3
4	High	1	High	3
4	High	2 or 3	None	2
4	High	2 or 3	Low	3
4	High	2 or 3	Medium	4
4	High	2 or 3	High	4
4	Immediate	1	None	2
4	Immediate	1	Low	2
4	Immediate	1	Medium	3
4	Immediate	1	High	3
4	Immediate	2 or 3	None	2
4	Immediate	2 or 3	Low	3
4	Immediate	2 or 3	Medium	4
4	Immediate	2 or 3	High	4
5	None	1	None	2
5	None	1	Low	2
5	None	1	Medium	3
5	None	1	High	4
5	None	2 or 3	None	3
5	None	2 or 3	Low	3
5	None	2 or 3	Medium	4
5	None	2 or 3	High	5
5	Low	1	None	2
5	Low	1	Low	2
5	Low	1	Medium	3
5	Low	1	High	4
5	Low	2 or 3	None	3
5	Low	2 or 3	Low	3
5	Low	2 or 3	Medium	4
5	Low	2 or 3	High	5

If your protective supervision support level is:	And your primary caregiver risk level is:	And your backup caregiver risk score is:	And your behavioral acuity level is:	Then your unadjusted individual and family services level is:
5	Medium	1	None	2
5	Medium	1	Low	2
5	Medium	1	Medium	3
5	Medium	1	High	4
5	Medium	2 or 3	None	3
5	Medium	2 or 3	Low	3
5	Medium	2 or 3	Medium	4
5	Medium	2 or 3	High	5
5	High	1	None	2
5	High	1	Low	2
5	High	1	Medium	3
5	High	1	High	4
5	High	2 or 3	None	3
5	High	2 or 3	Low	3
5	High	2 or 3	Medium	4
5	High	2 or 3	High	5
5	Immediate	1	None	2
5	Immediate	1	Low	2
5	Immediate	1	Medium	3
5	Immediate	1	High	4
5	Immediate	2 or 3	None	3
5	Immediate	2 or 3	Low	3
5	Immediate	2 or 3	Medium	4
5	Immediate	2 or 3	High	5
6	None	1	None	2
6	None	1	Low	3
6	None	1	Medium	3
6	None	1	High	4
6	None	2 or 3	None	3
6	None	2 or 3	Low	3
6	None	2 or 3	Medium	4
6	None	2 or 3	High	5
6	Low	1	None	2
6	Low	1	Low	3
6	Low	1	Medium	3
6	Low	1	High	4
6	Low	2 or 3	None	3
6	Low	2 or 3	Low	3
6	Low	2 or 3	Medium	4
6	Low	2 or 3	High	5
6	Medium	1	None	3
6	Medium	1	Low	3
6	Medium	1	Medium	3
6	Medium	1	High	4

If your protective supervision support level is:	And your primary caregiver risk level is:	And your backup caregiver risk score is:	And your behavioral acuity level is:	Then your unadjusted individual and family services level is:
6	Medium	2 or 3	None	3
6	Medium	2 or 3	Low	4
6	Medium	2 or 3	Medium	4
6	Medium	2 or 3	High	5
6	High	1	None	3
6	High	1	Low	3
6	High	1	Medium	4
6	High	1	High	4
6	High	2 or 3	None	4
6	High	2 or 3	Low	4
6	High	2 or 3	Medium	5
6	High	2 or 3	High	5
6	Immediate	1	None	3
6	Immediate	1	Low	3
6	Immediate	1	Medium	4
6	Immediate	1	High	4
6	Immediate	2 or 3	None	4
6	Immediate	2 or 3	Low	4
6	Immediate	2 or 3	Medium	5
6	Immediate	2 or 3	High	5

(2) ((~~DD~~)) DDA adds one level to your individual and family services level when your individual and family services level is determined to be:

(a) Level one, two, three, or four; and

(b) You have a score of four for question two "Other caregiving for persons who are disabled, seriously ill, or under five" in the ((~~DD~~)) DDA caregiver status acuity scale. See WAC 388-828-5260.

[Statutory Authority: RCW 71A.12.010, 71A.12.030, and Title 71A RCW. WSR 09-21-033, § 388-828-9040, filed 10/13/09, effective 11/13/09. Statutory Authority: RCW 71A.12.030, 71A.12.040, and 2007 c 283. WSR 08-16-121, § 388-828-9040, filed 8/5/08, effective 9/5/08.]

AMENDATORY SECTION (Amending WSR 15-22-039, filed 10/28/15, effective 11/28/15)

WAC 388-828-9060 How does ((~~DD~~)) DDA determine your individual and family services support rating? Your individual and family services support rating is determined by using the following table:

If your unadjusted individual and family services level is:	Then your individual and family services support rating is:
1	0
2	240
3	336
4	432

If your unadjusted individual and family services level is:	Then your individual and family services support rating is:
5	528

[Statutory Authority: RCW 71A.12.030 and 71A.12.140. WSR 15-22-039, § 388-828-9060, filed 10/28/15, effective 11/28/15. Statutory Authority: RCW 71A.12.010, 71A.12.030, and Title 71A RCW. WSR 09-21-033, § 388-828-9060, filed 10/13/09, effective 11/13/09. Statutory Authority: RCW 71A.12.030, 71A.12.040, and 2007 c 283. WSR 08-16-121, § 388-828-9060, filed 8/5/08, effective 9/5/08.]

AMENDATORY SECTION (Amending WSR 15-22-039, filed 10/28/15, effective 11/28/15)

WAC 388-828-9100 How does ((DDD)) DDA determine the number to use in the adjustment of your individual and family services support rating? ((DDD)) DDA determines the amount of the adjustment for your individual and family services support rating using the following table:

If your individual and family services level is 1, 2, 3, 4, or 5.		And your ADL support needs level for the SIS per WAC 388-828-5480			
		None	Low	Medium	High
And your medical acuity level per WAC 388-828-5700	None	57	57	76	85
	Low	57	57	76	85
	Medium	57	88	122	145
	High	57	145	245	287

Example: If your individual and family service level is 3 and your ADL support needs level is "low" and your medical acuity level is "medium," the amount of your adjustment is 88.

[Statutory Authority: RCW 71A.12.030 and 71A.12.140. WSR 15-22-039, § 388-828-9100, filed 10/28/15, effective 11/28/15. Statutory Authority: RCW 71A.12.030, 71A.12.040, and 2007 c 283. WSR 08-16-121, § 388-828-9100, filed 8/5/08, effective 9/5/08.]

AMENDATORY SECTION (Amending WSR 15-22-039, filed 10/28/15, effective 11/28/15)

WAC 388-828-9120 How does ((DDD)) DDA determine your individual and family services score? ((DDD)) DDA adds your individual and family services support rating from WAC 388-828-9060 to the adjustment amount in WAC 388-828-9100 to determine your individual and family services score.

Example: If your individual and family services support rating is 336 and the amount of your adjustment is 122, your individual and family services score is 458.

[Statutory Authority: RCW 71A.12.030 and 71A.12.140. WSR 15-22-039, § 388-828-9120, filed 10/28/15, effective 11/28/15. Statutory Authority:

RCW 71A.12.030, 71A.12.040, and 2007 c 283. WSR 08-16-121, § 388-828-9120, filed 8/5/08, effective 9/5/08.]

AMENDATORY SECTION (Amending WSR 14-07-028, filed 3/10/14, effective 4/10/14)

WAC 388-828-9140 How does ((DDD)) DDA determine the amount of your individual and family service award? ((DDD)) DDA uses the following table to determine the amount of your individual and family services award:

If your individual and family services score is:	The award level will be	The amount of your award is up to:
0 to 60	Not eligible	No Award
61 to 240	Level 1	\$1,200
241 to 336	Level 2	\$1,800
337 to 527	Level 3	\$2,400
528 or more	Level 4	\$3,600

[Statutory Authority: RCW 71A.12.030, 71A.12.040, and 74.08.090. WSR 14-07-028, § 388-828-9140, filed 3/10/14, effective 4/10/14. Statutory Authority: RCW 71A.12.030, 71A.12.040, and 2007 c 283. WSR 08-16-121, § 388-828-9140, filed 8/5/08, effective 9/5/08.]

AMENDATORY SECTION (Amending WSR 11-13-039, filed 6/8/11, effective 7/9/11)

WAC 388-828-9200 What is the ((DDD)) DDA employment acuity scale? The ((DDD)) DDA employment acuity scale is an algorithm that determines your employment acuity score and employment support level.

[Statutory Authority: RCW 71A.12.030, 71A.12.020(3), 71A.12.040(4), and 2009 c 564 §§ 103(7) and 205(c). WSR 11-13-039, § 388-828-9200, filed 6/8/11, effective 7/9/11.]

AMENDATORY SECTION (Amending WSR 11-13-039, filed 6/8/11, effective 7/9/11)

WAC 388-828-9205 How does ((DDD)) DDA determine your employment support level? ((DDD)) DDA determines your employment support level using the following table:

If your employment acuity score in WAC 388-828-9210 is:	Your employment support level is:
0 or less	None
Greater than 0 and less than 1.5	Low
1.5 to less than 2.5	Medium
2.5 or greater	High

[Statutory Authority: RCW 71A.12.030, 71A.12.020(3), 71A.12.040(4), and 2009 c 564 §§ 103(7) and 205(c). WSR 11-13-039, § 388-828-9205, filed 6/8/11, effective 7/9/11.]

AMENDATORY SECTION (Amending WSR 11-13-039, filed 6/8/11, effective 7/9/11)

WAC 388-828-9210 How does ((DDD)) DDA determine your employment acuity score? ((DDD)) DDA determines your employment acuity support score by combining your employment support scores for:

- (1) Activities of daily living (see WAC 388-828-9215);
- (2) Behavioral support (see WAC 388-828-9220);
- (3) Interpersonal support (see WAC 388-828-9225);
- (4) Environmental support (see WAC 388-828-9230);
- (5) Level of monitoring (see WAC 388-828-9240);
- (6) Employment support (see WAC 388-828-9245);
- (7) Completing tasks with acceptable speed (see WAC 388-828-9255);
- (8) Completing tasks with acceptable quality (see WAC 388-828-9260);
- (9) Medical support (see WAC 388-828-9265); and
- (10) Seizure support (see WAC 388-828-9270).

Example:

Acuity scales and questions used in determining employment acuity score:	If employment support scores are:
Activities of daily living	0.20607
Behavioral support	0.08372
Interpersonal support	0.47326
Environmental support	0.13596
Level of monitoring	0.7311
Employment support	0.43562
Completing tasks with acceptable speed	0.18855
Completing tasks with acceptable quality	0.10836
Medical support	0.135
Seizure support	-0.15393
Your employment acuity score is:	2.34371

[Statutory Authority: RCW 71A.12.030, 71A.12.020(3), 71A.12.040(4), and 2009 c 564 §§ 103(7) and 205(c). WSR 11-13-039, § 388-828-9210, filed 6/8/11, effective 7/9/11.]

AMENDATORY SECTION (Amending WSR 11-13-039, filed 6/8/11, effective 7/9/11)

WAC 388-828-9215 How does ((DDD)) DDA determine your employment acuity scale score for activities of daily living? ((DDD)) DDA deter-

mines your employment acuity score for activities of daily living by multiplying your ADL support needs level score by 0.06869.

If your ADL support needs level in WAC 388-828-5480 is:	Then your ADL support needs level score is:
None	0
Low	1
Medium	2
High	3

Example: An ADL support needs level score of 3 is multiplied by 0.06869 resulting in an employment acuity scale score for activities of daily living of 0.20607.

[Statutory Authority: RCW 71A.12.030, 71A.12.020 (3), 71A.12.040 (4), and 2009 c 564 §§ 103(7) and 205(c). WSR 11-13-039, § 388-828-9215, filed 6/8/11, effective 7/9/11.]

AMENDATORY SECTION (Amending WSR 11-13-039, filed 6/8/11, effective 7/9/11)

WAC 388-828-9220 How does ((DDD)) DDA determine your employment acuity scale score for behavioral support? ((DDD)) DDA determines your employment acuity scale score for behavioral support by multiplying your behavioral acuity level score (see WAC 388-828-5640) by 0.04186.

If your behavioral acuity level in WAC 388-828-5640 is:	Then your behavioral acuity level score is:
None	0
Low	1
Medium	2
High	3

Example: A behavioral acuity level score of 2 is multiplied by 0.04186 resulting in an employment acuity scale score for behavioral support of 0.08372.

[Statutory Authority: RCW 71A.12.030, 71A.12.020 (3), 71A.12.040 (4), and 2009 c 564 §§ 103(7) and 205(c). WSR 11-13-039, § 388-828-9220, filed 6/8/11, effective 7/9/11.]

AMENDATORY SECTION (Amending WSR 11-13-039, filed 6/8/11, effective 7/9/11)

WAC 388-828-9225 How does ((DDD)) DDA determine your employment acuity scale score for interpersonal support? ((DDD)) DDA determines your employment acuity scale score for interpersonal support by multiplying your interpersonal support needs level score (see WAC 388-828-5820) by 0.23663.

If your interpersonal support needs level in WAC 388-828-5820 is:	Then your interpersonal support needs level score is:
None	0
Low	1
Medium	2
High	3

Example: An interpersonal support needs level score of 2 is multiplied by 0.23663 resulting in an employment acuity scale score for interpersonal support of 0.47326.

[Statutory Authority: RCW 71A.12.030, 71A.12.020 (3), 71A.12.040 (4), and 2009 c 564 §§ 103(7) and 205(c). WSR 11-13-039, § 388-828-9225, filed 6/8/11, effective 7/9/11.]

AMENDATORY SECTION (Amending WSR 11-13-039, filed 6/8/11, effective 7/9/11)

WAC 388-828-9230 How does ((DDD)) DDA determine your employment acuity scale score for environmental support? ((DDD)) DDA determines your employment acuity scale score for environmental support by multiplying your environmental support level by 0.06798.

If your environmental support score from WAC 388-828-9235 is:	Then your environmental support level is:	
0	0	None
1 or 2	1	Low
3 or 4	2	Medium
5 or more	3	High

Example: An environmental support score of 3 equals an environmental support level of 2. The environmental support level of 2 is then multiplied by 0.06798 resulting in an employment acuity scale score for environmental support of 0.13596.

[Statutory Authority: RCW 71A.12.030, 71A.12.020 (3), 71A.12.040 (4), and 2009 c 564 §§ 103(7) and 205(c). WSR 11-13-039, § 388-828-9230, filed 6/8/11, effective 7/9/11.]

AMENDATORY SECTION (Amending WSR 11-13-039, filed 6/8/11, effective 7/9/11)

WAC 388-828-9235 How does ((DDD)) DDA determine your environmental support score? ((DDD)) DDA determines your environmental support score by adding the sum of your assessment responses to employment support limitations in the following table:

Response	Employment Support/ Limitations	Score
1	Behaviors impact workplace	1
2	Employment goals too specific	1

Response	Employment Support/ Limitations	Score
3	Fearful/scared of new situations	0
4	Frequent job changes	1
5	High turnover of natural supports	1
6	Hygiene issues unresolved	1
7	Lacks social skills	1
8	Little work history	1
9	Narrow scope of job requirements	1
10	Needs support arranging childcare	1
11	Others not supportive of employment goals	1
12	Others unable to support employment goals	1
13	Transportation	1
14	Unable to regularly get to work on time	1
15	Uncertain about work	0
16	Uncooperative/lacks motivation	0
Maximum employment support limitation score is:		13

Example: If you have selected responses 1, 3, 8, 13, and 15, the sum of your scores for employment support limitations would be 3, resulting in an environmental support score of 3 for WAC 388-828-9230.

[Statutory Authority: RCW 71A.12.030, 71A.12.020(3), 71A.12.040(4), and 2009 c 564 §§ 103(7) and 205(c). WSR 11-13-039, § 388-828-9235, filed 6/8/11, effective 7/9/11.]

AMENDATORY SECTION (Amending WSR 11-13-039, filed 6/8/11, effective 7/9/11)

WAC 388-828-9240 How does ((DDD)) DDA determine your employment support score for level of monitoring? ((DDD)) DDA determines your employment support score for level of monitoring by multiplying your level of monitoring score in WAC 388-828-5060(1) by 0.14622.

Example: If ((you)) your level of monitoring is "onsite" (e.g., on property) your level of monitoring score is 5. Multiplying a "level of monitoring score" of 5 by 0.14622 results in an employment support score for level of monitoring of 0.7311.

[Statutory Authority: RCW 71A.12.030, 71A.12.020(3), 71A.12.040(4), and 2009 c 564 §§ 103(7) and 205(c). WSR 11-13-039, § 388-828-9240, filed 6/8/11, effective 7/9/11.]

AMENDATORY SECTION (Amending WSR 11-13-039, filed 6/8/11, effective 7/9/11)

WAC 388-828-9245 How does ((DDD)) DDA determine your employment acuity scale score for employment support? ((DDD)) DDA determines

your employment acuity score for employment support by multiplying your ~~DDD~~ DDA support score in WAC 388-828-9250 by 0.21781.

Example: A ~~DDD~~ DDA employment support score of 2 is multiplied by 0.21781 resulting in an employment acuity scale score for employment support of 0.43562.

[Statutory Authority: RCW 71A.12.030, 71A.12.020 (3), 71A.12.040 (4), and 2009 c 564 §§ 103(7) and 205(c). WSR 11-13-039, § 388-828-9245, filed 6/8/11, effective 7/9/11.]

AMENDATORY SECTION (Amending WSR 11-13-039, filed 6/8/11, effective 7/9/11)

WAC 388-828-9250 How does ~~DDD~~ DDA determine your ~~DDD~~ DDA employment support score? ~~DDD~~ DDA determines your ~~DDD~~ DDA employment support score using the following table:

If your total raw score for the SIS employment activities subscale in WAC 388-828-4260 is:	Then your DDD <u>DDA</u> employment level is:	And your DDD <u>DDA</u> employment support score is:
0	None	0
1 through 35	Low	1
36 through 59	Medium	2
60 or more	High	3

[Statutory Authority: RCW 71A.12.030, 71A.12.020 (3), 71A.12.040 (4), and 2009 c 564 §§ 103(7) and 205(c). WSR 11-13-039, § 388-828-9250, filed 6/8/11, effective 7/9/11.]

AMENDATORY SECTION (Amending WSR 11-13-039, filed 6/8/11, effective 7/9/11)

WAC 388-828-9255 How does ~~DDD~~ DDA determine your employment acuity score for completing tasks with acceptable speed? ~~DDD~~ DDA determines your employment acuity score for completing tasks with acceptable speed by using your "type of support" score for question "D5" in WAC 388-828-4260 and multiplying it by 0.06285.

Example: A "type of support" score of 3 (partial physical assistance) is multiplied by 0.06285 resulting in an employment acuity score for completing tasks with acceptable speed of 0.18855.

[Statutory Authority: RCW 71A.12.030, 71A.12.020 (3), 71A.12.040 (4), and 2009 c 564 §§ 103(7) and 205(c). WSR 11-13-039, § 388-828-9255, filed 6/8/11, effective 7/9/11.]

AMENDATORY SECTION (Amending WSR 11-13-039, filed 6/8/11, effective 7/9/11)

WAC 388-828-9260 How does ((DDD)) DDA determine your employment acuity score for completing tasks with acceptable quality? ((DDD)) DDA determines your employment acuity score for completing tasks with acceptable quality by using your "type of support" score for question "D6" in WAC 388-828-4260 and multiplying it by 0.05418.

Example: A "type of support" score of 2 (verbal/gestural prompting) is multiplied by 0.05418 resulting in an employment acuity score for completing tasks with acceptable quality of 0.10836.

[Statutory Authority: RCW 71A.12.030, 71A.12.020(3), 71A.12.040(4), and 2009 c 564 §§ 103(7) and 205(c). WSR 11-13-039, § 388-828-9260, filed 6/8/11, effective 7/9/11.]

AMENDATORY SECTION (Amending WSR 11-13-039, filed 6/8/11, effective 7/9/11)

WAC 388-828-9265 How does ((DDD)) DDA determine your employment acuity scale score for medical support? ((DDD)) DDA determines your employment acuity scale score for medical support by multiplying your medical support needs level score (see WAC 388-828-5700) by 0.06750.

If your medical support needs level in WAC 388-828-5700 is:	Then your medical support needs level score is:
None	0
Low	1
Medium	2
High	3

Example: A medical support needs level score of 2 is multiplied by 0.06750 resulting in an employment acuity scale score for medical support of 0.135.

[Statutory Authority: RCW 71A.12.030, 71A.12.020(3), 71A.12.040(4), and 2009 c 564 §§ 103(7) and 205(c). WSR 11-13-039, § 388-828-9265, filed 6/8/11, effective 7/9/11.]

AMENDATORY SECTION (Amending WSR 11-13-039, filed 6/8/11, effective 7/9/11)

WAC 388-828-9270 How does ((DDD)) DDA determine your employment acuity scale score for seizure support? ((DDD)) DDA determines your employment acuity scale score for seizure support by multiplying your seizure support score in WAC 388-828-9275 by negative 0.05131.

Example: A seizure support score of 3 is multiplied by -0.05131 resulting in an employment acuity scale score for seizure support of -0.15393.

[Statutory Authority: RCW 71A.12.030, 71A.12.020(3), 71A.12.040(4), and 2009 c 564 §§ 103(7) and 205(c). WSR 11-13-039, § 388-828-9270, filed 6/8/11, effective 7/9/11.]

AMENDATORY SECTION (Amending WSR 11-13-039, filed 6/8/11, effective 7/9/11)

WAC 388-828-9275 How does ((DDD)) DDA determine your seizure support score? ((DDD)) DDA determines your seizure support score using the following table:

If your assessment indicates the following:	Your seizure support level is:	And your seizure support score is:
(1) Does the client have a history of seizures equals "no"	None	0
(2) Does the client have a history of seizures equals "yes"; and (3) Client does not meet requirements for seizure support level of "medium" or "high"	Low	1
(4) Client has convulsive seizures (tonic-clonic or atonic); and (5) Frequency is quarterly, monthly, weekly or multiple times per week; and (6) Seizure duration is 5 minutes or less	Medium	2
(7) Two ((ore)) or more emergency room visits/911 calls in past year; or (8) Has convulsive seizures (tonic-clonic or atonic); and (9) Frequency is quarterly, monthly, weekly or multiple times per week; and (10) Seizure duration is greater than 5 minutes or requires medical intervention to stop	High	3

[Statutory Authority: RCW 71A.12.030, 71A.12.020(3), 71A.12.040(4), and 2009 c 564 §§ 103(7) and 205(c). WSR 11-13-039, § 388-828-9275, filed 6/8/11, effective 7/9/11.]

AMENDATORY SECTION (Amending WSR 11-13-039, filed 6/8/11, effective 7/9/11)

WAC 388-828-9280 Why does ((DDD)) DDA multiply your seizure support score by a negative factor? ((DDD)) DDA multiplies your seizure support score by a negative factor because the ((DDD)) DDA employment acuity scale tends to over-predict employment support needs for per-

sons with seizures. This is because seizures can often be controlled with medication and the relationship between a person's seizure acuity and employment support needs may have already been partially taken into account by other variables in the algorithm, such as the medical acuity scale.

[Statutory Authority: RCW 71A.12.030, 71A.12.020(3), 71A.12.040(4), and 2009 c 564 §§ 103(7) and 205(c). WSR 11-13-039, § 388-828-9280, filed 6/8/11, effective 7/9/11.]

AMENDATORY SECTION (Amending WSR 13-01-076, filed 12/18/12, effective 1/18/13)

WAC 388-828-9325 How does ((DDD)) DDA determine the number of hours you may receive for employment support services? ((DDD)) DDA determines the number of hours you may receive for employment services using information from the following:

- (1) Your employment support level determined as described in WAC 388-828-9205;
- (2) Your employment status determined as described in WAC 388-828-9330;
- (3) Your employment service level and employment service hours determined as described in WAC 388-828-9335;
- (4) Your employment service type;
- (5) You meet one of the conditions identified as described in WAC 388-828-9345 and require add-on hours identified in WAC 388-828-9350.

[Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-01-076, § 388-828-9325, filed 12/18/12, effective 1/18/13.]

AMENDATORY SECTION (Amending WSR 13-01-076, filed 12/18/12, effective 1/18/13)

WAC 388-828-9355 How many add-on hours are you eligible to receive? ((DDD)) DDA uses the following table to determine the maximum number of add-on hours you are eligible to receive.

If you meet one of the conditions in WAC 388-828-9350 and your employment level is:	You are eligible to receive up to the following amount of add-on hours:
A	0
B	0
C	5
D	7
E	5
F	7
G	12
H	14

[Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-01-076, § 388-828-9355, filed 12/18/12, effective 1/18/13.]

AMENDATORY SECTION (Amending WSR 08-15-091, filed 7/17/08, effective 7/17/08)

WAC 388-828-9500 What is the residential algorithm? The residential algorithm is a formula in the ((~~DD~~)) DDA assessment that determines the level of residential services and supports you may expect to receive based on your assessed support needs.

[WSR 08-15-091, recodified as § 388-828-9500, filed 7/17/08, effective 7/17/08. Statutory Authority: RCW 71A.12.30 [71A.12.030] and Title 71A RCW. WSR 08-12-037, § 388-828-10000, filed 5/30/08, effective 7/1/08.]

AMENDATORY SECTION (Amending WSR 09-06-047, filed 2/25/09, effective 3/28/09)

WAC 388-828-9520 Where does the residential algorithm obtain your support needs information? The residential algorithm obtains your support needs information from the following components of your current ((~~DD~~)) DDA assessment:

- (1) The supports intensity scale assessment (SIS) per WAC 388-828-4000 through 388-828-4320;
- (2) The ((~~DD~~)) DDA protective supervision acuity scale per WAC 388-828-5000 through 388-828-5100;
- (3) The ((~~DD~~)) DDA behavioral acuity scale per WAC 388-828-5500 through 388-828-5640;
- (4) The ((~~DD~~)) DDA medical acuity scale per WAC 388-828-5660 through 388-828-5700;
- (5) The program and services panel per WAC 388-828-6020;
- (6) The ((~~DD~~)) DDA seizure acuity scale per WAC 388-828-7040 through 388-828-7080; and
- (7) The ((~~DD~~)) DDA sleep panel per WAC 388-828-9640.

[Statutory Authority: RCW 71A.12.030 and Title 71A RCW. WSR 09-06-047, § 388-828-9520, filed 2/25/09, effective 3/28/09. WSR 08-15-091, recodified as § 388-828-9520, filed 7/17/08, effective 7/17/08; WSR 08-12-037, § 388-828-10040, filed 5/30/08, effective 7/1/08.]

AMENDATORY SECTION (Amending WSR 09-06-047, filed 2/25/09, effective 3/28/09)

WAC 388-828-9530 How does the residential algorithm identify your residential support needs score? The residential algorithm uses the support needs information from your current ((~~DD~~)) DDA assessment to identify the following residential support needs scores:

- (1) Community protection program enrollment as defined in WAC 388-828-9590;
- (2) Daily support needs score as defined in WAC 388-828-9560;

- (3) Mid-frequency support needs score as defined in WAC 388-828-9580;
- (4) Behavior support needs score as defined in WAC 388-828-9590;
- (5) Medical support needs score as defined in WAC 388-828-9600;
- (6) Seizure support needs score as defined in WAC 388-828-9610;
- (7) Protective supervision support needs score as defined in WAC 388-828-9620;
- (8) Ability to seek help score as defined in WAC 388-828-9630;
- (9) Nighttime support needs score as defined in WAC 388-828-9640;
- (10) Toileting support needs score as defined in WAC 388-828-9650; and
- (11) Total critical support time as defined in WAC 388-828-9660 through 388-828-9690.

[Statutory Authority: RCW 71A.12.030 and Title 71A RCW. WSR 09-06-047, § 388-828-9530, filed 2/25/09, effective 3/28/09. WSR 08-15-091, re-codified as § 388-828-9530, filed 7/17/08, effective 7/17/08; WSR 08-12-037, § 388-828-10060, filed 5/30/08, effective 7/1/08.]

AMENDATORY SECTION (Amending WSR 09-06-047, filed 2/25/09, effective 3/28/09)

WAC 388-828-9540 What residential service levels of support does ((~~DD~~) DDA use? ((~~DD~~) DDA uses the following residential service levels of support which correspond with your assessed support needs (see WAC 388-828-9530):

Support Need Level	Typical Support Need Characteristics from the ((DD) <u>DDA</u> Assessment	Expected Level of Support*
Weekly or less Support Level 1	Client requires supervision, training, or physical assistance in areas that typically occur weekly or less often, such as shopping, paying bills, or medical appointments. Client is generally independent in support areas that typically occur daily or every couple of days.	Clients assessed to need this level receive support on a weekly basis or less frequently.
Multiple times per week Support Level 2	Client is able to maintain health and safety for a full day or more at a time AND needs supervision, training, or physical assistance with tasks that typically occur every few days, such as light housekeeping, menu planning, or guidance and support with relationships. Client is generally independent in support areas that must occur daily.	Clients assessed to need this level receive support multiple times per week.
Intermittent daily - Low Support Level 3A	Client is able to maintain health and safety for short periods of time (i.e., hours, but not days) OR needs supervision, training, or physical assistance with activities that typically occur daily, such as bathing, dressing, or taking medications.	Clients assessed to need this level receive daily support.
Intermittent daily - Moderate Support Level 3B	Client requires supervision, training, or physical assistance with multiple tasks that typically occur daily OR requires frequent checks for health and safety or due to disruptions in routines.	Clients assessed to need this level receive daily support and may receive checks during nighttime hours as needed.
Close proximity Support Level 4	Client requires support with a large number of activities that typically occur daily OR is able to maintain health and safety for very short periods of time (i.e., less than 2 hours, if at all) AND requires occasional health and safety checks or support during overnight hours.	Clients assessed to need this level receive supports in close proximity 24 hours per day. Support hours may be shared with neighboring households.
Continuous day and continuous night Support Level 5	Client is generally unable to maintain health and safety OR requires support with a large number of activities that occur daily or almost every day AND requires nighttime staff typically within the household.	Clients assessed to need this level receive support 24 hours per day.

Support Need Level	Typical Support Need Characteristics from the ((DD)) <u>DDA</u> Assessment	Expected Level of Support*
Community Protection Support Level 6	Client is enrolled in the community protection program.	Clients assessed to need this level of support will receive 24 hour per day supervision per community protection program policy.
*Emergency access to residential staff is available to all clients, 24-hours per day, regardless of the residential service level of support the assessment indicates.		

[Statutory Authority: RCW 71A.12.030 and Title 71A RCW. WSR 09-06-047, § 388-828-9540, filed 2/25/09, effective 3/28/09. WSR 08-15-091, recodified as § 388-828-9540, filed 7/17/08, effective 7/17/08; WSR 08-12-037, § 388-828-10080, filed 5/30/08, effective 7/1/08.]

AMENDATORY SECTION (Amending WSR 08-15-091, filed 7/17/08, effective 7/17/08)

WAC 388-828-9550 How does the residential algorithm determine if you are enrolled in the community protection program? The residential algorithm determines that you are enrolled in the community protection program if your current ((~~DD~~)) DDA assessment (see WAC 388-828-6020) shows that you are:

- (1) On the community protection waiver; or
- (2) Considered for the community protection waiver.

[WSR 08-15-091, recodified as § 388-828-9550, filed 7/17/08, effective 7/17/08. Statutory Authority: RCW 71A.12.30 [71A.12.030] and Title 71A RCW. WSR 08-12-037, § 388-828-10100, filed 5/30/08, effective 7/1/08.]

AMENDATORY SECTION (Amending WSR 08-15-091, filed 7/17/08, effective 7/17/08)

WAC 388-828-9570 How does ((~~DD~~)) DDA define mid-frequency support? ((~~DD~~)) DDA defines mid-frequency support as support for selected SIS activities that most people perform every two to four days.

[WSR 08-15-091, recodified as § 388-828-9570, filed 7/17/08, effective 7/17/08. Statutory Authority: RCW 71A.12.30 [71A.12.030] and Title 71A RCW. WSR 08-12-037, § 388-828-10130, filed 5/30/08, effective 7/1/08.]

AMENDATORY SECTION (Amending WSR 08-15-091, filed 7/17/08, effective 7/17/08)

WAC 388-828-9640 How does the residential algorithm determine your nighttime support needs score? The residential algorithm scores the answers to each of the five following questions from the ((~~DD~~)) DDA sleep panel in the service level assessment to determine your nighttime support needs:

- (1)

(DD) DDA Sleep Panel Question	If (you) your answer to the question is:	Then your support needs score for this question is:
Nighttime Assistance*needed? Frequency	0 = None or less than monthly	Less than daily
	1 = At least once a month but not once a week	Less than daily
	2 = At least once a week but not once a day	Less than daily
	3 = At least once a day but not once an hour	Daily or more frequently
	4 = Hourly or more frequently	Daily or more frequently
* Nighttime assistance needed means that the person wakes in the night and requires assistance with toileting, mobility, medical issues, behaviors, guidance through sleepwalking, or other support requiring intervention.		

(2)

(DD) DDA Sleep Panel Question	If your answer to this question is:	Then your support needs score for this question is:
Nighttime assistance needed? Daily support time	0 = None	Less than (<) 30 minutes
	1 = Less than 30 minutes	Less than (<) 30 minutes
	2 = 30 minutes to less than 2 hours	30 minutes or more
	3 = 2 hours to less than 4 hours	30 minutes or more
	4 = 4 hours or more	30 minutes or more

(3)

(DD) DDA Sleep Panel Question	If your answer to this question is:	Then your support needs score for this question is:
Can toilet self at night?	Yes	Yes
	No	No

(4)

(DD) DDA Sleep Panel Question	If your answer to this question is:	Then your support needs score for this question is:
Wakes to toilet most nights?	Yes	Yes
	No	No

(5)

((DDD)) DDA Sleep Panel Question	If your answer to this question is:		Then your support needs score for this question is:
Nighttime behavioral/ anxiety issues?	None	Defined as: No behavioral or anxiety issues at night.	No
	Minor	Defined as: You experience low to medium behavioral or anxiety issues when left alone at night, but can manage the behaviors/anxiety with minimal or no intervention.	No
	Moderate	Defined as: You experience intense behavioral or anxiety issues when left alone at night, but you are managing to cope, even if only minimally, by yourself or with remote or occasional onsite help as needed.	No
	Severe	Defined as: You experience intense behavioral or anxiety issues on most nights if left alone and require a support person within your home during all overnight hours in order to maintain yours and/or other's health and safety.	Yes

[WSR 08-15-091, recodified as § 388-828-9640, filed 7/17/08, effective 7/17/08. Statutory Authority: RCW 71A.12.30 [71A.12.030] and Title 71A RCW. WSR 08-12-037, § 388-828-10260, filed 5/30/08, effective 7/1/08.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 388-828-1160 Does everyone receive all three modules of the DDD assessment?
- WAC 388-828-1200 Who does DDD ask to disclose financial information?
- WAC 388-828-1220 Will DDD require the reported annual gross income to be verified with supporting documentation?
- WAC 388-828-1300 How will your access to, or receipt of, DDD paid services, private duty nursing services, or SSP be affected if income information is not reported?
- WAC 388-828-1360 Are there any exceptions to completing your DDD assessment within thirty days?
- WAC 388-828-1380 What will DDD do if you are unable to identify an ADSA contracted provider?
- WAC 388-828-1400 What is your responsibility when selecting and/or hiring an ADSA contracted individual provider?
- WAC 388-828-1560 Do all questions in the DDD assessment have to be answered?

- WAC 388-828-1620 How does DDD determine which panels are mandatory in your DDD assessment?
- WAC 388-828-1640 What are the mandatory panels in your DDD assessment?
- WAC 388-828-8020 What components contained in the individual support plan module determine a service level and/or number of hours?

WSR 21-19-096
PERMANENT RULES
PARKS AND RECREATION
COMMISSION

[Filed September 17, 2021, 10:15 a.m., effective October 18, 2021]

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

Purpose: This permanent rule will amend chapter 352-28 WAC to update and consolidate definitions and clarify the agency approval process for resource sales.

Citation of Rules Affected by this Order: Amending WAC 352-28-005, 352-28-010, and 352-28-020.

Statutory Authority for Adoption: RCW 79A.05.070, 79A.05.030.

Adopted under notice filed as WSR 21-15-109 on July 20, 2021.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 0.

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

Date Adopted: September 16, 2021.

Valeria Vealsey [Veasley]
Management Analyst

OTS-2927.3

AMENDATORY SECTION (Amending WSR 10-15-024, filed 7/12/10, effective 8/12/10)

WAC 352-28-005 Definitions. When used in this chapter the following words and phrases shall have the meanings designated in this section unless a different meaning is expressly provided or unless the context clearly indicates otherwise.

(1) (~~"Catastrophic forest event" means a natural or accidental devastation of major proportions that results in drastic alteration of the natural environment by, but not limited to, wind, fire, insect infestation, forest disease, flooding, or landslide.~~

~~(2))~~ "Commission" means the Washington state parks and recreation commission.

~~((3))~~ (2) "Conservation" means the professional management of the agency's natural resources to ensure their long-term presence, function and enjoyment by the public.

(3) "Cruise" means a forest survey to locate and estimate the quantity of timber on a given area according to species, size, quality, possible products, or other characteristics.

(4) "Director" means the director of the Washington state parks and recreation commission.

(5) "Emergency tree" means any tree that has already failed, or that poses an imminent or probable likelihood of failure before the next inspection, based on the judgment of a professional forester, certified arborist, or staff member trained in tree risk rating and abatement techniques approved by the agency, and which due to its location, could impact a target.

(6) "Endangered species" means each plant, fungus and lichen species identified as endangered on the list of such species prepared by the department of natural resources Washington natural heritage program and each wildlife species identified as endangered by the Washington department of fish and wildlife in WAC ((232-12-014)) 220-610-010.

((+6)) (7) "Natural resource(s)" includes biological organisms, their processes, dead or organic matter, soils, and geologic materials.

((+7)) (8) "Resource conservation plan" means a plan that advances the stewardship of that resource. The plan may address, although not be limited to, resource conservation, protection, restoration or mitigation.

((+8)) (9) "Sensitive species" means each plant, fungus and lichen species identified as sensitive on the list of such species prepared by the department of natural resources Washington natural heritage program and each wildlife species identified as sensitive on the list of such species prepared by the Washington department of fish and wildlife.

((+9)) (10) "Significant tree" means living and dead standing trees greater than 10 inches in diameter at breast height (4.5 feet above the ground).

(11) "Target" means a structure, facility, property, activity, or person that has the potential to be hit or impacted by a falling tree or tree part.

(12) "Threatened species" means each plant, fungus and lichen species identified as threatened on the list of such species prepared by the department of natural resources Washington natural heritage program and each wildlife species identified as threatened on the list of such species prepared by the Washington department of fish and wildlife.

(13) "Timber" means forest trees of commercial value.

[Statutory Authority: RCW 79A.05.035, 79A.05.070, 79A.05.075, and 79A.05.165. WSR 10-15-024, § 352-28-005, filed 7/12/10, effective 8/12/10. Statutory Authority: RCW 79A.05.030, 79A.05.035, 79A.05.055, 79A.05.070, 79A.05.075, and 79A.05.165. WSR 08-05-009, § 352-28-005, filed 2/7/08, effective 3/9/08. Statutory Authority: RCW 43.51.040(1), [43.51.]045, [43.51.]050, [43.51.]060(1), [43.51.]061 and [43.51.]395. WSR 96-01-078, § 352-28-005, filed 12/18/95, effective 1/18/96. Statutory Authority: RCW 43.51.040. WSR 94-10-012, § 352-28-005, filed 4/25/94, effective 5/26/94. Statutory Authority: RCW 43.51.040 and 43.51.045. WSR 84-08-017 (Resolution No. 76), § 352-28-005, filed 3/27/84.]

AMENDATORY SECTION (Amending WSR 10-15-024, filed 7/12/10, effective 8/12/10)

WAC 352-28-010 Cutting, collection and removal of natural resources. (1) **Trees may be cut and removed subject to the following limitations:**

(a) **Significant trees:** (~~Significant trees means living and dead standing trees > 10 inches in diameter at breast height (4.5 feet above the ground).~~) Except in emergencies and when feasible, significant trees in any area under the jurisdiction and/or management of the commission shall be removed only after they have been evaluated, rated, appraised and marked by a professional forester, certified arborist, or staff member trained in agency-approved tree risk rating and abatement techniques. In addition, except where deemed an emergency tree, or in the event of wildfire, weather, or other natural emergencies, significant trees can be cut or removed only after compliance with (d) of this subsection and subsection (4) of this section, agency review through the tree activity worksheet process and upon the written approval of the director or the designee of the director.

(b) **Emergency trees:** (~~Emergency trees means any tree that has already failed (cracked, tipped, diseased, or standing dead) or that poses an imminent threat, based on the judgment of a professional forester, certified arborist, or staff member trained in tree risk rating and abatement techniques approved by the agency, and which due to its location, poses an imminent threat to a target. Imminent means likely to occur at any moment, and target means a structure, facility, or person that has the potential to be hit or impacted by a falling tree or tree part.~~) The park manager or designee trained in tree risk rating and abatement techniques as prescribed by the agency forester or (~~arboriculture manager~~) certified arborist is authorized to immediately close the target area, and where the target cannot be relocated, cut or remove the emergency tree.

(c) **Worksheet:** The cutting or removal of any significant trees in landscapes classified recreation, heritage, or resource recreation by the commission shall, except in the case of emergency trees, occur only after agency review through the tree activity worksheet process and the written approval of the director or designee.

(d) **Consultation:** The cutting or removal of any significant trees in a natural area, natural forest area or natural area preserve shall, except in the case of emergency trees, be approved only by the director or designee and only after consultation with the Washington department of fish and wildlife and the department of natural resources Washington natural heritage program, the preparation of a resource conservation plan for affected natural resources, and a public hearing (~~on each such proposed cutting or removal conducted~~) in the county/ counties in which the cutting or removal is to take place (~~as determined by the director. Prior notice of a hearing shall be published in a newspaper of general circulation in such county or by an alternative method prescribed by the commission deemed to yield equal or better public notice. Any person who requests notification of such proposed cutting or removal shall be sent prior notice of a hearing. A summary of the testimony presented at a hearing or received in writing shall be presented to the director~~).

(2) **Native plants, fungi, and dead organic matter:** The cutting or removal of natural resources, other than trees or those specified in WAC 352-32-350, 352-28-030 and 352-28-040, will only occur as a part of a resource conservation plan approved by the director or designee.

(3) **Protected species:** Natural resources may be cut and/or removed from areas supporting protected species, or for the purposes of enhancing habitat for protected species, under the following conditions:

(a) The cutting or removal of natural resources in any area known to be inhabited by endangered, threatened, or sensitive species shall, except in emergencies as defined in subsection (1)(b) of this section, follow requirements of the department of fish and wildlife and of the department of natural resources Washington natural heritage program and be approved only by the director or designee after consultation with those agencies, and the preparation of a mitigation plan for affected species.

(b) The cutting or removal of natural resources to enhance the habitat of a sensitive, threatened, or endangered species as defined in WAC 352-28-005, on lands managed by the commission or on other state lands, will only occur as a part of an interagency agreement or resource conservation plan that involves consultation with the Washington department of fish and wildlife, department of natural resources Washington natural heritage program, and as appropriate, other agencies and groups with expertise with these species, and is approved by the director or designee.

(4) **Land classification (chapter 352-16 WAC) criteria:** Natural resources may be cut and/or removed from the areas listed below for the following reasons only:

(a) Natural area preserves:

(i) Maintenance or construction of service roads, boundary fences, or trails, or modification of conditions only as may be required, and only where necessary, to meet park management goals and mitigated in a resource conservation plan that involves consultation with the department of natural resources Washington natural heritage program, and as appropriate other agencies and is approved by the director or the designee of the director.

(ii) Maintain or restore a native plant community, species population, or ecological process as specified in a natural area preserve management plan prepared in consultation with the department of natural resources Washington natural heritage program.

(iii) Correction of conditions hazardous to persons, properties, and/or facilities on or adjacent to park land.

(iv) Control of diseases and insect infestations where adjacent lands are severely jeopardized or where a drastic alteration of the natural environment is expected to occur, after consultation with the department of natural resources Washington natural heritage program and other agencies and groups with expertise in ecosystem health as deemed appropriate by the director.

(v) Prevent the deterioration or loss of or facilitate the restoration of historical/cultural resources.

(vi) Maintenance or construction of fire lanes for abatement of fires.

(vii) Collection of specimens as specified in WAC 352-28-040, including consultation with the department of natural resources Washington natural heritage program.

(b) Natural areas and natural forest areas:

(i) Maintenance or construction of boundary fences, trails, trail structures, trail head facilities, interpretive sites, utility easements, or service roads only as may be required, and only where absolutely necessary to meet park management goals and mitigated in a resource conservation plan that involves consultation with the depart-

ment of natural resources Washington natural heritage program, and as appropriate other agencies and is approved by the director or the designee of the director.

(ii) Maintain or restore a native plant community, species population, or ecological process as specified in a natural resource conservation plan prepared in consultation with the department of natural resources Washington natural heritage program, and as appropriate other agencies.

(iii) Correction of conditions hazardous to persons, properties, and/or facilities on or adjacent to park land.

(iv) Control of diseases and insect infestations where adjacent lands are severely jeopardized or where a drastic alteration of the natural environment is expected to occur, after consultation with the department of natural resources Washington natural heritage program and other agencies and groups with expertise in ecosystem health as deemed appropriate by the director or the designee of the director.

(v) Prevent the deterioration or loss of or facilitate the restoration of historical/cultural resources.

(vi) Maintenance or construction of fire lanes for abatement of fires.

(vii) Collection of edibles as specified in WAC 352-28-030 or specimens as specified in WAC 352-28-040.

(c) Recreation areas, resource recreation areas, and heritage areas:

(i) Area clearing necessary for park maintenance, and/or park development projects for day use and overnight recreation facilities, road and utility easements, and administrative facilities.

(ii) Correction of conditions hazardous to persons, properties, and/or facilities on or adjacent to park land.

(iii) Cleanup of trees fallen, tipped, or damaged by the weather, fire, or other natural causes where they directly interfere with park management activities.

(iv) Creation of diverse native trees and other plants, coarse woody debris, and fungi sizes, ages, and species to achieve visual aspects that resemble a formal landscape, natural or historical setting, or to improve wildlife habitat.

(v) Maintenance or creation of a regenerating natural environment that will sustain low ground cover, shrubs, and understory and over-story trees to provide screening, wind, and sun protection.

(vi) Control of diseases and insect infestations where adjacent lands are severely jeopardized or where a drastic alteration of the natural environment is expected to occur.

(vii) Prevent the deterioration or loss of historical/cultural resources.

(viii) Maintenance or construction of fire lanes for abatement of fires.

(ix) Modification of conditions to maintain or restore a desired plant community, species population, or ecological process.

(x) Collection of edibles as specified in WAC 352-28-030 or specimens as specified in WAC 352-28-040.

(5) **Use of fallen trees:** When feasible, fallen trees shall be left on the ground when deemed environmentally beneficial or used for park purposes such as, but not limited to, approved building projects, trail mulching, and firewood, or where the tree has no economic values contributed to a state managed resource conservation effort. In natural area preserves, natural forest areas, natural areas, and resource

recreation areas first consideration shall be given to leaving trees on the ground for natural purposes.

(6) **Parks use:** Subject to the guidelines of this section, the commission may authorize the use of natural resources within recreation areas, resource recreation areas, and heritage areas for park purposes.

[Statutory Authority: RCW 79A.05.035, 79A.05.070, 79A.05.075, and 79A.05.165. WSR 10-15-024, § 352-28-010, filed 7/12/10, effective 8/12/10. Statutory Authority: RCW 79A.05.030, 79A.05.035, 79A.05.055, 79A.05.070, 79A.05.075, and 79A.05.165. WSR 08-05-009, § 352-28-010, filed 2/7/08, effective 3/9/08. Statutory Authority: RCW 79A.05.030, 79A.05.035, 79A.05.055, 79A.05.070, and 79A.05.075. WSR 05-17-105, § 352-28-010, filed 8/16/05, effective 9/16/05. Statutory Authority: RCW 43.51.040(1), [43.51.]045, [43.51.]050, [43.51.]060(1), [43.51.]061 and [43.51.]395. WSR 96-01-078, § 352-28-010, filed 12/18/95, effective 1/18/96. Statutory Authority: RCW 43.51.040. WSR 94-10-012, § 352-28-010, filed 4/25/94, effective 5/26/94. Statutory Authority: RCW 43.51.040 and 43.51.045. WSR 84-08-017 (Resolution No. 76), § 352-28-010, filed 3/27/84; Order 7, § 352-28-010, filed 4/1/70.]

AMENDATORY SECTION (Amending WSR 10-15-024, filed 7/12/10, effective 8/12/10)

WAC 352-28-020 Resource sales and leases. The following qualifications, procedures, and general provisions pertain to the sale of natural resources from commission owned or managed lands:

(1) Subject to the limitations set forth under WAC 352-28-010(4), the sale of natural resources will be undertaken only where they advance a commission approved development, are part of a resource conservation plan or interagency agreement approved by the director or designee, or are deemed by the director or designee to advance agency stewardship goals and are surplus to the ((parks)) park's needs.

(2) Prior to a sale of natural resources, qualified park personnel or their designated agent shall conduct an inventory or cruise of the materials, appraise the value of such materials, and establish a minimum acceptable bid, unless such natural resources are for use by the park or qualify for direct sale under subsection ((+4)) (5) of this section.

Where ((trees-are)) timber is to be sold, such ((trees)) timber shall be cruised or appraised using methods consistent with those applied by the Washington department of natural resources or other applicable professional standards of forest land and timber appraisal. Complete records of the methods and assumptions used to make the cruise or timber appraisal and estimated minimum acceptable bids shall be maintained.

(3) Sales of timber where the ((appraised-value)) cruised volume of the ((materials)) timber is in excess of ((twenty-five thousand dollars)) one million board-feet shall require approval by a majority of the commission.

(4) Sales of timber where the ((appraised-value)) cruised volume of the ((materials)) timber is less than or equal to ((twenty-five thousand dollars)) one million board-feet and greater than five thousand board-feet shall require approval by the director or designee.

The director may defer approval to the commission, in which case it shall require approval by a majority of the commission.

(5) Sales of timber where the cruised volume of timber is less than or equal to five thousand board-feet shall require approval by the natural resources program manager.

(6) Sales of timber resulting from the conversion of forest land for the development of park facilities where the appraised value of the timber removed is in excess of twenty-five thousand dollars shall require approval by a majority of the commission.

(7) Sales of natural resources other than timber where the appraised value is in excess of twenty-five thousand dollars shall require approval by a majority of the commission.

(8) All sales shall be conducted pursuant to procedures approved by the commission.

[Statutory Authority: RCW 79A.05.035, 79A.05.070, 79A.05.075, and 79A.05.165. WSR 10-15-024, § 352-28-020, filed 7/12/10, effective 8/12/10. Statutory Authority: RCW 79A.05.030, 79A.05.035, 79A.05.055, 79A.05.070, 79A.05.075, and 79A.05.165. WSR 08-05-009, § 352-28-020, filed 2/7/08, effective 3/9/08. Statutory Authority: RCW 43.51.040 and 43.51.045. WSR 84-08-017 (Resolution No. 76), § 352-28-020, filed 3/27/84; Order 26, § 352-28-020, filed 6/16/76; Order 7, § 352-28-020, filed 4/1/70.]

WSR 21-19-097

PERMANENT RULES

DEPARTMENT OF ECOLOGY

[Order 20-01—Filed September 17, 2021, 10:34 a.m., effective October 18, 2021]

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

Purpose: The department of ecology is adopting amendments to the Water quality standards for surface waters of the state of Washington, chapter 173-201A WAC.

We are adopting the following changes to:

- WAC 173-201A-020 Definitions.
- WAC 173-201A-440 Use attainability analysis.
- WAC 173-201A-602 Table 602—Use designations for fresh waters by water resource inventory area (WRIA), to change the designated use and water quality criteria for temperature and dissolved oxygen for the Chelan River.

We changed 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 reaches of the river (reaches 1-3), and to "salmonid spawning, rearing, and migration for naturally limited waters" to the lower part of the river (reach 4).

We also added corresponding water quality criteria for temperature and dissolved oxygen, to align with the highest achievable water quality.

We have added definitions of the new designated uses to WAC 173-201A-020 Definitions.

We made 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.

Citation of Rules Affected by this Order: Amending chapter 173-201A WAC.

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.

Other Authority: 40 C.F.R. 131.20 requires states and tribes (with primacy for clean water actions) to periodically review and update the water quality standards.

Adopted under notice filed as WSR 21-07-144 on March 24, 2021.

Changes Other than Editing from Proposed to Adopted Version: The following differences between the proposed and adopted version are reflected in strikeout and underlined text.

Changes to WAC 173-201A-602, Table 602: WRIA 47 - Chelan:

- Note 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~~ 3.50°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.

- Note 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~~ 1.20°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.
- Note 4: No ~~anthropogenic~~ further point or nonpoint heat source inputs are allowed downstream of the Lake Chelan Dam outlet to the Chelan River confluence with the Columbia River.
- Added a new Note 5 for Reach 4: Lake Chelan Dam tailrace waters must be cooler than Chelan River when the river water temperature is greater than 17.5°C as a daily maximum above the confluence with powerhouse channel.

A final cost-benefit analysis is available by contacting Marla Koberstein, Department of Ecology, Water Quality Program, P.O. Box 47600, Olympia, WA 98504, phone 360-407-6600, people with speech disability may call TTY at 877-833-6341. People with impaired hearing may call Washington relay service at 711, email swqs@ecy.wa.gov, website <https://apps.ecology.wa.gov/publications/SummaryPages/2110034.html>.

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

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

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

Date Adopted: September 17, 2021.

Laura D. Watson
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 Environmental 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 re-published.

"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 EPAs *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 indica-

tion 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 nth 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 (CaCO₃).

"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 µg/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 ($^{\circ}\text{C}$).

"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 intentionally 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-2909.4

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 designa-

ted 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)

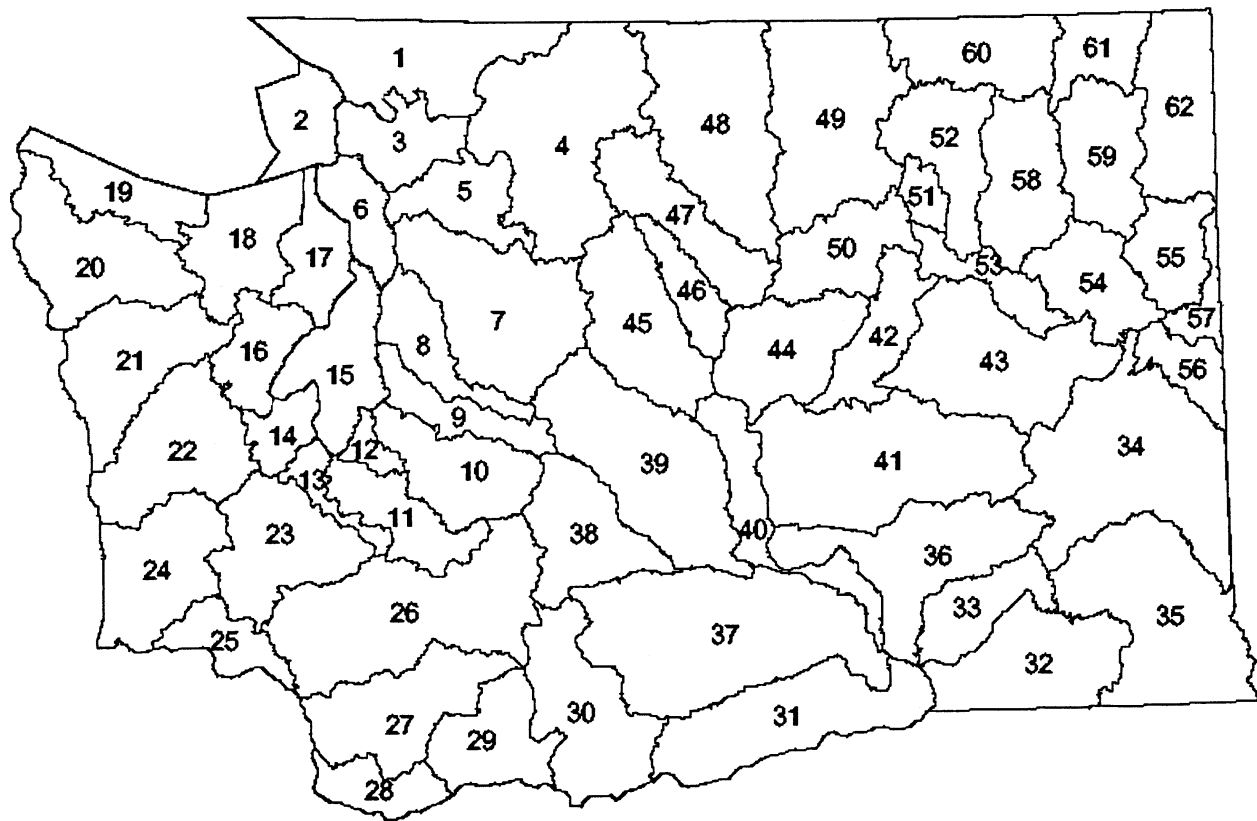
WAC 173-201A-602 Table 602—Use designations for fresh waters by water resource inventory area (WRIA). (1) Table 602 lists uses for fresh waters. All surface waters of the state have designated uses assigned to them for protection under this chapter. Table 602 lists use designations for specific fresh 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:

1. 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 $t = 34/(T + 9)$.
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 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:

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 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:

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 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:

- 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:

- 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:

- 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:

1. 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 $t = 34 / (T + 9)$.
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 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:

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 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:

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 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}	Migration for Naturally Limited Waters ²	Primary Contact	All	All	173-201A-440 (9)
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, 5}	Salmonid Spawning, Rearing, and Migration for Naturally Limited Waters	Primary Contact	All	All	173-201A-440 (9)

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 3.50°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 1.20°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 further point or nonpoint heat source inputs are allowed downstream of the Lake Chelan Dam outlet to the Chelan River confluence with the Columbia River.
5. Lake Chelan Dam tailrace waters must be cooler than Chelan River when the river water temperature is greater than 17.5°C as a daily maximum above the confluence with powerhouse channel.

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)

Table 602: WRIA 48 - Methow	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
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)
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	-

Table 602: WRIA 48 - Methow	Aquatic Life Uses	Recreation Uses	Water Supply Uses	Misc. Uses	Additional info for waterbody
Pipestone Canyon Creek: Upstream from, and including, Campbell Lake (latitude 48.4395, longitude -120.0656), including tributaries.	Char Spawning /Rearing	Primary Contact	All	All	-
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:

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 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:

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 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 - Nespalem	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 21-19-099
PERMANENT RULES
PARAEDUCATOR BOARD

[Filed September 17, 2021, 11:06 a.m., effective October 18, 2021]

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

Purpose: Amendment responds to recent legislative activity for the effective implementation and execution of the paraeducator certificate program. Proposed amendment removes the requirement on paraeducators to complete the general paraeducator certificate within three years of completing the fundamental course of study.

Citation of Rules Affected by this Order: Amending WAC 179-11-040.

Statutory Authority for Adoption: Chapter 28A.413 RCW.

Adopted under notice filed as WSR 21-15-040 on July 14, 2021.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

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

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

Date Adopted: September 15, 2021.

Jack Busbee
Rules Coordinator

OTS-3171.1

AMENDATORY SECTION (Amending WSR 19-21-071, filed 10/11/19, effective 11/11/19)

WAC 179-11-040 Process. (1) School districts must implement this section only in school years for which state funding is appropriated specifically for the purposes of this section and only for the number of days that are funded by the appropriation.

(2) School districts are encouraged to provide at least one day of the ten days of general courses, as defined by the board, on the state paraeducator standards of practice as a professional learning day, where paraeducators collaborate with certified staff and other classified staff on applicable courses.

(3) ~~((The paraeducator must complete the general paraeducator certificate within three employed years after completing the fundamental course of study))~~ After completing the fundamental course of study, paraeducators must complete annual training provided by their school district on the general paraeducator certificate and only for the number of days that are funded by the appropriation, as follows:

(a) If the fundamental course of study is completed prior to June 30th of a calendar year, then it shall have a completion date calculated on the basis that it was completed on June 30th of the same calendar year regardless of the date of completion; and

(b) If the fundamental course of study is completed July 1st or later in the calendar year, then it shall have a completion date calculated on the basis that it was completed on June 30th of the next calendar year regardless of the date of completion.

(4) Beginning with the 2019-20 school year, school districts must:

(a) Provide paraeducators with general courses on the state paraeducator standards of practice; and

(b) If four days of funding is appropriated, ensure all paraeducators employed by the district meet the general paraeducator certificate requirements of this section within three years of completing the four-day fundamental course of study.

The district is only required to ensure paraeducators meet the general certificate requirement by the end of the paraeducator's third year of employment in that district as a paraeducator.

(5) To attain the paraeducator general certificate, the paraeducator must complete training that meets in-service education approval standards as written in chapter 181-85 WAC.

(6) A maximum of one professional growth plan may be completed towards the attainment of the general paraeducator certificate.

(7) A paraeducator who completes continuing education credit hours to meet the English language learner subject matter certificate or special education subject matter certificate may count these hours towards meeting the general paraeducator certificate.

(8) The paraeducator shall be responsible for completing filing requirements with the superintendent of public instruction, in accordance with WAC 179-01-020, the completion of the general paraeducator certificate.

[Statutory Authority: Chapter 28A.413 RCW. WSR 19-21-071, § 179-11-040, filed 10/11/19, effective 11/11/19; WSR 19-13-071, § 179-11-040, filed 6/17/19, effective 7/18/19; WSR 18-16-107, § 179-11-040, filed 7/31/18, effective 8/31/18.]

WSR 21-19-108
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed September 20, 2021, 11:34 a.m., effective October 21, 2021]

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

Purpose: The developmental disabilities administration (DDA) amended these rules to enforce federal waiver application requirements and update service definitions, service limits, and other service details. When the centers for medicare and medicaid service approves DDA's waiver applications, DDA's rules must align with those approved waiver applications. DDA must comply with federal medicaid rules to continue to receive federal funding.

Citation of Rules Affected by this Order: New WAC 388-845-0920, 388-845-0930, 388-845-0940, 388-845-1101, 388-845-1161, 388-845-1162, 388-845-1163, 388-845-1870, 388-845-1880, 388-845-1890, 388-845-2145, 388-845-2150 and 388-845-2155; repealing WAC 388-845-0300, 388-845-0305, 388-845-0310, 388-845-0400, 388-845-0405, 388-845-0410, 388-845-0700, 388-845-0705, 388-845-0710, 388-845-1300, 388-845-1305, 388-845-1310, 388-845-1400, 388-845-1405, 388-845-1410, 388-845-1900, 388-845-1905, 388-845-1910, 388-845-2160, 388-845-2165 and 388-845-2170; and amending WAC 388-845-0001, 388-845-0030, 388-845-0041, 388-845-0045, 388-845-0052, 388-845-0055, 388-845-0060, 388-845-0105, 388-845-0110, 388-845-0200, 388-845-0210, 388-845-0215, 388-845-0220, 388-845-0225, 388-845-0230, 388-845-0425, 388-845-0500, 388-845-0510, 388-845-0515, 388-845-0520, 388-845-0525, 388-845-0650, 388-845-0655, 388-845-0660, 388-845-0800, 388-845-0810, 388-845-0820, 388-845-0900, 388-845-0905, 388-845-0910, 388-845-1100, 388-845-1105, 388-845-1110, 388-845-1150, 388-845-1155, 388-845-1160, 388-845-1180, 388-845-1197, 388-845-1505, 388-845-1607, 388-845-1700, 388-845-1800, 388-845-1805, 388-845-1810, 388-845-2000, 388-845-2005, 388-845-2010, 388-845-2140, 388-845-2200, 388-845-2210, 388-845-2270, 388-845-3000, 388-845-3055, 388-845-3056, 388-845-3060, 388-845-3061, 388-845-3062, 388-845-3063, 388-845-3065, 388-845-3070, and 388-845-3075.

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: RCW 71A.12.120.

Adopted under notice filed as WSR 21-12-031 on May 24, 2021.

Changes Other than Editing from Proposed to Adopted Version: In WAC 388-845-1880 "licensed, registered, or certified professionals" was removed before the colon because it does not apply to subsection (3), and people under subsections (1) and (2) will be licensed, registered, or certified.

A final cost-benefit analysis is available 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.

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

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 13, Amended 61, Repealed 21.
Date Adopted: September 20, 2021.

Donald L. Clintsman
Acting Secretary

SHS-4833.11

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0001 Definitions. "Aggregate services" means a combination of services subject to the dollar limits in the basic plus waiver.

"Allocation" means the amount of individual and family services (IFS) waiver funding available to a client for a maximum of twelve months.

"CARE" means comprehensive assessment and reporting evaluation.

"Client" means a person who has a developmental disability under RCW 71A.10.020(5) and has been determined eligible to receive services from the administration under chapter 71A.16 RCW.

~~("Community crisis stabilization services" or "CCSS" means a state-operated program that provides short-term supports to clients who are in crisis, or who are at risk of hospitalization or institutional placement.)~~

"DDA" means the developmental disabilities administration, of the department of social and health services.

"DDA assessment" refers to the standardized assessment tool under chapter 388-828 WAC, used by DDA to measure the support needs of people with developmental disabilities.

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

"Evidence-based treatment" means the use of physical, mental, and behavioral health interventions for which systematic, empirical research has provided evidence of statistically significant effectiveness as treatments for specific conditions. Alternate terms with the same meaning are evidence-based practice (EBP) and empirically supported treatment (EST).

"Family" means one or more of the following relatives: Spouse or registered domestic partner; natural, adoptive or step parent; grandparent; child; stepchild; sibling; stepsibling; uncle; aunt; first cousin; niece; or nephew.

"Family home" means the residence where you and your family live.

"Gainful employment" means employment that reflects achievement of or progress towards a living wage.

"General utility" describes something used by people in the absence of illness, injury, or disability.

"HCBS waiver" is a home and community based services waiver program under section 1915(c) of the Social Security Act.

"Home" means present (~~or intended~~) place of long-term residence.

"ICF/IID" means an intermediate care facility for individuals with intellectual disabilities.

"Integrated business settings" means a setting that enables participants to either work alongside or interact with individuals who do not have disabilities, or both.

"Integrated settings" mean typical community settings not designed specifically for individuals with disabilities in which the majority of persons employed and participating are individuals without disabilities.

"Legal representative" means a parent of a person who is under eighteen years of age, a person's legal guardian, a person's limited guardian when the subject matter is within the scope of limited guardianship, a person's attorney at law, a person's attorney in fact, or any other person who is authorized by law to act for another person.

"Living wage" means the amount of earned wages needed to enable an individual to meet or exceed his or her living expenses.

"Necessary supplemental accommodation representative" means an individual who receives copies of DDA planned action notices (PANs) and other department correspondence in order to help a client understand the documents and exercise the client's rights. A necessary supplemental accommodation representative is identified by a client of DDA when the client does not have a legal guardian and the client is requesting or receiving DDA services.

"Participant" means a client who is enrolled in a home and community based services waiver program.

"Person-centered service plan" is a document that identifies your goals and assessed health and welfare needs. Your person-centered service plan also indicates the paid services and natural supports that will assist you to achieve your goals and address your assessed needs.

"Primary caregiver" means the person who provides the majority of your care and supervision.

"Provider" means an individual or agency who meets the provider qualifications and is contracted with DSHS to provide services to you.

"Respite assessment" means an algorithm within the DDA assessment that determines the number of hours of respite care you may receive per year if you are enrolled in the basic plus, children's intensive in-home behavioral support, or core waiver.

"SSI" means supplemental security income, an assistance program administered by the federal Social Security Administration for blind, disabled and aged individuals.

"SSP" means state supplementary payment program, a state-paid cash assistance program for certain clients of the developmental disabilities administration.

"State-funded services" means services that are funded entirely with state dollars.

"You" means the client or participant.

"Waiver year" means the twelve-month period starting from the initial or annual plan effective date in the client's person-centered service plan.

[Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0001, filed 6/20/18, effective 7/21/18. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-0001, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0001, filed 11/26/13, effective

tive 1/1/14. Statutory Authority: RCW 74.08.090, 74.09.520, and 2012 c 49. WSR 12-16-095, § 388-845-0001, filed 8/1/12, effective 9/1/12. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-0001, filed 11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 08-20-033, § 388-845-0001, filed 9/22/08, effective 10/23/08; WSR 07-20-050, § 388-845-0001, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-0001, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-0030 Do I meet criteria for HCBS waiver-funded services? (1) You meet criteria for DDA HCBS waiver-funded services if you meet all of the following:

(a) You have been determined eligible for DDA services per RCW 71A.10.020.

(b) You have been determined to meet ICF/IID level of care per WAC 388-845-0070, 388-828-3060 and 388-828-3080.

(c) You meet disability criteria established in the Social Security Act.

(d) You meet financial eligibility requirements as defined in WAC 182-515-1510.

(e) You choose to receive services in the community rather than in an ICF/IID facility.

(f) You have a need for monthly waiver services or monthly monitoring as identified in your person-centered service plan(~~/individual support plan~~).

(g) You are not residing in hospital, jail, prison, nursing facility, ICF/IID, or other institution.

(h) Additionally, for the children's intensive in-home behavioral support (CIIBS) waiver-funded services:

(i) You are age eight or older and under the age of eighteen for initial enrollment and under age twenty-one for continued enrollment;

(ii) You have been determined to meet CIIBS program eligibility per chapter 388-828 WAC prior to initial enrollment only;

(iii) You live with your family; and

(iv) Your parent/guardian(s) and primary caregiver(s), if other than parent/guardian(s), have signed the participation agreement.

(2) For the individual and family services waiver, you must meet the criteria in subsection (1) of this section and also live in your family home.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 20-05-080, § 388-845-0030, filed 2/18/20, effective 3/20/20. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-0030, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0030, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-0030, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-0030, filed 11/1/10, ef-

fective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-0030, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-0030, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-0041 What is DDA's responsibility to provide your services under the DDA HCBS waivers administered by DDA? If you are enrolled in an HCBS waiver administered by DDA.

(1) DDA will provide an annual comprehensive assessment to evaluate your health and welfare needs. Your person-centered service plan(~~/individual support plan~~), as specified in WAC 388-845-3055, will document:

(a) Your identified health and welfare needs; and

(b) Your HCBS waiver services and nonwaiver services authorized to meet your assessed need.

(2) You have access to DDA paid services that are provided within the scope of your waiver, subject to the limitations in WAC 388-845-0110 and 388-845-0115.

(3) DDA will provide waiver services you need and qualify for within your waiver.

(4) DDA will not deny or limit, based on lack of funding, the number of waiver services for which you are eligible.

[Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-0041, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0041, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 74.08.090, 74.09.520, and 2012 c 49. WSR 12-16-095, § 388-845-0041, filed 8/1/12, effective 9/1/12. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-0041, filed 11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-0041, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-0041, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-0045 When there is capacity to add people to a waiver, how does DDA determine who will be enrolled? When there is capacity on a waiver and available funding for new waiver participants, DDA may enroll people from the statewide database in a waiver based on the following priority considerations:

(1) First priority will be given to current waiver participants assessed to require a different waiver because their identified health and welfare needs have increased and these needs cannot be met within the scope of their current waiver.

(2) DDA may also consider any of the following populations in any order:

- (a) Priority populations as identified and funded by the legislature.
- (b) Persons DDA has determined to be in immediate risk of ICF/IID admission due to unmet health and welfare needs.
- (c) Persons identified as a risk to the safety of the community.
- (d) Persons currently receiving services through state-only funds.
- (e) Persons on an HCBS waiver that provides services in excess of what is needed to meet their identified health and welfare needs.
- (f) Persons who were previously on an HCBS waiver since April 2004 and lost waiver eligibility per WAC (~~(388-845-0060 (1)(i))~~) 388-845-0060 (1)(k).

(3) DDA may consider persons who need the waiver services available in the basic plus or IFS waivers to maintain them in their family's home or in their own home.

[Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-0045, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0045, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-0045, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-0045, filed 11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 08-20-033, § 388-845-0045, filed 9/22/08, effective 10/23/08; WSR 07-20-050, § 388-845-0045, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-0045, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-0052 What is the process if I am already on a DDA HCBS waiver and request enrollment onto a different DDA HCBS waiver?

(1) If you are already enrolled in a DDA HCBS waiver and you request to be enrolled in a different waiver DDA will do the following:

(a) Assess your needs to determine whether your health and welfare needs can be met with services available on your current waiver or whether those needs can only be met through services offered on a different waiver.

(b) If DDA determines your health and welfare needs can be met by services available on your current waiver your enrollment request will be denied.

(c) If DDA determines your health and welfare needs can only be met by services available on a different waiver your service need will be reflected in your person-centered service plan (~~(/individual support plan)~~).

(d) If DDA determines there is capacity on the waiver that is determined to meet your needs, DDA will place you on that waiver.

(2) You will be notified in writing of DDA's decision under subsection (1)(a) of this section and if your health and welfare needs

cannot be met on your current waiver, DDA will notify you in writing whether there is capacity on the waiver that will meet your health and welfare needs and whether you will be enrolled on that waiver. If current capacity on that waiver does not exist, your eligibility for enrollment onto that different waiver will be tracked on a statewide database.

[Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-0052, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0052, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-0052, filed 9/26/07, effective 10/27/07.]

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-0055 How do I remain eligible for the waiver? (1)

Once you are enrolled in a DDA HCBS waiver, you can remain eligible if you continue to meet eligibility criteria in WAC 388-845-0030, and:

(a) You complete a reassessment with DDA at least once every twelve months to determine if you continue to meet all of these eligibility requirements;

(b) You must either receive a waiver service at least once in every thirty consecutive days, as specified in WAC 182-513-1320(3), or your health and welfare needs require monthly monitoring, which will be documented in your client record;

(c) You complete an in-person DDA assessment/reassessment interview per WAC 388-828-1520.

(2) For the children's intensive in-home behavioral supports waiver, you must meet the criteria in subsection (1) of this section and you must:

(a) Be under age twenty-one;

(b) Live with your family; (~~and~~)

(c) Have an annual participation agreement signed by your parent/guardian(s) and primary caregiver(s), if other than parent/guardian(s); and

(d) Continue to participate in the program as outlined in the annual participation agreement.

(3) For the individual and family services waiver, you must meet the criteria in subsection (1) of this section and live in your family home.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 20-05-080, § 388-845-0055, filed 2/18/20, effective 3/20/20. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-0055, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0055, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-0055, filed 11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-0055, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030,

71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-0055, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-0060 Can your waiver enrollment be terminated? DDA may terminate your waiver enrollment if DDA determines that:

(1) Your health and welfare needs cannot be met in your current waiver or for one of the following reasons:

(a) You no longer meet one or more of the requirements listed in WAC 388-845-0030;

(b) You do not have an identified need for a waiver service at the time of your annual person-centered service (~~(plan/individual support)~~) plan;

(c) You do not use a waiver service at least once in every thirty consecutive days and your health and welfare do not require monthly monitoring to avoid institutionalization;

(d) You are on the community protection waiver and:

(i) You choose not to be served by a certified residential community protection provider-intensive supported living services (CP-ISLS);

(ii) You engage in any behaviors identified in WAC 388-831-0240 (1) through (4); and

(iii) DDA determines that your health and safety needs or the health and safety needs of the community cannot be met in the community protection program;

(e) You choose to unenroll from the waiver;

(f) You reside out-of-state;

(g) You cannot be located or do not make yourself available for the annual waiver reassessment of eligibility;

(h) Your needs exceed the maximum funding level or scope of services under the basic plus waiver as specified in WAC 388-845-3080;

(i) Your needs exceed what can be provided under WAC 388-845-3085;

(j) You refuse to participate with DDA in:

(i) Service planning;

(ii) Required quality assurance and program monitoring activities; or

(iii) Accepting services agreed to in your person-centered service plan (~~(/individual support plan)~~) as necessary to meet your health and welfare needs; or

(~~(i)~~) (k) You are (~~(residing)~~) in a hospital, jail, prison, nursing facility, ICF/IID, or other institution (~~(and remain in residence)~~) for at least one full calendar month, and (~~(are still in residence)~~) are under the care of that institution or entity:

(i) At the end of that full calendar month (~~(7)~~) and there is no immediate plan for you to return to the community;

(ii) At the end of the twelfth month following the effective date of your current person-centered service (~~(plan/individual support)~~) plan, as described in WAC 388-845-3060; or

(iii) At the end of the waiver fiscal year, whichever date occurs first (~~(7)~~)

~~(j) Your needs exceed the maximum funding level or scope of services under the basic plus waiver as specified in WAC 388-845-3080; or~~

~~(k) Your needs exceed what can be provided under WAC 388-845-3085).~~

(2) Services offered on a different waiver can meet your health and welfare needs and DDA enrolls you on a different waiver.

[Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-0060, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0060, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-0060, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.120, and Title 71A RCW. WSR 09-10-021, § 388-845-0060, filed 4/28/09, effective 5/29/09; WSR 07-20-050, § 388-845-0060, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-0060, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-0105 What criteria determine assignment to the community protection waiver? DDA may assign you to the community protection waiver only if you are at least eighteen years of age, not currently residing in a hospital, jail or other institution, and meet the following criteria:

- (1) You have been identified by DDA as a person who meets one or more of the following:
 - (a) You have been convicted of or charged with a crime of sexual violence as defined in chapter 71.09 RCW;
 - (b) You have been convicted of or charged with acts directed towards strangers or individuals with whom a relationship has been established or promoted for the primary purpose of victimization, or persons of casual acquaintance with whom no substantial personal relationship exists;
 - (c) You have been convicted of or charged with a sexually violent offense and/or predatory act, and may constitute a future danger as determined by a qualified professional;
 - (d) You have not been convicted and/or charged, but you have a history of stalking, violent, sexually violent, predatory and/or opportunistic behavior which demonstrates a likelihood to commit a sexually violent and/or predatory act based on current behaviors that may escalate to violence, as determined by a qualified professional; or
 - (e) You have committed one or more violent offense, as defined in RCW 9.94A.030;
- (2) You receive or agree to receive residential services from certified residential community protection provider-intensive supported living services (CP-ISLS); and
- (3) You comply with the specialized supports and restrictions in one or more of the following:
 - (a) Your person-centered service plan(~~/individual support plan~~);
 - (b) Your individual instruction and support plan (IISP); or
 - (c) Your treatment plan provided by DDA approved certified individuals and agencies.

[Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-0105, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0105, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-0105, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-0105, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-0105, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0110 What are the limits to the waiver services you may receive? The following limits apply to the waiver services you may receive:

(1) A service must be available in your waiver and address an unmet need identified in your person-centered service plan.

(2) (~~Behavioral health~~) Stabilization services may be added to your person-centered service plan after the services have been provided.

(3) Waiver services are limited to services required to prevent placement in an intermediate care facility for individuals with intellectual disabilities (ICF/IID).

(4) The daily cost of your waiver services must not exceed the average daily cost of care in an ICF/IID.

(5) Waiver services must not replace or duplicate other available paid or unpaid supports or services. Before DDA will cover a service through waiver services, you must first request and be denied all applicable (~~services~~) covered benefits through private insurance, medicare, the medicaid state plan, and other resources.

(6) Waiver funding must not be authorized for treatments determined by DSHS to be experimental or investigational under WAC 182-531-0050.

(7) For the individual and family services (IFS) (~~and~~) waiver, basic plus (~~waivers~~) waiver, and children's intensive in-home behavior support waiver, services must not exceed the yearly limits specified in these programs for specific services or combinations of services.

(8) Your choice of qualified providers and services is limited to the most cost-effective option that meets your unmet need identified in your person-centered service plan.

(9) Services provided out-of-state, other than in recognized bordering cities, are limited to respite care and personal care during vacations of not more than thirty consecutive days.

(10) You may receive services in a recognized out-of-state bordering city under WAC 182-501-0175.

(11) Other out-of-state waiver services require an approved exception to rule before DDA will authorize payment.

(12) Waiver services do not cover:

(a) Copays;

(b) Deductibles;

- (c) Dues;
- (d) Membership fees; or
- (e) Subscriptions.

(13) Waiver services do not cover a product unless the product is:

- (a) ~~((Necessary to meet a))~~ The most basic model of the product available that can meet your health and safety need related to your intellectual or developmental disability; ~~((and))~~
- (b) The least restrictive means for meeting that need; and
- (c) Requested by you.

[Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0110, filed 6/20/18, effective 7/21/18. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-0110, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0110, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-0110, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-0110, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-0200 What waiver services are available to you?

Each of the DDA HCBS waivers has a different scope of service and your person-centered service plan(~~/individual support plan~~) defines the waiver services available to you.

[Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-0200, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0200, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1) (i), and Title 71A RCW. WSR 10-22-088, § 388-845-0200, filed 11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-0200, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-0200, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0210 What services are available under the basic plus waiver? The following services are available under the basic plus waiver:

SERVICE	YEARLY LIMIT
<p>AGGREGATE SERVICES: ((Chemical)) <u>Extermination of cimex lectularius (bedbugs)</u> Community ((guide)) <u>engagement</u> Environmental adaptations Occupational therapy Physical therapy Positive behavior support and consultation Skilled nursing Specialized ((medical)) equipment and supplies Specialized ((psychiatric services)) <u>habilitation</u> Speech, hearing, and language services Staff and family consultation ((and training)) Transportation Wellness education</p>	<p>Total costs must not exceed six thousand one hundred ninety-two dollars per year per participant</p>
<p><u>Therapeutic adaptations</u></p>	<p><u>Limited to a single one-time authorization every five years and limited to funds available in the client's aggregate and emergency funding</u></p>
<p>EMPLOYMENT SERVICES: Individual technical assistance ((Prevoecational services)) Supported employment</p>	<p>Limits determined by DDA assessment and employment status ((; no new enrollment in prevoecational services after September 1, 2015))</p>
<p>Community inclusion</p>	<p>Limits determined by ((DDA assessment)) <u>the person-centered service plan</u></p>
<p>((BEHAVIORAL HEALTH)) STABILIZATION SERVICES: ((Behavioral health)) <u>Crisis diversion bed</u> ((services Positive behavior support and consultation)) <u>Specialized habilitation</u> <u>Staff and family consultation</u></p>	<p>Limits determined by a ((behavioral health professional or DDA)) <u>the person-centered service plan</u></p>
<p>((Specialized psychiatric services))</p>	

SERVICE	YEARLY LIMIT
((Personal care))	((Limits determined by the CARE tool used as part of the DDA assessment))
Respite care	Limits determined by DDA assessment
Risk assessment	Limits determined by DDA
((Emergency assistance is only for basic plus waiver aggregate services))	Six thousand dollars per year((; preauthorization required)) for emergency assistance funding
<u>Community engagement</u>	
<u>Environmental adaptations</u>	
<u>Occupational therapy</u>	
<u>Physical therapy</u>	
<u>Positive behavior support</u>	
<u>Specialized equipment and supplies</u>	
<u>Speech, hearing, and language services</u>	
<u>Skilled nursing</u>	
<u>Staff and family consultation</u>	
<u>Transportation</u>	

[Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0210, filed 6/20/18, effective 7/21/18. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-0210, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0210, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 08-20-033, § 388-845-0210, filed 9/22/08, effective 10/23/08; WSR 07-20-050, § 388-845-0210, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.120. WSR 07-05-014, § 388-845-0210, filed 2/9/07, effective 3/12/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-0210, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0215 What services are available under the core waiver? (1) The following services are available under the core waiver:

SERVICE	YEARLY LIMIT
((Chemical)) Extermination of cimex lectularius (bedbugs) Community ((guide)) <u>engagement</u> Community transition Environmental ((adaptions)) <u>adaptations</u> Occupational therapy Physical therapy Positive behavior support and consultation Residential habilitation Risk assessment Skilled nursing Specialized ((medical)) equipment and supplies ((Specialized psychiatric services)) Speech, hearing, and language services Staff and family consultation ((and training)) Transportation Wellness education	Determined by the person-centered service plan
<u>Specialized habilitation</u>	<u>Limited to four thousand dollars per waiver year</u>
EMPLOYMENT SERVICES: Individualized technical assistance ((Prevoecational services)) Supported employment	Limits determined by DDA assessment and employment status ((; no new enrollment in prevoecational services after September 1, 2015))
Community inclusion	Limits determined by ((DDA assessment)) <u>the person-centered service plan</u>
((BEHAVIORAL HEALTH)) STABILIZATION SERVICES: ((Behavioral health)) Crisis diversion bed ((services)) ((Positive behavior support and consultation)) Specialized ((psychiatric services)) <u>habilitation</u> <u>Staff and family consultation</u>	Limits determined by ((a behavioral health professional or DDA)) <u>the person-centered service plan</u>
Respite care	Limits determined by DDA assessment

(2) A participant's core waiver services are subject to additional limits under this chapter.

(3) The total cost of a participant's core waiver services must not exceed the average cost of care at an intermediate care facility for individuals with intellectual disabilities (ICF/IID).

[Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0215, filed 6/20/18, effective 7/21/18. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-0215, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0215, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-0215, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-0215, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0220 What services are available under the community protection waiver? (1) The following services are available under the community protection waiver:

SERVICE	YEARLY LIMIT
((Chemical)) Extermination of cimex lectularius (bedbugs) Community transition Environmental adaptations Occupational therapy Physical therapy Positive behavior support and consultation Residential habilitation Risk assessment Skilled nursing Specialized ((medical)) equipment and supplies ((Specialized psychiatric services)) Speech, hearing, and language services Staff and family consultation ((and training)) Transportation	Determined by the person-centered service plan

SERVICE	YEARLY LIMIT
EMPLOYMENT SERVICES: Individual technical assistance ((Prevocational services)) Supported employment	Limits determined by DDA assessment and employment status(; no new enrollment in prevocational services after September 1, 2015)
((BEHAVIORAL HEALTH)) STABILIZATION SERVICES: ((Behavioral health)) Crisis diversion bed ((services)) ((Positive behavior support and consultation)) Specialized ((psychiatric services)) <u>habilitation</u> <u>Staff and family consultation</u>	Limits determined by ((a behavioral health professional or DDA)) <u>the person-centered service plan</u>

(2) A participant's community protection waiver services are subject to additional limits under this chapter.

(3) The total cost of a participant's community protection waiver services must not exceed the average cost of care at an intermediate care facility for individuals with intellectual disabilities (ICF/IID).

[Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0220, filed 6/20/18, effective 7/21/18. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-0220, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0220, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-0220, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-0220, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0225 What services are available under the children's intensive in-home behavioral support (CIIBS) waiver? (1) The following services are available under the children's intensive in-home behavioral support (CIIBS) waiver:

SERVICE	YEARLY LIMIT
Assistive technology Environmental adaptations Nurse delegation ((Positive behavior support and consultation)) Specialized clothing Specialized ((medical)) equipment and supplies <u>Specialized habilitation</u> Staff and family consultation ((and training)) ((Therapeutic equipment and supplies)) Transportation Vehicle modifications	((Determined by the person-centered service plan. Total cost of waiver services must not exceed the average cost of four thousand dollars per month per participant.)) <u>Fifteen thousand dollars per year for any combination of services</u>
Respite care	Limits determined by the DDA assessment. ((Costs are included in the total average cost of four thousand dollars per month per participant for all waiver services.))
((BEHAVIORAL HEALTH)) STABILIZATION SERVICES: ((Behavioral health)) Crisis diversion bed ((services Positive behavior support and consultation)) <u>Specialized habilitation</u> <u>Staff and family consultation</u>	Limits determined by ((behavioral health professional or DDA)) <u>the person-centered service plan</u>
Risk assessment <u>Positive behavior support</u>	Limits determined by DDA
<u>Environmental adaptations (Accessibility and repairs)</u> <u>Specialized habilitation</u> <u>Staff and family consultation</u> <u>Vehicle modifications</u>	<u>Six thousand dollars per year for emergency assistance funding</u>
<u>Music therapy</u> <u>Equine therapy</u>	<u>Five thousand dollars per year for combination of services</u>
<u>Therapeutic adaptations</u>	<u>Limited to a single, one-time authorization not to exceed fifteen thousand dollars every five waiver years</u>

(2) A participant's CIIBS waiver services are subject to additional limits under this chapter.

[Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0225, filed 6/20/18, effective 7/21/18. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c

4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-0225, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0225, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-0225, filed 11/1/10, effective 12/2/10.]

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-0230 What services are available under the individual and family services (IFS) waiver? (1) The following services are available under the individual and family services (IFS) waiver:

SERVICE	YEARLY LIMIT
Assistive technology Community engagement Environmental ((adaptions)) <u>adaptations</u> Occupational therapy Peer mentoring Person-centered plan facilitation Physical therapy Positive behavior support and consultation Respite care Skilled nursing Specialized clothing Specialized ((medical)) equipment and supplies Specialized ((psychiatric services)) <u>habilitation</u> Speech, hearing, and language services Staff and family consultation ((and training)) Supported parenting services Transportation Vehicle modifications Wellness education	Total cost of waiver services must not exceed annual allocation determined by the person-centered service plan
<u>Therapeutic adaptations</u>	<u>Limited to a one-time authorization every five years and limited to funds available in the client's aggregate and emergency services</u>

SERVICE	YEARLY LIMIT
Risk assessment	Limits determined by ((DDA. Costs are excluded from the annual allocation.)) <u>the person-centered service plan</u>
((BEHAVIORAL HEALTH)) STABILIZATION SERVICES: Crisis diversion bed ((services)) ((Positive behavior support and consultation)) Specialized ((psychiatric services)) <u>habilitation</u> <u>Staff and family consultation</u>	Limits determined by ((behavioral health professional or DDA)) <u>the person-centered service plan</u> . Costs are excluded from the annual allocation.

(2) Your IFS waiver services annual allocation is based upon the DDA assessment under chapter 388-828 WAC. The DDA assessment determines your service level and annual allocation based on your assessed need. Annual allocations are as follows:

- (a) Level 1 = one thousand two hundred dollars;
- (b) Level 2 = one thousand eight hundred dollars;
- (c) Level 3 = two thousand four hundred dollars; or
- (d) Level 4 = three thousand six hundred dollars.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 20-05-080, § 388-845-0230, filed 2/18/20, effective 3/20/20. Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0230, filed 6/20/18, effective 7/21/18. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-0230, filed 8/4/16, effective 9/4/16.]

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-0425 Are there limits to the assistive technology you may receive? The assistive technology you may receive has the following limits:

(1) Assistive technology is limited to additional services not otherwise covered under the medicaid state plan, including EPSDT, but consistent with waiver objectives of avoiding institutionalization.

(2) Clinical and support needs for assistive technology must be identified in your DDA assessment and documented in the person-centered service plan.

(3) DDA requires ~~((your))~~ a treating professional's written recommendation regarding your need for the technology. This recommendation must take into account that:

(a) The treating professional has personal knowledge of and experience with the requested assistive technology; and

(b) The treating professional has recently examined you, reviewed your medical records, and conducted a functional evaluation of your

use of the equipment and determined its effectiveness in meeting your identified need.

(4) Assistive technology requires prior approval by the DDA regional administrator or designee.

(5) DDA may require a written second opinion from a DDA-selected professional.

(6) The dollar amounts for your individual and family services (IFS) waiver annual allocation limit the amount of assistive technology you are authorized to receive.

(7) Assistive technology excludes any item that is for recreational or diversion purposes such as a television, cable, or DVD player.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 20-05-080, § 388-845-0425, filed 2/18/20, effective 3/20/20. Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0425, filed 6/20/18, effective 7/21/18. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-0425, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0425, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-0425, filed 11/1/10, effective 12/2/10.]

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0500 What is positive behavior support and consultation? (1) Positive behavior support and consultation (~~(may be provided to persons on any)~~) is available on all of the DDA HCBS waivers (~~(and)~~). A participant is eligible for positive behavior support and consultation if the participant is:

(a) Under age 21 and currently authorized to receive positive behavior support and consultation for the support of behavioral health or autism treatment when unable to access through the medicaid state plan; or

(b) On the community protection waiver and requires behavior support to address sexual aggression, arson, or assaultive behaviors which make the client eligible for the community protection waiver.

(2) Positive behavior support and consultation includes the development and implementation of programs designed to support waiver participants using:

(a) Individualized strategies for effectively relating to caregivers and other people in the waiver participant's life; and

(b) Direct interventions with the person to decrease aggressive, destructive, and sexually inappropriate or other behaviors that compromise their ability to remain in the community (i.e., training, specialized cognitive counseling, conducting a functional assessment, and development and implementation of a positive behavior support plan).

~~((2) Positive behavior support and consultation may also be provided as a behavioral health stabilization service in accordance with WAC 388-845-1150 through 388-845-1160.))~~

[Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0500, filed 6/20/18, effective 7/21/18. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0500, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-0500, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-0500, filed 11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-0500, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0510 Are there limits to the positive behavior support and consultation you may receive? (1) Clinical and support needs for positive behavior support and consultation must be identified in your DDA assessment and documented in the person-centered service plan.

(2) DDA determines the amount of positive behavior support and consultation you may receive based on your needs and information from your treating professional.

(3) The dollar amounts for aggregate services in your basic plus waiver or the dollar amounts in the annual allocation for the individual and family services (IFS) waiver limit the amount of service unless provided as a (~~behavioral health~~) stabilization service.

(4) DDA may require a second opinion from a DDA-selected provider.

(5) Positive behavior support and consultation (~~not provided as a behavioral health stabilization service~~) requires prior approval by the DDA regional administrator or designee for the following waivers:

(a) Basic plus;

(b) Core;

(c) Children's intensive in-home behavior support (CIIBS); and

(d) IFS.

(6) Positive behavior support and consultation services are limited to services:

(a) Consistent with waiver objectives of avoiding institutionalization; and

(b) That are not (~~otherwise~~) a covered benefit under the medic-aid state plan.

[Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0510, filed 6/20/18, effective 7/21/18. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-0510, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0510, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-0510, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-0510, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter

71A.12 RCW. WSR 06-01-024, § 388-845-0510, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0515 What is ((chemical)) extermination of bedbugs?

(1) ((Chemical)) Extermination of cimex lectularius (bedbugs) is professional ((chemical)) extermination of bedbugs.

(2) DDA covers professional ((chemical)) extermination of bedbugs in your primary residence if you:

(a) Receive residential habilitation services; or

(b) Live in a private house or apartment for which you are financially responsible.

[Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0515, filed 6/20/18, effective 7/21/18.]

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0520 Who are qualified providers of ((chemical)) extermination of bedbugs? A qualified ((chemical-extermination)) provider must be ((÷

~~(1) Licensed as a chemical pesticide applicator by the Washington state department of agriculture; and~~

~~(2))~~ contracted with DDA to provide ((chemical)) extermination of bedbugs.

[Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0520, filed 6/20/18, effective 7/21/18.]

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0525 Are there limits to the ((chemical)) extermination of bedbugs services I may receive? (1) ((Chemical)) Extermination of bedbugs services covers only:

(a) The assessment or inspection by the qualified provider;

(b) The application of chemical-based pesticide or heat treatment; and

(c) One follow-up visit.

(2) ((Chemical)) Extermination of bedbugs is limited to two treatments cycles per plan year.

(3) ((Chemical)) Extermination of bedbugs excludes:

(a) Lodging during the ((chemical)) extermination process; and

(b) Preparatory housework associated with the extermination process.

(4) DDA does not cover ~~((chemical))~~ extermination of bedbugs for a participant who lives:

(a) With their family; or

(b) In an adult family home, assisted living, group home, group training home, licensed staffed residential home, or other facility contractually obligated to provide housing.

~~((5) DDA requires prior approval by the regional administrator or designee for ~~((chemical))~~ extermination of bedbugs.))~~

[Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0525, filed 6/20/18, effective 7/21/18.]

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-0650 What ~~((are))~~ is community engagement ~~((services))~~? (1) Community engagement ~~((services are services))~~ is designed to increase a waiver participant's connection to and engagement in formal and informal community supports by connecting the participant to community resources.

(2) ~~((Services are))~~ Community engagement is designed to develop creative, flexible, and supportive community resources and relationships for individuals with developmental disabilities.

(3) Waiver participants are introduced to the community resources and supports that are available in their area.

(4) Participants are supported to develop identified skills that will facilitate integration into their community as described in the person-centered service plan.

~~((5) ~~((Outcomes for this service include skill development, opportunities for socialization, valued community roles, and involvement in community activities, organizations, groups, projects, and other resources.~~~~

~~((6))~~ This service is available ~~((in))~~ on the:

(a) IFS waiver;

(b) Basic plus waiver; and

(c) Core waiver when the participant is not receiving residential habilitation services.

[Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-0650, filed 8/4/16, effective 9/4/16.]

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-0655 Who are qualified providers of community engagement ~~((services))~~? Qualified providers of community engagement ~~((services))~~ must be contracted with DSHS to provide this service and must be an individual or organization that has specialized training to provide services to people with developmental disabilities. Qualified provider types include:

- (1) Registered recreational therapists in the state of Washington; or
- (2) Organizations that provide services that promote skill development, improved functioning, increased independence, as well as reducing or eliminating the effects of illness or disability, including, but not limited to:
- (a) Community centers;
 - (b) Municipal parks and recreation programs;
 - (c) Therapeutic recreation camps and programs; and
 - (d) Organizations that provide supports for ~~((individuals))~~ people with developmental disabilities.

[Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-0655, filed 8/4/16, effective 9/4/16.]

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

- WAC 388-845-0660 Are there limits to the community engagement ~~((services))~~ you may receive?** (1) Community engagement ~~((services are))~~ is limited to the support needs identified in your DDA assessment and documented in your person-centered service plan.
- (2) The dollar amounts in the annual allocation for the individual and family services ~~((IFS))~~ waiver limit the amount of community engagement ~~((services))~~ you may receive.
- (3) Community engagement ~~((services are))~~ is limited to the community where you live.
- (4) Community engagement ~~((services do))~~ does not cover:
- (a) Membership fees or dues;
 - (b) Equipment related to activities; or
 - (c) The cost of any activities.

[Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0660, filed 6/20/18, effective 7/21/18. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-0660, filed 8/4/16, effective 9/4/16.]

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0800 What is emergency assistance? Emergency assistance is a temporary increase of ninety days or less to the yearly basic plus or CIIBS waiver aggregate dollar limit when additional waiver aggregate services under WAC 388-845-0820 are required to ~~((prevent))~~ avoid placement in an intermediate care facility for individuals with intellectual disabilities (ICF/IID).

[Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0800, filed 6/20/18, effective 7/21/18. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0800, filed 11/26/13, effective 1/1/14. Statutory

Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-0800, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-0800, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-0810 How do I qualify for emergency assistance? You qualify for emergency assistance only if you have used all of your ~~((waiver))~~ CIIBS or basic plus aggregate funding and your current situation meets one of the following criteria:

- (1) You involuntarily lose your present residence for any reason either temporary or permanent;
- (2) You lose your present caregiver for any reason, including death;
- (3) There are changes in your caregiver's mental or physical status resulting in the caregiver's inability to perform effectively for the individual; or
- (4) There are significant changes in your emotional or physical condition that requires a temporary increase in the amount of a waiver service.

[Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0810, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-0810, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0820 Are there limits to your use of emergency assistance funding? All of the following limits apply to the emergency assistance you may receive ~~((+))~~.

- (1) Prior approval by the DDA regional administrator or designee is required based on a reassessment of your person-centered service plan to determine the need for emergency ~~((services+))~~ assistance.
- (2) Payment authorizations are reviewed every thirty days and must not exceed six thousand dollars per twelve months based on the effective date of your current person-centered service plan ~~((+))~~.
- (3) Emergency assistance ~~((services are))~~ is limited to the following ~~((basic plus waiver))~~ aggregate services when on the basic plus waiver:
 - (a) Community ~~((guide))~~ engagement;
 - (b) Environmental adaptations;
 - (c) Occupational therapy;
 - (d) Physical therapy;
 - (e) Positive behavior support and consultation;
 - (f) Skilled nursing;
 - (g) Specialized ~~((medical))~~ equipment and supplies;
 - (h) ~~((Specialized psychiatric services+; +i))~~ Speech, hearing, and language services;

~~((j))~~ (i) Staff and family consultation ~~((and training))~~, which excludes individual and family counseling;

~~((k))~~ (j) Transportation; and

(k) Therapeutic adaptations.

(4) Emergency assistance is limited to the following services when on the CIIBS waiver:

(a) Environmental adaptations;

(b) Specialized habilitation;

(c) Staff and family consultation; and

(d) Vehicle modifications.

(5) Emergency assistance may be used for interim services until:

(a) The emergency situation has been resolved;

(b) You are transferred to alternative supports that meet your assessed needs; or

(c) You are transferred to an alternate waiver that provides the service you need.

[Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0820, filed 6/20/18, effective 7/21/18. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-0820, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0820, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-0820, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-0820, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-0900 What are environmental adaptations? (1) Environmental adaptations provide minimum necessary physical adaptations to the ~~((dwelling))~~ existing home and existing rooms within the home required by the individual's person-centered service plan needed to:

(a) Ensure the health, welfare, and safety of the individual;

(b) Enable the individual who would otherwise require institutionalization to function with greater independence in the ~~((dwelling))~~ home; and

(c) Increase the individual's independence inside ~~((the dwelling))~~ or outside the ~~((dwelling))~~ home to ~~((provide access to the dwelling))~~ allow the individual to physically enter and move within the home.

(2) Examples of environmental ~~((adaptions))~~ adaptations include installing stair lifts, installing ramps and grab bars, widening doorways, modifying the individual's primary bathroom, or installing specialized electrical or plumbing systems necessary to accommodate the medical equipment and supplies that are necessary for the welfare of the individual.

(3) Environmental ~~((adaptions))~~ adaptations are available in all of the DDA HCBS waivers.

(4) Only the children's intensive in-home behavioral support (CIIBS) and individual and family services (IFS) waivers may include adaptations to the ~~((dwelling))~~ home necessary to prevent or repair

~~((property destruction))~~ damage to the structure of the home caused by the participant's behavior, as addressed in the participant's ~~((posi-
tive))~~ behavior support plan.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 20-05-080, § 388-845-0900, filed 2/18/20, effective 3/20/20. Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0900, filed 6/20/18, effective 7/21/18. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-0900, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0900, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-0900, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-0900, filed 11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-0900, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-0900, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-0905 Who is a qualified provider for environmental adaptations? ~~((1) For adaptations that do not require installation, qualified providers are retail vendors with a valid business license contracted with DDA to provide this service.~~

~~(2) For adaptations requiring installation,))~~ A qualified ~~((pro-
viders))~~ provider must be a registered contractor per chapter 18.27 RCW and contracted with DDA. The contractor ~~((or subcontractor))~~ must be licensed and bonded to perform the specific type of work ~~((they are providing))~~ being provided.

~~((3) For debris removal, qualified providers must be contracted with DDA.))~~

[Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-0905, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0905, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-0905, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-0910 What limits apply to environmental adaptations? The following service limits apply to environmental adaptations:

(1) Clinical and support needs for an environmental adaptation must be identified in the waiver participant's DDA assessment and documented in the person-centered service plan.

(2) Environmental adaptations require prior approval by the DDA regional administrator or designee and must be supported by itemized and written bids from licensed contractors. For an adaptation that costs:

(a) One thousand five hundred dollars or less, one bid is required;

(b) More than one thousand five hundred dollars and equal to or less than five thousand dollars, two bids are required; or

(c) More than five thousand dollars, three bids are required.

(3) All bids must include:

(a) The cost of all required permits and sales tax; and

(b) An itemized and clearly outlined scope of work.

(4) DDA may require an occupational therapist, physical therapist, or ~~((construction consultant))~~ other professional to review and recommend an appropriate environmental adaptation statement of work prior to the waiver participant soliciting bids or purchasing adaptive equipment.

(5) Environmental adaptations to the home are excluded if they are of general utility without direct benefit to the individual as related to the individual's developmental disability, such as cosmetic improvements to the ~~((dwelling))~~ home, or general home improvements, such as carpeting, roof repair, or central air conditioning.

(6) Environmental adaptations must meet all local and state building codes. Evidence of any required completed inspections must be submitted to DDA prior to final payment for work.

~~((The condition of the dwelling or other projects in progress in the dwelling may prevent or limit some or all environmental adaptations at the discretion of DDA))~~ Environmental adaptations must not be performed while other adaptations or remodeling projects are in process.

(8) Environmental adaptations must not be approved if the existing residence condition is impacted by hazardous mold, asbestos, or home dilapidation.

(9) Location of the ((dwelling)) home in a flood plain, landslide zone, or other hazardous area may limit or prevent any environmental adaptations at the discretion of DDA.

~~((9))~~ (10) Written consent from the ((dwelling)) home's landlord is required prior to starting any environmental adaptations for a rental property. The landlord must not require removal of the environmental adaptations at the end of the waiver participant's tenancy as a condition of the landlord approving the environmental adaptation to the waiver participant's ((dwelling)) home.

~~((10))~~ (11) Environmental adaptations must not add to the total square footage of the ((dwelling)) home, convert nonliving space to living space, or create a new room.

~~((11))~~ (12) The amount of service you may receive is limited to the dollar amounts for aggregate services in your basic plus waiver, CIIBS waiver, or the dollar amount of your annual IFS waiver allocation ((limit the amount of service you may receive)).

~~((12))~~ (13) For core((7)) and community protection waivers, ((and CIIBS waivers,)) annual environmental adaptation costs must not exceed twelve thousand one hundred ninety-two dollars.

~~((13))~~ (14) Damage prevention and repairs under the CIIBS and IFS waivers are subject to the following restrictions:

(a) Limited to the cost of restoration to the original function;

(b) Limited to the dollar amounts of the ~~((IFS waiver))~~ participant's annual allocation;

(c) Behaviors of waiver participants that resulted in damage to the ~~((dwelling))~~ home must be addressed in a positive behavior support plan prior to the repair of damages;

(d) Repairs to personal property such as furniture and appliances are excluded; and

(e) Repairs due to normal wear and tear are excluded.

~~((14) The following))~~ (15) Noncovered environmental adaptations ~~((are not covered as an environmental adaptation))~~ include:

(a) Building fences and fence repairs;

(b) Carpet or carpet replacement;

(c) Air conditioning, heat pumps, generators, or ceiling fans;

(d) Roof repair or siding;

(e) Deck construction or repair; and

(f) Jetted tubs or saunas.

~~((15))~~ (16) Environmental ~~((adaptions))~~ adaptations are limited to additional services not otherwise covered under the medicaid state plan, including EPSDT, but consistent with waiver objectives of avoiding institutionalization.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 20-05-080, § 388-845-0910, filed 2/18/20, effective 3/20/20. Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0910, filed 6/20/18, effective 7/21/18. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-0910, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0910, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-0910, filed 11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-0910, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-0910, filed 12/13/05, effective 1/13/06.]

NEW SECTION

WAC 388-845-0920 What is equine therapy? (1) Equine therapy is the use of horses to provide experiences that support mental health and emotional well-being.

(2) Services may include horsemanship as part of a therapeutic team and participation in other activities associated with preparing a horse for a client's riding lesson.

(3) Equine therapy is available only on the CIIBS waiver.

[]

NEW SECTION

WAC 388-845-0930 Who are qualified providers of equine therapy?

(1) The provider of equine therapy must be a certified therapeutic horseback riding instructor and contracted with DDA to provide this service.

(2) The provider of equine therapy must have one year of experience working with individuals with developmental disabilities.

[]

NEW SECTION

WAC 388-845-0940 Are there limits to the equine therapy I may receive? The following limits apply to your receipt of equine therapy:

(1) Support needs for equine therapy are limited to those identified in your DDA assessment and documented in the person-centered service plan.

(2) The department requires your behavior specialist's written recommendation regarding your need for the service. This recommendation must take into account that the service is expected to complement the existing behavior support plan to address behavior support needs.

(3) Equine therapy requires prior approval by the DDA regional administrator or designee.

(4) DDA may require a second opinion by the department-selected provider.

(5) Equine therapy services must not exceed the CIIBS combined specialized-hourly services allocation of five thousand dollars per plan year.

(6) Equine therapy services must not be used to provide hippo-therapy, which is an occupational therapy service.

(7) The department reserves the right to terminate the authorization for equine therapy services if there is not a demonstrable improvement in behavior as documented by the contracted equine therapist or other treatment provider.

[]

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-1100 What are ((behavioral health)) stabilization services - crisis diversion bed ((services))? ((Behavioral health)) (1) Crisis diversion ((bed services)) beds are ((short-term emergent residential services that may be provided in a client's home, licensed or certified setting, or state operated setting. These services are available to eligible clients whose current living situation is disrupted and the client is at risk of institutionalization. These services are)) available in all five HCBS waivers administered by DDA as ((behavioral health)) a stabilization ((services)) service in accordance with WAC 388-845-1150 through 388-845-1160.

(2) Crisis diversion beds are short-term residential habilitative supports provided by trained specialists and include direct care, supervision or monitoring, habilitative supports, referrals, and consultation. Crisis diversion beds are available to individuals determined by DDA to be at risk of institutionalization.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 20-05-080, § 388-845-1100, filed 2/18/20, effective 3/20/20. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-1100, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-1100, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-1100, filed 12/13/05, effective 1/13/06.]

NEW SECTION

WAC 388-845-1101 Where may stabilization services - crisis diversion bed be provided? Stabilization services - crisis diversion beds may be provided in a client's home or a licensed or certified setting.

[]

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-1105 Who is a qualified provider of ((behavioral health)) stabilization services - crisis diversion bed ((services))? Providers of ((behavioral health)) stabilization services - crisis diversion ((bed services)) beds must be:

- (1) DDA certified residential agencies per chapter 388-101 WAC;
- (2) Other department licensed or certified agencies; or
- (3) State-operated ((agency)) agencies.

[Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-1105, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-1105, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-1110 What are the limits of ((behavioral health)) stabilization services - crisis diversion bed ((services))? (1) ((Clinical and)) Support needs for ((behavioral health)) stabilization services - crisis diversion ((bed services)) beds are limited to those identified in the waiver participant's DDA assessment and documented in the person-centered service plan.

(2) ((Behavioral health)) Stabilization services - crisis diversion ((bed services)) beds are intermittent and temporary. A behavioral health professional may make a recommendation about your need for ((behavioral health)) stabilization services - crisis diversion ((bed services)) beds. The DDA person-centered service plan determines the duration and amount of ((behavioral health)) stabilization services - crisis diversion ((bed services)) beds you will receive.

(3) The costs of (~~behavioral health~~) stabilization services - crisis diversion (~~bed services~~) beds do not count toward the dollar amounts for aggregate services in the basic plus or CIIBS waiver or the annual allocation in the individual and family services waiver.

(4) Stabilization services - crisis diversion beds are limited to additional services not otherwise covered under the state plan, including EPSDT, but consistent with waiver objectives of avoiding institutionalization.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 20-05-080, § 388-845-1110, filed 2/18/20, effective 3/20/20. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-1110, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-1110, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-1110, filed 11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-1110, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-1150 What are (~~behavioral health~~) stabilization services? (1) (~~Behavioral health~~) Stabilization services assist persons who are experiencing a (~~behavioral health~~) crisis.

(2) (~~Behavioral health~~) Stabilization services are available in the basic plus, core, children's intensive in-home behavior support (CIIBS), individual and family services (IFS), and community protection waivers.

(3) A participant may be eligible for (~~behavioral health~~) stabilization services if:

(a) A behavioral health professional (~~or~~) and DDA has determined the participant is at risk of institutionalization or hospitalization; and

(b) The participant needs short-term:

(i) (~~Positive behavior support and consultation~~) Specialized habilitation;

(ii) (~~Specialized psychiatric services for people age twenty-one and older~~) Staff and family consultation; or

(iii) (~~Behavioral health~~) Crisis diversion (~~bed services available to participants on the individual and family services, basic plus, core, CIIBS, and community protection waivers~~) beds.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 20-05-080, § 388-845-1150, filed 2/18/20, effective 3/20/20. Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-1150, filed 6/20/18, effective 7/21/18. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-1150, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-1150, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-1150, filed

11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-1150, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

WAC 388-845-1155 Who are qualified providers of ((behavioral health)) stabilization services? Providers of these ((behavioral health)) stabilization services are listed in the rules in this chapter governing the specific services listed in WAC 388-845-1150.

[Statutory Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-1155, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-1155, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-1160 Are there ((limitations)) limits to the ((behavioral health)) stabilization services that you can receive? (1) ((Clinical and support needs for behavioral health)) Stabilization services are limited to those identified in your DDA assessment and documented in the person-centered service ((plan/individual support)) plan.

(2) ((Behavioral health)) Stabilization services are intermittent and ((temporary)) last for ninety days or less. ((The duration and amount of services you need to stabilize your crisis is determined by a behavioral health professional and/or DDA.))

(3) The costs of ((behavioral health)) stabilization services do not count toward the dollar amounts for aggregate services in the basic plus or CIIBS waiver or the annual allocation in the IFS waiver.

((4) Behavioral health stabilization services require prior approval by DDA or its designee.))

[Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-1160, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-1160, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-1160, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-1160, filed 12/13/05, effective 1/13/06.]

NEW SECTION

WAC 388-845-1161 What is music therapy? (1) Music therapy is the use of musical interventions to promote the accomplishment of individualized goals within a therapeutic relationship.

(2) Services may include music improvisation, receptive music listening, song writing, lyric discussion, music and imagery, music performance, or other expressive musical forms.

(3) Music therapy is available in the CIIBS waiver.

[]

NEW SECTION

WAC 388-845-1162 Who are qualified providers of music therapy?

(1) Qualified providers of music therapy are agencies or individuals who are or employ board certified music therapists (MT-BC) as defined by the certification board for music therapists;

(2) Are contracted with DDA to provide this service; and

(3) Have one year of experience working with individuals with developmental disabilities.

[]

NEW SECTION

WAC 388-845-1163 Are there limits to the music therapy I may receive? The following limits apply to your receipt of music therapy:

(1) Support needs for music therapy are limited to those identified in your DDA assessment and documented in the person-centered service plan.

(2) The department requires your behavior specialist's written recommendation regarding your need for the service. This recommendation must take into account that music therapy is expected to complement the existing behavior support plan to address behavior support needs.

(3) Music therapy requires prior approval by the DDA regional administrator or designee.

(4) DDA may require a second opinion by a department-selected provider.

(5) Music therapy must not exceed the CIIBS combined specialized-hourly services allocation of five thousand dollars per year.

(6) The department reserves the right to terminate the service authorization for music therapy if there is not a demonstrable improvement in behavior as documented by the certified music therapist or other treatment provider.

[]

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-1180 Are there limitations to the nurse delegation services that you receive? The following limitations apply to receipt of nurse delegation services:

- (1) Clinical and support needs for nurse delegation are limited to those identified in your DDA assessment and documented in the person-centered service plan(~~/individual support plan~~).
- (2) The department requires the delegating nurse's written recommendation regarding your need for the service. This recommendation must take into account that the nurse has recently examined you, reviewed your medical records, and conducted a nursing assessment.
- (3) The department may require a written second opinion from a department selected nurse delegator that meets the same criteria in subsection (2) of this section.
- (4) The following tasks must not be delegated:
 - (a) Injections, other than insulin;
 - (b) Central lines;
 - (c) Sterile procedures; and
 - (d) Tasks that require nursing judgment.
- (5) The dollar amounts for aggregate services in your basic plus waiver or the dollar amounts for your annual allocation in your IFS waiver limit the amount of nurse delegation service you are authorized to receive.

[Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-1180, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-1180, filed 11/1/10, effective 12/2/10.]

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-1197 What limitations are there for person-centered plan facilitation? (1) Support needs for person-centered planning facilitation are limited to those identified in the waiver participant's DDA assessment and documented in the person-centered service plan(~~/individual support plan~~).

(2) Person-centered plan facilitation may include follow up contacts with the waiver participant and his or her family to consult on plan implementation.

(3) The dollar amounts for the waiver participants' annual allocation in the IFS waiver limit the amount of person-centered plan facilitation service the individual is authorized to receive.

[Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-1197, filed 8/4/16, effective 9/4/16.]

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-1505 Who are qualified providers of residential habilitation services for the core waiver? Providers of residential habilitation services for participants in the core waiver must be one of the following:

(1) Individuals contracted with DDA to provide residential support as a "companion home" provider;

(2) Individuals contracted with DDA to provide training as an "alternative living provider";

(3) Agencies contracted with DDA and certified per chapter 388-101 WAC;

(4) State-operated living alternatives (SOLA); or

(5) Licensed and contracted:

(a) Group care facilities and staffed residential homes ((~~r~~)) under chapter 110-145 WAC;

(b) Child foster homes ((~~r~~)) under chapter 110-148 WAC; or

(c) Child placing agencies ((~~or staffed residential homes per chapter 388-148~~)) under chapter 110-147 WAC.

[Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-1505, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-1505, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-1505, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-1607 Can someone who lives with you be your respite provider? ((Someone)) A person who lives with you ((may)) must not be your respite care provider ((as long as he or she is not)) if the person is:

(1) Your primary care provider ((and is not contracted to provide));

(2) Providing any other DSHS paid service to you ((. The limitations)) in the month that person provides respite care to you; or

(3) Unqualified to provide waiver services based on the limits listed in WAC 388-845-0111 ((also apply)).

[Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-1607, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-1607, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-1607, filed 1/24/13, effective 2/24/13.]

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-1700 What is waiver skilled nursing? (1) Waiver skilled nursing means long-term, intermittent, and hourly skilled nursing services consistent with waiver objectives of avoiding institutionalization.

(2) Waiver skilled nursing services are available in the basic plus, community protection (CP), core, and individual and family services (IFS) waivers, and are limited to participants age twenty-one and older unless skilled nursing is authorized as nurse delegation.

(3) Waiver skilled nursing services include nurse delegation services provided by a registered nurse under WAC 388-845-1170.

[Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-1700, filed 6/20/18, effective 7/21/18. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-1700, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-1700, filed 11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-1700, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-1800 What are specialized ((medical)) equipment and supplies? (1) Specialized ((medical)) equipment and supplies are durable and nondurable medical equipment, or nonmedical equipment necessary to prevent institutionalization, not available through the medicaid state plan or are in excess of what is available through the medicaid state plan benefit, which enables individuals:

(a) To increase their abilities to perform their activities of daily living;

(b) To perceive, control, or communicate with the environment in which they live; or

(c) ~~((On the IFS waiver only,))~~ To improve daily functioning through sensory integration ((when prescribed)) identified in a written therapeutic plan by the current treating professional.

(2) Specialized equipment and supplies are available in all DDA HCBS waivers.

(3) Durable medical equipment and medical supplies are defined in WAC 182-543-1000 and 182-543-5500, respectively.

~~((3))~~ (4) Also included in specialized equipment and supplies are items necessary for life support and ancillary supplies and equipment necessary to the proper functioning of the equipment and supplies described in subsection (1) of this section.

~~((4))~~ (5) Specialized ((medical)) equipment and supplies include the maintenance and repair of specialized ((medical)) equipment not covered through the medicaid state plan.

~~((5) Specialized medical equipment and supplies are available in all DDA HCBS waivers.)~~

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 20-05-080, § 388-845-1800, filed 2/18/20, effective 3/20/20. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-1800, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-1800, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-1800, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-1800, filed 11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-1800, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-1800, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-1805 Who are the qualified providers of specialized ((medical)) equipment and supplies? (1) ((The)) To be a qualified provider of ((specialized)) durable or nondurable medical equipment ((and supplies)), the provider must be a medical equipment supplier contracted:

(a) With DDA ((or have a state contract)); and

(b) As a Title XIX vendor.

(2) ((For IFS only,)) The provider of nonmedical equipment may be a provider contracted with DDA as a goods and services shopper or a provider who satisfies the requirements of WAC 388-845-1805(1).

(3) The provider of specialized ((medical)) equipment and supplies under WAC 388-845-1800 (1)(c) ((must)) may be contracted with DDA as a provider of specialized goods and services or specialized equipment and supplies for IFS and CIIBS waiver clients only.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 20-05-080, § 388-845-1805, filed 2/18/20, effective 3/20/20. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-1805, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-1805, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-1810 Are there limits to the specialized ((medical)) equipment and supplies you may receive? The following limits apply to the specialized ((medical)) equipment and supplies you may receive:

(1) Habilitative support needs for specialized ((medical)) equipment and supplies are limited to those identified in your DDA person-centered assessment and documented in your person-centered service plan.

(2) Specialized (~~medical~~) equipment and supplies require prior approval by the DDA regional administrator or designee for each authorization.

(3) When your medical professional recommends specialized equipment and supplies for you, DDA may require a second opinion by a DDA-selected provider.

(4) Items must be of direct medical or remedial benefit to you or required to prevent institutionalization and necessary as a result of your disability.

(5) Medications, first aid supplies, antiseptic supplies, personal hygiene products, supplements, and vitamins are excluded.

(6) The dollar amounts for aggregate services in your basic plus waiver limit the amount of service you may receive.

(7) The dollar amounts for your annual allocation in your individual and family services (IFS) waiver limit the amount of service you may receive.

(8) Items excluded from specialized equipment and supplies include:

(a) Items of general utility; and

(b) Nonspecialized recreational or exercise equipment, (~~such as~~) including but not limited to trampolines, treadmills, swing sets, and hot tubs.

(9) Specialized equipment and supplies are limited to additional services not otherwise covered under the medicaid state plan, including EPSDT, but consistent with waiver objectives of avoiding institutionalization.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 20-05-080, § 388-845-1810, filed 2/18/20, effective 3/20/20. Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-1810, filed 6/20/18, effective 7/21/18. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-1810, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-1810, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-1810, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-1810, filed 12/13/05, effective 1/13/06.]

NEW SECTION

WAC 388-845-1870 What are specialized habilitation services?

(1) Specialized habilitation services provide community-based and individualized support with the intent of reaching an identified habilitative goal in the person-centered service plan.

(2) Service must assist a client to learn or maintain skills in the category of self-empowerment, safety awareness, self-advocacy, interpersonal effectiveness, effective social communication, appropriate coping strategies for everyday life changes, managing daily tasks, or adaptive skills.

(3) Specialized habilitation must promote inclusion in the community.

(4) Specialized habilitation services are available on the basic plus, IFS, core, and CIIBS waivers.

(5) Specialized habilitation, when authorized as a stabilization service, is available on all five HCBS waivers.

[]

NEW SECTION

WAC 388-845-1880 Who are qualified providers of specialized habilitation services? To provide specialized habilitation services, a provider must be contracted with DDA for this service, have one year of experience working with people with a developmental or intellectual disability, and be one of the following:

(1) A certified life skills coach;

(2) An individual with a bachelor's, master's, or doctoral degree in social work, sociology, psychology, education, child development, gerontology, nursing, or other related field; or

(3) An individual in a university internship program for social work, sociology, psychology, education, child development, gerontology, sociology, or nursing.

[]

NEW SECTION

WAC 388-845-1890 Are there limits to the specialized habilitation I may receive? The following limits apply to your receipt of specialized habilitation:

(1) Specialized habilitation is limited to address a maximum of three goals at a time.

(2) Specialized habilitation support needs must be identified in your DDA assessment and specialized habilitation must be documented in your person-centered service plan.

(3) Specialized habilitation must not exceed:

(a) Four-thousand dollars of your basic plus aggregate funding;

(b) Your IFS annual allocation in combination with other waiver services; or

(c) Fifteen thousand dollars within your total CIIBS aggregate budget and six thousand dollars emergency funding when eligible per WAC 388-845-0800 and 388-845-0820.

(4) Specialized habilitation does not cover education, vocational, skills acquisition training through community first choice, behavioral health, ABA, skilled nursing, occupational therapy, physical therapy, or speech, language, and hearing services that are covered benefits through the medicaid state plan, including early and periodic screening, diagnosis, and treatment and part B special education services.

(5) Specialized habilitation must not be authorized to clients enrolled in residential habilitation.

(6) Habilitation plans must be documented as formal plans as outlined in the provider's contract.

(7) Specialized habilitation, not provided as a stabilization service, requires prior approval by the DDA regional administrator or designee.

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AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-2000 What is staff and family consultation ((and training))? (1) Staff and family consultation ((and training)) is ((professional)) assistance, not covered by the medicaid state plan, to families or direct service providers to help them meet the individualized and specific needs of a participant as outlined in the participant's person-centered service plan and necessary to improve the participant's independence and inclusion in their community.

(2) Staff and family consultation ((and training)) is available in all DDA HCBS waivers.

(3) Staff and family consultation ((and training)) is consultation and guidance to a staff member or family member about one or more of the following:

(a) Health and medication monitoring to track and report to healthcare provider;

(b) Positioning and transfer;

(c) Basic and advanced instructional techniques;

(d) ((Positive behavior support)) Consultation with potential referral resources;

(e) Augmentative communication systems;

(f) Diet and ((nutrition)) nutritional guidance;

(g) Disability information and education;

(h) Strategies for effectively and therapeutically interacting with the participant;

(i) Environmental ((safety)) consultation;

(j) Assistive technology safety; ((and))

(k) An existing plan of care; and

(l) For the basic plus, IFS, and CIIBS waivers only, individual and family counseling.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 20-05-080, § 388-845-2000, filed 2/18/20, effective 3/20/20. Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-2000, filed 6/20/18, effective 7/21/18. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-2000, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-2000, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-2000, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-2000, filed 11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-2000, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-2000, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-2005 Who is a qualified provider of staff and family consultation ((and training))? To provide staff and family consultation ((and training)), a provider must be contracted with DDA and be one of the following licensed, registered, or certified professionals:

- (1) Audiologist;
- (2) Licensed practical nurse;
- (3) Marriage and family therapist;
- (4) Mental health counselor;
- (5) Occupational therapist;
- (6) Physical therapist;
- (7) Registered nurse;
- (8) Sex offender treatment provider;
- (9) Speech-language pathologist;
- (10) Social worker;
- (11) Psychologist;
- (12) Certified American Sign Language instructor;
- (13) Nutritionist;
- (14) Counselors registered or certified in accordance with chapter 18.19 RCW;
- (15) Certified dietician;
- (16) Recreation therapist registered in Washington and certified by the national council for therapeutic recreation;
- (17) Providers listed in WAC 388-845-0506 and contracted with DDA to provide CIIBS intensive services;
- (18) Certified music therapist (for CIIBS only);
- (19) Psychiatrist;
- (20) Professional advocacy organization; or
- (21) Teacher certified under chapter 181-79A WAC.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 20-05-080, § 388-845-2005, filed 2/18/20, effective 3/20/20. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-2005, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-2005, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 74.08.090, 74.09.520, and 2012 c 49. WSR 12-16-095, § 388-845-2005, filed 8/1/12, effective 9/1/12. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1) (i), and Title 71A RCW. WSR 10-22-088, § 388-845-2005, filed 11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-2005, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-2005, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-2010 Are there limits to the staff and family consultation ((and training)) you may receive? (1) Staff and family consultation ((and training)) are limited to supports identified in your DDA assessment and documented in the person-centered service plan.

(2) Expenses to the family or provider for room and board or attendance, including registration, at conferences are excluded as a service under staff and family consultation (~~and training~~).

(3) The dollar amounts for aggregate service in your basic plus waiver or the dollar amount of the annual allocation in your individual and family services (IFS) waiver limit the amount of staff and family consultation (~~and training~~) you may receive.

(4) Under the basic plus waiver, individual and family counseling is limited to family members who:

(a) Live with the participant; and

(b) Have been assaulted by the participant and the assaultive behavior was:

(i) Documented in the participant's person-centered service plan; and

(ii) Addressed in the participant's positive behavior support plan or therapeutic plan.

(5) Staff and family consultation (~~and training~~) does not provide training or consultation necessary to meet a provider's or staff's contractual licensing or certification requirements or to complete the necessary functions of their job.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 20-05-080, § 388-845-2010, filed 2/18/20, effective 3/20/20. Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-2010, filed 6/20/18, effective 7/21/18. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-2010, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-2010, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-2010, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-2010, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-2140 Are there any limitations on your receipt of supported parenting services? The following limitations apply to your receipt of supported parenting services:

(1) Clinical and support needs for supported parenting services are limited to those identified in your DDA assessment and documented in your person-centered service plan (~~individual support plan~~); and

(2) The dollar amount of your annual allocation in your IFS waiver limit the amount of supported parenting service you are authorized to receive.

[Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-2140, filed 8/4/16, effective 9/4/16.]

NEW SECTION

WAC 388-845-2145 What are therapeutic adaptations? (1) Therapeutic adaptations available on the basic plus, IFS, and CIIBS waiver are modifications to an existing room in the waiver participant's current home and are necessary to reduce or eliminate environmental sensory stressors, enable effective social support, or give a sense of control to the waiver participant in order for a therapeutic plan to be implemented.

(2) Therapeutic adaptations include one-time room modifications not related to physical accessibility such as:

- (a) Noise reduction or enhancement;
- (b) Lighting adjustment;
- (c) Wall softening;
- (d) Anchored and nonremovable tactile accents; or
- (e) Anchored and nonremovable visual accents.

[]

NEW SECTION

WAC 388-845-2150 Who is a qualified provider of therapeutic adaptations? (1) A qualified provider of therapeutic adaptations is a person who is contracted with DDA and:

- (a) A registered contractor per chapter 18.27 RCW and licensed and bonded to perform the specific type of work they are providing; or
- (b) A medical equipment supplier with a state contract as a Title XIX vendor.

(2) A qualified provider of therapeutic adaptations may also be someone who is contracted with DDA as:

- (a) A purchasing goods and services contractor; or
- (b) A CIIBS goods and services contractor.

[]

NEW SECTION

WAC 388-845-2155 Are there limits to the therapeutic adaptations I may receive? The following limits apply to your receipt of therapeutic adaptations:

(1) Therapeutic adaptations are limited to one adaptation request every five waiver years.

(2) Funding is limited to the aggregate budget in the basic plus and IFS waiver or fifteen thousand dollars on the CIIBS waiver.

(3) Modifications may not add square footage to the home or convert nonliving space into living space.

(4) The department requires a written recommendation by a behavioral health provider, occupational therapist, or physical therapist within the waiver participant's current therapeutic plan.

(5) Therapeutic adaptations are limited to items not otherwise covered under the state plan, including EPSDT, but consistent with waiver objectives of avoiding institutionalization.

(6) Therapeutic adaptations require prior approval by the DDA regional administrator or designee.

(7) Therapeutic adaptations are limited to those identified in the client's person-centered service plan.

[]

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-2200 What are transportation services? Transportation services provide reimbursement to a provider when the transportation is required and specified in the waiver (~~(individual support)~~) person-centered service plan. This service is available in all DDA HCBS waivers if the cost and responsibility for transportation is not already included in your provider's contract and payment.

(1) Transportation provides you access to waiver services, specified by your (~~(individual support)~~) person-centered service plan.

(2) Whenever possible, you must use family, neighbors, friends, or community agencies that can provide this service without charge.

[Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-2200, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-2200, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-2200, filed 11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-2200, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-2200, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-2210 Are there limitations to the transportation services you can receive? The following limitations apply to transportation services:

(1) Support needs for transportation services are limited to those identified in your DDA assessment and documented in your person-centered service plan (~~(individual support plan)~~).

(2) Transportation is limited to travel to and from a waiver service. When the waiver service is supported employment, transportation is limited to days when you receive employment support services.

(3) Transportation does not include the purchase of a bus pass.

(4) Reimbursement for provider mileage requires prior authorization by DDA and is paid according to contract.

(5) This service does not cover the purchase or lease of vehicles.

(6) Reimbursement for provider travel time is not included in this service.

(7) Reimbursement to the provider is limited to transportation that occurs when you are with the provider.

(8) You are not eligible for transportation services if the cost and responsibility for transportation is already included in your provider's contract and payment.

(9) The dollar limitations for aggregate services in your basic plus waiver or the dollar amount of your annual allocation in the IFS waiver limit the amount of service you may receive.

(10) If your individual waiver personal care provider uses his or her own vehicle to provide transportation to you for essential shopping and medical appointments as a part of your personal care service, your provider may receive up to one hundred miles per month in mileage reimbursement. If you work with more than one individual personal care provider, your limit is still a total of one hundred miles per month. This cost is not counted toward the dollar limitation for aggregate services in the basic plus waiver.

[Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-2210, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-2210, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 08-20-033, § 388-845-2210, filed 9/22/08, effective 10/23/08; WSR 07-20-050, § 388-845-2210, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-2210, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-2270 Are there limitations to your receipt of vehicle modification services? Vehicle modification services are only available on the CIIBS or IFS waiver. The following limitations apply:

(1) Clinical and support needs for vehicle modification services are limited to those identified in your DDA assessment and documented in the person-centered service plan(~~/individual support plan~~).

(2) Vehicle modifications are excluded if they are of general utility without direct medical or remedial benefit to you.

(3) If you are eligible for or enrolled with division of vocational rehabilitation (DVR) you must pursue this benefit through DVR first.

(4) Vehicle modifications must be the most cost effective modification based upon a comparison of contractor bids as determined by DDA.

(5) Modifications will only be approved for a vehicle that serves as your primary means of transportation and is owned by you, your family, or both.

(6) DDA requires your treating professional's written recommendation regarding your need for the service. This recommendation must take into account that the treating professional has recently examined you, reviewed your medical records, and conducted a functional evaluation.

(7) The department may require a second opinion from a department selected provider that meets the same criteria as subsection (6) of this section.

(8) The dollar amount for your annual allocation in your IFS waiver limits the amount of vehicle modification service you are authorized to receive.

[Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-2270, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-2270, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-2270, filed 11/1/10, effective 12/2/10.]

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-3000 What is the process for determining the services you need? Your service needs are determined through the DDA assessment and the service planning process as defined in chapter 388-828 WAC. Only identified health and welfare needs will be authorized for payment in the person-centered service plan(~~/individual support plan~~).

(1) You receive an initial and annual assessment of your needs using a department-approved form.

(a) You meet the eligibility requirements for ICF/IID level of care.

(b) The comprehensive assessment reporting evaluation (CARE) tool will determine your eligibility and amount of personal care services.

(c) If you are in the basic plus, CIIBS, or core waiver, the DDA assessment will determine the amount of respite care available to you.

(2) From the assessment, DDA develops your waiver person-centered service plan(~~/individual support plan (ISP)~~) with either you, or you and your legal representative, and others who are involved in your life such as your parent or guardian, advocate, and service providers.

[Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-3000, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-3000, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-3000, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-3000, filed 11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-3000, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-3000, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-3055 What is a waiver person-centered service plan(~~(/individual support plan (ISP))~~)? (1) The person-centered service plan(~~(/individual support plan (ISP))~~) is the primary tool DDA uses to determine and document your needs and to identify the services to meet those needs.

(2) Your person-centered service plan(~~(/ISP)~~) must include:

(a) Your identified health and welfare needs;

(b) Both paid and unpaid services and supports approved to meet your identified health and welfare needs as identified in WAC 388-828-8040 and 388-828-8060; and

(c) How often you will receive each waiver service, how long you will need it, and who will provide it.

(3) For any person-centered service plan(~~(/ISP)~~), you or your legal representative must sign the plan indicating your agreement to the receipt of services.

(4) You may choose any qualified provider for the service, who meets all of the following:

(a) Is able to meet your needs within the scope of their contract, licensure, and certification;

(b) Is reasonably available;

(c) Meets provider qualifications in chapters 388-845 and 388-825 WAC for contracting; and

(d) Agrees to provide the service at department rates.

[Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-3055, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-3055, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-3055, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-3055, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-3055, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-3056 What if you need assistance to understand your person-centered service plan(~~(/individual support plan)~~)? If you are unable to understand your person-centered service plan(~~(/individual support plan)~~) and the individual who has agreed to provide assistance to you as your necessary supplemental accommodation representative is unable to assist you with understanding your (~~(individual support)~~) person-centered service plan, DDA will take the following steps:

(1) Consult with the office of the attorney general to determine if you require a legal representative or guardian to assist you with your (~~(individual support)~~) person-centered service plan;

(2) Continue your current waiver services; and

(3) If the office of the attorney general or a court determines that you do not need a legal representative, DDA will continue to try

to provide necessary supplemental accommodations in order to help you understand your person-centered service plan(~~/individual support plan~~)).

[Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-3056, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-3056, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-3056, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-3056, filed 9/26/07, effective 10/27/07.]

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-3060 When is your person-centered service plan(~~/individual support plan~~) effective? Your person-centered service plan(~~/individual support plan~~) is effective the last day of the month in which DDA signs and dates it.

[Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-3060, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-3060, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-3060, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-3060, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-3060, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-3061 Can a change in your person-centered service plan(~~/individual support plan~~) be effective before you sign it? If you verbally request a change in service to occur immediately, DDA can sign the person-centered service plan(~~/individual support plan~~) and approve it prior to receiving your signature.

(1) Your person-centered service plan(~~/individual support plan~~) will be mailed to you for signature.

(2) You retain the same appeal rights as if you had signed the person-centered service plan(~~/individual support plan~~).

[Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-3061, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-3061, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-3061, filed 1/24/13, effective 2/24/13. Statutory

Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-3061, filed 9/26/07, effective 10/27/07.]

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-3062 Who is required to sign the person-centered service plan(~~/individual support plan~~)? (1) If you do not have a legal representative, you must sign the person-centered service plan(~~/individual support plan~~).

(2) If you have a legal representative, your legal representative must sign the person-centered service plan(~~/individual support plan~~).

(3) If you need assistance to understand your person-centered service plan(~~/individual support plan~~), DDA will follow the steps outlined in WAC 388-845-3056 (1) and (3).

[Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-3062, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-3062, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-3062, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-3062, filed 9/26/07, effective 10/27/07.]

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-3063 Can your person-centered service plan(~~/individual support plan~~) be effective before the end of the month? You may request to DDA to have your person-centered service plan(~~/individual support plan~~) effective prior to the end of the month. The effective date will be the date DDA signs and dates it.

[Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-3063, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-3063, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-3063, filed 1/24/13, effective 2/24/13.]

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-3065 How long is your plan effective? Your person-centered service plan(~~/individual support plan~~) is effective through the last day of the twelfth month following the effective date or until another (~~ISP~~) person-centered service plan is completed, whichever occurs sooner.

[Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-3065, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-3065, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-3065, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-3065, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-3070 What happens if you do not sign your person-centered service plan? (1) If you do not sign your initial person-centered service plan (PCSP), DDA must not provide waiver services to you until you sign the PCSP.

(2) If you do not sign your PCSP and it is a reassessment or review, DDA will:

(a) Continue providing services identified in your current PCSP until the end of the notice period under WAC 388-825-105; and

(b) Return your PCSP to you for your signature.

(3) If you do not return your signed PCSP within two months of your reassessment or review, DDA (~~must~~) may terminate your services.

(4) Your appeal rights are under:

(a) WAC 388-845-4000; and

(b) WAC 388-825-120 through 388-825-165.

[Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-3070, filed 6/20/18, effective 7/21/18. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-3070, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-3070, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-3070, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-3070, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-3070, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-3075 What if your needs change? You may request a review of your person-centered service plan(~~(/individual support plan)~~) at any time by calling your case manager. If there is a significant change in your condition or circumstances, DDA must reassess your person-centered service plan(~~(/individual support plan)~~) with you and amend the plan to reflect any significant changes. This reassess-

ment does not affect the end date of your annual person-centered service plan(~~/individual support plan~~).

[Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-3075, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-3075, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-3075, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-3075, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-3075, filed 12/13/05, effective 1/13/06.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-845-0300	What are adult family home (AFH) services?
WAC 388-845-0305	Who is a qualified provider of AFH services?
WAC 388-845-0310	Are there limits to the AFH services I can receive?
WAC 388-845-0400	What are adult residential care (ARC) services?
WAC 388-845-0405	Who is a qualified provider of ARC services?
WAC 388-845-0410	Are there limits to the ARC services I can receive?
WAC 388-845-0700	What are community guide services?
WAC 388-845-0705	Who may be a qualified provider of community guide services?
WAC 388-845-0710	Are there limits to the community guide services I may receive?
WAC 388-845-1300	What are personal care services?
WAC 388-845-1305	Who are the qualified providers of personal care services?
WAC 388-845-1310	Are there limits to the personal care services you can receive?
WAC 388-845-1400	What are prevocational services?
WAC 388-845-1405	Who are the qualified providers of prevocational services?
WAC 388-845-1410	Are there limits to the prevocational services you may receive?
WAC 388-845-1900	What are specialized psychiatric services?

- WAC 388-845-1905 Who are qualified providers of specialized psychiatric services?
- WAC 388-845-1910 Are there limitations to the specialized psychiatric services you can receive?
- WAC 388-845-2160 What is therapeutic equipment and supplies?
- WAC 388-845-2165 Who are qualified providers of therapeutic equipment and supplies?
- WAC 388-845-2170 Are there limits to your receipt of therapeutic equipment and supplies?

WSR 21-19-131
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed September 21, 2021, 11:11 a.m., effective October 22, 2021]

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

Purpose: This proposed rule clarifies requirements for out-of-state candidates for Washington educator certificates. This rule clarifies that candidates must meet existing requirement(s) for certification, licensure, and degree. For example, principal and superintendent candidates must hold or have held a teacher or educational staff associate certificate. The clarified language will be easier for readers of WAC 181-79A-257 to understand. These nonsubstantive changes include updating citations, as well as organizational changes.

Citation of Rules Affected by this Order: Amending WAC 181-79A-257.

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

Adopted under notice filed as WSR 21-15-093 on September 21 [July 19], 2021.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

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

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

Date Adopted: September 21, 2021.

Sophia Keskey
Rules Coordinator

OTS-3187.1

AMENDATORY SECTION (Amending WSR 21-08-024, filed 3/29/21, effective 4/29/21)

WAC 181-79A-257 Out-of-state candidates. Candidates for certification from other states who meet the general certificate requirements described in WAC 181-79A-150 (1) and (2), and the specific requirements for the certificate being sought in chapter 181-77 or 181-79A WAC including, but not limited to, degree, continuing education credit hours, and certification/licensure, shall be eligible for Washington certificates as follows:

(1) **Residency or initial certificates.** The residency or initial certificate shall be issued by the superintendent of public instruction to any candidate who meets requirements for the certificate in-

cluding testing requirements as described in RCW 28A.410.220, and chapters 181-01 and 181-02 WAC, and who meets one of the following:

(a) ~~((Holds the appropriate degree and, if applicable, credit hours and/or licensing as set forth in this chapter, and))~~ Has completed a state approved preparation program in the professional field for which the certificate is to be issued and such additional professional fields as required by WAC 181-79A-150(4). Such programs shall include a defined course of study and a supervised internship.

(b) If a candidate for teacher, administrator, or educational staff associate certification does not meet the qualifications described in (a) of this subsection, a residency or initial certificate shall be issued to a candidate who(†

~~(i) Holds an appropriate degree from an accredited college or university.~~

~~(ii))~~ holds or has held a certificate in the role, comparable to a residency or initial certificate, issued by another state and has practiced at the P-12 level in the role outside the state of Washington for at least three years.

(c) Holds an appropriate degree from an accredited college or university and has practiced three years as an educational staff associate in that role in a state where such certificate was not required.

(d) Holds a valid Nationally Certified School Psychologist (NCSP) credential issued by the National Association of School Psychologists (NASP); and applies for a residency educational staff associated school psychologist certificate.

(2) **Professional certificate.** ~~((After August 31, 2000,))~~ The professional certificate shall be issued to out-of-state candidates if the candidate meets requirements for the initial or residency certificate including testing requirements as described in RCW 28A.410.220 and chapters 181-01 and 181-02 WAC, meets the ~~((child))~~ issues of abuse ((course work)) or emotional or behavioral distress requirement as described in WAC ~~((181-79A-206 (3) (b)))~~ 181-79A-200, and if one of the following conditions is met:

(a) The candidate has completed an advanced level certification procedure approved by the professional educator standards board as equivalent to the approved program procedure required in Washington; or

(b) The candidate holds a valid teaching certificate issued by the National Board for Professional Teaching Standards; or

(c) The candidate holds a valid school counselor certificate issued by the National Board for Professional Teaching Standards.

(3) Under RCW 18.340.020 out-of-state candidates who are military spouses shall receive expedited issuance of the appropriate certificate in accordance with this section.

(4) Out-of-state candidates must meet the assessment requirements per chapters 181-01 and 181-02 WAC. Equivalent assessments will be published by the board.

(5) Out-of-state candidates for educational staff associate certificates under WAC 181-79A-223 are considered to have met the requirement for the professional transitions to public schools course work provided they meet one or more of the following:

(a) Have completed a state-approved program as an educational staff associate in the role; or

(b) Hold or have held a certificate in the role, comparable to a residency or initial certificate, issued by another state and have practiced at the P-12 school level in the role outside the state of Washington for at least three years; or

(c) Hold an appropriate degree from an accredited college or university and have practiced three years as an educational staff associate in that role in a state where such certificate was not required.

[Statutory Authority: Chapter 28A.410 RCW. WSR 21-08-024, § 181-79A-257, filed 3/29/21, effective 4/29/21. Statutory Authority: RCW 28A.410.220. WSR 18-21-011, § 181-79A-257, filed 10/4/18, effective 11/4/18. Statutory Authority: RCW 28A.410.210. WSR 15-23-013, § 181-79A-257, filed 11/6/15, effective 12/7/15; WSR 14-13-006, § 181-79A-257, filed 6/5/14, effective 7/6/14; WSR 11-15-038, § 181-79A-257, filed 7/13/11, effective 8/13/11; WSR 09-16-018, § 181-79A-257, filed 7/24/09, effective 8/24/09; WSR 07-20-047, § 181-79A-257, filed 9/26/07, effective 10/27/07; WSR 06-14-010, § 181-79A-257, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-79A-257, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.410.010. WSR 05-04-054, § 180-79A-257, filed 1/28/05, effective 2/28/05; WSR 04-21-005, § 180-79A-257, filed 10/7/04, effective 11/7/04; WSR 04-04-011, § 180-79A-257, filed 1/23/04, effective 2/23/04; WSR 04-04-009, § 180-79A-257, filed 1/23/04, effective 2/23/04; WSR 01-18-043, § 180-79A-257, filed 8/29/01, effective 9/29/01; WSR 01-13-108, § 180-79A-257, filed 6/20/01, effective 7/21/01; WSR 00-23-005, § 180-79A-257, filed 11/2/00, effective 12/3/00; WSR 00-03-048, § 180-79A-257, filed 1/14/00, effective 2/14/00. Statutory Authority: RCW 28A.305.130 (1) and (2), 28A.410.010 and 28A.150.220(4). WSR 99-01-174, § 180-79A-257, filed 12/23/98, effective 1/23/99.]

WSR 21-19-141

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed September 22, 2021, 8:29 a.m., effective October 23, 2021]

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

Purpose: The agency is amending WAC 182-500-0015 and 182-500-0050 to correct outdated behavioral health terminology.

Citation of Rules Affected by this Order: Amending WAC 182-500-0015 and 182-500-0050.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 21-15-013 on July 8, 2021.

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

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

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

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

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

Date Adopted: September 22, 2021.

Wendy Barcus
Rules Coordinator

OTS-3198.1

AMENDATORY SECTION (Amending WSR 16-06-053, filed 2/24/16, effective 4/1/16)

WAC 182-500-0015 Medical assistance definitions—B. (~~"Behavioral health organization" means a single- or multiple-county authority or other entity operating as a prepaid health plan with which the medicaid agency or the agency's designee contracts for the delivery of community outpatient and inpatient mental health and substance use disorder services in a defined geographic area.~~)

"Benefit package" means the set of health care service categories included in a client's health care program. See WAC 182-501-0060.

"Benefit period" means the time period used to determine whether medicare can pay for covered Part A services. A benefit period begins the first day a beneficiary receives inpatient hospital or extended care services from a qualified provider. The benefit period ends when the beneficiary has not been an inpatient of a hospital or other facility primarily providing skilled nursing or rehabilitation services for sixty consecutive days. There is no limit to the number of benefit periods a beneficiary may receive. Benefit period also means a "spell of illness" for medicare payments.

"Billing instructions" means provider guides. See WAC 182-500-0085.

"Blind" is a category of medical program eligibility that requires:

- (a) A central visual acuity of 20/200 or less in the better eye with the use of a correcting lens; or
- (b) A field of vision limitation so the widest diameter of the visual field subtends an angle no greater than twenty degrees from central.

"By report (BR)" means a method of payment in which the agency or the agency's designee determines the amount it will pay for a service when the rate for that service is not included in the agency's published fee schedules. The provider must submit a report which describes the nature, extent, time, effort and equipment necessary to deliver the service.

[Statutory Authority: RCW 41.05.021, 41.05.160, 2014 c 225. WSR 16-06-053, § 182-500-0015, filed 2/24/16, effective 4/1/16. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 15-21-063, § 182-500-0015, filed 10/19/15, effective 11/19/15. WSR 11-14-075, recodified as § 182-500-0015, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090 and 2011 1st sp.s. c 15. WSR 11-14-053, § 388-500-0015, filed 6/29/11, effective 7/30/11.]

AMENDATORY SECTION (Amending WSR 17-12-017, filed 5/30/17, effective 6/30/17)

WAC 182-500-0050 Washington apple health definitions—I. "Ineligible spouse" see "spouse" in WAC 182-500-0100.

"Institution" means an entity that furnishes (in single or multiple facilities) food, shelter, and some treatment or services to four or more people unrelated to the proprietor. Eligibility for a Washington apple health program may vary depending upon the type of institution in which an individual resides. For the purposes of apple health programs, "institution" includes all the following:

(1) "**Institution for mental diseases (IMD)**" - A hospital, nursing facility, or other institution of more than sixteen beds that is primarily engaged in providing diagnosis, treatment or care of people with mental diseases, including medical attention, nursing care and related services. An IMD may include inpatient (~~chemical dependency~~) substance use disorder (SUD) facilities of more than sixteen beds which provide residential treatment for (~~alcohol and substance abuse~~) SUD.

(2) "**Intermediate care facility for the mentally retarded (ICF/MR)**" - An institution or distinct part of an institution that is:

- (a) Defined in 42 C.F.R. 440.150;
- (b) Certified to provide ICF/MR services under 42 C.F.R. 483, Subpart I; and
- (c) Primarily for the diagnosis, treatment, or rehabilitation for people with mental retardation or a related condition.

(3) "**Medical institution**" - An entity that is organized to provide medical care, including nursing and convalescent care. The terms "medical facility" and "medical institution" are sometimes used interchangeably throughout Title 182 WAC.

(a) To meet the definition of medical institution, the entity must:

- (i) Be licensed as a medical institution under state law;
 - (ii) Provide medical care, with the necessary professional personnel, equipment, and facilities to manage the health needs of the patient on a continuing basis under acceptable standards; and
 - (iii) Include adequate physician and nursing care.
- (b) Medical institutions include:
- (i) "Hospice care center" - An entity licensed by the department of health (DOH) to provide hospice services. Hospice care centers must be medicare-certified, and approved by the agency or the agency's designee to be considered a medical institution.
 - (ii) "Hospital" - Defined in WAC 182-500-0045.
 - (iii) "Nursing facility (NF)" - An entity certified to provide skilled nursing care and long-term care services to medicaid recipients under Social Security Act Sec. 1919(a), 42 U.S.C. Sec. 1396r. Nursing facilities that may become certified include nursing homes licensed under chapter 18.51 RCW, and nursing facility units within hospitals licensed by DOH under chapter 70.41 RCW. This includes the nursing facility section of a state veteran's facility.
 - (iv) "Psychiatric hospital" - An institution, or a psychiatric unit located in a hospital, licensed as a hospital under applicable Washington state laws and rules, that is primarily engaged to provide psychiatric services for the diagnosis and treatment of mentally ill people under the supervision of a physician.
 - (v) "Psychiatric residential treatment facility (PRTF)" - A non-hospital residential treatment center licensed by DOH, and certified by the agency or the agency's designee to provide psychiatric inpatient services to medicaid-eligible people age twenty-one and younger. A PRTF must be accredited by the Joint Commission on Accreditation of Health care Organizations (JCAHO) or any other accrediting organization with comparable standards recognized by Washington state. A PRTF must meet the requirements in 42 C.F.R. 483, Subpart G, regarding the use of restraint and seclusion.
 - (vi) "Residential habilitation center (RHC)" - A residence operated by the state under chapter 71A.20 RCW that serves people who have exceptional care and treatment needs due to their developmental disabilities by providing residential care designed to develop individual capacities to their optimum. RHCs provide residential care and may be certified to provide ICF/MR services and nursing facility services.
- (c) Medical institutions do not include entities licensed by the agency or the agency's designee as adult family homes (AFHs) and boarding homes. AFHs and boarding homes include assisted living facilities, adult residential centers, enhanced adult residential centers, and developmental disability group homes.
- (4) "**Public institution**" means an entity that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control.
- (a) Public institutions include:
- (i) Correctional facility - An entity such as a state prison, or city, county, or tribal jail, or juvenile rehabilitation or juvenile detention facility.
 - (ii) Eastern and Western State mental hospitals. (Medicaid coverage for these institutions is limited to people age twenty-one and younger, and people age sixty-five and older.)
 - (iii) Certain facilities administered by Washington state's department of veteran's affairs (see (b) of this subsection for facilities that are not considered public institutions).

(b) Public institutions do not include intermediate care facilities, entities that meet the definition of medical institution (such as Harborview Medical Center and University of Washington Medical Center), or facilities in Retsil, Orting, and Spokane that are administered by the department of veteran's affairs and licensed as nursing facilities.

"Institution for mental diseases (IMD)" see "institution" in this section.

"Institutional review board" - A board or committee responsible for reviewing research protocols and determining whether:

- (1) Risks to subjects are minimized;
- (2) Risks to subjects are reasonable in relation to anticipated benefits, if any, to subjects, and the importance of the knowledge that may reasonably be expected to result;
- (3) Selection of subjects is equitable;
- (4) Informed consent will be sought from each prospective subject or the subject's legally authorized representative;
- (5) Informed consent will be appropriately documented;
- (6) When appropriate, the research plan makes adequate provision for monitoring the data collected to ensure the safety of subjects;
- (7) When appropriate, there are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of data; and
- (8) When some or all of the subjects are likely to be vulnerable to coercion or undue influence, such as children, prisoners, pregnant people, mentally disabled persons, or economically or educationally disadvantaged persons, additional safeguards have been included in the study to protect the rights and welfare of these subjects.

"Institutionalized spouse" see "spouse" in WAC 182-500-0100.

"Intermediate care facility for the mentally retarded (ICF/MR)" see "institution" in this section.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 17-12-017, § 182-500-0050, filed 5/30/17, effective 6/30/17; WSR 15-17-013, § 182-500-0050, filed 8/7/15, effective 9/7/15. WSR 11-14-075, recodified as § 182-500-0050, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090 and 2011 1st sp.s. c 15. WSR 11-14-053, § 388-500-0050, filed 6/29/11, effective 7/30/11.]

WSR 21-19-142

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed September 22, 2021, 9:19 a.m., effective October 23, 2021]

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

Purpose: The agency is amending WAC 182-503-0515 to add a new subsection (6)(f) to name the family planning only program described in WAC 182-532-510 as an additional program for which a Social Security number is not required. The agency has determined this rule amendment is necessary because the agency is expanding family planning only program services to all Washington residents, including those who do not have a Social Security number.

Citation of Rules Affected by this Order: Amending WAC 182-503-0515.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 21-17-086 on August 13, 2021.

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

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

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

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

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

Date Adopted: September 22, 2021.

Wendy Barcus
Rules Coordinator

OTS-3122.2

AMENDATORY SECTION (Amending WSR 18-10-014, filed 4/23/18, effective 5/24/18)

WAC 182-503-0515 Washington apple health—Social Security number requirements. (1) To be eligible for Washington apple health (medicaid), or tailored supports for older adults (TSOA) described in WAC 182-513-1610, you (the applicant or recipient) must provide your valid Social Security number (SSN) or proof of application for an SSN to the medicaid agency or the agency's designee, except as provided in subsections (2) and (6) of this section.

(2) An SSN is not required if you are:

(a) Not eligible to receive an SSN or may only be issued an SSN for a valid nonwork reason described in 20 C.F.R. 422.104;

(b) A household member who is not applying for apple health coverage, unless verification of that household member's resources is required to determine the eligibility of the client;

(c) Refusing to obtain an SSN for well-established religious objections as defined in 42 C.F.R. 435.910 (h) (3); or

(d) Not able to obtain or provide an SSN because you are a victim of domestic violence.

(3) If you are receiving coverage because you meet an exception under either subsection (2) (c) or (d) of this section, we (the agency) will confirm with you at your apple health renewal, consistent with WAC 182-503-0050, that you still meet the exception.

(4) If we ask for confirmation that you continue to meet an exception in subsection (2) of this section and you do not respond in accordance with subsection (3) of this section, or if you no longer meet an exception and do not provide your SSN, we will terminate your apple health coverage according to WAC 182-518-0025.

(5) If you are not able to provide your SSN, either because you do not know it or it has not been issued, you must provide:

(a) Proof from the Social Security Administration (SSA) that you turned in an application for an SSN; and

(b) The SSN when you receive it.

(i) Your apple health coverage will not be delayed, denied, or terminated while waiting for SSA to send you your SSN. If you need help applying for an SSN, assistance will be provided to you.

(ii) We will ask you every ninety days if your SSN has been issued.

(6) An SSN is not required for the following apple health programs:

(a) Refugee medical assistance program described in WAC 182-507-0130;

(b) Alien medical programs described in WAC 182-507-0115, 182-507-0120, and 182-507-0125;

(c) Newborn medical program described in WAC 182-505-0210 (2) (a);

(d) Foster care program for a child age eighteen and younger as described in WAC 182-505-0211(1); (~~(e)~~)

(e) Medical programs for children and pregnant women who do not meet citizenship or immigration status described in WAC 182-503-0535 (2) (e) (ii) and (iii); or

(f) Family planning only program described in WAC 182-532-510 if you do not meet citizenship or immigration status for Washington apple health or you have made an informed choice to apply for family planning services only.

(7) If you are required to provide an SSN under this section, and you do not meet an exception under subsection (2) of this section, failure to provide your SSN may result in:

(a) Denial of your application or termination of your coverage because we cannot determine your household's eligibility; or

(b) Inability to apply the community spouse resource allocation (CSRA) or monthly maintenance needs allowance (MMNA) for a client of long-term services and supports (LTSS).

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 18-10-014, § 182-503-0515, filed 4/23/18, effective 5/24/18. Statutory Authority: RCW 41.05.021, 41.05.160, Public Law 111-148, 42 C.F.R. § 431, 435, and 457, and 45 C.F.R. § 155. WSR 14-16-052, § 182-503-0515, filed 7/29/14, effective 8/29/14.]