

WSR 22-24-005

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed November 28, 2022, 12:11 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-18-069.

Title of Rule and Other Identifying Information: WAC 182-538-070 Payments, corrective action, and sanctions for managed care organizations (MCOs) and 182-538-140 Quality of care.

Hearing Location(s): On January 10, 2023, 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the health care authority (HCA) continues to hold public hearings virtually without a physical meeting place. This promotes social distancing and the safety of the residents of Washington state. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_uzi3CSJ5TjaOjrSSuttwUA. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: January 11, 2023.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by January 10, 2023, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email Johanna.Larson@hca.wa.gov, by December 30, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending these rules to allow it to be flexible in its approach to sanctions with managed care organizations (MCOs), as authorized by 42 C.F.R. 438.702(b). The proposed rules allow the agency to impose the maximum allowable sanction on a daily, per-occurrence basis for an MCO's violation of any material obligation under the MCO's contract.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1408; Implementation and Enforcement: Michael Brown, P.O. Box 45503, Olympia, WA 98504-5503, 360-725-0913.

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

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

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

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

November 28, 2022
Wendy Barcus
Rules Coordinator

OTS-4206.1

AMENDATORY SECTION (Amending WSR 19-24-063, filed 11/27/19, effective 1/1/20)

WAC 182-538-070 Payments (~~(and)~~), corrective action, and sanctions for managed care organizations (MCOs) ((in integrated managed care regional service areas)). (1) The medicaid agency pays apple health managed care organizations (MCOs) monthly capitated premiums that:

(a) Have been developed using generally accepted actuarial principles and practices;

(b) Are appropriate for the populations to be covered and the services to be furnished under the MCO contract;

(c) Have been certified by actuaries who meet the qualification standards established by the American Academy of Actuaries and follow the practice standards established by the Actuarial Standards Board;

(d) Are based on analysis of historical cost, rate information, or both; and

(e) Are paid based on legislative allocations.

(2) The MCO is solely responsible for payment of MCO-contracted health care services. The agency will not pay for a service that is the MCO's responsibility, even if the MCO has not paid the provider for the service.

(3) The agency pays MCOs a service-based enhancement rate for wraparound with intensive services (WISe) administered by a certified WISe provider who holds a current behavioral health agency license issued by the department of health under chapter 246-341 WAC.

(4) For crisis services, the MCO must determine whether the person receiving the services is eligible for Washington apple health or if the person has other insurance coverage.

(5) The agency may ~~((~~

~~(a) Impose intermediate sanctions under 42 C.F.R. Sec. 438.700 and)) require corrective action for:~~

~~(a) Substandard rates of clinical performance measures ((and for))~~;

~~(b) Deficiencies found in audits and on-site visits; or~~

~~((b) Require corrective action for)) (c) Findings ((for)) of noncompliance with any contractual, state, or federal requirements ((for (e)))~~.

(6) The agency may:

(a) Impose sanctions for an MCO's noncompliance with any contractual, state, or federal requirements ((not corrected)) including, but not limited to, intermediate sanctions as described in 42 C.F.R. Sec. 438.700 and 42 C.F.R. Sec. 438.702; and

((d)) (b) Apply a monthly penalty assessment associated with poor performance on selected behavioral health performance measures.

((6)) (7) As authorized by 42 C.F.R. Sec. 438.702(b), if an MCO fails to meet any material obligation under the MCO contract including, but not limited to, the items listed in 42 C.F.R. Sec. 438.700(b), (c), or (d), the agency may impose the maximum allowable sanction on a per-occurrence, per-day basis until the agency determines the MCO has:

(a) Corrected the violation; and

(b) Remedied any harm caused by the noncompliance.

(8) The agency pays an enhancement rate for each MCO enrollee assigned to a federally qualified health center (~~((FQHC))~~) or rural health clinic (~~((RHC) according to)~~), as authorized under chapters 182-548 and 182-549 WAC.

~~((7))~~ (9) The agency pays MCOs a delivery case rate, separate from the capitation payment, when an enrollee delivers a ~~((child(ren)))~~ child or children and the MCO pays for any part of labor and delivery.

[Statutory Authority: RCW 41.05.021, 41.05.160, 2019 c 325, 2014 c 225, and 2018 c 201. WSR 19-24-063, § 182-538-070, filed 11/27/19, effective 1/1/20. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 18-08-035, § 182-538-070, filed 3/27/18, effective 4/27/18; WSR 15-24-098, § 182-538-070, filed 12/1/15, effective 1/1/16. Statutory Authority: RCW 41.05.021, 42 C.F.R. 438. WSR 13-02-010, § 182-538-070, filed 12/19/12, effective 2/1/13. WSR 11-14-075, recodified as § 182-538-070, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090 and 74.09.522. WSR 08-15-110, § 388-538-070, filed 7/18/08, effective 8/18/08; WSR 06-03-081, § 388-538-070, filed 1/12/06, effective 2/12/06. Statutory Authority: RCW 74.08.090, 74.09.522, 2003 E1 c 25 § 201(4), 2004 c 276 § 201(4), 42 U.S.C. 1396N (section 1915 (b) and (c) of the Social Security Act of 1924). WSR 05-01-066, § 388-538-070, filed 12/8/04, effective 1/8/05. Statutory Authority: RCW 74.08.090, 74.09.522. WSR 03-18-109, § 388-538-070, filed 9/2/03, effective 10/3/03. Statutory Authority: RCW 74.09.080, 74.08.510, [74.08.]522, 74.09.450, 1115 Waiver, 42 U.S.C. 1396. WSR 02-01-075, § 388-538-070, filed 12/14/01, effective 1/14/02. Statutory Authority: RCW 74.08.090, 74.09.510 and [74.09.]522 and 1115 Federal Waiver, 42 U.S.C. 1396 (a), (e), (p), 42 U.S.C. 1396r-6(b), 42 U.S.C. 1396u-2. WSR 00-04-080, § 388-538-070, filed 2/1/00, effective 3/3/00. Statutory Authority: RCW 74.08.090. WSR 96-24-073, § 388-538-070, filed 12/2/96, effective 1/2/97. Statutory Authority: RCW 74.08.090 and 1995 2nd sp.s. c 18. WSR 95-18-046 (Order 3886), § 388-538-070, filed 8/29/95 effective 9/1/95. Statutory Authority: RCW 74.08.090. WSR 93-17-039 (Order 3621), § 388-538-070, filed 8/11/93, effective 9/11/93.]

OTS-4207.1

AMENDATORY SECTION (Amending WSR 19-24-063, filed 11/27/19, effective 1/1/20)

WAC 182-538-140 Quality of care. ~~((1))~~ To assure that managed care enrollees receive quality health care services, the agency requires managed care organizations (MCOs) to comply with quality improvement standards detailed in the agency's managed care contract. MCOs must:

~~((a))~~ (1) Have a clearly defined quality organizational structure and operation, including a fully operational quality assessment, measurement, and improvement program;

~~((b))~~ (2) Have effective means to detect overutilization and underutilization of services;

- ~~((e))~~ (3) Maintain a system for provider and practitioner credentialing and recredentialing;
- ~~((d))~~ (4) Ensure that MCO subcontracts and the delegation of MCO responsibilities align with agency standards;
- ~~((e))~~ (5) Ensure MCO oversight of delegated entities responsible for any delegated activity to include:
- ~~((i))~~ (a) A delegation agreement with each entity describing the responsibilities of the MCO and the entity;
- ~~((ii))~~ (b) Evaluation of the entity before delegation;
- ~~((iii))~~ (c) An annual evaluation of the entity; and
- ~~((iv))~~ (d) Evaluation or regular reports and follow-up on issues that are not compliant with the delegation agreement or the agency's managed care contract specifications (~~((f))~~);
- (6) Cooperate with an agency-contracted, qualified independent external quality review organization (EQRO) conducting review activities as described in 42 C.F.R. Sec. 438.358;
- ~~((g))~~ (7) Have an effective mechanism to assess the quality and appropriateness of care furnished to enrollees with special health care needs;
- ~~((h))~~ (8) Assess and develop individualized treatment plans for enrollees with special health care needs which ensure integration of clinical and nonclinical disciplines and services in the overall plan of care;
- ~~((i))~~ (9) Submit annual reports to the agency on performance measures as specified by the agency;
- ~~((j))~~ (10) Maintain a health information system that:
- ~~((i))~~ (a) Collects, analyzes, integrates, and reports data as requested by the agency;
- ~~((ii))~~ (b) Provides information on utilization, grievances and appeals, enrollees ending enrollment for reasons other than the loss of Medicaid eligibility, and other areas as defined by the agency;
- ~~((iii))~~ (c) Retains enrollee grievance and appeal records described in 42 C.F.R. Sec. 438.416, base data as required by 42 C.F.R. Sec. 438.5(c), MLR reports as required by 42 C.F.R. Sec. 438.8(k), and the data, information, and documentation specified in 42 C.F.R. Secs. 438.604, 438.606, 438.408, and 438.610 for a period of no less than ~~((ten))~~ 10 years;
- ~~((iv))~~ (d) Collects data on enrollees, providers, and services provided to enrollees through an encounter data system, in a standardized format as specified by the agency; and
- ~~((v))~~ (e) Ensures data received from providers is adequate and complete by verifying the accuracy and timeliness of reported data and screening the data for completeness, logic, and consistency (~~((k))~~);
- (11) Conduct performance improvement projects designed to achieve significant improvement, sustained over time, in clinical care outcomes and services, and that involve the following:
- ~~((i))~~ (a) Measuring performance using objective quality indicators;
- ~~((ii))~~ (b) Implementing system changes to achieve improvement in service quality;
- ~~((iii))~~ (c) Evaluating the effectiveness of system changes;
- ~~((iv))~~ (d) Planning and initiating activities for increasing or sustaining performance improvement;
- ~~((v))~~ (e) Reporting each project status and the results as requested by the agency; and

~~((vi))~~ (f) Completing each performance improvement project timely so as to generally allow aggregate information to produce new quality of care information every year~~((-~~

~~(-l))~~);

(12) Ensure enrollee access to health care services;

~~((m))~~ (13) Ensure continuity and coordination of enrollee care;

~~((n))~~ (14) Maintain and monitor availability of health care services for enrollees;

~~((o))~~ (15) Perform client satisfaction surveys; and

~~((p))~~ (16) Obtain and maintain national committee on quality assurance (NCQA) accreditation.

~~((2))~~ The agency may:

~~(a) Impose intermediate sanctions under 42 C.F.R. Sec. 438.700 and corrective action for substandard rates of clinical performance measures and for deficiencies found in audits and on-site visits;~~

~~(b) Require corrective action for findings for noncompliance with any contractual state or federal requirements; and~~

~~(c) Impose sanctions for noncompliance with any contractual, state, or federal requirements not corrected.)~~

[Statutory Authority: RCW 41.05.021, 41.05.160, 2019 c 325, 2014 c 225, and 2018 c 201. WSR 19-24-063, § 182-538-140, filed 11/27/19, effective 1/1/20. Statutory Authority: RCW 41.05.021, 41.05.160 and 42 C.F.R. Parts 431, 433, 438, 440, 457, and 495. WSR 17-23-199, § 182-538-140, filed 11/22/17, effective 12/23/17. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 15-24-098, § 182-538-140, filed 12/1/15, effective 1/1/16. Statutory Authority: RCW 41.05.021, 42 C.F.R. 438. WSR 13-02-010, § 182-538-140, filed 12/19/12, effective 2/1/13. WSR 11-14-075, recodified as § 182-538-140, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090 and 74.09.522. WSR 08-15-110, § 388-538-140, filed 7/18/08, effective 8/18/08; WSR 06-03-081, § 388-538-140, filed 1/12/06, effective 2/12/06; WSR 03-18-111, § 388-538-140, filed 9/2/03, effective 10/3/03. Statutory Authority: RCW 74.09.080, 74.08.510, [74.08.]522, 74.09.450, 1115 Waiver, 42 U.S.C. 1396. WSR 02-01-075, § 388-538-140, filed 12/14/01, effective 1/14/02. Statutory Authority: RCW 74.08.090, 74.09.510 and [74.09.]522 and 1115 Federal Waiver, 42 U.S.C. 1396 (a), (e), (p), 42 U.S.C. 1396r-6(b), 42 U.S.C. 1396u-2. WSR 00-04-080, § 388-538-140, filed 2/1/00, effective 3/3/00. Statutory Authority: RCW 74.08.090 and 1995 2nd sp.s. c 18. WSR 95-18-046 (Order 3886), § 388-538-140, filed 8/29/95, effective 9/1/95. Statutory Authority: RCW 74.08.090. WSR 93-17-039 (Order 3621), § 388-538-140, filed 8/11/93, effective 9/11/93.]

WSR 22-24-008
PROPOSED RULES
CLOVER PARK
TECHNICAL COLLEGE

[Filed November 28, 2022, 3:10 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-20-068.

Hearing Location(s): On January 13, 2023, at 9 - 10 a.m., Zoom
<https://cptc-edu.zoom.us/j/9466251249>.

Date of Intended Adoption: February 1, 2023.

Submit Written Comments to: Dean Kelly, 4500 Steilacoom Boulevard, email dean.kelly@cptc.edu, by January 9, 2023.

Assistance for Persons with Disabilities: Contact Dean Kelly, phone 253-589-6066, email dean.kelly@cptc.edu, by January 9, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To adopt new and revised language on hazing as mandated by the Washington state legislature (HB [2SHB] 1751).

Reasons Supporting Proposal: Requirement from Washington state legislature (HB [2SHB] 1751).

Statutory Authority for Adoption: RCW 288.50.140; United States Department of Education, 34 C.F.R. Part 106, HB [2SHB] 1751.

Statute Being Implemented: Chapter 495C-121 WAC.

Rule is necessary because of federal law, United States Department of Education, 34 C.F.R. Part 10; Washington state HB [2SHB] 1751.

Name of Proponent: Clover Park Technical College, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Dean Kelly, 4500 Steilacoom Boulevard, Lakewood, WA 98499, 253-589-6066.

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

A cost-benefit analysis is not required under RCW 34.05.328. Updating language as required by HB [2SHB] 1751.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Updated language in the student code of conduct. No additional costs.

November 28, 2022

Dean Kelly

Interim Vice President Student Success

OTS-4117.1

AMENDATORY SECTION (Amending WSR 14-11-070, filed 5/19/14, effective 6/19/14)

WAC 495C-121-010 Definitions. The following definitions shall apply for the purposes of this student conduct code, chapter 495C-121 WAC:

(1) "College" means Clover Park Technical College, College District (~~Twenty-nine~~) 29.

(2) "College facilities" includes all campuses of the college, wherever located, and all land, buildings, vehicles, equipment, and other real and personal property which are owned, leased, used, or controlled by the college.

(3) "Committee" and "student conduct committee" means the committee which is formed under WAC 495C-121-140 and which hears the matters specified in WAC 495C-121-110.

(4) "Conduct review officer" is the vice president of student services or other college administrator designated by the president to be responsible for receiving and then either reviewing or referring an appeal of student disciplinary action in accordance with WAC 495C-121-110 and following sections of this chapter. The president may reassign any and all of the conduct review officer's responsibilities as set forth in this chapter as he/she deems appropriate.

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

(6) "Disciplinary action" is the process by which the student conduct officer, or the committee upon a referral, imposes discipline against a student for violation of WAC 495C-121-050. Disciplinary action does not include instructional decisions and actions which are under the authority of faculty members and instructional administrators, such as determinations of academic credit and grading; any such determinations, and any review or appeal of these, are outside the scope of this chapter.

(7) "Disciplinary appeal" is the process by which an aggrieved student can appeal discipline, as provided in WAC 495C-121-110 through 495C-121-180.

(8) "Family Educational Rights and Privacy Act" and "FERPA" mean the law and regulations known by those names (20 U.S.C. §1232g; 34 C.F.R. Part 99).

(9) "Filing" is delivery of a document to the college official who is designated under this chapter to receive it for the purpose of review of a disciplinary action. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to that official or the official's assistant during regular office hours; or

(b) Sending the document both by first class mail postage prepaid to the official's office and by email to his/her college email address.

(10) "Hazing" as used in RCW 28B.10.901 and 28B.10.902, includes any act committed as part of a person's recruitment, initiation, pledging, admission into, or affiliation with a student organization, athletic team, or living group or any pastime or amusement engaged in with respect to such an organization, athletic team, or living group that causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student or other person attending a public or private institution of higher education or other postsecondary educational institution in this state, including causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm, regardless of the person's willingness to participate. "Hazing" does not include customary athletic events or other similar contests or competitions.

(11) "Includes" and "including" means contained as part of a larger described whole or grouping, but these terms are not a limitation and mean "but not limited to."

~~((11))~~ (12) "President" is the president of the college. The president may delegate any of his or her responsibilities under this chapter as he/she deems appropriate.

~~((12))~~ (13) "Respondent" is the student against whom disciplinary action is initiated.

~~((13))~~ (14) "Service" is the delivery of a document or copy of a document to a party. Unless otherwise provided, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) Sending the document both by first class and/or certified mail postage prepaid to the party's last known address and by email to the email address shown in the college's records.

Service is deemed complete either upon hand delivery or when the document has been both deposited in the mail and emailed.

~~((14))~~ (15) "Student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered "students."

~~((15))~~ (16) "Student conduct officer" is a college administrator designated by the president or vice president of student services to be responsible for investigating allegations of student misconduct and taking disciplinary action as provided in WAC 495C-121-100. The president or vice president of student services may reassign any of the student conduct officer's responsibilities under this chapter as he/she deems appropriate.

~~((16))~~ (17) "Student group" for purposes of this code, is a student organization, athletic team, or living group including, but not limited to, student clubs and organizations, affinity groups, members of a class or student cohort, student performance groups, and student living groups within student housing.

(18) "Vice president of student services" is the position which reports directly to the president and which the president assigns overall operational responsibility for this chapter. The president may reassign, or the vice president may delegate, any such responsibility as he/she deems appropriate.

[Statutory Authority: RCW 28B.50.140. WSR 14-11-070, § 495C-121-010, filed 5/19/14, effective 6/19/14.]

AMENDATORY SECTION (Amending WSR 14-11-070, filed 5/19/14, effective 6/19/14)

WAC 495C-121-030 Jurisdiction. (1) The student conduct code, chapter 495C-121 WAC, shall apply to student conduct that occurs:

(a) In or on college facilities;

(b) At or in connection with college-sponsored activities; or

(c) Off-campus when in the judgment of the college it adversely affects the college community or the pursuit of its objectives.

(2) ~~((This chapter applies to conduct which occurs at all locations where students are engaged in college activities, including foreign or domestic travel, activities funded or sponsored by the associated students, athletic or recreational events, training internships, cooperative and distance education, online education, practicums, supervised work experiences, or any other college-sanctioned activities.~~

~~(3) This chapter applies to conduct from the time of application for admission through the actual receipt of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment. This chapter shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending.~~

~~(4) The college has sole discretion, on a case-by-case basis, to determine whether this student conduct code will be applied to conduct that occurs off campus.) Jurisdiction extends to, but is not limited to, locations where students or student groups are engaged in official college activities, including foreign or domestic travel, activities funded or sponsored by the associated students, athletic events or recreational events, training internships, cooperative and distance education, online education, practicums, supervised work experiences, or any other college-sanctioned social or club activities and college-sanctioned housing.~~

(3) Students are responsible for their conduct from notification of admission to the college through the actual receipt of a certificate or degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment.

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

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

[Statutory Authority: RCW 28B.50.140. WSR 14-11-070, § 495C-121-030, filed 5/19/14, effective 6/19/14.]

AMENDATORY SECTION (Amending WSR 16-06-026, filed 2/22/16, effective 3/24/16)

WAC 495C-121-050 Prohibited student conduct. The college may impose disciplinary sanctions against a student or student group who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit any act of misconduct, which includes, but is not limited to, the following:

(1) **Academic dishonesty.** Any act of academic dishonesty, including cheating, plagiarism, and fabrication.

(a) Cheating includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment or requirement.

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment or requirement.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment or requirement, or providing false or deceptive information to an instructor concerning the completion of an assignment or requirement, including submitting for credit without authorization academic work also submitted for credit in another course.

(2) **Other dishonesty.** Any other act of dishonesty, including:

(a) Forgery, alteration, submission of falsified documents, or misuse of any college document, record, or instrument of identification;

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

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

(3) **Obstruction or disruption.** Conduct which significantly obstructs or disrupts any operation of the college, any college meeting, any college class or other activity, any activity authorized to occur at a college facility, or any college-sponsored activity, including obstructing the free flow of pedestrian or vehicular movement or blocking access to or from any college facility or college-sponsored event.

(4) **Assault, abuse, intimidation, etc.** Assault, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, stalking, reckless conduct, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property or which unreasonably disrupts the educational environment. For purposes of this subsection:

(a) Bullying is severe or pervasive physical or verbal abuse involving an apparent power imbalance between the aggressor and victim.

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

(c) Reckless conduct means acts performed with a heightened degree of carelessness or indifference so as to create a significant risk of physical, mental, or emotional harm to another person.

(5) **Cyber misconduct. Cyberstalking, cyberbullying or online harassment.** Use of electronic communications including, but not limited to, electronic mail, instant messaging, texting, electronic bulletin boards, and social media sites, to harass, abuse, bully, or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health, safety, or well-being of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's electronic communications directly or through spyware, sending threatening messages, disrupting electronic communications, sending a computer virus or malware, sending false messages to third parties using another's identity, nonconsensual recording of sexual activity, or nonconsensual distribution of a recording of sexual activity.

(6) **Property violation.** Damage to, or theft or misuse of, real or personal property or money of:

- (a) The college or state, including college facilities;
- (b) Any college student, official, employee, or organization;
- (c) Any other member of the college community or a college organization.

Property violation also includes possession of such property or money after it has been stolen.

(7) **Failure to comply with directive.** Failure to comply with the direction of a college official or employee who is acting in the legitimate performance of his or her duties, including failure to properly identify oneself to such a person when requested to do so.

(8) **Weapons.** Holding, wearing, transporting, storing, or otherwise possessing any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon or device which is apparently capable of producing bodily harm, on or in any college facility, subject to the following exceptions:

(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties;

(b) College-owned knives, tools, etc., that are being used for a legitimate educational purpose as part of a college instructional program;

(c) A student with a valid concealed pistol license may store a pistol in his or her vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the pistol is concealed from view;

(d) The president may grant permission to bring such a weapon or device on or into a college facility when he/she determines that it is reasonably related to a legitimate pedagogical purpose, provided that such permission shall be in writing and shall be subject to all terms and conditions incorporated in that writing; and

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

(9) **Hazing.** (~~Hazing includes, but is not limited to, any initiation into a student organization, or any pastime or amusement engaged in with respect to such an organization, that causes, or is likely to cause, bodily danger, physical harm, or serious mental or emotional harm to any student, regardless of whether the victim has consented.~~)

(a) Hazing is any act committed as part of:

(i) A person's recruitment, initiation, pledging, admission into, or affiliation with a student group;

(ii) Any pastime or amusement engaged in with respect to such a student group; or

(iii) That causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm to any student.

(b) Examples of hazing include, but not limited to:

(i) Causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug or other substance which subjects the person to risk of such harm;

(ii) Humiliation by ritual act;

(iii) Striking another person with an object or body part;

(iv) Causing someone to experience excessive fatigue, or physical and/or psychological shock; or

(v) Causing someone to engage in degrading or humiliating games or activities that create a risk of serious psychological, emotional, and/or physical harm.

(c) "Hazing" does not include customary athletic events or similar contests or competitions.

(d) Consent is not a valid defense against hazing.

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

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

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

(c) **Drugs.** The use, possession, delivery, sale, or being observably under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed health care practitioner.

(d) **Tobacco, electronic cigarettes, and related products.** Use of tobacco, electronic cigarettes or smoking devices, and/or related products on or in any college facility is prohibited, except that such use in a designated smoking area or in a closed private vehicle is permitted when consistent with applicable law and rules. "Related products" include cigarettes, pipes, bidi, clove cigarettes, water pipes, hookahs, chewing tobacco, and snuff.

(11) **Lewd conduct.** Conduct which is lewd or obscene.

(12) **Discriminatory conduct.** Discriminatory conduct which harms or adversely affects any member of the college community because of her/his race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(13) **Sexual misconduct.** Any act of sexual misconduct, including sexual harassment, sexual intimidation, and sexual violence.

(a) Sexual harassment means unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, that is sufficiently serious as to deny or limit, and that does deny or limit, based on sex, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for campus community members.

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

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

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

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

(iii) Domestic violence includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.

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

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

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

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

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

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

(15) **Retaliation.** Taking adverse action against any individual for reporting, providing information, or otherwise participating in a process for addressing alleged violations of federal, state, or local law, or college policies, including allegations of discrimination or harassment.

- (16) **Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college, which includes:
- (a) Unauthorized use of such resources or opening of a file, message, or other item;
 - (b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;
 - (c) Unauthorized use or distribution of someone else's password or other identification;
 - (d) Use of such time or resources to interfere with someone else's work;
 - (e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;
 - (f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;
 - (g) Use of such time or resources in violation of applicable copyright or other law;
 - (h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or
 - (i) Failure to comply with the college's policies or procedures governing the use of such time or resources.
- (17) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.
- (18) **Safety violations.** Any nonaccidental conduct that violates, interferes with, or otherwise compromises any law, rule, policy, procedure, or equipment relating to the safety and security of college facilities or the college community, including tampering with fire safety equipment or triggering false alarms or other emergency response systems.
- (19) **Motor vehicle operation.** Operation of any motor vehicle in an unsafe manner or contrary to posted signs or college procedures.
- (20) **Violation of laws or policies.** Violation of any federal, state, or local law or regulation, or college rule, policy, or procedure, which regulates the behavior of the college's students, including a parking rule.
- (21) **Student procedures violations.** Misuse of or failure to follow any of the procedures relating to student complaints or misconduct, including:
- (a) Falsification or misrepresentation of information;
 - (b) Failure to obey a subpoena;
 - (c) Disruption or interference with the orderly conduct of a proceeding;
 - (d) Destroying or altering potential evidence, or attempting to intimidate or otherwise improperly pressure a witness or potential witness;
 - (e) Attempting to influence the impartiality of, or harassing or intimidating, a student conduct committee member or other disciplinary official; or
 - (f) Failure to comply with any disciplinary action, term, or condition imposed under this chapter.
- (22) **Ethical violation.** Ethical violations include, but are not limited to, breach of a generally recognized and published code of ethics or standard of professional practice that governs the conduct of a particular profession, which the student has been specifically

informed about and is required to adhere to as a condition of enrolling in a course or participating in an educational program.

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

[Statutory Authority: RCW 28B.50.140. WSR 16-06-026, § 495C-121-050, filed 2/22/16, effective 3/24/16; WSR 14-11-070, § 495C-121-050, filed 5/19/14, effective 6/19/14.]

NEW SECTION

WAC 495C-121-065 Hazing prohibited—Sanctions. (1) Hazing by a student or student group is prohibited pursuant to WAC 495C-121-050.

(2) No student may conspire to engage in hazing or participate in hazing of another. State law provides that hazing is a criminal offense, punishable as a misdemeanor.

(3) Washington state law provides that:

(a) Any student group that knowingly permits hazing is strictly liable for harm caused to persons or property resulting from hazing. If the organization, association, or student living group is a corporation whether for profit or nonprofit, the individual directors of the corporation may be held individually liable for damages.

(b) Any person who participates in the hazing of another shall forfeit an entitlement to state-funded grants, scholarships, or awards for a period of time determined by the college.

(c) Student groups that knowingly permits hazing to be conducted by its members or by others subject to its direction or control shall be deprived of any official recognition or approval granted by the college.

(d) Student groups found responsible for violating the code of student conduct, college antihazing policies, or state or federal laws relating to hazing or offenses related to alcohol, drugs, sexual conduct, or physical assault will be disclosed in a public report issued by the college setting forth the name of the student group, the date the investigation began, the date the investigation ended, a finding of responsibility, a description of the incident(s) giving rise to the finding, and the details of the sanction(s) imposed.

[]

WSR 22-24-009
PROPOSED RULES
OFFICE OF MINORITY AND
WOMEN'S BUSINESS ENTERPRISES
[Filed November 28, 2022, 3:47 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-19-004.

Title of Rule and Other Identifying Information: Political subdivision fees.

Hearing Location(s): On January 10, 2023, at 1:30 p.m., virtual <https://attendee.gotowebinar.com/register/9117176133591146767>.

Date of Intended Adoption: May 17, 2023.

Submit Written Comments to: Julie Bracken, 1110 Capitol Way South, Suite 150, Olympia, WA, email rules@omwbe.wa.gov, fax 360-586-7070, by January 6, 2023.

Assistance for Persons with Disabilities: Contact Julie Bracken, phone 360-819-3666, fax 360-586-7070, TTY 800-833-6384, email rules@omwbe.wa.gov, by January 6, 2023.

Reasons Supporting Proposal: Under current rules, the formula for determining each political subdivision's fees contain gaps that create ambiguity. The fees also do not increase smoothly as expenditures rise under the current formula. Finally, the cap on fees has not been updated since 2004, despite the growth in expenditures. As a result, political subdivisions with greater expenditures pay a lower proportion in fees compared to political subdivisions with less expenditures. The new formula will make fees more predictable, less ambiguous, and more proportionate to expenditures. The resulting increase in collections will offset increases in the staff cost for the office of minority and women's business enterprises (OMWBE) to certify more businesses.

Statutory Authority for Adoption: RCW 39.19.030.

Statute Being Implemented: RCW 39.19.220.

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

Name of Agency Personnel Responsible for Drafting: Julie Bracken, 1110 Capitol Way South, Suite 150, Olympia, 360-819-3666; Implementation and Enforcement: Shanika Allen, 1110 Capitol Way South, Suite 150, Olympia, 360-561-7261.

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

A cost-benefit analysis is not required under RCW 34.05.328. OMWBE is not an agency listed under RCW 34.05.328 (5)(a)(i) and the rules do not subject parties to a penalty or sanction. They do not involve licensing or permits or make significant amendments to a policy or regulatory program.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposal modifies fees charged by OMWBE to political subdivisions. It does not impact nongovernmental entities.

Scope of exemption for rule proposal:

Is fully exempt.

November 28, 2022

Julie Bracken
Public Records Officer
Rules Coordinator
Records Manager

OTS-4082.1

AMENDATORY SECTION (Amending WSR 11-11-030, filed 5/11/11, effective 6/11/11)

WAC 326-02-034 Political subdivision fees. (1) It is the intent of the state legislature that political subdivisions within the state of Washington contribute to the costs of the state's certification program for minority and women's business enterprises. For the purpose of this section, political subdivisions means any city, town, county, special purpose district, public corporation created by the state, municipal corporation, or quasi-municipal corporation within the state of Washington that administers a policy or program, or funds from whatever source, which requires or encourages the use of certified minority, women, or disadvantaged business enterprises.

(2) Effective July 1, 1993, the office shall allocate a portion of its biennial operational costs to political subdivisions. Each political subdivision shall pay a proportionate share of this allocation based on the formula set forth in subsection (4) of this section.

(3) (a) The fee charged to each political subdivision for the ~~((period, July 1, 2003 -- June 30, 2005))~~ biennium beginning July 1, 2023, and subsequent biennia unless revised by rule, shall be based on the annual average of expenditures for capital projects, supplies and other services for ~~((fiscal years 1999-2001 as reflected in the state auditor's online BARS report, when available. Data on the annual average of capital expenditures by the transit districts during the relevant period will be taken from a report produced by the Washington state department of transportation entitled, 2001 Summary of Public Transportation Systems in Washington State))~~ the most recent available biennium as reported by the state auditor's office. Data on the annual average of expenditures by school districts and educational service districts will be obtained from the office of the superintendent of public instruction. The basis for the fee to be charged to the Housing Authorities is the number of low-income units owned or managed during the last fiscal year as reported to the U.S. Department of Housing and Urban Development. The maximum amount charged to any political subdivision ~~((shall))~~ must not exceed ~~(((\$40,000.00 in a single biennium))~~ \$60,000 in the biennium beginning July 1, 2023. In subsequent biennia, the maximum amount charged must be adjusted for inflation as measured in the implicit price deflator index.

(b) ~~((For the biennium beginning July 1, 2005, and subsequent biennia, similar data reflecting expenditures during the previous biennium or in the case of Housing Authorities, the average number of low-income units owned or managed during the previous biennium will be used to calculate the fee charged to each political subdivision.~~

~~((e))~~ When insufficient data is available to calculate the average expenditures from the sources listed in (a) of this subsection, the office may either use other sources for the data or estimate the

amount of relevant expenditures. In either event, the office shall allow the affected political subdivisions to offer alternative data on which to base its calculation. New political subdivisions will be charged based on the office's estimate of the annual average of relevant expenditures by the entity for the current biennium.

~~((d))~~ (c) After paying the fee, the political subdivisions may challenge the office about the accuracy of the data used to calculate the fee under ~~((b))~~ (a) of this subsection. Upon verification by the state auditor, the fee may be revised and refund issued or additional fee assessed.

~~((e))~~ (d) Following the initial billing in each biennium, which will include the total amount due for the biennium beginning July 1, 2003, the office will mail invoices on a quarterly basis one month before the start of each quarter for the outstanding balance at that time. Payments shall be due within ~~((thirty))~~ 30 calendar days after receipt of the invoice.

(4) (a) The following formula will be used to calculate the fees: ~~((For the annual average of expenditures ranging from \$1m — \$50.99m, a sliding scale as follows: (\$1m — \$10m = \$100; \$11m — \$20m = \$150; \$21m — \$30m = \$200; \$31m — \$40m = \$250; \$41m — \$50m = \$300). For \$51m — \$99.99m, the formula will be the annual average of expenditures multiplied by .0001. At \$100m, a sliding scale resumes; beginning at \$10k and increasing in increments of \$5k for each additional \$100m in the annual average of expenditures; e.g., \$200m — \$299m = \$15k; \$300m — \$399m = \$20,000; etc. Fees will not be charged to any political subdivision with an average annual expenditure totaling less than \$1m during the period under review.))~~ The political subdivision's average annual expenditures multiplied by 0.00006.

(b) The fee to Housing Authorities will be ~~((1))~~ one dollar per low-income unit owned or managed during the last fiscal year.

(5) The office shall develop a policy and procedure for collection of any invoice that is not paid within ~~((thirty))~~ 30 calendar days. The office shall distribute the collection policy and procedure to all political subdivisions along with the initial and quarterly billings.

[Statutory Authority: RCW 39.19.030. WSR 11-11-030, § 326-02-034, filed 5/11/11, effective 6/11/11. Statutory Authority: RCW 39.19.220. WSR 04-13-032, § 326-02-034, filed 6/9/04, effective 7/10/04. Statutory Authority: RCW 39.19.030(17). WSR 98-13-075, § 326-02-034, filed 6/15/98, effective 7/16/98. Statutory Authority: RCW 39.19.030(7). WSR 97-17-045, § 326-02-034, filed 8/14/97, effective 9/15/97. Statutory Authority: RCW 39.19.220. WSR 94-11-113, § 326-02-034, filed 5/18/94, effective 6/18/94.]

WSR 22-24-013
PROPOSED RULES
DEPARTMENT OF
NATURAL RESOURCES

[Filed November 29, 2022, 10:49 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-21-060.

Title of Rule and Other Identifying Information: Filing and recording fees for survey maps. The proposed rule is an amendment to the existing rule in WAC 332-150-030, setting the recording fee surcharge for survey maps. The board of natural resources is authorized by RCW 58.24.070 to review the current fee and determine if it needs to be adjusted in order to provide appropriate funding support for the public land survey office (PLSO) in the department of natural resources (DNR).

Hearing Location(s): On January 12, 2023, at 3:00 p.m., at Main Conference Room, DNR PLSO, Tumwater Compound, 801 88th Avenue S.E., Tumwater, WA 98501. Free visitor parking. This facility has a secure access protocol for visitors.

Date of Intended Adoption: March 14, 2023.

Submit Written Comments to: Patrick J. Beehler, 1111 Washington Street S.E., Olympia, WA 98504-7030, email Pat.Beehler@DNR.WA.Gov, fax 360-902-1778, 360-902-1181, by January 13, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To amend WAC 332-150-030 by increasing the recording fee surcharge for any surveys, subdivision plats, short plats or condominium surveys, plats or maps from the current fee of \$64.00 to \$100 per instrument, effective July 1, 2023.

Reasons Supporting Proposal: Provide additional funding for PLSO of DNR to help meet the legislative expectations under chapter 58.24 RCW as the statewide source of land surveying information.

Statutory Authority for Adoption: RCW 58.24.070.

Statute Being Implemented: RCW 58.24.070.

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

Name of Proponent: DNR PLSO, governmental.

Name of Agency Personnel Responsible for Drafting: Patrick J. Beehler, 1111 Washington Street S.E., Olympia, WA 98504, 360-902-1181; Implementation and Enforcement: David Icenhower, 801 88th Avenue S.E., Tumwater, WA 98501, 360-902-1230.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Patrick J. Beehler, 1111 Washington Street S.E., Olympia, WA 98504, phone 360-902-1181, email pat.beehler@dnr.wa.gov.

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

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

November 18, 2022
Todd Welker
Acting Deputy Supervisor

OTS-4211.1

AMENDATORY SECTION (Amending WSR 15-13-075, filed 6/12/15, effective 8/1/15)

WAC 332-150-030 Filing and recording fees. Each county auditor shall collect the fee of (~~sixty-four dollars~~) \$100 per instrument in addition to any other fees required by law, as a condition precedent to the filing and recording of any surveys, subdivision plats, short plats or condominium surveys, plats or maps.

[Statutory Authority: RCW 58.24.070. WSR 15-13-075, § 332-150-030, filed 6/12/15, effective 8/1/15; WSR 02-15-126 (Order 708), § 332-150-030, filed 7/19/02, effective 8/19/02; WSR 87-15-048 (Order 509), § 332-150-030, filed 7/14/87. Statutory Authority: Chapter 58.24 RCW and 1982 c 165 § 7. WSR 82-14-042 (Order 378), § 332-150-030, filed 6/30/82.]

WSR 22-24-015
PROPOSED RULES
OLYMPIC REGION
CLEAN AIR AGENCY

[Filed November 29, 2022, 12:54 p.m.]

Original Notice.

Proposal is exempt under RCW 70A.15.2040.

Title of Rule and Other Identifying Information: Olympic Region Clean Air Agency Regulations (ORCAA): Rule 6.2.7 Recreational Burning, and Rule 6.2.8 Permit Program.

Hearing Location(s): On January 11, 2023, at 10:00 a.m., at ORCAA, 2940 Limited Lane N.W., Olympia, WA 98502.

Date of Intended Adoption: January 11, 2023.

Submit Written Comments to: Robert Moody, 2940 Limited Lane N.W., Olympia, WA 98502, email robert.moody@orcaa.org, fax 360-491-6308, by January 9, 2023.

Assistance for Persons with Disabilities: Contact Dan Nelson, phone 360-539-7610 ext. 111, fax 360-491-6308, email dan.nelson@orcaa.org, by January 4, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to revoke the ban on recreational fires in the cities of Lacey, Olympia, and Tumwater. Current ORCAA regulations ban recreational fires within those city limits.

Reasons Supporting Proposal: The ban on recreational fires was enacted more than 20 years ago to help reduce particulate matter pollution levels in Thurston County. This ban once served an important purpose, but the ban is no longer needed for maintaining healthy air quality in Thurston County. Lacey, Olympia, and Tumwater are the only cities in Western Washington that have a ban on recreational fires. Lifting the ban will further align local and state burning laws.

Statutory Authority for Adoption: Chapter 70A.15 RCW.

Statute Being Implemented: Chapter 70A.15 RCW.

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

Name of Proponent: ORCAA, governmental.

Name of Agency Personnel Responsible for Drafting: Robert Moody, 2940 Limited Lane N.W., Olympia, 360-539-7610; Implementation and Enforcement: Jeff C. Johnston, Ph.D., 2940 Limited Lane N.W., Olympia, 360-539-7610.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 applies to state government. It does not apply to local air agencies per RCW 70A.15.2040.

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

Is exempt under RCW 19.85.011.

Explanation of exemptions: Chapter 19.85 RCW applies to "rules adopted by state agencies." RCW 70A.15.2040(1) states: "An air pollution control authority shall not be deemed to be a state agency." ORCAA is an air pollution control authority.

Scope of exemption for rule proposal:

Is fully exempt.

November 29, 2022
Jeff C. Johnston, Ph.D.

AMENDED SECTION

Rule 6.2.7 Recreational Burning

The following burn practices must be used for recreational burning where allowed.

(a) Maximum pile size is three (3) feet in diameter and two (2) feet high.

(b) Only dry, seasoned firewood or charcoal and enough clean paper necessary to start a fire may be burned.

~~((c) No recreational fires are allowed within the city limits of Lacey, Olympia, and Tumwater, and unincorporated areas of Thurston County lying within or between the municipal boundaries of these cities. Charcoal, propane, or natural gas may be used without a permit.))~~

AMENDED SECTION

Rule 6.2.8 Permit Program

ORCAA may consult with fire protection authorities, conservation districts, or counties to determine if any of these agencies are capable and willing to serve as the permitting agency and/or enforcing agency for specific types of burning. Permitting agencies may use, as appropriate, a verbal, electronic, written, or general permit established by rule, for any type of burning that requires a permit.

(a) Permitting agencies may deny an application or revoke a previously issued permit if it is determined that the application contained inaccurate information, failed to contain pertinent information or the permitted activity has caused a nuisance.

(b) Failure to comply with any term or condition of a permit constitutes a violation of this rule and is subject to penalties pursuant to RCW 70A.15.3150 and RCW 70A.15.3160.

(c) Types of burning that require a written permit.

(1) Agricultural burning must abide by Rule 6.2 and all conditions of the written permit issued by ORCAA or another permitting agency.

(2) Fire training fires, except as provided in RCW 52.12.150, may be conducted provided all the following requirements are met:

(i) Fire training must not occur during a burn ban.

(ii) The fire must be for training.

(iii) The agency conducting the training fire must obtain any permits, licenses, or other approvals required by any entity for such training fires. All permits, licenses, and approvals must be kept on-site and available for inspection.

~~((3) Native American ceremonial fires within the city limits of Olympia, Lacey, and Tumwater and unincorporated areas of Thurston County lying within or between the municipal boundaries.))~~

~~((4))~~ 3) Land Clearing Burning requires an approved written permit. Conditions of the written permit issued by ORCAA, or another permitting agency are enforceable.

~~((5))~~ 4) Storm and flood debris resulting from a declared emergency by a governmental authority may be burned within two years of the event (storm). Burning must abide by Rule 6.2 and all conditions of the written permit issued by ORCAA or another permitting agency.

~~((6))~~ 5) Weed abatement fires.

~~((7))~~ 6) Residential fires in Thurston County.

The permit application for the above permits must be accompanied by the applicable fee, pursuant to Rule 3.4.

(d) Where residential burning is allowed and no written burn permits are issued, burning must abide by Rule 6.2 and the following:

- (1) Maximum pile size is four (4) feet in diameter and three (3) feet high.
- (2) Only one pile may be burned at a time, and each pile must be extinguished before lighting another.
- (3) Only natural vegetation may be burned.
- (4) No fires are to be within fifty (50) feet of structures or within five hundred (500) feet of forest slash.
- (5) No tree stumps may be burned.

WSR 22-24-069
PROPOSED RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES
[Filed December 2, 2022, 4:28 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-05-060.

Title of Rule and Other Identifying Information: WAC 110-300-0005 Definitions, 110-300-0030 Nondiscrimination, 110-300-0035 Department access to licensed space, 110-300-0166 Emergency preparation and exiting, and 110-300-0210 Immunizations and exempt children.

Hearing Location(s): On January 10, 2023, telephonic. Make oral comments by calling 360-628-2151 and leaving a voicemail that includes the comment and an email or physical mailing address where the department of children, youth, and families (DCYF) will send its response. Comments received through and including January 10, 2023, will be considered.

Date of Intended Adoption: January 13, 2022 [2023].

Submit Written Comments to: DCYF rules coordinator, email dcyf.rulescoordinator@dcyf.wa.gov, <https://dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/online>, by January 10, 2023.

Assistance for Persons with Disabilities: Contact DCYF rules coordinator, email dcyf.rulescoordinator@dcyf.wa.gov, by January 6, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules clarify the department's authority to access licensed space and the consequences for refusing access. The proposals also require two emergency exits for each floor of licensed space in family home child cares and describe the specific criteria for each exit. The proposed rules better ensure nondiscrimination of LGBTQIA+ children enrolled in child care. Lastly, the proposed rules align immunization requirements with chapter 246-105 WAC under which child care providers who enroll unimmunized children must notify their parents or guardians that children who are not immunized within 30 days of enrollment will be excluded from care.

Reasons Supporting Proposal: The proposed rule clarifying the department's authority to access licensed space is needed to fully explain the department's authority to access and inspect child cares authorized by RCW 43.216.258 and 43.216.290, under what conditions the department will access child cares, as well as the consequences for refusing access. The proposed emergency exit requirements for family homes restore requirements of repealed chapter 190-296A WAC that were erroneously omitted in the development of chapter 110-300 WAC and are needed to promote the safety of children enrolled in care. Better clarifying nondiscrimination of LGBTQIA+ children participating in programs administered by the department aligns with the department's practice of inclusion and supporting the whole child. The proposed requirement to exclude children from care who are not immunized after 30 days is consistent with chapter 246-105 WAC and allows unimmunized children to enter child care while establishing an expectation that immunizations will be completed.

Statutory Authority for Adoption: RCW 43.216.055, 43.216.065, and 43.216.250.

Statute Being Implemented: RCW 43.216.250 and 43.216.265.

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

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Judy Bunkelman, 509-423-9152; Implementation and Enforcement: DCYF.

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

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

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

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

Explanation of exemptions: Clarifying language inserted in WAC 110-300-0030. Proposed changes to WAC 110-300-0210 are incorporating chapter 246-105 WAC requirements. WAC 110-300-0035 implements the requirement to periodically inspect child cares dictated by RCW 43.216.250(8) and access to child cares granted by RCW 43.216.290.

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: Exemption does not apply to WAC 110-300-0166.

The proposed rule does impose more-than-minor costs on businesses.

Small Business Economic Impact Statement

For proposed WAC 110-300-0166:

1. Describe the proposed rule, including:

- A brief history of the issue.
- An explanation of why the proposed rule is needed.
- A brief description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule.

Brief history: DCYF licenses and certifies child cares in Washington state, and its licensing standards must promote the continued safety of child care settings. Prior to August 2019, family home child cares were licensed or certified under chapter 170-296A WAC. WAC 170-296A-4500 required each level of a family home licensed for child care to have two emergency exits. In August 2019, chapter 170-296A WAC was repealed and replaced with aligned licensing standards codified at chapter 110-300 WAC. In the development of chapter 110-300 WAC, family home child care emergency exits were overlooked. The proposed rule corrects that inadvertent omission.

Why the rule is needed: The rule is needed to promote all occupants' safe evacuation in the event of fire or other emergency. A fam-

ily home may be licensed for 13 children, or more when certain conditions are met. More than one exit better ensures quick evacuation for all occupants. A second exit also better ensures a safe evacuation for all occupants if one exit is blocked by the fire or emergency situation triggering the evacuation.

Probable compliance requirements:

- All licensed and certified child cares and early learning programs must:
 - o Develop and follow an emergency preparedness plan (WAC 110-300-0166(1));
 - o Have a working flashlight and batteries or other emergency lighting device (WAC 110-300-0166(2)); and
 - o Have a working telephone (WAC 110-300-0166(2)).
- Only licensed and certified family home child cares and early learning programs must have:
 - o Two emergency exits for each level of the home that contains licensed space, excluding basements (WAC 110-300-0166(3)).

All programs must develop an emergency preparedness plan that is kept on site and shared with families who enroll children in the program. The flashlight and telephone requirements will require low-cost purchases and telephone service subscription or a cell phone plan. The door and window requirements of the residential building code will satisfy WAC 110-300-0166(3)'s emergency exit requirements for the ground level of family homes, which means that only family home child cares that are licensing space in an upper story must comply with WAC 110-300-0166(3). These programs may require construction or carpentry services in order to comply with the requirement.

2. Identify which businesses are required to comply with the proposed rule using the North American Industry Classification System (NAICS) codes and what the minor cost thresholds are.

NAICS code (4, 5 or 6 digit)	NAICS Business Description	Number of Businesses in Washington	Minor cost threshold = 1% of average annual payroll	Minor cost threshold = 0.3% of average annual receipts
624410	Child day care services	4,741	\$2,991.80	\$1,014.95

3. Analyze the probable cost of compliance. Identify the probable costs to comply with the proposed rule, including: Cost of equipment, supplies, labor, professional services and increased administrative costs. Based on input, describe how compliance with the rule may cause lost sales or revenue.

Emergency preparedness planning requires up to three hours of staff time for a total one-time approximate cost of \$45.00.

Purchased flashlight and batteries - one time cost of \$15 + minimal ongoing cost of replacement batteries.

Telephone and service plan - \$350 to \$500 annually.

Family homes' second story emergency exits - up to \$5,000 for permitting, materials, and labor.

Lost sales or revenue are not anticipated for child cares and early learning programs complying with the emergency preparedness plan, flashlight, and telephone requirements. A currently licensed or certified family home child care wanting to expand its capacity that has no other option than to expand to the second story would lose the potential revenue from the loss of capacity if it was not able to comply with the emergency exit requirement. Applications for an initial

license for a family home second-story would be denied if the home owner was not able to comply with the emergency exit requirement.

4. Explain how you determined the rule may impose more-than-minor costs on businesses in the industry. Cost projection was based on actual costs of a family home child care owner who, in 2022, created a second emergency exit from the upper level of their home by adding an 8'x8' landing/deck pad with six stairs to the ground beneath an exterior window. The owner used a mix of pressure treated wood, stained wood, trex decking and a trex stair rail and spent approximately \$1,000 for these materials. The owner did the labor but estimated the cost at \$1,500 for a total labor and materials cost of \$2,500. The distance from the window to the ground was less than half an average story. Based on these actual costs, our estimated cost for permitting, labor, and materials to equip a standard second-story window to be used as an emergency exit is \$5,000.

5. Determine whether the proposed rule may impose a disproportionate impact on small businesses compared to the 10 percent of businesses that are the largest businesses required to comply with the proposed rule. Use one or more of the following as a basis for comparing costs:

- Cost per employee.
- Cost per hour of labor.
- Cost per \$100 of sales.

The proposed rule impacts only small businesses.

6. If the proposed rule is likely to impose a disproportionate impact on small businesses, identify the steps taken to reduce the costs of the rule on small businesses. Include consideration of each of the following cost mitigation strategies:

(a) **Reducing, modifying, or eliminating substantive regulatory requirements:** To promote the safety of children in care, as well as the licensee and any employees, DCYF feels two emergency exits are needed. Rather than require two exterior doors, the proposed rule allows a window to be used as an emergency exit provided that a walking child or an adult carrying a child could navigate the exit.

(b) **Simplifying, reducing, or eliminating recordkeeping and reporting requirements:** Not applicable.

(c) **Reducing the frequency of inspections:** DCYF must periodically inspect licensed premises. The current frequency is once per year, which strikes a balance between ensuring the health and safety of enrolled children and the inconvenience that a program might experience during an inspection.

(d) **Delaying compliance timetables:** Compliance must occur concurrent with licensing to promote the safety of enrolled children.

(e) **Reducing or modifying fine schedules for noncompliance:** Not applicable since licensure is dependent on compliance.

(f) **Any other mitigation techniques suggested by small businesses or their advocates:** Licensing space in just the basement or on the ground floor of the family home.

If the costs cannot be reduced, provide a clear explanation of why.

7. Describe how small businesses were involved in the development of the proposed rule. Family home child cares represented by SEIU Local 925 and DCYF negotiated the language of proposed WAC 110-300-0166.

8. Identify the estimated number of jobs that will be created or lost as the result of compliance with the proposed rule. Zero jobs are expected to be lost. The potential number of new jobs created is un-

known because most family home child cares license space on the ground floor and will not be required to comply with the upper level exit door requirement in the proposed rule. It is not possible to estimate how many new licenses could be issued for second story space or how many current licensees may apply to expand their licensed space to a second story.

9. Summarize the results of the analysis, including the determination if costs are disproportionate. All family home child cares are small businesses; however, only those that license space on their home's upper level will be impacted by the proposed rule's exit door requirement. For those who are impacted, more-than-minor costs will be incurred if any renovation is needed for compliance.

A copy of the statement may be obtained by contacting DCYF rules coordinator, email dcyf.rulescoordinator@dcyf.wa.gov.

December 2, 2022
Brenda Villarreal
Rules Coordinator

OTS-2729.5

AMENDATORY SECTION (Amending WSR 19-22-103, filed 11/6/19, effective 12/7/19)

WAC 110-300-0005 Definitions. Unless the context requires otherwise, the following definitions apply to this chapter:

"Accessible to children" means items, areas or materials of an early learning program that a child can reasonably reach, enter, use, or get to on their own.

"Accommodations" means program curriculum and instruction, activities, spaces, and materials that have been adapted to help children and adults with special need function within their surroundings.

"Active supervision" or **"actively supervise"** means a heightened standard of care beyond supervision. This standard requires ~~((a))~~ early learning providers to see and hear the children they are responsible for during higher risk activities. ~~((The))~~ Providers must be able to prevent or instantly respond to unsafe or harmful events.

"ADA" refers to the Americans with Disabilities Act, ~~((as now and hereafter amended))~~ 42 U.S.C. Sec. 12101, et seq.

"Aide" is a person who offers support to ~~((the))~~ early learning program staff.

"Allergy" or **"allergies"** refers to an overreaction of the immune system to a substance that is harmless to most people. During an allergic reaction, the body's immune system treats the substance or "allergen" as an invader. The body overreacts by releasing chemicals that may cause symptoms ranging from mildly annoying to life threatening. Common allergens include certain foods (milk, eggs, fish, shellfish, common tree nuts, peanuts, wheat, and soybeans) pollen, mold, or medication.

"Annual" or **"annually"** means ~~((the))~~ an event that occurs each calendar year, ((January 1st through December 31st)) not to exceed 365 days between occurrences.

"Applicant" means an individual who has made a formal request for a child care license, certification, exemption, or portable background check.

"Appropriate" when used to refer to child care or educational materials means that the materials will interest and challenge children in terms of their ages and abilities.

"Appropriately" means correct or properly suited for a particular situation.

"Asexual" means the lack of a sexual attraction or desire for other individuals.

"Assistant director" is a person responsible for the overall management of the center early learning program including the facility and operations.

"Assistant teacher" is a person whose work is to assist a lead teacher or licensee in providing instructional supports to children and implementing a developmentally appropriate program. The assistant must carry out assigned tasks under the supervision of a lead teacher, program supervisor, director, assistant director, or licensee.

"ASTM" refers to the American Society for Testing and Materials.

"Bathroom" means a room containing a built-in, flush-type toilet.

"Bias" means a tendency to believe that some people or ideas are better than others that usually results in treating some people unfairly.

"Bisexual" means individuals who have an emotional or physical attraction to individuals of the same and different genders.

"Body of water" or **"bodies of water"** is a natural area or human-made area or device that contains or holds a depth of more than two inches of water. Examples include swimming pools, ditches, canals, fish ponds, water retention areas, excavations, and quarries.

"CACFP" means the Child and Adult Care Food Program established by Congress and funded by the United States Department of Agriculture (USDA).

"Cannabis" (also known as "marijuana") refers to all parts of the cannabis plant, whether growing or not, the seeds thereof, the resin or concentrate extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin.

"Capacity" means the maximum number of children ~~((an))~~ early learning providers ~~((is))~~ are authorized by the department to have in care at any given time. This includes any children on-site at the early learning program and any children in transit to or from the program or other activities such as field trips while the children are signed in to the care of the program.

"Center early learning program" is a facility providing regularly scheduled care for a group of children birth through ~~((twelve))~~ 12 years of age for periods of less than ~~((twenty-four))~~ 24 hours a day, pursuant to RCW 43.216.010 (1)(a) (child day care center).

"Center early learning program licensee" or **"center licensee"** means an entity licensed and authorized by the department to operate a center early learning program.

"Certificate of exemption (COE)" ~~((means a form that is approved by the Washington state department of health and consistent with the requirements of WAC 246-105-050(2), or an immunization form produced by the state immunization information system))~~ has the same meaning in this chapter as in WAC 246-105-020.

"Certificate of immunization status ~~((child))~~" ~~((means a form that is approved by the Washington state department of health and con-~~

sistent with the requirements of WAC 246-105-050(1), or an immunization form produced by the state immunization information system)) has the same meaning in this chapter as in WAC 246-105-020.

"Certificate of occupancy" means a document issued by a local government agency or building department that certifies a building complies with applicable building codes and other laws and indicates that the building is in a condition suitable for occupancy.

"Certification" means department approval of a person, home, or facility that is exempt from licensing but requests evidence that the program meets these foundational licensing standards.

"Child" means an individual who is younger than age ((~~thirteen~~)) 13, including any infant, toddler, preschool-age child, or school-age child as defined in this chapter.

"Child abuse" or **"neglect"** means the physical abuse, sexual abuse, sexual exploitation, abandonment, negligent treatment or maltreatment of a child by any person as defined in RCW 26.44.020.

"Child care" refers to supervision of children outside the child's home for periods of less than ((~~twenty-four~~)) 24 hours a day.

"Child care basics ((~~"or"~~)) (CCB)" means curriculum designed to meet the initial basic training requirement for early learning program staff working in licensed or certified programs in Washington state. It serves as a broad introduction for professionals who are pursuing a career in the early care and education field.

"Chromated copper arsenate ((~~"or"~~)) (CCA)" is a wood preservative and insecticide that contains roughly ((~~twenty-two~~)) 22 percent arsenic, a known carcinogen. The United States restricted the use of CCA on residential lumber in 2003, but it can still be found on older decks and playground equipment. Information about the health hazards of arsenic can be found on the department of health's website.

"Clean" or **"cleaning"** means to remove dirt and debris from a surface by scrubbing and washing with a detergent solution and rinsing with water. This process must be accomplished before sanitizing or disinfecting a surface.

"Confidential" means the protection of personal information, such as the child's records, from individuals who are not authorized to see or hear the information.

"Consistent care" means providing steady opportunities for children to build emotionally secure relationships by primarily interacting with a limited number of early learning program staff.

"Contagious disease" means an illness caused by an infectious agent of public health concern which can be transmitted from one person, animal, or object to another person by direct or indirect means including transmission through an intermediate host or vector, food, water, or air. Contagious diseases pertinent to this chapter are described in WAC 246-110-010.

"Continuous" means without interruptions, gaps, or stopping.

"Core competencies" are standards required by the department that detail what early learning providers need to know and are able to do to provide quality care and education for children and their families.

"CPSC" means the United States Consumer Product Safety Commission.

"Cultural" or **"culturally"** means in a way that relates to the ideas, customs, and social behavior of different societies.

"Curriculum philosophy" means a written statement of principles developed by an early learning provider to form the basis of the learning program of activities, including age appropriate developmental learning objectives for children.

"DCYF" or "the department" refers to the Washington state department of children, youth, and families.

"Developmental screening" is the use of standardized tools to identify a child at risk of a developmental delay or disorder. (Source: American Academy of Pediatrics, *Healthy Child Care America*, 2009).

"Developmentally appropriate" means:

- (a) ((An)) Early learning providers interact((s)) with ((each child)) children in a way that recognizes and respects ((the)) each child's chronological and developmental age;
- (b) Knowledge about how children grow and learn;
- (c) Reflects the developmental level of the individual child; and
- (d) Interactions and activities are planned with the developmental needs of the individual child in mind.

"Director" means the person responsible for the overall management of a center early learning program including the facility and operation.

"Disability" or "disabilities" has the same meaning in this chapter as in RCW 49.60.040(7), the Washington law against discrimination.

"Discipline" means a method used to redirect a child in order to achieve a desired behavior.

"Disinfect" means to eliminate virtually all germs from an inanimate surface by the process of cleaning and rinsing, followed by:

- (a) The application of a fragrance-free chlorine bleach and water solution following the department of health's current guidelines for mixing bleach solutions for child care and similar environments; or
- (b) The application of other disinfectant products registered with the EPA, if used strictly according to the manufacturer's label instructions including, but not limited to, quantity, time the product must be left in place, adequate time to allow the product to dry or rinsing if applicable, and appropriateness for use on the surface to be disinfected. Any disinfectant used on food contact surfaces or toys must be labeled "safe for food contact surfaces."

"Disinfectant" means a chemical or physical process that kills bacteria and viruses.

"Drinking water" or "potable water" is water suitable for drinking by the public as determined by the Washington state department of health or a local health jurisdiction.

"Dual language learners" refers to children who are learning two or more languages at the same time. This term includes children who learn two or more languages from birth, and children who are still mastering their home language when they are introduced to and start learning a second language. (Source: *The Washington State Early Learning and Development Guidelines*.)

"Early achievers" is a statewide system of high-quality early learning that connects families to early learning programs with the help of an easy to understand rating system and offers coaching, professional development, and resources for early learning providers to support each child's learning and development.

"Early childhood education and assistance program (ECEAP)" is a comprehensive preschool program that provides free services and support to eligible children and their families.

"Early childhood education (ECE) initial certificate" ((twelve)) 12 quarter credits) is Washington's initial certificate in early childhood education and serves as the point of entry for a career in early learning and covers foundational content for early learning professionals.

"Early childhood education (ECE) short certificate," ((+) an initial certificate plus eight quarter credits(+)), is Washington's short certificate in early childhood education and offers areas of specialization, building on the state's initial certificate.

"Early childhood education (ECE) state certificate," ((+) a short certificate plus (~~twenty-seven~~) 27 quarter credits(+)), is Washington's state certificate in early childhood education and is the benchmark for Level 2 core competencies for early care and education professionals and prepares for the next step, an associate's degree in early childhood education.

"Early learning program" refers to regularly scheduled care for a group of children birth through (~~twelve~~) 12 years of age for periods of less than (~~twenty-four~~) 24 hours, licensed by the department.

"Early learning program space" means the licensed indoor and outdoor space on the premises approved by the department for the purpose of providing licensed child care.

"Early learning program staff" refers to all persons who work, substitute, or volunteer in an early learning program during hours when children are or may be present, excluding licensees.

"Early learning provider" or "provider" refers to an early learning licensee or designee who works in an early learning program during hours when children are or may be present. Designees include center directors, assistant directors, program supervisors, lead teachers, assistants, aides, and volunteers.

(~~("ECEAP" or "early childhood education and assistance program" is a comprehensive preschool program that provides free services and support to eligible children and their families.)~~)

"Electronic record" means a record generated, communicated, received or stored by electronic means for use in an information system or for transmission from one information system to another.

"Electronic signature" means a signature in electronic form attached to or logically associated with an electronic record including, but not limited to, a digital signature. An electronic signature is a paperless way to sign a document using an electronic sound, symbol, or process, attached to or logically associated with a record, and executed or adopted by a person with the intent to sign the record.

"Electronic workforce registry" refers to (~~the Washington state department of children, youth, and families'~~) DCYF's current database of professional records of individual early learning providers.

"Emergency preparedness" means a continuous cycle of planning, organizing, training, equipping, exercising, evaluating, and taking corrective action in an effort to ensure effective coordination in case of emergencies or during incident response.

"Enforcement action" means denial, suspension, revocation, modification, or nonrenewal of a license pursuant to RCW 43.216.325(3). An early learning provider may contest enforcement actions and seek an adjudicative proceeding pursuant to chapter 110-03 WAC.

"EPA" means the United States Environmental Protection Agency.

"Equivalency" when referring to staff qualifications means an individual is allowed to meet the requirements of this chapter through a department recognized alternative credential, or demonstration of competency, that indicates similar knowledge as the named credential.

"Exempt" or "exemption" means, as applied to immunizations, a type of immunization status where a child has not been fully immunized against one or more vaccine preventable diseases required by chapter 246-105 WAC for full immunization due to medical, religious, philosophical or personal reasons. Under chapter 362, Laws of 2019, if a

child plans on attending or is attending a center early learning program, a philosophical or personal objection may not be used to exempt a child from the measles, mumps, and rubella vaccine.

"Expel" or **"expulsion"** means to end a child's enrollment in an early learning program. An early learning provider will end a child's enrollment if the provider is unable to meet a child's needs due to the child's challenging behavior.

"Family home early learning program" means an early learning program licensed by the department where a family home licensee provides child care or education services for ((~~twelve~~)) 12 or fewer children in the family living quarters where the licensee resides as provided in RCW 43.216.010 (1)(c) (family day care provider).

"Family home early learning program licensee" or **"family home licensee"** means an individual licensee authorized by the department to operate a family home early learning program within the licensee's family living quarters.

"Family living quarters" means a family home licensee or applicant's residence and other spaces or building on the premises.

"Food worker card" means a food and beverage service worker's permit as required under chapter 69.06 RCW.

"Foundational quality standards" refers to the administrative and regulatory requirements contained within this chapter. These standards are designed to promote the development, health, and safety of children enrolled in center and family home early learning programs. The department uses these standards to equitably serve children, families, and early learning providers throughout Washington state.

"Gay" means physically attracted to someone of the same gender. Gay is sometimes an umbrella term for the LGBTQIA+ community.

"Gender" or **"gender identity"** means an individual's inner sense of being a female, male, a blend of both or neither, or another gender. This may or may not correspond with an individual's sex assigned at birth.

"Gender expression" means individuals' outward communication of their gender through behavior or appearance. This may or may not conform to their sex assigned at birth or socially defined behaviors and characteristics typically associated with being either masculine or feminine.

"Gender fluid" means individuals whose gender identities are flexible, not permanent.

"Good repair" means about ((~~eighty~~)) 80 percent of materials and components are unbroken, have all their pieces, and can be used by children as intended by the manufacturer or builder.

"Health care provider" means a person who is licensed, certified, registered, or otherwise authorized by the law of Washington state to provide health care in the ordinary course of business or practice of a profession.

"Household member" means one or more individuals who live in the same dwelling or share living arrangements, and may consist of family relatives or other groups of people.

"Immunization" is the process of administering a vaccine to make a person immune or resistant to an infectious disease.

"Inaccessible to children" means a method to prevent a child from reaching, entering, using, or getting to items, areas, or materials of an early learning program.

"Inactive" when used by the department to indicate a licensing status, means early learning providers who have requested and have

been approved to temporarily cease caring for children and close their early learning program.

"Individual care plan" means a specific plan to meet the individual needs of a child with a food allergy, special dietary requirement due to a health condition, other special needs, or circumstances.

"Infant" is a child birth through ((eleven)) 11 months of age.

"In-service training" means professional development requirements for continuing education delivered or approved by the department to maintain staff standards and qualifications while employed as an early learning provider.

"Inspection report" means a written or digital record developed by the department that identifies violations of licensing standards. An inspection report is separate from and does not include a facility licensing compliance agreement (FLCA).

"Internal review process" has the same meaning in this chapter as in RCW 43.216.395, as now or hereafter amended.

"Intersex" is an umbrella term used to describe a wide range of natural bodily variations when the body is born with a combination of chromosomes, internal organs, or external genitalia that do not develop as expected.

"Lead teacher" means an early learning provider who works as the lead staff person in charge of a child or group of children and implements activity programs.

"Lesbian" means females or women who have an emotional or physical attraction for other females or women.

"LGBTQIA+" means lesbian, gay, bisexual, transgender, queer or questioning, intersex, and asexual. The "+" represents identities not specifically named in the LGBTQIA acronym (e.g., pansexual, gender nonbinary, and Two-spirit).

"License" means a permit issued by the department legally authorizing an applicant to operate an early learning program.

"Licensed space" means the indoor and outdoor space on the premises approved by the department for the purpose of providing licensed child care.

"Licensee" means an individual or legal entity listed on a license issued by the department, authorized to provide child care or early learning services in a center or family home setting.

"Lockdown" means restricted to an interior room with few or no windows while the facility or building is secured from a threat.

"Locking mechanism" means a lock that requires a key, tumbler, dial, passcode, touchpad, or similar device or method to lock and unlock.

"Modification" when used in reference to an early learning provider's licensing status, means an enforcement action by the department to change the conditions identified on a licensee's current license.

"Nonbinary" is a term of self-identification for individuals who do not identify within the limited and binary terms that have described gender identity, e.g., female and male. Nonbinary is also an umbrella term for many identities such as gender expansive, gender fluid, and genderqueer.

"Nonexpiring license" means a license that is issued to an early learning provider following the initial licensing period, pursuant to chapter 43.216 RCW.

"Operating hours" means the hours listed in an early learning program parent handbook when the program is open and providing care and services to children.

"Parent" or **"guardian"** means birth parent, custodial parent, foster parent, legal guardian or those authorized by the parent or entity legally responsible for the welfare of the child.

"Peer interaction" refers to relationships children have with one another, which includes how infants and toddlers play near one another and how preschoolers play together, communicate, and whether they fight or get along.

"Personal needs" means an early learning provider's toileting or medication needs. Personal needs do not include smoking or use of tobacco products, illegal drug use or misuse or prescription drugs, conducting business or related activities, sleeping or napping, screen time, or leaving children in care unattended.

"Pest" means an animal, plant, or insect that has a harmful effect on humans, food, or living conditions.

"Pesticide" refers to chemicals used to kill pests.

"Pet" means a domestic or tamed animal or bird kept for companionship or pleasure.

"Physical barrier" means a nonclimbable fence or ((a)) wall that is at least five feet tall and has no openings greater than two inches or a gate or door that allows entry to and exit from a body of water and has the following requirements in addition to those already listed: A locking mechanism, a self-closing or self-latching device, and a device used to open the locks which is inaccessible to children but readily available to staff.

"Physical restraint" means holding a child as gently as possible for the minimum amount of time necessary to control a situation where that child's safety or the safety of others is threatened.

"Poison" includes, but is not limited to, substances, chemicals, chemical compounds (other than naturally occurring compounds such as water or salt), or similar items that even in small quantities, are likely to cause injury or illness if it is swallowed or comes into contact with a child's skin, eyes, mouth, or mucus membranes.

"Premises" means the licensed and unlicensed space at the licensed address including, but not limited to, buildings, land, and residences.

"Preschool-age children" means children ((thirty)) 30 months through six years of age not attending kindergarten or elementary school.

"Preservice training" means professional development standards or requirements for early learning program staff prior to hiring or within a department specified time frame and delivered or approved by the department.

"Private septic system" means a septic system as defined in chapter 246-272A WAC that is not connected to a public sewer system or a large on-site sewage system as defined in chapter 246-272B WAC. A private septic system includes, but is not limited to, the septic system's drain field and tanks.

"Probationary license" has the same meaning as in RCW 43.216.010(23).

"Professional development support plan" is a formal means by which an individual who is supervising staff sets out the goals, strategies, and outcomes of learning and training.

"Program supervisor" means the center early learning provider responsible for planning and supervising the learning and activity program.

"Queer" is a term used to express LGBTQIA+ identities and orientations. The term is sometimes used as an umbrella term for all LGBTQIA+ individuals.

"Questioning" means individuals who are exploring their sexual orientation, gender identity, or gender expression at any age.

"RCW" means the Revised Code of Washington.

"Readily available" means able to be used or obtained quickly and easily.

"Revocation" or "revoke" when used in reference to an early learning provider's licensing status, means an enforcement action by the department to close an early learning program and permanently remove the license.

"Routine care" means typical or usual care provided to a child during the time the child is enrolled in the early learning program, ((+)) for example ((+)), feeding, diapering, toileting, napping, resting, playing, and learning((+)).

"Safe route" means a way or course taken to get from a starting point to a destination that is protected from danger or risk.

"Safety plan" means a written plan to implement program changes to bring an early learning program into compliance with this chapter and chapter 43.216 RCW. Safety plans are developed at meetings involving at least an early learning provider and a department licensor and supervisor. Safety plans detail changes the provider needs to make to mitigate the risk of direct and indirect harm to children enrolled in the early learning program. Program changes must be agreed to in writing and signed by all participants at the meeting. Safety plans expire ((thirty)) 30 calendar days after being signed by all parties. Safety plans may only be extended for an additional ((thirty)) 30 days and extensions may only be authorized by a department supervisor.

"Sanitize" means to reduce the number of microorganisms on a surface by the process of:

(a) Cleaning and rinsing with water at a high temperature pursuant to this chapter; or

(b) Cleaning and rinsing, followed by using:

(i) A fragrance-free chlorine bleach and water solution following the department of health's current guidelines for mixing bleach solutions for child care and similar environments; or

(ii) Other sanitizer product if it is registered with the EPA and used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, adequate time to allow the product to dry, and appropriateness for use on the surface to be sanitized. If used on food contact surfaces or toys, a sanitizer product must be labeled as "safe for food contact surfaces."

"School-age children" means a child ((not less than)) who is five years of age through ((twelve)) 12 years of age ((who)) and is attending ((kindergarten or elementary)) a public or private school or is receiving home-based instruction under chapter 28A.200 RCW.

"Screen time" means watching, using, or playing television, computer, video games, video or DVD players, mobile communication devices, or similar devices.

"Serious injury" means an injury resulting in an overnight hospital stay; a severe neck or head injury; choking or serious unexpected breathing problems; severe bleeding; shock or an acute confused state; sudden unconsciousness; dangerous chemicals in eyes, on skin, or ingested; near drowning; one or more broken bones; a severe burn requir-

ing professional medical care; poisoning; or an overdose of a chemical substance.

"Sexual orientation" means an individual's emotional or physical attraction to other individuals.

"Shelter in place" means staff and children staying at the facility due to an external threat such as a storm, chemical or gas leak or explosion, or other event that prohibits the occupants from safely leaving the facility.

"Sign" means an individual formally placing their name or legal mark on a document by physical signature or electronic signature.

"Sleep equipment" or **"sleeping equipment"** includes a bed, cot, mattress, mat, crib, bassinet, play pen, play yard or "pack and play" but does not include a car seat or infant swing.

"SOGIE" is an acronym for sexual orientation, gender identity, and expression which are distinct identifiers everyone has. LGBTQIA+ is a subdistinction within SOGIE self-identifiers. SOGIE includes LGBTQIA+ as well as heterosexual, cisgender, and nonquestioning individuals.

"Special needs" is a term used for children who require assistance due to learning difficulties, physical disability, or emotional and behavioral difficulties and who have documentation in the form of an individual educational plan (IEP), individual health plan (IHP), 504 plan, or an individualized family service plan (IFSP).

"Staff" means any early learning provider providing care in the early learning program.

"Strengthening families program self-assessment" refers to a research informed approach to increase family strengths, enhanced child development, and reduce the likelihood of child abuse and neglect. It is based on engaging families, programs, and communities in building five protective factors:

- (a) Parental resilience;
- (b) Social connections;
- (c) Knowledge of parenting and child development;
- (d) Concrete support in times of need; and
- (e) Social and emotional competence of children.

"Supervise" or **"supervision"** means an early learning provider must be able to see or hear the children they are responsible for at all times. Early learning providers must use their knowledge of each child's development and behavior to anticipate what may occur to prevent unsafe or unhealthy events or conduct, or to intervene in such circumstances as soon as possible. Early learning providers must also reposition themselves or the children to be aware of where children are and what they are doing during care. An early learning provider must reassess and adjust their supervision each time child care activities change. See "active supervision" for a heightened standard of care.

"Suspend" when used in reference to an early learning provider's licensing status, means an enforcement action by the department to temporarily stop a license in order to protect the health, safety, or welfare of enrolled children or the public.

"Swimming pool" means a pool that has a water depth greater than two feet (24 inches).

"Technical assistance" means a service provided to early learning providers by department staff or a contracted third party. The goal of technical assistance is to offer guidance, information, and resources to help a provider fully comply with the licensing requirements of this chapter and chapter 43.216 RCW.

"Toddler" means a child ((~~twelve~~)) 12 months through ((~~twenty-nine~~)) 29 months of age.

"Transgender" is an umbrella term for individuals whose gender identity or expression is different from cultural expectations based on the sex they were assigned at birth. Gender-affirming medical care is not a prerequisite to identify as transgender. Being transgender does not imply any specific sexual orientation.

"Transition" is the process or period of time to change from one activity, place, grade level, or sleeping arrangement to another.

"Tummy time" means placing an infant in a nonrestrictive prone position, lying on his or her stomach when not in sleeping equipment.

"Two-spirit" means a modern, pan-indigenous umbrella term used by some indigenous North Americans to describe Native people in their communities who fulfill a traditional third-gender or other gender-variant, ceremonial, and social role in their cultures. Being Two-spirit does not imply any specific sexual orientation.

"Unlicensed space" means the indoor and outdoor areas of the premises not approved by the department as licensed space that the early learning provider must make inaccessible to the children during child care hours.

"Unsupervised access" as used throughout this chapter has the same meaning as in WAC 110-06-0020.

"Usable space" means the areas that are available at all times for use by children in an early learning program and meets licensing requirements.

"USDA" means the U.S. Department of Agriculture.

"Vapor product" means any:

(a) Device that employs a battery or other mechanism to heat a solution or substance to produce a vapor or aerosol intended for inhalation;

(b) Cartridge or container of a solution or substance intended to be used with or in such a device or to refill such a device; or

(c) Solution or substance intended for use in such a device including, but not limited to, concentrated nicotine, nonnicotine substances, or supplemental flavorings. This includes any electronic cigarettes, electronic nicotine delivery systems, electronic cigars, electronic cigarillos, electronic pipes, hookahs, steam stones, vape pens, or similar products or devices, as well as any parts that can be used to build such products or services. "Vapor product" does not include any drug, device, or combination product approved for sale by the United States Food and Drug Administration that is marketed and sold for such approved purpose.

"Variance" is an official approval by the department to allow an early learning program to achieve the outcome of a rule or rules in this chapter in an alternative way than described due to the needs of a unique or specific program approach or methodology. The department may grant a request for variance if the proposed alternative provides clear and convincing evidence that the health, welfare, and safety of all enrolled children is not jeopardized. An early learning provider does not have the right to appeal the department's disapproval of request for variance under chapter 110-03 WAC. The provider may challenge a variance disapproval on a department form.

"Volunteer" includes any person who provides labor or services to an early learning provider but is not compensated with employment pay or benefits. A volunteer must never have unsupervised access to a child unless the volunteer is the parent or guardian of that child or

is an authorized person pursuant to WAC 110-300-0345 (1)(c). "Unsupervised access" has the same meaning here as in WAC 110-06-0020.

"WAC" means the Washington Administrative Code.

"Wading pool" means a pool that has a water depth of less than two feet (24 inches).

"Waiver" is an official approval by the department allowing an early learning provider not to meet or satisfy a rule in this chapter due to specific needs of the program or an enrolled child. The department may grant a request for waiver if the proposed waiver provides clear and convincing evidence that the health, welfare, and safety of all enrolled children is not jeopardized. An early learning provider does not have the right to appeal the department's disapproval of a waiver request under chapter 110-03 WAC. The provider may challenge a waiver disapproval on a department form.

"Walking independently" means an individual is able to stand and move easily without the aid or assistance of holding on to an object, wall, equipment, or another individual.

"Washington state early learning and development guidelines" refers to guidelines published by the department, the Washington state office of superintendent of public instruction (OSPI), and thrive Washington for children birth through third grade that outlines what children know and are able to do at different stages of their development.

"Water activities" means early learning program activities in which enrolled children swim or play in a body of water that poses a risk of drowning for children. Water activities do not include using sensory tables.

"Weapon" means an instrument or device of any kind that is used or designed to be used to inflict harm including, but not limited to, rifles, handguns, shotguns, antique firearms, knives, swords, bows and arrows, BB guns, pellet guns, air rifles, electronic or other stun devices, or fighting implements.

"WLAD" means the law against discrimination, chapter 49.60 RCW.

"Written food plan" is a document designed to give alternative food to a child in care because of a child's medical needs or special diet, or to accommodate a religious, cultural, or family preference. A parent or guardian and the early learning provider must sign a written food plan.

[Statutory Authority: RCW 43.216.055, 43.216.065, 43.216.250 and chapter 43.216 RCW. WSR 19-22-103, § 110-300-0005, filed 11/6/19, effective 12/7/19. WSR 18-14-078, recodified as § 110-300-0005, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070, 43.215.201 and chapter 42.56 RCW. WSR 18-14-079, § 170-300-0005, filed 6/30/18, effective 8/1/19. Statutory Authority: RCW 43.215.020, 43.215.060, 43.215.070, 43.215.201, and Governor Directive 16-06. WSR 17-10-032, § 170-300-0005, filed 4/26/17, effective 5/27/17.]

AMENDATORY SECTION (Amending WSR 19-22-103, filed 11/6/19, effective 12/7/19)

WAC 110-300-0030 Nondiscrimination. (1) Early learning programs are defined by state law as places of public accommodation that must:

(a) Not discriminate in employment practices or client services based on race, creed, color, national origin, sex, honorably dis-

charged veteran or military status, marital status, gender, sexual orientation, age, religion, or ability. For the purposes of this chapter, "sex" means gender and "sexual orientation" means heterosexuality, homosexuality, bisexuality, and gender expression or identity, also referred to as SOGIE, and includes all persons who identify as LGBTQIA+; and

(b) Comply with the requirements of the ~~((Washington law against discrimination--))~~ WLAD, chapter 49.60 RCW ~~((+))~~, and the ADA.

(2) An early learning program must have a written nondiscrimination policy addressing at least the factors listed in subsection (1) of this section.

[Statutory Authority: RCW 43.216.055, 43.216.065, 43.216.250 and chapter 43.216 RCW. WSR 19-22-103, § 110-300-0030, filed 11/6/19, effective 12/7/19. WSR 18-15-001, recodified as § 110-300-0030, filed 7/5/18, effective 7/5/18. Statutory Authority: RCW 43.215.070, 43.215.201 and chapter 42.56 RCW. WSR 18-14-079, § 170-300-0030, filed 6/30/18, effective 8/1/19.]

NEW SECTION

WAC 110-300-0035 Department access to licensed space. (1) Pursuant to RCW 43.216.250(8), licensees must grant reasonable access to department licensors during the licensees' hours of operation for the purpose of announced or unannounced monitoring. Licensors must be allowed to inspect the indoor and outdoor licensed space to verify compliance with the requirements of this chapter and chapter 43.216 RCW. For the purposes of this chapter "hours of operation" means the hours of the day that licensees offer early learning services as reported to the department on the license application or modification paperwork, or as indicated in the parent or guardian handbook.

(2) The department may deny, suspend, revoke, or not continue a license when licensees refuse to allow the department's authorized staff access to any of the following:

- (a) Information relevant to the early learning program;
- (b) The licensed space;
- (c) Child, staff, or program records or files; or
- (d) Staff members or children in care.

[]

AMENDATORY SECTION (Amending WSR 18-15-001, filed 7/5/18, effective 7/5/18)

WAC 110-300-0166 Emergency preparation and exiting. (1) To be properly prepared for an emergency, ~~((an))~~ early learning programs must have an emergency preparedness plan ~~((pursuant to))~~ required by WAC 110-300-0470.

(2) ~~((An))~~ Early learning providers must have the following in case of an emergency:

(a) A working flashlight or other emergency lighting device must be available for use as an emergency light source. Battery powered flashlights must have an extra set of batteries easily available; and

(b) A working telephone must be available for use with sufficient backup power to function for at least five hours.

(3) To ensure a safe exit from the premises during an emergency, ~~((the))~~ early learning providers must comply with the following requirements:

(a) Emergency exit doors must remain unlocked from the inside, but may be locked from the outside while the early learning program is open. The door handle must be of the type that can be opened from the inside without the use of a key, tools, or special knowledge, and must automatically unlock when the knob or handle is turned;

(b) Exit doors that are not designated as an emergency exit door may be locked during operating hours. Locking interior doors in early learning program space must be designed to be unlocked from either side. An unlocking device must be readily available; and

(c) Exit doors must not be partially or entirely blocked (~~(+ and~~
~~(d) Family home early learning programs must have at least one pivoting or side-hinged swinging exit door. Other exit doors may be sliding glass doors).~~).

(4) For family home early learning programs:

(a) Each level or floor of the home licensed for early learning programming, except basements, must have at least two emergency exits that open directly to the exterior of the space.

(i) The emergency exits on each floor must be as widely spaced as possible, ideally at opposite ends of the floor.

(ii) At least one emergency exit on each floor must be an emergency exit door. At least one emergency exit door must be a pivoting or side-hinged swinging door. Other exit doors may be sliding glass doors.

(iii) The portion of a home that is partly or completely below grade (basement) must have at least one emergency exit window or door that leads directly to the exterior of the building.

(b) Every room licensed for early learning programming, except bathrooms, must have at least two emergency exits. These exits must be any combination of the following:

(i) An emergency exit door that leads directly to the exterior of the building;

(ii) An emergency exit window that leads directly to the exterior of the building; or

(iii) A door or doorway that leads to an emergency exit pathway. No two doors or doorways can lead to the same emergency exit pathway.

(c) Any window used as an emergency exit window must:

(i) Remain unlocked during operating hours except that a manufacturer-installed latch may remain latched;

(ii) Be designed to open from the inside of the room without the use of keys, tools, or special knowledge;

(iii) Be easy to open to the full position;

(iv) Have at least five point seven square feet of open area, except emergency exit windows on the ground floor which must have at least five square feet of open area;

(v) Be at least 20 inches wide and at least 24 inches tall when fully opened;

(vi) Have an interior sill height no more than 44 inches above the interior floor; and

(vii) Have a place to land outside that is no more than 48 inches below the exterior window sill.

[WSR 18-15-001, recodified as § 110-300-0166, filed 7/5/18, effective 7/5/18. Statutory Authority: RCW 43.215.070, 43.215.201 and chapter 42.56 RCW. WSR 18-14-079, § 170-300-0166, filed 6/30/18, effective 8/1/19.]

AMENDATORY SECTION (Amending WSR 19-14-076, filed 7/1/19, effective 8/1/19)

WAC 110-300-0210 Immunizations and exempt children. (1) On or before their children's first day of attending an early learning program, ((a child)) the parents or guardians of enrolled children must ((be vaccinated against or show)) give to early learning providers proof of vaccination or acquired immunity for the vaccine-preventable disease, ((pursuant to)) required under RCW 43.216.690 and chapter 246-105 WAC. ((An)) Early learning providers may accept children without proof of vaccinations or immunity as otherwise indicated in this section.

(2) ((Pursuant to WAC 246-105-050, an)) Early learning providers must receive for each enrolled child upon enrollment and annually thereafter, as required by RCW 43.216.690 and WAC 246-105-050:

(a) A current ((and)), complete ((department of health approved)), and medically verified certificate of immunization status (CIS) form;

(b) A department approved certificate of exemption (COE) form, if applicable; or

(c) A current immunization record from the Washington state immunization information system (WA IIS).

(3) To accept a child who is not current with their immunizations, ((an)) early learning providers must give written notice to that child's parent or guardian stating the child may be accepted if the immunizations are completed consistent with chapter 246-105 WAC and:

(a) Prior to enrollment the parent or guardian provides written proof the child is scheduled to be immunized; or

(b) ((The)) Parents or guardians provides a signed and dated statement detailing when the child's immunizations will be brought up to date and stating they understand their child will be excluded from care if the immunizations are not completed within 30 days of the specified due date.

(4) ((An)) Early learning providers must maintain and update each child's records relating to immunizations or exemptions, or plans to bring immunizations current. These records must be available in the licensed space or easily accessible for review by department licensors, health specialists, and health consultants.

(5) ((An)) Early learning providers may accept homeless or foster children into care without the records listed in this section if the child's family, caseworker, or health care provider offers written proof that ((he or she is)) they are in the process of obtaining the child's immunization records.

(6) ((An)) Early learning providers must exclude a child from care according to the criteria listed in WAC 246-105-080.

(7) If an outbreak of a vaccine-preventable disease occurs within an early learning program, an early learning provider must notify ((the)) parents or guardians of children exempt from immunization for

that disease and children without vaccination documents. A provider may exclude the child from the child care premises for the duration of the outbreak of that vaccine-preventable disease.

(8) ((An)) Early learning providers may have a written policy stating children exempted from immunization by their parent or guardian will not be accepted into care unless that exemption is due to an illness protected by the ADA or WLAD or by a completed and signed COE.

[Statutory Authority: RCW 43.216.250 and 43.216.255. WSR 19-14-076, § 110-300-0210, filed 7/1/19, effective 8/1/19. WSR 18-15-001, recodified as § 110-300-0210, filed 7/5/18, effective 7/5/18. Statutory Authority: RCW 43.215.070, 43.215.201 and chapter 42.56 RCW. WSR 18-14-079, § 170-300-0210, filed 6/30/18, effective 8/1/19.]

WSR 22-24-072

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed December 5, 2022, 10:46 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-21-091.

Title of Rule and Other Identifying Information: WAC 182-508-0005
Washington apple health medical care services—Eligibility and scope
of coverage.

Hearing Location(s): On January 10, 2023, at 10:00 a.m. In re-
sponse to the coronavirus disease 2019 (COVID-19) public health emer-
gency, the health care authority (HCA) continues to hold public hear-
ings virtually without a physical meeting place. This promotes social
distancing and the safety of Washington state residents. To attend the
virtual public hearing, you must register in advance [https://
us02web.zoom.us/webinar/register/WN_uzi3CSJ5TjaOjrSSuttwUA](https://us02web.zoom.us/webinar/register/WN_uzi3CSJ5TjaOjrSSuttwUA). If the
link above opens with an error message, please try using a different
browser. After registering, you will receive a confirmation email con-
taining information about joining the public hearing.

Date of Intended Adoption: Not sooner than January 11, 2023.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box
42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727,
by January 10, 2023, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson,
phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay serv-
ice 711, email Johanna.Larson@hca.wa.gov, by December 30, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including
Any Changes in Existing Rules: The agency is amending WAC 182-508-0005
to include individuals residing in "public institutions" (as that term
is defined in WAC 182-500-0050) within the population not eligible for
state-funded Washington apple health medical care services. The amend-
ment is necessary to ensure that individuals residing in public insti-
tutions receiving a new aged, blind, or disabled program cash grant
(ESSB 5693, section 205(22), chapter 297, Laws of 2022) do not thereby
become eligible for state-funded Washington apple health medical care
services.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160; ESSB 5693,
section 205(22), chapter 297, Laws of 2022.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Jensen,
P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0815; Implementation
and Enforcement: Dody McAlpine, P.O. Box 42722, Olympia, WA
98504-2722, 360-725-9964.

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

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

Scope of exemption for rule proposal:

Is not exempt.

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

costs were calculated. The proposed rule pertains to client program eligibility and does not impose any costs on businesses.

December 5, 2022
Wendy Barcus
Rules Coordinator

OTS-4185.1

AMENDATORY SECTION (Amending WSR 22-02-034, filed 12/29/21, effective 2/1/22)

WAC 182-508-0005 Washington apple health medical care services—Eligibility and scope of coverage. (1) A person is eligible for state-funded Washington apple health medical care services (MCS) coverage to the extent of available funds if the person is:

(a) Determined by the department of social and health services to be eligible for benefits under:

(i) The aged, blind, or disabled program as described in WAC 388-400-0060;

(ii) The housing and essential needs referral program as described in WAC 388-400-0070; or

(iii) The survivors of certain crimes (SCC) program, as described in WAC 388-424-0035, which includes victims of human trafficking as described in RCW 74.04.005; ~~((and))~~

(b) Not eligible for another federally funded categorically needy (CN) (as defined in WAC 182-500-0020) or alternative benefits plan (ABP) (as defined in WAC 182-500-0010) Washington apple health program; and

(c) Not residing in a public institution as defined in WAC 182-500-0050.

(2) If an enrollment cap exists under WAC 182-508-0150, a waiting list of people may be established.

(3) A person's period of eligibility for MCS is the same as the person's period of eligibility for:

(a) The aged, blind, or disabled program as described in WAC 388-449-0150;

(b) The person's incapacity authorization period for the housing and essential needs referral program as described in WAC 388-447-0110; or

(c) The person's period of eligibility for the SCC program as described in WAC 388-424-0035.

(4) The MCS program covers only the medically necessary services defined in WAC 182-501-0060.

(5) The MCS program does not cover medical services received outside the state of Washington unless the medical services are provided in a border city listed in WAC 182-501-0175.

[Statutory Authority: RCW 41.05.021, 41.05.160, and 2020 c 136. WSR 22-02-034, § 182-508-0005, filed 12/29/21, effective 2/1/22. 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 14-16-019, § 182-508-0005, filed 7/24/14, effective 8/24/14. Statutory Authority: RCW 41.05.021,

74.09.035, and 2011 1st sp.s. c 36. WSR 12-19-051, § 182-508-0005,
filed 9/13/12, effective 10/14/12.]

WSR 22-24-081

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed December 5, 2022, 4:27 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-17-169.

Title of Rule and Other Identifying Information: Chapter 16-228 WAC, General pesticide rules. The department is proposing to modify WAC 16-228-1100 through 16-228-1150 by updating penalty amounts (that have not been increased since 1999) to serve as an effective deterrent, restructure the penalty schedule to address equity related to different categories of violations instead of a "one size fits all" approach, and clarifying the rule by adding language and modifying existing language.

Hearing Location(s): On January 10, 2023, at 9:00 a.m., Microsoft Teams meeting. Join on your computer, mobile app, or room device. Click here to join the meeting [contact agency for link], Meeting ID 298 320 828 26, Passcode diwArZ; or call in (audio only) +1 564-999-2000, Phone Conference ID 397 558 423#; and on January 10, 2023, at 6:00 p.m., Microsoft Teams meeting. Join on your computer, mobile app, or room device. Click here to join the meeting [contact agency for link], Meeting ID 294 474 000 53, Passcode iH7hv5; or call in (audio only) +1 564-999-2000, Phone Conference ID 534 530 563#.

Date of Intended Adoption: January 17, 2023.

Submit Written Comments to: Gloriann Robinson, Agency Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, email wsdarulescomments@agr.wa.gov, fax 360-902-2092, by 5:00 p.m., January 10, 2023.

Assistance for Persons with Disabilities: Contact Maryann Connell, phone 360-902-2012, fax 360-902-2093, TTY 800-833-6388, email mconnell@agr.wa.gov, by January 3, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department regulates the distribution, storage, transportation, use, and disposal of pesticides. In particular, the pesticide management division's pesticide compliance program is charged with enforcing laws and rules associated with application and the control of the use of various pesticides within the state of Washington.

Regulatory action is necessary to deter violations of pesticide laws and rules, and to educate persons about the consequences of those violations. One component of regulatory action is the issuance of monetary and/or license suspension penalties.

Currently, WAC 16-228-1100 through 16-228-1150 describes the basis for penalties, how penalties are calculated, and the penalty assignment schedule. These rules have not been substantially updated since they were first adopted in 1999.

The department is proposing to update these rules by updating penalty amounts (that have not been increased since 1999) to serve as an effective deterrent, restructuring the penalty schedule to address equity related to different categories of violations instead of a "one size fits all" approach, and clarifying the rule by adding language and modifying existing language.

Reasons Supporting Proposal: Penalties have not increased since 1999, and the current \$450 penalty per violation in the median section of the penalty schedule does not act as a deterrent. Higher penalties are proposed not only to adjust for inflation but to act as a deterrent to help prevent pesticide violations from occurring. Amending the

single general penalty schedule to three specific penalty schedules will allow for more appropriate and equitable penalties for different types of pesticide violations. The three proposed schedules will cover: (1) Human exposure/property damage, (2) worker protection standard, and (3) unlicensed applicator/distributor violations. Establishing a new penalty of \$250 for recordkeeping violations would separate these relatively minor violations from the penalty schedule designed for more egregious violations. Clarifying the rule language increases stakeholder and licensee understanding of these regulations.

Statutory Authority for Adoption: RCW 15.58.040, 17.21.030.

Statute Being Implemented: RCW 15.58.040, 15.58.335, 17.21.030, 17.21.315.

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

Name of Proponent: Washington state department of agriculture, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Scott Nielsen, 1111 Washington Street S.E., Olympia, WA, 509-990-6518.

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

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state department of agriculture is not a listed agency under RCW 34.05.328 (5) (a) (i).

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

Is exempt under RCW 19.85.040(1).

Explanation of exemptions: RCW 19.85.040(1) states that the department shall analyze the costs of compliance for businesses required to comply with the proposed rule. Since the proposed amendments are only applicable to those in violation of this chapter, the department has concluded that the costs for compliance are \$0.00 and a small business economic impact statement is not required.

Scope of exemption for rule proposal:

Is fully exempt.

December 5, 2022
R. Schoen-Nessa
Assistant Director

OTS-4210.3

AMENDATORY SECTION (Amending WSR 03-22-029, filed 10/28/03, effective 11/28/03)

WAC 16-228-1100 ((What is the) Basis for penalties(?)). For the purpose of fair, uniform determination of penalty as set forth in WAC 16-228-1110 through 16-228-1150, the director hereby declares:

(1) Regulatory action is necessary to deter violations of the pesticide laws and rules, and to educate persons about the consequences of such violation(s); and

(2) Any regulatory action taken by the department against any person who violates the provisions of ((chapter 17.21 RCW,)) chapter

15.58 (~~RCW, and/or~~) or 17.21 RCW, or the rules adopted thereunder shall be commensurate with the seriousness of the violation under the circumstances; and

(3) Each person shall be treated fairly in accordance with the rules set forth in this chapter.

[Statutory Authority: Chapters 17.21, 15.58, 34.05 RCW. WSR 03-22-029, § 16-228-1100, filed 10/28/03, effective 11/28/03. Statutory Authority: Chapters 15.54, 15.58 and 17.21 RCW. WSR 99-22-002, § 16-228-1100, filed 10/20/99, effective 11/20/99.]

AMENDATORY SECTION (Amending WSR 03-22-029, filed 10/28/03, effective 11/28/03)

WAC 16-228-1110 ((What are the)) Definitions specific to penalties(?). In addition to the definitions set forth in RCW 17.21.020, 15.58.030, and WAC 16-228-1010, the following shall apply to WAC 16-228-1100 through 16-228-1150:

(1) "Adverse effect(s)" means that the alleged activity or mishap actually causes(~~(r)~~) or creates the possibility of damage, injury, or a public health threat((r)) to, or endangerment of, humans, animals, plants, property (~~(e)~~), the environment, or beneficial pollinating insects. (~~(In those situations involving)~~) This term includes circumstances when a wood destroying organism inspection((r-adverse effects exist when the inspection)) has been performed in a faulty, careless or negligent manner.

(2) "Beneficial pollinating insects" means those insects commonly considered as pollinators. This term does not include any of the following:

(a) Insects in any life stage that are presenting a current harm to humans, animals, plants, property, or the environment;

(b) Insects in any life stage normally considered to be a pest;

(c) Insects which the director declares to be a pest; and

(d) Any pollinating insect that may be incidentally adversely affected by any properly licensed public health vector control program as a result of that program's normal operations done in compliance with the law and which operates with reasonable care.

(3) "Civil penalty" means a monetary penalty administratively issued by a regulatory agency for noncompliance with state or federal law, or rules. The term does not include any criminal penalty, damage assessment, wages, premiums, or taxes owed, or interest or late fees on any existing obligation.

(4) "Human exposure" means a pesticide exposure to humans caused by a violation of chapter 15.58 or 17.21 RCW, or the rules adopted thereunder.

(5) "Level of violation" means that the alleged violation is a first, second, third, (~~(fourth)~~) or more violation(s). For purposes of calculating the level of violation, prior incidences will be measured from the date that a final order or stipulated order resolved the prior violation(s), and not from the date that the incident(s) occurred.

(a) "First violation" (~~(-This)~~) means the alleged violator has committed no prior (~~(incident(s) which resulted in a violation or violations)~~) incident resulting in a notice of intent within three years of committing the current alleged violation.

(b) "Second violation" ~~((This))~~ means the alleged violator committed one prior incident ~~((which resulted))~~ resulting in a ~~((violation or violations))~~ notice of intent within three years of committing the current alleged violation.

(c) "Third violation" ~~((This))~~ means the alleged violator committed two or more prior incidents ~~((which resulted in a violation or violations))~~ resulting in a notice of intent within three years of committing the current alleged violation.

~~((d))~~ Fourth violation. This means the alleged violator committed three prior incidents which resulted in a violation or violations within three years of committing the current alleged violation.

~~((e))~~ For purposes of calculating the level of violation, prior incidents will be measured from the date that a final order or stipulated order resolved the prior violation(s), and not from the date that the incident(s) occurred.

~~((3))~~ (6) "License in good standing" means an unexpired license that is not currently suspended or revoked by the director.

(7) "Not probable" means that the alleged violator's conduct more likely than not did not or would not have caused an adverse effect.

~~((4))~~ (8) "Notice of correction" means a document issued by the department that describes a condition or conduct that is not in compliance with chapter 15.58 or 17.21 RCW, or the rules adopted thereunder, but that is not subject to civil penalties as provided for in RCW 43.05.110. A notice of correction is not a formal enforcement action, is not subject to appeal, and is a public record.

(9) "Notice of intent" means a document issued by the department that alleges specific violations of chapter 15.58 or 17.21 RCW, or the rules adopted thereunder. A notice of intent is a formal enforcement document issued with the intent to assess civil penalties to the alleged violator and/or to suspend, deny, or revoke the alleged violator's pesticide license.

(10) "Pesticide exposure" means intentional or unintentional contact with pesticides caused by a violation of chapter 15.58 or 17.21 RCW, or the rules adopted thereunder.

(11) "Probable" means that the alleged violator's conduct more likely than not did or would have caused an adverse effect.

~~((5))~~ (12) "Revoke" or "revocation" means the termination of a license for violations of chapter 15.58 or 17.21 RCW, or the rules adopted thereunder. The department will not reactivate revoked licenses.

(13) "Suspend" or "suspension" means the abeyance of a license for a specific period of time for violations of chapter 15.58 or 17.21 RCW, or the rules adopted thereunder. The department may reactivate suspended licenses following the period of suspension.

(14) "Unlicensed" means any person or apparatuses that does not hold or has not been issued a license in good standing for an activity where a license is required by chapter 15.58 or 17.21 RCW, or the rules adopted thereunder.

(15) "Violation" means commission of an act or acts prohibited by ~~((chapter 17.21 RCW, chapter 15.58 RCW, and/or rules adopted thereunder.~~

~~((6))~~ "Civil penalty" means a monetary penalty administratively issued by a regulatory agency for noncompliance with state or federal law, or rules. The term does not include any criminal penalty, damage assessment, wages, premiums, or taxes owed, or interest or late fees on any existing obligation.

~~(7) "Notice of Correction" means a document issued by the department that describes a condition or conduct that is not in compliance with chapter 15.58 or 17.21 RCW, or the rules adopted under the authority of chapter 15.58 or 17.21 RCW and is not subject to civil penalties as provided for in RCW 43.05.110. A notice of correction is not a formal enforcement action, is not subject to appeal and is a public record.~~

~~(8) "Notice of intent" means a document issued by the department that alleges specific violations of chapter 15.58 or 17.21 RCW, or any rules adopted under the authority of those chapters. A notice of intent is a formal enforcement document issued with the intent to assess civil penalties to the alleged violator and/or to suspend, deny or revoke the alleged violator's pesticide license) chapter 15.58 or 17.21 RCW, or the rules adopted thereunder.~~

[Statutory Authority: Chapters 17.21, 15.58, 34.05 RCW. WSR 03-22-029, § 16-228-1110, filed 10/28/03, effective 11/28/03. Statutory Authority: Chapters 17.21 and 15.58 RCW. WSR 01-01-058, § 16-228-1110, filed 12/12/00, effective 1/12/01. Statutory Authority: Chapters 15.54, 15.58 and 17.21 RCW. WSR 99-22-002, § 16-228-1110, filed 10/20/99, effective 11/20/99.]

AMENDATORY SECTION (Amending WSR 03-22-029, filed 10/28/03, effective 11/28/03)

WAC 16-228-1115 ~~((When can the department issue a civil penalty without first issuing))~~ Civil penalty may be issued prior to a notice of correction(?). (1) Pursuant to RCW 43.05.100 a notice of correction may be issued by the department when they become aware of conditions ~~((and/or))~~ or conduct or both that are not in compliance with the applicable laws and rules enforced by the department. The issuance of a notice of correction by the department shall not constitute a previous violation for purposes of WAC 16-228-1110 ~~((+2))~~ (5), but may, at the discretion of the department, be considered as an aggravating factor for the purposes of WAC 16-228-1120(2).

(2) Prior to issuing a civil penalty for a violation of chapter 15.58 or 17.21 RCW, ~~((and))~~ or the rules adopted ~~((under the authority of chapter 15.58 or 17.21 RCW))~~ thereunder, the department shall comply with the requirements of RCW 43.05.110. RCW 43.05.110 provides that the department of agriculture may issue a civil penalty provided for by law without first issuing a notice of correction if: ~~((+1))~~ (a) The person has previously been subject to an enforcement action for the same or similar type of violation of the same statute or rule or has been given previous notice of the same or similar type of violation of the same statute or rule; or ~~((+2))~~ (b) compliance is not achieved by the date established by the department in a previously issued notice of correction, if the department has responded to any request for review of such date by reaffirming the original date or establishing a new date; ~~((+3))~~ (c) the violation has a probability of placing a person in danger of death or bodily harm, has a probability of causing more than minor environmental harm, or has a probability of causing physical damage to the property of another in an amount exceeding ~~((one thousand dollars))~~ \$1,000; or ~~((+4))~~ (d) the violation was committed by a business that employed ~~((fifty))~~ 50 or more employees on at least one day in each of the preceding ~~((twelve))~~ 12 months.

[Statutory Authority: Chapters 17.21, 15.58, 34.05 RCW. WSR 03-22-029, § 16-228-1115, filed 10/28/03, effective 11/28/03. Statutory Authority: Chapters 17.21 and 15.58 RCW. WSR 01-01-058, § 16-228-1115, filed 12/12/00, effective 1/12/01.]

AMENDATORY SECTION (Amending WSR 03-22-029, filed 10/28/03, effective 11/28/03)

WAC 16-228-1120 ((How are penalties calculated?)) Calculation of penalties.

~~((1) Median penalty selection. In the disposition of administrative cases, the department shall use the penalty assignment schedule listed in WAC 16-228-1130 to determine appropriate penalties. The department shall calculate the appropriate penalty based on the level of violation and the adverse effect(s) or potential adverse effects at the time of the incident(s) giving rise to the violation. The median penalty shall be assessed unless a proportionate adjustment is warranted and/or there are aggravating or mitigating factors present. The median penalty as listed in WAC 16-228-1130 may be proportionately adjusted and/or aggravated to a level more than the maximum penalty listed for the violation in the penalty assignment schedule table. The median penalty under the penalty assignment schedule may not be proportionately adjusted and/or mitigated to a level less than the minimum penalty listed for the violation.~~

~~(2) Proportionate adjustment of median penalty.~~

~~(a) The department reserves the right to proportionately increase the civil penalty and proportionately decrease the licensing action under certain circumstances. Such circumstances include situations where licensing action(s) as a deterrent are ineffective and include, but are not limited to:~~

~~(i) Violations by persons who are not licensed; and~~

~~(ii) Situations where the civil penalty assessed is not substantially equivalent to the violator's economic benefit derived from the violation.~~

~~(b) The department also reserves the right to proportionately decrease the civil penalty and increase the licensing action in circumstances that demonstrate the ineffectiveness of a civil penalty as a deterrent. Nothing shall prevent the department from proportionally adjusting a licensing action to a level greater than the maximum licensing action listed in the penalty assignment schedule.~~

~~(3) Aggravating factors. The department may consider circumstances enhancing the penalty based on the seriousness of the violation. Aggravating factors include, but are not limited to, the following:~~

~~(a) The number of separate alleged violations contained within a single notice of intent.~~

~~(b) The high magnitude of the harm, or potential harm, including quantity and/or degree, to humans, animals, plants, property or the environment caused by the violation(s).~~

~~(c) The similarity of the current alleged violation to previous violations committed within the last three years.~~

~~(d) The extent to which the alleged violation is part of a pattern of the same or substantially similar conduct.~~

~~(4) When the department determines that one or more aggravating factors are present, the department may assess the maximum penalty as listed within the level of violation or may, in its discretion, in-~~

~~crease the penalty to a level greater than the maximum penalty, including but not limited to revocation of the license.~~

~~(5) Mitigating factors. The department may consider circumstances reducing the penalty based upon the seriousness of the violation. Mitigating factors include but are not limited to, the following:~~

~~(a) Voluntary disclosure of a violation.~~

~~(b) The low magnitude of the harm, or potential harm, including quantity and/or degree, caused by the violation.~~

~~(c) Voluntary taking of remedial measures that will result in increased public protection, or that will result in a decreased likelihood that the violation will be repeated.~~

~~(6) When the department determines that one or more mitigating factors are present, the department may assess the minimum penalty for the violation from the penalty schedule.~~

~~(7) The department considers each violation to be a separate and distinct event. When a person has committed multiple violations, the violations are cumulative for purposes of calculating the appropriate penalty. Penalties are added together.~~

~~(8) Violation(s) committed during the period when an individual's license is suspended or revoked shall be subject to the maximum civil penalty of seven thousand five hundred dollars and/or revocation of the license for a period of up to five years. Violation(s) committed by unlicensed individuals are subject to the provisions of this chapter, including the penalty provision.)) (1) For recordkeeping violations described in WAC 16-228-1126, licensing violations described in WAC 16-228-1127, and violations of chapter 16-233 WAC described in WAC 16-228-1128, the department will assess the civil penalty according to the schedule unless circumstances warrant a deviation from the penalty calculation rules as allowed under subsection (5) of this section.~~

~~(2) For the penalties assessed under WAC 16-228-1129, the department will select the level of violation and use the appropriate base penalty according to the type of pesticide violation as the starting point for calculating penalties. The base penalty shall be assessed unless either an adjustment is warranted, or there are aggravating or mitigating factors present, or both.~~

~~(3) Adjustment of base penalty for violations calculated under WAC 16-228-1129:~~

~~(a) The department reserves the right to increase the civil penalty and decrease the licensing action under certain circumstances. Such circumstances include situations where the licensing actions(s) are ineffective as a deterrent and include, but are not limited to:~~

~~(i) Violations involving unlicensed or during a license suspension;~~

~~(ii) Situations where the civil penalty assessed is not substantially equivalent to the economic benefit derived by the violator from the violation; and~~

~~(iii) Where the violation is the result of a business or other management decision(s).~~

~~(b) The department may decrease the civil penalty and increase the licensing action in circumstances that demonstrate the ineffectiveness of a civil penalty as a deterrent.~~

~~(4) Each violation of chapter 15.58 or 17.21 RCW, or the rules adopted thereunder, are separate and distinct violations. When a person has committed multiple violations in a single incident, each violation is individually and separately subject to the maximum civil penalty of \$7,500. Penalties for separate violations related to a single event are added together for the purpose of the notice of intent.~~

(5) The department may, in its discretion, deviate from the penalty calculation rules adopted in this chapter. The department has complied with these rules if it acknowledges the deviation and states its reasons for deviating from the penalty calculation rules in this chapter, in the notice of intent.

(6) Nothing in this chapter shall prevent the department from:

(a) Adjusting either a licensing action to a level greater than the maximum licensing action listed in any penalty assignment schedule, or a civil penalty to a level greater than the maximum civil penalty listed in any penalty assignment schedule; or

(b) Aggravating either a licensing action or civil penalty, or both, to either a level greater than the maximum licensing action listed in any penalty assignment schedule or a civil penalty to a level greater than the maximum civil penalty in any penalty assignment schedule or both.

(7) When adjusting a penalty, the department may aggravate, mitigate, or proportionally adjust either the civil penalty or the license suspension, or both. Generally, the department will aggravate, mitigate, or proportionally adjust both the civil penalty and the license suspension when the department determines such factors are present; however, the department retains the discretion to aggravate, mitigate, or proportionally adjust a civil penalty without also aggravating, mitigating, or proportionally adjusting the license suspension, and may aggravate, mitigate, or proportionally adjust the license suspension without aggravating, mitigating, or proportionally adjusting the civil penalty. In the event the department aggravates, mitigates, or proportionally adjusts either the civil penalty or the license suspension without aggravating, mitigating, or proportionally adjusting the other, the department will indicate its basis for doing so in the notice of intent.

[Statutory Authority: Chapters 17.21, 15.58, 34.05 RCW. WSR 03-22-029, § 16-228-1120, filed 10/28/03, effective 11/28/03. Statutory Authority: Chapters 17.21 and 15.58 RCW. WSR 01-01-058, § 16-228-1120, filed 12/12/00, effective 1/12/01. Statutory Authority: Chapters 15.54, 15.58 and 17.21 RCW. WSR 99-22-002, § 16-228-1120, filed 10/20/99, effective 11/20/99.]

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-228-1125 ((When can the department revoke or deny)) Revocation or denial of a license(?). (1) The department retains the sole discretion to determine when an individual license should be revoked rather than suspended. ((Revocation of a license shall be an option for the department in those circumstances where:))

(a) The department may revoke a license when:

(i) The penalty schedule allows for revocation; ((and/or)) or

((b)) (ii) One or more aggravating factors are present;

((and/or

(c) The duration of the licensure action exceeds six months.

In circumstances where the department determines revocation to be appropriate, the period of revocation shall be determined at the discretion of the department, but in no instance shall the revocation exceed five years.)) or

(iii) The circumstances surrounding the violation are such that a suspension of the license will not serve as an adequate deterrent for future conduct.

(b) The department may in its discretion, revoke any or all licenses held by the person when this section permits revocation. Where the circumstances warrant revocation of more than one license held by the person, the department shall explain its reasons for revoking each license in its notice of intent.

(c) In circumstances where the department revokes a license, the department may order that person will not be granted new licensure or new license categories for a period of time. This period of ineligibility for the person to be granted a new license or category shall be determined at the discretion of the department, but shall not exceed five years.

(2) The department may deny an applicant a license when the applicant has committed a violation(s) of chapter ~~((s))~~ 15.58 ~~((and))~~ or 17.21 RCW ~~((and/or))~~, or the rules adopted ~~((under those chapters))~~ thereunder. The duration of denial shall be determined based upon the penalty provisions of this chapter. ~~((In circumstances where the department determines denial to be appropriate, the period of denial shall not exceed five years.~~

~~((3))~~ (a) Nothing shall prevent the department from denying an applicant a license when the applicant has an outstanding civil penalty owed to the department from a previous violation(s).

~~((4))~~ (b) The department may deny an application for a license when that person's license was revoked under subsection (1) of this section or when the department has prohibited a person from being issued a license for a period of time, and that time has not expired.

(3) The department may, at its discretion, suspend a license without also seeking a civil penalty. Such circumstances include, but are not limited to, those incidents where a civil penalty is not available as an appropriate penalty pursuant to RCW 43.05.110. The appropriate period of suspension shall be determined ~~((from the))~~ in accordance with the appropriate penalty schedule and the penalty provisions of this chapter.

[Statutory Authority: Chapters 17.21, 15.58, and 34.05 RCW. WSR 07-11-041A, § 16-228-1125, filed 5/9/07, effective 6/9/07; WSR 03-22-029, § 16-228-1125, filed 10/28/03, effective 11/28/03. Statutory Authority: Chapters 17.21 and 15.58 RCW. WSR 01-01-058, § 16-228-1125, filed 12/12/00, effective 1/12/01.]

NEW SECTION

WAC 16-228-1126 Penalties for certain recordkeeping violations.

The department will assess a penalty of \$250 for failing to properly record the information required by RCW 17.21.100 (1)(a) through (j), WAC 16-228-1320 (1)(a) through (n), and WAC 16-228-1300 (1) through (8) unless circumstances warrant a deviation as allowed under WAC 16-228-1120(5), or the application of aggravating and mitigating factors as allowed by WAC 16-228-1131. Violations of other subsections of RCW 17.21.100, WAC 16-228-1320 and 16-228-1300 are assessed under WAC 16-228-1129.

[]

NEW SECTION

WAC 16-228-1127 Penalties for unlicensed using, handling, applying, distributing, or consulting about pesticides. (1) Violations committed during the period when an individual's license is suspended shall be subject to the maximum civil penalty of \$7,500 or suspension of the license for a period of up to five years, or both.

(2) Violations committed following the revocation of a license, and where the previous licensee has not successfully obtained a new license, shall be subject to the maximum civil penalty of \$7,500 or an extension of the time during which the person is ineligible for reissuance of a license, or both. Violations are considered to be "operating without a license" for the purpose of RCW 17.21.320(4).

(3) Penalties for unlicensed use will be assessed according to the penalty assignment schedule in WAC 16-228-1130 Table I. The penalty schedule in WAC 16-228-1130 Table I does not apply to violations described in subsections (1) and (2) of this section.

(4) Nothing herein shall prevent the department from seeking an injunction against persons operating without a license as allowed under RCW 17.21.320(4).

[]

NEW SECTION

WAC 16-228-1128 Penalties for violations of chapter 16-233 WAC—Worker protection standard. (1) Violations of WAC 16-233-211(1) are assessed under WAC 16-228-1129.

(2) Except for violations described in (1) of this section, violations of chapter 16-233 WAC are assessed in accordance with the penalty assignment schedule in WAC 16-228-1130 Table II.

[]

NEW SECTION

WAC 16-228-1129 Penalties for other violations of chapter 15.58 or 17.21 RCW, or the rules adopted thereunder. (1) This section covers all violations of chapter 15.58 or 17.21 RCW, or the rules adopted thereunder, that do not have a more specific penalty assignment schedule described in WAC 16-228-1126, 16-228-1127, and 16-228-1128.

(2) The penalties in this section will be calculated by selecting the appropriate level of violation, then selecting the appropriate base penalty, and then adjusting the base penalty for aggravating and mitigating factors. The base penalty shall be assessed unless either a deviation is warranted or there are either aggravating or mitigating factors present, or both.

(3) Except as provided in WAC 16-228-1120(5), when penalties are calculated under this section, and the department determines that one or more aggravating factors are present, the department may increase the penalty by a factor of no more than 25 percent of the base penalty for each aggravating factor.

(4) Except as provided in WAC 16-228-1120(5), when penalties are calculated under this section, and the department determines that one or more mitigating factors are present, the department may decrease the penalty by a factor of no more than 25 percent of the base penalty for each mitigating factor.

(5) Violations described in this section are assessed in accordance with the penalty assignment schedule in WAC 16-228-1130 Table III.

[[

AMENDATORY SECTION (Amending WSR 03-22-029, filed 10/28/03, effective 11/28/03)

WAC 16-228-1130 ((What is the)) Penalty assignment ((schedule?)) schedules—Tables I, II, and III. ((This assignment schedule shall be used for violations of chapter 17.21 or 15.58 RCW or chapter 16-228 WAC. (See WAC 16-228-1150 for other dispositions of alleged violations, including Notice of Corrections.))

LEVEL OF VIOLATION	ADVERSE EFFECTS NOT PROBABLE			ADVERSE EFFECTS PROBABLE		
	MINIMUM	MEDIAN	MAXIMUM	MINIMUM	MEDIAN	MAXIMUM
FIRST	\$200 and or 2 days license suspension	\$300 and or 3 days license suspension	\$500 and or 6 days license suspension	\$350 and or 5 days license suspension	\$450 and or 7 days license suspension	\$550 and or 9 days license suspension
SECOND	\$350 and or 3 days license suspension	\$500 and or 6 days license suspension	\$1000 and or 9 days license suspension	\$600 and 10 days license suspension denial or revocation	\$1300 and 20 days license suspension denial or revocation	\$2000 and 30 days license suspension denial or revocation
THIRD	\$700 and or 4 days license suspension	\$1000 and or 9 days license suspension	\$2000 and or 12 days license suspension	\$800 and 30 days license suspension denial or revocation	\$2400 and 40 days license suspension denial or revocation	\$4000 and 50 days license suspension denial or revocation
FOURTH OR MORE	\$900 and or 5 days license suspension denial or revocation	\$2000 and or 12 days license suspension denial or revocation	\$3000 and or 15 days license suspension denial or revocation	\$1000 and 50 days license suspension denial or revocation	\$4250 and 70 days license suspension denial or revocation	\$7500 and 90 days license suspension denial or revocation))

Table I Licensing Violations

Level of Violation	Commercial Applicator Operating Unlicensed	Pesticide Dealer Distributing Restricted Use Pesticides Unlicensed	All Other Violations for Operating Unlicensed
First	\$2,500	\$1,000	\$1,000
Second	\$5,000	\$2,500	\$2,500
Third or more	\$7,500	\$5,000	\$5,000

Table II Worker Protection Standard Violations		
<u>Level of Violation</u>	<p>WAC 16-233-021(6) providing emergency assistance.</p> <p>WAC 16-233-201 failure to provide sufficient training to handlers prior to <u>mixing or applying category 1 pesticides, unless handler is exempt from training requirements.</u></p> <p>WAC 16-233-211 (3) and (4) <u>monitoring handlers applying highly toxic and enclosed space fumigants.</u></p> <p>WAC 16-233-216 PPE for handlers.</p> <p>WAC 16-233-221 <u>decontamination and eye flush for handlers.</u></p> <p>WAC 16-233-311 <u>protection of early-entry workers.</u></p>	<p>All other violations of chapter 16-233 WAC, excluding WAC 16-233-211(1), that warrant a civil penalty</p>
<u>First</u>	<u>\$1,000</u>	<u>\$500</u>
<u>Second</u>	<u>\$2,000</u>	<u>\$750</u>
<u>Third or more</u>	<u>\$3,000</u>	<u>\$1,000</u>

Table III Base Penalties			
<u>Level of Violation</u>	<u>Human Exposure</u>	<u>Adverse Effects Probable (Other than Human Exposure)</u>	<u>Adverse Effects Not Probable</u>
<u>First</u>	<u>\$1,500 and five-day license suspension</u>	<u>\$1,000 and four-day license suspension</u>	<u>\$300</u>
<u>Second</u>	<u>\$3,000 and 10-day license suspension, denial, or revocation</u>	<u>\$2,000 and eight-day license suspension, denial, or revocation</u>	<u>\$600</u>
<u>Third or more</u>	<u>\$6,000 and 20-day license suspension, denial, or revocation</u>	<u>\$4,000 and 16-day license suspension, denial, or revocation</u>	<u>\$1,200 and three-day license suspension, denial, or revocation</u>

[Statutory Authority: Chapters 17.21, 15.58, 34.05 RCW. WSR 03-22-029, § 16-228-1130, filed 10/28/03, effective 11/28/03. Statutory Authority: Chapters 17.21 and 15.58 RCW. WSR 01-01-058, § 16-228-1130, filed 12/12/00, effective 1/12/01. Statutory Authority: Chapters 15.54, 15.58 and 17.21 RCW. WSR 99-22-002, § 16-228-1130, filed 10/20/99, effective 11/20/99.]

NEW SECTION

WAC 16-228-1131 Aggravating and mitigating factors. The department may consider the following factors when calculating penalties under WAC 16-228-1130. The department is not required to apply every aggravating or mitigating factor that may be present or relevant to a particular violation, and will only apply those factors that the department determines significantly affect a case or contribute to a particular violation.

(1) Aggravating factors. When calculating penalties under WAC 16-228-1130, the department may consider circumstances that warrant enhancing the penalty above base penalty. Aggravating factors include, but are not limited to, the following:

- (a) The number of separate alleged violations contained within a single notice of intent.
- (b) The high magnitude of the harm, or potential harm, including either the quantity or degree, or both, to humans, animals, plants, property, or the environment caused by the violation(s).
- (i) Number of individuals directly exposed as a result of the violation. The department may aggravate the penalty for each individual exposed.
- (ii) Number of individuals reporting verifiable health symptoms to the department or to the state department of health. The department may aggravate the penalty for each individual that reported verifiable symptoms.
- (iii) Number of individuals requiring emergency medical treatment. The department may aggravate the penalty for each individual that required emergency medical treatment.
- (c) The similarity of the current alleged violation to previous violations committed within the last six years, regardless of whether those violations resulted in notices of correction or notices of intent, and regardless of whether a notice of intent was resolved by a settlement unless otherwise expressly indicated in the agreement.
- (d) The extent to which the alleged violation is part of a pattern of the same or substantially similar conduct.
- (e) Lack of, or deficiency in, either training or supervision of operator(s), or both, regardless of whether the pesticide(s) applied required direct supervision of uncertified applicators.
- (f) High pesticide toxicity. This may be indicated by a product's signal word or words on any pesticide label involved in the offending investigation including, but are not limited to, "Danger/Poison."
- (g) One or more pesticides involved in the incident were state or federal restricted use pesticides.
- (h) The high degree of visible and accessible damage that was not reported in conjunction with a complete wood destroying organism inspection, when the damage was located in an area that was not allowably excluded from inspection.
- (i) The violation involved a careless or negligent operation.
- (j) Inappropriate or insufficient equipment safeguards or operation including, but not limited to, the failure to properly calibrate and configure application equipment prior to application.
- (k) Extent to which the location of the violation, including near sensitive areas or areas near human population, creates the potential for harm to the environment or human health or safety.
- (l) False information provided to the department during an investigation of the violation.
- (m) Applicator failed to follow advisory precautionary language on label, which impacted the violation.
- (n) Except as exempted in WAC 16-228-1110(2), the violation had a direct adverse effect on bees, honey bees, or other beneficial pollinating insects.
- (2) Mitigating factors. When calculating a penalty under WAC 16-228-1130, the department may consider circumstances that warrant reducing the penalty below the base penalty. Mitigating factors include, but are not limited to, the following:
- (a) Voluntary disclosure by the violator of a violation.
- (b) The low magnitude of the harm, or potential harm, including quantity and/or degree, caused by the violation.
- (c) Safety protocol established and prevention measures taken prior to incident.

(d) Voluntary taking of remedial measures following the violation that will result in increased public protection or that will result in a decreased likelihood that the violation will be repeated.

(e) Good faith efforts of the violator to comply with the pesticide laws and rules that are applicable to the violation and the application was made in a careful and safe manner.

(f) Violator did not, and could not with exercise of reasonable diligence, have known the risk of the application to safety, human health, or property.

(g) Low toxicity of pesticide involved. This may be indicated by the lack of a label signal word, or the signal word "Caution" on all pesticides involved.

(h) Applicator followed advisory precautionary language on label, which impacted the violation.

[]

AMENDATORY SECTION (Amending WSR 03-22-029, filed 10/28/03, effective 11/28/03)

WAC 16-228-1150 ((What are the)) Other dispositions of alleged violations that the department may choose(?). Nothing herein shall prevent the department from:

(1) Choosing not to pursue a civil penalty, license suspension or license revocation.

(2) Issuing a notice of correction in lieu of pursuing a civil penalty, license suspension or license revocation.

(3) Negotiating settlement(s) of cases on such terms and for such reasons as it deems appropriate. ((Prior)) Violation(s) covered by a ((prior)) settlement agreement for a previous violation may be used by the department for the purpose of determining the appropriate penalty for the current alleged violation(s) if not expressly prohibited by the agreement.

(4) Referring violations or alleged violations, to any federal, state or county authority with jurisdiction over the activities in question((~~r~~)) including, but not limited to, the Environmental Protection Agency (EPA) ((and)) the Federal Aviation Administration (FAA), or criminal prosecutors for criminal dispositions.

[Statutory Authority: Chapters 17.21, 15.58, 34.05 RCW. WSR 03-22-029, § 16-228-1150, filed 10/28/03, effective 11/28/03. Statutory Authority: Chapters 17.21 and 15.58 RCW. WSR 01-01-058, § 16-228-1150, filed 12/12/00, effective 1/12/01. Statutory Authority: Chapters 15.58, 17.21 RCW. WSR 00-22-073, § 16-228-1150, filed 10/30/00, effective 11/30/00. Statutory Authority: Chapters 15.54, 15.58 and 17.21 RCW. WSR 99-22-002, § 16-228-1150, filed 10/20/99, effective 11/20/99.]

WSR 22-24-082

PROPOSED RULES

PIERCE COLLEGE

[Filed December 5, 2022, 5:43 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-08-057.

Title of Rule and Other Identifying Information: Pierce College student conduct code.

Hearing Location(s): On January 17, 2023, at 11:00 a.m., Zoom, <https://pierce-college.zoom.us/j/86499760362>.

Date of Intended Adoption: February 7, 2023.

Submit Written Comments to: Julie Draper Davis, 9401 Farwest Drive S.W., Lakewood, WA 98498, email jdraperdavis@pierce.ctc.edu, by January 20, 2023.

Assistance for Persons with Disabilities: Contact access and disability services, phone 253-964-6468, email ads@pierce.ctc.edu, by January 13, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Address federal law compliance requirements with Title IX.

Reasons Supporting Proposal: Title IX regulations changed and updated.

Statutory Authority for Adoption: RCW 28B.50.140(13).

Statute Being Implemented: RCW 28B.50.140(13).

Rule is necessary because of federal law, Title IX Regulations.

Name of Proponent: Pierce College, Community College District Eleven, public.

Name of Agency Personnel Responsible for Drafting and Implementation: Julie Draper Davis, Pierce College District, 253-912-2331; Enforcement: Vice President of Learning and Student Success, Pierce College District, 253-840-8336.

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

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule will not impose any costs for the institution.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

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

November 30, 2022
Michele Johnson
Chancellor and CEO

OTS-3738.1

AMENDATORY SECTION (Amending WSR 21-11-045, filed 5/13/21, effective 6/13/21)

WAC 132K-135-360 Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

(1) Relevance: The committee chair shall review all questions for relevance and shall explain on the record their reasons for excluding any question based on lack of relevance.

(2) Relevance means that information elicited by the question makes facts in dispute more or less likely to be true.

(3) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:

(a) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or

(b) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.

~~(4) ((Cross-examination required: If a party or witness does not submit to cross-examination during the live hearing, the committee must not rely on any statement by that party or witness in reaching a determination of responsibility.~~

~~(5))~~ No negative inference: The committee may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions.

~~((6))~~ (5) Privileged evidence: The committee shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(a) Spousal/domestic partner privilege;

(b) Attorney-client and attorney work product privileges;

(c) Privileges applicable to members of the clergy and priests;

(d) Privileges applicable to medical providers, mental health therapists, and counselors;

(e) Privileges applicable to sexual assault and domestic violence advocates; and

(f) Other legal privileges identified in RCW 5.60.060.

[Statutory Authority: RCW 28B.50.140(13). WSR 21-11-045, § 132K-135-360, filed 5/13/21, effective 6/13/21.]

AMENDATORY SECTION (Amending WSR 21-11-045, filed 5/13/21, effective 6/13/21)

WAC 132K-135-380 Appeals. ~~((1) The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in WAC 132K-135-180.~~

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

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

(1) All parties, including the student conduct officer in their capacity as a representative of the college, have the right to appeal from the determination of responsibility and/or from a dismissal, in whole or in part, of a formal complaint during the investigative or hearing process. Appeals must be in writing and filed with the president's office within 21 days of service of the initial order or notice of dismissal. Appeals must identify the specific findings of fact and/or conclusions of law in the initial order or dismissal that the appealing party is challenging and must contain argument as to why the appeal should be granted. Failure to file a timely appeal constitutes a waiver of the right to appeal and the initial order or dismissal shall be deemed final.

(2) Upon receiving a timely appeal, the president's office will serve a copy of the appeal on all parties, who will have 10 days from the date of service to submit written responses to the president's office addressing issues raised in the appeal. Failure to file a timely response constitutes a waiver of the right to participate in the appeal. Upon receipt of written responses, the president's office shall serve copies of the responses to the other parties.

(3) Parties receiving a copy of the responses shall have five days in which to submit a written reply addressing issues raised in the responses to the president's office.

(4) The president or their delegate, based on their review of parties' submissions and the hearing or investigative record, will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether a dismissal is affirmed or denied, or if the disciplinary sanctions and conditions imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth the new disciplinary sanctions and conditions.

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

(6) All administrative decisions reached through this process are and may be judicially appealed pursuant to applicable provisions of chapter 34.05 RCW including, but not limited to, the timelines set forth in RCW 34.05.542. No decisions or recommendations arising from this disciplinary procedure will be subject to grievance pursuant to any collective bargaining agreement.

[Statutory Authority: RCW 28B.50.140(13). WSR 21-11-045, § 132K-135-380, filed 5/13/21, effective 6/13/21.]

WSR 22-24-083

PROPOSED RULES

PIERCE COLLEGE

[Filed December 5, 2022, 5:51 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-17-002.

Title of Rule and Other Identifying Information: Pierce College student conduct code.

Hearing Location(s): On January 17, 2023, at 11:00 a.m., Zoom, <https://pierce-college.zoom.us/j/86499760362>.

Date of Intended Adoption: February 7, 2023.

Submit Written Comments to: Julie Draper Davis, 9401 Farwest Drive S.W., Lakewood, WA 98498, email jdraperdavis@pierce.ctc.edu, by January 20, 2023.

Assistance for Persons with Disabilities: Contact access and disability services, phone 253-964-6468, email ads@pierce.ctc.edu, by January 13, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Address state law compliance requirements with hazing legislation.

Reasons Supporting Proposal: Hazing legislation implemented by Washington state.

Statutory Authority for Adoption: RCW 28B.50.140(13).

Statute Being Implemented: RCW 28B.50.140(13).

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

Name of Proponent: Pierce College, Community College District Eleven, public.

Name of Agency Personnel Responsible for Drafting and Implementation: Julie Draper Davis, Pierce College District, 253-912-2331; Enforcement: Vice President of Learning and Student Success, Pierce College District, 253-840-8336.

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

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule will not impose any costs for the institution.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

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

November 30, 2022
Michele Johnson
Chancellor and CEO

OTS-4041.1

AMENDATORY SECTION (Amending WSR 21-11-045, filed 5/13/21, effective 6/13/21)

WAC 132K-135-040 Statement of jurisdiction. (1) The student conduct code shall apply to student conduct that occurs:

(a) On college premises;
(b) At or in connection with college-sponsored activities; or
(c) Off-campus where indicated in the rule or that in the judgment of the college adversely affects the college community, visitors, or the pursuit of the college's objectives.

(2) Jurisdiction extends to, but is not limited to, locations in which students are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences, or any other college-sanctioned social or club activities.

(3) Students are responsible for their conduct from the time of notification of acceptance at the college through the actual receipt of a degree or certificate, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment.

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

(5) The student conduct officer has sole discretion on a case-by-case basis to determine whether the student conduct code will be applied to conduct that occurs off-campus.

[Statutory Authority: RCW 28B.50.140(13). WSR 21-11-045, § 132K-135-040, filed 5/13/21, effective 6/13/21; WSR 17-13-102, § 132K-135-040, filed 6/20/17, effective 7/21/17.]

AMENDATORY SECTION (Amending WSR 21-11-045, filed 5/13/21, effective 6/13/21)

WAC 132K-135-070 Prohibited student conduct. The college may impose disciplinary sanctions against a student who commits, attempts to commit, aids, abets, incites, encourages, or assists another person to commit, an act(s) of misconduct which include, but are not limited to, the following:

(1) **Abuse of others.** Assault, physical abuse, verbal abuse, threat(s), intimidation, or other conduct, which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property unless otherwise protected by law.

(2) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication. The decision to bring a student conduct proceeding under this code for academic dishonesty is at the sole discretion of the student conduct officer. Nothing in this code prohibits instructors and/or academic divisions or departments from imposing academic consequences in response to academic dishonesty. Faculty may impose up to and including a failing grade in an academic class and academic divisions or departments may impose up to and including dismissal from an academic program. Policies and procedures governing the imposition of academic

consequences for academic dishonesty can be found in the class syllabus and applicable program handbook.

(a) Cheating includes using or any attempt to use, give or obtain unauthorized assistance relating to the completion of an academic assignment, test, or exam.

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Plagiarism may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(d) Multiple submissions includes submitting the same work in separate classes without the express permission of the instructor(s).

(e) Deliberate damage includes taking deliberate action to destroy or damage another's academic work or college property.

(f) No student shall be allowed to withdraw from a course or from the college to avoid the consequences of academic dishonesty.

(3) **Acts of dishonesty.** Acts of dishonesty include, but are not limited to:

(a) Forgery, alteration, submission of falsified documents, or misuse of any college document, record, or instrument of identification;

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

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

(4) **Alcohol.** The use, possession, manufacture, distribution, sale, or being under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(5) **Cyber misconduct.** Cyberstalking, cyberbullying, or online harassment. Use of electronic communications including, but not limited to, electronic mail (email), text messaging, social media sites, or applications (apps), to harass, abuse, bully, or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's electronic communications or computer activities directly or through spyware, sending threatening emails or texts, disrupting electronic communications with spam or by sending a computer virus, or sending false messages to third parties using another's identity (spoofing).

(6) **Discriminatory harassment.**

(a) Unwelcome and offensive conduct, not otherwise protected by law, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently severe, persistent, or pervasive as to:

(i) Limit the ability of a student to participate in or benefit from the college's educational, social, or housing programs; or

(ii) Create an intimidating, hostile, or offensive environment for other college community members and/or visitors.

(b) Discriminatory harassment may include, but is not limited to, physical, verbal, written, social media, and electronic communications.

(c) Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(7) **Disorderly conduct.** Conduct, or assisting or encouraging another person to engage in such conduct, which disrupts campus operations or the college's educational, social, or housing programs.

(8) **Disruption or obstruction.** Disruption or obstruction of instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college premises or at a college activity, or any activity that is authorized to occur on college premises, whether or not actually conducted or sponsored by the college.

(9) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

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

(11) **Harassment or bullying.** Conduct unrelated to a protected class that is unwelcome and sufficiently severe, persistent, or pervasive such that it could reasonably be expected to create an intimidating, hostile or offensive environment, or has the purpose or effect of unreasonably interfering with a person's academic or work performance, or a person's ability to participate in or benefit from the college's programs, services, opportunities, or activities.

(a) Harassing conduct may include, but is not limited to, physical, verbal, or nonverbal conduct, including written, social media and electronic communications unless otherwise protected by law.

(b) For purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior not otherwise protected by law when a reasonable person would feel humiliated, harmed, or intimidated.

(c) For purposes of this code, "intimidation" is an implied threat. Intimidation exists when a reasonable person would feel threatened or coerced even though an explicit threat or display of physical force has not been made. Intimidation is evaluated based on the intensity, frequency, or duration of the comments or actions.

(12) **Hazing.** ~~Hazing includes (, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm to any student)~~ any act, on or off the college premises, committed as part of a person's recruitment, initiation, pledging, admission into, or affiliation with a student organization, athletic team, or living group, or any pastime or amusement engaged in with respect to such an organization, athletic team, or living group that causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student or other person attending a public or private institution of higher education or other postsecondary educational institution in this state, including causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm, regardless of the person's willingness to partici-

ate. Hazing does not include customary athletic events or other similar contests or competitions.

(13) **Lewd conduct.** Conduct which is vulgar, obscene, or indecent, unless otherwise protected by law.

(14) **Marijuana or other drugs.**

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

(b) Drugs. The use, possession, delivery, sale, or being observably under the influence of any legend or prescription drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance, including narcotic drugs or opiates, under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

(15) **Misuse of computer time or electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

(a) Unauthorized use of such resources or unauthorized opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of such time or resources to interfere with someone else's work;

(e) Use of such time or resources to send, display, or print an obscene, harassing, or abusive message, text, or image;

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

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

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

(i) Failure to comply with the computer information systems resources acceptable use or subsequent similar policy.

(16) **Property violation.** Damage to, theft of, misappropriation of, unauthorized use or possession of, vandalism of, or other nonaccidental damaging or destruction of, real or personal property or money of:

(a) The college or state;

(b) Any student or college officer, employee, or student organization;

(c) Any other member of the college community, or visitors.

(17) **Retaliation.** Any intentional, adverse action taken by an accused individual or allied third party, absent legitimate nondiscriminatory purposes, as reprisal against any individual for reporting, providing information, exercising one's rights or responsibilities, or otherwise being involved in the process of responding to, investigating, or addressing allegations or violations of federal, state or local law, or college policies including, but not limited to, student conduct code provisions prohibiting discrimination and harassment. Retaliatory actions include, but are not limited to, threats or actual violence against the person or their property, adverse educational or

employment consequences, ridicule, intimidation, bullying, or ostracism.

(18) **Safety violations.** Safety violations include committing any reckless or unsafe act that endangers others, failing to follow established safety procedures, or interfering with or otherwise compromising any college policy, equipment, or procedure relating to the safety and security of the college community or visitors including, but not limited to, tampering with fire safety equipment or triggering false alarms and other emergency response systems.

(19) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX defined in the supplemental procedures to this code. See WAC 132K-135-300, et seq.

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

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

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

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

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

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

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

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

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

(iv) Statutory rape. Consensual intercourse between a person who is eighteen years of age or older, and a person who is under the age of sixteen.

(v) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of

the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(vi) Dating violence, physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(A) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(B) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(I) The length of the relationship;

(II) The type of relationship; and

(III) The frequency of interaction between the persons involved in the relationship.

(vii) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(A) Fear for their safety or the safety of others; or

(B) Suffer substantial emotional distress.

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

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

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

(20) **Tobacco, electronic cigarettes, and related products.** The college community and visitors will abide by all Washington state laws and college policy as it relates to the use of tobacco, electronic cigarettes, and related products, including chapter 70.160 RCW.

(21) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property. Providing keys to an unauthorized person or providing access to an unauthorized person is also prohibited.

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

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

(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties;

(b) A student with a valid concealed weapons permit may store a pistol in the student's vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view; or

(c) The president or chancellor may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission.

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

[Statutory Authority: RCW 28B.50.140(13). WSR 21-11-045, § 132K-135-070, filed 5/13/21, effective 6/13/21; WSR 17-13-102, § 132K-135-070, filed 6/20/17, effective 7/21/17.]

WSR 22-24-087
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed December 6, 2022, 8:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-17-126.

Title of Rule and Other Identifying Information: Reopening workers' compensation claims. WAC 296-20-097, under chapter 296-20 WAC, Medical aid rules.

Hearing Location(s): On January 11, 2023, at 9:00 a.m. Join Zoom meeting at <https://lni-wa-gov.zoom.us/j/9361655337>, Meeting ID 936 165 5337; join by phone +1 253-215-8782 US (Tacoma). Find your local number <https://lni-wa-gov.zoom.us/u/kdFrdfe0fg>. The virtual meeting starts at 9:00 a.m. and will continue until all oral comments are received.

Date of Intended Adoption: February 14, 2023.

Submit Written Comments to: Suzy Campbell, Department of Labor and Industries (L&I), Insurance Services, Legal Services, P.O. Box 44270, Olympia, WA 98504-4270, email suzanne.campbell@lni.wa.gov, fax 360-902-5029, by January 11, 2023, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Nathalie Penberthy, phone 360-902-4252, fax 360-902-6509, TTY 360-902-4252, email nathalie.penberthy@lni.wa.gov, by January 3, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Based on the legislation passed in 2022 adjusting the number of days prior to receipt of a reopening application for a workers' compensation claim, the department or self-insured employer can consider setting the effective date from 60 days up to 120 days when certain criteria are met. Due to the change in the statute, the existing rule, WAC 296-20-097 Reopenings, needs to be updated. Allowing the date to be set beyond 60 days up to 120 days may result in additional time-loss or medical benefits.

Reasons Supporting Proposal: The 2022 legislative session amended RCW 51.28.040 Application for change in compensation, by passing SHB 1902 to allow reopening of a workers' compensation claim up to 120 days prior to receipt of the application when certain criteria are met. Criteria that must be met is when the provider does not complete and file the application within 60 days of medical services **and** the worker submits the application within 30 days of medical services without medical completion. The worker must prove the application was received by the department or self-insurer. As a result of the legislation, WAC 296-20-097 Reopenings, needs to be amended to be consistent with the change in the statute.

Statutory Authority for Adoption: RCW 51.04.020, 51.04.030.

Statute Being Implemented: RCW 51.28.040.

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

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Suzy Campbell, Tumwater, Washington, 360-902-5003; Implementation: Debra Hatzialexiou, Tumwater, Washington, 360-902-6695; Enforcement: Mike Ratko, Tumwater, Washington, 360-902-4997.

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

A cost-benefit analysis is not required under RCW 34.05.328. This rule making is exempt from preparing a cost-benefit analysis under RCW 34.05.328 (5)(b)(iii) because the rule making is proposing to adopt language, without material change, [to] a Washington statute.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

December 6, 2022

Joel Sacks

Director

OTS-4146.1

AMENDATORY SECTION (Amending WSR 08-24-047, filed 11/25/08, effective 12/26/08)

WAC 296-20-097 Reopenings. When a claim has been closed by the department or self-insurer by written order and notice for ((sixty)) 60 days, submission of a formal "application to reopen claim for aggravation of condition" form # F242-079-000 is ((necessary)) preferred. The department or self-insurer is responsible for customary charges for examinations, diagnostic studies, and determining whether or not time-loss is payable regardless of the final action taken on the reopening application. Reopening applications should be submitted immediately. When reopening is granted, the department or self-insurer can pay time loss and treatment benefits only for a period not to exceed ((sixty)) 60 days prior to date the application is received by the department or self-insurer. The 60 days may be extended up to 120 days consistent with RCW 51.28.040. Necessary treatment should not be deferred pending a department or self-insurer adjudication decision. However, should reopening be denied treatment costs become the financial responsibility of the worker.

[Statutory Authority: RCW 51.04.020, 51.04.030, and Title 51 RCW. WSR 08-24-047, § 296-20-097, filed 11/25/08, effective 12/26/08. Statutory Authority: RCW 51.32.190 and 51.32.210. WSR 90-22-054, § 296-20-097, filed 11/5/90, effective 12/6/90. Statutory Authority: RCW 51.04.020(4), 51.04.030, and 51.16.120(3). WSR 81-24-041 (Order 81-28), § 296-20-097, filed 11/30/81, effective 1/1/82; WSR 81-01-100 (Order 80-29), § 296-20-097, filed 12/23/80, effective 3/1/81; Order 71-6, § 296-20-097, filed 6/1/71; Order 70-12, § 296-20-095 (codified as WAC 296-20-097), filed 12/1/70, effective 1/1/71. Formerly WAC 296-20-090.]

WSR 22-24-088
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed December 6, 2022, 8:22 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-17-127.

Title of Rule and Other Identifying Information: 2023 Transportation network companies (TNC) workers' compensation reporting and classification amendments. Chapter 296-17 WAC, General reporting rules, audit and recordkeeping, rates and rating system for Washington workers' compensation insurance; and chapter 296-17A WAC, Classifications for Washington workers' compensation insurance.

Hearing Location(s): On January 10, 2023, at 10:00 a.m. Join Zoom meeting at <https://lni-wa-gov.zoom.us/j/83026247785>, Meeting ID 830 2624 7785, Passcode Jan1023!; join by phone 1-253-215-8782 US (Tacoma), Meeting ID 830 2624 7785, Passcode 73006331. The hearing will begin at 10:00 a.m. and will continue until all oral comments are received.

Date of Intended Adoption: February 14, 2023.

Submit Written Comments to: Jo Anne Attwood, Department of Labor and Industries (L&I), Insurance Services, Employer Services, P.O. Box 44148, Olympia, WA 98504-4148, email JoAnne.Attwood@lni.wa.gov, fax 360-902-4988, by January 10, 2023, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Jo Anne Attwood, phone 360-902-4777, fax 360-902-4988, TTY 360-902-5797, email JoAnne.Attwood@lni.wa.gov, by January 5, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule proposal is to implement requirements of 2022's ESHB 2076 concerning rights and obligations of TNC drivers and TNCs. This new law provides workers' compensation insurance coverage to TNC drivers during platform dispatch and passenger dispatch time, among other rights and protections.

Proposed amendments include WAC 296-17-35205 Special reporting for taxi, for-hire, limousine drivers or entities, and commercial transportation services drivers and 296-17A-1401 Passenger transportation companies.

Reasons Supporting Proposal: Drivers previously exempt from workers' compensation coverage will be covered starting January 1, 2023. TNCs will report and pay for coverage. This rule proposal amends the reporting and classification rules to address the new requirements.

Statutory Authority for Adoption: RCW 51.16.035.

Statute Being Implemented: RCW 51.16.035.

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

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

Name of Proponent: L&I, governmental.

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

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

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required per RCW 34.05.328 (5)(b)(v) and (vi), as the proposed rules adjust rates pursuant to legislative standards in RCW 51.16.035.

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

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

Explanation of exemptions: The rule is fully exempt from a small business economic impact statement under RCW 34.05.310 (4)(e) and (f), as the proposed rules adjust rates as required by EHB 2076, codified as RCW 51.16.035.

Scope of exemption for rule proposal:

Is fully exempt.

December 6, 2022

Joel Sacks

Director

OTS-4174.1

AMENDATORY SECTION (Amending WSR 15-19-081, filed 9/15/15, effective 10/16/15)

WAC 296-17-35205 Special reporting for taxi, for-hire, limousine drivers or entities; and ((commercial)) transportation ((service drivers)) network companies. (1) ~~((When does the law providing for))~~ **Non-mandatory coverage ((begin? The law takes effect July 24, 2015, and exempts)).** The following individuals are excluded from mandatory coverage, ((who)) but may elect coverage as authorized under RCW 51.32.030:

(a) ~~((Drivers providing commercial transportation services (CTS), also sometimes known as transportation network company services (TNCs), as defined in Title 48 RCW;~~

~~(b))~~ For-hire vehicle operators as defined under chapter 46.72 RCW who own the for-hire vehicle or lease it from others;

~~((e))~~ (b) Limousine drivers as defined under chapter 46.72A RCW who own the limousine or lease it from others; and

~~((d))~~ (c) Taxicab operators, as defined under chapter 81.72 RCW, who own the taxicab or lease it from others.

(2) ~~((What are the special rules for these drivers and entities? If you are exempt from mandatory coverage as described in subsection (1) of this section:~~

~~(a) You may elect to buy workers' compensation insurance to cover yourself as provided by RCW 51.32.030 and as defined in WAC 296-17-31007 Owner coverage.~~

~~(b) For the reporting period July 1, 2015, through July 23, 2015, if we do not receive an application for optional coverage from you by~~

July 23, 2015, you must report your mandatory coverage on a prorated basis using one of these methods:

- ~~(i) For flat rate by driver, one hundred twenty hours per driver;~~
- ~~(ii) For flat rate by vehicle, two hundred forty hours per vehicle;~~
- ~~(iii) Actual hours worked.~~

~~(3) What are the quarterly reporting options for)) **Mandatory coverage.**~~

~~(a) Taxi, for-hire, limousine, and cabulance entities with employees must provide coverage for their workers.~~

~~(b) Transportation network companies (TNC) as defined in Title 49 RCW are required to report and pay premium to cover their drivers for the time the driver is in dispatch platform time or passenger platform time on the digital application. Drivers are only covered for a workplace injury or illness during these qualifying times.~~

~~(3) **Quarterly reporting.**~~

~~(a) **Taxi drivers and entities ((τ))_i for-hire drivers and entities ((, and CTS drivers? When reporting for an entire quarter)):**~~

~~((a) If you are)) (i) An exempt driver who has elected coverage, ((you)) may report ((your)) exposure under either subclassification 1401-01 (480 hours per quarter per driver) or 1401-03 (actual hours worked), but ((you)) must report all ((your)) exposure for the quarter under only one subclassification.~~

~~((b) If you are or)) (ii) An entity reporting mandatorily covered workers, ((you)) may choose to report all driver exposure under subclassifications 1401-01 (480 hours per quarter per driver), 1401-02 (960 hours per quarter per vehicle), or 1401-03 (actual hours worked), but ((you)) must report all driver exposure for a quarter under only one subclassification.~~

~~((e)) **Reporting method options:**~~

~~((i)) (A) Flat rate by driver - The rate is based on ((four hundred eighty)) 480 hours per driver each quarter (classification 1401-01);~~

~~((ii)) (B) Flat rate by vehicle - The rate is based on ((nine hundred sixty)) 960 hours per vehicle each quarter (classification 1401-02);~~

~~((iii)) (C) Actual hours - The rate is based on actual hours worked (classification 1401-03).~~

Special note: If you report by driver or by actual hours worked, you must maintain verifiable records, such as lease agreements or payroll records.

~~((4) What are the quarterly reporting options for)) (b) Limousine drivers and entities ((τ))_i and cabulance drivers and entities ((?))_i. For exempt drivers who elect coverage and for entities paying for coverage for mandatorily covered workers, when reporting an entire quarter, hours must be reported in one of the following methods:~~

~~((a)) (i) Actual hours worked; or~~

~~((b)) (ii) Four hundred eighty hours per quarter.~~

Special note: ((If you report)) Detailed records must be kept if reporting actual hours worked((, you must keep detailed records)).

(c) **Transportation network companies (TNC).**

TNCs must report quarterly the actual hours of each TNC driver for these times, as defined in chapter 49.46 RCW and this rule:

(i) "Dispatch platform time" means the time a driver spends traveling from a dispatch location to a passenger pick-up location. Dispatch platform time ends when a passenger cancels a trip or the driver begins the trip through the driver platform. A driver cannot simultaneously be engaged in dispatch platform time and passenger platform time for the same transportation network company. For shared rides, dispatch platform time means the time a driver spends traveling from the first dispatch location to the first passenger pick-up location.

(ii) "Dispatch location" means the location of the driver at the time the driver accepts a trip request through the driver platform. For the purposes of reporting and coverage, a driver accepts a trip request and dispatch platform time begins when the driver indicates through the driver platform that they are starting travel to a passenger pick-up location.

(iii) "Driver platform" means the driver-facing application dispatch system software or any online-enabled application service, website, or system, used by a driver, or which enables services to be delivered to a driver that enables the prearrangement of passenger trips for compensation.

(iv) "Passenger platform time" means the period of time when the driver is transporting one or more passengers on a trip. For shared rides, passenger platform time means the period of time commencing when the first passenger enters the driver's vehicle until the time when the last passenger exits the driver's vehicle.

Special note: TNCs must keep detailed records of each trip including; driver names, dispatch platform start and end times, and passenger platform start and end times. The department may request TNCs to provide supplemental quarterly reports containing this information.

[Statutory Authority: RCW 51.04.020 and 51.16.035. WSR 15-19-081, § 296-17-35205, filed 9/15/15, effective 10/16/15.]

OTS-4171.1

AMENDATORY SECTION (Amending WSR 15-19-081, filed 9/15/15, effective 10/16/15)

WAC 296-17A-1401 Classification 1401. ~~((Applies to providing passenger transportation to others, including:~~

- ~~• Establishments that employ taxi or for-hire drivers as defined under:

 - ~~— Either chapter 81.72 or 46.72 RCW; and~~
 - ~~— WAC 296-17-35205, which describes special reporting.~~~~
- ~~• Taxi or for-hire drivers as defined under either chapter 81.72 or 46.72 RCW, and who:

 - ~~— Own their own vehicles or who lease vehicles from others; and~~
 - ~~— Elect optional coverage as provided by RCW 51.32.030 and as defined in WAC 296-17-31007.~~~~
- ~~• Commercial transportation services (also known as transportation network company) drivers as defined in Title 48 who are exempt from coverage, but who have elected optional coverage as provided by RCW 51.32.030 and as defined in WAC 296-17-31007.~~
- ~~• Pedicab and horse drawn carriage companies.~~

~~**Special note:** If all conditions are met for the general reporting rules about standard exception employees, establishments that furnish only a dispatch service for taxicab drivers who own their own vehicles, or who lease vehicles from others, may be reported separately in classification 4904. Employees of a taxicab dispatch service who perform maintenance/repair of vehicles are reported separately in classification 3411.~~

~~Work contemplated by this classification includes, but is not limited to:~~

- ~~• Operation of the vehicle;~~
- ~~• Loading/unloading passengers' luggage;~~
- ~~• Assisting passengers in and out of the vehicle;~~
- ~~• Pickup and delivery of small packages; and~~
- ~~• Incidental "cabulance" services which may be offered in conjunction with the taxi service.~~

~~This classification excludes:~~

- ~~• Maintenance/repair of the vehicle which is be reported in classification 3411;~~
- ~~• Establishments that operate ambulance services which is reported separately in classification 1405;~~
- ~~• Establishments that operate cabulance and paratransit services exclusively which is reported separately in classification 1404; and~~
- ~~• Dispatchers with no other job duties who may be reported separately in classification 4904.~~

~~For administrative purposes, classification 1401 is divided into the following subclassification(s):~~

~~**1401-01 Passenger transportation companies -- Flat rate by driver**~~

~~This classification is for reporting drivers on a flat rate of four hundred eighty hours per driver each quarter.~~

~~**1401-02 Passenger transportation companies -- Flat rate by vehicle**~~

~~This classification is for reporting vehicles on a flat rate of nine hundred sixty hours per vehicle each quarter.~~

~~**1401-03 Passenger transportation companies - Actual hours**~~

~~This classification is for reporting employees on an actual hours worked basis.~~

~~**1401-04 Pedicab and horse-drawn carriage companies**~~

~~Applies to establishments engaged in furnishing passenger transportation to others using pedicab or horse-drawn carriage.~~

~~Work contemplated by this classification includes, but is not limited to, care and feeding of animals while the vehicle is available for transporting passengers.))~~

~~**1401-01 Passenger transportation companies - Flat rate by driver**~~

~~This classification is for reporting drivers on a flat rate of 480 hours per driver each quarter.~~

~~**Applies to:**~~

~~Businesses providing passenger transportation to others, including:~~

- ~~• Businesses that employ taxi or for-hire drivers as defined under either chapter 81.72 or 46.72 RCW; and WAC 296-17-35205, which describes special reporting.~~
- ~~• Taxi or for-hire drivers as defined under either chapter 81.72 or 46.72 RCW, and who own their own vehicles or who lease vehicles from others; and elect optional coverage as provided by RCW 51.32.030 and as defined in WAC 296-17-31007.~~

Work activities include, but are not limited to:

- Operation of the vehicle;
- Loading/unloading passengers' luggage;
- Assisting passengers in and out of the vehicle; and
- Incidental "cabulance" services which may be offered in conjunction with the taxi service.

Exclusions:

- Businesses that operate ambulance services are classified in 1405;
- Businesses that operate cabulance and paratransit services exclusively are classified in 1404;
- Dispatchers with no other job duties may be classified separately in 4904; and
- Work performing maintenance/repair of the vehicle is classified separately in 3411.

Special note: If all conditions are met for the general reporting rules about standard exception employees, businesses that furnish only a dispatch service for taxicab drivers who own their own vehicles, or who lease vehicles from others, may be classified separately in 4904. Employees of a taxicab dispatch service who perform maintenance/repair of vehicles are classified separately in 3411.

1401-02 Passenger transportation companies - Flat rate by vehicle

This classification is for reporting vehicles on a flat rate of 960 hours per vehicle each quarter.

Applies to:

- Businesses providing passenger transportation to others, including:
- Businesses that employ taxi or for-hire drivers as defined under either chapter 81.72 or 46.72 RCW; and WAC 296-17-35205, which describes special reporting.
 - Taxi or for-hire drivers as defined under either chapter 81.72 or 46.72 RCW, and who own their own vehicles or who lease vehicles from others; and elect optional coverage as provided by RCW 51.32.030 and as defined in WAC 296-17-31007.

Work activities include, but are not limited to:

- Operation of the vehicle;
- Loading/unloading passengers' luggage;
- Assisting passengers in and out of the vehicle; and
- Incidental "cabulance" services which may be offered in conjunction with the taxi service.

Exclusions:

- Businesses that operate ambulance services are classified in 1405;
- Businesses that operate cabulance and paratransit services exclusively are classified in 1404;
- Dispatchers with no other job duties may be classified separately in 4904; and
- Work performing maintenance/repair of the vehicle is classified separately in 3411.

Special note: If all conditions are met for the general reporting rules about standard exception employees, businesses that furnish only a dispatch service for taxicab drivers who own their own vehicles, or who lease vehicles from others, may be classified separately in 4904.

Employees of a taxicab dispatch service who perform maintenance/repair of vehicles are classified separately in 3411.

1401-03 Passenger transportation companies - Actual hours

This classification is for reporting employees on an actual hours worked basis.

Applies to:

Businesses providing passenger transportation to others, including:

- Transportation network companies as defined in Title 49 RCW. Special reporting and coverage requirements in WAC 296-17-35205;
- Businesses that employ taxi or for-hire drivers as defined under either chapter 81.72 or 46.72 RCW; and WAC 296-17-35205, which describes special reporting.
- Taxi or for-hire drivers as defined under either chapter 81.72 or 46.72 RCW, and who own their own vehicles or who lease vehicles from others; and elect optional coverage as provided by RCW 51.32.030 and as defined in WAC 296-17-31007.

Work activities include, but are not limited to:

- Operation of the vehicle;
- Loading/unloading passengers' luggage;
- Assisting passengers in and out of the vehicle; and
- Incidental "cabulance" services which may be offered in conjunction with the taxi service.

Exclusions:

- Businesses that operate ambulance services are classified in 1405;
- Businesses that operate cabulance and paratransit services exclusively are classified in 1404;
- Dispatchers with no other job duties may be classified separately in 4904; and
- Work performing maintenance/repair of the vehicle is classified separately in 3411.

Special note: If all conditions are met for the general reporting rules about standard exception employees, businesses that furnish only a dispatch service for taxicab drivers who own their own vehicles, or who lease vehicles from others, may be classified separately in 4904. Employees of a taxicab dispatch service who perform maintenance/repair of vehicles are classified separately in 3411.

1401-04 Pedicab and horse-drawn carriage companies

Applies to businesses engaged in furnishing passenger transportation to others using pedicab or horse-drawn carriage.

Work activities include, but are not limited to:

- Operation of the vehicle;
- Assisting passengers in and out of the vehicle; and
- The care and feeding of animals while vehicle is available for transporting passengers.

Businesses in this classification report the actual hours their employees work and must maintain verifiable records.

[Statutory Authority: RCW 51.04.020 and 51.16.035. WSR 15-19-081, § 296-17A-1401, filed 9/15/15, effective 10/16/15. Statutory Authority: RCW 51.04.020, 51.16.035, and 51.16.100. WSR 11-24-022, § 296-17A-1401, filed 11/30/11, effective 1/1/12. WSR 07-01-014, recodified as § 296-17A-1401, filed 12/8/06, effective 12/8/06. Statutory

Authority: RCW 51.16.035, 51.04.020. WSR 00-14-052, § 296-17-542, filed 7/1/00, effective 7/1/00. Statutory Authority: RCW 51.16.035. WSR 98-18-042, § 296-17-542, filed 8/28/98, effective 10/1/98; WSR 87-12-032 (Order 87-12), § 296-17-542, filed 5/29/87, effective 7/1/87; WSR 85-24-032 (Order 85-33), § 296-17-542, filed 11/27/85, effective 1/1/86; WSR 83-24-017 (Order 83-36), § 296-17-542, filed 11/30/83, effective 1/1/84; WSR 82-24-047 (Order 82-38), § 296-17-542, filed 11/29/82, effective 1/1/83; Order 73-22, § 296-17-542, filed 11/9/73, effective 1/1/74.]

WSR 22-24-100

PROPOSED RULES

STATE BOARD OF EDUCATION

[Filed December 6, 2022, 3:37 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-21-025.

Title of Rule and Other Identifying Information: State subject and credit requirements for high school graduation.

Hearing Location(s): On January 20, 2023, at 1:00 [p.m.], Zoom meeting link <https://us02web.zoom.us/j/81987932917>; in person at 600 Washington Street S.E., Olympia, WA 98504-7206. Hearing will be conducted in a hybrid format. Members of the public who wish to attend may participate either online through the Zoom link or may attend in person.

Date of Intended Adoption: February 16, 2022.

Submit Written Comments to: Linda Drake, P.O. Box 47206, email rulescoordinatorSBE@k12.wa.us, fax 360-586-2357, by January 31, 2023.

Assistance for Persons with Disabilities: Contact Jacki Verd, phone 360-725-6025, fax 360-586-2357, TTY 360-664-3631, email rulescoordinatorSBE@k12.wa.us, by January 31, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the rule revision is to align rules on state subject and credit requirements for high school graduation with current statute by allowing computer science courses to substitute for math or science graduation requirements under certain circumstances.

Reasons Supporting Proposal: Rules need to be revised to align with statute enacted in 2021.

Statutory Authority for Adoption: RCW 28A.230.090, 28A.150.220(7).

Statute Being Implemented: RCW 28A.230.300.

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

Name of Proponent: State board of education, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Randy Spaulding, 600 Washington Street S.E., Olympia, WA 98504-6024, 360-725-6024.

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

A cost-benefit analysis is not required under RCW 34.05.328. The rules implement state statute without material change (RCW 34.05.328 (5)(b)(iii)).

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

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rules relate to public school district course offerings and do not affect small businesses. Furthermore, the rules adopt state statute without material change.

Scope of exemption for rule proposal:

Is fully exempt.

December 5, 2022
Randy Spaulding
Executive Director

OTS-4224.1

AMENDATORY SECTION (Amending WSR 21-01-077, filed 12/10/20, effective 1/10/21)

WAC 180-51-210 State subject and credit requirements for high school graduation. (1) Definitions. The definitions in this section apply throughout this chapter.

(a) "Laboratory science" means any instruction that provides opportunities for students to interact directly with the material world, or with data drawn from the material world, using the tools, data collection techniques, models and theories of science. A laboratory science course meeting the requirement of subsection (4) of this section may include courses conducted in classroom facilities specially designed for laboratory science, or course work in traditional classrooms, outdoor spaces, or other settings which accommodate elements of laboratory science as identified in this subsection;

(b) "Personalized pathway" means a locally determined body of course work identified in a student's high school and beyond plan that is deemed necessary to attain the postsecondary career or educational goals chosen by the student;

(c) "Personalized pathway requirements" means up to three course credits chosen by a student that are included in a student's personalized pathway, that prepare the student to meet specific postsecondary career or educational goals, and that align with the student's high school and beyond plan. A student's personalized pathway requirements are included in the student's flexible credits, as defined in this subsection.

(d) "Core credit" is a credit earned through course work or through mastery-based credit in the subject areas listed in subsection (4) of this section. Students subject to the graduation requirements in this section must earn (~~seventeen~~) 17 core credits in high school. Core credits do not include electives or personalized pathway requirements and may not be waived under RCW 28A.230.090 (1)(e) or subsection (2) of this section.

(e) "Flexible credit" is a credit that is either an elective credit or a personalized pathway requirement. Flexible credits may be waived under RCW 28A.230.090 and subsection (2) of this section, and are listed in subsection (5) of this section.

(2) A school district that grants high school diplomas may waive up to two of the flexible credits required for graduation under subsection (~~(+4)~~) (5) of this section for an individual student, based on the student's circumstances. Districts will grant any such waiver in accordance with written district policy. A student granted a waiver under this subsection must earn the core credits in subsection (4) of this section, but may graduate with as few as (~~twenty-two~~) 22 credits, rather than (~~twenty-four~~) 24 credits.

(3) The statewide subject areas and credits required for high school graduation, for students who enter the ninth grade or begin the equivalent of a four-year high school program on or after July 1, 2017, (the class of 2021 and beyond) shall total (~~twenty-four~~) 24, except as otherwise provided in this section. The (~~twenty-four~~) 24 subject area credits for graduation include core credits and flexible credits listed in subsections (4) and (5) of this section. All credits are to be aligned with the state's learning standards developed under RCW 28A.655.070 for the subject and may be earned through mastery-

based credit. The contents of any course shall be determined by the local school district. Districts are encouraged to adopt culturally responsive curricula that is relevant to the district's students, including the incorporation of curricula about the history, culture, and government of the nearest federally recognized Indian tribe or tribes as required by RCW 28A.320.170.

(4) Core credits are credits and subject areas that may not be waived under RCW 28A.230.090 (1)(e) and subsection (2) of this section. The core credits include:

(a) Four **English** credits.

(b) Three **mathematics** credits.

(i) Unless otherwise provided for in (b)(ii), (iii), or (iv) of this subsection, the three mathematics credits required under this section must include:

(A) Algebra 1 or integrated mathematics I;

(B) Geometry or integrated mathematics II; and

(C) A third credit of high school mathematics, aligning with the student's interests and high school and beyond plan, with agreement of the student's parent or guardian. The high school and beyond plan must be provided to the student's parents or guardians in their native language if that language is one of the two most frequently spoken non-English languages of students in the district (RCW 28A.230.090). Districts are encouraged to provide plans to parents and guardians in additional languages as needed, to the extent feasible. If the parent or guardian is unavailable or does not indicate a preference for a specific course, agreement may be provided by the school counselor or principal.

(ii) A student who prior to ninth grade successfully completes one or more high school level math courses with a passing grade that is automatically transcribed on the student's high school transcript in accordance with RCW 28A.230.090 and WAC 180-51-030, or a student who demonstrates mastery in high school math subjects and has received credit for them, may use these credits to meet their math graduation requirements. Refer to WAC 180-51-030 for information about opting out of credits and numerical grades. Upon completion of algebra 1 or integrated math I, geometry or integrated math II, and a third credit of high school level math that aligns with the student's high school and beyond plan, schools are urged to encourage the student to consider additional math courses, which align with the student's education and career goals in their high school and beyond plan.

(iii) A student who prior to ninth grade successfully completes one or more high school level math courses with a passing grade and opts to receive no high school credit for such course(s) in accordance with RCW 28A.230.090 and WAC 180-51-030, or a student who demonstrated mastery in these subjects but did not receive high school credits, may either:

(A) Repeat the course(s) for credit in high school; or

(B) Earn three credits of high school mathematics in different math subjects than those completed before high school. The student must take algebra 1 or integrated mathematics I and geometry or integrated math II in high school if the student did not complete these courses at a high school level prior to high school, but the student does not need to repeat courses if the student already passed the courses at a high school level.

(iv) A student may substitute a computer science course aligned to state computer science learning standards as an alternative to a

third credit of math if the requirements of subsection (10) of this section are met.

(c) **Three science credits.**

(i) Unless otherwise provided for in (c)(ii) of this subsection, at least two of ((which)) the science credits must be in laboratory science. A student may choose the content of the third credit of science based on the student's interests and high school and beyond plan, with agreement of the student's parent or guardian. The high school and beyond plan must be provided to the student's parents or guardians in their native language if that language is one of the two most frequently spoken non-English languages of students in the district (RCW 28A.230.090). Districts are encouraged to provide plans to parents and guardians in additional languages as needed, to the extent feasible. If the parent or guardian is unavailable or does not indicate a preference for a specific course, the school counselor or principal may provide agreement with the plan.

(ii) A student may substitute a computer science course aligned to state computer science learning standards as an alternative to a third science credit, which may be a laboratory science course, if the requirements of subsection (10) of this section are met.

(d) Three **social studies** credits (two credits prescribed courses, plus one credit social studies elective) and Washington state history and government, a noncredit requirement typically met in middle school. In accordance with RCW 28A.320.170, when a school district board of directors reviews or adopts its social studies curriculum, it shall incorporate curricula about the history, culture, and government of the nearest federally recognized Indian tribe or tribes, so that students learn about the unique heritage and experience of those tribe or tribes. The social studies requirement shall consist of the following mandatory courses:

(i) One credit shall be required in United States history or its equivalent.

(ii) One-half credit shall be required in contemporary world history, geography, and problems, or its equivalent. Courses in economics, sociology, civics (through the class of 2023), political science, international relations, or related courses with emphasis on contemporary world problems may be accepted as equivalencies.

(iii) One-half credit shall be required in civics, including at a minimum the content listed in RCW 28A.230.094. Starting with the class of 2024, districts must offer this graduation requirement as a stand-alone course, subject to the provisions of RCW 28A.230.094.

(iv) Successful completion of Washington state history and government shall be required, subject to the provisions of RCW 28A.230.170, 28A.230.090, 28A.320.170 and WAC 392-410-120, and shall include information on the cultures, histories, and governments of the American Indian peoples who are the first inhabitants of the state. Successful completion of Washington state history must be noted on each student's transcript. The Washington state history requirement may be waived by the principal for individual students who:

(A) Have successfully completed a state history course of study in another state; or

(B) Are in (~~eleventh or twelfth~~) 11th or 12th grade and who have not completed a course of study in Washington's history because of previous residence outside the state or because emergency school closure, or other circumstance due to an emergency, prevented the student from having the opportunity to fulfill this requirement.

(e) One-half credit of **health**.

(f) One and one-half credit of **physical education**. Students may be excused from the physical education requirement under RCW 28A.230.050. Such excused students shall be required to demonstrate mastery in the knowledge portion of the physical education requirement, in accordance with written district policy. Such policies should be based upon addressing health and physical education learning standards as well as alternative means of engaging in physical activities, as directed in RCW 28A.210.365.

(g) One credit in **career and technical education**.

(i) Courses that meet this requirement include courses that are part of career and technical education programs, as defined in chapter 28A.700 RCW, or occupational education courses as identified by the district. "Occupational education" means credits resulting from a series of learning experiences designed to assist the student to acquire and demonstrate mastery of skills under student learning goal four and are required for success in current and emerging occupations. At a minimum, these competencies shall align with the definition of an exploratory course as contained in the career and technical program standards of the office of the superintendent of public instruction. Districts are encouraged to offer career and technical education programs, as defined in RCW 28A.700.010.

(ii) An exception of the career and technical education requirement may be made for private schools as provided in WAC 180-90-160.

(iii) A student who earns credit through a career and technical education course determined by the district or by the office of the superintendent of public instruction to be equivalent to a noncareer and technical education core course (RCW 28A.700.070 and subsection (7) of this section), will not be required to pass a course in the noncareer and technical education subject to earn a credit in that subject. The student earns one credit while meeting two graduation requirements, a career and technical education requirement and the non-career and technical education subject requirement. The total number of credits required for graduation remain unchanged, and the student will need to earn an additional elective credit.

(h) One **arts** credit. The essential content in this subject area may be satisfied in dance, media arts, music, theater, and visual arts.

(5) Flexible credits are credits that may be waived under RCW 28A.230.090 and subsection (2) of this section. Districts may replace these credits with local district requirements through written district policy. Flexible credits include:

(a) One **arts** credit. The essential content in this subject area may be satisfied in dance, media arts, music, theater and visual arts. This credit may be replaced with a personalized pathway requirement as provided in subsection (1)(c) of this section.

(b) Two credits in **world languages**. These credits may be replaced with personalized pathway requirements as provided in subsection (1)(c) of this section. If the student has an educational goal of attaining a baccalaureate degree, the student shall be advised to earn at least two credits in the same world language. Students who earn a Seal of Biliteracy (RCW 28A.300.575) are considered to have met this requirement.

(c) Four credits of **electives**.

(6) Each student shall have a **high school and beyond plan** to guide his or her high school experience and prepare the student for postsecondary education, training, and career, as described in WAC 180-51-220.

(7) Career and technical education courses determined by the district or by the office of the superintendent of public instruction to be equivalent to a noncareer and technical education course in accordance with RCW 28A.700.070 can be taken for credit in place of that course. Equivalencies may be determined for any of the core credit graduation requirements of subsection (4) of this section.

(8) Students who complete and pass all required International Baccalaureate Diploma Programme courses are considered to have satisfied state subject and credit requirements for graduation from a public high school, subject to the provisions of RCW 28A.230.090, 28A.230.170, and chapter 28A.230 RCW.

(9) A student with an individualized education program (IEP) must be provided the opportunity to meet graduation requirements that align with the student's high school and beyond plan, pursuant to WAC 180-51-115.

(10) A student may substitute a computer science course aligned to state computer science learning standards as an alternative to a third science credit, which may be laboratory science, or to a third math credit. This substitution of computer science for a third credit of math or a third credit of science may only be used once per student, and the following requirements must be met:

(a) Prior to the substitution, the school counselor provides the student and the student's parent or guardian with written notification of the consequences of the substitution on postsecondary opportunities;

(b) The student, the student's parent or guardian, and the student's school counselor or principal agree to the substitution; and

(c) The substitution is aligned with the student's high school and beyond plan.

[Statutory Authority: 2020 c 7 § 10-12 and RCW 28A.195.010, 28A.230.090, 28A.150.220(7). WSR 21-01-077, § 180-51-210, filed 12/10/20, effective 1/10/21. Statutory Authority: RCW 28A.230.090. WSR 20-01-101, § 180-51-210, filed 12/13/19, effective 1/13/20.]

WSR 22-24-107

PROPOSED RULES

DEPARTMENT OF ECOLOGY

[Order 21-01—Filed December 7, 2022, 8:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-23-105.

Title of Rule and Other Identifying Information: The Washington department of ecology (ecology) proposes new chapter 173-337 WAC, Safer products restrictions and reporting. This new chapter aims to reduce toxic chemicals in consumer products and implement chapter 70A.350 RCW.

For more information on this rule making, visit <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-337>.

Hearing Location(s): On January 18, 2023, at 10:00 a.m. PST, join the online hearing <https://waecy-wa-gov.zoom.us/j/87086239384?pwd=ZjU0Vk1xWjFnYmp5VDMvZWwhHRUMyZz09>; and on January 19, 2023, at 5:30 p.m. PST, join the online hearing <https://waecy-wa-gov.zoom.us/j/88155960286?pwd=NX1SZ3gzOEdoYzNGVlJQZHV0a05mZz09>. Ecology is hosting these events online and will provide presentations about proposed rules, question-and-answer sessions, and formal hearings. You can attend these events from any device with internet access.

Date of Intended Adoption: May 15, 2023.

Submit Written Comments to: Stacey Callaway, Department of Ecology, Hazardous Waste and Toxics Reduction Program, P.O. Box 47600, Olympia, WA 98504-7600 (United States mail), email safeproductswa@ecy.wa.gov, online <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-337>, by February 5, 2023.

Assistance for Persons with Disabilities: Contact ecology ADA coordinator, phone 360-407-6831, Washington relay service or TTY call 711 or 877-833-6341, email ecyADAcoordinator@ecy.wa.gov, <https://ecology.wa.gov/accessibility>, by January 13, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Ecology plans to conduct this rule making to:

- Reduce the use of priority chemicals in priority consumer products.
- Develop chapter 173-337 WAC in accordance with the regulatory actions outlined in the Final Regulatory Determinations Report to the legislature that ecology submitted in June 2022.

This rule making proposes to:

- Create reporting requirements or restrictions that apply to priority consumer products that contain priority chemicals. These include:
 - o PFAS in aftermarket stain- and water-resistance treatments, carpets and rugs, and leather and textile furnishings.
 - o Phthalates in personal care products (fragrances) and vinyl flooring.
 - o Organohalogen flame retardants in electric and electronic products.
 - o Flame retardants (as defined in RCW 70A.350.010) in recreational polyurethane foam.
 - o Phenolic compounds in laundry detergent, food and drink can linings, and thermal paper.

- Include provisions for repair and replacement parts, refurbished products, and previously owned products.

Reasons Supporting Proposal: Steady releases of chemicals from millions of consumer products make up the largest source of toxics entering Washington's environment. Toxic chemicals in consumer products can expose people:

- Directly from items such as personal care products, furniture, and household products.
- Indirectly from their environment—air we breathe, water we drink, and food we eat.

In 2019, the Washington state legislature passed the Pollution Prevention for Healthy People and Puget Sound Act to make consumer products safer for our families and environment. Chapter 70A.350 RCW directs ecology to restrict chemicals in products when safer alternatives exist. The proposed rule aims to:

- Reduce the use of toxic chemicals in products by restricting those chemicals when ecology identifies safer, available, and feasible alternatives.
 - Reduce consumers' exposure to toxic chemicals.
 - Reduce the amount of toxic chemicals that enter the environment.
- Increase product ingredient transparency.
- Encourage changes in the broader marketplace, both nationally and internationally.

Statutory Authority for Adoption: Chapter 70A.350 RCW, Toxic pollution.

Statute Being Implemented: Chapter 70A.350 RCW, Toxic pollution.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: For more information on this rule making, visit <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-337>. For more information on the safer products for Washington program, visit https://www.ezview.wa.gov/site/alias__1962/37555/safer_products_for_washington.aspx.

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Stacey Callaway, Lacey, Washington, 360-584-5661; Implementation and Enforcement: Camille Bennett, Lacey, Washington, 360-688-4312.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Stacey Callaway, Department of Ecology, Hazardous Waste and Toxics Reduction Program, P.O. Box 47600, Olympia, WA 98504-7600 (United States mail), phone 360-584-5661, Washington relay service or TTY call 711 or 877-833-6341, email saferproductswa@ecy.wa.gov.

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

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

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: Elements of the rule are specified in the authorizing statute (chapter 70A.350 RCW), such as requirements for the safer products Washington process and chemicals to be regulated. The impacts of the proposed rule are also mitigated by baseline requirements (required by law or rule regardless of adoption of the proposed rule), including 15 U.S.C. 2601. Finally, we did not identify small businesses in Washington in one of the industries affected by the proposed rule, though we did in other industries. See the Preliminary Regulatory Analyses - Ecology publication number 22-04-042 for this rule making for details.

The proposed rule does impose more-than-minor costs on businesses.

Small Business Economic Impact Statement (SBEIS)

This SBEIS presents the:

- Compliance requirements of the proposed rule.
- Results of the analysis of relative compliance cost burden.
- Consideration of lost sales or revenue.
- Cost-mitigating action taken by ecology, if required.
- Small business and local government consultation.
- Industries likely impacted by the proposed rule.
- Expected net impact on jobs statewide.

A small business is defined by the Regulatory Fairness Act (chapter 19.85 RCW) as having 50 or fewer employees. Estimated costs are determined as compared to the existing regulatory environment—the regulations in the absence of the rule. The SBEIS only considers costs to "businesses in an industry" in Washington state. This means that impacts, for this document, are not evaluated for government agencies.

The existing regulatory environment is called the "baseline" in this document. It includes only existing laws and rules at federal and state levels. This information is excerpted from ecology's complete set of regulatory analyses for this rule making. For complete discussion of the likely costs, benefits, minimum compliance burden, and relative burden on small businesses, see the associated Regulatory Analyses document (**Ecology publication no. 22-04-042, December 2022**).

COMPLIANCE REQUIREMENTS OF THE PROPOSED RULE, INCLUDING PROFESSIONAL SERVICES: The baseline for our analyses generally consists of existing rules and laws, and their requirements. This is what allows us to make a consistent comparison between the state of the world with and without the proposed rule.

For this rule making, the baseline includes:

- Toxic Pollution (chapter 70A.350 RCW).
- Toxic Substances Control Act, 15 U.S.C. §§ 2601, et seq.

The proposed rule would make the following changes:

- Restricting specific priority chemicals in designated priority consumer products.
- Requiring reporting of the use of specific priority chemicals in designated priority consumer products.

Restricting specific priority chemicals in designated priority consumer products: Baseline: Even if there are other regulations on priority chemicals and priority consumer products, we presume there currently are no restrictions on the specific combinations of priority chemicals in priority consumer products in Washington state.

Proposed: The proposed rule establishes restrictions on five priority chemicals in 10 designated priority consumer products manufactured, sold (including but not limited to wholesale, online, or retail), or distributed in Washington state.

In general, the restrictions prohibit the intentional use or addition of priority chemicals in priority consumer products. In some cases, the proposed rule sets concentration limits to align with restrictions from other jurisdictions. In other cases, where there were no existing limits, we either set a limit based on functionality or developed a rebuttable presumption. The rebuttable presumption describes our logic process for identifying products where restricted priority chemicals are likely intentionally added.

When we test regulated priority consumer products to determine compliance with the proposed rule, and we detect the chemicals identified in the rebuttable presumption, we will contact the manufacturer. The manufacturer then can rebut that presumption by certifying that they are not intentionally adding priority chemicals and providing some evidence to support that statement.

We expect the costs associated with rebutting ecology's presumptions around intentional use to be minimal. This is for two reasons: ecology has limited product testing resources and will only be able to test a handful of products for each product category.

We provide manufacturers with significant flexibility on how they rebut our presumptions. In some cases, it could be a certified letter from their suppliers; in other cases, it could be product testing. Product testing is not necessary if manufacturers have sufficient transparency across their supply chains or if they undertake improving supply chain transparency. Although we expect some costs associated with the rebuttable presumption, we do not analyze them in the preliminary regulatory analysis, as we do not require manufacturers to rebut the presumption. We also cannot confidently estimate the frequency of rebuttals, but assume that they would only undertake rebuttal if it was a net savings over otherwise needing to comply. So, our estimates of compliance costs and benefits conservatively assume no one rebuts the presumption in the proposed rule.

Expected impact: We expect the proposed rule to impact costs and the health of humans and the environment. We expect this requirement to result in costs to manufacturers, sellers (including, but not limited to, wholesale, online, or retail), and distributors of priority consumer products containing priority chemicals in Washington state. The costs would occur because some of the covered parties would have to reorient their production and investment patterns, and some would have to reconfigure their supply chains.

For some product categories, manufacturers would be required to integrate or develop new chemistries, redesign, or reformulate the product, and recertify new products.

Another main factor is the time needed to redesign products so that they meet safety standards, performance requirements, and aesthetic preferences.

In some instances, we expect decreased costs (benefits) for business, such as when product redesign eliminates the need for added chemicals. This would mean that a manufacturer would skip the step of

adding a chemical to the production process. Many of the chemicals included in the proposed rule are associated with human and environmental hazards:

- Cancer.
- Reproductive harm.
- Developmental harm.
- Endocrine disruption.
- Persistence in the environment.

If we continue to use and release these chemicals, they will continue to accumulate in the environment. People and animals interacting with the environment will experience increased exposures over time.

Contamination from priority chemicals has led to expensive clean-up efforts and widespread drinking water contamination.

By restricting the use of these chemicals in products where safer alternatives are feasible and available, we can reduce future clean-up costs and reduce the burden of diseases caused by the chemicals in the environment. This will benefit human health and the environment.

Requiring reporting use of specific priority chemicals in designated priority consumer products: Baseline: Although currently there is no requirement to report specific priority chemicals in designated priority consumer products in Washington state, for many reporting parties, a reporting requirement already exists in other jurisdictions. Some chemicals within these classes are also included in our chemicals of high concern to children (CHCC) list and are required to be reported in children's products as part of our Children's Safe Products Act (CSPA). See chapter 173-334 WAC.

Proposed: The purpose of the proposed rule's reporting requirement is to increase transparency in product ingredients. The proposed rule establishes reporting requirements for five priority chemicals in four designated priority consumer product categories. The proposed rule states the reporting party may be the:

- Manufacturer of the priority consumer product, or
- A trade organization representing the manufacturer.

The proposed rule would require the reporting party to submit a notification to ecology:

- By January 31 of the year after the effective date of the reporting requirement, as listed in the table below.
- Annually thereafter by January 31 each year.

The reporting party may submit a revised notification to ecology when a priority consumer product no longer contains an intentionally added priority chemical.

The notification must include the following information about a priority consumer product containing an intentionally added priority chemical, that is sold or offered for sale in Washington state during the prior calendar year:

- The name and CAS RN (chemical abstracts service registry number) of the priority chemical that is intentionally added, if the priority chemical has a CAS RN.
- The product category that contains the priority chemical. The product category means the "brick" level of the GS1 Global Product Classification (GPC) standard, which identifies products that

serve a common purpose, are of a similar form and material, and share the same set of category attributes.

- The product component within the product category that contains the priority chemical. The product component means a uniquely identifiable material or coating (including ink or dye) that is intended to be included as a part of a finished priority consumer product.
- A description of the function of the priority chemical.
- The concentration range of each intentionally added priority chemical in each product component in each product category. The reporting party may report the concentration in ranges rather than the exact concentration. If there are multiple concentrations for a given product component in a particular product category, the reporting party must report the highest concentration.
- The reporting ranges are:
 1. Less than 100 ppm (0.01 percent).
 2. Equal to or more than 100 ppm (0.01 percent), but less than 500 ppm (0.05 percent).
 3. Equal to or more than 500 ppm (0.05 percent), but less than 1,000 ppm (0.1 percent).
 4. Equal to or more than 1,000 ppm (0.1 percent), but less than 5,000 ppm (0.5 percent).
 5. Equal to or more than 5,000 ppm (0.5 percent), but less than 10,000 ppm (1.0 percent).
 6. Equal to or more than 10,000 ppm (1.0 percent).
- Contact information:
 1. The name and address of the reporting party.
 2. The name, address, phone number, and electronic mail address of the contact person for the reporting party.
 3. When a trade organization serves as the reporting party, the notification must include a list of the manufacturers they report for and all the required information.
 4. Which option in the hierarchy in the proposed rule best represents the reporting party.
 5. Any other information the reporting party deems relevant to the appropriate use of the product.

Expected impact: Reporting parties must notify ecology when they use a specific priority chemical in a specific priority consumer product. The reporting parties would need to create an account in the Interstate Chemical Clearinghouse (IC2) High Priority Chemicals Data System (HPCDS), create their inventory, and then create their annual report.

Reporting parties don't always know which chemicals are in their consumer product or the components, so they may need to contact entities in their supply chain to determine what chemicals are present.

This will likely also result in informational benefits, including increasing consumer awareness and informing government decision-making, reducing potential health impacts and litigation, and improving industry understanding of the presence of these chemicals across the supply chain. This knowledge would also serve as a deterrent for future uses where safe alternatives are available.

COSTS OF COMPLIANCE: EQUIPMENT, SUPPLIES, LABOR, PROFESSIONAL SERVICES, ADMINISTRATIVE COSTS:

Compliance with the proposed rule, compared to the baseline, is not likely to impose additional costs of professional services, based on the necessary estimation methods to deal with data gaps. Costs were estimated in terms of maximum potential lost sales (see next section).

COSTS OF COMPLIANCE: OTHER: Average annual costs per business in worst-case scenario for the restriction of specific priority chemicals in designated priority consumer products, five-year adaptation:

Chemical	Industry	Assumed share to switch, %	Possible maximum sales loss (millions \$)	Maximum annual costs for market (millions \$)	Number of businesses	Maximum annual cost per business
PFAS	Aftermarket stain and water resistance treatments	15	\$2.1	\$0.4	208	\$2,049
PFAS	Carpet and rugs	5	\$11.8	\$2.4	464	\$5,067
PFAS	Leather and textile furnishings	50	\$77.4	\$15.5	1,139	\$13,595
Ortho-Phthalates	Personal care and beauty products (fragrance)	0.7	\$62.5	\$12.5	4,357	\$2,869
Ortho-Phthalates	Vinyl flooring	2.4	\$47.4	\$9.5	5,036	\$1,881
Organohalogen flame retardants	Electric and electronic equipment (plastic device casings)	50	\$286.3	\$57.3	3,388	\$16,902
Flame retardants	Recreational polyurethane foam products	64	\$0	\$0	0	\$0
APE	Laundry detergent	95	\$1.9	\$0.4	519	\$732
Bisphenols	Drink can linings	5	\$25.1	\$5.0	352	\$14,242
Bisphenols	Thermal paper	50	\$34.7	\$6.9	256	\$27,142
Total	N/A	N/A	\$549.2	\$109.9	15,719	N/A

COMPARISON OF COMPLIANCE COST FOR SMALL VERSUS LARGE BUSINESSES: We calculated the estimated per-business costs to comply with the proposed rule, based on the costs estimated in Chapter 3 of this document. Note that in Chapter 3 we identified losses in sales for businesses in the United States with sales in Washington. The losses indicate how much of the revenues a business would lose if not adapted to the new regulations before the effective date. The costs of restrictions are shown for potentially illustrative purposes only.

In this section, we estimate compliance costs per employee for businesses in Washington. The results are shown in the tables below.

Compliance costs per employee for businesses with sales [of] consumer products with PFAS.

Type of cost (or total cost), by industry	Low	High
Aftermarket stain treatments	-	-
Average small business employment	9	9
Average employment at largest 10 percent of businesses	N/A ¹	N/A
Small business cost per employee	\$11,198	\$44,791
Largest business cost per employee	N/A	N/A
Carpets and rugs	-	-
Average small business employment	5	5
Average employment at largest 10 percent of businesses	N/A	N/A
Small business cost per employee	\$53,707	\$214,830
Largest business cost per employee	N/A	N/A
Leather and textile	-	-
Average small business employment	11	11
Average employment at largest 10 percent of businesses	N/A	N/A

Type of cost (or total cost), by industry	Low	High
Small business cost per employee	\$36,107	\$144,430
Largest business cost per employee	N/A	N/A

¹ We determined that all of the businesses in these industries working in Washington state are small.

As we did not identify large businesses in the above industries that would be impacted by the proposed rule, RFA requires us to consider all cost-mitigating options listed in the law, as far as is legal and feasible.

Compliance costs per employee for businesses with sales of consumer products with ortho-phthalates.

Type of cost (or total cost)	Low	High
Personal care products	-	-
Average small business employment	7	7
Average employment at largest 10 percent of businesses	240	240
Small business cost per employee	\$68,672	\$274,687
Largest business cost per employee	\$732	\$2,926
Vinyl flooring	-	-
Average small business employment	4	4
Average employment at largest 10 percent of businesses	400	400
Small business cost per employee	\$12,939	\$51,757
Largest business cost per employee	\$362	\$1,446

We conclude that the proposed rule is likely to have disproportionate impacts on small businesses, and therefore, ecology must include elements in the proposed rule to mitigate this disproportion, as far as is legal and feasible. As we could not identify any large businesses in the leather and textile industry, RFA requires us to consider all cost-mitigating options listed in the law, as far as is legal and feasible.

Compliance costs per employee for businesses with sales of consumer products with flame retardants.

Type of cost (or total cost)	Low	High
Recreational polyurethane foam products	-	-
Average small business employment	\$705,530	\$2,822,122
Average employment at largest 10 percent of businesses	N/A	N/A
Small business cost per employee	\$68,832	\$275,329
Largest business cost per employee	N/A	N/A

We identified only large businesses affected by the proposed rule's restriction on flame retardants in electronic products. As no small businesses are likely to be impacted, this section of the proposed rule is exempt under RFA (RCW 19.85.025(4)).

As we did not identify large businesses in the recreational polyurethane foam product industry that would be impacted by the proposed rule, RFA requires us to consider all cost-mitigating options listed in the law, as far as is legal and feasible.

Compliance costs per employee for businesses with sales consumer products with APEs.

Type of cost (or total cost)	Low	High
Average small business employment	2	2
Average employment at largest 10 percent of businesses	65	65

Type of cost (or total cost)	Low	High
Small business cost per employee	\$1,071	\$4,283
Largest business cost per employee	\$737	\$2,947

We conclude that the proposed rule is likely to have disproportionate impacts on small businesses, and therefore, ecology must include elements in the proposed rule to mitigate this disproportion, as far as is legal and feasible.

Compliance costs per employee for businesses with sales of consumer products with bisphenols - thermal paper.

Type of cost (or total cost)	Low	High
Average small business employment	9	9
Average employment at largest 10 percent of businesses	N/A	N/A
Small business cost per employee	\$17,091	\$68,366
Largest business cost per employee	N/A	N/A

As we did not identify large businesses in the above industry that would be impacted by the proposed rule, RFA requires us to consider all cost-mitigating options listed in the law, as far as is legal and feasible.

Compliance costs per employee for drink can linings: We did not identify businesses manufacturing drink can linings in Washington state.

CONSIDERATION OF LOST SALES OR REVENUE: Businesses that would incur costs could experience reduced sales or revenues if the proposed rule significantly affects the prices of the goods they sell. The degree to which this could happen is strongly related to each business's production and pricing model (whether additional lump-sum costs would significantly affect marginal costs), as well as the specific attributes of the markets in which they sell goods, including the degree of influence each firm has on market prices, as well as the relative responsiveness of market demand to price changes.

We used the REMI E3+ model for Washington state to estimate the impact of the proposed rule on directly affected markets, accounting for dynamic adjustments throughout the economy. The model accounts for: Interindustry impacts; price, wage, and population changes; and dynamic adjustment of all economic variables over time. As potential maximum costs were modeled as lost sales, we structured REMI inputs as lost sales by specified industries, with consumers reallocating that spending on other goods and services.

Initially, the total value of output (total amount of goods and services produced by Washington businesses) in the state (across all sectors) is modeled to increase by a high of \$644,000, with diminishing impacts over time.

MITIGATION OF DISPROPORTIONATE IMPACT: RFA (RCW 19.85.030(2)) states that: "Based upon the extent of disproportionate impact on small business identified in the statement prepared under RCW 19.85.040, the agency shall, where legal and feasible in meeting the stated objectives of the statutes upon which the rule is based, reduce the costs imposed by the rule on small businesses. The agency must consider, without limitation, each of the following methods of reducing the impact of the proposed rule on small businesses:

- (a) Reducing, modifying, or eliminating substantive regulatory requirements;
- (b) Simplifying, reducing, or eliminating recordkeeping and reporting requirements;

(c) Reducing the frequency of inspections;
 (d) Delaying compliance timetables;
 (e) Reducing or modifying fine schedules for noncompliance; or
 (f) Any other mitigation techniques including those suggested by small businesses or small business advocates."

We considered all the above options, the goals and objectives of the authorizing statutes (see Chapter 6), and the scope of this rule making. We limited compliance cost-reduction methods to those that:

- Are legal and feasible.
- Meet the goals and objectives of the authorizing statute.
- Are within the scope of this rule making.

The scope of this rule making was limited to identifying actions, restrictions, or reporting, so we could not legally include options (a), (c), and (e).

Ecology was required to start the proposed rule making with pre-determined requirements, established as actions recommended to the legislature.

We included the following elements and mitigation techniques in the proposed rule to reduce costs to small businesses.

During the rule-development process, ecology specifically sought input from a variety of industry associations. The intent was to help ensure representation of businesses of all sizes, not just from large manufacturers who have staff dedicated to these types of stakeholder activities. To address potential discrepancies between large and small manufacturers and distributors, we made the following provisions in the rule:

- Incorporated concentration limits and effective dates suggested by manufacturers, distributors, and their representatives as being reasonable.
- Incorporated tiered effective dates for large and small electronics manufacturers. Although "Group 2" businesses may include some that do not qualify as "small" businesses under Washington law, we determined it was preferable to be overinclusive instead of potentially excluding small businesses.
- Left the criteria and process for requesting an exemption open-ended and flexible. This will allow us to respond to small businesses and grant exemptions or compliance extensions on an individualized basis.
- Required the use of the IC2 database when submitting notifications to ecology. Some manufacturers already use this database if they must comply with Washington's CSPA (chapter 173-334 WAC) and with Oregon regulations. This can reduce costs to small businesses that already use the IC2 database.
- Exempted existing stock and repair and replacement parts manufactured before the effective date. This allows small businesses to continue selling existing stock and to continue repairing products manufactured before the effective date.

SMALL BUSINESS AND LOCAL GOVERNMENT CONSULTATION: We involved small businesses and local governments in the development of the proposed rule:

- Ecology held 29 stakeholder meetings on the topics of the proposed rule during cycle 1 of the program.
- Ecology organized 19 webinars on the topics of the proposed rule during cycle 1 of the program.

- Ecology published on the safer products for Washington web page announcements, reports, and other informational materials.
- Three informal public comment periods on the draft products report, draft regulatory determinations report, and a preliminary draft of the proposed rule.
- Outreach through the Washington department of health newsletter, shared with local health authorities, encouraging feedback.

NAICS CODES OF INDUSTRIES IMPACTED BY THE PROPOSED RULE: The proposed rule likely impacts the following industries with associated NAICS codes. NAICS definitions and industry hierarchies are discussed at <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?chart=2017>.

443142 Electronics stores
 334417 Electronic connector manufacturing
 334111 Electronic computer manufacturing
 334418 Printed circuit assembly manufacturing
 334419 Other electronic component manufacturing
 423620 Household appliances, electric housewares, and consumer electronics wholesalers
 423690 Other electronic parts and equipment merchant wholesalers
 326150 Polyurethane foam products manufacturing
 424610 Plastics foam merchant wholesalers
 314110 Carpets and rugs made from textile materials
 423220 Carpet merchant wholesalers
 442210 Carpet stores
 442299 Home furnishings stores
 423220 Home furnishings merchant wholesalers/linens (e.g., bath, bed, table) merchant wholesalers/towels merchant wholesalers
 314120 Bedspreads and bed sets made from purchased fabrics/towels or washcloths made from purchased fabrics/curtains and draperies, window, made from purchased fabrics
 337121 Household-type furniture, upholstered, manufacturing
 337211 Office furniture, padded, upholstered, or plain wood, manufacturing
 337214 Office furniture (except wood), padded, upholstered, or plain (except wood), manufacturing
 313310 Chemical finishing (e.g., fire, mildew, water resistance) fabrics
 332431 Metal cans, light gauge metal, manufacturing
 322230 Tapes (e.g., adding machine, calculator, cash register) made from purchased paper
 325992 Heat-sensitized (i.e., thermal) paper made from purchased paper
 325611 Detergents (e.g., dishwashing, industrial, laundry) manufacturing
 424690 Detergents merchant wholesalers
 326199 Vinyl floor coverings manufacturing
 325199 Perfume materials (i.e., basic synthetic chemicals, such as terpineol) manufacturing
 325620 Blending and compounding perfume bases/perfumes manufacturing
 339999 Atomizers (e.g., perfumes) manufacturing
 424210 Perfumes merchant wholesalers/deodorants, personal, merchant wholesalers
 325611 Hand soaps (e.g., hard, liquid, soft) manufacturing/bar soaps manufacturing

325620 Makeup (i.e., cosmetics) manufacturing/deodorants, personal, manufacturing/cosmetic creams, lotions, and oils manufacturing/hair preparations (e.g., conditioners, dyes, rinses, shampoos) manufacturing

IMPACT ON JOBS: We used the REMI E3+ model for Washington state to estimate the impact of the proposed rule on jobs in the state, accounting for dynamic adjustments throughout the economy.

The proposed rule would result in transfers of money within and between industries, as compared to the baseline. The modeled impacts on employment are the result of multiple small increases and decreases in employment, prices, and other economic variables across all industries in the state. As potential maximum costs were modeled as lost sales, we structured REMI inputs as lost sales by specified industries, with consumers reallocating that spending on other goods and services.

Industry	Initial Jobs Impact	Jobs Impact in 20 years
Whole state	7	0
Household appliance manufacturing	0	0
Retail trade	7	0
Wholesale trade	1	0

A copy of the statement may be obtained by contacting Stacey Callaway, Department of Ecology, Hazardous Waste and Toxics Reductions Program, P.O. Box 47600, Olympia, WA 98504-7600 (United States mail), phone 360-584-5661, Washington relay service or TTY call 711 or 877-833-6341, email saferproductswa@ecy.wa.gov.

December 7, 2022
 Heather R. Bartlett
 Deputy Director

OTS-4159.1

**Chapter 173-337 WAC
 SAFER PRODUCTS RESTRICTIONS AND REPORTING**

PART A - GENERAL

NEW SECTION

WAC 173-337-010 Authority and purpose. (1) **Authority.** Chapter 70A.350 Revised Code of Washington (RCW) authorizes ecology to:

- (a) Implement, administer, and enforce chapter 70A.350 RCW.

- (b) Regulate priority chemicals in priority consumer products.
- (2) **Purpose.** This chapter implements chapter 70A.350 RCW.
- (a) This chapter provides a regulatory framework to:
 - (i) Reduce the use of priority chemicals in priority consumer products by establishing restrictions.
 - (ii) Increase transparency in product ingredients by requiring notification.
- (b) This chapter establishes:
 - (i) Actions applicable persons must take related to manufacturing, selling (including, but not limited to, wholesale, online, or retail), or distributing priority consumer products containing priority chemicals in Washington state.
 - (ii) The enforcement process ecology will use if manufacturers fail to comply with this chapter.

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NEW SECTION

- WAC 173-337-015 Applicability.** (1) This chapter applies to any person who manufactures, sells, or distributes a priority consumer product that contains a priority chemical in Washington state.
- (2) This chapter does **not** apply to:
 - (a) Consumer products excluded from chapter 70A.350 RCW.
 - (b) Consumer products purchased outside of Washington state.
 - (c) Consumer products transported or stored in Washington state solely for sale or distribution to consumers outside of Washington state.
 - (d) Priority consumer product repair and replacement parts manufactured before the effective date of the restriction.
 - (e) Priority consumer products refurbished with repair or replacement parts manufactured before the effective date of the restriction.
 - (f) The recycling or disposal of existing stock.

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NEW SECTION

- WAC 173-337-020 Requesting an exemption.** (1) A person required to comply with this chapter may request an exemption from the requirements of this chapter.
- (2) Ecology will use objective factors, such as (a) through (c) of this subsection, in their evaluation of exemption requests.
 - (a) The priority chemical is functionally necessary to the priority consumer product and there is no alternative.
 - (b) It is not currently possible to comply with the restriction and also comply with another legally imposed requirement.
 - (c) An unforeseen event or circumstance limited the availability of alternatives.
 - (3) A person seeking exemption from the requirements of this chapter must submit a request to ecology that includes the following information:

- (a) Your name and address;
- (b) Requirements in this chapter from which you request an exemption;
- (c) A statement of the need and justification for the exemption. Include information, data, or sources relevant to the need and justification.
- (4) A person who submits a request for exemption must make the following certification:

"I certify under penalty of perjury under the law of Washington that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry as the person or one of the persons who manage(s) the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete."

- (5) A person who submits a request for exemption to ecology must comply with the requirements of this chapter until ecology approves their request.

[]

NEW SECTION

WAC 173-337-025 Acronyms and definitions. Unless ecology determines the context requires otherwise, the following definitions apply for the purposes of this chapter.

"Bisphenol" means a chemical with two phenol rings connected by a single linker atom. The linker atom and phenol rings may have additional substituents.

"Chemical abstracts service registry number" or **"CAS RN"** means the number assigned for identification of a particular chemical by the chemical abstracts service, a service of the American Chemical Society that indexes and compiles abstracts of worldwide chemical literature called *chemical abstracts*.

"Consumer product" means any item, including any component parts and packaging, sold for residential or commercial use.

"Ecology" means the Washington state department of ecology.

"Electronic display" means a display screen and associated electronics that, as its primary function, displays visual information from wired or wireless sources.

"Environmental justice" means the term as defined in chapter 70A.02 RCW.

"Existing stock" means consumer products in commerce at the time a restriction takes effect.

"External enclosures" means the plastic external part of the product that renders inaccessible all or any parts of the equipment that may otherwise present a risk of electric shock or retards propagation of flame initiated by electrical disturbances occurring within.

"FDA" means the United States Federal Drug Administration.

"Flame retardant" means a chemical that is added to or reacted with a material to effectively retard flames. Chemicals used in the product to provide anti-drip are not flame retardants as long as other chemicals are explicitly used for the purpose of flame retardancy.

"Inaccessible electronic component" means a part or component of an electronic product that is located inside and entirely enclosed within another material and is not capable of coming out of the product or being accessed during any reasonably foreseeable use or abuse of the product.

"Intended for indoor use" means a product designed primarily for use or storage inside buildings.

"Intended for outdoor use" means a product designed to maintain functionality after exposure to ultraviolet (UV) light, water, or immersion when used outdoors for an extended time.

"Intentionally added chemical" means a chemical that serves an intended function in the final product or in the manufacturing of the product or part of the product.

"Manufacturer" means any person, firm, association, partnership, corporation, governmental entity, organization, or joint venture that produces a product or is an importer or domestic distributor of a product sold or offered for sale in or into the state.

"Organohalogen" means a class of chemicals that includes any chemical containing one or more halogen elements bonded to a carbon.

"Ortho-phthalates" means synthetic chemical esters of benzenedicarboxylic acid consisting of two carboxy groups at ortho positions.

"Overburdened community" means the term as defined in chapter 70A.02 RCW.

"Perfluoroalkyl and polyfluoroalkyl substances" or **"PFAS"** means a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

"Phenolic compounds" means alkylphenol ethoxylates and bisphenols.

"ppm" means parts per million.

"Priority chemical" means the following chemicals or chemical classes used as, used in, or put in a priority consumer product.

- Perfluoroalkyl and polyfluoroalkyl substances;
- Phthalates;
- Organohalogen flame retardants;
- Flame retardants, as identified by the Washington state department of ecology under chapter 70A.430 RCW;
- Phenolic compounds;
- A chemical identified by ecology as a priority chemical under chapter 70A.350 RCW.

"Priority consumer product" means a product identified by ecology to be a significant source or use of a priority chemical.

"RCW" means the Revised Code of Washington.

"Sell" includes, but is not limited to, wholesale, online, and retail.

"Sensitive population" means the term as defined in chapter 70A.350 RCW.

"Thermal paper" means a paper coated with a material formulated to change color when exposed to heat.

"TMBPF" means tetramethyl bisphenol F (CAS RN: 5384-21-4).

"U.S.C." means the United States Code.

"WAC" means the Washington Administrative Code.

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NEW SECTION

WAC 173-337-030 Enforcement and penalties. (1) Any violation of this chapter is subject to the enforcement and penalty sanctions of chapter 70A.350 RCW.

(2) In accordance with chapter 70A.350 RCW:

(a) A manufacturer violating a requirement of this chapter is subject to a civil penalty **not** to exceed \$5,000 for each violation in the case of a first offense. Manufacturers who are repeat violators are subject to a civil penalty **not** to exceed \$10,000 for each repeat offense.

(b) A manufacturer may appeal any penalty provided for in this chapter to the pollution control hearings board.

(c) All penalties collected under this chapter shall be deposited in the model toxics control operating account created in RCW 70A.305.180.

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NEW SECTION

WAC 173-337-035 Severability. If any provision of this chapter or its application to any person is held invalid, the remainder of this chapter or the application of the provision to other persons or circumstances is not affected.

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NEW SECTION

WAC 173-337-040 Federal preemption. (1) This section applies in the event that either of the following federal regulatory actions occurs after the effective date of this chapter.

(a) The U.S. Environmental Protection Agency takes an action under the Toxic Substances Control Act, 15 U.S.C. Secs. 2601 through 2697, that preempts pursuant to 15 U.S.C. Sec. 2617 the enforcement of a restriction imposed by this chapter on a priority chemical in a priority consumer product.

(b) The U.S. Consumer Product Safety Commission takes an action under the Consumer Product Safety Act, 15 U.S.C. Secs. 2051 through 2089, or the Federal Hazardous Substances Act, 15 U.S.C. Secs. 1261 through 1278a, that preempts pursuant to 15 U.S.C. Sec. 2075 or 15 U.S.C. Sec. 1261 note "Effect Upon Federal and State Law" at

(b) (1) (B), the enforcement of a restriction imposed by this chapter on a priority chemical in a priority consumer product.

(2) If either of the preemptive federal regulatory actions described in subsection (1) of this section occurs, manufacturers will, starting on the date of the relevant federal agency action, be subject to the requirements of WAC 173-337-060 with regard to the affected priority chemical in the affected priority consumer product, instead of the restriction imposed by this chapter.

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NEW SECTION

WAC 173-337-045 Relation to other laws and rules. In addition to the requirements of this chapter and chapter 70A.350 RCW, other laws, rules, and ordinances may apply to priority consumer products containing priority chemicals. Nothing in this chapter is intended to excuse persons regulated by this chapter from complying with other laws, rules, ordinances, procedures, other restrictions, or limitations on regulated consumer products.

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NEW SECTION

WAC 173-337-050 Equity and environmental justice. (1) To strengthen the integration of equity and environmental justice considerations when implementing, administering, and enforcing chapter 70A.350 RCW, ecology will, to the extent legal and practical:

(a) Strive to collaborate and co-develop approaches to equitable and meaningful community engagement with overburdened communities, sensitive populations, tribes, and indigenous communities, and others.

(b) Pursue processes that facilitate and support the inclusion of overburdened communities that reduce barriers in equitable participation.

Examples of barriers include child care, food costs, ADA and other accessibility needs, and compensation for lived experience and expertise.

Examples of how community input may inform decision-making include determining:

- Preliminary priority chemicals, priority consumer products, and preliminary alternatives.

- Rule requirements.

- Compliance approach.

(c) Use existing data and information to document potential exposure disparities when identifying priority chemicals and priority consumer products. Examples of data and information include peer-reviewed scientific studies, government reports and data, demographic information, market-based research, and other sources reviewed by ecology.

(d) Prioritize chemicals and consumer products where regulatory actions may reduce disproportionate exposure.

(e) Work toward equitable access to safer consumer products. This includes, but is not limited to, considering overburdened communities and low-income populations' ability to access safer consumer products.

(2) Ecology will refer to guidance from relevant authorities including, but not limited to:

(a) Title VI of the Civil Rights Act 1964, 42 U.S.C. Sec. 2000D et seq.

(b) Chapter 70A.02 RCW - Environmental justice.

(c) Chapter 43.03.220 RCW - Compensation of members of part-time boards and commissions—Class one groups.

(d) The Washington state office of equity.

(e) Ecology's office of equity and environmental justice.

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NEW SECTION**WAC 173-337-055 Previously owned priority consumer products.**

(1) No person may sell or distribute a previously owned priority consumer product that they know violates a restriction in this chapter.

(2) This does **not** apply to a:

(a) Priority consumer product that has a reporting requirement.

(b) Priority consumer product manufactured before the effective date of the restriction, as listed in WAC 173-337-110 through 173-337-114.

(c) Repair part or replacement part manufactured before the effective date of the restriction, as listed in WAC 173-337-110 through 173-337-114.

(d) Priority consumer product refurbished with repair or replacement parts manufactured before the effective date of the restriction, as listed in WAC 173-337-110 through 173-337-114.

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NEW SECTION**WAC 173-337-060 Reporting requirements. (1) Applicability.**

(a) This section applies to a manufacturer of a priority consumer product required to submit a notification to ecology, as listed in WAC 173-337-110, 173-337-112, and 173-337-114. This chapter refers to that person as the "reporting party."

(b) The manufacturer of the priority consumer product or a trade organization representing the manufacturer may serve as the reporting party.

(c) **Reporting party.** The following hierarchy determines which person or entity ecology will hold primarily responsible for ensuring that ecology receives a complete, accurate, and timely notification.

(i) The person or entity that had the priority consumer product manufactured, unless it has **no** presence in the United States.

(ii) The person or entity that marketed the priority consumer product under their name or trademark, unless it has **no** presence in the United States.

(iii) The first person or entity, whether an importer or a distributor, who owned the priority consumer product in the United States.

(d) This chapter requires only one reporting party to submit notification with respect to a particular priority consumer product.

(2) Timing.

(a) The reporting party must submit a notification to ecology:

(i) By January 31st of the year after the effective date of the reporting requirement, as listed in WAC 173-337-110, 173-337-112, and 173-337-114.

(ii) Annually thereafter by January 31st each year.

(b) The reporting party may submit a revised notification to ecology when a priority consumer product **no** longer contains an intentionally added priority chemical.

(3) Notification contents.

(a) The notification must include information about a priority consumer product containing an intentionally added priority chemical,

that is sold or offered for sale in Washington state during the prior calendar year.

(b) The notification must include the following information:

(i) The name and CAS RN of the priority chemical that is intentionally added. If the priority chemical has a CAS RN, the notification must include it. If the priority chemical does **not** have a CAS RN, then include the generic name of the chemical.

(ii) The product category that contains the priority chemical. The product category means the "brick" level of the GS1 Global Product Classification (GPC) standard, which identifies products that serve a common purpose, are of a similar form and material, and share the same set of category attributes.

(iii) The product component within the product category that contains the priority chemical. The product component means a uniquely identifiable material or coating (including ink or dye) that is intended to be included as a part of a finished priority consumer product.

(iv) A description of the function of the priority chemical.

(v) The concentration range of each intentionally added priority chemical in each product component in each product category. The reporting party may report the concentration in ranges rather than the exact concentration. If there are multiple concentrations for a given product component in a particular product category, the reporting party must report the highest concentration.

The reporting ranges are:

(A) Less than 100 ppm (0.01%).

(B) Equal to or more than 100 ppm (0.01%), but less than 500 ppm (0.05%).

(C) Equal to or more than 500 ppm (0.05%), but less than 1,000 ppm (0.1%).

(D) Equal to or more than 1,000 ppm (0.1%), but less than 5,000 ppm (0.5%).

(E) Equal to or more than 5,000 ppm (0.5%), but less than 10,000 ppm (1.0%).

(F) Equal to or more than 10,000 ppm (1.0%).

(vi) **Contact information.**

(A) The name and address of the reporting party.

(B) The name, address, phone number, and electronic mail address of the contact person for the reporting party.

(C) When a trade organization serves as the reporting party, the notification must include a list of the manufacturers they report for and all the required information.

(D) Which option in the hierarchy in subsection (1)(c) of this section best represents the reporting party.

(vii) Any other information the reporting party deems relevant to the appropriate use of the product.

(c) If the reporting party determines the information in the prior annual notification did **not** change in the current reporting year, they must resubmit the data from the previous year's notification.

(d) This chapter does **not** require the reporting party to include:

(i) Specific formulations.

(ii) The specific name and address of the facility responsible for the use or addition of a priority chemical in the priority consumer product or product component.

(4) **Notification database.** The reporting party must use an ecology-designated notification database to submit the required notification to ecology.

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NEW SECTION

WAC 173-337-065 Confidential business information (CBI). A person who submits information to ecology may request that ecology treat that information as confidential as provided in RCW 43.21A.160 by providing appropriate documentation supporting the request.

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PART B - CHEMICALS AND CONSUMER PRODUCTS

NEW SECTION

WAC 173-337-110 PFAS. (1) Aftermarket stain- and water-resistance treatments.

(a) **Applicability.**

(i) Priority consumer products. This subsection applies to:

(A) Aftermarket stain-resistant treatments applied to textile and leather consumer products.

(B) Aftermarket water-resistant treatments applied to textile and leather consumer products.

(C) Aftermarket stain-resistant and water-resistant treatments applied to textile and leather consumer products.

(ii) This subsection does **not** apply to premarket topical chemical treatments applied during the manufacturing process.

(b) **Compliance schedule.** The restriction in (c) of this subsection takes effect on January 1, 2025.

(c) **Restriction.**

(i) No person may manufacture, sell, or distribute a priority consumer product described in (a) of this subsection that contains intentionally added PFAS.

This does **not** apply to a priority consumer product described in (a) of this subsection manufactured before January 1, 2025.

(ii) Ecology presumes the detection of total fluorine indicates the intentional addition of PFAS.

(iii) Manufacturers may rebut this presumption by submitting a statement to ecology that includes the following information:

(A) The name and address of the person submitting the statement.

(B) A statement that PFAS were **not** intentionally added. Provide credible evidence supporting that statement and include information, data, or sources relevant to demonstrate that PFAS were **not** intentionally added.

(2) **Carpets and rugs.**

(a) **Applicability.** Priority consumer products. This subsection applies to:

(i) Carpets intended for indoor use or intended for outdoor use.

(ii) Rugs intended for indoor use or intended for outdoor use, including carpeted mats.

(b) **Compliance schedule.** The restriction in (c) of this subsection takes effect on January 1, 2025.

(c) **Restriction.**

(i) No person may manufacture, sell, or distribute a priority consumer product described in (a) of this subsection that contains intentionally added PFAS.

This does **not** apply to a:

(A) Priority consumer product described in (a) of this subsection manufactured before January 1, 2025.

(B) Repair part or replacement part manufactured before January 1, 2025.

(C) Priority consumer product refurbished with repair or replacement parts manufactured before January 1, 2025.

(ii) Ecology presumes the detection of total fluorine indicates the intentional addition of PFAS.

(iii) Manufacturers may rebut this presumption by submitting a statement to ecology that includes the following information:

(A) The name and address of the person submitting the statement.

(B) A statement that PFAS were **not** intentionally added. Provide credible evidence supporting that statement and include information, data, or sources relevant to demonstrate that PFAS were **not** intentionally added.

(3) **Leather and textile furniture and furnishings intended for indoor use.**

(a) **Applicability.**

(i) Priority consumer products. This subsection applies to leather and textile furniture and furnishings intended for indoor use.

(ii) This subsection does **not** apply to:

(A) Leather and textile furniture and furnishings intended for outdoor use.

(B) Leather and textiles sold separately and not part of furniture and furnishings.

(b) **Compliance schedule.** The restriction in (c) of this subsection takes effect on January 1, 2026.

(c) **Restriction.**

(i) No person may manufacture, sell, or distribute a priority consumer product described in (a) of this subsection that contains intentionally added PFAS.

This does **not** apply to a:

(A) Priority consumer product described in (a) of this subsection manufactured before January 1, 2026.

(B) Repair part or replacement part manufactured before January 1, 2026.

(C) Priority consumer product refurbished with repair or replacement parts manufactured before January 1, 2026.

(ii) Ecology presumes the detection of total fluorine indicates the intentional addition of PFAS.

(iii) Manufacturers may rebut this presumption by submitting a statement to ecology that includes the following information:

(A) The name and address of the person submitting the statement.

(B) A statement that PFAS were **not** intentionally added. Provide credible evidence supporting that statement and include information,

data, or sources relevant to demonstrate that PFAS were **not** intentionally added.

(4) **Leather and textile furniture and furnishings intended for outdoor use.**

(a) **Applicability.**

(i) Priority consumer products. This subsection applies to leather and textile furniture and furnishings intended for outdoor use.

(ii) This subsection does **not** apply to:

(A) Leather and textile furniture and furnishings intended for indoor use.

(B) Leather and textiles sold separately and not part of furniture and furnishings.

(b) **Compliance schedule.** The reporting requirement in (c) of this subsection takes effect on January 1, 2024.

(c) **Reporting.** The manufacturer must provide notice that the priority consumer product described in (a) of this subsection, contains intentionally added PFAS. The manufacturer must provide notice to ecology in accordance with WAC 173-337-060.

(i) Ecology presumes the detection of total fluorine indicates the intentional addition of PFAS.

(ii) Manufacturers may rebut this presumption by submitting a statement to ecology that includes the following information:

(A) The name and address of the person submitting the statement.

(B) A statement that PFAS were **not** intentionally added. Provide credible evidence supporting that statement and include information, data, or sources relevant to demonstrate that PFAS were **not** intentionally added.

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NEW SECTION

WAC 173-337-111 Ortho-phthalates. (1) Fragrances in beauty products and personal care products.

(a) **Applicability.**

(i) Priority consumer products. This subsection applies to:

(A) Fragrances sold separately, such as perfumes and colognes.

(B) Fragrances used in beauty products, regardless of whether the item contains drug ingredients regulated by the FDA.

(C) Fragrances used in personal care products, regardless of whether the item contains drug ingredients regulated by the FDA.

(ii) This subsection does **not** apply to:

(A) Ortho-phthalates used in beauty products or personal care products for purposes other than as a solvent or fixative for fragrances.

(B) Active ingredients in products regulated by the FDA as drugs.

(C) Consumer products regulated by the FDA as medical devices.

(b) **Compliance schedule.** The restriction in (c) of this subsection takes effect on January 1, 2025.

(c) **Restriction.**

(i) No person may manufacture, sell, or distribute a priority consumer product described in (a) of this subsection that contains an intentionally added ortho-phthalate used as a solvent or fixative for fragrance ingredients.

This does **not** apply to a priority consumer product described in (a) of this subsection manufactured before January 1, 2025.

(ii) Ecology presumes the detection of ortho-phthalates **not** listed in the ingredients, indicates the intentional addition of ortho-phthalates as solvents or fixatives for fragrance ingredients.

(iii) Manufacturers may rebut this presumption by submitting a statement to ecology that includes the following information:

(A) The name and address of the person submitting the statement.

(B) A statement that an ortho-phthalate was **not** intentionally added as a solvent or fixative. Provide credible evidence supporting that statement and include information, data, or sources relevant to demonstrate that an ortho-phthalate was **not** intentionally added.

(2) **Vinyl flooring.**

(a) **Applicability.** Priority consumer products. This subsection applies to vinyl flooring.

(b) **Compliance schedule.** The restriction in (c) of this subsection takes effect on January 1, 2025.

(c) **Restriction.** No person may manufacture, sell, or distribute a priority consumer product described in (a) of this subsection that contains more than 1,000 ppm of any ortho-phthalate, individually or combined.

This does **not** apply to a:

(i) Priority consumer product described in (a) of this subsection manufactured before January 1, 2025.

(ii) Repair part or replacement part manufactured before January 1, 2025.

(iii) Priority consumer product refurbished with repair or replacement parts manufactured before January 1, 2025.

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NEW SECTION

WAC 173-337-112 Flame retardants. (1) Electric and electronic products with plastic external enclosures, intended for indoor use.

(a) **Applicability.**

(i) Priority consumer products. This subsection applies to electric and electronic products with plastic external enclosures, intended for indoor use that are powered by either of the following:

(A) Standard 120 volt outlets and designed for up to 20 amp circuit;

(B) Battery.

(ii) This subsection does **not** apply to:

(A) Electric and electronic products with plastic external enclosures, intended for outdoor use.

(B) Consumer products that receive power only when they are hard-wired into and permanently part of the fixed electrical wiring of a building. This includes wiring devices, control devices, electrical distribution equipment, and lighting equipment.

(C) Products regulated by the FDA as medical devices.

(D) Products designed to use nonelectric heating energy sources, such as natural gas.

(iii) This subsection does **not** apply to the following parts of the priority consumer products described in (a) of this subsection.

(A) Inaccessible electronic component, such as printed circuit boards and internal fans.

(B) Internal parts that are removable and replaceable, but not accessible once the product is in its fully assembled and functional form.

(C) Plastic external enclosure parts that weigh less than 0.5 grams.

(D) Screens. This subsection does apply to the plastic enclosure surrounding the screen.

(E) Wires, cords, cables, switches, light bulbs, and connectors.

(b) **Compliance schedule.**

(i) Group definitions.

(A) "**Group 1**" means a person or entity whose gross sales equal or exceed \$1,000,000,000 in 2022.

(B) "**Group 2**" means a person or entity whose gross sales are less than \$1,000,000,000 in 2022.

(ii) Electronic displays and televisions compliance schedule.

(A) The restriction in (c) of this subsection takes effect on January 1, 2025, for persons or entities in Group 1 or Group 2 who manufacture, sell, or distribute:

- Electronic displays described in (a) of this subsection;

- Televisions described in (a) of this subsection.

(B) This does **not** include the following priority consumer products:

- All-in-one video conference systems;

- Displays that are integrated with appliances and are not available for purchase as separate products by end-users;

- Projectors;

- Virtual reality headsets.

(iii) Group 1 compliance schedule.

(A) The restriction in (c) of this subsection takes effect on January 1, 2026, for persons or entities in Group 1 who manufacture, sell, or distribute a priority consumer product described in (a) of this subsection. This includes:

- All-in-one video conference systems;

- Displays that are integrated with appliances and are not available for purchase as separate products by end-users;

- Projectors;

- Virtual reality headsets.

(B) This does **not** include the following priority consumer products described in (a) of this subsection:

- Electronic displays described in (a) of this subsection;

- Televisions described in (a) of this subsection.

(iv) Group 2 compliance schedule.

(A) The restriction in (c) of this subsection takes effect on January 1, 2027, for persons or entities in Group 2 who manufacture, sell, or distribute a priority consumer product described in (a) of this subsection. This includes:

- All-in-one video conference systems;

- Displays that are integrated with appliances and are not available for purchase as separate products by end-users;

- Projectors;

- Virtual reality headsets.

(B) This does **not** include the following priority consumer products described in (a) of this subsection:

- Electronic displays described in (a) of this subsection;

- Televisions described in (a) of this subsection.

(c) **Restriction.**

(i) No person may manufacture, sell, or distribute a priority consumer product described in (a) of this subsection that has a plastic external enclosure that contains intentionally added organohalogen flame retardants.

This does **not** apply to a:

(A) Priority consumer product described in (a) of this subsection manufactured before the applicable compliance schedules in (b) of this subsection;

(B) Repair part or replacement part manufactured before the applicable compliance schedules in (b) of this subsection;

(C) Priority consumer product refurbished with repair or replacement parts manufactured before the applicable compliance schedules in (b) of this subsection.

(ii) Ecology presumes the detection of:

(A) Total bromine concentrations above 1,000 ppm indicate intentionally added organohalogen flame retardants.

(B) Total chlorine concentrations above 1,000 ppm indicate intentionally added organohalogen flame retardants.

(C) Total fluorine concentrations above 1,000 ppm with less than 5,000 ppm total phosphorus indicate intentionally added organohalogen flame retardants.

(iii) Manufacturers may rebut this presumption by submitting a statement to ecology that includes the following information:

(A) The name and address of the person submitting the statement;

(B) A statement that an organohalogen flame retardant was **not** intentionally added. Provide credible evidence supporting that statement and include information, data, or sources relevant to demonstrate that an organohalogen flame retardant was **not** intentionally added.

(2) **Electric and electronic products with plastic external enclosures, intended for outdoor use.**

(a) **Applicability.**

(i) Priority consumer products. This subsection applies to electric and electronic products with plastic external enclosures, intended for outdoor use that are powered by either of the following:

(A) Standard 120 volt outlets and designed for up to 20 amp circuit;

(B) Battery.

(ii) This subsection does **not** apply to:

(A) Electric and electronic products with plastic external enclosures, intended for indoor use.

(B) Consumer products that receive power only when they are hard-wired into and permanently part of the fixed electrical wiring of a building. This includes wiring devices, control devices, electrical distribution equipment, and lighting equipment.

(C) Products regulated by the FDA as medical devices.

(D) Products designed to use nonelectric heating energy sources, such as natural gas.

(iii) This subsection does **not** apply to the following parts of the priority consumer products described in (a) of this subsection:

(A) Inaccessible electronic component, such as printed circuit boards and internal fans;

(B) Internal parts that are removable and replaceable, but not accessible once the product is in its fully assembled and functional form;

(C) Plastic external enclosure parts that weigh less than 0.5 grams;

(D) Screens. This subsection does apply to the plastic enclosure surrounding the screen;

(E) Wires, cords, cables, switches, light bulbs, and connectors.

(b) **Compliance schedule.** The reporting requirement in (c) of this subsection takes effect on January 1, 2024.

(c) **Reporting.** The manufacturer must provide notice that the priority consumer product described in (a) of this subsection, contains an intentionally added organohalogen flame retardant. The manufacturer must provide notice to ecology in accordance with WAC 173-337-060.

(i) Ecology presumes the detection of:

(A) Total bromine concentrations above 1,000 ppm indicate intentionally added organohalogen flame retardants.

(B) Total chlorine concentrations above 1,000 ppm indicate intentionally added organohalogen flame retardants.

(C) Total fluorine concentrations above 1,000 ppm with less than 5,000 ppm total phosphorus indicate intentionally added organohalogen flame retardants.

(ii) Manufacturers may rebut this presumption by submitting a statement to ecology that includes the following information:

(A) The name and address of the person submitting the statement;

(B) A statement that an organohalogen flame retardant was **not** intentionally added. Provide credible evidence supporting that statement and include information, data, or sources relevant to demonstrate that an organohalogen flame retardant was **not** intentionally added.

(3) **Recreational covered wall padding made from polyurethane foam.**

(a) **Applicability.**

(i) Priority consumer products. This subsection applies to recreational covered wall padding made from polyurethane foam.

(ii) This subsection does **not** apply to the priority consumer products listed in subsection (4)(a)(i) of this section.

(b) **Compliance schedule.** The reporting requirement in (c) of this subsection takes effect on January 1, 2024.

(c) **Reporting.** The manufacturer must provide notice that the priority consumer product described in (a) of this subsection, contains an intentionally added priority chemical listed in (c)(i) of this subsection. The manufacturer must provide notice to ecology in accordance with WAC 173-337-060.

(i) Priority chemicals.

(A) Organohalogen flame retardant.

(B) The following organophosphate flame retardants:

• Ethylhexyl diphenyl phosphate (EHDPP, CAS RN: 1241-94-7);

• Isopropylated triphenyl phosphate (IPTPP, CAS RN: 68937-41-7);

• Tributyl phosphate (TNBP, CAS RN: 126-73-8);

• Triorthocresyl phosphate (TCP, CAS RN: 1330-78-5);

• Triphenyl phosphate (TPP, CAS RN: 115-86-6).

(ii) Ecology presumes the detection of:

(A) Total bromine concentrations above 1,000 ppm indicate intentionally added organohalogen flame retardants.

(B) Total chlorine concentrations above 1,000 ppm indicate intentionally added organohalogen flame retardants.

(C) Total fluorine concentrations above 1,000 ppm indicate intentionally added organohalogen flame retardants.

(D) Organophosphate flame retardants listed in (c)(i) of this subsection (individual or combined) at concentrations above 1,000 ppm indicate intentionally added organophosphate flame retardants.

(iii) Manufacturers may rebut this presumption by submitting a statement to ecology that includes the following information:

(A) The name and address of the person submitting the statement;

(B) A statement that an organohalogen flame retardant or an organophosphate flame retardant listed in (c)(i) of this subsection, was **not** intentionally added. Provide credible evidence supporting that statement and include information, data, or sources relevant to demonstrate that an organohalogen flame retardant or an organophosphate flame retardant was **not** intentionally added.

(4) **Other recreational products made from polyurethane foam.**

(a) **Applicability.**

(i) Priority consumer products. This subsection applies to:

(A) Recreational covered flooring made from polyurethane foam;

(B) Recreational covered mats made from polyurethane foam;

(C) Outdoor recreational products made from polyurethane foam;

(D) Uncovered recreational products made from polyurethane foam.

(ii) This subsection does **not** apply to:

(A) Recreational covered wall padding made from polyurethane foam.

(B) Outdoor playground equipment.

(b) **Compliance schedule.** The restriction in (c) of this subsection takes effect on January 1, 2025.

(c) **Restriction.** No person may manufacture, sell, or distribute a priority consumer product described in (a) of this subsection that contains an intentionally added priority chemical listed in (c)(i) of this subsection, individually or combined.

This does **not** apply to a priority consumer product described in

(a) of this subsection manufactured before January 1, 2025.

(i) Priority chemicals.

(A) Organohalogen flame retardant.

(B) The following organophosphate flame retardants:

• Ethylhexyl diphenyl phosphate (EHDPP, CAS RN: 1241-94-7);

• Isopropylated triphenyl phosphate (IPTPP, CAS RN: 68937-41-7);

• Tributyl phosphate (TNBP, CAS RN: 126-73-8);

• Triorthocresyl phosphate (TCP, CAS RN: 1330-78-5);

• Triphenyl phosphate (TPP, CAS RN: 115-86-6).

(ii) Ecology presumes the detection of:

(A) Total bromine concentrations above 1,000 ppm indicate intentionally added organohalogen flame retardants.

(B) Total chlorine concentrations above 1,000 ppm indicate intentionally added organohalogen flame retardants.

(C) Total fluorine concentrations above 1,000 ppm indicate intentionally added organohalogen flame retardants.

(D) Organophosphate flame retardants listed in (c)(i) of this subsection (individual or combined) at concentrations above 1,000 ppm indicate intentionally added organophosphate flame retardants.

(iii) Manufacturers may rebut this presumption by submitting a statement to ecology that includes the following information:

(A) The name and address of the person submitting the statement;

(B) A statement that an organohalogen flame retardant or an organophosphate flame retardant listed in (c)(i) of this subsection, was **not** intentionally added. Provide credible evidence supporting that statement and include information, data, or sources relevant to demonstrate that an organohalogen flame retardant or an organophosphate flame retardant was **not** intentionally added.

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NEW SECTION**WAC 173-337-113 Alkylphenol ethoxylates. Laundry detergent.**

(1) **Applicability.** Priority consumer products. This subsection applies to laundry detergent.

(2) **Compliance schedule.** The restriction in subsection (3) of this section takes effect on January 1, 2025.

(3) **Restriction.** No person may manufacture, sell, or distribute a priority consumer product described in subsection (1) of this section that contains more than 1,000 ppm of any alkylphenol ethoxylates, individually or combined.

This does **not** apply to a priority consumer product described in subsection (1) of this section manufactured before January 1, 2025.

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NEW SECTION**WAC 173-337-114 Bisphenols. (1) Drink can linings.****(a) Applicability.**

(i) Priority consumer products. This subsection applies to drink can linings.

(ii) This subsection does **not** apply to food can linings.

(b) **Compliance schedule.** The restriction in (c) of this subsection takes effect on January 1, 2025.

(c) Restriction.

(i) No person may manufacture, sell, or distribute a priority consumer product described in (a) of this subsection that contains a bisphenol-based epoxy can liner, excluding TMBPF-based epoxy can liners.

This does **not** apply to a priority consumer product described in (a) of this subsection manufactured before January 1, 2025.

(ii) Ecology presumes the detection of a bisphenol, excluding TMBPF, indicates a bisphenol-based epoxy can liner.

(iii) Manufacturers may rebut this presumption by submitting a statement to ecology that includes the following information:

(A) The name and address of the person submitting the statement;

(B) A statement that the priority consumer product does **not** contain a bisphenol-based epoxy can liner. Provide credible evidence supporting that statement and include information, data, or sources relevant to demonstrate that the priority consumer product does **not** contain a bisphenol-based epoxy can liner.

(2) Food can linings.**(a) Applicability.**

(i) Priority consumer products. This subsection applies to food can linings.

(ii) This subsection does **not** apply to drink can linings.

(b) **Compliance schedule.** The reporting requirement in (c) of this subsection takes effect on January 1, 2024.

(c) **Reporting.** The manufacturer must provide notice that the priority consumer product described in (a) of this subsection, contains a bisphenol-based epoxy can liner. This does **not** include TMBPF-based epoxy can liners.

The manufacturer must provide notice to ecology in accordance with WAC 173-337-060.

(i) Ecology presumes the detection of a bisphenol, excluding TMBPF, indicates a bisphenol-based epoxy can liner.

(ii) Manufacturers may rebut this presumption by submitting a statement to ecology that includes the following information:

(A) The name and address of the person submitting the statement;

(B) A statement that the priority consumer product does **not** contain a bisphenol-based epoxy can liner. Provide credible evidence supporting that statement and include information, data, or sources relevant to demonstrate that the priority consumer product does **not** contain a bisphenol-based epoxy can liner.

(3) **Thermal paper.**

(a) **Applicability.** Priority consumer products. This subsection applies to thermal paper.

(b) **Compliance schedule.** The restriction in (c) of this subsection takes effect on January 1, 2025.

(c) **Restriction.** No person may manufacture, sell, or distribute a priority consumer product described in (a) of this subsection that contains more than 200 ppm of any individual bisphenol.

This does **not** apply to a priority consumer product described in (a) of this subsection manufactured before January 1, 2025.

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