

**WSR 23-07-006**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**CHILDREN, YOUTH, AND FAMILIES**

[Filed March 1, 2023, 5:04 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-12-013.

Title of Rule and Other Identifying Information: Chapter 110-300E WAC, Outdoor nature-based programs: WAC 110-300E-0001 Authority, 110-300E-0005 Definitions, 110-300E-0015 Outdoor nature-based licensing agreement—Uniform rules, 110-300E-0020 Enforcement actions—Right of review—Process of seeking review, and 110-300E-0400 Outdoor nature-based licenses—Application.

Hearing Location(s): On April 25, 2023, telephonic. Oral comments may be made by calling 360-972-5385 and leaving a voicemail that includes the comment and an email or a physical address where the department of children, youth, and families (DCYF) will send its response. Comments received through and including April 25, 2023, will be considered.

Date of Intended Adoption: April 26, 2023.

Submit Written Comments to: DCYF rules coordinator, email [dcyf.rulescoordinator@dcyf.wa.gov](mailto:dcyf.rulescoordinator@dcyf.wa.gov), <https://dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/online>.

Assistance for Persons with Disabilities: Contact DCYF rules coordinator, phone 360-972-5385, email [dcyf.rulescoordinator@dcyf.wa.gov](mailto:dcyf.rulescoordinator@dcyf.wa.gov), by March 30, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Repeal chapter 110-300E WAC under which outdoor nature-based child care programs were required to agree with, enter into, and comply with the terms and conditions of an outdoor, nature-based licensing agreement prepared by DCYF.

Reasons Supporting Proposal: Section 28, chapter 304, Laws of 2021, authorized the department to license outdoor nature-[based] (ONB) child care effective July 1, 2021. Prior to the authorization, DCYF had conducted a pilot to determine the feasibility of licensing ONB programs. To participate in the pilot, ONB programs were required to agree with, enter into, and comply with the terms and conditions of an outdoor, nature-based licensing agreement prepared by DCYF. To accommodate the July 1, 2021, authorization, DCYF developed a phased approach under which licensing would continue using agreements similar to those used during the pilot while foundational quality standards to include health and safety standards were developed. DCYF proposed chapter 100-302 [110-302] WAC Foundational quality standards for outdoor nature-based programs under WSR 22-23-072 on November 10, 2022. Once chapter 110-302 WAC is in effect, chapter 110-300E WAC will not be needed.

Statutory Authority for Adoption: RCW 43.216.742.

Statute Being Implemented: RCW 43.216.742.

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

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Debbie Groff, 509-380-4247; Implementation and Enforcement: DCYF, statewide.

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

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

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

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Scope of exemption for rule proposal:

Is fully exempt.

March 1, 2023  
Brenda Villarreal  
Rules Coordinator

## OTS-4293.1

### REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 110-300E-0001	Authority.
WAC 110-300E-0005	Definitions.
WAC 110-300E-0015	Outdoor nature-based licensing agreement—Uniform rules.
WAC 110-300E-0020	Enforcement actions—Right of review—Process of seeking review.
WAC 110-300E-0400	Outdoor nature-based licenses—Application.

**WSR 23-07-010**  
**PROPOSED RULES**  
**DEPARTMENT OF AGRICULTURE**  
 [Filed March 2, 2023, 11:45 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-05-093.

Title of Rule and Other Identifying Information: Chapter 16-401 WAC, Nursery inspection fees and chapter 16-470 WAC, Quarantine—Agricultural pests. The Washington state department of agriculture (WSDA) is proposing restructuring, increasing, and consolidating fees for inspections requested by stakeholders, nursery licenses fees, nematode laboratory fees, and plant pathology laboratory fees. WSDA is also proposing revising the language in these chapters to increase clarity and readability and to better serve industry inspection needs.

Hearing Location(s): On April 25, 2023, at 10:00 a.m. Microsoft Teams website link and phone number/access code. Join on your computer, mobile app, or room device [https://teams.microsoft.com/l/meetup-join/19%3ameeting\\_MjQzYzFkOGMtOTMzMC00YzUwLWF1NjUtMzYyNzkzZTkzZWFl%40thread.v2/0?context=%7b%22Tid%22%3a%2211d0e217-264e-400a-8ba0-57dcc127d72d%22%2c%22Oid%22%3a%22838c55c7-c187-44ae-8de0-2be684ce5d4a%22%7d, Meeting ID 277 702 634 883, Passcode 67e2SY; or call-in \(audio only\) +1 564-999-2000, Phone Conference ID 531 749 746#](https://teams.microsoft.com/l/meetup-join/19%3ameeting_MjQzYzFkOGMtOTMzMC00YzUwLWF1NjUtMzYyNzkzZTkzZWFl%40thread.v2/0?context=%7b%22Tid%22%3a%2211d0e217-264e-400a-8ba0-57dcc127d72d%22%2c%22Oid%22%3a%22838c55c7-c187-44ae-8de0-2be684ce5d4a%22%7d, Meeting ID 277 702 634 883, Passcode 67e2SY; or call-in (audio only) +1 564-999-2000, Phone Conference ID 531 749 746#).

Date of Intended Adoption: May 2, 2023.

Submit Written Comments to: Gloriann Robinson, Agency Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, email [wsdarulescomments@agr.wa.gov](mailto:wsdarulescomments@agr.wa.gov), fax 360-902-2092, by 5:00 p.m., April 25, 2023.

Assistance for Persons with Disabilities: Contact Deanna Painter, phone 360-902-2061, TTY 800-833-6388, email [deanna.painter@agr.wa.gov](mailto:deanna.painter@agr.wa.gov), by April 18, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WSDA is proposing to amend the following fees:

<b>Requested Services</b>	<b>Current Fee</b>	<b>Proposed Fee</b>
Nursery, hourly rate	\$50.00	\$58.00
Nonnursery, hourly rate	\$62.50	\$72.50
Nursery additional certificates	\$8.25	\$20.00 - this will be a new flat rate for all nursery phytosanitary certificates
Nonnursery additional certificates	\$10.00	\$26.00 - this will be a new flat rate for all nonnursery phytosanitary certificates
Nursery compliance agreement	\$50.00	\$58.00
Nonnursery compliance agreement	\$62.50	\$72.50
Nursery stickers (250)	\$10.00	No change
Noncommercial phytosanitary certificate	\$10.00	\$20.00
Lab fee: Hourly rate	\$62.50	\$72.50
Lab fee: Nematode plant assay	\$38.00	\$48.00
Lab fee: Nematode soil assay	\$60.00	\$65.00
Lab fee: Karnal bunt, dwarf bunt, and flag smut	\$60.00	\$70.00
First free phytosanitary certificate	\$0.00	Fee repealed - all certificates will be charged at the new \$20/\$26 flat rate listed above

Requested Services	Current Fee	Proposed Fee
Nursery phytosanitary certificate 24 hours after inspection	\$24.50	Fee repealed - all certificates will be charged at the new \$20 flat rate listed above
Nonnursery phytosanitary certificate 24 hours after inspection	\$30.00	Fee repealed - all certificates will be charged at the new \$26 flat rate listed above
Fumigation lot per container	\$25.00	Fee repealed - will be charged under the new \$58/\$72.50 flat hourly rate
Nursery hourly rate nonbusiness	\$75.00	Fee repealed - program is no longer offering services during nonbusiness hours
Nonnursery hourly rate nonbusiness	\$93.75	Fee repealed - program is no longer offering services during nonbusiness hours
Postentry quarantine site approval	\$125.00	Fee repealed - will be charged under the new \$58/\$72.50 flat hourly rate

Nursery Licenses	Current Fee	Proposed Fee
Retailer A	\$52.50	\$67.20
Retailer B	\$115.00	\$147.20
Retailer C	\$228.00	\$292.00
Wholesale A	\$115.00	\$147.20
Wholesale B	\$228.00	\$292.00
Exempt organization (plant sale) permit	\$10.00	\$20.00

Reasons Supporting Proposal: WSDA's plant services program facilitates agricultural trade and ensures consumer protection by providing accurate and reliable inspection, testing, and certification of agricultural plant products, and serves on the front line of defense against the introduction and spread of plant pests and diseases. Some of the services provided by the program include the inspection, sampling, and testing of a wide variety of agricultural commodities for export and issuing export certificates that allow the commodity to enter another state or country. The program also provides regulatory inspection of licensed nurseries, conducting hundreds of physical and virtual inspections annually to ensure plants for sale meet Washington's quarantine requirements and are free of pests and diseases. Over 5,000 nurseries pay an annual licensing fee based on the value of plant sales. These fees are the primary funds supporting the nursery inspection program. The plant services program also maintains an official nematode laboratory in Prosser that tests a number of exported agricultural commodities for quarantine species of nematodes and provides testing services to WSDA's seed certification program as well.

WSDA's plant pathology and molecular diagnostics lab (PPMDL) and nematology lab provide a number of testing services necessary for both domestic and international export of many plants. Diagnostic services are also available, primarily on agricultural crops, but also nursery stock and some other hosts. The laboratories participate in plant disease surveys in cooperation with the United States Department of Agriculture (USDA) and other agencies. These activities directly support the agricultural industry by keeping unwanted pests out of Washington, protecting growers and the natural environment, and facilitating the movement of agricultural products.

Fees for these programs were last increased in 2015; however, cost projections indicate that at the current rates, the programs will not have enough revenue to meet operating expenses within the next year. There has been an 11 percent increase in employee salaries and benefits since 2015. In addition, the agency overhead cost has recently increased from 16.4 percent to 24.6 percent. For 2023, the Washing-

ton Federation of State Employees (WFSE) has negotiated an additional 10 percent salary increase for the environmental specialist job classification, which will affect all 11 plant services inspectors and the scientific technician position in the PPMDL. Similar salary increases will be necessary for the associated program supervisors and managers to prevent salary compression or inversion. Expenses for vehicles and other costs associated with providing services have increased as well. An additional inspector was added to the plant services program in 2021, utilizing 60 percent grant funding to enable online enforcement of plant quarantines, something the industry has greatly encouraged WSDA to undertake. Current fees in rule are well below competitive rates and do not allow for additional staff to be hired to meet demand. Additionally, some of the current fees charged for services are not adequate to cover the costs of providing such services.

RCW 17.24.131 authorizes WSDA to charge a fee for requested services and dictates that the fee charged shall, as closely as practical, cover the cost of the service rendered, including the salaries and expenses of the personnel involved. Increasing fees is necessary to cover the costs of services rendered and to maintain the financial stability of the programs so that the program may continue to meet current demand and provide valuable services to businesses across the state.

Statutory Authority for Adoption: RCW 15.13.260, 15.13.280, 15.14.015, and 17.24.131.

Statute Being Implemented: Chapters 15.13, 15.14, and 17.24 RCW.

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

Name of Proponent: WSDA, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Scott Brooks, 1111 Washington Street S.E., Olympia, WA 98504, 360-485-1235.

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. WSDA is not a listed agency under RCW 34.05.328 (5) (a) (i).

Scope of exemption for rule proposal:

Is not exempt.

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

### **Small Business Economic Impact Statement**

Chapter 16-401 WAC, Nursery inspection fees and

Chapter 16-470 WAC, Quarantine—Agricultural pests plant services and pest program fee increase

February 24, 2023

**SECTION 1: Describe the proposed rule, including: A brief history of the issue; an explanation of why the proposed rule is needed; and 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.**

Overview and Background: WSDA plant services program facilitates agricultural trade and ensures consumer protection by providing accurate and reliable inspection, testing, and certification of agricultural plant products and serves on the front line of defense against the introduction and spread of plant pests and diseases. Some of the services provided by the program include the inspection, sampling, and

testing of a wide variety of agricultural commodities for export and issuing export certificates that allow the commodity to enter another state or country. The program also provides regulatory inspection of licensed nurseries, conducting hundreds of physical and virtual inspections annually to ensure plants for sale meet Washington's quarantine requirements and are free of pests and diseases. Over 5,000 nurseries pay an annual licensing fee based on the value of plant sales. These fees are the primary funds supporting the nursery inspection program. The plant services program also maintains an official nematode laboratory in Prosser that tests a number of exported agricultural commodities for quarantine species of nematodes and provides testing services to WSDA's seed certification program as well.

WSDA's PPMDL and nematology lab provide a number of testing services necessary for both domestic and international export of many plants. Diagnostic services are also available, primarily on agricultural crops, but also nursery stock and some other hosts. The laboratories participate in plant disease surveys in cooperation with USDA and other agencies. These activities directly support the agricultural industry by keeping unwanted pests out of Washington, protecting growers and the natural environment, and facilitating the movement of agricultural products.

Fees for these programs were last increased in 2015; however, cost projections indicate that at the current rates, the programs will not have enough revenue to meet operating expenses within the next year. There has been an 11 percent increase in employee salaries and benefits since 2015. In addition, the agency overhead cost has recently increased from 16.4 percent to 24.6 percent. For 2023, WFSE has negotiated an additional 10 percent salary increase for the environmental specialist job classification, which will affect all 11 plant services inspectors and the scientific technician position in the PPMDL. Similar salary increases will be necessary for the associated program supervisors and managers to prevent salary compression or inversion. Expenses for vehicles and other costs associated with providing services have increased as well. An additional inspector was added to the plant services program in 2021, utilizing 60 percent grant funding, to enable online enforcement of plant quarantines, something the industry has greatly encouraged WSDA to undertake. Current fees in rule are well below competitive rates and do not allow for additional staff to be hired to meet demand. Additionally, some of the current fees charged for services are not adequate to cover the costs of providing such services. RCW 17.24.131 authorizes WSDA to charge a fee for requested services and dictates that the fee charged shall, as closely as practical, cover the cost of the service rendered, including the salaries and expenses of the personnel involved. Increasing fees is necessary to cover the costs of providing services and to maintain the financial stability of the programs, so that the programs may continue to meet current demand and provide valuable services to businesses across the state.

If fees are not increased, the programs will need to implement a reduction in force resulting in delayed inspection and testing response time. This could delay exports or cause businesses to cancel orders. There are no other local alternatives to certify export inspections. USDA provides minimal inspections, similar to the services provided by WSDA at a rate four times higher, but does not have the personnel to provide this service to Washington state industries currently.

Proposed Rule Amendments:

**Table 1.1 - WSDA proposed fee changes.**

Requested Services	Current Fee	Proposed Fee
Nursery, hourly rate	\$50.00	\$58.00
Nonnursery, hourly rate	\$62.50	\$72.50
Nursery additional certificates	\$8.25	\$20.00 - this will be a new flat rate for all nursery phytosanitary certificates
Nonnursery additional certificates	\$10.00	\$26.00 - this will be a new flat rate for all non-nursery phytosanitary certificates
Nursery compliance agreement	\$50.00	\$58.00
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Nursery stickers (250)	\$10.00	No change
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Lab fee: Hourly rate	\$62.50	\$72.50
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Lab fee: Karnal bunt, dwarf bunt, and flag smut	\$60.00	\$70.00
First free phytosanitary certificate	\$0.00	Fee repealed - all certificates will be charged at the new \$20/\$26 flat rate listed above
Nursery phytosanitary certificate 24 hours after inspection	\$24.50	Fee repealed - all certificates will be charged at the new \$20 flat rate listed above
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Fumigation lot per container	\$25.00	Fee repealed - will be charged under the new \$58/\$72.50 flat hourly rate
Nursery hourly rate nonbusiness	\$75.00	Fee repealed - program is no longer offering services during nonbusiness hours
Nonnursery hourly rate nonbusiness	\$93.75	Fee repealed - program is no longer offering services during nonbusiness hours
Postentry quarantine site approval	\$125.00	Fee repealed - will be charged under the new \$58/\$72.50 flat hourly rate

**Table 1.2 - Nursery license fee increases.**

Nursery Licenses	Current Fee	Proposed Fee
Retailer A	\$52.50	\$67.20
Retailer B	\$115.00	\$147.20
Retailer C	\$228.00	\$292.00
Wholesale A	\$115.00	\$147.20
Wholesale B	\$228.00	\$292.00
Exempt organization (plant sale) permit	\$10.00	\$20.00

**Probable Compliance Requirements:** Probable compliance requirements include paying the fee associated with the service requested from the program under the new fee structure.

**Required Professional Services:** The proposed rule amendment does not require businesses to obtain professional services to comply.

**SECTION 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.

**Table 2.1 - Number of businesses in each industry that requested services, or a combination of services and nursery licenses, that will need to comply with the proposed fee increases.**

NAICS Code and Business Description	Number of Impacted Businesses	*Minor Cost Threshold = 1 Percent of Average Annual Payroll	**Minor Cost Threshold = 0.3 Percent of Average Annual Revenue
11121 Potato Farming	3	\$8,909.99	\$3,719.74
111219 Other Vegetable (except Potato) and Melon Farming	2	\$3,503.04	\$11,395.89
111332 Grape Vineyards	1	\$5,461.08	\$421.79
111334 Berry (except Strawberry) Farming	4	\$3,443.84	\$7,629.83
111419 Other Food Crops Grown Under Cover	1	\$3,263.61	\$3,047.66
111421 Nursery and Tree Production	19	\$5,428.08	\$2,313.03
111422 Floriculture Production	2	\$7,268.96	\$718.29
111940 Hay Farming	5	\$1,388.23	\$3,642.77
111998 All Other Miscellaneous Crop Farming	22	\$11,782.08	\$3,518.45
112420 Goat Farming	1	\$616.78	\$394.15
113210 Forest Nurseries and Gathering of Forest Products	1	\$3,388.35	\$11,743.52
113310 Logging	2	\$5,055.83	\$5,119.28
115112 Soil Preparation; Planting; and Cultivating	2	\$1,825.96	\$1,852.47
115113 Crop Harvesting; Primarily by Machine	1	\$2,993.41	\$7,230.77
115310 Support Activities for Forestry	5	\$4,052.07	\$2,312.78
236115 New Single-Family Housing Construction (except For-Sale Builders)	3	\$1,919.03	\$2,508.04
311423 Dried and Dehydrated Food Manufacturing	1	\$61,114.22	\$10,623.24
311999 All Other Miscellaneous Food Manufacturing	2	\$12,992.65	\$28,280.31
312120 Breweries	2	\$2,803.58	\$3,085.32
312130 Wineries	1	\$3,905.58	\$3,560.33
321114 Wood Preservation	1	\$28,030.55	\$54,514.03
321214 Truss Manufacturing	1	\$23,341.04	\$28,620.35
321912 Cut Stock; Resawing Lumber; and Planing	1	\$12,964.02	\$158,300.26
321918 Other Millwork (including flooring)	1	\$12,174.46	\$12,312.59
321999 All Other Miscellaneous Wood Product Manufacturing	1	\$4,963.32	\$10,315.61
325312 Phosphatic Fertilizer Manufacturing	1	Data not available	\$303,827.12
325411 Medicinal and Botanical Manufacturing	1	\$10,872.12	\$11,272.08
325412 Pharmaceutical Preparation Manufacturing	1	\$10,463.92	\$45,550.97
333414 Heating Equipment (except Warm Air Furnaces) Manufacturing	1	\$29,772.98	\$41,248.51
339920 Sporting and Athletic Goods Manufacturing	1	\$11,837.93	\$15,210.21



<b>NAICS Code and Business Description</b>	<b>Number of Impacted Businesses</b>	<b>*Minor Cost Threshold = 1 Percent of Average Annual Payroll</b>	<b>**Minor Cost Threshold = 0.3 Percent of Average Annual Revenue</b>
339992 Musical Instrument Manufacturing	1	\$4,387.84	\$2,045.76
339999 All Other Miscellaneous Manufacturing	3	\$4,522.90	\$9,874.17
423310 Lumber; Plywood; Millwork; and Wood Panel Merchant Wholesalers	19	\$13,394.11	\$38,355.14
423830 Industrial Machinery and Equipment Merchant Wholesalers	1	\$8,940.67	\$16,393.09
423990 Other Miscellaneous Durable Goods Merchant Wholesalers	3	\$2,245.72	\$9,143.34
424480 Fresh Fruit and Vegetable Merchant Wholesalers	5	\$15,570.97	\$47,928.58
424490 Other Grocery and Related Products Merchant Wholesalers	3	\$7,269.70	\$25,663.43
424510 Grain and Field Bean Merchant Wholesalers	4	\$10,906.60	\$53,558.90
424590 Other Farm Product Raw Material Merchant Wholesalers	4	\$3,948.77	\$7,750.68
424910 Farm Supplies Merchant Wholesalers	12	\$10,501.05	\$35,044.58
424930 Flower; Nursery Stock; and Florists' Supplies Merchant Wholesalers	40	\$4,165.54	\$6,155.64
424990 Other Miscellaneous Nondurable Goods Merchant Wholesalers	6	\$2,136.61	\$7,559.52
444110 Home Centers	2	\$71,135.41	\$197,164.73
444190 Other Building Material Dealers	2	\$8,788.86	\$10,571.42
444240 Nursery, Garden Center, and Farm Supply Retailers	49	\$4,675.20	\$3,798.35
445110 Supermarkets and Other Grocery Retailers (except Convenience Retailers)	1	\$24,632.97	\$39,505.18
445230 Fruit and Vegetable Markets	2	\$2,435.71	\$2,220.48
445299 All Other Specialty Food Stores	1	\$5,718.67	\$3,009.59
446191 Food (Health) Supplement Stores	1	\$2,540.74	\$4,703.76
452319 All Other General Merchandise Stores	1	\$11,230.73	\$2,005.00
453110 Florists	9	\$1,791.59	\$548.01
453310 Used Merchandise Stores	1	\$2,922.52	\$549.61
453910 Pet and Pet Supplies Stores	1	\$6,671.64	\$5,721.20
453998 All Other Miscellaneous Store Retailers (except Tobacco Stores)	3	\$3,299.06	\$4,863.58
454390 Other Direct Selling Establishments	1	\$4,034.18	\$2,740.36
488510 Freight Transportation Arrangement	8	\$11,020.17	\$18,996.34
493110 General Warehousing and Storage	1	\$44,702.01	\$7,289.16
493120 Refrigerated Warehousing and Storage	1	\$27,460.90	\$22,553.32
541320 Landscape Architectural Services	1	\$4,874.31	\$906.94
541410 Interior Design Services	1	\$1,662.96	\$935.22
541611 Administrative Management and General Management Consulting Services	2	\$8,171.09	\$1,726.78
541618 Other Management Consulting Services	3	\$5,848.69	\$7,603.18
541690 Other Scientific and Technical Consulting Services	1	\$2,707.38	\$2,264.27

NAICS Code and Business Description	Number of Impacted Businesses	*Minor Cost Threshold = 1 Percent of Average Annual Payroll	**Minor Cost Threshold = 0.3 Percent of Average Annual Revenue
541715 Research and Development in the Physical, Engineering, and Life Sciences (except Nanotechnology and Biotechnology)	1	\$28,877.62	\$18,750.67
541940 Veterinary Services	1	\$7,929.73	\$4,572.56
541990 All Other Professional, Scientific, and Technical Services	1	\$6,907.62	\$3,992.71
561499 All Other Business Support Services	3	\$11,413.97	\$8,117.81
561730 Landscaping Services	6	\$2,131.66	\$798.41
611310 Colleges, Universities, and Professional Schools	3	\$107,981.59	\$17,202.82
621330 Offices of Mental Health Practitioners (except Physicians)	1	\$3,726.60	\$589.78
624410 Child Care Services	1	\$2,991.80	\$1,014.95
721214 Recreational and Vacation Camps (except Campgrounds)	1	\$2,649.84	\$784.05
722410 Drinking Places (Alcoholic Beverages)	2	\$1,386.88	\$1,376.99
722515 Snack and Nonalcoholic Beverage Bars	1	\$2,722.49	\$2,307.40
813910 Business Associations	1	\$3,602.65	\$3,919.65
813920 Professional Organizations	1	\$4,506.82	\$2,018.74

\* Data source: 2020 Employment security department

\*\* Data source: 2020 Department of revenue

The table above includes industries in which businesses requested services or a combination of services and nursery licenses, but it does not include industries that only purchased nursery licenses. Businesses in an additional 189 industries purchased nursery licenses without any other services. For these 189 industries, WSDA will use a minor cost threshold of \$100, which is the minimum stated cost for "minor costs" as defined in RCW 19.85.020(2).

For many of the businesses in industries represented in the table above, such as goat farming, child care services, drinking places, etc., the services requested from the programs are rare and a very small portion of their business.

**SECTION 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; and whether compliance with the proposed rule will cause businesses to lose sales or revenue.**

The proposed amendments restructure, increase, and consolidate fees for inspections requested by stakeholders, nursery license fees, nematode laboratory fees, and plant pathology laboratory fees. The proposed changes will not cause businesses to lose sales or decrease their revenue; however, they will increase fees for most businesses. Whether a business experiences increased costs due to this depends on what services a business uses and the frequency of that usage. For instance, businesses that have a large number of phytosanitary certificates issued will generally see a greater cost increase than those who only purchase a nursery license. There will be no increased cost for businesses to comply with the proposed rule in terms of costs for equipment, supplies, labor, professional services, or administrative

costs. Compliance with the proposed rule amendments will not cause businesses to lose sales or revenue.

Table 3.1 shows the average cost differences for requested services fees and nursery license fees (if applicable) that small businesses will pay under the proposed fee increases versus the current fee structure.

Table 3.2 shows the average cost differences for requested services fees and nursery license fees (if applicable) that large businesses will pay under the proposed fee increases versus the current fee structure.

Table 3.3 shows the cost differences between the current nursery license fees and the proposed nursery license fees. One hundred eighty-nine businesses that purchase nursery licenses, without any other services, will see a fee increase that ranges from \$10.00 for an exempt organization to \$64.00 for a larger wholesale operation.

**Table 3.1 - Cost difference averages for current fee structure versus the proposed fee changes for small businesses.**

<b>Small Business NAICS Code and Description</b>	<b>Small Business Current Fee Average</b>	<b>Small Business Proposed Fee Average</b>	<b>Difference Between Current versus Proposed Fees</b>
11121 Potato Farming	\$181.58	\$213.25	\$31.67
111219 Other Vegetable (except Potato) and Melon Farming	\$114.50	\$151.50	\$37.00
111332 Grape Vineyards	\$31.25	\$145.60	\$114.35
111334 Berry (except Strawberry) Farming	\$2,236.13	\$3,056.00	\$819.88
111421 Nursery and Tree Production	\$694.09	\$999.94	\$305.84
111422 Floriculture Production	\$135.63	\$164.23	\$28.60
111940 Hay Farming	\$2,351.15	\$3,555.95	\$1,204.80
111998 All Other Miscellaneous Crop Farming	\$1,606.71	\$2,135.16	\$528.45
112420 Goat Farming	\$115.00	\$147.20	\$32.20
115112 Soil Preparation; Planting; and Cultivating	\$965.50	\$1,155.61	\$190.11
115113 Crop Harvesting; Primarily by Machine	\$250.00	\$290.00	\$40.00
115310 Support Activities for Forestry	\$768.85	\$948.25	\$179.40
236115 New Single-Family Housing Construction (except For-Sale Builders)	\$304.67	\$456.82	\$152.15
311999 All Other Miscellaneous Food Manufacturing	\$31.25	\$36.25	\$5.00
312120 Breweries	\$1,343.75	\$1,505.00	\$161.25
321114 Wood Preservation	\$1,343.75	\$1,558.75	\$215.00
321214 Truss Manufacturing	\$531.25	\$616.25	\$85.00
325411 Medicinal and Botanical Manufacturing	\$31.25	\$36.25	\$5.00
333414 Heating Equipment (except Warm Air Furnaces) Manufacturing	\$62.50	\$70.00	\$7.50
339920 Sporting and Athletic Goods Manufacturing	\$31.25	\$36.25	\$5.00
339992 Musical Instrument Manufacturing	\$1,250.00	\$1,450.00	\$200.00
339999 All Other Miscellaneous Manufacturing	\$187.50	\$217.50	\$30.00

<b>Small Business NAICS Code and Description</b>	<b>Small Business Current Fee Average</b>	<b>Small Business Proposed Fee Average</b>	<b>Difference Between Current versus Proposed Fees</b>
<b>423310 Lumber; Plywood; Millwork; and Wood Panel Merchant Wholesalers</b>	\$1,197.12	\$1,404.96	\$207.85
<b>423830 Industrial Machinery and Equipment Merchant Wholesalers</b>	\$156.25	\$181.25	\$25.00
<b>423990 Other Miscellaneous Durable Goods Merchant Wholesalers</b>	\$2,377.50	\$2,755.50	\$378.00
<b>424480 Fresh Fruit and Vegetable Merchant Wholesalers</b>	\$197.00	\$244.75	\$47.75
<b>424490 Other Grocery and Related Products Merchant Wholesalers</b>	\$1,147.50	\$1,257.50	\$110.00
<b>424510 Grain and Field Bean Merchant Wholesalers</b>	\$1,360.63	\$1,587.13	\$226.50
<b>424590 Other Farm Product Raw Material Merchant Wholesalers</b>	\$7,496.88	\$9,936.38	\$2,439.50
<b>424910 Farm Supplies Merchant Wholesalers</b>	\$2,047.36	\$3,023.38	\$976.02
<b>424930 Flower; Nursery Stock; and Florists' Supplies Merchant Wholesalers</b>	\$1,694.01	\$2,240.44	\$546.43
<b>424990 Other Miscellaneous Nondurable Goods Merchant Wholesalers</b>	\$277.83	\$336.25	\$58.42
<b>444110 Home Centers</b>	\$606.00	\$702.00	\$96.00
<b>444220 Nursery; Garden Center; and Farm Supply Stores</b>	\$563.27	\$736.27	\$173.00
<b>445230 Fruit and Vegetable Markets</b>	\$140.63	\$163.13	\$22.50
<b>445299 All Other Specialty Food Stores</b>	\$3,935.00	\$4,330.00	\$395.00
<b>446191 Food (Health) Supplement Stores</b>	\$93.75	\$108.75	\$15.00
<b>452319 All Other General Merchandise Stores</b>	\$1,093.75	\$1,268.75	\$175.00
<b>453110 Florists</b>	\$1,075.19	\$1,276.91	\$201.71
<b>453310 Used Merchandise Stores</b>	\$38.00	\$48.00	\$10.00
<b>453998 All Other Miscellaneous Store Retailers (except Tobacco Stores)</b>	\$333.33	\$386.67	\$53.33
<b>454390 Other Direct Selling Establishments</b>	\$50.00	\$58.00	\$8.00
<b>488510 Freight Transportation Arrangement</b>	\$873.54	\$1,081.39	\$207.86
<b>493110 General Warehousing and Storage</b>	\$114.00	\$144.00	\$30.00
<b>493120 Refrigerated Warehousing and Storage</b>	\$646.00	\$816.00	\$170.00
<b>541320 Landscape Architectural Services</b>	\$228.00	\$292.00	\$64.00
<b>541618 Other Management Consulting Services</b>	\$379.50	\$440.00	\$60.50
<b>541940 Veterinary Services</b>	\$62.50	\$72.50	\$10.00
<b>561499 All Other Business Support Services</b>	\$553.08	\$663.75	\$110.67
<b>561730 Landscaping Services</b>	\$398.58	\$534.58	\$136.00
<b>621330 Offices of Mental Health Practitioners (except Physicians)</b>	\$93.75	\$105.00	\$11.25
<b>721214 Recreational and Vacation Camps (except Campgrounds)</b>	\$187.50	\$217.50	\$30.00
<b>722410 Drinking Places (Alcoholic Beverages)</b>	\$734.50	\$773.00	\$38.50
<b>813910 Business Associations</b>	\$378.00	\$466.00	\$88.00
<b>813920 Professional Organizations</b>	\$843.75	\$978.75	\$135.00

**Table 3.2 - Cost difference averages for current fee structure versus the proposed fee changes for large businesses.**

Large Business NAICS Code and Description	Large Business Current Fee Average	Large Business Proposed Fee Average	Difference Between Current versus Proposed Fees
111421 Nursery and Tree Production	\$913.42	\$1,079.33	\$165.92
113310 Logging	\$625.00	\$725.00	\$100.00
311423 Dried and Dehydrated Food Manufacturing	\$267.50	\$361.00	\$93.50
311999 All Other Miscellaneous Food Manufacturing	\$38.00	\$48.00	\$10.00
321912 Cut Stock; Resawing Lumber; and Planing	\$750.00	\$870.00	\$120.00
339999 All Other Miscellaneous Manufacturing	\$9,067.75	\$14,230.00	\$5,162.25
423310 Lumber; Plywood; Millwork; and Wood Panel Merchant Wholesalers	\$2,302.13	\$3,058.96	\$756.83
424910 Farm Supplies Merchant Wholesalers	\$798.00	\$1,008.00	\$210.00
424930 Flower; Nursery Stock; and Florists' Supplies Merchant Wholesalers	\$5,174.00	\$5,959.60	\$785.60
444220 Nursery; Garden Center; and Farm Supply Stores	\$327.50	\$399.00	\$71.50
488510 Freight Transportation Arrangement	\$9,122.75	\$11,045.75	\$1,923.00

**Table 3.3 - Cost difference for current nursery license fees versus proposed nursery license fees.**

Nursery Licenses	Current Fee	Proposed Fee	Difference Between Current versus Proposed Fee
Retailer A	\$52.50	\$67.20	\$14.70
Retailer B	\$115.00	\$147.20	\$32.20
Retailer C	\$228.00	\$292.00	\$64.00
Wholesale A	\$115.00	\$147.20	\$32.20
Wholesale B	\$228.00	\$292.00	\$64.00
Exempt organization (plant sale) permit	\$10.00	\$20.00	\$10.00

**SECTION 4: Analyze whether the proposed rule may impose more-than-minor costs on businesses in the industry.**

Current costs were compared with costs under the proposed rule amendments for businesses that paid fees in 2021. From this, WSDA was able to determine what the estimated cost would be for each business under the proposed fee changes if those businesses requested the exact same services as they did in 2021. Table 4.1 shows the largest cost increase to businesses for each industry and compares it to their minor cost threshold as mandated in RCW 19.85.030.

WSDA determined that the costs to a single business in the hay farming industry, NAICS code 111940, would exceed the minor cost threshold. However, the business that exceeded the threshold had requested an unusually high number of inspections due to selling a particular type of weed-free hay. The business is not expected to need the same level of service each year.

The proposed fee increase would not impose more-than-minor costs on any other business in any industry.

**Table 4.1 - Largest cost increases to businesses compared to their industry's minor cost threshold.**

<b>NAICS Codes and Business Description</b>	<b>Largest Cost Increase for any Business</b>	<b>*Minor Cost Threshold</b>
11121 Potato Farming	\$1,340.50	\$8,909.99
111219 Other Vegetable (except Potato) and Melon Farming	\$32.20	\$11,395.89
111332 Grape Vineyards	\$5.00	\$5,461.08
111334 Berry (except Strawberry) Farming	\$2,471.00	\$7,629.83
111421 Nursery and Tree Production	\$2,959.00	\$5,428.08
111422 Floriculture Production	\$32.20	\$7,268.96
111940 Hay Farming	\$5,018.00	\$3,642.77
111998 All Other Miscellaneous Crop Farming	\$4,245.00	\$11,782.08
112420 Goat Farming	\$32.20	\$616.78
113210 Forest Nurseries and Gathering of Forest Products	\$294.00	\$11,743.52
113310 Logging	\$100.00	\$5,119.28
115112 Soil Preparation; Planting; and Cultivating	\$310.21	\$1,852.47
115113 Crop Harvesting; Primarily by Machine	\$40.00	\$7,230.77
115310 Support Activities for Forestry	\$355.00	\$4,052.07
236115 New Single-Family Housing Construction (except For-Sale Builders)	\$247.45	\$2,508.04
311423 Dried and Dehydrated Food Manufacturing	\$93.50	\$61,114.22
311999 All Other Miscellaneous Food Manufacturing	\$10.00	\$28,280.31
312120 Breweries	\$506.75	\$3,085.32
312130 Wineries	\$427.50	\$3,905.58
321114 Wood Preservation	\$215.00	\$54,514.03
321214 Truss Manufacturing	\$85.00	\$28,620.35
321912 Cut Stock; Resawing Lumber; and Planing	\$120.00	\$158,300.26
321918 Other millwork (including flooring)	\$750.00	\$12,312.59
321999 All other miscellaneous wood product manufacturing	\$214.00	\$10,315.61
325312 Phosphatic Fertilizer Manufacturing	\$146.00	\$303,827.12
325411 Medicinal and Botanical Manufacturing	\$5.00	\$11,272.08
325412 Pharmaceutical preparation manufacturing	\$16.00	\$45,550.97
333414 Heating Equipment (except Warm Air Furnaces) Manufacturing	\$10.00	\$41,248.51
339920 Sporting and Athletic Goods Manufacturing	\$5.00	\$15,210.21
339992 Musical Instrument Manufacturing	\$200.00	\$4,387.84

<b>NAICS Codes and Business Description</b>	<b>Largest Cost Increase for any Business</b>	<b>*Minor Cost Threshold</b>
<b>339999 All Other Miscellaneous Manufacturing</b>	\$5,162.25	\$9,874.17
<b>423310 Lumber; Plywood; Millwork; and Wood Panel Merchant Wholesalers</b>	\$3,898.00	\$38,355.14
<b>423830 Industrial Machinery and Equipment Merchant Wholesalers</b>	\$25.00	\$16,393.09
<b>423990 Other Miscellaneous Durable Goods Merchant Wholesalers</b>	\$378.00	\$9,143.34
<b>424480 Fresh Fruit and Vegetable Merchant Wholesalers</b>	\$111.75	\$47,928.58
<b>424490 Other Grocery and Related Products Merchant Wholesalers</b>	\$350.50	\$25,663.43
<b>424510 Grain and Field Bean Merchant Wholesalers</b>	\$11,006.00	\$53,558.90
<b>424590 Other Farm Product Raw Material Merchant Wholesalers</b>	\$6,818.00	\$7,750.68
<b>424910 Farm Supplies Merchant Wholesalers</b>	\$4,449.00	\$35,044.58
<b>424930 Flower; Nursery Stock; and Florists' Supplies Merchant Wholesalers</b>	\$2,762.95	\$6,155.64
<b>424990 Other Miscellaneous Nondurable Goods Merchant Wholesalers</b>	\$167.00	\$7,559.52
<b>444110 Home Centers</b>	\$180.00	\$197,164.73
<b>444220 Nursery; Garden Center; and Farm Supply Stores</b>	\$2,488.25	\$4,675.20
<b>445110 Supermarkets and Other Grocery Retailers (except Convenience Retailers)</b>	\$9,594.00	\$39,505.18
<b>445230 Fruit and Vegetable Markets</b>	\$118.75	\$2,435.71
<b>445299 All Other Specialty Food Stores</b>	\$395.00	\$5,718.67
<b>446191 Food (Health) Supplement Stores</b>	\$15.00	\$4,703.76
<b>452319 All Other General Merchandise Stores</b>	\$175.00	\$11,230.73
<b>453110 Florists</b>	\$691.00	\$1,791.59
<b>453310 Used Merchandise Stores</b>	\$10.00	\$2,922.52
<b>453998 All Other Miscellaneous Store Retailers (except Tobacco Stores)</b>	\$110.00	\$4,863.58
<b>454390 Other Direct Selling Establishments</b>	\$8.00	\$4,034.18
<b>488510 Freight Transportation Arrangement</b>	\$1,923.00	\$18,996.34
<b>493110 General Warehousing and Storage</b>	\$30.00	\$44,702.01
<b>493120 Refrigerated Warehousing and Storage</b>	\$170.00	\$27,460.90
<b>541320 Landscape Architectural Services</b>	\$64.00	\$4,874.31
<b>541618 Other Management Consulting Services</b>	\$4,491.00	\$7,603.18
<b>541690 Other Scientific and Technical Consulting Services</b>	\$30.00	\$2,707.38
<b>541715 Research and Development in the Physical, Engineering, and Life Sciences (except Nanotechnology and Biotechnology)</b>	\$155.00	\$28,877.62
<b>541940 Veterinary Services</b>	\$10.00	\$7,929.73

NAICS Codes and Business Description	Largest Cost Increase for any Business	*Minor Cost Threshold
541990 All Other Professional, Scientific, and Technical Services	\$75.00	\$6,907.62
561499 All Other Business Support Services	\$146.00	\$11,413.97
561730 Landscaping Services	\$436.25	\$2,131.66
611310 Colleges, Universities, and Professional Schools	\$294.00	\$107,981.59
621330 Offices of Mental Health Practitioners (except Physicians)	\$15.00	\$3,726.60
624410 Child Care Services	\$20.00	\$2,991.80
721214 Recreational and Vacation Camps (except Campgrounds)	\$365.18	\$2,649.84
722410 Drinking Places (Alcoholic Beverages)	\$69.00	\$1,386.88
813910 Business Associations	\$88.00	\$3,919.65
813920 Professional Organizations	\$135.00	\$4,506.82

\* Of the minor cost thresholds listed for each NAICS code in Table 2.1, the higher minor cost threshold was used for comparison. Of the 189 industries that request nursery licenses without additional services, the lowest minor cost threshold amount used for this analysis is \$100.00 per RCW 19.85.020(2). The largest nursery fee increase will be applied to group Wholesale B at \$64.00, which means that there will not be any businesses that exceed the minor cost threshold if they only purchase nursery licenses.

**SECTION 5: Determine whether the proposed rule may have a disproportionate impact on small businesses as compared to the 10 percent of businesses that are the largest businesses required to comply with the proposed rule.**

RCW 19.85.040(1) requires WSDA to compare the cost of compliance for small businesses with the cost of compliance for the 10 percent of businesses that are the largest businesses required to comply with the proposed rules using one or more of the following as a basis for comparing costs: (a) Cost per employee; (b) cost per hour of labor; or (c) cost per \$100 of sales. WSDA used the cost per employee method to determine if the proposed fee increase will have a disproportionate impact on small businesses. Since the proposed rule amendment affects multiple industry classifications, the costs are analyzed separately for each NAICS code.

Table 5.1 shows the average cost per employee for large and small businesses by NAICS code. The average cost increase was divided by the average number of employees in each NAICS code (small and large businesses calculated separately). WSDA was not able to determine employee numbers for all businesses which paid fees in 2021. Of the 194 small businesses analyzed, WSDA was able to determine employee information for 154 of them. Of the 19 large businesses analyzed, WSDA was able to determine employee information for 11 of them.

Small businesses in the following NAICS classifications are expected to be disproportionately impacted by the proposed amendments: 111421 Nursery and Tree Production; 423310 Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers; 424930 Flower, Nursery Stock, and Florists' Supplies Merchant Wholesalers; and 444220 Nursery, Garden Center, and Farm Supply Stores. Those industries are highlighted in Table 5.1 below.

There are no large businesses impacted by this rule in the following classifications: 11121 Potato Farming; 111219 Other Vegetable (except Potato) and Melon Farming; 111332 Grape Vineyards; 111334 Berry (except Strawberry) Farming; 111998 All Other Miscellaneous Crop Farming; 112420 Goat Farming; 115112 Soil Preparation, Planting, and Cultivating; 115113 Crop Harvesting, Primarily by Machine; 115310 Sup-



port Activities for Forestry; 236115 New Single-Family Housing Construction (except For-Sale Builders); 312120 Breweries; 321114 Wood Preservation; 321214 Truss Manufacturing; 325411 Medicinal and Botanical Manufacturing; 333414 Heating Equipment (except Warm Air Furnaces) Manufacturing; 339920 Sporting and Athletic Goods Manufacturing; 339992 Musical Instrument Manufacturing; 424480 Fresh Fruit and Vegetable Merchant Wholesalers; 424490 Other Grocery and Related Products Merchant Wholesalers; 424510 Grain and Field Bean Merchant Wholesalers; 424590 Other Farm Product Raw Material Merchant Wholesalers; 424910 Farm Supplies Merchant Wholesalers; 424990 Other Miscellaneous Nondurable Goods Merchant Wholesalers; 444110 Home Centers; 445230 Fruit and Vegetable Markets; 445299 All Other Specialty Food Stores; 446191 Food (Health) Supplement Stores; 452319 All Other General Merchandise Stores; 453110 Florists; 453998 All Other Miscellaneous Store Retailers (except Tobacco Stores); 488510 Freight Transportation Arrangement; 493110 General Warehousing and Storage; 493120 Refrigerated Warehousing and Storage; 541320 Landscape Architectural Services; 541618 Other Management Consulting Services; 541940 Veterinary Services; 561499 All Other Business Support Services; 561730 Landscaping Services; 721214 Recreational and Vacation Camps (except Campgrounds); 722410 Drinking Places (Alcoholic Beverages); 813910 Business Associations; and 813920 Professional Organizations. Since there are no large businesses in these classifications, the proposed fee increase is expected to disproportionately impact small businesses in these classifications.

There are no small businesses impacted by this rule in the following classifications: 113310 Logging; 311423 Dried and Dehydrated Food Manufacturing; 311999 All Other Miscellaneous Food Manufacturing; and 321912 Cut Stock, Resawing Lumber, and Planing. Since there are no small businesses in these classifications, the proposed fee increase is not expected to disproportionately impact small businesses in these classifications.

The current fee structure for nursery licenses is already designed to allow smaller businesses to pay less for their licenses while the costs for nursery licenses increase along with the gross business sales of the business. The proposed rule will not disproportionately impact any of the small businesses that only purchase nursery licenses, as the fees will increase by 28 percent across all pricing levels, which will not alter the tiered system that is already in place.

**Table 5.1 - Average cost per employee for large and small businesses by NAICS category.**

<b>Business NAICS Code and Description</b>	<b>Average Difference Between Current versus Proposed Fees</b>	<b>Average Cost per Employee for Small Businesses</b>	<b>Average Cost per Employee for Large Businesses</b>
11121 Potato Farming	\$11.87	\$0.90	*
111219 Other Vegetable (except Potato) and Melon Farming	\$25.50	\$3.70	*
111332 Grape Vineyards	\$3.75	\$3.27	*
111334 Berry (except Strawberry) Farming	\$774.27	\$102.48	*
111421 Nursery and Tree Production	\$113.35	\$30.58	\$1.77
111998 All Other Miscellaneous Crop Farming	\$349.58	\$132.11	*
112420 Goat Farming	\$21.00	\$10.73	*

<b>Business NAICS Code and Description</b>	<b>Average Difference Between Current versus Proposed Fees</b>	<b>Average Cost per Employee for Small Businesses</b>	<b>Average Cost per Employee for Large Businesses</b>
113310 Logging	\$75.00	*	\$0.69
115112 Soil Preparation; Planting; and Cultivating	\$167.61	\$27.16	*
115113 Crop Harvesting; Primarily by Machine	\$30.00	\$1.38	*
115310 Support Activities for Forestry	\$117.30	\$22.43	*
236115 New Single-Family Housing Construction (except For-Sale Builders)	\$135.47	\$38.04	*
311423 Dried and Dehydrated Food Manufacturing	\$69.90	*	\$0.09
311999 All Other Miscellaneous Food Manufacturing	\$3.75	*	\$0.19
312120 Breweries	\$161.25	\$6.45	*
321114 Wood Preservation	\$161.25	\$17.92	*
321214 Truss Manufacturing	\$63.75	\$1.70	*
321912 Cut Stock; Resawing Lumber; and Planing	\$90.00	*	\$1.71
325411 Medicinal and Botanical Manufacturing	\$3.75	\$0.83	*
333414 Heating Equipment (except Warm Air Furnaces) Manufacturing	\$7.50	\$0.94	*
339920 Sporting and Athletic Goods Manufacturing	\$3.75	\$1.67	*
339992 Musical Instrument Manufacturing	\$150.00	\$6.67	*
339999 All Other Miscellaneous Manufacturing	\$7.50	*	\$26.61
423310 Lumber; Plywood; Millwork; and Wood Panel Merchant Wholesalers	\$131.04	\$25.98	\$5.05
424480 Fresh Fruit and Vegetable Merchant Wholesalers	\$42.82	\$5.97	*
424490 Other Grocery and Related Products Merchant Wholesalers	\$45.00	\$22.00	*
424510 Grain and Field Bean Merchant Wholesalers	\$546.75	\$56.63	*
424590 Other Farm Product Raw Material Merchant Wholesalers	\$886.67	\$304.94	*
424910 Farm Supplies Merchant Wholesalers	\$62.75	\$195.20	*
424930 Flower; Nursery Stock; and Florists' Supplies Merchant Wholesalers	\$463.36	\$39.03	\$2.85
424990 Other Miscellaneous Nondurable Goods Merchant Wholesalers	\$33.75	\$19.47	*
444110 Home Centers	\$76.00	\$16.00	*
444220 Nursery; Garden Center; and Farm Supply Stores	\$161.06	\$13.31	\$0.67
445230 Fruit and Vegetable Markets	\$15.00	\$2.50	*

Business NAICS Code and Description	Average Difference Between Current versus Proposed Fees	Average Cost per Employee for Small Businesses	Average Cost per Employee for Large Businesses
445299 All Other Specialty Food Stores	\$360.00	\$49.38	*
446191 Food (Health) Supplement Stores	\$11.25	\$3.75	*
452319 All Other General Merchandise Stores	\$131.25	\$175.00	*
453110 Florists	\$77.28	\$28.82	*
453998 All Other Miscellaneous Store Retailers (except Tobacco Stores)	\$82.50	\$5.33	*
488510 Freight Transportation Arrangement	\$7.50	\$20.79	*
493110 General Warehousing and Storage	\$30.00	\$1.58	*
493120 Refrigerated Warehousing and Storage	\$170.00	\$28.33	*
541320 Landscape Architectural Services	\$41.40	\$21.33	*
541618 Other Management Consulting Services	\$58.00	\$6.72	*
541940 Veterinary Services	\$7.50	\$0.91	*
561499 All Other Business Support Services	\$30.00	\$15.81	*
561730 Landscaping Services	\$192.44	\$15.11	*
721214 Recreational and Vacation Camps (except Campgrounds)	\$22.50	\$6.00	*
722410 Drinking Places (Alcoholic Beverages)	\$23.50	\$4.28	*
813910 Business Associations	\$59.40	\$4.19	*
813920 Professional Organizations	\$101.25	\$67.50	*

\* No businesses in size category for the specified NAICS code.  
Data pertaining to the number of employees for all impacted businesses was obtained from Buzzfile.

**SECTION 6: If the proposed rule has a disproportionate impact on small businesses, identify the steps taken to reduce the costs of the rule on small businesses. If the costs cannot be reduced, provide a clear explanation of why.**

WSDA has analyzed the impacts of the proposed rule as required by RCW 19.85.040 and has determined that there are disproportionate impacts to some small businesses in the following industries: 111421 Nursery and Tree Production, 423310 Lumber; Plywood; Millwork; and Wood Panel Merchant Wholesalers, 424930 Flower; Nursery Stock; and Florists' Supplies Merchant Wholesalers, and 444220 Nursery; Garden Center; and Farm Supply Stores, when comparing the average cost increases to small and large businesses in Table 5.1.

RCW 19.85.030(2) requires consideration of the following methods of reducing the impact of the proposed amendment on small businesses:

(a) *Reducing, modifying, or eliminating substantive regulatory requirements:* Any reduction, modification, or elimination of the regulatory requirements of the proposed rule amendment could increase the risk of the entry of unwanted pests and plant diseases into the state. This could potentially close international and domestic markets to some businesses in Washington state, leading to reductions in revenue.

(b) *Simplifying, reducing, or eliminating recordkeeping and reporting requirements:* There are no recordkeeping or reporting requirements associated with the proposed rule amendment.

(c) *Reducing the frequency of inspections:* Inspections directly support the agricultural industry by keeping unwanted pests and plant diseases out of Washington, protecting growers and the natural environment, and facilitating the movement of agricultural products. Generally, any reduction of the frequency of inspections could increase the risk of entry of an unwanted pest or plant disease into the state. However, the plant services program does collaborate with departments of agriculture in neighboring states to try to reduce the number of inspection and phytosanitary certifications needed to export plant material safely into those states when appropriate. For example, the program clarified with the Oregon department of agriculture that it will accept a single phytosanitary certificate for grapevine shipments from a nursery that covers a given time frame, like spring or fall. Previously, it required a phytosanitary certificate for each shipment and for a couple of businesses that added up to a lot of phytosanitary certificates (and a large expense) over the course of the season. This new approach will reduce costs for the nurseries involved going forward.

(d) *Delaying compliance timetables:* Delaying compliance timetables is not a viable option, as cost projections indicate that at the current rates, the programs will not have enough revenue to meet operating expenses within the next year. There has been an 11 percent increase in employee salaries and benefits since 2015. Expenses for vehicles and agency overhead costs have increased as well. An additional inspector was added to the plant services program in 2021, utilizing 60 percent grant funding, to enable online enforcement of plant quarantines, something the industry has greatly encouraged WSDA to undertake. Current fees are well below competitive rates and do not allow for additional staff to be hired to meet demand. The current fees charged for services are not adequate to compensate the program for the costs of providing such services.

(e) *Reducing or modifying fine schedules for noncompliance:* Chapter 17.24 RCW specifies the penalty for violations of the chapter and rules adopted thereunder. Reducing or modifying fine schedules would involve a legislative change and is not part of this rule making.

(f) *Any other mitigation techniques including those suggested by small businesses or small business advocates:* Small businesses can request inspections be done when inspectors are in their area for other business, reducing time and mileage costs. All parties save on costs as they are prorated between businesses when multiple inspections can be done in one geographic area. The program also works with businesses that need frequent export services to establish a compliance agreement, when practical, that will reduce expenses throughout the year over what they would normally be paying under the fee schedule in rule.

**SECTION 7: Describe how small businesses were involved in the development of the proposed rule.**

The proposal to increase fees was shared with the nursery [nursery] advisory committee, Christmas tree advisory committee, grapevine advisory committee, seed potato commission, grapevine foundation block advisory group, and fruit tree advisory committee. These groups have members that represent small businesses in their respective industries.

**SECTION 8: Identify the estimated number of jobs that will be created or lost as the result of compliance with the proposed rule.**

No jobs are expected to be created or lost because of compliance with the proposed rule amendment.

A copy of the statement may be obtained by contacting Gloriann Robinson, Agency Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, phone 360-902-1802, fax 360-902-2092, TTY 800-833-6388, email wsdarulescomments@agr.wa.gov.

March 2, 2023  
Brad White  
Assistant Director

**OTS-4373.1**

AMENDATORY SECTION (Amending WSR 03-10-083, filed 5/6/03, effective 6/30/03)

**WAC 16-401-023 Schedule of fees and charges—Establishing hourly rates.** (1) Requested services are provided at the applicable hourly rate. (~~The nonbusiness hourly rate applies for service provided before~~) Services are generally available between 8:00 a.m. ((or after)) and 5:00 p.m. during the ((workday and for all services provided on Saturday, Sunday, or a)) workweek, except for on holidays listed in subsection (2) of this section.

(2) Holidays mean New Year's Day, Memorial Day, Juneteenth, Independence Day, Labor Day, Thanksgiving Day, the day immediately following Thanksgiving Day, Veteran's Day, Christmas Day, President's Day, and Martin Luther King's Birthday.

(3) The hourly charge is assessed in one-half hour increments, with one-half hour being the minimum charge.

~~((4) Persons requesting service with less than twenty-four hours notice during nonbusiness hours may be subject to a charge of two additional hours at the nonbusiness hourly rate, if the department is required to pay call back to the employee(s) providing the requested service.))~~

[Statutory Authority: Chapters 15.13, 15.14, and 34.05 RCW. WSR 03-10-083, § 16-401-023, filed 5/6/03, effective 6/30/03. Statutory Authority: Chapters 15.13 and 15.14 RCW. WSR 99-12-034, § 16-401-023, filed 5/26/99, effective 6/26/99. Statutory Authority: [Chapter 15.13 RCW]. WSR 92-24-067 (Order 4016), § 16-401-023, filed 12/1/92, effective 1/1/93.]

AMENDATORY SECTION (Amending WSR 15-21-022, filed 10/13/15, effective 12/1/15)

**WAC 16-401-027 Schedule of fees and charges—Applicable rates and charges.** The following rates apply for requested inspection services at licensed nursery facilities:

<b>(1) Fee or Charge:</b>	
Hourly rate—business hours	<del>(\$50.00)</del> <u>\$58.00</u>
<del>(Hourly rate—nonbusiness hours</del>	<del>\$75.00</del>
<del>Certificate issued at time of inspection</del>	<del>No charge</del>
<del>Certificate issued more than twenty-four hours after the inspection</del>	<del>\$24.50</del>
<del>Additional certificates</del>	<del>\$8.25</del>
<del>Fumigation lot or container fee</del>	<del>\$25.00)</del>
<u>Phytosanitary certificate issued for licensed nurseries</u>	<u>\$20.00</u>
<del>Certificate of plant health for noncommercial movement</del>	<del>(\$10.00)</del> <u>\$20.00</u>
<del>Compliance agreement</del>	<del>(\$50.00)</del> <u>\$58.00</u>
Inspection tags or stickers (lots of 250)	\$10.00 per lot

(2) Mileage at the established office of financial management rate (~~(schedule A)~~), per diem and other authorized travel expenses at actual cost, and travel time at the applicable hourly rate may be assessed for requested inspections that are not a part of a regular work schedule. Such charge may be prorated among applicants if more than one applicant is provided service during a workday or trip when mileage and/or per diem are applicable.

(3) Inspections for phytosanitary certification, including growing season field inspections, are provided at the applicable hourly rate provided in subsection (1) of this section except where an alternate certification inspection fee is provided in statute, in rule, or by a written agreement between the department and an industry entity, university, or public agency. When growing season field inspections for phytosanitary certification and regulatory inspections are performed simultaneously, the first two hours of inspection each calendar year for nurseries licensed under WAC 16-401-041 (1)(b) or (2)(a); and the first four hours of inspection per calendar year for nurseries licensed under WAC 16-401-041 (1)(c) or (2)(b), are without charge.

~~((There is no additional charge for the first phytosanitary certificate issued at the time of the inspection.))~~

(4) Inspection and certification of nonplant material or equipment for sanitation (freedom from soil or pests) by visual examination or through witnessing a prescribed treatment (steam cleaning, hydro-washing, etc.) is charged at the applicable hourly rate.

~~(5) ((Witnessing and certification of fumigation is charged at the applicable hourly rate, plus a per lot or container fee.~~

~~(6))~~ The department may also charge fees and/or surcharges for transmittal to federal agencies.

~~((7))~~ (6) The department may issue a certificate of plant health for noncommercial movement of plant materials between states by unlicensed persons, up to a maximum of five plants, ~~((and))~~ for a flat fee without charges for hourly rate, provided that the plants are brought to a plant services office for inspection.

Note: When two or more types of inspection, provided in this section, are performed simultaneously, only one hourly rate applies. ~~((One certificate for one service is issued at no charge.))~~

[Statutory Authority: RCW 15.13.260, 15.13.280, 15.14.015, 17.24.131, and chapter 34.05 RCW. WSR 15-21-022, § 16-401-027, filed 10/13/15,

effective 12/1/15. Statutory Authority: RCW 15.13.260, 15.13.280, 15.13.370, 15.14.015, chapter 34.05 RCW, and 2009 c 564. WSR 09-23-005, § 16-401-027, filed 11/5/09, effective 1/1/10. Statutory Authority: Chapters 15.13, 15.14, and 34.05 RCW. WSR 07-11-011, § 16-401-027, filed 5/3/07, effective 7/1/07; WSR 06-15-043, § 16-401-027, filed 7/11/06, effective 8/11/06; WSR 05-12-110, § 16-401-027, filed 5/31/05, effective 7/1/05; WSR 04-17-037, § 16-401-027, filed 8/10/04, effective 9/10/04. Statutory Authority: Chapters 15.13, 15.14, 17.24, and 34.05 RCW. WSR 03-21-166, § 16-401-027, filed 10/22/03, effective 11/22/03. Statutory Authority: Chapters 15.13, 15.14, and 34.05 RCW. WSR 03-10-083, § 16-401-027, filed 5/6/03, effective 6/30/03. Statutory Authority: Chapters 15.13 and 15.14 RCW. WSR 01-11-031, § 16-401-027, filed 5/8/01, effective 6/8/01.]

AMENDATORY SECTION (Amending WSR 15-21-022, filed 10/13/15, effective 12/1/15)

**WAC 16-401-041 Nursery dealer license fees.** Annual license fees as established below, must accompany the application for nursery dealer license:

- (1) Retail nursery dealer license fee:
  - (a) Gross business sales of horticultural plants and turf less than (~~two thousand five hundred dollars~~) \$2,500. . . (~~(\$52.50)~~) \$67.20
  - (b) Gross business sales of horticultural plants and turf between (~~two thousand five hundred dollars and fifteen thousand dollars~~) \$2,500 and \$15,000, the license fee is. . . . . (~~(\$115.00)~~) \$147.20
  - (c) Gross business sales of horticultural plants and turf of (~~fifteen thousand dollars~~) \$15,000 or more. . . . . (~~(\$228.00)~~) \$292.00
- (2) Wholesale nursery dealer license fee:
  - (a) Gross business sales of horticultural plants and turf less than (~~fifteen thousand dollars~~) \$15,000. . . . . (~~(\$115.00)~~) \$147.20
  - (b) Gross business sales of horticultural plants and turf of (~~fifteen thousand dollars~~) \$15,000 or more. . . . . (~~(\$228.00)~~) \$292.00
- (3) As provided in RCW 15.13.285, a surcharge of (~~twenty~~) 20 percent of the base rate, in addition to the fees established on all classes of licenses in subsections (1) and (2) of this section, is established.
- (4) Permit fee for those types of sales and organizations exempted from licensing requirements by RCW 15.13.270  
 . . . . . (~~(\$10.00)~~) \$20.00

[Statutory Authority: RCW 15.13.260, 15.13.280, 15.14.015, 17.24.131, and chapter 34.05 RCW. WSR 15-21-022, § 16-401-041, filed 10/13/15, effective 12/1/15. Statutory Authority: RCW 15.13.260, 15.13.280, 15.13.370, 15.14.015, chapter 34.05 RCW, and 2009 c 564. WSR 09-23-005, § 16-401-041, filed 11/5/09, effective 1/1/10. Statutory Authority: Chapters 15.13, 15.14, and 34.05 RCW. WSR 07-11-011, § 16-401-041, filed 5/3/07, effective 7/1/07; WSR 06-15-043, § 16-401-041, filed 7/11/06, effective 8/11/06; WSR 05-12-110, § 16-401-041, filed 5/31/05, effective 7/1/05. Statutory Authority: Chapters 15.13, 15.14, 17.24 and 34.05 RCW. WSR 03-21-166, § 16-401-041, filed 10/22/03, effective 11/22/03. Statutory Authority: Chapters 15.13, 15.14, and 34.05 RCW. WSR 03-10-083, § 16-401-041, filed 5/6/03, effective 6/30/03. Statutory Authority: Chapters 15.13

and 15.14 RCW. WSR 01-11-031, § 16-401-041, filed 5/8/01, effective 6/8/01; WSR 99-12-034, § 16-401-041, filed 5/26/99, effective 6/26/99.]

**OTS-4374.1**

AMENDATORY SECTION (Amending WSR 03-10-082, filed 5/6/03, effective 6/30/03)

**WAC 16-470-905 Schedule of fees and charges—Establishing hourly rates.** (1) Requested services are provided at the applicable hourly rate except as provided in subsection ~~((5))~~ (4) of this section. ~~((The hourly rate for nonbusiness hours applies for service provided before))~~ Services are generally available between 8:00 a.m. (or after) and 5:00 p.m. during the (workday and for all services provided on Saturday, Sunday, or) workweek, except for on a holiday listed in subsection (2) of this section.

(2) Holidays shall mean New Year's Day, Memorial Day, Juneteenth, Independence Day, Labor Day, Thanksgiving Day, the day immediately following Thanksgiving Day, Veteran's Day, Christmas Day, President's Day, and Martin Luther King's Birthday.

(3) Charges are assessed in one-half hour increments, with one-half hour as a minimum.

~~(4) ((Persons requesting service with less than twenty-four hours notice during nonbusiness hours, may be subject to a charge of two additional hours at the nonbusiness hourly rate if the department is required to pay call back pay to the employee(s) providing the requested service.~~

~~(5))~~ The department reserves the right to provide service by written agreement at a single, negotiated cost or at a negotiated rate for projects with one of the following characteristics:

(a) Projects requiring multiple periodic inspections and/or certificates; or

(b) Projects requiring field inspections of crops not regulated under chapter 15.13 or 15.14 RCW.

The rate charged shall not be less than the cost to the department of providing the services.

[Statutory Authority: Chapters 17.24 and 34.05 RCW. WSR 03-10-082, § 16-470-905, filed 5/6/03, effective 6/30/03. Statutory Authority: Chapter 17.24 RCW. WSR 99-12-035, § 16-470-905, filed 5/26/99, effective 6/26/99; WSR 92-07-023, § 16-470-905, filed 3/10/92, effective 4/10/92.]

AMENDATORY SECTION (Amending WSR 15-21-022, filed 10/13/15, effective 12/1/15)

**WAC 16-470-912 Schedule of fees and charges—Applicable fees and charges.** (1) Hourly rate(~~-~~) . . . . . \$72.50

((Hourly rate - Business hours	\$62.50
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Hourly rate—Nonbusiness hours | \$93.75))

(2) Laboratory diagnostic services, except as provided in subsection (3) or (4) of this section, are charged at the applicable hourly rate plus materials.

(3) Plant pathology laboratory diagnostic fees:

- (a) Nematode assay (plant material). . . . . ((~~\$38.00~~)) \$48.00
- (b) Nematode assay (soil). . . . . ((~~\$60.00~~)) \$65.00
- (c) Assay for dwarf bunt (TCK), Karnal bunt, flag smut. . . . . ((~~\$60.00~~)) \$70.00

Note: Fee is for one sample for one specific organism, unless more than one organism can be detected in a single test without additional inputs.

(4) The department reserves the right to provide service by written agreement at a single, negotiated cost or at a negotiated rate for projects with at least one of the following characteristics:

- (a) Projects greater than ((~~one hundred~~)) 100 samples;
- (b) Projects requiring materials not readily available; or
- (c) Projects requiring special handling, multiple phase test procedures, or prolonged incubation periods.

The rate charged shall not be less than the cost to the department of performing the tests.

[Statutory Authority: RCW 15.13.260, 15.13.280, 15.14.015, 17.24.131, and chapter 34.05 RCW. WSR 15-21-022, § 16-470-912, filed 10/13/15, effective 12/1/15. Statutory Authority: RCW 17.24.131, 2012 2nd sp.s. c 7, and chapter 34.05 RCW. WSR 12-22-028, § 16-470-912, filed 10/31/12, effective 12/1/12. Statutory Authority: RCW 17.24.021, 17.24.131, chapter 34.05 RCW, and 2009 c 564. WSR 09-23-006, § 16-470-912, filed 11/5/09, effective 1/1/10. Statutory Authority: Chapters 17.24 and 34.05 RCW. WSR 07-11-012, § 16-470-912, filed 5/3/07, effective 7/1/07; WSR 06-15-044, § 16-470-912, filed 7/11/06, effective 8/11/06; WSR 05-12-111, § 16-470-912, filed 5/31/05, effective 7/1/05. Statutory Authority: Chapters 17.24, 15.14, and 34.05 RCW. WSR 05-01-180, § 16-470-912, filed 12/21/04, effective 1/21/05. Statutory Authority: Chapters 17.24 and 34.05 RCW. WSR 04-17-036, § 16-470-912, filed 8/10/04, effective 9/10/04. Statutory Authority: Chapters 15.13, 15.14, 17.24, and 34.05 RCW. WSR 03-21-166, § 16-470-912, filed 10/22/03, effective 11/22/03. Statutory Authority: Chapters 17.24 and 34.05 RCW. WSR 03-10-082, § 16-470-912, filed 5/6/03, effective 6/30/03. Statutory Authority: Chapters 17.24 and 15.14 RCW. WSR 01-11-033, § 16-470-912, filed 5/8/01, effective 6/8/01.]

AMENDATORY SECTION (Amending WSR 15-21-022, filed 10/13/15, effective 12/1/15)

**WAC 16-470-917 Schedule of fees and charges—Fees for post entry inspection services.** (1) Post entry site inspection ((and/or)), per-

mit review and approval ((~~\_\_\_\_\_~~)) \$125.00  
((~~2~~)) and subsequent inspections of post entry plant materials are provided at the applicable hourly rate.

((~~3~~)) (2) Post entry inspection fees may be waived for state universities, United States Department of Agriculture researchers, and other public entities.

[Statutory Authority: RCW 15.13.260, 15.13.280, 15.14.015, 17.24.131, and chapter 34.05 RCW. WSR 15-21-022, § 16-470-917, filed 10/13/15, effective 12/1/15. Statutory Authority: RCW 17.24.131, 2012 2nd sp.s. c 7, and chapter 34.05 RCW. WSR 12-22-028, § 16-470-917, filed 10/31/12, effective 12/1/12. Statutory Authority: RCW 17.24.021, 17.24.131, chapter 34.05 RCW, and 2009 c 564. WSR 09-23-006, § 16-470-917, filed 11/5/09, effective 1/1/10. Statutory Authority: Chapters 17.24 and 34.05 RCW. WSR 07-11-012, § 16-470-917, filed 5/3/07, effective 7/1/07; WSR 06-15-044, § 16-470-917, filed 7/11/06, effective 8/11/06; WSR 05-12-111, § 16-470-917, filed 5/31/05, effective 7/1/05; WSR 04-17-036, § 16-470-917, filed 8/10/04, effective 9/10/04. Statutory Authority: Chapters 15.13, 15.14, 17.24, and 34.05 RCW. WSR 03-21-166, § 16-470-917, filed 10/22/03, effective 11/22/03. Statutory Authority: Chapters 17.24 and 34.05 RCW. WSR 03-10-082, § 16-470-917, filed 5/6/03, effective 6/30/03. Statutory Authority: Chapters 17.24 and 15.14 RCW. WSR 01-11-033, § 16-470-917, filed 5/8/01, effective 6/8/01.]

AMENDATORY SECTION (Amending WSR 15-21-022, filed 10/13/15, effective 12/1/15)

**WAC 16-470-921 Schedule of fees and charges—Miscellaneous fees.**

(1) Mileage at the established office of financial management rate (~~((schedule A))~~), per diem and other authorized travel expenses at actual cost, and travel time at the applicable hourly rate may be assessed for requested inspections or post entry inspections that are not a part of a regular work schedule. Such charges may be prorated among applicants if more than one applicant is provided service during a workday or trip when per diem is applicable.

(2) Postage, special handling services and other miscellaneous costs exceeding five dollars will be charged back to the applicant at the actual cost.

(3) Certificates of inspection, phytosanitary certificates, and other official documents will be provided to the applicant subject to the charges and conditions established below:

Fee or Charge:	
<del>((Certificate issued at time of inspection</del>	No charge
<del>Certificate issued more than twenty-four hours after the inspection</del>	\$30.00
<del>Additional certificates</del>	\$10.00
<del>Fumigation lot or container fee</del>	<del>(\$25.00))</del>
<u>Each phytosanitary certificate issued to a nonnursery</u>	<u>\$26.00</u>
Compliance agreement	<del>(((\$62.50)) \$72.50</del>

[Statutory Authority: RCW 15.13.260, 15.13.280, 15.14.015, 17.24.131, and chapter 34.05 RCW. WSR 15-21-022, § 16-470-921, filed 10/13/15, effective 12/1/15. Statutory Authority: RCW 17.24.131, 2012 2nd sp.s. c 7, and chapter 34.05 RCW. WSR 12-22-028, § 16-470-921, filed 10/31/12, effective 12/1/12. Statutory Authority: RCW 17.24.021, 17.24.131, chapter 34.05 RCW, and 2009 c 564. WSR 09-23-006, §

16-470-921, filed 11/5/09, effective 1/1/10. Statutory Authority: Chapters 17.24 and 34.05 RCW. WSR 03-10-082, § 16-470-921, filed 5/6/03, effective 6/30/03. Statutory Authority: Chapters 17.24 and 15.14 RCW. WSR 01-11-033, § 16-470-921, filed 5/8/01, effective 6/8/01. Statutory Authority: Chapter 17.24 RCW. WSR 99-12-035, § 16-470-921, filed 5/26/99, effective 6/26/99.]

## WSR 23-07-012

## PROPOSED RULES

## SEATTLE COLLEGES

[Filed March 2, 2023, 3:09 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-10-006.

Title of Rule and Other Identifying Information: Student services hazing prevention.

Hearing Location(s): On April 25, 2023, at 10:00 - 11:00 a.m., Zoom.

Date of Intended Adoption: May 4, 2023.

Submit Written Comments to: Bella Garrison, 1500 Harvard Avenue, Seattle, WA 98122, email Wacinput@seattlecolleges.edu, by April 1, 2023.

Assistance for Persons with Disabilities: Contact Bella Garrison, phone 206-934-3873, email Bella.Garrison@seattlecolleges.edu, by April 1, 2023.

Reasons Supporting Proposal: Amend WAC to follow the RCW for hazing prevention policy and expanded definitions used, as well as the new state Sam's Law requirements amended in RCW 28B.10.900 from HB [2SHB] 1751. The amended WAC will include providing hazing awareness and prevention education.

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

Statute Being Implemented: WAC 132F-121-010 and 132F-121-110, Student activities, rights and discipline.

Rule is not necessitated by federal law, federal or state court decision. HB [2SHB] 1751 Sam's Law.

Name of Proponent: Seattle Colleges, public.

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

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

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

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.

Scope of exemption for rule proposal:

Is fully exempt.

February 28, 2023  
Teresa (Bella) Garrison  
Director of Compliance

**OTS-4409.1**

AMENDATORY SECTION (Amending WSR 21-10-027, filed 4/26/21, effective 5/27/21)

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

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

- ~~(i) Intentionally causes physical or emotional imminent harm to the student or damage to the student's property;~~
- ~~(ii) Places the student in reasonable fear of harm to themselves or of damage to the student's property;~~
- ~~(iii) Creates an unlawful hostile environment at school for the student;~~
- ~~(iv) Infringes on the rights of the student at school; or~~
- ~~(v) Is conduct that is sufficiently severe or pervasive to cause material disruption to the ability of a student to participate or benefit in the education program.~~

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

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

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

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

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

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

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

~~finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.~~

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

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

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

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

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

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

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

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

~~(3)) (1) The terms "college" and "campus" are used interchangeably, and each refers to any of the district's three colleges, North Seattle College, Seattle Central College, and South Seattle College. ((The Seattle Vocational Institute is considered to be part of Seattle Central College.~~

~~(4)) (2) "Day" means calendar day, unless specified otherwise, and deadlines shall be computed in accordance with WAC 10-08-080.~~

~~((5)) (3) "District" means the sixth state college district, the district administrative offices (Siegal Center), North Seattle College, Seattle Central College, South Seattle College, and/or every other District VI educational facility, each separately and all together.~~

~~((6)) (4) "District community" includes, but is not limited to, the district itself and all enrolled students, employees, officers, and invitees of the district.~~

~~((7)) (5) "District property" includes all real property, buildings, and other facilities that are owned, leased, or controlled by the district or by the state for district purposes.~~

~~((8)) (6) "Vice president for student services" means the person whom a college president has appointed to that position or has~~

otherwise designated to perform the functions ascribed to that position in this chapter.

~~((9))~~ (7) An action or activity that may be authorized or taken by the district chancellor, a vice chancellor, a campus president, or a campus vice president may also be authorized or taken by any other person whom that officer has specifically designated to perform that function on their behalf, but this officer retains responsibility for the function.

~~((10))~~ (8) After the adoption of these rules, if a statute or rule to which they refer is renumbered or otherwise amended, these rules shall be interpreted to the fullest extent possible to incorporate such amendment while still giving effect to their original purposes.

~~((11))~~ (9) Service of any document, notice, or copy under this chapter shall be made (a) by personal delivery, (b) by mailing to the recipient's last known address, which service shall be regarded as complete upon deposit in the U.S. mail properly stamped and addressed, or (c) as otherwise authorized by law or rule.

~~((12))~~ (10) The term "student" includes all persons taking courses at the district, either full-time or part-time. Persons who withdraw after allegedly violating the student code, who are not officially enrolled for a particular term but who have a continuing relationship with the district, or who have been notified of their acceptance for admission are considered "students" as are persons who are living in district resident halls, although not enrolled at the district.

(11) The term "student group" is a student organization, athletic team, or living group including, but not limited to, student clubs and organizations, members of a class or student cohort, student performance groups, and student living groups within student housing.

[Statutory Authority: RCW 28B.50.140 and 28B.50.090(3). WSR 21-10-027, § 132F-121-010, filed 4/26/21, effective 5/27/21. Statutory Authority: RCW 28B.50.140(13). WSR 16-04-025, § 132F-121-010, filed 1/25/16, effective 2/25/16. Statutory Authority: RCW 28B.50.140(13) and 42.56.040. WSR 15-02-072, § 132F-121-010, filed 1/6/15, effective 2/6/15. Statutory Authority: RCW 28B.50.140(13). WSR 13-11-127, § 132F-121-010, filed 5/21/13, effective 6/21/13. Statutory Authority: RCW 28B.50.100, [28B.50].130, and/or [28B.50].140. WSR 03-16-015, § 132F-121-010, filed 7/28/03, effective 8/28/03.]

#### NEW SECTION

**WAC 132F-121-035 Hazing prohibited—Sanctions.** (1) Hazing by a student or a student group is prohibited pursuant to WAC 132F-121-110(15).

(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 corpo-

ration 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 any entitlement to state-funded grants, scholarships, or awards for a period of time determined by the college.

(c) Student groups that knowingly permit 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 assault, 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.

[ ]

AMENDATORY SECTION (Amending WSR 21-10-027, filed 4/26/21, effective 5/27/21)

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

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

(2) Sexual misconduct. ~~((The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence as defined in WAC 132F-121-010(2).))~~ Sexual misconduct includes sexual harassment, sexual intimidation, sexual violence, domestic violence, and dating violence. Sexual misconduct may also include acts of sexual harassment prohibited under Title IX. See WAC 132F-121-280.

(a) Sexual harassment is a form of sexual discrimination consisting of unwelcome, gender-based, verbal, written, electronic and/or physical conduct. Sexual harassment does not need to be sexual in nature and can include offensive remarks about a person's gender. There are two types of sexual harassment:

(i) Hostile environment sexual harassment occurs when the conduct is sufficiently severe and/or pervasive and so objectively offensive that it has the effect of altering the terms or conditions of employment or substantially limiting the ability of a student to participate in or benefit from the college's educational and/or social programs and/or student housing.

(ii) Quid pro quo harassment occurs when an individual, in a position of real or perceived authority, conditions the receipt of a benefit upon granting of sexual favors.

(b) Sexual exploitation. Taking nonconsensual or abusive sexual advantage of another for the respondent's own advantage or benefit, or



to benefit or take advantage of anyone other than the one being exploited, when the behavior does not otherwise constitute one of the other sexual misconduct offenses described herein. Examples of sexual exploitation may include, but are not limited to:

(i) Invading another person's sexual privacy;

(ii) Prostituting another person;

(iii) Nonconsensual photography and digital or video recording of nudity or sexual activity, or nonconsensual audio recording of sexual activity;

(iv) Unauthorized sharing or distribution of photographs or digital or video recording of nudity or sexual activity, or audio recording of sexual activity, unless otherwise protected by law;

(v) Engaging in voyeurism. A person commits voyeurism if they knowingly view, photograph, record, or film another person, without that person's knowledge and consent, while the person being viewed, photographed, recorded, or filmed is in a place where the person has a reasonable expectation of privacy;

(vi) Knowingly or recklessly exposing another person to a significant risk of sexually transmitted disease or infection; or

(vii) Causing the nonconsensual indecent exposure of another person, as defined by subsection (21) of this section.

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

(i) Nonconsensual sexual intercourse (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 or body part, 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.

(d) Consent: Knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact. A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct. Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

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

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

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

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

(4) Academic dishonesty. Any act of course-related dishonesty ~~((7))~~ including, but not limited to, cheating or plagiarism.

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

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

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

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

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

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

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

(6) Obstruction or disruption of (a) any instruction, research, administration, disciplinary proceeding, or other district activity, whether occurring on or off district property, or (b) any other activ-

ity that is authorized to occur on district property, whether or not actually conducted by the district.

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

(8) Bullying is unwelcome conduct, whether verbal, physical or otherwise, including "cyber" bullying that is objectively offensive and sufficiently severe, or persistent, and/or pervasive, that it has the effect of substantially limiting the ability of an individual to participate in or benefit from the colleges' educational and/or social programs, and/or student housing. Bullying behavior is conduct that is not otherwise protected by law. Bullying may be top-down, perpetuated by someone with greater positional power towards another with lesser positional power; bottom-up, perpetuated by someone with lesser positional power towards someone with greater positional power; or peer-to-peer. Petty slights, annoyances, offensive utterances, and isolated incidents (unless extremely serious) typically do not qualify as bullying.

(9) Cyber misconduct. Cyberstalking, cyberbullying, or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, nonconsensual recording, including images or videos of a sexual nature, and nonconsensual distribution of such material.

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

(11) Attempted or actual damage to, or theft or misuse of, real or personal property or money of (a) the district or state, (b) any student or district officer, employee, or organization, or (c) any other person or organization lawfully present on district property, or possession of such property or money after it has been stolen.

~~((9))~~ (12) Failure to comply with the direction of a district officer or employee who is acting in the legitimate performance of their duties, or failure to properly identify oneself to such a person when requested to do so.

~~((10))~~ (13) Participation in any activity which unreasonably disrupts the operations of the district or infringes on the rights of another member of the district community, or leads or incites another person to engage in such an activity.

~~((11))~~ (14) Weapons. Carrying, holding, wearing, exhibiting, displaying or drawing of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

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

(b) A student with a valid concealed weapons permit may store a firearm in their vehicle parked on campus in accordance with RCW 9.41.050, provided the vehicle is locked and the weapon is concealed from view; or

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

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

~~((12))~~ (15) Hazing. Hazing 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. Hazing includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student.

~~((13))~~ (16) Alcohol. The use, possession, delivery, or sale of any alcoholic beverage, except as permitted by law, applicable college policies, or authorized by chancellor or a college president, or being observably under the influence of alcohol.

~~((14))~~ (17) Drugs.

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

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

~~((15))~~ (18) Obstruction of the free flow of pedestrian or vehicular movement on district property or at a district activity.

~~((16))~~ (19) Conduct which is disorderly, lewd, or obscene.

~~((17))~~ (20) Breach of the peace, or aiding, abetting, or procuring a breach of the peace.

~~((18))~~ (21) Indecent exposure. The intentional or knowing exposure of a person's genitals or other private body parts when done in a place or manner in which such exposure is likely to cause affront or alarm. Breastfeeding or expressing breast milk is not indecent exposure.

~~(22)~~ (22) The use of tobacco, electronic cigarettes, and related products is prohibited in any building owned, leased or operated by the college, including ~~((twenty-five))~~ 25 feet from entrances, exits, windows that open, and ventilation intakes of such buildings, and where otherwise prohibited. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, water pipes, hookahs, chewing tobacco, and snuff.

~~((19))~~ (23) Theft or other misuse of computer time or other electronic information resources of the district. Such misuse includes but is not limited to:

(a) Unauthorized use of such resources or opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of such time or resources to interfere with someone else's work;

(e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;

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

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

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

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

~~((20))~~ (24) Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to district property, or unauthorized entry onto or into district property.

~~((21))~~ (25) Abuse or misuse of any of the procedures relating to student complaints or misconduct including, but not limited to:

(a) Failure to obey a subpoena;

(b) Falsification or misrepresentation of information;

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

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

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

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

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

~~((22))~~ (26) Safety violations. The operation of any motor vehicle on district property in an unsafe manner or in a manner which is reasonably perceived as threatening the health or safety of another person. Safety violation includes any nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

~~((23))~~ (27) Violation of any other district rule, requirement, or procedure including, but not limited to, any that is posted in

electronic form, the district's traffic and parking rules, or the requirements for carpool parking.

~~((24))~~ (28) Violation of any federal, state, or local law, rule, or regulation, including any hate crime.

~~((25))~~ (29) Ethical violation. The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

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

~~((26))~~ (30) Attempting to commit any of the foregoing acts of misconduct or aiding, abetting, inciting, encouraging, or assisting another person to commit any of the foregoing acts of misconduct.

~~((27))~~ (31) Retaliation. Retaliation against any individual for reporting, providing information, exercising one's rights or responsibilities, or otherwise being involved in the process of responding to, investigating, or addressing allegations or violations of federal, state or local law, or college policies including, but not limited to, student conduct code provisions prohibiting discrimination and harassment.

[Statutory Authority: RCW 28B.50.140 and 28B.50.090(3). WSR 21-10-027, § 132F-121-110, filed 4/26/21, effective 5/27/21. Statutory Authority: RCW 28B.50.140(13). WSR 16-04-025, § 132F-121-110, filed 1/25/16, effective 2/25/16; WSR 13-11-127, § 132F-121-110, filed 5/21/13, effective 6/21/13. Statutory Authority: RCW 28B.50.100, [28B.50].130, and/or [28B.50].140. WSR 03-16-015, § 132F-121-110, filed 7/28/03, effective 8/28/03.]

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

**WAC 132F-121-130 Disciplinary jurisdiction.** ~~((1) Disciplinary action may be instituted against a student for any misconduct that is a violation of this student code, regardless of whether there is a related civil or criminal court proceeding. Proceedings under these rules may precede, accompany, or follow any such court proceeding.~~

~~(2) Except as provided in subsection (3), a student is subject to disciplinary action under these rules for any act of misconduct which (a) occurs on or damages district property or (b) occurs during any event or activity that the district conducts, participates in, or sponsors, regardless of where it occurs.~~

~~(3) The district reserves jurisdiction and authority to take disciplinary action for student misconduct beyond that described in subsection (2) when the misconduct demonstrates such flagrant disregard for the safety or well-being of others that it endangers the district community.)~~ 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 discipli-

nary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

(1) The student conduct code shall apply to conduct by students and student groups that occurs:

(a) on college premises; or

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

(c) To off-campus conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives.

(2) Jurisdiction extends to, but is not limited to, locations in which students or student groups 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 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) 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 by students or student groups that occurs off-campus.

[Statutory Authority: RCW 28B.50.100, [28B.50].130, and/or [28B.50].140. WSR 03-16-015, § 132F-121-130, filed 7/28/03, effective 8/28/03.]

AMENDATORY SECTION (Amending WSR 21-10-027, filed 4/26/21, effective 5/27/21)

**WAC 132F-121-280 Prohibited conduct under Title IX.** Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, the Seattle Colleges may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

For purposes of this supplemental procedure, "sexual harassment" encompasses the following conduct:

(1) Title IX quid pro quo harassment. (~~(A Seattle Colleges' student conditioning)~~) Quid pro quo harassment occurs when a student in their capacity as an employee of the Seattle Colleges conditions the provision of an aid, benefit, or service of the Seattle Colleges on an individual's participation in unwelcome sexual conduct.

(2) Title IX hostile environment. Unwelcome sexual or gender-based conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the Seattle Colleges' educational programs or activities, or employment.

(3) Sexual assault. Sexual assault includes the following conduct:

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

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

(c) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of (~~eighteen~~) 18.

(d) Statutory rape. Consensual sexual intercourse between someone who is (~~eighteen~~) 18 years of age or older and someone who is under the age of (~~sixteen~~) 16.

(4) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(5) Dating violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(a) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(b) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(i) The length of the relationship;

(ii) The type of relationship; and

(iii) The frequency of interaction between the persons involved in the relationship.

(6) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.

[Statutory Authority: RCW 28B.50.140 and 28B.50.090(3). WSR 21-10-027, § 132F-121-280, filed 4/26/21, effective 5/27/21.]



AMENDATORY SECTION (Amending WSR 21-10-027, filed 4/26/21, effective 5/27/21)

**WAC 132F-121-330 Evidence.** The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

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

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

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

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

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

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

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

~~((6))~~ (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 and 28B.50.090(3). WSR 21-10-027, § 132F-121-330, filed 4/26/21, effective 5/27/21.]

AMENDATORY SECTION (Amending WSR 21-10-027, filed 4/26/21, effective 5/27/21)

**WAC 132F-121-350 Appeals.** (1) ~~((The parties shall))~~ All parties, including the student conduct officer in their capacity as a representative of the college, have the right to appeal from the ((initial order's)) determination of responsibility and/or from a dismissal ((of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in WAC 132F-121-170)), in whole or 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 if affirmed or denied, or if the disciplinary sanctions and ~~((condition(s)))~~ conditions imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth ~~((any))~~ the new disciplinary sanctions and ~~((or condition(s)))~~ conditions.

~~((3))~~ (5) The president's office shall serve the final decision on the parties simultaneously.

(6) All administrative decisions reached through this process 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.

[Statutory Authority: RCW 28B.50.140 and 28B.50.090(3). WSR 21-10-027, § 132F-121-350, filed 4/26/21, effective 5/27/21.]

## WSR 23-07-013

## PROPOSED RULES

## EASTERN WASHINGTON UNIVERSITY

[Filed March 3, 2023, 7:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-03-077.

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

Hearing Location(s): On April 27, 2023, at 8:00 a.m., at 215A Tawanka Commons, Cheney, WA 99004.

Date of Intended Adoption: May 19, 2023.

Submit Written Comments to: Annika Scharosch, 211 Tawanka [Commons], Cheney, WA 99004, email [ascharosch@ewu.edu](mailto:ascharosch@ewu.edu), website <https://inside.ewu.edu/policies>, by April 27, 2023.

Assistance for Persons with Disabilities: Contact Annika Scharosch, phone 509-359-6724, email [ascharosch@ewu.edu](mailto:ascharosch@ewu.edu), by April 25, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Updates the University of Eastern Washington's (EWU) student conduct code to identify the process for investigating non-Title IX complaints, provide for separate prehearing conferences, and clarify the standards for the admission and review of evidence.

Reasons Supporting Proposal: See above.

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

Statute Being Implemented: RCW 28B.10.902.

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

Name of Proponent: EWU, governmental.

Name of Agency Personnel Responsible for Drafting: Annika Scharosch, 211 Tawanka Commons, Cheney, WA 99004, 509-359-6724; Implementation and Enforcement: Dr. Shari McMahan, 214 Showalter Hall, Cheney, WA 99004, 509-359-6200.

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

A cost-benefit analysis is not required under RCW 34.05.328. Not subject to RCW 34.05.328(5).

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

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Scope of exemption for rule proposal:

Is fully exempt.

March 3, 2023

Annika Scharosch

Associate Vice President for Civil Rights  
Compliance and Enterprise Risk Management

OTS-4356.1

AMENDATORY SECTION (Amending WSR 23-01-027, filed 12/9/22, effective 1/9/23)

**WAC 172-121-100 Complaints.** (1) Filing of complaints.

(a) Any person or the university may file a complaint against a student or student organization for violation of the student conduct code.

(b) A person wishing to file a complaint under the student conduct code must submit the complaint, in writing, to one of the following:

(i) Student rights and responsibilities ([www.inside.ewu.edu/srr](http://www.inside.ewu.edu/srr)); or

(ii) Title IX coordinator ([www.inside.ewu.edu/titleix](http://www.inside.ewu.edu/titleix)).

(c) Filing a complaint under the student conduct code does not prohibit or limit a person's right to file complaints or charges with other civil and/or criminal authorities for violations of local, county, state, or federal law.

(d) All student conduct code complaints will be forwarded to the director of SRR for further review and action.

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

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

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

(a) Report to Title IX coordinator. The director of SRR shall report all complaints which may constitute any form of sexual misconduct or interpersonal violence to the university Title IX coordinator within 24 hours.

(b) Title IX complaints. The Title IX coordinator will determine whether or not the allegation of sexual misconduct or interpersonal violence constitutes a Title IX complaint under this code. Solely in cases of Title IX complaints, the university will not move forward with initiating a Title IX investigation or student conduct hearing unless a formal complaint from the person alleged to have been subjected to sexual misconduct or interpersonal violence or a complaint from the Title IX coordinator requesting initiation of the student conduct process has been received.

The Title IX coordinator is responsible for determining whether or not the allegations constitute a formal Title IX complaint. If allegations include sexual misconduct or interpersonal violence but do not meet the definition of a Title IX complaint, the Title IX coordi-

nator will inform the complainant and the respondent that the complaint is not considered a Title IX complaint and the reasons it does not fit within the required elements of a formal Title IX complaint. If the complainant or respondent disagrees with the Title IX coordinator's decision, the party may file an appeal with the dean of students within three calendar days of the Title IX coordinator's decision. The dean of students can affirm, reverse, or remand the Title IX coordinator's decision and such decision must be communicated in writing simultaneously to the parties.

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

(c) Prompt resolution. The university shall investigate any complaint alleging sexual misconduct or interpersonal violence when it is legally required to do so. The university's goal is to have complaints of sexual misconduct or interpersonal violence resolved within 90 days. If the university needs additional time, the investigator or director of SRR should provide written notice to the complainant and respondent of the delay and the reasons for the delay. Delays and extensions beyond the 90 days must be based on good cause.

(d) Investigations.

(i) Sexual misconduct and interpersonal violence. The university will investigate complaints of sexual misconduct and interpersonal violence, including Title IX complaints, and may, at its discretion, ask for an investigation of other alleged misconduct. During the investigation, the investigator is responsible for gathering evidence relating to the complaint. The investigator will contact the complainant, respondent, and other witnesses to ask questions and gather relevant evidence. Parties may be assisted by an advisor during the investigative process. During the investigation, parties will be provided with an equal opportunity to identify witnesses and other evidence that supports their position. Prior to any investigatory interview regarding a Title IX complaint, the investigator will provide written notice of the meeting with the date, time, location, participants, and purpose with sufficient time for the person to prepare to participate in the interview.

Prior to the completion of the investigative report for a Title IX complaint, the investigator will send to each party the evidence obtained during the investigation that is directly related to the allegations raised, including the evidence upon which the university does not intend to rely in reaching a determination regarding responsibility and inculpatory and exculpatory evidence. Each party will then have at least 10 calendar days to submit a written response for a Title IX complaint. The investigator will consider the written response prior to the completion of the investigative report. At the conclusion of the investigation, the investigator will prepare a final written report that fairly summarizes the relevant evidence. The investigative report, along with any evidence collected during the investigation, shall then be transmitted to the director of SRR at least 10 days prior to any hearing or other determination of responsibility. In cases of sexual misconduct or interpersonal violence, a copy of the report must also be provided to the parties for their review and written response.

(ii) Other types of conduct. The director may request an investigation for other types of alleged misconduct. During the investigation, the investigator is responsible for gathering evidence relating

to the complaint. An investigation may be completed by a single investigator or team of investigators. The investigator will contact the complainant, if applicable, respondent, and other witnesses to ask questions and gather relevant evidence. During the investigation, parties will be provided with an equal opportunity to identify witnesses and other evidence that supports their position. At the conclusion of the investigation, the investigator will prepare a final written report that fairly summarizes the relevant evidence gathered during the investigation. The investigative report, along with any evidence collected during the investigation, shall then be transmitted to the director of SRR.

(e) Confidentiality. To facilitate the investigative process and protect the privacy of those involved, all information will be maintained in a confidential manner to the fullest extent permissible by law. During an investigation, complaint information will be disseminated on a need-to-know basis. If the complainant wishes to remain anonymous, the university will take all reasonable steps to investigate the allegation without disclosing the name of the complainant to the extent allowed by state and federal law. If the complainant wishes to remain anonymous, the university shall inform them that its ability to investigate and respond to the allegation will be limited. The university cannot ensure confidentiality, as its legal obligations under federal or state law may require investigation of the allegation and possible disclosure of the complainant's name. Reports of crimes to the campus community shall not include the names of the complainants. Files subject to public disclosure will be released to the extent required by law.

(f) Right to file a criminal report. Once the university is notified of an allegation of sexual misconduct or interpersonal violence that could constitute a crime, it will notify the potential complainant of their right to file a criminal complaint with campus or local law enforcement. If the complainant in such circumstances wishes to report the conduct to local law enforcement, the university will assist them in doing so. The university will also notify the complainant that they are not required to file a report with local law enforcement. The university will report allegations of sexual misconduct or interpersonal violence to law enforcement or other authorities when it is required to do so under federal, state, and local law.

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

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

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

(i) The respondent's and complainant's rights under the student conduct code;

(ii) A summary of the allegations the complainant has against the respondent;

(iii) The potential conduct code violations related to the allegations; and

(iv) How to report any subsequent problems or retaliation, including intimidation, threats, coercion, or discrimination.

(b) In all cases alleging sexual misconduct or interpersonal violence, the director of SRR will, in addition to the information speci-

fied under (a) of this subsection, provide both parties with written information that will include, at a minimum:

(i) The student's rights and options, including options to avoid contact with the other party; a list of available university and community resources for counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other academic and housing services at the university and in the community; and options for, available assistance in, and how to request changes to academic, living, transportation, and working situations or protective measures;

(ii) The importance of preserving evidence of the alleged incident and procedures to follow to preserve evidence of the alleged incident;

(iii) Who will receive a report of the allegation;

(iv) Their right to file or not file a criminal complaint as detailed above and the ability to be assisted by campus authorities in notifying law enforcement authorities if the complainant wishes to do so;

(v) A list of resources for obtaining protective, no contact, restraining, or similar orders, if applicable;

(vi) The procedures the university will follow when determining if discipline is appropriate;

(vii) Steps the university will take to ensure confidentiality of complainants and other necessary parties and the limits this may place on the university's ability to investigate and respond, as set forth above; and

(viii) Information regarding the university's policy against retaliation, steps the university will take to prevent and respond to any retaliation, and how the student should report retaliation or new incidents.

(6) Following the complaint review, the director of SRR will either dismiss the matter or arrange a prehearing conference.

(a) Dismiss the matter. If the director of SRR determines the allegations, even if true, would not rise to the level of a conduct violation, they may dismiss the matter. In such cases, the director of SRR will prepare a written record of the dismissal. The director of SRR will also notify the complainant of their decision, if such notification is permissible under FERPA. The dismissal letter, along with the original complaint and any other related documents, will be maintained as described in WAC 172-121-080. In cases of sexual misconduct or interpersonal violence or for a Title IX complaint, the complainant may request a review of the dismissal by the dean of students by filing a request for review with the director of SRR within seven business days of receiving notice of the dismissal.

(b) Prehearing conference. If the director of SRR does not dismiss the matter they will arrange a prehearing conference as described in WAC 172-121-110 unless a respondent is opting to admit responsibility under WAC 172-121-118.

[Statutory Authority: RCW 28B.35.120(12). WSR 23-01-027, § 172-121-100, filed 12/9/22, effective 1/9/23; WSR 21-01-102, § 172-121-100, filed 12/11/20, effective 1/11/21; WSR 20-19-046, § 172-121-100, filed 9/10/20, effective 10/11/20; WSR 20-01-032, § 172-121-100, filed 12/6/19, effective 1/6/20. Statutory Authority: RCW 28B.35.120(12) and 42.56.070. WSR 19-01-047, § 172-121-100, filed 12/13/18, effective 1/13/19. Statutory Authority: RCW 28B.35.120(12). WSR 17-17-031, § 172-121-100, filed 8/9/17, effective 9/9/17; WSR

15-24-050, § 172-121-100, filed 11/23/15, effective 12/24/15; WSR  
13-24-123, § 172-121-100, filed 12/4/13, effective 1/4/14; WSR  
09-12-001, § 172-121-100, filed 5/20/09, effective 6/20/09.]

AMENDATORY SECTION (Amending WSR 23-01-027, filed 12/9/22, effective 1/9/23)

**WAC 172-121-110 Notice of allegations and initial scheduling.**

(1) Notice of investigation. If the director of SRR refers a complaint to an investigation, the director shall provide the respondent with a notice of investigation that meets the following requirements:

(a) Is made in writing;

(b) Includes a written list of the allegations against the respondent with sufficient details of the allegations based on current information including, if known, date and time of the incident, description of the conduct, and the specific sections of this code allegedly violated;

(c) Indicates that the complaint has been assigned to a university investigator and provide the contact information for the investigator;

(d) Provides notice that the respondent is presumed not responsible for the alleged conduct and a determination of responsibility will be made at the end of the hearing;

(e) Provides a reminder that the person may have an advisor of their choice throughout the student conduct process;

(f) A statement that students are prohibited from knowingly furnishing false information during the student conduct process; and

(g) Information about supportive measures and resources available to the respondent as well as information about the university's prohibition on retaliation.

(2) Notice of allegations: If the director of SRR decides to send the case to hearing, following a review of the investigative report if any, the director of SRR shall appoint a CRO to the case and notify the respondent of the CRO and the date of a prehearing conference. In cases alleging sexual misconduct or interpersonal violence, the CRO and session council assigned must have completed training on issues relating to sexual misconduct and interpersonal violence, the Violence Against Women Reauthorization Act, and Title IX requirements. Notification of the allegations to the respondent must:

(a) Be made in writing;

(b) Include a written list of the allegations against the respondent with sufficient details of the allegations based on current information, including, if known, date and time of the incident, description of the conduct, and the specific sections of this code allegedly violated;

(c) Provide notice that the respondent is presumed not responsible for the alleged conduct and a determination of responsibility will be made at the end of the hearing;

(d) Provide a reminder that the person may have an advisor of their choice and, for Title IX complaints, that the university will provide them with an advisor upon requests for the purposes of conducting cross-examination;

(e) Provide information about how to review the evidence gathered prior to the hearing;



(f) Provide a statement that students are prohibited from knowingly furnishing false information during the student conduct process;

(g) Inform them of the option to admit responsibility under WAC 172-121-118; and

(h) Include a date, time, and location of the prehearing conference.

(3) Follow up with complainant. In all cases alleging sexual misconduct or interpersonal violence, the SRR office shall notify the complainant(s) of the date, time, and location of the prehearing conference and of their right to attend the conference. The director may, at their discretion, conduct a separate prehearing conference with each party. The SRR office shall also follow up with the complainant(s) and respondent(s) to inform them of the process of reporting any retaliation or new incidents. If the complainant or respondent engages in retaliatory behavior, the university shall take immediate steps to protect the complainant or respondent from further harassment or retaliation. The complainant will also be notified that they have a right to an advisor during the hearing process, and, for Title IX complaints, that the university will provide an advisor upon request for the purposes of conducting cross-examination.

(4) If additional information is learned during the investigation that may rise to additional allegations, the university must provide the respondent with an updated notice of allegations.

(5) The procedures for the prehearing conference for brief hearings is contained in WAC 172-121-121. The procedures for the prehearing conference for full hearings is contained in WAC 172-121-122.

[Statutory Authority: RCW 28B.35.120(12). WSR 23-01-027, § 172-121-110, filed 12/9/22, effective 1/9/23; WSR 20-19-046, § 172-121-110, filed 9/10/20, effective 10/11/20; WSR 20-01-032, § 172-121-110, filed 12/6/19, effective 1/6/20. Statutory Authority: RCW 28B.35.120(12) and 42.56.070. WSR 19-01-047, § 172-121-110, filed 12/13/18, effective 1/13/19. Statutory Authority: RCW 28B.35.120(12). WSR 17-17-031, § 172-121-110, filed 8/9/17, effective 9/9/17; WSR 13-24-123, § 172-121-110, filed 12/4/13, effective 1/4/14; WSR 09-12-001, § 172-121-110, filed 5/20/09, effective 6/20/09.]

AMENDATORY SECTION (Amending WSR 23-01-027, filed 12/9/22, effective 1/9/23)

**WAC 172-121-122 Full hearing procedures.** (1) Scheduling and notification. Full hearings are used for allegations which, if substantiated by a preponderance of the evidence, could be a felony-level crime, involve a Title IX complaint, or could result in a sanction of suspension or expulsion. Following provision of the notice of allegations to the respondent, as set forth in WAC 172-121-110, the SRR office shall arrange for a prehearing conference unless the respondent has admitted responsibility under WAC 172-121-118.

(2) General provisions.

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

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

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

(3) Appearance.

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

(b) Appearance: The parties will be provided options for reasonable alternative arrangements if they do not wish to be present in the same room as the other student during the hearing. The parties may appear at the conduct review hearing in person via a method that allows the council to hear the parties and physically observe them while testifying, subject to the limits set forth below in (e) of this subsection. If a party does not appear at the hearing, the council will decide the case based on the information available. ~~((Solely for Title IX complaints, if a party or witness does not appear at the hearing and submit to cross-examination, the council must not rely on any statement of that party or witness in reaching a determination regarding responsibility; additionally,))~~ The council cannot draw an inference regarding responsibility based on the failure to appear or refusal to answer cross-examination or other questions.

(c) Advisors: The complainant and the respondent may be assisted by one advisor during conduct review hearings as described in WAC 172-121-105. For Title IX complaints, the university will provide an advisor to a party upon request for the purposes of conducting cross-examination.

(d) Disruption of proceedings: Any person, including the respondent or advisor, who disrupts a hearing, may be excluded from the proceedings.

(e) Remote appearance. In the interest of fairness and expedience, the CRO may permit any person to appear by a method that allows the person to be seen and heard by the council.

(4) Standard of evidence. The council shall determine whether the respondent violated the student conduct code, as charged, based on a preponderance of the evidence. A preponderance means, based on the evidence admitted, whether it is more probable than not that the respondent violated the student conduct code.

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

(a) Review the written list of allegations;

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

(c) Provide the respondent and complainant with a copy of the student conduct code and any other relevant university policies;

(d) Explain the respondent's and complainant's rights and responsibilities under the student code;

(e) Explain the conduct review procedures;

(f) Explain possible penalties under the student conduct code;

(g) Review the option for admitting responsibility under WAC 172-121-118;

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

(i) Address any preliminary matters or motions.

(6) Notice of hearing. Following the prehearing conference, the director shall schedule the hearing and notify the respondent and complainant of the date, time, location, participants, and purpose of the hearing. At the discretion of the hearing officer, and where the rights of the parties will not be prejudiced thereby, all or part of any hearing may be conducted by telephone or other electronic means. Each party in the hearing must have an opportunity to participate effectively in, to hear, and if technically and economically feasible, to see the entire proceeding while it is taking place. The notices will include information about how to request accommodations or interpreters for any parties or witnesses. Any request for the presence of an emotional support animal or any other accommodation must be directed to disability support services and approved as a reasonable accommodation in advance of the hearing. A person may bring a certified therapy animal with a handler to a hearing. The notice of hearing must be served on the respondent and complainant at least seven business days prior to the hearing. The director may coordinate with the parties to facilitate scheduling, but is not required to do so.

(7) Evidence.

(a) Evidence: Pertinent records, exhibits and written statements may be accepted as information for consideration by the council in accordance with RCW 34.05.452. Council may review proposed exhibits prior to the hearing. Any investigation conducted by the university will be admitted into evidence as long as the investigator testifies at the hearing. Evidence, including hearsay evidence, is admissible if in the judgment of the CRO it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The CRO shall exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized by Washington courts. The CRO may exclude irrelevant material. If not inconsistent with this section, the CRO shall refer to the Washington rules of evidence as guidelines for evidentiary rulings. Prior or subsequent conduct of the respondent may be considered in determining opportunity, intent, preparation, plan, identity, a pattern of conduct, credibility, or absence of mistake or lack of knowledge. For Title IX complaints, prior to allowing a question to be answered during cross-examination, the CRO must determine that the question is relevant, and, if excluded, the CRO must explain on the record the reason for the exclusion.

(b) The respondent and complainant have the right to view all material presented during the course of the hearing. If a respondent's disciplinary history is considered solely for sanctioning purposes, the complainant does not have a right to review the history.

(c) All testimony of parties and witnesses shall be made under oath or affirmation. Any interpreter shall be proscribed the oath set forth in WAC 10-08-160.

(d) Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

(e) Official notice may be taken of (i) any easily verifiable facts such as dates or weather conditions, (ii) technical or scientific facts within EWU's specialized knowledge, such as enrollment status or class schedules, and (iii) codes or standards that have been adopted by an agency of the United States, of this state or of another

state, or by a nationally recognized organization or association. Parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material so noticed and the sources thereof, including any staff memoranda and data, and they shall be afforded an opportunity to contest the facts and material so noticed. A party proposing that official notice be taken may be required to produce a copy of the material to be noticed.

(f) All rulings upon objections to the admissibility of evidence shall be made in accordance with the provisions of RCW 34.05.452, except for the additional restrictions on the admission of evidence required by Title IX.

(8) Discovery. Discovery is not permitted under the code, except for requests for documentary information from the university. Either party may request the university to produce relevant documents in the university's possession as long as such request is submitted at least five business days prior to the hearing, absent extenuating circumstances. If the CRO determines the request is not relevant to the present allegation, the CRO may deny the request. The university will provide the requested information prior to the hearing to the extent permitted by state and federal law.

(9) Subpoenas.

(a) Subpoenas may be issued by the presiding officer or an attorney consistent with RCW 34.05.446. However, for the protection of both parties, a party cannot subpoena the other party. A party may request an exemption from this rule by filing a written request with the presiding officer at least 10 days prior to the hearing. The presiding officer will provide a copy of the request to the other party and give them three days to respond. The presiding officer will then decide whether or not sufficient cause exists to grant an exemption to this rule and will inform the parties of the decision. Any subpoena issued must conform to EWU's subpoena form. Every subpoena shall identify the party causing issuance of the subpoena and shall state EWU's name and the title of the proceeding and shall direct the person to whom it is directed to attend and give testimony or produce designated books, documents, or things under their control.

A subpoena to a person to provide testimony at a hearing shall specify the time and place set for hearing.

(b) A subpoena may be served by any suitable person over 18 years of age, by exhibiting and reading it to the witness, or by giving them a copy thereof, or by leaving such copy at the place of their abode. When service is made by any other person than an officer authorized to serve process, proof of service shall be made by affidavit or declaration under penalty of perjury.

(c) The CRO, upon motion by a party or at their own discretion, may quash or modify the subpoena if it is unreasonable or oppressive. Subpoenas may not be used to threaten or intimidate parties or witnesses.

(10) Summary judgment. A motion for summary judgment may be granted and an order issued if the written record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. A motion for summary judgment is not permitted for Title IX complaints.

(11) Witnesses.

(a) The complainant, respondent, and the university's presenter may call witnesses at full hearings.

(b) The person who wishes to call a witness is responsible for ensuring that the witness is available and present at the time of the

hearing. An attorney may subpoena a witness to appear at the hearing. Nonattorneys may request the CRO to subpoena witnesses in accordance with subsection (4) of this section. The CRO has the discretion to deny a request to issue a subpoena or to quash a subpoena issued by an attorney if the subpoena is unreasonable, oppressive, or does not conform to EWU's subpoena form.

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

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

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

(12) Questioning:

(a) The complainant's advisor, the respondent's advisor, and the university's presenter may ask questions of any witness, or party, including cross-examination questions. For cases that do not involve Title IX complaints, if the student does not have an advisor, the complainant and respondent may submit questions in writing to the CRO and the CRO may ask the questions. For Title IX complaints, if a party does not have an advisor, the university will provide the party with an advisor aligned with that party for the purposes of conducting cross-examination as long as the party requests such an advisor at least five business days in advance of the hearing. The CRO may also ask questions, but is not required to do so. The CRO may preclude any questions which they consider irrelevant, and for Title IX cases such decision must be explained on the record. The CRO must exclude and the council shall not consider any questions or evidence pertaining to the complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. The CRO will explain to the parties the reason for rejecting any questions and will maintain a record of the questions submitted and rulings made.

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

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

(14) Deliberations and sanctions. Following the hearing, the council will determine in closed session whether, by a preponderance of the evidence, the respondent violated the student conduct code based on the evidence presented at the hearing. If a student fails to appear, the council shall make a decision based on the information available. The council shall make its decisions based on a majority vote. If the council determines the respondent violated the student conduct code, the CRO shall then decide what sanctions and remedies

shall be imposed. The CRO may review the respondent's previous disciplinary history for purposes of determining the appropriate sanction. In addition to sanctions under this code, if the student is also an employee of the university, the CRO's decision may be forwarded to the student's supervisor to determine whether any employment actions outside of this code should be taken in accordance with university policy.

The council shall issue a decision including their findings, conclusions, and rationale. The decision shall address credibility issues if credibility or witness demeanor was a substantial factor in the council's decision. Credibility determinations may not be based on a person's status as a complainant, respondent, or witness. The findings shall be based exclusively on the evidence provided at the hearing. If the council finds the respondent violated the code, the CRO shall add the decision regarding sanctions and remedies to the council's decision. Such decisions should be issued within 10 business days from the date of the hearing. The written decision shall also:

(a) Be correctly captioned identifying EWU and the name of the proceeding;

(b) Designate all parties and representatives participating in the proceeding;

(c) Identify the allegations at issue;

(d) A description of the procedural steps taken, including notifications to the parties, interviews with the parties and witnesses, site visits, methods used to gather other evidence, and hearings held;

(e) Contain appropriate numbered findings of fact meeting the requirements in RCW 34.05.461;

(f) Contain appropriately numbered conclusions regarding the application of university policies and this code to the facts;

(g) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed, and if any remedies are necessary to provide to the complainant in a Title IX complaint to restore or preserve equal access to the university's educational programs or activities;

(h) Contain a statement describing rights to appeal and the procedures for appealing.

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

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

(17) Notification to the complainant. In cases of sexual misconduct or interpersonal violence, simultaneous with notification of the decision to the respondent, the complainant shall be provided with written notice of:

(a) The university's determination as to whether sexual misconduct or interpersonal violence occurred;

(b) The complainant's right to appeal;

(c) Any change to the results that occurs prior to the time that such results become final and when such results become final (20 U.S.C. 1092(f));

(d) Information regarding the discipline of the respondent will not be released unless:

(i) The information contained in the record directly relates to the complainant, such as an order requiring the student harasser to not contact the complainant; or

(ii) The misconduct involves a crime of violence or a sexual assault, including rape, dating violence, domestic violence or stalking as defined in 42 U.S.C. Sec. 13925(a).

(e) Any remedies provided to the complainant. For Title IX complaints, the complainant shall receive a copy of the decision provided to the respondent under subsection (14) of this section.

(18) **Notification to Title IX coordinator.** For Title IX complaints, the Title IX coordinator must be provided with notice of the decision as the Title IX coordinator is responsible for effective implementation of any remedies.

[Statutory Authority: RCW 28B.35.120(12). WSR 23-01-027, § 172-121-122, filed 12/9/22, effective 1/9/23; WSR 22-01-090, § 172-121-122, filed 12/12/21, effective 1/12/22; WSR 21-01-102, § 172-121-122, filed 12/11/20, effective 1/11/21; WSR 20-19-046, § 172-121-122, filed 9/10/20, effective 10/11/20; WSR 20-01-032, § 172-121-122, filed 12/6/19, effective 1/6/20. Statutory Authority: RCW 28B.35.120(12) and 42.56.070. WSR 19-01-047, § 172-121-122, filed 12/13/18, effective 1/13/19. Statutory Authority: RCW 28B.35.120(12). WSR 17-17-031, § 172-121-122, filed 8/9/17, effective 9/9/17.]

**WSR 23-07-027**  
**PROPOSED RULES**  
**UTILITIES AND TRANSPORTATION**  
**COMMISSION**

[Docket T-220252—Filed March 6, 2023, 12:18 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-15-046.

Title of Rule and Other Identifying Information: Rule making to consider revisions to insurance and safety regulations governing the operation of motor common carriers, household goods carriers, auto transportation companies, nonprofit transportation providers, charter party and excursion service carriers, and solid waste collection companies in chapters 480-14, 480-15, 480-30, 480-31, and 480-70 WAC. This rule making is recorded as Docket T-220252 at the utilities and transportation commission (UTC).

Hearing Location(s): On June 7, 2023, at 9:30 a.m., <https://utc-wa-gov.zoom.us/j/86907867570?pwd=eUJocWxsSjhhMGhyeUxNaUtzUGJOUT09>. Virtual public hearing to consider adoption of the proposed rule.

Date of Intended Adoption: June 10, 2023.

Submit Written Comments to: Amanda Maxwell, Executive Director and Secretary, P.O. Box 47250, Olympia, WA 98504-7250, email [records@utc.wa.gov](mailto:records@utc.wa.gov), 360-664-1160, by May 1, 2023.

Assistance for Persons with Disabilities: Contact human resources, phone 360-664-1160, TTY 360-586-8203, email [human\\_resources@utc.wa.gov](mailto:human_resources@utc.wa.gov), by May 1, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed rules is to improve motor carrier safety regulation and increase public safety. UTC aims to eliminate redundant, overlapping, and inconsistent rules with its state and federal partners.

Reasons Supporting Proposal: UTC identified many areas that needed to be amended or revised. The detailed list is available in Docket T-220252 in the motor carrier safety increase regulatory consistency report.

Statutory Authority for Adoption: RCW 80.01.040, 81.01.010, 81.04.160.

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

Name of Proponent: UTC, governmental.

Name of Agency Personnel Responsible for Drafting: Mathew Perkinson, 621 Woodland Square Loop S.E., Lacey, WA 98503, 360-701-1601; Implementation and Enforcement: Amanda Maxwell, 621 Woodland Square Loop S.E., Lacey, WA 98503, 360-664-1110.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to the UTC as it is not one of the listed agencies in RCW 34.05.328 (5)(a)(i).

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. UTC is proposing to adopt rules that enable UTC to improve its motor carrier safety regulations that intersect with the Washington state patrol (WSP) and the Federal Motor Carrier Safety



Administration (FMCSA) commercial vehicle safety regulations. The rules, in effect, meet UTC's strategic business goal to work with WSP and FMCSA to align safety rules and apply them equally to transportation companies regulated by UTC. Further, in pursuing its mission to ensure the transportation services it regulates are safe, available, reliable, and fairly priced, UTC seeks to establish necessary, understandable, and clear regulations in the interest of consumer protection and public safety. In support of goal two: Advance public safety in UTC's 2021-2023 strategic business plan, UTC's transportation safety division reviewed rules that fall under its motor carrier safety program's jurisdiction. Implementing these rules eliminates redundant, overlapping, and inconsistent regulations which create uncertainty and confusion to regulated industries or offer no public benefit. In summary, UTC identified rules that may need to be repealed or amended to reduce inconsistencies that may cause confusion or to avoid imposing unnecessary costs on intrastate commerce and regulated transportation industries.

The commission sent a small business economic impact statement questionnaire to affected entities, providing an opportunity to respond. UTC received no responses to the supplemental questionnaire. Based on the information available to it, UTC determined that the proposed rules do not have a fiscal impact to small businesses.

March 6, 2023  
Amanda Maxwell  
Executive Director and Secretary

**OTS-4216.2**

AMENDATORY SECTION (Amending WSR 13-23-048, filed 11/15/13, effective 12/16/13)

**WAC 480-14-250 Insurance requirements.** (1) **Required insurance coverage.** Each applicant for common carrier authority and each common carrier must file with the commission evidence of currently effective liability and property damage insurance written by a company authorized to write such insurance in the state of Washington or by an unauthorized insurer providing surplus lines coverage subject to the provisions of RCW 48.15.040, covering each motor vehicle as defined in RCW 81.80.010 used or to be used under the permit.

(a) For vehicles with gross vehicle weight ratings of (~~ten thousand~~) 10,000 pounds or more, filings must be for the amount shown on the following table:

Category of Carrier Operation	Filing Required
1. Property (nonhazardous) .....	\$750,000
2. Hazardous substances, as defined in 49 Code of Federal Regulations (C.F.R.) 171.8 transported in cargo tanks, portable tanks, or hopper-type vehicles with capacities in excess of 3,500 water gallons; or in bulk Division 1.1, 1.2 and 1.3 materials, Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A material, in bulk Division 2.1 or 2.2; or highway route controlled quantities of a Class 7 material, as defined in 49 C.F.R. 173.403 .....	\$5,000,000

Category of Carrier Operation	Filing Required
3. Oil listed in 49 C.F.R. 172.101; hazardous waste, hazardous materials and hazardous substances defined in 49 C.F.R. 171.8 and listed in 49 C.F.R. 172.101, but not mentioned in 2. above or in 4. below .....	\$1,000,000
4. Any quantity of Division 1.1, 1.2, or 1.3 material; any quantity of a Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A material; or highway route controlled quantities of a Class 7 material, as defined in 49 C.F.R. 173.403 .....	\$5,000,000

(b) For vehicles with gross vehicle weight ratings less than (~~ten thousand~~) 10,000 pounds, filings shall be for the amounts shown on the following table:

Category of Carrier Operation	Filing Required
1. Property (nonhazardous) .....	\$300,000
2. Property (hazardous); any quantity of Division 1.1, 1.2, or 1.3 material; any quantity of a Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A material; or highway route controlled quantities of a Class 7 material, as defined in 49 C.F.R. 173.403 .....	\$5,000,000

(c) Insurance requirements do not apply to taxicabs whose only operation subject to commission jurisdiction is the operation of small parcel general freight service under a permit issued pursuant to chapter 81.80 RCW. Those taxicabs must comply with the provisions of RCW 46.72.040 and 46.72.050 in lieu of the above. However, all carriers must comply with the reporting requirements of this section.

(d) The commission may dismiss an application or suspend or cancel a permit if a carrier does not file proof that such insurance is in full force and effect.

(e) Carriers must submit evidence of insurance by a Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance (Form E), Uniform Motor Carrier Bodily Injury and Property Damage Liability Surety Bond (Form G), or a written binder evidencing the required coverage. A binder may not be effective for longer than (~~sixty~~) 60 days, during which time the carrier must file the Form E or Form G.

(2) **Continuing proof of insurance.** A carrier must file evidence of continued insurance with the commission not less than (~~ten~~) 10 days prior to the termination date of the current insurance.

(3) **Insurance endorsement.** All liability and property damage insurance policies issued to common carriers must carry a "uniform motor carrier bodily injury and property damage liability endorsement."

(4) **Insurance termination.** All insurance policies issued under the requirements of chapter 81.80 RCW must provide that the coverage continues in full force and effect unless and until canceled by at least (~~thirty~~) 30 days' written notice served on the insured and the commission by the insurance company. The (~~thirty~~) 30 days' notice must commence to run from the date the notice is actually received by the commission.

(a) An insurance binder may be canceled on (~~ten~~) 10 days' written notice.

(b) The carrier or carrier's insurance company must notify the commission of cancellation or expiration by filing a Notice of Cancellation (Form K) no less than (~~thirty~~) 30 days before the cancellation or expiration effective date.

(c) The carrier or carrier's insurance company must provide notice of cancellation or expiration not more than (~~sixty~~) 60 days be-

fore the termination date, except binders which may be canceled on (~~ten~~) 10 days' written notice.

[Statutory Authority: RCW 80.01.040, 81.01.010, 81.04.160, and 81.80.130. WSR 13-23-048 (Docket TV-130079, General Order R-573), § 480-14-250, filed 11/15/13, effective 12/16/13. Statutory Authority: RCW 80.01.040 and 81.04.160. WSR 09-22-057 (Order R-555, Docket TV-090400), § 480-14-250, filed 10/30/09, effective 11/30/09. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, and 34.05.310. WSR 01-20-061 (Docket No. A-010827, General Order No. R-491), § 480-14-250, filed 9/28/01, effective 10/29/01. Statutory Authority: RCW 80.01.040 and 34.05.350. WSR 95-24-001 (Order R-435, Docket No. TV-941290), § 480-14-250, filed 11/22/95, effective 12/23/95.]

### OTS-4217.3

AMENDATORY SECTION (Amending WSR 09-24-104, filed 12/2/09, effective 1/2/10)

**WAC 480-15-020 Definitions.** For the purpose of this chapter, the words, terms, and phrases in this section have the following meaning:

**Accessorial services:** Any service provided by a household goods carrier that supplements, or is incidental to, the transportation of household goods. Examples include packing, unpacking, wrapping, or protecting a portion of the shipment or providing special equipment or services such as hoisting.

**Agent:** A permitted carrier, who, under the provisions of a formal written agreement, performs services on behalf of another permitted carrier.

**Application docket:** A commission publication listing applications requesting operating authority.

**Authority:** The rights granted to a carrier to transport household goods.

**Cancellation:** An act by the commission to terminate a household goods carrier's authority.

**Carrier (~~or~~), household goods carrier, or motor carrier:** A person who transports for compensation, by motor vehicle within this state, or who advertises, solicits, offers, or enters into an agreement to transport household goods.

**Commercial motor vehicle:** Any motor vehicle used by a household goods carrier to transport household goods, if either the vehicle has a gross vehicle weight rating or gross combination weight rating of 10,001 pounds or more or if the gross vehicle weight or gross combination weight is 10,001 pounds or more.

**Commission:** The Washington utilities and transportation commission.

**Customer:** Anyone who hires a household goods carrier.

**Engaging in business as a household goods carrier:** Transporting household goods for compensation, by motor vehicle within this state, or advertising, soliciting, offering, or entering into an agreement to transport household goods.

**Estimate:**

(a) **Nonbinding estimate:** The written estimate the carrier gives to the customer in advance of the move. A nonbinding estimate is not binding on the mover. The final charges will be based upon the actual cost of the move and the services provided, although a carrier may not charge more than (~~twenty-five~~) 25 percent over the nonbinding estimate.

(b) **Binding estimate:** The written estimate the carrier gives to the customer in advance of the move, signed by the carrier and the customer, and by which both the carrier and customer are bound. The carrier may not charge any amount other than the binding estimate and the customer must pay the amount of the binding estimate.

(c) **Supplemental estimate:** An amendment to the original nonbinding estimate, necessary when the circumstances of a move change in a way from the original written estimate that increases the cost of the move.

**Exempt motor carrier:** Any person operating a motor vehicle exempt from certain provisions of Title 81 RCW as defined in RCW 81.80.040.

**Filing:** Any application, petition, tariff proposal, annual report, comment, complaint, pleading, or other document submitted to the commission.

**Household goods:** The personal effects and property used, or to be used, in a residence when transported or arranged to be transported between residences or between a residence and a storage facility with the intent to later transport to a residence or when referenced in connection with advertising, soliciting, offering, or entering into an agreement for such transportation. Transportation of the goods must be arranged and paid for by the customer or by another individual, company, or organization on behalf of the customer.

**Local move:** A move taking place within the limits of a city or town or moves where the shipment is transported (~~fifty-five~~) 55 miles or less.

**Long distance move:** A move where the shipment is transported (~~fifty-six~~) 56 miles or more.

**Motor vehicle or vehicle:** Any (~~motor truck, tractor or other self-propelled vehicle, any trailer, semi-trailer~~) vehicle, machine, tractor, trailer, or semi-trailer propelled or drawn by mechanical power, or any combination of such vehicles ((moving as a single unit)), used on the public roads to transport household goods.

**Permit:** A document issued by the commission describing the authority granted to a household goods carrier.

**Person:** Any individual, firm, corporation, company, or partnership.

**Private carrier:** Persons who transport their own household goods, transport household goods bought or sold by them or transport household goods purely as an incidental adjunct to an established business.

**Shipment:** A load of household goods moved by a carrier from a single residence or as a single transaction.

**State:** The state of Washington.

**Suspension:** Also includes **suspend, suspended, suspending:** An act by the commission to withhold temporarily a household goods carrier's authority.

**Tariff:** A publication containing rates and charges carriers must assess on shipments of household goods and the rules that govern how rates and charges are assessed.

[Statutory Authority: RCW 80.01.040, 80.04.160, 34.05.353, and 2009 c 94. WSR 09-24-104 (Docket TV-091038, General Order R-556), §

480-15-020, filed 12/2/09, effective 1/2/10. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.250, 81.28.040, 81.80.120, 81.80.130 and 81.80.290. WSR 08-02-049 (Docket TV-070466, General Order R-547), § 480-15-020, filed 12/27/07, effective 1/27/08. Statutory Authority: RCW 81.04.160, 81.04.250, 81.28.040, 81.80.090, 81.80.120, 81.80.130, 81.80.290, 81.80.211, and 80.01.040. WSR 00-14-010 (General Order No. R-471, Docket No. TV-991559), § 480-15-020, filed 6/27/00, effective 7/28/00. Statutory Authority: RCW 81.04.160 and 80.01.040. WSR 99-01-077 (Order R-454, Docket No. TV-971477), § 480-15-020, filed 12/15/98, effective 1/15/99.]

AMENDATORY SECTION (Amending WSR 13-23-048, filed 11/15/13, effective 12/16/13)

**WAC 480-15-530 Public liability and property damage insurance.**

(1) Before operating under a household goods permit, carriers must have public liability and property damage insurance covering every motor vehicle used in its operations. The commission will not issue a permit for authority to operate without acceptable proof of required insurance coverage. Carriers must maintain the required public liability and property damage insurance at all times for every motor vehicle used in Washington intrastate operations.

(a) The policy must be written by an insurance company authorized to write insurance in Washington state or by an unauthorized insurer providing surplus lines coverage subject to the provisions of RCW 48.15.040, covering each motor vehicle as defined in RCW 81.80.010 used or to be used under the permit.

(b) The policy must include the Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance (Form E) or Uniform Motor Carrier Bodily Injury and Property Damage Liability Surety Bond (Form G).

(c) The commission may suspend or cancel the permit of any carrier operating without proof of required insurance coverage.

(2) The minimum limits of required public liability and property damage insurance for motor vehicles operated by household goods carriers are as follows:

(a) At least (~~three hundred thousand dollars~~) \$300,000 in combined single limit coverage for motor vehicles with a gross vehicle weight rating of (~~less than ten thousand~~) 10,000 pounds or less.

(b) At least (~~seven hundred fifty thousand dollars~~) \$750,000 in combined single limit coverage for motor vehicles with a gross vehicle weight rating of (~~ten thousand~~) 10,001 pounds or more.

(3) Carriers must file a Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance (Form E) or Uniform Motor Carrier Bodily Injury and Property Damage Liability Surety Bond (Form G) as a condition of maintaining a household goods permit.

(a) The Form E or Form G filing must be issued in (~~exactly~~) the same name as the carrier's permit.

(b) The Form E or Form G filing must be continuous, until canceled by a Notice of Cancellation (Form K) filed with the commission no less than (~~thirty~~) 30 days before the cancellation effective date.

(4) (a) The commission will accept an insurance certificate or binder for up to (~~sixty~~) 60 days. A certificate or binder may be canceled by filing written notice with the commission at least (~~ten~~)

10 days before the cancellation effective date. A certificate or binder must be replaced by a Form E or Form G within ~~((sixty))~~ 60 days of filing, or before the expiration date, whichever occurs first.

(b) Certificates or binders must include ~~((all of))~~ the following information:

- (i) The commission as the named certificate holder.
- (ii) The carrier's name, ~~((exactly))~~ as it appears on the permit or application, as the insured.
- (iii) The insurance company name.
- (iv) The insurance policy number.
- (v) The effective and expiration dates.
- (vi) The insurance limits of coverage.

[Statutory Authority: RCW 80.01.040, 81.01.010, 81.04.160, and 81.80.130. WSR 13-23-048 (Docket TV-130079, General Order R-573), § 480-15-530, filed 11/15/13, effective 12/16/13. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.250, 81.28.040, 81.80.120, 81.80.130 and 81.80.290. WSR 08-02-049 (Docket TV-070466, General Order R-547), § 480-15-530, filed 12/27/07, effective 1/27/08. Statutory Authority: RCW 81.04.160 and 80.01.040. WSR 99-01-077 (Order R-454, Docket No. TV-971477), § 480-15-530, filed 12/15/98, effective 1/15/99.]

AMENDATORY SECTION (Amending WSR 13-23-048, filed 11/15/13, effective 12/16/13)

**WAC 480-15-555 Criminal background checks for prospective employees.**

(1) Each carrier must complete a national criminal background check for every person the carrier intends to hire.

(2) The carrier must keep evidence that it has completed a national criminal background check for every person the carrier intends to hire for as long as that person is employed and for three years ~~((thereafter))~~ after the person is no longer employed by the carrier.

(3) No carrier may hire a person who has been convicted of any crime involving theft, burglary, assault, sexual misconduct, identity theft, fraud, false statements, or the manufacture, sale, or distribution of a controlled substance within the past five years.

[Statutory Authority: RCW 80.01.040, 81.01.010, 81.04.160, and 81.80.130. WSR 13-23-048 (Docket TV-130079, General Order R-573), § 480-15-555, filed 11/15/13, effective 12/16/13.]

AMENDATORY SECTION (Amending WSR 11-04-041, filed 1/25/11, effective 2/25/11)

**WAC 480-15-560 ~~((Equipment))~~ Vehicle and driver safety requirements.** ~~((1))~~ All carriers must comply with all of the following requirements:

- ~~((a))~~ Maintain all vehicles in a safe and sanitary condition.
- ~~((b))~~ Maintain vehicles free of defects likely to result in an accident or breakdown.
- ~~((c))~~ Maintain vehicles consistent with the North American Uniform Out-Of-Service Criteria as adopted in WAC 480-15-999.

~~(d) Make vehicles available for inspection by commission representatives at any time upon request.~~

~~(2) A household goods carrier must display its permit name and number, as registered with the commission, on both the driver and passenger doors of all power units.~~

~~(a) All markings on the power unit must be:~~

~~(i) Clearly legible.~~

~~(ii) No less than three inches high.~~

~~(iii) In a color that contrasts with the background color.~~

~~(iv) Permanent. Exception: Carriers may use temporary markings on vehicles operated under a lease.~~

~~(b) Carriers with both intrastate and interstate authority must display either the commission permit number, federal permit number or both on the power unit.~~

~~(3) Carriers must comply with all of the following requirements:~~

~~(a) All state and local motor vehicle safety laws and rules including, but not limited to, those contained in this chapter.~~

~~(b) The following parts of Title 49 of the Code of Federal Regulations (49 C.F.R.), as adopted by reference in this chapter on the date specified in WAC 480-15-999:~~

~~(i) 49 C.F.R. Part 390: Safety Regulations, General; except the following definitions will apply:~~

~~(A) Exempt motor carrier: Any person operating a motor vehicle exempt from certain provisions of RCW Title 81 as defined in RCW 81.80.040.~~

~~(B) Motor carrier: Any common carrier, exempt carrier and private carrier as defined in WAC 480-15-020.~~

~~(C) Motor vehicle: Any vehicle, machine, tractor, trailer or semi-trailer propelled or drawn by mechanical power, or any combination of such vehicles, used on the public roads to transport household goods.~~

~~(D) Private carrier: Persons who transport their own household goods, transport household goods bought or sold by them or transport household goods purely as an incidental adjunct to an established business.~~

~~(E) Commercial motor vehicle: Any motor vehicle used by a household goods carrier to transport household goods, if either the vehicle has a gross vehicle weight rating or gross combination weight rating of ten thousand one pounds or more or if the gross vehicle weight or gross combination weight is ten thousand one pounds or more.~~

~~(F) Director: The commission.~~

~~(ii) 49 C.F.R. Part 392: Driving of Commercial Motor Vehicles.~~

~~(iii) 49 C.F.R. Part 379: Preservation of Records.~~

~~(iv) 49 C.F.R. Part 385: Safety Fitness Procedures.~~

~~(v) 49 C.F.R. Part 397: Transportation of Hazardous Materials.~~

~~(vi) 49 C.F.R. Part 393: Parts and Accessories Necessary for Safe Operation.~~

~~(vii) 49 C.F.R. Part 396: Inspection, Repair, and Maintenance.~~

~~(viii) 49 C.F.R. Part 375: Transportation of Household Goods in Interstate Commerce; Consumer Protection Regulations. However, 49 C.F.R. Part 375 does not apply to intrastate operations. 49 C.F.R. Part 375 applies only to interstate operations.~~

~~(ix) 49 C.F.R. Part 380: Special Training Requirements.~~

~~(c) All motor vehicles must be equipped with mud flaps which effectively reduce the spray or splash of water from the road.~~

~~(d) Mud flaps must be as wide as the tires on which they are mounted, and must extend from the top of the tires down to at least the center of the axle.))~~

(1) Household goods carriers must ensure that all vehicles and drivers used to provide household goods comply with all federal, state, and local laws and rules, and commission orders, governing licensing, vehicle safety, and driver safety. Carriers must also comply with parts of Title 49 Code of Federal Regulations (49 C.F.R.) shown in the following chart, that are adopted by reference. Information about 49 C.F.R. regarding the version adopted and where to obtain copies is set out in WAC 480-15-999.

<b>49 C.F.R. Part:</b>		<b>Notes:</b>
<u>Part 40 -</u>	<u>Procedure for Transportation Workplace Drug and Alcohol Testing</u>	<u>Entire Part 40 is adopted and applies to Washington intrastate operations.</u>
<u>Part 375 -</u>	<u>Transportation of Household Goods in Interstate Commerce; Consumer Protection Regulations</u>	<u>Applies only to interstate operations.</u>
<u>Part 379 -</u>	<u>Preservation of Records</u>	<u>Entire Part 379 is adopted and applies to Washington intrastate operations.</u>
<u>Part 380 -</u>	<u>Special Training Requirements</u>	<u>Entire Part 380 is adopted and applies to Washington intrastate operations.</u>
<u>Part 382 -</u>	<u>Controlled Substance and Alcohol Use and Testing</u>	<u>Entire Part 382 is adopted and applies to Washington intrastate operations.</u>
<u>Part 383 -</u>	<u>Commercial Driver's License Standards; Requirements and Penalties</u>	<u>Entire Part 383 is adopted and applies to Washington intrastate operations.</u>
<u>Part 385 -</u>	<u>Safety Fitness Procedures</u>	<u>Entire Part 385 is adopted and applies to Washington intrastate operations.</u>
<u>Part 390 -</u>	<u>Safety Regulations, General</u>	<u>Entire Part 390 is adopted and applies to Washington intrastate operations, with the following exceptions:</u>
		<u>(1) The terms "motor carrier," "motor vehicle," "commercial motor vehicle," "exempt motor carrier," and "private carrier" are not adopted. Instead, where those terms are used in 49 C.F.R., they have the meanings assigned to them in WAC 480-15-020.</u>
		<u>(2) Whenever the term "director" is used in 49 C.F.R., it means the commission.</u>
<u>Part 391 -</u>	<u>Qualifications of Drivers</u>	<u>Entire Part 391 is adopted and applies to Washington intrastate operations, with the following exceptions:</u>
		<u>(1) A driver who operates exclusively in intrastate commerce is not subject to the provisions of Part 391.11(b)(1) (general qualifications - age). A driver operating exclusively in intrastate commerce may drive a motor vehicle if they are at least 18 years of age.</u>
		<u>(2) A driver who operates exclusively in intrastate commerce is not subject to the provisions of Part 391.49 (Waiver of certain physical defects), if that driver has obtained from the Washington department of licensing, a driver's license with endorsements and restrictions allowing operation of the motor vehicle being driven.</u>
<u>Part 392 -</u>	<u>Driving of Motor Vehicles</u>	<u>Entire Part 392 is adopted and applies to Washington intrastate operations.</u>
<u>Part 393 -</u>	<u>Parts and Accessories Necessary for Safe Operation</u>	<u>Entire Part 393 is adopted and applies to Washington intrastate operations.</u>
<u>Part 395 -</u>	<u>Hours of Service of Drivers</u>	<u>Entire Part 395 is adopted and applies to Washington intrastate operations.</u>



<b>49 C.F.R. Part:</b>		<b>Notes:</b>
Part 396 -	<u>Inspection, Repair, and Maintenance</u>	Entire Part 396 is adopted and applies to Washington intrastate operations.
Part 397 -	<u>Transportation of Hazardous Materials, Driving and Parking Rules</u>	Entire Part 397 is adopted and applies to Washington intrastate operations.

(2) Companies must:

(a) Maintain all vehicles in a safe and sanitary condition.

(b) Ensure that vehicles are in proper working condition and repair all identified defects or deficiencies likely to result in an accident or breakdown.

(c) All motor vehicles must be equipped with fenders, covers, mud flaps, or splash aprons which effectively reduce the spray or splash of water from the road. All such devices must be as wide as the tires on which they are mounted and must extend from the top of the tires down to at least the center of the axle.

(3) All motor vehicles and drivers operating under the provisions of this chapter and used to provide permitted services are always subject to inspection by the commission or its duly authorized representatives. The commission will place out-of-service for the provision of household goods moving service any motor vehicle or the driver of that vehicle if the vehicle or driver meets any condition listed in the *North American Uniform Out-of-Service Criteria*. A company must not require or permit a vehicle or driver that has been placed out-of-service to operate until the condition(s) causing the out-of-service violation is corrected. Information about the *North American Uniform Out-of-Service Criteria* is set out in WAC 480-15-999.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, and 34.05.353. WSR 11-04-041 (Docket A-101466, General Order R-562), § 480-15-560, filed 1/25/11, effective 2/25/11. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.250, 81.28.040, 81.80.120, 81.80.130 and 81.80.290. WSR 08-02-049 (Docket TV-070466, General Order R-547), § 480-15-560, filed 12/27/07, effective 1/27/08. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, and 34.05.310. WSR 01-20-061 (Docket No. A-010827, General Order No. R-491), § 480-15-560, filed 9/28/01, effective 10/29/01. Statutory Authority: RCW 81.04.160, 81.04.250, 81.28.040, 81.80.090, 81.80.120, 81.80.130, 81.80.290, 81.80.211, and 80.01.040. WSR 00-14-010 (General Order No. R-471, Docket No. TV-991559), § 480-15-560, filed 6/27/00, effective 7/28/00. Statutory Authority: RCW 81.04.160 and 80.01.040. WSR 99-01-077 (Order R-454, Docket No. TV-971477), § 480-15-560, filed 12/15/98, effective 1/15/99.]

#### NEW SECTION

**WAC 480-15-565 Motor vehicle identification.** (1) (a) A household goods carrier must display its permit name and number, as registered with the commission, on both sides of the self-propelled motor vehicle.

(b) The markings must be:

(i) Legible, during daylight hours, from 50 feet while the motor vehicle is not moving.

(ii) In a color that contrasts with the background color of the motor vehicle.

(iii) Permanent. *Exception:* Carriers may use temporary markings on vehicles when operated under a lease, when the rental agreement or lease has a term of 30 days or less.

(2) All carriers must display the U.S. Department of Transportation identification number on both sides of self-propelled motor vehicles.

[]

#### NEW SECTION

**WAC 480-15-575 Intrastate medical waivers.** (1) **Department of licensing intrastate medical waiver.** A household goods carrier may use a driver that is not physically qualified to drive a commercial motor vehicle under Title 49 C.F.R. Part 391.41, if the driver:

(a) Only operates motor vehicles intrastate, wholly within the state of Washington; and

(b) Has obtained from the Washington state department of licensing an intrastate medical waiver to drive a commercial motor vehicle.

For the purposes of a department of licensing medical waiver, a commercial motor vehicle means a motor vehicle:

(i) With a gross vehicle weight rating of 26,001 pounds or more;

(ii) Transporting 16 or more passengers, including the driver; or

(iii) With a manufacturer's seating capacity of 16 or more passengers, including the driver.

(2) **Doctor's statement of intrastate medical waiver.** A carrier may use a driver that is not physically qualified to drive a commercial motor vehicle under Title 49 C.F.R. Part 391.41 if the driver:

(a) Holds a valid Washington state driver's license;

(b) Has received a doctor's statement that:

(i) The driver's medical condition is not likely to interfere with the driver's ability to safely operate a commercial motor vehicle; and

(ii) The driver's condition is likely to remain stable for the next two years or other specified date, but not more than the two years that the medical certificate is valid.

(c) Operates commercial motor vehicles intrastate wholly within the state of Washington. For the purposes of a doctor's statement of intrastate medical waiver, a commercial motor vehicle means a motor vehicle:

(i) With a gross vehicle weight rating under 26,001 pounds;

(ii) Transporting 15 or fewer passengers, including the driver; or

(iii) With a manufacturer's seating capacity of 15 or fewer passengers, including the driver.

(3) **Driver qualification files.** Carriers that use a driver under an intrastate medical waiver must maintain in the driver's qualification file a physical or digital copy of the doctor's statement of intrastate medical waiver.

[]

AMENDATORY SECTION (Amending WSR 13-23-048, filed 11/15/13, effective 12/16/13)

**WAC 480-15-590 Leasing vehicles.** A carrier must enter into an equipment lease agreement before operating a leased motor vehicle. The carrier must ensure that all ~~((of))~~ the following conditions are met:

- (1) The carrier signs the form and ensures the lessor signs the form.
- ~~((2))~~ ~~((The carrier marks "master lease" if the carrier intends to use a master lease instead of individual leases.~~
- ~~((3))~~ A physical or digital copy of the lease is carried in all leased motor vehicles.
- ~~((4))~~ ~~Copies of all leases are kept in the carrier's permanent files for at least))~~ (3) A physical or digital copy of the lease is kept in the carrier's files during the effective period of the lease and for one year after the lease expires.
- ~~((5))~~ (4) The carrier gives a physical or digital copy of the lease to the owner of the leased motor vehicle.
- ~~((6))~~ (5) The carrier takes possession, control, and use of the motor vehicle during the period of the lease agreement.
- ~~((7))~~ (6) The leased motor vehicle is properly insured as specified in WAC 480-15-530 and 480-15-550.
- ~~((8))~~ (7) The carrier properly identifies the motor vehicle as specified in RCW 81.80.305.
- ~~((9))~~ (8) The carrier charges appropriate tariff rates and charges.
- ~~((10))~~ (9) The driver of the leased motor vehicle is on the carrier's payroll during the leased period.
- ~~((11))~~ (10) The leased motor vehicle is operated in compliance with laws and rules as specified in WAC 480-15-560 and 480-15-570.
- ~~((12))~~ (11) The driver of the leased motor vehicle is subject to the ~~((company's))~~ carrier's alcohol and controlled substance policies.
- ~~((13))~~ (12) The carrier and the owner of the leased motor vehicle specify on the lease form who is responsible for all expenses relating to the leased motor vehicles.
- ~~((14))~~ (13) The carrier complies with the terms of the lease.

[Statutory Authority: RCW 80.01.040, 81.01.010, 81.04.160, and 81.80.130. WSR 13-23-048 (Docket TV-130079, General Order R-573), § 480-15-590, filed 11/15/13, effective 12/16/13. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.250, 81.28.040, 81.80.120, 81.80.130 and 81.80.290. WSR 08-02-049 (Docket TV-070466, General Order R-547), § 480-15-590, filed 12/27/07, effective 1/27/08. Statutory Authority: RCW 81.04.160 and 80.01.040. WSR 99-01-077 (Order R-454, Docket No. TV-971477), § 480-15-590, filed 12/15/98, effective 1/15/99.]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 480-15-570 Driver safety requirements.

OTS-4218.2

AMENDATORY SECTION (Amending WSR 17-16-114, filed 7/31/17, effective 8/31/17)

**WAC 480-30-036 Definitions, general.** (1) See WAC 480-30-261 for definition of terms used primarily in tariffs and time schedules and WAC 480-30-216 for definitions used in driver and vehicle safety rules.

(2) Unless the language or context indicates that a different meaning is intended, the following definitions apply:

**"Agent"** means a person authorized to transact business for, and in the name of, another.

**"Airporter service"** means an auto transportation service that starts or ends at a station served by another type of transportation such as, air or rail transportation. Airporter service is often a premium service that involves handling luggage. Although stops may be made along the way, they are usually limited to picking up or discharging passengers and luggage bound to or from the airport or depot served.

**"Alternate arrangements for passengers"** means the travel arrangements made by an auto transportation company that has accepted a trip booking or reservation from a passenger and that is unable to provide the agreed transportation. The alternate arrangements may require travel by another carrier or mode of transportation at no additional cost to the passenger beyond what the passenger would have paid for the original transportation arrangement.

**"Application docket"** means a commission publication providing notice of all applications requesting auto transportation operating authority, with a description of the authority requested. The commission sends this publication to all persons currently holding auto transportation authority, to all persons with pending applications for auto transportation authority, to affected local jurisdictions or agencies, and to all other persons who asked to receive copies of the application docket.

**"Area"** means a defined geographical location. Examples include, but are not limited to:

(a) A specified city or town;

(b) A specified county, group of counties, or subdivision of the state, e.g., western Washington;

(c) A zone, e.g., company designated territory; or

(d) A route, e.g., area within four road miles of Interstate 5.

**"Auto transportation company"** means every corporation or person, their lessees, trustees, receivers, or trustees appointed by any court whatsoever owning, controlling, operating, or managing any motor-propelled vehicle used in the business of transporting persons and their baggage on the vehicles of auto transportation companies carrying passengers, for compensation over any public highway in this state between fixed termini or over a regular route, and not operating exclusively within the incorporated limits of any city or town.

**"Between fixed termini or over a regular route"** means the fixed points between which an auto transportation company provides service or the route over which an auto transportation company ordinarily operates any motor-propelled vehicle, even though there may be variance whether the variance is periodic or irregular.

**"Bus"** means a motor vehicle designed, constructed, and/or used for the transportation of passengers.

**"Business days"** means days of the week excluding Saturdays, Sundays, and official state holidays.

**"By-reservation-only service"** means transportation of passengers by an auto transportation company, with routes operated only if passengers have made prior reservations.

**"Certificate"** means:

(a) The certificate of public convenience and necessity issued by the Washington utilities and transportation commission under the provisions of chapter 81.68 RCW to operate as an auto transportation company; or

(b) The certificate issued by the Washington utilities and transportation commission under chapter 81.70 RCW to operate as a charter and excursion carrier in the state of Washington.

**"Certificated authority"** means:

(a) The territory and services granted by the commission and described in an auto transportation company's certificate of public convenience and necessity; or

(b) Operations in the state of Washington for charter and excursion service carriers.

**"Charter party carrier"** or **"charter carrier"** means every person engaged in the transportation over any public highways in this state of a group of persons who, pursuant to a common purpose and under a single contract, acquire the use of a motor vehicle to travel together as a group to a specified destination or for a particular itinerary, either agreed upon in advance or modified by the chartering group after leaving the place of origin. A person who is engaged in the transportation of persons by party bus over any public highway in this state is considered engaging in the business of a charter party carrier or excursion service carrier.

**"Claim"** means a demand made on a company for payment resulting from a loss sustained through the company's negligence or for inadequate service provided by the company.

**"Closed-door service"** means a portion of a route or territory in which an auto transportation company is not allowed to pick up or deliver passengers. Closed-door service restrictions must be clearly stated in an auto transportation company's certificate.

**"Commercial motor vehicle"** means a motor vehicle or combination of motor vehicles used in commerce to transport passengers if the vehicle:

(a) Has a gross (~~combination~~) vehicle weight rating or gross combination weight of (~~(11,794 kilograms (-))~~) 26,001 pounds (~~(+)~~) or more, inclusive of a towed unit(s) with a gross vehicle weight rating or gross (~~vehiele~~) combination weight of more than (~~(4,536 kilograms (-10,000 pounds))~~) 10,001 pounds or more; or

(b) Has a gross vehicle weight rating or gross (~~vehiele~~) combination weight of (~~(11,794 kilograms (-))~~) 26,001 pounds (~~(+)~~) or more; or

(c) Is designed to transport (~~sixteen~~) 16 or more passengers, including the driver; or

(d) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. Sec. 5103(b)) and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 C.F.R. Part 172, Subpart F).

**"Commission"** means the Washington utilities and transportation commission.

**"Common carrier"** means any person who transports passengers by motor vehicle over the public highways for compensation.

**"Common purpose"** means that a group of persons is traveling together to achieve a common goal or objective. For example, a group of persons traveling together to attend a common function or to visit a common location. For the purposes of these rules, it does not mean a group of persons who have no common goal other than transportation to, or from, the airport.

**"Company"** means an entity authorized by the commission to transport passengers, for compensation, using a motor vehicle, over the public highways of the state.

**"Complaint"** means one of two types of actions by a person against a passenger transportation company that the commission regulates:

(a) **"Informal complaints"** are those complaints filed with the commission under the provisions of WAC 480-07-910. Informal complaints are normally investigated and resolved by commission staff.

(b) **"Formal complaints"** are those complaints filed with the commission under the provisions of WAC 480-07-370. In a formal complaint, the burden of proof resides with the complaining party who must prove its assertions in a formal commission proceeding.

**"Connecting service"** means an auto transportation company service over a route, or routes, that require passengers to transfer from one vehicle to another vehicle operated by either the same company or a different company before reaching the ending point.

**"Contract"** as used in this chapter means any agreement between a passenger transportation company and another person to obtain property or services the company uses to provide passenger transportation services including, but not limited to, sales agreements, service agreements, employment agreements, mortgages, loans, and leases for real or personal property.

**"Customer"** means a person who purchased transportation services from an auto transportation company or a person, corporation, or other entity that prearranges for transportation services with a charter party carrier or purchases a ticket for transportation services aboard an excursion service carrier.

**"Direct route"** means an auto transportation company service over a route that goes from the beginning point to the ending point with limited, if any, stops along the way, and traveling only to points located on the specific route without requiring a passenger to transfer from one vehicle to another.

**"Discontinuance of service":**

(a) **"Permanent discontinuance of service"** means that a company holding auto transportation authority issued by the commission is unable to continue to provide all, or part of, the service authorized by the company's certificate, filed tariff, or filed time schedule and requests commission permission to permanently discontinue all, or part of, its service and relinquish that certificate or portion of that certificate. See WAC 480-30-186.

(b) **"Temporary discontinuance of service"** means that a company holding auto transportation authority issued by the commission is unable to continue to provide all, or part of, the service authorized by the company's certificate, filed tariff, or filed time schedule and requests commission permission to discontinue all, or part of, its service for a specified, limited period of time.

**"Door-to-door service"** means an auto transportation company service provided between a location identified by the passenger and a

point specifically named by the company in its filed tariff and time schedule.

**"Double-decker bus"** means a motor vehicle with more than one passenger deck.

**"Excursion service carrier"** or **"excursion carrier"** means every person engaged in the transportation of persons for compensation over any public highway in the state from points of origin within any city, town, or area, to any other location within the state of Washington and returning to that origin. The service must not pick up or drop off passengers after leaving and before returning to the area of origin. The excursions may be regularly scheduled. Compensation for the transportation offered or afforded must be computed, charged, or assessed by the excursion service company on an individual fare basis.

**"Express passenger service"** means auto transportation company service provided between fixed points or stations with few, if any, stops along the route, and is designed to get passengers from origin to destination more quickly than normally scheduled passenger service.

**"Federal Motor Carrier Safety Administration"** means an agency of the United States Department of Transportation (USDOT) and successor agency to the former Interstate Commerce Commission.

**"Filing"** means any application, petition, tariff proposal, annual report, comment, complaint, pleading, or other document submitted to the commission.

**"Fixed termini"** means points of origin and destination that are set, static locations or defined geographic areas. Examples include a city or town, a building, or an airport. In addition, "fixed termini" can include service between an airport and unlimited points within a defined geographic area.

**"Flag stops"** means a point along an auto transportation company's normally traveled routes where the company stops only if it receives notification that a passenger wishes to board the vehicle at that point. An auto transportation company must list available flag stops in the company's tariffs and time schedules. Flag stops may only be named at points that provide waiting passengers safe access to the vehicle.

**"Group"** means:

- (a) Two or more passengers traveling together;
- (b) A class of passengers to whom special rates and/or rules apply. For example, active military personnel.

**"Intermediate point"** means a point located on a route between two other points that are specifically named in an auto transportation company's certificate or tariff.

**"Intermediate service"** means service to an intermediate point.

**"Interruption in service"** means a period of time during which an auto transportation company cannot provide service listed in its certificate, its filed tariff, or its filed time schedule. An interruption in service is normally short lived, lasting no more than a few hours or a few days.

**"Liquor permit holder"** means a holder of an appropriate special permit to provide liquor issued under chapter 66.20 RCW, who is ((~~twenty-one~~)) 21 years of age or older and who is responsible for compliance with the requirements of WAC 480-30-244 and chapter 66.20 RCW during the provision of transportation services.

**"Motor vehicle"** or **"vehicle"** means:

- (a) As related to auto transportation companies: Every self-propelled vehicle used on the public highways, for the transportation of persons for compensation.

(b) As related to charter and excursion carriers: Every self-propelled vehicle with a manufacturer's seating capacity for ~~((eight or))~~ more than eight passengers, including the driver, used on the public highways, for the transportation of persons for compensation.

**"Named points"** means cities, towns, or specific locations that are listed in an auto transportation company's certificate, tariff, or time schedule.

**"Nonstop service"** means transportation of passengers from point of origin to point of destination without stopping at any intermediate points.

**"On-call service"** means unscheduled auto transportation company service provided only to those passengers that have by prior arrangement requested service prior to boarding.

**"Party bus"** means any motor vehicle whose interior enables passengers to stand and circulate throughout the vehicle because seating is placed around the perimeter of the bus or is nonexistent and in which food, beverages, or entertainment may be provided. A motor vehicle configured in the traditional manner of forward-facing seating with a center aisle is not a party bus.

**"Passenger facility"** means a location at which an auto transportation company stations employees and at which passengers can purchase tickets or pay fares for transportation service.

**"Passenger transportation company"** means an auto transportation company or charter and excursion carrier.

**"Person"** means an individual, firm, corporation, association, partnership, lessee, receiver, trustee, consortium, joint venture, or commercial entity.

**"Premium service"** means a type of service provided by an auto transportation company that is outside normal service. Examples include express service, direct route service, and nonstop door-to-door service.

**"Private carrier"** means a person who transports passengers in the person's own vehicle purely as an incidental adjunct to some other established private business owned or operated by that person in good faith.

**"Private motor vehicle"** means a vehicle owned or operated by a private carrier.

**"Public highway"** means every street, road, or highway in this state.

**"Public transit agency"** means a municipal corporation or agency of state or local government formed under the laws of the state of Washington for the purpose of providing transportation services including, but not limited to, public transportation benefit areas, regional transit authorities, municipal transit authorities, city and county transit agencies.

**"Residence"** means the regular dwelling place of an individual or individuals.

**"Route"** means a highway or combination of highways over which an auto transportation company provides passenger service. There are two types of routes:

(a) **"Irregular route"** means travel between points named in an auto transportation company's certificate via any highway or combination of highways the company wishes to operate over. The certificate issued to the company does not list highways to be used, but the company defines routes in its tariffs and time schedules.



(b) **"Regular route"** means an auto transportation company providing passenger transportation over a route named in the certificate issued to the company by the commission.

**"Scheduled service"** means an auto transportation company providing passenger service at specified arrival and/or departure times at points on a route.

**"Single contract"** means an agreement between a charter carrier and a group of passengers to provide transportation services at a set price for the group or trip. Under a single contract, passengers are not charged individually.

**"Small business"** means any company that has (~~(fifty)~~) 50 or fewer employees.

**"Special or promotional fares"** means temporary fares for specific services offered for no more than (~~(ninety)~~) 90 days.

**"Suspension"** means an act by the commission to temporarily revoke a company's certificated authority; or an act by the commission to withhold approval of an auto transportation company's tariff filing.

**"Tariff"** or **"tariff schedule"** means a document issued by an auto transportation company containing the services provided, the rates the company must assess its customers for those services, and the rules describing how the rates apply.

**"Tariff service territory"** means a company-defined geographic area of its certificated authority in which a specific tariff applies.

**"Temporary certificate"** means the certificate issued by the Washington utilities and transportation commission under RCW 81.68.046 to operate as an auto transportation company for up to (~~(one hundred eighty)~~) 180 days or pending a decision on a parallel filed auto transportation company certificate application.

**"Temporary certificate authority"** means the territory and services granted by the commission and described in an auto transportation company's temporary certificate.

**"Ticket agent agreements"** means a signed agreement between an auto transportation company and a second party in which the second party agrees, for compensation, to sell tickets to passengers on behalf of the auto transportation company. See WAC 480-30-391.

**"Time schedule"** means a document filed as part of an auto transportation company's tariff, or as a separate document, that lists the routes operated by the company including the times and locations at which passengers may receive service and any rules specific to operating those routes.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.68.030 [81.68.030], and 81.70.270. WSR 17-16-114 (Docket TC-161262, General Order R-590), § 480-30-036, filed 7/31/17, effective 8/31/17. Statutory Authority: RCW 80.01.040, 80.04.160, 80.54.020, and 80.54.060. WSR 16-02-076 (Docket TE-151080, General Order R-583), § 480-30-036, filed 1/4/16, effective 2/4/16. Statutory Authority: RCW 80.01.040, 81.04.160, 81.12.050, 81.68.030, and 81.70.270. WSR 06-13-006 (General Order No. R-533, Docket No. TC-020497), § 480-30-036, filed 6/8/06, effective 7/9/06.]

AMENDATORY SECTION (Amending WSR 17-16-114, filed 7/31/17, effective 8/31/17)

**WAC 480-30-191 Bodily injury and property damage liability insurance.** (1) **Insurance coverage.** A company must have bodily injury and property damage liability insurance covering each motor vehicle used to provide passenger transportation services under the authority of the company's certificate in Washington.

(a) The insurance policy must be written by an insurance company authorized to write insurance in the state of Washington or by an unauthorized insurer providing surplus lines coverage subject to the provisions of RCW 48.15.040.

(b) The insurance policy must include the Uniform Motor Carrier Bodily Injury and Property Damage Liability Endorsement (Form F).

(c) If a company operates without the required insurance coverage, the commission may take immediate compliance action as described in WAC 480-30-171.

(2) **Insurance limits.** The minimum limits of required bodily injury and property damage liability insurance for motor vehicles operated by companies are:

<b>Motor vehicles that:</b>	<b>Must have bodily injury and property damage insurance or surety bond with the following minimum limits:</b>
Have a passenger seating capacity of <del>((fifteen))</del> <u>15</u> or less (including the driver).	\$1,500,000 combined single limit coverage.
Have a passenger seating capacity of <del>((sixteen))</del> <u>16</u> or more (including the driver).	\$5,000,000 combined single limit coverage.

(3) **Insurance filings.** A company must file and maintain a Uniform Motor Carrier Bodily Injury Property Damage Certificate of Insurance (Form E) as a condition of being issued and maintaining a certificate to operate as a passenger transportation company.

(a) The Form E is a standard motor carrier insurance form recognized by the insurance industry and is normally filed with the commission by an insurance company rather than an insurance agent.

(b) The Form E must be issued in the company name exactly as it appears on the company's certificate or application for certificate.

(c) The Form E filing must remain in effect until canceled by a Notice of Cancellation (Form K). The Form K must be filed with the commission by the insurance company not less than ~~((thirty))~~ 30 days before the cancellation effective date.

(d) A company may file a Uniform Motor Carrier Bodily Injury and Property Damage Liability Surety Bond (Form G) instead of the Form E.

(4) **Insurance binders.** The commission will accept an insurance certificate or binder for up to ~~((sixty))~~ 60 days.

(a) An insurance certificate or binder may be canceled by written notice filed with the commission at least ~~((ten))~~ 10 days before the cancellation effective date.

(b) An insurance certificate or binder must be replaced by a Form E within ~~((sixty))~~ 60 days of filing, or before the expiration date, whichever occurs first.

(c) Insurance certificates or binders must show:

- (i) The commission as the named insurance certificate holder;
- (ii) The company name, exactly as it appears on the company's certificate or application for a certificate, as the insured;
- (iii) The insurance company name;
- (iv) The insurance policy number;
- (v) The insurance policy effective and expiration dates;
- (vi) The insurance limits of coverage; and
- (vii) The agent's or other insurance representative's signature.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.68.030 [81.68.030], and 81.70.270. WSR 17-16-114 (Docket TC-161262, General Order R-590), § 480-30-191, filed 7/31/17, effective 8/31/17. Statutory Authority: RCW 80.01.040, 81.04.160, 81.12.050, 81.68.030, and 81.70.270. WSR 06-13-006 (General Order No. R-533, Docket No. TC-020497), § 480-30-191, filed 6/8/06, effective 7/9/06.]

AMENDATORY SECTION (Amending WSR 17-16-114, filed 7/31/17, effective 8/31/17)

**WAC 480-30-221 Vehicle and driver safety requirements.** (1) A passenger transportation company must ensure that all vehicles and drivers used to provide passenger transportation services under the authority of the company's certificate comply with all federal, state, (~~and~~) local laws and rules, and commission orders, governing licensing, vehicle safety, and driver safety. Except for vehicles with a seating capacity of (~~seven~~) eight or fewer passengers (including the driver) and the drivers of those vehicles, in which case the company must comply with the requirements in WAC 480-30-222, companies must also comply with the parts of Title 49, Code of Federal Regulations (49 C.F.R.), adopted by reference, that are shown in the following chart. Information about 49 C.F.R., including the version adopted by the commission and where to obtain copies is set out in WAC 480-30-999.

49 C.F.R. Part:		Notes:
Part 40 -	Procedures For Transportation Workplace Drug and Alcohol Testing Programs	Entire Part 40 is adopted and applies to Washington intrastate operations.
Part 382 -	Controlled Substance and Alcohol Use and Testing	Entire Part 382, is adopted and applies to Washington intrastate operations.
Part 383 -	Commercial Driver's License Standards; Requirements and Penalties	Entire Part 383, is adopted and applies to Washington intrastate operations.
Part 379 -	Preservation of Records	Entire Part 379 is adopted and applies to Washington intrastate operations.
Part 380 -	Special Training Requirements	Entire Part 380 is adopted and applies to Washington intrastate operations.
Part 385 -	Safety Fitness Procedures	Entire Part 385 is adopted and applies to Washington intrastate operations.
Part 390 -	Safety Regulations, General	Entire Part 390 is adopted and applies to Washington intrastate operations, with the following exceptions:
		(1) The terms "motor vehicle," "commercial motor vehicle," and "private <u>motor</u> vehicle" are not adopted. Instead, where those terms are used in Title 49 C.F.R., they have the meanings assigned to them in WAC 480-30-036.

49 C.F.R. Part:		Notes:
		(2) Whenever the term "director" is used in Title 49 C.F.R., it means the commission.
Part 391 -	Qualification of Drivers	Entire Part 391 is adopted, with the following exceptions:
		(1) Part 391.49 (alternative physical qualification standards for the loss or impairment of limbs) is not adopted for drivers who operate vehicles exclusively intrastate. Instead refer to WAC 480-30-226 for intrastate medical waivers.
Part 392 -	Driving of Motor Vehicles	Entire Part 392 is adopted and applies to Washington intrastate operations.
Part 393 -	Parts and Accessories Necessary for Safe Operation	Entire Part 393 is adopted and applies to Washington intrastate operations.
Part 395 -	Hours of Service of Drivers	Entire Part 395 is adopted and applies to Washington intrastate operations.
Part 396 -	Inspection, Repair, and Maintenance	Entire Part 396 is adopted and applies to Washington intrastate operations.
Part 397 -	Transportation of Hazardous Materials, Driving and Parking Rules	Entire Part 397 is adopted and applies to Washington intrastate operations.

(2) Companies must: Ensure that all motor vehicles used to provide certificated service are maintained in a safe and sanitary condition and are free of defects likely to result in an accident or breakdown.

(3) No company, its agents, contractors, officers, or employees ((~~r~~)) will allow any animal, article, commodity, or substance to be loaded in or on any motor vehicle used by the company to provide certificated services to transport passengers that is dangerous to the lives and safety of passengers.

(4) No company, its agents, contractors, officers, or employees will allow any article, commodity, or substance to be loaded in or on any motor vehicle used by the company to provide certificated services to transport passengers that is prohibited by the hazardous materials rules in Title 49 C.F.R. from being transported on passenger-carrying vehicles.

(5) All motor vehicles and drivers operating under the provisions of this chapter and used to provide certificated services are ((~~at all times~~)) subject to inspection by the commission or its duly authorized representatives at all times. ((~~The commission will place out-of-service for the provision of passenger transportation service any motor vehicle with a seating capacity of eight or more passengers (including the driver) or the driver of that vehicle if the vehicle or driver meets any condition listed in the North American Uniform Out-of-Service Criteria. A company must not allow a vehicle or driver that has been placed out-of-service to operate until the condition(s) causing the out-of-service violation is corrected.~~))

(6) All motor vehicles must be equipped with fenders, covers, mud flaps, or splash aprons which effectively reduce the spray or splash of water from the road. All such devices must be as wide as the tires on which they are mounted, and must extend from the top of the tires down to at least the center of the axle.

(a) The commission will place out-of-service a motor vehicle with safety defects identified in the North American Uniform Out-of-Service Criteria. A carrier must not require or permit a driver to operate a vehicle placed out-of-service until all out-of-service violations have been satisfactorily repaired so that no violation(s) exists.

(b) The commission will place out-of-service a driver who operates a motor vehicle subject to an out-of-service order. No driver shall operate a commercial motor vehicle subject to an out-of-service order until all repairs required by the out-of-service order have been satisfactorily repaired. A driver subject to an out-of-service order shall not operate a commercial motor vehicle until the reason for the out-of-service order has been remedied.

(c) Information about the North American Uniform Out-of-Service Criteria is set out in WAC 480-30-999.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.68.030 [81.68.030], and 81.70.270. WSR 17-16-114 (Docket TC-161262, General Order R-590), § 480-30-221, filed 7/31/17, effective 8/31/17. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, and 34.05.353. WSR 11-04-041 (Docket A-101466, General Order R-562), § 480-30-221, filed 1/25/11, effective 2/25/11. Statutory Authority: RCW 80.01.040, 81.04.160, 81.12.050, 81.68.030, and 81.70.270. WSR 06-13-006 (General Order No. R-533, Docket No. TC-020497), § 480-30-221, filed 6/8/06, effective 7/9/06.]

AMENDATORY SECTION (Amending WSR 17-16-114, filed 7/31/17, effective 8/31/17)

**WAC 480-30-222 Vehicles with capacity for ~~((seven))~~ eight or fewer passengers (including the driver).** A company must ensure compliance with the requirements of this section for all vehicles with a capacity of ~~((seven))~~ eight or fewer passengers (including the driver) used to provide passenger transportation service under the authority of the company's certificate and for all drivers of those vehicles. Regardless of whether a record required under this section is maintained by the certificated company or its contractor, the certificated company must make the record available to the commission upon request within ~~((forty-eight))~~ 48 hours of the request.

(1) All vehicles must be inspected annually by a mechanic who has successfully passed the applicable examinations of, and met the applicable experience requirements prescribed by, the National Institute for Automotive Service Excellence, and certified by the mechanic as safe to operate.

(2) At the beginning and end of each day's work, the driver must check each vehicle the driver operates to determine if the lights, brakes, tires, steering, seat belts, and other safety and operating equipment are working properly. The driver must document the inspection the driver performs at the end of each day.

(3) Records of inspection, repair, and maintenance indicating the date and nature of the inspection, repair, or maintenance must be kept by the certificated company or contractor for a period of three years.

(4) Drivers used to operate vehicles with a capacity of ~~((seven))~~ eight or fewer passengers (including the driver) must have the following qualifications ~~((at all times))~~ when operating a vehicle on behalf of a certificated company:

(a) Be licensed to drive in the state of Washington;

(b) Be a safe driver as demonstrated by a complete driving record from the Washington department of licensing and a complete driving record from any other state in which the driver held a driver's license in the previous five years;

(c) Have not been convicted within the past five years of hit-and-run, reckless driving, attempting to elude an officer by using a vehicle, vehicular assault, vehicular homicide, reckless endangerment, negligent driving in the first degree, or driving under the influence of alcohol or a controlled substance, and have not been convicted within the past five years of a crime pertaining to physical violence or crimes reasonably related to the driver's honesty including, but not limited to, robbery, fraud, theft, extortion, assault, or identity theft, as demonstrated by a state criminal background check;

(d) Have not been required to register as a sex offender or been convicted of a sex offense or been convicted of a kidnapping offense against a minor;

(e) Have been medically examined and certificated by a medical examiner who is listed on the National Registry of Certified Medical Examiners, and be physically and mentally qualified to operate a passenger carrying vehicle for compensation; and

(f) Have passed a defensive driving course certified by the National Safety Council or passed an equivalent course approved by the commission.

(5) The certificated company must verify and document the driver's qualifications under this section prior to initially allowing the driver to operate a vehicle under the company's authority and at least once every (~~twelve~~) 12 months thereafter during the time of employment or the contract.

(6) A driver shall not be in control of a vehicle more than (~~twelve~~) 12 consecutive hours. The (~~twelve~~) 12 hours can be spread over a (~~fifteen~~) 15 hour period within (~~twenty-four~~) 24 hours. Thereafter, the driver shall not drive a vehicle until the driver takes eight consecutive hours off duty.

(7) The certificated company or contractor must keep or require its contractors to keep, and provide or make available to the commission on request, the following records for the specified time periods:

(a) All documents related to driver hours for a period of at least six months;

(b) Verification of each driver's qualifications for the duration of the driver's employment or contract with the certificated company and for three years thereafter; and

(c) All documents related to any vehicle collisions or other accidents that occur while driving for compensation for a period of at least three years from the date of the accident. Such records must include copies of all accident reports and any other documents that identify the date and geographic location of the accident, the driver name, the number of fatalities or persons injured and a description of those injuries. The certificated company must ensure that its contractors immediately notify the certificated company of any accident or motor vehicle violation that occurs while driving for compensation.

(8) The commission will place a motor vehicle or driver out-of-service for the purposes of use by a certificated company if the vehicle or driver fails to meet any of the requirements in this section.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.68.030 [81.68.030], and 81.70.270. WSR 17-16-114 (Docket TC-161262, General Order R-590), § 480-30-222, filed 7/31/17, effective 8/31/17.]

AMENDATORY SECTION (Amending WSR 17-16-114, filed 7/31/17, effective 8/31/17)

**WAC 480-30-226 Intrastate medical waivers.** (1) **Department of licensing intrastate medical waiver.** A passenger transportation company may use a driver that is not physically qualified to drive a commercial motor vehicle under Title 49 C.F.R. Part 391.41, if the driver:

(a) Only operates motor vehicles intrastate, wholly within the state of Washington; and

(b) Has obtained from the Washington state department of licensing an intrastate medical waiver to drive a commercial motor vehicle.

For the purposes of a department of licensing medical waiver, a commercial motor vehicle means a motor vehicle:

(i) With a gross vehicle weight rating (~~(over 26,000 lbs.)~~) of 26,001 pounds or more;

(ii) Transporting (~~(sixteen)~~) 16 or more passengers, including the driver; or

(iii) With a manufacturer's seating capacity of (~~(sixteen)~~) 16 or more passengers, including the driver.

(2) **Doctor's statement of intrastate medical waiver.** A passenger transportation company may use a driver that is not physically qualified to drive a commercial motor vehicle under Title 49 C.F.R. Part 391.41 or WAC 480-30-222, as applicable, if the driver:

(a) Holds a valid Washington state driver's license;

(b) Has received a doctor's statement that:

(i) The driver's medical condition is not likely to interfere with the driver's ability to safely operate a commercial motor vehicle; and

(ii) (~~(The doctor's opinion is that)~~) The driver's condition is likely to remain stable for the next two years or other specified date, but not more than the two years that the medical certificate is valid.

(c) Operates commercial motor vehicles intrastate wholly within the state of Washington. For the purposes of a doctor's statement of intrastate medical waiver, a commercial motor vehicle means a motor vehicle:

(i) With a gross vehicle weight rating under 26,001 (~~(lbs.)~~) pounds;

(ii) Transporting (~~(fifteen)~~) 15 or fewer passengers, including the driver; or

(iii) With a manufacturer's seating capacity of (~~(fifteen)~~) 15 or fewer passengers, including the driver.

(3) **Driver qualification files.** A passenger transportation company that uses a driver under an intrastate medical waiver must maintain in the driver's qualification file a physical or digital copy of the doctor's statement of intrastate medical waiver.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.68.030 [81.68.030], and 81.70.270. WSR 17-16-114 (Docket TC-161262, General Order R-590), § 480-30-226, filed 7/31/17, effective 8/31/17. Statutory Authority: RCW 80.01.040, 81.04.160, 81.12.050, 81.68.030, and 81.70.270. WSR 06-13-006 (General Order No. R-533, Docket No. TC-020497), § 480-30-226, filed 6/8/06, effective 7/9/06.]

AMENDATORY SECTION (Amending WSR 17-16-114, filed 7/31/17, effective 8/31/17)

**WAC 480-30-231 Vehicle and driver identification.** (1) Unless otherwise prohibited by law, a passenger transportation company must ensure that all motor vehicles used to provide passenger transportation services are clearly and easily identifiable as being operated under the authority of the company.

(a) Each motor vehicle must display the certificate holder's name (or registered trade name) and certificate number on each side of the vehicle. A company with both intrastate and interstate operations may display its U.S. Department of Transportation identification number in addition to, or in place of, its commission-issued certificate number.

(b) Each motor vehicle operated in regular route service with scheduled stops must display a suitable destination sign.

(c) Each motor vehicle operated in transportation of passengers must display on the vehicle a company identification or unit number.

(d) All identifications must be ~~((clearly legible, conspicuous, and of a size that is easily readable.~~

~~(e) For all vehicles owned by the company, all identifications must be permanent.))~~;

(i) Legible, during daylight hours, from 50 feet while the motor vehicle is not moving.

(ii) In a color that contrasts with the background color of the motor vehicle.

(e) All company owned vehicles must have permanent identification.

(f) Permanent. **Exception:** Companies may use temporary markings on vehicles when operated under a lease agreement with a term of 30 calendar days or less.

(2) An auto transportation company must ensure that all drivers operating motor vehicles in the transportation of passengers are clearly and easily identifiable as driving under the authority of the company. Identification may include, but is not limited to, an identification badge or a uniform with a name tag identifying the driver by name or number. If applicable law prohibits the vehicle from being marked as required under subsection (1) of this section, the driver must have an identification badge or name tag clearly visible on the driver's person and must carry a sign at the point of pickup with the name of the certificated company and the name of the passenger(s) to be picked up clearly printed.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.68.030 [81.68.030], and 81.70.270. WSR 17-16-114 (Docket TC-161262, General Order R-590), § 480-30-231, filed 7/31/17, effective 8/31/17. Statutory Authority: RCW 80.01.040, 81.04.160, 81.12.050, 81.68.030, and 81.70.270. WSR 06-13-006 (General Order No. R-533, Docket No. TC-020497), § 480-30-231, filed 6/8/06, effective 7/9/06.]

AMENDATORY SECTION (Amending WSR 17-16-114, filed 7/31/17, effective 8/31/17)

**WAC 480-30-236 Leasing vehicles.** (1) A passenger transportation company operating a leased vehicle must have a ~~((written))~~ physical or digital copy of the lease agreement with the owner of the vehicle.



(2) It is the company's responsibility to ensure that:

(a) A physical or digital copy of the lease is carried in each leased vehicle, unless the vehicle's registration names the certificate holder as registered owner or lessee.

(b) A physical or digital copy of the lease is kept in the company's files during the effective period of the lease and for ((at least)) one year after the lease expires.

(c) The leased vehicle is properly insured as specified in WAC 480-30-191.

(d) The driver of the leased vehicle is on the carrier's payroll during the leased period.

(e) The leased vehicle is operated in compliance with laws and rules as specified in WAC 480-30-216 and 480-30-221.

(f) The driver of the leased vehicle is subject to the company's alcohol and controlled substance policies.

(g) The company and the owner of the leased vehicle specify on the lease form who is responsible for all expenses relating to the leased motor vehicles.

(h) The company complies with the terms of the lease.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.68.030 [81.68.030], and 81.70.270. WSR 17-16-114 (Docket TC-161262, General Order R-590), § 480-30-236, filed 7/31/17, effective 8/31/17. Statutory Authority: RCW 80.01.040, 81.04.160, 81.12.050, 81.68.030, and 81.70.270. WSR 06-13-006 (General Order No. R-533, Docket No. TC-020497), § 480-30-236, filed 6/8/06, effective 7/9/06.]

## OTS-4219.1

AMENDATORY SECTION (Amending WSR 06-07-100, filed 3/15/06, effective 4/15/06)

**WAC 480-31-070 Insurance.** (1) Evidence of liability and property damage insurance or a surety bond must be on file before a certificate will be issued to a private, nonprofit transportation provider. The insurance or surety bond must have been written by a company authorized to write such insurance in the state of Washington or by an unauthorized insurer providing surplus lines coverage subject to the provisions of RCW 48.15.040. The combined bodily injury and property damage liability insurance or surety bond must not be less than:

Five hundred thousand dollars combined single limit for vehicles with a passenger capacity of less than ((~~sixteen~~)) 16 passengers, including the driver;

One million dollars combined single limit for vehicles with a passenger capacity of ((~~sixteen~~)) 16 or more passengers, including the driver.

(2) A provider's insurance agency or company must submit evidence of insurance on a "uniform motor carrier bodily injury and property damage liability certificate of insurance" (form E).

(3) All liability and property damage insurance policies issued to providers must carry a "uniform motor carrier bodily injury and property damage liability endorsement."

(4) Insurance termination. All insurance policies issued must provide that the same will continue in full force and effect until canceled by at least ~~((thirty))~~ 30 days' written notice served on the insured and the commission by the insurance company. The ~~((thirty-day))~~ 30-day notice will commence to run from the date notice is actually received by the commission, except for binders which may be canceled on ~~((ten))~~ 10 days' written notice.

A provider's insurance agency or company must submit notice of cancellation or expiration in duplicate on forms prescribed by the commission and must not submit the notice more than ~~((sixty))~~ 60 days before the desired termination date, except binders which may be canceled by ~~((ten))~~ 10 days' written notice from the insurance agency or company.

(5) No provider may operate ~~((upon))~~ on the public highways of this state without insurance as required by this section.

[Statutory Authority: RCW 80.01.040(4), 81.04.160. WSR 06-07-100 (Docket No. T-051359, General Order No. R-529), § 480-31-070, filed 3/15/06, effective 4/15/06. Statutory Authority: RCW 80.01.040 and chapter 80.01 RCW. WSR 97-08-037 (Order R-440, Docket No. TC 961102), § 480-31-070, filed 3/27/97, effective 4/27/97.]

#### NEW SECTION

**WAC 480-31-150 Intrastate medical waivers.** (1) **Department of licensing intrastate medical waiver.** A private, nonprofit transportation provider may use a driver that is not physically qualified to drive a commercial motor vehicle under Title 49 C.F.R. Part 391.41, if the driver:

(a) Only operates commercial motor vehicles intrastate, wholly within the state of Washington; and

(b) Has obtained from the Washington state department of licensing an intrastate medical waiver to drive a commercial motor vehicle.

For the purposes of a department of licensing medical waiver, a commercial motor vehicle means a motor vehicle:

(i) With a gross vehicle weight rating of 26,001 pounds or more;

(ii) Transporting 16 or more passengers, including the driver; or

(iii) With a manufacturer's seating capacity of 16 or more passengers, including the driver.

(2) **Doctor's statement of intrastate medical waiver.** A private, nonprofit transportation provider may use a driver that is not physically qualified to drive a motor vehicle under Title 49 C.F.R. Part 391.41 or WAC 480-31-130, as applicable, if the driver:

(a) Holds a valid Washington state driver's license;

(b) Has received a doctor's statement that:

(i) The driver's medical condition is not likely to interfere with the driver's ability to safely operate a motor vehicle; and

(ii) The driver's condition is likely to remain stable for the two years or other specified date, but not more than the two years that the medical certificate is valid.

(c) Operates motor vehicles intrastate wholly within the state of Washington. For the purposes of a doctor's statement of intrastate medical waiver, a motor vehicle means a motor vehicle:

(i) With a gross vehicle weight rating under 26,001 pounds;

- (ii) Transporting 15 or fewer passengers, including the driver;
- or
- (iii) With a manufacturer's seating capacity of 15 or fewer passengers, including the driver.

(3) **Driver qualification files.** A private, nonprofit transportation provider that uses a driver under an intrastate medical waiver must maintain in the driver's qualification file a physical or digital copy of the doctor's statement of intrastate medical waiver.

[]

**OTS-4220.1**

AMENDATORY SECTION (Amending WSR 01-08-012, filed 3/23/01, effective 4/23/01)

**WAC 480-70-181 Public liability and property damage insurance.**

(1) **Insurance coverage.** A company must have public liability and property damage insurance covering each motor vehicle it operates in the state of Washington.

(a) The insurance policy must be written by an insurance company authorized to write insurance in the state of Washington or by an unauthorized insurer providing surplus lines coverage subject to the provisions of RCW 48.15.040.

(b) The insurance policy must include the Uniform Motor Carrier Bodily Injury and Property Damage Liability Endorsement (Form F).

(c) If a company operates without the required insurance coverage, the commission may take immediate compliance action as described in WAC 480-70-161 and WAC 480-70-166.

(2) **Insurance limits.** The minimum limits of required public liability and property damage insurance for motor vehicles operated by companies are:

<b>Vehicles that:</b>	<b>Must have bodily injury and property damage insurance or bond with the following minimum limits:</b>
Have Gross Vehicle Weight Rating (GVWR) less than <del>((10,000))</del> <u>10,001</u> pounds	\$300,000 combined single limit coverage
Have GVWR <del>((10,000))</del> <u>10,001</u> pounds or more	\$750,000 combined single limit coverage
Transport quantities of biomedical waste not subject to federal regulation	\$1,000,000 combined single limit coverage
Transport quantities of hazardous or biomedical waste that are subject to federal regulation	The federal minimum combined single limit coverage

(3) **Insurance filings.** A company must file and maintain a Uniform Motor Carrier Bodily Injury Property Damage Certificate of Insurance (Form E) as a condition of being issued and maintaining a certificate.

(a) The Form E is a standard motor carrier insurance form recognized by the insurance industry and is normally filed with the commission by an insurance company rather than an insurance agent.

(b) The Form E must be issued in the company name exactly as it appears on the company's certificate or application for certificate.

(c) The Form E filing must remain in effect until canceled by a Notice of Cancellation (Form K). The Form K must be filed with the commission by the insurance company not less than (~~thirty~~) 30 days before the cancellation effective date.

(d) A company may file a Uniform Motor Carrier Bodily Injury and Property Damage Liability Surety Bond (Form G) instead of the Form E.

(4) **Insurance binders.** The commission will accept an insurance certificate or binder for up to (~~sixty~~) 60 days.

(a) An insurance certificate or binder may be canceled by written notice filed with the commission at least (~~ten~~) 10 days before the cancellation effective date.

(b) An insurance certificate or binder must be replaced by a Form E within (~~sixty~~) 60 days of filing, or before the expiration date, whichever occurs first.

(c) Insurance certificates or binders must show:

(i) The commission as the named insurance certificate holder;

(ii) The company name, exactly as it appears on the company's certificate or application for a certificate, as the insured;

(iii) The insurance company name;

(iv) The insurance policy number;

(v) The insurance policy effective and expiration dates; and

(vi) The insurance limits of coverage.

[Statutory Authority: RCW 81.04.160, 81.77.030 and 80.01.040. WSR 01-08-012 (Docket No. TG-990161, General Order No. R-479), § 480-70-181, filed 3/23/01, effective 4/23/01.]

AMENDATORY SECTION (Amending WSR 18-13-106, filed 6/19/18, effective 7/20/18)

**WAC 480-70-201 Vehicle and driver safety requirements.** (1) Companies must comply with all state and local laws and rules governing vehicle and driver safety. Companies must also comply with the parts of Title 49, Code of Federal Regulations (49 C.F.R.) shown in the following chart, that are adopted by reference. Information about 49 C.F.R. regarding the version adopted and where to obtain copies is set out in WAC 480-70-999.

49 C.F.R. Part ((Adopted)) <b>ADOPTED:</b>	((Portions Not Adopted)) <b>NOT ADOPTED:</b>
Part 40 - Procedures for Transportation Workplace Drug and Alcohol Testing Programs	n/a
Part 379 - Preservation of Records	n/a
Part 380 - Special Training Requirements	n/a

49 C.F.R. Part ((Adopted)) <b>ADOPTED:</b>		<del>((Portions Not Adopted))</del> <b>NOT ADOPTED:</b>
Part 382 -	Controlled Substance and Alcohol Use and Testing	n/a
Part 383 -	Commercial Driver's License Standards; Requirements and Penalties	n/a
Part 385 -	Safety Fitness Procedures	n/a
Part 390 -	Safety Regulations, General	(1) The terms "motor vehicle," "commercial motor vehicle," and "private vehicle" are not adopted. Instead, where those terms are used in Title 49 C.F.R., they shall have the meanings assigned to them in WAC 480-70-041 (private vehicle) and WAC 480-70-196 (commercial motor vehicle).  (2) Whenever the term "director" is used in Title 49 C.F.R., it shall mean the commission.
Part 391 -	Qualification of Drivers	(1) A driver who operates exclusively within the state of Washington is not subject to the provisions of Part 391.49 (waiver of certain physical defects), if that driver has obtained from the Washington department of licensing a driver's license with endorsements and restrictions allowing operation of the motor vehicle being driven.  (2) A driver who operates exclusively in intrastate commerce is not subject to the provisions of Part 391.11(b)(1) (general qualifications – age). A driver operating exclusively in intrastate commerce may drive a motor vehicle if he or she is at least <del>((eighteen))</del> 18 years of age.
Part 392 -	Driving of Motor Vehicles	n/a
Part 393 -	Parts and Accessories Necessary for Safe Operation	n/a
Part 395 -	Hours of Service of Drivers	n/a
Part 396 -	Inspection, Repair, and Maintenance	n/a
Part 397 -	Transportation of Hazardous Materials, Driving and Parking Rules	n/a

(2) Companies must:

(a) Maintain all motor vehicles in a safe and sanitary condition;

(b) Ensure that vehicles are free of defects likely to result in an accident or breakdown; and

(c) Make vehicles available for inspection by commission representatives at any time upon request.

~~(3) ((The commission will place out-of-service any motor vehicle having safety defects identified in the *North American Uniform Out-Of-Service Criteria*. Information about the *North American Uniform Out-Of-Service Criteria* regarding the version adopted and where to obtain copies is set out in WAC 480-70-999. A company must not operate any vehicle placed out-of-service until after proper repairs have been completed.~~

~~(4) The commission will place out-of-service any driver meeting criteria identified in the *North American Uniform Out-Of-Service Criteria*. A company must not allow a driver who has been placed out-of-service to operate a motor vehicle until such time as the conditions causing the driver to be placed out-of-service have been corrected.))~~ All motor vehicles and drivers operating under the provisions of this chapter and used to provide certificated services are always subject to inspection by the commission or its duly authorized representatives. The commission will place out-of-service for the provision of solid waste collection service any motor vehicle or the driver of that vehicle if the vehicle or driver meets any condition listed in the *North American Uniform Out-of-Service Criteria*. A company must not require or permit a vehicle or driver that has been placed out-of-service to operate until the condition(s) causing the out-of-service violation is corrected. Information about the *North American Uniform Out-of-Service Criteria* is set out in WAC 480-70-999.

(4) All motor vehicles must be equipped with fenders, covers, mud flaps, or splash aprons which effectively reduce the spray or splash of water from the road. All such devices must be as wide as the tires on which they are mounted, and must extend from the top of the tires down to at least the center of the axle.

[Statutory Authority: RCW 80.10.040, 80.04.160, 81.04.160, and 34.05.353. WSR 18-13-106, § 480-70-201, filed 6/19/18, effective 7/20/18. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, and 34.05.353. WSR 11-04-041 (Docket A-101466, General Order R-562), § 480-70-201, filed 1/25/11, effective 2/25/11. Statutory Authority: RCW 81.04.160, 81.77.030 and 80.01.040. WSR 01-08-012 (Docket No. TG-990161, General Order No. R-479), § 480-70-201, filed 3/23/01, effective 4/23/01.]

#### NEW SECTION

**WAC 480-70-203 Intrastate medical waivers.** (1) **Department of licensing intrastate medical waiver.** Companies may use a driver that is not physically qualified to drive a commercial motor vehicle under Title 49 C.F.R. Part 391.41, if the driver:

(a) Only operates motor vehicles intrastate, wholly within the state of Washington; and

(b) Has obtained from the Washington state department of licensing an intrastate medical waiver to drive a commercial motor vehicle.

For the purposes of a department of licensing medical waiver, a commercial motor vehicle means a motor vehicle:

- (i) With a gross vehicle weight rating of 26,000 pounds or more;
- (ii) Transporting 16 or more passengers, including the driver; or

(iii) With a manufacturer's seating capacity of 16 or more passengers, including the driver.

(2) **Doctor's statement of intrastate medical waiver.** Solid waste collection companies may use a driver that is not physically qualified to drive a commercial motor vehicle under Title 49 C.F.R. Part 391.41 or WAC 480-70-201, as applicable, if the driver:

(a) Holds a valid Washington state driver's license;

(b) Has received a doctor's statement that:

(i) The driver's medical condition is not likely to interfere with the driver's ability to safely operate a commercial motor vehicle; and

(ii) The driver's condition is likely to remain stable for the two years or other specified date, but not more than the two years that the medical certificate is valid.

(c) Operates commercial motor vehicles intrastate wholly within the state of Washington. For the purposes of a doctor's statement of intrastate medical waiver, a commercial motor vehicle means a motor vehicle:

(i) With a gross vehicle weight rating under 26,001 pounds;

(ii) Transporting 15 or fewer passengers, including the driver;

or

(iii) With a manufacturer's seating capacity of 15 or fewer passengers, including the driver.

(3) **Driver qualification files.** A solid waste collection company that uses a driver under an intrastate medical waiver must maintain in the driver's qualification file a physical or digital copy of the doctor's statement of intrastate medical waiver.

[ ]

AMENDATORY SECTION (Amending WSR 01-08-012, filed 3/23/01, effective 4/23/01)

**WAC 480-70-206 Motor vehicle identification.** (1) A company must ensure (~~that~~) all motor vehicles operated, including leased, substitute or emergency vehicles, display the certificate holder's name (or registered trade name) and certificate number on each side of the vehicle. All identifications must be clearly legible. All identifications, except those displayed on leased or substitute vehicles, must be permanent.

(2) Exception: Companies may use temporary markings on vehicles when operated under a lease agreement with a term of 30 days or less.

[Statutory Authority: RCW 81.04.160, 81.77.030 and 80.01.040. WSR 01-08-012 (Docket No. TG-990161, General Order No. R-479), § 480-70-206, filed 3/23/01, effective 4/23/01.]

AMENDATORY SECTION (Amending WSR 01-08-012, filed 3/23/01, effective 4/23/01)

**WAC 480-70-211 Leasing vehicles.** (1) A company operating a leased vehicle must have a (~~written~~) physical or digital copy of a lease agreement with the owner of the vehicle.

(2) It is the company's responsibility to ensure that:

- (a) A physical or digital copy of the lease is carried in each leased vehicle;
- (b) A physical or digital copy of the lease is kept in the company's files during the effective period of the lease and for ((at least)) one year after the lease expires;
- (c) A physical or digital copy of the lease is provided to the owner of the leased vehicle;
- (d) The company has complete possession, control, and use of the motor vehicle during the period of the lease;
- (e) The leased motor vehicle is properly insured as specified in WAC 480-70-181;
- (f) The leased vehicle is properly identified as specified in WAC 480-70-206;
- (g) The leased vehicle is operated in compliance with all safety laws and rules, including those regarding vehicle inspection, records, and maintenance; and
- (h) The terms of the lease are followed.

(3) If a company leases a vehicle with a driver, the company must also ensure that:

- (a) The driver of the leased motor vehicle is on the company's payroll during the lease period;
- (b) The driver operates in compliance with all driver qualification, safety and hours of service laws and rules;
- (c) The driver is subject to the company's alcohol and controlled substance policies; and
- (d) The company maintains appropriate files and paperwork on the driver for a period of ((at least)) one year following the expiration of the lease.

(4) The company and the owner of the leased vehicle must specify in the lease who is responsible for all expenses relating to the leased motor vehicle. The lease must contain all information shown in the following sample lease form. If a company uses an alternate form, the company must ensure the alternate form contains all information requested on the sample.

Illustration of motor vehicle lease form:

<b>EQUIPMENT LEASE</b>			
A copy of this lease must be carried in the leased vehicle. Copies must also be maintained in the files of both parties for the length of the lease plus one year following the expiration of the lease. <u>Digital copies are acceptable.</u>			
Name and address of company leasing vehicle (lessee):		G certificate number:	
Name and address of party from whom the vehicle is being leased (lessor):		G certificate number((,if any)):	
Vehicle make ((and year)):	<u>Vehicle year:</u>	Vehicle ((Serial)) <u>Identification Number:</u>	Vehicle License Number:
The lease will become effective at ((.....)) _____ (time) on ((.....)) _____ (date), and will continue until ((.....)) _____ (date) unless canceled in writing before that date.			
Compensation that will be paid to owner of vehicle (lessor): \$ ((.....)) _____ per ((.....)) _____			
If lease also includes driver, compensation for driver: \$ ((.....)) _____ per ((.....)) _____			
<b>Lessee/Lessor Expense Agreement</b>			
Place an "x" or a checkmark next to each item indicating whether the lessee or lessor is responsible for the listed expense.			



Item	Lessee	Lessor	Item	Lessee	Lessor
Vehicle Licensing Fees			Equipment Rental Taxes		
Toll and Ferry Charges			Fuel and Oil		
Vehicle Loan Payments			Vehicle Maintenance		
Parts & Tires			Major Vehicle Repairs		
Insurance, Comprehensive			Minor Vehicle Repairs		
Insurance, Theft			Other (explain):		
Insurance, Fire			Other (explain):		
Under the terms of this lease, the lessee must:					
<ul style="list-style-type: none"> <li>• Have complete possession, control and use of the vehicle during the lease period;</li> <li>• Be in complete control of all operations;</li> <li>• Provide liability and property damage insurance;</li> <li>• Ensure that the driver of the leased vehicle is an employee of the lessee;</li> <li>• Ensure that the vehicle is properly identified;</li> <li>• Comply with all safety regulations; and</li> <li>• Bill and collect proper tariff rates and charges.</li> </ul>					
The parties signing this lease certify that the information shown above is true and correct, that the provisions of the lease will be enforced by both parties, and that all operations conducted with the leased equipment will be conducted in compliance with applicable laws and rules.					
((Lessee Signature/Title ..... date signed .....)) <u>Lessee Signature/Title</u> ..... <u>date signed</u> .....					
((Lessor Signature/Title ..... date signed .....)) <u>Lessor Signature/Title</u> ..... <u>date signed</u> .....					

[Statutory Authority: RCW 81.04.160, 81.77.030 and 80.01.040. WSR 01-08-012 (Docket No. TG-990161, General Order No. R-479), § 480-70-211, filed 3/23/01, effective 4/23/01.]

## WSR 23-07-047

## PROPOSED RULES

## HORSE RACING COMMISSION

[Filed March 8, 2023, 1:24 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-01-002.

Title of Rule and Other Identifying Information: WAC 260-49-070

Distribution of source market fees.

Hearing Location(s): On May 23, 2023, at 9:30 a.m., via Zoom teleconference. Link will be available at [www.whrc.wa.gov](http://www.whrc.wa.gov) prior to hearing.

Date of Intended Adoption: May 23, 2023.

Submit Written Comments to: Amanda Benton, 6326 Martin Way, Suite 209, Olympia, WA 98516, email [Amanda.benton@whrc.wa.gov](mailto:Amanda.benton@whrc.wa.gov), fax 360-459-6461, by May 10, 2023.

Assistance for Persons with Disabilities: Contact Melanie Bowdish, phone 360-459-6462, fax 360-459-6461, email [melanie.bowdish@whrc.wa.gov](mailto:melanie.bowdish@whrc.wa.gov), by May 10, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Washington horse racing commission (WHRC) may need to adjust the source market fee distribution to reflect a change in duties performed by WHRC employees if a voluntary agreement with the Horseracing Industry [Integrity and] Safety Authority (HISA) and/or the Horseracing Industry [Integrity and] Welfare Unit (HIWU) is not signed.

Reasons Supporting Proposal: If WHRC does not sign a voluntary agreement with HISA/HIWU some duties previously carried out by employees of WHRC will be performed by employees of HISA/HIWU and WHRC cannot collect fees for duties no longer performed by WHRC.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Amanda Benton, 6326 Martin Way, Suite 209, Olympia, WA 98516, 360-459-6462.

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 does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Not business related.

March 8, 2023

Amanda Benton

Executive Secretary

**OTS-4430.1**

AMENDATORY SECTION (Amending WSR 22-24-110, filed 12/7/22, effective 1/7/23)

**WAC 260-49-070 Distribution of source market fee.** (1) A source market fee shall be paid monthly, unless otherwise directed by the

commission, for the source market fee area on all accounts that have Washington as the principal residence address.

(2) The authorized advance deposit wagering service provider shall, at least monthly, unless otherwise directed by the commission, distribute the total source market fee as follows:

(a) One hundred percent of the total source market fee directly to the class 1 racing association.

(b) The class 1 racing association shall submit monthly 12.5 percent of the total source market fee to the commission of which two and one-half percent to be deposited into the Washington bred owners' bonus fund and 10 percent to be deposited into the commission's operating account.

If the commission declines to enter into a voluntary agreement for the current live racing season with the Horseracing Industry Safety Authority (HISA) and/or the Horseracing Industry Welfare Unit (HIWU), beginning July 1 of that year, the class 1 association will retain an amount approved by the commission each year designated as the 10 percent of the source market fee due the commission operating account to offset costs associated with the duties that are performed by employees of HISA/HIWU previously carried out by commission staff. After the amount designated is reached, the source market fee deposits will be made into the commission's operating account.

(c) The class 1 racing association shall distribute two and one-half percent of the total source market fee to the Washington bred breeder award account as provided in RCW 67.16.175.

(d) The class 1 racing association and the recognized horsemen's organization shall negotiate a separate agreement for contributions to the purse account from the source market fee and submit the agreement for review and approval by the commission. The class 1 racing association shall distribute the horsemen's share of the source market fee in accordance with the horseman's agreement.

(3) The commission shall annually review the distribution of the source market fee. Any changes to the distribution shall be adopted by rule.

[Statutory Authority: RCW 67.16.020. WSR 22-24-110, § 260-49-070, filed 12/7/22, effective 1/7/23; WSR 22-02-047, § 260-49-070, filed 1/3/22, effective 2/3/22; WSR 20-19-062, § 260-49-070, filed 9/11/20, effective 10/12/20; WSR 11-17-056, § 260-49-070, filed 8/15/11, effective 9/15/11. Statutory Authority: RCW 67.16.020 and 67.16.040. WSR 09-21-015, § 260-49-070, filed 10/9/09, effective 11/9/09; WSR 05-19-015, § 260-49-070, filed 9/9/05, effective 10/10/05. Statutory Authority: RCW 67.16.020. WSR 04-21-053, § 260-49-070, filed 10/18/04, effective 11/18/04.]

**WSR 23-07-051**

**WITHDRAWAL OF PROPOSED RULES**

**LAKE WASHINGTON**

**INSTITUTE OF TECHNOLOGY**

(By the Code Reviser's Office)

[Filed March 9, 2023, 9:34 a.m.]

WAC 495D-121-320, 495D-121-330, 495D-121-550, 495D-121-590, and 495D-121-605, proposed by the Lake Washington Institute of Technology in WSR 22-17-003, appearing in issue 22-17 of the Washington State Register, which was distributed on September 7, 2022, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the 180-day period allowed by the statute.

Jennifer C. Meas, Editor  
Washington State Register

**WSR 23-07-052**

**WITHDRAWAL OF PROPOSED RULES**

**PUBLIC EMPLOYMENT**

**RELATIONS COMMISSION**

(By the Code Reviser's Office)

[Filed March 9, 2023, 9:35 a.m.]

WAC 391-35-350 and 391-35-356, proposed by the public employment relations commission in WSR 22-17-165, appearing in issue 22-17 of the Washington State Register, which was distributed on September 7, 2022, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the 180-day period allowed by the statute.

Jennifer C. Meas, Editor  
Washington State Register

**WSR 23-07-053**

**WITHDRAWAL OF PROPOSED RULES**

**DEPARTMENT OF LICENSING**

(By the Code Reviser's Office)

[Filed March 9, 2023, 9:42 a.m.]

WAC 308-10A-100, 308-10A-201, 308-10A-202, 308-10A-203, 308-10A-204, 308-10A-205, 308-10A-301, 308-10A-401, 308-10A-402, 308-10A-403, 308-10A-404, 308-10A-405, 308-10A-500, 308-10A-700, 308-10A-801, 308-10A-802, 308-10A-803, 308-10A-804, 308-10A-805, 308-10A-806, 308-10A-901, 308-10A-902, and 308-104-150, proposed by the department of licensing in WSR 22-17-171, appearing in issue 22-17 of the Washington State Register, which was distributed on September 7, 2022, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the 180-day period allowed by the statute.

Jennifer C. Meas, Editor  
Washington State Register

**WSR 23-07-068**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Behavioral Health Administration)  
[Filed March 10, 2023, 4:59 p.m.]

Supplemental Notice to WSR 23-01-074.

Preproposal statement of inquiry was filed as WSR 22-19-078.

Title of Rule and Other Identifying Information: WAC 388-880-010 Definitions (amend), 388-880-055 How SCC processes recommendations related to releases, discharges, and revocations (repeal), 388-880-056 How SCC considers a resident for release to an LRA (amend), 388-880-057 How SCC considers a resident's revocation of LRA status (repeal), 388-880-058 How SCC considers a recommendation for a resident's unconditional discharge (repeal), 388-880-059 Communicating and coordinating resident discharge and conditional release related matters (amend), and possible other sections as required.

Hearing Location(s): On April 25, 2023, at 10:00 a.m., Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtually. Due to the COVID[-19] pandemic, hearings are being held virtually. Please see the DSHS website for the most up-to-date information.

Date of Intended Adoption: Not earlier than April 26, 2023.

Submit Written Comments to: Rules and Policies Assistance Unit, Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax 360-664-6185, by 5:00 p.m. on April 25, 2023.

Assistance for Persons with Disabilities: Contact Shelley Tencza, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email [tenczsa@dshs.wa.gov](mailto:tenczsa@dshs.wa.gov), by 5:00 p.m. on April 11, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DSHS recognizes these WAC have not been updated since 2013 and, since then, there have been policy and RCW changes that require an update. The department has decided to combine WAC 388-880-056 through 388-880-058 into one WAC. This will help clarify expectations of the senior clinical team and clarify how the special commitment center (SCC) reviews residents whose less restrictive alternative (LRA) status is revoked. WAC 388-880-059 is being amended to clarify communication expectations for SCC when a resident is conditionally released or discharged. WAC 388-880-010 Definitions will also be updated to ensure consistency as the WAC are updated. DSHS held a public rule-making hearing January 24, 2023. Testimony was received and we have made changes to the rule text.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 71.09.070, 71.09.090, and 71.09.097.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Emma Palumbo, P.O. Box 45090, Olympia, WA, 360-972-6214.

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. Not a significant legislative rule. RCW 34.05.328 (5)(b)(ii): Rules relating only to internal governmental operations that are not subject to violation by a nongovernment party.

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 34.05.328 (5)(b)(ii): Rules relating only to internal governmental operations that are not subject to violation by a nongovernment party.

Scope of exemption for rule proposal:

Is fully exempt.

March 10, 2023  
Katherine I. Vasquez  
Rules Coordinator

#### SHS-4955.4

AMENDATORY SECTION (Amending WSR 10-13-130, filed 6/22/10, effective 7/23/10)

**WAC 388-880-010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

**"Appropriate facility"** means the total confinement facility the department uses to hold and evaluate a person court-detained under chapter 71.09 RCW.

**"Authorized third party"** means a person approved in writing by the resident on a DSHS Form 17-063 (Authorization to disclose records), who may request and have access to the resident clinical file under chapter 71.09 RCW or the resident's medical records under chapter 70.02 RCW.

**"Care"** means a service the department provides during a person's detention or commitment within a secure facility toward adequate health, shelter, and physical sustenance.

**"Chief executive officer (CEO)"** means the person appointed by the secretary of the department to be responsible for the general operation, program, and facilities of the SCC. Also referred to as "superintendent of the special commitment center" and "superintendent" under chapter 71.09 RCW.

**"Control"** means a restraint, restriction, or confinement the department applies protecting a person from endangering self, others, or property during a period of custody under chapter 71.09 RCW.

**"Department"** means the department of social and health services or DSHS.

**"Escorted leave"** means a leave of absence under the continuous supervision of an escort from a facility housing persons who are court-detained or civilly committed under chapter 71.09 RCW.

**"Evaluation"** means an examination, report, or recommendation by a professionally qualified person to determine if a person has a person-



ality disorder, ~~((and/or))~~ mental abnormality, or both, which renders the person likely to engage in predatory acts of sexual violence if not confined in a secure facility. The four types of evaluations that occur related to a person's commitment or detention under chapter 71.09 RCW are as follows:

- The **initial evaluation** occurs before the person is detained at the SCC, usually occurring while the person is in prison, department of children, youth, and families, ~~((juvenile rehabilitation administration (JRA),))~~ a state mental hospital, a county jail, or in the community following commission of a recent overt act.

- **Supplemental evaluations**, as required by RCW 71.09.040, are performed for civil commitment trial purposes.

- **Annual review evaluations** occur only after a person has been civilly committed under RCW 71.09.070.

- **Post commitment evaluations**, as required by RCW 71.09.090, when the person qualifies for a conditional or unconditional release trial.

**"Health care facility"** means any hospital, hospice care center, licensed or certified health care facility, health maintenance organization regulated under chapter 48.46 RCW, federally qualified health maintenance organization, federally approved renal dialysis center or facility, or federally approved blood bank.

**"Health care practitioner"** means an individual or firm licensed or certified to engage actively in a regulated health profession.

**"Health care services"** means those services provided by health professionals licensed pursuant to RCW 18.120.020(4).

**"Health profession"** means those licensed or regulated professions set forth in RCW 18.120.020(4).

**"Immediate family"** includes a resident's parents, stepparents, parent surrogates, legal guardians, grandparents, spouse, brothers, sisters, half or stepbrothers or sisters, children, stepchildren, registered domestic partner, and other dependents.

**"Indigent"** refers to the financial status of a resident who has maintained a total balance of ~~((forty dollars))~~ \$40 or less, combined, in ~~((his/her))~~ their resident trust and resident store accounts for the past ~~((thirty))~~ 30 days, after paying court ordered legal financial obligations, child support, or cost-of-care reimbursement, and who swears or affirms under penalty of perjury that ~~((he/she has))~~ they have no additional outside resources, including but not limited to pension income, business income, and a spouse's or registered domestic partner's employment or other income.

**"Individual treatment plan (ITP)"** means an outline the SCC staff persons develop detailing how control, care, and treatment services are provided to a civilly committed person or to a court-detained person.

**"Legal mail"** means a resident's written communications, to or from: Courts/court staff regarding a legal action currently before a court, a licensed attorney, a public defense agency, a licensed private investigator retained by private counsel representing a resident or appointed by a court, an expert retained by an attorney representing a resident or appointed by a court, and a law enforcement agency.

**"Less restrictive alternative (LRA)"** means court-ordered treatment in a setting less restrictive than total confinement which satisfies the conditions stated in RCW 71.09.092. A less restrictive alternative may not include placement in the community protection program as pursuant to RCW 71A.12.230.

**"Less restrictive alternative facility"** means a secure community transition facility as defined under RCW 71.09.020(16).

**"Mental abnormality"** means a congenital or acquired condition affecting the person's emotional or volitional capacity which predisposes the person to the commission of criminal sexual acts in a degree constituting such person a menace to the health and safety of others.

**"((Native)) Original format"** means the format in which a record subject to public disclosure was originally produced.

**"Oversight"** means official direction, guidance, review, inspection, investigation, and information gathering activities conducted for the purposes of program quality assurance by persons or entities within, or external to, the SCC.

**"Personality disorder"** means an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture, is pervasive and inflexible, has onset in adolescence or early adulthood, is stable over time, and leads to distress or impairment. Purported evidence of a personality disorder must be supported by testimony of a licensed forensic psychologist or psychiatrist.

**"Predatory"** means acts a person directs toward:

- (1) Strangers;
- (2) Individuals with whom a relationship has been established or promoted for the primary purpose of victimization; or
- (3) Persons of casual acquaintance with whom no substantial personal relationship exists.

**"Professionally qualified person":**

(1) **"Psychiatrist"** means a person licensed as a physician in this state, in accordance with chapters 18.71 and 18.57 RCW. In addition, the person (~~shall~~) must:

(a) Have completed three years of graduate training in a psychiatry program approved by the American Medical Association or the American Osteopathic Association; and

(b) Be certified, or eligible to be certified, by the American Board of Psychiatry and Neurology.

(2) **"Psychologist"** means a person licensed as a doctoral level psychologist in this state, in accordance with chapter 18.83 RCW.

**"Relapse prevention plan (RPP)"** details static and dynamic risk factors particular to the resident and contains a written plan of interventions for the purpose of reducing the risk of sexual offending.

**"Resident"** means a person court-detained or civilly committed pursuant to chapter 71.09 RCW.

**"Resident trust account"** means the custodial bank account, held by the state, which represents the resources of the individual resident which is held for the individual resident's use.

**"Responsivity"** refers to the delivery of treatment in a manner that is consistent with the abilities and learning style of the (~~offender~~) resident. Responsivity can be conceptualized within the following categories: Physical limitations and sensory impairments, cognitive and learning impairments, mental health symptoms and behavioral disorders, cultural and subcultural differences to the extent that these differences may interfere with treatment participation.

**"Risk factors"** means resident factors, supported by empirical evidence, shown to increase the likelihood an individual will engage in sexual offending behavior.

**"Secretary"** means the secretary of the department of social and health services or the secretary's designee.

**"Secure community transition facility (SCTF)"** means a residential facility for persons civilly committed and conditionally released to a less restrictive alternative under chapter 71.09 RCW. A secure commun-

ity transition facility has supervision and security, and either provides or ensures the provision of sex offender treatment services. Secure community transition facilities include, but are not limited to, the facilities established in RCW 71.09.~~((201))~~250 and any community-based facilities established under chapter 71.09 RCW and operated by the secretary or under contract with the secretary.

**"SCTF residential community transition team (~~((CTT-SCTF))~~) (RCTT)"** means a team made up of three key individuals who will be closely involved with day to day decision making related to the transition activities of a resident residing in an SCTF operated by the department of social and health services. These three individuals include the department of corrections (DOC) (~~((community corrections officer))~~) correctional specialist, the certified sex offender treatment provider employed by (~~(the department))~~ DSHS or who has been contracted by SCC, and the SCTF manager, the chief of clinical (~~(director)) services~~ or designee may substitute for the SCTF manager. The (~~((CTT-SCTF))~~) RCTT must approve all community activities of an SCTF resident. As the agency responsible for funding SCTF activities, (~~(the department))~~ DSHS through its SCTF manager may consider budgetary constraints when approving or supporting discretionary activities such as community shopping or recreation, or personal activities such as visiting family and friends.

**"Secure facility"** means a residential facility for persons court-detained or civilly committed under the provisions of chapter 71.09 RCW that includes security measures sufficient to protect the community. Such facilities include total confinement facilities, secure community transition facilities, and any residence used as a court-ordered placement in RCW 71.09.096.

**"Senior clinical team"** means a (~~((body of clinical professionals as described below which has been designated by the superintendent))~~) team of professionally qualified persons employed by the department which are designated by the CEO to meet regularly to:

- Make decisions about the implementation of the sex (~~((offender))~~) offense treatment ((program)).
- (~~((Review for the purposes of approval or denial, treatment team recommendations for phase promotions or demotions.))~~)
- Make clinical recommendations to provide input about residents (~~((in community))~~) discharging to less restrictive alternative (LRA) settings.
- Provide general consultation regarding resident treatment and behavioral management issues.
- Conduct outreach to program areas of SCC including staffing and consultation of residents in sex (~~((offender))~~) offense treatment.
- As requested, provide guidance and advice to the (~~((clinical director, the superintendent))~~) chief of clinical services, the CEO, and the treatment teams.

Members of the senior clinical team are expected to (~~((take into account))~~) consider all available relevant information, including contextual and situational factors, to make optimal, clinically supportable decisions.

(~~((The senior clinical team shall consist of a team of professionally qualified persons employed by the department which are designated by the superintendent.))~~) The team may include either a SCC contracted community-based psychologist with advanced forensic assessment and treatment expertise, (~~((and/or))~~) a contracted community-based psychiatrist with advanced expertise in forensic assessment and treatment, or both.

The senior clinical team (~~(shall)~~) may not include the following persons, ~~((+))~~ unless needed at the request of the ~~((clinical director))~~ chief of clinical services for consultation on a specific issue(s):

- The resident's attorney;
- The prosecuting agency;
- Any representative from DOC;
- Potential certified sex offender treatment providers (CSOTPs) or community providers of any type who may treat the resident; or
- Any other party who may serve to financially gain from the resident's release.

**"Sexual predator program"** means a department-administered and operated program including the special commitment center (SCC) established for:

- (1) A court-detained person's custody and evaluation; or
- (2) Control, care, and treatment of a civilly committed person defined as a sexually violent predator under chapter 71.09 RCW.

**"Sexually violent offense"** means an act defined under chapter 9A.28 RCW, RCW 9.94A.030 and 71.09.020.

**"Sexually violent predator"** means any person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility.

~~((**"Superintendent"** means the person appointed by the secretary of the department to be responsible for the general operation, program, and facilities of the SCC.))~~

**"Special commitment center (SCC)"** means the department operated secure facility that provides supervision and sex offender treatment services in a total confinement setting for individuals committed under RCW 71.09.

**"Total confinement facility"** means a facility that provides supervision and sex offender treatment services in a total confinement setting. Total confinement facilities include the special commitment center and any similar facility designated as a secure facility by the secretary.

[Statutory Authority: Chapter 71.09 RCW and RCW 72.01.090. WSR 10-13-130, § 388-880-010, filed 6/22/10, effective 7/23/10. Statutory Authority: RCW 71.09.040(4). WSR 03-23-022, § 388-880-010, filed 11/10/03, effective 12/11/03. Statutory Authority: Chapter 71.09 RCW, 2000 c 44, 2001 c 286. WSR 02-02-054, § 388-880-010, filed 12/27/01, effective 1/27/02. WSR 99-21-001, recodified as § 388-880-010, filed 10/6/99, effective 10/6/99. Statutory Authority: RCW 71.09.230. WSR 97-24-054, § 275-155-010, filed 12/1/97, effective 1/1/98. Statutory Authority: 1990 c 3. WSR 90-17-120 (Order 3054), § 275-155-010, filed 8/21/90, effective 9/21/90.]

AMENDATORY SECTION (Amending WSR 10-13-130, filed 6/22/10, effective 7/23/10)

**WAC 388-880-056 How SCC considers a resident for release to an LRA.** When the department ~~((, based on a forensic evaluation or progress in sex offender treatment,))~~ considers a ~~((SCC))~~ resident in total confinement for a less restrictive alternative, modification or

revocation of a less restrictive alternative, ((placement under RCW 71.09.090(1), or considers a resident currently residing in a secure community transition facility (SCTF) on a conditional release for further transition into a nonSCTF less restrictive alternative,)) or unconditional discharge, ((the clinical director shall schedule)) the senior clinical team ((to)) must review the matter and formulate a clinical recommendation to the ((superintendent)) chief executive officer (CEO). When the department, based on a forensic evaluation that opined that a resident no longer meets the definition of a sexually violent predator, the senior clinical meeting must occur within 30 days and provide a recommendation to the CEO.

The senior clinical meeting will provide ((an adequate staffing of the case, to include the resident's)) a review of the resident's case, to include:

(1) Participation and progress in sex ((offender)) offense treatment.

(2) Behavior.

(3) ((Latest)) Progress since most recent annual forensic evaluation.

(4) ((Relapse prevention plan)) Manifestation and management of risk factors.

(5) ((Any other relevant information such as: medication compliance, manifestation and management of dynamic risk factors, evidence or absence of paraphilia and personality disorder, responsivity, psychological testing, polygraph results, PPG assessments results, etc.

(6) When the resident is being considered for a LRA placement in a nonstate sponsored setting such as a private home or apartment option, the team shall also consider the resident's finances such as savings, benefits, eligibility for social services, housing options, employment or employability, absence or availability of community supports, family supports, etc.) Barriers to discharge.

(6) Other factors related to an LRA recommendation, if applicable, including:

(i) The resident's transition activity;

(ii) The factors surrounding the situation(s)/behavior(s) causing the revocation review;

(iii) The ability of SCC and department of corrections (DOC) to adequately manage the resident in the community given existing resources;

(iv) The ability of SCC and DOC to adequately assure for the public's safety and the resident's compliance with less restrictive alternative conditions if the resident remains in the community or is allowed community access.

(7) Any other relevant information which may include, but is not limited to: medication compliance, evidence or absence of paraphilia and personality disorder, responsivity, psychological testing, polygraph results, existing penile plethysmograph (PPG) assessment results, etc.

(8) Lack of resources will not be the sole factor in recommending that a resident not be released on an LRA.

The CEO or designee will notify the prosecuting attorney, the resident's attorney, the resident's corrections specialist (CS), certified sex offender treatment provider (CSOTP), and local law enforcement of SCC's position pertaining to the resident's less restrictive alternative or unconditional release status.

[Statutory Authority: Chapter 71.09 RCW and RCW 72.01.090. WSR 10-13-130, § 388-880-056, filed 6/22/10, effective 7/23/10.]

AMENDATORY SECTION (Amending WSR 10-13-130, filed 6/22/10, effective 7/23/10)

**WAC 388-880-059 Communicating and coordinating resident discharge and conditional release related matters. (1) Communication with the department.**

~~(a) ((The SCC clinical director, or designee serves as the principal party at SCC responsible to communicate discharge and release matters internally within SCC.~~

~~(b) When a resident's request for advancement to community transition status is approved by the superintendent, the superintendent shall inform the DSHS secretary.~~

~~(c) If the SCC superintendent endorses the resident's request to petition the court for conditional release to either a secure community transition facility or other type of less restrictive alternative, the superintendent (as the secretary's designee) shall formally authorize the resident, in writing, to petition the court for a less restrictive alternative hearing in accordance with RCW 71.09.090.) If the SCC CEO endorses the resident's request to petition the court for conditional release to either a secure community transition facility or other type of less restrictive alternative, the CEO (as the secretary's designee) must formally authorize the resident, in writing, to petition the court for a less restrictive alternative hearing in accordance with RCW 71.09.090.~~

~~((d)) (b) Once the ((superintendent)) CEO has made a decision to support a resident's request to petition the court, the ((superintendent shall)) CEO must notify ((the clinical director)) forensic services of that decision. ((At that point the clinical director or designee shall serve as the principal party at)) SCC ((to)) staff will communicate discharge and release matters to the resident, their attorney, to external stakeholders which, among others, ((shall)) must include the state attorney general's criminal justice division's sexually violent predator unit, and the King County prosecuting attorney's sexually violent predator unit, and ((to)) organize the necessary activities in support of that discharge or conditional release.~~

**(2) Responsibility to communicate court related activities.**

~~(a) ((The resident's attorney is responsible to coordinate the court hearing.)) It is not the SCC's responsibility to petition the court for a resident to be conditionally released or discharged.~~

~~(b) When the court orders a resident to be conditionally released to a less restrictive alternative, ((the)) SCC ((clinical director or designee shall)) must:~~

~~(i) Manage the release process, including community notification to the appropriate law enforcement agency at least ((thirty)) 30 days prior to the resident's release to the court-approved LRA.~~

~~(ii) Keep internal SCC stakeholders apprised of the status of the case.~~

~~(iii) Coordinate the transition with the:~~

~~(A) DOC end of sentence review committee program manager;~~

~~(B) Assigned DOC community ((corrections officer)) correctional specialist, if applicable;~~

(C) Court-approved certified sex offender treatment provider, if applicable;

(D) Appropriate SCTF manager, if applicable; and

(E) Other court-approved providers or persons for the resident's court-approved living setting.

(iv) The coordination will address civil commitment issues, community safety, and the court-ordered conditions of release.

**(3) When the secretary or designee objects to a pending release.**

When the ((DSHS)) secretary or designee objects to a pending release under RCW 71.09.090, before the scheduled less restrictive alternative court hearing or following the hearing such as in the case of newly discovered information, that objection ((shall)) must be presented to the court in writing and ((shall be)) signed by the secretary or designee.

**(4) When a less restrictive alternative placement is approved by the court.**

When a resident ((of)) from SCC or a resident already conditionally released is approved to transfer to a less restrictive alternative placement ((or a resident of a secure community transition facility is approved to transfer to an alternative less restrictive alternative placement)), that placement will occur ((no sooner than thirty)) within 30 days following the day the court approves that placement but not before the department of corrections files their investigation or the court orders release to a specific placement, whichever occurs first. This ((thirty)) 30 day period will allow SCC to fulfill its law enforcement notification obligations under RCW 9A.44.130 and the affected county sheriff to fulfill their public notification obligations under RCW 4.24.550.

**(5) When a resident is unconditionally released by the court.**

When a resident of the SCC total confinement facility or a secure community transition facility is determined by the court to no longer meet the criteria of a sexually violent predator under chapter 71.09 RCW, and the court orders that the resident ((shall)) be unconditionally released, SCC ((shall)) must release the person within ((twenty-four)) 24 hours of the court's decision.

**(6) When a resident or attorney proposes ((an alternative)) a different less restrictive alternative placement.**

(a) When a resident or attorney proposes ((an alternative)) a different less restrictive alternative placement other than what SCC recommends or supports, the resident or the attorney ((shall)) must bear the responsibility to locate and identify that alternative.

(b) The department ((shall)) may not reimburse attorneys or other parties for assisting residents in finding ((an alternative)) a different less restrictive alternative placement unless otherwise ordered by the commitment court for good cause.

[Statutory Authority: Chapter 71.09 RCW and RCW 72.01.090. WSR 10-13-130, § 388-880-059, filed 6/22/10, effective 7/23/10.]

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 388-880-055      How SCC processes recommendations related to releases, discharges and revocations.
- WAC 388-880-057      How SCC considers a resident's revocation of LRA status.
- WAC 388-880-058      How SCC considers a recommendation for a resident's unconditional discharge.



**WSR 23-07-071**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Aging and Long-Term Support Administration)  
[Filed March 13, 2023, 12:01 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-14-034.

Title of Rule and Other Identifying Information: New chapter 388-112B WAC, Behavioral health workers—Facility based workers—Geriatric behavioral health worker training and curriculum requirements. The department of social and health services (DSHS) is planning to add new chapter 388-112B WAC relating to curricula for persons in long-term care facilities with behavioral health needs.

Hearing Location(s): On April 25, 2023, at 10:00 a.m., at Office Building 2, DSHS Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtually. Hearings are currently held virtually, see the DSHS website <https://www.dshs.wa.gov/office-of-the-secretary/filings-and-rules> for the most current information.

Date of Intended Adoption: Not earlier than April 26, 2023.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax 360-664-6185, by 5:00 p.m., April 25, 2023.

Assistance for Persons with Disabilities: Contact DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email [shelley.tencza@dshs.wa.gov](mailto:shelley.tencza@dshs.wa.gov), by 5:00 p.m., April 11, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This new rule will set competencies and standards to be used by nursing home facilities to create the curriculum required by RCW 74.39A.078 and set rules for approval of the curriculum by DSHS.

Reasons Supporting Proposal: During the 2017 legislative session, HB [ESHB] 1548 was codified as RCW 74.39A.078. This law requires DSHS to adopt rules to establish minimum competencies and standards for the approval of curricula for facility-based workers serving persons with behavioral health needs and geriatric behavioral health workers. The curricula must include at least 30 hours of training specific to the diagnosis, care, and crisis management of residents with a mental health disorder, traumatic brain injury, or dementia. The curricula must be outcome-based and the effectiveness must be measured by demonstrated competency in the core specialty areas through the use of a competency test. By eliminating the requirement for a social work degree through this training, the number of individuals who fall within the definition of geriatric behavioral health worker can be expanded, which consequently allows the work performed by these individuals to be used to satisfy the nursing home's direct care service minimum requirements.

Statutory Authority for Adoption: RCW 18.20.270, 74.39A.020, and 74.42.360.

Statute Being Implemented: RCW 74.39A.078.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: David Chappell, P.O. Box 45600, Lacey, WA 98504-5600, 360-725-2516.

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 David Chappell, P.O. Box 45600, Lacey, WA 98504-5600, phone 360-725-2516, email david.chappell@dshs.wa.gov.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. While the proposed rules spell out the requirements of what the behavioral health curriculum must contain and the process for its approval, they do not require businesses to create or implement the curriculum. In consultation with stakeholders representing affected skilled nursing facilities, it was estimated that the cost for those that choose to create and implement the curriculum would not impose more-than-minor costs.

These proposed rules impact nursing facilities that may choose to create and offer this training. Some of these businesses may fall under the following North American Industry Classification System (NAICS) designation:

- Residential mental health facilities - NAICS code 6232.
- Nursing and residential care facilities - NAICS code 623110.

DSHS's aging and long-term support administration (AL TSA) has analyzed the proposed rule amendments and has determined that only those listed small businesses choosing to develop and offer geriatric behavioral health worker training will be impacted by these changes.

**INVOLVEMENT OF STAKEHOLDERS:** The following stakeholders were involved in reaching agreement on the final language of the proposed changes:

- Leading Age, Washington.
- Washington Healthcare Association.
- Residential care services.

**SMALL BUSINESS ECONOMIC IMPACT STATEMENT (SBEIS)—DETERMINATION OF NEED:** Chapter 19.85 RCW, The Regulatory Fairness Act, requires that the economic impact of proposed regulations be analyzed in relation to small businesses. The statute defines small businesses as those businesses that employ 50 or fewer people and are independently owned and operated.

Preparation of an SBEIS is required when a proposed rule has the potential of placing a disproportionate economic impact on small businesses. The statute outlines information that must be included in an SBEIS.

Offering geriatric behavioral health training is optional for facilities, and those that do will benefit by expanding the number of individuals who fall within the definition of geriatric behavioral health worker, allowing the work performed by these individuals to be used to satisfy the nursing home's direct care service minimum requirements. The proposed rules strike a balance between holding a high standard for the required competencies of the curriculum and flexibility in application.

DSHS's AL TSA has analyzed the proposed rules and amendments and concludes that they will impose moderate costs to programs that choose to develop and offer geriatric behavioral health training, and no new costs on small businesses that do not. The preparation of a comprehensive SBEIS is not required.

March 8, 2023  
Katherine I. Vasquez  
Rules Coordinator

SHS-4965.3

**Chapter 388-112B WAC**  
**BEHAVIORAL HEALTH WORKERS-FACILITY BASED WORKERS-GERIATRIC BEHAVIORAL**  
**HEALTH WORKER TRAINING AND CURRICULUM REQUIREMENTS**

NEW SECTION

**WAC 388-112B-0010 What definitions apply to this chapter?** The following definitions apply to this chapter:

(1) "**Challenge test**" means a competency test without first taking the class for which the test is designed.

(2) "**Competency**" means the integrated knowledge, skills, or behavior expected of a worker after completing the training in a required topic area. Learning objectives are associated with each competency.

(3) "**Competency testing**" means evaluating a student to determine if they can demonstrate the required level of skill, knowledge, and behavior with respect to the identified learning objectives of a particular course.

(4) "**DSHS**" or "**Department**" means the department of social and health services and the department's employees.

(5) "**Facility**" means a nursing home as defined in RCW 18.51.010.

(6) "**Geriatric behavioral health worker**" means a person who has received specialized training devoted to diagnoses, care, and crisis management of residents with a mental health disorder, traumatic brain injury, or dementia.

(7) "**Geriatric behavioral health worker training**" means department-approved curricula for facility-based geriatric behavioral health workers serving persons with behavioral health needs as described in RCW 74.42.360 (2) (c) (i) (B).

(8) "**Learning objectives**" means measurable, written statements that clearly describe what a worker must minimally learn to meet each competency. Learning objectives are identified for each competency. Learning objectives provide consistent, common language and a framework for curriculum designers, the curriculum approval process, and testing.

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NEW SECTION

**WAC 388-112B-0020 What are the purposes of this chapter?** The purposes of this chapter are to describe the following:

- (1) The standards and minimum competencies of the geriatric health worker training curriculum;
- (2) The approval process for the behavioral health worker training curriculum; and
- (3) The documentation required for the proof of completion of the behavioral health worker training curriculum.

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NEW SECTION

**WAC 388-112B-0030 What must geriatric behavioral health worker training include?** (1) The geriatric behavioral health worker training curricula must include at least 30 hours of training specific to the diagnoses, care, and crisis management of residents. The curricula must include:

- (a) Training related to mental health disorders;
  - (b) Training related to traumatic brain injury;
  - (c) Training related to dementia; and
  - (d) Training related to person-centered care or other additional, relevant information to be identified by the facility.
- (2) The curricula must be outcome-based, and the effectiveness measured by demonstrated competency in the areas using one or more competency tests.
- (3) The curricula must be balanced regarding time allowance and content to provide quality training in all topics listed in (1) (a) (b) (c) (d) of this section.
- (4) Curricula delivery can be flexible in arrangement of content and format.
- (5) Competencies within the individual components of (1) (a) (b) (c) (d) of this section that are repetitive, such as trauma informed care and person-centered language, may be combined into a single portion of the curriculum.

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NEW SECTION

**WAC 388-112B-0040 What are the competencies and learning objectives for the dementia portion of geriatric behavioral health worker training?** Curricula developed and approved for the dementia portion of geriatric behavioral health worker training must include, at a minimum, all the knowledge, skills, topics, competencies, and learning objectives described in this section.

- (1) Defining dementia.
  - (a) Introduction to dementia. The worker will review and identify common signs, symptoms, and types of dementia and identify the difference between dementia and conditions that might look like dementia.

- (i) What is dementia: Symptoms, causes, parts of the brain, types of dementia; and
- (ii) Forgetfulness, depression, delirium, urinary tract infection, mild cognitive impairment, and other conditions that might be mistaken for dementia.
- (b) Hallucinations and delusions. The worker will identify common hallucinations and delusions a person with dementia may exhibit and identify physical, emotional, and environmental causes of hallucinations and delusions.
- (c) Interactions with residents living with dementia: The worker will distinguish between positive and negative interactions and identify ways to enhance quality of life for the individual.
  - (i) The role and characteristics of the worker, such as empathy, dependability, patience, strength, flexibility, creativity;
  - (ii) Tools for self-care, such as reducing personal stress, setting goals, communicating effectively, asking for help, exercise, nutrition;
  - (iii) Learning from emotions;
  - (iv) Support.
- (d) Environmental influences on residents' behaviors. The worker will adapt the environment to promote resident independence and minimize challenges, including:
  - (i) Physical environment such as adjusting the lighting, controlling sounds/noise, adjusting the temperature, rearranging the furniture, and identifying wayfinding methods;
  - (ii) Emotional environment such as staff interactions and approaches.
- (e) Working with families. The worker will recognize common emotions family members experience with a loved one who has dementia, and identify difficulties family members may experience or express about their loved one's care by:
  - (i) Understanding the family unit;
  - (ii) Working with and supporting family members and friends by providing resources; and
  - (iii) Building trust.
- (2) Sexuality and intimacy. The worker will identify safe and unsafe expressions of sexuality by demonstrating knowledge in:
  - (a) Sexuality and intimacy;
  - (b) Sexualized behavior;
  - (c) Prioritization of doing no harm;
  - (d) Individual attitudes about sexuality and intimacy;
  - (e) Lesbian, gay, bisexual, transgender, and queer or questioning (LGBTQ);
  - (f) Changes in sexual behavior, such as reduced interest, increased interest, sexual aggression, inhibitions, coping, and frustrations;
  - (g) Resident rights related to sexuality;
  - (h) Consent and appropriate reporting of nonconsensual sexual contact, including alleged and suspected sexual abuse;
  - (i) Talking to families about sex.
- (3) Treatment of dementia. The worker will demonstrate an understand of:
  - (a) Conventional medicines used in the treatment of dementia and other drugs used with people who have dementia;
  - (b) Prohibition of chemical restraints; and
  - (c) Nonconventional therapies, such as natural medicine, cannabis, holistic therapies, and nutrition.

(4) Fostering communication and understanding.

(a) The worker will demonstrate the ability to communicate effectively with people living with dementia, and demonstrate an ability to recognize communication styles and ways to communicate effectively, such as:

(i) Verbal and nonverbal communication used by the resident;

(ii) Progression of dementia and ways communication changes over time;

(iii) Communication changes and common themes of communication seen in early, middle, and late phase dementia;

(iv) Successful methods to approach a resident who has dementia, such as starting a conversation or listening and interpreting information, being respectful, avoiding the use of reality orientation, and using nonverbal gestures; and

(v) The impact of culture and generational differences on resident behaviors.

(b) Trauma-informed care. The worker will recognize that past traumas can affect current thinking, behaviors, and actions, and will identify strategies to provide trauma informed care, including:

(i) Individual various common coping mechanisms following traumatic events;

(ii) Impacts culture and generation have on trauma;

(iii) Principles of trauma informed care, such as safety, trustworthiness, choice, collaboration, empowerment; and

(iv) Strategies for working with residents who have experienced trauma.

(5) Challenging behaviors. The worker will note common causes of resident's challenging behaviors, such as physical, environmental, and emotional triggers:

(a) Explore how the challenging resident behaviors might be a form of communication, and

(b) Approaching and addressing the challenging behaviors with methods such as:

(i) A standardized problem-solving method such as Plan-Do-Study-Act (PDSA), five why's, or similar;

(ii) Safe ways to approach a resident expressing a challenging behavior; and

(iii) Calming techniques;

(6) Person centered approach. The worker will demonstrate the ability to use person-centered language in the work they do.

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#### NEW SECTION

**WAC 388-112B-0043 What are the competencies and learning objectives for the mental health portion of geriatric behavioral health worker training?** Curricula developed and approved for the mental health portion of geriatric behavioral health worker training will include all knowledge, skills, topics, competencies, and learning objectives described in this section.

(1) Introduction to mental disorders. The worker will review definitions, common signs, and symptoms and identify types of mental illness.

(a) Stigma and mental disorders;

(b) Common myths about mental illness;  
 (c) Differentiating forms of mental disorders; and  
 (d) Common mental health conditions seen in the skilled nursing facility, such as:

- (i) Anxiety Disorder;
- (ii) Bipolar disorder;
- (iii) Borderline personality disorder;
- (iv) Depression;
- (v) Dissociative disorder;
- (vi) Neurodevelopmental disorders, such as:
  - (A) Intellectual disability;
  - (B) Autism spectrum disorder; and
  - (C) Attention-deficit hyperactivity disorder;
- (vii) Obsessive-compulsive disorder;
- (viii) Posttraumatic stress disorder;
- (ix) Schizoaffective disorder;
- (x) Schizophrenia; and
- (xi) Related conditions including but not limited to:
  - (A) Anosognosia;
  - (B) Dual diagnoses;
  - (C) Psychosis;
  - (D) Risk of suicide;
  - (E) Self-harm;
  - (F) Sleep disorders; and
  - (G) Substance use and/or abuse.

(2) Compassionate and trauma-informed mental health. The worker will recognize and identify the following strategies to provide informed care and support resilience:

- (a) Impact of culture and ethnicity;
- (b) Impact of generation on resident experience;
- (c) Impact of religion;
- (d) Co-occurring disorders;
- (e) Trauma informed care;
- (f) Trauma informed approach; and
- (g) Resilience.

(3) Supports for wellness. The worker will identify and understand the following:

- (a) How to determine if a resident is at baseline;
- (b) Steps to take if the resident's mental or emotional status seems to be deteriorating;
- (c) Person centered approach to care and mental wellness; and
- (d) Common types of treatments and therapies including:
  - (i) Medication;
  - (ii) Chemical restraints;
  - (iii) Nondrug therapies including:
    - (A) Natural medicine;
    - (B) Cannabis;
    - (C) Holistic therapies; and
    - (D) Nutrition.

(4) Getting help and self-care. The worker will recognize the importance of wellness and identify strategies to prevent burnout, and know how to seek help, if needed.

(5) Respectful communication and communication dynamics. The worker will demonstrate an ability to recognize communication styles and ways to communicate effectively including skills in the areas of:

- (a) Communication and privacy;
- (b) Listening;

- (c) Empathy;
  - (d) Nonverbal vs verbal communication;
  - (e) Seeking clarification;
  - (f) Identifying behaviors impacting communication and their triggers; and
  - (g) The impact of culture and generational differences.
- (6) Boundaries. The worker will demonstrate an understanding of creating healthy professional boundaries.
- (a) Importance of boundaries for mental health;
  - (b) Personal and professional boundaries;
  - (c) Setting boundaries; and
  - (d) Assertiveness.
- (7) Creative approaches to challenging behaviors. The worker will demonstrate the sequence of steps to approach challenging behaviors by setting limits and providing consistency in response.
- (8) Crisis management. The worker will identify potential stressors to prevent crisis and demonstrate steps for de-escalation considering the following topics:
- (a) Definition of crisis;
  - (b) When a crisis occurs;
  - (c) How to avert or prevent crisis;
  - (d) Decompensation of the resident; and
  - (e) Aggression and violence of a resident leading to a crisis.
- (9) Suicide prevention. The worker will identify current facts about suicide, recognize warning signs for suicidal behavior, and communicate about suicide using a person-centered approach including:
- (a) Definition and history around suicide including medically assisted suicide;
  - (b) Risk factors to suicide;
  - (c) Indicators of suicidal behavior;
  - (d) Talking about suicide and asking questions;
  - (e) Resources on suicide prevention;
  - (f) Stigma around suicide;
  - (g) History of the worker;
  - (h) Grief support resources.

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#### NEW SECTION

**WAC 388-112B-0045 What are the competencies and learning objectives for the traumatic brain injury portion of geriatric behavioral health worker training?** The competencies and learning objectives for the traumatic brain injury portion of geriatric behavioral health worker curriculum will include all knowledge, skills, topics, competencies, and learning objectives described in this section.

(1) Anatomy of the brain and brain injury basics. The worker will identify parts of the brain and have an understanding of how injuries may affect a Traumatic Brain Injury survivor. The worker will also identify possible signs, symptoms, severity levels, types of brain injury, and describe the regions of the brain and functions associated with each region.

- (a) Anatomy of the brain including parts and functions; and
- (b) Types of brain injury:
  - (i) Acquired brain injury;



- (ii) Traumatic brain injury;
- (iii) Concussion;
- (iv) Brain cell damage;
- (v) Secondary Events.
- (c) Severity:
  - (i) Mild;
  - (ii) Moderate;
  - (iii) Severe.
- (d) Possible effects of the injury:
  - (i) Apraxia;
  - (ii) Attention and memory;
  - (iii) Behavioral and emotional changes;
  - (iv) Bladder and bowel changes;
  - (v) Dizziness and balance;
  - (vi) Fatigue;
  - (vii) Headaches;
  - (viii) Muscle weakness/immobility;
  - (ix) Pain;
  - (x) Post-Traumatic Stress Disorder (PTSD);
  - (xi) Seizures;
  - (xii) Sensory changes;
  - (xiii) Sleep;
  - (xiv) Spasticity;
  - (xv) Swallowing, appetite, and weight;
  - (xvi) Visual problems.

(2) Brain injury management. The worker will recognize and identify strategies to provide individualized quality care and management of symptoms for individuals with brain injury including:

- (a) Trauma informed care;
- (b) Approach;
- (c) Person centered approach and language;
- (d) Enhancing recovery and healing process:
  - (i) Physical;
    - (ii) Short term (6-9 month) / Recovery or stabilize;
    - (iii) Long-term potential;
    - (iv) Sensory hypersensitivity;
    - (v) Additional considerations.
- (e) Dual diagnoses (pre or post injury);
  - (i) Substance use disorder;
  - (ii) Mental health diagnoses;
  - (iii) Developmental disabilities;
  - (iv) Suicide.
- (f) Quality of life therapies:
  - (i) Occupational;
  - (ii) Speech;
  - (iii) Physical;
  - (iv) Music;
  - (v) Art;
  - (vi) Yoga and meditation;
  - (vii) Laughter yoga.
- (g) Prevention:
  - (i) Falls prevention;
  - (ii) Re-injury.
- (h) Activities of daily living and functional independence.

(3) Behavior, mood, and cognition intervention and resolution.

The worker will demonstrate an approach to challenging behaviors to recognize and resolve changes in behavior, mood, and cognition.

- (a) Exploring behaviors;
- (b) De-escalation strategies;
- (c) Specific behavioral challenges and steps.
- (4) Communication. The worker will demonstrate the ability to recognize communication styles and methods to communicate effectively with brain injury survivors, families of survivors, and other professionals.
  - (a) Social Communication;
  - (b) Communication tips for workers:
    - (i) Communicate clearly;
    - (ii) Provide support and opportunities for practice;
    - (iii) Be kind when giving constructive feedback;
    - (iv) Have realistic expectations.
  - (c) Communicating with TBI survivors:
    - (i) Initiating conversation;
    - (ii) Following conversation;
    - (iii) Taking turns in conversation;
    - (iv) Difficulty with annunciating;
    - (v) Nonverbal communication.
  - (d) Cultural diversity and communication;
  - (e) Communicating with the family:
    - (i) Involve the family;
    - (ii) Supporting families;
    - (iii) When there is no family.
  - (f) Communicating with professionals;
  - (g) Reporting.
- (5) Self-care:
  - (a) Worker health and well-being;
  - (b) Take responsibility for your own care;
  - (c) Goals and self-care planning including examples of self-care.

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NEW SECTION

**WAC 388-112B-0050 What is the curriculum approval process for geriatric behavioral health curriculum?** A facility or other curriculum developer seeking approval for a geriatric behavioral health curriculum under this chapter will meet the following requirements:

- (1) Submit the required curriculum application form; and
  - (a) A department-approved crosswalk linked to the competencies and learning objectives in this chapter; or
  - (b) A copy of the test(s) that will be used to determine student competency.
- (2) Attest that the curriculum at a minimum includes:
  - (a) Student materials that support the curriculum and learning resource materials such as learning activities, audio-visual materials, handouts, and books; and
  - (b) The methods or approaches to be used for different sections of the course, including for each lesson:
    - (i) Learning activities that incorporate adult learning principles;
    - (ii) Practice of communication strategies to increase competency;
    - (iii) Feedback to the student; and
    - (iv) An emphasis on facilitation by the instructor.

- (c) A list of the sources or references, if any, used to develop the curriculum;
- (d) Methods of facilitation and student evaluation; and
- (e) A plan for updating material.

[]

NEW SECTION

**WAC 388-112B-0060 What components must competency testing include?** Competency testing must include the following components:

- (1) Written evaluation to show the level of comprehension and knowledge of the training's learning objectives; and
- (2) A scoring guide for the tester with clearly stated criteria and minimum proficiency standards.

[]

NEW SECTION

**WAC 388-112B-0070 Is there a challenge test for geriatric behavioral health worker training?** There is no challenge test for geriatric behavioral health worker training.

[]

NEW SECTION

**WAC 388-112B-0080 What documentation is required for successful completion of geriatric behavioral health worker training?** Geriatric behavioral health worker training must be documented by a certificate, transcript, or proof of successful completion of training issued by a qualified instructor that includes:

- (1) The name of the student;
- (2) The title of the training as approved by the department;
- (3) The number of hours of the training;
- (4) The name of the facility providing the training;
- (5) The instructor's name;
- (6) The instructor's signature or other authorized signature from the training entity; and
- (7) The completion date of the training.

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## WSR 23-07-076

## PROPOSED RULES

## DEPARTMENT OF

## SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed March 13, 2023, 5:34 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-13-121.

Title of Rule and Other Identifying Information: Amending WAC 388-76-10350 Assessment—Updates required, 388-78A-2100 On-going assessments, 388-107-0080 On-going comprehensive assessment; and adding a new rule to chapters 388-76, 388-78A, and 388-107 WAC to codify the timeline for emergency rules in place due to the COVID-19 public emergency.

Hearing Location(s): On April 25, 2023, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtually. Due to the COVID[-19] pandemic, hearings are being held virtually. Please see the DSHS website for the most up-to-date information.

Date of Intended Adoption: Not earlier than April 26, 2023.

Submit Written Comments to: Rules and Policies Assistance Unit Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m. on April 25, 2023.

Assistance for Persons with Disabilities: Contact Shelley Tencza, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email tenczsa@dshs.wa.gov, by 5:00 p.m. on April 11, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DSHS is proposing to adopt rules to identify the requirements in place during the COVID-19 pandemic in Washington state. The purpose of the rule change is to ensure consistent implementation and enforcement of rule requirements in effect during the COVID-19 pandemic in Washington state.

Reasons Supporting Proposal: This rule making will provide clarity for regulated facilities, department inspection, and investigation staff related to requirements in place during the COVID-19 pandemic.

Statutory Authority for Adoption: RCW 18.20.090, 70.97.230, and 70.128.040.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting: Sondra Haas, P.O. Box 45600, Olympia, WA 98504-5600, 360-688-0715; Implementation and Enforcement: Amy Abbott, P.O. Box 45600, Olympia, WA 98504-5600, 360-485-7893.

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

A cost-benefit analysis is not required under RCW 34.05.328. This proposal is exempt from the requirement for a cost-benefit analysis under RCW 34.05.328 (5) (b) (iv) as the proposed rules clarify language of a rule without changing its effect.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Is exempt under RCW 34.05.328 (5)(b)(iv).

Explanation of exemptions: The rule is exempt under RCW 34.05.328 (5)(b)(iv), as it clarifies language of a rule without changing its effect. DSHS is proposing to adopt rules to identify the requirements in place during the COVID-19 pandemic in Washington state. The purpose of the rule change is to ensure consistent implementation and enforcement of rule requirements in effect during the COVID-19 pandemic.

Scope of exemption for rule proposal:

Is fully exempt.

March 10, 2023  
Katherine I. Vasquez  
Rules Coordinator

#### SHS-4914.4

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

**WAC 388-76-10350 Assessment—Updates required.** (1) The department amended portions of this rule from January 18, 2022, through (DATE), in response to the state of emergency related to the COVID-19 pandemic. For requirements in place during that time, see WAC 388-76-10351.

(2) The adult family home must ensure each resident's assessment is reviewed and updated to document the resident's ongoing needs and preferences as follows:

((1)) (a) When there is a significant change in the resident's physical or mental condition;

((2)) (b) When the resident's negotiated care plan no longer reflects the resident's current status, needs, and preferences;

((3)) (c) At the resident's request or at the request of the resident's representative; or

((4)) (d) At least every ((twelve)) 12 months.

[Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. WSR 07-21-080, § 388-76-10350, filed 10/16/07, effective 1/1/08.]

#### NEW SECTION

**WAC 388-76-10351 Assessment—Updates required—Requirements in effect from January 18, 2022, through (DATE), in response to the state of emergency related to COVID-19.** (1) In response to the state of emergency related to the COVID-19 pandemic, the department adopted emergency rules under RCW 34.05.320 on January 18, 2022, to amend a portion of WAC 388-76-10350. The emergency rules remained in effect until (DATE). The amended rules in place at that time were:

(2) The adult family home must ensure each resident's assessment is reviewed and updated to document the resident's ongoing needs and preferences as follows:

(a) When there is a significant change in the resident's physical or mental condition;

(b) When the resident's negotiated care plan no longer reflects the resident's current status, needs, and preferences;

(c) At the resident's request or at the request of the resident's representative; or

(d) At least every 12 months, except beginning January 18, 2022, assessments for residents whose care is state funded may be extended an additional 12 months during the COVID-19 public health emergency.

[ ]

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

**WAC 388-78A-2100 ((On-going)) Ongoing assessments.** (1) The department amended portions of this rule from January 18, 2022, through DATE, in response to the state of emergency related to the COVID-19 pandemic. For requirements in place during that time, see WAC 388-78A-2101.

(2) The assisted living facility must:

((1)) (a) Complete a full assessment addressing the elements set forth in WAC 388-78A-2090 for each resident at least annually;

((2)) (b) Complete an assessment specifically focused on a resident's identified problems and related issues:

((a)) (i) Consistent with the resident's change of condition as specified in WAC 388-78A-2120;

((b)) (ii) When the resident's negotiated service agreement no longer addresses the resident's current needs and preferences;

((c)) (iii) When the resident has an injury requiring the intervention of a practitioner.

((3)) (c) Ensure the staff person performing the ((on-going)) ongoing assessments is qualified to perform them.

[Statutory Authority: Chapter 18.20 RCW. WSR 13-13-063, § 388-78A-2100, filed 6/18/13, effective 7/19/13. Statutory Authority: RCW 18.20.090. WSR 06-01-047, § 388-78A-2100, filed 12/15/05, effective 1/15/06. Statutory Authority: RCW 18.20.090 (2004 c 142 § 19) and chapter 18.20 RCW. WSR 04-16-065, § 388-78A-2100, filed 7/30/04, effective 9/1/04.]

NEW SECTION

**WAC 388-78A-2101 Ongoing assessments—Requirements in effect from January 18, 2022, through (DATE), in response to the state of emergency related to COVID-19.** (1) In response to the state of emergency related to the COVID-19 pandemic, the department adopted emergency rules under RCW 34.05.320 on January 18, 2022, to amend a por-

tion of WAC 388-78A-2100. The emergency rules remained in effect until (DATE). The amended rules in place at that time were:

(2) The assisted living facility must:

(a) Complete a full assessment addressing the elements set forth in WAC 388-78A-2090 for each resident at least annually, except beginning January 18, 2022, assessments for residents whose care is state funded may be extended an additional 12 months during the COVID-19 public health emergency;

(b) Complete an assessment specifically focused on a resident's identified problems and related issues:

(i) Consistent with the resident's change of condition as specified in WAC 388-78A-2120;

(ii) When the resident's negotiated service agreement no longer addresses the resident's current needs and preferences;

(iii) When the resident has an injury requiring the intervention of a practitioner.

(c) Ensure the staff person performing the ongoing assessments is qualified to perform them.

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AMENDATORY SECTION (Amending WSR 16-14-078, filed 7/1/16, effective 8/1/16)

**WAC 388-107-0080 Ongoing comprehensive assessments.** (1) The department amended portions of this rule from January 18, 2022, through (DATE), in response to the state of emergency related to the COVID-19 pandemic. For requirements in place during that time, see WAC 388-107-0081.

(2) The enhanced services facility must:

~~((1))~~ (a) Complete a comprehensive assessment, addressing the elements set forth in WAC 388-107-0070, upon a significant change in the resident's condition or at least every 180 days if there is no significant change in condition;

~~((2))~~ (b) Complete an assessment specifically focused on a resident's identified strengths, preferences, limitations, and related issues:

~~((a))~~ (i) Consistent with the resident's change of condition as specified in WAC 388-107-0060;

~~((b))~~ (ii) When the resident's person-centered service plan no longer addresses the resident's current needs and preferences; and

~~((c))~~ (iii) When the resident has an injury requiring the intervention of a practitioner;

~~((3))~~ (c) Review each resident's needs to evaluate discharge or transfer options when the resident:

~~((a))~~ (i) No longer needs the level of behavioral support provided by the facility; or

~~((b))~~ (ii) Expresses the desire to move to a different type of community based setting;

~~((4))~~ (d) Ensure that the person-centered service planning team discusses all available placement options; and

~~((5))~~ (e) Ensure the staff person performing the ongoing assessments is a qualified assessor.

[Statutory Authority: RCW 70.97.230 and HCBS Final Rule 42 C.F.R. WSR 16-14-078, § 388-107-0080, filed 7/1/16, effective 8/1/16. Statutory Authority: Chapter 70.97 RCW. WSR 14-19-071, § 388-107-0080, filed 9/12/14, effective 10/13/14.]

NEW SECTION

**WAC 388-107-0081 Ongoing comprehensive assessments—Requirements in effect from January 18, 2022, through (DATE), in response to the state of emergency related to COVID-19.** (1) In response to the state of emergency related to the COVID-19 pandemic, the department adopted emergency rules under RCW 34.05.320 on January 18, 2022, to amend a portion of WAC 388-107-0080. The emergency rules remained in effect until (DATE). The amended rules in place at that time were:

(2) The enhanced services facility must:

(a) Complete a comprehensive assessment, addressing the elements set forth in WAC 388-107-0070 on the following timelines:

(i) Upon a significant change in the resident's condition; or

(ii) At least every 180 days if there is no significant change in condition, except beginning January 18, 2022, assessments for residents whose care is state funded may be extended an additional 12 months during the COVID-19 public health emergency.

(b) Complete an assessment specifically focused on a resident's identified strengths, preferences, limitations, and related issues:

(i) Consistent with the resident's change of condition as specified in WAC 388-107-0060;

(ii) When the resident's person-centered service plan no longer addresses the resident's current needs and preferences; and

(iii) When the resident has an injury requiring the intervention of a practitioner;

(c) Review each resident's needs to evaluate discharge or transfer options when the resident:

(i) No longer needs the level of behavioral support provided by the facility; or

(ii) Expresses the desire to move to a different type of community based setting;

(d) Ensure that the person-centered service planning team discusses all available placement options; and

(e) Ensure the staff person performing the ongoing assessments is a qualified assessor.

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**WSR 23-07-077**  
**PROPOSED RULES**  
**OFFICE OF THE**  
**INSURANCE COMMISSIONER**  
[Filed March 14, 2023, 8:50 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-04-091.

Title of Rule and Other Identifying Information: Premium change transparency.

Hearing Location(s): On April 25, 2023, at 9:00 a.m., hybrid public hearing. In person at 5000 Capitol Boulevard S.E., Conference/ Training Room #120, Tumwater, WA 98501; or virtual attendance by Zoom. Detailed information for attending the Zoom meeting posted on the office of the insurance commissioner (OIC) website <https://www.insurance.wa.gov/premium-change-transparency-r-2022-01>. Written comments are due to OIC by close of business (5 p.m. PST) on April 28, 2023. Written comments can be emailed to [RulesCoordinator@oic.wa.gov](mailto:RulesCoordinator@oic.wa.gov).

Date of Intended Adoption: May 2, 2023.

Submit Written Comments to: Michael Walker, Senior Policy Analyst, 302 Sid Snyder [Avenue S.W.], P.O. Box 40255, Olympia, WA 98504-0255, fax 360-586-3109, [RulesCoordinator@oic.wa.gov](mailto:RulesCoordinator@oic.wa.gov), by close of business (5 p.m. PST) on April 28, 2023.

Assistance for Persons with Disabilities: Contact Katie Bennett, phone 360-725-7013, fax 360-586-2023, TTY 360-586-0241, email [Katie.Bennett@oic.wa.gov](mailto:Katie.Bennett@oic.wa.gov), by April 24, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: OIC is proposing rule making to achieve transparency for insureds receiving premium increases from insurers at renewal. This rule achieves transparency by defining the scope of insurer responsibility to explain the specific rate and rating factors that cause premiums to increase for consumers at renewal. This rule will require insurers to provide premium change transparency to their policyholders for factors evaluated and associated with increased premiums at renewal. The rule will afford insurance consumers additional protections in the form of financial transparency and fairness in insurance transactions at renewal, as well as the ability to make educated and informed decisions on purchasing or renewing policies, administering coverages, improving insurability, and managing insurance costs.

Reasons Supporting Proposal: Consumer complaints and industry responses provided to OIC demonstrate a need for insurers to provide transparency to policyholders for premium increases occurring at renewal. Insurers have limited disclosure duties at the time of renewal under the insurance code. Currently, insurers are under no legal obligation to disclose and explain the specific rate and rating factors used to determine premium increases. Neither the renewal notices, nor adverse action notices, required of insurers under current law operate to sufficiently disclose the totality of financial factors or underwriting decisions associated with premium increases in adequate detail for consumers.

The current renewal and adverse action notices do not effectively provide consumers with transparency in these transactions. This prevents policyholders from making educated and informed decisions on their insurance at renewal. This also leaves insurance consumers uninformed, not only on the factors considered by their insurers in underwriting and at renewal that can result in financial impacts, but also

as to how the consumer can mitigate their insurance risks or costs. Requiring insurers to provide premium change transparency to their insurance consumers, disclosing the increases in a consumer's insurance costs at renewal and the reasons causing increased policyholder premiums, will promote honesty and fairness in these insurance transactions, and upholds the public interest in the business of insurance.

Statutory Authority for Adoption: RCW 48.02.060 for OIC's general rule-making authority to implement RCW 48.01.030, 48.18.180, 48.18.2901, 48.18.292, 48.18.480, 48.18.545, 48.19.020, 48.19.035, and 48.30.010.

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: None.

Name of Proponent: OIC, governmental.

Name of Agency Personnel Responsible for Drafting: Michael Walker, P.O. Box 40255, Olympia, WA 98504-0255, 360-725-7036; Implementation: Molly Nollette, P.O. Box 40255, Olympia, WA 98504-0255, 360-725-7117; and Enforcement: Charles Malone, P.O. Box 40255, Olympia, WA 98504-0255, 360-725-7050.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Rules Coordinator, P.O. Box 40255, Olympia, WA 98504-0255, phone 360-725-7171, fax 360-586-3109, email RulesCoordinator@oic.wa.gov, www.insurance.wa.gov.

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: RCW 19.85.025(4), The businesses that must comply with the proposed rule are not small businesses, under chapter 19.85 RCW. **OIC has found that none of the existing insurance companies may be considered small businesses under RCW 19.85.020(3).**

OIC determined that property and casualty insurance companies are impacted by the implementation of this rule. Based on 2019 Bureau of Labor Statistics (BLS) data, direct property and casualty insurers are not considered small businesses, as they have on average 74 employees per firm (6,393 total employees in Washington, 87 average number of firms in Washington). Small business is defined as a business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, and that has 50 or fewer employees (RCW 19.85.020). To verify that the impacted insurers are not small businesses, a question within the industry survey administered by OIC to evaluate the impacts of this rule making asked whether the insurer had 50 employees or fewer or more than 50 employees. All respondents except for three (12 respondents out of 15) indicated they had more than 50 employees. The three respondents that indicated they are small businesses were all a part of the same insurer group (and submissions were provided by the same contact). Despite the response that these are small businesses, they cannot be viewed as distinct entities under the definition of a "small business" considering they are not owned and operated independently from all other businesses. Upon reviewing the insurer group's 2022 financial report, OIC discovered that the total number of employees exceed 30,000 across the entire insurer group. The BLS data, in conjunction with the survey results and further research into insurer

groups' financial reports indicate that these entities cannot be considered small businesses under the definition provided in RCW 19.85.020(3).

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: The rule scope applies solely to insurers who will not meet the definition of small business in RCW 19.85.020(3). However, insurance producers can anticipate an associated impact from the premium change transparency required by the rule, as producers are likely to be contacted by their consumers to discuss their consumer protection rights or the new rule generally. Insurance producers can also meet the definition of small business under RCW 19.85.020(3). The rule will not impose more-than-minor costs on insurance producers.

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. RCW 19.85.0301 (1)(a), The proposed rule will not impose more-than-minor costs on businesses in an industry. **The proposed rule will not impose more-than-minor costs on insurance producers.**

Insurance producers will be impacted by an expected increase in consumer contacts and call volume regarding the premium change transparency. RCW 19.85.030 (1)(a) states that "... an agency shall prepare a small business economic impact state [statement]: (i) If the proposed rule will impose more than minor costs on businesses in an industry ..." OIC determined that this rule would not impose more-than-minor costs on insurance producer businesses.

From the industry survey, 64 percent of property and casualty insurers that responded estimated that producers would have costs resulting from direct impacts of the proposed rule. Respondents indicated that these costs would likely stem from increased call volume. Based on the survey data, OIC estimates that each insurance agency can expect to respond to 60 policyholders for 30 minutes each concerning the premium change transparency. This equates to 30 hours per agency answering questions resulting from the proposed rule making. Using 2019 BLS data, the average weekly pay for individuals employed by insurance agencies and brokerages in Washington is \$1,626. Assuming a 40-hour work week, that equals approximately \$40.65 per hour. Therefore, the cost of compliance for producers is estimated to be **\$1,219.50.**

$$(60 \text{ policyholders} * 0.5 \text{ hours}) * (\$1,626 \text{ average weekly pay} / 40\text{-hour work week}) = \$1,219.50$$

This cost of compliance is used to determine whether the cost imposed on producers by this rule is below or exceeds the minor cost threshold. The chart below shows the estimated cost of compliance (calculated above), as well as the minor cost estimate, which is the larger of either one percent of the average annual payroll or 0.3 percent of the average annual gross business income. When the cost of compliance is estimated to be \$1,219.50, it is well under the minor cost estimate of \$5,432.13.

Industry NAICS Code	Estimated Cost of Compliance	NAICS Code Title	Minor Cost Estimate	1% of Average Annual Payroll	0.3% of Average Annual Gross Business Income
524210	\$1,219.50	Insurance Agencies and Brokerages	\$5,432.13	\$5,432.13 2020 data pulled from the employment security department	\$2,495.45 2020 data pulled from the department of revenue

The cost estimate above assumes 60 policyholders will require 30 minutes each to discuss consumer questions concerning the premium change transparency. If each agency were to respond to 250 policyholders for 30 minutes each, well above the anticipated numbers provided in the industry survey, the associated costs would equal \$5,081.25 per producer business, still below the minor cost estimate.

The proposed rule requires insurers to provide the premium change transparency to policyholders upon written request by the policyholder for any premium increase occurring at renewal starting on June 1, 2024. Beginning on June 1, 2027, insurers will be required to provide premium change notices to policyholders upon a 10 percent premium increase occurring at renewal, or upon request. The cost of compliance for producers outlined above is for the second phase of the rule, where insurers must provide the notices upon a 10 percent premium increase or upon request. This phase is expected to result in higher costs for producers, as a higher number of consumers who receive the notices are likely to reach out for additional information. Producer costs associated with phase one of this rule are expected to be lower than the estimates provided and, therefore, still beneath the minor cost estimate.

The estimated cost of compliance is below the minor cost threshold. The figures used for this calculation are drawn from relevant data from BLS, the Washington employment security department, and the Washington department of revenue.

March 14, 2023  
Mike Kreidler  
Insurance Commissioner

**OTS-4002.7**

**Chapter 284-30A WAC  
PREMIUM CHANGE TRANSPARENCY**

NEW SECTION

**WAC 284-30A-010 Purpose.** (1) Numerous consumer complaints filed with the commissioner about the premium increase explanations provided by insurers demonstrate a need for insurers to provide greater transparency to policyholders when their premiums increase.

(2) This chapter improves transparency in insurance by defining the scope of insurer responsibility to explain premium increases to policyholders.

(3) Insurers shall provide the premium change transparency required by this chapter to their policyholders indicating the premium increases occurring at renewal. Failure to provide the premium change transparency required by this chapter is hereby defined as an unfair and deceptive practice in the business of insurance under chapters 284-30 WAC and 48.30 RCW.

[]

#### NEW SECTION

**WAC 284-30A-020 Scope of applicability.** (1) This chapter applies to policies renewed on or after June 1, 2024.

(2) This chapter applies to authorized insurers with the following types of personal insurance policies:

(a) Private passenger automobile coverage; and

(b) Homeowner's coverage, including mobile homeowners, manufactured homeowners, condominium owners, and renter's coverage.

(3) This chapter applies to renewals of policies and will not apply to the purchase of new policies or new insurance applications.

(4) Exemptions:

(a) This chapter does not apply to personal insurance policies for coverage of boats, motorcycles, off-road vehicles, recreational vehicles, antique or collector vehicles, classic vehicles, and specialty vehicles.

(b) Insurers of health, disability, life, and long-term care are exempt from compliance with this chapter. Health care services contractors and health maintenance organizations are also exempt from compliance with this chapter.

(c) Nothing in this chapter requires insurers to disclose the contents of credit-based insurance scoring models, company placement criteria or eligibility rules, and strictly confidential insurance company trade secrets, as defined by chapter 19.108 RCW (Uniform Trade Secrets Act). However, insurers may need to provide information specific to the policyholder that has been produced through or resulting from these sources to comply with this chapter.

(d) Information in a filing on "usage-based insurance" and about the usage-based component of the rate is confidential and exempt from this chapter, pursuant to RCW 48.19.040.

(e) This chapter does not apply to policyholder-initiated changes to insurance coverages, policies, or premiums.

(f) This chapter does not apply to personal umbrella policies.

(5) This chapter is not intended to contradict or conflict with the Fair Credit Reporting Act (15 U.S.C. Sec. 1681).

(6) This chapter, and the associated premium change transparency requirements, are in addition to and separate from the disclosure requirements contained in chapter 284-24A WAC.

(7) Violation of this regulation is not a violation for purposes of RCW 48.30.015(5).

[]

NEW SECTION

**WAC 284-30A-030 Definitions.** When used in this chapter, these terms are defined as and have the following meaning:

(1) "Antique vehicle" or "collector vehicle" means a vehicle that is a classic vehicle and is at least 30 years old.

(2) "Classic vehicle" means a vehicle that is at least 10 years old and has historical interest for preservation or restoration.

(3) "Insurance" has the same meaning as provided in RCW 48.01.040.

(4) "Insurance policy" or "policy" or "insurance contract" or "contract" means any contract of insurance, indemnity, or suretyship, issued, proposed for issuance, or intended for issuance by any insurer that provides either:

(a) Private passenger automobile coverage; or

(b) Homeowner's coverage, including mobile homeowners, manufactured homeowners, condominium owners, and renter's coverage.

(5) "Insurer" means any individual, corporation, association, partnership, reciprocal exchange, interinsurer, fraternal mutual insurer, and any other legal entity engaged in the business of insurance, and which is authorized to issue and which issues any insurance policy or insurance contract in this state that provides either:

(a) Private passenger automobile coverage; or

(b) Homeowner's coverage, including mobile homeowners, manufactured homeowners, condominium owners, and renter's coverage.

(6) "Policyholder" means either the persons, entities, or both, listed on the declarations page as the named insured in an insurance policy. Policyholder does not include other covered individuals or lienholders.

(7) "Policy period" means the time or period during which insurance coverage is in effect.

(8) "Premium" has the same meaning as provided in RCW 48.18.170.

(9) "Premium change transparency" means either insurer explanations or notices provided to policyholders regarding premium increases occurring at renewal according to this chapter.

(10) "Written" or "in writing" means any retrievable method of recording an agreement or document, and, unless otherwise specified, includes paper and electronic formats.

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NEW SECTION

**WAC 284-30A-040 Premium change transparency thresholds.** (1) Beginning June 1, 2024, and effective until June 1, 2027, insurers shall provide reasonable explanations, for insurance policies as described in WAC 284-30A-020, upon written request by the policyholder, for any premium increase occurring at renewal.

(2) Beginning June 1, 2027, insurers shall provide premium change notices, with reasonable explanations and primary factors, disclosing the causes of premium increases for insurance policies as described in WAC 284-30A-020. Insurers shall provide premium change notices automatically when a renewal will result in a 10 percent premium increase or more, or upon written request by the policyholder for any premium increase occurring at renewal.

[]

NEW SECTION

**WAC 284-30A-050 Premium change transparency administrative requirements.** (1) **Insurer premium change transparency disclaimer:** Beginning June 1, 2024, insurers shall include a prominent disclaimer on the first page or view of renewal notices and renewal billing statements indicating, in **at least 12-point type bold font**, substantially similar language as the following: **"Policyholders receiving an increase to their premiums at renewal can request an explanation by contacting their insurer in writing. Please see Chapter 284-30A WAC for additional information on your right to an explanation for your rate increase."**

(2) Insurers shall include their contact information in all premium change transparency to policyholders, and may include the producer's (if any), contact information.

(3) Consumers' written requests, and insurers' premium change transparency, are deemed to be requested and responded to at the date indicated by either postmark or electronic timestamp for delivery. In the event of duplicate requests or responses, for delivery by both mail and email, then this date will be determined as the earlier of either postmark or electronic timestamp for delivery.

(4) Insurers shall provide premium change transparency to the policyholder, and their producer (if any), according to the following:

(a) If upon written request, then no later than 20 calendar days from the receipt of the written request; and

(b) If upon renewal, due to a 10 percent premium increase or more, then automatically and no less than 20 calendar days prior to the effective date of the renewed policy.

(5) Insurers shall include a statement in all premium change transparency that the policyholder may contact their insurer to request additional information about the policyholder's premium increases.

(6) Insurers shall respond to and provide additional information for policyholder's subsequent requests for premium change transparency, no later than 20 calendar days from the receipt of any subsequent requests.

(7) Insurers shall send premium change transparency to policyholders in writing, and may send either explanations or notices via postal mail, or may deliver either in email or electronic format, if the policyholder has consented to receive notifications electronically. All electronic correspondence, notices, and deliveries must comply with chapter 48.185 RCW.

(8) Insurers may send premium change transparency to the policyholder individually or with renewal notices.

(9) Insurers may provide policyholders with access to a language translation service specific to the premium change transparency. This can include either written or telephonic translation services. If an insurer translates premium change transparency, then the translations must comply with WAC 284-20B-150.

(10) Insurers' records related to premium change transparency are subject to RCW 48.05.280. Insurers' records must be retrievable and made accessible to the commissioner during the retention period.

[]

NEW SECTION**WAC 284-30A-060 Premium change transparency notice requirements.**

(1) Beginning January 1, 2027, insurers shall file the premium change notice with the commissioner, whether using the premium change notice provided in WAC 284-30A-080, or using an alternative version of the premium change notice. Insurers shall file any alternative premium change notice with the commissioner, so the premium change notice can be reviewed for sufficiently meeting or exceeding the standards outlined in this chapter.

(2) Insurers' failure to use the premium change notice in WAC 284-30A-080, or obtain commissioner approval to use alternative insurer premium change notices, when notice is required under this chapter, is a violation of this chapter.

(3) Insurers' premium change notice filings and requests to use alternative premium change notices shall be submitted electronically in the system for electronic rate and form filings (SERFF).

[]

NEW SECTION

**WAC 284-30A-070 Insurer communication standards.** (1) Reasonable explanation is a communication standard that requires insurers to provide sufficient information, in terms that are understandable to an average policyholder, which enable the policyholder to figure out the basic nature of any premium increase.

(2) Primary factors is a communication standard that requires insurers to provide the specific rate and rating factors that caused the premium increase. The primary factors are the following:

(a) Auto-related factors (car garaging location, driving record, miles driven, number of drivers, and number of vehicles), claims history, discounts, fees and surcharges, demographic factors (age, credit history, education, gender, marital status, and occupation), property related factors (age, location, and value), premium capping, and rate changes (including those subject to rate stability rules, transition rules, or premium-capping rules, as referenced in WAC 284-24-130).

(b) Insurers shall include the primary factors in the premium change notice, if applicable to the premium increase, with any premium change notices processed for renewals effective on or after June 1, 2027. Factors not listed above as primary are considered as optional factors. Insurers may include additional optional factors not listed in this section, if applicable to the premium increase.

(3) Insurers may include composite rating variables in premium change transparency to inform policyholders of premium increases. However, if insurers include composite rating variables in their premium change transparency, then insurers shall explain the premium increase attributed to the composite rating variables.

(4) Insurers may include the use of estimated dollars in premium change transparency, if a reasonable explanation is provided by the



insurers to the policyholders on the degree of accuracy estimated dollars achieve, as specifically applied to that policy and premium increase.

(5) Insurers may show separate impacts by the different perils or risks being covered and the type of coverage for each.

(6) This chapter does not prohibit insurers from sending premium change transparency for all premium increases beyond those required in this section.

[]

#### NEW SECTION

**WAC 284-30A-080 Premium change notice contents.** (1) This section outlines the explanation required and minimum amount of information to include in the contents of the premium change notice. Insurers are permitted to provide additional information beyond these requirements.

(2) **Premium change notice.**

**LICENSED INSURANCE COMPANY – NAME, ADDRESS, NAIC Number, & Notice Date**

**Policyholder Name, Policy Type, Covered Risks, Policy Number, Policy Period, and Effective Date**

- **We are notifying you of a premium increase to your insurance policy. Your premium for this insurance policy has increased from (Total Amount) to (Total Amount) (insurers insert amounts).**
- **Your premium is impacted by (insurers insert primary factors such as auto-related factors, demographics, discounts, rates, and property related factors), which will cause the price of your insurance to increase at renewal.**
- **Here is an explanation for each reason of your premium increase (insurers shall communicate the reasons for the premium increases along with a corresponding explanation; insurers' explanations must include the percentage or dollar change occurring to the policyholder's premium at renewal):**

\*Please note: Your future premiums may increase or decrease if you change your coverage, if there are changes in your risk characteristics that occur during this time frame, or by future rate change filings made by our company in your state.

**If you have any questions, please contact your insurance company via telephone ( ), email ( ), postal mail ( ), or visit our website ( ).**

[]

#### NEW SECTION

**WAC 284-30A-090 Penalties for noncompliance.** (1) Insurers who fail to adhere to this chapter, including the provisions on content requirements, timing, notice, and retention, are considered to have committed unfair and deceptive practices, and will be subject to the applicable remedies and penalties contained in chapters 284-30 WAC and 48.30 RCW.

(2) Insurers shall not enter into any agreement, arrangement, scheme, or understanding, or in any other manner pursue any course of conduct, designed or intended to avoid compliance with this chapter.

(3) Insurers are responsible for compliance with this chapter and cannot avoid liability by delegating premium change transparency requirements to third parties.

[]

NEW SECTION

**WAC 284-30A-100 Severability clause.** If any section or portion of a section of this chapter or the applicability thereof to any person or circumstance is held invalid by a court, the remainder of this chapter or the applicability of the provision to other persons or circumstances shall not be affected.

[]

**WSR 23-07-080**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Developmental Disabilities Administration)  
[Filed March 14, 2023, 2:13 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-22-078.

Title of Rule and Other Identifying Information: WAC 388-829C-131

How does DDA determine the daily rate?, 388-829C-230 What is respite and where can a companion home client access respite?, 388-829C-232 How does DDA determine the amount of waiver-funded respite a companion home client may receive?, 388-829C-233 May the client or companion home provider request additional waiver-funded respite hours?, 388-829C-234 Will DDA reduce the companion home daily rate if additional waiver-funded respite hours are approved?, 388-829C-235 Will DDA reduce the companion home daily rate if a client receives state-funded respite?, 388-829R-005 What definitions apply to this chapter?, 388-829R-011 Who is eligible to receive overnight planned respite services?, 388-829R-165 What must overnight planned respite services providers do to plan for and respond to emergencies?, and 388-829R-170 What records must overnight planned respite services providers keep?

Hearing Location(s): On April 25, 2023, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtually. Hearings are currently held virtually, see the DSHS website <https://www.dshs.wa.gov/office-of-the-secretary/filings-and-rules> for the most current information.

Date of Intended Adoption: Not earlier than April 26, 2023.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax 360-664-6185, by 5:00 p.m. on April 25, 2023.

Assistance for Persons with Disabilities: Contact DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email [shelley.tencza@dshs.wa.gov](mailto:shelley.tencza@dshs.wa.gov), by 5:00 p.m. on April 14, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of these amendments is to allow companion home providers to access respite through overnight planned respite services (OPRS) providers, and planned respite through residential habilitation centers. Other changes notification to a primary caregiver when a client receiving OPRS experiences an emergency.

Reasons Supporting Proposal: The proposed amendments will give companion home providers more options for accessing respite services.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: RCW 71A.12.040.

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: Developmental disabilities administration (DDA)-contracted companion home providers, private.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1500; Implementation and Enforcement: Olga Lutsyk, P.O. Box 45310, Olympia, WA 98504-5310, 360-764-6155.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, phone 360-790-4732, email chantelle.diaz@dshs.wa.gov.

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. DDA has analyzed the proposed rule amendments and concludes that they will impose no costs on small businesses. While all of the companion home providers affected by chapter 388-829C WAC are small businesses, the providers should incur no costs in complying with these amendments. Although a provider's rate might be reduced if they access additional respite services, it is not compulsory for a provider to access additional respite services. "Additional respite services" means hours above the number of assessed annual hours in a client's DDA assessment.

March 14, 2023  
 Katherine I. Vasquez  
 Rules Coordinator

**SHS-4969.4**

AMENDATORY SECTION (Amending WSR 22-04-073, filed 1/31/22, effective 3/3/22)

**WAC 388-829C-131 How does DDA determine the daily rate?** (1) A companion home daily rate is based on the client's DDA assessment under chapter 388-828 WAC. The DDA assessment uses an algorithm to convert raw scores into support assessment scales.

(2) The following support assessment scales are used to calculate a companion home daily rate. Each support assessment scale is assigned an acuity level of "none," "low," "medium," or "high" by the DDA assessment algorithm and corresponds to the values below:

Support Assessment Scale	Acuity Levels			
	None	Low	Medium	High
Activities of daily living	0	1	2	3
Behavior	0	1	2	3
Interpersonal support	0	1	2	3
Medical	0	1	2	3
Mobility	0	1	2	3
Protective supervision	0	1	2	3

(3) DDA assigns a behavior score of four if:

- (a) The client has an acuity level of "high" for behavior on the support assessment scale; and
- (b) The client has a behavior support plan that meets requirements under WAC 388-829C-135.
- (4) The sum of the assessment scale scores corresponds to an established daily rate. Rates are set prospectively in accordance with state legislative appropriations and will be adjusted accordingly.
- (5) DSHS publishes companion home daily rates on the office of rates management's website.
- (6) DDA may adjust a companion home daily rate if:
- (a) The sum of the client's support assessment acuity levels changes; or
- (b) DDA approves additional respite hours (~~under WAC 388-829C-234(3)~~).

[Statutory Authority: RCW 71A.12.030 and 71A.12.040. WSR 22-04-073, § 388-829C-131, filed 1/31/22, effective 3/3/22; WSR 20-13-091, § 388-829C-131, filed 6/16/20, effective 7/17/20. Statutory Authority: RCW 71A.12.030, 71A.10.020 and 71A.12.040. WSR 18-22-106, § 388-829C-131, filed 11/6/18, effective 12/7/18.]

AMENDATORY SECTION (Amending WSR 18-22-106, filed 11/6/18, effective 12/7/18)

**WAC 388-829C-230 What is respite and where can a companion home client access respite?** (1) Respite is (~~short-term, intermittent~~) a scheduled break in caregiving to provide relief for the companion home provider.

(2) (~~The DDA assessment determines a client's annual allocation of respite hours.~~

(3) ~~Respite may be provided in:~~

(a) ~~The companion home where the client lives;~~

(b) ~~A community setting available to an adult, such as a camp, senior center, or adult day care center;~~

(c) ~~An adult family home;~~

(d) ~~An assisted living facility;~~

(e) ~~A group home; or~~

(f) ~~A group training home.~~

(4) ~~To be a qualified respite provider, a person or agency must be contracted with DDA to provide respite services.)~~ A companion home client may receive:

(a) Waiver-funded respite under chapter 388-845 WAC;

(~~(5) A companion home client must not receive~~) (b) Overnight planned respite services under chapter 388-829R WAC(~~(-)~~); and

(~~(6) A companion home client must not receive~~) (c) Planned respite at a residential habilitation center.

[Statutory Authority: RCW 71A.12.030, 71A.10.020 and 71A.12.040. WSR 18-22-106, § 388-829C-230, filed 11/6/18, effective 12/7/18. Statutory Authority: RCW 71A.12.010, 71A.12.030, and Title 71A RCW. WSR 09-20-004, § 388-829C-230, filed 9/24/09, effective 10/25/09. Statutory Authority: RCW 71A.12.30 [71A.12.030] and Title 71A RCW. WSR 07-16-102, § 388-829C-230, filed 7/31/07, effective 9/1/07.]

AMENDATORY SECTION (Amending WSR 18-22-106, filed 11/6/18, effective 12/7/18)

**WAC 388-829C-232 How does DDA determine the amount of waiver-funded respite a companion home ((client's annual respite allocation)) client may receive?** For waiver-funded respite, DDA determines a companion home client's annual respite allocation by adding the client's companion home services support score under WAC 388-828-6010 to their adjusted companion home services support score under WAC 388-828-6011.

[Statutory Authority: RCW 71A.12.030, 71A.10.020 and 71A.12.040. WSR 18-22-106, § 388-829C-232, filed 11/6/18, effective 12/7/18.]

AMENDATORY SECTION (Amending WSR 18-22-106, filed 11/6/18, effective 12/7/18)

**WAC 388-829C-233 May the client or companion home provider request additional waiver-funded respite hours? ((+1))** A client may request waiver-funded respite hours in addition to their annual respite allocation, or the companion home provider may request additional respite on behalf of the client in consultation with the client's legal representative if the client has one.

~~((2) DDA may approve additional respite hours if a temporary and unexpected event occurs in the client or the companion home provider's life, such as an illness or injury.))~~

[Statutory Authority: RCW 71A.12.030, 71A.10.020 and 71A.12.040. WSR 18-22-106, § 388-829C-233, filed 11/6/18, effective 12/7/18.]

AMENDATORY SECTION (Amending WSR 18-22-106, filed 11/6/18, effective 12/7/18)

**WAC 388-829C-234 Will DDA reduce the companion home daily rate if additional waiver-funded respite hours are approved?** (1) ~~((If DDA approves additional respite hours under WAC 388-829C-233(2), the daily rate remains unchanged.~~

~~(2))~~ If DDA approves additional waiver-funded respite hours ~~((for any reason not under WAC 388-829C-233(2))),~~ DDA may reduce the companion home daily rate.

~~((3))~~ (2) ~~((If DDA approves additional respite hours under subsection (2) of this section))~~ To reduce the companion home daily rate, DDA:

(a) Divides the cost of the additional respite hours by the number of days remaining in the client's plan year; and

(b) Subtracts that amount from the companion home daily rate for the remaining number of days in the plan year.

~~((4))~~ (3) The cost of the additional respite hours is based on the identified respite provider's hourly rate.

[Statutory Authority: RCW 71A.12.030, 71A.10.020 and 71A.12.040. WSR 18-22-106, § 388-829C-234, filed 11/6/18, effective 12/7/18.]

NEW SECTION

**WAC 388-829C-235 Will DDA reduce the companion home daily rate if a client receives state-funded respite?** DDA may reduce a companion home daily rate if the client receives overnight planned respite services or respite at a residential habilitation center.

[ ]

AMENDATORY SECTION (Amending WSR 20-08-033, filed 3/24/20, effective 5/1/20)

**WAC 388-829R-005 What definitions apply to this chapter?** The following definitions apply to this chapter:

"Administrator" means the person responsible for daily management and operation of the overnight planned respite services site. The administrator may also be the owner.

"Authorization" means DDA approval of funding for a service as identified in the person-centered service plan or evidence of payment for a service.

"Client" means a person who has a developmental disability as defined in RCW 71A.10.020(~~(+5)~~) and who the DDA has determined eligible to receive services under chapter 71A.16 RCW. When used in this section, "you" is interchangeable with client.

"DDA" means the developmental disabilities administration, an administration of the department of social and health services and its employees and authorized agents.

"Direct support professional" means a person who interacts directly with a client during an overnight planned respite stay to provide services outlined in the client's overnight planned respite services individualized agreement.

"DSHS" or "the department" means the state of Washington department of social and health services and its employees and authorized agents.

"Family" means one or more of the following relatives: Spouse or registered domestic partner; natural; adoptive; or stepparent; grandparent; child; stepchild; sibling; stepsibling; uncle; aunt; first cousin; niece; or nephew.

"Legal representative" means a parent of a client if the client is under age 18, a court-appointed guardian if a decision is within the scope of the guardianship order, or any other person authorized by law to act for the client.

"Mandatory reporter" means any person working with vulnerable adults required to report suspected incidents of abandonment, abuse, neglect, financial exploitation under chapter 74.34 RCW.

"Nurse delegation" means the process by which a registered nurse transfers the performance of select nursing tasks to a nursing assistant-registered or nursing assistant-certified in select situations as set forth in chapter 18.79 RCW and WAC 246-840-910 through 246-840-970.

"Overnight planned respite services" means services that are intended to provide short-term intermittent relief for a person who lives with and acts as a DDA client's primary caregiver.

"Overnight planned respite services provider" and "provider" means an agency that is contracted to provide overnight planned respite services.

"Owner" means the person who accepts or delegates responsibility for the management and operation of the overnight planned respite services site. The owner may also be the administrator.

"Primary caregiver" means the person who provides the client's care and supervision and lives with the client.

[Statutory Authority: RCW 71A.12.030 and 71A.12.040. WSR 20-08-033, § 388-829R-005, filed 3/24/20, effective 5/1/20. Statutory Authority: RCW 71A.12.030, 71A.12.120, and 2015 3rd sp.s. c 4. WSR 16-17-003, § 388-829R-005, filed 8/4/16, effective 9/4/16.]

AMENDATORY SECTION (Amending WSR 20-08-033, filed 3/24/20, effective 5/1/20)

**WAC 388-829R-011 Who is eligible to receive overnight planned respite services?** To be eligible to receive overnight planned respite services, a client must:

- (1) Be eligible for DDA services under chapter 388-823 WAC;
- (2) Be ~~((eighteen))~~ 18 or older;
- (3) ~~((Be-living))~~ Live at home with a primary caregiver and not currently ~~((receiving))~~ receive:
  - (a) Residential habilitation services, unless receiving services from a companion provider; or ((under the core waiver))
  - (b) Community first choice residential services; and
- (4) Identify a backup caregiver to respond in an emergency if the primary caregiver is unavailable.

[Statutory Authority: RCW 71A.12.030 and 71A.12.040. WSR 20-08-033, § 388-829R-011, filed 3/24/20, effective 5/1/20.]

AMENDATORY SECTION (Amending WSR 20-08-033, filed 3/24/20, effective 5/1/20)

**WAC 388-829R-165 What must overnight planned respite services providers do to plan for and respond to emergencies?** (1) The overnight planned respite services provider must develop an emergency response plan to address natural and other disasters.

- (2) In an emergency, the overnight planned respite services provider must:
  - (a) Immediately call 911 if it is a life-threatening emergency;
  - (b) Provide emergency services;
  - (c) Notify DDA;
  - (d) Notify the primary caregiver, client's legal representative, or backup caregiver; and
  - (e) Submit a written report to DDA.

[Statutory Authority: RCW 71A.12.030 and 71A.12.040. WSR 20-08-033, § 388-829R-165, filed 3/24/20, effective 5/1/20. Statutory Authority: RCW 71A.12.030, 71A.12.120, and 2015 3rd sp.s. c 4. WSR 16-17-003, § 388-829R-165, filed 8/4/16, effective 9/4/16.]



AMENDATORY SECTION (Amending WSR 20-08-033, filed 3/24/20, effective 5/1/20)

**WAC 388-829R-170 What records must overnight planned respite services providers keep?** (1) For each client, the overnight planned respite services providers must keep the following information:

- (a) The client's name and address;
- (b) The name, address, and telephone number of the client's primary (~~guardian~~) caregiver or legal representative;
- (c) A copy of the client's most recent person-centered service plan;
- (d) A copy of the client's overnight planned respite services individualized agreement;
- (e) Nurse delegation records, if applicable;
- (f) Progress notes;
- (g) Incident reports, if applicable;
- (h) Medication documentation, including a medication intake form and medication administration records, if applicable;
- (i) A list of the client's personal property upon arrival and departure; and
- (j) A record of money or gift cards managed by the respite provider on behalf of the client during the respite stay, if applicable.

(2) An overnight planned respite services provider must also keep the following:

- (a) Water temperature monitoring records;
- (b) Direct support professional training records;
- (c) Direct support professional time sheets specific to locations worked;
- (d) Payment records;
- (e) A signed copy of DSHS form 10-403 for each direct support professional and administrator.

[Statutory Authority: RCW 71A.12.030 and 71A.12.040. WSR 20-08-033, § 388-829R-170, filed 3/24/20, effective 5/1/20. Statutory Authority: RCW 71A.12.030, 71A.12.120, and 2015 3rd sp.s. c 4. WSR 16-17-003, § 388-829R-170, filed 8/4/16, effective 9/4/16.]

**WSR 23-07-082**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)  
[Filed March 15, 2023, 9:54 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-13-019.

Title of Rule and Other Identifying Information: The department is proposing amendments to WAC 388-446-0015 What is an intentional program violation (IPV) and administrative disqualification hearing (ADH) for basic food? No amendments are being proposed to WAC 388-410-0020 and 388-410-0030 at this time, as originally contemplated in the CR-101.

Hearing Location(s): On April 25, 2023, at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtually. Due to the COVID[-19] pandemic, hearings are being held virtually. Please see the DSHS website for the most up-to-date information.

Date of Intended Adoption: No earlier than April 26, 2023.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax 360-664-6185, by April 25, 2023, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email [Tenczsa@dshs.wa.gov](mailto:Tenczsa@dshs.wa.gov), by April 11, 2023, 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These amendments align with federal regulations in 7 C.F.R. 273.16 (e) (3) regarding administrative disqualification hearing notices and actions related to trafficked benefits.

Reasons Supporting Proposal: 7 C.F.R. 273.16 (e) (3).

Statutory Authority for Adoption: RCW 43.20A.550, 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

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: None.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Alexis Miller, P.O. Box 45470, Olympia, WA 98504-5470, 253-579-3144.

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

A cost-benefit analysis is not required under RCW 34.05.328. These rules are exempt as allowed under RCW 34.05.328 (5) (b) (vii) which states in part, "this section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute

or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: 7 C.F.R. 273.16 (e) (3).

Is exempt under RCW 34.05.328 (5) (b) (vii).

Explanation of exemptions: The proposed amendments do not impact small businesses. They only impact DSHS clients.

Scope of exemption for rule proposal:

Is fully exempt.

March 10, 2023  
Katherine I. Vasquez  
Rules Coordinator

### SHS-4963.1

AMENDATORY SECTION (Amending WSR 20-13-090, filed 6/16/20, effective 8/1/20)

**WAC 388-446-0015 What is an intentional program violation (IPV) and administrative disqualification hearing (ADH) for basic food?** (1)  
An intentional program violation (IPV) is an act in which someone intentionally:

(a) Misrepresents, conceals, or withholds facts in order to be found eligible for benefits or to receive more benefits than their actual circumstances would allow including making a false statement regarding household circumstances;

(b) Acts in violation of the Food Nutrition Act of 2008, regulations for the supplemental nutrition assistance program (SNAP) under Title 7 of the Code of Federal Regulations, any state statute, or WAC relating to the use, presentation, transfer, acquisition, receipt, trafficking, or possession of food assistance benefits including; or

(c) Attempts to buy, sell, steal, or trade food assistance benefits issued and accessed via electronic benefit transfer (EBT) cards, EBT card numbers or personal identification numbers (PINs), for cash or anything other than eligible food, alone or acting with others.

(2) If we suspect someone has committed an IPV we refer their case for an administrative disqualification hearing (ADH), unless:

(a) The case is currently referred for prosecution; or

(b) A court or prosecutor already took action against the person for the same or related facts.

(3) An administrative disqualification hearing (ADH) is a formal hearing to determine if a person committed an IPV. ADHs are governed by the rules found in chapter 388-02 WAC. However, rules in this section are the overriding authority if there is a conflict.

(4) A person suspected of an IPV may choose to waive their right to an ADH by signing a waiver of administrative disqualification hearing or a disqualification consent agreement that waives their right to the hearing and accept the IPV penalty under WAC 388-446-0020.

(5) If someone commits one or more IPV's and is suspected of committing another, we refer them for an ADH when the act of suspected violation occurred:

(a) After we mailed the disqualification notice to the client for the most recent IPV; or

(b) After criminal proceedings for the most recent IPV are concluded.

(6) When we refer a case for an administrative disqualification hearing (ADH), the office of administrative hearings (OAH) sends the person notice of the ADH at least (~~(thirty)~~) 30 days in advance of the hearing date. OAH sends the notice by certified mail, or personal service. The notice will contain the following information:

(a) The date, time, and place of the hearing;

(b) The charges against the person;

(c) A summary of the evidence, and how and where they may examine the evidence;

(d) A warning that a decision will be based entirely on the evidence the department provides if they fail to appear at the hearing;

(e) A statement that the person has (~~(ten)~~) 10 days from the date of the scheduled hearing to show good cause for failing to attend the hearing and to ask for a new hearing date;

(f) A warning that a determination of IPV will result in a disqualification period; and

(g) A statement that if we schedule a telephone hearing, they may request an in-person hearing by filing a request with the administrative law judge one week or more prior to the date of the hearing.

(h) If there is an individual or organization available that provides free legal representation, the notice shall advise the affected individual of the availability of the service.

(7) The department may combine an ADH and a regular hearing when the reason for both hearings is related.

(8) The person or a representative has the right to one continuance of up to (~~(thirty)~~) 30 days if a request is filed (~~(ten)~~) 10 days or more prior to the hearing date.

(9) The administrative law judge (ALJ) will conduct the ADH and render a decision even if the person or representative fails to appear, unless within (~~(ten)~~) 10 days from the date of the scheduled hearing:

(a) The person can show good cause for failing to appear; and

(b) The person or representative requests the hearing be reinstated.

(10) We may change a scheduled telephone hearing to an in-person hearing if (~~(this is requested by)~~) the person or department representative requests this at least one week in advance. The person requesting a change less than one week in advance must show good cause for the requested change.

(11) The ALJ issues a final decision as specified in WAC 388-02-0215 through 388-02-0525. The decision determines whether the department had established with clear and convincing evidence that the person committed and intended to commit an IPV.

(12) The department and the client each have the right to request a reconsideration of the decision as specified in WAC 388-02-0610 through 388-02-0635. The final order or the reconsideration decision is the final agency decision.

(13) We will not implement a disqualification and continue benefits at the current amount if:

(a) The client can show good cause for not attending the hearing within (~~(thirty)~~) 30 days from the date the disqualification notice was mailed; and

(b) An administrative law judge determines the client had good cause; or

(c) The client requests reconsideration or files a petition for judicial review to appeal the disqualification as specified in WAC 388-02-0530 (1) or (4).

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.04.770, 74.08.090, 74.08.580, 74.12.260, 9.91.14, [9.91.142] and 7 C.F.R. §§ 271.2 and 273.16. WSR 20-13-090, § 388-446-0015, filed 6/16/20, effective 8/1/20. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090 and 7 C.F.R. §§ 271.2 and 273.16. WSR 19-03-054, § 388-446-0015, filed 1/10/19, effective 2/10/19. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 7 C.F.R. § 271.2. WSR 14-05-063, § 388-446-0015, filed 2/18/14, effective 3/21/14. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510, 74.04.770, 74.12.260, 74.08.580, 9.91.142, 7 C.F.R. 273.16, the Food and Nutrition Act of 2008 as amended and 42 U.S.C. 601a; and 2011 c 42. WSR 11-19-047, § 388-446-0015, filed 9/13/11, effective 10/14/11. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 9.91.142. WSR 05-23-082, § 388-446-0015, filed 11/15/05, effective 1/1/06. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-446-0015, filed 7/31/98, effective 9/1/98.]

**WSR 23-07-092**  
**PROPOSED RULES**  
**SPOKANE REGIONAL**  
**CLEAN AIR AGENCY**

[Filed March 17, 2023, 7:11 a.m.]

Original Notice.

Proposal is exempt under RCW 70A.15.2040.

Title of Rule and Other Identifying Information: Amend Spokane Regional Clean Air Agency (SRCAA) Regulation I, Articles I, II, III, IV, V, VI, VIII, and X.

Hearing Location(s): On Thursday, June 1, 2023, at 9:30 a.m., in person at 1610 South Technology Boulevard, #101, Spokane, WA 99224; or online, Zoom URL link provided on board meeting agenda. Comment period from May 1 through June 1, 2023, ends at close of public hearing.

Date of Intended Adoption: June 1, 2023.

Submit Written Comments to: Margee Chambers, 1610 South Technology Boulevard, #101, Spokane, WA 99224, email [PublicComment@spokanecleanair.org](mailto:PublicComment@spokanecleanair.org), fax 509-477-6828, by June 1, 2023, close of hearing; submit comments by May 23, 2023, to be included in board packet.

Assistance for Persons with Disabilities: Contact Mary Kataoka, phone 509-477-4727 ext. 100, fax 509-477-6828, email [mkataoka@spokanecleanair.org](mailto:mkataoka@spokanecleanair.org), by May 29, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The 2020 legislative change to Title 70 RCW renumbered the Washington Clean Air Act from chapter 70.94 RCW to chapter 70A.15 RCW. SRCAA is amending Regulation I to update the RCW citing as well as to correct typographical errors; provide clarification; align the wood heating exemption to RCW 70A.15.3580; separate late fee from penalty fee; update formatting in Article III and VIII; and update adoption by reference. The amendments will not change fees or add new requirements for businesses or residents to meet.

Reasons Supporting Proposal: The proposed amendments are necessary to support the agency's implementation of the Washington Clean Air Act. The amendments will allow the agency to meet the state legislature's deadline for agencies to update the RCW citing in agency regulations. The amendments' anticipated effects include improved readability, accurate citing, and alignment of SRCAA's local regulations to state rules and regulations.

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: SRCAA, governmental.

Name of Agency Personnel Responsible for Drafting: Margee Chambers, SRCAA, 509-477-4727; Implementation: April Westby, SRCAA, 509-477-4727; and Enforcement: Lori Rodriguez, SRCAA, 509-477-4727.

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

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis under RCW 34.05.328 does not apply to local air pollution control 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 70A.15.2040.

Explanation of exemptions: Chapter 19.85 RCW applies to state agencies. Under RCW 70A.15.2040, local air pollution control agencies are not state agencies. SRCAA is a local air pollution control agency.

Scope of exemption for rule proposal:

Is fully exempt.

March 16, 2023

Margee Chambers

SIP Planner/Rule Writer

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the [23-09](#) issue of the Register.

**WSR 23-07-102**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 23-02—Filed March 20, 2023, 10:50 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-04-011 on January 19, 2023.

Title of Rule and Other Identifying Information: Periodic status review, American white pelican. WAC 220-200-100 Wildlife classified as protected shall not be hunted or fished.

Hearing Location(s): On May 12, 2023, at 8:00 a.m., web conference. Join from a PC, Mac, iPad, iPhone or Android device <https://us06web.zoom.us/j/82426107514>; or One-tap mobile +12532158782,,82426107514# US (Tacoma), +16699006833,,82426107514# US (San Jose). Information on how to register to testify at the public hearing is available at <http://wdfw.wa.gov/about/commission.meetings> or contact the commission office at 360-902-2267.

Date of Intended Adoption: On or after May 12, 2023.

Submit Written Comments to: Wildlife Program, P.O. Box 43200, Olympia, WA 98504, email [white-pelican@PublicInput.com](mailto:white-pelican@PublicInput.com), fax 360-902-2162, <http://publicinput.com/c5076#1>, phone 855-925-2801, project code 9587, by May 5, 2023.

Assistance for Persons with Disabilities: Contact Title VI/ADA compliance coordinator, phone 360-902-2349, TTY 1-800-833-6388 or 711, email [Title6@dfw.wa.gov](mailto:Title6@dfw.wa.gov), <http://wdfw.wa.gov/accessibility/requests-accommodation>, by May 5, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule amendment proposal, if finalized, would reclassify the American white pelican within WAC 220-200-100 Wildlife classified as protected shall not be hunted or fished, from threatened to sensitive. Anticipated effects include a lower level of conservation concern for the species and advancement towards their recovery. WAC 220-610-110(11.1) guides the Washington department of fish and wildlife (WDFW) to draft a management plan for sensitive species, rather than a recovery plan (as applicable to endangered and threatened species). If the status change is adopted, white pelican will be removed from the list of threatened species in WAC 220-200-100 Wildlife classified as protected shall not be hunted or fished, and added to the list of sensitive species under the same WAC.

This same species was presented and voted on in front of the fish and wildlife commission in the fall of 2022 alongside the Cascade red fox status report and listing decision. This proposal will reinitiate the same rule-making decision on American white pelican that was presented in 2022.

Reasons Supporting Proposal: On October 7, 2022, the fish and wildlife commission voted to downlist the American white pelican to a sensitive species as recommended by agency staff. Because of a procedural issue, we need to reinitiate rule making with a new vote on this species. The information presented is the same information presented in the fall of 2022 and agency staff are still recommending a downlisting from threatened to sensitive for the American white pelican.

The western population of white pelicans has recovered substantially and, given the size of the Badger Island colony and number of



nonbreeding white pelicans in Washington during the past several years, a change in listing could be considered.

The species remains somewhat vulnerable, however, as only the single colony regularly forms in Washington, and white pelican colonies are highly sensitive to disturbances; adults will desert and/or leave eggs leaving their young exposed to predation following disturbances. We recommend the species be downlisted to sensitive. A sensitive species is "vulnerable or declining and is likely to become endangered or threatened in a significant portion of its range within the state without cooperative management or removal of threats" (WAC 220-610-110).

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.020, and 77.12.047.

Statute Being Implemented: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.020, and 77.12.047.

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: None.

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Eric Gardner, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2515; and Enforcement: Steve Bear, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2373.

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

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

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

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

March 20, 2023  
Tom McBride  
Rules Coordinator

## OTS-4450.1

AMENDATORY SECTION (Amending WSR 23-06-035, filed 2/23/23, effective 3/26/23)

**WAC 220-200-100 Wildlife classified as protected shall not be hunted or fished.** Protected wildlife are designated into three subcategories: Threatened, sensitive, and other.

(1) Threatened species are any wildlife species native to the state of Washington that are likely to become endangered within the foreseeable future throughout a significant portion of their range within the state without cooperative management or removal of threats. Protected wildlife designated as threatened include:

Common Name	Scientific Name
western gray squirrel	<i>Sciurus griseus</i>

Common Name	Scientific Name
sea otter	<i>Enhydra lutris</i>
green sea turtle	<i>Chelonia mydas</i>
Mazama pocket gopher	<i>Thomomys mazama</i>
<del>(American white pelican)</del>	<del><i>Pelecanus erythrorhynchos</i></del>
Columbian white-tailed deer	<i>Odocoileus virginianus leucurus</i>

(2) Sensitive species are any wildlife species native to the state of Washington that are vulnerable or declining and are likely to become endangered or threatened in a significant portion of their range within the state without cooperative management or removal of threats. Protected wildlife designated as sensitive include:

Common Name	Scientific Name
<u>American white pelican</u>	<u><i>Pelecanus erythrorhynchos</i></u>
Gray whale	<i>Eschrichtius robustus</i>
Common Loon	<i>Gavia immer</i>
Larch Mountain salamander	<i>Plethodon larselli</i>
Pygmy whitefish	<i>Prosopium coulteri</i>
Margined sculpin	<i>Cottus marginatus</i>
Olympic mudminnow	<i>Novumbra hubbsi</i>

(3) Other protected wildlife include:

Common Name	Scientific Name
cony or pika	<i>Ochotona princeps</i>
least chipmunk	<i>Tamias minimus</i>
yellow-pine chipmunk	<i>Tamias amoenus</i>
Townsend's chipmunk	<i>Tamias townsendii</i>
red-tailed chipmunk	<i>Tamias ruficaudus</i>
hoary marmot	<i>Marmota caligata</i>
Olympic marmot	<i>Marmota olympus</i>
Cascade golden-mantled ground squirrel	<i>Callospermophilus saturatus</i>
golden-mantled ground squirrel	<i>Callospermophilus lateralis</i>
Washington ground squirrel	<i>Urocitellus washingtoni</i>
red squirrel	<i>Tamiasciurus hudsonicus</i>
Douglas squirrel	<i>Tamiasciurus douglasii</i>
northern flying squirrel	<i>Glaucomys sabrinus</i>
Humboldt's flying squirrel	<i>Glaucomys oregonensis</i>
wolverine	<i>Gulo gulo</i>
painted turtle	<i>Chrysemys picta</i>
California mountain kingsnake	<i>Lampropeltis zonata</i>

All birds not classified as game birds, predatory birds or endangered species, or designated as threatened species or sensitive species; all bats, except when found in or immediately adjacent to a dwelling or other occupied building; mammals of the order Cetacea, in-

cluding whales, porpoises, and mammals of the order *Pinnipedia* not otherwise classified as endangered species, or designated as threatened species or sensitive species. This section shall not apply to hair seals and sea lions which are threatening to damage or are damaging commercial fishing gear being utilized in a lawful manner or when said mammals are damaging or threatening to damage commercial fish being lawfully taken with commercial gear.

[Statutory Authority: RCW 77.04.012, 77.04.055, 77.12.047, and 77.08.030. WSR 23-06-035 (Order 22-13), § 220-200-100, filed 2/23/23, effective 3/26/23. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.020. WSR 21-20-010 (Order 21-196), § 220-200-100, filed 9/23/21, effective 10/24/21. Statutory Authority: RCW 77.04.012, 77.04.055, 77.12.047, and 77.12.240. WSR 21-13-032 (Order 21-60), § 220-200-100, filed 6/10/21, effective 7/11/21. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.020, and 77.12.047. WSR 18-17-153 (Order 18-207), § 220-200-100, filed 8/21/18, effective 9/21/18. Statutory Authority: RCW 77.04.012, 77.04.055, 77.12.020, and 77.12.047. WSR 17-20-030 (Order 17-254), § 220-200-100, filed 9/27/17, effective 10/28/17. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), recodified as § 220-200-100, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.04.012, 77.04.055, 77.12.020, and 77.12.047. WSR 17-02-084 (Order 17-02), § 232-12-011, filed 1/4/17, effective 2/4/17; WSR 15-10-021 (Order 14-95), § 232-12-011, filed 4/27/15, effective 5/28/15. Statutory Authority: RCW 77.12.047, 77.12.020. WSR 08-03-068 (Order 08-09), § 232-12-011, filed 1/14/08, effective 2/14/08; WSR 06-04-066 (Order 06-09), § 232-12-011, filed 1/30/06, effective 3/2/06. Statutory Authority: RCW 77.12.047, 77.12.655, 77.12.020. WSR 02-11-069 (Order 02-98), § 232-12-011, filed 5/10/02, effective 6/10/02. Statutory Authority: RCW 77.12.047. WSR 02-08-048 (Order 02-53), § 232-12-011, filed 3/29/02, effective 5/1/02; WSR 00-17-106 (Order 00-149), § 232-12-011, filed 8/16/00, effective 9/16/00. Statutory Authority: RCW 77.12.040, 77.12.010, 77.12.020, 77.12.770. WSR 00-10-001 (Order 00-47), § 232-12-011, filed 4/19/00, effective 5/20/00. Statutory Authority: RCW 77.12.040, 77.12.010, 77.12.020, 77.12.770, 77.12.780. WSR 00-04-017 (Order 00-05), § 232-12-011, filed 1/24/00, effective 2/24/00. Statutory Authority: RCW 77.12.020. WSR 98-23-013 (Order 98-232), § 232-12-011, filed 11/6/98, effective 12/7/98. Statutory Authority: RCW 77.12.040. WSR 98-10-021 (Order 98-71), § 232-12-011, filed 4/22/98, effective 5/23/98. Statutory Authority: RCW 77.12.040 and 75.08.080. WSR 98-06-031, § 232-12-011, filed 2/26/98, effective 5/1/98. Statutory Authority: RCW 77.12.020. WSR 97-18-019 (Order 97-167), § 232-12-011, filed 8/25/97, effective 9/25/97. Statutory Authority: RCW 77.12.040, 77.12.020, 77.12.030 and 77.32.220. WSR 97-12-048, § 232-12-011, filed 6/2/97, effective 7/3/97. Statutory Authority: RCW 77.12.020. WSR 93-21-027 (Order 615), § 232-12-011, filed 10/14/93, effective 11/14/93; WSR 90-11-065 (Order 441), § 232-12-011, filed 5/15/90, effective 6/15/90. Statutory Authority: RCW 77.12.040. WSR 89-11-061 (Order 392), § 232-12-011, filed 5/18/89; WSR 82-19-026 (Order 192), § 232-12-011, filed 9/9/82; WSR 81-22-002 (Order 174), § 232-12-011, filed 10/22/81; WSR 81-12-029 (Order 165), § 232-12-011, filed 6/1/81.]

**WSR 23-07-103**  
**PROPOSED RULES**  
**GAMBLING COMMISSION**  
[Filed March 20, 2023, 10:51 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-03-076 and 23-03-078.

Title of Rule and Other Identifying Information: License fees for charitable or nonprofit organizations, commercial stimulant organizations, sports wagering vendors, and other businesses; WAC 230-05-160, 230-05-165, and 230-05-170.

Hearing Location(s): On May 11, 2023, at 9:30 a.m., at Washington State Gambling Commission, 4565 7th Avenue S.E., Lacey, WA 98503. The meeting time and location is tentative. Visit our website at [www.wsgc.wa.gov](http://www.wsgc.wa.gov) approximately seven days prior to the meeting and select "About Us" and then "Public Meetings" to confirm the hearing date, location, start time, and agenda items.

Date of Intended Adoption: May 11, 2023.

Submit Written Comments to: Lisa C. McLean, P.O. Box 42400, Olympia, WA 98504-2400, email [rules.coordinator@wsgc.wa.gov](mailto:rules.coordinator@wsgc.wa.gov), [www.wsgc.wa.gov](http://www.wsgc.wa.gov), by May 8, 2023.

Assistance for Persons with Disabilities: Contact Julie Anderson, phone 360-486-3453, TTY 360-486-3637, email [julie.anderson@wsgc.wa.gov](mailto:julie.anderson@wsgc.wa.gov), [www.wsgc.wa.gov](http://www.wsgc.wa.gov), by May 8, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule amendments would make adjustments to the fees paid by charitable or nonprofit organizations, commercial stimulant organizations, and other businesses. The adjustments are necessary to ensure that the commission has sufficient revenue to cover its costs of licensing, regulation, and enforcement in the coming year, while also ensuring that fees related to tribal-only gambling activities are based on actual costs. In general, the proposed rule amendments increase the base fee 10 percent, increase the quarterly gross gambling receipt rate six percent, and raise the maximum annual license fee 60 percent. All other fees for organizations increase 10 percent. The exceptions are: (1) Electronic raffles (WAC 230-05-160); and (2) sports wagering vendors (WAC 230-05-170). For electronic raffles, the new base fee is proposed to be \$5,500, with a quarterly gross gambling receipt rate of 3.853 percent and a maximum annual license fee of \$51,200 and with the commission billing for actual expenses related to verifying and investigating electronic raffle operating and system requirements. For sports wagering vendors, the proposal is to reduce the annual license fees for major sports wagering vendors to \$30,000, for mid-level sports wagering vendors to \$5,000, and for ancillary sports wagering vendor to \$2,000.

Reasons Supporting Proposal: Although the gambling industry has largely recovered from a significant contraction due to the COVID-19 pandemic, the number of licensees has decreased in the last three years. This decline in licensees has caused revenues to flatten, while operating costs continue to increase in this inflationary period. Current license fees are not projected to be sufficient to cover the agency's costs of licensing, regulation, and enforcement beginning in fiscal year 2024, which is why the increases are necessary. In the case of the exceptions (electronic raffles and sports wagering vendor fees), these activities are new activities. The electronic raffle activity requires a level of staff effort unforeseen when the activity

was first launched, and the fee changes reflect the costs of these activities. After a year of operation of sports wagering, the commission has enhanced knowledge of the actual costs associated with licensing and regulation of the vendors and, therefore, is adjusting its fees to be proportional to the actual costs.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: RCW 9.46.070.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: After the proposed amended rules take effect, the new fees would apply to licensees as they renew their licenses.

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Lisa McLean, Legislative and Policy Manager, 4565 7th Avenue S.E., Lacey, WA 98503, 360-878-1903; Implementation: Tina Griffin, Director, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3546; and Enforcement: Gary Drumheller, Assistant Director, 4565 7th Avenue S.E., Lacey, WA 98503, 509-325-7904.

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 34.05.3228 (5)(b)(vi).

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

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

Scope of exemption for rule proposal:

Is fully exempt.

March 13, 2023

Lisa C. McLean

Legislative and Policy Manager

**OTS-4439.1**

AMENDATORY SECTION (Amending WSR 21-21-079, filed 10/18/21, effective 11/18/21)

**WAC 230-05-160 Charitable or nonprofit organization fees.** Bona fide charitable and nonprofit organizations must pay the following fees:

(1) Annual licenses:

License Type	Base License Fee	Gross Gambling Receipts Rate	Maximum Annual License Fee
Amusement games	<del>(\$65)</del> \$70 plus <del>(\$65)</del> \$70 per approved location	<del>((0.730%))</del> 0.774%	<del>(\$1,000)</del> \$1,600
Bingo	<del>(\$65)</del> \$70	<del>((0.460%))</del> 0.488%	<del>(\$11,000)</del> \$17,600

License Type	Base License Fee	Gross Gambling Receipts Rate	Maximum Annual License Fee
Card games - House-banked	<del>(\$10,000)</del> <u>\$11,000</u>	<del>(1.462%)</del> <u>1.550%</u>	<del>(\$40,000)</del> <u>\$64,000</u>
Card games - Nonhouse-banked	<del>(\$65)</del> <u>\$70</u>	<del>(0.430%)</del> <u>0.456%</u>	<del>(\$1,000)</del> <u>\$1,600</u>
Combination	<del>(\$125)</del> <u>\$140</u>	-	-
Fund-raising equipment distributor	<del>(\$270)</del> <u>\$295</u>	<del>(1.430%)</del> <u>1.516%</u>	<del>(\$700)</del> <u>\$1,120</u>
Punch board/pull-tabs	<del>(\$650)</del> <u>\$715</u>	<del>(1.430%)</del> <u>1.516%</u>	<del>(\$10,000)</del> <u>\$16,000</u>
Raffles	<del>(\$65)</del> <u>\$70</u>	<del>(3.380%)</del> <u>3.583%</u>	<del>(\$2,000)</del> <u>\$3,200</u>
Raffles - Credit Union	<del>(\$65)</del> <u>\$70</u>	<del>(3.380%)</del> <u>3.583%</u>	<del>(\$2,000)</del> <u>\$3,200</u>
Raffles - Enhanced <del>((raffles))</del>	<del>(\$5,000)</del> <u>\$5,500</u>	<del>(0.430%)</del> <u>0.456%</u>	<del>(\$32,000)</del> <u>\$51,200</u>
Raffles - Electronic* <del>((raffles))</del>	<del>(\$5,000)</del> <u>\$5,500</u>	<del>(0.430%)</del> <u>3.583%</u>	<del>(\$32,000)</del> <u>\$51,200</u>

\* Commission will bill for actual expenses related to verifying/investigating electronic raffle operating and system requirements.

(2) Event licenses or permits:

License Type	Base License Fee	Gross Gambling Receipts Rate	Maximum Annual License Fee
Fund-raising event	<del>(\$180)</del> <u>\$200</u>	<del>(3.130%)</del> <u>3.318%</u>	<del>(\$1,000)</del> <u>\$1,600</u>
Recreational gaming activity	<del>(\$65)</del> <u>\$70</u>	-	-
Special property bingo/ change of bingo premises	<del>(\$30)</del> <u>\$35</u>	-	-

(3) Change fees:

Change of:	Fee
Name	<del>(\$100)</del> <u>\$110</u>
Location	<del>(\$100)</del> <u>\$110</u>
Fund-raising event location, date, or time	<del>(\$50)</del> <u>\$55</u>

(4) Other fees:

Transaction	Fee
Add a new amusement game location	<del>(\$65)</del> <u>\$70</u>
Duplicate license	<del>(\$50)</del> <u>\$55</u>
Review, inspection, and/or evaluation of gambling equipment, supplies, services, games, or schemes	Deposit and cost reimbursement

[Statutory Authority: RCW 9.46.070. WSR 21-21-079, § 230-05-160, filed 10/18/21, effective 11/18/21; WSR 20-04-011, § 230-05-160, filed 1/24/20, effective 2/24/20; WSR 18-05-026, § 230-05-160, filed 2/9/18, effective 5/1/18.]

AMENDATORY SECTION (Amending WSR 18-05-026, filed 2/9/18, effective 5/1/18)

**WAC 230-05-165 Commercial stimulant organization fees.** All commercial stimulant organizations must pay the following fees:

(1) Annual licenses:

License Type	Base License Fee	Gross Gambling Receipts Rate	Maximum Annual License Fee
Card games - Nonhouse-banked	<del>(\$65)</del> <u>\$70</u>	<del>(1.462%)</del> <u>1.550%</u>	<del>(\$20,000)</del> <u>\$32,000</u>
Card games - House-banked	<del>(\$10,000)</del> <u>\$11,000</u>	<del>(1.462%)</del> <u>1.550%</u>	<del>(\$40,000)</del> <u>\$64,000</u>
Punch boards/pull-tabs	<del>(\$700)</del> <u>\$770</u>	<del>(1.430%)</del> <u>1.516%</u>	<del>(\$13,000)</del> <u>\$20,800</u>

(2) Change fees:

Change of:	Fee
Name	<del>(\$100)</del> <u>\$110</u>
Location	<del>(\$100)</del> <u>\$110</u>
Business classification (same owners)	<del>(\$100)</del> <u>\$110</u>
Corporate stock/limited liability company shares/units	<del>(\$100)</del> <u>\$110</u> , and cost reimbursement for <u>investigating the transaction and qualification of each substantial interest holder</u>
License transfers	<del>(\$100)</del> <u>\$110</u>

(3) Other fees:

Transaction	Fee
Duplicate License	<del>(\$50)</del> <u>\$55</u>

[Statutory Authority: RCW 9.46.070. WSR 18-05-026, § 230-05-165, filed 2/9/18, effective 5/1/18.]

AMENDATORY SECTION (Amending WSR 21-16-072, filed 7/30/21, effective 8/30/21)

**WAC 230-05-170 Fees for other businesses.** All other business organizations must pay the following fees:

(1) Annual licenses or permits:

License Type	Base License Fee	Gross Gambling Receipts Rate	Maximum Annual License Fee
Agricultural fair bingo (annual permit)	<del>(\$200)</del> <u>\$220</u>	-	-
Call centers for enhanced raffles	<del>(\$4,800)</del> <u>\$5,280</u>	-	-
Commercial amusement games	<del>(\$500)</del> <u>\$550</u> plus <del>(\$65)</del> <u>\$70</u> per approved location	<del>(1.130%)</del> <u>1.198%</u>	<del>(\$11,000)</del> <u>\$17,600</u>
Distributor	<del>(\$700)</del> <u>\$770</u>	<del>(1.430%)</del> <u>1.516%</u>	<del>(\$7,000)</del> <u>\$11,200</u>
Fund-raising event distributor	<del>(\$280)</del> <u>\$310</u>	<del>(1.430%)</del> <u>1.516%</u>	<del>(\$1,000)</del> <u>\$1,600</u>

License Type	Base License Fee	Gross Gambling Receipts Rate	Maximum Annual License Fee
Linked bingo prize providers	<del>(\$1,500)</del> <u>\$1,650</u>	<del>(.046%)</del> <u>0.048%</u>	<del>(\$20,000)</del> <u>\$32,000</u>
Manufacturer	<del>(\$1,500)</del> <u>\$1,650</u>	<del>(1.430%)</del> <u>1.516%</u>	<del>(\$25,000)</del> <u>\$40,000</u>
Manufacturer's special sales permit	<del>(\$250)</del> <u>\$275</u>	-	-
Punch board/pull-tab service business permit	<del>(\$250)</del> <u>\$275</u>	-	-
Gambling service supplier	<del>(\$300)</del> <u>\$330</u>	<del>(1.430%)</del> <u>1.516%</u>	<del>(\$7,000)</del> <u>\$11,200</u>
Major sports wagering vendor	<del>(\$65,000)</del> <u>\$30,000</u>	-	-
Mid-level sports wagering vendor	<del>(\$10,000)</del> <u>\$5,000</u>	-	-
Ancillary sports wagering vendor	<del>(\$5,000)</del> <u>\$2,000</u>	-	-

(2) Events or permits:

License or Permit Type	Base License Fee	Gross Gambling Receipts Rate	Maximum Annual License Fee
Recreational gaming activity	<del>(\$65)</del> <u>\$70</u>	-	-
Special property bingo	<del>(\$30)</del> <u>\$35</u>	-	-

(3) Change fees:

Change of:	Fee
Name	<del>(\$100)</del> <u>\$110</u>
Location	<del>(\$100)</del> <u>\$110</u>
Business classification (same owners)	<del>(\$100)</del> <u>\$110</u>
Corporate stock/limited liability company shares/units	<del>(\$100)</del> <u>\$110</u> , and cost reimbursement for <u>investigating the transaction and qualification of each substantial interest holder</u>
License transfers	<del>(\$100)</del> <u>\$110</u>

(4) Other fees:

Transaction	Fee
Add a new amusement game location	<del>(\$65)</del> <u>\$70</u>
Defective punch board/pull-tab cost recovery fees	Up to <del>(\$100)</del> <u>\$110</u>
Duplicate license	<del>(\$50)</del> <u>\$55</u>
Pre- and post-licensing investigations	Cost reimbursement
Review, inspection, and/or evaluation of gambling equipment, supplies, services, games, schemes, or group 12 amusement games	Deposit and cost reimbursement



[Statutory Authority: RCW 9.46.070, 9.46.075, 9.46.140, 9.46.153, 9.46.210. WSR 21-16-072, § 230-05-170, filed 7/30/21, effective 8/30/21. Statutory Authority: RCW 9.46.070. WSR 18-11-055, § 230-05-170, filed 5/10/18, effective 6/10/18.]

**WSR 23-07-104**  
**PROPOSED RULES**  
**GAMBLING COMMISSION**  
[Filed March 20, 2023, 11:00 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-12-005.

Title of Rule and Other Identifying Information: Purchase of chips using debit cards.

Hearing Location(s): On April 26, 2023, at 9:30 a.m., at Washington State Gambling Commission, 4565 7th Avenue S.E., Lacey, WA 98503. The meeting time and location will be posted approximately one week prior to the meeting on our website at [www.wsgc.wa.gov](http://www.wsgc.wa.gov). Select "The Commission" and then select "Public Meetings" to confirm the hearing date, location, start time, and agenda items.

Date of Intended Adoption: May 11, 2021 [2023].

Submit Written Comments to: Lisa C. McLean, P.O. Box 42400, Olympia, WA 98504-2400, email [rules.coordinator@wsgc.wa.gov](mailto:rules.coordinator@wsgc.wa.gov), [www.wsgc.wa.gov](http://www.wsgc.wa.gov), by May 8, 2023.

Assistance for Persons with Disabilities: Contact Julie Anderson, phone 360-486-3453, TTY 360-486-3637, email [julie.anderson@wsgc.wa.gov](mailto:julie.anderson@wsgc.wa.gov), [www.wsgc.wa.gov](http://www.wsgc.wa.gov), by May 8, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The gambling commission is considering amending its rules to allow for the purchase of chips using debit cards. In addition to changing the rule related to the process for selling and redeeming chips, rule amendments are necessary to define "debit card," expand the definition of "gambling equipment," set limits on withdrawals, and generally change the way that accounting for table inventory and conducting and concluding the count are done and recorded to ensure internal controls.

Reasons Supporting Proposal: A player is [not] able to purchase chips using a debit card without leaving the table as the rule is now; only cash is allowed to purchase chips at gaming tables. The change may allow for more control over cash withdrawals. It will also mean less cash will be transferred between patrons and operators and there will be a lesser chance of operators accepting counterfeit bills.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: RCW 9.46.070.

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

Name of Proponent: Jan Espejo, Light and Wonder, Las Vegas, NV, public.

Name of Agency Personnel Responsible for Drafting: Lisa C. McLean, Legislative and Policy Manager, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3454; Implementation: Tina Griffin, Director, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3546; and Enforcement: Gary Drumheller, Assistant Director, 4565 7th Avenue S.E., Lacey, WA 98503, 509-325-7904.

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

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required per RCW 34.05.328 (5) (a) (i).

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

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

Scope of exemption for rule proposal:  
Is fully exempt.

March 20, 2023  
Lisa C. McLean  
Legislative and Policy Manager

## OTS-4381.1

AMENDATORY SECTION (Amending WSR 21-21-079, filed 10/18/21, effective 11/18/21)

**WAC 230-03-200 Defining "gambling equipment."** "Gambling equipment" means any device, gambling-related software, expendable supply, or any other paraphernalia used as a part of gambling or to make gambling possible. "Gambling equipment" includes, but is not limited to:

- (1) Amusement games;
- (2) Punch boards and pull-tabs;
- (3) Devices for dispensing pull-tabs;
- (4) Electronic devices for conducting, facilitating, or accounting for the results of gambling activities including, but not limited to:
  - (a) Components of a tribal lottery system;
  - (b) Electronic devices for reading and displaying outcomes of gambling activities; and
  - (c) Accounting systems that are a part of, or directly connected to, a gambling system including, but not limited to:
    - (i) Bet totalizers; or
    - (ii) Progressive jackpot meters; or
    - (iii) Keno systems;
  - (5) Bingo equipment;
  - (6) Electronic raffle systems;
  - (7) Devices and supplies used to conduct card games, fund-raising events, recreational gaming activities, or Class III gaming activities, as defined in the Indian Gaming Regulatory Act at U.S.C. 25 chapter 29 § 2703 and in tribal-state compacts including, but not limited to:
    - (a) Gambling chips;
    - (b) Cards;
    - (c) Dice;
    - (d) Card shuffling devices;
    - (e) Graphical game layouts for table games;
    - (f) Ace finders or no-peek devices;
    - (g) Roulette wheels;
    - (h) Keno equipment; and
    - (i) Tables manufactured exclusively for gambling purposes;
  - (8) Debit card reading devices used at gambling tables to sell chips to players.

[Statutory Authority: RCW 9.46.070. WSR 21-21-079, § 230-03-200, filed 10/18/21, effective 11/18/21; WSR 06-07-157 (Order 457), § 230-03-200, filed 3/22/06, effective 1/1/08.]

OTS-4370.1

NEW SECTION

**WAC 230-06-006 Defining debit card.** "Debit card," as used in this title, means a physical payment card linked to and issued by a bank, mutual savings bank, or credit union regulated by the department of financial institutions or any federally regulated commercial institution, for the purposes of making payments for purchases or services electronically in place of cash. Debit cards must be linked to checking or savings accounts with funds on deposit and available to be withdrawn.

[]

OTS-4382.1

AMENDATORY SECTION (Amending WSR 07-21-116, filed 10/22/07, effective 1/1/08)

**WAC 230-06-035 Credit, loans, or gifts prohibited.** (1) Licensees, employees, or members must not offer or give credit, loans, or gifts to any person playing in an authorized gambling activity or which makes it possible for any person to play in an authorized gambling activity.

(2) Gifts are items licensees give to their customers. Licensees must not connect these gifts to gambling activities we regulate unless the gifts are:

- (a) Gambling promotions; or
- (b) Transportation services to and from gambling activities; or
- (c) Free or discounted food, drink, or merchandise which:
  - (i) Costs less than (~~five hundred dollars~~) \$500 per individual item; and
  - (ii) Must not be traded back to you for cash; and
  - (iii) Must not give a chance to participate further in an authorized gambling activity.

(3) You must collect the price required to participate in the gambling activity in full before allowing someone to participate. (~~Licensees must collect~~) Authorized payment methods include cash, check, gift certificate, gift card, or (~~electronic point-of-sale bank transfer~~) debit card.

(4) If the price paid for the opportunity to play a punch board or pull-tab series is (~~ten dollars~~) \$10 or less, licensees may collect the price immediately after the play is completed.

(5) If a charitable or nonprofit organization has a regular billing system for all of the activities of its members, it may use its billing system in connection with the playing of any licensed activities as long as the organization limits play to full and active members of its organization.

(6) Charitable or nonprofit organizations may allow credit cards, issued by a state regulated or federally regulated financial institution, for payment to participate in raffles.

[Statutory Authority: RCW 9.46.070. WSR 07-21-116 (Order 617), § 230-06-035, filed 10/22/07, effective 1/1/08; WSR 06-17-132 (Order 601), § 230-06-035, filed 8/22/06, effective 1/1/08.]

### OTS-4383.1

AMENDATORY SECTION (Amending WSR 07-10-034, filed 4/24/07, effective 1/1/08)

**WAC 230-15-150 Selling and redeeming chips.** (~~((1))~~) Card game licensees must:

- ~~((a))~~ (1) Sell chips and redeem chips at the same value; and
- ~~((b))~~ (2) Sell chips for cash at gambling tables. Provided that house-banked card game licensees may allow players to use debit cards to purchase chips at house-banked card game tables in accordance with WAC 230-15-506 and 230-15-507; and
- ~~((c))~~ (3) Keep all funds from selling chips separate and apart from all other money received; and
- ~~((d))~~ (4) Not extend credit to a person purchasing chips, including to card room employees playing cards (~~;~~ and
- ~~(2) Licensees may accept checks, if the checks meet the requirements of WAC 230-06-005. They must:~~
  - ~~(a) Deposit any check retained after the close of business no later than the second banking day after the close of business. Checks deposited to an armored car service no later than the second banking day after the close of business meet this requirement; and~~
  - ~~(b) Count each transaction for the purchase of chips as a separate transaction. (Example: They must not allow a player's check to be altered after it is exchanged for chips.)~~

[Statutory Authority: RCW 9.46.070. WSR 07-10-034 (Order 611), § 230-15-150, filed 4/24/07, effective 1/1/08.]

AMENDATORY SECTION (Amending WSR 07-09-033, filed 4/10/07, effective 1/1/08)

**WAC 230-15-280 Surveillance requirements for house-banked card games.** House-banked card game licensees must use a closed circuit television system (CCTV) to closely monitor and record all gambling activities and areas, including, at least:

- (1) Each table, including:
  - (a) Cards; and
  - (b) Wagers; and
  - (c) Chip tray; and
  - (d) Drop box openings; and
  - (e) Table number; and
  - (f) Card shoe; and
  - (g) Shuffling devices; and
  - (h) Players; and
  - (i) Dealers; and

- (j) Debit card reading devices at gambling tables; and  
 (2) The designated gambling areas; and  
 (3) The cashier's cage, including:  
 (a) Outside entrance; and  
 (b) Fill/credit dispenser; and  
 (c) Customer transactions; and  
 (d) Cash and chip drawers; and  
 (e) Vault/safe; and  
 (f) Storage cabinets; and  
 (g) Fill or credit transactions; and  
 (h) Floor; and  
 (4) The count room, including:  
 (a) The audio; and  
 (b) Count table; and  
 (c) Floor; and  
 (d) Counting devices; and  
 (e) Trolley; and  
 (f) Drop boxes; and  
 (g) Storage shelves/cabinets; and  
 (h) Entrance and exit; and  
 (5) The movement of cash, gambling chips, and drop boxes; and  
 (6) Entrances and exits to the card room.

[Statutory Authority: RCW 9.46.070. WSR 07-09-033 (Order 608), § 230-15-280, filed 4/10/07, effective 1/1/08.]

AMENDATORY SECTION (Amending WSR 07-09-033, filed 4/10/07, effective 1/1/08)

**WAC 230-15-500 Accounting for table inventory.** (1) House-banked card game licensees must establish procedures to ensure proper accounting for chips and coins stored at gambling tables, known as the "table inventory."

(2) Licensees must not add or remove chips or coins from the table inventory except:

(a) In exchange for cash from players; or

(b) In exchange for debit card transactions from players according to WAC 230-15-506; or

(c) To pay winning wagers and collect losing wagers made at the gambling table; or

~~((e))~~ (d) In exchange for chips received from a player having an equal total face value (known as "coloring up" or "coloring down"); or

~~((d))~~ (e) In compliance with fill and credit procedures.

[Statutory Authority: RCW 9.46.070. WSR 07-09-033 (Order 608), § 230-15-500, filed 4/10/07, effective 1/1/08.]

AMENDATORY SECTION (Amending WSR 14-11-021, filed 5/9/14, effective 7/1/14)

**WAC 230-15-505 Selling gambling chips to players.** House-banked card game licensees must accurately account for all chips, debit card

transaction receipts, and cash when they sell chips to players. Licensees must sell chips only at the gambling table.

[Statutory Authority: RCW 9.46.070 and 9.46.0282. WSR 14-11-021 (Order 699), § 230-15-505, filed 5/9/14, effective 7/1/14. Statutory Authority: RCW 9.46.070. WSR 07-09-033 (Order 608), § 230-15-505, filed 4/10/07, effective 1/1/08.]

AMENDATORY SECTION (Amending WSR 07-09-033, filed 4/10/07, effective 1/1/08)

**WAC 230-15-585 Using drop boxes.** (1) House-banked card game licensees must use a drop box to collect all cash, chips, coins, debit card transaction receipts, requests for fill, fill slips, requests for credit, credit slips, and table inventory forms.

(2) The dealer or the floor supervisor must deposit these items in the drop box.

[Statutory Authority: RCW 9.46.070. WSR 07-09-033 (Order 608), § 230-15-585, filed 4/10/07, effective 1/1/08.]

AMENDATORY SECTION (Amending WSR 18-23-074, filed 11/19/18, effective 1/1/19)

**WAC 230-15-615 Conducting the count.** (1) All house-banked card room licensees must have a three person count team except as set forth in subsections (2) and (3) of this section. The three person count team must conduct the count as follows:

(a) The contents of drop boxes must not be combined before the count team separately counts and records the contents of each box; and

(b) As each drop box is placed on the count table, a count team member must announce the game, table number, and shift, if applicable, loudly enough to be heard by all persons present and to be recorded by the audio recording equipment; and

(c) A count team member must empty the contents onto the count table; and

(d) Immediately after the contents are emptied onto the count table, a count team member must display the inside of the drop box to the closed circuit television camera, and show it to at least one other count team member to confirm that all contents of the drop box have been removed. A count team member must then lock the drop box and place it in the drop box storage area; and

(e) Count team member(s) must separate the contents of each drop box into separate stacks on the count table by denominations of coin, chips, and (~~currency~~) cash and by type of form, record, or document; and

(f) At least two count team members must count, either manually or mechanically, each denomination of coin, chips, (~~and currency~~) cash, and debit card transaction receipts separately and independently. Count team members must place individual bills and coins of the same denomination and debit card transaction receipts on the count table in full view of the closed circuit television cameras, and at

least one other count team member must observe and confirm the accuracy of the count orally or in writing; and

(g) As the contents of each drop box are counted, a member of the count team must record the total amount of coin, chips, ~~((and currency))~~ cash, and debit card transaction receipts counted (the drop) on the master games report; and

(h) If a cage cashier has recorded the opener, closer, fill slips, and credit slips on the master game report before the count, a count team member must compare the series numbers and totals recorded on the master game report to the fill slips, credit slips, and table inventory slips removed from the drop boxes, confirm the accuracy of the totals, and must record, by game and shift, the totals we require on the master game report. Otherwise, the count team must complete all required information on the master game report; and

(i) The accounting department may complete the win/loss portions of the master game report independently from the count team if this is properly documented in the approved internal controls.

(2) The two person count team for licensees with card game gross gambling receipts of less than \$5 million in their previous fiscal year must conduct the count as follows:

(a) The contents of drop boxes must not be combined before the count team separately counts and records the contents of each box; and

(b) As each drop box is placed on the count table, a count team member must announce the game, table number, and shift, if applicable, loudly enough to be heard by all persons present and to be recorded by the audio recording equipment; and

(c) A count team member must empty the contents onto the count table; and

(d) Immediately after the contents are emptied onto the count table, a count team member must display the inside of the drop box to the closed circuit television camera, and show it to at least one other count team member to confirm that all contents of the drop box have been removed. A count team member must then lock the drop box and place it in the drop box storage area; and

(e) A count team member must separate the contents of each drop box into separate stacks on the count table by denominations of coin, chips, and ~~((currency))~~ cash and by type of form, record, or document; and

(f) One count team member must count, either manually or mechanically, each denomination of coin, chips, ~~((and currency))~~ cash, and debit card transaction receipts separately and independently. The count team member must place individual bills and coins of the same denomination and debit card transaction receipts on the count table in full view of the closed circuit television cameras, and the other count team member must observe and confirm the accuracy of the count orally or in writing; and

(g) As the contents of each drop box are counted, a member of the count team must record the total amount of coin, chips, ~~((and currency))~~ cash, and debit card transaction receipts counted (the drop) on the master games report; and

(h) As the count is occurring, a surveillance employee must record in the surveillance log the total chip ~~((and currency count of))~~ cash, and debit card transaction receipts counted for each drop box and the announcement by the count team of the combined dollar count of all drop boxes; and

(i) If a cage cashier has recorded the opener, closer, fill slips, and credit slips on the master game report before the count, a



count team member must compare the series numbers and totals recorded on the master game report to the fill slips, credit slips, and table inventory slips removed from the drop boxes, confirm the accuracy of the totals, and must record, by game and shift, the totals we require on the master game report. Otherwise, the count team must complete all required information on the master game report; and

(j) The accounting department may complete the win/loss portions of the master game report independently from the count team if this is properly documented in the approved internal controls.

(3) The two person count team for licensees with card game gross gambling receipts between \$5 million and \$15 million in their previous fiscal year and use a currency counter must conduct the count as follows:

(a) The currency counter to be used must meet the following requirements:

(i) Automatically provides two separate counts of the funds at different stages in the count process. If the separate counts are not in agreement during the count process and the discrepancy cannot be resolved immediately, the count must be suspended until a third count team member is present to manually complete the count as set forth in subsection (1) of this section until the currency counter is fixed; and

(ii) Displays the total bill count and total dollar amount for each drop box on a screen, which must be recorded by surveillance.

(b) Immediately prior to the count, the count team must verify the accuracy of the currency counter with previously counted currency for each denomination actually counted by the currency counter to ensure the counter is functioning properly. The test results must be recorded on the table games count documentation and signed by the two count team members performing the test; and

(c) The currency counter's display showing the total bill count and total dollar amount of each drop box must be recorded by surveillance during the count; and

(d) The contents of drop boxes must not be combined before the count team separately counts and records the contents of each box; and

(e) As each drop box is placed on the count table, a count team member must announce the game, table number, and shift, if applicable, loudly enough to be heard by all persons present and be recorded by the audio recording equipment; and

(f) A count team member must empty the contents onto the count table; and

(g) Immediately after the contents are emptied onto the count table, a count team member must display the inside of the drop box to the closed circuit television camera, and show it to the other count team member to confirm that all contents of the drop box have been removed. A count team member must then lock the drop box and place it in the drop box storage area; and

(h) Count team member(s) must combine all (~~currency~~) cash into one stack and separate the contents of each drop box into separate stacks on the count table by denomination of coin and chips, by type of form, record, or document; and

(i) Count team members must place all of the (~~currency~~) cash from a drop box into the currency counter which will perform an aggregate count by denomination of all of the currency collected from the drop box; and

(j) One count team member must count each denomination of coin (~~and~~), chips, and debit card transaction receipts separately and in-

dependently by placing coins and chips of the same denomination on the count table in full view of the closed circuit television cameras, and the other count team member must observe and confirm the accuracy of the count orally or in writing; and

(k) As the contents of each drop box are counted, a member of the count team must record the total amount of coin, chips, (~~and currency~~) cash, and debit card transaction receipts counted (the drop) on the master games report; and

(l) As the count is occurring, a surveillance employee must record in the surveillance log the currency counter accuracy information in (b) of this subsection, currency verification amount, debit card transaction receipt amount, total bill and dollar count of each drop box and the announcement by the count team of the combined dollar count of all drop boxes; and

(m) If a cage cashier has recorded the opener, closer, fill slips, and credit slips on the master game report before the count, a count team member must compare the series numbers and totals recorded on the master game report to the fill slips, credit slips, and table inventory slips removed from the drop boxes, confirm the accuracy of the totals, and must record, by game and shift, the totals we require on the master game report. Otherwise, the count team must complete all required information on the master game report; and

(n) The accounting department may complete the win/loss portions of the master game report independently from the count team if this is properly documented in the approved internal controls.

[Statutory Authority: RCW 9.46.070. WSR 18-23-074, § 230-15-615, filed 11/19/18, effective 1/1/19; WSR 07-09-033 (Order 608), § 230-15-615, filed 4/10/07, effective 1/1/08.]

AMENDATORY SECTION (Amending WSR 14-11-021, filed 5/9/14, effective 7/1/14)

**WAC 230-15-620 Concluding the count.** (1) After the count team finishes their count, the cage cashier or accounting department employee must verify the contents of the drop boxes.

(2) In the presence of the count team and before looking at the master game report, the verifier must recount the cash, coin, chips, and debit card transaction receipts either manually or mechanically.

(3) The verifier must sign the master game report verifying that the cash (~~count is~~) and debit card transaction receipt counts are accurate.

(4) Each count team member must sign the report attesting to the accuracy of the information recorded.

(5) After the report is signed, the master game report must be taken directly to the accounting department, along with the debit card transaction receipts, requests for fills, the fill slips, the requests for credit, the credit slips, and the table inventory slips removed from drop boxes. The cage cashiers must not be allowed access to any of these records.

[Statutory Authority: RCW 9.46.070 and 9.46.0282. WSR 14-11-021 (Order 699), § 230-15-620, filed 5/9/14, effective 7/1/14. Statutory Authority: RCW 9.46.070. WSR 07-09-033 (Order 608), § 230-15-620, filed 4/10/07, effective 1/1/08.]

OTS-4371.2

NEW SECTION

**WAC 230-15-151 Accepting checks in exchange for chips at non-house-banked card games.** Nonhouse-banked card game licensees may accept checks for the purchase of chips if the checks meet the requirements of WAC 230-06-005. Licensees must:

(1) Deposit any check retained after the close of business no later than the second banking day after the close of business. Checks deposited to an armored car service no later than the second banking day after the close of business meet this requirement; and

(2) Count each transaction for the purchase of chips as a separate transaction. Licensees must not allow a player's check to be altered after it is exchanged for chips.

[]

NEW SECTION

**WAC 230-15-506 Using debit cards to purchase chips on house-banked card games.** House-banked card game licensees may allow a player to use a debit card to purchase chips at house-banked card games under the following conditions:

(1) The licensee must use approved debit card reading devices to process the debit card transactions; and

(2) The debit card transaction must be initiated at an approved gambling table; and

(3) A supervisor must be present at the gambling table during the debit card transaction; and

(4) The dealer or supervisor must examine the player's identification to confirm the player's identity. The dealer or supervisor must verify that the name on the identification matches the name on the debit card; and

(5) Verify the player is not on the state-wide self-exclusion list; and

(6) Not execute a debit card transaction upon notification from the player's financial institution that the available funds in the player's account associated with the debit card are less than the amount requested by the player; and

(7) A single debit card transaction is limited to \$500 or less. Furthermore, aggregated debit card transactions at gambling tables for a single player cannot exceed \$2,500 during a 24-hour period; and

(8) The licensee must prominently post all fees charged by the gaming establishment or system provider associated with the transfer at the gambling table or on the approved debit card reading device; and

(9) The debit card transaction receipt must be deposited into the drop box attached to the gambling table; and

(10) Licensees are required to post at all tables in which the debit transaction may be completed signage with the problem gambling helpline and how to register for the state-wide self-exclusion program at the licensee's establishment. The signage must be in at least the same font as all other signage on the table; and

(11) Conspicuously display on or at the gaming device or game, and on a printed item given to the patron, notice that funds may be approved for transfer from sources other than the account associated with the patron's debit instrument, as determined by the patron's financial institution; and

(12) Licensees must submit internal controls to us in the format we require.

[]

#### NEW SECTION

**WAC 230-15-507 Debit card reading devices used on house-banked card games.** House-banked card game licensees may use approved debit card reading devices on house-banked card games to sell chips to players in accordance with WAC 230-15-506. Licensees must use debit card reading devices that:

(1) Are approved and documented in internal controls; and

(2) Execute all transactions in accordance with all applicable state and federal electronic funds transfer requirements including, receipting and fee disclosure requirements; and

(3) Provide real-time accounting reports for each debit card reading device to include patron transaction history by date and time; and

(4) Do not interfere with gaming system interfaces and device operations; and

(5) Do not accept signature debit, credit, and EBT cards; and

(6) Are not used for the purchase of live gaming vouchers that can be used for other authorized gambling activities at the card room; and

(7) Do not execute a transaction for funds that exceed the available amount of funds from the linked bank account; and

(8) Provide a daily monetary transfer limit per patron that does not exceed the limits in WAC 230-15-506. A fee charged by the gaming establishment or system provider associated with a transfer does not contribute to the transfer limit; and

(9) Employ data encryption that meets or exceeds current industry standards for all data that is transmitted.

[]

## WSR 23-07-106

## PROPOSED RULES

## BELLEVUE COLLEGE

[Filed March 20, 2023, 11:13 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-04-025.

Title of Rule and Other Identifying Information: WAC 132H-121-020 general conduct, hazing rules.

Hearing Location(s): On April 27, 2023, at 11 a.m. - 12 p.m., on-line via Zoom at <https://bellevuecollege.zoom.us/j/88093302814>; dial by your location +1 253 215 8782, Meeting ID 880 9330 2814.

Date of Intended Adoption: June 14, 2023.

Submit Written Comments to: Nadescha Bunje, Executive Assistant to the Vice President of Administrative Services, 3000 Landerholm Circle S.E., B125, Bellevue, WA 98007, email [nadescha.bunje@bellevuecollege.edu](mailto:nadescha.bunje@bellevuecollege.edu), by April 27, 2023.

Assistance for Persons with Disabilities: Contact Nadescha Bunje, Executive Assistant to the Vice President of Administrative Services, phone 425-564-5669, TTY 425-564-6189, email [nadescha.bunje@bellevuecollege.edu](mailto:nadescha.bunje@bellevuecollege.edu), by April 20, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Bellevue College plans to repeal WAC 132H-121-020 Hazing rules.

Reasons Supporting Proposal: This change is proposed as updates regarding hazing have been made to chapter 132H-126 WAC, Student conduct code of Bellevue College, to be in compliance with Sam's Law (HB [2SHB] 1751).

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140.

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

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: Bellevue College, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Megan Kaptik, Manager of Student Conduct, 3000 Landerholm Circle S.E., U112, Bellevue, WA 98007, 425-564-2757.

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

A cost-benefit analysis is not required under RCW 34.05.328. Bellevue College is not one of the enumerated agencies required to conduct cost-benefit analyses under RCW 34.05.328(5).

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

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

March 16, 2023  
Loreen M. Keller  
Associate Director  
Policies and Special Projects

OTS-4452.1

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 132H-121-020      Hazing rules.

## WSR 23-07-107

## PROPOSED RULES

## BELLEVUE COLLEGE

[Filed March 20, 2023, 11:17 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-03-120.

Title of Rule and Other Identifying Information: Chapter 132H-136 WAC, Library media center.

Hearing Location(s): On Tuesday, April 25, 2023, 2 - 3 p.m. PDT, Zoom meeting [https://bellevuecollege.zoom.us/j/88308850361?](https://bellevuecollege.zoom.us/j/88308850361?pwd=TGirdG1IOUg3a21MZFd5d25yRkc0Zz09)pwd=TGirdG1IOUg3a21MZFd5d25yRkc0Zz09, Meeting ID 883 0885 0361, Pass-code 394085.

Date of Intended Adoption: June 14, 2023.

Submit Written Comments to: Nicole Longpre, Acting Associate Dean of Library, 3000 Landerholm Circle S.E., Bellevue, WA 98007, email [nlongpre@bellevuecollege.edu](mailto:nlongpre@bellevuecollege.edu), by April 27, 2023.

Assistance for Persons with Disabilities: Contact Nicole Longpre, acting associate dean of library, phone 425-564-3071, email [nlongpre@bellevuecollege.edu](mailto:nlongpre@bellevuecollege.edu), by April 20, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Bellevue College plans to update library media center (LMC) policy 3550 and chapter 132H-136 WAC to remove holds on transcripts due to debt.

Reasons Supporting Proposal: Bellevue College proposes updates to the current LMC policy 3550 regarding fines. Changes are proposed to comply with SSHB [2SHB] 2513 (this bill prohibits colleges from withholding a student's official transcript for debt collection), to remove and/or update outdated information, and to clarify rules.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140.

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

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: Bellevue College, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Nicole Longpre, Acting Associate Dean of Library, 3000 Landerholm Circle S.E., Library Media Center, Bellevue, WA 98007, 425-564-3071.

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

A cost-benefit analysis is not required under RCW 34.05.328. Bellevue College is not one of the enumerated agencies required to conduct cost-benefit analyses under RCW 34.05.328(5).

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

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

Scope of exemption for rule proposal:

Is fully exempt.

March 20, 2023  
Loreen M. Keller  
Associate Director

OTS-4451.1

**Chapter 132H-136 WAC  
LIBRARY MEDIA CENTER ((CODE))**

AMENDATORY SECTION (Amending WSR 05-17-013, filed 8/4/05, effective 9/4/05)

**WAC 132H-136-010 Title.** WAC 132H-136-010 through ((132H-136-040)) 132H-136-030 will be known as the library media center policy of Community College District VIII.

[Statutory Authority: RCW 28B.50.140. WSR 05-17-013, § 132H-136-010, filed 8/4/05, effective 9/4/05; Order 13, § 132H-136-010, filed 3/9/73.]

AMENDATORY SECTION (Amending WSR 05-17-013, filed 8/4/05, effective 9/4/05)

**WAC 132H-136-015 Purpose.** The library media center (LMC) provides ((the)) information resources ((needed by students, faculty, staff and the community to encourage learning, innovation, intellectual integrity and civic responsibility. The LMC resources and services support the college's mission to provide accessible services and meet the changing educational needs of our diverse community)) to accomplish Bellevue College's mission and goals by being student-centered and committed to teaching excellence. In order to advance the lifelong educational development of students, the LMC continually strengthens its collections and services in breadth and depth, supporting increased curricular offerings and varied instructional modes of delivery. This policy applies to all ((BCC)) BC employees, students, and library users who use any of the ((library media center)) LMC resources and facilities.

[Statutory Authority: RCW 28B.50.140. WSR 05-17-013, § 132H-136-015, filed 8/4/05, effective 9/4/05.]

AMENDATORY SECTION (Amending WSR 05-17-013, filed 8/4/05, effective 9/4/05)

**WAC 132H-136-025 Services.** The ((library media center)) LMC maintains a website ((and publishes a brochure)) summarizing information about the LMC, including:

- Hours of service((τ)):



- ~~Circulation of collections ((including print and nonprint materials), and));~~
- ~~Services and resources available ((including media, equipment, and facilities)).~~

[Statutory Authority: RCW 28B.50.140. WSR 05-17-013, § 132H-136-025, filed 8/4/05, effective 9/4/05.]

AMENDATORY SECTION (Amending WSR 05-17-013, filed 8/4/05, effective 9/4/05)

**WAC 132H-136-030 Fines.** ~~((Charges are levied for overdue, lost, damaged materials and equipment.~~

~~(1) Replacement charges will include cost of replacement plus a processing fee. Replacement costs for items that are no longer in print or not available for purchase will be based upon the cost of a similar item plus a processing fee.~~

~~(2) Charges for overdue materials will be according to a fee schedule that is posted in the circulation desk area and the LMC website and brochure. Students may appeal charges by following the library fines appeal procedure as detailed in the LMC manual of policies and procedures, a copy of which is available in the reserve collection.~~

~~(3) When materials are not returned, or charges not paid, holds are placed on the transcript records of those involved only as a sanction to cause the ultimate return of library media material in order to protect the integrity of the library collection.~~

~~(4) In extreme cases, when expensive or valuable items are involved, the provisions of RCW 27.12.340 may be invoked.)~~ Fines are not charged for overdue materials, except for reserve materials and equipment. A fine schedule is posted at the circulation desk area and the LMC website. Charges are levied for lost or damaged materials and equipment. Replacement charges for different types of items vary. Students may appeal charges by following the library's appeal procedure as detailed in the LMC manual of guidelines and procedures, a copy of which is available in the reserve collection.

[Statutory Authority: RCW 28B.50.140. WSR 05-17-013, § 132H-136-030, filed 8/4/05, effective 9/4/05. Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140. WSR 92-19-052, § 132H-136-030, filed 9/10/92, effective 10/11/92; Order 35, § 132H-136-030, filed 10/10/75; Order 13, § 132H-136-030, filed 3/9/73.]

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 132H-136-020      Loans.

## WSR 23-07-110

## PROPOSED RULES

## WHATCOM COMMUNITY COLLEGE

[Filed March 20, 2023, 1:39 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-03-103.

Title of Rule and Other Identifying Information: Chapter 132U-126

WAC.

Hearing Location(s): On April 26, 2023, at 3 - 4 p.m., at 237 West Kellogg Road, Laidlaw 143, Bellingham, WA 98226.

Date of Intended Adoption: May 10, 2023.

Submit Written Comments to: Lexus Criswell, 237 West Kellogg Road, Laidlaw 208, Bellingham, WA 98226, email lcriswell@whatcom.edu, fax 360-383-4000, by April 24, 2023.

Assistance for Persons with Disabilities: Contact Kerri Holferty, phone 360-383-3043, fax 360-383-4000, TTY 360-225-7182, email kholferty@whatcom.edu, by April 19, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The current chapter 132U-126 WAC does not meet new state legislation regarding policy and definitions of hazing.

Reasons Supporting Proposal: The current WAC does not meet state guidelines for definitions, policy, and sanctions of hazing.

Statutory Authority for Adoption: RCW 28B.50.140(13); 20 U.S.C. § 1092(f).

Statute Being Implemented: SSHB [2SHB] 1751.

Rule is necessary because of state court decision, [no further information supplied by agency].

Name of Proponent: Whatcom Community College, governmental.

Name of Agency Personnel Responsible for Drafting: Lexus Criswell, LDC 208, 360-383-3077; Implementation and Enforcement: Terri Thayer, CDR 135, 360-383-3073.

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 change is the result of a Washington state statute exempt under RCW 34.05.328 (5) [(b)](v).

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: SSHB [2SHB] 1751, "The new law updates the definition of hazing and requires institutions of higher education to implement antihazing programming for employees and students."

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

Scope of exemption for rule proposal:

Is fully exempt.

March 20, 2023

L. Criswell

Administrative Assistant to the Vice President  
for Student Services

## OTS-4400.1

AMENDATORY SECTION (Amending WSR 18-17-025, filed 8/6/18, effective 9/6/18)

**WAC 132U-126-005 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) To off-campus conduct that, in the judgment of the college, adversely affects the college community or the pursuit of its objectives.

(2) Jurisdiction extends to, but is not limited to, locations in which students or student groups 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, study abroad, or any other college-sanctioned social or club activities and college sanctioned housing.

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

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

[Statutory Authority: Chapter 28B.50 RCW. WSR 18-17-025, § 132U-126-005, filed 8/6/18, effective 9/6/18.]

AMENDATORY SECTION (Amending WSR 21-18-100, filed 8/31/21, effective 10/1/21)

**WAC 132U-126-010 Definitions.** The following definitions shall apply for the purpose of this student conduct code:

(1) "Business day" any day, Monday through Friday (excluding holidays), during which college offices are open.

(2) "College community" shall include any person or entity with a connection or relationship with pursuit of the college mission.

(3) "College premises" shall include the college campus and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, leased, or controlled by the college.

(4) "Complainant" is an employee(s), applicant(s), student(s), or visitor(s) of Whatcom Community College who alleges that they have been subjected to behavior that is a violation of this policy.

(5) "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 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.

(6) "Conduct review officer" is the vice president for student services or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary cases in accordance with the procedures of this code.

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

(8) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of (~~ten~~) 10 business days or an expulsion are heard by the student conduct appeals board. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

(9) "Filing" is the process by which a document is received by a college official responsible for facilitating a disciplinary process. Documents required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official. Unless otherwise provided, filing shall be accomplished by:

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

(b) Sending the document by first class mail to the specified college official's office; or

(c) Emailing the document to specified college official's college(~~s~~) email address.

(10) As used in RCW 28B.10.901 and 28B.10.902, "hazing" includes any act committed as part of a person's recruitment, initiation, pledging, and 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 similar contests or competitions.

(11) "Guest" is any person who is not a member of the college community, who is on institutional property or attending an institutional function that the invitation of and/or hosted by a member of the college community.

(~~(11)~~) (12) "Preponderance of evidence" is defined as "more likely than not" and is the standard of responsibility that is used when determining whether a violation of the student rights and responsibilities has occurred.

~~((12))~~ (13) "President" is the president of the college. The president is authorized to delegate or reassign any and all of their responsibilities as may be reasonably necessary.

~~((13))~~ (14) "Reporting party" is a student or another member of the college community who reports an alleged violation of this code that has been committed.

~~((14))~~ (15) "Respondent" is the student against whom disciplinary action is initiated.

~~((15))~~ (16) "Service" is the process by which a document is officially delivered to a party. Service is deemed complete upon the hand delivery of the document, or upon the date the document is emailed or post marked by the mail service. Unless otherwise provided, service upon a person shall be accomplished by:

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

(b) Sending the document by certified or first class mail to the person's last known address; or

(c) Emailing the document to the party's official college email address.

~~((16))~~ (17) "Student" includes all persons taking courses at or through the college, whether on a full-time or a 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 admissions are considered "students."

~~((17))~~ (18) "Student conduct code" or "code" is the student rights and responsibilities policy in this chapter.

~~((18))~~ (19) "Student conduct officer" is a college administrator designated by the president or vice president for student services to be responsible for implementing and enforcing the student conduct code.

(20) "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, members of a class or student cohort, student performance groups, and student living groups within student housing.

[Statutory Authority: Chapter 28B.50 RCW. WSR 21-18-100, § 132U-126-010, filed 8/31/21, effective 10/1/21; WSR 18-17-025, § 132U-126-010, filed 8/6/18, effective 9/6/18.]

AMENDATORY SECTION (Amending WSR 21-18-100, filed 8/31/21, effective 10/1/21)

**WAC 132U-126-030 Prohibited student conduct.** The college may impose sanctions against a student found responsible for committing, attempting to commit, aiding, abetting, inciting, encouraging, or assisting another person to commit, an act(s) of misconduct which include, but are not limited to, the following:

(1) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication:

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

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

completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

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

(d) 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 sanctions, up to and including a failing grade in an academic course or dismissal from an academic program, in response to academic dishonesty. Policies and procedures governing the imposition of academic sanctions for academic dishonesty can be found in the course syllabus, and any applicable program handbook.

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

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

(3) **Disruption or obstruction.** Conduct not otherwise protected by law, that interferes with, impedes, or otherwise unreasonably hinders the following:

(a) Instruction, services, research, administration, disciplinary proceedings, or other college activities, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

(b) Any activity that is authorized to occur on college property or under college jurisdiction, whether or not actually conducted or sponsored by the college.

(4) **Assault or intimidation.** Unwanted touching, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purpose of this code, "bullying" is defined as repeated or aggressive unwanted behavior, not otherwise protected by law that intentionally humiliates, harms, or intimidates the victim.

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

(6) **Property violation.** Damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging

or destruction of college property or property of another person. Property for the purposes of this subsection includes, but is not limited to, computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college copyrights and trademarks.

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

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

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

(b) A student with a valid concealed weapons permit may store a pistol in their vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view; or

(c) The president may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission.

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

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

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

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

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

(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 are not limited to:

(i) Causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or 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 other similar contests or competitions.

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

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

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

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

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

(d) **Tobacco, electronic cigarettes, and related products.** The use of tobacco, electronic cigarettes, and related products in any building owned, leased or operated by the college or in any location where such use is prohibited, including (~~twenty-five~~) 25 feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased or operated by the college. The use of tobacco, electronic cigarettes, and related products on the college campus is restricted to designated smoking areas. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, water pipes, hookahs, chewing tobacco, vaporizers, and snuff.

(11) **Lewd conduct.** Conduct which is obscene, indecent, pornographic and/or lascivious that is not otherwise protected under the law.

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

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

(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 to participate in or benefit from the college's educational program;

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

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

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

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



(i) Nonconsensual sexual intercourse is any sexual intercourse (anal, oral, or vaginal), however slight, with any object 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 is any intentional sexual touching, however slight, with any object or body part, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breast, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(iii) Domestic violence includes 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.

(iv) Dating violence means physical violence, bodily injury, assault, the infliction of fear or imminent physical harm, sexual assault, or stalking committed 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.

(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; age; religion; genetic information; gender, including pregnancy, marital status; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic communications.

(15) **Hostile environment.** Unwelcome conduct that a reasonable person would find to be so severe, pervasive, or objectively offensive that it effectively denies a person equal access to the college's educational programs or activities.

(16) **Retaliation.** Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such person reported an alleged violation of this code or college policy, provided information about an alleged violation, or participated as a

witness or in any other capacity in a college investigation or disciplinary proceeding.

(17) **Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

(a) Unauthorized use of such resources or opening of 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;

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

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

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

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

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

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: Chapter 28B.50 RCW. WSR 21-18-100, § 132U-126-030, filed 8/31/21, effective 10/1/21; WSR 18-17-025, § 132U-126-030, filed 8/6/18, effective 9/6/18.]

AMENDATORY SECTION (Amending WSR 21-18-100, filed 8/31/21, effective 10/1/21)

**WAC 132U-126-040 Sanctions.** In keeping with the educational mission of Whatcom Community College, sanctions serve the purpose of educating students about their rights and responsibilities, reinforcing the high standards of scholarship expected of Whatcom students, promoting student development, and maintaining safety and well-being of members of the college community. When appropriate, the college may attempt to resolve issues without formal disciplinary action and may give verbal warnings. When a student takes responsibility for a violation or is determined to have violated the code, the student conduct officer may impose one or more of the following sanctions. This list is not meant to be exhaustive and other sanctions may be applied at the discretion of the student conduct officer.

(1) **Disciplinary warning.** A verbal statement to a student that there is a violation and that continued violation may be cause for further disciplinary action.

(2) **Written reprimand.** Notice in writing that the student has violated one or more terms of this code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action.

(3) **Disciplinary probation.** Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation. Probation may be for a specific period of time or for the duration of the student's enrollment at the college.

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

(5) **Dismissal.** The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the action is taken.

(6) **Educational activity.** A student may be required to engage in educational activities related to violation(s). Such activities may include, but are not limited to, attendance at educational programs, community services, project or written assignments, and/or meeting with campus officials.

(7) **Loss of privileges.** A student may be denied specific privileges on a temporary or permanent basis such as participating in specific activities or restriction from specific areas of campus.

(8) **Restitution.** Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceedings.

(9) **Professional evaluation.** Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditional upon compliance with the recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended

until further evaluation recommends that the student is capable of re-entering the college and complying with the rules of conduct.

(10) **Administrative no-contact order.** An order directing a student to have no contact with a specified student, college employee, a member of the college community, or a particular college facility.

(11) **Student housing relocation.** Students who are living in college-controlled or administered housing may be transferred to alternate college-controlled or administered housing.

(12) **Termination of student housing contract.** A student may be removed from their college-controlled housing and their housing contract terminated.

(13) **Disqualification from athletics.** Any student found by the college to have violated this code related to the use, possession, sale, or delivery of legend drugs is subject to additional sanctions, including disqualification from college-sponsored athletic events.

(14) **College community service.** Assignment of labor or responsibilities to any student or student organization with the college or local community. May also include mandatory attendance to educational programs or courses or other assignments.

(15) **Hazing by a student or a student group is prohibited pursuant to WAC 132U-126-030(9).** No student may conspire to engage in hazing or participate in the hazing of another. State law provides that hazing is a criminal offense, punishable as a misdemeanor. 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 any entitlement to state-funded grants, scholarships, or awards for a period of time determined by the college in accordance.

(c) Student groups that knowingly permit hazing to be conducted by its members or by other 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 assault, 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.

[Statutory Authority: Chapter 28B.50 RCW. WSR 21-18-100, § 132U-126-040, filed 8/31/21, effective 10/1/21; WSR 18-17-025, § 132U-126-040, filed 8/6/18, effective 9/6/18.]

WSR 23-07-111

PROPOSED RULES

WHATCOM COMMUNITY COLLEGE

[Filed March 20, 2023, 1:44 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-03-105.

Title of Rule and Other Identifying Information: Chapter 132U-122

WAC.

Hearing Location(s): On April 26, 2023, at 3 - 4 p.m., at 237 West Kellogg Road, Laidlaw 143, Bellingham, WA 98226.

Date of Intended Adoption: May 10, 2023.

Submit Written Comments to: Lexus Criswell, 237 West Kellogg Road, Laidlaw 208, Bellingham, WA 98226, email lcriswell@whatcom.edu, fax 360-383-4000, by April 24, 2023.

Assistance for Persons with Disabilities: Contact Kerri Holferty, phone 360-383-3043, fax 360-383-4000, TTY 360-225-7182, email kholferty@whatcom.edu, by April 19, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The existing chapter 132U-122 WAC does not meet the new state legislature guidelines for withholding services. Whatcom Community College will no longer withhold transcripts as a means of debt collection.

Reasons Supporting Proposal: The existing WAC does not meet current state guidelines.

Statutory Authority for Adoption: RCW 28B.50.143, 28B.10.293.

Statute Being Implemented: SSHB [2SHB] 2513.

Rule is necessary because of state court decision, [no further information supplied by agency].

Name of Proponent: Whatcom Community College, governmental.

Name of Agency Personnel Responsible for Drafting: Lexus Criswell, LDC 208, 360-383-3077; Implementation and Enforcement: William Martens, Laidlaw 141, 360-343-3046.

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 change in the rule is the result of a Washington state statute exempt under RCW 34.05.328 (5) [(b)] (v).

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: SSHB [2SHB] 2513, "An act relating to prohibiting the practice of transcript withholding and limiting the practices of registration holds at institutions of higher education as debt collection practices."

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

Scope of exemption for rule proposal:

Is fully exempt.

March 20, 2023

Lexus Criswell

Administrative Assistant to the Vice President  
for Student Services

OTS-4398.1

AMENDATORY SECTION (Amending WSR 88-15-005, filed 7/8/88)

**WAC 132U-122-010 Statement of policy.** The college expects that students who receive services for which a financial obligation is incurred will exercise responsibility in meeting these obligations. Appropriate college staff are empowered to act in accordance with regularly adopted procedures to carry out the intent of this policy, and if necessary to initiate legal action to insure that collection matters are brought to a timely and satisfactory conclusion.

Admission to or registration with the college, and conferring of degrees (~~and issuance of academic transcripts~~), may be withheld for failure to meet financial obligations to the college.

[Statutory Authority: RCW 28B.50.130 and 28B.50.140. WSR 88-15-005 (Order 88-03), § 132U-122-010, filed 7/8/88.]

## WSR 23-07-115

## PROPOSED RULES

## DEPARTMENT OF LICENSING

[Filed March 21, 2023, 9:49 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-03-102.

Title of Rule and Other Identifying Information: WAC 308-33-105  
Employment agency fees.

Hearing Location(s): On April 25, 2023, at 11:00 a.m., join Zoom meeting <https://dol-wa.zoom.us/j/83302820057?pwd=Y2NXNldza0dMTUlyL2dtS0phS3Uydz09>, Meeting ID 833 0282 0057, Passcode 557119; One-tap mobile +12532158782,,83302820057#,,,,\*557119# US (Tacoma), +12532050468,,83302820057#,,,,\*557119# US; dial by your location +1 253 215 8782 US (Tacoma), Meeting ID 833 0282 0057, Passcode 557119. Find your local number <https://dol-wa.zoom.us/j/83302820057?pwd=Y2NXNldza0dMTUlyL2dtS0phS3Uydz09>. If you are having difficulty joining the Zoom meeting at the time of the public hearing, please call 360-902-3846. An in-person option is available at Highways-Licenses Building, 1125 Washington Street S.E., Olympia, WA 98504.

Date of Intended Adoption: April 26, 2023.

Submit Written Comments to: Ellis Starrett, 1125 Washington Street S.E., Olympia, WA 98504, email [rulescoordinator@dol.wa.gov](mailto:rulescoordinator@dol.wa.gov), by April 25, 2023.

Assistance for Persons with Disabilities: Contact Ellis Starrett, phone 360-902-3846, email [rulescoordinator@dol.wa.gov](mailto:rulescoordinator@dol.wa.gov), by April 17, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is required to set fees for each professional, occupational, or business licensing program at a sufficient level to defray the costs of administering that program.

Reasons Supporting Proposal: Current fees are insufficient to sustain this program. The department is considering fee increases that would go into effect in summer 2023. This is part of a larger fee increase project which had been proposed to go into effect fall of 2022.

Statutory Authority for Adoption: RCW 43.24.086 Fee policy for professions, occupations, and businesses—Determination by rule, and 46.01.110 Rule-making authority.

Statute Being Implemented: RCW 43.24.086 Fee policy for professions, occupations, and businesses—Determination by rule.

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: The department is proposing this rule change in order to fund the administration of employment agency licensing [department of licensing], governmental.

Name of Agency Personnel Responsible for Drafting: Lorin Doyle; Implementation: Kathrine McDaniel; and Enforcement: Vanessa Simpson.

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

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

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

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

Scope of exemption for rule proposal:  
Is fully exempt.

March 21, 2023  
Ellis Starrett  
Rules and Policy Manager

**OTS-3953.1**

AMENDATORY SECTION (Amending WSR 98-18-053, filed 8/28/98, effective 9/28/98)

**WAC 308-33-105 Employment agency fees.** The following fees shall be charged by the business and professions division of the department of licensing:

Title of Fee	Fee
Agencies:	
Original application and license	(( <del>\$783.00</del> )) <u>\$823.00</u>
Renewal	(( <del>648.00</del> )) <u>688.00</u>
Transfer of license	150.00
(( <del>Duplicate</del> )) <u>License print fee</u>	(( <del>15.00</del> )) <u>5.00</u>
New/amended contract or fee schedule review	50.00
Branch office:	
Original application and license	(( <del>540.00</del> )) <u>580.00</u>
Renewal	(( <del>540.00</del> )) <u>580.00</u>
Transfer of license	25.00
(( <del>Duplicate</del> )) <u>License print fee</u>	(( <del>15.00</del> )) <u>5.00</u>
General manager exam fee	150.00

[Statutory Authority: Chapter 19.31 RCW, RCW 43.240.086 [43.24.086] and 1998 c 346. WSR 98-18-053, § 308-33-105, filed 8/28/98, effective 9/28/98. Statutory Authority: RCW 43.24.086. WSR 90-06-052, § 308-33-105, filed 3/2/90, effective 4/2/90; WSR 87-10-028 (Order PM 650), § 308-33-105, filed 5/1/87. Statutory Authority: 1983 c 168 § 12. WSR 83-22-060 (Order PL 446), § 308-33-105, filed 11/2/83; WSR 83-17-031 (Order PL 442), § 308-33-105, filed 8/10/83. Formerly WAC 308-33-100.]



## WSR 23-07-117

## PROPOSED RULES

## DEPARTMENT OF LICENSING

[Filed March 21, 2023, 9:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-03-101.

Title of Rule and Other Identifying Information: WAC 308-127-160 Fees.

Hearing Location(s): On April 25, 2023, at 10:00 a.m., join Zoom meeting <https://dol-wa.zoom.us/j/81597087616?pwd=RjNLSjVYdDNAMTlqWmZCM3h1b3A2QT09>, Meeting ID 815 9708 7616, Passcode 841414; One-tap mobile +12532050468,,81597087616#,,,,\*841414# US, +12532158782,,81597087616#,,,,\*841414# US (Tacoma); dial by your location +1 253 205 0468 US, +1 253 215 8782 US (Tacoma), Meeting ID 815 9708 7616, Passcode 841414. Find your local number [https://dol-wa.zoom.us/u/kejd7bjWQz](https://dol-wa.zoom.us/j/81597087616?pwd=RjNLSjVYdDNAMTlqWmZCM3h1b3A2QT09). If you are having difficulty joining the Zoom meeting at the time of the public hearing, please call 360-902-3846. An in-person option is available at Highways-Licenses Building, 1125 Washington Street S.E., Olympia, WA 98504.

Date of Intended Adoption: April 26, 2023.

Submit Written Comments to: Ellis Starrett, 1125 Washington Street S.E., Olympia, WA 98504, email [rulescoordinator@dol.wa.gov](mailto:rulescoordinator@dol.wa.gov), by April 25, 2023.

Assistance for Persons with Disabilities: Contact Ellis Starrett, phone 360-902-3846, email [rulescoordinator@dol.wa.gov](mailto:rulescoordinator@dol.wa.gov), by April 17, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is required to set fees for each professional, occupational, or business licensing program at a sufficient level to defray the costs of administering that program.

Reasons Supporting Proposal: Current fees are insufficient to sustain this program. The department is considering fee increases that would go into effect in summer 2023. This is part of a larger fee increase and these fees had been proposed to go into effect fall of 2022.

Statutory Authority for Adoption: RCW 43.24.086 Fee policy for professions, occupations, and businesses—Determination by rule, and 46.01.110 Rule-making authority.

Statute Being Implemented: RCW 43.24.086 Fee policy for professions, occupations, and businesses—Determination by rule.

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: The department is proposing this rule change in order to fund the administration of timeshares licensing [department of licensing], governmental.

Name of Agency Personnel Responsible for Drafting: Lorin Doyle; Implementation: Kathrine McDaniel; and Enforcement: Vanessa Simpson.

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

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

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

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

Scope of exemption for rule proposal:  
Is fully exempt.

March 21, 2023  
Ellis Starrett  
Rules and Policy Manager

**OTS-3957.1**

AMENDATORY SECTION (Amending WSR 20-06-036, filed 2/27/20, effective 3/29/20)

**WAC 308-127-160 Fees.** The following fees shall be charged under the authority of RCW 64.36.081 and 43.24.086:

- (1) Registration application fees:
  - Start up timeshare program including one project. ~~(\$1000.00)~~ \$1,040.00
  - Each additional project in program. 200.00
  - Each apartment unit in program. 10.00
  - The first unit of personal property in the timeshare program. 500.00
  - Each additional unit of personal property in the timeshare program. 100.00
  - Businesses of listing or brokering resale intervals. 500.00
- (2) Interval Fees:
  - For each interval through one thousand. 1.00
  - Intervals beyond one thousand. 0.00
  - Each monthly filing of listings of resale intervals (in lieu of interval fees for resale intervals). 10.00
- (3) Renewal fees:
  - Timeshare program including one project. ~~(500.00)~~ 540.00
  - Late renewal fee for timeshare program. 2000.00
  - Each additional project to a maximum of five projects. 200.00
  - Each apartment unit - to maximum of twenty-five apartment units. 10.00
- (4) Consolidation fees:
  - Each additional project added. 200.00
  - Each additional apartment unit. 10.00
  - The first additional unit of personal property being consolidated. 250.00

Each additional unit of personal property added in one consolidation.	100.00
(5) Exemption fees:	
Programs consisting of a single apartment unit in a single project with fifty-two or fewer intervals.	250.00
All other types of programs.	1000.00
(6) Impound fees:	
Initial establishment of an impound, escrow, trust, or other arrangement requiring a depository.	500.00
Each required periodic report.	50.00
(7) Advertising fees:	
Each initial submission of advertisement whether or not submitted in a timely manner, and whether or not in use at the time of payment.	25.00
Examination of advertisement which are for the purpose of marketing surveys and not involving an examination of project or program instruments.	150.00
(8) Fees for persons in the business of offering commercial promotional programs:	
Registration of individual.	500.00
(9) Salespersons fees:	
Initial application, including first timeshare company association.	((25.00)) <u>35.00</u>
Each timeshare company association after the first.	((25.00)) <u>35.00</u>
Renewal.	((25.00)) <u>35.00</u> per timeshare company association
(10) Fees for amendment of registration:	
For a timely submission of an amendment filing.	25.00
Late fee for failure to file an amendment within twenty days of the occurrence of a materially adverse change.	500.00
(11) Inspection fees:	
Applicants and registrants shall pay the cost of inspections conducted pursuant to chapter 64.36 RCW. The inspection fees shall be paid prior to the granting of a registration or consolidation. The inspection fee shall be the actual cost to the department for conducting of the inspection.	

[Statutory Authority: RCW 64.36.270 and 43.24.023. WSR 20-06-036, § 308-127-160, filed 2/27/20, effective 3/29/20. Statutory Authority: RCW 64.36.081, 43.24.023, 43.24.086. WSR 04-19-040, § 308-127-160, filed 9/13/04, effective 11/1/04. Statutory Authority: RCW 64.36.270, 43.24.023. WSR 04-12-028, § 308-127-160, filed 5/26/04, effective 7/1/04; WSR 04-08-003, § 308-127-160, filed 3/24/04, effective

4/24/04. Statutory Authority: RCW 64.36.081 and 43.24.086. WSR 02-15-169, § 308-127-160, filed 7/23/02, effective 1/1/03. Statutory Authority: RCW 43.24.086. WSR 90-07-023, § 308-127-160, filed 3/14/90, effective 4/14/90.]

**WSR 23-07-118**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
[Filed March 21, 2023, 10:09 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-01-117.

Title of Rule and Other Identifying Information: Medical aid rules—Conversion factors and maximum daily fees; WAC 296-20-135, 296-23-220, and 296-23-230.

Hearing Location(s): On April 26, 2023, at 1:30 p.m., virtual and telephonic hearing. Join electronically <https://lni-wa-gov.zoom.us/j/85821515701?pwd=cUhINkpvUFN3cFR3TUhjeTliMFZ0dz09>, Meeting ID 858 2151 5701, Passcode Pubhear#23; One-tap mobile +12532158782,,85821515701#,,,,\*0820615591# US (Tacoma); join by phone (audio only) 1-253-215-8782 US (Tacoma), Meeting ID 858 2151 5701, Passcode 0820615591. Find your local number here <https://lni-wa-gov.zoom.us/j/85821515701?pwd=cUhINkpvUFN3cFR3TUhjeTliMFZ0dz09>.

Date of Intended Adoption: May 23, 2023.

Submit Written Comments to: Megan Lemon, Department of Labor and Industries (L&I), Health Services Analysis, P.O. Box 44322, Olympia, WA 98504-4322, email [Megan.Lemon@lni.wa.gov](mailto:Megan.Lemon@lni.wa.gov), fax 360-902-4249, by 5:00 p.m. on April 26, 2023.

Assistance for Persons with Disabilities: Contact Megan Lemon, phone 360-902-5161, fax 360-902-5161, email [Megan.Lemon@lni.wa.gov](mailto:Megan.Lemon@lni.wa.gov), by April 19, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making will (1) increase the conversion factor used to calculate payment for anesthesia services; and (2) increase the maximum daily payment for physical and occupational therapy.

WAC 296-20-135(3), increase the resource-based relative value scale (RBRVS) conversion factor from \$59.46 to \$59.54 and increase the anesthesia conversion factor from \$3.75 to \$3.83 per minute.

WAC 296-23-220 and 296-23-230, increase the maximum daily rate for physical and occupational therapy services from \$140.84 to \$143.66.

Reasons Supporting Proposal: These rules are to be updated to continually follow the established methodologies of L&I and maintain consistency with the health care authority and medicaid purchasing administration. This rule will provide medical aid updates regarding rate setting for professional health care services for injured workers.

Statutory Authority for Adoption: RCW 51.04.020(1) and 51.04.030.

Statute Being Implemented: RCW 51.36.080.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Megan Lemon, Tumwater, Washington, 360-902-5161; Implementation 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. RCW 34.05.328 does not apply because the content of this rule sets fees and fits within the exception listed in RCW 34.05.328 (5) (b) (vi).

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

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

Explanation of exemptions: The rule is fully exempt because the content of the rule sets fees and fits within the exemption listed in RCW 34.05.310 (4) (f).

Scope of exemption for rule proposal:  
Is fully exempt.

March 21, 2023  
Joel Sacks  
Director

### OTS-4403.1

AMENDATORY SECTION (Amending WSR 22-10-064, filed 5/3/22, effective 7/1/22)

**WAC 296-20-135 Conversion factors.** (1) Conversion factors are used to calculate payment levels for services reimbursed under the Washington resource based relative value scale (RBRVS), and for anesthesia services payable with base and time units.

(2) **Washington RBRVS** services have a conversion factor of (~~(\$59.46)~~) \$59.54. The fee schedules list the reimbursement levels for these services.

(3) **Anesthesia services** that are paid with base and time units have a conversion factor of (~~(\$3.75)~~) \$3.83 per minute, which is equivalent to (~~(\$56.25)~~) \$57.45 per 15 minutes. The base units and payment policies can be found in the fee schedules.

[Statutory Authority: RCW 51.04.020(1) and 51.04.030. WSR 22-10-064, § 296-20-135, filed 5/3/22, effective 7/1/22; WSR 21-11-084, § 296-20-135, filed 5/18/21, effective 7/1/21; WSR 20-17-116, § 296-20-135, filed 8/18/20, effective 10/1/20; WSR 18-10-082, § 296-20-135, filed 5/1/18, effective 7/1/18; WSR 17-10-060, § 296-20-135, filed 5/2/17, effective 7/1/17; WSR 16-10-084, § 296-20-135, filed 5/3/16, effective 7/1/16; WSR 15-09-120, § 296-20-135, filed 4/21/15, effective 7/1/15; WSR 14-09-094, § 296-20-135, filed 4/22/14, effective 7/1/14; WSR 13-11-020, § 296-20-135, filed 5/7/13, effective 7/1/13; WSR 12-11-107, § 296-20-135, filed 5/22/12, effective 7/1/12; WSR 11-12-019, § 296-20-135, filed 5/24/11, effective 7/1/11; WSR 10-10-107, § 296-20-135, filed 5/4/10, effective 7/1/10; WSR 08-09-121, § 296-20-135, filed 4/22/08, effective 7/1/08; WSR 07-10-082, § 296-20-135, filed 5/1/07, effective 7/1/07; WSR 06-09-071, § 296-20-135, filed 4/18/06, effective 7/1/06; WSR 05-09-062, § 296-20-135, filed 4/19/05, effective 7/1/05; WSR 04-09-100, § 296-20-135, filed 4/20/04, effective 7/1/04; WSR 03-14-043, § 296-20-135, filed 6/24/03, effective 8/1/03; WSR 02-10-129, § 296-20-135, filed 5/1/02, effective 7/1/02; WSR 01-10-026, §

296-20-135, filed 4/24/01, effective 7/1/01; WSR 00-09-077, § 296-20-135, filed 4/18/00, effective 7/1/00. Statutory Authority: RCW 51.04.020(4) and 51.04.030. WSR 99-10-043, § 296-20-135, filed 4/30/99, effective 7/1/99; WSR 98-09-125, § 296-20-135, filed 4/22/98, effective 7/1/98; WSR 97-10-017, § 296-20-135, filed 4/28/97, effective 7/1/97. Statutory Authority: RCW 51.04.020 and 51.04.030. WSR 96-19-060, § 296-20-135, filed 9/16/96, effective 10/17/96; WSR 96-10-086, § 296-20-135, filed 5/1/96, effective 7/1/96; WSR 95-17-001 § 296-20-135, filed 8/2/95, effective 10/1/95; WSR 95-05-072, § 296-20-135, filed 2/15/95, effective 3/18/95. Statutory Authority: RCW 51.04.020, 51.04.030 and 1993 c 159. WSR 94-02-045 and 94-03-008, § 296-20-135, filed 12/30/93 and 1/6/94, effective 3/1/94; WSR 93-16-072, § 296-20-135, filed 8/1/93, effective 9/1/93. Statutory Authority: RCW 51.04.020(4) and 51.04.030. WSR 91-02-063, § 296-20-135, filed 12/28/90, effective 1/28/91; WSR 88-24-011 (Order 88-28), § 296-20-135, filed 12/1/88, effective 1/1/89; WSR 87-03-004 (Order 86-45), § 296-20-135, filed 1/8/87; WSR 83-24-016 (Order 83-35), § 296-20-135, filed 11/30/83, effective 1/1/84; WSR 82-24-050 (Order 82-39), § 296-20-135, filed 11/29/82, effective 7/1/83. Statutory Authority: RCW 51.04.020(4), 51.04.030, and 51.16.120(3). WSR 81-24-041 (Order 81-28), § 296-20-135, filed 11/30/81, effective 1/1/82; WSR 80-18-033 (Order 80-24), § 296-20-135, filed 12/1/80, effective 1/1/81. Statutory Authority: RCW 51.04.030 and 51.16.035. WSR 79-12-086 (Order 79-18), § 296-20-135, filed 11/30/79, effective 1/1/80; Order 77-27, § 296-20-135, filed 11/30/77, effective 1/1/78; Order 76-34, § 296-20-135, filed 11/24/76, effective 1/1/77; Order 75-39, § 296-20-135, filed 11/28/75, effective 1/1/76; Order 74-7, § 296-20-135, filed 1/30/74; Order 71-6, § 296-20-135, filed 6/1/71; Order 68-7, § 296-20-135, filed 11/27/68, effective 1/1/69.]

#### OTS-4404.1

AMENDATORY SECTION (Amending WSR 22-10-064, filed 5/3/22, effective 7/1/22)

**WAC 296-23-220 Physical therapy rules.** Practitioners should refer to WAC 296-20-010 through 296-20-125 for general information and rules pertaining to the care of workers.

Refer to WAC 296-20-132 and 296-20-135 regarding the use of conversion factors.

All supplies and materials must be billed using HCPCS Level II codes. Refer to chapter 296-21 WAC for additional information. HCPCS codes are listed in the fee schedules.

Refer to chapter 296-20 WAC (WAC 296-20-125) and to the department's billing instructions for additional information.

Physical therapy treatment will be reimbursed only when ordered by the worker's attending doctor and rendered by a licensed physical therapist, a physical therapist assistant serving under the direction of a licensed physical therapist as required in RCW 18.74.180 (3)(a), or a licensed athletic trainer serving under the direction of a licensed physical therapist as required in RCW 18.250.010 (4)(a)(v). In addition, physician assistants may order physical therapy under these

rules for the attending doctor. Doctors rendering physical therapy should refer to WAC 296-21-290.

The department or self-insurer will review the quality and medical necessity of physical therapy services provided to workers. Practitioners should refer to WAC 296-20-01002 for the department's rules regarding medical necessity and to WAC 296-20-024 for the department's rules regarding utilization review and quality assurance.

The department or self-insurer will pay for a maximum of one physical therapy visit per day. When multiple treatments (different billing codes) are performed on one day, the department or self-insurer will pay either the sum of the individual fee maximums, the provider's usual and customary charge, or (~~(\$140.84)~~) \$143.66 whichever is less. These limits will not apply to physical therapy that is rendered as part of a physical capacities evaluation, work hardening program, or pain management program, provided a qualified representative of the department or self-insurer has authorized the service.

The department will publish specific billing instructions, utilization review guidelines, and reporting requirements for physical therapists who render care to workers.

Use of diapulse or similar machines on workers is not authorized. See WAC 296-20-03002 for further information.

A physical therapy progress report must be submitted to the attending doctor and the department or the self-insurer following 12 treatment visits or one month, whichever occurs first. Physical therapy treatment beyond initial 12 treatments will be authorized only upon substantiation of improvement in the worker's condition. An outline of the proposed treatment program, the expected restoration goals, and the expected length of treatment will be required.

Physical therapy services rendered in the home and/or places other than the practitioner's usual and customary office, clinic, or business facilities will be allowed only upon prior authorization by the department or self-insurer.

No inpatient physical therapy treatment will be allowed when such treatment constitutes the only or major treatment received by the worker. See WAC 296-20-030 for further information.

The department may discount maximum fees for treatment performed on a group basis in cases where the treatment provided consists of a nonindividualized course of therapy (e.g., pool therapy; group aerobics; and back classes).

Biofeedback treatment may be rendered on doctor's orders only. The extent of biofeedback treatment is limited to those procedures allowed within the scope of practice of a licensed physical therapist. See chapter 296-21 WAC for rules pertaining to conditions authorized and report requirements.

Billing codes and reimbursement levels are listed in the fee schedules.

[Statutory Authority: RCW 51.04.020(1) and 51.04.030. WSR 22-10-064, § 296-23-220, filed 5/3/22, effective 7/1/22; WSR 21-11-084, § 296-23-220, filed 5/18/21, effective 7/1/21; WSR 20-17-116, § 296-23-220, filed 8/18/20, effective 10/1/20; WSR 18-10-082, § 296-23-220, filed 5/1/18, effective 7/1/18; WSR 17-10-060, § 296-23-220, filed 5/2/17, effective 7/1/17; WSR 16-10-084, § 296-23-220, filed 5/3/16, effective 7/1/16; WSR 15-09-120, § 296-23-220, filed 4/21/15, effective 7/1/15. Statutory Authority: RCW 51.04.020 and 51.04.030. WSR 14-23-064, § 296-23-220, filed 11/18/14, effective 1/1/15. Statutory Authority: RCW 51.04.020(1) and 51.04.030.



WSR 14-09-094, § 296-23-220, filed 4/22/14, effective 7/1/14; WSR 13-11-020, § 296-23-220, filed 5/7/13, effective 7/1/13; WSR 12-11-107, § 296-23-220, filed 5/22/12, effective 7/1/12; WSR 08-09-121, § 296-23-220, filed 4/22/08, effective 7/1/08; WSR 07-10-082, § 296-23-220, filed 5/1/07, effective 7/1/07; WSR 06-09-071, § 296-23-220, filed 4/18/06, effective 7/1/06. Statutory Authority: RCW 51.04.020 and 51.04.030. WSR 05-18-030, § 296-23-220, filed 8/30/05, effective 10/1/05. Statutory Authority: RCW 51.04.020(1) and 51.04.030. WSR 05-09-062, § 296-23-220, filed 4/19/05, effective 7/1/05; WSR 04-09-100, § 296-23-220, filed 4/20/04, effective 7/1/04; WSR 03-14-043, § 296-23-220, filed 6/24/03, effective 8/1/03; WSR 02-10-129, § 296-23-220, filed 5/1/02, effective 7/1/02; WSR 01-10-026, § 296-23-220, filed 4/24/01, effective 7/1/01; WSR 00-09-077, § 296-23-220, filed 4/18/00, effective 7/1/00. Statutory Authority: RCW 51.04.020(4) and 51.04.030. WSR 99-10-043, § 296-23-220, filed 4/30/99, effective 7/1/99; WSR 98-09-125, § 296-23-220, filed 4/22/98, effective 7/1/98; WSR 97-10-017, § 296-23-220, filed 4/28/97, effective 7/1/97; WSR 96-10-086, § 296-23-220, filed 5/1/96, effective 7/1/96; WSR 95-05-072, § 296-23-220, filed 2/15/95, effective 3/18/95. Statutory Authority: RCW 51.04.020, 51.04.030 and 1993 c 159. WSR 94-02-045, § 296-23-220, filed 12/30/93, effective 3/1/94; WSR 93-16-072, § 296-23-220, filed 8/1/93, effective 9/1/93.]

#### OTS-4405.1

AMENDATORY SECTION (Amending WSR 22-10-064, filed 5/3/22, effective 7/1/22)

**WAC 296-23-230 Occupational therapy rules.** Practitioners should refer to WAC 296-20-010 through 296-20-125 for general information and rules pertaining to the care of workers.

Refer to WAC 296-20-132 and 296-20-135 for information regarding the conversion factors.

All supplies and materials must be billed using HCPCS Level II codes, refer to the department's billing instructions for additional information.

Occupational therapy treatment will be reimbursed only when ordered by the worker's attending doctor and rendered by a licensed occupational therapist or an occupational therapist assistant serving under the direction of a licensed occupational therapist. In addition, physician assistants may order occupational therapy under these rules for the attending doctor. Vocational counselors assigned to injured workers by the department or self-insurer may request an occupational therapy evaluation. However, occupational therapy treatment must be ordered by the worker's attending doctor or by the physician assistant.

An occupational therapy progress report must be submitted to the attending doctor and the department or self-insurer following 12 treatment visits or one month, whichever occurs first. Occupational therapy treatment beyond the initial 12 treatments will be authorized only upon substantiation of improvement in the worker's condition. An

outline of the proposed treatment program, the expected restoration goals, and the expected length of treatment will be required.

The department or self-insurer will review the quality and medical necessity of occupational therapy services. Practitioners should refer to WAC 296-20-01002 for the department's definition of medically necessary and to WAC 296-20-024 for the department's rules regarding utilization review and quality assurance.

The department will pay for a maximum of one occupational therapy visit per day. When multiple treatments (different billing codes) are performed on one day, the department or self-insurer will pay either the sum of the individual fee maximums, the provider's usual and customary charge, or (~~(\$140.84)~~) \$143.66 whichever is less. These limits will not apply to occupational therapy which is rendered as part of a physical capacities evaluation, work hardening program, or pain management program, provided a qualified representative of the department or self-insurer has authorized the service.

The department will publish specific billing instructions, utilization review guidelines, and reporting requirements for occupational therapists who render care to workers.

Occupational therapy services rendered in the worker's home and/or places other than the practitioner's usual and customary office, clinic, or business facility will be allowed only upon prior authorization by the department or self-insurer.

No inpatient occupational therapy treatment will be allowed when such treatment constitutes the only or major treatment received by the worker. See WAC 296-20-030 for further information.

The department may discount maximum fees for treatment performed on a group basis in cases where the treatment provided consists of a nonindividualized course of therapy (e.g., pool therapy; group aerobics; and back classes).

Billing codes, reimbursement levels, and supporting policies for occupational therapy services are listed in the fee schedules.

[Statutory Authority: RCW 51.04.020(1) and 51.04.030. WSR 22-10-064, § 296-23-230, filed 5/3/22, effective 7/1/22; WSR 21-11-084, § 296-23-230, filed 5/18/21, effective 7/1/21; WSR 20-17-116, § 296-23-230, filed 8/18/20, effective 10/1/20; WSR 18-10-082, § 296-23-230, filed 5/1/18, effective 7/1/18; WSR 17-10-060, § 296-23-230, filed 5/2/17, effective 7/1/17; WSR 16-10-084, § 296-23-230, filed 5/3/16, effective 7/1/16; WSR 15-09-120, § 296-23-230, filed 4/21/15, effective 7/1/15; WSR 14-09-094, § 296-23-230, filed 4/22/14, effective 7/1/14; WSR 13-11-020, § 296-23-230, filed 5/7/13, effective 7/1/13; WSR 12-11-107, § 296-23-230, filed 5/22/12, effective 7/1/12; WSR 08-09-121, § 296-23-230, filed 4/22/08, effective 7/1/08; WSR 07-10-082, § 296-23-230, filed 5/1/07, effective 7/1/07; WSR 06-09-071, § 296-23-230, filed 4/18/06, effective 7/1/06. Statutory Authority: RCW 51.04.020 and 51.04.030. WSR 05-18-030, § 296-23-230, filed 8/30/05, effective 10/1/05. Statutory Authority: RCW 51.04.020(1) and 51.04.030. WSR 05-09-062, § 296-23-230, filed 4/19/05, effective 7/1/05; WSR 04-09-100, § 296-23-230, filed 4/20/04, effective 7/1/04; WSR 03-14-043, § 296-23-230, filed 6/24/03, effective 8/1/03; WSR 02-10-129, § 296-23-230, filed 5/1/02, effective 7/1/02; WSR 01-10-026, § 296-23-230, filed 4/24/01, effective 7/1/01; WSR 00-09-077, § 296-23-230, filed 4/18/00, effective 7/1/00. Statutory Authority: RCW 51.04.020(4) and 51.04.030. WSR 99-10-043, § 296-23-230, filed 4/30/99, effective 7/1/99; WSR 98-09-125, §

296-23-230, filed 4/22/98, effective 7/1/98; WSR 97-10-017, §  
296-23-230, filed 4/28/97, effective 7/1/97; WSR 96-10-086, §  
296-23-230, filed 5/1/96, effective 7/1/96; WSR 95-05-072, §  
296-23-230, filed 2/15/95, effective 3/18/95. Statutory Authority: RCW  
51.04.020, 51.04.030 and 1993 c 159. WSR 94-02-045, § 296-23-230,  
filed 12/30/93, effective 3/1/94; WSR 93-16-072, § 296-23-230, filed  
8/1/93, effective 9/1/93.]

**WSR 23-07-123**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
[Filed March 21, 2023, 1:01 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-17-135.

Title of Rule and Other Identifying Information: Outdoor ambient heat exposures in all industries under WAC 296-62-095 through 296-62-09560, General occupational health standards—Outdoor heat exposure, and 296-307-097 through 296-307-09760, Safety standards for agriculture—Outdoor heat exposure.

Hearing Location(s): On April 25, 2023, at 10:00 a.m., at SpringHill Suites by Marriott, 4040 Northwest Avenue, Bellingham, WA 98226; on April 26, 2023, at 10:00 a.m., at SpringHill Suites by Marriott, 7048 West Grandridge Boulevard, Kennewick, WA 99336; on April 27, 2023, at 10:00 a.m., at Hampton Inn by Hilton, 2010 South Assembly Road, Spokane, WA 99224; on May 2, 2023, at 10:00 a.m., at Department of Labor and Industries (L&I), 12806 Gateway Drive South, Tukwila, WA 98168; on May 3, 2023, at 10:00 a.m., at Clark College at Columbia Tech Center, 18700 S.E. Mill Plain Boulevard, Vancouver, WA 98683; or on May 4, 2023, at 2:00 p.m., virtual and telephonic hearing. Join electronically <https://lni-wa-gov.zoom.us/j/89566996553?pwd=QzNGMlhTT3V3RGtFTGhMS2tYYlo5UT09>; or join by phone (audio only) 1-253-215-8782, Meeting ID 895 6699 6553, Passcode 678052798. A pre-hearing overview will occur one hour prior to the start of each public hearing. The hearings will begin at the indicated times and will continue until all oral comments are received.

Date of Intended Adoption: June 15, 2023.

Submit Written Comments to: Carmyn Shute, Administrative Regulations Analyst, L&I, Division of Occupational Safety and Health (DOSH), P.O. Box 44620, Olympia, WA 98504-4620, email [Carmyn.Shute@lni.wa.gov](mailto:Carmyn.Shute@lni.wa.gov), fax 360-902-5619, by 5:00 p.m., May 11, 2023.

Assistance for Persons with Disabilities: Contact Carmyn Shute, administrative regulations analyst, phone 360-870-4525, fax 360-902-5619, email [Carmyn.Shute@lni.wa.gov](mailto:Carmyn.Shute@lni.wa.gov), by 5:00 p.m., April 20, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: On June 28, 2021, L&I received a petition for rule making requesting changes to L&I's rules to include more specific requirements to prevent heat-related illness and injury. The petition for rule making was accepted recognizing the need to reexamine the current rules, especially in light of information suggesting the occurrence of heat illnesses below the current trigger temperatures and the increasing temperatures experienced in our state since the rule was first established in 2008.

**WAC 296-62-09510 and 296-307-09710, outdoor heat exposure.** Sets scope of the rule to apply to all outdoor work environments year-round rather than May through September. Removed redundant WAC citations.

**WAC 296-62-09520 and 296-307-09720, definitions.** All definitions were numerated to aid in cross-referencing.

- Broadened definition of "acclimatization" to include period of time required to become acclimatized and when acclimatization can be lost.
- Added definition for "buddy system."

- Removed definition for "double-layer woven clothing" as it is no longer a key in trigger temperature table.
- Clarified definition of "drinking water" to be suitably cool in temperature.
- Clarified definition of "engineering controls" to be devices used to reduce heat exposure.
- Removed definition for "Environmental factors for heat-related illness."
- Removed sentence in "Outdoor environment" definition regarding construction activity that may be contradictory.
- Added definition for "Risk factors for heat-related illness."
- Added definition for "Shade."
- In "Vapor barrier clothing" definition replaced "nonbreathing" with "nonbreathable."

**WAC 296-62-09530 and 296-307-09730, employer and employee responsibility.** Adds prescriptive requirements for the outdoor heat exposure safety plan. Adds requirement for preventative cool-down rest periods when employees begin to feel overheated. Adds Table 1 with trigger temperatures of 52°F and 80°F depending on clothing worn and personal protective equipment used. Specifies that employees must be allowed and encouraged to take a preventative cool-down rest in the shade or using another means provided by the employer to reduce body temperature when they feel the need to do so to protect themselves from overheating. Finally, adds employee requirement to take preventative cool-down rest periods when they begin to feel overheated.

**WAC 296-62-09535 and 296-307-09735, access to shade (new).** Adds requirement to provide one or more areas of shade for employees that is large enough to accommodate all employees during a meal or rest period. The provided shade must also be as close to areas where employees are working. The rule also provides alternatives employers may use in lieu of shade.

**WAC 296-62-09540 and 296-307-09740, drinking water.** Adds clarification that drinking water must be suitably cool in temperature which has been standard under DOSH Directive 10.15.

**WAC 296-62-09545 and 296-307-09745, acclimatization (new).** Adds requirement for observation for up to 14 days for newly assigned employees to ensure employees become accustomed to working at various temperatures. Adds definition of "heat wave" and adds requirement for close observation during the heat wave. Provides a "Note" that employers may consider additional acclimatization procedures recommended by the National Institute for Occupational Safety and Health.

**WAC 296-62-09547 and 296-307-09747, high heat procedures (new).** Adds requirement for rest periods when temperatures exceed 90°F or 100°F according to new Table 2. Adds requirement to closely observe employees for signs and symptoms of heat-related illness at and above 90°F.

**WAC 296-62-09550 and 296-307-09750, responding to signs and symptoms of heat-related illness.** Adds requirement for employers to ensure there is means for effective communication between employees and supervisors.

**WAC 296-62-09560 and 296-307-09760, information and training.** Adds requirement for training to be effective and performed prior to outdoor work when occupational exposure to heat might occur. Adds defined environmental factors and other work conditions that may contribute to heat-related illness. Adds physical fitness, previous heat-related illness and pregnancy as conditions that may contribute to

heat-related illness. Removed caffeine use and nicotine use as contributors to heat-related illness.

Adds the importance of acclimatization and considerations for cool-down rest periods, gradual increase of work in the heat and importance that employees are unable to build tolerance to working in the heat. Adds the importance of taking preventative cool-down rest periods, and mandatory rest periods when temperatures exceed 90°F. Adds training requirement for procedures for shade or other means to reduce body temperature, and employer's procedures for close observation of employees. Finally, adds the importance of considering the use of engineering or administrative controls to reduce exposure.

Reasons Supporting Proposal: L&I filed emergency rules related to outdoor ambient heat in the summer of 2021 and 2022 to protect outdoor workers from heat-related illnesses due to outdoor heat exposure. The current rules do not affirmatively address preventative measures to avoid overheating other than access to drinking water. The hazards of heat are well documented and research suggests the occurrence of heat-related illnesses below the current trigger temperatures. Research also documents increased temperatures in Washington since the rule was first established. L&I has determined that rule making is necessary for the preservation of worker health and safety.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060.

Statute Being Implemented: Chapter 49.17 RCW.

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: No additional comments.

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Teri Neely, Tumwater, Washington, 360-902-6652; Implementation and Enforcement: Craig Blackwood, Tumwater, Washington, 360-902-5828.

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 Carmyn Shute, Administrative Regulations Analyst, L&I, DOSH, P.O. Box 44620, Olympia, WA 98504-4620, phone 360-870-4525, fax 360-902-5619, email Carmyn.Shute@lni.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 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.

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions:

	<b>Proposed WAC sections and title</b>	<b>This proposed rule section is <u>not exempt</u> - Analysis is required.</b>	<b>This proposed rule section is <u>exempt</u>. Provide RCW to support this exemption.</b>
1.	WAC 296-62-09510 and 296-307-09710 Scope and purpose.	X	
2.	WAC 296-62-09520 and 296-307-09720 Definitions.	<input type="checkbox"/>	RCW 34.05.310 (4)(d) because the proposed rule language clarifies terms used throughout the rule language without changing the effect of the rule.
3.	WAC 296-62-09530 and 296-307-09730 Employer and employee responsibility.	X	
4.	WAC 296-62-09535 and 296-307-09735 Access to shade.	X	
5.	WAC 296-62-09540 and 296-307-09740 Drinking water.	<input type="checkbox"/>	RCW 34.05.310 (4)(d) because the proposed rule language clarifies terms used throughout the rule language without changing the effect of the rule.
6.	WAC 296-62-09545 and 296-307-09745 Acclimatization.	X	
7.	WAC 296-62-09547 and 296-307-09747 High heat procedures.	X	
8.	WAC 296-62-09550 and 296-307-09750 Responding to signs and symptoms.	<input type="checkbox"/>	RCW 34.05.310 (4)(d) because the proposed rule language clarifies the existing requirements.
9.	WAC 296-62-09560 and 296-307-09760 Information and training.	<input type="checkbox"/>	

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

Small Business Economic Impact Statement

**1. Describe the rule, including: A brief history of the issue; an explanation of why the rule is needed; and a brief description of the amendments that would impose new or additional costs on affected businesses, including small businesses.** During the significant and unprecedented 2021 heat wave, L&I received a petition requesting the department adopt emergency rules and amend the permanent rules to address preventative measures when there is extreme high heat. L&I accepted the petition, recognizing the need to reexamine the agency's 2008 outdoor heat exposure rules, especially in light of information suggesting the occurrence of heat-related illnesses below the current temperature action levels and the increasing temperatures experienced in Washington state since the rule was first established. Emergency rules were adopted in 2021 and 2022. These proposed rules address minimum requirements to prevent heat-related illness and reduce traumatic injuries associated with heat exposure. The proposed rules:

- Amend the scope to be applicable year-round when workers are exposed to outdoor heat.
- Amend and add definitions to clarify and improve understanding of the chapter.
- Amend the outdoor temperature action levels that apply to different sections of the rules to 80°F except for workers wearing non-breathable clothing under the current action level of 52°F.
- Amend requirements for the written outdoor heat exposure safety program specifying the minimum required elements of the written

program and clarifying that the written program needs to be in a language understood by employees.

- Create specific requirements for access to shade, what is considered appropriate shade, and where it should be provided.
- Amend drinking water requirements under to align with L&I's long-standing requirement (DOSH Directive 10.15) that drinking water needs to be suitably cool in temperature such that it will not discourage employees to drink water.
- Create requirements for acclimatization requiring close observation for 14 days for new employees and those returning from absences and for close observation of all employees during a heat wave, a sudden temperature increase that does not allow for acclimatization to occur.
- Create high heat procedure requirements establishing mandatory cool-down rest periods and close observation of employees to help identify employees who may begin showing signs and symptoms of heat-related illness.
- Clarify the requirement for responding to signs and symptoms of heat-related illness to explicitly requiring employers to ensure effective means of communication are available to report and respond to heat-related illness.
- Amend the training requirements to require training when there might be an employee exposure to outdoor heat, rather than when an outdoor temperature action level has been reached. The training provisions are also amended to reflect the new and amended sections of the rule.

**2. Identify which businesses are required to comply with the rule using the North American Industry Classification System (NAICS).** The proposed rule applies to all employers with employees who are exposed to outdoor heat environments. As discussed in Section 1.3.1 of the cost-benefit analysis (CBA), L&I used outdoor exposure data from the Bureau of Labor Statistics (BLS) Occupational Requirements Survey (ORS) to determine the number of workers affected. Using the number of affected workers in each occupation from Section 1.3.1 of the CBA for this rule making, and their employment by each industry, L&I was able to estimate the number of businesses in each industry that are likely affected by this proposed rule.<sup>1</sup> The share and number of affected businesses in each industry are presented in Table 2.1.

<sup>1</sup> Assuming the share of affected workers in a certain industry is similar to that of affected businesses in that industry.

**Table 2.1. Share and Number of Businesses That Are Likely Affected In Each Industry**

NAICS	Sector	Share of Affected Businesses	Number of Affected Businesses	Affected Businesses as % of Total Affected
11	Agriculture, Forestry, Fishing and Hunting	53.3%	3,482	11.1%
21	Mining, Quarrying, and Oil and Gas Extract	22.2%	29	0.1%
22	Utilities	16.8%	38	0.1%
23	Construction	45.1%	12,744	40.7%
31-33	Manufacturing	6.8%	527	1.7%
42	Wholesale Trade	12.5%	1,544	4.9%
44-45	Retail Trade	5.9%	841	2.7%
48-49	Transportation and Warehousing	21.8%	1,098	3.5%



NAICS	Sector	Share of Affected Businesses	Number of Affected Businesses	Affected Businesses as % of Total Affected
51	Information	3.2%	186	0.6%
52	Finance and Insurance	3.1%	201	0.6%
53	Real Estate and Rental and Leasing	16.5%	1,196	3.8%
54	Professional, Scientific, and Technical Services	2.8%	910	2.9%
55	Management of Companies and Enterprises	2.0%	14	0.0%
56	Administrative, Support, and Waste Management	25.1%	3,352	10.7%
61	Educational Services	5.7%	217	0.7%
62	Health Care and Social Assistance	2.8%	1,747	5.6%
71	Arts, Entertainment, and Recreation	12.8%	392	1.3%
72	Accommodation and Food Services	4.1%	623	2.0%
81	Other Services Except Public Administration	9.2%	1,845	5.9%
99	State and Local Governments	14.5%	290	0.9%
	<b>Overall</b>	<b>11.8%</b>	<b>31,274</b>	<b>100.0%</b>

**3. Identify and analyze the probable costs to comply with the adopted rule.**

**3.1 Cost of employer and employee responsibility:** The amended subsections under WAC 296-62-09530 and 296-307-09730 require employers with exposed employees to (a) address their outdoor heat exposure safety program (OHESP) in a language that employees understand; (b) ensure a minimum set of six elements are included in their OHESP; (c) ensure a copy of the OHESP is made available to employees and their authorized representatives; and (d) encourage and allow employees to take paid preventative cool-down rest periods when needed. We assumed that employers would use digital methods to provide electronic copies of the OHESP to employees and their authorized representatives. Employers can easily provide digital copies to any common electronic device such as a mobile phone or tablet. In addition, we assume that employers would not incur any cost encouraging employees to take cool-down rest periods.

The costs estimated for the new requirements are administrative time needed to update the OHESP with the minimum required elements and cost of translating the updated OHESP document. The proposed amendment affects all employers of outdoor workers exposed at or above the temperature thresholds specified in this proposed rule. Table 2.1 shows the number of affected businesses in each industry.

L&I makes available on its website a template of the OHESP document that includes the new minimum required elements, which employers could use to update their own OHESP.<sup>2</sup> As discussed in Section 2.1.1 of the CBA, the cost factors and calculation for this requirement are listed below in Table 3.1.

<sup>2</sup> View the "Outdoor Heat APP Addendum" at Accident Prevention Program (APP) (wa.gov).

**Table 3.1. Administrative Cost to Update OHESP**

Cost Factors	
Average time to update OHESP	15 - 30 minutes
Hourly labor cost (wage and benefits)	\$80.36
Average cost per business	\$20.09 - \$40.18
Number of impacted businesses	31,274

<b>Cost Factors</b>	
Total cost	\$628,321 - \$1,256,642
Annualized cost <sup>3</sup>	\$84,189 - \$168,378

<sup>3</sup> The five percent discount rate is used to convert the total cost over a nine-year period to the net present value and annualize it for this section and all other sections as well.

The proposed rule also requires that employers provide the OHESP in a language understood by the employee. The distribution of workers who do not adequately understand English across all impacted industries is not known. While the Agriculture, Forestry, Fishing and Hunting, and the Construction sectors do have a significant number of workers who do not adequately understand English and would need the OHESP translated into one or more languages, not all businesses in these sectors will need translation services. For the purposes of this analysis, we assumed all businesses in these two sectors, about 52 percent of total impacted businesses, would need translation to address this requirement for employers across all industries. As discussed in Section 2.1.1 of the CBA, the cost factors and total costs for this requirement are listed below in Table 3.2.

**Table 3.2. Translation Costs**

<b>Cost Factors</b>	
Industries needing translation services:	Number of businesses
- Agriculture, Forestry, Fishing, and Hunting	3,428
- Construction	12,744
Average cost of translation services per business	\$20.00 - \$75.00
Total translation costs - one time	\$324,508 - \$1,216,906
Annualized cost	\$43,481 - \$163,054

Given the cost of updating the OHESP and translating the documents, L&I estimates this proposed requirement will impose approximately a cost of \$127,670 to \$331,432 on impacted businesses each year (see Table 3.3).

**Table 3.3. Total Compliance Costs**

<b>Cost Factor</b>	
Updating OHESP	\$628,321 - \$1,256,642
Translation services	\$324,508 - \$1,216,906
Total one-time cost	\$952,829 - \$2,473,548
<b>Annualized cost</b>	<b>\$127,670 - \$331,432</b>

**3.2 Access to shade:** The proposed rules under WAC 296-62-09535 and 296-307-09735 require employers to (1) provide and maintain one or more areas of ventilated or cooled shade as close as possible to the worksite at all times; (2) ensure that this shade be large enough to accommodate employees on a meal or rest break so they can sit in a normal posture; and (3) use other equally or more effective means to reduce body temperatures in lieu of shade. This could include misting stations, cooling vests, or air conditioned areas, among others.

This is a new requirement which would impose a cost on impacted businesses. To estimate this cost, L&I relied upon the following assumptions:

- A typical employer would choose pop-up canopies for shade. A 10'x10' and 12'x12' canopy which holds eight and 12 individuals respectively, with a chair and table included, would be some of the most likely options employers choose.

- The average time to set up and disassemble a simple pop-up canopy is 10 minutes.
- Only a proportion of workers would be working outdoors at any single point in time, and of those who are out, some would avoid exposure to outdoor heat as a result of engineering or administrative controls, so they don't require shade.

As discussed in Section 2.1.2 of the CBA, the cost factors and total costs for this requirement are listed below in Table 3.4.

**Table 3.4. Cost of Providing 10'x10' and 12'x12' Shade Canopies**

<b>Cost Factors</b>	
Total number of affected workers over 9 years	127,658
<b>10'x10' canopies</b>	
Number of canopies needed	15,957
Cost of each canopy	\$43.56 - \$106.82
Total set-up cost	\$1,314,794
Total cost in nine years	\$2,009,832 - \$3,019,343
Annualized cost	\$235,018 - \$368,127
<b>12'x12' canopies</b>	
Number of canopies needed	10,638
Cost of each canopy	\$80.66 - \$217.99
Total set-up cost	\$876,529
Total cost in nine years	\$1,734,602 - \$3,195,528
Annualized cost	\$208,724 - \$401,354

The proposed rule also allows employers to use other effective body temperature reducing options, such as misting vests. Based on the average cost of \$10.89 to \$21.67 per unit and the number of units needed for all impacted workers, L&I estimates the total cost of this option to be \$1,390,077 to \$2,766,240 over the entire period, or \$183,289 to \$364,743 per year (see Table 3.5).

**Table 3.5. Cost of Body Temperature Reduction Option**

<b>Cost Factor</b>	
Total number of devices needed	127,658
Cost range of typical devices	\$10.89 - \$21.67
Total cost over the entire period	\$1,390,077 - \$2,766,240
Annualized	\$183,289 - \$364,743

Considering a mix of the options available for employers to comply with this proposed section, L&I estimates a total cost of \$1,390,077 to \$3,195,528 over the entire period or \$183,289 to \$401,354 per year to impacted businesses (see Table 3.6).

**Table 3.6. Total Cost of Providing Shade**

<b>Cost Factor</b>	
10'x10' canopies	\$2,009,832 - \$3,019,343
12'x12' canopies	\$1,735,602 - \$3,195,528
Body temperature reducing options	\$1,390,077 - \$2,766,240
Total cost range	\$1,390,077 - \$3,195,528
Annualized cost	\$183,289 - \$401,354

**3.3 Drinking water:** Under existing WAC 296-62-09540 and 296-307-09740, employers are required to provide and keep workers hydrated with drinking water of at least one quart per hour for each employee, but this requirement only applies to the period of May through September. While the requirements for drinking water have not changed, the change in temperature action levels and the change in the scope of the rule to all year have implications to the drinking water requirement. First, drinking water now also needs to be provided for the hours and days between October and April when the temperature is at or above certain thresholds for the affected workers. Secondly, the trigger temperature for providing drinking water for workers between May and September is now lowered from 89°F to 80°F, which means water needs to be provided for more hours and days during these months as well.

In order to estimate the cost of these proposed changes, L&I needs to determine the amount of drinking water to be provided for the new period of October to April when the temperature is at or above 52°F for workers who wear nonbreathable clothing and when the temperature is at or above 80°F for all other workers. L&I then needs to determine the amount of drinking water that would need to be provided between 80°F to 89°F for May through September.

As discussed in Section 2.1.3 of the CBA, L&I determines that the cost of this proposed requirement would be approximately \$2.5 million to \$8.0 million each year over a nine-year period (see Table 3.7).

**Table 3.7. Cost of Providing Drinking Water**

<b>Cost Factors</b>	
Average number of affected workers in October - April per year	89,677
Average number of affected workers in May - September per year	403,220
Average number of gallons of water required in October - April per year	667,612
Average number of gallons of water required in May - September per year	4,721,923
Cost per gallon of water - bottled water <sup>4</sup>	\$1.29
Cost per gallon of water - using existing water source <sup>5</sup>	\$0.01
Total cost of drinking water per year:	
Low-cost scenario: 30% of bottled water and 70% other options	\$2,456,145
High-cost scenario: 100% bottled water	\$8,041,270

<sup>4</sup> Based on the recent market prices from large grocery stores such as Safeway, Fred Myers, Walmart, and Costco (after-tax prices). The prices in future years are inflation adjusted.

<sup>5</sup> Based on the 2022 average water rate per CCF (748 gallons) of water for commercial use in selected large cities across Washington state.

**3.4 Acclimatization:** WAC 296-62-09545 and 296-307-09745 are new sections which require employers to closely observe employees for signs and symptoms of heat-related illness for (1) a total of 14 days who are (a) newly assigned to outdoor work at the trigger temperatures, and (b) who are returning to work after a seven-day absence, and exposed to outdoor heat at the trigger temperatures; and (2) during a heat wave, as defined by the rule, through a mix of either (a) regular communication,<sup>6</sup> (b) a mandatory buddy system, or (c) some other effective means.

<sup>6</sup> The regular communication option is intended to be used and applied to workers who are working alone via means such as a radio or cellular phone (see WAC 296-62-09547 (2)(a)).

These requirements are new and would impose a cost upon impacted businesses. To determine the probable total cost, L&I analyzed the

cost of each of the requirements using the first two options - regular communication and the mandatory buddy system. L&I did not analyze cost of a third option due to data and time limitations. L&I relies upon the following major assumptions in the analysis of this section:

- On average, around six percent of employees would be working alone in outdoor exposure conditions. This figure would vary in the colder months of October to April where the percent of exposed workers would be reduced.
- On average, around five percent of employees working alone would be in remote locations which require long range radio signal for communication. This figure would vary depending on the time of year.
- On average, two devices would be needed for each employee who needs long range communication.
- Observation time is on average about two minutes, meaning in some cases it may be longer and in others shorter. For instance, when the observer and the employee already work in close proximity there is likely the opportunity for ongoing visual and verbal assessment to be conducted while simultaneously carrying out normal work duties. This time may also vary depending on a number of variables, including whether or not the individual is showing any signs or symptoms of heat-related illness, the individual's location, the size of the worksite, etc.

**Fourteen-day observation of newly assigned employees:** To estimate the cost of observing newly assigned employees, L&I needs to determine the number of newly assigned workers. Using the employment growth rates for new workers entering the workforce from the employment security department,<sup>7</sup> the total number of newly assigned workers subject to this rule are estimated at 45,131 for the next eight years, or 5,641 each year.<sup>8</sup>

<sup>7</sup> ESDWAGOV - Projections.

<sup>8</sup> L&I used an eight-year period for this assessment because new employees would not count in the base year but in year one of the forecast period.

As discussed in Section 2.1.4 of the CBA, the costs factors and total costs for this requirement are listed below in Table 3.8.

**Table 3.8. Cost of Observing Newly Assigned Employees**

<b>Cost Factors</b>		
Regular Communication	Total number of workers to be observed in eight years	45,131
	Number of workers needing devices	124
	Total device cost	\$17,435
	Observation costs	\$5,566,237
	Total cost in eight years	\$5,583,673
Buddy system	Number of workers to be observed in eight years	45,131
	Total cost in eight years	\$5,566,237
Overall	Total cost range in eight-year period	\$5,566,237 - \$5,583,673
	Annual cost	\$662,720 - \$664,800

**Fourteen-day observation of return-to-work employees:** To estimate the cost of workers returning to work after a seven-day absence, L&I needs to determine the number of these workers.<sup>9</sup> To estimate this number, L&I relies upon the average national absentee rate of 3.2 percent. As discussed in Chapter 2.1.4 of the CBA, the costs factors and total costs for this requirement are listed below in Table 3.9.

<sup>9</sup> Absences from work of employed full-time wage and salary workers by occupation and industry: BLS (bls.gov). The initial rate used in this calculation was 3.2 percent, but the rate shown on BLS's website may vary due to BLS updates.

**Table 3.9. Cost of Observing Return-To-Work Employees**

Cost Factors		
Regular Communication	Number of workers to be observed	120,901
	Number of workers needing devices	319
	Total device cost	\$44,569
	Observation cost	\$14,822,571
	Total cost	\$14,867,141
Buddy system	Number of workers to be observed	120,901
	Total cost	\$14,822,571
Overall	Total cost range	\$14,822,571 - \$14,867,141
	Annualized cost	\$1,614,901 - \$1,619,768

**Observation during a heat wave:** The third requirement under these sections is for the observation of employees during a heat wave.<sup>10</sup> Based on the definition of a heat wave for this rule, there are two temperature triggers at which a heatwave is assessed and during which employees exposed to outdoor heat must be observed for signs and symptoms of heat-related illnesses: 52°F and 80°F.

<sup>10</sup> For purposes of this rule, a "heat wave" is defined as any day in which the predicted high temperature for the day will be at least the temperatures listed in Table 1 of WAC 296-62-09530 and at least 10°F higher than the average high daily temperature in the preceding five days.

Examination of historical data over the 10-year period 2011-2020 shows that heat waves satisfying this definition would have occurred for approximately 14 business days and seven business days each year at 52°F and 80°F, respectively. In assessing this requirement, L&I estimated the cost when utilizing (1) the regular communications (along with any equipment cost), and (2) the mandatory buddy system.

As discussed in Section 2.1.4 of the CBA, the cost factors and total costs for this requirement are listed below in Table 3.10.

**Table 3.10. Cost of Observation During Heat Waves**

Cost Factors		
Regular Communication	Number of workers to be observed each year	122,430
	Number of workers needing devices	3,030
	Total device cost in nine years	\$423,170
	Total observation cost in nine years	\$116,135,084
	Total cost in nine years	\$116,558,254
Buddy system	Number of workers to be observed each year	122,430
	Total cost in nine years	\$116,135,084
Overall	Total cost range in nine years	\$116,135,084 - \$116,558,254
	Annual cost	\$12,664,029 - \$12,710,284

Summing the cost of the individual requirements from these proposed sections related to acclimatization, L&I estimates that the total cost is \$14,941,650 to \$14,994,852 per year on the impacted businesses.

**3.5 High heat procedures:** WAC 296-62-09547 and 296-307-09747 require employers to implement high-heat procedures when the temperature is at or above 90°F unless they can utilize engineering or administrative controls, such as changing work schedules or the use of air-conditioning, to lower the employees' exposure to below 90°F. In particular, these proposed sections have two main parts. First, employers

must ensure employees take, at minimum, the mandatory cool-down rest periods of (1) 10 minutes every two hours when the temperature is 90°F - 100°F, and (2) 15 minutes every hour when the temperature is at least 100°F. Secondly, employers must closely observe employees for signs and symptoms of heat-related illness by implementing one or more of either (1) regular communication with employees working alone, (2) a mandatory buddy system, or (3) other effective means of observation. Consistent with the explanation in section 3.4 above, L&I only assesses the first two observation options for cost impact.

**Mandatory cool-down rest period at 90°F:** Analysis of weather data for the period of 2011-2020 shows that temperatures between 90°F to 100°F lasted on average 1.2 hours per day for an average of seven business days per year.<sup>11</sup> L&I used the starting weighted average hour wage (plus benefits) of \$47.05 for the base year and adjusted for wage inflation over future years. As discussed in Section 2.1.5 of the CBA, the costs factors and total costs for this requirement are listed below in Table 3.11.

<sup>11</sup> While the 1.2 daily rate is below the two-hour threshold, there were days when the daily hours did exceed the two-hour threshold.

**Table 3.11. Cost of Mandatory Cool-Down Rest Periods at 90°F - 100°F**

Cost Factor	
Average number of workers impacted over nine years	122,430
Average number of affected hours per day	1.2
Average number of affected days per year	7
Average number of 10-minute breaks per year	516,647
Total cost over nine years	\$44,405,457
<b>Annualized cost</b>	<b>\$4,842,233</b>

**Mandatory cool-down rest periods for 100°F temperatures:** This rest period requires exposed employees to take a 15 minute break each hour when the temperature is at least 100°F or greater. Using the same historical weather data, the average number of hours per day when the temperature was at least 100°F was about 0.4 for an average of at least one business day. As discussed in Section 2.1.5 of the CBA, the cost factors and total costs for this requirement are listed below in Table 3.12.

**Table 3.12. Cost of Mandatory Cool-Down Rest Periods at 100°F**

Cost Factor	
Average number of workers impacted over nine years	91,822
Average number of affected hours per day	0.4
Average number of affected days per year	1
Average number of 15-minute rest periods per year	774,970
Total cost over nine years	\$99,912,278
<b>Annualized cost</b>	<b>\$10,895,002</b>

**Close observations at or above 90°F:** As mentioned in the section introduction, employers with employees exposed to outdoor heat temperature of at least 90°F must closely observe these employers for heat-related illness using one or more of three options. To determine the likely cost of this requirement, L&I analyzed the first two options - regular communication and mandatory buddy system. Similar to the analysis above which required these options, L&I did not analyze the third

option for cost given the wide variety of choices an employer could make.

As discussed in Section 2.1.5 of the CBA, the cost factors and total costs for this requirement are listed below in Table 3.13.

**Table 3.13. Close Observation Cost at or Above 90°F**

Cost Factors		
Regular Communication	Number of workers to be observed each year	122,430
	Number of workers needing devices	3,030
	Total device cost in nine years	\$423,170
	Total observation cost in nine years	\$26,775,119
Buddy system	Total cost in nine years	\$27,178,289
	Number of workers to be observed each year	122,430
Overall	Total cost in nine years	\$26,775,119
	Total cost range in nine years	\$26,775,119 - \$27,178,289
	Annual cost	\$2,917,530 - \$2,963,785

**3.6 Information and training:** WAC 296-62-09560 and 296-307-09760 require employees and supervisors to be trained prior to outdoor work where occupational exposure to heat may occur, and annually thereafter. Employees must be trained on acclimatization and the importance of taking preventative cool-down rest periods, among other topics. Supervisors must now be trained on the importance of considering the use of engineering or administrative controls in order to reduce employees' exposure to heat.

The updates to the employee and supervisor training section would have a cost implication to impacted businesses. First, employers would need to update their training material to include the new information to which employees and supervisors must be trained. While annual training is not a new requirement, the proposed amendments would add additional time to training and so add an administrative cost. As discussed in Section 2.1.6 of the CBA, the cost factors and total costs for this requirement are listed below in Tables 3.14, 3.15, and 3.16.

**Table 3.14. Cost of Updating Training Content**

Cost factor	
Average time to update training material	1 - 2 hours
Hourly labor cost (wage and benefits)	\$80.17
Average cost of updating training material per business	\$80.17 - \$160.34
Number of impacted businesses	31,274
Estimated one-time cost to update training material	\$2,507,196 - \$5,014,392
Annualized cost	\$335,941 - \$671,881

**Table 3.15. Cost of Employee Training**

Cost factor	
Average number of impacted employees per year	420,371
Average time for new training	10 - 15 minutes
Hourly labor cost for an employee	\$47.05
Hourly labor cost for a trainer	\$80.17
Total cost of employee training over nine-year period	\$36,153,020 - \$54,229,530
Annualized cost	\$3,939,791 - \$5,909,687

**Table 3.16. Cost of Supervisor Training**



<b>Cost factor</b>	
Average number of impacted supervisors per year	4,468
Average time for new training	10 - 15 minutes
Hourly labor cost for a supervisor	\$56.73
Hourly labor cost for a trainer	\$80.17
Total cost of supervisor training in nine years	\$463,487 - \$695,230
Annualized cost	\$50,497 - \$75,746

The total cost of the proposed information and training amendments would be approximately \$4,326,229 - \$6,657,314 each year.

**3.7 Summary of Total Compliance Cost of Proposed Rule:** Overall the proposed rule amendments are estimated to impose \$40.7 million - \$49.1 million of cost on all impacted businesses each year (see Table 3.17).

**Table 3.17. Summary of Total Cost**

<b>Requirement</b>	<b>Cost Range</b>
Employer and employee responsibility	\$127,670 - \$331,432
Access to shade	\$183,289 - \$401,354
Drinking water	\$2,456,145 - \$8,041,270
Acclimatization	14,941,650 - \$14,994,852
High heat procedures	\$18,654,756 - \$18,701,011
Employee training and information	\$4,326,229 - \$6,657,314
<b>Total</b>	<b>\$40,689,738 - \$49,127,233</b>

**4. Determine whether or not the proposed rule will impose more-than-minor costs on businesses in an industry:** As analyzed above, L&I estimates the total cost of compliance with the proposed rule to be \$40.7 million to \$49.1 million each year for all the affected businesses. Based on this cost range and the share of affected businesses in each industry estimated in Section 2 above (see Table 2.1), the average per-business cost of the proposed rule is in a range of \$615 to \$16,525 depending on the specific industry to which a business belongs. Comparing this per-business cost to the minor cost threshold of one percent of annual payroll for each industry<sup>12</sup> shows this unit cost is far below the minor cost threshold for all industry except educational services (see Table 4.1). Overall, the average per-business cost is about 11 to 13 percent of the minor cost threshold.

<sup>12</sup> Based on the QCEW data for 2021 (most recent available) and adjusted to 2022 figures using 6.45 percent inflation rate (December 2021 to December 2022).

**Table 4.1. Average Cost Per Business vs. Minor Cost Threshold By Industry**

<b>Industry</b>	<b>Per-Business Cost</b>	<b>Minor Cost Threshold</b>
Agriculture, Forestry, Fishing and Hunting (11)	\$1,587- \$1,915	\$5,914
Mining, Quarrying, and Oil and Gas Extract (21)	\$1,335 - \$1,611	\$12,915
Utilities (22)	\$2,193 - \$2,644	\$28,354
Construction (23)	\$803 - \$972	\$5,852
Manufacturing (31-33)	\$3,019 - \$3,638	\$29,247
Wholesale Trade (42)	\$1,037 - \$1,253	\$10,604
Retail Trade (44-45)	\$2,830 - \$3,410	\$22,588
Transportation and Warehousing (48-49)	\$2,317 - \$2,793	\$15,969
Information (51)	\$2,682 - \$3,232	\$77,467

Industry	Per-Business Cost	Minor Cost Threshold
Finance and Insurance (52)	\$1,527 - \$1,843	\$19,916
Real Estate and Rental and Leasing (53)	\$821 - \$993	\$5,647
Professional, Scientific, and Technical Services (54)	\$710 - \$860	\$9,457
Management of Companies and Enterprises (55)	\$6,502 - \$7,828	\$93,730
Administrative and Support and Waste Management (56)	\$1,261 - \$1,523	\$8,421
Educational Services (61)	\$8,024 - \$9,658	\$5,617
Health Care and Social Assistance (62)	\$774 - \$937	\$4,513
Arts, Entertainment, and Recreation (71)	\$1,841 - \$2,221	\$5,647
Accommodation and Food Services (72)	\$1,620 - \$1,955	\$4,733
Other services except public administration (81)	\$615 - \$745	\$2,542
State and Local Governments (99)	\$13,732 - \$16,525	\$203,393
<b>Overall</b>	<b>\$1,301 - \$1,571</b>	<b>\$11,968</b>

**5. If the proposed rule is likely to impose a disproportionate impact on small businesses, identify the steps taken to reduce the cost of the rule on small businesses:** Only educational services exceeded the minor cost threshold. However, for educational services specifically and all industries impacted by the rule, reliable data are lacking to differentiate the average cost for small businesses from their larger counterparts. As such, L&I assumes there is a disproportionate impact on small businesses. L&I reviewed the list of methods for reducing the impact on small businesses under RCW 19.85.030 and is taking the following steps to reduce the costs of the rule on small businesses:

- Reducing fine schedules for noncompliance for small businesses. RCW 49.17.180 addresses the civil penalties for the Washington Industrial Safety and Health Act (WISHA) citations and requires L&I give consideration in the penalty assessment to factors including the size of the employer's business. WAC 296-900-14015 under Table 11 sets forth the specific process for penalty adjustments including employer size, with reductions of 20 percent up to 70 percent.
- Developing and implementing a robust outreach and education program to ensure that small businesses are informed about what they need to know to comply with the law.
- Working with employer associations and other organizations to identify opportunities for targeted outreach efforts to assist employers.
- Reducing, modifying, or eliminating substantive regulatory requirements. The proposed rules allow for mandatory cool-down rest periods to be taken concurrently with other regulatory required meal and rest breaks, and if the cool-down rest period is taken during a meal period, the mandatory cool-down rest period does not need to be paid.
- Considering other mitigation techniques, including those suggested by small businesses or small business advocates.

L&I has considered the other methods of reducing costs under RCW 19.85.030 and found them inapplicable:

- Delaying compliance timetables. Given the hazard to workers and L&I's mandate under WISHA, chapter 49.17 RCW, delaying compliance

is not legal or feasible in meeting the objectives and requirements of WISHA.

- This rule does not directly impose any recordkeeping or reporting requirements. Indirectly, it may affect the number of employees for whom certain recordkeeping requirements are imposed under the statute or other rules. L&I cannot reduce the requirements set by statute in the Minimum Wage Act through this rule.
- This rule does not require inspections and presents no opportunity to reduce the frequency of inspections.

**6. Describe how small businesses were involved in the development of the proposed rule:** As discussed in Section 1.2.4 of the CBA, L&I communicated on the rule-development process via DOSH electronic email distribution lists, L&I rules electronic email distributions lists, and on social media in English and Spanish. Small business employers and organizations representing small businesses were involved throughout these processes and L&I considered their feedback throughout the process. Rule development efforts included:

- In February 2022, DOSH conducted an outdoor heat exposure survey, asking 10 scoping questions. The survey was sent to several DOSH electronic email distribution lists and also posted on social media in English and Spanish.
- Four stakeholder meetings were held virtually and stakeholders were able to participate online or by phone. In addition, some meetings were televised on TVW.
- L&I developed and shared draft proposed rules and circulated them for stakeholder feedback.

**7. Identify the estimated number of jobs that will be created or lost as the result of compliance with the proposed rule:** L&I does not anticipate that the compliance with proposed rules will lead to a significant number of job creations or cuts. Employers will be able to meet the proposed requirements using existing staff without new hires. Similarly, it is unlikely that employers would need to dismiss employees as a result of the proposed rule amendments.

A copy of the statement may be obtained by contacting Carmyn Shute, Administrative Regulations Analyst, L&I, DOSH, P.O. Box 44620, Olympia, WA 98504-4620, phone 360-870-4525, fax 360-902-5619, email Carmyn.Shute@Lni.wa.gov.

March 21, 2023  
Joel Sacks  
Director

#### OTS-4162.4

AMENDATORY SECTION (Amending WSR 19-01-094, filed 12/18/18, effective 1/18/19)

**WAC 296-62-09510 Scope and purpose.** (~~(+1)~~) WAC 296-62-095 through 296-62-09560:

(1) Applies to all employers with employees performing work in an outdoor environment.

(2) ~~((The requirements of WAC 296-62-095 through 296-62-09560 apply))~~ Applies to outdoor work environments ~~((from May 1 through September 30, annually, only))~~ when employees are exposed to outdoor heat ~~((at or above an applicable temperature listed in Table 1))~~.

~~((Table 1~~

~~To determine which temperature applies to each worksite, select the temperature associated with the general type of clothing or personal protective equipment (PPE) each employee is required to wear.~~

~~Outdoor Temperature Action Levels~~

<del>All other clothing</del>	<del>89°</del>
<del>Double-layer woven clothes including coveralls, jackets and sweatshirts</del>	<del>77°</del>
<del>Nonbreathing clothes including vapor barrier clothing or PPE such as chemical resistant suits</del>	<del>52°</del>

**Note:** ~~There is no requirement to maintain temperature records. The temperatures in Table 1 were developed based on Washington state data and are not applicable to other states.)~~

(3) ~~((WAC 296-62-095 through 296-62-09560))~~ Does not apply to incidental exposure ~~((which exists when))~~. Incidental exposure means an employee is not required to perform a work activity outdoors for more than ~~((fifteen))~~ 15 minutes in any ~~((sixty-minute))~~ 60-minute period. This exception may be applied every hour during the work shift.

(4) ~~((WAC 296-62-095 through 296-62-09560))~~ Supplements all industry-specific standards with related requirements. Where the requirements under these sections provide more specific or greater protection than the industry-specific standards, the employer must comply with the requirements under these sections. Additional related requirements are found in chapter 296-305 WAC, Safety standards for firefighters and chapter 296-307 WAC, Safety standards for agriculture.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 19-01-094, § 296-62-09510, filed 12/18/18, effective 1/18/19; WSR 08-12-109, § 296-62-09510, filed 6/4/08, effective 7/5/08.]

AMENDATORY SECTION (Amending WSR 19-01-094, filed 12/18/18, effective 1/18/19)

**WAC 296-62-09520 Definitions.** (1) Acclimatization. The body's temporary adaptation to work in heat that occurs as a person is exposed to it over ~~((time-~~

~~Double-layer woven clothing.~~ Clothing worn in two layers allowing air to reach the skin. For example, coveralls worn on top of regular work clothes.) a period of seven to 14 days depending on the amount of recent work in the heat and the individual factors. Acclimatization can be lost after seven consecutive days away from working in the heat.

(2) Buddy system. A system where individuals are paired or teamed up into work groups so each employee can be observed by at least one other member of the group to monitor and report signs and symptoms of heat-related illness.

(3) Drinking water. Potable water that is suitable to drink((-)) and suitably cool in temperature. Other acceptable beverages include

drinking water packaged as a consumer product, and electrolyte-replenishing beverages (i.e., sports drinks) that do not contain high amounts of sugar, caffeine ((are acceptable)), or both such as energy drinks.

(4) **Engineering controls.** The use of devices to reduce exposure and aid cooling ((i.e., air conditioning)).

**Environmental factors for heat-related illness.** Working conditions that increase susceptibility for heat-related illness such as air temperature, relative humidity, radiant heat from the sun and other sources, conductive heat sources such as the ground, air movement, workload (i.e., heavy, medium, or low) and duration, and personal protective equipment worn by employees. Measurement of environmental factors is not required by WAC 296-62-095)). Examples of engineering controls include fans, misting stations, air-conditioning, etc.

(5) **Heat-related illness.** A medical condition resulting from the body's inability to cope with a particular heat load, and includes, but is not limited to, heat cramps, heat rash, heat exhaustion, fainting, and heat stroke.

(6) **Outdoor environment.** An environment where work activities are conducted outside. Work environments such as inside vehicle cabs, sheds, and tents or other structures may be considered an outdoor environment if the environmental factors affecting temperature are not managed by engineering controls. ((Construction activity is considered to be work in an indoor environment when performed inside a structure after the outside walls and roof are erected.))

(7) **Risk factors for heat-related illness.** Conditions that increase susceptibility for heat-related illness including:

(a) Environmental factors such as air temperature, relative humidity, air movement, radiant heat from the sun and other sources, conductive heat sources such as the ground;

(b) Workload (light, moderate, or heavy) and work duration;

(c) Personal protective equipment and clothing worn by employees;  
and

(d) Personal factors such as age, medications, physical fitness, and pregnancy.

(8) **Shade.** A blockage of direct sunlight. Shade may be provided by any natural or artificial means that does not expose employees to unsafe or unhealthy conditions and that does not deter or discourage access or use. One indicator that blockage is sufficient is when objects do not cast a shadow in the area of blocked sunlight. Shade is not adequate when heat in the area of shade defeats the purpose of shade, which is to allow the body to cool. For example, a car sitting in the sun does not provide acceptable shade to a person sitting in it, unless the car is running with air-conditioning.

(9) **Vapor barrier clothing.** Clothing that significantly inhibits or completely prevents sweat produced by the body from evaporating into the outside air. Such clothing includes encapsulating suits, various forms of chemical resistant suits used for PPE, and other forms of ((nonbreathing)) nonbreathable clothing.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 19-01-094, § 296-62-09520, filed 12/18/18, effective 1/18/19; WSR 08-12-109, § 296-62-09520, filed 6/4/08, effective 7/5/08.]

AMENDATORY SECTION (Amending WSR 08-12-109, filed 6/4/08, effective 7/5/08)

**WAC 296-62-09530 Employer and employee responsibility.** (1) Employers of employees exposed to temperatures at or above (~~temperatures~~) those listed in ((WAC 296-62-09510(2)) Table 1 of this section must:

(a) Address their outdoor heat exposure safety program in their written accident prevention program (APP) (~~and~~ (b)), in a language that employees understand;

(b) Ensure the outdoor heat exposure safety program contains, at a minimum, the following elements:

(i) Procedures for providing sufficiently cool drinking water;

(ii) Procedures for providing shade or other sufficient means to reduce body temperature, including the location of such means and how employees can access them;

(iii) Emergency response procedures for employees demonstrating signs or symptoms of heat-related illness;

(iv) Acclimatization methods and procedures;

(v) High heat procedures; and

(vi) The specific method used by the employer to closely observe for signs and symptoms of heat-related illness as required under WAC 296-62-09545 and 296-62-0947(2);

(c) Ensure a copy of the outdoor heat exposure safety program is made available to employees and their authorized representatives;

(d) Encourage employees to frequently consume water or other acceptable beverages to ensure hydration(~~and~~); and

(e) Encourage and allow employees to take a preventative cool-down rest period when they feel the need to do so to protect themselves from overheating using sufficient means to reduce body temperature such as shade or other equally or more effective means. The preventative cool-down rest period must be paid unless taken during a meal period. If an employee is showing signs and symptoms of heat-related illness during the cool-down rest period, the employer must comply with requirements under WAC 296-62-09550.

**Table 1.** To determine which temperature applies to each worksite, select the temperature associated with the general type of clothing or personal protective equipment (PPE) each employee is required to wear.

<u>Nonbreathable clothes including vapor barrier clothing or PPE such as chemical resistant suits</u>	<u>52°F</u>
<u>All other clothing</u>	<u>80°F</u>

**Note:** There is no requirement to maintain temperature records. The temperatures in Table 1 were developed based on Washington state data and are not applicable to other states.

(2) Employees are responsible for monitoring their own personal factors for heat-related illness including consumption of water or other acceptable beverages to ensure hydration, and taking preventative cool-down rest periods when they feel the need to do so to prevent from overheating.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060. WSR 08-12-109, § 296-62-09530, filed 6/4/08, effective 7/5/08.]

NEW SECTION

**WAC 296-62-09535 Access to shade.** Employers of employees exposed to temperatures at or above those listed in Table 1 of WAC 296-62-09530 must:

(1) Provide and maintain one or more areas with shade at all times while employees are present that are either open to the air or provided with ventilation or cooling, and not adjoining a radiant heat source such as machinery or a concrete structure. The shade must be located as close as practicable to the areas where employees are working.

(2) Ensure the amount of shade present is large enough to accommodate the number of employees on a meal or rest period, so they can sit in a normal posture fully in the shade.

(3) In lieu of shade, employers may use other means to reduce body temperature if they can demonstrate such means are equally or more effective than shade. Some alternatives to shade may include the provision of misting stations, cooling vests, or air-conditioned areas.

[ ]

AMENDATORY SECTION (Amending WSR 08-12-109, filed 6/4/08, effective 7/5/08)

**WAC 296-62-09540 Drinking water.** (1) Keeping workers hydrated in a hot outdoor environment requires that more water be provided than at other times of the year. Federal OSHA and research indicate that employers should be prepared to supply at least one quart of drinking water per employee per hour. When employee exposure is at or above an applicable temperature listed in WAC ((~~296-62-09510(2)~~) 296-62-09530 Table 1:

(a) Employers must ensure that a sufficient quantity of suitably cool drinking water is readily accessible to employees at all times; and

(b) Employers must ensure that all employees have the opportunity to drink at least one quart of drinking water per hour.

(2) Employers are not required to supply the entire quantity of drinking water needed to be supplied for all employees on a full shift at the beginning of the shift. Employers may begin the shift with smaller quantities of drinking water if effective procedures are established for replenishment during the shift.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060. WSR 08-12-109, § 296-62-09540, filed 6/4/08, effective 7/5/08.]

NEW SECTION

**WAC 296-62-09545 Acclimatization.** Employers must closely observe employees for signs and symptoms of heat-related illness by implementing one or more of the close observation options under WAC 296-62-09547(2).

(1) For 14 days when employees:

- (a) Are newly assigned to working at or above the applicable temperatures listed in Table 1 of WAC 296-62-09530;
- (b) Return to work at the applicable temperatures listed in Table 1 of WAC 296-62-09530 after an absence seven days or more;
- (2) During a heat wave. For purposes of this section only, "heat wave" means any day in which the predicted high temperature for the day will be at least the temperatures listed in Table 1 of WAC 296-62-09530 and at least 10 degrees Fahrenheit higher than the average high daily temperature in the preceding five days.

**Note:** Employers may also consider additional acclimatization procedures recommended by NIOSH:  
 - NIOSH Heat Stress: Acclimatization. <https://www.cdc.gov/niosh/mining/userfiles/works/pdfs/2017-124.pdf>  
 - NIOSH Criteria for a Recommended Standard for Occupational Exposure to Heat and Hot Environments: <https://www.cdc.gov/niosh/docs/2016-106/pdfs/2016-106.pdf?id=10.26616/NIOSH PUB2016106>

[]

NEW SECTION

**WAC 296-62-09547 High heat procedures.** The employer must implement the following high heat procedures when the temperature is at or above 90 degrees Fahrenheit, unless engineering or administrative controls (such as air-conditioning or scheduling work at cooler times of the day) are used to lower employees' exposure below 90 degrees Fahrenheit.

(1) Ensure that employees take at minimum the mandatory cool-down rest periods in Table 2. The cool-down rest period must be provided in the shade or using other equally or more effective means to reduce body temperature. The mandatory cool-down rest period may be provided concurrently with any meal or rest period required under WAC 296-126-092 and must be paid unless taken during a meal period.

Table 2

Air Temperature	Mandatory cool-down rest periods
At or above 90°F	10 minutes/2 hours
At or above 100°F	15 minutes/1 hour

**Note:** Employers may also consider implementing more additional protective rest periods per NIOSH or ACGIH methods:  
 - NIOSH Criteria for a Recommended Standard for Occupational Exposure to Heat and Hot Environments: <https://www.cdc.gov/niosh/docs/2016-106/pdfs/2016-106.pdf?id=10.26616/NIOSH PUB2016106>  
 - American Conference of Governmental Industrial Hygienists (ACGIH) Threshold Limit Value (TLV) for Heat Stress and Strain: <https://www.acgih.org/heat-stress-and-strain-2/>  
 The department will review work-rest periods within three years after the outdoor heat exposure rule goes into effect. We will review applicable data including, but not limited to, heat-related illness claims, inspections, other national and state regulations, peer-reviewed publications, and nationally recognized standards.

- (2) Closely observe employees for signs and symptoms of heat-related illness by implementing one or more of the following:
  - (a) Regular communication with employees working alone, such as by radio or cellular phone;
  - (b) A mandatory buddy system; or
  - (c) Other effective means of observation.

[]



AMENDATORY SECTION (Amending WSR 08-12-109, filed 6/4/08, effective 7/5/08)

**WAC 296-62-09550 Responding to signs and symptoms of heat-related illness.** (1) Employers must ensure that effective communication by voice, observation, or electronic means is maintained so that employees at the work site and their supervisor can contact each other to report signs and symptoms of heat-related illness and get medical attention when necessary. An electronic device, such as a cellular phone or text messaging device, may be used for this purpose only if reception in the area is reliable.

(2) Employees showing signs or demonstrating symptoms of heat-related illness must be relieved from duty and provided with a sufficient means to reduce body temperature.

~~((2))~~ (3) Employees showing signs or demonstrating symptoms of heat-related illness must be monitored to determine whether medical attention is necessary.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060. WSR 08-12-109, § 296-62-09550, filed 6/4/08, effective 7/5/08.]

AMENDATORY SECTION (Amending WSR 08-12-109, filed 6/4/08, effective 7/5/08)

**WAC 296-62-09560 Information and training.** (1) ~~All ((training must be provided to)) employees and supervisors((7))~~ must be trained as required by this section prior to outdoor work where occupational exposure to heat might occur and at least annually after the initial training. Training must be provided in a language and manner the employee or supervisor understands((7, prior to outdoor work which exceeds a temperature listed in WAC 296-62-09510(2) Table 1, and at least annually thereafter)).

~~((1))~~ (2) Employee training. Effective training on the following topics must be provided to all employees who may be exposed to outdoor heat ((at or above the temperatures listed in WAC 296-62-09510(2) Table 1)):

(a) The environmental factors and other work conditions (i.e., workload, work duration, personal protective equipment, clothing) that contribute to the risk of heat-related illness;

(b) General awareness of personal factors that may increase susceptibility to heat-related illness including, but not limited to, an individual's age, physical fitness, degree of acclimatization, medical conditions, drinking water consumption, alcohol use, ((caffeine use, nicotine use)) previous heat-related illness, pregnancy, and use of medications that affect the body's responses to heat. This information is for the employee's personal use;

(c) The importance of removing heat-retaining personal protective equipment such as nonbreathable chemical resistant clothing during all breaks;

(d) The importance of frequent consumption of small quantities of drinking water or other acceptable beverages;

(e) ~~The ((importance of)) acclimatization((7~~

~~(f))~~ requirements under WAC 296-62-09545, the concept of acclimatization, and the importance of the following considerations:

(i) Frequent cool-down rest periods;

(ii) Gradual increase of work duration in the heat; and  
(iii) Employees are unable to build a tolerance to working in the heat during a heat wave;

(f) The importance of taking preventative cool-down rest periods when employees feel the need to do so in order to protect themselves from overheating;

(g) The mandatory cool-down rest periods under WAC 296-62-09547 when the outdoor temperature reaches or exceeds 90 degrees Fahrenheit;

(h) The employer's procedures for providing shade or other sufficient means to reduce body temperature, including the location of such means and how employees can access them;

(i) The different types of heat-related illness, the common signs and symptoms of heat-related illness; ((and

~~(g))~~ (j) The importance of immediately reporting signs or symptoms of heat-related illness in either themselves or in co-workers to the person in charge and the procedures the employee must follow including appropriate emergency response procedures~~((~~

~~(2))~~); and

(k) The employer's procedures for close observation of employees for signs and symptoms of heat-related illness.

(3) Supervisor training. Prior to supervising employees working in outdoor environments with heat exposure at or above the temperature levels listed in WAC ((296-62-09510(2)) 296-62-09530(2) Table 1, supervisors must have training on the following topics:

(a) The information required to be provided to employees listed in subsection (1) of this section;

(b) The procedures the supervisor must follow to implement the applicable provisions of WAC 296-62-095 through 296-62-09560;

(c) The importance of considering the use of engineering or administrative controls such as air-conditioning and scheduling work during the cooler hours of the day in order to reduce employees' exposure to heat;

(d) The procedures the supervisor must follow if an employee exhibits signs or symptoms consistent with possible heat-related illness, including appropriate emergency response procedures; and

~~((d))~~ (e) Procedures for moving or transporting an employee(s) to a place where the employee(s) can be reached by an emergency medical service provider, if necessary.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060. WSR 08-12-109, § 296-62-09560, filed 6/4/08, effective 7/5/08.]

### OTS-4164.3

AMENDATORY SECTION (Amending WSR 20-21-091, filed 10/20/20, effective 11/20/20)

**WAC 296-307-09710 Scope and purpose.** ~~((1) WAC 296-307-097))~~  
WAC 296-307-09710 through 296-307-09760:

(1) Applies to all employers with employees performing work in an outdoor environment.

(2) ((The requirements of WAC 296-307-097 through 296-307-09760 apply)) Applies to outdoor work environments ((from May 1 through Sep-

tember 30, annually, only)) when employees are exposed to outdoor heat ((at or above an applicable temperature listed in Table 1)).

~~(Table 1~~

To determine which temperature applies to each worksite, select the temperature associated with the general type of clothing or personal protective equipment (PPE) each employee is required to wear.

Outdoor Temperature Action Levels

All other clothing	89°
Double-layer woven clothes including coveralls, jackets and sweatshirts	77°
Nonbreathing clothes including vapor barrier clothing or PPE such as chemical resistant suits	52°

**Note:** There is no requirement to maintain temperature records. The temperatures in Table 1 were developed based on Washington state data and are not applicable to other states.)

(3) ((WAC 296-307-097 through 296-307-09760)) Does not apply to incidental exposure ((which exists when)). Incidental exposure means an employee is not required to perform a work activity outdoors for more than ((fifteen)) 15 minutes in any ((sixty-minute)) 60-minute period. This exception may be applied every hour during the work shift.

(4) ((WAC 296-307-097 through 296-307-09760)) Supplements all industry-specific standards with related requirements. Where the requirements under these sections provide more specific or greater protection than the industry-specific standards, the employer must comply with the requirements under these sections. Additional related requirements are found in chapter 296-305 WAC, Safety standards for firefighters and chapter 296-307 WAC, Safety standards for agriculture.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 20-21-091, § 296-307-09710, filed 10/20/20, effective 11/20/20; WSR 09-07-098, § 296-307-09710, filed 3/18/09, effective 5/1/09.]

AMENDATORY SECTION (Amending WSR 20-21-091, filed 10/20/20, effective 11/20/20)

**WAC 296-307-09720 Definitions.** (1) Acclimatization. The body's temporary adaptation to work in heat that occurs as a person is exposed to it over ((time.

~~**Double-layer woven clothing.** Clothing worn in two layers allowing air to reach the skin. For example, coveralls worn on top of regular work clothes.)) a period of seven to 14 days depending on the amount of recent work in the heat and individual factors. Acclimatization can be lost after seven consecutive days away from working in the heat.~~

(2) Buddy system. A system where individuals are paired or teamed up into work groups so each employee can be observed by at least one other member of the group to monitor and report signs and symptoms of heat-related illness.

(3) Drinking water. Potable water that is suitable to drink((-) and suitably cool in temperature. Other acceptable beverages include drinking water packaged as a consumer product, and electrolyte-replenishing beverages (i.e., sports drinks) that do not contain high

amounts of sugar, caffeine ((are acceptable)), or both such as energy drinks.

(4) **Engineering controls.** The use of devices to reduce exposure and aid cooling ((i.e., air conditioning)).

~~Environmental factors for heat-related illness.~~ Working conditions that increase susceptibility for heat-related illness such as air temperature, relative humidity, radiant heat from the sun and other sources, conductive heat sources such as the ground, air movement, workload (i.e., heavy, medium, or low) and duration, and personal protective equipment worn by employees. Measurement of environmental factors is not required by WAC 296-307-097). Examples of engineering controls include fans, misting stations, air-conditioning, etc.

(5) **Heat-related illness.** A medical condition resulting from the body's inability to cope with a particular heat load, and includes, but is not limited to, heat cramps, heat rash, heat exhaustion, fainting, and heat stroke.

(6) **Outdoor environment.** An environment where work activities are conducted outside. Work environments such as inside vehicle cabs, sheds, and tents or other structures may be considered an outdoor environment if the environmental factors affecting temperature are not managed by engineering controls. ((Construction activity is considered to be work in an indoor environment when performed inside a structure after the outside walls and roof are erected.))

(7) **Risk factors for heat-related illness.** Conditions that increase susceptibility for heat-related illness including:

(a) Environmental factors such as air temperature, relative humidity, air movement, radiant heat from the sun and other sources, conductive heat sources such as the ground;

(b) Workload (light, moderate, or heavy) and work duration;

(c) Personal protective equipment and clothing worn by employees;  
and

(d) Personal factors such as age, medications, physical fitness, and pregnancy.

(8) **Shade.** A blockage of direct sunlight. Shade may be provided by any natural or artificial means that does not expose employees to unsafe or unhealthy conditions and that does not deter or discourage access or use. One indicator that blockage is sufficient is when objects do not cast a shadow in the area of blocked sunlight. Shade is not adequate when heat in the area of shade defeats the purpose of shade, which is to allow the body to cool. For example, a car sitting in the sun does not provide acceptable shade to a person sitting in it, unless the car is running with air-conditioning.

(9) **Vapor barrier clothing.** Clothing that significantly inhibits or completely prevents sweat produced by the body from evaporating into the outside air. Such clothing includes encapsulating suits, various forms of chemical resistant suits used for PPE, and other forms of ((nonbreathing)) nonbreathable clothing.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 20-21-091, § 296-307-09720, filed 10/20/20, effective 11/20/20; WSR 09-07-098, § 296-307-09720, filed 3/18/09, effective 5/1/09.]

AMENDATORY SECTION (Amending WSR 09-07-098, filed 3/18/09, effective 5/1/09)

**WAC 296-307-09730 Employer and employee responsibility.** (1) Employers of employees exposed to temperatures at or above (~~temperatures~~) those listed in ((WAC 296-307-09710(2)) Table 1 of this section must:

(a) Address their outdoor heat exposure safety program in their written accident prevention program (APP) (~~and~~ (b)), in a language that employees understand;

(b) Ensure the outdoor heat exposure safety program contains, at a minimum, the following elements:

(i) Procedures for providing sufficiently cool drinking water;  
 (ii) Procedures for providing shade or other sufficient means to reduce body temperature, including the location of such means and how employees can access them;

(iii) Emergency response procedures for employees demonstrating signs or symptoms of heat-related illness;

(iv) Acclimatization methods and procedures;

(v) High heat procedures; and

(vi) The specific method used by the employer to closely observe employees for signs and symptoms of heat-related illness as required under WAC 296-307-09745 and 296-307-09747(2);

(c) Ensure a copy of the outdoor heat exposure safety program is made available to employees and their authorized representatives;

(d) Encourage employees to frequently consume water or other acceptable beverages to ensure hydration(~~and~~); and

(e) Encourage and allow employees to take a preventative cool-down rest period when they feel the need to do so to protect themselves from overheating using sufficient means to reduce body temperature such as shade or other equally or more effective means. The preventative cool-down rest period must be paid unless taken during a meal period. If an employee is showing signs or symptoms of heat-related illness during the cool-down rest period, the employer must comply with the requirements under WAC 296-307-09750.

**Table 1.** To determine which temperature applies to each worksite, select the temperature associated with the general type of clothing or personal protective equipment (PPE) each employee is required to wear.

<u>Nonbreathable clothes including vapor barrier clothing or PPE such as chemical resistant suits</u>	<u>52°F</u>
<u>All other clothing</u>	<u>80°F</u>

**Note:** There is no requirement to maintain temperature records. The temperatures in Table 1 were developed based on Washington state data and are not applicable to other states.

(2) Employees are responsible for monitoring their own personal factors for heat-related illness including consumption of water or other acceptable beverages to ensure hydration, and taking preventative cool-down rest periods when they feel the need to do so to prevent from overheating.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 09-07-098, § 296-307-09730, filed 3/18/09, effective 5/1/09.]

NEW SECTION

**WAC 296-307-09735 Access to shade.** Employers of employees exposed at or above temperatures listed in Table 1 of WAC 296-307-09730 must:

(1) Provide and maintain one or more areas with shade at all times while employees are present that are either open to the air or provided with ventilation or cooling, and not adjoining a radiant heat source such as machinery or a concrete structure. The shade must be located as close as practicable to the areas where employees are working.

(2) Ensure the amount of shade present is large enough to accommodate the number of employees on a meal or rest period, so they can sit in a normal posture fully in the shade.

(3) In lieu of shade, employers may use other means to reduce body temperature if they can demonstrate such means are equally or more effective than shade. Some alternatives to shade may include the provision of misting stations, cooling vests, or air-conditioned areas.

[ ]

AMENDATORY SECTION (Amending WSR 09-07-098, filed 3/18/09, effective 5/1/09)

**WAC 296-307-09740 Drinking water.** (1) Keeping workers hydrated in a hot outdoor environment requires that more water be provided than at other times of the year. Federal OSHA and research indicate that employers should be prepared to supply at least one quart of drinking water per employee per hour. When employee exposure is at or above an applicable temperature listed in WAC ((~~296-307-09710(2)~~)) 296-307-09730 Table 1:

(a) Employers must ensure that a sufficient quantity of suitably cool drinking water is readily accessible to employees at all times; and

(b) Employers must ensure that all employees have the opportunity to drink at least one quart of drinking water per hour.

(2) Employers are not required to supply the entire quantity of drinking water needed to be supplied for all employees on a full shift at the beginning of the shift. Employers may begin the shift with smaller quantities of drinking water if effective procedures are established for replenishment during the shift.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 09-07-098, § 296-307-09740, filed 3/18/09, effective 5/1/09.]

NEW SECTION

**WAC 296-307-09745 Acclimatization.** Employers must closely observe employees for signs and symptoms of heat-related illness by implementing one or more of the close observation options under WAC 296-307-09747(2).

(1) For 14 days when employees:

(a) Are newly assigned to working at or above the applicable temperatures listed in Table 1 of WAC 296-307-09730;

(b) Return to work at the applicable temperatures listed in Table 1 of WAC 296-307-09730 after an absence of seven days or more;

(2) During a heat wave. For purposes of this section only, "heat wave" means any day in which the predicted high temperature for the day will be at least the temperatures listed in Table 1 of WAC 296-307-09730 and at least 10 degrees Fahrenheit higher than the average high daily temperature in the preceding five days.

**Note:** Employers may also consider additional acclimatization procedures recommended by NIOSH:  
 - NIOSH Heat Stress: Acclimatization. <https://www.cdc.gov/niosh/mining/userfiles/works/pdfs/2017-124.pdf>  
 - NIOSH Criteria for a Recommended Standard for Occupational Exposure to Heat and Hot Environments: <https://www.cdc.gov/niosh/docs/2016-106/pdfs/2016-106.pdf?id=10.26616/NIOSH PUB2016106>

[]

NEW SECTION

**WAC 296-307-09747 High heat procedures.** The employer must implement the following high heat procedures when the temperature is at or above 90 degrees Fahrenheit, unless engineering or administrative controls (such as air-conditioning or scheduling work at cooler times of the day) are used to lower employees' exposure below 90 degrees Fahrenheit.

(1) Ensure that employees take at a minimum the mandatory cool-down rest periods in Table 2. The cool-down rest period must be provided in the shade or using other equally or more effective means to reduce body temperature. The mandatory cool-down rest period may be provided concurrently with any meal or rest period required under WAC 296-131-020 and must be paid unless taken during a meal period.

Table 2

Air Temperature	Mandatory cool-down rest periods
At or above 90°F	10 minutes/2 hours
At or above 100°F	15 minutes/1 hour

**Note:** Employers may also consider implementing more additional protective rest periods per NIOSH or ACGIH methods:  
 - NIOSH Criteria for a Recommended Standard for Occupational Exposure to Heat and Hot Environments: <https://www.cdc.gov/niosh/docs/2016-106/pdfs/2016-106.pdf?id=10.26616/NIOSH PUB2016106>  
 - American Conference of Governmental Industrial Hygienists (ACGIH) Threshold Limit Value (TLV) for Heat Stress and Strain: <https://www.acgih.org/heat-stress-and-strain-2/>  
 The department will review work-rest periods within three years after the outdoor heat exposure rule goes into effect. We will review applicable data including, but not limited to, heat-related illness claims, inspections, other national and state regulations, peer-reviewed publications, and nationally recognized standards.

(2) Closely observe employees for signs and symptoms of heat-related illness by implementing one or more of the following:

(a) Regular communication with employees working alone, such as by radio or cellular phone;

(b) A mandatory buddy system; or

(c) Other effective means of observation.

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AMENDATORY SECTION (Amending WSR 09-07-098, filed 3/18/09, effective 5/1/09)

**WAC 296-307-09750 Responding to signs and symptoms of heat-related illness.** (1) Employers must ensure that effective communication by voice, observation, or electronic means is maintained so that employees at the work site and their supervisor can contact each other to report signs and symptoms of heat-related illness and get medical attention when necessary. An electronic device, such as a cellular phone or text messaging device, may be used for this purpose only if reception in the area is reliable.

(2) Employees showing signs or demonstrating symptoms of heat-related illness must be relieved from duty and provided with a sufficient means to reduce body temperature.

~~((2))~~ (3) Employees showing signs or demonstrating symptoms of heat-related illness must be monitored to determine whether medical attention is necessary.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 09-07-098, § 296-307-09750, filed 3/18/09, effective 5/1/09.]

AMENDATORY SECTION (Amending WSR 09-07-098, filed 3/18/09, effective 5/1/09)

**WAC 296-307-09760 Information and training.** (1) All ~~((training must be provided to))~~ employees and supervisors ~~((7))~~ must be trained as required by this section prior to outdoor work where occupational exposure to heat might occur and at least annually after the initial training. Training must be provided in a language and manner the employee or supervisor understands ((7, prior to outdoor work which exceeds a temperature listed in WAC 296-307-09710(2) Table 1, and at least annually thereafter)).

~~((1))~~ (2) Employee training. Effective training on the following topics must be provided to all employees who may be exposed to outdoor heat ((at or above the temperatures listed in WAC 296-307-09710(2) Table 1)):

(a) The environmental factors and other work conditions (i.e., workload, work duration, personal protective equipment, clothing) that contribute to the risk of heat-related illness;

(b) General awareness of personal factors that may increase susceptibility to heat-related illness including, but not limited to, an individual's age, physical fitness, degree of acclimatization, medical conditions, drinking water consumption, alcohol use, ((caffeine use, nicotine use)) previous heat-related illness, pregnancy, and use of medications that affect the body's responses to heat. This information is for the employee's personal use;

(c) The importance of removing heat-retaining personal protective equipment such as nonbreathable chemical resistant clothing during all breaks;

(d) The importance of frequent consumption of small quantities of drinking water or other acceptable beverages;

(e) The importance of acclimatization~~((7))~~

~~((f))~~ requirements under WAC 296-307-09745, the concept of acclimatization, and the importance of the following considerations:



(i) Frequent cool-down rest periods;  
(ii) Gradual increase of work duration in the heat; and  
(iii) Employees are unable to build a tolerance to working in the heat during a heat wave;

(f) The importance of taking preventative cool-down rest periods when employees feel the need to do so in order to protect themselves from overheating;

(g) The mandatory cool-down rest periods under WAC 296-307-09747 when the outdoor temperature reaches or exceeds 90 degrees Fahrenheit;

(h) The employer's procedures for providing shade or other sufficient means to reduce body temperature, including the location of such means and how employees can access them;

(i) The different types of heat-related illness, the common signs and symptoms of heat-related illness; (~~and~~

~~(g))~~ (j) The importance of immediately reporting signs or symptoms of heat-related illness in either themselves or in co-workers to the person in charge and the procedures the employee must follow including appropriate emergency response procedures (~~(-~~

~~(2))~~); and

(k) The employer's procedures for close observation of employees for signs and symptoms of heat-related illness.

(3) Supervisor training. Prior to supervising employees working in outdoor environments with heat exposure at or above the temperature levels listed in WAC (~~(296-307-09710(2))~~) 296-307-09730(2) Table 1, supervisors must have training on the following topics:

(a) The information required to be provided to employees listed in subsection (1) of this section;

(b) The procedures the supervisor must follow to implement the applicable provisions of WAC 296-307-097 through 296-307-09760;

(c) The importance of considering the use of engineering or administrative controls such as air-conditioning and scheduling work during the cooler hours of the day in order to reduce employees' exposure to heat;

(d) The procedures the supervisor must follow if an employee exhibits signs or symptoms consistent with possible heat-related illness, including appropriate emergency response procedures; and

~~((d))~~ (e) Procedures for moving or transporting an employee(s) to a place where the employee(s) can be reached by an emergency medical service provider, if necessary.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 09-07-098, § 296-307-09760, filed 3/18/09, effective 5/1/09.]

## WSR 23-07-125

## PROPOSED RULES

## DEPARTMENT OF HEALTH

[Filed March 21, 2023, 1:34 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-01-186.

Title of Rule and Other Identifying Information: Chapter 246-770 WAC, Fruit and vegetable incentives program. The department of health (DOH) is proposing rules to establish the criteria for food retailers, farmers' markets, and farm stands to participate in the fruit and vegetables incentives program, as well as the eligibility criteria for consumers to receive and use fruit and vegetable incentives.

Hearing Location(s): On May 1, 2023, at 1:00 p.m. DOH will be holding a virtual only hearing. Please register in advance for this webinar [https://us02web.zoom.us/webinar/register/WN\\_uOqd37jqSxKMtfxq5qEVUw](https://us02web.zoom.us/webinar/register/WN_uOqd37jqSxKMtfxq5qEVUw). After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: May 8, 2023.

Submit Written Comments to: Alyssa Auvinen, P.O. Box 47830, Olympia, WA 98504-7830, email [alyssa.auvinen@doh.wa.gov](mailto:alyssa.auvinen@doh.wa.gov), <https://fortress.wa.gov/doh/policyreview/>, by May 1, 2023.

Assistance for Persons with Disabilities: Contact Ashley Noble, phone 360-628-3776, TTY 711, email [ashley.noble@doh.wa.gov](mailto:ashley.noble@doh.wa.gov), by April 17, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The fruit and vegetable incentives program includes farmers' market basic food incentives, grocery store basic food incentives, and fruit and vegetable vouchers. These incentives allow eligible participants to receive extra benefits or cash-value vouchers to purchase fruits and vegetables from farmers' markets and food retailers. Fruit and vegetable incentives supplement the buying power of low-income people and families.

The proposed rules establish the criteria for food retailers, farmers' markets, and farm stands to participate in the fruit and vegetables incentives program, as well as the eligibility criteria for consumers to receive and use fruit and vegetable incentives.

Reasons Supporting Proposal: RCW 43.70.780 Fruit and vegetable incentives program, requires DOH to adopt rules to implement a fruit and vegetable incentives program. These incentives allow eligible participants (low-income people and families) to receive extra benefits or cash-value vouchers to purchase fruits and vegetables from farmers' markets and food retailers.

Statutory Authority for Adoption: RCW 43.70.780.

Statute Being Implemented: RCW 43.70.780.

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: None.

Name of Proponent: DOH, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Alyssa Auvinen, 101 Israel Road S.E., Tumwater, WA 98501, 360-999-8967.

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 Alyssa

Auvinen, P.O. Box 47830, Olympia, WA 98540[98504]-7830, phone 360-999-8967, email alyssa.auvinen@doh.wa.gov.

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

Is not exempt.

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

#### Small Business Economic Impact Statement

**Describe the proposed rule, including: A brief history of the issue; an explanation of why the proposed rule is needed; and 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:** RCW 43.70.780 Fruit and vegetable incentives program, requires DOH (department) to make rules to implement a fruit and vegetable incentives program. The program includes farmers' market basic food incentives, grocery store basic food incentives, and fruit and vegetable vouchers. These incentives allow eligible participants to receive extra benefits or cash-value vouchers to purchase fruits and vegetables from farmers' markets and food retailers.

The United States Department of Agriculture's Food and Nutrition Services established the Food Insecurity Nutrition Incentives (FINI) program in 2014 to enable grantees to supplement Supplemental Nutrition Assistance Program (SNAP) benefits and encourage consumption of fruits and vegetables. The department was awarded \$5,859,307 in FINI grant funds for a large scale, multi-year project (April 2015 - March 2020). The FINI grant funded farmers' market basic food incentives, grocery store basic food incentives, and fruit and vegetable vouchers.

Recognizing the value of fruit and vegetable incentives to supplement the buying power of low-income people and families, the Washington state legislature passed legislation (SHB 1587) in 2019 to ensure these incentives would remain available to low-income Washingtonians regardless of the availability of future federal grant funding.

The FINI program was amended by federal legislation in 2018, which changed the program's name to the Gus Schumacher Nutrition Incentive Program (GusNIP). The department was awarded GusNIP funds in 2020 (September 2020 - August 2023) to support farmers' market basic food incentives and grocery store basic food incentives. The GusNIP funds no longer support fruit and vegetable vouchers.

To become authorized to offer basic food incentives and fruit and vegetable vouchers, farmers' markets, farm stands, grocers, convenience stores, retailers, and health care systems will be required to submit applications and enter into contracts with the department, complete trainings, maintain point of sale mechanisms that allow tracking and redemption of basic food incentives and/or fruit and vegetable vouchers, employ a designated staff member on-site who has received food incentives training, and sell fresh fruits and vegetables.

**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:** The department identified grocers, retailers, fruit and vegetable markets, and health care systems as the types of businesses directly impacted by the proposed rules. Table A summarizes the minor cost thresholds for each applicable code.

NAICS Code (4, 5, or 6 digit)	NAICS Business Description	# Of Businesses In Washington	Minor Cost Threshold = 1% of Average Annual Payroll	Minor Cost Threshold = .3% of Average Annual Receipts
4451	Grocery Stores	1,999	\$11,227.61	\$26,576.83
445110	Supermarkets and Other Grocery (except Convenience) Stores	1,330	\$24,632.97	\$39,505.18
445120	Convenience Stores	665	\$1,268.47	\$3,619.63
445230	Fruit and Vegetable Markets	107	\$2,435.71	\$2,220.48
621111	Offices of Physicians (except Mental Health Specialists)	1,866	\$27,457.90	\$10,767.33
621491	HMO Centers	47	Redacted	\$106,630.18

**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; and whether compliance with the proposed rule will cause businesses to lose sales or revenue: WAC 246-770-030 Farmers' market and farm stand basic food incentives.**

**Description:** This section describes how farmers' markets and farm stands may become authorized to offer basic food incentives, states that systems that do not comply with these rules will be subject to disqualification from participation in the voucher program, and describes the circumstances that constitute noncompliance.

**Costs:** Farmers' markets and farm stands that meet the proposed requirements must submit an application to the department to become authorized to offer basic food incentives. The department estimates negligible cost for farmers' markets and farm stands to prepare and submit the initial application and to renew the application.

If the department approves the application the administrative work for entering into contract with the department is estimated at one hour annually.<sup>1</sup> The department estimates that meeting contract requirements, which includes administering the program at a farmers' market or farm stand, submitting reporting/data to the department, and submitting monthly invoices will require 40 hours annually.

<sup>1</sup> Time estimates in section 5 of the analysis are based on fiscal records collected for a previous federal grant (FINI grant program) that operated very similarly to the farmers markets' and farm stand basic food incentives.

For farmers' markets and farm stands that are then authorized to offer basic food incentives, the department will provide training and no cost and estimates that the time to complete training for basic food incentives is two hours for a single employee annually.

The department used an hourly wage for farmers' market and farm stand managers and staff of \$29.95.<sup>2</sup> The department estimates that compliance with the proposed rule will require 43 hours annually, multiplied by \$29.95/hour, resulting in \$1,288 total annual costs per farmers' market or farm stand.

<sup>2</sup> Value of volunteer time was used as a comparable hourly salary, <https://independentsector.org/value-of-volunteer-time-2021/>. Reference accessed on September 16, 2022.

**WAC 246-770-040 Grocery store basic food incentives.**

**Description:** This section describes how grocery stores may become authorized to offer basic food incentives, states that stores that do not comply with these rules will be subject to disqualification from participation in the voucher program, and describes the circumstances that constitute noncompliance.

**Costs:** Grocery stores that meet the proposed requirements must submit an application to the department to become authorized to offer

basic food incentives. The department estimates negligible cost to the grocery stores to prepare and submit the initial application and to renew the application.

If the department approves the application the administrative work for entering into the contract with the department estimates one hour annually<sup>3</sup>. The department estimates that meeting contract requirements, which includes administering the program at the grocery store, submitting reporting/data to the department, and submitting monthly invoicing will require 49 hours annually.

<sup>3</sup> Ibid 2.

For grocery stores that are authorized to offer basic food incentives, the department will provide training at no cost and estimates that the time to complete training for basic food incentives will require two hours annually.

The department based its cost estimations using a grocery store manager as the program coordinator earning a median hourly wage of \$43<sup>4</sup>. The department estimates the cost to comply with the proposed rule section to be 49 hours multiplied by \$43/hour, resulting in \$2,107 per grocery store per year to comply with the proposed rule.

<sup>4</sup> Used grocery store manager in Washington state hourly wage, <https://www.salary.com/tools/salary-calculator/grocery-store-manager-hourly/wa>. Reference accessed on September 16, 2022.

#### **WAC 246-770-050 Fruit and vegetable vouchers for health care systems.**

**Description:** This section describes how health care systems may become authorized to distribute fruit and vegetable vouchers, states that systems that do not comply with these rules will be subject to disqualification from participation in the voucher program and describes the circumstances that constitute noncompliance.

**Costs:** Health care systems that meet the proposed requirements must submit an application to the department to become authorized to distribute fruit and vegetable vouchers. The department estimates a negligible cost for health care systems to prepare and submit an application and to renew an application. For health care systems that are authorized to offer fruit and vegetable vouchers, the department estimates that the cost to complete training for fruit and vegetable vouchers is four hours annually; administrative work for entering into the contract with the department estimates one hour annually; meeting contract requirements, which includes administering the program in the health care system and submitting reports and data to the department, is 96 hours annually. Time estimates are based on fiscal records collected for a previous federal grant (FINI grant program) that operated very similarly to the fruit and vegetable vouchers program and using the assumption of a dietitian earning \$69,747 annually as the coordinator. Total cost for 101 hours multiplied by \$33.53/hour<sup>5</sup> results in \$3,387 per health system per year.

<sup>5</sup> Hourly salary was calculated by dividing annual salary estimate by 2,080 hours worked.

#### **WAC 246-770-060 Fruit and vegetable vouchers for retailers.**

**Description:** This section describes how a retailer may be authorized to accept fruit and vegetable vouchers, states that systems that do not comply with these rules will be subject to disqualification from participation in the voucher program and describes the circumstances that constitute noncompliance.

**Costs:** Retailers that meet the proposed requirements must submit an application to the department to become authorized to accept fruit

and vegetable vouchers. The department estimates a negligible cost to the retailers to prepare and submit the application. For retailers that are authorized to accept fruit and vegetable vouchers, the department estimates that two hours will be required to complete training for fruit and vegetable vouchers each year. Administrative work for entering into the contract with the department will require one hour annually. Meeting contract requirements, which includes accepting fruit and vegetable vouchers in the retail setting, submitting reports and data to the department, and submitting monthly invoices to the department, will require 30 hours annually. These time estimates are based on a retailer that has participated in incentive programs historically. Cost estimates were reached using the assumption of a grocery store manager acting as the coordinator earning a median hourly wage of \$43.<sup>6</sup> Total costs per retailer over 33 hours multiplied by \$43/hour results in \$1,419 per retailer per year.

<sup>6</sup> Ibid 7.

**Summary:** The department anticipates that businesses will experience increased sales from people who use fruit and vegetable incentives to purchase items at participating locations.

**Table B:**

NAICS Code (4, 5 or 6 digit)	NAICS Business Description	WAC Section	Estimated time to comply with the proposed rule section per regulated entity	Estimated annual cost to comply with the proposed rule section per regulated entity*	Minor Cost Threshold
4451	Grocery Stores	246-770-040 246-770-060	49 hours/year 33 hours/year	\$2,107 \$1,419	\$11,227.61
445110	Supermarkets and Other Grocery (except Convenience) Stores	246-770-040 246-770-060	49 hours/year 33 hours/year	\$2,107 \$1,419	\$24,632.97
445120	Convenience Stores	246-770-040 246-770-060	49 hours/year 33 hours/year	\$2,107 \$1,419	\$1,268.47
445230	Fruit and Vegetable Markets	246-770-030	43 hours/year	\$1,227	\$2,220.48
621111	Offices of Physicians (except Mental Health Specialists)	246-770-050	101 hours/year	\$3,387	\$10,767.33
621491	HMO Centers	246-770-050	101 hours/year	\$3,387	\$106,630.18

\*Entries are not meant to be summed across rows and costs are duplicated to show the cost of compliance per entity.

**Analyze whether the proposed rule may impose more-than-minor costs on businesses in the industry:** The department estimates that fruit and vegetable markets (NAICS code 445230) annual cost of compliance per entity due to the proposed rule is \$1,227, which falls below the minor cost threshold of \$2,220.48. Therefore, the department does not anticipate the annual cost of compliance per entity to impose more-than-minor costs on businesses in this industry.

The department estimates that Grocery Stores (NAICS code 4451) annual cost of compliance per entity due to the proposed rule is \$3,526, which falls below the minor cost threshold of \$11,227.61. Therefore, the department does not anticipate the annual cost of compliance per entity to impose more-than-minor costs on businesses in this industry.

The department estimates that Supermarkets and Other Grocery (except Convenience) Stores (NAICS code 445110) annual cost of compliance

per entity due to the proposed rule is \$3,526, which falls below the minor cost threshold of \$24,632.97. Therefore, the department does not anticipate the annual cost of compliance per entity to impose more-than-minor costs on businesses in this industry.

The department estimates that Convenience Stores (NAICS code 445120) annual cost of compliance per entity to the proposed rule is \$3,526, which falls above the minor threshold of \$1,268.

The department estimates that Offices of Physicians (except Mental Health Specialists) (NAICS code 621111) annual cost of compliance per entity due to the proposed rule is \$3,387 which falls below the minor cost threshold of \$10,767. Therefore, the department does not anticipate the annual cost of compliance per entity to impose more-than-minor costs on businesses in this industry.

The department estimates that HMO Centers (NAICS code 621491) annual cost of compliance per entity due to the proposed rule is \$3,387, which falls below the minor cost threshold of \$106,630. Therefore, the department does not anticipate the annual cost of compliance per entity to impose more-than-minor costs on businesses in this industry.

Sections five through seven will focus on cost impacts to Convenience Stores as they have been identified through the analysis as the only NAICS code to potentially fall above the minor cost threshold.

**Determine whether the proposed rule may have a disproportionate impact on small businesses as compared to the 10 percent of businesses that are the largest businesses required to comply with the proposed rule:** A total of 665 convenience stores (NAICS code 445120) are currently operating in Washington state. Participation in the grocery store basic food incentives program, as well as participation in the fruit and vegetable vouchers program, is voluntary. The department estimates that a convenience store would incur annual costs of \$1,502 if they chose to participate in the fruit and vegetable voucher program and \$2,094 if they chose to participate in the grocery store basic food incentives program, with a total probable cost to comply of \$3,596.

It is possible that participating convenience stores may experience increased sales of fruit and vegetables purchased by customers with each program. Increased sales and reimbursement for the basic food incentives and fruit and vegetable vouchers could result in participating convenience stores recouping the cost of participation. The department has no reason to believe that there will be a disproportionate impact on small vs. large convenience stores because the costs to comply should be similar for all convenience stores. The department does not anticipate the proposed rule will have a disproportionate impact on small businesses as compared to large businesses.

**If the proposed rule has a disproportionate impact on small businesses, identify the steps taken to reduce the costs of the rule on small businesses. If the costs can not be reduced provide a clear explanation of why:** The department has no reason to believe that there will be a disproportionate impact on small vs. large convenience stores because the costs to comply should be similar for all convenience stores. The department DOES NOT anticipate the proposed rule will have a disproportionate impact on small businesses as compared to large businesses.

**Describe how small businesses were involved in the development of the proposed rule:** The department solicited feedback from interested parties by circulating the draft rule via email. The Washington State Farmers Market Association and the Washington Food Industry Association, two organizations that represent farmers markets and independent

grocery stores in Washington, did not provide any changes to the draft. The department sent the draft rule to 12 health care organizations for input, and one of the health care organizations provided minor suggested edits.

**Identify the estimated number of jobs that will be created or lost as the result of compliance with the proposed rule:** The department does not anticipate the creation or loss of any jobs as a result of this rule.

A copy of the statement may be obtained by contacting Alyssa Auvinen, P.O. Box 47830, Olympia, WA 98540[98504]-7830, phone 360-999-8967, TTY 711, email alyssa.auvinen@doh.wa.gov.

March 21, 2023  
 Kristin Peterson, JD  
 Chief of Policy  
 for Umair A. Shah, MD, MPH  
 Secretary

OTS-3301.5

**Chapter 246-770 WAC  
 FRUIT AND VEGETABLE INCENTIVES PROGRAM**

NEW SECTION

**WAC 246-770-010 Fruit and vegetable incentives program—Purpose.**

The purpose of the fruit and vegetable incentives program is to:

- (1) Improve access and affordability to culturally relevant fruits and vegetables for individuals and families with limited financial resources;
- (2) Increase fruit and vegetable consumption and nutrition security among program participants; and
- (3) Support Washington's food systems and agriculture and promote local economic development.

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NEW SECTION

**WAC 246-770-020 Definitions.** The following definitions apply throughout this chapter unless otherwise specified:

- (1) "Authorized farm stand" means a farm stand in Washington that has met the selection criteria established by the department and has signed a contract with the department allowing participation in basic food incentives.
- (2) "Authorized farmers' market" means a farmers' market in Washington that has met the selection criteria established by the depart-



ment and has signed a contract with the department allowing participation in basic food incentives.

(3) "Authorized grocery store" means a grocery store in Washington that has met the selection criteria established by the department and has signed a contract with the department allowing participation in basic food incentives.

(4) "Authorized health care system" means an organization whose primary intent is to deliver health care services.

(5) "Authorized retailer" means any retail outlet that has met the selection criteria established by the department and has signed a contract with the department allowing participation in fruit and vegetable vouchers.

(6) "Basic food incentives" includes farmers' market basic food incentives and grocery store basic food incentives.

(7) "County with high food insecurity" means a county located within the borders of the state of Washington where the resident population experiences rates of food insecurity higher than the state average.

(8) "Culturally relevant" means the acknowledgment and appreciation of experiences, traditions, and diverse preferences of a group of people.

(9) "Department" means the Washington state department of health.

(10) "Electronic benefit transfer" means the method of transferring basic food benefits from eligible participants to eligible participating retailers via a benefits card.

(11) "Eligible fruits and vegetables" means:

(a) For farmers market basic food incentives, eligible fruits and vegetables means fruits, vegetables, herbs, plants, and seeds that produce food.

(b) For grocery store basic food incentives and fruit and vegetable vouchers, eligible fruits and vegetables means fruits and vegetables that are unprocessed or minimally processed including, but not limited to, frozen or cut products.

(12) "Eligible participant" means:

(a) For basic food incentives, a recipient of basic food benefits, including the supplemental nutrition assistance program and the food assistance program, as authorized under Title 74 RCW;

(b) For fruit and vegetable vouchers, a person who is determined to be experiencing food insecurity by a participating health care provider.

(13) "Farmers' market basic food incentives" means incentives provided to basic food program beneficiaries at authorized farmers' markets and farm stands to improve beneficiaries' purchase of eligible fruits and vegetables.

(14) "Food insecurity" means the limited or uncertain availability of nutritionally adequate and safe foods or limited or uncertain ability to acquire acceptable foods with dignity and without resorting to emergency food supplies or other coping strategies.

(15) "Fruit and vegetable vouchers" means cash-value benefits given to patients of approved health care systems to improve patient access to eligible fruit and vegetables.

(16) "Grocery store basic food incentives" means incentives provided to basic food program beneficiaries at approved grocery stores to improve beneficiaries' ability to purchase eligible fruits and vegetables.

(17) "Health care system" includes participating health care providers, health educators, community health workers, or other health

professionals who provide care to patients who experience food insecurity.

(18) "High food insecurity" means food insecurity rates higher than the state average.

(19) "Qualifying health condition" means any diet-related health condition including, but not limited to, diabetes mellitus, prediabetes, and hypertension.

(20) "Supplemental nutrition assistance program (SNAP)" means the supplemental nutrition assistance program established under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.).

(21) "Trafficking" means the purchase or exchange of basic food incentives or fruit and vegetable vouchers for cash or other compensation.

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#### NEW SECTION

**WAC 246-770-030 Farmers' market and farm stand basic food incentives.** (1) To become authorized to offer basic food incentives, a farmers' market or farm stand must:

(a) Be in good standing with the United States Department of Agriculture as an authorized farmers' market or farm stand that can accept SNAP benefits through electronic benefit transfer;

(b) Provide documentation to the department showing United States Department of Agriculture approval to accept SNAP benefits;

(c) Apply as a farmers' market or farm stand on a form determined by the department including documentation demonstrating that the farmers' market or farm stand applicant meets the following criteria:

(i) Have a designated staff member on-site during operating hours that has completed all required basic food incentive training;

(ii) Have days and times posted for operating hours; and

(iii) Have at least one vendor selling fresh fruits and vegetables.

(d) Execute a contract with the department.

(2) The department is not required to authorize all applicants. Selection is based on available funding and community needs and preferences.

(3) An authorized farmers' market or farm stand must reapply at the end of the contract period; however, neither the department nor the participant has an obligation to renew a contract.

(4) Authorized farmers' markets and farm stands must, at a minimum:

(a) Comply with the basic food incentives requirements and the terms of their contract;

(b) Accept annual training and other technical assistance on basic food incentives requirements from department staff;

(c) Provide training to employees and volunteers on basic food incentive requirements including, but not limited to, eligible foods, distribution and redemption procedures, data tracking, evaluation requirements, and fiscal recordkeeping;

(d) Be accountable for the actions of employees and volunteers;

(e) Ensure basic food incentives are only redeemed for eligible foods;

(f) Comply with federal and state nondiscrimination laws;

(g) Ensure that participants receive the same courtesies as other customers;

(h) Promote the availability of basic food incentives with materials provided by the department;

(i) Promptly provide the department, upon request, with any information it has available regarding its participation in basic food incentives;

(j) Allow the department to share information about the farmers' market or farm stand related to basic food incentives with program partners and in public reports;

(k) Allow the department to monitor the farmers' market for compliance with basic food incentive requirements and fiscal recordkeeping;

(l) Notify the department immediately if the farmers' market's operations cease; and

(m) Comply with department instructions and guidance with respect to the program.

(5) Authorized farmers' markets or farm stands that do not comply with requirements of this chapter are subject to termination of their contract. Such noncompliance includes, but is not limited to:

(a) Violating the requirements of any applicable state or federal law;

(b) Violating any provision of the contract between the department and the authorized farmers' market or farm stand; or

(c) Accepting basic food incentives without having a signed contract with the department.

(6) Prior to contract termination, the department must consider whether the contract termination would create undue hardships to participants.

(7) Trafficking in basic food incentives in any amount will result in contract termination. Farmers' markets and farm stands should ensure basic food incentives are not trafficked among any participants.

(8) An authorized farmers' market or farm stand that has a terminated contract may reapply for reauthorization.

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#### NEW SECTION

**WAC 246-770-040 Grocery store basic food incentives.** (1) To become authorized to offer basic food incentives, the grocery store must:

(a) Be in good standing with the United States Department of Agriculture as an authorized grocer that can accept SNAP benefits through electronic benefit transfer;

(b) Apply as a grocery store on a form determined by the department, including documentation demonstrating that the grocery store meets the following criteria:

(i) Have a point-of-sale mechanism that allows tracking and redemption of basic food incentives, including either automated or manual tracking;

(ii) Have a designated staff member on-site during operating hours that has completed all required basic food incentive training; and

(iii) Sells fresh fruits and vegetables.

(c) Execute a contract with the department.

(2) The department is not required to authorize all applicants. Selection is based on available funding and community needs and preferences as collected by the department.

(3) An authorized grocery store must reapply at the end of the contract period; however, neither the department nor the participant has an obligation to renew a contract.

(4) The authorized grocery store must, at a minimum:

(a) Comply with the grocery store basic food incentives requirements and the terms of their contract;

(b) Accept annual training and other technical assistance on basic food incentives requirements from department staff;

(c) Provide training to employees and volunteers on basic food incentive requirements including, but not limited to, eligible foods, redemption procedures, data tracking and evaluation requirements;

(d) Be accountable for actions of employees and volunteers;

(e) Ensure basic food incentives are only redeemed for eligible foods;

(f) Comply with federal and state nondiscrimination laws;

(g) Ensure that participants receive the same courtesies as other customers;

(h) Promote the availability of basic food incentives with materials provided by the department;

(i) Promptly provide the department, upon request, with any information it has available regarding its participation in basic food incentives;

(j) Allow the department to share information about the grocery store related to basic food incentives with program partners and in public reports;

(k) Allow the department to monitor the grocery store for compliance with basic food incentive requirements and fiscal recordkeeping;

(l) Notify the department immediately if the grocery store's operations cease; and

(m) Comply with department instructions and guidance with respect to the program.

(5) Authorized grocery stores that do not comply with requirements of this chapter are subject to termination of their contract. Noncompliance includes, but is not limited to:

(a) Violating any applicable state or federal law;

(b) Violating any provision of the contract; or

(c) Accepting basic food incentives without having a signed contract with the department.

(6) Prior to disqualification, the department must consider whether the contract termination would create undue hardships to participants.

(7) Trafficking in basic food incentives in any amount will result in contract termination. Grocery stores should ensure basic food incentives are not trafficked among any participants.

(8) An authorized grocery store that has a terminated contract may reapply for reauthorization.

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NEW SECTION**WAC 246-770-050 Fruit and vegetable vouchers for health care systems.**

(1) To become a health care system authorized to distribute fruit and vegetable vouchers, an applicant must:

(a) Apply as a health care system on a form determined by the department;

(b) Complete all required training on fruit and vegetable voucher requirements offered by the department; and

(c) Receive a contract from the department signed by both the department and the applicant.

(2) The department is not required to authorize all applicants. Priority authorization will be given to applicants that:

(a) Routinely screen patients for food insecurity;

(b) Have a high percentage of patients who are medicaid clients;

(c) Are located in a county with a high level of food insecurity;

(d) Are a federally qualified health center or tribal health clinic;

(e) Have previously operated fruit and vegetable voucher programs; or

(f) Plan to distribute fruit and vegetable vouchers to people who have, or are at risk of developing, a qualifying health condition.

(3) An authorized health care system must reapply at the end of the current contract period; however, neither the department nor the participant has an obligation to renew a contract.

(4) The authorized health care system must, at a minimum:

(a) Comply with the fruit and vegetable voucher requirements and the terms of their contract;

(b) Have at least one staff member who has completed training for fruit and vegetable vouchers;

(c) Accept annual training and other technical assistance on fruit and vegetable voucher requirements from department staff;

(d) Be accountable for the actions of employees and volunteers;

(e) Ensure fruit and vegetable vouchers are only distributed to eligible participants;

(f) Consistently follow a distribution plan to assure equitable access to fruit and vegetable vouchers;

(g) Comply with federal and state nondiscrimination laws;

(h) Comply with federal laws regarding patient privacy, specifically the Health Insurance Portability and Accountability Act of 1995 and any regulations enacted to its provisions ("HIPAA Standards") and Washington state law;

(i) Ensure that participants receive the same courtesies as other customers;

(j) Promptly provide the department, upon request, with any information it has available regarding its participation in offering fruit and vegetable vouchers;

(k) Allow the department to share information about the health care system's participation related to fruit and vegetable vouchers with program partners and in public reports;

(l) Allow the department to monitor the health care system for compliance with fruit and vegetable voucher requirements;

(m) Notify the department immediately if the health care system's operations cease; and

(o) Comply with department instructions and guidance with respect to the program.

(5) Authorized health care systems that do not comply with requirements in this chapter are subject to termination of their contract. Such noncompliance includes, but is not limited to:

(a) Violating the provisions of the contract; or

(b) Distributing fruit and vegetable vouchers without having a signed contract with the department.

(6) Prior to contract termination, the department must consider whether the disqualification would create undue hardships to participants.

(7) Any trafficking in fruit and vegetable vouchers in any amount will result in contract termination. Health care systems should ensure fruit and vegetable vouchers are not trafficked among any of their organization's participants.

(8) An authorized health care system that has a terminated contract may reapply for reauthorization.

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#### NEW SECTION

#### **WAC 246-770-060 Fruit and vegetable vouchers for retailers. (1)**

To become authorized to accept fruit and vegetable vouchers as distributed by a health care system under WAC 246-770-050, a retailer must:

(a) Apply as a retailer on a form provided by the department including documentation that the retailer meets the following criteria:

(i) Have a point-of-sale mechanism that allows either automated or manual tracking and redemption of fruit and vegetable vouchers;

(ii) Have a designated staff member on-site during operating hours that has completed all required fruit and vegetable voucher training; and

(iii) Sells fresh fruits and vegetables.

(b) Complete all required trainings on fruit and vegetable vouchers requirements offered by the department; and

(c) Execute a contract with the department.

(2) The department is not required to authorize all applicants. Selection is based on available funding and community need and preferences.

(3) An authorized retailer must reapply at the end of the contract period; however, neither the department nor the participant has an obligation to renew a contract.

(4) An authorized retailer must, at a minimum:

(a) Comply with the fruit and vegetable voucher requirements and the terms of their contract;

(b) Accept annual training and other technical assistance on fruit and vegetable voucher requirements from department staff;

(c) Provide training to employees and volunteers on fruit and vegetable vouchers requirements including, but not limited to, eligible foods, redemption procedures, data tracking and evaluation requirements;

(d) Be accountable for the actions of employees and volunteers;

(e) Ensure fruit and vegetable vouchers are redeemed only once;

(f) Comply with federal and state nondiscrimination laws;

(g) Ensure that participants receive the same courtesies as other customers;

(h) Promptly provide the department, upon request, with any information it has available regarding its participation in accepting fruit and vegetable vouchers;

(i) Allow the department to share information about the retailer related to fruit and vegetable vouchers with program partners and in public reports;

(j) Allow the department to monitor the retailer for compliance with fruit and vegetable voucher requirements and fiscal recordkeeping;

(k) Notify the department immediately if the retailer's operations cease; and

(l) Comply with department instructions with respect to the program.

(5) Authorized retailers that do not comply with requirements in this chapter are subject to termination of their contract. Noncompliance includes, but is not limited to:

(a) Violating the provisions of the contract; or

(b) Accepting fruit and vegetable vouchers without having a signed contract with the department.

(6) Prior to contract termination, the department must consider whether termination of a contract would create undue hardships to participants.

(7) Any trafficking in fruit and vegetable vouchers in any amount will result in termination of a contract.

(8) An authorized retailer that has a terminated contract may re-apply for reauthorization.

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## WSR 23-07-134

## PROPOSED RULES

## DEPARTMENT OF AGRICULTURE

[Filed March 22, 2023, 8:55 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-22-096.

Title of Rule and Other Identifying Information: Chapter 16-70 WAC, Animal diseases—Reporting.

Hearing Location(s): On May 3, 2023, at 10:00 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 236 010 241 665, Passcode 2VnRs9; or call in (audio only) +1 564-999-2000, Phone Conference ID 239 345 996#.

Date of Intended Adoption: May 10, 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 May 3, 2023, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Jodi Jones, animal services operations director, phone 360-402-0397, fax 360-902-2087, TTY 800-833-6388, email jjones@agr.wa.gov, by April 26, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend chapter 16-70 WAC to:

- Clarify reporting requirements for veterinarians and veterinary laboratories;
- Modify the list of reportable diseases by making the list inclusive of all diseases that are required to be reported by Washington state department of agriculture (WSDA), the World Organisation of Animal Health (WOAH), United States Department of Agriculture (USDA), and the Washington state department of health (DOH);
- Simplify reporting times from 24 hours, 72 hours, monthly, etc. to immediate reporting for veterinarians;
- Create a new WAC 16-70-015 specific to reporting requirements for veterinary laboratories;
- Modify the definitions section to include:
  - o Adding definitions for "Case," "New, emerging or unusual animal diseases," WOAH notifiable diseases list, "WOAH," and "Zoonotic";
  - o Removing definitions for "OIE notifiable disease list," and "OIE"; and
  - o Amending definitions for "Reportable diseases list" and "Veterinary Laboratory."
- Revise language to increase clarity and readability.

Reasons Supporting Proposal: The department has received feedback from veterinarians that the current format of the list of reportable diseases and requirements for reporting have made the process confusing, difficult to interpret, and cumbersome. Both in state and out of state veterinary laboratories have failed to report diseases to the Washington state veterinarian's office in a timely or consistent way.

The current list of reportable diseases does not list all the reportable diseases in one place, but rather references where to go to find the diseases established by other entities. Feedback received by the department from veterinarians and laboratories indicated that this



was time consuming to go to multiple sources to find all of the diseases and reduced the accuracy and likeliness of reporting the correct diseases for each species. The proposed amendment modifies the list to include ALL the reportable diseases for the different sources in one place and is arranged alphabetically by species, which ends up listing the same disease multiple times, but makes the list more user friendly, complete, and more specific to diseases that can affect multiple species. The "Animal Type" column includes a section for "multiple species" to cover uncommon animal species that don't have their own section (example: Nonhuman primates, mullosks, muscolids (ferrets)). The new list removes references to reporting time frames (24-hour, 72-hour, monthly) since the time frames are already listed in other sections. Making the list more complete and user friendly will increase the reporting behaviors by veterinarians and veterinary laboratories which in turn increases the department's ability to respond to disease outbreaks.

By removing the 24-hour, 72-hour, and monthly reporting schema and requiring immediate reporting, this removes the burden on veterinarians to remember what diseases are to be reported when and to whom. A review of the reporting behaviors over the last five years indicates that veterinarians were not following the required timelines. By providing a complete list that is searchable online and providing an immediate online reporting capability, the reporting steps are simplified and the department's notification of zoonotic diseases to DOH will be faster. Removing the complications of figuring out what the reporting time frame is for each disease alleviates stressful tracking by veterinarians and veterinary laboratories and reduces the chances that they will forget to report a disease if the reporting time frame is delayed (such as in the case of 72-hour or monthly reporting). Listing out all the reportable diseases specifically in the rule, rather than referring to outside lists (Office International des Epizooties (OIE), USDA, DOH), makes it easier to understand exactly what diseases need to be reported.

The current rule states that all veterinary laboratories and veterinarians are required to report the existence or suspected existence of all diseases on the OIE reportable disease list or in this chapter. With the changes made to the reportable disease list within this chapter including the OIE (which is now called WOA) reportable diseases, this section is being revised to clarify that all veterinarians must report diseases from our reportable diseases list, as well as any unusually high mortality or morbidity event and any highly unusual clinical signs and encephalitis conditions to the department. The proposed amendments to this section also list all the information required on the report and where a report can be filed. The information to include on the report is already reflected on the reporting form that the department uses. The rule is being updated in this manner to reflect the information already being collected.

WAC 16-70-015 has been created to separate the reporting requirements for veterinary laboratories from the veterinarians in WAC 16-70-010. The new section also includes instructions on the type of information that needs to be included in each report, and how to submit the reports to the state veterinarian. The reporting provisions for laboratories in WAC 16-70-015 (1)(a)-(c) require laboratories to notify the state veterinarian whenever a positive test result is confirmed for a disease on the reportable disease list, even if there are no clinical signs of the disease. Veterinary laboratories are already required to report diseases to the same state office under the exist-

ing rule, and the changes will not create additional steps for laboratories. The rule is being updated to help clarify the responsibilities and provide additional information about the reporting process. Clarifying the information required in the reporting process and explaining how to submit each form should improve the number of submissions and the accuracy of each report. Veterinary laboratories will have updated standards to follow in the new text, which should reduce the amount of time each business spends searching for the correct information in the administrative code, further reducing the amount of time they spend compiling each report.

OIE has changed their name to WOAHA, and all references to OIE are being updated to include the new name. The phrase "New, emerging, or unusual animal diseases" is being added to provide flexibility for testing new and unknown diseases as they emerge in the future. The zoonotic definition is being added because a category for these types of diseases is included in the updated list of reportable diseases in WAC 16-70-020. Adding to the list of definitions and updating organization names will make the rule current and accurate and will include terms that are being added to several sections of the rule.

Statutory Authority for Adoption: RCW 16.36.040.

Statute Being Implemented: Chapter 16.36 RCW.

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

Name of Proponent: WSDA, governmental.

Name of Agency Personnel Responsible for Drafting: Dr. Ben Smith, 1111 Washington Street [S.E.], Olympia, WA 98504, 509-350-0081; Implementation: Jodi Jones, 1111 Washington Street [S.E.], Olympia, WA 98504, 360-402-0397; and Enforcement: Joel Williams, 1111 Washington Street [S.E.], Olympia, WA 98504, 360-688-4294.

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. WSDA is not a listed agency under RCW 34.05.328 (5)(a)(i).

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of exemptions: Inclusion of the diseases listed by WOAHA, USDA, and DOH into the updated reportable diseases list in this rule are exempt from the small business economic impact statement (SBEIS) requirements because they are clarifying the rule without changing its effect.

Amending the definitions in the proposed rule is exempt from SBEIS requirements since they are clarifying the rule without changing its effect.

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: Inclusion of the diseases listed by WOAHA, USDA, and DOH into the updated reportable disease list in this rule are exempt from SBEIS requirements under RCW 19.85.025(3)/34.05.310 (4)(d). The rule currently just provides a reference of where to go to find the reportable diseases established by these outside entities. The proposed rule clarifies what diseases are reportable to [by] specifically listing them all within reportable diseases list within the

rule. This does not change the effect of the rule, because all of the same diseases are still required to be reported, but it does make the rule more user friendly by listing them all in one place.

Amending the definitions and removing the reference to the animal health handbook in the proposed rule are exempt from SBEIS requirements under RCW 19.85.025(3)/34.05.310 (4)(d), since they are clarifying the rule without changing its effect.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. While the proposed rule increases the time frame for reporting diseases to the state veterinarian's office from 24-hours, 72-hours, and monthly reporting to immediate reporting in most cases, the amendments also allow for submission of the report to be done online, where the current rule requires the report to be filled out and physically mailed in. It was determined that the increased reporting time frame is offset by the ability to submit reports online, as well as incorporating all of the reportable diseases into the reportable diseases list in this rule (rather than having to search other locations for all of the diseases) and would not impose any additional costs on the businesses that are already required to comply with the rule.

March 22, 2023  
Jodi Jones  
Operations Director

### OTS-4255.3

AMENDATORY SECTION (Amending WSR 15-02-027, filed 12/30/14, effective 1/30/15)

**WAC 16-70-005 Definitions.** For the purpose of this chapter:

"Animal" means any animal species except fish and insects including all those so classified as wild, captive wild, exotic wild, alternative livestock, semidomesticated, domestic or farm.

~~("OIE notifiable disease list" means the diseases listed by the OIE in the *Terrestrial Animal Health Code* (22nd Edition, 2013). The OIE notifiable disease list may be found on the internet at: <http://www.oie.int/en/international-standard-setting/terrestrial-code/>. The list may also be found in the Washington state department of agriculture's *Animal Health Handbook for Veterinarians*.~~

~~"OIE" means Office International des Epizooties. The OIE is the World Organization of Animal Health.)~~

"Case" means a mammalian species including piscine or apian, alive or dead, with a diagnosis or suspected diagnosis of a disease.

"New, emerging, or unusual animal diseases" means diseases in animals that have never or rarely been observed in Washington state (new or emerging); or appear in a new species; or show evidence of higher pathogenicity; or appear in a higher than expected number of animals clustered in time or space. Any of these diseases may or may not be of potential public health significance.

"Reportable disease list" means the list of diseases (~~that include the OIE notifiable disease list and other diseases listed in this chapter~~) identified in Table 1 of WAC 16-70-020.

"Veterinary laboratory" means a private or state-funded place equipped for performing diagnostic or investigative procedures on submitted specimens from animals and fish by personnel (~~whose primary duties are to conduct such procedures~~) who conduct such procedures for, and report to, Washington state licensed veterinarians or sample submitter.

"WOAH notifiable disease list" means the diseases listed by the WOA in the *Terrestrial Animal Health Code (2022)*. The WOA notifiable disease list may be found at <https://www.woah.org/en/what-we-do/animal-health-and-welfare/animal-diseases/>.

"WOAH" means World Organisation of Animal Health, founded as OIE (Office International des Epizooties).

"Zoonotic" means a disease that can be transmitted between animals and humans.

[Statutory Authority: RCW 16.36.040 and chapter 34.05 RCW. WSR 15-02-027, § 16-70-005, filed 12/30/14, effective 1/30/15. Statutory Authority: Chapters 16.36 and 34.05 RCW. WSR 07-10-087, § 16-70-005, filed 5/1/07, effective 6/1/07. Statutory Authority: RCW 16.36.010(1), [16.36.]040 and [16.36.]080(4). WSR 00-06-064, § 16-70-005, filed 3/1/00, effective 4/1/00. Statutory Authority: RCW 16.36.096 and 16.36.040. WSR 93-19-127 (Order 5011), § 16-70-005, filed 9/21/93, effective 10/22/93.]

AMENDATORY SECTION (Amending WSR 15-02-027, filed 12/30/14, effective 1/30/15)

**WAC 16-70-010 Reporting requirements for ((reporting diseases that are on the OIE notifiable disease list)) veterinarians.** ((1) Any veterinary laboratory or person licensed to practice veterinary medicine in the state of Washington shall immediately report to the office of the state veterinarian the existence or suspected existence among any animals within the state of any reportable or notifiable diseases as published by the OIE (effective May 2013) or in this chapter.

(2) ~~Case definitions shall conform to OIE standards under the *Terrestrial Animal Health Code* (22nd Edition, 2013) and the *OIE Manual of Diagnostic Tests and Vaccines for Terrestrial Animals*, 6th Edition, (2008), with updates published online at: <http://www.oie.int/manual-of-diagnostic-tests-and-vaccines-for-terrestrial-animals/>.~~

(a) ~~A case means an individual animal affected by one of the diseases listed on the OIE notifiable disease list or a disease listed in this chapter.~~

(b) ~~The criterion by which "affected" is defined for each disease (for example: Clinical signs, serological evidence, etc.) is found in the *Terrestrial Animal Health Code* and *Manual of Diagnostic Tests and Vaccines for Terrestrial Animals*.~~

(c) ~~The OIE *Terrestrial Animal Health Code* can be found on the internet <http://www.oie.int/en/international-standard-setting/terrestrial-code/access-online/>. The *Terrestrial Animal Health Code* is available in web format; a hard copy version may be ordered from~~

01E-)) (1) All licensed veterinarians must immediately notify the state veterinarian of:

(a) Any case of a reportable disease, including any new, emerging, or unusual animal diseases listed in Table 1 in WAC 16-70-020.

(b) Any higher than expected mortality or morbidity event.

(c) Any highly unusual clinical signs such as: Mouth or muzzle lesions, especially if accompanied by foot, udder, vulva, or skin lesions resembling blisters or vesicles.

(d) Encephalitis conditions in all animals and avians.

(2) Licensed veterinarians reporting to the state veterinarian shall provide the following information:

(a) Veterinarian's name;

(b) Veterinarian's phone number;

(c) Animal county of residence;

(d) Animal species;

(e) Diagnosis or suspected diagnosis of the condition;

(f) Laboratory name and laboratory confirmed test result.

(3) Reports may be submitted to the state veterinarian in the following ways:

(a) Online at <https://agr.wa.gov/departments/animals-livestock-and-pets/animal-health/reportable-diseases>;

(b) Phone at 360-902-1878;

(c) Email at [ahealth@agr.wa.gov](mailto:ahealth@agr.wa.gov);

(d) Fax at 360-902-2087.

[Statutory Authority: RCW 16.36.040 and chapter 34.05 RCW. WSR 15-02-027, § 16-70-010, filed 12/30/14, effective 1/30/15. Statutory Authority: Chapters 16.36 and 34.05 RCW. WSR 07-10-087, § 16-70-010, filed 5/1/07, effective 6/1/07. Statutory Authority: RCW 16.36.010(1), [16.36.]040 and [16.36.]080(4). WSR 00-06-064, § 16-70-010, filed 3/1/00, effective 4/1/00. Statutory Authority: RCW 16.36.096 and 16.36.040. WSR 93-19-127 (Order 5011), § 16-70-010, filed 9/21/93, effective 10/22/93; Order 1005, Regulations 1-3, filed 7/22/66, effective 8/22/66; Order 655, Regulation 1, effective 5/19/53.]

## NEW SECTION

**WAC 16-70-015 Reporting requirements for veterinary laboratories.** (1) All veterinary laboratories must notify the state veterinarian of preliminary and final positive test results of diseases identified in WAC 16-70-010 (1)(a) and (b) as follows:

(a) Immediately when a disease agent listed in Table 1 in WAC 16-70-020 is identified:

(i) By culture, isolation, PCR, or sequencing; or

(ii) By single serum titer and paired with clinical signs of disease; or

(iii) By paired serology (acute and convalescent) and paired with clinical signs of disease.

(b) Immediately when the disease is a new, emerging, or unusual animal disease, or a zoonotic disease.

(c) Monthly when the disease agent is identified by serology with no clinical signs of disease.

(2) Veterinary laboratories reporting to the state veterinarian shall provide a laboratory report with the following information:

(a) Laboratory name;

- (b) Submitter's name (name of veterinarian and/or owner);
- (c) Submitter's phone number;
- (d) Submitter's county;
- (e) Animal species;
- (f) Laboratory confirmed test result.

(3) Reports may be submitted to the state veterinarian in the following ways:

- (a) Online at <https://fortress.wa.gov/agr.apps/rad/>;
- (b) Phone at 360-902-1878;
- (c) Email at [ahealth@agr.wa.gov](mailto:ahealth@agr.wa.gov);
- (d) Fax at 360-902-2087.

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AMENDATORY SECTION (Amending WSR 15-02-027, filed 12/30/14, effective 1/30/15)

**WAC 16-70-020 ((Other diseases reportable to WSDA.)) Reportable disease list.** ((1) In addition to the diseases published on the OIE notifiable disease list, the state veterinarian may request reports on other diseases of concern from a statistical or survey standpoint associated with overall disease control measures.

(2) Any veterinarian or veterinary laboratory must report to the office of the state veterinarian any of the diseases listed in subsection (5) of this section. Reports may be faxed to 360-902-2087 or sent to:

Washington State Department of Agriculture  
Animal Services Division  
1111 Washington Street S.E.  
P.O. Box 42577  
Olympia, Washington 98504-2577

(3) In addition to reporting requirements listed in the chart below, laboratories must send to the office of the state veterinarian reports of cultures of isolates from *Mycobacterium tuberculosis*, *Cryptococcus* excluding confirmed *Cryptococcus neoformans*, and Vancomycin resistant *Staphylococcus aureus* immediately after they are identified or the next business day.

(4) Veterinary laboratory directors must submit positive specimens of the diseases listed in subsection (3) of this section and any requested information to the state public health laboratories at:

Washington State Public Health Laboratories  
Washington State Department of Health  
1610 N.E. 150th Street  
Seattle, Washington 98155

(5) The tables below describe the time frames associated with reportable diseases.

<b>EMERGENCY CONDITIONS or DISEASE Report to state veterinarian immediately upon suspicion</b>
<b>MULTIPLE SPECIES</b>
<ul style="list-style-type: none"> <li>• Anthrax (<i>Bacillus anthracis</i>)</li> <li>• Crimean Congo hemorrhagic fever</li> </ul>

**EMERGENCY CONDITIONS or DISEASE  
Report to state veterinarian immediately upon  
suspicion**

- Foot-and-mouth disease
  - Heartwater (*Cowdria ruminantium*)
  - Japanese encephalitis
  - Livestock exposed to toxic substances which may threaten public health
  - Malignant catarrhal fever (all forms)
  - *Mycobacterium tuberculosis*
  - Rabies in any species (excluding bats)
  - Rift Valley fever
  - Rinderpest (cattle plague)
  - Screwworm myiasis (*Cochliomyia hominivorax* or *Chrysomya bezziana*)
  - Surra (*Trypanosoma evansi*)
  - Theileriosis (Corridor disease, East Coast fever)
  - Unexplained increase in dead or diseased animals
  - Vancomycin resistant (*Staphylococcus aureus*)
  - Vesicular stomatitis
- BOVINE**
- African trypanosomiasis (Tsetse fly diseases)
  - Bovine babesiosis (piroplasmosis)
  - Bovine spongiform encephalopathy (mad cow)
  - Contagious bovine pleuropneumonia (*Mycoplasma mycoides mycoides*)
  - Lumpy skin disease
- CAPRINE/OVINE**
- Contagious agalactia (*Mycoplasma agalactia*)
  - Contagious caprine pleuropneumonia (*Mycoplasma capricolum capripneumoniae*)
  - Nairobi sheep disease
  - Goat plague (*Peste des petits ruminants*)
  - *Salmonella abortus ovis*
  - Sheep and goat pox
- PORCINE**
- African swine fever
  - Classical swine fever (hog cholera)
  - Nipah virus
  - Swine vesicular disease
  - Vesicular exanthema of swine
- POULTRY**
- Exotic Newcastle disease (Viscerotropic velogenic Newcastle disease)
  - High pathogenic avian influenza and low pathogenic avian influenza
  - Turkey rhinotracheitis
- EQUINE**
- African horse sickness
  - Dourine (*Trypanosoma equiperdum*)

<b>EMERGENCY CONDITIONS or DISEASE Report to state veterinarian immediately upon suspicion</b>
<ul style="list-style-type: none"> <li>• Equine piroplasmiasis (<i>Theileria equi</i> and <i>Babesia caballi</i>)</li> <li>• Glanders (Farcy) (<i>Pseudomonas mallei</i>)</li> <li>• Hendra virus (Equine morbillivirus)</li> <li>• Venezuelan equine encephalomyelitis</li> </ul> <p><b>OTHER SPECIES</b></p> <ul style="list-style-type: none"> <li>• Viral hemorrhagic disease of rabbits (calicivirus)</li> </ul>

<b>CONDITIONS OF REGULATORY IMPORTANCE Report to state veterinarian within twenty-four hours of suspicion or confirmation</b>
<p><b>MULTIPLE SPECIES</b></p> <ul style="list-style-type: none"> <li>• Bluetongue</li> <li>• Brucellosis                             <ul style="list-style-type: none"> <li>• Bovine (<i>Brucella abortus</i>)</li> <li>• Canine (<i>Brucella canis</i>)</li> <li>• Caprine (<i>Brucella abortus</i> and <i>B. melitensis</i>)</li> <li>• Cervids (<i>Brucella abortus</i>)</li> <li>• Ovine (<i>Brucella ovis</i>)</li> <li>• Porcine (<i>Brucella suis</i>)</li> </ul> </li> <li>• <i>Cryptococcus</i> not confirmed to be <i>Cryptococcus neoformans</i></li> <li>• Plague (<i>Yersinia pestis</i>)</li> <li>• Pseudorabies (Aujeszky's disease)</li> <li>• Tularemia</li> <li>• West Nile virus</li> </ul> <p><b>BOVINE</b></p> <ul style="list-style-type: none"> <li>• Bovine tuberculosis (<i>Mycobacterium bovis</i>)</li> <li>• Trichomoniasis (<i>Trichomonas fetus</i>)</li> </ul> <p><b>CAPRINE/OVINE</b></p> <ul style="list-style-type: none"> <li>• Contagious ecthyma (Orf)</li> <li>• Scrapie</li> </ul> <p><b>POULTRY</b></p> <ul style="list-style-type: none"> <li>• Avian infectious laryngotracheitis</li> <li>• Ornithosis (psittacosis or avian chlamydiosis) (<i>Chlamydia psittaci</i>)</li> <li>• Pullorum disease (fowl typhoid) (<i>Salmonella gallinarum</i> and <i>S. pullorum</i>)</li> </ul> <p><b>EQUINE</b></p> <ul style="list-style-type: none"> <li>• Contagious equine metritis (<i>Taylorella equigenitalis</i>)</li> <li>• Ehrlichiosis (Potomac horse fever)</li> <li>• Equine encephalomyelitis (Eastern and Western equine encephalitis)</li> <li>• Equine infectious anemia (swamp fever)</li> <li>• Equine rhinopneumonitis (Equine herpesvirus-1 neurologic form)</li> </ul> <p><b>SWINE</b></p> <ul style="list-style-type: none"> <li>• Porcine epidemic diarrhea virus (PEDv)</li> </ul>



<b>CONDITIONS OF REGULATORY IMPORTANCE Report to state veterinarian within twenty-four hours of suspicion or confirmation</b>
<b>OTHER SPECIES</b>
<ul style="list-style-type: none"> <li>• Chronic wasting disease in cervids</li> <li>• Tuberculosis in cervids</li> </ul>

<b>MONITORED CONDITIONS Report by monthly summaries</b>
<b>MULTIPLE SPECIES</b>
<ul style="list-style-type: none"> <li>• Avian tuberculosis (<i>Mycobacterium avium</i>)</li> <li>• Coccidioidomycosis (<i>Coccidioides immitis</i>) (valley fever)</li> <li>• Echinococcosis/Hydatidosis (<i>Echinococcus</i> sp.)</li> <li>• Johne's disease (<i>Mycobacterium avium</i> subspecies <i>paratuberculosis</i>)</li> <li>• Leishmaniasis</li> <li>• Leptospirosis</li> <li>• Listeriosis</li> <li>• Lyme Disease</li> <li>• Q Fever (<i>Coxiella burnetii</i>)</li> <li>• Salmonella</li> <li>• Scabies</li> </ul>
<b>BOVINE</b>
<ul style="list-style-type: none"> <li>• Anaplasmosis (<i>Anaplasma marginale</i> or <i>A. centrale</i>)</li> <li>• Beef measles (<i>Taenia saginata</i>)</li> <li>• Bovine genital campylobacteriosis (<i>Campylobacter fetus venerealis</i>)</li> <li>• Bovine viral diarrhea</li> <li>• Enzootic bovine leukosis (Bovine leukemia virus)</li> </ul>
<b>CAPRINE/OVINE</b>
<ul style="list-style-type: none"> <li>• Caprine (contagious) arthritis/encephalitis)</li> <li>• Caseous lymphadenitis</li> <li>• Enzootic abortion of ewes (<i>Chlamydophila abortus</i>)</li> <li>• Maedi-Visna (Ovine progressive pneumonia)</li> </ul>
<b>PORCINE</b>
<ul style="list-style-type: none"> <li>• Porcine circovirus (post-weaning multisystemic wasting syndrome)</li> <li>• Porcine cysticercosis (<i>Taenia solium</i> in humans)</li> <li>• Porcine reproductive and respiratory syndrome</li> <li>• Transmissible gastroenteritis (coronavirus)</li> <li>• Trichinellosis (<i>Trichinella spiralis</i>)</li> </ul>
<b>POULTRY</b>
<ul style="list-style-type: none"> <li>• Avian infectious bronchitis</li> <li>• Avian mycoplasmosis (<i>Mycoplasma synoviae</i>)</li> <li>• Duck viral hepatitis</li> <li>• Fowl cholera (<i>Pasteurella multocida</i>)</li> <li>• Infectious bursal disease (Gumboro disease)</li> <li>• Infectious coryza (<i>Avibacterium paragallinarum</i>)</li> <li>• Marek's disease</li> </ul>

<b>MONITORED CONDITIONS Report by monthly summaries</b>
<ul style="list-style-type: none"> <li>• Mycoplasmosis (<i>Mycoplasma gallisepticum</i>)</li> </ul> <p><b>EQUINE</b></p> <ul style="list-style-type: none"> <li>• Equine influenza</li> <li>• Equine rhinopneumonitis (Equine herpesvirus-1 non-neurologic form)</li> <li>• Equine viral arteritis</li> <li>• Strangles (<i>Streptococcus equi</i> subsp. <i>equi</i>)</li> <li>• Pigeon Fever (<i>Corynebacterium pseudotuberculosis</i>)</li> </ul> <p><b>OTHER SPECIES</b></p> <ul style="list-style-type: none"> <li>• Fish diseases on the OIE notifiable disease list</li> <li>• Heartworm</li> <li>• Hemorrhagic diseases of deer (bluetongue, adenovirus, and epizootic hemorrhagic disease)</li> <li>• Myxomatosis in commercial rabbits)</li> </ul>

This section sets forth the list of diseases that licensed veterinarians and veterinary laboratories must report to the state veterinarian as described in WAC 16-70-010 and 16-70-015. It includes diseases listed by the state veterinarian, by WOAH on the WOAH notifiable disease list, and by the state board of health under chapter 246-101 WAC.

**Table 1: List of reportable diseases**

<b>Disease</b>	<b>Animal Type</b>
<u>New, emerging, or unusual animal diseases/zoonotic diseases</u>	<u>Amphibian</u>
<u>Ranaviriosis (<i>Ranavirus</i> species)</u>	<u>Amphibian</u>
<u>Acarapisosis (<i>Acarapis woodi</i>)</u>	<u>Apian (bee)</u>
<u>American foulbrood (<i>Paenibacillus larva</i>)</u>	<u>Apian</u>
<u>European foulbrood (<i>Melissococcus plutonius</i>)</u>	<u>Apian</u>
<u>New, emerging, or unusual animal diseases/zoonotic diseases</u>	<u>Apian</u>
<u>Small hive beetle infestation (<i>Aethina tumida</i>)</u>	<u>Apian</u>
<u><i>Tropilaelaps</i></u>	<u>Apian</u>
<u>Varroosis (<i>Varroa</i> spp.)</u>	<u>Apian</u>
<u>Avian infectious bronchitis</u>	<u>Avian (bird)</u>
<u>Avian infectious laryngotracheitis (ILT)</u>	<u>Avian (bird)</u>
<u>Avian influenza, high pathogenic</u>	<u>Avian (bird)</u>
<u>Avian influenza, low pathogenic</u>	<u>Avian (bird)</u>
<u>Avian mycoplasmosis (<i>Mycoplasma gallisepticum</i>)</u>	<u>Avian (bird)</u>
<u>Avian mycoplasmosis (<i>Mycoplasma synoviae</i>)</u>	<u>Avian (bird)</u>
<u>Carbapenem-resistant organisms</u>	<u>Avian (bird)</u>
<u>Duck viral hepatitis</u>	<u>Avian (bird)</u>
<u>Fowl typhoid (<i>Salmonella gallinarum</i>)</u>	<u>Avian (bird)</u>
<u>Infectious bursal disease (Gumboro disease)</u>	<u>Avian (bird)</u>
<u>Infectious coryza (<i>Avibacterium paragallinarum</i>)</u>	<u>Avian (bird)</u>
<u>Japanese encephalitis</u>	<u>Avian (bird)</u>
<u>Livestock exposed to toxic substances which may threaten public health</u>	<u>Avian (bird)</u>
<u>New, emerging, or unusual animal diseases/zoonotic diseases</u>	<u>Avian (bird)</u>

<b>Disease</b>	<b>Animal Type</b>
<u>Newcastle disease</u>	<u>Avian (bird)</u>
<u>Ornithosis (<i>Chlamydia psittaci</i>, psittacosis, parrot fever, or avian chlamydiosis)</u>	<u>Avian (bird)</u>
<u>Pullorum disease (<i>Salmonella pullorum</i>)</u>	<u>Avian (bird)</u>
<u>Shiga toxin-producing <i>Escherichia coli</i> infections/enterohemorrhagic <i>E. coli</i> infections</u>	<u>Avian (bird)</u>
<u>St. Louis encephalitis virus (SLEV)</u>	<u>Avian (bird)</u>
<u>Turkey rhinotracheitis</u>	<u>Avian (bird)</u>
<u>Unexplained increase in dead or diseased animals</u>	<u>Avian (bird)</u>
<u>West Nile virus</u>	<u>Avian (bird)</u>
<u>Akabane disease (<i>Akabane virus</i>)</u>	<u>Bovine (cow)</u>
<u>Anthrax</u>	<u>Bovine (cow)</u>
<u>Beef measles (<i>Taenia saginata</i>, Bovine cysticercosis)</u>	<u>Bovine (cow)</u>
<u>Bluetongue (<i>Orbivirus</i>)</u>	<u>Bovine (cow)</u>
<u>Bovine anaplasmosis (<i>Anaplasma marginale</i>, <i>A. centrale</i>)</u>	<u>Bovine (cow)</u>
<u>Bovine babesiosis (<i>Babesia bovis</i>, <i>B. bigemina</i>, piroplasmosis, tick fever)</u>	<u>Bovine (cow)</u>
<u>Bovine genital campylobacteriosis (<i>Campylobacter fetus venerealis</i>)</u>	<u>Bovine (cow)</u>
<u>Bovine spongiform encephalopathy (BSE, mad cow disease)</u>	<u>Bovine (cow)</u>
<u>Bovine viral diarrhea (BVD, mucosal disease)</u>	<u>Bovine (cow)</u>
<u>Brucellosis (<i>Brucella abortus</i>)</u>	<u>Bovine (cow)</u>
<u>Contagious bovine pleuropneumonia (<i>Mycoplasma mycoides mycoides</i>, CBPP)</u>	<u>Bovine (cow)</u>
<u>Crimean Congo haemorrhagic fever (CCHF)</u>	<u>Bovine (cow)</u>
<u><i>Cryptococcus gattii</i></u>	<u>Bovine (cow)</u>
<u><i>Cryptococcus</i> (undifferentiated species not identified as <i>C. neoformans</i>)</u>	<u>Bovine (cow)</u>
<u>Enzootic bovine leukosis (Bovine leukemia virus, BLV)</u>	<u>Bovine (cow)</u>
<u>Epizootic hemorrhagic disease (EHD)</u>	<u>Bovine (cow)</u>
<u>Foot-and-mouth disease (FMD)</u>	<u>Bovine (cow)</u>
<u>Hemorrhagic septicaemia (<i>Pastuerella multocida</i>, serotypes B/Asian or E/African)</u>	<u>Bovine (cow)</u>
<u>Heartwater (<i>Ehrlichia ruminantium</i>, Cowdriosis)</u>	<u>Bovine (cow)</u>
<u>Infectious bovine rhinotracheitis (IBR,S Infectious pustular vulvovaginitis)</u>	<u>Bovine (cow)</u>
<u>Jamestown Canyon virus (JCV, California serogroup)</u>	<u>Bovine (cow)</u>
<u>Johne's disease (paratuberculosis, Mycobacterium aviumsubspecies paratuberculosis, MAP, paratuberculosis)</u>	<u>Bovine (cow)</u>
<u>Leptospirosis</u>	<u>Bovine (cow)</u>
<u>Livestock exposed to toxic substances which may threaten public health</u>	<u>Bovine (cow)</u>
<u>Lumpy skin disease (Lumpy skin disease virus)</u>	<u>Bovine (cow)</u>
<u>Lyme disease (<i>Borrelia burgdorferi</i>)</u>	<u>Bovine (cow)</u>
<u>Malignant catarrhal fever (MCF)</u>	<u>Bovine (cow)</u>
<u>Melioidosis (<i>Burkholderia pseudomallei</i>)</u>	<u>Bovine (cow)</u>
<u>New, emerging, or unusual animal diseases/zoonotic diseases</u>	<u>Bovine (cow)</u>
<u>Pseudorabies (Aujeszky's disease)</u>	<u>Bovine (cow)</u>
<u>Q Fever (<i>Coxiella burnetti</i>)</u>	<u>Bovine (cow)</u>
<u>Rabies</u>	<u>Bovine (cow)</u>
<u>Rift Valley fever</u>	<u>Bovine (cow)</u>
<u>Rinderpest (cattle plague)</u>	<u>Bovine (cow)</u>
<u>Scabies (<i>Sarcoptes sp.</i>)</u>	<u>Bovine (cow)</u>
<u>Screwworm, new world (<i>Cochliomyia hominivorax</i>)</u>	<u>Bovine (cow)</u>

<b>Disease</b>	<b>Animal Type</b>
<u>Screwworm, old world (<i>Chrysomya bezziana</i>)</u>	<u>Bovine (cow)</u>
<u>Shiga toxin-producing <i>Escherichia coli</i> infections/enterohemorrhagic <i>E. coli</i> infections</u>	<u>Bovine (cow)</u>
<u>Snowshoe hare virus (SSHV, California serogroup)</u>	<u>Bovine (cow)</u>
<u>Surra (<i>Trypanosoma evansi</i>)</u>	<u>Bovine (cow)</u>
<u>Theileriosis (<i>Theileria annulata</i>, <i>T. parva</i>, Corridor disease, East Coast fever)</u>	<u>Bovine (cow)</u>
<u>Trichomoniasis (<i>Tritrichomonas fetus</i>)</u>	<u>Bovine (cow)</u>
<u>Trypanosomiasis (Tsetse fly diseases, <i>Trypanosoma congolense</i>, <i>T. vivax</i>, <i>T. brucei</i>, <i>T. evansii</i>)</u>	<u>Bovine (cow)</u>
<u>Tuberculosis (<i>Mycobacterium bovis</i>)</u>	<u>Bovine (cow)</u>
<u>Unexplained increase in dead or diseased animals</u>	<u>Bovine (cow)</u>
<u>Vesicular stomatitis</u>	<u>Bovine (cow)</u>
<u>Anthrax</u>	<u>Camelid (camel)</u>
<u>Bluetongue (Orbivirus)</u>	<u>Camelid (camel)</u>
<u>Camelpox Bluetongue (Orbivirus)</u>	<u>Camelid (camel)</u>
<u><i>Cryptococcus gattii</i></u>	<u>Camelid (camel)</u>
<u><i>Cryptococcus</i> (undifferentiated species not identified as <i>C. neoformans</i>)</u>	<u>Camelid (camel)</u>
<u>Epizootic hemorrhagic disease (EHD)</u>	<u>Camelid (camel)</u>
<u>Foot-and-mouth disease (FMD)</u>	<u>Camelid (camel)</u>
<u>Leptospirosis</u>	<u>Camelid (camel)</u>
<u>Livestock exposed to toxic substances which may threaten public health</u>	<u>Camelid (camel)</u>
<u>New, emerging, or unusual animal diseases/zoonotic diseases</u>	<u>Camelid (camel)</u>
<u>Plague (<i>Yersinia pestis</i>)</u>	<u>Camelid (camel)</u>
<u>Rabies</u>	<u>Camelid (camel)</u>
<u>Rift Valley fever</u>	<u>Camelid (camel)</u>
<u>Rinderpest (cattle plague)</u>	<u>Camelid (camel)</u>
<u>Scabies (<i>Sarcoptes sp.</i>)</u>	<u>Camelid (camel)</u>
<u>Screwworm, new world (<i>Cochliomyia hominivorax</i>)</u>	<u>Camelid (camel)</u>
<u>Screwworm, old world (<i>Chrysomya bezziana</i>)</u>	<u>Camelid (camel)</u>
<u>Shiga toxin-producing <i>Escherichia coli</i> infections/enterohemorrhagic <i>E. coli</i> infections</u>	<u>Camelid (camel)</u>
<u>Surra (<i>Trypanosoma evansi</i>)</u>	<u>Camelid (camel)</u>
<u>Vesicular stomatitis</u>	<u>Camelid (camel)</u>
<u>Unexplained increase in dead or diseased animals</u>	<u>Camelid (camel)</u>
<u>Anthrax</u>	<u>Canine (dog)</u>
<u>Brucellosis (<i>Brucella canis</i>)</u>	<u>Canine (dog)</u>
<u>Coccidioidomycosis (<i>Coccidioides immitis</i>, valley fever)</u>	<u>Canine (dog)</u>
<u><i>Cryptococcus gattii</i></u>	<u>Canine (dog)</u>
<u><i>Cryptococcus</i> (undifferentiated species not identified as <i>C. neoformans</i>)</u>	<u>Canine (dog)</u>
<u>Echinococcosis/Hydatidosis (<i>Echinococcus granulosus</i>)</u>	<u>Canine (dog)</u>
<u>Echinococcosis/Hydatidosis (<i>Echinococcus multilocularis</i>)</u>	<u>Canine (dog)</u>
<u>Ehrlichiosis (<i>Ehrlichia</i> species)</u>	<u>Canine (dog)</u>
<u>Heartworm</u>	<u>Canine (dog)</u>
<u>La Crosse encephalitis virus (LACV)</u>	<u>Canine (dog)</u>
<u>Leishmaniasis</u>	<u>Canine (dog)</u>
<u>Leptospirosis</u>	<u>Canine (dog)</u>
<u>Lyme disease (<i>Borrelia burgdorferi</i>)</u>	<u>Canine (dog)</u>

<b>Disease</b>	<b>Animal Type</b>
<u>Melioidosis (<i>Burkholderia pseudomallei</i>)</u>	<u>Canine (dog)</u>
<u>New, emerging, or unusual animal diseases/zoonotic diseases</u>	<u>Canine (dog)</u>
<u>Pseudorabies (<i>Aujeszky's disease</i>)</u>	<u>Canine (dog)</u>
<u>Q Fever (<i>Coxiella burnetti</i>)</u>	<u>Canine (dog)</u>
<u>Rabies</u>	<u>Canine (dog)</u>
<u>Rift Valley fever</u>	<u>Canine (dog)</u>
<u>SARS-CoV-2 (COVID-19)</u>	<u>Canine (dog)</u>
<u>Scabies (<i>Sarcoptes sp.</i>)</u>	<u>Canine (dog)</u>
<u>Screwworm, new world (<i>Cochliomyia hominivorax</i>)</u>	<u>Canine (dog)</u>
<u>Screwworm, old world (<i>Chrysomya bezziana</i>)</u>	<u>Canine (dog)</u>
<u>Shiga toxin-producing <i>Escherichia coli</i> infections/enterohemorrhagic <i>E. coli</i> infections</u>	<u>Canine (dog)</u>
<u>Surra (<i>Trypanosoma evansi</i>)</u>	<u>Canine (dog)</u>
<u>Unexplained increase in dead or diseased animals</u>	<u>Canine (dog)</u>
<u>West Nile virus</u>	<u>Canine (dog)</u>
<u>Akabane disease (<i>Akabane virus</i>)</u>	<u>Caprine (goat)</u>
<u>Anthrax</u>	<u>Caprine (goat)</u>
<u>Bluetongue (<i>Orbivirus</i>)</u>	<u>Caprine (goat)</u>
<u>Brucellosis (<i>Brucella abortus</i>)</u>	<u>Caprine (goat)</u>
<u>Brucellosis (<i>Brucella melitensis</i>)</u>	<u>Caprine (goat)</u>
<u>Caprine contagious arthritis and encephalitis (CAE)</u>	<u>Caprine (goat)</u>
<u>Caseous lymphadenitis (<i>Corynebacterium pseudotuberculosis</i>)</u>	<u>Caprine (goat)</u>
<u>Contagious agalactia (<i>Mycoplasma agalactiae</i>, <i>M. capricolum capricolum</i>, <i>M. putrefaciens</i>, <i>M. mycoides mycoides</i>)</u>	<u>Caprine (goat)</u>
<u>Contagious caprine pleuropneumonia (<i>Mycoplasma capricolum capripneumoniae</i>)</u>	<u>Caprine (goat)</u>
<u>Contagious ecthyma (Orf, sore mouth)</u>	<u>Caprine (goat)</u>
<u>Crimean Congo hemorrhagic fever</u>	<u>Caprine (goat)</u>
<u><i>Cryptococcus gattii</i></u>	<u>Caprine (goat)</u>
<u><i>Cryptococcus</i> (undifferentiated species not identified as <i>C. neoformans</i>)</u>	<u>Caprine (goat)</u>
<u>Enzootic abortion of ewes (<i>Chlamydophila abortus</i>, ovine chlamydiosis)</u>	<u>Caprine (goat)</u>
<u>Epizootic hemorrhagic disease (EHD)</u>	<u>Caprine (goat)</u>
<u>Foot-and-mouth disease (FMD)</u>	<u>Caprine (goat)</u>
<u>Goat pox</u>	<u>Caprine (goat)</u>
<u>Heartwater (<i>Ehrlichia ruminantium</i>, Cowdriosis)</u>	<u>Caprine (goat)</u>
<u>Johne's disease (paratuberculosis)</u>	<u>Caprine (goat)</u>
<u>La Crosse encephalitis virus (LACV, La Crosse virus)</u>	<u>Caprine (goat)</u>
<u>Leptospirosis</u>	<u>Caprine (goat)</u>
<u>Listeriosis</u>	<u>Caprine (goat)</u>
<u>Livestock exposed to toxic substances which may threaten public health</u>	<u>Caprine (goat)</u>
<u>Maedi-Visna (Ovine progressive pneumonia, OPP)</u>	<u>Caprine (goat)</u>
<u>Malignant catarrhal fever (MCF)</u>	<u>Caprine (goat)</u>
<u>Mange (<i>Sarcoptes scabiei</i>, <i>Chorioptes bovis</i>, <i>Psoroptes ovis</i>, <i>Psoroptes cuniculi</i>, <i>Psoregates ovis</i>)</u>	<u>Caprine (goat)</u>
<u>Melioidosis (<i>Burkholderia pseudomallei</i>)</u>	<u>Caprine (goat)</u>
<u>Nairobi sheep disease</u>	<u>Caprine (goat)</u>
<u>New, emerging, or unusual animal diseases/zoonotic diseases</u>	<u>Caprine (goat)</u>
<u>Peste des petits ruminants</u>	<u>Caprine (goat)</u>

<b>Disease</b>	<b>Animal Type</b>
<u>Plague (<i>Yersinia pestis</i>)</u>	<u>Caprine (goat)</u>
<u>Pseudorabies (Aujeszky's disease)</u>	<u>Caprine (goat)</u>
<u>Q Fever (<i>Coxiella burnetti</i>)</u>	<u>Caprine (goat)</u>
<u>Rabies</u>	<u>Caprine (goat)</u>
<u>Rift Valley fever</u>	<u>Caprine (goat)</u>
<u>Rinderpest (cattle plague)</u>	<u>Caprine (goat)</u>
<u>Salmonellosis (<i>Salmonella abortus ovis</i>)</u>	<u>Caprine (goat)</u>
<u>Scrapie</u>	<u>Caprine (goat)</u>
<u>Screwworm, new world (<i>Cochliomyia hominivorax</i>)</u>	<u>Caprine (goat)</u>
<u>Screwworm, old world (<i>Chrysomya bezziana</i>)</u>	<u>Caprine (goat)</u>
<u>Sheep pox (Goat pox)</u>	<u>Caprine (goat)</u>
<u>Shiga toxin-producing <i>Escherichia coli</i> infections/enterohemorrhagic <i>E. coli</i> infections</u>	<u>Caprine (goat)</u>
<u>Surra (<i>Trypanosoma evansi</i>)</u>	<u>Caprine (goat)</u>
<u>Theileriosis (<i>Theileria annulata</i>, <i>T. parva</i>, Corridor disease, East Coast fever)</u>	<u>Caprine (goat)</u>
<u>Vesicular stomatitis</u>	<u>Caprine (goat)</u>
<u>Unexplained increase in dead or diseased animals</u>	<u>Caprine (goat)</u>
<u>Adenovirus hemorrhagic disease</u>	<u>Cervine (deer)</u>
<u>Anthrax</u>	<u>Cervine (deer)</u>
<u>Bluetongue (<i>Orbivirus</i>)</u>	<u>Cervine (deer)</u>
<u>Brucellosis (<i>Brucella abortus</i>)</u>	<u>Cervine (deer)</u>
<u>Ehrlichiosis (<i>Ehrlichia</i> species)</u>	<u>Cervine (deer)</u>
<u>Chronic wasting disease (CWD)</u>	<u>Cervine (deer)</u>
<u>Epizootic hemorrhagic disease (EHD)</u>	<u>Cervine (deer)</u>
<u>Foot-and-mouth disease (FMD)</u>	<u>Cervine (deer)</u>
<u>Jamestown Canyon virus (JCV, California serogroup)</u>	<u>Cervine (deer)</u>
<u>La Crosse encephalitis virus (LACV, La Crosse virus)</u>	<u>Cervine (deer)</u>
<u>Leptospirosis</u>	<u>Cervine (deer)</u>
<u>Malignant catarrhal fever (MCF)</u>	<u>Cervine (deer)</u>
<u>New, emerging, or unusual animal diseases/zoonotic diseases</u>	<u>Cervine (deer)</u>
<u>Ovine epididymitis (<i>Brucella ovis</i>)</u>	<u>Cervine (deer)</u>
<u>Rabies</u>	<u>Cervine (deer)</u>
<u>Rift Valley fever</u>	<u>Cervine (deer)</u>
<u>Scabies (<i>Sarcoptes sp.</i>)</u>	<u>Cervine (deer)</u>
<u>Screwworm, new world (<i>Cochliomyia hominivorax</i>)</u>	<u>Cervine (deer)</u>
<u>Screwworm, old world (<i>Chrysomya bezziana</i>)</u>	<u>Cervine (deer)</u>
<u>Shiga toxin-producing <i>Escherichia coli</i> infections/enterohemorrhagic <i>E. coli</i> infections</u>	<u>Cervine (deer)</u>
<u>Surra (<i>Trypanosoma evansi</i>)</u>	<u>Cervine (deer)</u>
<u>Tuberculosis (<i>Mycobacterium bovis</i>)</u>	<u>Cervine (deer)</u>
<u>Vesicular stomatitis</u>	<u>Cervine (deer)</u>
<u>Unexplained increase in dead or diseased animals</u>	<u>Cervine (deer)</u>
<u>Acute hepatopancreatic necrosis disease (<i>Vibrio parahaemolyticus</i>)</u>	<u>Crustacean</u>
<u><i>Aphanomyces astaci</i> (Crayfish plague)</u>	<u>Crustacean</u>
<u><i>Hepatobacter penaei</i> (necrotising hepatopancreatitis)</u>	<u>Crustacean</u>
<u>Infection with infectious hypodermal and haematopoietic necrosis virus</u>	<u>Crustacean</u>

<b>Disease</b>	<b>Animal Type</b>
<u>Infectious myonecrosis virus</u>	<u>Crustacean</u>
<u>Macrobrachium rosenbergii nodavirus (white tail disease)</u>	<u>Crustacean</u>
<u>New, emerging, or unusual animal diseases/zoonotic diseases</u>	<u>Crustacean</u>
<u>Taura syndrome virus</u>	<u>Crustacean</u>
<u>White spot syndrome virus</u>	<u>Crustacean</u>
<u>Yellow head virus genotype 1</u>	<u>Crustacean</u>
<u>Unexplained increase in dead or diseased animals</u>	<u>Crustacean</u>
<u>African horse sickness</u>	<u>Equine (horse)</u>
<u>Anthrax</u>	<u>Equine (horse)</u>
<u>Contagious equine metritis (<i>Taylorella equigenitalis</i>, CEM)</u>	<u>Equine (horse)</u>
<u><i>Cryptococcus gattii</i></u>	<u>Equine (horse)</u>
<u><i>Cryptococcus</i> (undifferentiated species not identified as <i>C. neoformans</i>)</u>	<u>Equine (horse)</u>
<u>Dourine (<i>Trypanosoma equiperdum</i>)</u>	<u>Equine (horse)</u>
<u>Ehrlichiosis (Potomac horse fever)</u>	<u>Equine (horse)</u>
<u>Equine encephalomyelitis, Eastern (EEE)</u>	<u>Equine (horse)</u>
<u>Equine encephalomyelitis, Venezuelan (VEE)</u>	<u>Equine (horse)</u>
<u>Equine encephalomyelitis, Western (WEE)</u>	<u>Equine (horse)</u>
<u>Equine infectious anemia (EIA, swamp fever)</u>	<u>Equine (horse)</u>
<u>Equine influenza</u>	<u>Equine (horse)</u>
<u>Equine piroplasmiasis (<i>Babesia caballi</i>, <i>Theileria equi</i>, babesiosis, Theileriosis)</u>	<u>Equine (horse)</u>
<u>Equine rhinopneumonitis (Equine herpesvirus-1, EHV-1)</u>	<u>Equine (horse)</u>
<u>Equine rhinopneumonitis (Equine herpesvirus-1 neurologic form, EHV-1 myelocencephalopathy, EHV-1-EHM)</u>	<u>Equine (horse)</u>
<u>Equine rhinopneumonitis (Equine herpesvirus-1 non-neurologic form, EHV-1 myelocencephalopathy, EHV-1-EHM)</u>	<u>Equine (horse)</u>
<u>Equine viral arteritis (EVA)</u>	<u>Equine (horse)</u>
<u>Glanders (<i>Burkholderia mallei</i>)</u>	<u>Equine (horse)</u>
<u>Hendra virus (Equine morbillivirus)</u>	<u>Equine (horse)</u>
<u>Jamestown Canyon virus (JCV, California serogroup)</u>	<u>Equine (horse)</u>
<u>Japanese encephalitis</u>	<u>Equine (horse)</u>
<u>Leishmaniasis</u>	<u>Equine (horse)</u>
<u>Leptospirosis</u>	<u>Equine (horse)</u>
<u>Livestock exposed to toxic substances which may threaten public health</u>	<u>Equine (horse)</u>
<u>Lyme disease (<i>Borrelia burgdorferi</i>)</u>	<u>Equine (horse)</u>
<u>Melioidosis (<i>Burkholderia pseudomallei</i>)</u>	<u>Equine (horse)</u>
<u>New, emerging, or unusual animal diseases/zoonotic diseases</u>	<u>Equine (horse)</u>
<u>Pigeon Fever (<i>Corynebacterium pseudotuberculosis</i>, ulcerative lymphangitis)</u>	<u>Equine (horse)</u>
<u>Rabies</u>	<u>Equine (horse)</u>
<u>Scabies (<i>Sarcoptes sp.</i>)</u>	<u>Equine (horse)</u>
<u>Screwworm, new world (<i>Cochliomyia hominivorax</i>)</u>	<u>Equine (horse)</u>
<u>Screwworm, old world (<i>Chrysomya bezziana</i>)</u>	<u>Equine (horse)</u>
<u>Snowshoe hare virus (SSHV, California serogroup)</u>	<u>Equine (horse)</u>
<u>Strangles (<i>Streptococcus equi</i> subsp. <i>equi</i>)</u>	<u>Equine (horse)</u>
<u>Shiga toxin-producing <i>Escherichia coli</i> infections/enterohemorrhagic <i>E. coli</i> infections</u>	<u>Equine (horse)</u>
<u>St. Louis encephalitis virus (SLEV)</u>	<u>Equine (horse)</u>
<u>Surra (<i>Trypanosoma evansi</i>)</u>	<u>Equine (horse)</u>

<b>Disease</b>	<b>Animal Type</b>
<u>Unexplained increase in dead or diseased animals</u>	<u>Equine (horse)</u>
<u>Vesicular stomatitis</u>	<u>Equine (horse)</u>
<u>West Nile virus (WNV)</u>	<u>Equine (horse)</u>
<u>Coccidioidomycosis (<i>Coccidioides immitis</i>, valley fever)</u>	<u>Feline (cat)</u>
<u><i>Cryptococcus gattii</i></u>	<u>Feline (cat)</u>
<u><i>Cryptococcus</i> (undifferentiated species not identified as <i>C. neoformans</i>)</u>	<u>Feline (cat)</u>
<u>Heartworm</u>	<u>Feline (cat)</u>
<u>Leishmaniasis</u>	<u>Feline (cat)</u>
<u>Listeriosis</u>	<u>Feline (cat)</u>
<u>Melioidosis (<i>Burkholderia pseudomallei</i>)</u>	<u>Feline (cat)</u>
<u>New, emerging, or unusual animal diseases/zoonotic diseases</u>	<u>Feline (cat)</u>
<u>Plague (<i>Yersinia pestis</i>)</u>	<u>Feline (cat)</u>
<u>Pseudorabies (Aujeszky's disease)</u>	<u>Feline (cat)</u>
<u>Q Fever (<i>Coxiella burnetii</i>)</u>	<u>Feline (cat)</u>
<u>Rabies</u>	<u>Feline (cat)</u>
<u>Rift Valley fever</u>	<u>Feline (cat)</u>
<u>SARS-CoV-2 (COVID-19)</u>	<u>Feline (cat)</u>
<u>Scabies (<i>Sarcoptes sp.</i>)</u>	<u>Feline (cat)</u>
<u>Screwworm, new world (<i>Cochliomyia hominivorax</i>)</u>	<u>Feline (cat)</u>
<u>Screwworm, old world (<i>Chrysomya bezziana</i>)</u>	<u>Feline (cat)</u>
<u>Shiga toxin-producing <i>Escherichia coli</i> infections/enterohemorrhagic <i>E. coli</i> infections</u>	<u>Feline (cat)</u>
<u>Surra (<i>Trypanosoma evansi</i>)</u>	<u>Feline (cat)</u>
<u>Unexplained increase in dead or diseased animals</u>	<u>Feline (cat)</u>
<u>West Nile virus (WNV)</u>	<u>Feline (cat)</u>
<u>Anthrax</u>	<u>Lagomorph (hare, rabbit, pika)</u>
<u>Crimean Congo hemorrhagic fever (CCHF)</u>	<u>Lagomorph (hare, rabbit, pika)</u>
<u>Myxomatosis</u>	<u>Lagomorph (hare, rabbit, pika)</u>
<u>New, emerging, or unusual animal diseases/zoonotic diseases</u>	<u>Lagomorph (hare, rabbit, pika)</u>
<u>Plague (<i>Yersinia pestis</i>)</u>	<u>Lagomorph (hare, rabbit, pika)</u>
<u>Scabies (<i>Sarcoptes sp.</i>)</u>	<u>Lagomorph (hare, rabbit, pika)</u>
<u>Screwworm, new world (<i>Cochliomyia hominivorax</i>)</u>	<u>Lagomorph (hare, rabbit, pika)</u>
<u>Screwworm, old world (<i>Chrysomya bezziana</i>)</u>	<u>Lagomorph (hare, rabbit, pika)</u>
<u>Shiga toxin-producing <i>Escherichia coli</i> infections/enterohemorrhagic <i>E. coli</i> infections</u>	<u>Lagomorph (hare, rabbit, pika)</u>
<u>Snowshoe hare virus (SSHV, California serogroup)</u>	<u>Lagomorph (hare, rabbit, pika)</u>
<u>Tularemia (<i>Francisella tularensis</i>)</u>	<u>Lagomorph (hare, rabbit, pika)</u>
<u>Viral hemorrhagic disease of rabbits (Rabbit hemorrhagic disease, RHD, calicivirus)</u>	<u>Lagomorph (hare, rabbit, pika)</u>
<u>Unexplained increase in dead or diseased animals</u>	<u>Lagomorph (hare, rabbit, pika)</u>
<u>West Nile virus (WNV)</u>	<u>Lagomorph (hare, rabbit, pika)</u>
<u>Abalone viral ganglioneuritis (<i>Abalone herpesvirus</i>)</u>	<u>Mollusc</u>
<u>Bonamiosis (<i>Bonamia exitiosa</i>)</u>	<u>Mollusc</u>
<u>Bonamiosis (<i>Bonamia ostreae</i>)</u>	<u>Mollusc</u>
<u>Marteiliosis (<i>Marteilia refringens</i>)</u>	<u>Mollusc</u>
<u>New, emerging, or unusual animal diseases/zoonotic diseases</u>	<u>Mollusc</u>
<u>Perkinsosis (<i>Perkinsus marinus</i>)</u>	<u>Mollusc</u>



<b>Disease</b>	<b>Animal Type</b>
<u>Perkinsosis (<i>Perkinsus olseni</i>)</u>	<u>Mollusc</u>
<u>Withering abalone syndrome (<i>Xenohalictis californiensis</i>)</u>	<u>Mollusc</u>
<u>Unexplained increase in dead or diseased animals</u>	<u>Mollusc</u>
<u>Akabane disease (<i>Akabane virus</i>)</u>	<u>Multiple Species</u>
<u>Anthrax</u>	<u>Multiple Species</u>
<u>Bluetongue (<i>Orbivirus</i>)</u>	<u>Multiple Species</u>
<u>Brucellosis</u>	<u>Multiple Species</u>
<u>Brucellosis (<i>Brucella abortus</i>)</u>	<u>Multiple Species</u>
<u>Brucellosis (<i>Brucella canis</i>)</u>	<u>Multiple Species</u>
<u>Brucellosis (<i>Brucella melitensis</i>)</u>	<u>Multiple Species</u>
<u>Brucellosis (<i>Brucella ovis</i>)</u>	<u>Multiple Species</u>
<u>Brucellosis (<i>Brucella suis</i>)</u>	<u>Multiple Species</u>
<u>Chikungunya</u>	<u>Multiple Species</u>
<u>Coccidioidomycosis (<i>Coccidioides immitis</i>, valley fever)</u>	<u>Multiple Species</u>
<u>Crimean Congo hemorrhagic fever (CCHF)</u>	<u>Multiple Species</u>
<u><i>Cryptococcus gattii</i></u>	<u>Multiple Species</u>
<u><i>Cryptococcus</i> (undifferentiated species not identified as <i>C. neoformans</i>)</u>	<u>Multiple Species</u>
<u>Dengue</u>	<u>Multiple Species</u>
<u>Echinococcosis/Hydatidosis</u>	<u>Multiple Species</u>
<u>Echinococcosis/Hydatidosis (<i>Echinococcus granulosus</i>)</u>	<u>Multiple Species</u>
<u>Echinococcosis/Hydatidosis (<i>Echinococcus multilocularis</i>)</u>	<u>Multiple Species</u>
<u>Ehrlichiosis (<i>Ehrlichia</i> species)</u>	<u>Multiple Species</u>
<u>Epizootic hemorrhagic disease (EHD)</u>	<u>Multiple Species</u>
<u>Equine encephalomyelitis</u>	<u>Multiple Species</u>
<u>Equine encephalomyelitis (Eastern, EEE)</u>	<u>Multiple Species</u>
<u>Equine encephalomyelitis (Venezuelan, VEE)</u>	<u>Multiple Species</u>
<u>Equine encephalomyelitis (Western, WEE)</u>	<u>Multiple Species</u>
<u>Foot-and-mouth disease (FMD)</u>	<u>Multiple Species</u>
<u>Heartwater (<i>Ehrlichia ruminantium</i>, Cowdriosis)</u>	<u>Multiple Species</u>
<u>Heartworm</u>	<u>Multiple Species</u>
<u>Jamestown Canyon virus (JCV, California serogroup)</u>	<u>Multiple Species</u>
<u>Japanese encephalitis</u>	<u>Multiple Species</u>
<u>Johne's disease (paratuberculosis)</u>	<u>Multiple Species</u>
<u>La Crosse encephalitis virus (LACV)</u>	<u>Multiple Species</u>
<u>Leishmaniasis</u>	<u>Multiple Species</u>
<u>Leptospirosis</u>	<u>Multiple Species</u>
<u>Livestock exposed to toxic substances which may threaten public health</u>	<u>Multiple Species</u>
<u>Lyme disease (<i>Borrelia burgdorferi</i>)</u>	<u>Multiple Species</u>
<u>Melioidosis (<i>Burkholderia pseudomallei</i>)</u>	<u>Multiple Species</u>
<u>Malignant catarrhal fever (MCF)</u>	<u>Multiple Species</u>
<u>New, emerging, or unusual animal diseases/zoonotic diseases</u>	<u>Multiple Species</u>
<u>Plague (<i>Yersinia pestis</i>)</u>	<u>Multiple Species</u>
<u>Powassan virus (POWV)</u>	<u>Multiple Species</u>
<u>Pseudorabies (Aujeszky's disease)</u>	<u>Multiple Species</u>
<u>Q Fever (<i>Coxiella burnetti</i>)</u>	<u>Multiple Species</u>
<u>Rabies</u>	<u>Multiple Species</u>

<b>Disease</b>	<b>Animal Type</b>
<u>Rift Valley fever</u>	<u>Multiple Species</u>
<u>Rinderpest (cattle plague)</u>	<u>Multiple Species</u>
<u>Scabies (<i>Sarcoptes sp.</i>)</u>	<u>Multiple Species</u>
<u>SARS-CoV-2 (COVID-19)</u>	<u>Multiple Species</u>
<u>Screwworm</u>	<u>Multiple Species</u>
<u>Screwworm, new world (<i>Cochliomyia hominivorax</i>)</u>	<u>Multiple Species</u>
<u>Screwworm, old world (<i>Chrysomya bezziana</i>)</u>	<u>Multiple Species</u>
<u>Shiga toxin-producing <i>Escherichia coli</i> infections/enterohemorrhagic <i>E. coli</i> infections</u>	<u>Multiple Species</u>
<u>Snowshoe hare virus (SSHV, California serogroup)</u>	<u>Multiple Species</u>
<u>St. Louis encephalitis virus (SLEV)</u>	<u>Multiple Species</u>
<u>Surra (<i>Trypanosoma evansi</i>)</u>	<u>Multiple Species</u>
<u>Theileriosis (Corridor disease, East Coast fever, <i>Theileria annulata</i>, <i>Theileria parva</i>)</u>	<u>Multiple Species</u>
<u>Transmissible Spongiform Encephalopathy (TSE)</u>	<u>Multiple Species</u>
<u>Trichinellosis (<i>Trichinella</i> spp., Trichinosis)</u>	<u>Multiple Species</u>
<u>Tuberculosis</u>	<u>Multiple Species</u>
<u>Tuberculosis (<i>Mycobacterium avium</i>)</u>	<u>Multiple Species</u>
<u>Tuberculosis (<i>Mycobacterium tuberculosis</i>)</u>	<u>Multiple Species</u>
<u>Tularemia (<i>Francisella tularensis</i>)</u>	<u>Multiple Species</u>
<u>Unexplained increase in dead or diseased animals</u>	<u>Multiple Species</u>
<u>Vancomycin resistant (<i>Staphylococcus aureus</i>)</u>	<u>Multiple Species</u>
<u>Vesicular stomatitis</u>	<u>Multiple Species</u>
<u>West Nile virus (WNV)</u>	<u>Multiple Species</u>
<u>Zika</u>	<u>Multiple Species</u>
<u>Zoonotic viral hemorrhagic fever</u>	<u>Multiple Species</u>
<u>Akabane disease (<i>Akabane virus</i>)</u>	<u>Ovine (sheep)</u>
<u>Anthrax</u>	<u>Ovine (sheep)</u>
<u>Bluetongue (<i>Orbivirus</i>)</u>	<u>Ovine (sheep)</u>
<u>Brucellosis (<i>Brucella abortus</i>)</u>	<u>Ovine (sheep)</u>
<u>Brucellosis (<i>Brucella melitensis</i>)</u>	<u>Ovine (sheep)</u>
<u>Brucellosis (<i>Brucella ovis</i>)</u>	<u>Ovine (sheep)</u>
<u>Caprine arthritis and encephalitis (CAE)</u>	<u>Ovine (sheep)</u>
<u>Caseous lymphadenitis (<i>Corynebacterium pseudotuberculosis</i>)</u>	<u>Ovine (sheep)</u>
<u>Contagious agalactia (<i>Mycoplasma agalactiae</i>, <i>M. Capricolum capricolum</i>, <i>M. putrefaciens</i>, <i>M. mycoides mycoide</i>, <i>M. mycoides mycoides</i>)</u>	<u>Ovine (sheep)</u>
<u>Contagious caprine pleuropneumonia</u>	<u>Ovine (sheep)</u>
<u>Contagious ecthyma (Orf, sore mouth)</u>	<u>Ovine (sheep)</u>
<u>Crimean Congo hemorrhagic fever (CCHF)</u>	<u>Ovine (sheep)</u>
<u><i>Cryptococcus gattii</i></u>	<u>Ovine (sheep)</u>
<u><i>Cryptococcus</i> (undifferentiated species not identified as <i>C. neoformans</i>)</u>	<u>Ovine (sheep)</u>
<u>Epizootic hemorrhagic disease (EHD)</u>	<u>Ovine (sheep)</u>
<u>Enzootic abortion of ewes (<i>Chlamydophila abortus</i>, ovine chlamydiosis)</u>	<u>Ovine (sheep)</u>
<u>Echinococcosis/Hydatidosis (<i>Echinococcus granulosus</i>)</u>	<u>Ovine (sheep)</u>
<u>Echinococcosis/Hydatidosis (<i>Echinococcus multilocularis</i>)</u>	<u>Ovine (sheep)</u>
<u>Foot-and-mouth disease (FMD)</u>	<u>Ovine (sheep)</u>
<u>Goat pox (Sheep pox)</u>	<u>Ovine (sheep)</u>

<b>Disease</b>	<b>Animal Type</b>
<u>Heartwater (<i>Ehrlichia ruminantium</i>, Cowdriosis)</u>	<u>Ovine (sheep)</u>
<u>Jamestown Canyon virus (JCV, California serogroup)</u>	<u>Ovine (sheep)</u>
<u>Johne's disease (paratuberculosis)</u>	<u>Ovine (sheep)</u>
<u>Leptospirosis</u>	<u>Ovine (sheep)</u>
<u>Livestock exposed to toxic substances which may threaten public health</u>	<u>Ovine (sheep)</u>
<u>Maedi-Visna (Ovine progressive pneumonia, OPP)</u>	<u>Ovine (sheep)</u>
<u>Malignant catarrhal fever (MCF)</u>	<u>Ovine (sheep)</u>
<u>Mange (<i>Sarcoptes scabiei</i>, <i>Chorioptes bovis</i>, <i>Psoroptes ovis</i>, <i>Psoroptes cuniculi</i>, <i>Psoregates ovis</i>)</u>	<u>Ovine (sheep)</u>
<u>Melioidosis (<i>Burkholderia pseudomallei</i>)</u>	<u>Ovine (sheep)</u>
<u>Nairobi sheep disease</u>	<u>Ovine (sheep)</u>
<u>New, emerging, or unusual animal diseases/zoonotic diseases</u>	<u>Ovine (sheep)</u>
<u>Peste des petits ruminants</u>	<u>Ovine (sheep)</u>
<u>Plague (<i>Yersinia pestis</i>)</u>	<u>Ovine (sheep)</u>
<u>Pseudorabies (Aujeszky's disease)</u>	<u>Ovine (sheep)</u>
<u>Q Fever (<i>Coxiella burnetii</i>)</u>	<u>Ovine (sheep)</u>
<u>Rabies</u>	<u>Ovine (sheep)</u>
<u>Rift Valley fever</u>	<u>Ovine (sheep)</u>
<u>Rinderpest (cattle plague)</u>	<u>Ovine (sheep)</u>
<u>Salmonellosis (<i>Salmonella abortus ovis</i>)</u>	<u>Ovine (sheep)</u>
<u>Scrapie</u>	<u>Ovine (sheep)</u>
<u>Screwworm, new world (<i>Cochliomyia hominivorax</i>)</u>	<u>Ovine (sheep)</u>
<u>Screwworm, old world (<i>Chrysomya bezziana</i>)</u>	<u>Ovine (sheep)</u>
<u>Sheep pox</u>	<u>Ovine (sheep)</u>
<u>Shiga toxin-producing <i>Escherichia coli</i> infections/enterohemorrhagic <i>E. coli</i> infections</u>	<u>Ovine (sheep)</u>
<u>Snowshoe hare virus (SSHV, California serogroup)</u>	<u>Ovine (sheep)</u>
<u>Surra (<i>Trypanosoma evansi</i>)</u>	<u>Ovine (sheep)</u>
<u>Theileriosis (Corridor disease, East Coast fever, <i>Theileria annulata</i>, <i>T. parva</i>)</u>	<u>Ovine (sheep)</u>
<u>Vesicular stomatitis</u>	<u>Ovine (sheep)</u>
<u>Unexplained increase in dead or diseased animals</u>	<u>Ovine (sheep)</u>
<u>Epizootic hematopoietic necrosis disease</u>	<u>Piscine (fish)</u>
<u>Epizootic ulcerative syndrome (<i>Aphanomyces invadans</i>, EUS)</u>	<u>Piscine (fish)</u>
<u><i>Gyrodactylus salaris</i> (<i>Gyrodactylosis</i>)</u>	<u>Piscine (fish)</u>
<u>Salmon anemia virus</u>	<u>Piscine (fish)</u>
<u>HPR-deleted or HPRO infectious salmon anaemia virus</u>	<u>Piscine (fish)</u>
<u>Koi herpesvirus disease</u>	<u>Piscine (fish)</u>
<u>New, emerging, or unusual animal diseases/zoonotic diseases</u>	<u>Piscine (fish)</u>
<u>Salmonid alphavirus infection</u>	<u>Piscine (fish)</u>
<u>Red sea bream iridoviral disease</u>	<u>Piscine (fish)</u>
<u>Spring viremia of carp (SVC)</u>	<u>Piscine (fish)</u>
<u>Tilapia lake virus disease (<i>Tilapia tilapinevirus</i>, <i>TiLV</i>)</u>	<u>Piscine (fish)</u>
<u>Unexplained increase in dead or diseased animals</u>	<u>Piscine (fish)</u>
<u>Viral hemorrhagic septicemia (VHS)</u>	<u>Piscine (fish)</u>
<u>African swine fever (ASF)</u>	<u>Porcine (pig)</u>
<u>Anthrax</u>	<u>Porcine (pig)</u>

<b>Disease</b>	<b>Animal Type</b>
<u>Brucellosis (<i>Brucella suis</i>)</u>	<u>Porcine (pig)</u>
<u>Classical swine fever (CSF, hog cholera)</u>	<u>Porcine (pig)</u>
<u><i>Cryptococcus gattii</i></u>	<u>Porcine (pig)</u>
<u><i>Cryptococcus</i> (undifferentiated species not identified as <i>C. neoformans</i>)</u>	<u>Porcine (pig)</u>
<u>Foot-and-mouth disease (FMD)</u>	<u>Porcine (pig)</u>
<u>Japanese encephalitis</u>	<u>Porcine (pig)</u>
<u>Leptospirosis</u>	<u>Porcine (pig)</u>
<u>Livestock exposed to toxic substances which may threaten public health</u>	<u>Porcine (pig)</u>
<u>Malignant catarrhal fever (MCF)</u>	<u>Porcine (pig)</u>
<u>Melioidosis (<i>Burkholderia pseudomallei</i>)</u>	<u>Porcine (pig)</u>
<u>New, emerging, or unusual animal diseases/zoonotic diseases</u>	<u>Porcine (pig)</u>
<u>Nipah virus</u>	<u>Porcine (pig)</u>
<u>Porcine circovirus (post-weaning multisystemic wasting syndrome)</u>	<u>Porcine (pig)</u>
<u>Porcine cysticercosis (<i>Taenia solium</i>)</u>	<u>Porcine (pig)</u>
<u>Porcine epidemic diarrhea virus (PEDv)</u>	<u>Porcine (pig)</u>
<u>Porcine reproductive and respiratory syndrome (PRRS)</u>	<u>Porcine (pig)</u>
<u>Pseudorabies (Aujeszky's disease)</u>	<u>Porcine (pig)</u>
<u>Q Fever (<i>Coxiella burnetti</i>)</u>	<u>Porcine (pig)</u>
<u>Rabies</u>	<u>Porcine (pig)</u>
<u>Rinderpest (cattle plague)</u>	<u>Porcine (pig)</u>
<u>Scabies (<i>Sarcoptes sp.</i>)</u>	<u>Porcine (pig)</u>
<u>Screwworm, new world (<i>Cochliomyia hominivorax</i>)</u>	<u>Porcine (pig)</u>
<u>Screwworm, old world (<i>Chrysomya bezziana</i>)</u>	<u>Porcine (pig)</u>
<u>Senecavirus A (SVA, Seneca Valley virus)</u>	<u>Porcine (pig)</u>
<u>Shiga toxin-producing <i>Escherichia coli</i> infections/enterohemorrhagic <i>E. coli</i> infections</u>	<u>Porcine (pig)</u>
<u>Surra (<i>Trypanosoma evansi</i>)</u>	<u>Porcine (pig)</u>
<u>Swine influenza</u>	<u>Porcine (pig)</u>
<u>Swine vesicular disease</u>	<u>Porcine (pig)</u>
<u>Transmissible gastroenteritis (<i>coronavirus</i>, TGE)</u>	<u>Porcine (pig)</u>
<u>Trichinellosis (<i>Trichinella spiralis</i>, Trichinosis)</u>	<u>Porcine (pig)</u>
<u>Unexplained increase in dead or diseased animals</u>	<u>Porcine (pig)</u>
<u>Vesicular exanthema of swine</u>	<u>Porcine (pig)</u>
<u>Vesicular stomatitis</u>	<u>Porcine (pig)</u>
<u>New, emerging, or unusual animal diseases</u>	<u>Reptilian</u>
<u>Unexplained increase in dead or diseased animals</u>	<u>Reptilian</u>
<u>Anthrax</u>	<u>Rodent</u>
<u>Foot-and-mouth disease (FMD)</u>	<u>Rodent</u>
<u>La Crosse encephalitis virus (LACV)</u>	<u>Rodent</u>
<u>Leishmaniasis</u>	<u>Rodent</u>
<u>New, emerging, or unusual animal diseases/zoonotic diseases</u>	<u>Rodent</u>
<u>Plague (<i>Yersinia pestis</i>)</u>	<u>Rodent</u>
<u>Q Fever (<i>Coxiella burnetti</i>)</u>	<u>Rodent</u>
<u>Rift Valley fever</u>	<u>Rodent</u>
<u>Shiga toxin-producing <i>Escherichia coli</i> infections/enterohemorrhagic <i>E. coli</i> infections</u>	<u>Rodent</u>

<b>Disease</b>	<b>Animal Type</b>
Unexplained increase in dead or diseased animals	Rodent

[Statutory Authority: RCW 16.36.040 and chapter 34.05 RCW. WSR 15-02-027, § 16-70-020, filed 12/30/14, effective 1/30/15. Statutory Authority: Chapters 16.36 and 34.05 RCW. WSR 10-13-055, § 16-70-020, filed 6/10/10, effective 7/11/10; WSR 07-10-087, § 16-70-020, filed 5/1/07, effective 6/1/07. Statutory Authority: RCW 16.36.096 and 16.36.040. WSR 93-19-127 (Order 5011), § 16-70-020, filed 9/21/93, effective 10/22/93; Order 1005, Regulation 4, filed 7/22/66, effective 8/22/66.]

**WSR 23-07-135**  
**PROPOSED RULES**  
**DEPARTMENT OF AGRICULTURE**  
[Filed March 22, 2023, 8:55 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-22-094.

Title of Rule and Other Identifying Information: Chapter 16-89 WAC, Sheep and goat diseases in Washington state.

Hearing Location(s): On May 3, 2023, at 10:00 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 236 010 241 665, Passcode 2VnRs9; or call in (audio only) +1 564-999-2000, Phone Conference ID 239 345 996#.

Date of Intended Adoption: May 10, 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 May 3, 2023, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Jodi Jones, animal services operations director, phone 360-402-0397, fax 360-902-2087, TTY 800-833-6388, email jjones@agr.wa.gov, by April 26, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend chapter 16-89 WAC to:

- Add the word "Individual" to the definition of official identification;
- Add "USDA" to the definition of "APHIS";
- Repeal WAC 16-89-012 Quarantine;
- Combine WAC 16-89-015 Scrapie program standards and 16-89-022 Scrapie identification of sheep and goats;
- Add the word "individual" to the official identification requirements when testing for brucellosis and tuberculosis in goats whose raw milk or raw milk products being sold; and
- Remove Q-fever testing requirements for raw milk dairies.

Reasons Supporting Proposal: The current definition for identification does not specify that sheep and goats need to be tracked individually which allows groups of animals to be tracked with the same identifier. Animal and Plant Health Inspection Service (APHIS) is referred to on its own and does not include any reference to the United States Department of Agriculture (USDA).

Adding the term "individual" to the official identification definition will clarify that each animal must have a unique identifier that cannot be shared with other members in the same group. Having individual identifiers for each animal will make it easier to trace disease outbreaks and ensure that a minimal number of animals be quarantined, if that step is necessary. In the event of a disease outbreak, without each animal being identified with individual identification, the group of animals or all animal species that are associated with that group identifier would be placed under quarantine rather than the individual animal(s) exposed to the disease. Animal disease traceability is critical to ensuring a rapid response when animal disease events take place. An efficient and accurate traceability system reduces the number of animals and response times involved in a disease investigation, reducing the economic impact on livestock producers.

Having individual identifiers should reduce the number of producers/farms that will be put under quarantine if an outbreak is detected and lower the amount of time for state and federal officials to trace the disease and impacted animals.

Adding "USDA" to the definition of APHIS makes it clear to businesses that APHIS is in fact part of the USDA and not an unrelated agency.

WAC 16-89-012 outlines requirements for sheep and goat quarantines when an infectious or communicable disease outbreak occurs. It also explains what some of the consequences will be to businesses that fail to comply with a quarantine order.

The section is being repealed because the department's authority to quarantine animals and the guidelines to conduct such quarantines are already included in RCW 16.36.010. The guidelines in the statute apply to all types of animals in the state, including sheep and goats, making this section redundant and unnecessary.

The existing rule separates the federal scrapie program standards adopted in WAC 16-89-015 from the scrapie identification procedures for sheep and goats in WAC 16-89-022. This has created confusion for both department staff and sheep and goat producers since the federal scrapie program also include scrapie identification procedures for sheep and goats. Combining both of these sections under WAC 16-89-015 eliminates that confusion by relying solely on the federal scrapie program adopted into rule for the procedures and methods used to identify and control the scrapie disease in sheep and goats and any exemptions that may apply. The department is also updating the version of 9 C.F.R. Part 79.2 being adopted to the most recent version and updating the links to the C.F.R. to ensure that producers are able to access it.

WAC 16-89-170 mandates that all sheep and goat herds that produce raw milk products be tested for Q-fever. The section provides time frames for when negative test results need to be received for new and existing animals and requires yearly tests for all animals. Products from animals with a positive test are prohibited from entering the market. Q-fever testing detects antibodies to *Coxiella burnetii* and antibody tests only determine past exposure to the agent rather than active shedding of the disease organism status. The testing does not actually determine if the animal is actively infected or if the animal is shedding the organism in the milk. Currently, there are no commercially available testing procedures for Q-fever that give accurate and reliable definitive results.

Statutory Authority for Adoption: RCW 16.36.040.

Statute Being Implemented: Chapter 16.36 RCW.

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: None.

Name of Proponent: Washington state department of agriculture (WSDA), governmental.

Name of Agency Personnel Responsible for Drafting: Dr. Ben Smith, 1111 Washington Street [S.E.], Olympia, WA 98504, 509-350-0081; Implementation: Jodi Jones, 1111 Washington Street [S.E.], Olympia, WA 98504, 360-402-0397; and Enforcement: Joel Williams, 1111 Washington Street [S.E.], Olympia, WA 98504, 360-688-4294.

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. WSDA is not a listed agency under RCW 34.05.328 (5)(a)(i).

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

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

Explanation of exemptions: Updating references to the C.F.R. in WAC 16-89-015 is adopting federal regulations and is exempt from the small business economic impact statement (SBEIS) requirements under RCW 19.85.025(3)/34.05.310 (4)(c).

Adding "USDA" to APHIS in the definitions is a clarifying change that does not change the effect of the rule and is exempt from SBEIS requirements under RCW 19.85.025(3)/34.05.310 (4)(d).

Combining WAC 16-89-015 and 16-89-022 under WAC 16-89-015, since WAC 16-89-022 covers identification of scrapies and exemptions which are already covered by the federal rule adopted in WAC 16-89-015, clarifies the rule without changing its effect and is exempt from SBEIS requirements under RCW 19.85.025(3)/34.05.310 (4)(d).

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: Updating references to the C.F.R. in WAC 16-89-015 is adopting federal regulations and is exempt from SBEIS requirements under RCW 19.85.025(3)/34.05.310 (4)(c).

Adding "USDA" to APHIS in the definitions is a clarifying change that does not change the effect of the rule and is exempt from SBEIS requirements under RCW 19.85.025(3)/34.05.310 (4)(d).

Combining WAC 16-89-015 and 16-89-022 under WAC 16-89-015, since WAC 16-89-022 covers identification of scrapies and exemptions which are already covered by the federal rule adopted in WAC 16-89-015, clarifies the rule without changing its effect and is exempt from SBEIS requirements under RCW 19.85.025(3)/34.05.310 (4)(d).

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 sheep and goat raw milk industry already utilizes individual identification and the proposed rule changes to the identification practices are more of a formality that clarifies this standard business practice. Businesses will not need to change any operating procedures and will not be expected to take on any additional costs.

Removing the testing requirements for Q-fever does not impose any additional costs for small businesses, as they are not being asked to carry out any new functions. Businesses will no longer need to carry out yearly Q-fever tests or tests on new animals being added to exist-



ing herds. Removing this section will also eliminate the restrictions on the sale of raw milk products for animals that have tested positive.

March 22, 2023  
Jodi Jones  
Operations Director

#### OTS-4257.4

AMENDATORY SECTION (Amending WSR 08-13-100, filed 6/18/08, effective 7/19/08)

**WAC 16-89-010 Definitions.** In addition to the definitions found in RCW 16.36.005, the following definitions apply to this chapter:

"APHIS" means the United States Department of Agriculture, Animal and Plant Health Inspection Service.

"Department" means the Washington state department of agriculture.

"Director" means the director of agriculture or the director's authorized representative.

"Flock" means a number of animals of sheep or goat species that are kept, fed and herded together, and have single or multiple ownership. The term "flock" is interchangeable with the term "herd" and applies to purebred and commercial sheep and goats.

"High risk animal" means any female genetically susceptible exposed animal. The female offspring of a scrapie-positive female animal or any female genetically less susceptible exposed animal that the designated scrapie epidemiologist (with the concurrence of the USDA area veterinarian in charge, state veterinarian, regional scrapie epidemiologist, and National Scrapie Program coordinator) determines to be a potential risk based on the epidemiology of the flock, including genetics of the positive sheep, the prevalence of scrapie in the flock, any history of recurrent infection, or other characteristics.

"Official individual identification" means an identification mark or device approved by USDA-APHIS for use in the scrapie eradication program. Examples include, but are not limited to, electronic devices, official ear tags, and legible official registry tattoos.

"Scrapie" means a transmissible spongiform encephalopathy that is a fatal, nonfebrile, transmissible, insidious, degenerative disease affecting the central nervous system of sheep and goats.

"Scrapie exposed animal" means any animal that has been in the same flock at the same time within the previous ((~~sixty~~) 60) months as a scrapie positive animal, excluding limited contacts, as identified in the *Scrapie Eradication Uniform Methods and Rules*, effective June 1, 2005.

"Scrapie Flock Certification Program" means a national voluntary program for classification of flocks relative to scrapie.

"USDA" means the United States Department of Agriculture.

[Statutory Authority: RCW 16.36.040 and chapter 34.05 RCW. WSR 08-13-100, § 16-89-010, filed 6/18/08, effective 7/19/08. Statutory Authority: RCW 16.36.040. WSR 02-24-042, § 16-89-010, filed 12/3/02,

effective 1/3/03; WSR 99-09-026, § 16-89-010, filed 4/15/99, effective 5/16/99.]

AMENDATORY SECTION (Amending WSR 08-13-100, filed 6/18/08, effective 7/19/08)

**WAC 16-89-015 Scrapie program standards and identification of sheep and goats.** (1) In addition to the rules adopted in this chapter, the Washington state department of agriculture adopts the procedures and methods of (~~the Scrapie Eradication Uniform Methods and Rules, effective June 1, 2005, and Control of Scrapie, Title 9, Code of Federal Regulations, Part 54 and Scrapie in Sheep and Goats, Part 79 as revised January 1, 2006.~~) Title 9, Code of Federal Regulations (C.F.R.), Part 54 Control of Scrapie as revised January 1, 2006, and Part 79.2 Scrapie in Sheep and Goats, Identification and Records Requirements for Sheep and Goats in Interstate Commerce, revised June 18, 2019. Copies of these documents are on file at the Washington Department of Agriculture, Animal Services Division, 1111 Washington Street, Olympia, Washington 98504 and are available for public inspection.

Except as exempted under the federal rules adopted in this section all sheep and goats that are placed into commerce must have official scrapie program identification.

(2) (~~The Scrapie Eradication Uniform Methods and Rules may be found on the internet at: [http://www.aphis.usda.gov/animal\\_health/animal\\_diseases/scrapie/downloads/umr\\_scrapie.pdf](http://www.aphis.usda.gov/animal_health/animal_diseases/scrapie/downloads/umr_scrapie.pdf).~~

~~(3))~~ Title 9 C.F.R., Parts 54 and 79 may be found on the internet at (~~: [http://www.access.gpo.gov/nara/cfr/waisidx\\_06/9efrv1\\_06.html](http://www.access.gpo.gov/nara/cfr/waisidx_06/9efrv1_06.html))~~) <https://www.ecfr.gov/current/title-9/chapter-I>.

[Statutory Authority: RCW 16.36.040 and chapter 34.05 RCW. WSR 08-13-100, § 16-89-015, filed 6/18/08, effective 7/19/08. Statutory Authority: RCW 16.36.040. WSR 02-24-042, § 16-89-015, filed 12/3/02, effective 1/3/03; WSR 99-09-026, § 16-89-015, filed 4/15/99, effective 5/16/99.]

AMENDATORY SECTION (Amending WSR 08-13-100, filed 6/18/08, effective 7/19/08)

**WAC 16-89-150 Brucellosis testing for sheep and goat dairies.**

(1) All sheep and goats whose raw milk or raw milk products are offered for sale must be from a flock or herd that is negative to a serological test for brucellosis within the previous (~~twelve~~) 12 months. Any additions to the flock or herd must be tested negative for brucellosis within (~~thirty~~) 30 days before introduction into the flock or herd.

(2) All raw milk and raw milk products from animals that test positive for brucellosis are prohibited from sale and must be destroyed.

(3) All sheep and goats whose raw milk or raw milk products are offered for sale must have official individual identification.

[Statutory Authority: RCW 16.36.040 and chapter 34.05 RCW. WSR 08-13-100, § 16-89-150, filed 6/18/08, effective 7/19/08.]

AMENDATORY SECTION (Amending WSR 08-13-100, filed 6/18/08, effective 7/19/08)

**WAC 16-89-180 Tuberculosis testing for goat dairies.** (1) All goats whose raw milk or raw milk products are offered for sale must be from a herd that has tested negative for tuberculosis within the previous (~~twelve~~) 12 months. Any additions to the herd must be tested negative for tuberculosis within (~~sixty~~) 60 days before introduction into the herd.

(2) All raw milk and raw milk products from animals that test positive for tuberculosis are prohibited from sale and must be destroyed.

(3) All goats whose raw milk or raw milk products are offered for sale must have official individual identification.

[Statutory Authority: RCW 16.36.040 and chapter 34.05 RCW. WSR 08-13-100, § 16-89-180, filed 6/18/08, effective 7/19/08.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 16-89-012	Quarantine.
WAC 16-89-022	Scrapie identification of sheep and goats.
WAC 16-89-170	Q fever testing requirements for sheep and goat dairies.

## WSR 23-07-136

## PROPOSED RULES

## DEPARTMENT OF AGRICULTURE

[Filed March 22, 2023, 8:55 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-22-095.

Title of Rule and Other Identifying Information: Chapter 16-80 WAC, Swine diseases regulated in Washington state.

Hearing Location(s): On May 3, 2023, at 10:00 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 236 010 241 665, Passcode 2VnRs9; or call in (audio only) +1 564-999-2000 Phone Conference ID 239 345 996#.

Date of Intended Adoption: May 10, 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 May 3, 2023, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Jodi Jones, animal services operations director, phone 360-402-0397, fax 360-902-2087, TTY 800-833-6388, email jjones@agr.wa.gov, by April 26, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend chapter 16-80 WAC to:

- Change the title of the chapter to "Domestic and Feral Swine in Washington State";
- Remove definitions for "Department," "Director," "Exposed," and "Pseudorabies infected herd";
- Update the definition of "Official USDA-approved identification" to reference the January 9, 2013, version of 9 C.F.R Chapter 1, Section 71.19;
- Update hyperlinks to standards adopted in WAC 16-80-006 and 16-80-008;
- Repeal WAC 16-80-009 and 16-80-010;
- Clarify official United States Department of Agriculture (USDA) approved identification requirements for swine in WAC 16-80-045; and
- Require observations of feral swine to be reported to the Washington invasive species council (WISC).

Reasons Supporting Proposal: RCW 16.36.010(1) states, "The director shall supervise the prevention of the spread and the suppression of infectious, contagious, communicable, and dangerous diseases affecting animals within, in transit through, and imported into the state."

Swine are high risk for many reportable foreign animal diseases such as foot and mouth disease, African swine fever, classical swine fever, and pseudorabies. Diseases of public health significance include tuberculosis, brucellosis, and trichinosis. Swine influenza viruses also have zoonotic potential and transmission at fairs and exhibitions has been well documented. Being able to track swine movement both intra- and interstate is critical to our mission to detect, contain and eradicate diseases to protect the economic viability of swine production in Washington and across the United States. Identification of swine entering and commingling in Washington state is necessary for

animal disease traceability and limiting the number of farms being placed under quarantine in the event of a disease outbreak.

Washington is considered a small swine state with an estimated 5,000 breeding sows, however, the state sees an influx of pigs for shows and exhibitions. In 2021, the department's animal health program conducted a fair and agriculture event swine identification survey and received feedback from five key stakeholder groups (i.e.: Fairs, veterinarians, exhibitors, WSU extension, producers). The survey showed that 57 percent of fairs already require identification for exhibition, but the majority use fair tags rather than official identification. Official identification is a unique number that allows individual animals, rather than groups of animals, to be traced. Fair tags can be duplicated each year, impeding animal disease traceability efforts. Swine at fairs tend to be market animals destined for slaughter (70 percent); only about 13 percent are out-of-state animals that are required to be officially identified by current regulations. In addition, less than five percent of breeding swine, that are the highest risk for disease transmission since they return to a farm, were required to have identification. Almost 70 percent of those surveyed indicated they would support a rule change to require official individual swine identification for exhibition that would support rapid response and containment of disease outbreaks.

The current title of the rule being swine diseases regulated in Washington state does not accurately reflect the entirety of regulations included in this chapter. Changing the title to domestic and feral swine in Washington state more accurately reflects those regulations. Changing the title to accurately reflect the content in the rule will make the rule clearer for those required to comply with it and make it easier to find when stakeholders are searching for rules applicable to them.

Removing the definitions for "Department," "Director," "Exposed," and "Pseudorabies infected herd" simplifies the rule and removes information that is not needed or pertinent, making the rule more clear and easier to understand. These definitions are unnecessary as they are either already defined in statute or references to them have been removed from the rule language.

Individuals and/or businesses are required to comply with the most updated version of federal regulations regarding swine identification. By updating the rule to match the most recent version of 9 C.F.R. 71.19, the department is ensuring that there is no confusion about which federal regulation must be complied with.

The proposed amendments replace the outdated hyperlinks to the PDF of standards adopted in WAC 16-80-006 and 16-80-008 to ensure that stakeholders have access to those standards.

WAC 16-80-009 Surveillance program, requires that all blood samples from Washington swine be submitted to the department's laboratory or to a USDA-approved laboratory for pseudorabies or brucellosis testing using the official USDA-approved tests. Since the department does not have a laboratory that conducts these tests, this section is outdated. The department has already adopted the USDA's pseudorabies and swine brucellosis program standards in WAC 16-80-006 and 16-80-008, which includes the requirement for samples to be sent to a USDA-approved laboratory and tested using official USDA-approved tests.

WAC 16-80-010 Quarantine, is being repealed from the rule language because authority to quarantine and test for swine diseases is provided in chapter 16.36 RCW. Repealing this section prevents any confusion between the requirements in the statute and the rule.

The current rule only states that feral swine are illegal in the state of Washington and states that if they are found that they will be eradicated and disposed of in a humane manner. The rule is being amended to require reporting of any feral swine observed (by anyone) to the WISC and provides the contact information to report to, as well as the USDA Wildlife Services contact as an optional agency to report the observation. Feral swine are capable of spreading both foreign animal diseases and endemic diseases to domestic or commercial swine. Awareness of their presence to responsible agencies for reporting purposes is critical. In 2020, WISC convened a working group of more than 40 federal, state, and Canadian feral swine experts to discuss challenges and opportunities to prevent feral swine along interstate and international borders. The report includes 22 recommendations that address five strategic areas of feral swine management, one being standardizing communications and reporting efforts. Amending the rule to include the requirement for observations of feral swine to be reported should increase the awareness of feral swine presence to responsible agencies so that they are able to locate and eradicate them, thus protecting state resources and individuals, businesses, and property owners from the destruction caused by feral swine.

Statutory Authority for Adoption: RCW 16.36.040.

Statute Being Implemented: Chapter 16.36 RCW.

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

Name of Proponent: Washington state department of agriculture (WSDA), governmental.

Name of Agency Personnel Responsible for Drafting: Dr. Ben Smith, 1111 Washington Street [S.E.], Olympia, WA 98504, 509-350-0081; Implementation: Jodi Jones, 1111 Washington Street [S.E.], Olympia, WA 98504, 360-402-0397; and Enforcement: Joel Williams, 1111 Washington Street [S.E.], Olympia, WA 98504, 360-688-4294.

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. WSDA is not a listed agency under RCW 34.05.328 (5)(a)(i).

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

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

Explanation of exemptions: Updating the version of 9 C.F.R. Section 71.19 already adopted in the rule is exempt from the small business economic impact statement (SBEIS) requirement under RCW 19.85.025(3)/34.05.310 (4)(c) since it is adopting updates to the federal regulation without material change.

Updating the title of the rule and updating the definitions in the rule to more accurately reflect the information provided in the chapter clarify the rule without changing its effect and are therefore

exempt from SBEIS requirements under RCW 19.85.025(3)/34.05.310 (4) (d).

Updating the links in WAC 16-80-006 and 16-80-008 is exempt from SBEIS requirements under RCW 19.85.025(3)/34.05.310 (4) (d) because it clarifies the rule without changing its effect.

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: Updating the version of 9 C.F.R. Section 71.19 already adopted in the rule is exempt from the SBEIS requirement under RCW 19.85.025(3)/34.05.310 (4) (c) since it is adopting updates to the federal regulation without material change.

Updating the title of the rule and updating the definitions in the rule to more accurately reflect the information provided in the chapter clarify the rule without changing its effect and is therefore exempt from SBEIS requirements under RCW 19.85.025(3)/34.05.310 (4) (d).

Updating the links in WAC 16-80-006 and 16-80-008 is exempt from SBEIS requirements under RCW 19.85.025(3)/34.05.310 (4) (d) because it clarifies the rule without changing its effect.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Repealing WAC 16-80-009 and 16-80-010 simplify the rule and remove information that is not needed or relevant. Repealing these sections prevents confusion between either of the USDA program standards adopted in WAC 16-80-006 and 16-80-008 or the statute. Removing information that is already stated in statute or adopted standards or is no longer relevant does not impose any additional costs on businesses.

Adding the requirement that swine that are commingled and swine at exhibition must have official USDA-approved identification aligns department rules with USDA. The metal official individual identification device (tag) and tagger can be obtained by WSDA animal disease traceability program for free, so there is no cost required as a result of this amendment.

Amending the rule to include the requirement for observations of feral swine to be reported should increase the awareness of feral swine presence to responsible agencies so that they are able to locate and eradicate them, thus protecting state resources and individuals, businesses, and property owners from the destruction caused by feral swine. Reporting the observation of feral swine to the WISC is as simple as calling the number provided in rule or sending an email. There is no specific form to use when reporting and there is no penalty associated with not reporting. The reporting requirement is not directed to businesses, necessarily, but to individuals. There is no cost to report the observation of feral swine, no additional resources are needed for businesses or individuals to report.

March 22, 2023  
Jodi Jones  
Operations Director

OTS-4256.2

**Chapter 16-80 WAC**  
**DOMESTIC AND FERAL SWINE ((DISEASES REGULATED)) IN WASHINGTON STATE**

AMENDATORY SECTION (Amending WSR 10-13-057, filed 6/10/10, effective 7/11/10)

**WAC 16-80-005 Definitions.** In addition to the definitions found in RCW 16.36.005, the following definitions apply to this chapter:

~~("Department" means the Washington state department of agriculture.~~

~~"Director" means the director of agriculture of the state of Washington or his or her authorized representative.~~

~~"Exposed" means to have had contact with an animal infected with an infectious or communicable disease.)~~

"Feral swine" means animals included in any of the following categories:

- Animals of the genus *Sus* that are free roaming on public or private lands and do not appear to be domesticated;
- Swine from domesticated stocks that have escaped or been released or born into the wild state;
- European wild hogs and their hybrid forms (also known as European wild boars or razorbacks), regardless of whether they are free roaming or kept in confinement; or
- Animals of the family *Tayassuidae* such as peccaries and javelinas, regardless of whether they are free roaming or kept in confinement.

"Official USDA-approved identification" means methods of identification, as approved in 9 C.F.R. ((Chapter 1, Section 71.19, January 1, 2009)) Sec. 71.19, revised January 9, 2013.

~~("Pseudorabies infected herd" means a herd of swine in which pseudorabies has been diagnosed in one or more animals by the National Veterinary Service Laboratory (NVSL) or a state laboratory approved by USDA to conduct official pseudorabies tests.)~~

"USDA" means the United States Department of Agriculture.

[Statutory Authority: Chapters 16.36 and 34.05 RCW. WSR 10-13-057, § 16-80-005, filed 6/10/10, effective 7/11/10. Statutory Authority: RCW 16.36.040. WSR 00-06-066, § 16-80-005, filed 3/1/00, effective 4/1/00. Statutory Authority: RCW 16.36.040 and 16.36.096. WSR 91-08-027, § 16-80-005, filed 3/29/91, effective 4/29/91.]

AMENDATORY SECTION (Amending WSR 10-13-057, filed 6/10/10, effective 7/11/10)

**WAC 16-80-006 Adoption of USDA pseudorabies eradication program standards.** In addition to the rules adopted in this chapter, the Washington state department of agriculture adopts the procedures and methods of the USDA pseudorabies eradication state-federal-industry program standards, effective November 1, 2003. The department main-



tains a copy of this document for public inspection. You may ((also)) find the information on the internet at ((~~http://www.aphis.usda.gov/animal\_health/animal\_diseases/pseudorabies/downloads/program\_stds.pdf~~)) <https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-disease-information/swine-disease-information/swine-pseudorabies>.

[Statutory Authority: Chapters 16.36 and 34.05 RCW. WSR 10-13-057, § 16-80-006, filed 6/10/10, effective 7/11/10.]

AMENDATORY SECTION (Amending WSR 10-13-057, filed 6/10/10, effective 7/11/10)

**WAC 16-80-008 Adoption of USDA swine brucellosis control and eradication program standards.** In addition to the rules adopted in this chapter, the Washington state department of agriculture adopts the procedures and methods of the USDA swine brucellosis control and eradication state-federal-industry program standards, effective April, 1998. The department maintains a copy of this document for public inspection. You may ((also)) find the information on the internet at ((~~http://www.aphis.usda.gov/animal\_health/animal\_dis\_spec/swine/downloads/sbruumr.pdf~~)) <https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-disease-information/swine-disease-information/swine-brucellosis>.

[Statutory Authority: Chapters 16.36 and 34.05 RCW. WSR 10-13-057, § 16-80-008, filed 6/10/10, effective 7/11/10.]

AMENDATORY SECTION (Amending WSR 10-13-057, filed 6/10/10, effective 7/11/10)

**WAC 16-80-045 Official identification of swine.** All swine ((moving through)) that leave the farm of origin or move through a public livestock market((s)) or collection ((facilities in intrastate or interstate commerce)) facility and all exhibition swine, must have official USDA-approved identification ((in compliance with 9 C.F.R. Chapter 1, Section 71.19, January 1, 2009)) unless going direct to slaughter.

[Statutory Authority: Chapters 16.36 and 34.05 RCW. WSR 10-13-057, § 16-80-045, filed 6/10/10, effective 7/11/10. Statutory Authority: RCW 16.36.040. WSR 00-06-066, § 16-80-045, filed 3/1/00, effective 4/1/00. Statutory Authority: RCW 16.36.040 and 16.36.096. WSR 91-08-027, § 16-80-045, filed 3/29/91, effective 4/29/91.]

AMENDATORY SECTION (Amending WSR 10-13-057, filed 6/10/10, effective 7/11/10)

**WAC 16-80-060 Feral swine.** Feral swine are ((illegal)) prohibited in the state of Washington. ((If found, feral swine will be eradicated and disposed of in a humane manner.)) If observed, feral swine

must be reported to the Washington invasive species council by telephone at 1-888-268-9219 or at their website at [www.invasivespecies.wa.gov/report](http://www.invasivespecies.wa.gov/report). Additionally, USDA Wildlife Services may be contacted by phone at 1-866-487-3297. An interagency response will be coordinated upon receipt of information.

[Statutory Authority: Chapters 16.36 and 34.05 RCW. WSR 10-13-057, § 16-80-060, filed 6/10/10, effective 7/11/10.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 16-80-009            Surveillance program.
- WAC 16-80-010            Quarantine.

## WSR 23-07-137

## PROPOSED RULES

## DEPARTMENT OF ECOLOGY

[Order 22-03—Filed March 22, 2023, 9:13 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-13-046.

Title of Rule and Other Identifying Information: Chapter 173-224 WAC, Water quality permit fees. The purpose of this chapter is to establish a fee system for state waste discharge and National Pollutant Discharge Elimination System (NPDES) permits issued by the department of ecology (ecology) pursuant to RCW 90.48.160, 90.48.162, or 90.48.260.

For more information on this rule making, visit <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-224>.

Hearing Location(s): On May 2, 2023, at 10:00 a.m. PST, online <https://waecy-wa-gov.zoom.us/j/91234567890>; and on May 4, 2023, at 6:00 p.m. PST, online <https://waecy-wa-gov.zoom.us/j/09876543210>. Ecology is hosting this event and will provide a presentation about the proposed rule, a question-and-answer session, and the formal hearing. You can attend from any computer using internet access.

Date of Intended Adoption: June 5, 2023.

Submit Written Comments to: Ligeia Heagy, Send US mail at Department of Ecology, Water Quality Permit Fee Unit, P.O. Box 47600, Olympia, WA 98504-7600; or send parcel delivery services to Department of Ecology, Water Quality Permit Fee Unit, 300 Desmond Drive S.E., Lacey, WA 98503, email [wqfeeunit@ecy.wa.gov](mailto:wqfeeunit@ecy.wa.gov), online <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-224>, by May 12, 2023.

Assistance for Persons with Disabilities: Contact Leslie Connelly, phone 360-628-4381, speech disability call TTY at 877-833-6341, impaired hearing call Washington relay service at 711, email [leslie.connelly@ecy.wa.gov](mailto:leslie.connelly@ecy.wa.gov), <https://ecology.wa.gov/About-us/Accessibility-equity/Accessibility/Request-for-reasonable-accommodation>, by April 26, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 173-224 WAC implements RCW 90.48.465 which requires ecology to establish, by rule, annual fees to recover the cost of administering the wastewater and stormwater permit programs. The rule amendment considers the economic impact on small dischargers and public entities, and provides appropriate adjustments where applicable.

Following is a brief explanation of the specific sections in chapter 173-224 WAC that will be updated for this rule making:

WAC 173-224-030 Definitions, definitions are updated to align with current water quality permit terminology and to reflect changes in the permit fee schedule.

WAC 173-224-040 Permit fee schedule, adjusts fees to reflect an increase in fees for underpayer fee categories, rounding of fee amounts, and expanding tiers to certain fee categories. Aligns fees for concentrated animal feeding operation (CAFO) permits with new CAFO general permit and creates fees for CAFO individual permits. Creates minimum permit fees. The fees for municipal wastewater treatment plants that are based on residential equivalents are increased based

on the recommendation of the municipal wastewater permit advisory committee, technical corrections.

WAC 173-224-050 Permit fee computation and payments, removes the waiver of lesser permit fees when a facility has a discharge permit and stormwater general permit. Makes other technical corrections.

WAC 173-224-060 Permits issued by other governmental agencies, technical corrections.

WAC 173-224-080 Transfer of permit coverage, technical corrections.

WAC 173-224-090 Permit fee reductions, clarifies requirements for an extreme hardship fee reduction. Adds a new fee reduction category for hazardous waste cleanup. Makes other technical corrections.

WAC 173-224-100 Administrative appeals to the department, technical corrections.

Reasons Supporting Proposal: RCW 90.48.465 requires ecology to establish annual fees that fund our wastewater and stormwater permit programs. Ecology is proposing to amend chapter 173-224 WAC, Water quality permit fees, to recover the program costs and move closer to payment equity between permit fee categories. Ecology uses these fees to recover operating expenses and manage permit programs to protect Washington's waters from pollution.

This rule amendment allows ecology to continue recovering expenses in operating and managing the permit programs. Ecology is proposing to adjust permit fees for fiscal years (FY) 2024 and 2025 to recover the projected program costs next biennium and move closer to payment equity between permit fee categories. Ecology is also proposing technical and rule language changes to improve clarity, reduce redundancy, and streamline information. Finally, we are proposing new permit fee categories, changes to structure of specific permit fee categories, and adjustment of some permit fees to account for increased costs and equity between permit fee categories.

Statutory Authority for Adoption: Chapter 90.48 RCW, Water pollution control; RCW 90.48.465 Water discharge fees—Report to the legislature.

Statute Being Implemented: RCW 90.48.465.

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

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

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Ligeia Heagy, 300 Demond [Desmond] Drive S.E., Lacey, WA 98503, 360-280-3697.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Ligeia Heagy, Department of Ecology, Water Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-280-3697, speech disability call TTY at 877-833-6341, impaired hearing call Washington relay service at 711, email wqfeeunit@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 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.

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: Ecology baselines are typically complex, consisting of multiple requirements fully or partially specified by existing rules, statutes, or federal laws. Where the proposed rule differs from this baseline of existing requirements, it is typically subject to (i.e., not exempt from) analysis required under the Regulatory Fairness Act (RFA), chapter 19.85 RCW, based on meeting criteria referenced in RCW 19.85.025(3) as defined by the Administrative Procedure Act in RCW 34.05.310. The small business economic impact statement (SBEIS) below includes a summary of the baseline for this rule making, and whether or how the proposed rule differs from the baseline. We identify relevant RFA exemptions (if any) for each set of requirements.

**Baseline for this rule making:** The baseline for our analyses generally consists of existing rules and laws, and their requirements. This is how we make a consistent comparison between the state of the world with and without the proposed rule amendments.

For this rule making, the baseline includes:

- The existing chapter 173-224 WAC, Water quality permit fees that sets the current fees and fee structures.
- The authorizing law, chapter 90.48 RCW, Water pollution control. Among other requirements related to permitting, the statute requires ecology to:
  - Establish fees to collect expenses for issuing and administering each class of permits.
  - Adjust the fee schedule at most every two years.
  - Base fees on factors relating to the complexity of permit issuance and compliance.
  - Charge fees that fully recover (and not exceed) costs of:
    - Processing permit applications and modifications.
    - Monitoring and evaluating compliance with permits.
    - Conducting inspections.
    - Securing laboratory analysis of samples taken during inspections.
    - Reviewing plans and documents directly related to operations of permittees.
    - Overseeing performance of delegated pretreatment programs.
    - Supporting the overhead expenses that are directly related to these activities.

**The proposed rule: 2.3.1 Adding, Clarifying, or Updating Definitions: Baseline:** The baseline includes multiple definitions needed to implement the existing rule and authorizing law.

**Proposed:** The proposed rule amendments would add definitions needed to implement other proposed rule amendments, or to clarify implementation of the existing rule, including:

- Aluminum forming.
- Coal mining and preparation.
- Facilities not otherwise classified.
- Federally recognized tribe.
- Inactive.
- Inactive rate.
- Industrial wastewater.
- Industrial wastewater facility.
- Municipal sewerage system.
- Nonfinfish hatching and rearing.
- Ore mining.

Amendments would also update or clarify definitions of:

- Animal unit.
- Combined sewer overflow system.
- Disturbed acres.
- Finfish hatching and rearing.
- Industrial stormwater.
- Median household income.

Other definitions would be clarified without material change to their meaning (e.g. separating "bbls/d" into separate definitions of "bbls" and "bbls per day"; or adding examples).

Finally, they would delete definitions no longer needed for rule implementation:

- Gross revenue for business.
- Municipal gross revenue.

**Expected impact:** We don't expect the proposed amendments to definitions, in and of themselves, to result in likely impacts. Instead, likely impacts would be reflected in the rule requirements that use those definitions. Likely costs and benefits of these proposed rule amendments are reflected in the context of other rule language in the sections below.

**2.3.2 Amending All Fee Schedules: Baseline:** The baseline rule includes FY 2022 and 2023 fees for each baseline fee category. There is no baseline minimum fee, which results in some permittees being charged fees as low as approximately \$10.

In the past, some fees were capped under the authorizing law, including a cap on municipal wastewater facilities permit fees under RCW 90.48.465, but over time, amendments to the law have removed this cap. Fees set in the rule remain in place for subsequent years until the rule is amended.

**Proposed:** The proposed rule amendments would make updates throughout the fee schedules for FY 2024 and 2025, including changes based on intent specific to individual category fees reflecting corresponding workload in the permit program (see sections 2.3.3 through 2.3.7). Updates common to all fee schedules would include:

- Rounding fees to whole dollars.
- Restructuring fee schedules to reflect permittee attributes and associated workload.
- Setting a minimum fee of \$150 to cover costs of invoicing and staff time at a minimum.

**Expected impact:** We expect these proposed rule amendments to result in fee increases or decreases, depending on the net effect of the above amendments in combination with amended fees specific to individual permit categories and tiers.

Permittees for which the net effect increases fees would incur costs, while permittees for which the net effect decreases fees would receive benefits (avoided costs). See sections 2.3.3 through 2.3.7 for discussion. Overall, however, the proposed rule amendments would result in the fee program:

- Funding the expected workload related to implementing the permit program.
- Having more equitable distribution of fees, reflecting individual permittees paying fees in line with the actual amount of work necessary to manage their permit(s).

**2.3.3 Adding New Industrial Permit Fee Categories or Subcategories: Baseline:** The proposed new industrial permit fee categories do not exist under the baseline. Permittees are charged fees based on the most appropriate existing category for their activities and discharges. RCW 90.48.465 also includes language addressing fees for general permits and individual permits for dairies.

Fees set in the rule remain in place for subsequent years until the rule is amended.

**Proposed:** The proposed rule amendments would add FY 2024 and 2025 fee categories or subcategories for:

- Aquaculture: Nonfinfish hatching and rearing—Individual permit (no existing permittees).
- Bridge and ferry terminals washing: Multisite permit.
- CAFO—Dairy individual permit (no existing permittees).
- CAFO—Nondairy individual permit.

**Expected impact:** We expect these proposed rule amendments to result in fee increases or decreases, depending on the net effect of the above amendments in combination with overall fee schedule amendments (see Section 2.3.2).

Permittees for which the net effect increases fees would incur costs, while permittees for which the net effect decreases fees would receive benefits (avoided costs). For example:

- The availability of a separate fee for the multisite permit for bridge and ferry terminals washing would reduce costs for the public agencies permitted for this activity if they operate at multiple sites compared to the larger total charge for multiple sites at the single site fee.
- One existing permittee has a CAFO individual nondairy permit, with higher associated workload costs than the CAFO general permit.

Overall, the proposed rule amendments would result in the fee program:

- Funding the corresponding workload necessary to implement the permit program.
- Having more equitable distribution of fees, reflecting individual permittees paying fees in line with the actual amount of work necessary to manage their permit(s).

### 2.3.4 Adjusting Existing Industrial Permit Fee Categories or

**Tiers: Baseline:** The baseline rule includes fee categories - some with tiers based on the amount of flow, acreage, or production - for multiple industrial activities.

**Proposed:** For FY 2024 and 2025, the proposed rule amendments would:

- Realign subcategories for aquatic and invasive species control fees with categories of upcoming permit renewals.
- Increase fees for aquatic and invasive species control: State agency permits, to reflect permit management for many sites at once that are permitted for state agencies.
- Increase fees for bridge and ferry terminals washing, to reflect the expected workload related to these permits to government agencies.
- Reduce fees for coal mining and preparation. (Note: There is only one inactive permittee currently paying a reduced rate.)
- Increase fees for combined food processing waste treatment facilities, to reflect the expected workload associated with these permits issued to government agencies.
- Increase fees for commercial laundry permits. (Note: There are no current permittees in this category.)
- Align CAFO general permit subcategories with United States Environmental Protection Agency (EPA) definitions of small, medium, and large CAFOs by animal type and number. (Note: Existing CAFOs under this general permit are permitted for dairy, cattle, horse, or laying hen activities.)
- Increase fees for flavor extraction permits to reflect expected workload.
- Increase fees for fuel and chemical storage, to reflect expected workload and adjust for equity across permittees. (Costs of managing these permits are subsidized by other fee payers under the baseline fee structure.)
- Increase fees for individual permits for noncontact cooling water with additives, for facilities discharging 1,000 to 10,000 gallons per day, to reflect expected workload associated with an individual permit instead of the baseline general permit rate.
- Increase fees for ore mining permits, to reflect expected workload and adjust for equity across permittees. (Costs for managing these permits are subsidized by other fee payers under the baseline fee structure.)
- Increase fees for power and/or steam plants permits, to reflect expected workload and adjust for equity across permittees. (Costs for managing these permits are subsidized by other fee payers under the baseline fee structure.)
- Increase fees for radioactive effluents and discharges permits with fewer than three waste streams to reflect expected workload.
- Increase fees for the sand and gravel general permit to reflect expected workload and adjust for equity across permittees. (Costs for managing these permits are subsidized by other fee payers under the baseline fee structure.) In addition:
  - o The lowest fee in this category would increase to the proposed \$150 minimum fee.
  - o Fees for portable facilities would increase to reflect additional workload related to inspections at multiple locations.



- Increase fees for sand and gravel individual permits to reflect expected workload. (Note: There are no current permittees in this category.)
- Increase fees for shipyards permits to reflect expected workload and adjust for equity across permittees. (Costs for managing these permits are subsidized by other fee payers under the baseline fee structure.)
- Increase fees for vegetable/bulb Washington facilities permits to reflect expected workload and adjust for equity across permittees. (Costs for managing these permits are subsidized by other fee payers under the baseline fee structure.)
- Increase fees for vessel deconstruction permits to reflect expected workload and adjust for equity across permittees. (Costs for managing these permits are subsidized by other fee payers under the baseline fee structure.)
- Increase fees for the wineries general permit for facilities discharging between 300,000 and 699,999 gallons per year, to reflect expected workload.
- Increase fees for wineries individual permits, for facilities discharging less than 24,999 gallons per year or between 700,000 and 999,999 gallons per year, to reflect expected workload.

**Expected impact:** We expect these proposed rule amendments to result primarily in fee increases, with some fee reductions, depending on the net effect of the above amendments in combination with overall fee schedule amendments (see Section 2.3.2).

Permittees for which the net effect increases fees would incur costs, while permittees for which the net effect decreases fees would receive benefits (avoided costs).

Overall, the proposed rule amendments would result in the fee program:

- Funding the corresponding workload necessary to implement the permit program.
- Having more equitable distribution of fees, reflecting individual permittees paying fees in line with the actual amount of work necessary to manage their permit(s).

**2.3.5 Adjusting Fees for Municipal and Domestic Wastewater Facilities: Baseline:** The baseline rule includes fees charged for:

- Domestic wastewater facilities owned by municipalities or federally recognized tribes. These fees are determined based on the number of residential equivalents (REs) served.
- State-owned domestic wastewater facilities, and domestic wastewater facilities that do not primarily serve residential customers. These fees are determined based on flow levels.

Previously, the authorizing statute capped municipal fees in RCW 90.48.465(2). This cap was removed by the legislature, as these rates were too low to recover costs. This resulted in a backlog of wastewater permitting work.

Fees set in the rule remain in place for subsequent years until the rule is amended.

**Proposed:** For facilities owned by municipalities or federally recognized tribes, for FY 2024 and 2025, the proposed rule would:

- Add a minimum fee to capture cost recovery. This \$250 flat fee would be for municipalities serving fewer than 100 REs, and would recover the costs of invoicing and staff time.

- Increase the fee per RE for facilities serving at least 100 REs, to reflect the revenue needed to hire additional staff to manage the current permit backlog.

For facilities that do not primarily serve residential customers, the proposed rule would add tiers for low flow facilities, to distribute fee burden more equitably without impacting total revenues.

**Expected impact:** We expect the proposed rule amendments to generate costs for municipal wastewater facilities, relative to the baseline. Ecology would use these fees to fund the expected workload related to managing these permits on an ongoing basis and recover costs related to processing the permit backlog. This would result in benefits because our permitting services would be provided in a timelier manner and reduce delays for permittees.

The proposed redistribution of fees using new tiers for facilities that do not primarily serve residential customers would result in fees that better reflect the expected workload related to managing different permits. Smaller facilities would subsidize less of the permit management costs associated with these facilities overall.

**2.3.6 Adjusting Fees for the Industrial Stormwater General Permit: Baseline:** The baseline rule includes fees charged for the industrial stormwater general permit (ISGP) and a dual coverage provision for facilities who have another water quality permit and do not have to pay the ISGP fee.

Fees set in the rule remain in place for subsequent years until the rule is amended.

**Proposed:** The proposed rule would eliminate the dual coverage provision for FY 2024 and 2025, resulting in requiring permittees to pay the ISGP fee even if they have another water quality permit.

The proposed rule would also add new tiers of gross revenue sub-categories, adding incremental steps between existing fee levels, and higher fee tiers. These changes would:

- Reduce burden on small businesses (as defined by the fee rule using revenues).
- Distribute fees across the largest businesses (by revenue) to better reflect expected permit complexity and workload.

**Expected impact:** We expect these proposed rule amendments to result in fee increases or decreases, depending on the net effect of the above amendments in combination with overall fee schedule amendments (see Section 2.3.2).

Permittees for which the net effect increases fees would incur costs, while permittees for which the net effect decreases fees would receive benefits (avoided costs). Significantly, smaller permittees would receive benefits of reduced fees.

Overall, the proposed rule amendments would result in the fee program:

- Funding the corresponding workload necessary to implement the permit program.
- Having more equitable distribution of fees, reflecting individual permittees paying fees in line with the actual amount of work necessary to manage their permit(s).

**2.3.7 Adjusting Fees for the Construction Stormwater General Permit: Baseline:** The baseline rule includes fees charged for the construction stormwater general permit (CSGP), based on covered acreage.

Fees set in the rule remain in place for subsequent years until the rule is amended.

**Proposed:** For FY 2024 and 2025, the proposed rule amendments would:

- Add a lowest fee tier for projects less than one acre in size.
- Replace the baseline fees for projects affecting more than 20 acres, with multiple tiers to more equitably distribute fees across smaller and larger projects that require different levels of work.
- Eliminate the dual coverage provision for FY 2024 and 2025, resulting in requiring permittees to pay the CSWGP even if they have another water quality permit.

**Expected impact:** We expect these proposed rule amendments to result in fee increases or decreases, depending on the net effect of the above amendments in combination with overall fee schedule amendments (see Section 2.3.2).

Permittees for which the net effect increases fees would incur costs, while permittees for which the net effect decreases fees would receive benefits (avoided costs). Significantly, smaller permittees would receive benefits of reduced fees.

Overall, the proposed rule amendments would result in the fee program:

- Funding the corresponding workload necessary to implement the permit program.
- Having more equitable distribution of fees, reflecting individual permittees paying fees in line with the actual amount of work necessary to manage their permit(s).

**2.3.8 Adjusting Extreme Hardship Reduction Fees: Baseline:** Under the baseline rule, small businesses with gross revenues up to \$100,000 can apply for an extreme hardship fee reduction. The rule sets a minimum hardship reduction fee of \$128.

Fees set in the rule remain in place for subsequent years until the rule is amended.

**Proposed:** For FY 2024 and 2025, the proposed rule would:

- Increase the minimum fee to \$150, to match the overall minimum fee under the rule.
- Reduce the hazardous waste cleanup fee for small businesses who no longer operate a business at their site.

**Expected impact:** We expect these proposed rule amendments to result in additional costs for permittees currently paying the minimum fee under the extreme hardship fee reduction. We also expect these amendments to result in benefits of cost-reduction options for some small business permittees.

**Relevant exemptions:** Based on the comparisons of the baseline and proposed rule amendments above, we identified partial exemptions under:

- RCW 34.05.310 (4) (c)
- RCW 34.05.310 (4) (d)
- RCW 34.05.310 (4) (e)

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. 23-10-008, February 2023**; we have retained section numbers for easier cross-referencing).

**COMPLIANCE REQUIREMENTS OF THE PROPOSED RULE, INCLUDING PROFESSIONAL SERVICES: Baseline for this rule making:** The baseline for our analyses generally consists of existing rules and laws, and their requirements. This is how we make a consistent comparison between the state of the world with and without the proposed rule amendments.

For this rule making, the baseline includes:

- The existing rule, chapter 173-224 WAC, Water quality permit fees that sets the current fees and fee structures.
- The authorizing law, chapter 90.48 RCW, Water pollution control. Among other requirements related to permitting, the statute requires ecology to:
  - Establish fees to collect expenses for issuing and administering each class of permits.
  - Adjust the fee schedule at most every two years.
  - Base fees on factors relating to the complexity of permit issuance and compliance.
  - Charge fees that fully recover (and not exceed) costs of:
    - Processing permit applications and modifications.
    - Monitoring and evaluating compliance with permits.
    - Conducting inspections.
    - Securing laboratory analysis of samples taken during inspections.
    - Reviewing plans and documents directly related to operations of permittees.
    - Overseeing performance of delegated pretreatment programs.
    - Supporting the overhead expenses that are directly related to these activities.

**The proposed rule:** The proposed rule amendments would make the following changes:

- Adding, clarifying, or updating definitions.
- Amending all fee schedules.
- Adding new industrial permit fee categories.
- Adjusting existing industrial permit fee categories or tiers.
- Adjusting fees for municipal and domestic wastewater facilities.
- Adjusting fees for the industrial stormwater general permit.
- Adjusting fees for the construction stormwater general permit.
- Adjusting extreme hardship reduction fees.

**2.3.1 Adding, Clarifying, or Updating Definitions:** We don't expect the proposed amendments to definitions, in and of themselves, to result in likely impacts. Instead, likely impacts would be reflected in the rule requirements that use those definitions. Likely costs and benefits of these proposed rule amendments are reflected in the context of other rule language, in the sections below.

**2.3.2 Amending All Fee Schedules:** We expect these proposed rule amendments to result in fee increases or decreases, depending on the net effect of the above amendments in combination with amended fees specific to individual permit categories and tiers.

Permittees for which the net effect increases fees would incur costs, while permittees for which the net effect decreases fees would receive benefits (avoided costs). See Sections 2.3.3 through 2.3.7 for discussion. Overall, however, the proposed rule amendments would result in the fee program:

- Funding the expected workload related to implementing the permit program.
- Having more equitable distribution of fees, reflecting individual permittees paying fees in line with the actual amount of work necessary to manage their permit(s).

**2.3.3 Adding New Industrial Permit Fee Categories or Subcategories:** We expect these proposed rule amendments to result in fee increases or decreases, depending on the net effect of the above amendments in combination with overall fee schedule amendments (see Section 2.3.2).

Permittees for which the net effect increases fees would incur costs, while permittees for which the net effect decreases fees would receive benefits (avoided costs). For example:

- The availability of a separate fee for the multisite permit for bridge and ferry terminals washing would reduce costs for the public agencies permitted for this activity, if they operate at multiple sites, compared to the larger total charge for multiple sites at the single site fee.
- One existing permittee has a CAFO individual nondairy permit, with higher associated workload costs than the CAFO general permit.

Overall, the proposed rule amendments would result in the fee program:

- Funding the corresponding workload necessary to implement the permit program.
- Having more equitable distribution of fees, reflecting individual permittees paying fees in line with the actual amount of work necessary to manage their permit(s).

**2.3.4 Adjusting Existing Industrial Permit Fee Categories or Tiers:** We expect these proposed rule amendments to result primarily in

fee increases, with some fee reductions, depending on the net effect of the above amendments in combination with overall fee schedule amendments (see Section 2.3.2).

Permittees for which the net effect increases fees would incur costs, while permittees for which the net effect decreases fees would receive benefits (avoided costs).

Overall, the proposed rule amendments would result in the fee program:

- Funding the corresponding workload necessary to implement the permit program.
- Having more equitable distribution of fees, reflecting individual permittees paying fees in line with the actual amount of work necessary to manage their permit(s).

**2.3.5 Adjusting Fees for Municipal and Domestic Wastewater Facilities:** We expect the proposed rule amendments to generate costs for municipal wastewater facilities, relative to the baseline. Ecology would use these fees to fund the expected workload related to managing these permits on an ongoing basis and recover costs related to processing the permit backlog. This would result in benefits because our permitting services would be provided in a timelier manner and reduce delays for permittees.

The proposed redistribution of fees using new tiers for facilities that do not primarily serve residential customers would result in fees that better reflect the expected workload related to managing different permits. Smaller facilities would subsidize less of the permit management costs associated with these facilities overall.

**2.3.6 Adjusting Fees for the Industrial Stormwater General Permit:** We expect these proposed rule amendments to result in fee increases or decreases, depending on the net effect of the above amendments in combination with overall fee schedule amendments (see Section 2.3.2).

Permittees for which the net effect increases fees would incur costs, while permittees for which the net effect decreases fees would receive benefits (avoided costs). Significantly, smaller permittees would receive benefits of reduced fees.

Overall, the proposed rule amendments would result in the fee program:

- Funding the corresponding workload necessary to implement the permit program.
- Having more equitable distribution of fees, reflecting individual permittees paying fees in line with the actual amount of work necessary to manage their permit(s).

**2.3.7 Adjusting Fees for the Construction Stormwater General Permit:** We expect these proposed rule amendments to result in fee increases or decreases, depending on the net effect of the above amendments in combination with overall fee schedule amendments (see Section 2.3.2).

Permittees for which the net effect increases fees would incur costs, while permittees for which the net effect decreases fees would receive benefits (avoided costs). Significantly, smaller permittees would receive benefits of reduced fees.

Overall, the proposed rule amendments would result in the fee program:

- Funding the corresponding workload necessary to implement the permit program.
- Having more equitable distribution of fees, reflecting individual permittees paying fees in line with the actual amount of work necessary to manage their permit(s).

**2.3.8 Adjusting Extreme Hardship Reduction Fees:** We expect these proposed rule amendments to result in additional costs for permittees currently paying the minimum fee under the extreme hardship fee reduction. We also expect these amendments to result in benefits of cost-reduction options for some small business permittees.

**COSTS OF COMPLIANCE: EQUIPMENT; SUPPLIES; LABOR; PROFESSIONAL SERVICES; ADMINISTRATIVE COSTS:** Compliance with the proposed rule, compared to the baseline, is not likely to impose these additional types of costs.

**COSTS OF COMPLIANCE: OTHER: 3.2.1 Quantifiable Cost Calculations:** As discussed in Chapter 2, the multiple types of fee adjustment or change to fee structures under the proposed rule amendments would interact, resulting in overall proposed fee changes.

To estimate the costs of the proposed rule amendments, we examined nearly 7,000 existing permittee records and identified:

- Baseline fees: Current fees paid by each permittee.
- Proposed fees: Likely fee tiers and associated fees for FY 2024 and 2025 for each permittee.

Based on the baseline rule, the baseline fee would remain constant over time. We made the simplifying assumption that the proposed FY 2025 fees would also remain constant over time, though it is possible, under the proposed fee updating process, for the fees to change over time. Since fees reflect the cost of services (a minimum estimate of the value of services provided by ecology permit managers), assuming a growth rate in total fees would reflect an equivalent increase in the value of services provided, leaving net benefits of the proposed rule amendments unchanged.

We were also unable to make confident assumptions about any future changes to fee distributions, as these would be based on public input as part of the proposed fee updating process.

We calculated the difference between baseline and proposed fees for FY 2024 and 2025 for each permittee. As discussed in Chapter 2, some permittees are likely to have higher fees under the proposed rule amendments, while others would have lower fees. Most fee changes would be costs (increases in fees), reflecting the higher current costs of administering the permit program related to those permits. The distribution of costs (fee increases) per permittee is summarized below.

**Table 6: Distribution Summary Statistics of Fee Increases by FY**

<i>Statistic</i>	FY 2024	FY 2025
<i>Minimum</i>	\$0.03	\$0.03
<i>Median (central estimate)</i>	\$47	\$47
<i>Mode (most frequent)</i>	\$388	\$388
<i>Average</i>	\$791	\$800
<i>Maximum</i>	\$501,278	\$501,278

While some permittees would see significant increases in fees (large municipal wastewater permittees whose fees were previously cap-

ped under the authorizing law), most permittees would see lower increases in their fees.

- Only four permittees would have fees increase by more than \$100,000.
- Over 3,100 permittees would have fees increase by less than \$100, many of which are small changes (as low as a few cents) due to rounding.
  - o Over 700 would have fees increase by less than \$10.
  - o Over 800 would have fees increase by between \$10 and \$20.
  - o 1,560 would have fees increase by between \$20 and \$50.
- The most common fee increases would be under \$400.

Over 1,300 permittees would not have their fees change at all under the proposed rule amendments.

**Total annual costs:** The total cost (total increase in fees) would be about \$3.9 million in FY 2024, and nearly \$4.0 million in FY 2025. Under our simplifying assumption (see discussion above in this section), this cost would continue in each subsequent year.

**Total present value costs:** Ecology calculates costs and benefits of proposed rules using 20-year present values. A present value converts streams of costs or benefits over time, into a single comparable value in current dollars. It accounts for inflation, and the opportunity cost of having funds or value later versus now, using a historic average real discount rate of 0.89 percent.

The 20-year present value of costs of the proposed rule amendments would be \$72 million.

**3.2.2 Qualitative Costs: Uncertainty in quantified costs:** We note that estimated fees for each permittee are based on current permittee attributes (e.g., flow rates or acreage), and if those attributes change and result in classification under a different fee tier, those permittees may have either higher or lower fees than assumed in this analysis. For example, if a permittee is currently paying a fee in a tier that would be subdivided under the proposed rule, we based our assumption on the new fee tier into which they would fall. If that permittee expands in the meantime, and instead falls into a higher fee tier, this additional cost would not be reflected in the above quantified cost estimate.

**Dual coverage and distribution of fee burden:** The proposed removal of the dual coverage provision would also result in some permittees now paying fees related to the CSWGP or ISGP (which they do not pay under the baseline if they also pay the fee for another water quality permit). This cost is reflected in the total costs quantified in Section 3.2.1, but we note that it also affects the distribution of fees. These permittees, like other permittees that have not paid fees that reflect the actual costs of services provided by the permit program, would bear a greater share of cost burden (all else equal), though this burden would not exceed the share of expected workload to manage their permits.

**COMPARISON OF COMPLIANCE COST FOR SMALL VERSUS LARGE BUSINESSES: 7.2 Analysis of Relative Compliance Cost Burden:** We calculated the estimated per-business costs to comply with the proposed rule amendments, based on the costs estimated in Chapter 3 of this document. In this section, we estimate compliance costs per employee. The average affected small business likely to be covered by the proposed rule amendments employs approximately 15 people. The largest 10 percent of affected businesses employ



an average of 10,627 people. Based on cost estimates in Chapter 3, we estimated the following compliance costs per employee.

**Table 10: Compliance Costs Per Employee**

Type of cost (or total cost)	Low	High
Average small business employment	15	15
Average employment at largest 10 percent of businesses	10,627	10,627
Small business cost per employee	\$35.67	\$36.07
Largest business cost per employee	\$0.05	\$0.05

We conclude that the proposed rule amendments are likely to have disproportionate impacts on small businesses and, therefore, ecology must include elements in the proposed rule amendments to mitigate this disproportion as far as is legal and feasible.

**CONSIDERATION OF LOST SALES OR REVENUE:** Businesses that would incur costs could experience reduced sales or revenues if the proposed rule amendments significantly affect 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 amendments 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. Our inputs to the model reflected total fees by industry.

The proposed rule amendments affect a wide variety of businesses (see 7.6 below). Across all industries there would be a minimal impact on output, estimating a total cost of \$1,000,000 annually. For context, we note that baseline state output is forecast to be over \$1.2 trillion by 2027. The following industries would have the largest impact on their output:

**Table 11: Impacts To Output, Percent**

Industry	Initial Output Impact	Output Impact In 20 Years
Hardware Manufacturing	-0.001%	-0.005%
Metal Ore Mining	0.000%	-0.002%
Support Activities for Mining	-0.001%	-0.002%
Clay Product and Refractory Manufacturing	0.000%	-0.001%
Water, Sewage, and Other Systems	0.000%	-0.001%

**MITIGATION OF DISPROPORTIONATE IMPACT:** The RFA 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, 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.

Modifying regulatory requirements, changing reporting requirements, reducing the frequency of inspections, or delaying compliance timetables would not meet statutory objectives or are not feasible and within the scope of this rule making.

Finally, we included the following elements in the proposed rule amendments to reduce costs to small businesses.

WAC 173-224-090 allows small businesses to receive a fee reduction of 50 percent, but not less than the minimum permit fee of \$150, if they are determined to be eligible under the following criteria:

1. Be a corporation, partnership, sole proprietorship, or other legal entity formed for the purpose of making a profit;
2. Be independently owned and operated from all other businesses (i.e., not a subsidiary of a parent company);
3. Have annual sales of \$1,000,000 or less of the goods or services produced using the processes regulated by the waste discharge or individual stormwater discharge permit (we identified 605 small business permittees in Washington that meet this definition); and
4. Have an original annual permit fee assessment totaling \$500 or greater.

In addition to the small business fee reduction, any small business with annual gross revenue totaling \$100,000 or less from goods and services produced using the processes regulated by the discharge permit may apply for an extreme hardship fee reduction. If the permit holder is determined eligible, the annual permit fee is reduced to the minimum annual permit fee of \$150.

**SMALL BUSINESS AND LOCAL GOVERNMENT CONSULTATION:** We involved small businesses and local governments in the development of the proposed rule amendments, using:

- The municipal wastewater permit fees advisory committee had 10 meetings in 2022 that were open to comment and included representatives from several different local government entities.

**NAICS CODES OF INDUSTRIES IMPACTED BY THE PROPOSED RULE:** The proposed rule amendments likely impact 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>.

**Table 12: Likely Affected NAICS Codes**

NAICS Code	Description	NAICS Code	Description	NAICS Code	Description
111x	Agricultural Products	334	Computer and Electronic Products	512	Motion Picture and Sound Recording Industries
112x	Livestock and Livestock Products	335	Electrical Equipment, Appliances and Components	517	Telecommunications

<i>NAICS Code</i>	Description	<i>NAICS Code</i>	Description	<i>NAICS Code</i>	Description
113x	Forestry and Logging	336	Transportation Equipment	522	Credit Intermediation and Related Activities
114x	Fish, Fresh/Chilled/ Frozen and Other Marine Products	337	Furniture and Fixtures	523	Securities, Commodity Contracts, and Other Financial Investments and Related Activities
115x	Support Activities for Agriculture and Forestry	339	Miscellaneous Manufactured Commodities	531	Real Estate
211x	Oil and Gas	423	Merchant Wholesalers, Durable Goods	532	Rental and Leasing Services
212x	Minerals and Ores	424	Merchant Wholesalers, Nondurable Goods	533	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)
213x	Support Activities for Mining	441	Motor Vehicle and Parts Dealers	541	Professional, Scientific, and Technical Services
221x	Utilities	444	Building Material, Garden Equipment, and Supplies Dealers	551	Management of Companies and Enterprises
236x	Construction of Buildings	445	Food and Beverage Retailers	561	Administrative and Support Services
237x	Heavy and Civil Engineering Construction	449	Furniture, Home Furnishings, Electronics, and Appliance Retailers	562	Waste Management and Remediation Services
238x	Specialty Trade Contractors	455	General Merchandise Retailers	611	Educational Services
311x	Food and Kindred Products	456	Health and Personal Care Retailers	621	Ambulatory Health Care Services
312x	Beverages and Tobacco Products	457	Gasoline Stations and Fuel Dealers	622	Hospitals
313x	Textiles and Fabrics	458	Clothing, Clothing Accessories, Shoe, and Jewelry Retailers	623	Nursing and Residential Care Facilities
314x	Textile Mill Products	459	Sporting Goods, Hobby, Musical Instrument, Book, and Miscellaneous Retailers	624	Social Assistance
321	Wood Products	481	Air Transportation	711	Performing Arts, Spectator Sports, and Related Industries
322	Paper Manufacturing	482	Rail Transportation	712	Museums, Historical Sites, and Similar Institutions
324	Petroleum and Coal Products	483	Water Transportation	713	Amusement, Gambling, and Recreation Industries
325	Chemicals	484	Truck Transportation	721	Accommodation
326	Plastics and Rubber Products	485	Transit and Ground Passenger Transportation	722	Food Services and Drinking Places
327	Nonmetallic Mineral Products	486	Pipeline Transportation	811	Repair and Maintenance
331	Primary Metal Manufacturing	488	Support Activities for Transportation	812	Personal and Laundry Services

NAICS Code	Description	NAICS Code	Description	NAICS Code	Description
332	Fabricated Metal Product Manufacturing	492	Couriers and Messengers	813	Religious, Grantmaking, Civic, Professional, and Similar Organizations
333	Machinery, except Electrical	493	Warehousing and Storage		

**IMPACT ON JOBS:** We used the REMI E3+ model for Washington state to estimate the impact of the proposed rule amendments on jobs in the state, accounting for dynamic adjustments throughout the economy.

The proposed rule amendments 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.

The results of the REMI E3+ model show insignificant impact on jobs in the affected industries. The industries with the highest jobs impact are construction and state and local government. Construction is estimated to have one job loss per year from 2024 to 2033 and state and local government is estimated to have one job loss per year from 2031 to 2034.

**Table 13: Impacts on Jobs, FTEs**

Industry	Initial Jobs Impact	Jobs Impact in 10 Years	Jobs Impact in 20 Years
<i>Whole State</i>	-3	-4	-4
<i>Construction</i>	-1	-1	0
<i>State and Local Government</i>	0	-1	0
<i>Retail Trade</i>	0	0	0

A copy of the statement may be obtained by contacting Ligeia Heagy, Department of Ecology, Water Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-280-3697, speech disability call TTY at 877-833-6341, impaired hearing call Washington relay service at 711, email wqfeeunit@ecy.wa.gov.

March 22, 2023  
 Heather R. Bartlett  
 Deputy Director

**OTS-4280.3**

AMENDATORY SECTION (Amending WSR 92-03-131, filed 1/21/92, effective 2/21/92)

**WAC 173-224-015 Purpose.** The purpose of this chapter is to establish a fee system for state waste discharge and NPDES permits issued by the department pursuant to RCW 90.48.160, 90.48.162, or 90.48.260. RCW 90.48.465 ((authorizes)) directs the department to base fees on factors related to the complexity of permit issuance and compliance and to ((charge)) assess fees to fully recover, but not exceed the costs of the permit program based on expenses incurred in the issuance and comprehensive administration of state waste discharge and

NPDES permits. Fee amounts contained in this chapter represent the department's true estimate of fee eligible permit program costs and reflect the department's commitment to fully recover all eligible expenses. Fee amounts in this chapter for fiscal year 2025 remain in effect for subsequent fiscal years until this chapter is amended. The department shall continue to examine the feasibility of adopting (~~, when applicable,~~) alternative permit fee systems. Any alternative fee system, such as variable permit fees, shall ensure continued full recovery of eligible program costs and may be based on pollutant loading and toxicity and may be designed to encourage recycling and reduction of the quantity of pollutants.

[Statutory Authority: Chapter 90.48 RCW. WSR 92-03-131 (Order 91-45), § 173-224-015, filed 1/21/92, effective 2/21/92. Statutory Authority: Chapter 43.21A RCW. WSR 89-12-027 and 90-07-015 (Order 89-8 and 89-8A), § 173-224-015, filed 5/31/89 and 3/13/90, effective 4/13/90.]

AMENDATORY SECTION (Amending WSR 19-14-040, filed 6/26/19, effective 7/27/19)

**WAC 173-224-020 Applicability.** This chapter applies to all persons holding or applying for a state waste discharge or NPDES permit issued by the department pursuant to RCW 90.48.160, 90.48.162, 90.48.200 or 90.48.260, including persons holding permits that remain in effect under WAC 173-216-040, 173-220-180 (~~(+5)~~), or 173-226-050. This chapter does not apply when a wastewater discharge permit is written for a state conducted remedial action under the Model Toxics Control Act. That is, ecology may not charge itself for wastewater discharge permits written for sites where the agency is conducting a cleanup.

[Statutory Authority: RCW 90.48.465. WSR 19-14-040 (Order 18-01), § 173-224-020, filed 6/26/19, effective 7/27/19. Statutory Authority: Chapter 90.48 RCW. WSR 94-10-027 (Order 93-08), § 173-224-020, filed 4/28/94, effective 5/29/94; WSR 92-03-131 (Order 91-45), § 173-224-020, filed 1/21/92, effective 2/21/92. Statutory Authority: Chapter 43.21A RCW. WSR 89-12-027 and 90-07-015 (Order 89-8 and 89-8A), § 173-224-020, filed 5/31/89 and 3/13/90, effective 4/13/90.]

AMENDATORY SECTION (Amending WSR 21-13-150, filed 6/22/21, effective 7/23/21)

**WAC 173-224-030 Definitions.** (1) "Administrative expenses" means those costs associated with issuing and administering permits under RCW 90.48.160, 90.48.162, 90.48.200, and 90.48.260.

(2) "Aluminum forming" means the deformation of aluminum or aluminum alloys into specific shapes by hot or cold rolling, drawing, extruding, or forging.

(3) "Aluminum and magnesium reduction mills" means the electrolytic reduction of alumina or magnesium salts to produce aluminum or magnesium metal.

(4) "Animal unit" means the following:

<b>((Animal Type</b>	<b>Number of Animals per Animal Unit</b>
<b>Dairy Cows</b>	
<b>Jersey Breed</b>	
Milking Cow	0.900
Dry Cow	0.900
Heifer	0.220
Calf	0.220
<b>Other Breeds</b>	
Milking Cow	1.400
Dry Cow	1.000
Heifer	0.800
Calf	0.500
<b>Feedlot Beef</b>	0.877
<b>Horses</b>	0.500
<b>Sheep</b>	0.100
<b>Swine for breeding</b>	0.375
<b>Swine for slaughter</b>	0.110
<b>Laying hens &amp; pullets &gt; 3 months</b>	0.004
<b>Broilers &amp; pullets &lt; 3 months</b>	0.002

For those concentrated animal feeding operations not listed on the above table, the department will use 1,000 pounds of live animal weight and the weight of the type of animal in determining the number of animal units.)

<b>DAIRY ANIMAL TYPE</b>	<b>ANIMAL UNIT MULTIPLIER</b>
<i>The number of animal units equals the number of animals multiplied by the animal unit multiplier.</i>	
<i>Example: 10 milk cows multiplied by 1.4 = 14 animal units</i>	
<u>Dairy Cows</u>	
<u>Milk cow</u>	<u>1.40</u>
<u>Dry cow</u>	<u>1.00</u>
<u>Heifer</u>	<u>0.80</u>

(5) "Annual permit fee" means the fee ((charged)) assessed by the department for annual expenses associated with activities specified in RCW 90.48.465. This annual fee is ((based on)) assessed in alignment with the state's fiscal year (July 1 - June 30).

((bbls/d)) (6) "bbls" means barrels of product in storage for fuel and chemical storage facilities.

(7) "bbls per day" means barrels per day of ((feedstock)) oil for petroleum refineries.

((bins/yr)) (8) "bins per year" means total standard bins used during the last complete calendar year by a facility in the fruit packing industry. The bins measure approximately 47.5 inches x 47.4 inches x 29.5 inches and hold approximately 870 pounds of fruit.

(9) "Chemical pulp mill ((w/chlorine)) with chlorine bleaching" means any pulp mill that uses chlorine or chlorine compounds in their bleaching process.

(10) "Coal mining and preparation" means extracting coal from underground or surface mines using machinery or explosives. Coal preparation plants may use chemical and physical processes such as leaching, distillation, retorting, slurry mining, solution mining, borehole mining, fluid recovery mining, washing and concentrating. Coal handling may include sorting, screening, crushing, storing, or transporting.

(11) "Combined food processing waste treatment facility" means a facility that treats wastewater from more than one separately permitted food processor and receives no domestic wastewater or waste from industrial sources other than food processing.

(12) "Combined industrial waste treatment" means a facility (~~(which)~~) that treats wastewater from more than one industry in any of the following categories: Inorganic chemicals, metal finishing, ore concentration, organic chemicals, or photofinishers.

(13) "Combined sewer overflow (CSO) system" means (~~(the event during which excess combined sewage flow caused by inflow is discharged from a combined sewer, rather than conveyed to the sewage treatment plant because either the capacity of the treatment plant or the combined sewer is exceeded)~~) a system that conveys combined wastewater and stormwater to a domestic wastewater facility for treatment, but may also discharge wastewater prior to the treatment facility.

(14) "Concentrated animal feeding operation (CAFO)" means an (~~(")~~) animal feeding operation (~~(")~~) that meets the criteria in Appendix (~~(B)~~) C of 40 C.F.R. 122 as presently enacted and any subsequent modifications thereto.

(15) "Contaminants of concern" means a chemical for which an effluent limit is established (this does not include pH, flow, temperature, or other "nonchemical parameters"). Petroleum constituents are considered as one contaminant of concern even if more than one effluent limit is established (e.g., Total Petroleum Hydrocarbons and benzene, toluene, ethylbenzene, and xylene (BTEX)).

(16) "Crane" means a machine used for hoisting and lifting ship hulls.

(~~("cu. yds/yr")~~) (17) "Cubic yards per year" means the cubic yards per year for total production from a sand and gravel facility during the most recent completed calendar year.

(18) "Department" means the department of ecology.

(19) "Director" means the director of the department of ecology.

(20) "Disturbed acres" means the total area (~~(which will be disturbed during all phases of the construction project or common plan of development or sale)~~) of disturbance for a construction site over the life of a construction project. This includes all clearing, grading, and excavating, and any other activity which disturbs the surface of the land.

(21) "Domestic wastewater" means water carrying human wastes, including kitchen, bath, and laundry wastes from residences, buildings, industrial establishments or other places, together with any groundwater infiltration or surface waters that may be present.

(22) "Domestic wastewater facility" means all structures, equipment, or processes required to collect, carry away, treat, reclaim or dispose of domestic wastewater together with (~~(such)~~) industrial waste (~~(as)~~) that may be present.

(23) "EPA" means the United States Environmental Protection Agency.

~~(("Fin fish rearing and hatching" means the raising of fin fish for fisheries enhancement or sale, by means of hatcheries, net pens, or other confined fish facilities.))~~

(24) "Facilities not otherwise classified" means an industrial wastewater facility that does not meet the definition of other permit fee categories and the discharge in gallons per day is the best method to assess a permit fee. This fee category may include a variety of industrial facility types.

(25) "Finfish hatching and rearing" means raising (i.e., hatching, culturing, rearing, and growing) finfish. An operation to raise finfish uses confined spaces such as hatcheries, net pens, or other enclosed fish facilities or structures. The purpose for the activity can include sales or fisheries enhancement.

(26) "Federally recognized tribe" means any Indian tribe, band, nation, or other organized group or community of Indians in the Federal List Act, that is recognized as having a government-to-government relationship with the United States of America, with the responsibilities, powers, limitations, and obligations to that designation, and is eligible for funding and services from the Bureau of Indian Affairs or successor agency.

(27) "Flavor extraction" means the recovery of flavors or essential oils from organic products by steam distillation.

(28) "Food processing" means the preparation of food for human or animal consumption or the preparation of animal by-products, excluding fruit packing. This category includes, but is not limited to, fruit and vegetable processing, meat and poultry products processing, dairy products processing, beer production, rendering and animal feed production. Food processing wastewater treatment plants that treat wastes from only one separately permitted food processor must be treated as one facility for billing purposes.

(29) "Fruit packing" means preparing fruit for wholesale or retail sale by washing and/or other processes in which the skin of the fruit is not broken and in which the interior part of the fruit does not come in direct contact with the wastewater.

(30) "gpd" means gallons per day.

(31) "gpy" means gallons per year ((and is used to calculate winery production levels)) of wine produced as reported annually for the most recent completed calendar year.

~~(("Gross revenue for business" means the gross income from Washington business activities.))~~

(32) "Hazardous waste ((clean-up)) cleanup sites" means any facility where there has been confirmation of a release or threatened release of a hazardous substance that requires remedial action other than RCRA corrective action sites.

~~(("Industrial facility" means any facility not included in the definition of municipal/domestic facility.))~~

(33) "Inactive" means that a facility is not currently discharging wastewater but maintains their permit coverage.

(34) "Inactive rate" means a fee assessment that is reduced to 25 percent of the regular assessed fee, when a site is inactive for a minimum of 18 months.

(35) "Industrial gross revenue" means the annual amount of the sales of goods and services produced using the processes regulated by the ((wastewater)) stormwater discharge permit.

(36) "Industrial stormwater" means ((a stormwater discharge from an operation required to be covered under ecology's NPDES and state waste discharge general permit for)) stormwater discharges associated



with industrial activities that are regulated under either a general permit or ((modifications to that permit or having)) an individual ((wastewater)) permit for stormwater ((only)).

(37) "Industrial wastewater" means water or liquid-carried waste from industrial or commercial processes, as distinct from domestic wastewater. These wastes may result from any process or activity of industry, manufacture, trade or business, from the development of any natural resource, or from animal operations such as feed lots, poultry houses, or dairies. The term includes contaminated stormwater and, also, leachate from solid waste facilities.

(38) "Industrial wastewater facility" means all structures, equipment, or processes required to collect, carry away, treat, reclaim, or dispose of industrial wastewater. In this rule, it also means any facility not included in the definition of municipal or domestic wastewater facility.

(39) "Manufacturing" means making goods and articles by hand or machine into a manufactured product.

(40) "Median household income" means the most recent available census data, updated yearly ((based on inflation rates)) as measured by the ((Federal Bureau of Labor Statistics and published as the Consumer Price Index)) U.S. Census Bureau.

(41) "Metal finishing" means preparing metal surfaces by means of electroplating, electroless plating, anodizing, coating (chromating, phosphating and coloring), chemical etching and milling, and printed circuit board manufacture.

(42) "MGD" means million gallons per day.

((("Municipal/domestic")) (43) "Municipal or domestic wastewater facility" means a publicly owned facility treating domestic wastewater together with any industrial ((wastes)) wastewaters that may be present, or a privately owned facility treating solely domestic wastewater.

((("Municipal gross revenue" means gross receipts from monthly, bimonthly, and/or quarterly user charges for sewer services received from all classes of customers;

Included in these user charges are user charges and fees based on wastewater constituents' strengths and characteristics including high-strength surcharges and charges based on biochemical oxygen demand, suspended solids, oil and grease, toxicants, heavy metals, and flow, etc.

Municipal gross revenue includes charges for receipt and treatment of septic tank wastes, holding tank wastes, chemical toilet wastes, etc.

Municipal gross revenue includes all amounts received from other municipalities for sewage interception, treatment, collection, or disposal.

Gross revenue excludes:

Amounts derived by municipalities directly from taxes levied for the support or maintenance of sewer services.

Late charges, penalties for nontimely payment by customers, interest on late payments, and all other penalties and fines.

Permit fees and compliance monitoring fees for wastewater discharge permits issued by municipalities with local pretreatment programs. Permit fees which are charged to cover the cost of providing sewer service are not excluded from municipal gross revenue.

Receipts by a municipality of special assessments or installments thereof and interests and penalties thereon, and charges in lieu of assessments.

Connection charges.

Revenues from sales of by-products such as sludge, processed wastewater, etc.)

(44) "Municipal sewerage system" or "publicly owned treatment works (POTW)" means a publicly owned domestic wastewater facility or a privately owned domestic wastewater facility.

(45) "Municipality" means a city, town, county, district, association, or other public body created by or in accordance with state law and that has jurisdiction over disposal of sewage, industrial wastes, or other wastes, (~~or an Indian tribe or an authorized Indian tribal organization,~~) or a designated and approved management agency under 33 U.S.C. Sec. 1288. State government agencies are not included in this definition.

(46) "Noncontact cooling water with additives" means water used for cooling that does not come into direct contact with any raw materials, intermediate product, waste product or finished product, but (~~which~~) may contain chemicals or additives (~~added by the permittee~~) to control corrosion or fouling of the cooling system.

(47) "Noncontact cooling water without additives" means water used for cooling that does not come into direct contact with any raw material, intermediate product, waste product or finished product, (~~and which~~) that does not contain chemicals (~~added by the permittee~~) or additives. The noncontact cooling water fee without additives category applies to those facilities (~~which~~) that discharge only noncontact cooling water and (~~which~~) that have no other wastewater discharges required to be permitted under RCW 90.48.160, 90.48.162, and 90.48.260.

(48) "Nonferrous metals forming" means manufacturing semifinished products from pure metal or metal alloys other than iron or steel or of metals not otherwise classified in WAC 173-224-040(2).

(49) "Nonfinfish hatching and rearing" means raising (i.e., hatching, culturing, rearing, and growing) aquatic animals, such as shellfish, other aquatic invertebrates, or other aquatic species, that are not exclusively finfish. An operation to raise these species uses confined spaces to grow the animals and includes feeding and cleaning activities to maintain the animals. The purposes for the activity can include sales and harvest enhancement.

(50) "Nonoperating (~~sand and gravel~~) site" means a location where previous sand and gravel mining or processing has occurred; that has not been fully reclaimed; that conducts mining or processing fewer than (~~ninety~~) 90 days per year, and that may include stockpiles of raw materials or finished products. The permittee may add or withdraw raw materials or finished products from the stockpiles for transportation off-site for processing, use, or sale and still be considered a nonoperating site.

(51) "NPDES permit" means a National Pollutant Discharge Elimination System permit issued by the department under Section 402 of the federal Clean Water Act and RCW 90.48.260.

(52) "Ore mining" refers to mine operators who extract ores (metal-bearing rock) from underground or surface mines using machinery, explosives, or chemicals. Extraction processes include dressing (picking, sorting, washing of ores), milling (crushing, grinding, etc.), and beneficiation (processing to improve purity/quality).

(53) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, partnership, association, firm, individual, or any other entity whatever.

(54) "Portable facility" means a facility or equipment that is designed for mobility and is moved from site to site for short term operations. A portable facility or equipment applies only to an asphalt batch plant, portable concrete batch plant and portable rock crusher.

(55) "RCRA corrective action sites" means Resource Conservation Recovery Act (~~(clean-up)~~) cleanup sites required to have a wastewater discharge permit resulting from a corrective action under relevant federal authorities or under chapters 70A.300 and 70A.305 RCW including chapters 173-303 and 173-340 WAC, and are not subject to cost recovery.

(56) "Residential equivalent (RE)" means a single-family residence or a unit of sewer service that yields an amount of gross revenue equal to the annual user charge for a single-family residence. In cases where the permit holder does not maintain data on gross revenue, user charges, and/or the number of single-family residences that it serves, "residential equivalent" means an influent flow of (~~(two hundred fifty)~~) 250 gallons per day.

(57) "Sand and gravel" means mining or quarrying sand, gravel, or rock, or producing concrete, asphalt, or a combination thereof.

(58) "Seafood processing" means:

(a) Preparing fresh, cooked, canned, smoked, preserved, or frozen seafoods, including marine and freshwater animals (fish, shellfish, crustaceans, etc.) and plants, for human or animal consumption; or

(b) Washing, shucking, and/or packaging of mollusks or crustaceans.

(59) "Sewer service" means receiving sewage deposited into and transported by a system of sewers, drains, and pipes to a common point, or points, for disposal or for transfer to treatment for disposal, and activities involving the interception, transfer, storage, treatment, and/or disposal of sewage, or any of these activities.

(60) "State waste discharge permit" means a permit required under RCW 90.48.160 or 90.48.162.

(61) "Stormwater" means precipitation that flows from an industrial operation or construction activity discharging stormwater runoff as defined in 40 C.F.R. 122.26 (b)(14) or facilities that are permitted as a significant contributor of pollutants as allowed in the federal Clean Water Act at Section 402 (p) (~~((2)-(E))~~).

(~~("Tons/yr.")~~) (62) "Tons per year" means the total annual production in tons from an asphalt production facility (~~(in tons)~~) during the most recent completed calendar year, or the average tons per year of coal mining and preparation production.

(~~("Vegetable/bulb")~~) (63) "Vegetable or bulb washing" means washing, packing, (~~(and/or)~~) or shipping fresh vegetables and bulbs when there is no cooking or cutting of the product before packing.

[Statutory Authority: RCW 90.48.465. WSR 21-13-150 (Order 19-10), § 173-224-030, filed 6/22/21, effective 7/23/21; WSR 19-14-040 (Order 18-01), § 173-224-030, filed 6/26/19, effective 7/27/19; WSR 17-16-005 (Order 16-11), § 173-224-030, filed 7/20/17, effective 8/20/17; WSR 13-22-051 (Order 13-02), § 173-224-030, filed 11/1/13, effective 12/2/13. Statutory Authority: Chapter 90.48 RCW. WSR 08-16-109 (Order 08-05), § 173-224-030, filed 8/5/08, effective 9/5/08. Statutory Authority: RCW 90.48.465. WSR 04-15-046, § 173-224-030, filed 7/13/04, effective 8/13/04. Statutory Authority: Chapter 90.48 RCW. WSR 02-12-059, § 173-224-030, filed 5/30/02, effective 6/30/02; WSR 00-02-031 (Order 99-03), § 173-224-030, filed 12/28/99, effective

1/28/00; WSR 98-03-046 (Order 97-27), § 173-224-030, filed 1/15/98, effective 2/15/98; WSR 94-10-027 (Order 93-08), § 173-224-030, filed 4/28/94, effective 5/29/94; WSR 92-03-131 (Order 91-45), § 173-224-030, filed 1/21/92, effective 2/21/92. Statutory Authority: Chapter 43.21A RCW. WSR 89-12-027 and 90-07-015 (Order 89-8 and 89-8A), § 173-224-030, filed 5/31/89 and 3/13/90, effective 4/13/90.]

AMENDATORY SECTION (Amending WSR 21-13-150, filed 6/22/21, effective 7/23/21)

**WAC 173-224-040 Permit fee schedule.** (~~((1) Application fee. In addition to the annual fee, first time applicants (except those applying for coverage under a general permit) will pay a one time application fee of twenty-five percent of the annual permit fee, or \$250.00, whichever is greater. An application fee is assessed for RCRA sites regardless of whether a new permit is issued or an existing permit for other than the discharge resulting from the RCRA corrective action, is modified.~~

~~(2) INDUSTRIAL FACILITY CATEGORIES.~~

<del>INDUSTRIAL FACILITY CATEGORIES</del>	<del>FY 2022 ANNUAL PERMIT FEE</del>	<del>FY 2023 ANNUAL PERMIT FEE &amp; BEYOND</del>
Aluminum Alloys	\$22,950.00	\$22,950.00
Aluminum and Magnesium Reduction Mills		
a. NPDES Permit	115,785.00	115,785.00
b. State Permit	57,895.00	57,895.00
Aluminum Forming	68,850.00	68,850.00
Aquaculture		
a. Finfish hatching and rearing – Individual Permit	5,889.00	5,889.00
b. Finfish hatching and rearing – General Permit Coverage	4,125.00	4,125.00
c. Shellfish hatching	223.00	223.00
Aquatic Pest Control		
a. Irrigation Districts	682.00	682.00
b. Mosquito Control Districts	682.00	682.00
c. Invasive Moth Control	682.00	682.00
d. Aquatic Species Control & Eradication	682.00	682.00
e. Oyster Growers	682.00	682.00
f. Rotenone Control	682.00	682.00
Boat Yards – Individual Permit Coverage		
a. With stormwater only discharge	588.00	588.00
b. All others	1,173.00	1,173.00
Boat Yards – General Permit Coverage		
a. With stormwater only discharge	537.00	537.00
b. All others	1,087.00	1,087.00
Bridge Washing		
a. Single-site Permit	4,047.00	4,047.00
b. WSDOT Annual Fee	13,450.00	13,450.00
Coal Mining and Preparation		
a. <200,000 tons per year	9,175.00	9,175.00

INDUSTRIAL FACILITY CATEGORIES	FY 2022 ANNUAL PERMIT FEE	FY 2023 ANNUAL PERMIT FEE & BEYOND
b. 200,000 – < 500,000 tons per year	20,657.00	20,657.00
e. 500,000 – < 1,000,000 tons per year	36,718.00	36,718.00
d. 1,000,000 tons per year and greater	68,850.00	68,850.00
<b>Combined Industrial Waste Treatment</b>		
a. <10,000 gpd	3,972.00	3,972.00
b. 10,000 – < 50,000 gpd	9,816.00	9,816.00
e. 50,000 – < 100,000 gpd	19,636.00	19,636.00
d. 100,000 – < 500,000 gpd	39,266.00	39,266.00
e. 500,000 gpd and greater	58,901.00	58,901.00
<b>Combined Food Processing Waste Treatment Facilities</b>		
	18,797.00	18,797.00
<b>Combined Sewer Overflow System</b>		
a. <50 acres	3,927.00	3,927.00
b. 50 – < 100 acres	9,816.00	9,816.00
e. 100 – < 500 acres	11,783.00	11,783.00
d. 500 acres and greater	15,704.00	15,704.00
<b>Commercial Laundry</b>		
	555.00	555.00
<b>Concentrated Animal Feeding Operation</b>		
a. Nondairy CAFOs		
1. <200 Animal Units	308.00	308.00
2. 200 – < 400 Animal Units	772.00	772.00
3. 400 – < 600 Animal Units	1,546.00	1,546.00
4. 600 – < 800 Animal Units	2,317.00	2,317.00
5. 800 Animal Units and greater	3,094.00	3,094.00
b. Dairy CAFOs \$ .50 per Animal Unit for FY 2022, FY 2023 and beyond, not to exceed \$2,076.00		
<b>Facilities Not Otherwise Classified – Individual Permit Coverage</b>		
a. <1,000 gpd	1,963.00	1,963.00
b. 1,000 – < 10,000 gpd	3,927.00	3,927.00
e. 10,000 – < 50,000 gpd	9,817.00	9,817.00
d. 50,000 – < 100,000 gpd	15,704.00	15,704.00
e. 100,000 – < 500,000 gpd	31,258.00	31,258.00
f. 500,000 – < 1,000,000 gpd	39,266.00	39,266.00
g. 1,000,000 gpd and greater	58,900.00	58,900.00
<b>Flavor Extraction</b>		
a. Steam Distillation	202.00	202.00
<b>Food Processing</b>		
a. <1,000 gpd	1,961.00	1,961.00
b. 1,000 – < 10,000 gpd	5,003.00	5,003.00
e. 10,000 – < 50,000 gpd	8,934.00	8,934.00
d. 50,000 – < 100,000 gpd	14,036.00	14,036.00
e. 100,000 – < 250,000 gpd	19,633.00	19,633.00
f. 250,000 – < 500,000 gpd	25,819.00	25,819.00
g. 500,000 – < 750,000 gpd	32,393.00	32,393.00
h. 750,000 – < 1,000,000 gpd	39,266.00	39,266.00
i. 1,000,000 – < 2,500,000 gpd	48,374.00	48,374.00

INDUSTRIAL FACILITY CATEGORIES		FY 2022 ANNUAL PERMIT FEE	FY 2023 ANNUAL PERMIT FEE & BEYOND
j.	2,500,000 - < 5,000,000 gpd	53,993.00	53,993.00
k.	5,000,000 gpd and greater	58,901.00	58,901.00
<b>Fruit Packing - Individual Permit Coverage</b>			
a.	0 - < 1,000 bins/yr.	392.00	392.00
b.	1,000 - < 5,000 bins/yr.	786.00	786.00
e.	5,000 - < 10,000 bins/yr.	1,570.00	1,570.00
d.	10,000 - < 15,000 bins/yr.	3,144.00	3,144.00
e.	15,000 - < 20,000 bins/yr.	5,199.00	5,199.00
f.	20,000 - < 25,000 bins/yr.	7,264.00	7,264.00
g.	25,000 - < 50,000 bins/yr.	9,717.00	9,717.00
h.	50,000 - < 75,000 bins/yr.	10,800.00	10,800.00
i.	75,000 - < 100,000 bins/yr.	12,564.00	12,564.00
j.	100,000 - < 125,000 bins/yr.	15,704.00	15,704.00
k.	125,000 - < 150,000 bins/yr.	19,633.00	19,633.00
l.	150,000 bins/yr. and greater	23,524.00	23,524.00
<b>Fruit Packing - General Permit Coverage</b>			
a.	0 - < 1,000 bins/yr.	274.00	274.00
b.	1,000 - < 5,000 bins/yr.	550.00	550.00
e.	5,000 - < 10,000 bins/yr.	1,100.00	1,100.00
d.	10,000 - < 15,000 bins/yr.	2,201.00	2,201.00
e.	15,000 - < 20,000 bins/yr.	3,643.00	3,643.00
f.	20,000 - < 25,000 bins/yr.	5,085.00	5,085.00
g.	25,000 - < 50,000 bins/yr.	6,800.00	6,800.00
h.	50,000 - < 75,000 bins/yr.	7,557.00	7,557.00
i.	75,000 - < 100,000 bins/yr.	8,788.00	8,788.00
j.	100,000 - < 125,000 bins/yr.	10,997.00	10,997.00
k.	125,000 - < 150,000 bins/yr.	13,744.00	13,744.00
l.	150,000 bins/yr. and greater	16,491.00	16,491.00
<b>Fuel and Chemical Storage</b>			
a.	< 50,000 bbls	1,963.00	1,963.00
b.	50,000 - < 100,000 bbls	3,927.00	3,927.00
e.	100,000 - < 500,000 bbls	9,816.00	9,816.00
d.	500,000 bbls and greater	19,636.00	19,636.00
<b>Hazardous Waste Clean Up Sites</b>			
a.	Leaking Underground Storage Tanks (LUST)		
	1. State Permit	5,149.00	5,149.00
	2. NPDES Permit Issued pre 7/1/94	5,148.00	5,148.00
	3. NPDES Permit Issued post 7/1/94	10,298.00	10,298.00
b.	Non-LUST Sites		
	1. 1 or 2 Contaminants of concern	10,069.00	10,069.00
	2. > 2 Contaminants of concern	20,137.00	20,137.00
<b>Ink Formulation and Printing</b>			
a.	Commercial Print Shops	3,021.00	3,021.00
b.	Newspapers	5,035.00	5,035.00
e.	Box Plants	8,055.00	8,055.00

INDUSTRIAL FACILITY CATEGORIES	FY 2022 ANNUAL PERMIT FEE	FY 2023 ANNUAL PERMIT FEE & BEYOND
d. Ink Formulation	10,070.00	10,070.00
<b>Inorganic Chemicals Manufacturing</b>		
a. Lime Products	9,816.00	9,816.00
b. Fertilizer	11,816.00	11,816.00
e. Peroxide	15,704.00	15,704.00
d. Alkaline Earth Salts	19,636.00	19,636.00
e. Metal Salts	27,482.00	27,482.00
f. Acid Manufacturing	38,942.00	38,942.00
g. Chlor-alkali	78,533.00	78,533.00
<b>Iron and Steel</b>		
a. Foundries	22,950.00	22,950.00
b. Mills	45,939.00	45,939.00
<b>Metal Finishing</b>		
a. <1,000 gpd	2,751.00	2,751.00
b. 1,000 -<10,000 gpd	4,587.00	4,587.00
e. 10,000 -<50,000 gpd	11,470.00	11,470.00
d. 50,000 -<100,000 gpd	22,949.00	22,949.00
e. 100,000 -<500,000 gpd	45,894.00	45,894.00
f. 500,000 gpd and greater	68,845.00	68,845.00
<b>Noncontact Cooling Water With Additives - Individual Permit Coverage</b>		
a. <1,000 gpd	1,229.00	1,229.00
b. 1,000 -<10,000 gpd	1,716.00	1,716.00
e. 10,000 -<50,000 gpd	3,685.00	3,685.00
d. 50,000 -<100,000 gpd	8,593.00	8,593.00
e. 100,000 -<500,000 gpd	14,721.00	14,721.00
f. 500,000 -<1,000,000 gpd	20,863.00	20,863.00
g. 1,000,000 -<2,500,000 gpd	27,001.00	27,001.00
h. 2,500,000 -<5,000,000 gpd	32,993.00	32,993.00
i. 5,000,000 gpd and greater	39,266.00	39,266.00
<b>Noncontact Cooling Water With Additives - General Permit Coverage</b>		
a. <1,000 gpd	861.00	861.00
b. 1,000 -<10,000 gpd	1,716.00	1,716.00
e. 10,000 -<50,000 gpd	2,579.00	2,579.00
d. 50,000 -<100,000 gpd	6,015.00	6,015.00
e. 100,000 -<500,000 gpd	10,307.00	10,307.00
f. 500,000 -<1,000,000 gpd	14,606.00	14,606.00
g. 1,000,000 -<2,500,000 gpd	18,899.00	18,899.00
h. 2,500,000 -<5,000,000 gpd	23,191.00	23,191.00
i. 5,000,000 gpd and greater	27,484.00	27,484.00
<b>Noncontact Cooling Water Without Additives - Individual Permit Coverage</b>		
a. <1,000 gpd	984.00	984.00
b. 1,000 -<10,000 gpd	1,963.00	1,963.00
e. 10,000 -<50,000 gpd	2,948.00	2,948.00
d. 50,000 -<100,000 gpd	6,874.00	6,874.00
e. 100,000 -<500,000 gpd	11,783.00	11,783.00

INDUSTRIAL FACILITY CATEGORIES		FY 2022 ANNUAL PERMIT FEE	FY 2023 ANNUAL PERMIT FEE & BEYOND
f.	500,000 - < 1,000,000 gpd	16,687.00	16,687.00
g.	1,000,000 - < 2,500,000 gpd	21,511.00	21,511.00
h.	2,500,000 - < 5,000,000 gpd	26,503.00	26,503.00
i.	5,000,000 gpd and greater	31,414.00	31,414.00
<b>Noncontact Cooling Water Without Additives – General Permit Coverage</b>			
a.	< 1,000 gpd	688.00	688.00
b.	1,000 - < 10,000 gpd	1,377.00	1,377.00
e.	10,000 - < 50,000 gpd	2,064.00	2,064.00
d.	50,000 - < 100,000 gpd	4,811.00	4,811.00
e.	100,000 - < 500,000 gpd	8,246.00	8,246.00
f.	500,000 - < 1,000,000 gpd	11,683.00	11,683.00
g.	1,000,000 - < 2,500,000 gpd	15,117.00	15,117.00
h.	2,500,000 - < 5,000,000 gpd	18,554.00	18,554.00
i.	5,000,000 gpd and greater	21,987.00	21,987.00
<b>Nonferrous Metals Forming</b>		22,950.00	22,950.00
<b>Ore Mining</b>			
a.	Ore Mining	4,588.00	4,588.00
b.	Ore mining with physical concentration processes	9,177.00	9,177.00
e.	Ore mining with physical and chemical concentration processes	36,718.00	36,718.00
<b>Organic Chemicals Manufacturing</b>			
a.	Fertilizer	19,636.00	19,636.00
b.	Aliphatic	39,266.00	39,266.00
e.	Aromatic	58,901.00	58,901.00
<b>Petroleum Refining</b>			
a.	< 10,000 bbls/d	39,266.00	39,266.00
b.	10,000 - < 50,000 bbls/d	77,853.00	77,853.00
e.	50,000 bbls/d and greater	157,075.00	157,075.00
<b>Photofinishers</b>			
a.	< 1,000 gpd	1,570.00	1,570.00
b.	1,000 gpd and greater	3,927.00	3,927.00
<b>Power and/or Steam Plants</b>			
a.	Steam Generation – Nonelectric	7,924.00	7,924.00
b.	Hydroelectric	7,924.00	7,924.00
e.	Nonfossil Fuel	11,781.00	11,781.00
d.	Fossil Fuel	31,414.00	31,414.00
<b>Pulp, Paper and Paper Board</b>			
a.	Fiber Recyclers/Nonwood Pulp Mills	19,632.00	19,632.00
b.	Paper Mills	39,266.00	39,266.00
e.	Groundwood Pulp Mills		
1.	< 300 tons per day	58,901.00	58,901.00
2.	> 300 tons per day	117,813.00	117,813.00
d.	Chemical Pulp Mills w/o Chlorine Bleaching	157,068.00	157,068.00
e.	Chemical Pulp Mills		



INDUSTRIAL FACILITY CATEGORIES	FY 2022 ANNUAL PERMIT FEE	FY 2023 ANNUAL PERMIT FEE & BEYOND
w/Chlorine Bleaching	176,697.00	176,697.00
Radioactive Effluents and Discharges (RED)		
a. <3 waste streams	37,986.00	37,986.00
b. 3-<8 waste streams	65,965.00	65,965.00
c. 8 waste streams and greater	108,648.00	108,648.00
RCRA Corrective Action Sites	27,597.00	27,597.00
Sand and Gravel - Individual Permit Coverage		
a. Mining Activities		
1. Mining, screening, washing and/or crushing	3,581.00	3,581.00
2. Nonoperating site (fee per site)	147.00	147.00
b. Asphalt Production		
1. 1-<50,000 tons/yr.	1,492.00	1,492.00
2. 50,000-<300,000 tons/yr.	3,582.00	3,582.00
3. 300,000 tons/yr. and greater	4,480.00	4,480.00
4. Nonoperating Asphalt	147.00	147.00
c. Concrete Production		
1. 1-<25,000 cu. yds/yr.	1,492.00	1,492.00
2. 25,000-<200,000 cu. yds/yr.	3,582.00	3,582.00
3. 200,000 cu. yds/yr. and greater	4,480.00	4,480.00
4. Nonoperating Concrete	147.00	147.00
The fee for a facility in the sand and gravel production category is the sum of the applicable fees in the mining activities and concrete and asphalt production categories.		
d. Portable Operations		
1. Rock Crushing	3,581.00	3,581.00
2. Asphalt	3,581.00	3,581.00
3. Concrete	3,581.00	3,581.00
4. Nonoperating Site	147.00	147.00
Sand and Gravel - General Permit Coverage		
a. Mining Activities		
1. Mining, screening, washing and/or crushing	2,505.00	2,505.00
2. Nonoperating site (fee per site)	103.00	103.00
b. Asphalt Production		
1. 0-<50,000 tons/yr.	1,046.00	1,046.00
2. 50,000-<300,000 tons/yr.	2,507.00	2,507.00
3. 300,000 tons/yr. and greater	3,135.00	3,135.00
4. Nonoperating Asphalt	103.00	103.00
c. Concrete Production		
1. 0-<25,000 cu. yds/yr.	1,046.00	1,046.00
2. 25,000-<200,000 cu. yds/yr.	2,507.00	2,507.00
3. 200,000 cu. yds/yr. and greater	3,135.00	3,135.00
4. Nonoperating Concrete	103.00	103.00
The fee for a facility in the sand and gravel production category is the sum of the applicable fees in the mining activities and concrete and asphalt production categories.		
d. Portable Operations		

INDUSTRIAL FACILITY CATEGORIES	FY 2022 ANNUAL PERMIT FEE	FY 2023 ANNUAL PERMIT FEE & BEYOND
1. Rock Crushing	2,507.00	2,507.00
2. Asphalt	2,507.00	2,507.00
3. Concrete	2,507.00	2,507.00
4. Nonoperating	103.00	103.00
<b>Seafood Processing</b>		
a. <1,000 gpd	1,963.00	1,963.00
b. 1,000-<10,000 gpd	5,003.00	5,003.00
c. 10,000-<50,000 gpd	8,934.00	8,934.00
d. 50,000-<100,000 gpd	14,036.00	14,036.00
e. 100,000 gpd and greater	19,636.00	19,636.00
<b>Shipyards</b>		
a. Per crane, travel lift, small boat lift	4,588.00	4,588.00
b. Per drydock under 250 ft in length	4,588.00	4,588.00
c. Per graving dock	4,588.00	4,588.00
d. Per marine way/ramp	6,882.00	6,882.00
e. Per syncrolift	6,882.00	6,882.00
f. Per drydock 250 ft and over in length	9,177.00	9,177.00
g. In-water vessel maintenance	9,177.00	9,177.00
The fee for a facility in the shipyard category is the sum of the fees for the applicable units in the facility.		
<b>Solid Waste Sites (nonstormwater)</b>		
a. Nonputrescible	7,850.00	7,850.00
b. <50 acres	15,703.00	15,703.00
c. 50-<100 acres	31,414.00	31,414.00
d. 100-<250 acres	39,266.00	39,266.00
e. 250 acres and greater	58,901.00	58,901.00
<b>Textile Mills</b>	78,533.00	78,533.00
<b>Timber Products</b>		
a. Log Storage	3,927.00	3,927.00
b. Veneer	7,850.00	7,850.00
c. Sawmills	15,704.00	15,704.00
d. Hardwood, Plywood	27,482.00	27,482.00
e. Wood Preserving	37,706.00	37,706.00
<b>Vegetable/Bulb Washing Facilities</b>		
a. <1,000 gpd	130.00	130.00
b. 1,000-<5,000 gpd	262.00	262.00
c. 5,000-<10,000 gpd	517.00	517.00
d. 10,000-<20,000 gpd	1,042.00	1,042.00
e. 20,000 and greater	1,721.00	1,721.00
<b>Vehicle Maintenance and Freight Transfer</b>		
a. <0.5 acre	3,927.00	3,927.00
b. 0.5-<1.0 acre	7,850.00	7,850.00
c. 1.0 acre and greater	11,781.00	11,781.00
<b>Vessel Deconstruction</b>		
a. Base fee	3,100.00	3,100.00

INDUSTRIAL FACILITY CATEGORIES	FY 2022 ANNUAL PERMIT FEE	FY 2023 ANNUAL PERMIT FEE & BEYOND
b. On land (per project)	3,500.00	3,500.00
e. On barge or drydock (per project)	4,800.00	4,800.00
d. In-water (per project)	18,700.00	18,700.00
The fee for a facility in the vessel deconstruction category is the sum of the base fee and number and type of projects completed in the previous calendar year.		
Water Plants – Individual Permit Coverage	5,359.00	5,359.00
Water Plants – General Permit Coverage	3,752.00	3,752.00
Wineries – Individual Permit Coverage		
a. <24,999 gallons per year (gpy)	423.00	423.00
b. 25,000 – <39,999 gpy	621.00	621.00
e. 40,000 – <54,999 gpy	960.00	960.00
d. 55,000 – <69,999 gpy	1,297.00	1,297.00
e. 70,000 – <99,999 gpy	1,636.00	1,636.00
f. 100,000 – <299,999 gpy	2,370.00	2,370.00
g. 300,000 – <699,999 gpy	7,111.00	7,111.00
h. 700,000 – <999,999 gpy	16,594.00	16,594.00
i. 1,000,000 – <1,999,999 gpy	23,762.00	23,762.00
j. 2,000,000 gpy and greater	47,470.00	47,470.00
Wineries – General Permit Coverage		
a. <24,999 gpy	296.00	296.00
b. 25,000 – <39,999 gpy	434.00	434.00
e. 40,000 – <54,999 gpy	671.00	671.00
d. 55,000 – <69,999 gpy	907.00	907.00
e. 70,000 – <99,999 gpy	1,144.00	1,144.00
f. 100,000 – <299,999 gpy	1,657.00	1,657.00
g. 300,000 – <699,999 gpy	4,973.00	4,973.00
h. 700,000 – <999,999 gpy	11,604.00	11,604.00
i. 1,000,000 – <1,999,999 gpy	16,617.00	16,617.00
j. 2,000,000 gpy and greater	33,196.00	33,196.00

~~(a) Facilities other than those in the sand and gravel, shipyard, or RCRA categories that operate within several fee categories or sub-categories, shall be charged from that category or subcategory with the highest fee.~~

~~(b) The total annual permit fee for a water treatment plant that primarily serves residential customers may not exceed three dollars per residential equivalent. The number of residential equivalents is determined by dividing the facility's annual gross revenue in the previous calendar year by the annual user charge for a single family residence that uses nine hundred cubic feet of water per month.~~

~~(c) Fruit packer, sand and gravel, and winery permit holders are required to submit information to the department certifying annual production (calendar year) or unit processes. The permit holder shall submit the information to the department by the required due date. Failure to provide this information results in a fee determination based on the highest subcategory the facility has received permit coverage in.~~

~~(i) Information submitted shall bear a certification of correctness and be signed:~~

~~(A) In the case of a corporation, by an authorized corporate officer;~~

~~(B) In the case of a limited partnership, by an authorized partner;~~

~~(C) In the case of a general partnership, by an authorized general partner; or~~

~~(D) In the case of a sole proprietorship, by the proprietor.~~

~~(ii) The department may verify information submitted and, if it determines that false or inaccurate statements have been made, it may, in addition to taking other actions provided by law, revise both current and previously granted fee determinations.~~

~~(d) Fees for fruit packers discharging only noncontact cooling water without additives shall pay the lesser of the applicable fee in the fruit packing or noncontact cooling water without additives categories.~~

~~(e) Where no clear industrial facility category exists for placement of a permit holder, the department may elect to place the permit holder in a category with dischargers or permit holders that contain or use similar properties or processes and/or a category which contains similar permitting complexities to the department.~~

~~(f) Hazardous waste cleanup sites and EPA authorized RCRA corrective action sites with whom the department has begun cost recovery through chapter 70A.305 RCW shall not pay a permit fee under chapter 173-224 WAC until such time as the cost recovery under chapter 70A.305 RCW ceases.~~

~~(g) Any permit holder, with the exception of nonoperating sand and gravel operations or a permitted portable facility, who has not been in continuous operation within a consecutive eighteen-month period or who commits to not being in operation for a consecutive eighteen-month period or longer can have their permit fee reduced to twenty-five percent of the fee that they would be otherwise assessed. This nonoperating mode may be verified by the appropriate ecology staff. Once operations resume, the permit fee returns to the full amount.~~

~~Facilities who commit to the minimum eighteen-month nonoperating mode but go back into operation during the same eighteen-month period are assessed permit fees as if they were active during the entire period.~~

~~(h) Facilities with subcategories based on gallons per day (gpd) shall have their annual permit fee determined by using the maximum daily flow or maximum monthly average permitted flow in gallons per day as specified in the waste discharge permit, whichever is greater.~~

~~(i) RCRA corrective action sites requiring a waste discharge permit are assessed a separate permit fee regardless of whether the discharge is authorized by a separate permit or by a modification to an existing permit for a discharge other than that resulting from the corrective action.~~

~~(3) MUNICIPAL/DOMESTIC FACILITIES~~

~~(a) The annual permit fee for a permit held by a municipality for a domestic wastewater facility issued under RCW 90.48.162 or 90.48.260 is determined as follows:~~

<b>Residential Equivalents (RE)</b>	<b>FY 2022 Annual Permit Fee</b>	<b>FY 2023 Annual Permit Fee &amp; Beyond</b>
<250,000	\$2.16	\$2.16
>250,000	2.16	2.16

~~(b) The annual permit fee under RCW 90.48.162 or 90.48.260 that is held by a municipality which:~~

~~(i) Holds more than one permit for domestic wastewater facilities; and~~

~~(ii) Treats each domestic wastewater facility as a separate accounting entity, is determined as in (a) of this subsection.~~

~~A separate accounting entity is one that maintains separate funds or accounts for each domestic wastewater facility. Revenues are received from the users to pay for the costs of operating that facility.~~

~~(c) The sum of the annual permit fees for permits held by a municipality that:~~

~~(i) Holds more than one permit for domestic wastewater facilities issued under RCW 90.48.162 or 90.48.260; and~~

~~(ii) Does not treat each domestic wastewater facility as a separate accounting entity, as described in (b) of this subsection, is determined as in (a) of this subsection.~~

~~(d) The permit fee for a privately owned and public-owned domestic wastewater facility that primarily serves residential customers is determined as in (a) of this subsection. Residential customers are those whose lot, parcel or real estate, or building is primarily used for domestic dwelling purposes.~~

~~(e) The annual permit fee for privately owned or public-owned domestic wastewater facilities must be determined by using the maximum daily flow or maximum monthly average permitted flow in million gallons per day, whichever is greater, as specified in the waste discharge permit. Permit fees for privately owned or public-owned domestic wastewater facilities that do not serve primarily residential customers and for state-owned domestic wastewater facilities are the following:~~

<b>Permitted Flows</b>	<b>FY 2022 Annual Permit Fee</b>	<b>FY 2023 Annual Permit Fee &amp; Beyond</b>
.1 MGD and Greater	\$15,075.00	\$15,075.00
.05 MGD to <.1 MGD	6,032.00	6,032.00
.0008 MGD to <.05 MGD	3,016.00	3,016.00
<.0008 MGD	910.00	910.00

~~(f) The number of residential equivalents is calculated in the following manner:~~

~~(i) If the facility serves only single-family residences, the number of residential equivalents is the number of single-family residences that it served on January 1 of the previous calendar year.~~

~~(ii) If the facility serves both single-family residences and other classes of customers, the number of residential equivalents is calculated in the following manner:~~

~~(A) Calculation of the number of residential equivalents that the facility serves in its own service area. Subtract from the previous calendar year's gross revenue:~~

~~(I) Any amounts received from other municipalities for sewage interception, treatment, collection, or disposal; and~~

~~(II) Any user charges received from customers for whom the permit holder pays amounts to other municipalities for sewage treatment or disposal services. Divide the resulting figure by the annual user charge for a single-family residence.~~

~~(B) Calculation of the number of residential equivalents that the facility serves in other municipalities which pay amounts to the facility for sewage interception, treatment, collection, or disposal:~~

~~(I) Divide any amounts received from other municipalities during the previous calendar year by the annual user charge for a single-family residence. In this case "annual user charge for a single-family residence" means the annual user charge that the facility charges other municipalities for sewage interception, treatment, collection, or disposal services for a single-family residence. If the facility charges different municipalities different single-family residential user fees, then the charge used in these calculations must be that which applies to the largest number of single-family residential customers. Alternatively, if the facility charges different municipalities different single-family residential user fees, the permit holder may divide the amount received from each municipality by the annual user charge that it charges that municipality for a single-family residence and sum the resulting figures.~~

~~(II) If the facility does not charge the other municipality on the basis of a fee per single-family residence, the number of residential equivalents in the other municipality is calculated by dividing its previous calendar year's gross revenue by its annual user fee for a single-family residence. If the other municipality does not maintain data on its gross revenue, user fees, and/or the number of single-family residences that it serves, the number of residential equivalents is calculated as in (f)(iv) of this subsection.~~

~~(III) If the other municipality serves only single-family residences, the number of residential equivalents may be calculated as in (f)(i) of this subsection.~~

~~The sum of the resulting figures is the number of residential equivalents that the facility serves in other municipalities.~~

~~(C) The number of residential equivalents is the sum of the number of residential equivalents calculated in (f)(ii)(A) and (B) of this subsection.~~

~~(iii) The annual user fee for a single-family residence is calculated by either of the following methods, at the choice of the permit holder:~~

~~(A) The annual user fee for a single-family residence using nine hundred cubic feet of water per month. If users are billed monthly, this is calculated by multiplying by twelve the monthly user fee for a single-family residence using nine hundred cubic feet of water per month. If users are billed bimonthly, the annual user fee is calculated by multiplying by six the bimonthly user fee for a single-family residence using one thousand eight hundred cubic feet of water per two-month period. If the user fee for a single-family residence varies, depending on age, income, location, etc., then the fee used in these calculations must be that which applies to the largest number of single-family residential customers.~~

~~(B) The average annual user fee for a single-family residence. This average is calculated by dividing the previous calendar year's gross revenue from provision of sewer services to single-family residences by the number of single-family residences served on January 1~~

of the previous calendar year. If the user fee for a single-family residence varies, depending on age, income, location, etc., then the gross revenue and number of single-family residences used in making this calculation must be those for all the single-family residential customers.

In either case, ~~(f) (iii) (A) or (B) of this subsection, the permit holder must provide the department with a copy of its complete sewer rate schedule for all classes of customers.~~

~~(iv) If a permit holder does not maintain data on its gross revenue, user fees, and/or the number of single-family residences that it serves, and therefore cannot use the methods described in (f) (i) or (ii) of this subsection to calculate the number of residential equivalents that it serves, then the number of residential equivalents that it serves is calculated by dividing the average daily influent flow to its facility for the previous calendar year by two hundred fifty gallons. This average is calculated by summing all the daily flow measurements taken during the previous calendar year and then dividing the resulting sum by the number of days on which flow was measured. Data for this calculation must be taken from the permit holder's discharge monitoring reports. Permit holders using this means of calculating the number of their residential equivalents must submit with their application a complete set of copies of their discharge monitoring reports for the previous calendar year.~~

~~(g) Fee calculation procedures for holders of permits for domestic wastewater facilities.~~

~~(i) Municipalities holding permits for domestic wastewater facilities issued under RCW 90.48.162 and 90.48.260, and holders of permits for privately owned domestic wastewater facilities that primarily serve residential customers must complete a form certifying the number of residential equivalents served by their domestic wastewater system. The form must be completed and returned to the department within thirty days after it is mailed to the permit holder by the department. Failure to return the form could result in permit termination.~~

~~(ii) The form shall bear a certification of correctness and be signed:~~

~~(A) In the case of a corporation, by an authorized corporate officer;~~

~~(B) In the case of a limited partnership, by an authorized partner;~~

~~(C) In the case of a general partnership, by an authorized partner;~~

~~(D) In the case of a sole proprietorship, by the proprietor; or~~

~~(E) In the case of a municipal or other public facility, by either a ranking elected official or a principal executive officer.~~

~~(iii) The department may verify the information contained in the form and, if it determines that the permit holder has made false statements, may, in addition to taking other actions provided by law, revise both current and previously granted fee determinations.~~

~~(h) The annual permit fee for a domestic wastewater facility with a Puget Sound nutrient general permit will be calculated at the rate of \$0.31 per residential equivalent per year. The number of residential equivalents will be calculated as described in (g) of this subsection. The permit fee in this subsection will not be assessed for municipal domestic wastewater treatment facilities unless the legislature amends RCW 90.48.465(2) to authorize this fee.~~

~~(4) STORMWATER PERMIT COVERAGES (UNLESS SPECIFICALLY CATEGORIZED ELSEWHERE IN WAC~~

~~173-224-040(2))~~

	FY 2022 Annual Permit Fee	FY 2023 Annual Permit Fee & Beyond
a. Individual Construction or Industrial Stormwater Permits		
1. <50 acres	\$6,032.00	\$6,032.00
2. 50-<100 acres	12,054.00	12,054.00
3. 100-<500 acres	18,095.00	18,095.00
4. 500 acres and greater	24,122.00	24,122.00
b. Facilities Covered Under the Industrial Stormwater General Permit		
1. Municipalities and state agencies	1,976.00	1,976.00
2. New permit holders without historical gross revenue information	1,035.00	1,035.00
3. The permit fee for all other permit holders shall be based on the gross revenue of the business for the previous calendar year		
Gross Revenue		
Less than \$100,000	192.00	192.00
\$100,000 < \$1,000,000	832.00	832.00
\$1,000,000 < \$2,500,000	995.00	995.00
\$2,500,000 < \$5,000,000	1,663.00	1,663.00
\$5,000,000 < \$10,000,000	2,493.00	2,493.00
\$10,000,000 and greater	3,012.00	3,012.00

~~To be eligible for less than the maximum permit fee, the permit holder must provide documentation to substantiate the gross revenue claims. Documentation shall be provided annually in a manner prescribed by the department. The documentation shall bear a certification of correctness and be signed:~~

- ~~(a) In the case of a corporation, by an authorized corporate officer;~~
- ~~(b) In the case of a limited partnership, by an authorized general partner;~~
- ~~(c) In the case of a general partnership, by an authorized partner; or~~
- ~~(d) In the case of a sole proprietorship, by the proprietor.~~

~~The department may verify the information contained in the submitted documentation and, if it determines that the permit holder has made false statements, may deny the adjustment, revoke previously granted fee adjustments, and/or take such other actions deemed appropriate or required under state or federal law.~~

Permitted Amount of Disturbed Acreage	FY 2022 Annual Permit Fee	FY 2023 Annual Permit Fee & Beyond
e. Construction Activities Covered Under the Construction Stormwater General Permit(s)		
1. Less than 5 acres disturbed area	\$780.00	\$780.00
2. 5-<7 acres of disturbed area	1,268.00	1,268.00
3. 7-<10 acres of disturbed area	1,712.00	1,712.00
4. 10-<20 acres of disturbed area	2,336.00	2,336.00
5. 20 acres and greater of disturbed area	2,906.00	2,906.00

~~(5) MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMITS~~

~~(a) Except as provided for in (d) of this subsection, the municipal stormwater permit annual fee for the entities listed below is:~~



<b>Name of Entity</b>	<b>FY 2022 Annual Permit Fee</b>	<b>FY 2023 Annual Permit Fee &amp; Beyond</b>
King County	\$68,695.00	\$68,695.00
Snohomish County	68,695.00	68,695.00
Pierce County	68,695.00	68,695.00
Tacoma, City of	68,695.00	68,695.00
Seattle, City of	68,695.00	68,695.00
Washington Department of Transportation	68,695.00	68,695.00
Clark County	68,695.00	68,695.00

~~(b) Municipal stormwater general permit fees for cities and counties, except as otherwise provided for in (a), (c), and (d) of this subsection, are determined in the following manner: For fiscal years 2022 and 2023 and beyond, ecology will charge \$1.99 per housing unit inside the geographic area covered by the permit for those cities and counties whose median household income exceeds the state average. Cities and counties whose median household income is less than the state average will have their fee per housing unit reduced to \$.98 per housing unit inside the geographic area covered by the permit. Fees will not exceed \$68,695.00 for fiscal years 2022 and 2023 and beyond. The minimum annual fee will not be lower than \$2,856.00 for fiscal years 2022 and 2023 and beyond unless the permitted city or county has a median household income less than the state average. In this case, the city or county will pay a fee totaling \$.98 per housing unit for fiscal years 2022 and 2023 and beyond.~~

~~(c) Other entities required to have permit coverage under a municipal stormwater general permit will pay an annual fee based on the entities' previous year's annual operating budget as follows:~~

<b>Annual Operating Budget</b>	<b>FY 2022 Annual Permit Fee</b>	<b>FY 2023 Annual Permit Fee &amp; Beyond</b>
Less than \$100,000	\$199.00	\$199.00
\$100,000 - < \$1,000,000	805.00	805.00
\$1,000,000 - < \$5,000,000	2,009.00	2,009.00
\$5,000,000 - < \$10,000,000	3,015.00	3,015.00
\$10,000,000 and greater	5,024.00	5,024.00

~~For the purposes of determining the annual permit fee category, the annual operating budget shall be the entities' annual operating budget for the entities' previous fiscal year and shall be determined as follows:~~

~~(i) For diking, drainage, irrigation, and flood control districts, the district's annual operating budget.~~

~~(ii) For ports, the annual operating budget for the port district.~~

~~(iii) For colleges, schools, and universities, the portion of the operating budget related to plant or facilities operation and maintenance for the site or sites subject to the permit.~~

~~(iv) For state agencies, the annual operating budget for the site or sites subject to the permit.~~

~~(v) For other entities not listed, ecology will consider annual revenue, and the noncapital operating budget for the site subject to the permit.~~

~~(d) Municipal stormwater permits written specifically for a single entity, such as a single city, county, or agency, issued after the effective date of this rule will have its annual fee determined in the following manner:~~

~~(i) For cities and counties listed in (a) of this subsection, the fee shall be five times the amount identified.~~

~~(ii) For cities and counties whose median household income exceeds the state average, the fee shall be the higher of either five times the otherwise applicable general permit fee or \$30,000. For municipalities whose median household income is less than the state average, the fee shall be the higher of 2.5 times the otherwise applicable general permit fee or \$15,000.~~

~~(iii) For entities that would otherwise be covered under a municipal stormwater general permit as determined in (c) of this subsection, the fiscal years 2022 and 2023 annual fee and beyond for a permit written for a specific entity is \$14,290.00.~~

~~(e) Ecology will assess a single permit fee for entities which apply only as copermittees or coapplicants. The permit fee shall be equal to the highest single permit fee which would have been assessed if the copermittees had applied separately.)~~

(1) Application fee. In addition to an annual fee, first time individual permit applicants must pay a nonrefundable application fee of 25 percent of the annual permit fee, or \$250, whichever is greater. An application fee is assessed for RCRA corrective action sites regardless of whether a new permit is issued or an existing permit for other than the discharge resulting from the RCRA corrective action, is modified.

(2) Minimum fee. The minimum water quality annual permit fee is \$150.00, unless specified elsewhere in this section. The department may elect, at its discretion, to assess this minimum fee when no better permit fee category applies, or when a prorated annual permit fee falls below the minimum fee amount.

(3) INDUSTRIAL FACILITY ANNUAL PERMIT FEE SCHEDULE

The following industrial facilities must pay an annual permit fee as follows:

<b>INDUSTRIAL FACILITY CATEGORIES</b>	<b>FY2024 ANNUAL PERMIT FEE</b>	<b>FY2025 ANNUAL PERMIT FEE</b>
<u>Aluminum Alloys</u>	<u>\$22,950</u>	<u>\$22,950</u>
<u>Aluminum and Magnesium Reduction Mills</u>		
a. <u>NPDES Permit</u>	<u>115,780</u>	<u>115,780</u>
b. <u>State Permit</u>	<u>57,900</u>	<u>57,900</u>
<u>Aluminum Forming</u>	<u>72,830</u>	<u>77,100</u>
<u>Aquaculture</u>		
a. <u>Finfish hatching and rearing - General Permit</u>	<u>4,126</u>	<u>4,126</u>
b. <u>Finfish hatching and rearing - Individual Permit</u>	<u>5,900</u>	<u>5,900</u>
c. <u>Nonfinfish hatching and rearing - Individual Permit</u>	<u>5,900</u>	<u>5,900</u>
<u>Aquatic and Invasive Species Control</u>		
a. <u>Aquatic &amp; Invasive Species Control (State agencies permits)</u>	<u>8,000</u>	<u>8,000</u>
b. <u>Aquatic Plant &amp; Algae Management</u>	<u>500</u>	<u>500</u>
c. <u>Irrigation System Aquatic Weed Control</u>	<u>710</u>	<u>710</u>

<b>INDUSTRIAL FACILITY CATEGORIES</b>	<b>FY2024 ANNUAL PERMIT FEE</b>	<b>FY2025 ANNUAL PERMIT FEE</b>	
d. <u>Mosquito Control</u>	<u>500</u>	<u>500</u>	
e. <u>Noxious Weed Control (State agencies permits)</u>	<u>8,000</u>	<u>8,000</u>	
f. <u>Oyster Growers</u>	<u>500</u>	<u>500</u>	
<u>Boatyards - General Permit</u>			
a. <u>With stormwater only discharge</u>	<u>570</u>	<u>600</u>	
b. <u>All others</u>	<u>1,150</u>	<u>1,210</u>	
<u>Boatyards - Individual Permit</u>			
a. <u>With stormwater only discharge</u>	<u>650</u>	<u>700</u>	
b. <u>All others</u>	<u>1,200</u>	<u>1,250</u>	
<u>Bridge and Ferry Terminals Washing</u>			
a. <u>Single site Permit</u>	<u>4,200</u>	<u>4,200</u>	
b. <u>Multi site Permit</u>			
<u>1. 1 - 5 Facilities</u>	<u>6,200</u>	<u>6,200</u>	
<u>2. 6 - 10 Facilities</u>	<u>8,200</u>	<u>8,200</u>	
<u>3. 11 - 20 Facilities</u>	<u>10,500</u>	<u>10,500</u>	
c. <u>WSDOT Annual Fee</u>	<u>13,500</u>	<u>13,500</u>	
<u>Coal Mining and Preparation</u>			
a. <u>&lt; 200,000 tons per year</u>	<u>9,000</u>	<u>9,000</u>	
b. <u>200,000 - &lt; 500,000 tons per year</u>	<u>20,500</u>	<u>20,500</u>	
c. <u>500,000 - &lt; 1,000,000 tons per year</u>	<u>36,500</u>	<u>36,500</u>	
d. <u>1,000,000 tons per year and greater</u>	<u>68,500</u>	<u>68,500</u>	
<u>Combined Industrial Waste Treatment</u>			
a. <u>&lt; 10,000 gpd</u>	<u>3,970</u>	<u>3,970</u>	
b. <u>10,000 - &lt; 50,000 gpd</u>	<u>9,800</u>	<u>9,800</u>	
c. <u>50,000 - &lt; 100,000 gpd</u>	<u>19,600</u>	<u>19,600</u>	
d. <u>100,000 - &lt; 500,000 gpd</u>	<u>39,200</u>	<u>39,200</u>	
e. <u>500,000 gpd and greater</u>	<u>58,800</u>	<u>58,800</u>	
<u>Combined Food Processing Waste Treatment Facilities</u>	<u>19,800</u>	<u>21,000</u>	
<u>Combined Sewer Overflow System</u>			
a. <u>&lt; 50 acres</u>	<u>3,900</u>	<u>3,900</u>	
b. <u>50 - &lt; 100 acres</u>	<u>9,800</u>	<u>9,800</u>	
c. <u>100 - &lt; 500 acres</u>	<u>11,780</u>	<u>11,780</u>	
d. <u>500 acres and greater</u>	<u>15,700</u>	<u>15,700</u>	
<u>Commercial Laundry</u>	<u>575</u>	<u>575</u>	
<u>Concentrated Animal Feeding Operation (CAFO) - Dairy GP</u>	<u>\$0.52 per animal unit, not to exceed \$2,190</u>	<u>\$0.54 per animal unit, not to exceed \$2,320</u>	
<u>Concentrated Animal Feeding Operation (CAFO) - Dairy IP</u>	<u>\$0.66 per animal unit, not to exceed \$2,850</u>	<u>\$0.70 per animal unit, not to exceed \$3,020</u>	
<u>Concentrated Animal Feeding Operation (CAFO) - General Permit</u>			
<u>Size of CAFO by Animal Type and Animal Count</u>	<u>SMALL</u>	<u>MEDIUM</u>	<u>LARGE</u>
<b><u>FY2024 and FY2025 Annual Fee</u></b>	<b><u>\$350</u></b>	<b><u>\$1,500</u></b>	<b><u>\$3,500</u></b>
a. <u>Veal Calves</u>	<u>&lt; 300</u>	<u>300 - 999</u>	<u>1,000 and greater</u>
b. <u>Other Cattle</u>	<u>&lt; 300</u>	<u>300 - 999</u>	<u>1,000 and greater</u>

<b>INDUSTRIAL FACILITY CATEGORIES</b>		<b>FY2024 ANNUAL PERMIT FEE</b>	<b>FY2025 ANNUAL PERMIT FEE</b>
c. <u>Swine (55 lbs or more)</u>	<u>≤ 700</u>	<u>700 - 2,499</u>	<u>2,500 and greater</u>
d. <u>Swine (less than 55 lbs)</u>	<u>≤ 3,000</u>	<u>3,000 - 9,999</u>	<u>10,000 and greater</u>
e. <u>Horses</u>	<u>≤ 150</u>	<u>150 - 499</u>	<u>500 and greater</u>
f. <u>Sheep and Lambs</u>	<u>≤ 3,000</u>	<u>3,000 - 9,999</u>	<u>10,000 and greater</u>
g. <u>Turkeys</u>	<u>≤ 16,500</u>	<u>16,500 - 54,999</u>	<u>55,000 and greater</u>
h. <u>Chickens, including laying hens or broilers, with liquid waste system</u>	<u>≤ 9,000</u>	<u>9,000 - 29,999</u>	<u>30,000 and greater</u>
i. <u>Chickens, other than layers, with dry waste system</u>	<u>≤ 25,000</u>	<u>25,000 - 81,999</u>	<u>82,000 and greater</u>
j. <u>Laying Hens, with dry waste system</u>	<u>≤ 25,000</u>	<u>25,000 - 81,999</u>	<u>82,000 and greater</u>
k. <u>Ducks, with liquid waste system</u>	<u>≤ 1,500</u>	<u>1,500 - 4,999</u>	<u>5,000 and greater</u>
l. <u>Ducks, with dry waste system</u>	<u>≤ 10,000</u>	<u>10,000 - 29,999</u>	<u>30,000 and greater</u>
m. <u>Other Species</u>	<u>As determined by Department</u>	<u>As determined by Department</u>	<u>As determined by Department</u>
<u>Concentrated Animal Feeding Operation (CAFO) - Individual Permit</u>		<u>\$5,000</u>	<u>\$5,000</u>
<u>Facilities Not Otherwise Classified</u>			
a. <u>&lt; 1,000 gpd</u>		<u>1,960</u>	<u>1,960</u>
b. <u>1,000 - &lt; 10,000 gpd</u>		<u>3,930</u>	<u>3,930</u>
c. <u>10,000 - &lt; 50,000 gpd</u>		<u>9,820</u>	<u>9,820</u>
d. <u>50,000 - &lt; 100,000 gpd</u>		<u>15,700</u>	<u>15,700</u>
e. <u>100,000 - &lt; 500,000 gpd</u>		<u>31,260</u>	<u>31,260</u>
f. <u>500,000 - &lt; 1,000,000 gpd</u>		<u>39,270</u>	<u>39,270</u>
g. <u>1,000,000 gpd and greater</u>		<u>58,900</u>	<u>58,900</u>
<u>Flavor Extraction</u>			
a. <u>Steam Distillation</u>		<u>215</u>	<u>230</u>
<u>Food Processing</u>			
a. <u>&lt; 1,000 gpd</u>		<u>1,960</u>	<u>1,960</u>
b. <u>1,000 - &lt; 10,000 gpd</u>		<u>5,000</u>	<u>5,000</u>
c. <u>10,000 - &lt; 50,000 gpd</u>		<u>8,930</u>	<u>8,930</u>
d. <u>50,000 - &lt; 100,000 gpd</u>		<u>14,040</u>	<u>14,040</u>
e. <u>100,000 - &lt; 250,000 gpd</u>		<u>19,630</u>	<u>19,630</u>
f. <u>250,000 - &lt; 500,000 gpd</u>		<u>25,820</u>	<u>25,820</u>
g. <u>500,000 - &lt; 750,000 gpd</u>		<u>32,400</u>	<u>32,400</u>
h. <u>750,000 - &lt; 1,000,000 gpd</u>		<u>39,270</u>	<u>39,270</u>
i. <u>1,000,000 - &lt; 2,500,000 gpd</u>		<u>48,370</u>	<u>48,370</u>
j. <u>2,500,000 - &lt; 5,000,000 gpd</u>		<u>53,990</u>	<u>53,990</u>
k. <u>5,000,000 gpd and greater</u>		<u>58,900</u>	<u>58,900</u>
<u>Fruit Packing - General Permit</u>			
a. <u>0 - &lt; 1,000 bins per year</u>		<u>275</u>	<u>275</u>
b. <u>1,000 - &lt; 5,000 bins per year</u>		<u>550</u>	<u>550</u>
c. <u>5,000 - &lt; 10,000 bins per year</u>		<u>1,100</u>	<u>1,100</u>
d. <u>10,000 - &lt; 15,000 bins per year</u>		<u>2,200</u>	<u>2,200</u>
e. <u>15,000 - &lt; 20,000 bins per year</u>		<u>3,640</u>	<u>3,640</u>
f. <u>20,000 - &lt; 25,000 bins per year</u>		<u>5,080</u>	<u>5,080</u>

<u>INDUSTRIAL FACILITY CATEGORIES</u>	<u>FY2024 ANNUAL PERMIT FEE</u>	<u>FY2025 ANNUAL PERMIT FEE</u>
g. <u>25,000 - &lt; 50,000 bins per year</u>	<u>6,800</u>	<u>6,800</u>
h. <u>50,000 - &lt; 75,000 bins per year</u>	<u>7,560</u>	<u>7,560</u>
i. <u>75,000 - &lt; 100,000 bins per year</u>	<u>8,790</u>	<u>8,790</u>
j. <u>100,000 - &lt; 125,000 bins per year</u>	<u>10,990</u>	<u>10,990</u>
k. <u>125,000 - &lt; 150,000 bins per year</u>	<u>13,740</u>	<u>13,740</u>
l. <u>150,000 bins per year and greater</u>	<u>16,490</u>	<u>16,490</u>
<u>Fruit Packing - Individual Permit</u>		
a. <u>0 - &lt; 1,000 bins per year</u>	<u>390</u>	<u>390</u>
b. <u>1,000 - &lt; 5,000 bins per year</u>	<u>790</u>	<u>790</u>
c. <u>5,000 - &lt; 10,000 bins per year</u>	<u>1,570</u>	<u>1,570</u>
d. <u>10,000 - &lt; 15,000 bins per year</u>	<u>3,140</u>	<u>3,140</u>
e. <u>15,000 - &lt; 20,000 bins per year</u>	<u>5,200</u>	<u>5,200</u>
f. <u>20,000 - &lt; 25,000 bins per year</u>	<u>7,260</u>	<u>7,260</u>
g. <u>25,000 - &lt; 50,000 bins per year</u>	<u>9,720</u>	<u>9,720</u>
h. <u>50,000 - &lt; 75,000 bins per year</u>	<u>10,800</u>	<u>10,800</u>
i. <u>75,000 - &lt; 100,000 bins per year</u>	<u>12,560</u>	<u>12,560</u>
j. <u>100,000 - &lt; 125,000 bins per year</u>	<u>15,700</u>	<u>15,700</u>
k. <u>125,000 - &lt; 150,000 bins per year</u>	<u>19,630</u>	<u>19,630</u>
l. <u>150,000 bins per year and greater</u>	<u>23,520</u>	<u>23,520</u>
<u>Fuel and Chemical Storage</u>		
a. <u>&lt; 50,000 bbls</u>	<u>2,080</u>	<u>2,180</u>
b. <u>50,000 - &lt; 100,000 bbls</u>	<u>4,150</u>	<u>4,300</u>
c. <u>100,000 - &lt; 500,000 bbls</u>	<u>10,400</u>	<u>11,000</u>
d. <u>500,000 bbls and greater</u>	<u>20,700</u>	<u>21,800</u>
<u>Hazardous Waste Cleanup Sites</u>		
a. <u>Leaking Underground Storage Tanks (LUST)</u>		
1. <u>State Permit</u>	<u>5,150</u>	<u>5,150</u>
2. <u>NPDES Permit issued pre 7/1/1994</u>	<u>5,150</u>	<u>5,150</u>
3. <u>NPDES Permit issued post 7/1/1994</u>	<u>10,300</u>	<u>10,300</u>
b. <u>Non-LUST Sites</u>		
1. <u>1 or 2 contaminants of concern</u>	<u>10,070</u>	<u>10,070</u>
2. <u>&gt; 2 contaminants of concern</u>	<u>20,140</u>	<u>20,140</u>
<u>Ink Formulation and Printing</u>		
a. <u>Commercial Print Shops</u>	<u>3,020</u>	<u>3,020</u>
b. <u>Newspapers</u>	<u>5,040</u>	<u>5,040</u>
c. <u>Package Printing</u>	<u>8,060</u>	<u>8,060</u>
d. <u>Ink Formulation</u>	<u>10,070</u>	<u>10,070</u>
<u>Inorganic Chemicals Manufacturing</u>		
a. <u>Lime Products</u>	<u>9,820</u>	<u>9,820</u>
b. <u>Fertilizer</u>	<u>11,820</u>	<u>11,820</u>
c. <u>Peroxide</u>	<u>15,700</u>	<u>15,700</u>
d. <u>Alkaline Earth Salts</u>	<u>19,640</u>	<u>19,640</u>
e. <u>Metal Salts</u>	<u>27,480</u>	<u>27,480</u>
f. <u>Acid Manufacturing</u>	<u>38,940</u>	<u>38,940</u>

<b>INDUSTRIAL FACILITY CATEGORIES</b>	<b>FY2024 ANNUAL PERMIT FEE</b>	<b>FY2025 ANNUAL PERMIT FEE</b>
g. Chlor-alkali	78,530	78,530
<b>Iron and Steel</b>		
a. Foundries	22,900	22,900
b. Mills	45,940	45,940
<b>Metal Finishing</b>		
a. < 1,000 gpd	2,750	2,750
b. 1,000 - < 10,000 gpd	4,590	4,590
c. 10,000 - < 50,000 gpd	11,470	11,470
d. 50,000 - < 100,000 gpd	22,950	22,950
e. 100,000 - < 500,000 gpd	45,900	45,900
f. 500,000 gpd and greater	68,840	68,840
<b>Noncontact Cooling Water with Additives - General Permit</b>		
a. < 1,000 gpd	860	860
b. 1,000 - < 10,000 gpd	1,720	1,720
c. 10,000 - < 50,000 gpd	2,580	2,580
d. 50,000 - < 100,000 gpd	6,010	6,010
e. 100,000 - < 500,000 gpd	10,300	10,300
f. 500,000 - < 1,000,000 gpd	14,600	14,600
g. 1,000,000 - < 2,500,000 gpd	18,900	18,900
h. 2,500,000 - < 5,000,000 gpd	23,190	23,190
i. 5,000,000 gpd and greater	27,480	27,480
<b>Noncontact Cooling Water without Additives - General Permit</b>		
a. < 1,000 gpd	690	690
b. 1,000 - < 10,000 gpd	1,380	1,380
c. 10,000 - < 50,000 gpd	2,060	2,060
d. 50,000 - < 100,000 gpd	4,810	4,810
e. 100,000 - < 500,000 gpd	8,250	8,250
f. 500,000 - < 1,000,000 gpd	11,680	11,680
g. 1,000,000 - < 2,500,000 gpd	15,120	15,120
h. 2,500,000 - < 5,000,000 gpd	18,550	18,550
i. 5,000,000 gpd and greater	21,990	21,990
<b>Noncontact Cooling Water with Additives - Individual Permit</b>		
a. < 1,000 gpd	1,230	1,230
b. 1,000 - < 10,000 gpd	2,000	2,000
c. 10,000 - < 50,000 gpd	3,680	3,680
d. 50,000 - < 100,000 gpd	8,590	8,590
e. 100,000 - < 500,000 gpd	14,720	14,720
f. 500,000 - < 1,000,000 gpd	20,860	20,860
g. 1,000,000 - < 2,500,000 gpd	27,000	27,000
h. 2,500,000 - < 5,000,000 gpd	32,990	32,990
i. 5,000,000 gpd and greater	39,270	39,270
<b>Noncontact Cooling Water without Additives - Individual Permit</b>		
a. < 1,000 gpd	980	980
b. 1,000 - < 10,000 gpd	1,960	1,960

<b>INDUSTRIAL FACILITY CATEGORIES</b>	<b>FY2024 ANNUAL PERMIT FEE</b>	<b>FY2025 ANNUAL PERMIT FEE</b>
c. <u>10,000 - &lt; 50,000 gpd</u>	<u>2,950</u>	<u>2,950</u>
d. <u>50,000 - &lt; 100,000 gpd</u>	<u>6,870</u>	<u>6,870</u>
e. <u>100,000 - &lt; 500,000 gpd</u>	<u>11,780</u>	<u>11,780</u>
f. <u>500,000 - &lt; 1,000,000 gpd</u>	<u>16,690</u>	<u>16,690</u>
g. <u>1,000,000 - &lt; 2,500,000 gpd</u>	<u>21,510</u>	<u>21,510</u>
h. <u>2,500,000 - &lt; 5,000,000 gpd</u>	<u>26,500</u>	<u>26,500</u>
i. <u>5,000,000 gpd and greater</u>	<u>31,410</u>	<u>31,410</u>
<u>Nonferrous Metals Forming</u>	<u>22,950</u>	<u>22,950</u>
<u>Ore Mining</u>		
a. <u>Ore mining</u>	<u>4,800</u>	<u>4,800</u>
b. <u>Ore mining with physical concentration processes</u>	<u>9,600</u>	<u>9,600</u>
c. <u>Ore mining with physical and chemical concentration processes</u>	<u>38,300</u>	<u>38,300</u>
<u>Organic Chemicals Manufacturing</u>		
a. <u>Fertilizer</u>	<u>19,640</u>	<u>19,640</u>
b. <u>Aliphatic</u>	<u>39,260</u>	<u>39,260</u>
c. <u>Aromatic</u>	<u>58,900</u>	<u>58,900</u>
<u>Petroleum Refining</u>		
a. <u>&lt; 10,000 bbls per day</u>	<u>39,260</u>	<u>39,260</u>
b. <u>10,000 - &lt; 50,000 bbls per day</u>	<u>77,850</u>	<u>77,850</u>
c. <u>50,000 bbls per day and greater</u>	<u>157,000</u>	<u>157,000</u>
<u>Photofinishers</u>		
a. <u>&lt; 1,000 gpd</u>	<u>1,570</u>	<u>1,570</u>
b. <u>1,000 and greater</u>	<u>3,930</u>	<u>3,900</u>
<u>Power and/or Steam Plants</u>		
a. <u>Steam generation - nonelectric</u>	<u>8,300</u>	<u>8,300</u>
b. <u>Hydroelectric</u>	<u>8,300</u>	<u>8,300</u>
c. <u>Nonfossil fuel</u>	<u>12,400</u>	<u>12,400</u>
d. <u>Fossil fuel</u>	<u>33,000</u>	<u>33,000</u>
<u>Pulp, Paper, and Paper Board</u>		
a. <u>Fiber Recyclers/Nonwood Pulp Mills</u>	<u>19,600</u>	<u>19,600</u>
b. <u>Paper Mills</u>	<u>39,250</u>	<u>39,250</u>
c. <u>Groundwood Pulp Mills</u>		
<u>1. &lt; 300 tons per day</u>	<u>58,900</u>	<u>58,900</u>
<u>2. &gt; 300 tons per day</u>	<u>117,800</u>	<u>117,800</u>
d. <u>Chemical Pulps Mills w/o chlorine bleaching</u>	<u>157,070</u>	<u>157,070</u>
e. <u>Chemical Pulp Mills with chlorine bleaching</u>	<u>176,700</u>	<u>176,700</u>
<u>Radioactive Effluents and Discharges (RED)</u>		
a. <u>&lt; 3 waste streams</u>	<u>38,000</u>	<u>38,000</u>
b. <u>3 - &lt; 8 waste streams</u>	<u>66,000</u>	<u>66,000</u>
c. <u>8 waste streams and more</u>	<u>108,500</u>	<u>108,500</u>
<u>RCRA Corrective Action Sites</u>	<u>27,600</u>	<u>27,600</u>
<u>Sand and Gravel - General Permit</u>		
a. <u>Mining Activities</u>		

<u>INDUSTRIAL FACILITY CATEGORIES</u>	<u>FY2024 ANNUAL PERMIT FEE</u>	<u>FY2025 ANNUAL PERMIT FEE</u>
<u>1. Mining, screening, washing, and/or crushing</u>	<u>2,550</u>	<u>2,550</u>
<u>2. Nonoperating</u>	<u>150</u>	<u>150</u>
<u>b. Asphalt Production and Recycling</u>		
<u>1. 0 - &lt; 50,000 tons per year</u>	<u>1,070</u>	<u>1,070</u>
<u>2. 50,000 - &lt; 300,000 tons per year</u>	<u>2,550</u>	<u>2,550</u>
<u>3. 300,000 tons per year and greater</u>	<u>3,180</u>	<u>3,180</u>
<u>4. Nonoperating</u>	<u>150</u>	<u>150</u>
<u>c. Concrete Production and Recycling</u>		
<u>1. 0 - &lt; 25,000 cubic yards per year</u>	<u>1,070</u>	<u>1,070</u>
<u>2. 25,000 - &lt; 200,000 cubic yards per year</u>	<u>2,550</u>	<u>2,550</u>
<u>3. 200,000 cubic yards per year and greater</u>	<u>3,180</u>	<u>3,180</u>
<u>4. Nonoperating</u>	<u>150</u>	<u>150</u>
<u>d. Portable Facility</u>		
<u>1. Rock crushing</u>	<u>2,700</u>	<u>2,700</u>
<u>2. Asphalt</u>	<u>2,700</u>	<u>2,700</u>
<u>3. Concrete</u>	<u>2,700</u>	<u>2,700</u>
<u>4. Nonoperating</u>	<u>165</u>	<u>165</u>
<u>Sand and Gravel - Individual Permit</u>		
<u>a. Mining Activities</u>		
<u>1. Mining, screening, washing, and/or crushing</u>	<u>3,580</u>	<u>3,580</u>
<u>2. Nonoperating</u>	<u>175</u>	<u>175</u>
<u>b. Asphalt Production and Recycling</u>		
<u>1. 0 - &lt; 50,000 tons per year</u>	<u>1,550</u>	<u>1,550</u>
<u>2. 50,000 - &lt; 300,000 tons per year</u>	<u>3,580</u>	<u>3,580</u>
<u>3. 300,000 tons per year and greater</u>	<u>4,480</u>	<u>4,480</u>
<u>4. Nonoperating</u>	<u>175</u>	<u>175</u>
<u>c. Concrete Production and Recycling</u>		
<u>1. 0 - &lt; 25,000 cubic yards per year</u>	<u>1,550</u>	<u>1,550</u>
<u>2. 25,000 - &lt; 200,000 cubic yards per year</u>	<u>3,580</u>	<u>3,580</u>
<u>3. 200,000 cubic yards per year and greater</u>	<u>4,480</u>	<u>4,480</u>
<u>4. Nonoperating</u>	<u>175</u>	<u>175</u>
<u>d. Portable Facility</u>		
<u>1. Rock crushing</u>	<u>3,700</u>	<u>3,700</u>
<u>2. Asphalt</u>	<u>3,700</u>	<u>3,700</u>
<u>3. Concrete</u>	<u>3,700</u>	<u>3,700</u>
<u>4. Nonoperating</u>	<u>200</u>	<u>200</u>
<i>The sand and gravel annual fee is the sum of the applicable fees for the permitted activities.</i>		
<u>Seafood Processing</u>		
<u>a. &lt; 1,000 gpd</u>	<u>1,960</u>	<u>1,960</u>
<u>b. 1,000 - &lt; 10,000 gpd</u>	<u>5,000</u>	<u>5,000</u>
<u>c. 10,000 - &lt; 50,000 gpd</u>	<u>8,930</u>	<u>8,930</u>
<u>d. 50,000 - &lt; 100,000 gpd</u>	<u>14,040</u>	<u>14,040</u>
<u>e. 100,000 gpd or greater</u>	<u>19,640</u>	<u>19,640</u>
<u>Shipyards</u>		



<u>INDUSTRIAL FACILITY CATEGORIES</u>	<u>FY2024 ANNUAL PERMIT FEE</u>	<u>FY2025 ANNUAL PERMIT FEE</u>
a. <u>Per crane, travel lift, small boat lift</u>	<u>4,820</u>	<u>4,820</u>
b. <u>Per drydock under 250 feet in length</u>	<u>4,820</u>	<u>4,820</u>
c. <u>Per graving dock</u>	<u>4,820</u>	<u>4,800</u>
d. <u>Per marine way/ramp</u>	<u>7,230</u>	<u>7,230</u>
e. <u>Per syncolift</u>	<u>7,230</u>	<u>7,230</u>
f. <u>Per drydock 250 feet and over in length</u>	<u>9,640</u>	<u>9,640</u>
g. <u>In-water vessel maintenance</u>	<u>9,640</u>	<u>9,640</u>
<i>The shipyard annual fee is the sum of the fees for applicable subcategories.</i>		
<u>Solid Waste Sites (nonstormwater)</u>		
a. <u>Nonputrescible</u>	<u>7,850</u>	<u>7,850</u>
b. <u>&lt; 50 acres</u>	<u>15,700</u>	<u>15,700</u>
c. <u>50 - &lt; 100 acres</u>	<u>31,410</u>	<u>31,410</u>
d. <u>100 - &lt; 250 acres</u>	<u>39,260</u>	<u>39,260</u>
e. <u>250 acres and greater</u>	<u>58,900</u>	<u>58,900</u>
<u>Textile Mills</u>	<u>78,500</u>	<u>78,500</u>
<u>Timber Products</u>		
a. <u>Log Storage</u>	<u>3,930</u>	<u>3,930</u>
b. <u>Veneer</u>	<u>7,850</u>	<u>7,850</u>
c. <u>Sawmills</u>	<u>15,700</u>	<u>15,700</u>
d. <u>Hardwood, Plywood</u>	<u>27,480</u>	<u>27,480</u>
e. <u>Wood Preserving</u>	<u>37,700</u>	<u>37,700</u>
<u>Vegetable/Bulb Washing Facilities</u>		
a. <u>&lt; 1,000 gpd</u>	<u>150</u>	<u>200</u>
b. <u>1,000 - &lt; 5,000 gpd</u>	<u>280</u>	<u>300</u>
c. <u>5,000 - &lt; 10,000 gpd</u>	<u>550</u>	<u>600</u>
d. <u>10,000 - &lt; 20,000 gpd</u>	<u>1,100</u>	<u>1,180</u>
e. <u>20,000 gpd and greater</u>	<u>1,830</u>	<u>1,930</u>
<u>Vehicle Maintenance and Freight Transfer</u>		
a. <u>&lt; 0.5 acre</u>	<u>3,930</u>	<u>3,930</u>
b. <u>0.5 - &lt; 1.0 acre</u>	<u>7,850</u>	<u>7,850</u>
c. <u>1.0 acre and greater</u>	<u>11,780</u>	<u>11,780</u>
<u>Vessel Deconstruction</u>		
a. <u>Base Fee</u>	<u>3,160</u>	<u>3,160</u>
b. <u>On land (per project)</u>	<u>3,550</u>	<u>3,550</u>
c. <u>On barge or drydock (per project)</u>	<u>4,850</u>	<u>4,850</u>
d. <u>In-Water (per project)</u>	<u>18,700</u>	<u>18,700</u>
<i>The vessel deconstruction annual fee is the sum of the base fee and applicable subcategories.</i>		
<u>Water Plants - General Permit</u>	<u>3,700</u>	<u>3,700</u>
<u>Water Plants - Individual Permit</u>	<u>5,300</u>	<u>5,300</u>
<u>Wineries - General Permit</u>		
a. <u>&lt; 24,999 gpy</u>	<u>300</u>	<u>300</u>
b. <u>25,000 - &lt; 39,999 gpy</u>	<u>440</u>	<u>440</u>
c. <u>40,000 - &lt; 54,999 gpy</u>	<u>680</u>	<u>680</u>

<u>INDUSTRIAL FACILITY CATEGORIES</u>	<u>FY2024 ANNUAL PERMIT FEE</u>	<u>FY2025 ANNUAL PERMIT FEE</u>
d. 55,000 - < 69,999 gpy	910	910
e. 70,000 - < 99,999 gpy	1,150	1,150
f. 100,000 - < 299,999 gpy	1,660	1,660
g. 300,000 - < 699,999 gpy	4,970	4,970
h. 700,000 - < 999,999 gpy	11,600	11,600
i. 1,000,000 - < 1,999,999 gpy	16,600	16,600
j. 2,000,000 gpy and greater	33,200	33,200
<u>Wineries - Individual Permit</u>		
a. < 24,999 gpy	430	430
b. 25,000 - < 39,999 gpy	630	630
c. 40,000 - < 54,999 gpy	960	960
d. 55,000 - < 69,999 gpy	1,300	1,300
e. 70,000 - < 99,999 gpy	1,650	1,650
f. 100,000 - < 299,999 gpy	2,370	2,370
g. 300,000 - < 699,999 gpy	7,110	7,110
h. 700,000 - < 999,999 gpy	16,600	16,600
i. 1,000,000 - < 1,999,999 gpy	23,760	23,760
j. 2,000,000 gpy and greater	47,000	47,000

(a) Facilities are assessed a fee or fees that best aligns with the category and subcategory relevant to their water quality discharge. Except for CAFO, RCRA, sand and gravel, shipyard, and vessel deconstruction that operate within multiple fee subcategories, if the facility fits within several categories or subcategories, then the permit holder is assessed the highest fee.

(b) CAFO, fruit packing, sand and gravel, vessel deconstruction and winery permit holders must submit information to the department certifying annual unit amounts or production during the previous calendar year. The permit holder must submit the information to the department by the required due date. Failure to provide this information will result in a fee determination based on the highest subcategory for which the facility has received permit coverage.

(c) Information submitted on the required form must include a signature certifying the information is correct:

- (i) For a corporation, by an authorized corporate officer;
- (ii) For a limited partnership, by an authorized partner;
- (iii) For a general partnership, by an authorized general partner; or
- (iv) For a sole proprietorship, by the proprietor.

(d) The department may verify information submitted and, if it determines that false statements have been made, it will, revise both current and previously granted fee determinations as appropriate, in addition to taking other actions provided by law.

(e) Fees for fruit packing facilities discharging only noncontact cooling water without additives shall pay the lesser of the applicable fee in the fruit packing or noncontact cooling water without additives categories. Any inactive fruit packing facility shall be assessed the lowest bin per year fee or lowest noncontact cooling water fee, as determined by the department.

(f) Where no clear industrial facility category exists for placement of a permit holder, the department will place the permit holder in a category with dischargers or permit holders that contain or use similar properties or processes or a category that contains similar permitting complexities. If no such category exists, the department will assess the minimum permit fee as specified in this section, until an appropriate permit fee category can be added to the rule.

(g) Hazardous waste cleanup sites and EPA authorized RCRA corrective action sites where the department has begun cost recovery through chapter 70A.305 RCW shall not pay an annual permit fee under this chapter until such time as the cost recovery under chapter 70A.305 RCW ceases.

(h) Any permit holder (with the exception of nonoperating portable facilities and fruit packing operations), who has not been in continuous operation within a consecutive 18-month period to include the assessed fiscal year or who commits to not being in operation for a consecutive 18-month period or longer may request their annual permit fee be reduced to the inactive rate by submitting the required request form. The inactive rate is 25 percent of the annual permit fee that would otherwise be assessed. The inactive status may be verified by the appropriate department staff. After the inactive status for the 18-month period ends, the permit fee returns to the full amount. The permit holder must submit another form to extend the inactive rate for another 18 months.

If a permit holder resumes operations during the 18-month inactive status, the full permit fee is due for that fiscal year. The inactive rate fee paid, will be applied to the full fee due.

(i) Facilities with subcategories based on gallons per day (gpd) shall have their annual permit fee determined by using the maximum daily flow or maximum monthly average permitted flow in gallons per day as specified in the waste discharge permit, whichever is greater.

(j) RCRA corrective action sites requiring a waste discharge permit are assessed a separate annual permit fee regardless of whether the discharge is authorized by a separate permit or by a modification to an existing permit for a discharge other than that resulting from the corrective action.

(4) MUNICIPAL AND DOMESTIC WASTEWATER FACILITIES ANNUAL PERMIT FEE SCHEDULE

The following municipal and domestic wastewater facilities must pay an annual permit fee as follows:

(a) The annual permit fee for a permit held by a municipality or federally recognized tribe for a domestic wastewater facility issued under RCW 90.48.162 or 90.48.260 is determined as follows:

<b>Residential Equivalents (RE)</b>	<b>FY2024 Permit Fee</b>	<b>FY2025 Permit Fee</b>
<i>The annual fee is calculated by multiplying the number of REs by the FY per RE rate, for permit holders with 100 or more REs For permit holders with less than 100 REs, a flat fee will be assessed</i>		
<u>Less than 100 REs (Minimum Muni WW Fee)</u>	<u>\$250 flat fee</u>	<u>\$250 flat fee</u>
<u>100 and more REs</u>		
<u>&lt; 250,000 REs</u>	<u>\$3.43 per RE</u>	<u>\$3.43 per RE</u>
<u>Greater than 250,000 REs</u>	<u>\$3.43 per RE</u>	<u>\$3.43 per RE</u>

(b) The annual permit fee for privately owned or public-owned domestic wastewater facilities that do not primarily serve residential customers and for state-owned domestic wastewater facilities is deter-

mined by using the design flow, or maximum daily flow or maximum monthly average permitted flow in million gallons per day, whichever is greater, as specified in the waste discharge permit. The annual fees for flow-based facilities are as follows:

<b>Tiered Flow-Based Fee</b>	<b>FY2024 Annual Permit Fee</b>	<b>FY2025 Annual Permit Fee</b>
<u>.1 MGD and greater</u>	<u>\$12,000</u>	<u>\$12,000</u>
<u>.05 MGD - &lt;.1 MGD</u>	<u>\$6,000</u>	<u>\$6,000</u>
<u>.01 MGD - &lt;.05 MGD</u>	<u>\$3,000</u>	<u>\$3,000</u>
<u>.005 MGD - &lt;.01 MGD</u>	<u>\$1,500</u>	<u>\$1,500</u>
<u>.001 MGD - &lt;.005 MGD</u>	<u>\$750</u>	<u>\$750</u>
<u>Less than .001 MGD</u>	<u>\$375</u>	<u>\$375</u>

(c) Instructions for calculating residential equivalents and reporting flow are provided on annual forms sent by the department to permit holders each year. Permit holders are required to complete and return the forms and any required back-up documentation to the department by the specified due date. Failure to return the annual form and any required back-up documentation will result in a permit fee as determined by the department.

(i) The annual forms must include a signature certifying the provided information is correct:

(A) For a corporation, by an authorized corporate officer;

(B) For a limited partnership, by an authorized partner;

(C) For a general partnership, by an authorized partner;

(D) For a sole proprietorship, by the proprietor; or

(E) For a municipal or other public facility, by either a ranking elected official or a principal executive officer.

(ii) The department may verify the information contained in the submitted documentation and, if it determines that the permit holder has made false statements, will, revise both current and previously granted fee determinations as appropriate, in addition to taking other actions provided by law.

(d) The annual permit fee for a domestic wastewater facility with a Puget Sound nutrient general permit will be calculated at the rate of \$0.31 per residential equivalent per year or the \$250 minimum wastewater fee described in this section, as determined by the department. The number of residential equivalents will be calculated based on information provided on the forms required in this section.

**(5) CONSTRUCTION AND INDUSTRIAL STORMWATER ANNUAL PERMIT FEE SCHEDULE**

(a) Unless specifically addressed elsewhere in this section, the following construction and industrial stormwater permit holders must pay an annual permit fee as follows:

	<b>FY204 Annual Permit Fee</b>	<b>FY2025 Annual Permit Fee</b>
<b>a. Construction and Industrial Stormwater - Individual Permits</b>		
<u>1. &lt; 50 acres</u>	<u>\$6,250</u>	<u>\$6,350</u>
<u>2. 50 - &lt; 100 acres</u>	<u>12,500</u>	<u>12,750</u>
<u>3. 100 - &lt; 500 acres</u>	<u>18,730</u>	<u>19,030</u>
<u>4. 500 acres and greater</u>	<u>25,500</u>	<u>26,000</u>
<b>b. Industrial Stormwater General Permit (ISGP)</b>		
<u>1. Municipalities and state agencies</u>	<u>2,100</u>	<u>2,100</u>

	<b><u>FY204 Annual Permit Fee</u></b>	<b><u>FY2025 Annual Permit Fee</u></b>
<u>2. New permit holders who have not previously submitted an annual gross revenue form</u>	<u>1,100</u>	<u>1,100</u>
<u>3. All other ISGP permit holders will have a fee based on the annual gross revenue reporting</u>		
<u>Gross Revenue Subcategories</u>		
<u>Less than \$100,000</u>	<u>200</u>	<u>200</u>
<u>\$100,000 - &lt; \$500,000</u>	<u>500</u>	<u>500</u>
<u>\$500,000 - &lt; \$1,000,000</u>	<u>750</u>	<u>750</u>
<u>\$1,000,000 - &lt; \$2,500,000</u>	<u>1,020</u>	<u>1,020</u>
<u>\$2,500,000 - &lt; \$5,000,000</u>	<u>1,700</u>	<u>1,700</u>
<u>\$5,000,000 - &lt; \$10,000,000</u>	<u>2,540</u>	<u>2,540</u>
<u>\$10,000,000 - &lt; \$15,000,000</u>	<u>3,020</u>	<u>3,020</u>
<u>\$15,000,000 - &lt; \$20,000,000</u>	<u>3,250</u>	<u>3,250</u>
<u>\$20,000,000 and greater</u>	<u>3,400</u>	<u>3,400</u>
<b><u>c. Construction Stormwater General Permit (CSWGP)</u></b>		
<u>1. Less than 1 acre</u>	<u>500</u>	<u>500</u>
<u>2. 1 - &lt; 5 acres</u>	<u>780</u>	<u>780</u>
<u>3. 5 - &lt; 7 acres</u>	<u>1,280</u>	<u>1,280</u>
<u>4. 7 - &lt; 10 acres</u>	<u>1,720</u>	<u>1,720</u>
<u>5. 10 - &lt; 20 acres</u>	<u>2,350</u>	<u>2,350</u>
<u>6. 20 - &lt; 50 acres</u>	<u>2,920</u>	<u>2,920</u>
<u>7. 50 - &lt; 100 acres</u>	<u>3,100</u>	<u>3,100</u>
<u>8. 100 - &lt; 500 acres</u>	<u>3,300</u>	<u>3,300</u>
<u>9. 500 - &lt; 1,000 acres</u>	<u>3,500</u>	<u>3,500</u>
<u>10. 1,000 and more acres</u>	<u>3,700</u>	<u>3,700</u>

(b) For industrial stormwater general permit holders assessed fees based on gross revenue, the permit holder must provide gross revenue information on the required form annually. Forms will be provided annually by the department and with a specified due date. Failure to provide this information will result in a fee determination based on the highest subcategory for which the facility has permit coverage. Submitted forms must include a signature certifying the provided information is correct:

- (i) For a corporation, by an authorized corporate officer;
- (ii) For a limited partnership, by an authorized general partner;
- (iii) For a general partnership, by an authorized partner; or
- (iv) For a sole proprietorship, by the proprietor.

(c) The department may verify the information contained in the submitted documentation and, if it determines that the permit holder has made false statements, will revise both current and previous granted fee determinations as appropriate in addition to taking other actions provided by law.

(6) MUNICIPAL STORMWATER ANNUAL PERMIT FEE SCHEDULE

(a) Municipal stormwater phase 1 general permit holders must pay an annual permit fee as follows:

<b><u>Name of Entity</u></b>	<b><u>FY2024 Annual Permit Fee</u></b>	<b><u>FY2025 Annual Permit Fee</u></b>
<u>Clark County</u>	<u>\$72,665</u>	<u>\$76,916</u>

<u>Name of Entity</u>	<u>FY2024 Annual Permit Fee</u>	<u>FY2025 Annual Permit Fee</u>
<u>King County</u>	<u>72,665</u>	<u>76,916</u>
<u>Pierce County</u>	<u>72,665</u>	<u>76,916</u>
<u>Seattle, City of</u>	<u>72,665</u>	<u>76,916</u>
<u>Snohomish County</u>	<u>72,665</u>	<u>76,916</u>
<u>Tacoma, City of</u>	<u>72,665</u>	<u>76,916</u>
<u>WSDOT</u>	<u>72,665</u>	<u>76,916</u>

(b) Municipal stormwater phase 2 general permit holders pay a fee for fiscal year 2024 and 2025 based on the most recently available census estimations for median household income for cities and counties as follows:

(i) For cities and counties with a median household income level above the state average, the annual permit fee is \$2.04 per housing unit inside the geographic area covered by the permit, with a not-to-exceed amount of \$72,665 in fiscal year 2024, and \$76,916 in fiscal year 2025. The minimum annual permit fee is \$3,000.

(ii) For cities and counties with a median household income level below the state average, the annual permit fee is \$1.04 per housing unit inside the geographic area covered by the permit. The minimum annual permit fee is \$150.

(c) Other entities (phase 1 and 2 secondary facilities) with a municipal stormwater general permit must pay an annual permit fee based on the entities' previous calendar year annual operating budget for the facilities covered under the stormwater permit as follows:

<u>Other Entities' Annual Stormwater Facility Operating Budget</u>	<u>FY2024 Annual Permit Fee</u>	<u>FY2025 Annual Permit Fee</u>
<u>Less than \$100,000</u>	<u>\$200</u>	<u>\$200</u>
<u>\$100,000 - &lt; \$1,000,000</u>	<u>805</u>	<u>805</u>
<u>\$1,000,000 - &lt; \$5,000,000</u>	<u>2,010</u>	<u>2,010</u>
<u>\$5,000,000 - &lt; \$10,000,000</u>	<u>3,020</u>	<u>3,020</u>
<u>\$10,000,000 and greater</u>	<u>5,024</u>	<u>5,024</u>

(d) Stormwater permit holders assessed fees under (b) of this subsection must complete an annual form provided by department, certifying the number of housing units served by their system. Permit holders under (c) of this subsection must complete an annual form provided by the department supplying their annual operating budget. The forms must be completed and returned to the department annually within the time frame specified on the forms. Failure to return the form will result in an annual permit fee as determined by the department.

(e) One annual permit fee will be assessed for entities that apply as copermittees or coapplicants and are assigned one permit number. The annual permit fee will be equal to the highest single permit fee that would have been assessed if the copermittees had applied separately. The copermittee responsible for paying annual permit fees will be identified in the permit.

[Statutory Authority: RCW 90.48.465. WSR 21-13-150 (Order 19-10), § 173-224-040, filed 6/22/21, effective 7/23/21; WSR 19-14-040 (Order 18-01), § 173-224-040, filed 6/26/19, effective 7/27/19; WSR 17-16-005 (Order 16-11), § 173-224-040, filed 7/20/17, effective 8/20/17; WSR

15-23-110 (Order 15-02), § 173-224-040, filed 11/18/15, effective 12/19/15; WSR 13-22-051 (Order 13-02), § 173-224-040, filed 11/1/13, effective 12/2/13. Statutory Authority: RCW 90.48.465 and 2011 c 50 § 302(2). WSR 11-20-035 (Order 11-02), § 173-224-040, filed 9/27/11, effective 10/28/11. Statutory Authority: RCW 90.48.465. WSR 09-20-020 (Order 09-06), § 173-224-040, filed 9/28/09, effective 10/29/09. Statutory Authority: Chapter 90.48 RCW. WSR 08-16-109 (Order 08-05), § 173-224-040, filed 8/5/08, effective 9/5/08. Statutory Authority: RCW 90.48.465. WSR 06-12-028 (Order 05-17), § 173-224-040, filed 5/30/06, effective 6/30/06; WSR 04-15-046, § 173-224-040, filed 7/13/04, effective 8/13/04. Statutory Authority: Chapter 90.48 RCW. WSR 02-12-059, § 173-224-040, filed 5/30/02, effective 6/30/02; WSR 00-13-010 (Order 00-06), § 173-224-040, filed 6/9/00, effective 7/10/00; WSR 00-02-031 (Order 99-03), § 173-224-040, filed 12/28/99, effective 1/28/00; WSR 98-03-046 (Order 97-27), § 173-224-040, filed 1/15/98, effective 2/15/98; WSR 96-03-041 (Order 94-21), § 173-224-040, filed 1/10/96, effective 2/10/96; WSR 94-10-027 (Order 93-08), § 173-224-040, filed 4/28/94, effective 5/29/94; WSR 92-03-131 (Order 91-45), § 173-224-040, filed 1/21/92, effective 2/21/92. Statutory Authority: Chapter 43.21A RCW. WSR 89-12-027 and 90-07-015 (Order 89-8 and 89-8A), § 173-224-040, filed 5/31/89 and 3/13/90, effective 4/13/90.]

AMENDATORY SECTION (Amending WSR 21-13-150, filed 6/22/21, effective 7/23/21)

**WAC 173-224-050 Permit fee computation and payments.** (1) The department (~~(shall charge)~~) assesses annual permit fees based on the permit fee schedule (~~(contained)~~) in WAC 173-224-040. The department (~~(may charge fees)~~) issues invoices at the beginning of the fiscal year to which they apply. The department (~~(shall)~~) will notify permit holders of annual permit fee charges by either sending an invoice to the (~~(permittee)~~) permit holder on record or making the invoice available online. (~~(The department must receive permit fee)~~) Payments are due by the date on the invoice, which is typically within (~~(forty-five)~~) 45 days (~~(after the department sends a billing statement)~~) of the invoice issue date. The department may elect to (~~(bill)~~) invoice the annual permit fee to permit holders (~~(a prorated portion of the annual fee)~~) on a monthly, quarterly, or other periodic basis. It is the permit holder's responsibility to ensure that the department has the correct billing address on file.

(2) Permit fee computation (~~(shall)~~) begins on the first day of each fiscal year. (~~(In the case of facilities or activities not previously covered by)~~) For newly issued permits, fee computation begins on the permit issuance date and shall not fall below the minimum permit fee as specified in WAC 173-224-040(2). (~~(In the case of applicants)~~)

(3) For state waste discharge permit(~~(s)~~) applicants who are deemed to have a temporary permit under RCW 90.48.200, fee computation (~~(shall)~~) begins on the (~~(sixty-first day after)~~) date the department (~~(accepts a)~~) approves the completed application. (~~(In the case of)~~)

(4) For existing NPDES permit holders who submit a (~~(new, updated)~~) renewal permit application or a permit modification request containing information that (~~(could)~~) may change their assigned permit fee, computation and permit fee category reassignment begins (~~(upon)~~) on the date the department (~~(accepts the application)~~) issues the renewed permit or permit modification.

~~(5)~~ Any facility that obtains permit coverage but fails to operate ~~(will)~~ is still ~~(be)~~ obligated to pay the annual permit fee assessment in this chapter until the department terminates permit coverage. Permits terminated during the fiscal year will pay the full annual fee assessment regardless of the permit termination date.

~~((3))~~ (6) Annual permit fees for sand and gravel general permit holders are assessed as in ((subsection (2) of this section)) WAC 173-224-040(3) and:

(a) Nonoperating sites. A facility conducting mining, screening, washing ~~(and/or)~~ or crushing activities, excluding portable rock crushing operations, is considered nonoperating for fee purposes if they are conducting these activities for less than ~~(ninety))~~ 90 cumulative days during a calendar year. A facility producing or recycling no asphalt ~~(and/or)~~ or concrete during the calendar year is also considered nonoperating for fee purposes.

(b) Nonoperating sites that become active for only concrete ~~(and/or)~~ or asphalt production or recycling are assessed a prorated fee for the actual time ~~(inactive))~~ nonoperational. For the actual time a concrete ~~(and/or)~~ or asphalt facility is active, excluding asphalt portable batch plants and concrete portable batch plants, fees are based on total production or recycled amount of concrete ~~(and/or)~~ or asphalt.

(c) Fees for continuously active sites that produce or recycle concrete ~~(and/or)~~ or asphalt, excluding asphalt portable batch plants and concrete portable batch plants, are based on the previous calendar year production totals. Existing facilities must provide the department with the production or recycled totals for concrete ~~(and/or)~~ or asphalt produced or recycled during the previous calendar year. New facilities with no historical asphalt ~~(and/or)~~ or concrete production or recycling data will have their first year fee based on the production or recycling levels reported ~~((en))~~ in the permit application ((for coverage under the National Pollutant Discharge Elimination System and State Waste Discharge Permit for Process Water, Stormwater, and Mine Dewatering Water Discharges Associated with Sand and Gravel Operations, Rock Quarries and Similar Mining Facilities including Stockpiles of Mined Materials, Concrete Batch Operations and Asphalt Batch Operations general permit)).

~~((4))~~ (7) Fees for fruit ((packer)) packing general permit holders are assessed as in ((subsection (2) of this section)) WAC 173-224-040(3) and are computed based on the three previous calendar years production totals. Existing facilities must provide the department with the production totals in the manner described in WAC 173-224-040 ((2)(e)) (3)(b). New facilities with no historical production data will have their first year fee based on the estimated production level for that year. The second year fee is determined based on the actual production during the first year. Fee calculation for subsequent years will be based on the average production values of previous years.

~~((5))~~ (8) Facilities with construction and industrial stormwater general permit coverage will have their annual permit fees begin on the permit issuance date.

~~((6) Permit fee accrual will))~~ (9) Annual permit fees continue until the permit has been terminated by the department regardless ((if)) of whether the activity covered under the permit has already ceased.

~~((7) Facilities with an existing NPDES and/or state wastewater discharge permit who also have obtained industrial and/or construction~~



~~stormwater general permit coverage shall only pay an annual fee based on the permit with the highest permit fee category assessment.~~

~~(8))~~ (10) Computation of fees shall end on June 30th, the last day of the state's fiscal year regardless of the permit termination date.

~~((9))~~ (11) The applicable permit fee shall be paid using ~~((ecology's))~~ the department's online payment ~~((software))~~ system or by check or money order payable to the "Department of Ecology" and mailed to the ~~((Water Quality Permit Fee Program))~~ Cashiering Office, P.O. Box 47611, Olympia, Washington 98504-7611.

~~((10))~~ (12) In the event a check is returned due to insufficient funds, the department shall consider the permit fee to be unpaid.

~~((11) Delinquent accounts.))~~ (13) Permit holders are considered delinquent in the payment of annual permit fees if the fees are not received by the first invoice ~~((billing))~~ due date. Delinquent accounts are processed in the following manner:

(a) Municipal and government entities ~~((shall))~~ and Native American tribes will be notified by regular mail or email that they have ~~((forty-five))~~ 45 days to ~~((bring the delinquent account up-to-date))~~ pay outstanding invoices. Accounts that remain delinquent after ~~((forty-five))~~ 45 days may receive a ~~((permit revocation letter))~~ notice of penalty for nonpayment of fees.

(b) Nonmunicipal or nongovernment permit holders ~~((shall))~~ will be notified by the department by regular mail or email that they have ~~((forty-five))~~ 45 days to ~~((bring the delinquent account up-to-date))~~ pay outstanding invoices. Accounts that remain delinquent after ~~((forty-five))~~ 45 days may receive a notice of penalty and may be ~~((turned over for))~~ referred to a collections agency. In addition to the amount owed, the collection agent may add a fee to the delinquent amount owed as authorized by RCW 19.16.500. If the collection agency fails to recover the delinquent fees ~~((after twelve months))~~, the permit holder may receive a permit revocation letter for nonpayment of fees.

[Statutory Authority: RCW 90.48.465. WSR 21-13-150 (Order 19-10), § 173-224-050, filed 6/22/21, effective 7/23/21; WSR 19-14-040 (Order 18-01), § 173-224-050, filed 6/26/19, effective 7/27/19; WSR 17-16-005 (Order 16-11), § 173-224-050, filed 7/20/17, effective 8/20/17; WSR 13-22-051 (Order 13-02), § 173-224-050, filed 11/1/13, effective 12/2/13; WSR 09-20-020 (Order 09-06), § 173-224-050, filed 9/28/09, effective 10/29/09. Statutory Authority: Chapter 90.48 RCW. WSR 08-16-109 (Order 08-05), § 173-224-050, filed 8/5/08, effective 9/5/08. Statutory Authority: RCW 90.48.465. WSR 04-15-046, § 173-224-050, filed 7/13/04, effective 8/13/04. Statutory Authority: Chapter 90.48 RCW. WSR 02-12-059, § 173-224-050, filed 5/30/02, effective 6/30/02; WSR 00-02-031 (Order 99-03), § 173-224-050, filed 12/28/99, effective 1/28/00; WSR 98-03-046 (Order 97-27), § 173-224-050, filed 1/15/98, effective 2/15/98; WSR 96-03-041 (Order 94-21), § 173-224-050, filed 1/10/96, effective 2/10/96; WSR 94-10-027 (Order 93-08), § 173-224-050, filed 4/28/94, effective 5/29/94; WSR 92-03-131 (Order 91-45), § 173-224-050, filed 1/21/92, effective 2/21/92. Statutory Authority: Chapter 43.21A RCW. WSR 89-12-027 and 90-07-015 (Order 89-8 and 89-8A), § 173-224-050, filed 5/31/89 and 3/13/90, effective 4/13/90.]

AMENDATORY SECTION (Amending WSR 89-12-027 and 90-07-015, filed 5/31/89 and 3/13/90, effective 4/13/90)

**WAC 173-224-060 Permits issued by other governmental agencies.**

The department shall not charge permit fees for:

- (1) Permits issued by a city, town, or municipal corporation under RCW 90.48.165;
- (2) Permits issued by the energy facilities site evaluation council under RCW 80.50.071;
- (3) Permits administered by the EPA under 33 U.S.C. 1251 et seq.
- (4) Nothing herein shall restrict the department from ((charg-  
ing)) assessing fees to recover administrative expenses of permits it  
issues under RCW 90.48.160 for discharges into municipal sewer sys-  
tems, nor for charging fees to recover administrative expenses related  
to monitoring compliance with delegated pretreatment programs.

[Statutory Authority: Chapter 43.21A RCW. WSR 89-12-027 and 90-07-015 (Order 89-8 and 89-8A), § 173-224-060, filed 5/31/89 and 3/13/90, effective 4/13/90.]

AMENDATORY SECTION (Amending WSR 21-13-150, filed 6/22/21, effective 7/23/21)

**WAC 173-224-080 Transfer of permit coverage.** In the event ((that)) a permit is transferred, the department shall not refund permit fees. Fees paid by a previous permit holder shall be applied to the corresponding fee payment requirements of a new permit holder. Unpaid permit fees owed by a previous permit holder are the liability of a new permit holder. Fee agreements between a new and previous permit holder are not binding on the department.

[Statutory Authority: RCW 90.48.465. WSR 21-13-150 (Order 19-10), § 173-224-080, filed 6/22/21, effective 7/23/21. Statutory Authority: Chapter 43.21A RCW. WSR 89-12-027 and 90-07-015 (Order 89-8 and 89-8A), § 173-224-080, filed 5/31/89 and 3/13/90, effective 4/13/90.]

AMENDATORY SECTION (Amending WSR 21-13-150, filed 6/22/21, effective 7/23/21)

**WAC 173-224-090 Permit fee reductions.** ((With the exception of facilities covered under the construction and industrial stormwater general permits who are not eligible to apply for a fee reduction, any business required to pay a fee may receive a reduction of its permit fee.)) Facilities covered under the construction stormwater general and individual permits, and the industrial stormwater general permits are not eligible to apply for a fee reduction under this section.

- (1) Market research and development.
  - (a) To qualify for the market research and development fee reduction, the ((operation under)) permit holder must be:
    - (i) A research facility with the primary purpose of researching market viability for products ((and/or)) or processes that reduce or eliminate wastewater pollutants or wastewater pollutant generating activity;

(ii) Covered under an individual permit issued within the past three fiscal years; and

(iii) Assessed a fee under an established fee category, excluding facility not otherwise classified.

(b) To receive a fee reduction, the permit holder must (~~submit an application~~) apply in a manner prescribed by the department demonstrating that the conditions in (a) of this subsection are met. The application (~~shall bear a certification of correctness and be signed~~) must include a signature certifying the provided information is correct:

(i) (~~In the case of~~) For a corporation, by an authorized corporate officer;

(ii) (~~In the case of~~) For a limited partnership, by an authorized general partner;

(iii) (~~In the case of~~) For a general partnership, by an authorized partner;

(iv) (~~In the case of~~) For a sole proprietorship, by the proprietor; or

(v) (~~In the case of~~) For a municipality, state, (~~or~~) other public entity, or Native American tribe, by either a principal executive officer or (~~a ranking~~) an elected official.

(c) The department may verify the information contained in the application and, if it determines that the permit holder has made false statements, (~~may~~) will deny the fee reduction request and revoke previously granted fee reductions.

(d) (~~The permit fee for market research and development determined to be~~) If the department determines a permit holder is eligible for a fee reduction under ((a) of) this subsection ((shall be)), the annual permit fee is reduced to ((twenty-five)) 25 percent of the assessed annual permit fee but not less than the minimum permit fee in WAC 173-224-040(2).

(e) A (~~site~~) permit holder can only be eligible for (~~this~~) a market research and development reduction for three consecutive fiscal years.

(2) Small business fee reduction.

(a) To qualify for the small business fee reduction, a business must meet all of the following conditions:

(i) Be a corporation, partnership, sole proprietorship, or other legal entity formed for the purpose of making a profit;

(ii) Be independently owned and operated from all other businesses (i.e., not a subsidiary of a parent company);

(iii) Have annual sales of (~~one million dollars~~) \$1,000,000 or less of the goods or services produced using the processes regulated by the waste discharge or individual stormwater discharge permit; and

(iv) Have an original annual permit fee assessment totaling (~~five hundred dollars~~) \$500 or greater.

(b) To receive a small business fee reduction, the permit holder must (~~submit an application~~) apply in a manner prescribed by the department demonstrating that the conditions in (~~(a) of~~) this subsection are met. The application (~~shall bear a certification of correctness and be signed~~) must include a signature certifying the information provided is correct:

(i) (~~In the case of~~) For a corporation, by an authorized corporate officer;

(ii) (~~In the case of~~) For a limited partnership, by an authorized general partner;

(iii) ~~((In the case of))~~ For a general partnership, by an authorized partner; or

(iv) ~~((In the case of))~~ For a sole proprietorship, by the proprietor.

(c) The department may verify the information contained in the application and, if it determines that the permit holder has made false statements, ~~((may))~~ will deny the fee reduction request and revoke previously granted fee reductions.

(d) ~~((The permit fee for small businesses determined to be))~~ If the department determines a permit holder is eligible under ~~((a) of)~~ this subsection ~~((shall be)),~~ the annual permit fee is reduced to ~~((fifty))~~ 50 percent of the assessed annual permit fee but not less than the minimum permit fee in WAC 173-224-040(2).

(3) Extreme hardship fee reduction.

(a) Any small business with annual gross revenue totaling ~~((one hundred thousand dollars))~~ \$100,000 or less from goods and services produced using the processes regulated by the ~~((waste discharge or individual stormwater))~~ discharge permit may apply in a manner prescribed by the department for an extreme hardship fee reduction. ~~((The small business must provide sufficient evidence to support its claim of an extreme hardship. In no case will a permit fee be reduced below \$128.00.))~~

(b) To receive an extreme hardship fee reduction, the permit holder must provide sufficient evidence to support its claim of hardship and demonstrate that the conditions in this subsection are met. The application must have a signature certifying that the information provided is correct and be signed:

(i) For a corporation, by an authorized corporate officer;

(ii) For a limited partnership, by an authorized general partner;

(iii) For a general partnership, by an authorized partner; or

(iv) For a sole proprietorship, by the proprietor.

(c) The department may verify the information contained in the application and, if it determines that the permit holder has made false statements, will deny the fee reduction request and revoke previously granted fee reductions.

(d) If the department determines a permit holder is eligible under this subsection, the annual permit fee is reduced to the minimum annual permit fee specified in WAC 173-224-040(2).

(4) Hazardous waste cleanup hardship reduction.

(a) Any former small business that is currently assessed a hazardous waste cleanup sites fee and no longer operates as a small business on the cleanup site, may apply in a manner prescribed by the department to have their assessed fee reduced. The permit holder must provide sufficient evidence to support its claim of hardship and demonstrate that the conditions in this subsection are met. The application must have a signature certifying the information provided is correct and be signed:

(i) For a corporation, by an authorized corporate officer;

(ii) For a limited partnership, by an authorized general partner;

(iii) For a general partnership, by an authorized partner; or

(iv) For a sole proprietorship, by the proprietor.

(b) The department may verify the information contained in the application and, if it determines that the permit holder has made false statements, will deny the fee reduction request and revoke previously granted fee reductions.

(c) If the department determines a permit holder is eligible under this subsection, the annual permit fee is reduced to \$500.

[Statutory Authority: RCW 90.48.465. WSR 21-13-150 (Order 19-10), § 173-224-090, filed 6/22/21, effective 7/23/21; WSR 19-14-040 (Order 18-01), § 173-224-090, filed 6/26/19, effective 7/27/19; WSR 13-22-051 (Order 13-02), § 173-224-090, filed 11/1/13, effective 12/2/13. Statutory Authority: RCW 90.48.465 and 2011 c 50 § 302(2). WSR 11-20-035 (Order 11-02), § 173-224-090, filed 9/27/11, effective 10/28/11. Statutory Authority: RCW 90.48.465. WSR 09-20-020 (Order 09-06), § 173-224-090, filed 9/28/09, effective 10/29/09. Statutory Authority: Chapter 90.48 RCW. WSR 08-16-109 (Order 08-05), § 173-224-090, filed 8/5/08, effective 9/5/08. Statutory Authority: RCW 90.48.465. WSR 04-15-046, § 173-224-090, filed 7/13/04, effective 8/13/04. Statutory Authority: Chapter 90.48 RCW. WSR 96-03-041 (Order 94-21), § 173-224-090, filed 1/10/96, effective 2/10/96; WSR 94-10-027 (Order 93-08), § 173-224-090, filed 4/28/94, effective 5/29/94; WSR 92-03-131 (Order 91-45), § 173-224-090, filed 1/21/92, effective 2/21/92. Statutory Authority: Chapter 43.21A RCW. WSR 89-12-027 and 90-07-015 (Order 89-8 and 89-8A), § 173-224-090, filed 5/31/89 and 3/13/90, effective 4/13/90.]

AMENDATORY SECTION (Amending WSR 19-14-040, filed 6/26/19, effective 7/27/19)

**WAC 173-224-100 Administrative appeals to the department.** Any person aggrieved by a determination made under this chapter by the department may file a written appeal to the department no later than each fiscal year's first billing due date for payment of fees. Such appeal shall state the reasons that the aggrieved person believes that the department's determination is contrary to the requirements of RCW 90.48.465, and specific actions they are requesting that are consistent with those requirements. The department shall either issue a revised determination or a statement upholding the original determination. A revised determination shall be consistent with the requirements of RCW 90.48.465. Any person feeling aggrieved by the administrative appeals decision made by the department regarding their permit fee may obtain review thereof by filing an appeal with the pollution control hearings board, (~~(P.O. Box 40903, Olympia, Washington 98504-0903,~~) within (~~(thirty)~~) 30 days of receipt of the department's decision. In addition, a copy of the appeal must be served on the Department of Ecology, Attention: Water Quality Program Permit Fee Unit, P.O. Box 47600, Olympia, Washington 98504-7696, within (~~(thirty)~~) 30 days of receipt. These procedures are consistent with the provisions of chapter 43.21B RCW and the rules and regulations adopted thereunder.

[Statutory Authority: RCW 90.48.465. WSR 19-14-040 (Order 18-01), § 173-224-100, filed 6/26/19, effective 7/27/19. Statutory Authority: Chapter 90.48 RCW. WSR 08-16-109 (Order 08-05), § 173-224-100, filed 8/5/08, effective 9/5/08. Statutory Authority: Chapter 90.48 RCW. WSR 94-10-027 (Order 93-08), § 173-224-100, filed 4/28/94, effective 5/29/94; WSR 92-03-131 (Order 91-45), § 173-224-100, filed 1/21/92, effective 2/21/92. Statutory Authority: Chapter 43.21A RCW. WSR 89-12-027 and 90-07-015 (Order 89-8 and 89-8A), § 173-224-100, filed 5/31/89 and 3/13/90, effective 4/13/90.]

**WSR 23-07-140**  
**PROPOSED RULES**  
**SOUTH PUGET SOUND**  
**COMMUNITY COLLEGE**

[Filed March 22, 2023, 11:03 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-03-116.

Title of Rule and Other Identifying Information: South Puget Sound Community College's (SPSCC) code of student rights and responsibilities has been updated to comply with new state law and federal interpretations of Title IX regulations. Specifically, the following WAC have been revised: WAC 132X-60-015 Definitions, 132X-60-020 Jurisdiction, 132X-60-090 Prohibited student conduct, 132X-60-200 Order of precedence, 132X-60-260 Evidence, and 132X-60-280 Appeals. The following new WAC has been added: WAC 132X-60-125 Hazing prohibited—Sanctions.

Hearing Location(s): On April 28, 2023, at 10:00 a.m., at SPSCC Olympia Campus, Building 27, Room 119. Student senate meeting.

Date of Intended Adoption: May 9, 2023.

Submit Written Comments to: David Pelkey, 2011 Mottman Road S.W., Olympia, WA 98512, email [dpelkey@spscc.edu](mailto:dpelkey@spscc.edu), fax 360-596-5709, 360-596-5231, by May 9, 2023.

Assistance for Persons with Disabilities: Contact access services, phone 360-596-5306, fax 360-596-5713, email [access.services@spscc.edu](mailto:access.services@spscc.edu), by May 9, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Washington state legislature adopted chapter 209, Laws of 2022 (Sam's Law). SPSCC is updating chapter 132X-60 WAC, Code of student rights and responsibilities (the student conduct code) and other related rules to bring the college into compliance with Sam's Law, and may make other changes to the student conduct code. In addition, changes to the supplemental Title IX student conduct procedures in chapter 132X-60 WAC are being made to reflect changes in the interpretation of the existing Title IX regulations and to clarify some procedural issues.

Reasons Supporting Proposal: The SPSCC's code of student rights and responsibilities requires updating to be compliant with federal regulations and legislative mandates. Language will be included to update and clarify guidelines and procedural changes regarding necessary supplemental Title IX procedures. Additionally, the legislature has issued HB [2SHB] 1751 (Sam's Law), which updates the definition of hazing and requires institutions of higher education to implement anti-hazing programming for employees and students.

Statutory Authority for Adoption: RCW 28B.10.900 through 28B.10.904 (as amended by 2SHB 1751, Sam's Law Act); chapter 34.05 RCW and RCW 28B.50.140(13); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.

Statute Being Implemented: Sam's Law Act.

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

Name of Proponent: SPSCC, public.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: David Pelkey, Vice President for Student Services Office, 360-596-5231.

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

A cost-benefit analysis is not required under RCW 34.05.328. SPSCC is not one of the enumerated agencies required to conduct cost-benefit analysis under RCW 34.05.328(5).

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

March 22, 2023  
Dr. Timothy S. Stokes  
President

#### OTS-4378.1

AMENDATORY SECTION (Amending WSR 21-08-019, filed 3/29/21, effective 4/29/21)

**WAC 132X-60-015 Definitions.** The following definitions shall apply for purpose of this student conduct code:

(1) "**Business day**" means a weekday, excluding weekends and college holidays.

(2) "**College premises**" shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, college housing, vehicles, equipment, and other property owned, used, or controlled by the college.

(3) "**Complainant**" is an alleged victim of sexual misconduct.

(4) "**Conduct review officer**" is the vice president for student services or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code.

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

(6) "**Disciplinary appeal**" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of (~~ten~~) 10 instructional days or an expulsion are heard by the student conduct appeals board. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings. See 132X-60-105 for a general overview of appeals process.

(7) "**Filing**" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

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

(b) By sending the document by email and first class mail to the specified college official's office and college email address.

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

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

(9) **"Service"** is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:

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

(b) By sending the document by email and by certified mail or first class mail to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date of the document is emailed and deposited in the mail.

(10) **"Sexual misconduct"** has the meaning ascribed to this term in WAC 132X-60-090.

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

(12) **"Student conduct officer"** is a college administrator designated by the president to be responsible for implementing and enforcing the student conduct code.

(13) "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, members of a class or student cohort, student performance groups, and student living groups within student housing.

(14) **"The president"** is the president of the college. The president is authorized to:

(a) Delegate any of their responsibilities as set forth in this chapter as may be reasonably necessary; and

(b) Reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary.

[Statutory Authority: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-08-019, § 132X-60-015, filed 3/29/21, effective 4/29/21. Statutory Authority: Chapter 28B.50 RCW and RCW 42.56.040. WSR 12-03-093, § 132X-60-015, filed 1/17/12, effective 2/17/12. Statutory Authority: RCW 28B.50.140(13). WSR 00-05-023, § 132X-60-015, filed 2/8/00, effective 3/10/00.]



AMENDATORY SECTION (Amending WSR 21-08-019, filed 3/29/21, effective 4/29/21)

**WAC 132X-60-020 Jurisdiction.** (1) The student conduct code shall apply to (~~student~~) conduct by students and student groups that occurs:

(a) On college premises;  
 (b) At or in connection with college sponsored activities; or  
 (c) To off-campus conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives.

(2) Jurisdiction extends to, but is not limited to, locations in which students or student groups 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 and college-sanctioned housing.

(3) Students are responsible for their conduct from notification of acceptance at 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) 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 by students or student groups that occurs off campus.

[Statutory Authority: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-08-019, § 132X-60-020, filed 3/29/21, effective 4/29/21. Statutory Authority: Chapter 28B.50 RCW and RCW 42.56.040. WSR 12-03-093, § 132X-60-020, filed 1/17/12, effective 2/17/12. Statutory Authority: RCW 28B.50.140(13). WSR 00-05-023, § 132X-60-020, filed 2/8/00, effective 3/10/00. Statutory Authority: RCW 28B.50.140. WSR 88-21-071 (Order 88-1), § 132X-60-020, filed 10/18/88.]

AMENDATORY SECTION (Amending WSR 21-08-019, filed 3/29/21, effective 4/29/21)

**WAC 132X-60-090 Prohibited student conduct.** The college may impose disciplinary sanctions against a student who commits, attempts to commit, aids, abets, incites, encourages, or assists another person to commit, an act(s) of misconduct, which include, but are not limited to, the following:

(1) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication.

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

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

completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

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

(d) Academic sanctions for failing to meet the college's standards for satisfactory scholarship and academic integrity may be imposed at the discretion of a faculty member, program chair, dean, or academic review panel, as set forth in the college's academic standards policy. Students should refer to each faculty course syllabus, and the college's academic standards policy, which is separate and distinct from the policies and procedures associated with the college's student conduct code, Title IX, and final course grade appeals.

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

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

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

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

(d) **Tobacco, electronic cigarettes and related products.** The use of tobacco, electronic cigarettes, and related products in any building owned, leased or operated by the college or in any location where such use is prohibited, including (~~twenty-five~~) 25 feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased or operated by the college. The use of tobacco, electronic cigarettes, and related products on the college campus is restricted to designated smoking areas. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, vaporizers, and snuff.

(3) **Assault, intimidation, harassment.** Unwanted touching, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior, not otherwise protected by law that intentionally humiliates, harms, or intimidates the victim.

(4) **Cyber misconduct.** Cyberstalking, cyberbullying or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities

include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

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

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

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

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

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

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

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

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

(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 are 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 other similar contests or competitions.

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

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

(11) **Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

(a) Unauthorized use of such resources or opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of such time or resources to interfere with someone else's work;

(e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;

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

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

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

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

(12) **Obstructive or disruptive conduct.** Conduct, not otherwise protected by law, that materially or substantially interferes with, impedes, or otherwise unreasonably hinders the educational process.

(a) Instruction, research, administration, disciplinary proceeding, or other college activities, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

(13) **Other dishonesty.** Any other acts of dishonesty. Such acts include, but are not limited to:

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

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

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

(14) **Property violation.** Damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging or destruction of college property or the property of another person. Property for purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.

(15) **Retaliation.** Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such

person reported an alleged violation of this code or college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.

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

(17) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX is defined in the supplemental procedures to this code. See WAC 132X-60-210 (supplemental Title IX student conduct procedures).

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

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

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

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

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

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

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

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

(iii) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren, and adopted children under the age of (~~eighteen~~) 18.

(iv) Statutory rape. Consensual intercourse between a person who is (~~eighteen~~) 18 years of age or older, and a person who is under the age of (~~sixteen~~) 16.

(v) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in

common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(vi) Dating violence, physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(A) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(B) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(I) The length of the relationship;

(II) The type of relationship; and

(III) The frequency of interaction between the persons involved in the relationship.

(vii) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(A) Fear for their safety or the safety of others; or

(B) Suffer substantial emotional distress.

(d) For purposes of this code, "consent" means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact. A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual sexual conduct. Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

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

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

(20) **Weapons.** Carrying, exhibiting, displaying or drawing any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, or any other weapon apparently capable of producing bodily harm, in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons.

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

[Statutory Authority: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20

U.S.C. § 1681 et seq. WSR 21-08-019, § 132X-60-090, filed 3/29/21, effective 4/29/21. Statutory Authority: Chapter 28B.50 RCW and RCW 42.56.040. WSR 12-03-093, § 132X-60-090, filed 1/17/12, effective 2/17/12. Statutory Authority: RCW 28B.50.140(13). WSR 00-05-023, § 132X-60-090, filed 2/8/00, effective 3/10/00. Statutory Authority: RCW 28B.50.140. WSR 88-21-071 (Order 88-1), § 132X-60-090, filed 10/18/88.]

NEW SECTION

**WAC 132X-60-125 Hazing prohibited—Sanctions.** (1) Hazing by a student or a student group is prohibited pursuant to WAC 132X-60-090(9).

(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 any 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 assault, 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.

[ ]

AMENDATORY SECTION (Amending WSR 21-08-019, filed 3/29/21, effective 4/29/21)

**WAC 132X-60-200 Order of precedence.** This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with South Puget Sound Community College's standard disciplinary procedures in chapter 132X-60 WAC, these supplemental procedures shall take precedence. South Puget Sound Community College may, at its discretion, contract with an administrative law judge or other person to act as presiding officer and

assign such presiding officer to exercise any or all of the duties in lieu of the student conduct committee and committee chair.

[Statutory Authority: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-08-019, § 132X-60-200, filed 3/29/21, effective 4/29/21.]

AMENDATORY SECTION (Amending WSR 21-08-019, filed 3/29/21, effective 4/29/21)

**WAC 132X-60-260 Evidence.** The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

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

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

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

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

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

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

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

~~((6))~~ (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: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-08-019, § 132X-60-260, filed 3/29/21, effective 4/29/21.]



AMENDATORY SECTION (Amending WSR 21-08-019, filed 3/29/21, effective 4/29/21)

**WAC 132X-60-280 Appeals.** (~~((1) The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in chapter 132X-60 WAC.~~

~~(2) The president or their delegate will determine whether the grounds for appeal have merit, provide the 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 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: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-08-019, § 132X-60-280, filed 3/29/21, effective 4/29/21.]