

WSR 15-03-005
PROPOSED RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed January 7, 2015, 4:17 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 357-28-260 At what rate must overtime be compensated?, 357-28-285 When must compensatory time be paid in cash?, 357-31-150 Can an employee be paid for accrued sick leave?, 357-31-225 When employees separate from state service, are they entitled to a lump sum payment of unused vacation leave?, 357-31-245 What happens if an employee uses accrued vacation leave, accrued sick leave, accrued compensatory time, recognition leave, accrued temporary salary reduction leave, or receives holiday pay during a period when he/she is receiving time loss compensation?, 357-31-255 What types of leave may an employee use when absent from work or arriving late to work because of inclement weather?, 357-31-265 What is the effect of suspended operations on employees who are not required to work during the closure?, 357-31-390 What criteria does an employee have to meet to be eligible to receive shared leave?, 357-31-435 Must employees use their own leave before using shared leave?, 357-31-530 Under the Family and Medical Leave Act of 1993, how is an eligible employee defined?, 357-31-740 What is temporary salary reduction (TSR) leave and which employees are eligible to earn TSR leave?, and 357-31-745 What provisions apply to temporary salary reduction (TSR) leave?

Hearing Location(s): Office of Financial Management (OFM), Capitol Court Building, 1110 Capitol Way South, Suite 120, Conference Room 110, Olympia, WA 98501, on May 14, 2015, at 8:30 a.m.

Date of Intended Adoption: May 14, 2015.

Submit Written Comments to: Kristie Wilson, OFM, P.O. Box 47500, e-mail Kristie.wilson@ofm.wa.gov, fax (360) 586-4694, by May 7, 2015. For OFM tracking purposes, please note on submitted comments "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact OFM by May 7, 2015, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: We are proposing revising these rules to remove language that specifically applies to TSR which was effective July 1, 2011, through June 29, 2013.

In addition to removing the language that pertains to TSR, we are also proposing removing the temporary layoff language in WAC 357-31-390. This language was in effect during the 2009 - 2011 fiscal biennium only.

Reasons Supporting Proposal: ESSB 5860 was passed during the 2011 legislative session. Under this bill, employees who earned a full-time salary of more than \$2500.00 per month were subject to a three percent reduction in salary and in exchange received TSR leave. These WACs need to be amended or repealed since the time frame has expired.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

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

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kristie Wilson, 128 10th Avenue S.W., Olympia, WA 98501, (360) 407-4139.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Rules related only to internal government operations. No impact to businesses or industry.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

January 7, 2015

Roselyn Marcus
 Assistant Director of
 Legal and Legislative Services

AMENDATORY SECTION (Amending WSR 11-19-091, filed 9/20/11, effective 10/24/11)

WAC 357-28-260 At what rate must overtime be compensated? Overtime worked by an overtime eligible employee must be compensated at a rate of one and one-half times the employee's regular rate. ~~((Compensation for overtime worked between July 1, 2011, and June 29, 2013, will not be subject to the three percent temporary salary reduction under chapter 39, Laws of 2011.))~~

AMENDATORY SECTION (Amending WSR 11-19-091, filed 9/20/11, effective 10/24/11)

WAC 357-28-285 When must compensatory time be paid in cash? (1) The accumulation of unused compensatory time of any amount that exceeds two hundred forty hours, or four hundred eighty hours for employees engaged in public safety or emergency response activity, must be paid in cash at the regular rate earned by the employee at the time the employee receives such payment. ~~((Payments made between July 1, 2011, and June 29, 2013, will not be subject to the three percent temporary salary reduction under chapter 39, Laws of 2011.))~~

(2) Upon termination of employment, an employee must be paid for unused compensatory time in accordance with applicable state and federal law. ~~((Payments made between July 1, 2011, and June 29, 2013, will not be subject to the three percent temporary salary reduction under chapter 39, Laws of 2011.))~~

AMENDATORY SECTION (Amending WSR 11-19-091, filed 9/20/11, effective 10/24/11)

WAC 357-31-150 Can an employee be paid for accrued sick leave? In accordance with the attendance incentive program established by RCW 41.04.340, employees are eligible to be paid for accrued sick leave as follows:

(1) In January of each year, an employee whose sick leave balance at the end of the previous year exceeds four

hundred eighty hours may elect to convert the sick leave hours earned in the previous calendar year, minus those hours used during the year, to monetary compensation.

(a) No sick leave hours may be converted which would reduce the calendar year-end balance below four hundred eighty hours.

(b) Monetary compensation for converted hours is paid at the rate of twenty-five percent and is based on the employee's current salary. ~~((Monetary compensation for converted hours which is paid between July 1, 2011, and June 29, 2013, will not be subject to a temporary salary reduction.))~~

(c) All converted hours are deducted from the employee's sick leave balance.

(d) Hours which are accrued, donated and returned from the shared leave program in the same calendar year may be included in the converted hours for monetary compensation.

(e) For the purpose of this section, hours which are contributed to a sick leave pool per WAC 357-31-570 are considered hours used.

(2) Employees who separate from state service because of retirement or death must be compensated for their total unused sick leave accumulation at the rate of twenty-five percent. The employer may deposit equivalent funds for a retiring employee in a medical expense plan as provided in WAC 357-31-375. Compensation must be based on the employee's salary at the time of separation. ~~((Compensation for unused sick leave which is paid between July 1, 2011, and June 29, 2013, will not be subject to a temporary salary reduction.))~~ For the purpose of this subsection, retirement does not include "vested out-of-service" employees who leave funds on deposit with the department of retirement systems (DRS).

(3) No contributions are to be made to the department of retirement systems (DRS) for payments under subsection (1) or (2) of this section, nor are such payments reported to DRS as compensation.

AMENDATORY SECTION (Amending WSR 11-19-091, filed 9/20/11, effective 10/24/11)

WAC 357-31-225 When employees separate from state service, are they entitled to a lump sum payment of unused vacation leave? (1) When an employee who has completed six continuous months of employment separates from service by reason of resignation with adequate notice, layoff, trial service reversion, separation, dismissal, retirement, or death, the employee is entitled to a lump sum payment of unused vacation leave. The payment is computed by using the formula published by the office of financial management. ~~((Payments made between July 1, 2011, and June 29, 2013, will not be subject to a temporary salary reduction.))~~ No contributions are to be made to the department of retirement systems (DRS) for lump sum payment of excess vacation leave accumulated under the provisions of WAC 357-31-215(2), nor shall such payment be reported to the DRS as compensation.

(2) General government permanent employees may defer the payment of accumulated vacation leave to which they are entitled for a period of thirty calendar days in any of these circumstances:

(a) If the separation resulted from a layoff, trial service reversion, or conclusion of a project or nonpermanent appointment and there is a reasonable probability of reemployment; or

(b) If the separation resulted from an employee returning to a classified position from an exempt position under the provision of RCW 41.06.070.

AMENDATORY SECTION (Amending WSR 11-19-091, filed 9/20/11, effective 10/24/11)

WAC 357-31-245 What happens if an employee uses accrued vacation leave, accrued sick leave, accrued compensatory time, recognition leave, ~~((accrued temporary salary reduction leave,))~~ or receives holiday pay during a period when he/she is receiving time loss compensation? An employee who uses accrued vacation leave, accrued sick leave, accrued compensatory time, recognition leave, ~~((accrued temporary salary reduction leave,))~~ or receives holiday pay during a period when he/she is receiving time loss compensation is entitled to time-loss compensation and full pay for vacation leave, sick leave, compensatory time, recognition leave, ~~((temporary salary reduction leave,))~~ and holiday pay.

AMENDATORY SECTION (Amending WSR 11-19-091, filed 9/20/11, effective 10/24/11)

WAC 357-31-255 What types of leave may an employee use when absent from work or arriving late to work because of inclement weather? When the employer determines inclement weather conditions exist, the employer's leave policy governs the order in which accrued leave and compensatory time may be used to account for the time an employee is absent from work due to the inclement weather. The employer's policy must allow the use of accrued vacation leave, accrued sick leave up to a maximum of three days in any calendar year, ~~((accrued temporary salary reduction leave,))~~ and the use of leave without pay in lieu of paid leave at the request of the employee. The employer's policy may allow leave with pay when an employee is absent due to inclement weather.

AMENDATORY SECTION (Amending WSR 11-19-091, filed 9/20/11, effective 10/24/11)

WAC 357-31-265 What is the effect of suspended operations on employees who are not required to work during the closure? At a minimum, employees not required to work during suspended operations must be allowed to use their personal holiday, or accrued vacation leave ~~((~~or~~ accrued temporary salary reduction leave))~~. Overtime eligible employees must also be allowed to use accrued compensatory time to account for the time lost due to the closure. Overtime eligible employees may be allowed to use leave without pay and given an opportunity to make up work time lost (as a result of suspended operations) within the work week. For overtime eligible employees, compensation for making up lost work time must be in accordance with WAC 357-28-255, 357-28-260, and 357-28-265 if it causes the employee to work in excess of forty hours in the workweek,

and must be part of the employer's suspended operations procedures. The amount of compensation earned under this section must not exceed the amount of salary lost by the employee due to suspended operation.

If the employer's suspended operations procedure allows, employees may be released without a loss in pay.

AMENDATORY SECTION (Amending WSR 11-19-091, filed 9/20/11, effective 10/24/11)

WAC 357-31-390 What criteria does an employee have to meet to be eligible to receive shared leave? An employee may be eligible to receive shared leave if the agency head or higher education institution president has determined the employee meets the following criteria:

(1) The employee:

(a) Suffers from, or has a relative or household member suffering from, an illness, injury, impairment, or physical or mental condition which is of an extraordinary or severe nature;

(b) The employee has been called to service in the uniformed services;

(c) A state of emergency has been declared anywhere within the United States by the federal or any state government and the employee has the needed skills to assist in responding to the emergency or its aftermath and volunteers their services to either a governmental agency or to a non-profit organization engaged in humanitarian relief in the devastated area, and the governmental agency or nonprofit organization accepts the employee's offer of volunteer services; or

(d) The employee is a victim of domestic violence, sexual assault, or stalking as defined in RCW 41.04.655 (~~or~~

~~(e) During the 2009-2011 fiscal biennium only, an employee whose monthly full-time equivalent base salary is two thousand five hundred dollars or less is eligible to use shared leave in lieu of temporary layoff as described in chapter 32, Laws of 2010).~~

(2) The illness, injury, impairment, condition, call to service, emergency volunteer service, consequence of domestic violence, sexual assault, or stalking, ~~((or temporary layoff under chapter 32, Laws of 2010, has caused;))~~ or is likely to cause, the employee to:

(a) Go on leave without pay status; or

(b) Terminate state employment.

(3) The employee's absence and the use of shared leave are justified.

(4) The employee has depleted or will shortly deplete their:

(a) Compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, accrued vacation leave, ~~((accrued temporary salary reduction leave;))~~ and accrued sick leave if the employee qualifies under subsection (1)(a) of this section; or

(b) Compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, accrued vacation leave, ~~((accrued temporary salary reduction leave;))~~ and paid military leave allowed under RCW 38.40.060 if the employee qualifies under subsection (1)(b) of this section; or

(c) Compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, ~~((accrued temporary~~

~~salary reduction leave;))~~ and accrued vacation leave if the employee qualifies under (1)(c) ~~((or (d)))~~ of this section ~~((or~~

~~(d) Compensatory time, recognition leave as described in WAC 357-31-565, accrued temporary salary reduction leave, and accrued vacation leave if the employee qualifies under subsection (1)(e) of this section)).~~

(5) The employee has abided by employer rules regarding:

(a) Sick leave use if the employee qualifies under subsection (1)(a) of this section; or

(b) Military leave if the employee qualifies under subsection (1)(b) of this section.

(6) If the illness or injury is work-related and the employee has diligently pursued and been found to be ineligible for benefits under chapter 51.32 RCW if the employee qualifies under subsection (1)(a) of this section.

AMENDATORY SECTION (Amending WSR 11-23-052, filed 11/10/11, effective 12/13/11)

WAC 357-31-435 Must employees use their own leave before using shared leave? Employees who qualify for shared leave under WAC 357-31-390 (1)(a) must first use all compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, sick leave, ~~((temporary salary reduction leave;))~~ and vacation leave that they have accrued before using shared leave. Employees who qualify under WAC 357-31-390 (1)(b) must first use all of their compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, accrued vacation leave, ~~((accrued temporary salary reduction leave;))~~ and paid military leave allowed under RCW 38.40.060 before using shared leave. Employees who qualify under WAC 357-31-390 (1)(c) and (d) must first use all compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, ~~((temporary salary reduction leave;))~~ and vacation leave that they have accrued before using shared leave. ~~((Employees who qualify for shared leave under WAC 357-31-390 (1)(e) must first use all compensatory time, recognition leave as described in WAC 357-31-565, temporary salary reduction leave, and vacation leave that they have accrued before using shared leave;))~~

AMENDATORY SECTION (Amending WSR 14-06-008, filed 2/20/14, effective 3/24/14)

WAC 357-31-530 Under the Family and Medical Leave Act of 1993, how is an eligible employee defined? In accordance with 29 C.F.R. Part 825, an eligible employee is an employee who has worked for the state for at least twelve months and for at least one thousand two hundred fifty hours during the previous twelve-month period. Paid time off such as vacation leave, sick leave, ~~((temporary salary reduction leave;))~~ personal holiday, compensatory time off, or shared leave and unpaid leave is not counted towards the one thousand two hundred and fifty hour eligibility requirement.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 357-31-740 What is temporary salary reduction (TSR) leave and which employees are eligible to earn TSR leave?
- WAC 357-31-745 What provisions apply to temporary salary reduction (TSR) leave?

WSR 15-03-010
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed January 8, 2015, 10:05 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-18-029.

Title of Rule and Other Identifying Information: Amends WAC 181-82A-204 and 181-82A-206 to permit nonhigher education programs to offer endorsements.

Hearing Location(s): Radisson Hotel, SeaTac Airport, 18118 International Boulevard, Seattle, WA 98188, on March 19, 2015, at 8:30.

Date of Intended Adoption: March 19, 2015.

Submit Written Comments to: David Brenna, 600 Washington Street, Room 400, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by March 12, 2015.

Assistance for Persons with Disabilities: Contact David Brenna by March 12, 2015, (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The legislature directed the professional educator standards board to accept applicants for educator preparation program approval in RCW 28A.410.290.

Reasons Supporting Proposal: Legislation.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

Statute Being Implemented: RCW 28A.410.290.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: David Brenna, P.O. Box 42736 [47236], Olympia, WA 98504, (360) 725-6238.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting David Brenna, 600 Washington Street, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

January 5, 2015

David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 10-23-076, filed 11/15/10, effective 12/16/10)

WAC 181-82A-204 Endorsement requirements. (1) Candidates completing endorsements required to obtain a residency certificate, shall complete (~~college/university~~) teacher preparation programs approved by the professional educator standards board pursuant to chapter 181-78A WAC, which include methodology (see WAC 181-78A-264(5)) and field experience/internship (see WAC 181-78A-264(6)) and pursuant to endorsement program approval requirements in this chapter.

(2) In order to add an additional endorsement, the candidate shall:

(a) Have completed a state-approved endorsement program which includes methodology (see WAC 181-78A-264(5)) and addresses all endorsement-specific competencies adopted and published by the professional educator standards board. The requirement for field experience shall be at the discretion of the college/university. Provided, that in cases where programs require a field experience/internship, the colleges/universities should make every attempt to allow the individual to complete field-based requirements for the endorsement within the confines of the individual's teaching schedule; or

(b) Achieve National Board certification in a Washington teaching endorsement area and hold a valid National Board certificate; or

(c) Pass the subject knowledge test approved by the professional educator standards board for the certificate endorsement being sought. The instructional methodology and content-related skills of the desired subject endorsement must be compatible with one or more of the current endorsement(s) on the applicant's teacher certificate, per the list of Pathway 1 endorsements adopted and published by the professional educator standards board. The applicant must document a minimum of ninety days teaching experience as a teacher via full-time, part-time, or substitute experience, in a public or state approved private school, or state agency providing educational services for students, in the endorsement area that is compatible in instructional methodology and content-related skills to the Pathway 1 endorsement; or

(d) (~~(f)~~) Pass the subject knowledge test approved by the professional educator standards board for the certificate endorsement being sought and successfully meet all eligibility criteria and process requirements for Pathway 2 endorsements as adopted and published by the professional educator standards board. The desired subject endorsement must be identified as a Pathway 2 endorsement for one or more of the current endorsement(s) on the applicant's teacher certificate, per the list of Pathway 2 endorsements adopted and published by the professional educator standards board. The applicant must document a minimum of ninety days teaching experience as a teacher via full-time, part-time, or substitute experience, in a public or state approved private school, or state agency providing educational services for students, while holding the endorsement area that is compatible in instructional methodology and content-related skills to the Pathway 2 endorsement.

tional methodology and content-related skills to the Pathway 2 endorsement.

(i) The ninety day teaching requirement is waived per RCW 28A.660.045 for individuals having an elementary education certificate but who are not employed in positions requiring an elementary education certificate and pursuing an endorsement in middle level mathematics or science.

(ii) The ninety day teaching requirement is waived for candidates holding a science or designated science endorsement who are adding a science or designated science endorsement.

(iii) Teacher preparation programs that offer Pathway 2 endorsement programs shall follow process steps as adopted by the professional educator standards board and published by the superintendent of public instruction to verify successful completion of the Pathway 2 process and to recommend adding the endorsement to the applicant's teacher certificate.

(3) Candidates from out-of-state shall be required to present verification that they completed a state-approved program (equivalent to a major) in a Washington endorsement area.

(4) Course work used to meet endorsement requirements must be completed through a regionally accredited college/university.

(5) Only course work in which an individual received a grade of C (2.0) or higher or a grade of pass on a pass-fail system of grading shall be counted toward the course work required for the approved endorsement program.

(6) Nothing within this chapter precludes a college or university from adopting additional requirements as conditions for recommendation, by such college or university, to the superintendent of public instruction for a particular subject area endorsement.

AMENDATORY SECTION (Amending WSR 14-24-059, filed 11/25/14, effective 12/26/14)

WAC 181-82A-206 Endorsement program approval, reapproval, and review. (1) The professional educator standards board shall approve, reapprove, and review endorsement programs at professional educator standards board-approved residency certificate teacher programs. (~~Only institutions with professional educator standards board-approved residency certificate teacher preparation programs are eligible to apply for approval to offer endorsement programs.~~)

(2) The professional educator standards board will publish competencies for all endorsement areas identified in chapter 181-82A WAC.

(3) The professional educator standards board shall determine and publish the schedule and process for endorsement program approval, reapproval, and review.

(a) Initial approval of a new endorsement program may be granted for a period of up to two years.

(b) Endorsement reapproval is required according to the posted schedule for when the endorsement competencies are updated. Reapproval of an endorsement program may be granted until the next endorsement program review, or for a period of up to one year with a written report. Once the program submits the written report, approval options are full

approval until the next endorsement program review, or disapproval.

(c) Each institution shall submit endorsement programs for review when requested by the professional educator standards board to ensure that each endorsement program meets the competencies and to provide assessment data relative to candidate performance. Approval options are approval until the next endorsement review or at-risk of losing approval. The professional educator standards board has the option to disapprove endorsement programs that have been at-risk for two consecutive years.

(d) Disapproved endorsements programs may reapply for approval by following the endorsement approval process.

WSR 15-03-012

PROPOSED RULES

DEPARTMENT OF HEALTH

(Board of Naturopathy)

[Filed January 8, 2015, 11:02 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-22-060.

Title of Rule and Other Identifying Information: Amending WAC 246-836-020 through 246-836-040, 246-836-110, and 246-836-120, regarding naturopathic physician licensure examinations, and repealing WAC 246-836-050.

Hearing Location(s): Department of Health, Creekside Two at CenterPoint, Suite 310, Room 307, 20425 72nd Avenue South, Kent, WA 98032, on February 27, 2015, at 9:00 a.m.

Date of Intended Adoption: February 27, 2015.

Submit Written Comments to: Susan Gragg, Program Manager, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, e-mail <http://www3.doh.wa.gov/policy-review/>, fax (360) 236-2901, by February 26, 2015.

Assistance for Persons with Disabilities: Contact Susan Gragg by February 20, 2015, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board of naturopathy (board) is proposing amendments to rules pertaining to acceptable naturopathic physician licensure examinations. The proposed amendments designate the naturopathic physician licensure examination (NPLEX) as the current, recognized national examination and make Washington state consistent with national standards. The proposal also identifies acceptable previous versions of the NPLEX. In addition, the proposal specifies which pre-NPLEX examinations (other state examinations) qualify an individual for licensure. The proposed rules also clarify the naturopathic physician jurisprudence examination requirement.

Reasons Supporting Proposal: The naturopath profession was recognized in law in 1987, and the department of health was directed to create a state licensure examination. In 1988 various state regulatory agencies sponsored the development of the NPLEX examination. In 1990, the North American Board of Naturopathic Examiners, an independent organization, was established to administer the NPLEX

examination. Since then, there have been no state-specific examinations. For these reasons, the board determined it is necessary to amend and update the rules regarding acceptable examinations.

Statutory Authority for Adoption: RCW 18.36A.110, 18.36A.150, and 18.36A.160.

Statute Being Implemented: RCW 18.36A.110.

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

Name of Proponent: Board of naturopathy, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Susan Gragg, Program Manager, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4941.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Susan Gragg, Program Manager, Department of Health, Board of Naturopathy, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4941, fax (360) 236-2901, e-mail susan.gragg@doh.wa.gov.

January 8, 2015
Chris Humberson, R.Ph.
Executive Director

AMENDATORY SECTION (Amending WSR 12-13-104, filed 6/20/12, effective 7/21/12)

WAC 246-836-020 ((Eligibility)) Requirements for licensure ((examination)). ~~((1) Graduates holding a degree/diploma from a college of naturopathic medicine approved by the board shall be eligible to take the examination, provided all other requirements of RCW 18.36A.090 are met.~~

~~(2) All applicants shall file with the board a completed application, with the required fee, at least sixty days prior to the exam.~~

~~(3) Applicants shall request that the college of naturopathic medicine send official transcripts directly to the board.~~

~~(4) Applicants who have filed the required applications, whose official transcript has been received by the board, and who meet all qualifications shall be notified of their eligibility, and only such applicants will be admitted to the exam.)~~
Individuals seeking a license to practice as a naturopathic physician must provide the following:

(1) A completed application, with all required fees;

(2) Official transcripts sent directly from a college of naturopathic medicine approved by the board, demonstrating that the applicant has graduated as a naturopathic physician;

(3) Verification of successful passage of the national examination approved by the board under WAC 246-836-030 sent directly from the examination entity;

(4) Successful passage of the jurisprudence examination provided by the board;

(5) A federal background check application, if required, including fingerprint cards and fee per RCW 18.130.064 (2)(b); and

(6) Any other documentation, materials, or information as determined by the board or its designee.

AMENDATORY SECTION (Amending WSR 12-13-104, filed 6/20/12, effective 7/21/12)

WAC 246-836-030 Licensure examinations accepted by the board. ~~(1) ((The)) Applicants for licensure as a naturopathic physician must pass the Naturopathic Physicians Licensing Examination (NPLEX) administered by the North American Board of Naturopathic Examiners (NABNE). The NPLEX licensure examination ((shall)) consists of the following components and tests:~~

~~(a) ((Basic science component which may include but not be limited to tests in the following subjects: Pathology; anatomy, physiology, microbiology and biochemistry.~~

~~(b) Clinical science component which may include but not be limited to tests in the following subjects: Physical diagnosis; nutrition; physical medicine; botanical medicines and toxicology; psychological and lifestyle counseling; emergency medicine, basic skills and public health; lab and X-ray diagnosis.~~

~~(c) Law of the state and administrative regulations as they relate to the practice of naturopathic medicine.~~

~~(d) The board, at its discretion, may require tests in other subjects. Candidates will receive information concerning additional tests prior to the examination.~~

~~(2) Candidates may take the basic science component of the exam after two years of training. A candidate who has achieved a passing score on the basic science component after two years of training must achieve a passing score on the clinical science component and the state law test within twenty-seven months after graduation; otherwise, the candidate's basic science component exam results will be null and void and the candidate must again take the basic science component of the exam. All exam candidates are required to obtain a passing score on all tests before a license is issued. A candidate who takes the basic science component of the exam after two years of training must submit an application for reexamination, along with reexamination fees, to take the clinical science component and the state law test at a later exam administration.~~

~~(3) Examinations shall be conducted twice a year.~~

~~(4)) The integrated NPLEX Part I biomedical science examination, first administered in August 2009;~~

~~(b) The integrated NPLEX Part II clinical science examination, first administered in August 2007; and~~

~~(c) The NPLEX Part II clinical elective add-on minor surgery examination.~~

~~(2) The acceptable scores for the integrated examinations identified in subsection (1) of this section are those passing scores reported by NABNE.~~

~~(3) For NPLEX examinations administered prior to the integrated examinations identified in subsection (1) of this section, the board accepts a minimum passing score of seventy-five for each component and test in:~~

~~(a) NPLEX Part I;~~

~~(b) NPLEX Part II;~~

~~(c) NPLEX clinical elective add-on minor surgery examination; and~~

(d) NPLEX clinical elective add-on homeopathy examination.

(4) The board will consider passing scores under the compensatory model as reported by NABNE on a case-by-case basis. The minimum passing score for each component and test in the examination is seventy-five.

(5) Appeals of NPLEX failing scores must be made directly to NABNE.

AMENDATORY SECTION (Amending WSR 91-02-049, filed 12/27/90, effective 1/31/91)

WAC 246-836-040 ~~((Release of))~~ Jurisprudence examinations ((results)). ~~((1) Candidates shall be notified of examination results by mail only.~~

~~(2) Candidates who successfully complete all components and tests of the examination shall receive a license to practice as a naturopathic physician provided all other requirements are met.~~

~~(3) Candidates who fail any test in the examination shall be so notified and shall be sent an application to retake the examination.~~

~~(4) A candidate's examination scores shall be released only to the candidate unless the candidate has requested, in writing, that the examination scores also be released to a specific school, individual, or entity.)~~ (1) Individuals taking the jurisprudence examination provided by the board must pay the appropriate fee when submitting it for scoring.

(2) The minimum passing score for the jurisprudence examination is seventy-five.

(3) Individuals who fail the jurisprudence examination may retake the examination provided they submit an additional fee.

(4) An individual's jurisprudence examination score is released only to the individual unless a written request is submitted that authorizes release to a specific third party.

AMENDATORY SECTION (Amending WSR 12-13-104, filed 6/20/12, effective 7/21/12)

WAC 246-836-110 Licensing by endorsement. A license to practice as a naturopathic physician in the state of Washington may be issued without examination at the discretion of the board provided the applicant meets all of the ~~((following))~~ requirements in WAC 246-836-020 except for the national examination requirement in subsection (3) of that section. The individual must:

~~(1) ((The candidate has)) Have graduated from ((and holds a degree/diploma from)) a college of naturopathic medicine approved by the ((state or jurisdiction where the school is located and which prepares candidates for licensure as a naturopathic physician. Provided, That such program at the time of the candidate's graduation is equivalent to or exceeds the minimum naturopathic medical educational standards required for Washington state approved schools)) board;~~

~~(2) ((The candidate holds)) Hold a current valid license in good standing to practice as a naturopathic physician in another state or jurisdiction. Official written verification of such licensure status must be received ((by the board)) directly from the other state or jurisdiction;~~

~~(3) ((The candidate has completed and filed with the board a notarized application for licensure by endorsement, a true and correct copy of the current valid license, and the required application fee;~~

~~(4) The candidate has)) Have successfully passed a naturopathic ((physician)) licensure examination in another state or jurisdiction prior to 1990 when the Naturopathic Physician Licensure Examination (NPLEX) became fully available. Written official verification of successful completion of the licensure examination ((and of licensure in good standing must be requested of the state or jurisdiction by the candidate and)) must be received ((by the board)) directly from the state or jurisdiction; ~~((5) The candidate must)) and~~~~

~~(4) Meet all other requirements of chapter 18.36A RCW and this chapter, including the requirement that the applicant be of good moral character; has not ((have)) engaged in unprofessional conduct; and ((not be unable)) is able to practice with reasonable skill and safety ((as a result of a physical or mental impairment; and~~

~~(6) The state or jurisdiction in which the candidate is currently licensed grants similar privilege of licensure without examination to candidates who are licensed in Washington as naturopathic physicians)).~~

AMENDATORY SECTION (Amending WSR 92-02-018, filed 12/23/91, effective 1/23/92)

WAC 246-836-120 Reciprocity or waiver of examination requirements. Reciprocity or waiver of examination requirements may be granted for certain examinations administered by ~~((other states or jurisdictions))~~ the Oregon Board of Naturopathic Medicine in accordance with the reciprocal agreement with that state that was in effect at the time the individual took the examinations. These examinations must ~~((include))~~ have included the clinical and the basic science sections. The minimum passing score ~~((will depend upon the quality of the examination, but))~~ must ~~((be))~~ have been equivalent to or better than the score of seventy-five ~~((which is))~~ as required in WAC 246-836-030. ~~((Reciprocity or waiver shall be in accordance with the reciprocal agreement in place with that state or jurisdiction.))~~ The examinations acceptable in accordance with the Oregon reciprocal agreement are:

(1) Individual basic and clinical examinations from 1927 through 1987 with scores as originally reported;

(2) Individual basic and clinical science examinations given in January 1988 with scores as originally reported;

(3) The basic science examination given in January 1989 with raw scores; and

(4) The Naturopathic Physician Licensure Examinations (NPLEX) for all years prior to 1990 with raw scores as reported by the North American Board of Naturopathic Examiners (NABNE).

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-836-050 Reexaminations.

WSR 15-03-015
PROPOSED RULES
DEPARTMENT OF ECOLOGY

[Order 12-03—Filed January 8, 2015, 1:00 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-19-055 and 12-19-056.

Title of Rule and Other Identifying Information: Water quality standards for surface waters of the state of Washington, chapter 173-201A WAC. Adopt human health toxics criteria into the standards. Adopt clarifying language and new language related to implementation tools for implementing the surface water quality standards. This rule proposal combines rule-making activities announced in two separate preproposal statement of inquiries (CR-101 forms) – WSR 12-19-055 and 12-19-056.

Hearing Location(s): **Hearing 1 - Spokane, Washington on March 3, 2015**, at 6:00 p.m., at the Centerplace Regional Event Center, 2426 North Discovery Place, Spokane Valley, WA 99216, (509) 688-0300, starting with half hour "open house" poster session. The presentation will start at 6:30 p.m. followed by questions and answers. The formal public hearing will start immediately after.

Hearing 2 - Yakima, Washington on March 4, 2015, at 6:00 p.m. at the Yakima Convention Center, 10 North 8th Street, Yakima, WA 98901, (509) 575-6062, starting with half hour "open house" poster session. The presentation will start at 6:30 p.m. followed by questions and answers. The formal public hearing will start immediately after.

Hearing 3 - Lacey, Washington combined with a webinar on March 12, 2015, at 1:30 p.m., at the Washington State Department of Ecology (Ecology) Headquarters Building Auditorium, 300 Desmond Drive, Lacey, WA 98503-1274, (360) 407-6000, starting with half hour "open house" poster session. The presentation and webinar will start at 2:00 p.m. followed by questions and answers. The formal public hearing will start immediately after and go until 5:00 p.m.

Webinar: Ecology is also offering this hearing via webinar starting at 2:00 p.m. Webinars are an online meeting forum that you can attend from any computer using internet access.

Comments: Ecology will accept comments at the Lacey location and through the webinar via phone at (888) 771-4384.

To join the webinar: Click on the following link for instructions on how to receive a participant code to use with the webinar phone number <http://www.ecy.wa.gov/programs/wq/ruledev/wac173201A/1203inv.html>.

Hearing 4 - Lacey, Washington combined with a webinar on March 12, 2015, at 6:00 p.m., at the Ecology Headquarters Building Auditorium, 300 Desmond Drive, Lacey, WA 98503-1274, (360) 407-6000, starting with half hour "open house" poster session. The presentation and webinar will start at 6:30 p.m. followed by questions and answers. The formal public hearing will start immediately after and go until done.

Webinar: Ecology is also offering this hearing via webinar starting at 6:30p.m. Webinars are an online meeting forum that you can attend from any computer using internet access.

Comments: Ecology will accept comments at the Lacey location and through the webinar via phone at (888) 771-4384.

To join the webinar: Click on the following link for instructions on how to receive a participant code to use with the webinar phone number <http://www.ecy.wa.gov/programs/wq/ruledev/wac173201A/1203inv.html>.

Date of Intended Adoption: On or after July 1, 2015.

Submit Written Comments to: Cheryl Niemi, Water Quality Program, Washington Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, e-mail swqs@ecy.wa.gov, fax (360) 407-6426, by March 23, 2015.

Assistance for Persons with Disabilities: Contact water quality reception at ecology, (360) 407-6600, by February 23, 2015, TTY (877) 833-6341.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Ecology is proposing amendments to Water quality standards for surface waters of the state of Washington, chapter 173-201A WAC (water quality standards). The state's water quality standards guide how the state regulates water pollution. This proposal combines two previously filed notices (CR-101) that were both dated September 13, 2012. This proposal will combine those two into one rule amendment proposal.

1. This rule making is to amend the water quality standards and provide new human health criteria. Adoption of new human health criteria into Washington's water quality standards will take into account factors used to calculate each chemical criterion such as the amount of fish and shellfish people eat. The new criteria will be used for all federal clean water actions: Discharge permits, water pollution identification and water cleanup plans.

2. This proposal will also propose amendments regarding implementation of the water quality standards. The implementation tools being proposed include language revisions to the compliance schedule and variance sections, and a new section to allow the use of intake credits.

Reasons Supporting Proposal: Ecology is proposing to adopt new human health criteria to protect public health, safety, and welfare. The current human health criteria Washington uses are outdated federal standards that do not reflect current science on protection from toxic chemicals. With adoption of this amendment, our state will have water quality standards for toxics that more accurately reflect the amount of fish and shellfish people eat in Washington.

Adopting new human health criteria was identified as a high priority when ecology conducted a triennial review of the water quality standards. The triennial review is required by the Federal Clean Water Act to ensure that states update standards as needed to reflect new and emerging science and information.

This rule proposal will also provide more language regarding how to implement the water quality standards. The proposed amendments to the implementation tools section of this rule is meant to provide more predictable regulatory tools that help entities subject to national pollutant discharge elimination system (NPDES) permits comply with more protective standards. The rule making to amend implementation tools also directly addresses legislation passed (RCW 90.48.605) that obligates ecology to amend water quality

standards to allow compliance schedules in excess of ten years under certain circumstances for permitted discharges.

Statutory Authority for Adoption: RCW 90.48.035 Rule-making authority.

Statute Being Implemented: Chapter 90.48 RCW, Water pollution control.

Rule is necessary because of federal law, Federal Clean Water Act (33 U.S.C. 1251).

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

Name of Agency Personnel Responsible for Drafting: Susan Braley, Washington Department of Ecology, Lacey, Washington, (360) 407-6414; Implementation: Cheryl Niemi, Washington Department of Ecology, Lacey, Washington, (360) 407-6440; and Enforcement: Heather Bartlett, Washington Department of Ecology, Lacey, Washington, (360) 407-6405.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule amendments do not impose costs on existing businesses in any industry, therefore a small business economic impact statement will not be a part of the rule package.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Cheryl Niemi, Washington Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6440, fax (360) 407-6426, e-mail swqs@ecy.wa.gov.

January 8, 2015
Maia D. Bellon
Director

AMENDATORY SECTION (Amending WSR 11-09-090, filed 4/20/11, effective 5/21/11)

WAC 173-201A-020 Definitions. The following definitions are intended to facilitate the use of chapter 173-201A WAC:

"1-DMax" or "1-day maximum temperature" is the highest water temperature reached on any given day. This measure can be obtained using calibrated maximum/minimum thermometers or continuous monitoring probes having sampling intervals of thirty minutes or less.

"7-DADMax" or "7-day average of the daily maximum temperatures" is the arithmetic average of seven consecutive measures of daily maximum temperatures. The 7-DADMax for any individual day is calculated by averaging that day's daily maximum temperature with the daily maximum temperatures of the three days prior and the three days after that date.

"Action value" means a total phosphorus (TP) value established at the upper limit of the trophic states in each ecoregion (see Table 230(1)). Exceedance of an action value indicates that a problem is suspected. A lake-specific study may be needed to confirm if a nutrient problem exists.

"Actions" refers broadly to any human projects or activities.

"Acute conditions" are changes in the physical, chemical, or biologic environment which are expected or demonstrated to result in injury or death to an organism as a result of

short-term exposure to the substance or detrimental environmental condition.

"AKART" is an acronym for "all known, available, and reasonable methods of prevention, control, and treatment." AKART shall represent the most current methodology that can be reasonably required for preventing, controlling, or abating the pollutants associated with a discharge. The concept of AKART applies to both point and nonpoint sources of pollution. The term "best management practices," typically applied to nonpoint source pollution controls is considered a subset of the AKART requirement.

"Background" means the biological, chemical, and physical conditions of a water body, outside the area of influence of the discharge under consideration. Background sampling locations in an enforcement action would be up-gradient or outside the area of influence of the discharge. If several discharges to any water body exist, and enforcement action is being taken for possible violations to the standards, background sampling would be undertaken immediately up-gradient from each discharge.

"Best management practices (BMP)" means physical, structural, and/or managerial practices approved by the department that, when used singularly or in combination, prevent or reduce pollutant discharges.

"Biological assessment" is an evaluation of the biological condition of a water body using surveys of aquatic community structure and function and other direct measurements of resident biota in surface waters.

"Bog" means those wetlands that are acidic, peat forming, and whose primary water source is precipitation, with little, if any, outflow.

"Carcinogen" means any substance or agent that produces or tends to produce cancer in humans. For implementation of this chapter, the term carcinogen will apply to substances on the United States Environmental Protection Agency lists of A (known human) and B (probable human) carcinogens, and any substance which causes a significant increased incidence of benign or malignant tumors in a single, well conducted animal bioassay, consistent with the weight of evidence approach specified in the United States Environmental Protection Agency's Guidelines for Carcinogenic Risk Assessment as set forth in 51 FR 33992 et seq. as presently published or as subsequently amended or republished.

"Chronic conditions" are changes in the physical, chemical, or biologic environment which are expected or demonstrated to result in injury or death to an organism as a result of repeated or constant exposure over an extended period of time to a substance or detrimental environmental condition.

"Compliance schedule" or "schedule of compliance" is a schedule of remedial measures included in a permit or an order, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with an effluent limit, other prohibition, or standard.

"Created wetlands" means those wetlands intentionally created from nonwetland sites to produce or replace natural wetland habitat.

"Critical condition" is when the physical, chemical, and biological characteristics of the receiving water environment interact with the effluent to produce the greatest potential adverse impact on aquatic biota and existing or designated water uses. For steady-state discharges to riverine systems the critical condition may be assumed to be equal to the 7Q10 flow event unless determined otherwise by the department.

"Damage to the ecosystem" means any demonstrated or predicted stress to aquatic or terrestrial organisms or communities of organisms which the department reasonably concludes may interfere in the health or survival success or natural structure of such populations. This stress may be due to, but is not limited to, alteration in habitat or changes in water temperature, chemistry, or turbidity, and shall consider the potential build up of discharge constituents or temporal increases in habitat alteration which may create such stress in the long term.

"Department" means the state of Washington department of ecology.

"Designated uses" are those uses specified in this chapter for each water body or segment, regardless of whether or not the uses are currently attained.

"Director" means the director of the state of Washington department of ecology.

"Drainage ditch" means that portion of a designed and constructed conveyance system that serves the purpose of transporting surplus water; this may include natural water courses or channels incorporated in the system design, but does not include the area adjacent to the water course or channel.

"Ecoregions" are defined using EPAs *Ecoregions of the Pacific Northwest* Document No. 600/3-86/033 July 1986 by Omernik and Gallant.

"Enterococci" refers to a subgroup of fecal streptococci that includes *S. faecalis*, *S. faecium*, *S. gallinarum*, and *S. avium*. The enterococci are differentiated from other streptococci by their ability to grow in 6.5% sodium chloride, at pH 9.6, and at 10°C and 45°C.

"E. coli" or **"Escherichia coli"** is an aerobic and facultative gram negative nonspore forming rod shaped bacterium that can grow at 44.5 degrees Celsius that is ortho-nitrophenyl-B-D-galactopyranoside (ONPG) positive and Methylumbelliferyl glucuronide (MUG) positive.

"Existing uses" means those uses actually attained in fresh or marine waters on or after November 28, 1975, whether or not they are designated uses. Introduced species that are not native to Washington, and put-and-take fisheries comprised of nonself-replicating introduced native species, do not need to receive full support as an existing use.

"Extraordinary primary contact" means waters providing extraordinary protection against waterborne disease or that serve as tributaries to extraordinary quality shellfish harvesting areas.

"Fecal coliform" means that portion of the coliform group which is present in the intestinal tracts and feces of warm-blooded animals as detected by the product of acid or gas from lactose in a suitable culture medium within twenty-four hours at 44.5 plus or minus 0.2 degrees Celsius.

"Geometric mean" means either the nth root of a product of n factors, or the antilogarithm of the arithmetic mean of the logarithms of the individual sample values.

"Ground water exchange" means the discharge and recharge of ground water to a surface water. Discharge is inflow from an aquifer, seeps or springs that increases the available supply of surface water. Recharge is outflow down-gradient to an aquifer or downstream to surface water for base flow maintenance. Exchange may include ground water discharge in one season followed by recharge later in the year.

"Hardness" means a measure of the calcium and magnesium salts present in water. For purposes of this chapter, hardness is measured in milligrams per liter and expressed as calcium carbonate (CaCO₃).

"Intake credit" is a procedure for establishing effluent limits in waste discharge permits issued pursuant to the National Pollutant Discharge Elimination System that take into account the amount of a pollutant that is present in public waters, at the time water is removed from the body of water by the discharger or other facility supplying the discharger with intake water.

"Irrigation ditch" means that portion of a designed and constructed conveyance system that serves the purpose of transporting irrigation water from its supply source to its place of use; this may include natural water courses or channels incorporated in the system design, but does not include the area adjacent to the water course or channel.

"Lakes" shall be distinguished from riverine systems as being water bodies, including reservoirs, with a mean detention time of greater than fifteen days.

"Lake-specific study" means a study intended to quantify existing nutrient concentrations, determine existing characteristic uses for lake class waters, and potential lake uses. The study determines how to protect these uses and if any uses are lost or impaired because of nutrients, algae, or aquatic plants. An appropriate study must recommend a criterion for total phosphorus (TP), total nitrogen (TN) in µg/l, or other nutrient that impairs characteristic uses by causing excessive algae blooms or aquatic plant growth.

"Mean detention time" means the time obtained by dividing a reservoir's mean annual minimum total storage by the thirty-day ten-year low-flow from the reservoir.

"Migration or translocation" means any natural movement of an organism or community of organisms from one locality to another locality.

"Mixing zone" means that portion of a water body adjacent to an effluent outfall where mixing results in the dilution of the effluent with the receiving water. Water quality criteria may be exceeded in a mixing zone as conditioned and provided for in WAC 173-201A-400.

"Natural conditions" or **"natural background levels"** means surface water quality that was present before any human-caused pollution. When estimating natural conditions in the headwaters of a disturbed watershed it may be necessary to use the less disturbed conditions of a neighboring or similar watershed as a reference condition. (See also WAC 173-201A-260(1).)

"New or expanded actions" mean human actions that occur or are regulated for the first time, or human actions

expanded such that they result in an increase in pollution, after July 1, 2003, for the purpose of applying this chapter only.

"Nonpoint source" means pollution that enters any waters of the state from any dispersed land-based or water-based activities including, but not limited to, atmospheric deposition; surface water runoff from agricultural lands, urban areas, or forest lands; subsurface or underground sources; or discharges from boats or marine vessels not otherwise regulated under the National Pollutant Discharge Elimination System program.

"Permit" means a document issued pursuant to chapter 90.48 RCW specifying the waste treatment and control requirements and waste discharge conditions.

"pH" means the negative logarithm of the hydrogen ion concentration.

"Pollution" means such contamination, or other alteration of the physical, chemical, or biological properties, of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental, or injurious to the public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

"Primary contact recreation" means activities where a person would have direct contact with water to the point of complete submergence including, but not limited to, skin diving, swimming, and water skiing.

"Secondary contact recreation" means activities where a person's water contact would be limited (e.g., wading or fishing) to the extent that bacterial infections of eyes, ears, respiratory or digestive systems, or urogenital areas would normally be avoided.

"Shoreline stabilization" means the anchoring of soil at the water's edge, or in shallow water, by fibrous plant root complexes; this may include long-term accretion of sediment or peat, along with shoreline progradation in such areas.

"Storm water" means that portion of precipitation that does not naturally percolate into the ground or evaporate, but flows via overland flow, interflow, pipes, and other features of a storm water drainage system into a defined surface water body, or a constructed infiltration facility.

"Storm water attenuation" means the process by which peak flows from precipitation are reduced and runoff velocities are slowed as a result of passing through a surface water body.

"Surface waters of the state" includes lakes, rivers, ponds, streams, inland waters, saltwaters, wetlands and all other surface waters and water courses within the jurisdiction of the state of Washington.

"Temperature" means water temperature expressed in degrees Celsius (°C).

"Treatment wetlands" means those wetlands intentionally constructed on nonwetland sites and managed for the primary purpose of wastewater or storm water treatment. Treatment wetlands are considered part of a collection and

treatment system, and generally are not subject to the criteria of this chapter.

"Trophic state" means a classification of the productivity of a lake ecosystem. Lake productivity depends on the amount of biologically available nutrients in water and sediments and may be based on total phosphorus (TP). Secchi depth and chlorophyll-a measurements may be used to improve the trophic state classification of a lake. Trophic states used in this rule include, from least to most nutrient rich, ultra-oligotrophic, oligotrophic, lower mesotrophic, upper mesotrophic, and eutrophic.

"Turbidity" means the clarity of water expressed as nephelometric turbidity units (NTU) and measured with a calibrated turbidimeter.

"Upwelling" means the natural process along Washington's Pacific Coast where the summer prevailing northerly winds produce a seaward transport of surface water. Cold, deeper more saline waters rich in nutrients and low in dissolved oxygen, rise to replace the surface water. The cold oxygen deficient water enters Puget Sound and other coastal estuaries at depth where it displaces the existing deep water and eventually rises to replace the surface water. Such surface water replacement results in an overall increase in salinity and nutrients accompanied by a depression in dissolved oxygen. Localized upwelling of the deeper water of Puget Sound can occur year-round under influence of tidal currents, winds, and geomorphic features.

"USEPA" means the United States Environmental Protection Agency.

"Variance" is a temporary modification to the designated use and associated water quality criteria based on the factors specified in 40 C.F.R. 131.10(g), and must be adopted by rule.

"Wetlands" means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites((-)) including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands. (Water bodies not included in the definition of wetlands as well as those mentioned in the definition are still waters of the state.)

"Wildlife habitat" means waters of the state used by, or that directly or indirectly provide food support to, fish, other aquatic life, and wildlife for any life history stage or activity.

AMENDATORY SECTION (Amending WSR 11-09-090, filed 4/20/11, effective 5/21/11)

WAC 173-201A-240 Toxic substances. (1) Toxic substances shall not be introduced above natural background levels in waters of the state which have the potential either sin-

gularly or cumulatively to adversely affect characteristic water uses, cause acute or chronic toxicity to the most sensitive biota dependent upon those waters, or adversely affect public health, as determined by the department.

(2) The department shall employ or require chemical testing, acute and chronic toxicity testing, and biological assessments, as appropriate, to evaluate compliance with subsection (1) of this section and to ensure that aquatic communities and the existing and designated uses of waters are being fully protected.

(3) USEPA Quality Criteria for Water, 1986, as revised, shall be used in the use and interpretation of the values listed in subsection (5) of this section.

(4) Concentrations of toxic, and other substances with toxic propensities not listed in Table 240 of this section shall be determined in consideration of USEPA Quality Criteria for Water, 1986, and as revised, and other relevant information as appropriate.

(5) The following criteria, found in Table 240(~~((3))~~), shall be applied to all surface waters of the state of Washington (~~(for the protection of aquatic life)~~). Values are µg/L for all substances except ammonia and chloride which are mg/L, and asbestos which is million fibers/L.

(a) **Aquatic life protection.** The department may revise the following criteria in Table 240 for aquatic life on a state-

wide or water body-specific basis as needed to protect aquatic life occurring in waters of the state and to increase the technical accuracy of the criteria being applied. The department shall formally adopt any appropriate revised criteria as part of this chapter in accordance with the provisions established in chapter 34.05 RCW, the Administrative Procedure Act. The department shall ensure there are early opportunities for public review and comment on proposals to develop revised criteria. (~~(Values are µg/L for all substances except Ammonia and Chloride which are mg/L:)~~)

(b) **Human health protection.** The following provisions apply to the human health criteria in Table 240. All waters shall maintain a level of water quality when entering downstream waters that provides for the attainment and maintenance of the water quality standards of those downstream waters, including the waters of another state. The human health criteria in the tables were calculated using a fish consumption rate of 175 g/day. The human health criteria calculations and variables include chronic durations of exposure up to seventy years. All human health criteria for metals are for total metal concentrations, unless otherwise noted. Dischargers have the obligation to reduce toxics in discharges through the use of AKART.

Table 240(~~((3))~~)
Toxics Substances Criteria

((Substance	Freshwater		-Marine Water	
	Acute	Chronic	Acute	Chronic
Aldrin/Dieldrin e	2.5a	0.0019b	0.71a	0.0019b
Ammonia (un-ionized NH ₃) hh	f,e	g,d	0.233h,e	0.035h,d
Arsenic dd	360.0e	190.0d	69.0e,h	36.0d,ee,h
Cadmium dd	i,e	j,d	42.0e	9.3d
Chlordane	2.4a	0.0043b	0.09a	0.004b
Chloride (Dissolved) k	860.0h,e	230.0h,d	-	-
Chlorine (Total Residual)	19.0e	11.0d	13.0e	7.5d
Chlorpyrifos	0.083e	0.041d	0.011e	0.0056d
Chromium (Hex) dd	15.0e,i,ii	10.0d,jj	1,100.0e,i,h	50.0d,h
Chromium (Tri) gg	m,e	n,d	-	-
Copper dd	o,e	p,d	4.8e,h	3.1d,h
Cyanide ee	22.0e	5.2d	1.0e,mm	d,mm
DDT (and metabolites)	1.1a	0.001b	0.13a	0.001b
Dieldrin/Aldrin e	2.5a	0.0019b	0.71a	0.0019b
Endosulfan	0.22a	0.056b	0.034a	0.0087b
Endrin	0.18a	0.0023b	0.037a	0.0023b
Heptachlor	0.52a	0.0038b	0.053a	0.0036b
Hexachlorocyclohexane (Lindane)	2.0a	0.08b	0.16a	-
Lead dd	q,e	r,d	210.0e,h	8.1d,h
Mercury s	2.1e,kk,dd	0.012d,ff	1.8e,h,dd	0.025d,ff
Nickel dd	t,e	u,d	74.0e,h	8.2d,h

((Substance	Freshwater		-Marine Water	
	Acute	Chronic	Acute	Chronic
Parathion	0.065e	0.013d	-	-
Pentachlorophenol (PCP)	w,e	v,d	13.0e	7.9d
Polychlorinated-Biphenyls (PCBs)	2.0b	0.014b	10.0b	0.030b
Selenium-	20.0e,ff	5.0d,ff	290e,ll,dd	71.0d, x,ll,dd
Silver dd	y,a	-	1.9a,ll	-
Toxaphene	0.73e,z	0.0002d	0.21e,z	0.0002d
Zinc dd	aa,e	bb,d	90.0e,ll	81.0d,ll

Notes to Table 240(3):)

Compound/Chemical	Chemical Abstracts Service (CAS)#	Category	Aquatic Life Criteria - Freshwater		Aquatic Life Criteria - Marine Water		Human Health Criteria for Consumption of:	
			Acute	Chronic	Acute	Chronic	Water & Organisms	Organisms Only
Metals:								
Antimony	7440360	Metals, cyanide, and total phenols					14 (A)	180
Arsenic	7440382	Metals, cyanide, and total phenols	360.0 (c,dd)	190.0 (d,dd)	69.0 (c,ll,dd)	36.0 (d,cc,ll,dd)	10 (B)	10 (B)
Asbestos	1332214	Toxic pollutants and hazardous substances					7,000,000 fibers/L (D)	
Beryllium	7440417	Metals, cyanide, and total phenols						
Cadmium	7440439	Metals, cyanide, and total phenols	(l,c,dd)	(l,c,dd)	42.0 (c,dd)	9.3 (d,dd)		
Chromium (III)	16065831	Metals, cyanide, and total phenols	(m,c,gg)	(n,d,gg)				
Chromium (VI)	18540299	Metals, cyanide, and total phenols	15.0 (c,l,ii,dd)	10.0 (d,jj,dd)	1,100.0 (c,l,ll,dd)	50.0 (d,ll,dd)		
Copper	7440508	Metals, cyanide, and total phenols	(o,c,dd)	(p,d,dd)	4.8 (c,ll,dd)	3.1 (d,ll,dd)	1,300 (D)	
Lead	7439921	Metals, cyanide, and total phenols	(q,c,dd)	(r,d,dd)	210.0 (c,ll,dd)	8.1 (d,ll,dd)		
Mercury	7439976	Metals, cyanide, and total phenols	2.1 (c,kk,dd)	0.012 (d,ff,s)	1.8 (c,ll,dd)	0.025 (d,ff,s)	(H)	(H)
Methylmercury	22967926	Nonconventional						
Nickel	7440020	Metals, cyanide, and total phenols	(t,c,dd)	(u,d,dd)	74.0 (c,ll,dd)	8.2 (d,ll,dd)	160	190
Selenium	7782492	Metals, cyanide, and total phenols	20.0 (c,ff)	5.0 (d,ff)	290 (c,ll,dd)	71.0 (d,x,ll,dd)	140	480
Silver	7440224	Metals, cyanide, and total phenols	(y,a,dd)		1.9 (a,ll,dd)			
Thallium	7440280	Metals, cyanide, and total phenols					0.24	0.27
Zinc	7440666	Metals, cyanide, and total phenols	(aa,c,dd)	(bb,d,dd)	90.0 (c,ll,dd)	81.0 (d,ll,dd)	2,300	2,900
Other chemicals:								
1,1,1-Trichloroethane	71556	Volatile						
1,1,2,2-Tetrachloroethane	79345	Volatile					0.17 (A, C)	4.6 (C)
1,1,2-Trichloroethane	79005	Volatile					0.60 (A, C)	18 (C)

Compound/Chemical	Chemical Abstracts Service (CAS)#	Category	Aquatic Life Criteria - Freshwater		Aquatic Life Criteria - Marine Water		Human Health Criteria for Consumption of:	
			Acute	Chronic	Acute	Chronic	Water & Organisms	Organisms Only
1,1-Dichloroethane	75343	Volatile						
1,1-Dichloroethylene	75354	Volatile					0.057 (A)	3.2 (A)
1,2,4-Trichlorobenzene	120821	Base/neutral compounds					36	40
1,2-Dichlorobenzene	95501	Volatile					610	740
1,2-Dichloroethane	107062	Volatile					0.38 (A, C)	42 (C)
1,2-Dichloropropane	78875	Volatile					4.4 (C)	17 (C)
1,3-Dichloropropene	542756	Volatile					10 (A)	72
1,2-Diphenylhydrazine	122667	Base/neutral compounds					0.040 (A, C)	0.23 (C)
1,2-Trans-Dichloroethylene	156605	Volatile					700	5,800
1,3-Dichlorobenzene	541731	Volatile					91	110
1,4-Dichlorobenzene	106467	Volatile					91	110
2,3,7,8-TCDD (Dioxin)	1746016	Dioxin					0.000000013 (A)	0.000000014 (A)
2,4,6-Trichlorophenol	88062	Acid compounds					2.1 (A, C)	2.8 (C)
2,4-Dichlorophenol	120832	Acid compounds					26	34
2,4-Dimethylphenol	105679	Acid compounds					87	97
2,4-Dinitrophenol	51285	Acid compounds					70 (A)	610
2,4-Dinitrotoluene	121142	Base/neutral compounds					0.11 (A, C)	3.9 (C)
2,6-Dinitrotoluene	606202	Base/neutral compounds						
2-Chloroethyvinyl Ether	110758	Volatile						
2-Chloronaphthalene	91587	Base/neutral compounds					170	180
2-Chlorophenol	95578	Acid compounds					16	17
2-Methyl-4,6-Dinitrophenol (4,6-dinitro-o-cresol)	534521	Acid compounds					11	32
2-Nitrophenol	88755	Acid compounds						
3,3'-Dichlorobenzidine	91941	Base/neutral compounds					0.031 (C)	0.033 (C)
3-Methyl-4-Chlorophenol (parachlorometa cresol)	59507	Acid compounds						
4,4'-DDD	72548	Pesticides/PCBs					0.00036 (C)	0.00036 (C)
4,4'-DDE	72559	Pesticides/PCBs					0.00025 (C)	0.00025 (C)
4,4'-DDT	50293	Pesticides/PCBs					0.00025 (C)	0.00025 (C)
4,4'-DDT (and metabolites)		Pesticides/PCBs	1.1 (a)	0.001 (b)	0.13 (a)	0.001 (b)		
4-Bromophenyl Phenyl Ether	101553	Base/neutral compounds						
4-Chlorophenyl Phenyl Ether	7005723	Base/neutral compounds						
4-Nitrophenol	100027	Acid compounds						

<u>Compound/Chemical</u>	<u>Chemical Abstracts Service (CAS)#</u>	<u>Category</u>	<u>Aquatic Life Criteria - Freshwater</u>		<u>Aquatic Life Criteria - Marine Water</u>		<u>Human Health Criteria for Consumption of:</u>	
			<u>Acute</u>	<u>Chronic</u>	<u>Acute</u>	<u>Chronic</u>	<u>Water & Organisms</u>	<u>Organisms Only</u>
Acenaphthene	83329	Base/neutral compounds					110	110
Acenaphthylene	208968	Base/neutral compounds						
Acrolein	107028	Volatile					1.0	1.1
Acrylonitrile	107131	Volatile					0.059 (A, C)	0.28 (C)
Aldrin	309002	Pesticides/PCBs	2.5 (a,e)	0.0019 (b,e)	0.71 (a,e)	0.0019 (b,e)	0.000057 (C)	0.000058 (C)
alpha-BHC	319846	Pesticides/PCBs					0.0039 (A, C)	0.0056 (C)
alpha-Endosulfan	959988	Pesticides/PCBs					0.93 (A)	2.0 (A)
Anthracene	120127	Base/neutral compounds					3,300	4,600
Benzene	71432	Volatile					1.2 (A, C)	59 (C)
Benzidine	92875	Base/neutral compounds					0.00012 (A, C)	0.00023 (C)
Benzo(a) Anthracene	56553	Base/neutral compounds					0.0028 (A, C)	0.021 (C)
Benzo(a) Pyrene	50328	Base/neutral compounds					0.0028 (A, C)	0.021 (C)
Benzo(b) Fluoranthene	205992	Base/neutral compounds					0.0028 (A, C)	0.021 (C)
Benzo(ghi) Perylene	191242	Base/neutral compounds						
Benzo(k) Fluoranthene	207089	Base/neutral compounds					0.0028 (A, C)	0.021 (C)
beta-BHC	319857	Pesticides/PCBs					0.014 (A, C)	0.020 (C)
beta-Endosulfan	33213659	Pesticides/PCBs					0.93 (A)	2.0 (A)
Bis(2-Chloroethoxy) Methane	111911	Base/neutral compounds						
Bis(2-Chloroethyl) Ether	111444	Base/neutral compounds					0.031 (A, C)	0.60 (C)
Bis(2-Chloroisopropyl) Ether	108601	Base/neutral compounds					1,300	7,400
Bis(2-Ethylhexyl) Phthalate	117817	Base/neutral compounds					1.8 (A, C)	2.5 (C)
Bromoform	75252	Volatile					4.3 (A, C)	150 (C)
Butylbenzyl Phthalate	85687	Base/neutral compounds					210	220
Carbon Tetrachloride	56235	Volatile					0.25 (A, C)	1.9 (C)
Chlordane	57749	Pesticides/PCBs	2.4 (a)	0.0043 (b)	0.09 (a)	0.004 (b)	0.00057 (A, C)	0.00059 (A, C)
Chlorobenzene	108907	Volatile					420	890
Chlorodibromomethane	124481	Volatile					0.41 (A, C)	15 (C)
Chloroethane	75003	Volatile						

Compound/Chemical	Chemical Abstracts Service (CAS)#	Category	Aquatic Life Criteria - Freshwater		Aquatic Life Criteria - Marine Water		Human Health Criteria for Consumption of:	
			Acute	Chronic	Acute	Chronic	Water & Organisms	Organisms Only
Chloroform	67663	Volatile					5.7 (A)	470 (A)
Chrysene	218019	Base/neutral compounds					0.0028 (A, C)	0.021 (C)
Cyanide	57125	Metals, cyanide, and total phenols	22.0 (c. ee)	5.2 (d. ee)	1.0 (c. mm. ee)	(d. mm. ee)	700 (A, E)	9,100 (E)
delta-BHC	319868	Pesticides/PCBs						
Dibenzo(a,h) Anthracene	53703	Base/neutral compounds					0.0028 (A, C)	0.021 (C)
Dichlorobromomethane	75274	Volatile					0.27 (A, C)	20 (C)
Dieldrin	60571	Pesticides/PCBs	2.5 (a.e)	0.0019 (b.e)	0.71 (a.e)	0.0019 (b.e)	0.000061 (C)	0.000061 (C)
Diethyl Phthalate	84662	Base/neutral compounds					4,300	5,000
Dimethyl Phthalate	131113	Base/neutral compounds					96,000	130,000
Di-n-Butyl Phthalate	84742	Base/neutral compounds					460	510
Di-n-Octyl Phthalate	117840	Base/neutral compounds						
Endosulfan		Pesticides/PCBs	0.22 (a)	0.056 (b)	0.034 (a)	0.0087 (b)		
Endosulfan Sulfate	1031078	Pesticides/PCBs					0.93 (A)	2.0 (A)
Endrin	72208	Pesticides/PCBs	0.18 (a)	0.0023 (b)	0.037 (a)	0.0023 (b)	0.034	0.035
Endrin Aldehyde	7421934	Pesticides/PCBs					0.034	0.035
Ethylbenzene	100414	Volatile					930	1,200
Fluoranthene	206440	Base/neutral compounds					16	16
Fluorene	86737	Base/neutral compounds					440	610
Hexachlorocyclohexane (gamma-BHC; Lindane)	58899	Pesticides/PCBs	2.0 (a)	0.08 (b)	0.16 (a)		0.019 (A)	0.063 (A)
Heptachlor	76448	Pesticides/PCBs	0.52 (a)	0.0038 (b)	0.053 (a)	0.0036 (b)	0.000091 (C)	0.000091 (C)
Heptachlor Epoxide	1024573	Pesticides/PCBs					0.000045 (C)	0.000045 (C)
Hexachlorobenzene	118741	Base/neutral compounds					0.00033 (C)	0.00033 (C)
Hexachlorobutadiene	87683	Base/neutral compounds					0.44 (A, C)	21 (C)
Hexachlorocyclopentadiene	77474	Base/neutral compounds					170	630
Hexachloroethane	67721	Base/neutral compounds					1.9 (A, C)	3.8 (C)
Indeno(1,2,3-cd) Pyrene	193395	Base/neutral compounds					0.0028 (A, C)	0.021 (C)
Isophorone	78591	Base/neutral compounds					8.4 (A, C)	600 (A, C)
Methyl Bromide	74839	Volatile					42	170
Methyl Chloride	74873	Volatile						

Compound/Chemical	Chemical Abstracts Service (CAS)#	Category	Aquatic Life Criteria - Freshwater		Aquatic Life Criteria - Marine Water		Human Health Criteria for Consumption of:	
			Acute	Chronic	Acute	Chronic	Water & Organisms	Organisms Only
Methylene Chloride	75092	Volatile					4.7 (A, C)	680 (C)
Napthalene	91203	Base/neutral compounds						
Nitrobenzene	98953	Base/neutral compounds					16	79
N-Nitrosodimethylamine	62759	Base/neutral compounds					0.00069 (A, C)	3.4 (C)
N-Nitrosodi-n-Propylamine	621647	Base/neutral compounds					0.052 (C)	0.58 (C)
N-Nitrosodiphenylamine	86306	Base/neutral compounds					5.0 (A, C)	6.9 (C)
Pentachlorophenol (PCP)	87865	Acid compounds	(w,c)	(v,d)	13.0 (c)	7.9 (d)	0.28 (A, C)	3.5 (C)
Phenanthrene	85018	Base/neutral compounds						
Phenol	108952	Acid compounds					11,000	98,000
Polychlorinated Biphenyls (PCBs)		Pesticides/PCBs	2.0 (b)	0.014 (b)	10.0 (b)	0.030 (b)	0.00017 (A, F)	0.00017 (A, F)
Pyrene	129000	Base/neutral compounds					330	460
Tetrachloroethylene	127184	Volatile					0.8 (A, C)	3.8 (C)
Toluene	108883	Volatile					4,100	8,500
Toxaphene	8001352	Pesticides/PCBs	0.73 (c,z)	0.0002 (d)	0.21 (c,z)	0.0002 (d)	0.00032 (C)	0.00032 (C)
Trichloroethylene	79016	Volatile					2.7 (A, C)	34 (C)
Vinyl Chloride	75014	Volatile					0.26 (C, G)	2.8 (C, G)
Ammonia (hh)		Nonconventional	(f,c)	(g,d)	0.233 (h,c)	0.035 (h,d)		
Chloride (dissolved) (k)		Nonconventional	860.0 (h,c)	230.0 (h,d)				
Chlorine (total residual)		Nonconventional	19.0 (c)	11.0 (d)	13.0 (c)	7.5 (d)		
Chlorpyrifos		Toxic pollutants and hazardous substances	0.083 (c)	0.041 (d)	0.011 (c)	0.0056 (d)		
Parathion		Toxic pollutants and hazardous substances	0.065 (c)	0.013 (d)				

Footnotes for aquatic life criteria in Table 240:

- a. An instantaneous concentration not to be exceeded at any time.
- b. A 24-hour average not to be exceeded.
- c. A 1-hour average concentration not to be exceeded more than once every three years on the average.
- d. A 4-day average concentration not to be exceeded more than once every three years on the average.
- e. Aldrin is metabolically converted to Dieldrin. Therefore, the sum of the Aldrin and Dieldrin concentrations are compared with the Dieldrin criteria.

f. Shall not exceed the numerical value in total ammonia nitrogen (mg N/L) given by:

$$\text{For salmonids present: } \frac{0.275}{1 + 10^{7.204-pH}} + \frac{39.0}{1 + 10^{pH-7.204}}$$

$$\text{For salmonids absent: } \frac{0.411}{1 + 10^{7.204-pH}} + \frac{58.4}{1 + 10^{pH-7.204}}$$

g. Shall not exceed the numerical concentration calculated as follows:

Unionized ammonia concentration for waters where salmonid habitat is an existing or designated use:

$$0.80 \div (FT)(FPH)(RATIO)$$

where: RATIO = 13.5; 7.7 ≤ pH ≤ 9

$$RATIO = \frac{20.25 \times 10^{(7.7-pH)}}{7.7} \div (1 + 10^{(7.4-pH)}); 6.5 \leq pH \leq 7.7$$

$$FT = 1.4; 15 \leq T \leq 30$$

$$FT = 10^{[0.03(20-T)]}; 0 \leq T \leq 15$$

$$FPH = 1; 8 \leq pH \leq 9$$

$$FPH = (1 + 10^{(7.4-pH)}) \div 1.25; 6.5 \leq pH \leq 8.0$$

Total ammonia concentrations for waters where salmonid habitat is not an existing or designated use and other fish early life stages are absent:

$$Chronic\ Criterion = \left(\frac{0.0577}{1 + 10^{7.688-pH}} + \frac{2.487}{1 + 10^{pH-7.688}} \right) \times (1.45 \times 10^{0.028(25-A)})$$

where: A = the greater of either T (temperature in degrees Celsius) or 7.

Applied as a thirty-day average concentration of total ammonia nitrogen (in mg N/L) not to be exceeded more than once every three years on average. The highest four-day average within the thirty-day period should not exceed 2.5 times the chronic criterion.

Total ammonia concentration for waters where salmonid habitat is not an existing or designated use and other fish early life stages are present:

$$Chronic\ Criterion = \left(\frac{0.0577}{1 + 10^{7.688-pH}} + \frac{2.487}{1 + 10^{pH-7.688}} \right) \times B$$

where: B = the lower of either 2.85, or 1.45 x 10^{0.028 x (25-T)}. T = temperature in degrees Celsius.

Applied as a thirty-day average concentration of total ammonia nitrogen (in mg N/L) not to be exceeded more than once every three years on the average. The highest four-day average within the thirty-day period should not exceed 2.5 times the chronic criterion.

- h. Measured in milligrams per liter rather than micrograms per liter.
- i. ≤ (0.944)(e^{(1.128[ln(hardness)]-3.828)}) at hardness = 100. Conversion factor (CF) of 0.944 is hardness dependent. CF is calculated for other hardnesses as follows: CF = 1.136672 - [(ln hardness)(0.041838)].
- j. ≤ (0.909)(e^{(0.7852[ln(hardness)]-3.490)}) at hardness = 100. Conversion factor (CF) of 0.909 is hardness dependent. CF is calculated for other hardnesses as follows: CF = 1.101672 - [(ln hardness)(0.041838)].
- k. Criterion based on dissolved chloride in association with sodium. This criterion probably will not be adequately protective when the chloride is associated with potassium, calcium, or magnesium, rather than sodium.
- l. Salinity dependent effects. At low salinity the 1-hour average may not be sufficiently protective.
- m. ≤ (0.316)(e^{(0.8190[ln(hardness)] + 3.688)})
- n. ≤ (0.860)(e^{(0.8190[ln(hardness)] + 1.561)})
- o. ≤ (0.960)(e^{(0.9422[ln(hardness)] - 1.464)})
- p. ≤ (0.960)(e^{(0.8545[ln(hardness)] - 1.465)})
- q. ≤ (0.791)(e^{(1.273[ln(hardness)] - 1.460)}) at hardness = 100. Conversion factor (CF) of 0.791 is hardness dependent. CF is calculated for other hardnesses as follows: CF = 1.46203 - [(ln hardness)(0.145712)].
- r. ≤ (0.791)(e^{(1.273[ln(hardness)] - 4.705)}) at hardness = 100. Conversion factor (CF) of 0.791 is hardness dependent. CF is calculated for other hardnesses as follows: CF = 1.46203 - [(ln hardness)(0.145712)].
- s. If the four-day average chronic concentration is exceeded more than once in a three-year period, the edible portion of the consumed species should be analyzed. Said edible tissue concentrations shall not be allowed to exceed 1.0 mg/kg of methylmercury.
- t. ≤ (0.998)(e^{(0.8460[ln(hardness)] + 3.3612)})
- u. ≤ (0.997)(e^{(0.8460[ln(hardness)] + 1.1645)})
- v. ≤ e^[1.005(pH) - 5.290]
- w. ≤ e^[1.005(pH) - 4.830]

- x. The status of the fish community should be monitored whenever the concentration of selenium exceeds 5.0 ug/l in salt water.
- y. ≤ (0.85)(e^{(1.72[ln(hardness)] - 6.52)})
- z. Channel Catfish may be more acutely sensitive.
- aa. ≤ (0.978)(e^{(0.8473[ln(hardness)] + 0.8604)})
- bb. ≤ (0.986)(e^{(0.8473[ln(hardness)] + 0.7614)})
- cc. Nonlethal effects (growth, C-14 uptake, and chlorophyll production) to diatoms (*Thalassiosira aestivalis* and *Skeletonema costatum*) which are common to Washington's waters have been noted at levels below the established criteria. The importance of these effects to the diatom populations and the aquatic system is sufficiently in question to persuade the state to adopt the USEPA National Criteria value (36 µg/L) as the state threshold criteria, however, wherever practical the ambient concentrations should not be allowed to exceed a chronic marine concentration of 21 µg/L.
- dd. These ambient criteria in the table are for the dissolved fraction. The cyanide criteria are based on the weak acid dissociable method. The metals criteria may not be used to calculate total recoverable effluent limits unless the seasonal partitioning of the dissolved to total metals in the ambient water are known. When this information is absent, these metals criteria shall be applied as total recoverable values, determined by back-calculation, using the conversion factors incorporated in the criterion equations. Metals criteria may be adjusted on a site-specific basis when data are made available to the department clearly demonstrating the effective use of the water effects ratio approach established by USEPA, as generally guided by the procedures in USEPA Water Quality Standards Handbook, December 1983, as supplemented or replaced by USEPA or ecology. Information which is used to develop effluent limits based on applying metals partitioning studies or the water effects ratio approach shall be identified in the permit fact sheet developed pursuant to WAC 173-220-060 or 173-226-110, as appropriate, and shall be made available for the public comment period required pursuant to WAC 173-220-050 or 173-226-130(3), as appropriate. Ecology has developed supplemental guidance for conducting water effect ratio studies.

- ee. The criteria for cyanide is based on the weak acid dissociable method in the 19th Ed. Standard Methods for the Examination of Water and Wastewater, 4500-CN I, and as revised (see footnote dd, above).
- ff. These criteria are based on the total-recoverable fraction of the metal.
- gg. Where methods to measure trivalent chromium are unavailable, these criteria are to be represented by total-recoverable chromium.
- hh. The listed fresh water criteria are based on un-ionized or total ammonia concentrations, while those for marine water are based on un-ionized ammonia concentrations. Tables for the conversion of total ammonia to un-ionized ammonia for freshwater can be found in the USEPA's Quality Criteria for Water, 1986. Criteria concentrations based on total ammonia for marine water can be found in USEPA Ambient Water Quality Criteria for Ammonia (Saltwater)-1989, EPA440/5-88-004, April 1989.
- ii. The conversion factor used to calculate the dissolved metal concentration was 0.982.
- jj. The conversion factor used to calculate the dissolved metal concentration was 0.962.
- kk. The conversion factor used to calculate the dissolved metal concentration was 0.85.
- ll. Marine conversion factors (CF) which were used for calculating dissolved metals concentrations are given below. Conversion factors are applicable to both acute and chronic criteria for all metals except mercury. The CF for mercury was applied to the acute criterion only and is not applicable to the chronic criterion. Conversion factors are already incorporated into the criteria in the table. Dissolved criterion = criterion x CF

Metal	CF
Arsenic	1.000
Cadmium	0.994
Chromium (VI)	0.993
Copper	0.83
Lead	0.951
Mercury	0.85
Nickel	0.990
Selenium	0.998
Silver	0.85
Zinc	0.946

mm. The cyanide criteria are: 2.8µg/l chronic and 9.1µg/l acute and are applicable only to waters which are east of a line from Point Roberts to Lawrence Point, to Green Point to Deception Pass; and south from Deception Pass and of a line from Partridge Point to Point Wilson. The chronic criterion applicable to the remainder of the marine waters is 1 µg/L.

~~((4) USEPA Quality Criteria for Water, 1986, as revised, shall be used in the use and interpretation of the values listed in subsection (3) of this section.~~

~~(5) Concentrations of toxic, and other substances with toxic propensities not listed in subsection (3) of this section shall be determined in consideration of USEPA Quality Criteria for Water, 1986, and as revised, and other relevant information as appropriate. Human health-based water quality criteria used by the state are contained in 40 C.F.R. 131.36 (known as the National Toxics Rule).~~

~~(6) Risk-based criteria for carcinogenic substances shall be selected such that the upper bound excess cancer risk is less than or equal to one in one million.)~~

Footnotes for human health criteria in Table 240:

- A. The value for this chemical was originally calculated based on cancer or noncancer risk, but because that calculation resulted in a higher concentration than that found in 40 C.F.R. 131.36, the criterion defaulted to the concentration found in 40 C.F.R. 131.36.
- B. This criterion for total arsenic is the maximum contaminant level (MCL) developed under the Safe Drinking Water Act. The MCL for total arsenic is applied to surface waters where consumption of organisms-only and where consumption of water + organisms reflect the designated uses. When the department determines that a direct or indirect industrial discharge to surface waters designated for domestic water supply may be adding arsenic to its wastewater, the department will require the discharger to develop and implement a pollution prevention plan to reduce arsenic through the use of AKART. Industrial wastewater discharges to a privately or publicly owned wastewater treatment facility are considered indirect discharges.
- C. This criterion was calculated based on an additional lifetime cancer risk of one in one hundred thousand (1 x 10⁻⁵ risk level). For some chemicals the criterion value defaulted from the risk-based concentration to the 40 C.F.R. 131.36 concentration, as indicated in footnote A. In these cases the additional lifetime cancer risk associated with the criterion is less than one in one hundred thousand.
- D. This criterion is based on a regulatory level developed under the Safe Drinking Water Act.
- E. This recommended water quality criterion is expressed as total cyanide, even though the integrated risk information system RiD used to derive the criterion is based on free cyanide. The multiple forms of cyanide that are present in ambient water have significant differences in toxicity due to their differing abilities to liberate the CN-moiety. Some complex cyanides require even more extreme conditions than refluxing with sulfuric acid to liberate the CN-moiety. Thus, these complex cyanides are expected to have little or no "bioavailability" to humans. If a substantial fraction of the cyanide present in a water body is present in a complexed form (e.g., Fe4[Fe(CN)6]3), this criterion may be overly conservative.
- F. This criterion applies to total PCBs, (e.g., the sum of all congener or all isomer or homolog or Aroclor analyses). The PCBs criteria were calculated using a 4 x 10⁻⁵ risk level, but because that calculation resulted in a higher concentration than that found in 40 C.F.R. 131.36, the criterion concentration defaulted to the concentration found in 40 C.F.R. 131.36, as indicated in footnote A.
- G. This criterion was derived using the cancer slope factor of 1.4 (linearized multistage model with a twofold increase to 1.4 per mg/kg-day to account for continuous lifetime exposure from birth).
- H. The human health criteria for mercury are contained in 40 C.F.R. 131.36.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 11-09-090, filed 4/20/11, effective 5/21/11)

WAC 173-201A-420 Variance. ~~((1) The criteria established in WAC 173-201A-200 through 173-201A-260 and 173-201A-600 through 173-201A-612 may be modified for individual facilities, or stretches of waters, through the use of a variance. Variances may be approved by the department when:~~

- ~~(a) The modification is consistent with the requirements of federal law (currently 40 C.F.R. 131.10(g) and 131.10(h));~~
- ~~(b) The water body is assigned variances for specific criteria and all other applicable criteria must be met; and~~
- ~~(c) Reasonable progress is being made toward meeting the original criteria.~~

(2) The decision to approve a variance is subject to a public and intergovernmental involvement process.

(3) The department may issue a variance for up to five years, and may renew the variance after providing for another opportunity for public and intergovernmental involvement and review.

(4) Variances are not in effect until they have been incorporated into this chapter and approved by the USEPA.) (1) **General provisions.** The criteria established in WAC 173-201A-200 through 173-201A-260 and 173-201A-600 through 173-201A-612 may be modified for individual facilities, a group of facilities, or stretches of waters, through the use of a variance. The following conditions apply when considering issuance of a variance:

(a) A variance may be considered when the standards are expected to be attained by the end of the variance period or the attainable use cannot be reliably determined.

(b) The variance applies to specific parameters and all other applicable standards remain in effect for the water body.

(c) The modification must be consistent with the requirements of federal regulations (currently 40 C.F.R. 131.10).

(d) Reasonable progress must be made toward meeting the original standards during the variance period.

(e) A variance renewal may be considered if the renewal request meets the above conditions.

(2) **Types of variances.** Upon request or on its own initiative, the department will consider granting the following types of variances to existing water quality standards:

(a) An individual variance is a designated use and parameter-specific change to the standard(s) of the receiving water body for a specific discharger. The temporary standard(s) only apply at the point(s) of compliance for the individual facility.

(b) A multidischarger variance is a designated use and parameter-specific change to the standard(s) of any water body that receives discharges from a permitted facility defined within the scope of the multidischarger variance. Any permitted discharger that is defined within the scope of the variance may be covered under the variance that is granted by the department, provided all requirements of the variance for that discharger are met.

(c) A water body variance is a designated use and parameter-specific change to the standard(s) for a stretch of waters. Any discharger of the specific parameter that is defined within the geographic scope of the water body variance may be covered under the variance that is granted by the department, provided all requirements of the variance for that discharger are met.

(3) **Requirements.** Any entity initiating a variance request or applying for coverage for an individual, multidischarger, or water body variance must submit the following information to the department:

(a) The pollutant(s) and designated use(s) proposed to be modified by the variance, and the proposed duration of the variance.

(b) A demonstration that attaining the water quality standard for a specific pollutant is not feasible for the requested duration of the variance based on one or more of the conditions found in 40 C.F.R. 131.10.

(c) An evaluation of treatment or alternative actions that were considered to meet effluent limits based on the original water quality criteria, and a description of why these options are not technically, economically, or otherwise feasible.

(d) Sufficient water quality data and analyses to characterize receiving and discharge water pollutant concentrations.

(e) A description and schedule of actions that the discharger(s) proposes to ensure the original water quality standard(s) are met or the highest attainable use is attained within the variance period. Dischargers are also required to submit a schedule for development and implementation of a pollutant minimization plan for the subject pollutant(s).

(f) If the variance is for a water body or stretch of water, the following information must also be provided to the department:

(i) The results from a pollutant source assessment that quantifies the contribution of pollution from permitted sources and nonpermitted sources;

(ii) All cost-effective and reasonable best management practices for permitted sources that address the pollutant the variance is based upon; and

(iii) Best management practices for nonpermitted sources that meet the requirements of chapter 90.48 RCW.

(g) Any additional information the department deems necessary to evaluate the application.

(4) **Public review and notification.** The decision to grant a variance is a formal rule making subject to a public and intergovernmental involvement process.

(a) The department will provide notice of the proposed variance and consult with Indian tribes or other states that have jurisdiction over adjacent and downstream waters of the proposed variance.

(b) The department shall maintain and make publicly available a list of dischargers that are covered under the variances that are in effect.

(5) **Period during which the variance is in effect.** A variance is a temporary modification to the designated use and associated water quality criteria.

(a) Each variance will be granted for the minimum time estimated to meet the original standard(s) or, if during the period of the variance it is determined that a designated use cannot be attained, then a use attainability analysis (WAC 173-201A-440) will be initiated.

(b) The ability to apply a variance in permits or other actions may be terminated by the department as a result of a mandatory interim review.

(c) Variances are in effect after they have been incorporated into this chapter and approved by the USEPA.

(6) **Contents of a variance.** At a minimum a variance adopted into rule will include the following:

(a) The time period for which the variance is applicable.

(b) The geographic area or specific waters in which the variance is applicable.

(c) A description of the permitted and unpermitted dischargers covered by the variance.

(d) Identification of required actions and a schedule, including any measurable milestones, for all pollution sources (permitted and unpermitted) subject to the variance. Dischargers are required to use adaptive management to fine

tune and update actions, schedules, and milestones in order to achieve the goals of the variance.

(e) A provision allowing the department to reopen and modify any permits and to revise BMP requirements for unpermitted dischargers as a result of the mandatory interim review of the variance (see subsection (8) of this section).

(7) **Variance permit conditions.** The department must establish and incorporate into NPDES permits all conditions necessary to implement and enforce an approved variance, including:

(a) Effluent limits that represent currently achieved or achievable effluent conditions, or effluent limits that are sufficient to meet the original water quality standard upon expiration of the variance;

(b) Monitoring and reporting requirements; and

(c) A provision allowing the department to reopen and modify the permits based on the mandatory interim review of the variance.

(8) **Mandatory interim review.** The department will conduct an interim review of each variance at least once every five years after the variance is adopted and approved to determine that conditions of the variance are being met and to evaluate whether the variance is still necessary.

(a) Review process for individual discharger and multi-discharger variances:

(i) The review shall be coordinated with the public review process of the permit renewal if the variance is being implemented in a permit.

(ii) The review will be focused on the discharger's compliance with permit conditions that are required by the variance as well as an evaluation of whether the variance is still necessary.

(b) Review process for water body variances:

(i) Variances for stretches of waters will be reviewed in a public process conducted by the department every five years after initial adoption of the variance into rule.

(ii) The review will evaluate whether the variance is still necessary, any new information on sources of the pollutant that indicates that reductions could be made that would allow water quality standards to be met in a shorter time frame, as well as any new information that indicates water quality improvements may require more time.

(c) A variance that applies to a permit will be shortened or terminated if the review determines that:

(i) The conditions and requirements of the variance and associated permit requirements have not been complied with unless reasons outside the control of the discharger prevented meeting any condition or requirement; or

(ii) Water quality standards could be met in a shorter time frame, based on new information submitted to the department.

NEW SECTION

WAC 173-201A-460 Intake credits. (1) **General provisions.** The following provisions apply to the consideration of intake credits in determining reasonable potential and establishing water quality based effluent limits (WQBELs) for waste discharge permits issued pursuant to the National Pollutant Discharge Elimination System.

(a) An "intake pollutant" is the amount of a pollutant that is present in public waters (including groundwater as provided in (d) of this subsection) at the time water is removed from the same body of water by the discharger or other facility supplying the discharger with intake water.

(b) An intake pollutant must be from the "same body of water" as the discharge in order to be eligible for an intake credit. An intake pollutant is considered to be from the "same body of water" as the discharge if the department finds that the intake pollutant would have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee. This finding will be established if:

(i) The background concentration of the pollutant in the receiving water (excluding any amount of the pollutant in the facility's discharge) is similar to that in the intake water; and

(ii) There is a direct hydrological connection between the intake and discharge points.

(c) The department may also consider other site-specific factors relevant to the transport and fate of the pollutant to make the finding in a particular case that a pollutant would or would not have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee.

(d) An intake pollutant from groundwater may be considered to be from the "same body of water" if the department determines that the pollutant would have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee.

(2) Consideration of intake pollutants.

(a) The department may determine if there is reasonable potential for the discharge of an identified intake pollutant to cause or contribute to an exceedance of a narrative or numeric water quality criterion. If a reasonable potential exists, then water quality-based effluent limits may be established where a discharger demonstrates that the following conditions are met:

(i) The facility removes the intake water containing the pollutant from the same body of water into which the discharge is made;

(ii) The ambient background concentration of the pollutant does not meet the most stringent applicable water quality criterion for that pollutant;

(iii) The facility does not alter the identified intake pollutant chemically or physically in a manner that would cause adverse water quality impacts to occur that would not occur if the pollutants had not been removed from the body of water;

(iv) The timing and location of the discharge would not cause adverse water quality impacts to occur that would not occur if the identified intake pollutant had not been removed from the body of water;

(v) For the purpose of determining reasonable potential, the facility does not contribute any additional mass of the identified intake pollutant to its wastewater; and

(vi) For the purpose of determining water quality-based effluent limits; the facility does not increase the identified intake pollutant concentration at the point of discharge as compared to the pollutant concentration in the intake water. A discharger may add mass of the pollutant to its waste stream if an equal or greater mass is removed prior to dis-

charge, so there is no net addition of the pollutant in the discharge compared to the intake water.

(b) Upon a finding under (a) of this subsection that an intake pollutant in the discharge does not cause, has the reasonable potential to cause, or contribute to an exceedance of an applicable water quality standard, the department is not required to include a water quality-based effluent limit for the identified intake pollutant in the facility's permit.

(c) Where intake water for a facility is provided by a municipal water supply system and the supplier provides treatment of the raw water that removes an intake water pollutant, the concentration of the intake water pollutant will be determined at the point where the water enters the water supplier's distribution system.

(d) Where a facility discharges intake pollutants from multiple sources that originate from the receiving water body and from other water bodies, the department may derive an effluent limit reflecting the flow-weighted amount of each source of the pollutant provided that conditions in (a) through (c) of this subsection are met and adequate monitoring to determine compliance can be established and is included in the permit.

AMENDATORY SECTION (Amending WSR 03-14-129, filed 7/1/03, effective 8/1/03)

WAC 173-201A-510 Means of implementation. (1) **Permitting.** The primary means to be used for controlling municipal, commercial, and industrial waste discharges shall be through the issuance of waste discharge permits, as provided for in RCW 90.48.160, 90.48.162, and 90.48.260. Waste discharge permits, whether issued pursuant to the National Pollutant Discharge Elimination System or otherwise, must be conditioned so the discharges authorized will meet the water quality standards. No waste discharge permit can be issued that causes or contributes to a violation of water quality criteria, except as provided for in this chapter.

(a) Persons discharging wastes in compliance with the terms and conditions of permits are not subject to civil and criminal penalties on the basis that the discharge violates water quality standards.

(b) Permits must be modified by the department when it is determined that the discharge causes or contributes to a violation of water quality standards. Major modification of permits is subject to review in the same manner as the originally issued permits.

(2) **Miscellaneous waste discharge or water quality effect sources.** The director shall, through the issuance of regulatory permits, directives, and orders, as are appropriate, control miscellaneous waste discharges and water quality effect sources not covered by subsection (1) of this section.

(3) Nonpoint source and storm water pollution.

(a) Activities which generate nonpoint source pollution shall be conducted so as to comply with the water quality standards. The primary means to be used for requiring compliance with the standards shall be through best management practices required in waste discharge permits, rules, orders, and directives issued by the department for activities which generate nonpoint source pollution.

(b) Best management practices shall be applied so that when all appropriate combinations of individual best management practices are utilized, violation of water quality criteria shall be prevented. If a discharger is applying all best management practices appropriate or required by the department and a violation of water quality criteria occurs, the discharger shall modify existing practices or apply further water pollution control measures, selected or approved by the department, to achieve compliance with water quality criteria. Best management practices established in permits, orders, rules, or directives of the department shall be reviewed and modified, as appropriate, so as to achieve compliance with water quality criteria.

(c) Activities which contribute to nonpoint source pollution shall be conducted utilizing best management practices to prevent violation of water quality criteria. When applicable best management practices are not being implemented, the department may conclude individual activities are causing pollution in violation of RCW 90.48.080. In these situations, the department may pursue orders, directives, permits, or civil or criminal sanctions to gain compliance with the standards.

(d) Activities which cause pollution of storm water shall be conducted so as to comply with the water quality standards. The primary means to be used for requiring compliance with the standards shall be through best management practices required in waste discharge permits, rules, orders, and directives issued by the department for activities which generate storm water pollution. The consideration and control procedures in (b) and (c) of this subsection apply to the control of pollutants in storm water.

(4) General allowance for compliance schedules.

(a) ~~Permits and orders and directives of~~ issued by the department for existing discharges may include a schedule for achieving compliance with effluent limits and water quality ~~(criteria contained in this chapter)~~ standards that apply to:

(i) Aquatic life uses; and

(ii) Uses other than aquatic life.

~~(Such)~~ (b) Schedules of compliance shall be developed to ensure final compliance with all water quality-based effluent limits and the water quality standards in the shortest practicable time. (Decisions regarding) The department will decide whether to issue schedules of compliance (will be made) on a case-by-case basis (by the department). Schedules of compliance may not be issued for new discharges. Examples of schedules of compliance that may be issued (to allow for) include:

(i) Construction of necessary treatment capability;

(ii) Implementation of necessary best management practices;

(iii) Implementation of additional storm water best management practices for discharges determined not to meet water quality (criteria) standards following implementation of an initial set of best management practices; and

(iv) Completion of necessary water quality studies (or resolution of a pending water quality standards' issue through rule-making action) related to implementation of permit requirements to meet effluent limits.

~~((b))~~ (c) For the period of time during which compliance with water quality ~~((criteria))~~ standards is deferred, interim effluent ~~((limitations))~~ limits shall be formally established, based on the best professional judgment of the department. Interim effluent ~~((limitations))~~ limits may be numeric or nonnumeric (e.g., construction of necessary facilities by a specified date as contained in an ~~((ecology))~~ order or permit, or both.

~~((e))~~ (d) Prior to establishing a schedule of compliance, the department shall require the discharger to evaluate the possibility of achieving water quality ~~((criteria))~~ standards via nonconstruction changes (e.g., facility operation, pollution prevention). Schedules of compliance ~~((may in no case exceed ten years, and))~~ shall meet requirements in WAC 173-220-140 and shall require compliance with the specified requirements as soon as practicable. Compliance schedules shall generally not exceed the term of any permit unless the department determines that a longer time period is needed to come into compliance with the applicable water quality standards.

(e) When an approved total maximum daily load, or TMDL, has established waste load allocations for permitted dischargers, a longer period of time for a compliance schedule may be authorized if the department has determined that:

(i) The permittee is not able to meet its waste load allocation in the TMDL solely by controlling and treating its own effluent;

(ii) The permittee has made significant progress to reduce pollutant loading during the term of the permit;

(iii) The permittee is meeting all of its requirements under the TMDL as soon as possible; and

(iv) Actions specified in the compliance schedule are sufficient to achieve water quality standards as soon as possible.

(5) Compliance schedules for dams:

(a) All dams in the state of Washington must comply with the provisions of this chapter.

(b) For dams that cause or contribute to a violation of the water quality standards, the dam owner must develop a water quality attainment plan that provides a detailed strategy for achieving compliance. The plan must include:

(i) A compliance schedule that does not exceed ten years;

(ii) Identification of all reasonable and feasible improvements that could be used to meet standards, or if meeting the standards is not attainable, then to achieve the highest attainable level of improvement;

(iii) Any department-approved gas abatement plan as described in WAC 173-201A-200 (1)(f)(ii);

(iv) Analytical methods that will be used to evaluate all reasonable and feasible improvements;

(v) Water quality monitoring, which will be used by the department to track the progress in achieving compliance with the state water quality standards; and

(vi) Benchmarks and reporting sufficient for the department to track the applicant's progress toward implementing the plan within the designated time period.

(c) The plan must ensure compliance with all applicable water quality criteria, as well as any other requirements

established by the department (such as through a total maximum daily load, or TMDL, analysis).

(d) If the department is acting on an application for a water quality certification, the approved water quality attainment plan may be used by the department in its determination that there is reasonable assurance that the dam will not cause or contribute to a violation of the water quality standards.

(e) When evaluating compliance with the plan, the department will allow the use of models and engineering estimates to approximate design success in meeting the standards.

(f) If reasonable progress toward implementing the plan is not occurring in accordance with the designated time frame, the department may declare the project in violation of the water quality standards and any associated water quality certification.

(g) If an applicable water quality standard is not met by the end of the time provided in the attainment plan, or after completion of all reasonable and feasible improvements, the owner must take the following steps:

(i) Evaluate any new reasonable and feasible technologies that have been developed (such as new operational or structural modifications) to achieve compliance with the standards, and develop a new compliance schedule to evaluate and incorporate the new technology;

(ii) After this evaluation, if no new reasonable and feasible improvements have been identified, then propose an alternative to achieve compliance with the standards, such as site specific criteria (WAC 173-201A-430), a use attainability analysis (WAC 173-201A-440), or a water quality offset (WAC 173-201A-450).

(h) New dams, and any modifications to existing facilities that do not comply with a gas abatement or other pollution control plan established to meet criteria for the water body, must comply with the water quality standards at the time of project completion.

(i) Structural changes made as a part of a department approved gas abatement plan to aid fish passage, described in WAC 173-201A-200 (1)(f)(ii), may result in system performance limitations in meeting water quality criteria for that parameter at other times of the year.

WSR 15-03-018

PROPOSED RULES

DEPARTMENT OF ECOLOGY

[Order 14-01—Filed January 8, 2015, 2:43 p.m.]

Original Notice.

Expedited Rule Making—Proposed notice was filed as WSR 14-14-010.

Title of Rule and Other Identifying Information: Ecology is proposing to repeal two obsolete rules: Chapter 173-330 WAC, Used automobile oil recycling sign requirements for automobile oil sellers and chapter 173-24 WAC, Tax exemptions and credits for pollution control facilities.

Hearing Location(s): Department of Ecology, Headquarters, 300 Desmond Drive, Lacey, WA, on February 25, 2015, at 1:30 p.m.

Date of Intended Adoption: March 18, 2015.

Submit Written Comments to: Bari Schreiner, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, e-mail rulemaking@ecy.wa.gov, fax (360) 407-6989, by March 5, 2015.

Assistance for Persons with Disabilities: Contact waste 2 resources main reception by February 18, 2015, TTY (877) 833-6341 or (360) 407-6900.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Repeal of chapter 173-330 WAC. Repeal of this obsolete rule will not impact other existing rules or any entities who currently provide used oil recycling.

Repeal of chapter 173-24 WAC. Repeal of this obsolete rule will not impact any tax exemptions or credits currently received by facilities.

On June 19, 2014, ecology filed an expedited notice (WSR 14-14-010) to repeal the above referenced chapters. The expedited rule-making process is intended to save taxpayer time and money by providing a streamlined process to repeal rules that meet certain criteria. In this case, the rules are no longer necessary and the statutory authority for one has been repealed. Ecology received one objection to the expedited process that was not withdrawn. The agency is now moving forward proposing these repeals and will hold a public hearing and accept comments.

Reasons Supporting Proposal: **Chapter 173-330 WAC:** All sections of the enabling statute (chapter 19.114 RCW, Used automotive oil recycling) were repealed in 1991. Requirements for used oil recycling were adopted by the 1991 legislature as chapter 70.951 RCW, Used oil recycling. Chapter 70.951 RCW contains requirements for education, including signs. Chapter 173-330 WAC is no longer authorized or necessary.

Chapter 173-24 WAC: Until November 30, 1981, chapter 82.34 RCW, Pollution control facilities—Tax exemptions and credits, authorized pollution control facilities to apply to the department of revenue for a tax credit or exemption. The appropriate pollution control agency was then required to review the application and if appropriate approve that the facility was a pollution control facility. Ecology's role for facilities under its jurisdiction was to identify and classify facilities, and to confirm that the facility controlled, captured and removed pollutants from the air and water. The review was conducted for water pollution control facilities and any facilities related to an air contaminant source. Chapter 173-24 WAC describes ecology's process for reviewing and approving facilities.

In 1981, the legislature amended the law in chapter 82.34 RCW to provide that the last date applications for pollution control tax credits or exemptions could be filed was November 30, 1981. Since applications are no longer accepted under chapter 82.34 RCW, the rules in chapter 173-24 WAC have no purpose, and we are proposing to repeal them. Repealing this chapter will not impact any tax exemptions or credits currently received by facilities.

Statutory Authority for Adoption: Chapter 173-330 WAC requires sellers of automotive oil to post signs informing the public about how to recycle used automotive oil. The statute enabling chapters 173-330 WAC, 19.114 RCW, was repealed in 1991 and replaced by chapter 70.951 RCW. Chap-

ter 173-330 WAC is no longer authorized or needed, and was replaced by requirements for signs found in chapter 70.951 RCW.

Chapter 173-24 WAC was originally adopted under the authority in RCW 82.34.040, which authorized ecology to "adopt such rules as it deems necessary for the administration of this chapter ...". RCW 82.34.040 likewise authorizes repeal of the chapter.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Kyle Dorsey and Bari Schreiner, Ecology Headquarters Building, Lacey Washington, (360) 407-6998; Implementation and Enforcement: Not applicable.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule making is exempt from chapter 19.85 RCW because the content of the rule is "explicitly and specifically dictated by statute" and the rules are being repealed because they are no longer needed. (RCW 34.05.310 (4)(e).) (See Statutory Authority for Adoption, above, for more details.)

A cost-benefit analysis is not required under RCW 34.05.328. This rule making is exempt from chapter 34.05 RCW because the content of the rule is "explicitly and specifically dictated by statute" and the rules are being repealed because they are no longer needed. (RCW 34.05.328 (5)(b) (ii).) (See Statutory Authority for Adoption, above, for more details.)

January 8, 2015

Polly Zehm

Deputy Director

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 173-24-010	Introduction and purpose.
WAC 173-24-020	Authority.
WAC 173-24-030	Definitions.
WAC 173-24-040	Applications submitted to the department of revenue.
WAC 173-24-050	Applications reviewed by the department.
WAC 173-24-060	Action by the department within thirty days—Request for further information.
WAC 173-24-070	Identification and classification of facilities.
WAC 173-24-080	Approval of a facility.
WAC 173-24-090	Installation for the purpose of pollution control.

- WAC 173-24-100 Operation for the purpose of pollution control.
- WAC 173-24-110 Meeting the intent and purposes of chapters 70.94 and 90.48 RCW.
- WAC 173-24-120 Treatment before connection to utilities.
- WAC 173-24-125 Revision of prior findings.
- WAC 173-24-130 Administrative appeal of department decision.
- WAC 173-24-140 Delegation.
- WAC 173-24-150 Delegation of state responsibilities under federal program.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 173-330-010 Purpose.
- WAC 173-330-020 Applicability.
- WAC 173-330-030 Definitions.
- WAC 173-330-040 Responsibility to procure and post sign.
- WAC 173-330-050 Sign criteria.
- WAC 173-330-060 Posting and maintenance of signs.
- WAC 173-330-070 Effective date and compliance.
- WAC 173-330-900 Logo and sign.

WSR 15-03-023
PROPOSED RULES
GAMBLING COMMISSION
 [Filed January 9, 2015, 11:10 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-21-123.

Title of Rule and Other Identifying Information: WAC 230-05-001 Prorating or refunding of fees, 230-05-010 Returned checks, and 230-06-140 Partial refund of license fees if gambling receipts limit not met.

Hearing Location(s): DoubleTree by Hilton Olympia, 415 Capitol Way North, Olympia, WA 98501, (360) 570-0555, on March 12 or 13, 2015, at 9:00 a.m. or 1:00 p.m. NOTE: Meeting dates and times are tentative. Visit our web site at www.wsgc.wa.gov and select public meeting about ten days before the meeting to confirm meeting date/location/start time.

Date of Intended Adoption: March 12 or 13, 2015.

Submit Written Comments to: Susan Newer, P.O. Box 42400, Olympia, WA 98504-2400, e-mail Susan.Newer@wsgc.wa.gov, fax (360) 486-3625, by March 1, 2015.

Assistance for Persons with Disabilities: Contact Michelle Rancour by March 1, 2015, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed changes allow us to retain our processing costs for the following refunds:

- Overpayments;
- Duplicate payments; and
- Prior year refunds (refunding the difference between the fees the licensee paid the previous year and the fees for the license class level actually met).

The proposed change also increases the processing costs we charge for collecting nonsufficient fund (NSF) payments.

History of the Rules:

Refunds: WAC 230-05-001(4): This rule allows us to retain a portion of the license fees to offset our costs for processing and investigating applications that are denied, voluntarily withdrawn, and administratively closed.

WAC 230-05-001(5) and 230-06-140(2): When licensees operate at a license class lower than their license, they can request a refund of the difference between the license class they operated at and the fee they paid.

NSF Recovery: WAC 230-05-010: In 1990, this rule allowed us to collect \$15 to process an NSF check as payment of fees. In July 2005, the rule was amended to increase the fee to \$30, which is what the fee is currently.

Impact of the Proposed Changes:

Refunds: We issue refunds for the following reasons: Prorated license fees, license limits not met, applications withdrawn or administratively closed, overpayment or duplicate payment, and refunding fees placed on deposit to complete an investigation or review.

The number and amount of refunds issued each year for overpayments, duplicate payments and license limits not met the previous year is summarized below:

Year	Total Refunds Issued	Total Refunded
2010	367	\$167,482
2011	275	\$113,044
2012	193	\$78,314
2013	206	\$70,483
2014 (through November 30)	228	\$82,585

It takes staff time to process each of these refunds. Currently, licensees do not pay our processing costs for issuing refunds when license limits are not met, for refunding overpayments or duplicate payments.

NSF Recovery: The number of NSF payments is increasing. The following is a breakdown of the NSFs received in the last few years:

Licensee	2012	2013	2014 (through October 31)
Individuals	49	31	33
Organizations	10	14	21
Total	59	44	54

NSFs have increased because licensees are not entering their account and/or routing number correctly when paying online. Our online payment page includes a note about the importance of correctly inputting banking information and we also ask them to input banking information twice to catch any inputting errors.

This rule change will allow us to recoup our actual processing costs for all NSF payments without additional rule changes. This change would also allow us to recoup our processing costs for credit card and electronic check payments we may accept in the future. We will post our processing costs on our web site and update the information as it changes.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Susan Newer, Lacey, (360) 486-3466; Implementation: David Trujillo, Director, Lacey, (360) 486-3512; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required for each rule change because the rules impose less than minor costs based on staff's analysis.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

January 9, 2015
Susan Newer
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-21-116, filed 10/22/07, effective 1/1/08)

WAC 230-05-001 Prorating or refunding of fees. (1)

We may prorate organization license fees when we adjust expiration dates to schedule our workload.

(2) We may adjust expiration dates to end on the same day for organizations licensed for more than one activity. Whenever we adjust license expiration dates under this provision, we may prorate the required fees.

(3) We will not prorate or refund fees when:

- (a) You discontinue your gambling activities; or
- (b) You voluntarily surrender your license or permit; or
- (c) We suspend or revoke your license.

(4) We keep a portion of your application or license fees ~~((whether we))~~ for processing costs when:

- (a) We deny or administratively close your application;
- or
- (b) You withdraw ~~((#))~~ your application; or
- (c) You overpaid us; or
- (d) We received duplicate license fees.

(5) If you are a commercial stimulant or a charitable or nonprofit licensee, you have one year from your license expiration to apply for a partial refund of your license fee if your annual gross gambling receipts are less than the minimum for your license class. After our approval, we refund you the difference between the fees you paid and the fees for the license class level you actually met less our processing costs.

AMENDATORY SECTION (Amending WSR 06-07-157, filed 3/22/06, effective 1/1/08)

WAC 230-05-010 ~~((Returned checks.))~~ Nonsufficient fund payments. (1) If your bank returns your ~~((check))~~ payment for license fees to us for any reason, you must:

- (a) Pay us in full, by certified check, money order, or cash, within five days of notification; and
- (b) ~~((Pay an additional))~~ Reimburse our processing ~~((charge of thirty dollars))~~ costs, which would include, but not be limited to, time spent notifying you and seeking payment.
- (2) If you fail to pay within five days of notification:
 - (a) We will administratively close your application; or
 - (b) Your license expires and all gambling activity must stop.
- (3) If we administratively close your application or your license expires, you must give us a new application with fees paid by certified check, money order, or cash in order to be considered for a license.

AMENDATORY SECTION (Amending WSR 06-17-132, filed 8/22/06, effective 1/1/08)

WAC 230-06-140 Partial refund of license fees if gambling receipts limit not met. (1) Licensees may apply for a partial refund of their license fee when their annual gross gambling receipts are less than the minimum for the class of license we issued to them.

- (2) Licensees may receive a refund for the difference between the fees actually paid and the fees that would normally apply to the level of gross gambling receipts actually received during the period less our processing costs.
- (3) Licensees may make their request for refund after the end of any annual license period and before the end of the next annual license period.

WSR 15-03-024
PROPOSED RULES
GAMBLING COMMISSION
[Filed January 9, 2015, 1:19 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-21-123.

Title of Rule and Other Identifying Information: Proposed new WAC 230-06-124 Online filing and payments required with waivers available upon request for good cause and amending WAC 230-06-125 Renew your license in a timely manner.

Hearing Location(s): DoubleTree by Hilton Olympia, 415 Capitol Way North, Olympia, WA 98501, (360) 570-0555, on March 12 or 13, 2015, at 9:00 a.m. or 1:00 p.m. NOTE: Meeting dates and times are tentative. Visit our web site at www.wsgc.wa.gov and select public meeting about ten days before the meeting to confirm meeting date/location/start time.

Date of Intended Adoption: March 12 or 13, 2015.

Submit Written Comments to: Susan Newer, P.O. Box 42400, Olympia, WA 98504-2400, e-mail Susan.Newer@wsgc.wa.gov, fax (360) 486-3625, by March 1, 2015.

Assistance for Persons with Disabilities: Contact Michelle Rancour by March 1, 2015, TTY (360)486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed changes would require all licensees to complete license renewals and activity reports online.

Licensed organizations may request a waiver for good cause from online renewal and activity reporting. A waiver for good cause would include:

- Not having access to the internet using their own computer or similar equipment; or
- Not having a bank account; or
- The licensee's bank is unable to send electronic fund transactions; or
- Some other circumstance or condition that prevents completing these transactions online.

Licensed individuals may request a waiver for good cause from online renewal. A waiver for good cause would include:

- Not having access to the internet using their own computer or similar equipment; or
- Not having a bank account *or credit card*; or
- The licensee's bank is unable to send electronic fund transactions; or
- Some other circumstance or condition that prevents completing these transactions online.

The department of revenue (DOR) requires businesses that file monthly and quarterly reports to report online. They provide businesses that are not able to report online a waiver. Our proposed language is similar to the language DOR uses.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Susan Newer, Lacey, (360) 486-3466; Implementation: David Trujillo, Director, Lacey, (360) 486-3512; and

Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not prepared because the rule change does not impose additional costs to licensees. Licensees could get a waiver and would not have to comply with this rule.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

January 9, 2015

Susan Newer

Rules Coordinator

LICENSE RENEWALS AND ACTIVITY REPORTS

NEW SECTION

WAC 230-06-124 Online filing and payments required with waivers available upon request for good cause. (1) All licensees must submit the following online:

(a) Renewal application and fees, as referenced in Title 230 WAC; and

(b) Activity reports, as referenced in Title 230 WAC.

(2) We may waive these requirements if a licensed organization can show good cause. The reasons for good cause include:

(a) You do not have access to the internet using your own computer or similar equipment; or

(b) You do not have a bank account; or

(c) Your bank is unable to send electronic fund transactions; or

(d) Some other circumstance or condition exists that, in our judgment, prevents you from submitting online.

(3) We may waive these requirements if a licensed individual can show good cause. The reasons for good cause include:

(a) You do not have access to the internet using your own computer or similar equipment; or

(b) You do not have a bank account or credit card; or

(c) Your bank is unable to send electronic fund transactions; or

(d) Some other circumstance or condition exists that, in our judgment, prevents you from submitting online.

(4) You must request a waiver, in writing, no later than sixty days before your activity report due date or license expiration date. A waiver will cover subsection (1)(a) and (b) of this section.

AMENDATORY SECTION (Amending WSR 08-03-062, filed 1/14/08, effective 2/14/08)

WAC 230-06-125 Renew your license in a timely manner. (1) ~~((Licensees))~~ You must renew online, unless you have received a waiver, as outlined in WAC 230-06-124 and allow for enough time to:

(a) Print the license prior to midnight before the license expires; or

(b) Have us print the license and mail it to you so you receive it before your license expires.

(2) If you have a waiver and are not renewing your license online, you must ensure a properly completed renewal application and all applicable fees are received at our administrative office in Lacey at least fifteen days before the expiration date on ~~((their))~~ the license.

~~((2))~~ (3) If licensees do not submit a properly completed application and all fees and their license expires, they must immediately stop the gambling activity covered by their license.

~~((3))~~ (4) If your license expires, you must submit an application and you must not operate any gambling activity until a new license is issued.

WSR 15-03-040

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed January 12, 2015, 3:53 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-22-093.

Title of Rule and Other Identifying Information: Quality orchardgrass seed certification under chapter 16-302 WAC. In response to a petition for rule making received from industry, the department is proposing to add orchardgrass to the quality seed certification program.

Hearing Location(s): WSDA Building, Room 238, 21 North First Avenue, Yakima, WA 98902, on February 25, 2015, at 11:00 a.m.

Date of Intended Adoption: March 11, 2015.

Submit Written Comments to: Teresa Norman, P.O. Box 42560, Olympia, WA 98504, e-mail WSDARulesComments@agr.wa.gov, fax (360) 902-2043, by 5:00 p.m., February 25, 2015.

Assistance for Persons with Disabilities: Contact the agency receptionist by calling TTY 1-800-833-6388 or 711 no later than February 11, 2015.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal will establish quality seed standards for orchardgrass, which will allow orchardgrass hay producers to select seed lots that are free from contaminants detrimental to orchardgrass hay production.

Reasons Supporting Proposal: This proposal is supported by members of the seed industry, the hay industry and the Organization of Kittitas County Timothy Hay Growers as this proposal will allow for selection of orchardgrass seed lots free from detrimental contaminants.

Statutory Authority for Adoption: RCW 15.49.005 and 15.49.021 and chapter 34.05 RCW.

Statute Being Implemented: Chapter 15.49 RCW, Seeds.

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

Name of Proponent: Casey Kilts, Bailey Seed Company, private.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Victor Shaul, Yakima, (509) 249-6950.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not prepared as this proposal will actually allow for a net profit for lots meeting the quality seed standards rather than creating a cost.

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

January 12, 2015

Brad J. Avy

Assistant Director

Quality Orchardgrass Seed and Quality Timothy Seed Program

AMENDATORY SECTION (Amending WSR 14-20-050, filed 9/25/14, effective 10/26/14)

WAC 16-302-740 Standards for quality orchardgrass seed and quality timothy seed certification. (1) The general seed certification definitions and standards found in WAC 16-302-005 through 16-302-130, the grass seed certification standards found in WAC 16-302-320 through 16-302-390, and the requirements found in WAC 16-302-745 through ~~((+6-302-755))~~ 16-302-756 constitute the standards for quality orchardgrass seed and quality timothy seed certification.

(2) Fees for quality orchardgrass seed and quality timothy seed certification are assessed by the certifying agency as established in chapter 16-303 WAC.

AMENDATORY SECTION (Amending WSR 08-23-055, filed 11/14/08, effective 12/15/08)

WAC 16-302-745 Seed certification requirements. (1) In order for a seed lot to be eligible for quality orchardgrass seed or quality timothy seed certification ~~((#))~~, the seed lot must meet field and seed certification standards as defined in WAC 16-302-330 through 16-302-385.

(2) For ~~((#))~~ an orchardgrass seed or timothy seed lot that has already been certified, a copy of the certification tag must be submitted as proof of certification.

AMENDATORY SECTION (Amending WSR 08-23-055, filed 11/14/08, effective 12/15/08)

WAC 16-302-750 Official sampling requirements. The seed test for the quality orchardgrass seed and quality timothy seed program must be conducted on an officially drawn sample taken in accordance with WAC 16-302-090.

AMENDATORY SECTION (Amending WSR 14-20-050, filed 9/25/14, effective 10/26/14)

WAC 16-302-755 Standards for quality timothy seed. (1) Seed standards for quality timothy grass seed are as follows:

	Minimum % Purity	Minimum Viability by Germination or TZ Test	Maximum % Other Crop (a)	Maximum % Weed (b)
Timothy seed	97	85	0.20	0.02
Purity component percentages are based on 1 gram sample size ((as prescribed by the AOSA rules)).				

- (a) Must be free of ryegrass, orchardgrass, *Agrostis* sp., *Poa* sp., brome, reed canarygrass, tall fescue, and meadow foxtail. Must be free of the above listed contaminants based upon a 50 gram examination.
- (b) Must be free of alfilaria (redstem filaree), *Bromus* sp., chickweed including all other species in the Caryophyllaceae family, henbit, *Poa* sp., wild carrot, ((and)) prohibited noxious weeds listed in WAC 16-301-045, and restricted noxious weeds listed in WAC 16-301-050. Must be free of the above listed contaminants based upon a 50 gram examination.

(2) A quality timothy seed analysis certificate is the basis of determining if a lot meets the quality timothy seed standards. This certificate is issued by the certifying agency and represents a purity test, a 50 gram noxious, all weed, all crop exam, and a viability test.

(3) Seed meeting quality timothy seed standards will be tagged with a "quality timothy seed" tag.

NEW SECTION

WAC 16-302-756 Standards for quality orchardgrass seed. (1) Seed standards for quality orchardgrass seed are as follows:

	Minimum % Purity	Minimum Viability by Germination or TZ Test	Maximum % Other Crop (a)	Maximum % Weed (b)
Orchardgrass seed	90	85	0.20	0.02
Purity component percentages are based on 3 gram sample size.				

- (a) Must be free of ryegrass, timothy, *Agrostis* sp., *Poa* sp., brome, reed canarygrass, tall fescue, and meadow foxtail. Must be free of the above listed contaminants based upon a 50 gram examination.
- (b) Must be free of alfilaria (redstem filaree), *Bromus* sp., chickweed including all other species in the Caryophyllaceae family, henbit, *Poa* sp., wild carrot, prohibited noxious weeds listed in WAC 16-301-045, and restricted noxious weeds listed in WAC 16-301-050. Must be free of the above listed contaminants based upon a 50 gram examination.

(2) A quality orchardgrass seed analysis certificate is the basis of determining if a lot meets the quality orchardgrass seed standards. This certificate is issued by the certifying agency and represents a purity test, a 50 gram noxious, all weed, all crop exam, and a viability test.

(3) Seed meeting quality orchardgrass seed standards will be tagged with a "quality orchardgrass seed" tag.

Hearing Location(s): Department of Financial Institutions (DFI), 150 Israel Road S.W., Tumwater, WA 98501, on February 24, 2015, at 10:00 a.m.

Date of Intended Adoption: March 24, 2015.

Submit Written Comments to: Michelle Webster, Securities Division, P.O. Box 9033, Olympia, WA 98507-9033, e-mail michelle.webster@dfi.wa.gov, fax (360) 704-6491, by February 24, 2015.

Assistance for Persons with Disabilities: Contact Carolyn Hawkey, P.O. Box 9033, Olympia, WA 98507, by February 24, 2015, TTY (360) 664-8126 or (360) 902-8760.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 21.20.310 (8) [21.20.310(8)] provides an exemption from securities registration for "any security which meets the criteria for investment grade securities that the director may adopt by rule." In furtherance of this statute, WAC 460-42A-081 provides an exemption for securities listed on specified national securities exchanges.

This rule was last amended in 1996 and since that time, a number of national securities exchanges specified in this rule have undergone name changes, have restructured, or no longer exist. The proposed rule seeks to identify the current exchange-listed securities recognized in Section 18 of the Securities Act of 1933 and federal Rule 146 adopted thereunder.

WSR 15-03-053
PROPOSED RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS
 (Securities Division)
 [Filed January 14, 2015, 3:01 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-21-092.

Title of Rule and Other Identifying Information: The securities division is proposing to amend WAC 460-42A-081 to update the list of securities exchanges for which securities listed thereon qualify as "investment grade securities" and are thus exempt from registration under RCW 21.20.310(8).

Reasons Supporting Proposal: The proposed amendments to WAC 460-42A-081 clarify the availability of the exemption from registration requirements for securities that are deemed "covered securities" under federal law and that the securities division is thus otherwise preempted from requiring registration thereof. As this rule was last amended in 1996, the proposed updates will better coordinate this rule with existing federal law enforced by the Securities and Exchange Commission.

Statutory Authority for Adoption: RCW 21.20.450, 21.20.310(8).

Statute Being Implemented: RCW 21.20.310(8).

Rule is necessary because of federal law, 15 U.S.C. §77r; 17 C.F.R. 230.146.

Name of Proponent: DFI, securities division, governmental.

Name of Agency Personnel Responsible for Drafting: Michelle Webster, 150 Israel Road S.W., Tumwater, WA 98501, (360) 902-8736; Implementation: Scott Jarvis, Director, DFI, 150 Israel Road S.W., Tumwater, WA 98501, (360) 902-8760; and Enforcement: William Beatty, Director, Securities, 150 Israel Road S.W., Tumwater, WA 98501, (360) 902-8760.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.061 of the Regulatory Fairness Act provides that unless requested by a majority vote of the joint administrative rules [review] committee under RCW 19.85.030, an agency is not required to prepare a small business economic impact statement when adopting any rule solely for the purpose of conformity or compliance, or both, with federal statutes or regulations. The proposed updates merely seek to better coordinate the amended proposed rule with existing federal law by identifying the current securities listed on exchanges recognized in Section 18 of the Securities Act of 1933 and amended federal Rule 146 adopted thereunder.

A cost-benefit analysis is not required under RCW 34.05.328. DFI is not an agency identified in RCW 34.05.-328.

January 14, 2015
Scott Jarvis
Director

AMENDATORY SECTION (Amending WSR 04-07-035, filed 3/9/04, effective 4/9/04)

WAC 460-42A-081 Exchange and national market system exemption. (1) Any securities listed or designated, or approved for listing or designation upon notice of issuance, on (a) the New York Stock Exchange LLC, (b) the ~~(American Stock Exchange, (c) the NASDAQ/NMS interdealer quotation system pursuant to the Memorandum of Understanding between the North American Securities Administrators Association (NASAA) and the National Association of Securities Dealers (NASD) adopted April 28, 1990, (d) the Chicago Board Options Exchange pursuant to the Memorandum of Understanding between NASAA and the Chicago Board Options Exchange dated May 30, 1991, (e) Tier I on the Pacific Stock Exchange pursuant to the Memorandum of Understanding between NASAA and the Pacific Stock~~

~~Exchange dated October 12, 1994, or (f) Tier I on the Philadelphia Stock Exchange pursuant to the Memorandum of Understanding between NASAA and the Philadelphia Stock Exchange dated October 12, 1994)) NYSE MKT LLC ("NYSE MKT"), (c) the National Market System of the NASDAQ Stock Market ("NASDAQ/NGM"), (d) Tier I of the NYSE Arca, Inc., (e) Tier I of the NASDAQ OMX PHLX LLC, (f) the Chicago Board Options Exchange, Incorporated, (g) options listed on the International Securities Exchange, LLC, (h) the NASDAQ Capital Market, (i) Tier I and Tier II of BATS Exchange, Inc., any other security of the same issuer which is of senior or substantially equal rank, any security called for by subscription rights or warrants so listed or approved, or any warrant or right to purchase or subscribe to any of the foregoing is exempt under RCW 21.20.310(8).~~

~~(2) ((For the purposes of nonissuer transactions only, any security listed or approved for listing upon notice of issuance on (a) the NASDAQ/NMS interdealer quotation system, (b) the New York Stock Exchange, (c) the American Stock Exchange, (d) the Chicago Stock Exchange, (e) the Chicago Board Options Exchange, (f) the Pacific Stock Exchange, (g) the Philadelphia Stock Exchange, or any other stock exchange registered with the federal securities and exchange commission and approved by the director; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing, is exempted under RCW 21.20.310(8).~~

~~(3))~~(a) For the purposes of nonissuer transactions only, any security meeting the following requirements is exempted under RCW 21.20.310(8):

(i) The issuer of the security is a reporting issuer in a foreign country or jurisdiction designated in (b) of this subsection, or by rule or order of the director, and has been subject to continuous reporting requirements in such foreign country for not less than one hundred eighty days before the transaction; and

(ii) The security is listed on such foreign country's securities exchange which has been designated in (b) of this subsection, or by rule or order of the director, or is a security of the same issuer which is of senior or substantially equal rank to such listed security or is a warrant or right to purchase or subscribe to any of the foregoing.

(b) For purposes of (a) of this subsection, Canada together with its provinces and territories is a designated foreign jurisdiction and the Toronto Stock Exchange is a designated securities exchange.

~~((4))~~ (3) The director may by order withdraw the exemptions provided by subsection (1)(~~(;))~~ or (2)(~~(; or (3))~~) of this section as to an exchange or interdealer quotation system or a particular security when necessary in the public interest for the protection of investors.

WSR 15-03-057**PROPOSED RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Behavioral Health and Service Integration Administration)

(Division of Behavioral Health and Recovery)

[Filed January 15, 2015, 9:09 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-16-111.

Title of Rule and Other Identifying Information: New WAC 388-877A-0400 How individuals can express concern about their rights, services, or treatment, 388-877A-0410 Grievance system—Definitions, 388-877A-0420 Grievance process, 388-877A-0430 Notice of action, 388-877A-0440 Appeal process, 388-877A-0450 Administrative hearings, 388-877A-0460 Individual rights specific to medicaid recipients and 388-877-0605 DBHR complaint process; and repealing WAC 388-865-0255 Consumer grievance process.

Hearing Location(s): Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on March 10, 2015, at 10:00 a.m.

Date of Intended Adoption: Not earlier than March 11, 2015.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., March 10, 2015.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, TTY (360) 664-6178 or (360) 664-6094 or e-mail Kildaja@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed new rules inform individuals applying for, eligible for, or receiving mental health services of their right to express dissatisfaction regarding a mental health service and how to use the regional support network's grievance system. The rules inform consumers of behavioral health services how to use the division of behavioral health and recovery's complaint process, and update and clarify individual rights specific to the medicaid program. The department is repealing WAC 388-865-0255 that is outdated due to these new rules.

Statutory Authority for Adoption: Chapter 49.60 RCW, RCW 71.05.560, 71.24.035 (5)(c), and 71.34.380; 42 C.F.R. §438.400.

Statute Being Implemented: Chapter 49.60 RCW, RCW 71.05.560, 71.24.035 (5)(c), and 71.34.380; 42 C.F.R. §438.400.

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Kathy Sayre, P.O. Box 45330, Olympia, WA 98504-5330, (360) 725-1342; Implementation and Enforcement: Dennis Malmer, P.O. Box 45330, Olympia, WA 98504-5330, (360) 725-3747.

A small business economic impact statement has been prepared under chapter 19.85 RCW. See Reviser's note below.

A copy of the statement may be obtained by contacting Kathy Sayre, Rules Manager, P.O. Box 45330, Olympia, WA 98504-5330, phone (360) 725-1342, fax (360) 725-2280, e-mail kathy.sayre@dshs.wa.gov.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Kathy Sayre, P.O. Box 45330, Olympia, WA 98504-5330, phone (360) 725-1342, fax (360) 725-2280, e-mail kathy.sayre@dshs.wa.gov.

January 14, 2015
Katherine I. Vasquez
Rules Coordinator

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 15-04 issue of the Register.

WSR 15-03-058**PROPOSED RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Developmental Disabilities Administration)

[Filed January 15, 2015, 9:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-21-127.

Title of Rule and Other Identifying Information: Chapter 388-833 WAC, Community crisis stabilization service (CCSS) program.

Hearing Location(s): Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on February 24, 2015, at 10:00 a.m.

Date of Intended Adoption: Not earlier than February 25, 2015.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., February 24, 2015.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, TTY (360) 664-6178 or (360) 664-6092 or e-mail Kildaja@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This new chapter of WAC is for the CCSS program and is necessary to define client eligibility and outline the short-term behavioral health supports for participants who are in crisis.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.120.

Statute Being Implemented: 2SSB 5459.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Monica Reeves, Devel-

opmental Disabilities Administration, P.O. Box 45310, Olympia, 98504-5310, (360) 725-3422.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rules do not impact small businesses or nonprofits. They only impact DSHS clients.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are exempt under RCW 34.05.328 (5)(b)(vii) and relate only to client medical or financial eligibility.

January 14, 2015
Katherine I. Vasquez
Rules Coordinator

NEW SECTION

WAC 388-833-0005 Definitions "CCSS review team" means DDA staff who review referrals to the CCSS program.

"**Crisis**" means a set of circumstances or events that:

- (1) Put a participant at risk of hospitalization, institutionalization, or loss of residence;
- (2) Exceeds a participant's individual ability to cope/remain stable; or
- (3) Exceeds the ability of the participant's caregivers to provide necessary supports.

"**CRM/SW/SSS**" means the DDA case resource manager, DDA social worker, or DDA social service specialist assigned to an individual or participant in the CCSS program.

"**Developmental disabilities administration**" or "**DDA**" means the developmental disabilities administration within the department of social and health services.

"**Individual**" means a person who has a developmental disability as defined in RCW 71A.10.020(5) who also has been determined eligible to receive services by the administration under chapter 71A.16 RCW. Other terms used in the field include "client" and "resident".

"**Participant**" means the individual who is accessing the community crisis stabilization service.

"**Participant team**" means individuals who work together to provide formal and informal supports to a participant. A typical team includes CCSS staff, the CRM/SW/SSS, the participant's family/legal representative(s), and service providers working with the participant.

"**Regional clinical team**" means DDA staff who may respond to crisis situations by providing assessment, training, behavior support and consultation as well as behavioral health stabilization services to DDA enrolled individuals.

NEW SECTION

WAC 388-833-0010 What is the purpose of the community crisis stabilization service (CCSS) program? The purpose of the CCSS program is to provide short-term behavioral health supports to participants who are in crisis.

NEW SECTION

WAC 388-833-0015 Who is eligible for the community crisis stabilization service (CCSS) program? To be eligible for CCSS, the following conditions must be met:

- (1) The individual has been determined eligible for DDA services as defined in chapter 388-823 WAC;
- (2) The individual is eligible for medicaid services;
- (3) The individual or legal representative has provided voluntary consent to participate;
- (4) The individual is age eight to twenty one;
- (5) The individual has no unresolved issues of abuse or neglect pending with the DSHS children's administration; and
- (6) The DDA CCSS review team has determined that the individual needs the level of service provided in the CCSS program.

NEW SECTION

WAC 388-833-0020 How long may a participant receive services from CCSS? The participant may receive services for a maximum of one hundred eighty consecutive days per admission, from the date of admission to the program.

NEW SECTION

WAC 388-833-0025 How does an individual access CCSS? The individual or family/legal representative may request CCSS through the CRM/SW/SSS.

NEW SECTION

WAC 388-833-0030 How is a decision made for participation in the CCSS program? (1) Placement in the CCSS program is only considered when there are no other DDA services available that can safely and appropriately meet the individual's needs.

(2) Through a referral process, review and discussion, the CCSS review team determines whether the individual needs the level of service provided in the CCSS program. When there are multiple clients requesting the CCSS program services, placement is offered at the sole discretion of the CCSS review team to the client who currently demonstrates the greatest need for services.

(3) DDA and the family/legal representative must be in agreement about the need for CCSS and that placement in the program is in the client's best interest.

NEW SECTION

WAC 388-833-0045 What are the expectations of family/legal representative when their child is in the CCSS program? Family/legal representatives retain custody of their child at all times when the child is receiving services in the CCSS program. Family/legal representative responsibilities include, but are not limited to, the following:

- (1) Maintain ongoing and regular contact with their child;
- (2) Agree to work cooperatively with their child's DDA CRM/SW/SSS, and other DSHS staff and persons caring for the child;
- (3) Participate in decision making for the child;
- (4) The right to make all nonemergency decisions about medical care, enlistment in military service, marriage and

other important legal decisions for the person under eighteen years of age; and

(5) Agree that if their child's CCSS placement disrupts, their child will return to the parents physical care until a new placement is developed.

NEW SECTION

WAC 388-833-0050 Who pays for the participant's care when they are in the CCSS program? A combination of state and federal funds cover the cost of the participant's care while in the CCSS program. The family/legal representative is encouraged to support the participant with typical items or activities, e.g., presents, clothing, special items, special outings which are not supported by state or federal funds.

NEW SECTION

WAC 388-833-0055 What appeal rights do I have?

(1) You have the right to appeal decisions made by DDA in accordance with WAC 388-825-120 through 388-825-165.

(2) Once the one hundred eighty day maximum stay is reached, the service has been completed and terminating the service and returning the participant to another residential placement is not considered a termination, denial, or move to a different type of residential service as described in WAC 388-825-120.

(3) A participant may appeal eligibility for the CCSS program but participation in the program is determined by WAC 388-833-0030 and is dependent on bed and funding availability. There is no appeal right to a CCSS participation determination.

NEW SECTION

WAC 388-833-0060 Does DDA make exceptions to the requirements in this chapter? The DDA assistant secretary may approve exceptions to the requirements specified in this chapter.

WSR 15-03-067

PROPOSED RULES

DEPARTMENT OF HEALTH

(Dental Quality Assurance Commission)

[Filed January 15, 2015, 1:29 p.m.]

Supplemental Notice to WSR 14-04-022.

Preproposal statement of inquiry was filed as WSR 09-13-097.

Title of Rule and Other Identifying Information: WAC 246-817-310 Maintenance and retention of records and new WAC 246-817-305 and 246-817-315. Creating new rules and renaming and amending an existing rule to set requirements for dental treatment record content, retention and accessibility. This is a supplemental notice to WSR 14-04-022.

Hearing Location(s): Department of Health, 310 Israel Road S.E., Room 152/153, Tumwater, WA 98501, on March 6, 2015, at 8:05 a.m.

Date of Intended Adoption: March 6, 2015.

Submit Written Comments to: Jennifer Santiago, P.O. Box 47852, Olympia, WA 98504-7852, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2901, by February 27, 2015.

Assistance for Persons with Disabilities: Contact Jennifer Santiago by February 27, 2015, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal renames and modifies WAC 246-817-310 and creates two new rules, WAC 246-817-305 and 246-817-315. The proposed rules detail patient record content requirements, move business record related requirements to a new rule, and separate business and patient record accessibility. The current proposal is different from the previous proposal as it modifies and moves deleted requirements for ownership and lessee requirement to WAC 246-817-315.

Reasons Supporting Proposal: A complete and accurate patient record is vital for patient safety and for appropriate regulation. Thorough records are necessary to inform the work of other treatment providers who subsequently treat the patient, as well as for the commission when investigating complaints and regulating practitioners. The proposed rules clarify what should be included in patient records and ensure that patient records are complete, legible, and consistent. The commission agreed with stakeholder comments at the April 18, 2014, hearing and modified the rules to include the existing requirements.

Statutory Authority for Adoption: RCW 18.32.655 and 18.32.0365.

Statute Being Implemented: RCW 18.32.655 and 18.32.-0365.

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

Name of Proponent: Washington state dental quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jennifer Santiago, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4893.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Jennifer Santiago, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4893, fax (360) 236-2901, e-mail jennifer.santiago@doh.wa.gov.

January 14, 2015

Robert R. Shaw, D.M.D., Chair
Dental Quality Assurance Commission

NEW SECTION

WAC 246-817-305 Record content. (1) A licensed dentist who treats patients shall maintain legible, complete, and accurate patient records.

(2) The patient record must reflect diagnosis and treatment performed and contain financial records.

(3) The patient record must include at least the following information:

(a) For each record entry, the signature or electronic verification of the responsible dentist or dental hygienist;

(b) The date of each patient record entry, document, radiograph or model;

(c) An up-to-date treatment plan;

(d) The physical examination findings documented by subjective complaints, objective findings, and an assessment or diagnosis of the patient's condition;

(e) Up-to-date dental and medical history that may affect dental treatment;

(f) Any diagnostic aid used including, but not limited to, images, radiographs, and test results. Retention of molds or study models except for orthodontia or full mouth reconstruction is at the discretion of the practitioner;

(g) A complete description of all treatment/procedures administered at each visit;

(h) An accurate record of any medication(s) administered, prescribed or dispensed including:

(i) The date prescribed or the date dispensed;

(ii) The name of the patient prescribed or dispensed to;

(iii) The name of the medication; and

(iv) The dosage and amount of the medication prescribed or dispensed, including refills;

(i) Referrals and any communication to and from any health care provider;

(j) Notation of communication to or from the patient or patient's parent or guardian, including:

(i) Discussion of potential risk(s) and benefit(s) of proposed treatment, recommended tests, and alternatives to treatment, including no treatment or tests;

(ii) Posttreatment instructions;

(iii) Patient complaints and resolutions; and

(iv) Termination of doctor-patient relationship; and

(k) A copy of each laboratory referral retained for three years as required in RCW 18.32.655.

(4) Complete manual treatment entries must not be erased or deleted from the record.

(a) Mistaken manual entries must be corrected with a single line drawn through the incorrect information. New or corrected information must be initialed and dated.

(b) Complete electronic treatment entries must include deletions, edits, and corrections.

AMENDATORY SECTION (Amending WSR 95-21-041, filed 10/10/95, effective 11/10/95)

WAC 246-817-310 ((Maintenance and)) Patient record retention ((of records)) and accessibility requirements. ((Any dentist who treats patients in the state of Washington shall maintain complete treatment records regarding patients treated. These records shall include, but shall not be limited to X rays, treatment plans, patient charts, patient histories, correspondence, financial data and billing. These records shall be retained by the dentist for five years in an orderly, accessible file and shall be readily available for inspection by the DQAC or its authorized representative. X rays or copies of records may be forwarded to a second party upon the patient's or authorized agent's written request. Also,

office records shall state the date on which the records were released, method forwarded and to whom, and the reason for the release. A reasonable fee may be charged the patient to cover mailing and clerical costs.

Every dentist who operates a dental office in the state of Washington must maintain a comprehensive written and dated record of all services rendered to his/her patients. In offices where more than one dentist is performing the services the records must specify the dentist who performed the services. Whenever requested to do so, by the secretary or his/her authorized representative, the dentist shall supply documentary proof:

(1) That he/she is the owner or purchaser of the dental equipment and/or the office he occupies.

(2) That he/she is the lessee of the office and/or dental equipment.

(3) That he/she is, or is not, associated with other persons in the practice of dentistry, including prosthetic dentistry, and who, if any, the associates are.

(4) That he/she operates his office during specific hours per day and days per week, stipulating such hours and days:))

(1) A licensed dentist who treats patients eighteen years and older shall keep readily accessible patient records for at least six years from the date of the last treatment.

(2) A licensed dentist who treats patients under the age of eighteen years old shall keep readily accessible patient records for at least six years after the patient reaches eighteen years old.

(3) A licensed dentist shall respond to a written request to examine or copy a patient's record within fifteen working days after receipt. A licensed dentist shall comply with chapter 70.02 RCW for all patient record requests.

(4) A licensed dentist shall comply with chapter 70.02 RCW and the Health Insurance Portability and Accountability Act, 45 C.F.R. destruction and privacy regulations.

NEW SECTION

WAC 246-817-315 Business records accessibility. If requested, a licensed dentist who operates a dental practice in the state of Washington shall provide:

(1) Documentation to the dental quality assurance commission that the licensed dentist is:

(a) The owner, purchaser, or lessee of the dental equipment;

(b) The owner, purchaser, or lessee of the office the dentist occupies; and

(c) Associated with other persons in the practice of dentistry, whether or not the associate is licensed to practice dentistry.

(2) All contracts or agreements governing the dental practice business relationships with co-owners, partners, and associates.

WSR 15-03-074
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed January 16, 2015, 11:13 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-24-078.

Title of Rule and Other Identifying Information: WAC 388-450-0085 Does the department count all of my self-employment income to determine if I am eligible for benefits?

Hearing Location(s): Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on February 24, 2015, at 10:00 a.m.

Date of Intended Adoption: Not earlier than February 25, 2015.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., February 24, 2015.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, TTY (360) 664-6178 or (360) 664-6092 or e-mail at kildaja@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This department is proposing to amend WAC 388-450-0085 to allow households with self-employment income and who receive cash and/or food assistance to take the greater of:

- A standard fifty percent deduction from the gross self-employment income; or
- A deduction consisting of actual verified and allowable cost of producing self-employment income.

This rule will eliminate the current \$100 standard self-employment income deduction for cost of doing business.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Statute Being Implemented: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Rule is necessary because of federal law, 7 C.F.R. 273.11 (b)(3)(iv).

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Robert Thibodeau, 712 Pear Street S.E., Olympia, WA 98504, (360) 725-4634.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules do not have an economic impact on small businesses. The proposed amendment only affects certain households served by DSHS who claim self-employment income to be counted toward financial eligibility and benefit level for cash and food assistance.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "[t]his sec-

tion 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."

January 13, 2015

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-18-007, filed 8/22/13, effective 10/1/13)

WAC 388-450-0085 Does the department count all of my self-employment income to determine if I am eligible for benefits? This section applies to cash assistance and Basic Food programs.

(1) We decide how much of your self-employment income to count by:

(a) Adding together your gross self-employment income and any profit you make from selling your business property or equipment;

(b) Subtracting your business expenses as described in subsection (2) below; and

(c) Dividing the remaining amount of self-employment income by the number of months over which the income will be averaged.

(2) We subtract (~~one hundred dollars~~) the greater value of one of the following as a business expense:

(a) Fifty percent of the gross self-employment income total described in subsection (1)(a) in this section even if your costs are less than this; or

(b) The actual verified and allowable costs of producing your self-employment income. If you want us to subtract your actual costs (~~of more than one hundred dollars~~), you must list and give us proof of your expenses within the time limits under WAC 388-406-0030 for us to count them.

(c) We never allow the following expenses when calculating (2)(b):

~~((a))~~ (i) Federal, state, and local income taxes;

~~((b))~~ (ii) Money set aside for retirement purposes;

~~((c))~~ (iii) Personal work-related expenses (such as travel to and from work);

~~((d))~~ (iv) Net losses from previous periods;

~~((e))~~ (v) Depreciation; or

~~((f))~~ (vi) Any amount that is more than the payment you get from a boarder for lodging and meals.

(3) If you have worked at your business for less than a year, we figure your gross self-employment income by averaging:

(a) The income over the period of time the business has been in operation; and

(b) The monthly amount we estimate you will get for the coming year.

(4) For cash assistance, if your self-employment expenses are more than your self-employment income, we do not use this "loss" to reduce income from other self-employment businesses or other sources of income to your assistance unit.

(5) For Basic Food, we use a "loss" from self-employment farming or fishing income to reduce other sources of income **only** if you meet the following three conditions:

(a) Someone in your assistance unit is a self-employed farmer or fisher;

(b) Your gross yearly income from farming or fishing is or is expected to be at least one thousand dollars; and

(c) Your allowable costs for farming or fishing are more than your income from farming or fishing.

WSR 15-03-082
PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed January 20, 2015, 1:18 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: Washington strawberry commission, chapter 16-555 WAC.

Hearing Location(s): Natural Resource[s] Building, 1111 Washington Street S.E., 2nd Floor, Conference Room 271, Olympia, WA 98504, on February 25, 2015, at 10:00 a.m.

Date of Intended Adoption: May 7, 2015.

Submit Written Comments to: Kelly Frost, P.O. Box 42560, Olympia, WA 98504-2560, e-mail kfrost@agr.wa.gov, fax (360) 902-2092, by 5:00 p.m., February 27, 2015.

Assistance for Persons with Disabilities: Contact WSDA receptionist by February 13, 2015, TTY 1-800-833-6388 or (360) 902-1976.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 16-555-040 Assessments and collections, increases the assessment rate from one-half cent to three-quarter cent per affected unit (pound). Any proposed increase would be decided through a referendum of affected strawberry producers.

Reasons Supporting Proposal: The strawberry commission board determined that an increase in the assessment rate is necessary to sustain the applicable provisions of the marketing order. The current assessment on all varieties of strawberries has been in effect since 1982. The commission predominantly funds research and those costs continue to rise. Any disruption in funding ongoing research could affect the viability of the strawberry industry in the state. This change will implement the petition received from the strawberry commission in accordance with RCW 15.65.050.

Statutory Authority for Adoption: RCW 15.65.047 and [15.65].050; chapter 34.05 RCW.

Statute Being Implemented: Chapter 15.65 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: Any rule proposal that results from this rule-making process will not be adopted unless the proposed rules are also approved in a referendum of affected strawberry producers pursuant to chapter 15.65 RCW.

Name of Proponent: Washington state strawberry commission, governmental.

Name of Agency Personnel Responsible for Drafting: Kelly Frost, P.O. Box 42560, Olympia, WA 98504, (360)

902-1802; Implementation and Enforcement: Walter Swenson, P.O. Box 2423, Olympia, WA 98507, (360) 352-1236.

No small business economic impact statement has been prepared under chapter 19.85 RCW. In accordance with RCW 15.65.570, the adoption of the final amendments to chapter 16-555 WAC will be determined by referendum vote of affected producers.

A cost-benefit analysis is not required under RCW 34.05.328. The department of agriculture and the Washington state strawberry commission are not named agencies in RCW 34.05.328 (5)(a)(i).

January 20, 2015
Don R. Hover
Director

AMENDATORY SECTION (Amending WSR 92-12-006, filed 5/21/92, effective 6/21/92)

WAC 16-555-040 Assessments and collections. (1) Assessments.

(a) The annual assessment on all varieties of strawberries shall be ~~((one-half))~~ three-quarter cent per affected unit (pound).

(b) For the purpose of collecting assessments, the board may:

(i) Require handlers to collect producer assessments from producers whose production they handle, and remit the same to the board; or

(ii) Require the person subject to the assessment to give adequate assurance or security for its payment.

(c) Subsequent to the first sale, no affected units shall be transported, carried, shipped, sold, marketed, or otherwise handled or disposed of until every due and payable assessment herein provided for has been paid and the receipt issued. The foregoing shall include all affected units shipped or sold, both inside and outside the state.

(2) **Collections.** Any moneys collected or received by the board pursuant to the provisions of the marketing order during or with respect to any season or year, may be refunded on a pro rata basis at the close of such season or year or at the close of such longer period as the board determines to be reasonably adapted to effectuate the declared policies of this act and the purposes of this marketing order, to all persons from whom such moneys were collected or received or may be carried over into and used with respect to the next succeeding season, year, or period whenever the board finds that the same will tend to effectuate such policies and purposes.

(3) **Penalties.** Any due and payable assessment herein levied in such specified amount as may be determined by the board pursuant to the provisions of the act and the marketing order, shall constitute a personal debt of every person so assessed or who otherwise owes the same, and the same shall be due and payable to the board when payment is called for by it. In the event any person fails to pay the board the full amount of such assessment or such other sum on or before the date due, the board may, and is hereby authorized to, add to such unpaid assessment or sum an amount not exceeding ten percent of the same to defray the cost of enforcing the collecting of the same. In the event of failure of such person or persons to pay any such due and payable assessment or other

such sum, the board may bring a civil action against such person or persons in a state court of competent jurisdiction for the collection thereof, together with the above specified ten percent thereon, and such action shall be tried and judgment rendered as in any other cause of action for debt due and payable.

WSR 15-03-085

PROPOSED RULES

DEPARTMENT OF HEALTH

(Dental Quality Assurance Commission)

[Filed January 21, 2015, 7:42 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-15-079.

Title of Rule and Other Identifying Information: WAC 246-817-187 Temporary practice permit—Military spouse eligibility and issuance, adding a new section to provide for temporary practice permits to be issued to military spouses or state-registered domestic partners who hold out-of-state credentials as dentists, expanded function dental auxiliaries, dental assistants, or dental anesthesia assistants.

Hearing Location(s): Department of Health, Point Plaza East, Room 152/153, 310 Israel Road S.E., Tumwater, WA 98501, on March 6, 2015, at 8:05 a.m.

Date of Intended Adoption: March 6, 2015.

Submit Written Comments to: Jennifer Santiago, P.O. Box 47852, Olympia, WA 98504-7852, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2901, by February 27, 2015.

Assistance for Persons with Disabilities: Contact Jennifer Santiago by February 27, 2015, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule describes the procedure to issue a temporary practice permit to a military spouse or state-registered domestic partner applicant who moved to Washington state because of the transfer of the military person, and where the applicant must complete specific additional licensing requirements in Washington state. The applicant must be credentialed in another state with substantially equivalent standards and meet other specific criteria.

Reasons Supporting Proposal: RCW 18.340.020 provides that military spouses may receive temporary permits while completing any specific additional requirements in Washington that are not related to a profession's training or practice standards. The proposed rule describes the requirements to obtain the temporary practice permit. The permit allows the person to work in the full scope of the profession for up to one hundred eighty days. RCW 1.12.080 requires that the interpretation of the term spouse be applied equally to state-registered domestic partners.

Statutory Authority for Adoption: RCW 18.32.0365 and 18.340.020.

Statute Being Implemented: Chapter 18.340 RCW.

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

Name of Proponent: Washington state dental quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jennifer Santiago, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4893.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(g)(ii), a small business economic impact statement is not required for proposed rules that adopt, amend, or repeal a filing or related process requirement for applying to an agency for a license or permit.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis. The rule is procedural, under RCW 34.05.328 (5)(c)(i), that adopts, amends or repeals a filing or related process requirement for making application to an agency for a license or permit.

January 21, 2015
Robert R. Shaw, DMD
Chair

NEW SECTION

WAC 246-817-187 Temporary practice permit—Military spouse eligibility and issuance. A military spouse or state registered domestic partner of a military person may receive a temporary practice permit while completing any specific additional requirements that are not related to training or practice standards for the profession. This section applies to dentists licensed in chapter 18.32 RCW, expanded function dental auxiliaries licensed and dental assistants registered in chapter 18.260 RCW, and dental anesthesia assistants certified in chapter 18.350 RCW.

(1) A temporary practice permit may be issued to an applicant who is a military spouse or state registered domestic partner of a military person and:

(a) Is moving to Washington as a result of the military person's transfer to Washington;

(b) Left employment in another state to accompany the military person to Washington;

(c) Holds an unrestricted, active credential in another state that has substantially equivalent credentialing standards for the same profession to those in Washington; and

(d) Is not subject to any pending investigation, charges, or disciplinary action by the regulatory body of the other state or states.

(2) A temporary practice permit grants the individual the full scope of practice for the profession.

(3) A temporary practice permit expires when any one of the following occurs:

(a) The credential is granted;

(b) A notice of decision on the application is mailed to the applicant, unless the notice of decision on the application specifically extends the duration of the temporary practice permit; or

(c) One hundred eighty days after the temporary practice permit is issued.

(4) To receive a temporary practice permit, the applicant must:

(a) Submit the necessary application, fee(s), fingerprint card if required, and documentation for the credential;

(b) Attest on the application that the applicant left employment in another state to accompany the military person;

(c) Meet all requirements and qualifications for the credential that are specific to the training, education, and practice standards for the profession;

(d) Provide verification of having an active unrestricted credential in the same profession from another state that has substantially equivalent credentialing standards for the profession in Washington;

(e) Submit a copy of the military person's orders and a copy of:

(i) The military-issued identification card showing the military person's information and the applicant's relationship to the military person;

(ii) A marriage license; or

(iii) A state registered domestic partnership; and

(f) Submit a written request for a temporary practice permit.

(5) For the purposes of this section:

(a) "Military person" means a person serving in the United States armed forces, the United States public health service commissioned corps, or the merchant marine of the United States.

(b) "Military spouse" means the husband, wife, or registered domestic partner of a military person.

WSR 15-03-094

PROPOSED RULES

OLYMPIC REGION

CLEAN AIR AGENCY

[Filed January 21, 2015, 11:01 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.-330(1).

Title of Rule and Other Identifying Information: Olympic Region Clean Air Agency (ORCAA) regulations: Regulation 3, Rule 3.1 Annual Registration Fees, Rule 3.3 Notice of Construction Fees, Rule 3.4 Outdoor Burning Permit Fees, Rule 3.5 Asbestos Fees, the addition of Rule 3.6 Notice of Intent to Operate Fees, and changes to references within Rules 2.3, 6.1.1, 6.3.2.

Hearing Location(s): ORCAA, 2940 Limited Lane N.W., Olympia, WA 98502, on March 11, 2015, at 10:00 a.m.

Date of Intended Adoption: March 11, 2015.

Submit Written Comments to: Robert Moody, 2940 Limited Lane N.W., Olympia, WA 98502, e-mail robert.moody@orca.org, fax (360) 539-7610, by March 10, 2015.

Assistance for Persons with Disabilities: Contact Dan Nelson by February 25, 2015, (360) 539-7610.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: ORCAA is proposing to streamline the publishing of fees by removing these fee schedules from our regulation and publishing them as separate board-approved documents. It also provides direction to ORCAA's board of directors for periodic review of the fees. The publishing of fees will change for the following programs: Registration, notices of construction, outdoor burning permits, and asbestos. It will move the existing table of fees for Notices of Intent to its own rule and establish how those fees will be published. References to the existing rules will be revised in Rules 2.3, 6.1.1, and 6.3.2. There is a financial impact created by changes to Rule 3.3(c). The word "technical" is being removed which allows ORCAA to collect revenue for hours expended in direct support of processing a Notice of Construction application. The most common example would be for staff involved with a public hearing.

Reasons Supporting Proposal: Updating fee schedules will be accomplished with less staff time. The change in Rule 3.3(c) will allow a small increase in agency revenue in a program that is significantly underfunded.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: Chapter 70.94 RCW.

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

Name of Proponent: ORCAA, governmental.

Name of Agency Personnel Responsible for Drafting: Robert Moody, 2940 Limited Lane N.W., Olympia, (360) 539-7610; Implementation and Enforcement: Fran McNair, 2940 Limited Lane N.W., Olympia, (360) 539-7610.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act, and the agency is not a school district.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70.94.141.

January 20, 2015

Francea L. McNair
Executive Director

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 15-04 issue of the Register.

WSR 15-03-096

PROPOSED RULES

RENTON TECHNICAL COLLEGE

[Filed January 21, 2015, 11:47 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-22-018.

Title of Rule and Other Identifying Information: Repeal chapter 495E-120 WAC, Student conduct code. Replace with new chapter 495E-110 WAC, Student conduct code and hearing procedures.

Hearing Location(s): Renton Technical College, 3000 N.E. 4th Street, Building C, Room 111, Renton, WA 98056, on Tuesday, March 10, 2015, at 11:30 a.m., and on Wednesday, March 11, 2015, at 2:30 p.m.

Date of Intended Adoption: April 21, 2015.

Submit Written Comments to: Melinda Merrell, Vice-President of Administration and Finance, 3000 N.E. 4th Street, Renton, WA 98056, e-mail mmerrell@RTC.edu, fax (425) 235-7865, by March 10, 2015.

Assistance for Persons with Disabilities: Contact Michelle Canzano by March 10, 2015, (425) 235-2471.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The current student conduct code has not been updated since 1993. One reason that replacing it with a new chapter makes more sense than trying to update all of the old one is that the community and technical college student services officers and the attorney general's office have developed a new model language. Among other changes, the new chapter is intended to enhance college compliance with federal law, including Title IX and Violence Against Women Reauthorization Act (VAWA). The overall changes are briefly summarized as including:

- Initial determinations on discipline will be more centralized, as will disciplinary records.
- Prohibited student conduct will be more clearly defined, and expanded to cover some additional types of student misconduct.
- Disciplinary conditions will be added to the traditional sanctions through which the college imposes discipline.
- Two avenues for appealing discipline will be established. Appeals of more serious discipline will be heard by student conduct committee. Lesser disciplines will be reviewed through less formal brief adjudicative proceedings.

Reasons Supporting Proposal: Overall updating is needed to stay current with best practices and proper legal language. Centralizing discipline functions should mean more consistency in the process. Clarifying what conduct is prohibited will mean better accountability and notification to students. Adding the option of disciplinary conditions will mean greater flexibility in providing remediation. The changed procedures and appeal rights will better comply with Title IX and VAWA.

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

Statute Being Implemented: 20 U.S.C. § 1681 et seq., 42 U.S.C. § 13925.

Rule is necessary because of federal law, Title IX, 20 U.S.C. § 1681 et seq.; VAWA, 42 U.S.C. § 13925.

Name of Proponent: Renton Technical College, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: June Stacey-Clemons, Interim Vice-President of Student Services, Building I, (425) 235-2463; and Enforcement: Scott Latiolais, Dean of Students, Building I, (425) 235-2409.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A statement is not required for these college rules under RCW 19.85.030.

A cost-benefit analysis is not required under RCW 34.05.328. The cost-benefit analysis in RCW 34.05.328 does not apply to these college rules.

January 20, 2015
Melinda Merrell
Vice-President of
Administration and Finance

Chapter 495E-110 WAC

STUDENT CONDUCT CODE AND HEARING PROCEDURES

STUDENT CONDUCT CODE

NEW SECTION

WAC 495E-110-010 Authority. The board of trustees, acting pursuant to RCW 28B.50.140(14), delegates to the president of the college the authority to administer disciplinary action. Administration of the disciplinary procedures is the responsibility of the vice-president of student affairs or designee. The student conduct officer shall serve as the principal investigator and administrator for alleged violations of this code.

NEW SECTION

WAC 495E-110-020 Statement of student rights. As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

The following enumerated rights are guaranteed to each student within the limitations of statutory law and college policy which are deemed necessary to achieve the educational goals of the college:

(1) **Academic freedom.**

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

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

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

(d) Students have the right to a learning environment which is free from unlawful discrimination, inappropriate

and disrespectful conduct, and any and all harassment, including sexual harassment.

(2) **Due process.**

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

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

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

NEW SECTION

WAC 495E-110-030 Prohibited student conduct. The college may impose disciplinary sanctions against a student who commits (or attempts to commit), or 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.

(2) **Other dishonesty.** Any other acts of dishonesty. Such acts include, but are not limited to:

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

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

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

(3) **Obstruction or disruption.** Obstruction or disruption of:

(a) Any instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

(4) **Assault.** Assault, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, stalking or other conduct which harms, threatens, or is reasonably perceived as

threatening the health or safety of another person or another person's property. For purposes of this subsection:

(a) Bullying is physical or verbal abuse, repeated over time, and involving a power imbalance between the aggressor and victim.

(b) Stalking is intentional and repeated 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.

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

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

(a) The college or state; or

(b) Any student or college officer, employee, or organization; or

(c) Any other member of the college community or organization; or

(d) Possession of such property or money after it has been stolen.

(7) **Failure to comply with directive.** Failure to comply with the direction of a college 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) **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 his or her 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.

This policy does not apply to the possession or use of disabling chemical sprays when 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, to any student.

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

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

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

(d) **Tobacco, electronic cigarettes, and related products.** The use of tobacco, electronic cigarettes, and related products in any building owned, leased, or operated by the college or in any location where such use is prohibited, including twenty-five feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased, or operated by the college. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, and snuff. There are designated smoking areas on campus.

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

(12) **Discriminatory conduct.** Discriminatory conduct which harms or adversely affects any member of the college community because of her/his person's race; color; national origin; sensory, mental or physical disability; use of a service animal; age; religion; 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 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 includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.

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

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

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

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

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

(14) **Harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; age; religion; genetic information; sexual orientation; gender identity; veteran's

status; or any other legally protected classification. See "Sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic communications.

(15) **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.

(16) **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.

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

(18) **Safety violations.** 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.

(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) **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.

NEW SECTION

WAC 495E-110-040 Disciplinary sanctions and terms and conditions. (1) The following disciplinary sanctions may be imposed upon students found to have violated the student conduct code.

(a) Disciplinary warning: A verbal statement to a student that there is a violation and that continued violation may be cause for further disciplinary action.

(b) Written reprimand: Notice in writing that the student has violated one or more terms of this code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action.

(c) Disciplinary probation: Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation and which may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction which may include, but is not limited to, a suspension or a dismissal from the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance at the college.

(d) Disciplinary suspension: Dismissal from the college and from the student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action is taken.

(e) Dismissal: The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the action is taken.

(2) Disciplinary terms and conditions that may be imposed in conjunction with the imposition of a disciplinary sanction include, but are not limited to:

(a) Restitution: Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.

(b) Professional evaluation: Referral for drug, alcohol, psychological, or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that

the student is capable of reentering the college and complying with the rules of conduct.

(c) Not in good standing: A student may be deemed "not in good standing" with the college. If so the student shall be subject to the following restrictions:

(i) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college;

(ii) Ineligible to represent the college to anyone outside the college community in any way, including representing the college at any official function, or any forms of intercollegiate competition or representation.

(d) No contact order: A student may be directed to have no physical, verbal, and/or written contact with another individual.

HEARING PROCEDURES

NEW SECTION

WAC 495E-110-050 Statement of jurisdiction. The student conduct code shall apply to student conduct that occurs on college premises, to conduct that occurs at or in connection with college sponsored activities, or to off-campus conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives. Jurisdiction extends to, but is not limited to, locations in which students are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences or any other college-sanctioned social or club activities. Students are responsible for their conduct from the time of application for admission through the actual receipt of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment. These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending. The college has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct that occurs off-campus.

NEW SECTION

WAC 495E-110-060 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" includes all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

(3) "Conduct review officer" is the vice-president of student services or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code. The president is authorized to reassign any and all of the conduct review offi-

cer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.

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

(5) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ten instructional days or an expulsion are heard by the student conduct appeals board. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

(6) "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 e-mail and first class mail to the specified college official's office and college e-mail address.

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

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

(8) "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) Sending the document by e-mail and by certified mail or first class mail to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is e-mailed and deposited in the mail.

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

(10) "Student conduct officer" is a college administrator designated by the president or vice-president of student services to be responsible for implementing and enforcing the student conduct code. The president or vice-president of student services is authorized to reassign any and all of the student conduct officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.

(11) "The president" is the president of the college. The president is authorized to delegate any and all of his or her responsibilities as set forth in this chapter as may be reasonably necessary.

NEW SECTION

WAC 495E-110-070 Initiation of disciplinary actions. (1) All disciplinary actions will be initiated by the student conduct officer. If that officer is the subject of a com-

plaint initiated by the respondent, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.

(2) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing him or her to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specify the time and location of the meeting. At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting, the student conduct officer may take disciplinary action based upon the available information.

(3) Within ten days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting his or her decision, the specific student conduct code provisions found to have been violated, the discipline imposed, if any, and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal.

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

(a) Exonerate the respondent and terminate the proceedings.

(b) Impose a disciplinary sanction(s), as described in WAC 495E-110-040.

(c) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate. Such referral shall be in writing, to the attention of the chair of the student conduct committee, with a copy served on the respondent.

NEW SECTION

WAC 495E-110-080 Appeal from disciplinary action. (1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within twenty-one days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

(2) The notice of appeal must include a brief statement explaining why the respondent is seeking review.

(3) The parties to an appeal shall be the respondent and the conduct review officer.

(4) A respondent, who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

(5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.

(6) Imposition of disciplinary action for violation of the student conduct code shall be stayed pending appeal, unless respondent has been summarily suspended.

(7) The student conduct committee shall hear appeals from:

(a) The imposition of disciplinary suspensions in excess of ten instructional days;

(b) Dismissals; and

(c) Discipline cases referred to the committee by the student conduct officer, the conduct review officer, or the president.

(8) Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:

(a) Suspensions of ten instructional days or less;

(b) Disciplinary probation;

(c) Written reprimands; and

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

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

NEW SECTION

WAC 495E-110-090 Brief adjudicative proceedings—Initial hearing. (1) Brief adjudicative proceedings shall be conducted by a conduct review officer. The conduct review officer shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(2) Before taking action, the conduct review officer shall conduct an informal hearing and provide each party:

(a) An opportunity to be informed of the agency's view of the matter; and

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

(3) The conduct review officer shall serve an initial decision upon both the parties within ten days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within twenty-one days of service of the initial decision, the initial decision shall be deemed the final decision.

(4) If the conduct review officer upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

NEW SECTION

WAC 495E-110-100 Brief adjudicative proceedings—Review of an initial decision. (1) An initial decision is subject to review by the president, provided the respondent files a written request for review with the conduct review officer within twenty-one days of service of the initial decision.

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

(3) During the review, the president shall give each party an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the student conduct committee for a formal adjudicative hearing.

(4) The decision on review must be in writing and must include a brief statement of the reasons for the decision and must be served on the parties within twenty days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the president does not make a disposition of the matter within twenty days after the request is submitted.

(5) If the president upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

NEW SECTION

WAC 495E-110-110 Student conduct committee. (1)

The student conduct committee shall consist of five members:

- (a) Two full-time students appointed by the student government;
- (b) Two faculty members appointed by the president; and
- (c) One administrator (other than an administrator serving as a student conduct or conduct review officer) appointed by the president at the beginning of the academic year.

(2) The faculty member or administrator shall serve as the chair of the committee and may take action on preliminary hearing matters prior to convening the committee. The chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.

(3) Hearings may be heard by a quorum of three members of the committee so long as one faculty member and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness, in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity. Any party may petition for disqualification of a committee member pursuant to RCW 34.05.425(4).

NEW SECTION

WAC 495E-110-120 Appeal—Student conduct committee. (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW, and by the Model Rules of Procedure, chapter 10-08 WAC. To the extent there is a conflict between these rules and chapter 10-08 WAC, these rules shall control.

(2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven

days in advance of the hearing date, as further specified in RCW 34.05.434 and WAC 10-08-040 and 10-08-045. The chair may shorten this notice period if both parties agree, and also may continue the hearing to a later time for good cause shown.

(3) The committee chair is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

(4) Upon request filed at least five days before the hearing by any party or at the direction of the committee chair, the parties shall exchange, no later than the third day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(5) The committee chair may provide to the committee members in advance of the hearing copies of (a) the conduct officer's notification of imposition of discipline (or referral to the committee), and (b) the notice of appeal (or any response to referral) by the respondent. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

(6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the committee chair may provide copies of these admissible exhibits to the committee members before the hearing.

(7) The student conduct officer, upon request, shall provide reasonable assistance to the respondent in obtaining relevant and admissible evidence that is within the college's control.

(8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(9) Each party may be accompanied at the hearing by a nonattorney assistant of his/her choice. A respondent may elect to be represented by an attorney at his or her own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer. The committee will ordinarily be advised by an assistant attorney general. If the respondent is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened assistant attorney general.

NEW SECTION

WAC 495E-110-130 Student conduct committee hearings—Presentations of evidence. (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

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

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

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

(3) The chair shall cause the hearing to be recorded by a method that he/she selects, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted, in accordance with WAC 10-08-190.

(4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.

(5) The student conduct officer (unless represented by an assistant attorney general) shall present the case for imposing disciplinary sanctions.

(6) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

NEW SECTION

WAC 495E-110-140 Student conduct committee—Initial decision. (1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within twenty days following the later of the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.

(3) The committee's initial order shall also include a determination on appropriate discipline, if any. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanction(s) or conditions (if any) as authorized in the student code. If the matter is an appeal by the respondent, the committee may affirm, reverse, or modify the disciplinary sanction and/or conditions imposed by the student conduct officer and/or impose additional disciplinary sanction(s) or conditions as authorized herein.

(4) The committee chair shall cause copies of the initial decision to be served on the parties and their legal counsel of record. The committee chair shall also promptly transmit a

copy of the decision and the record of the committee's proceedings to the president.

NEW SECTION

WAC 495E-110-150 Appeal from student conduct committee initial decision. (1) A respondent who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's initial decision to the president by filing a notice of appeal with the president's office or designee within twenty-one days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

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

(3) The president shall provide a written decision to all parties within forty-five days after receipt of the notice of appeal. The president's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.

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

NEW SECTION

WAC 495E-110-160 Summary suspension. (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

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

(a) Has violated any provision of the code of conduct; and

(b) Presents an immediate danger to the health, safety or welfare of members of the college community; or

(c) Poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.

(3) Notice. Any respondent who has been summarily suspended shall be served with oral or written notice of the summary suspension. If oral notice is given, a written notification shall be served on the respondent within two business days of the oral notice.

(4) The written notification shall be entitled "Notice of summary suspension" and shall include:

(a) The reasons for imposing the summary suspension, including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student conduct code or the law allegedly violated;

(b) The date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and

(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included that warns the student that his or her privilege to enter into or remain on college premises has been withdrawn, that the respondent shall be considered trespassing and subject to arrest for criminal trespass if the respondent enters the college campus other than to meet with the student conduct officer or conduct review officer, or to attend a disciplinary hearing.

(5) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.

(6) During the summary suspension hearing, the issue before the conduct review officer is whether there is probable cause to believe that the summary suspension should be continued pending the conclusion of disciplinary proceedings and/or whether the summary suspension should be less restrictive in scope.

(7) The respondent shall be afforded an opportunity to explain why summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope.

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

(9) As soon as practicable following the hearing, the conduct review officer shall issue a written decision which shall include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal.

(10) To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or offices who may be bound or protected by it.

DISCIPLINE PROCEDURES FOR CASES INVOLVING ALLEGATIONS OF SEXUAL MISCONDUCT

NEW SECTION

WAC 495E-110-170 Supplemental sexual misconduct procedures. Both the respondent and the complainant in cases involving allegations of sexual misconduct shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the initial disciplinary decision-making process and to appeal any disciplinary decision.

Application of the following procedures is limited to student conduct code proceedings involving allegations of sexual misconduct by a student. In such cases, these procedures shall supplement the student disciplinary procedures in WAC 495E-110-050 through 495E-110-160. In the event of conflict between the sexual misconduct procedures and the student disciplinary procedures, the sexual misconduct procedures shall prevail.

NEW SECTION

WAC 495E-110-180 Supplemental definitions. The following supplemental definitions shall apply for purposes of student conduct code proceedings involving allegations of sexual misconduct by a student:

(1) A "complainant" is an alleged victim of sexual misconduct, as defined in subsection (2) of this section.

(2) "Sexual misconduct" has the meaning ascribed to this term in WAC 495E-110-030(13).

NEW SECTION

WAC 495E-110-190 Supplemental complaint process. The following supplemental procedures shall apply with respect to complaints or other reports of alleged sexual misconduct by a student.

(1) The college's Title IX compliance officer shall investigate complaints or other reports of alleged sexual misconduct by a student. Investigations will be completed in a timely manner and the results of the investigation shall be referred to the student conduct officer for disciplinary action.

(2) Informal dispute resolution shall not be used to resolve sexual misconduct complaints without written permission from both the complainant and the respondent. If the parties elect to mediate a dispute, either party shall be free to discontinue mediation at any time. In no event shall mediation be used to resolve complaints involving allegations of sexual violence.

(3) College personnel will honor requests to keep sexual misconduct complaints confidential to the extent this can be done without unreasonably risking the health, safety and welfare of the complainant or other members of the college community or compromising the college's duty to investigate and process sexual harassment and sexual violence complaints.

(4) The student conduct officer, prior to initiating disciplinary action, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or conditions (if any) that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.

(5) The student conduct officer, on the same date that a disciplinary decision is served on the respondent, will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of his or her appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure prompt notice of the protective disciplinary sanctions and/or conditions.

NEW SECTION

WAC 495E-110-200 Supplemental appeal rights. (1) The following actions by the student conduct officer may be appealed by the complainant:

(a) The dismissal of a sexual misconduct complaint; or

(b) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary warning.

(2) A complainant may appeal a disciplinary decision by filing a notice of appeal with the conduct review officer within twenty-one days of service of the notice of the discipline decision provided for in WAC 495E-110-190(5). The notice of appeal may include a written statement setting forth the grounds of appeal. Failure to file a timely notice of appeal constitutes a waiver of this right and the disciplinary decision shall be deemed final.

(3) If the respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college shall notify the complainant of the appeal and provide the complainant an opportunity to intervene as a party to the appeal.

(4) Except as otherwise specified in this supplemental procedure, a complainant who timely appeals a disciplinary decision or who intervenes as a party to respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as are afforded the respondent.

(5) An appeal by a complainant from the following disciplinary actions involving allegations of sexual misconduct against a student shall be handled as a brief adjudicative proceeding:

- (a) Exoneration and dismissal of the proceedings;
- (b) A disciplinary warning;
- (c) A written reprimand;
- (d) Disciplinary probation;
- (e) Suspensions of ten instructional days or less; and/or
- (f) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(6) An appeal by a complainant from disciplinary action imposing a suspension in excess of ten instructional days or an expulsion shall be reviewed by the student conduct committee.

(7) In proceedings before the student conduct committee, respondent and complainant shall have the right to be accompanied by a nonattorney assistant of their choosing during the appeal process. Complainant may choose to be represented at the hearing by an attorney at his or her own expense, but will be deemed to have waived that right unless, at least four business days before the hearing, he or she files a written notice of the attorney's identity and participation with the committee chair, and with copies to the respondent and the student conduct officer.

(8) In proceedings before the student conduct committee, complainant and respondent shall not directly question or cross examine one another. All questions shall be directed to the committee chair, who will act as an intermediary and pose questions on the parties' behalf.

(9) Student conduct hearings involving sexual misconduct allegations shall be closed to the public, unless respondent and complainant both waive this requirement in writing and request that the hearing be open to the public. Complainant, respondent and their respective nonattorney assistants and/or attorneys may attend portions of the hearing where argument, testimony and/or evidence are presented to the student conduct committee.

(10) The chair of the student conduct committee, on the same date as the initial decision is served on the respondent,

will serve a written notice upon complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice will also inform the complainant of his or her appeal rights.

(11) Complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to other parties.

(12) The president, on the same date that the final decision is served upon the respondent, shall serve a written notice informing the complainant of the final decision. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.

BRIEF ADJUDICATIVE PROCEEDINGS (BAPs) AUTHORIZATION

NEW SECTION

WAC 495E-110-210 Brief adjudicative proceedings authorized. This rule is adopted in accordance with RCW 34.05.482 through 34.05.494.

(1) Brief adjudicative proceedings shall be used, unless provided otherwise by another rule or determined otherwise in a particular case by the president, or a designee, in regard to:

- (a) Parking violations;
- (b) Outstanding debts owed by students or employees;
- (c) Use of college facilities;
- (d) Residency determinations;
- (e) Use of library - Fines;
- (f) Challenges to contents of education records;
- (g) Loss of eligibility for participation in institution sponsored athletic events;
- (h) Student conduct appeals involving the following disciplinary actions:
 - (i) Suspensions of ten instructional days or less;
 - (ii) Disciplinary probation;
 - (iii) Written reprimands;
 - (iv) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions; and
 - (v) Appeals by a complainant in student disciplinary proceedings involving allegations of sexual misconduct in which the student conduct officer:
 - (A) Dismisses disciplinary proceedings based upon a finding that the allegations of sexual misconduct have no merit; or
 - (B) Issues a verbal warning to respondent.

(i) Appeals of decisions regarding mandatory tuition and fee waivers.

(2) Brief adjudicative proceedings are informal hearings and shall be conducted in a manner which will bring about a prompt, fair resolution of the matter.

NEW SECTION

WAC 495E-110-220 Brief adjudicative proceedings

—**Agency record.** The agency record for brief adjudicative proceedings shall consist of any documents regarding the matter that were considered or prepared by the presiding officer for the brief adjudicative proceeding or by the reviewing officer for any review. These records shall be maintained as the official record of the proceedings.