

**WSR 18-12-108**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Developmental Disabilities Administration)

[Filed June 6, 2018, 9:04 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-21-101.

Title of Rule and Other Identifying Information: The department is proposing to create new sections and amend and repeal existing sections in chapter 388-826 WAC, Voluntary placement program, and amend WAC 388-845-1515 Are there limits to the residential habilitation services I can receive?

Hearing Location(s): On July 25, 2018, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than July 26, 2018.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., July 25, 2018.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by July 11, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules update provider training requirements and clarify client participation and room and board requirements for children receiving voluntary placement services.

Reasons Supporting Proposal: Proposed amendments to add references to Title 182 WAC standardize how client participation and room and board are calculated. Proposed amendments to add references to chapter 388-829 WAC align training requirements for providers of voluntary placement services with other qualified DDA providers. Proposed amendments to WAC 388-845-1515 clarify that residential habilitation services for children under age eighteen are subject to requirements in chapter 388-826 WAC. The proposed amendments clarify the chapter by using plain language and removing redundant information.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: RCW 74.13.350.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1589; Implementation and Enforcement: Nichole Jensen, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1521.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, phone 360-407-1589, fax 360-407-0955, TTY 1-800-833-6388, email Chantelle.Diaz@dshs.wa.gov.

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

Is exempt under RCW 19.85.025(4) because the rules do not affect small businesses.

Explanation of exemptions: The proposed amendments impose no new or disproportionate costs on small businesses so a small business economic impact statement is not required.

June 5, 2018

Katherine I. Vasquez

Rules Coordinator

AMENDATORY SECTION (Amending WSR 02-22-057, filed 10/31/02, effective 12/1/02)

**WAC 388-826-0001 What ~~((is the purpose of the))~~ are voluntary placement ((program)) services? ~~((The purpose of the))~~ Voluntary placement ~~((program is to:~~**

(1) ~~Support the optimal growth and development of the child or youth in out of home placement. The sole reason for the out of home placement is the child's developmental disability.)~~ services are ~~((offered))~~ administered by ((DSHS/ DDD through a voluntary placement agreement. Parents retain custody of their child or youth.

(2) ~~Support) the ((child and family with a shared parenting arrangement through the use of licensed foster care providers.~~

(3) ~~Complement other public and private resources in providing supports to the child and family.~~

(4) ~~Encourage the relationship between the child and parents, even when the child or youth is not living in their own home.~~

(5) ~~These rules are adopted under the authority of RCW 74.13.350)) developmental disabilities administration (DDA) and provide temporary residential placement for a child outside of the child's regular home setting that is voluntarily agreed to by the child's parent, custodian, or guardian and DDA.~~

AMENDATORY SECTION (Amending WSR 02-22-057, filed 10/31/02, effective 12/1/02)

**WAC 388-826-0005 What definitions((-)) apply to this chapter? ~~(("Best interest" includes, but is not limited to:~~**

(1) ~~Prevent regression or loss of skills already acquired;~~

(2) ~~Achieve or maintain self-sufficiency;~~

(3) ~~Provide the least restrictive setting that will meet the child's/youth's medical, social, developmental and personal needs;~~

(4) ~~Benefits the medical, personal, social and developmental needs of the child/youth;~~

(5) Maintains family relationships.)

**"Child ((or youth))"** means ~~((an individual))~~ a person who is eligible for ~~((division))~~ developmental disabilities administration (DDA) services ~~((per RCW 71A.16.040 and))~~ under chapter 388-825 WAC, ~~((is less than))~~ under eighteen ~~((years of age and who is))~~, and in the custody of a parent by blood, adoption, or legal guardianship.

**"Child foster home"** means a private home licensed to provide twenty-four hour care to children.

**"Client ((or person))"** means ~~((an individual is))~~ a person eligible for ~~((division))~~ DDA services ~~((per RCW 71A.16.040 and WAC 388-825-030))~~ under chapter 388-825 WAC.

~~("Community support services" means one or more of the services listed in RCW 71A.12.040 including, but not limited to the following services: Architectural, social work, early childhood intervention, employment, family counseling, respite care, information and referral, health services, legal services, therapy services, residential services and support, transportation services, and vocational services.)~~

**"Client responsibility"** means the total amount of a client's participation and room and board.

**"Community inclusion activities"** means person-centered, age appropriate, participation in activities in a client's local community.

**"Custody"** means protective care or guardianship of someone; parental responsibility, especially as allocated to one of two divorcing parents.

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

**"Department"** means the department of social and health services of the state of Washington.

~~("Director" means the director of the division of developmental disabilities.~~

**"DDD"** means the division of developmental disabilities of the department of social and health services.

**"Emergency"** means a sudden, unexpected occurrence demanding immediate action.

**"Exemption"** means the department's approval of a written request for an exception to a rule in this chapter.)

**"Family"** means ~~((individuals of any age, living together in the same household related by blood, marriage, adoption or as a result of sharing legal custody of a minor child))~~ one or more of the following relatives: Spouse or registered domestic partner, natural, adoptive or step parent; grandparent; child; stepchild; sibling; stepsibling; uncle; aunt; first cousin; niece; or nephew.

~~("Foster care provider" means the individual person licensed by the DSHS, children's administration, division of licensed resources (DLR) (chapter 388-148 WAC) to provide foster care in the person's home; or a group care agency licensed by DLR to provide foster care for an individual in a group facility or staffed residential setting.~~

**"In the voluntary placement program the legal status of the child"** means that the child is in legal custody of the biological or adoptive parent(s) or legal and custodial guardian.)

**"Group care facility"** means an agency, other than a foster-family home, which is maintained and operated for the care of a group of children on a twenty-four hour basis.

**"Guardian ad litem (GAL)"** means a court-appointed neutral investigator whose job is to make a recommendation to the court if the proposed guardian is fit to serve and whether the client is legally incapacitated.

~~("The) Judicial determination ((and review))"~~ means a court process ~~((that occurs in court and its purpose is))~~ to ~~((affirm that))~~ determine whether out-of-home placement is in the best interest of ~~((the))~~ a child. ~~((The parent is notified of the court date and may appear in court with the child's DDD social worker.))~~

**"Legal guardian"** means a person's legal guardian appointed through formal proceedings in accordance with state law.

**"Legal status of the child"** means that the child is in legal custody of a biological or adoptive parent or legal and custodial guardian.

**"Out-of-home placement"** means a ~~((DLR licensed))~~ home ~~((; a licensed group care))~~ other than the child's regular home, such as a state-operated living alternative or a facility ~~((or another))~~ licensed ~~((setting))~~ by the division of licensed resources (DLR) where the child has been placed.

**"Parent"** means ~~((the individual who is the))~~ a biological or adoptive ~~((person or legal custodial guardian))~~ parent who has legal responsibility for and physical custody of the child.

**"Participation"** has the same meaning as is under WAC 182-513-1100.

**"Personal needs allowance (PNA)"** means an amount set aside from a client's income under WAC 182-513-1105.

**"Person-centered service plan (PCSP)"** means a document that identifies the client's goals and assessed health and welfare needs. The person-centered service plan also indicates the paid services and natural supports that will assist the client to achieve their goals and address their assessed needs.

**"Registered nurse delegator"** means a licensed registered nurse who delegates specific nursing care tasks to a qualified nursing assistant or home care aide, and supports clients in a community-based care setting or in-home care setting under RCW 18.79.260.

**"Residential habilitation services"** means instruction and support services under WAC 388-845-1500.

**"Respite care"** means short-term, intermittent care to relieve a primary caregiver.

**"Room and board"** has the same meaning as is under WAC 182-513-1100.

**"Shared parenting"** means ~~((biological or adoptive parents or legal guardians and foster care providers share responsibilities. Responsibilities are for the physical and emotional care, education and medical well-being of child/youth who meets DDD eligibility criteria and who is in a voluntary out of home placement as is described in the shared parenting agreement))~~ a collaboration between the parent or legal guardian and licensed provider or state-operated living alternative (SOLA) to share in meeting the support needs of the client receiving voluntary placement services.

**"Shared parenting plan"** means a written plan ~~((among the parent, a foster care provider and DDD, with the expectation of))~~ for sharing responsibilities ~~((for care of a~~

child/youth, including exchanging information on a routine basis about medical, education, daily routines and special situations in the life of the child/youth)) among the parent, a licensed provider or SOLA and the department, outlining the shared responsibilities for care of a child.

("Voluntary out-of-home placement" for a child who is eligible for DDD services means:

(1) When a parent and the division of developmental disabilities (DDD) agree that it is in the best interest of the child to reside out of the home of the parents;

(2) The placement is solely due to the child's disability;

(3) There are no unresolved issues of abuse and neglect;

(4) When the parent or custodial and legal guardian and division sign a voluntary placement agreement; and

(5) When a child lives more than fifty percent of her/his life in a licensed setting that is other than in the parents' home. The setting may be a licensed foster family home, group care facility, or staffed residential home as licensed under chapter 74.15 RCW.)

"Significant change assessment" means an assessment triggered by an unexpected, documented change in a client's condition, activities of daily living, mood and behaviors, or psychological or medical conditions which affect the level of care needed for the client.

"SOLA" means state-operated living alternative.

"Staffed residential home" means a licensed facility that provides twenty-four hour care to six or fewer children who require more supervision than can be provided in a foster home.

"Supplemental security income (SSI)" means a needs-based assistance program administered by the federal social security administration for blind, disabled, and aged individuals.

"Voluntary placement agreement((s))" ((as used in this section,)) means a written agreement between the department and a child's parent, custodian, or legal guardian authorizing the department to place the child in a licensed facility or SOLA.

("Written request for out-of-home placement" means a written request signed by the custodial parent requesting out-of-home placement for the child or youth under eighteen years of age.)

AMENDATORY SECTION (Amending WSR 02-22-057, filed 10/31/02, effective 12/1/02)

**WAC 388-826-0010 Who is eligible for ~~((the))~~ voluntary placement ~~((program))~~ services?** ~~((Children who:~~

~~(1) Are determined eligible for DDD services under RCW 71A.16.040;~~

~~(2) Are under eighteen years of age when the request for services through VPP is made;~~

~~(3) Have no unresolved issues of abuse or neglect pending with DSHS children's administration;~~

~~(4) Are in the legal and physical custody of their parent or legal guardian; and~~

~~(5) The request is made solely due to the child's disability RCW 74.13.350 and parents have used all other appropriate services for their child through DDD.)~~

(1) A child is eligible for voluntary placement services if:

(a) The child:

(i) Is DDA-eligible under chapter 388-825 WAC;

(ii) Will enter voluntary out-of-home placement while under eighteen;

(iii) Has accessed all other available and appropriate DDA services;

(b) The child's parent, guardian, or legal custodian:

(i) Is unable to provide care for the child needs;

(ii) Has determined that the child would benefit from voluntary out-of-home placement;

(iii) Requests out-of-home placement solely because of the child's developmental disability;

(iv) Requests voluntary placement services in writing;

(v) Complies with the voluntary placement agreement;

and

(c) DDA:

(i) Has available funding;

(ii) Determines that available and appropriate in-home supports do not meet the child's needs;

(iii) Determines that voluntary out-of-home placement is in the child's best interest.

(2) The department considers voluntary out-of-home placement to be in the best interest of the child if voluntary placement services:

(a) Help maintain family relationships; and

(b) Provide the least restrictive setting that will benefit the child's medical, social, developmental, and personal needs.

(3) DDA waits to determine a client's eligibility for voluntary placement services until any pending child protective services' investigations conclude.

#### NEW SECTION

**WAC 388-826-0011 What do voluntary placement services include?** Voluntary placement services include:

(1) A shared parenting plan under WAC 388-826-0041;

(2) A person-centered service plan;

(3) Residential habilitation services;

(4) Community inclusion activities;

(5) Developmentally appropriate support to the child in activities of daily living;

(6) Comprehensive health and safety reviews facilitated by DDA every ninety days;

(7) Coordination with the medically intensive children's program under chapter 182-551 WAC;

(8) Coordination with the early support for infants and toddlers program for eligible children under the Individuals with Disabilities Education Act, Part C; and

(9) Coordination between the local school district and the licensed provider or SOLA to receive free and public education (FAPE) services.

#### NEW SECTION

**WAC 388-826-0016 Where may a client receive voluntary placement services?** A client may receive voluntary placement services in:

- (1) A children's state-operated living alternative; or
- (2) A home licensed under chapter 74.15 RCW, including a:
  - (a) Child foster home;
  - (b) Staffed residential home; or
  - (c) Group care facility for medically-fragile children.

AMENDATORY SECTION (Amending WSR 02-22-057, filed 10/31/02, effective 12/1/02)

**WAC 388-826-0040 What is ((\*) the voluntary placement agreement?** ~~((It is a mutually voluntary and written document between the parent and the department. It must be signed by the child's parent and the DSHS/DDD representative to be in effect. An agreement regarding a Native American child is not valid unless executed in writing before the court and filed with the court as provided in RCW 13.34.130. Any party to the voluntary placement agreement may terminate the agreement at any time. When one party ends the agreement, per the VPA, the voluntary agreement is ended.~~

~~The agreement authorizes DSHS/DDD to facilitate a placement for the child who is under eighteen years of age in a licensed facility. Under the term of the agreement, the parent retains legal custody. DSHS/DDD is responsible for the child's placement and care. The agreement shall at a minimum specify the legal status of the child and the rights and obligations of the parent or legal guardian, the child, and the department while the child is in placement.))~~

(1) Before a child may enter voluntary out-of-home placement, the child's parent or legal guardian must execute a voluntary placement agreement.

(2) The voluntary placement agreement must specify:

(a) That the child's parent or legal guardian retains legal custody of the child;

(b) That the department is responsible for the child's placement and care;

(c) That the signature of the child's parent or legal guardian is required;

(d) The legal status of the child;

(e) The rights and obligations of the parent or legal guardian;

(f) The rights and obligations of the child;

(g) The rights and obligations of the department while the child is in placement; and

(h) That any party to the voluntary placement agreement may terminate the agreement at any time.

(3) If a court has entered a final divorce decree or parenting plan that delineates decision-making authority, the parent must provide a copy of the document to the department.

(4) A voluntary placement agreement regarding an Indian child is invalid unless it complies with RCW 13.38-.150.

(5) If a child's placement is unsuccessful under the terms of the voluntary placement agreement, the child returns to their parent's physical care until a new placement is available.

(6) Upon termination of the voluntary placement agreement, the child must return to the parent or legal guardian's care unless:

(a) Taken into custody under RCW 13.34.050 or 26.44-.050;

(b) Placed in shelter care under RCW 13.34.060; or

(c) Placed in foster care under RCW 13.34.130.

#### NEW SECTION

**WAC 388-826-0041 What is a shared parenting plan?** (1) A shared parenting plan is a written agreement between the client's parent or legal guardian, the licensed provider or SOLA, and the department.

(2) The shared parenting plan must:

(a) Include a plan for the parent or legal guardian's continual involvement, including:

(i) A schedule for visiting the child in out-of-home placement;

(ii) An activities schedule;

(iii) Emergency contact information;

(iv) Consent to medical care;

(v) Routine communication about medical issues, education, daily routines, and special considerations in the life of the child; and

(vi) Expectations for each party's role, including special considerations.

(b) Coordinate healthcare benefits;

(c) Designate a representative payee;

(d) Address the requirement to access all available income sources under WAC 182-512-0700(1);

(e) Include a plan for respite care if the child lives in a child foster home; and

(f) Be developed within forty-five days of the client's out-of-home placement and reviewed annually thereafter by the department.

(3) If any party does not follow the shared parenting plan, all parties must review and revise the shared parenting plan.

(4) If any party does not follow the revised shared parenting plan, DDA may terminate the client's voluntary placement services and the child will return to the parent or legal guardian's care unless:

(a) Taken into custody under RCW 13.34.050 or 26.44-.050;

(b) Placed in shelter care under RCW 13.34.060; or

(c) Placed in foster care under RCW 13.34.130.

AMENDATORY SECTION (Amending WSR 02-22-057, filed 10/31/02, effective 12/1/02)

**WAC 388-826-0050 ((Is there an ongoing court process when the child is in out-of-home placement and how does the process work?)) What are the judicial requirements for a child receiving voluntary placement services?**

~~((The ongoing court process involves the following activities:~~

~~(1) When a child is placed in a licensed out-of-home setting, within one hundred eighty days, the DDD social worker must file an order with the court that says the custodial and legal parent has signed a voluntary placement agreement with DDD and voluntarily requests placement of their child in out-of-home care;~~

~~(2) The child's DDD social worker prepares the necessary papers and files them with the court clerk; and~~

~~(3) Once a year, the DDD social worker prepares a report that must be presented to the court. It is called an order for~~

continued placement and it describes in the words of the social worker, why the out-of-home placement continues to be in the best interest of the child.)

When a child receives voluntary placement services, the department must:

(1) Develop a permanency plan of care no more than sixty days after the child is placed out-of-home;

(2) No more than one hundred eighty days after the child is placed out-of-home and annually thereafter, obtain a judicial determination that the placement is in the best interest of the child - a judicial determination is not required if the child's out-of-home placement ends before one hundred eighty days elapse;

(3) Conduct periodic administrative reviews as required by federal law - a review may be called at any time by the department, the parent, or the legal guardian; and

(4) Work with the department of children, youth, and families to file a dependency petition if there is reason to believe the child is a dependent child under RCW 13.34.030.

AMENDATORY SECTION (Amending WSR 02-22-057, filed 10/31/02, effective 12/1/02)

**WAC 388-826-0070** ~~What ((is)) are the ((responsibility of the department for the)) department's responsibilities for a child ((who is in out of home care)) receiving voluntary placement services? ((When DDD facilitates an out-of-home placement, DDD is responsible for:~~

~~(1) A voluntary placement agreement according to this section;~~

~~(2) Monitoring of the child's placement and care;~~

~~(3) A permanency plan of care for the child;~~

~~(4) A plan that monitors the health, safety and appropriateness of the child's placement at a minimum every ninety days, making face to face visits at that time;~~

~~(5) The DDD social worker maintains any records as required by court oversight; and~~

~~(6) DDD social worker facilitates a needs assessment, individual service plan and a shared parenting plan.))~~

When a child receives voluntary placement services, the department must:

(1) Develop the shared parenting plan no more than forty-five days after the child is placed out-of-home and review the plan at each annual assessment;

(2) Visit the child in their out-of-home placement at least every ninety days;

(3) Review the child's person-centered service plan no more than ninety days after the child is placed out-of-home;

(4) Monitor the child's voluntary placement services by:

(a) Facilitating team meetings using a wraparound planning model;

(b) Reviewing the child's support plans;

(c) Reviewing incident reports and follow-up measures involving the client;

(d) Authorizing payment for services; and

(e) Facilitating communication between the client's parent, legal guardian, and licensed provider or SOLA;

(5) Determine eligibility for apple health coverage under chapters 182-513 WAC and 182-515 WAC;

(6) Determine the child's participation and room and board amount, if any;

(7) Comply with the permanency planning hearing requirements under RCW 13.34.270 no more than one-hundred eighty days after the child is placed out-of-home and annually thereafter;

(8) Notify the child's parent or legal guardian in writing before the date of each annual permanency planning hearing;

(9) Monitor the licensed provider or SOLA to ensure the provider complies with contract requirements, which includes compliance with DDA policies and minimum licensing rules; and

(10) Refer a client age eighteen or older for a nurse delegation assessment, if necessary.

#### NEW SECTION

**WAC 388-826-0071** **What are the responsibilities of the licensed provider supporting a client receiving voluntary placement services?** When a client is receiving voluntary placement services, the licensed provider must:

(1) Ensure the health and safety of the client;

(2) Develop a quarterly report if the client is in a staffed residential home or group care facility for medically-fragile children. The quarterly report must include:

(a) A summary of the client's progress toward developing skills identified in the individualized treatment plan;

(b) An update regarding shared parenting, including a summary of family visits;

(c) A summary of incident reports, if any;

(d) School progress, including individualized education program updates;

(e) Any significant changes in the client's condition or prescribed medications; and

(f) A summary of the client's participation in community inclusion activities.

(3) Help develop and implement the shared parenting plan;

(4) Participate in the client's individualized education program;

(5) Develop emergency preparedness plans under chapter 388-145 WAC;

(6) Track, and make available to the department upon request, the client's participation in community inclusion activities - if the client is in a staffed residential home - including:

(a) Date of each activity;

(b) Cost of each activity; and

(c) A running balance of the client's community inclusion activities funds;

(7) Retain all client records for at least six years after termination or expiration of their contract; and

(8) Request an assessment for nurse delegation if the client is age eighteen or older and needs medication administration.

#### NEW SECTION

**WAC 388-826-0072** **What training must a licensed staffed residential or SOLA employee complete?** To support a client receiving voluntary placement services, a

licensed staffed residential or SOLA employee must complete:

- (1) Training required under chapter 388-145 WAC;
- (2) Training and continuing education required under chapter 388-829 WAC;
- (3) Client-specific training based on the client's treatment plan and person-centered service plan; and
- (4) Nurse delegation training under chapter 246-888 WAC, if applicable.

AMENDATORY SECTION (Amending WSR 02-22-057, filed 10/31/02, effective 12/1/02)

**WAC 388-826-0075** ~~What are ((the)) a parent or legal guardian's responsibilities ((of the parents)) when their child ((receives)) is receiving voluntary placement services ((in the voluntary placement program))?~~ ((Parents retain custody of their child at all times when the child is receiving services in the voluntary placement program. Parents responsibilities include, but are not limited to, the following:

(1) ~~The right to make all major nonemergency decision about medical care, enlistment in military service, marriage and other important legal decisions for the person under eighteen years of age;~~

(2) ~~Maintain ongoing and regular contact with the child;~~

(3) ~~Agree to work cooperatively with their child's DDD social worker and other DSHS staff and persons caring for their child;~~

(4) ~~Participate in decision making for their child;~~

(5) ~~Cooperate with DDD in selecting a representative payee for the child's Social Security benefits, received from the Social Security Administration, and which are used for basic maintenance while the child is in out-of-home care;~~

(6) ~~Agree that if their child's out-of-home placement disrupts, their child will return to the parents physical care until a new placement is developed. The parent's signature on the voluntary placement agreement confirms their understanding of the responsibilities listed in the VPA.)~~

When a client is receiving voluntary placement services, the client's parent or legal guardian must:

(1) Maintain weekly contact with the child;

(2) Comply with the voluntary placement agreement;

(3) Help apply for income and benefits available to the child from the Social Security Administration; and

(4) Participate in:

(a) The shared parenting plan;

(b) Team meetings; and

(c) The DDA annual assessment, including the person-centered service plan.

AMENDATORY SECTION (Amending WSR 09-24-063, filed 11/25/09, effective 12/26/09)

**WAC 388-826-0077** ~~((Are there limits to the))~~ Who is eligible for respite ((care I can receive if I receive voluntary placement)) services? ((The following limitations apply to the respite care you can receive when approved for voluntary placement services:

(1) ~~The DDD assessment will determine how much respite you can receive per chapter 388-828 WAC.~~

(2) ~~Prior approval by the DDD regional administrator or designee is required:~~

(a) ~~To exceed fourteen days in a calendar per month for out of home respite; or~~

(b) ~~To pay for more than eight hours in a twenty-four hour period of time for respite care in any setting other than your place of residence.~~

(3) ~~Respite providers have the following limitations and requirements:~~

(a) ~~If respite is provided in a private home, the home must be licensed;~~

(b) ~~The respite provider cannot be the spouse of the foster parent receiving respite if the spouse and the foster parent reside in the same residence;~~

(c) ~~If you receive respite from a provider who requires licensure, the respite services are limited to those age-specific services contained in the provider's license.~~

(4) ~~DDD cannot pay for any fees associated with the respite care; for example, membership fees at a recreational facility, or insurance fees.~~

(5) ~~If you require respite from a licensed practical nurse (LPN) or a registered nurse (RN), services may be authorized as skilled nursing services per WAC 388-845-1700 using an LPN or RN.~~

(6) ~~Respite cannot replace day care while your foster parent is at work.~~

(7) ~~Respite cannot replace natural supports available to the child while in foster care. Family members will not be paid to provide respite.~~

(8) ~~If you reside in a licensed staffed residential home or group care facility, you are not eligible to receive respite care.)~~

(1) A client who lives in a foster home is eligible for respite services.

(2) A client who lives in a licensed staffed residential, SOLA, or group home for medically-fragile children is not eligible for respite services.

(3) The DDA assessment under chapter 388-828 WAC determines the amount of respite services a client may receive.

#### NEW SECTION

**WAC 388-826-0078** Who may provide respite services to a client receiving voluntary placement services in a child foster home? To provide respite services to a client receiving voluntary placement services, a provider must:

(1) Be a qualified provider under WAC 388-845-1615; and

(2) Have a respite contract with the developmental disabilities administration.

#### NEW SECTION

**WAC 388-826-0079** What limits apply to respite services? Limits under WAC 388-845-1620 apply to a client receiving voluntary placement services in a child foster home.

AMENDATORY SECTION (Amending WSR 07-15-003, filed 7/6/07, effective 8/6/07)

**WAC 388-826-0130** How does ~~((DDD))~~ the department determine the rate ((that is paid)) to support a ((child)) client in a licensed foster home? ~~((DDD))~~ (1) The department determines the rate that is paid to support a ((child)) client in a licensed foster home by ((adding:

~~(1) The basic foster care room and board rate published annually by children's administration per WAC 388-25-0120))~~ conducting a foster care rate assessment.

~~(2) DDA conducts the ((specialized rate identified after administering the))~~ foster care rate assessment ((FCRA tool)):

(a) No more than thirty days after the date the child is admitted to a licensed foster home;

(b) Annually; and

(c) If a significant change occurs.

NEW SECTION

**WAC 388-826-0131** What does the department pay towards voluntary placement services? (1) The department pays the cost of the residential habilitation services minus the amount of client responsibility under WAC 388-826-0132.

(2) The department pays a licensed provider to provide voluntary placement services through a DDA contract and according to a rate structure established by DDA.

NEW SECTION

**WAC 388-826-0132** What must a parent or legal guardian pay toward voluntary placement services? (1) A parent or legal guardian is not required to contribute financially toward the cost of voluntary placement services.

(2) The client's countable income, minus the client's personal needs allowance, must be contributed toward the cost of participation and room and board.

(3) The department determines the client's countable income under chapter 182-512 WAC. Examples of countable income include:

(a) Supplemental security income (SSI);

(b) Social security benefits, such as child survivor benefits or disability benefits; and

(c) Child support, both current and arrears payments.

(4) The client keeps a personal needs allowance (PNA) under WAC 182-513-1105. The child's representative payee may:

(a) Place the personal needs allowance into a payee account for the client, or

(b) Use the personal needs allowance to purchase items that directly benefit the client.

(5) The client may be required to pay participation and room and board. The department determines participation and room and board amounts under:

(a) WAC 182-515-1510 if the client is enrolled on a DDA home and community based services waiver; or

(b) WAC 182-515-1512 if the client is not enrolled on a DDA home and community based services waiver.

(6) A parent or legal guardian must pay for their child's clothing, activities, special events, and gifts.

NEW SECTION

**WAC 388-826-0133** What is the representative payee's role? The representative payee:

(1) Receives and manages the client's countable income;

(2) Uses the client's countable income to contribute toward the cost of the client's participation and room and board;

(3) Places the client's personal needs allowance and any conserved funds in a payee account; and

(4) Monitors the child's payee account to maintain eligibility for supplemental security income (SSI) and medicaid.

AMENDATORY SECTION (Amending WSR 07-15-003, filed 7/6/07, effective 8/6/07)

**WAC 388-826-0138** What questions are ~~((asked))~~ in the foster care rate assessment ((tool)) and how are ((the licensed foster home provider's)) answers scored? (1) The foster care rate assessment ((tool)) consists of thirteen questions ((that are scored by DDD based on discussion between the DSHS representative and the licensed foster home provider)).

~~((+))~~ (2) Scores are based on natural supports available, documented support plans, and report of care provided by the licensed foster home provider.

(3) The assessment excludes any additional paid supports provided, such as nursing and therapies.

(4) The hours are assessed against the number of hours expected to support a typically-developing child the same age as the client.

(5) Daily living: ((Include)) What is the average number of hours per day spent ((earing for this child beyond what is expected for his/her age on)) supporting the client with daily living tasks ((including)) like dressing, grooming, toileting, feeding and providing specialized body care? Do not include private duty nursing hours in this average.

<del>((Answers))</del> Hours per day	Score
0 to 1	30
2 to 5	91
6 to 9	213
10 to 20	396
Over 20	609

~~((2))~~ (6) Physical needs: What is the average number of hours per day ((beyond what is expected for his/her age)) spent providing assistance to the client that is not included in the "daily living" category above? ((E.g., wheelchairs,)) Examples include assistance with: Mobility; prosthetics((- and)); communication; other assistive devices((- dental/orthodontic, communication (speech, hearing, sight))); airway management (monitors, ventilators)((-)); pressure sores; and((-or intravenous)) enteral nutrition(+)). Do not include private duty nursing hours in this average.

<del>((Answers))</del> Hours per day	Score
0 to 1	30
2 to 5	91

<del>((Answers))</del> Hours per day	Score
6 to 20	274
Over 20	609

~~((3))~~ (7) Behavioral needs: What is the average number of hours per day ~~((the foster parent(s) will need to spend supporting and supervising the child due to behaviors disorders, emotional disorders, and mental disorders))~~ spent providing behavioral, emotional, and mental health supports to the client? Do not include hours under subsection (8)(b) of this section in this average.

<del>((Answers))</del> Hours per day	Score
0 to 1	30
2 to 5	91
6 to 13	335
14 to 24	578
Over 24	731

~~((4) Participation in child's)~~ (8) Therapeutic plan: ~~((Include))~~ What is the average number of hours per week spent implementing a plan prescribed by a professional related to the child's physical, behavioral, emotional, or mental health therapy? The foster parent must provide a copy of each plan to the assessor.

(a) ~~((Physical therapeutic plan (e.g., meeting with providers, attending therapy or directly giving))~~ What is the average numbers of hours per week spent providing or attending physical, occupational ~~((or postsurgical))~~, and speech therapy~~((?))~~?

<del>((Answers))</del> Hours per week	Score
0 to 1	4
2 to 3	13
4 to 9	30
10 to 46	65

(b) ~~((Participation in emotional/))~~ What is the average number of hours per week spent participating in or implementing services identified in the client's behavioral support plan ~~((e.g., meeting with providers, attending therapy or directly supporting therapeutic plan-))~~, such as applied behavior analysis (ABA) or counseling?

<del>((Answers))</del> Hours per week	Score
0 to 1	4
2 to 3	13
4 to 19	48
20 to 60	104
Over 60 <del>((hours/week))</del>	390

~~((5) Arranging, scheduling and supervising activities)~~ (9) Appointments: ~~((Indicate))~~ What is the average number of hours per week spent scheduling, traveling to and from, and participating in appointments ~~((and accompanying the~~

child))? The foster parent must provide documentation of appointments to the assessor.

(a) ~~((Medical/dental (e.g., transporting and waiting for medical services including))~~ What is the average number of hours per week spent scheduling, traveling to and from, and participating in doctor visits, dental visits, rehabilitation, and therapy visits~~((?))~~?

<del>((Answers))</del> Hours per week	Score
0 to 1	4
2 to 5	13
6 to 14	39
Over 14 <del>((hours/week))</del>	82

(b) What is the average number of hours per week spent scheduling, traveling to and from, and participating in community activities ~~((e.g., transporting and waiting during events including))~~, such as recreation, leisure, sports ~~((or))~~, and extra-curricular activities~~((?))~~?

<del>((Answers))</del> Hours per week	Score
0 to 1	4
2 to 3	13
4 to 7	30
8 to 20	48
Over 20 <del>((hours/week))</del>	130

~~((6))~~ (10) House care: ~~((Indicate))~~ What is the average number of times per week ~~((to repair))~~ spent repairing, ~~((clean or replace))~~ cleaning, and replacing household items~~((, including))~~ and medical equipment, over and above normal wear and tear, due to:

(a) A chronic medical condition~~((s (e.g., lack of personal control resulting in bed-wetting or incontinence, lack of muscle control or unawareness of the consequences of physical actions-))~~?

<del>((Answers))</del> Times per week	Score
0 to 1	6
2 to 7	24
8 to 19	58
20 to 38	91
Over 38 <del>((times per week))</del>	238

(b) Destructive behavior ~~((e.g., lack of emotional control resulting in damage or destruction of property-))~~?

<del>((Answers))</del> Times per week	Score
0 to 1	6
2 to 3	15
4 to 9	28
10 to 22	58
Over 22 <del>((times per week))</del>	162



~~((7)) (11) Development and socialization skills: ((Indicate)) What is the average number of hours per week ((to provide)) spent providing guidance and assistance((-))?~~

~~(a) ((Direct developmental assistance (e.g.)) What is the average number of hours per week spent helping with homework and ((readiness to learn)) learning new activities((-))?~~

<del>((Answers)) Hours per week</del>	Score
0 to 1	4
2 to 3	13
4 to 11	30
12 to 30	87
Over 30 <del>((hours/week))</del>	249

~~(b) ((Professional interaction (e.g.)) What is the average number of hours per week spent interacting with other professionals, such as meeting with teachers, visiting the client's school ((either planned or in crisis)), speaking on the phone with school personnel, participating in individual education plan development and review((-))?~~

<del>((Answers)) Hours per week</del>	Score
0 to 1	4
2 to 3	13
4 to 5	22
6 to 12	30
Over 12 <del>((hours/week))</del>	82

~~(c) What is the average number of hours per week spent developing socialization and functional life skills ((e.g.)), ((helping the child build skills, make)) like making positive choices ((and take responsibility)), ((learn about the use of)) being accountable, managing money, ((relate to peers, adults and family members and explore)) exploring the community((-)), and relating to peers, adults, and family members?~~

<del>((Answers)) Hours per week</del>	Score
0 to 1	4
2 to 7	22
8 to 19	56
20 to 60	173
Over 60 <del>((hours/week))</del>	403

~~((8)) (12) Shared parenting: ((Indicate)) What is the average number of hours per week ((to work with the birth parents and/or siblings, including assisting in the care of the child during visits, demonstrating care techniques, planning and decision making)) spent implementing the shared parenting plan? The shared parenting plan must be available for review.~~

<del>((Answers)) Hours per week</del>	Score
0 to 1	4
2 to 3	13
4 to 12	30

<del>((Answers)) Hours per week</del>	Score
Over 12	82

AMENDATORY SECTION (Amending WSR 07-15-003, filed 7/6/07, effective 8/6/07)

**WAC 388-826-0145 How does ~~((DDD))~~ DDA determine the foster care level from the raw score? (1)** The following are the foster care levels based on the range of aggregate scores:

Level	Low Score	High Score
1	0	320
2	321	616
3	617	1501
4	1502	2085
5	2086	2751
6	2752	999999

~~(2)~~ A standardized rate for specialized services is assigned to ~~((each))~~ levels one through six.

~~(3)~~ The standardized rate is published by ~~((DDD. The rate))~~ DDA and is paid monthly to the foster parent ~~((in addition to the basic rate)).~~

AMENDATORY SECTION (Amending WSR 06-04-088, filed 1/31/06, effective 3/3/06)

**WAC 388-826-0150 What happens if ~~((the level assigned to the child changes))~~ a significant change assessment occurs?** ~~((The care needs of all children in foster care will be reassessed annually or more often if a major life change occurs.))~~

~~(1)~~ ~~((A "major life change" is an unexpected, documented))~~ If a significant change ~~((in a child's medical or psychological condition that affects the level of care required))~~ assessment occurs, DDA conducts a foster care rate assessment.

~~(2)~~ If the ~~((assessed level changes and))~~ foster care rate assessment results in a rate change, the foster parent ~~((will receive at least thirty days))~~ receives a thirty-day written notice ~~((of the rate change. The notice will include))~~ that includes the effective date ~~((that))~~ of the ~~((rate))~~ change ~~((takes effect)).~~

AMENDATORY SECTION (Amending WSR 06-04-088, filed 1/31/06, effective 3/3/06)

**WAC 388-826-0160 ~~((What limitations exist on administrative hearings regarding))~~ Are foster care ~~((payments in VPP))~~ rates appealable?** ~~((The))~~ A foster care ~~((provider and the parents are not entitled to request an))~~ rate is not appealable through the administrative hearing ~~((to dispute the established foster care rates))~~ process.

AMENDATORY SECTION (Amending WSR 06-04-088, filed 1/31/06, effective 3/3/06)

**WAC 388-826-0170** ~~How ((are rates for)) does the department determine the rate to support a client in a licensed staffed residential home((s determined in VPP))?~~ ((Rates for licensed staffed residential homes are determined by the department after review of the needs of the child, the proposal from the licensed staffed residential agency and the proposed staffing schedule.))

(1) To determine the rate to support a client in a licensed staffed residential home, the department assesses the client's support needs, including:

- (a) Activities of daily living;
- (b) Instrumental activities of daily living; and
- (c) Behavioral and supervision supports.

(2) Children are entitled to appropriate educational services including, to the extent possible, participating in a full school day. The department must not pay a provider for any hours the client is in school.

AMENDATORY SECTION (Amending WSR 07-15-003, filed 7/6/07, effective 8/6/07)

**WAC 388-826-0175** ~~How does ((DDD)) the department determine the rate ((that is paid)) to support a ((child)) medically-fragile client in a ((licensed)) group care facility? ((A rate is negotiated by contract between DDD and the licensed group care facility.))~~

The department pays a group care facility a DDA-established, per-person, monthly rate to support a medically-fragile client.

AMENDATORY SECTION (Amending WSR 06-01-107, filed 12/21/05, effective 12/21/05)

**WAC 388-826-0200** ~~What happens if ((the voluntary placement ends)) a licensed provider terminates a client's out-of-home placement? ((The child must be returned to the physical care of the child's legal parent unless the child has been taken into custody pursuant to RCW 13.34.050 or 26.44.050, placed in shelter care pursuant to RCW 13.34.060, or placed in foster care pursuant to RCW 13.34.130. The agreement as described in RCW 74.13.350, between DDD and legal parents is completely voluntary. Per RCW 74.13.350, any party may terminate the agreement at any time.))~~

If a licensed provider terminates a client's out-of-home placement:

(1) The child must return to the parent or legal guardian's care unless:

- (a) Taken into custody under RCW 13.34.050 or 26.44.050;
- (b) Placed in shelter care under RCW 13.34.060; or
- (c) Placed in foster care under RCW 13.34.130;

(2) The provider must:

(a) Notify the client's parent or legal guardian, the department, and the client's school in writing at least thirty days before the termination; and

(b) Develop a transition plan; and

(3) The department assesses the client's health and welfare needs, and may authorize supports to the family while a new out-of-home placement is identified.

NEW SECTION

**WAC 388-826-0205** ~~What happens when a client, parent, or legal guardian request a different provider? (1)~~

A client, parent, or legal guardian requesting a change in provider must:

(a) Notify the DDA social worker and provider; and  
(b) Determine if current services can be modified to meet the client's need.

(2) If services cannot be modified to meet the client's need, alternative residential options may be explored.

(a) The client may return home until a new placement is identified; or

(b) The client may remain in the current placement until a new provider is identified.

(3) The department may request a court review and a guardian ad litem to represent the best interest of the child.

AMENDATORY SECTION (Amending WSR 06-01-107, filed 12/21/05, effective 12/21/05)

**WAC 388-826-0230** ~~What happens after a ((youth)) client turns eighteen? ((When a youth turns eighteen, and is considered an adult, while in the voluntary placement program, the youth may remain in the child foster home, in VPP, under the following circumstances:~~

(1) Youth remains in the education or vocational program in the local public school district in which he/she has been enrolled until graduation or age twenty-one, whichever is earlier, per WAC 392-172-030(2), RCW 74.13.031 (10) and (13), 28A.155.020, and 28A.155.030;

(2) The placement remains intact and does not disrupt;

(3) When needed, youth who turns eighteen can self-administer medication;

(4) Youth cannot remain in foster care, living in a child foster home, and in VPP, after eighteen years of age when:

(a) The child foster home placement disrupts;

(b) The youth leaves education or vocational program; or

(e) The youth who turns eighteen needs someone to administer medication.

Dependency guardianships end at age eighteen. If a youth has been in a legal guardianship, under chapter 11.88 RCW and if the reason for guardianship was the minority of the child the guardianship ends.))

A client who turns eighteen while in voluntary out-of-home placement may remain there until their twenty-first birthday if:

(1) They pursue a high school or equivalency course of study (GED/HSEC) or vocational program;

(2) A voluntary placement agreement is signed by the client or their legal guardian; and

(3) The client can self-administer medication or they receive nurse delegation services.

AMENDATORY SECTION (Amending WSR 06-01-107, filed 12/21/05, effective 12/21/05)

**WAC 388-826-0240** (~~What happens if a parent disagrees with a decision made by DDD~~) **Who can appeal a department action?** ((If a parent disagrees with a decision made by DDD staff, the parent has the right to pursue the appeal process, as outlined in RCW 71A.10.050 and chapter 388-02 WAC.))

(1) A client, the client's parent, or the client's authorized representative may appeal any decision under RCW 71A.10.050 or WAC 388-825-120.

(2) A request may be made orally or in writing.

(3) An appellant must request an administrative hearing no more than ninety days after the date they received notification of the disputed decision.

(4) An appellant must request an administrative hearing within the ten-day notice period under WAC 388-458-0040 if the client wishes to receive continued benefits under WAC 388-825-145.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-1515 Are there limits to the residential habilitation services I can receive?** (1) You may only receive one type of residential habilitation service at a time.

(2) None of the following can be paid for under the core or community protection waiver:

(a) Room and board;

(b) The cost of building maintenance, upkeep, improvement, modifications or adaptations required to assure the health and safety of residents, or to meet the requirements of the applicable life safety code;

(c) Activities or supervision already being paid for by another source;

(d) Services provided in your parent's home unless you are receiving alternative living services for a maximum of six months to transition you from your parent's home into your own home.

(3) Alternative living services in the core waiver cannot:

(a) Exceed forty hours per month;

(b) Provide personal care or protective supervision.

(4) The following persons cannot be paid providers for your service:

(a) Your spouse;

(b) Your natural, step, or adoptive parents if you are a child age seventeen or younger;

(c) Your natural, step, or adoptive parent unless your parent is certified as a residential agency per chapter 388-101 WAC or is employed by a certified or licensed agency qualified to provide residential habilitation services.

(5) The initial authorization of residential habilitation services requires prior approval by the DDA regional administrator or designee.

(6) If you are under age eighteen, the residential habilitation services you receive are subject to requirements under chapter 388-826 WAC.

## REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-826-0015 Who else may be eligible to participate in the voluntary placement program?

WAC 388-826-0020 How does the family, whose child is a client of DDD request access to the VPP?

WAC 388-826-0025 What is the process for a child or youth who transfers from children's administration to get into the VPP?

WAC 388-826-0030 How is a decision made for out-of-home placement?

WAC 388-826-0035 How is a decision made regarding participation in the voluntary placement program?

WAC 388-826-0045 What happens after a voluntary placement agreement is signed, what are the legal issues and who is responsible?

WAC 388-826-0055 What basic services may a child receive from the voluntary placement program?

WAC 388-826-0060 Are there other services a child may receive in this program?

WAC 388-826-0065 What can parents expect if they use in-home supports under this program?

WAC 388-826-0080 What are the expectations for parents when their child is in out-of-home care?

WAC 388-826-0085 What other DDD services are available for a child through the voluntary placement program?

WAC 388-826-0090 What does a parent do with the child's Social Security benefits when the parent's child lives outside the parent's home?

WAC 388-826-0095 Who pays for a child's care when a child is in out-of-home placement?

WAC 388-826-0129 What are the residential settings that DDD uses to provide voluntary placement program services?

WAC 388-826-0135 When does DDD administer the foster care rate assessment tool?

WAC 388-826-0136 How often does DDD administer the foster care rate assessment tool?

- WAC 388-826-0210 When the child leaves the voluntary placement program for any reason, what DDD services are available to the child and family when voluntary placement ends?
- WAC 388-826-0220 Will a child or youth continue to receive special education or early intervention services while in VPP?
- WAC 388-826-0250 Does DDD make exceptions to the requirements in this chapter?

**WSR 18-13-021****PROPOSED RULES****HEALTH CARE AUTHORITY**

[Filed June 8, 2018, 10:35 a.m.]

## Original Notice.

Preproposal statement of inquiry was filed as WSR 18-08-045.

Title of Rule and Other Identifying Information: WAC 182-513-1330 Determining available income for legally married couples for long-term care (LTC) services.

Hearing Location(s): On July 25, 2018, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, Sue Crystal Room 106A, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at <https://www.hca.wa.gov/assets/program/Driving-parking-checkin-instructions.pdf> or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than July 26, 2018.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, by July 25, 2018.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, TTY 800-848-5429 or 711, email [amber.lougheed@hca.wa.gov](mailto:amber.lougheed@hca.wa.gov), by July 20, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is modifying WAC 182-513-1330 to add WAC references for sponsored immigrants and how to determine if sponsors' income counts in determining benefits.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, 20 C.F.R 416.1204 Deeming of resources of the sponsor of an alien.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

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

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

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

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: This rule making applies to client eligibility and does not affect small businesses.

June 8, 2018

Wendy Barcus

Rules Coordinator

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

**WAC 182-513-1330 Determining available income for legally married couples for long-term care (LTC) services.** This section describes income the agency or its designee determines available when evaluating a legally married person's eligibility for long-term care (LTC) services.

(1) The agency or ~~((#s))~~ the agency's designee applies the following rules when determining income eligibility for LTC services:

(a) WAC 182-512-0600 SSI-related medical—Definition of income;

(b) WAC 182-512-0650 SSI-related medical—Available income;

(c) WAC 182-512-0700 SSI-related medical—Income eligibility;

(d) WAC 182-512-0750 SSI-related medical—Countable unearned income;

(e) WAC 182-512-0840(3), self-employment income-allowance expenses;

(f) WAC 182-512-0960 SSI-related medical—Allocating income—Determining eligibility for a spouse when the other spouse receives long-term services and supports (LTSS);

(g) WAC 182-512-0785, 182-512-0790, and 182-512-0795 for sponsored immigrants and how to determine if the sponsors' income counts in determining benefits.

(2) In initial categorically needy income eligibility for LTC, the agency does not allow any deductions listed in 1612(b) of the Social Security Act, for example:

(a) Twenty dollars per month income exclusion under WAC 182-512-0800;

(b) The first \$65 and the remaining one-half earned income work incentive under WAC 182-512-0840; and

(c) Impairment related work expense or blind work expense under WAC 182-512-0840.

(3) The following income is available to an institutionalized spouse, unless subsections (5) and (6) apply:

(a) Income received in the institutionalized spouse's name;

(b) Income paid to a representative on the institutionalized spouse's behalf; and

(c) One-half of the income received in the names of both spouses.

(4) The following income is unavailable to an institutionalized spouse:

(a) Separate income received in the name of the community spouse; and

(b) Income established as unavailable through a court order.

(5) For the determination of eligibility only, if available income under subsection (3)(a) through (c) of this section, minus income exclusions under WAC 182-513-1340, exceeds the special income level (SIL), defined under WAC 182-513-1100, the agency or its designee:

(a) Follows Washington state community property law when determining ownership of income;

(b) Presumes all income received after the marriage by either spouse to be community income;

(c) Considers one-half of all community income available to the institutionalized spouse.

(6) If the total of subsection (5)(c) of this section plus the institutionalized spouse's separate income is over the SIL, determine available income using subsection (3) of this section.

(7) A stream of income, not generated by a transferred resource, is available to the institutionalized spouse, even if the institutionalized spouse transfers or assigns the rights to the stream of income to one of the following:

(a) The community spouse; or

(b) A trust for the benefit of the community spouse.

4600 allows for ambulance transportation for involuntary substance use disorder treatment.

Reasons Supporting Proposal: The agency is creating WAC 182-546-4600 to implement ESHB [E3SHB] 1713, also known as the Ricky Garcia Act.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, ESHB [E3SHB] 1713, chapter 29, Laws of 2016 1st sp. sess.

Statute Being Implemented: RCW 41.05.021, 41.05.160, ESHB [E3SHB] 1713, chapter 29, Laws of 2016 1st sp. sess.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Amy Emerson, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1348; Implementation and Enforcement: Abigail Cole, P.O. Box 45510, Olympia, WA 98504-5510, 360-725-1835.

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

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

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The updates to WAC 182-546-4600 do not impose additional compliance costs or requirements on providers.

June 8, 2018

Wendy Barcus

Rules Coordinator

## WSR 18-13-022

### PROPOSED RULES

#### HEALTH CARE AUTHORITY

[Filed June 8, 2018, 11:18 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-14-040.

Title of Rule and Other Identifying Information: WAC 182-546-4600 Ambulance transportation—Involuntary substance use disorder treatment—Ricky Garcia Act.

Hearing Location(s): On July 25, 2018, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, Pear Conference Room #107, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at <https://www.hca.wa.gov/assets/program/Driving-parking-checkin-instructions.pdf> or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than July 26, 2018.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, by July 25, 2018.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, TTY 800-848-5429 or 711, email [amber.lougheed@hca.wa.gov](mailto:amber.lougheed@hca.wa.gov), by July 20, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 182-546-

#### NEW SECTION

**WAC 182-546-4600 Ambulance transportation—Involuntary substance use disorder treatment—Ricky Garcia Act.** (1) Definitions. For the purposes of this section, the following definitions and those found in chapter 182-500 WAC apply:

(a) "**Behavioral health organization (BHO)**" - See WAC 182-500-0015.

(b) "**Chemical dependency professional**" means a person certified as a chemical dependency professional by the department of health (DOH) under chapter 18.205 RCW.

(c) "**Designated crisis responder (DCR)**" means a mental health professional appointed by the behavioral health organization (BHO) to perform the duties described in RCW 70.96A.140.

(d) "**Detention**" or "**detain**" means the lawful confinement of a person, under chapter 71.05 RCW.

(e) "**Gravely disabled**" means a condition in which a person, as a result of a mental disorder, or as the result of the use of alcohol or other psychoactive chemicals:

(i) Is in danger of serious physical harm as a result of being unable to provide for personal health or safety; or

(ii) Shows repeated and escalating loss of cognitive control over personal actions and is not receiving care essential for personal health or safety.

(f) **"Less restrictive alternative treatment"** means a program of individualized treatment in a less restrictive setting than inpatient treatment and that includes the services described in RCW 71.05.585.

(g) **"Nearest and most appropriate destination"** means the nearest facility able and willing to accept the involuntarily detained person for treatment, not the closest facility based solely on driving distance.

(h) **"Secure detoxification facility"** means a facility operated by either a public or private agency that:

(i) Provides for intoxicated people:

(A) Evaluation and assessment by certified chemical dependency professionals;

(B) Acute or subacute detoxification services;

(C) Discharge assistance by certified chemical dependency professionals, including assistance with transitions to appropriate voluntary or involuntary inpatient services, or to less-restrictive alternatives appropriate for the client;

(ii) Includes security measures sufficient to protect the patients, staff, and community; and

(iii) Is certified as a secure withdrawal management and stabilization facility by the department of social and health services (DSHS) and the department of health (DOH).

(2) For a client involuntarily detained for substance use disorder (SUD) treatment, the agency covers transportation services under the ITA when the client has been assessed by a DCR and found to be one of the following:

(a) A danger to self;

(b) A danger to others;

(c) At substantial risk of inflicting physical harm upon the property of others; or

(d) Gravely disabled as a result of SUD.

(3) The agency pays for transportation under this section only when the transportation is:

(a) From one of the following locations:

(i) The site of the initial detention;

(ii) A local emergency room department;

(iii) A court hearing; or

(iv) A secure detoxification facility or crisis response center.

(b) To one of the following locations:

(i) A less restrictive alternative setting, except when ambulance transportation to a client's home is not covered;

(ii) A local emergency room department;

(iii) A court hearing; or

(iv) A secure detoxification facility or crisis response center.

(c) Provided by an ambulance transportation provider or law enforcement. The ambulance transportation provider must have an active core provider agreement (CPA) with the agency.

(d) To the nearest and most appropriate destination. The reason for a diversion to a more distant facility must be clearly documented in the client's file.

(4) The DCR authorizes the treatment destination based on the client's legal status.

(5) A copy of the agency's authorization of ambulance/secure transportation services under the Involuntary Treatment Act (ITA) form (HCA 42-003) must be completed and signed by the DCR and kept in the client's file.

(6) The SUD program, administered by DSHS, establishes payment for SUD-related transportation services when the transportation provider complies with DSHS requirements for drivers, driver training, vehicle and equipment standards and maintenance. Providers must clearly identify ITA transportation on the claim when billing the agency.

## WSR 18-13-070

### PROPOSED RULES

### DEPARTMENT OF

### SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed June 15, 2018, 10:04 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-05-082.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-829-0005 Who do the training requirements in this chapter apply to?

Hearing Location(s): On July 25, 2018, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than July 26, 2018.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., July 25, 2018.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by July 11, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending WAC 388-829-0005 in order to add community crisis stabilization services (CCSS) and state-operated living alternatives (SOLA) to the scope of chapter 388-829 WAC.

Reasons Supporting Proposal: The proposed amendments ensure that CCSS and SOLA program staff receive the same training as the developmental disabilities administration's other residential service providers.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: RCW 74.39A.009, 74.39A.-074.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1589; Implementation and Enforcement: Nichole Jensen, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1521.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, phone 360-407-1589, fax 360-407-0955, TTY 1-800-833-6388, email Chantelle.Diaz@dshs.wa.gov.

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

Is exempt under RCW 19.85.025(4) because the rules do not affect small businesses.

Explanation of exemptions: The proposed amendments impose no new or disproportionate costs on small businesses so a small business economic impact statement is not required.

June 11, 2018  
Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-14-090, filed 6/30/17, effective 8/1/17)

**WAC 388-829-0005 Who do the training requirements in this chapter apply to?** (1) The training requirements in this chapter apply to:

~~(a)~~ Community residential service businesses ((as defined in)) under RCW 74.39A.009((;));

~~(b)~~ Alternative living ((as defined in)) providers under chapter 388-829A WAC((;));

~~(c)~~ Community crisis stabilization services providers under chapter 388-833 WAC; and

~~(d)~~ Companion home((s as defined in)) providers under chapter 388-829C WAC. ((H))

~~(2)~~ Under this chapter, the term ((service providers refers to all service providers within the scope of this chapter, which include)) "service provider" includes:

(a) Supported living service providers;

(b) State-operated living alternatives;

~~(c)~~ DDA group homes;

~~((e))~~ ~~(d)~~ Licensed staffed residential homes;

~~((d))~~ ~~(e)~~ Alternative living providers;

~~(f)~~ Community crisis stabilization services for children;  
and

~~((e))~~ ~~(g)~~ Companion home providers.

~~((z))~~ ~~(3)~~ A DDA group ((homes)) home licensed as an adult family ((homes)) home or assisted living ((facilities)) facility must meet the training requirements in this chapter and the home care aide certification requirements ((described in)) under chapter ((388-112)) 388-112A WAC.

~~(4)~~ All other service providers listed in subsection ((+)) (2) of this section must meet the training requirements in this chapter but are exempt from home care aide certification through the department of health.

**WSR 18-13-075**  
**PROPOSED RULES**  
**BIG BEND**  
**COMMUNITY COLLEGE**

[Filed June 15, 2018, 12:39 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-10-010.

Title of Rule and Other Identifying Information: Chapter 132R-04 WAC, Student conduct code.

Hearing Location(s): On August 2, 2018, at 9:30 a.m., at the ATEC Building, Hardin Room, 7662 Chanute Street N.E., Moses Lake, WA.

Date of Intended Adoption: August 2, 2018.

Submit Written Comments to: Melinda Dourte, 7662 Chanute Street N.E., Moses Lake, WA 98837, email melindad@bigbend.edu, fax 509-766-6355, by July 26, 2018.

Assistance for Persons with Disabilities: Contact Loralyn Allen, phone 509-793-2027, fax 509-766-6355, TTY 509-793-2325, email loraal@bigbend.edu, by July 26, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Updates to rules, removes duplications.

Reasons Supporting Proposal: Duplication needs to be removed, updating definition of student.

Statutory Authority for Adoption: RCW 28B.50.140.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Dawna Haynes, 7662 Chanute Street N.E., Moses Lake, WA, 509-793-2077.

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

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

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

June 15, 2018  
Melinda Dourte  
Executive Assistant  
to the President

AMENDATORY SECTION (Amending WSR 17-22-054, filed 10/25/17, effective 11/25/17)

**WAC 132R-04-015 Definitions.** For the purposes of this chapter, terms are defined as follows:

(1) "Student conduct officer" is a college administrator designated by the president to be responsible for implementing and enforcing the student conduct code. The vice president of learning and student success will serve as the student conduct officer or may appoint a designee.

(2) "Conduct review officer" is a college administrator designated by the president to be responsible for receiving and facilitating appeals from student disciplinary actions and for reviewing initial decisions issued in a brief adjudicative proceeding. The conduct review officer shall be designated by the president and shall be authorized to grant appropriate relief upon review. The director of student programs will serve as the conduct review officer, unless otherwise designated by the president.

(3) "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 and to reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary.

(4) "Disciplinary action" is the process by which discipline is imposed by the student conduct officer 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 disciplinary committee. Appeals of all other appealable disciplinary action may be reviewed through brief adjudicative proceedings.

(6) "Respondent" is the student against whom disciplinary action is being taken.

(7) "Service" is the process by which a document is officially delivered to a party. Unless expressly specified otherwise, service upon a party shall be accomplished by:

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

(b) By sending the document to the college assigned email, once one has been generated, and by certified mail to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is emailed, if possible, and deposited into the mail.

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

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

(b) By sending the document by email and first class mail to the recipient's college-assigned email and office address.

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified official or presiding officer.

(9) "College premises" shall include 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.

(10) "Student" (~~includes~~) is defined as all persons taking courses at or through the college, including those concurrently attending secondary or postsecondary institutions and 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) (~~excluding those trainings~~

occurring through the Center for Business and Industry Service and the Japanese Agriculture Training Program), irrespective of modality. Persons who withdraw after allegedly violating the student code of conduct, 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" for the purposes of this chapter. "Continuing relationship" is established when a student is registered for an upcoming term or has indicated an intent to do so via a transaction, such as submitting a financial aid application for an upcoming term.

(11) "Business day" means a weekday, excluding weekends and college holidays. If a time period is not specifically stated in business days, then calendar days apply.

(12) "Complainant" means any person who files a complaint alleging that a student or student organization violated the standards of conduct for students. Complainant also refers to the college when the college files the complaint.

(13) "Sexual misconduct" has the meaning ascribed to this term in WAC 132R-04-057.

AMENDATORY SECTION (Amending WSR 17-22-054, filed 10/25/17, effective 11/25/17)

**WAC 132R-04-057 Student code of conduct violations.** The college may impose sanctions against a student who commits, attempts to commit, aids, abets, incites, encourages, or assists another person to commit an act of misconduct. Misconduct for which the college may impose sanctions includes, but is not limited to, any of the following:

(1) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, or fabrication.

(a) Cheating includes, but is not limited to, any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) Plagiarism includes, but is not limited to, 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 in an instructional course concerning the completion of an assignment.

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

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

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

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

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



(a) Any instruction, research, administration, disciplinary proceeding, or other college activities, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

(4) **Assault, intimidation, harassment.** Unwanted touching, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this code, bullying is repeated or aggressive unwanted behavior, not otherwise protected by law, that humiliates, harms, or intimidates the victim.

(5) **Cyber misconduct.** Cyber misconduct including, but not limited to: Cyberstalking, cyberbullying, or online harassment.

(a) 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.

(b) Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third-parties using another's email identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(6) **Property violation.** Damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging or destruction of college property or the property of another person.

Property for the purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.

(7) **Failure to comply with directive.** Failure to comply with the directive(s) 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 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, unless previously authorized by the vice president of learning and student success. This policy does not apply to the possession of a personal protection spray device, as authorized by RCW 9.91.160. This policy is subject to the following exceptions:

(a) Commissioned law enforcement personnel in the state of Washington, legally authorized military personnel while in performance of their duties, and other persons or entities authorized by contract to carry firearms in the course of their employment;

(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 or designee 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.

(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, sale, or being visibly under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(b) Marijuana. The use, possession, delivery, or sale of marijuana or the psychoactive compounds found in marijuana intended for human consumption, regardless of form, or being observably under the influence of marijuana or the psychoactive compounds found in marijuana 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 grown hormones), narcotic drug or controlled substance as defined in chapters 69.41 and 69.50 RCW, except in accordance with a lawful prescription for that student by a licensed health care professional.

(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, or in any location other than the parking lots, including twenty-five feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased or operated by the college. The use of tobacco, electronic cigarettes, and related products on the college campus is restricted to designated smoking areas.

"Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, vaporizers, and snuff.

(11) **Disorderly conduct.** Conduct which is disorderly, lewd, indecent, or obscene, that is not otherwise protected under the law.

(12) **Discriminatory conduct.** Conduct which harms or adversely affects any member of the college community because of race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age (40+); religion; creed; 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 unwelcomed 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 programs or activities 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. This includes, but is 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: Clear knowing and voluntary permission to engage in mutually agreed upon activity. For consent to be valid, there must be actual words or conduct indicating freely given agreement to the act at the time of the act. Consent cannot be inferred from silence, passivity, or lack of active resistance. Consent can be withdrawn by either party at any point. Consent to engage in one activity, or past agreement to engage in a particular activity, cannot be presumed to constitute consent to engage in a different activity or to engage in the same activity again. There is no consent where there is a threat of force or violence or any other form of coercion or intimidation, physical or psychological. A person cannot con-

sent if they are unable to understand what is happening or are disoriented, or if they are 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 incapable of consent has engaged in nonconsensual conduct.

(14) **Harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age (40+); religion; creed; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See supplemental definitions: "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.** Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such person reported an alleged violation of this code or college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.

(16) **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 relat-

ing 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.~~

~~(20))~~ **Abuse of process.** Abuse or misuse of any of the procedures relating to student complaints or misconduct including, but not limited to:

(a) Failure to obey a subpoena or order to appear at a hearing;

(b) Falsification or misrepresentation of information;

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

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

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

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

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

~~((21))~~ **(20) Unsafe vehicle operation.** Operation of any motor vehicle on college property in an unsafe manner or in a manner which is reasonably perceived as threatening the health or safety of another person.

~~((22))~~ **(21) Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college traffic and parking rules.

~~((23))~~ **(22) Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

~~((24))~~ **(23) Aiding or abetting.** Aiding, abetting, inciting, encouraging, or assisting another person to commit any of the foregoing acts of misconduct.

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

**WSR 18-13-076**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**FINANCIAL INSTITUTIONS**

[Filed June 15, 2018, 1:48 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-08-037.

Title of Rule and Other Identifying Information: The securities division proposes to adjust the filing fees required

for initial and renewal applications for registration as an investment adviser, broker-dealer, investment adviser representative, and securities salesperson, in addition to the initial and renewal and notice filing fees for federal covered advisers, upward by ten dollars to defray the costs of administering the Securities Act of Washington, chapter 21.20 RCW, pursuant to RCW 21.20.340 and 43.320.110 as amended by SB 6024 (2018).

Hearing Location(s): On July 26, 2018, at 3:00 p.m., at the Department of Financial Institutions, 150 Israel Road S.W., Room 319, Tumwater, WA 98501.

Date of Intended Adoption: July 27, 2018.

Submit Written Comments to: Faith L. Anderson, Chief of Registration and Regulatory Affairs, Securities Division, Department of Financial Institutions, P.O. Box 9033, Olympia, WA 98507-9033, email [faith.anderson@dfi.wa.gov](mailto:faith.anderson@dfi.wa.gov), fax 360-704-6480.

Assistance for Persons with Disabilities: Contact Carolyn Hawkey, phone 360-902-8824, fax 360-902-0524, TTY 360-664-8126, email [Carolyn.hawkey@dfi.wa.gov](mailto:Carolyn.hawkey@dfi.wa.gov), by July 19, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: On March 22, 2018, Governor Jay Inslee signed into law SB 6024, which authorizes the director of the department of financial institutions to increase the fees set forth in RCW 21.20.340 upward by no more than fifteen dollars upon a finding that a fee increase is necessary to defray the costs of administering the Securities Act of Washington. The securities division's annual revenues are insufficient to sustain its operations. To address this deficiency, the securities division now proposes to increase the fees associated with initial and renewal applications for registration as an investment adviser, broker-dealer, investment adviser representative, and securities salesperson, in addition to the initial and renewal notice filing fees for federal covered advisers, upward by ten dollars with an effective date of January 1, 2019. The full amount of any fee increase will be allocated to the securities division.

Reasons Supporting Proposal: The securities division's annual revenues are insufficient to sustain its regular operations. The securities division's annual expenditures have exceeded its revenues cumulatively by approximately \$14.4 million since fiscal year 2004. The securities division's yearly deficits are projected to continue through fiscal year 2019, resulting in an approximate \$7.5 million deficit in fund balance for the division, far below the recommended minimum fund balance of \$1.6 million. The proposed fee increase will correct the deficiencies in revenues that have persisted since fiscal year 2004.

Statutory Authority for Adoption: RCW 21.20.340 and 43.320.110 as amended by SB 6024 (2018).

Statute Being Implemented: RCW 21.20.340 and 43.320.110 as amended by SB 6024 (2018).

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

Name of Agency Personnel Responsible for Drafting: Faith L. Anderson, 150 Israel Road S.W., Tumwater, WA 98501, 360-902-8760; Implementation: Joanne Jones, 150 Israel Road S.W., Tumwater, WA 98501, 360-902-8760; and

Enforcement: William M. Beatty, 150 Israel Road S.W., Tumwater, WA 98501, 360-902-8760.

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

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 34.05.328 (5)(b)(vi), a preliminary cost-benefit analysis is not required because the proposed rule would merely adjust fees pursuant to legislative standards.

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

Is exempt under RCW 19.85.025(3) as the rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

June 15, 2018

Gloria Papiez

Director

## Chapter 460-05A WAC

### FEES

#### NEW SECTION

**WAC 460-05A-010 Licensing fees.** (1) In accordance with RCW 21.20.340(15), the fees specified in RCW 21.20.-340 (6) and (7) are adjusted upward by ten dollars effective January 1, 2019, in order to defray the costs of administering the Securities Act of Washington, chapter 21.20 RCW. Accordingly, the following fees shall apply:

(a) For registration of a broker-dealer or investment adviser, the fee shall be one hundred sixty dollars for original registration and eighty-five dollars for each annual renewal. When an application is denied or withdrawn the director shall retain one half of the fee.

(b) For a federal covered adviser filing pursuant to RCW 21.20.050, the fee shall be one hundred sixty dollars for original notification and eighty-five dollars for each annual renewal. A fee shall not be assessed in connection with converting an investment adviser registration to a notice filing when the investment adviser becomes a federal covered adviser.

(c) For registration of a salesperson or investment adviser representative, the fee shall be fifty dollars for each original registration with each employer and thirty dollars for each annual renewal. When an application is denied or withdrawn the director shall retain one half of the fee.

(2) Upon a finding by the department of financial institutions that the fee increase, or portion thereof, set forth in subsection (1) of this section is not necessary to defray the costs of administering the Securities Act of Washington, chapter 21.20 RCW, the department may waive that portion of the fee attributable to a fee increase under RCW 21.20.340(15).

## WSR 18-13-079

### PROPOSED RULES

### DEPARTMENT OF

### SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed June 15, 2018, 2:13 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-08-004.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-446-0015 What is an intentional program violation (IPV) and administrative disqualification hearings (ADH) for basic food assistance?

Hearing Location(s): On July 25, 2018, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than July 26, 2018.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., July 25, 2018.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by July 11, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Changes proposed under this filing will amend WAC 388-446-0015 to align with federal regulations specifying administrative law judges' jurisdiction over administrative disqualification hearings for intentional program violations of the basic food and food assistance programs.

Reasons Supporting Proposal: The proposed changes are necessary to clarify the jurisdiction of administrative law judges over the administrative disqualification and intentional program violation process for basic food or food assistance program recipients.

Statutory Authority for Adoption: RCW 74.04.500, 74.04.510, 74.08A.120.

Rule is necessary because of federal law, 7 C.F.R. 273.16.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Ezra Paskus, 712 Pear Street S.E., Olympia, WA, 360-725-4611.

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

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "this section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

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

Is exempt under RCW 19.85.025.

Explanation of exemptions: The proposed rule does not have an economic impact on small businesses.

June 14, 2018  
Katherine I. Vasquez  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 14-05-063, filed 2/18/14, effective 3/21/14)

**WAC 388-446-0015 What is an intentional program violation (IPV) and administrative disqualification hearing((s)) (ADH) for basic food (~~(assistance))~~?**

(1) An intentional program violation (IPV) is an act in which someone intentionally:

(a) Misrepresents, conceals, or withholds facts in order to be found eligible for benefits or to receive more benefits than their actual circumstances would allow(~~(-This includes))~~ including making a false statement regarding household circumstances(~~(:));~~

(b) Acts in violation of the Food Nutrition Act of 2008, regulations for the supplemental nutrition assistance program (SNAP) under Title 7 of the Code of Federal Regulations (~~(or))~~, any state statute, or WAC relating to the use, presentation, transfer, acquisition, receipt, trafficking, or possession of food assistance benefits including(~~(:)); or~~

(c) Attempts to buy, sell, steal, or trade food assistance benefits issued and accessed via electronic benefit transfer (EBT) cards, EBT card numbers or personal identification numbers (PINs), for cash or anything other than eligible food, alone or acting with others.

(2) If we suspect someone has committed an IPV we refer their case for an administrative disqualification hearing (ADH), (~~(if))~~ unless:

(a) The (~~(suspected IPV causes an over-issuance of four hundred fifty dollars or more))~~ case is currently referred for prosecution; or

(b) (~~(The suspected IPV is due to the trafficking of food benefits; and~~

(c) ~~(The person has not been referred for criminal proceedings))~~ A court or prosecutor already took action against the person for the same or related facts.

(3) An administrative disqualification hearing (ADH) is a formal hearing to determine if a person committed an IPV. ADHs are governed by the rules found in chapter 388-02 WAC. However, rules in this section are the overriding authority if there is a conflict.

(4) A person suspected of an IPV can choose to waive their right to an ADH by signing a disqualification consent agreement that waives their right to the hearing and accepts the IPV penalty under WAC 388-446-0020.

(5) If someone commits one or more IPV's and is suspected of committing another, we refer them for an ADH when the act of suspected violation occurred:

(a) After we mailed the disqualification notice to the client for the most recent IPV; or

(b) After criminal proceedings for the most recent IPV are concluded.

(6) When we (~~(suspect someone has committed an IPV; we))~~ refer (~~(their))~~ a case for an administrative disqualifica-

tion hearing (ADH)(~~(-))~~, the office of administrative hearings (OAH) sends (~~(them))~~ the person notice of (~~(am))~~ the ADH at least thirty days in advance of the hearing date. OAH sends the notice by certified mail, or personal service. The notice will contain the following information:

(a) The date, time, and place of the hearing;

(b) The charges against the person;

(c) A summary of the evidence, and how and where they may examine the evidence;

(d) A warning that a decision will be based entirely on the evidence the department provides if they fail to appear at the hearing;

(e) A statement that the person has ten days from the date of the scheduled hearing to show good cause for failing to attend the hearing and to ask for a new hearing date;

(f) A warning that a determination of IPV will result in a disqualification period; and

(g) A statement that if we schedule a telephone hearing, they (~~(can))~~ may request an in-person hearing by filing a request with the administrative law judge one week or more prior to the date of the hearing.

(7) The department may combine an ADH and a regular hearing when the reason for both hearings is related.

(8) The person or a representative (~~(shall have))~~ has the right to one continuance of up to thirty days if a request is filed ten days or more prior to the hearing date.

(9) The administrative law judge (ALJ) will conduct the ADH and render a decision even if the person or representative fails to appear, unless within ten days from the date of the scheduled hearing:

(a) The person can show good cause for failing to appear; and

(b) The person or representative requests the hearing be reinstated.

(10) We may change a scheduled telephone hearing to an in-person hearing if this is requested by the person or department representative at least (~~(a))~~ one week in advance. The person requesting a change less than one week in advance must show good cause for the requested change.

(11) The ALJ issues a final decision as specified in WAC 388-02-0215 through 388-02-0525. The decision determines whether the department had established with clear and convincing evidence that the person committed and intended to commit an IPV.

(12) The department and the client each have the right to request a reconsideration of the decision as specified in WAC 388-02-0610 through 388-02-0635. The final order or the reconsideration decision is the final agency decision.

(13) We will not implement a disqualification and continue benefits at the current amount if:

(a) The client can show good cause for not attending the hearing within thirty days from the date the disqualification notice was mailed; and

(b) An administrative law judge determines the client had good cause; or

(c) The client requests reconsideration or files a petition for judicial review to appeal the disqualification as specified in WAC 388-02-0530 (1) or (4).

**WSR 18-13-080**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)

[Filed June 15, 2018, 2:19 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-07-056.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-400-0060 Who is eligible for aged, blind or disabled (ABD) cash assistance?, 388-400-0070 Who is eligible for referral to the housing and essential needs (HEN) program?, 388-447-0001 What are the incapacity requirements for referral to the housing and essential needs (HEN) program?, 388-447-0040 Progressive evaluation process step II—How does the department determine the severity of mental impairments?, and 388-447-0060 Progressive evaluation process step IV—How does the department determine the severity of multiple impairments?

Hearing Location(s): On July 25, 2018, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than July 26, 2018.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax 360-664-6185, by 5:00 p.m., July 25, 2018.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email [Kildaja@dshs.wa.gov](mailto:Kildaja@dshs.wa.gov), by July 11, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These proposed amendments are necessary to comply with changes mandated by ESHB [SHB] 2667 (chapter 48, Laws of 2018). The amendments expand eligibility criteria for a referral to the HEN program and clarify the eligibility process to support this change.

These amendments are currently in effect by emergency rule-making order filed as WSR 18-07-048 on March 14, 2018.

Reasons Supporting Proposal: These proposed amendments are necessary to comply with changes mandated by ESHB [SHB] 2667 (chapter 48, Laws of 2018).

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055 [74.04.055], 74.08.090.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Erik Peterson, 712 Pear Street S.E., Olympia, WA 98501, 360-725-4622.

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

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "this section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

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

Is exempt under RCW 19.85.025.

Explanation of exemptions: The proposed rule does not have an economic impact on small businesses.

June 14, 2018

Katherine I. Vasquez

Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-24-040, filed 11/26/13, effective 1/1/14)

**WAC 388-400-0060 Who is eligible for aged, blind or disabled (ABD) cash assistance?** (1) ~~((Effective November 1, 2011,))~~ The aged, blind, or disabled (ABD) cash assistance program provides a state-funded cash stipend and a referral to the housing and essential needs (HEN) program under WAC 388-400-0065 to eligible low-income individuals.

~~(2) You are eligible for ((aged, blind, or disabled (ABD) cash benefits))~~ ABD if you:

- (a) Are:
  - (i) At least sixty-five years old;
  - (ii) Blind as defined by the Social Security Administration (SSA); or
  - (iii) Likely to be disabled as defined in WAC 388-449-0001 through 388-449-0100; and
- (b) Are at least eighteen years old or, if under eighteen, a member of a married couple;
- (c) Are in financial need according to ABD cash income and resource rules in chapters 388-450, 388-470 and 388-488 WAC. We determine who is in your assistance unit according to WAC 388-408-0060;
- (d) Have countable income, as defined in WAC 388-450-0162, at or below the monthly income limits defined in WAC 388-478-0090;
- (e) Meet the citizenship/alien status requirements under WAC 388-424-0015;
- (f) Provide a Social Security number as required under WAC 388-476-0005;
- (g) Reside in the state of Washington as required under WAC 388-468-0005;
- (h) Sign an interim assistance reimbursement authorization agreeing to repay the monetary value of general assistance, disability lifeline, or aged blind or disabled benefits subsequently duplicated by supplemental security income benefits as described under WAC 388-449-0200, 388-449-0210 and 388-474-0020;
- (i) Report changes of circumstances as required under WAC 388-418-0005; and
- (j) Complete a mid-certification review and provide proof of any changes as required under WAC 388-418-0011.

~~((2))~~ (3) You aren't eligible for ~~((aged, blind, or disabled cash benefits))~~ ABD if you:

(a) Are eligible for temporary assistance for needy families (TANF) benefits;

(b) Are eligible for state family assistance (SFA) benefits;

(c) Refuse or fail to meet a TANF or SFA eligibility rule;

(d) Refuse or fail to pursue federal aid assistance, including but not limited to medicaid, without good cause;

(e) Refuse or fail to participate in drug or alcohol treatment as required in WAC 388-449-0220 without good cause;

(f) Refuse or fail to follow through with the SSI application as required in WAC 388-449-0200 without good cause;

(g) Refuse or fail to participate in vocational rehabilitation services as required in WAC 388-449-0225 without good cause;

(h) Are eligible for supplemental security income (SSI) benefits;

(i) Are an ineligible spouse of an SSI recipient; or

(j) Failed to follow a Social Security Administration (SSA) program rule or application requirement and SSA denied or terminated your benefits.

~~((3))~~ (4) If you reside in a public institution and meet all other requirements, your eligibility for ABD ~~((cash))~~ depends on the type of institution. A "public institution" is an institution that is supported by public funds, and a governmental unit either is responsible for it or exercises administrative control over it.

(a) You may be eligible for ABD ~~((cash))~~ if you are:

(i) A patient in a public medical institution; or

(ii) A patient in a public mental institution and:

(A) Sixty-five years of age or older; or

(B) Twenty years of age or younger.

~~((4))~~ (5) You aren't eligible for ABD ~~((cash))~~ when you are in the custody of or confined in a public institution such as a state penitentiary or county jail including placement:

(a) In a work release program; or

(b) Outside of the institution including home detention.

**AMENDATORY SECTION** (Amending WSR 13-24-044, filed 11/26/13, effective 1/1/14)

**WAC 388-400-0070 Who is eligible for referral to the housing and essential needs (HEN) program?** (1) You are eligible for referral to the housing and essential needs (HEN) program if you:

(a) Apply for cash assistance as detailed in WAC 388-406-0010;

(b) Complete an interview with the department;

(c) Are incapacitated as defined in WAC 388-447-0001 through 388-447-0100;

(d) Are at least eighteen years old or, if under eighteen, legally emancipated or a member of a married couple;

(e) Are in financial need according to income rules in chapter 388-450 WAC and resource requirements in RCW 74.04.005 and chapter 388-470 WAC. We determine who is in your assistance unit according to WAC 388-408-0070;

(f) Have countable income, as defined in WAC 388-450-0162, at or below the monthly income limits defined in WAC 388-478-0090;

(g) Meet the citizenship/alien status requirement for ABD cash assistance under WAC 388-424-0015;

(h) Meet the Social Security number verification requirement for cash assistance under WAC 388-476-0005;

(i) Meet the residency requirement for cash assistance under WAC 388-468-0005;

(j) Meet verification requirements for cash assistance detailed in WAC 388-490-0005.

(k) To remain eligible for HEN referral, you must also:

(i) Report changes in your circumstances as required for cash assistance under WAC 388-418-0007; and

(ii) Complete and return eligibility reviews we send you under WAC 388-434-0005.

(2) You are not eligible for referral to the HEN program if you:

(a) ~~((Are eligible for the aged, blind, or disabled (ABD) cash assistance program;~~

~~((b)))~~ Are eligible for the pregnant women assistance (PWA) program;

~~((c)))~~ (b) Are eligible for temporary assistance for needy families (TANF) program;

~~((d)))~~ (c) Refuse or fail to meet a TANF rule without good cause;

~~((e)))~~ (d) Refuse or fail to cooperate in obtaining federal aid assistance, including but not limited to medicaid, without good cause;

~~((f)))~~ (e) Refuse or fail to participate in drug or alcohol treatment as required in WAC 388-447-0120;

~~((g)))~~ (f) Are eligible for supplemental security income (SSI) benefits and receiving a state supplemental payment (SSP) under WAC 388-474-0012;

~~((h)))~~ (g) Are an ineligible spouse of an SSI recipient;

~~((i)))~~ (h) Refuse or fail to follow a Social Security Administration (SSA) program rule or application requirement without good cause and SSA denied or terminated your benefits;

~~((j)))~~ (i) Are terminated from ABD for refusing or failing to sign an interim assistance reimbursement authorization agreement under WAC 388-400-0060; ~~((k)))~~

~~((l)))~~ (j) Are fleeing to avoid prosecution of, or to avoid custody or confinement for conviction of, a felony, or an attempt to commit a felony as described in WAC 388-442-0010~~((-)); or~~

~~((m)))~~ (k) Are disqualified from receiving cash assistance due to a conviction related to unlawful practices in obtaining cash assistance as described in WAC 388-446-0005.

(3) If you reside in a public institution and meet all other requirements, your eligibility for referral to the HEN program depends on the type of institution. A "public institution" is an institution that is supported by public funds, and a governmental unit either is responsible for it or exercises administrative control over it.

(a) You may be eligible for referral to the HEN program if you are:

(i) A patient in a public medical institution; or

(ii) A patient in a public mental institution and are sixty-five years of age or older.

(b) You aren't eligible for referral to the HEN program if you are in the custody of or confined in a public institution

such as a state penitentiary or county jail, including placement:

- (i) In a work release program; or
- (ii) Outside of the institution including home detention.

**AMENDATORY SECTION** (Amending WSR 13-24-044, filed 11/26/13, effective 1/1/14)

**WAC 388-447-0001 What are the incapacity requirements for referral to the housing and essential needs (HEN) program?** (1) For the purposes of this chapter, the following definitions apply:

(a) "We" and "us" mean the department of social and health services.

(b) "You" means the applicant or recipient.

(c) "Incapacitated" means you cannot be gainfully employed due to a physical or mental impairment that is expected to continue for at least ninety days from the date you apply.

(d) "Mental impairment" means a diagnosable mental disorder.

(e) "Physical impairment" means a diagnosable physical illness.

(2) You must be incapacitated in order to receive a HEN referral.

(3) We determine if you are incapacitated when:

- (a) You apply for a referral to the HEN program;
- (b) You become gainfully employed;
- (c) You obtain work skills by completing a training program;

(d) We receive new information that indicates you may be able to work; or

(e) Your incapacity authorization period ends.

(4) We deny your HEN referral if you are gainfully employed at the time of application for referral to the HEN program. "Gainfully employed" means you are performing, in a regular predictable manner, an activity usually done for pay or profit and earning more than the substantial gainful activity standard defined by the Social Security Administration (SSA).

(5) We do not consider you to be gainfully employed if you are working:

(a) Under special conditions that go beyond providing reasonable accommodation; or

(b) Occasionally or part-time because your impairment limits the hours you are able to work compared to unimpaired workers in the same job.

(6) We determine you are incapacitated if you are:

(a) Eligible for the aged, blind, or disabled (ABD) cash assistance program;

(b) Approved through the progressive evaluation process (PEP). The PEP is a sequence of eight steps described in WAC 388-447-0030 through 388-447-0100;

~~((b))~~ (c) Eligible for services from the Developmental Disabilities Administration (DDA);

~~((c))~~ (d) Diagnosed as having an intellectual disability based on a full scale score of seventy or lower on the Wechsler adult intelligence scale (WAIS);

~~((d))~~ (e) Eligible for long-term care services from Aging and Long-term Support Administration (AL TSA);

~~((e))~~ (f) Released from a medical institution where you received services from AL TSA within the past 90 days; or

~~((f))~~ (g) Released from inpatient treatment for a mental impairment within the past 90 days if:

(i) The release from inpatient treatment was not against medical advice; and

(ii) You were discharged into outpatient mental health treatment.

(7) If you have a physical or mental impairment~~(s)~~ or are impaired ~~((by alcohol or drug addiction))~~ due to a substance use disorder, and do not meet the other incapacity criteria in section 6 ~~((b))~~ (c) through ~~((f))~~ (g), we decide if you are incapacitated by applying the PEP. ~~((We do not consider symptoms related to substance use or a diagnosis of chemical dependency when determining incapacity when we have evidence substance use is material to your impairment(s).))~~

(8) ~~((We consider substance use material to your impairment(s) if you are disabled primarily because of drug or alcohol addiction.))~~

~~((9))~~ If your impairment will persist at least sixty days after you stop using drugs or alcohol, we do not consider substance use to be material to your impairment~~(s)~~.

~~((10))~~ In determining incapacity, we consider only your ability to perform basic work-related activities. "Basic work-related activities" are activities that anyone would be required to perform in a work setting. They consist of: Sitting, standing, walking, lifting, carrying, handling; and other physical functions (including manipulative or postural functions such as pushing, pulling, reaching, handling, stooping, or crouching), seeing, hearing, communicating, remembering, understanding and following instructions, responding appropriately to supervisors and co-workers, tolerating the pressures of a work setting, maintaining appropriate behavior, using judgment, and adapting to changes in a routine work setting.

**AMENDATORY SECTION** (Amending WSR 13-24-044, filed 11/26/13, effective 1/1/14)

**WAC 388-447-0040 Progressive evaluation process step II—How does the department determine the severity of mental impairments?** If you are diagnosed with a mental impairment by a professional described in WAC 388-447-0005, we use information from the medical evidence provider to determine how the impairment limits work-related activities.

(1) We review the following psychological evidence to determine the severity of your mental impairment:

- (a) Psychosocial and treatment history records;
- (b) Clinical findings of specific abnormalities of behavior, mood, thought, orientation, or perception;
- (c) Results of psychological tests; and
- (d) Symptoms observed by the examining professional that show how your impairment affects your ability to perform basic work-related activities.

(2) ~~((We do not consider diagnoses or symptoms of alcohol or substance use or dependency when the only impairment supported by objective medical evidence is drug or alcohol addiction.))~~



~~(3))~~ If you are diagnosed with an intellectual disability, the diagnosis must be based on the Wechsler adult intelligence scale (WAIS). The following test results determine the severity rating:

Intelligence Quotient (IQ) Score	Severity Rating
85 or above	1
71 to 84	3
70 or lower	5

~~((4))~~ (3) If you are diagnosed with a mental impairment with physical causes, we assign a severity rating based on the most severe of the following four areas of impairment:

- (a) Short term memory impairment;
- (b) Perceptual or thinking disturbances;
- (c) Disorientation to time and place; or
- (d) Labile, shallow, or coarse affect.

~~((5))~~ (4) We base the severity of an impairment diagnosed as a mood, anxiety, thought, memory, personality, or cognitive disorder on a clinical assessment of the intensity and frequency of symptoms that:

- (a) Affect your ability to perform basic work-related activities; and
- (b) Are consistent with a diagnosis of a mental impairment as listed in the most recent version of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM).

~~((6))~~ (5) We base the severity rating for a functional mental impairment on accumulated severity ratings for the symptoms in subsection (5) of this section as follows:

Condition	Severity Rating
(a) The clinical findings and objective evidence are consistent with a significant limitation on performing one or more basic work activities.	Moderate (3)
(b) You are diagnosed with a functional disorder with psychotic features;	Marked (4)
(c) You have had two or more hospitalizations for psychiatric reasons in the past two years;	
(d) You have had more than six months of continuous psychiatric inpatient or residential treatment in the past two years;	
(e) The clinical findings and objective evidence are consistent with very significant limitations on ability to perform one or more basic work activities.	

Condition	Severity Rating
(f) The clinical findings and objective evidence are consistent with an inability to perform one or more basic work activities.	Severe (5)

~~((7))~~ (6) If you are diagnosed with any combination of mental retardation, mental impairment with physical causes, or functional mental impairment, we assign a severity rating as follows:

Condition	Severity Rating
(a) Two or more disorders with moderate severity (3) ratings; or	Marked (4)
(b) One or more disorders rated moderate severity (3), and one rated marked severity (4).	
(c) Two or more disorders rated marked severity (4).	Severe (5)

~~((8))~~ (7) We deny incapacity when you haven't been diagnosed with a significant physical impairment and the overall severity of your mental impairment is one or two;

~~((9))~~ (8) We approve incapacity when your overall mental severity rating is severe (5).

**AMENDATORY SECTION** (Amending WSR 13-24-044, filed 11/26/13, effective 1/1/14)

**WAC 388-447-0060 Progressive evaluation process step IV—How does the department determine the severity of multiple impairments?** (1) If you have more than one impairment, we determine the overall severity rating by deciding if your impairments have a combined effect on your ability to be gainfully employed.

(2) When you have two or more diagnosed impairments that limit work activities, we assign an overall severity rating as follows:

Condition	Severity Rating
(a) All impairments are mild and there is no cumulative effect on basic work activities.	Mild 2
(b) All impairments are mild and there is a significant cumulative effect on one or more basic work activities.	Moderate 3
(c) Two or more impairments are of moderate severity and there is a very significant cumulative effect on basic work activities.	Marked 4

Condition	Severity Rating
(d) Two or more impairments are of marked severity.	Severe 5

(3) We deny incapacity at this step when ~~((a))~~ the overall severity rating is two ~~((or (b) Substance use is material to your impairment under WAC 388-447-0001 and your overall severity rating is two when symptoms related to substance use or a diagnosis of chemical dependency are not considered))~~.

(4) We approve incapacity at this step when the overall severity rating is five.

**WSR 18-13-082  
PROPOSED RULES  
EASTERN WASHINGTON UNIVERSITY**

[Filed June 18, 2018, 7:59 a.m.]

Original Notice.  
Preproposal statement of inquiry was filed as WSR 18-10-087.  
Title of Rule and Other Identifying Information: Revising chapter 172-139 WAC, Commercial activities.  
Hearing Location(s): On September 26, 2018, at 10:00 a.m., at Eastern Washington University, Main Campus, 526 5th Street, Room 201, Showalter Hall, Cheney, WA 99004.  
Date of Intended Adoption: October 5, 2018.  
Submit Written Comments to: Joseph Fuxa, Eastern Washington University, Main Campus, 526 5th Street, 314 Showalter Hall, Cheney, WA 99004, email jfuxa@ewu.edu, fax 509-359-2874, by September 26, 2018.  
Assistance for Persons with Disabilities: Contact Joseph Fuxa, phone 509-359-7496, fax 509-359-2874, email jfuxa@ewu.edu, by September 26, 2018.  
Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The revisions to chapter 172-138 WAC, Commercial activities, update university standards and processes to better reflect current practices regarding commercial activities.  
Reasons Supporting Proposal: Modifications are being made to the processes and standards regarding the use of university facilities due to changes in practice.  
Statutory Authority for Adoption: RCW 28B.35.120 (12).  
Rule is not necessitated by federal law, federal or state court decision.  
Name of Proponent: Eastern Washington University, governmental.  
Name of Agency Personnel Responsible for Drafting: Joseph Fuxa, 314 Showalter Hall, 509-359-7496; Implementation and Enforcement: Dr. Mary Cullinan, 214 Showalter Hall, 509-359-6362.  
A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 34.5.328 [34.05.328] (5)(a)(i), this agency is not an agency mandated to comply with RCW 34.05.328. Further, the agency does not voluntarily make that section applicable to the adoption of this [these] rules pursu-

ant to subsection (5)(a)(ii), and to date, the joint administrative rules review committee has not made the section applicable to the adoption of this rule.

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

Is exempt under RCW 19.85.025(4).

June 18, 2018  
Joseph Fuxa  
Labor Relations Manager

AMENDATORY SECTION (Amending WSR 10-04-072, filed 2/1/10, effective 3/4/10)

**WAC 172-139-005 Purpose.** This chapter establishes standards for the conduct of commercial activities on Eastern Washington University property by ~~((external))~~ persons or ~~((organizations))~~ entities. This includes property and facilities that are owned, operated, or otherwise controlled by Eastern Washington University.

AMENDATORY SECTION (Amending WSR 10-04-072, filed 2/1/10, effective 3/4/10)

**WAC 172-139-010 Commercial activities.** Eastern Washington University facilities shall not be used by any person or entity other than the university for commercial solicitation, advertising, or promotional activities except:

(1) By special permission granted by the vice president for business and finance or designee if a contract, lease, or other formal arrangement is entered into between the university and the person, corporation, or other entity desiring to engage in commercial activity;

(2) Regular advertising, promotions, or sponsorship activities carried on, by, or in any university media, *The Easterner*, or at intercollegiate events;

(3) In designated areas of the Pence Union Building as set forth in WAC 172-139-020; or

(4) When the activities clearly serve educational objectives. Examples of acceptable activities include the display of books of interest to the academic community, the display or demonstration of technical or research equipment, or other commercial activities that relate to educational objectives. In all cases, such commercial activities must be conducted under the sponsorship or at the request of a university department or of a vice president or authorized designee. Approved commercial activities shall not interfere with or operate to the detriment of the conduct of university affairs or the free flow of pedestrian or vehicular traffic.

AMENDATORY SECTION (Amending WSR 10-04-072, filed 2/1/10, effective 3/4/10)

**WAC 172-139-020 Commercial activities in the Pence Union Building.** ~~((Exceptions to WAC 172-139-010 are granted for the Pence Union Building (PUB) subject to the following provisions:~~

~~(1) Any commercial activity conducted under this section shall not duplicate services provided by the university.~~

~~(2) Vendors, organizations, or individuals)) Commercial advertising and activities are permitted in the limited areas identified by the university in the Pence Union Building~~

(PUB). Individuals, corporations, or entities seeking to engage in commercial activities or advertising within the PUB must obtain approval from the director of the student union building prior to conducting any commercial activity.

((3)) The university shall charge vendors for use of PUB facilities.

**WSR 18-13-084**  
**PROPOSED RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed June 18, 2018, 10:00 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-10-095.

Title of Rule and Other Identifying Information: WAC 392-140-976 Salary bonus for teachers and other certificated instructional staff who hold current certification by the national board—Conditional loan program.

Hearing Location(s): On August 2, 2018, at 11:00 a.m., at the Office of Superintendent of Public Instruction (OSPI), 600 South Washington Street, Olympia, WA 98501.

Date of Intended Adoption: August 6, 2018.

Submit Written Comments to: Carrie Dubuque, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, email carrie.dubuque@k12.wa.us, by August 2, 2018.

Assistance for Persons with Disabilities: Contact Kristin Murphy, phone 360-725-6133, fax 360-754-4201, TTY 360-664-3631, email Kristin.murphy@k12.wa.us, by July 26, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposed rule making is to add a new section to chapter 392-140 WAC concerning the conditional loan program related to salary bonus for teachers and other certificated instructional staff who hold current certification by the National Board for Professional Teaching Standards (NBPTS). This change would allow NBPTS candidates the entire duration of their candidacy before repaying a conditional loan rather than repaying the loan mid-candidacy.

Reasons Supporting Proposal: The intent of the conditional loan program is to remove a financial barrier for all teachers to have access to pursue board certification. Requiring teachers to repay the loan mid-candidacy does not fully remove the financial barrier.

Statutory Authority for Adoption: Section 513 (4)(d) of ESSB 6032 (2018).

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Carrie Dubuque, OSPI, 600 South Washington Street, Olympia, WA, 360-725-6119.

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

A cost-benefit analysis is not required under RCW 34.05.328. OSPI is not subject to RCW 34.05.328 (5)(a)(i). Additionally, this rule is not a significant legislative rule per subsection (5)(c)(iii).

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

Is exempt under RCW 19.85.030.

Explanation of exemptions: 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).

June 15, 2018

Chris P. S. Reykdal  
State Superintendent  
of Public Instruction

NEW SECTION

**WAC 392-140-976 Salary bonus for teachers and other certificated instructional staff who hold current certification by the national board—Conditional loan program.** (1) During the 2017-18 and 2018-19 school years, and within available funds, certificated instructional staff who have met the eligibility requirements and have applied for certification from the National Board for Professional Teaching Standards may receive a conditional loan of one thousand four hundred twenty-five dollars toward the current assessment fee, not including the initial up-front candidacy payment.

(2) The conditional loan shall be an advance on the first annual bonus provided under RCW 28A.405.415. The conditional loan is provided in addition to compensation received under a district's salary allocation and shall not be included in calculations of a district's average salary and associated salary limitation under RCW 28A.400.200.

(3)(a) Conditional loan recipients who fail to receive national board certification within three years following the completion of their second year of candidacy under the National Board for Professional Teaching Standards must repay the conditional loan.

(b) Repayment shall begin after the candidate has either:

- (i) Obtained the national board certification;
- (ii) Exhausted all years of eligibility under the National Board for Professional Teaching Standards; or
- (iii) Withdrawn their candidacy.

(4) The terms of repayment shall be pursuant to a promissory note or other instrument executed by the conditional loan recipient.

**WSR 18-13-088**  
**PROPOSED RULES**  
**CRIMINAL JUSTICE**  
**TRAINING COMMISSION**

[Filed June 18, 2018, 12:24 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-10-026.

Title of Rule and Other Identifying Information: WAC 139-07-020 Background information.

Hearing Location(s): On Wednesday, September 12, 2018, at 10 a.m., at the Washington State Criminal Justice Training Commission (WSCJTC), 19010 1st Avenue South, Room C-121, Burien, WA 98148.

Date of Intended Adoption: September 12, 2018.

Submit Written Comments to: Sonja Peterson, 19010 1st Avenue South, Burien, WA 98148, email [speterson@cjtc.state.wa.us](mailto:speterson@cjtc.state.wa.us), by September 10, 2018.

Assistance for Persons with Disabilities: Contact Sonja Peterson, phone 206-835-7356, TTY 206-835-7300, email [speterson@cjtc.state.wa.us](mailto:speterson@cjtc.state.wa.us), by September 10, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Add language referencing lawful permanent resident and homeschool transcript to WAC 139-07-020. SB 6145 amended sections of chapter 43.101 RCW; these WAC changes will incorporate the amended RCW sections as described in SB 6145. Additionally, adding clarifying language in reference to educational requirements.

Reasons Supporting Proposal: SB 6145 changes to chapter 43.101 RCW.

Statutory Authority for Adoption: RCW 43.101.080.

Statute Being Implemented: Changes to chapter 43.101 RCW.

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

Name of Proponent: WSCJTC staff, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Tisha Jones, Lacey, Washington, 360-486-2431.

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

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

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

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

June 18, 2018  
Sonja Peterson  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-02-060, filed 12/27/12, effective 1/27/13)

**WAC 139-07-020 Background information.** (1) Requirements for the applicant.

(a) Personal history statement. The applicant shall complete and submit to the employing agency a personal history statement on a form prescribed by the employer before the start of a background investigation. The personal history statement form shall contain questions and answers which aid in determining whether the person is suitable for employment as a certified peace officer or a reserve officer. The questions shall address whether the applicant meets the minimum requirements for employment, has engaged in conduct or a pattern of conduct which would jeopardize the public trust in

the law enforcement profession, and is of good moral character.

(b) Information requirements. To assist with the background investigation, the applicant shall provide the following:

(i) ~~((Proof of United States citizenship.))~~ Verification of immigrant or citizenship status as either a citizen of the United States of America or a lawful permanent resident. A copy of ((a)) any of the following United States government or United States Citizenship Immigration Services documents are acceptable proof: A United States birth certificate, a United States passport, ((or United States naturalization papers is acceptable proof)) a permanent resident card, a certificate of naturalization, or a certificate of citizenship.

(ii) Proof of education. A certified copy of a diploma, certificate, ~~((or))~~ transcript, or homeschool transcript is acceptable proof.

(iii) Record of any military discharge. A certified copy of the Military Service Record (DD Form 214, Member 4) is acceptable proof.

(iv) Personal references. The names and addresses of at least three people who can provide information as personal references.

(v) Previous employers or school attendees. The names and addresses of all employers and schools attended within the last ten years, at a minimum.

(vi) Residence history. A listing of the complete residential addresses for the last ten years.

(2) Requirements of the agency. At a minimum, the agency shall include the following in its collection and assessment of an applicant's background information, which also includes determining if the information provided by the applicant is accurate and truthful. The agency shall:

(a) Query all the law enforcement agency records in jurisdictions listed in subsection (1)(b)(v) and (vi) of this section;

(b) Query the motor vehicle division driving records from any state listed in subsection (1)(b)(v) and (vi) of this section;

(c) Complete and submit a fingerprint card inventory sheet to the Federal Bureau of Investigation and Washington state patrol records division for query;

(d) Query the National Crime Information Center/Interstate Identification Index (NCIC/III) and the Washington Criminal Information Center/Washington State Identification System (WACIC/WASIS) or the equivalent for each state listed in subsection (1)(b)(v) and (vi) of this section;

(e) Contact a minimum of three references and a reasonable number of previous employers listed in subsection (1)(b)(iv) and (v) of this section and document the answers to inquiries concerning whether the person meets the standards of this section; and

(f) At the conclusion of all of the requirements of the collection and assessment of an applicant's background information, the agency shall complete a report that attests to all the requirements, including the requirements of WAC 139-05-220.

**WSR 18-13-089**  
**PROPOSED RULES**  
**HARDWOODS COMMISSION**

[Filed June 18, 2018, 1:16 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-10-020.

Title of Rule and Other Identifying Information: WAC 244-12-050 Assessments and collections.

Hearing Location(s): On July 25, 2018, at 10:00 a.m., at 225 S.E. Lechner Street, Camas, WA.

Date of Intended Adoption: July 25, 2018.

Submit Written Comments to: David Sweitzer, P.O. Box 1095, email whc@wahardwoodscomm.com, fax 360-835-1910, by July 23, 2018.

Assistance for Persons with Disabilities: Contact David Sweitzer, phone 360-835-1600, fax 360-835-1910, email whc@wahardwoodscomm.com, by July 23, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Change the assessment fee schedule to adjust for inflation and continue to sustain the commission and its purpose.

Reasons Supporting Proposal: Maintain operation of the commission to affect greater hardwood harvest which supports the infrastructure and rural economy.

Statutory Authority for Adoption: Chapter 15.74 RCW.

Statute Being Implemented: Chapter 15.74 RCW.

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

Name of Proponent: Washington hardwoods commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: David Sweitzer, 225 S.E. Lechner Street, Camas, WA, 360-835-1700.

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

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

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

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

June 18, 2018  
 David A. Sweitzer  
 Executive Director

**AMENDATORY SECTION** (Amending WSR 91-14-055, filed 6/27/91, effective 7/1/91)

**WAC 244-12-050 Assessments and collections.** (1) ~~((The assessment shall be based upon the following schedule:~~

QUARTERLY PRODUCTION

CATEGORY	(THOUSAND TONS)	QUARTERLY ASSESSMENT
1	5 to 7.5	\$150
2	7.5 to 15	\$300

QUARTERLY PRODUCTION

CATEGORY	(THOUSAND TONS)	QUARTERLY ASSESSMENT
3	15 to 25	\$600
4	25 to 35	\$900
5	35 to 45	\$1,200
6	45 to 62.5	\$1,500
7	62.5 to 82.5	\$2,250
8	82.5 to 125	\$3,000
9	125 to 175	\$4,500
10	175 to 250	\$6,000
11	250 to 350	\$9,000
12	350 to 450	\$12,000
13	450 to 625	\$15,000
14	625 to 875	\$22,500
15	875 to 1125	\$30,000
16	over 1125	(\$35,000))

To provide for permanent funding of the Washington hardwoods commission, agricultural commodity assessments shall be levied by the commission on processors of hardwoods.

An assessment is hereby levied on hardwood processors operating within the state of Washington. The assessment shall be based on the hardwood processor's production per calendar quarter. The assessment shall be four cents per ton produced effective July 1, 2018.

Beginning July 1, 2019, and every July 1st thereafter, the assessment must be adjusted to reflect the percentage change in the implicit price deflator for personal consumption expenditures for the United States as published for the most recent twelve-month period by the bureau of economic analysis of the federal Department of Commerce by September 25th of the year before the assessments are payable.

(2) For purposes of determining the ~~((appropriate production category))~~ assessment, the following ~~((equivalents with))~~ definitions apply:

(a) One ton of logs, scaled by weight, input for a processor equals one ton of production; or

(b) One thousand board feet, Scribner scale, input for a processor equals 7.25 tons of production.

(3) Processors who produce less than ~~((five))~~ one thousand tons of hardwood products or ship less than one thousand tons of logs out of the state of Washington in a calendar quarter will not be assessed. However, they still must submit a quarterly report.

(4) Assessments shall be paid to the commission according to the levy schedule in subsection (1) of this section.

**WSR 18-13-097**  
**PROPOSED RULES**  
**DEPARTMENT OF COMMERCE**

[Filed June 19, 2018, 9:50 a.m.]

June 19, 2018  
 Jaime Rossman  
 Rules Coordinator

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-05-027.

Title of Rule and Other Identifying Information: The proposal creates new chapter 365-175 WAC to implement RCW 43.330.480 through 43.330.488, which establish the low-income home rehabilitation revolving loan program at the Washington state department of commerce.

Hearing Location(s): On July 30, 2018, at 1:00 p.m., at the Washington Department of Commerce, 1011 Plum Street S.E., Olympia, WA 98501. A courtesy call-in line will be available to allow for comments to be provided by phone during the hearing. The call-in number is 360-407-3780 and PIN code is 883401#. Participants choosing to provide oral comments via the conference line are advised to also submit written comments, in the event of technical difficulties.

Date of Intended Adoption: August 1, 2018.

Submit Written Comments to: Amanda Rains, P.O. Box 42525, Olympia, WA 98504-2525, email amanda.rains@commerce.wa.gov, by 5:00 p.m., July 31, 2018.

Assistance for Persons with Disabilities: Contact Carolee Sharp, phone 360-725-3118, TTY 360-586-0772, email carolee.sharp@commerce.wa.gov, by July 23, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Enact rules for the operation of the low-income home rehabilitation revolving loan program.

Reasons Supporting Proposal: Enacting rules is necessary to implement the program and required by statute.

Statutory Authority for Adoption: RCW 43.330.482.

Statute Being Implemented: RCW 43.330.480 through 43.330.488.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Amanda Rains, 1011 Plum Street S.E., Olympia, WA 98501, 360-725-2980.

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

A cost-benefit analysis is not required under RCW 34.05.328. Commerce is not an agency listed in RCW 34.05.-328 (5)(a)(i) as one to which that statute applies.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The rule does not impose any costs on businesses. Rather, the rule establishes procedures by which certain entities, which may include businesses, may choose to apply to commerce for a grant of funds to operate a revolving loan program. While successful applicants would incur administrative costs to operate the program, such costs would be covered by the grants. In addition, administrative provisions in the rule are based on the requirements in statute.

## Chapter 365-175 WAC

### RULES FOR LOW-INCOME HOME REHABILITATION REVOLVING LOAN PROGRAM

#### NEW SECTION

**WAC 365-175-010 Authority.** These rules implement RCW 43.330.480 through 43.330.488 and are adopted under the authority in RCW 43.330.482.

#### NEW SECTION

**WAC 365-175-020 Purpose.** To set forth the conditions and procedures for how funds for the low-income home rehabilitation revolving loan program will be administered and used to serve low-income clients living in rural areas.

#### NEW SECTION

**WAC 365-175-030 Definitions.** "Commerce" means the Washington state department of commerce.

"Consumer price index" means the annual average consumer price index for all urban consumers (CPI-U) published by the Bureau of Labor Statistics of the United States Department of Labor.

"Home" means a single-family residential structure.

"Home rehabilitation" means residential repairs and improvements that address health, safety, and durability issues in existing housing in rural areas.

"Homeowner" means a person who owns and resides permanently in the home the person occupies.

"Low-income" means persons or households with income at or below two hundred percent of the federal poverty level as adjusted for family size and determined annually by the federal Department of Health and Human Services.

"Rehabilitation agency" means any approved department grantee, tribal nation, or any public service company, municipality, public utility district, mutual or cooperative, or other entity that bears the responsibility for rehabilitating residences under this chapter and has been approved by the department.

"Rural areas" means areas of Washington state defined as nonentitlement areas by the United States Department of Housing and Urban Development.

#### NEW SECTION

**WAC 365-175-040 What agencies are eligible to use funds from the low-income home rehabilitation revolving loan program?** A local agency must apply to and receive approval from commerce to become an authorized rehabilitation agency. The application must show that the agency is eligible to participate and must show that the agency has established procedures to administer the program in compliance with the statute and these rules. Commerce will give preference to local agencies that are grantees of the state low-

income weatherization assistance program. Authorized rehabilitation agencies must comply with reporting requirements established in grant agreements and must adopt operating procedures that are subject to approval by commerce.

#### NEW SECTION

**WAC 365-175-050 How do authorized rehabilitation agencies receive funds from the low-income home rehabilitation revolving loan fund?** (1) Commerce will initially allocate funds to authorized rehabilitation agencies using a formula developed for the low-income rural rehabilitation revolving loan fund. Initial funding levels may be adjusted based on the capacity and capability of each rehabilitation agency as determined through the application process.

(2) Commerce may reallocate funds to other authorized rehabilitation agencies if doing so will better achieve the objectives of the program.

(3) Authorized rehabilitation agencies will receive a grant for funds each biennium funding is available. Funding is subject to a grant agreement between commerce and the authorized rehabilitation agency.

(4) Authorized rehabilitation agencies must report to commerce quarterly or in line with reporting for federal weatherization grants. Commerce will provide reporting instructions to authorized rehabilitation agencies. Timely reporting will be considered when determining future funding opportunities.

#### NEW SECTION

**WAC 365-175-060 What clients are eligible to receive program loans from the low-income home rehabilitation revolving loan program?** (1) An authorized rehabilitation agency may provide a program loan to a person only if the agency determines that all of these eligibility criteria are met:

(a) The person owns and occupies the home that will receive the rehabilitation services.

(b) The income of the person is at or below two hundred percent of the federal poverty level, as adjusted for family size and as determined annually by the federal Department of Health and Human Services.

(c) The property is located in a rural area.

(2) An authorized rehabilitation agency must give priority to rehabilitation applications from persons who are senior citizens, persons with disabilities, families with children five years old and younger, and veterans.

#### NEW SECTION

**WAC 365-175-070 What criteria must a program loan meet?** (1) The loan amount may not exceed any of the following limits:

(a) Forty thousand dollars.

(b) The direct costs paid to one or more rehabilitation agency for necessary improvements, plus seven percent for administrative costs to the authorized rehabilitation agency.

(c) An amount equal to eighty percent of the assessed value of the property.

(d) An amount equal to eighty percent of the assessed value of the property minus the sum of the unpaid principal amounts of all existing loans that are secured by the property. (For example, if the assessed value of the property is \$100,000 and an existing mortgage has an unpaid principal amount of \$50,000, the limitation under this is \$30,000, which is eighty percent of \$100,000 minus \$50,000.)

(2) The loan must be secured by a lien against the property that is in favor of the Washington department of commerce and subordinate to no lien other than a first mortgage or deed of trust or liens for general taxes, amounts deferred under chapter 84.37 or 84.38 RCW, or special assessments as defined in RCW 84.38.020.

(3) The loan must specify a rate of interest equal to the annual change in consumer price index for the prior calendar year. (For loans closed in calendar year 2018, the interest rate is 2.1 percent.)

(4) The loan must require repayment of principal, interest, and any administrative fee upon the sale or any other change in ownership of the property.

(5) The loan must provide the borrower with the option for early repayment without prepayment penalty.

(6) Authorized rehabilitation agencies must file lien paperwork in compliance with local recording office requirements and consistent with operating procedures approved by commerce.

#### **WSR 18-13-109**

##### **PROPOSED RULES**

##### **DEPARTMENT OF ECOLOGY**

[Order 16-09—Filed June 20, 2018, 7:11 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-09-105.

Title of Rule and Other Identifying Information: Air quality fee rule, chapter 173-455 WAC, consolidates most of the air quality related fees into one chapter. This makes it easier for the regulated community to find what fees they may need to pay.

General regulations for air pollution sources, chapter 173-400 WAC, establishes the regulatory framework to ensure healthy air quality in Washington and that we meet federal air quality standards.

Hearing Location(s): Hearing 1 on July 25, 2018, at 10 a.m., at the Wenatchee Red Lion Hotel, 1225 North Wenatchee Avenue, Wenatchee, WA 98801, presentation, question and answer session followed by the formal public hearing; and hearing 2 on July 26, 2018, at 10 a.m., at the Best Western Plus Lake Front Hotel, 3000 West Marina Drive, Moses Lake, WA 98837, presentation, question and answer session followed by the formal public hearing.

Date of Intended Adoption: October 17, 2018.

Submit Written Comments to: Jean-Paul Huys, Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, submit comments by mail, online, or at the hearing(s); or online at <http://ac.ecology.commentinput.com/?id=rU53f>, by August 3, 2018.

Assistance for Persons with Disabilities: Contact Hanna Waterstrat, phone 360-407-7668, people with speech disability may call TTY at 877-833-6341, people with impaired hearing may call Washington relay service at 711, email [hanna.waterstrat@ecy.wa.gov](mailto:hanna.waterstrat@ecy.wa.gov), by July 5, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Ecology proposes to amend chapters 173-455 and 173-400 WAC to:

- Revise the registration program structure, including requiring all sources to register.
- Increase fees to more fully cover the costs of the air quality source registration program.
- Revise the fee process to create an equitable distribution of fees across all sources, and establish a process to revise fees without going through rule making.
- Align chapters 173-400 and 173-455 WAC.
- Match hourly rate charge in WAC 173-455-050, 173-455-100(2) and 173-455-130 with the current ecology hourly billing rate (currently \$95).
- Identify, and where appropriate, make needed edits in chapters 173-455 and 173-400 WAC to increase clarity and readability.

The proposed revisions to chapters 173-455 and 173-400 WAC will:

- Require all sources to register.
- Revise the existing annual fee structure for the registration program to establish:
  - Six registration tiers.
  - An annual fee for each source based on its tier assignment.
  - Registration tiers based on total emissions of PM<sub>10</sub>, VOC, CO, NO<sub>x</sub> and SO<sub>2</sub>, that ecology will assign by August 1 of the year before the new fee schedule goes into effect, with a sixty day period to appeal an assignment.
  - Cap on the fees for tier 6 (synthetic minor source).
- Phase in the new fee structure in 2019, 2020, and 2021.
- Remove registration fee amounts from the rule in 2022 and beyond, and establish a process for determining annual fees outside of rule making:
  - Set fees annually or biennially based on a budget.
  - Post a draft budget and tier fee schedule on our web site by August 1 of the year before the new fee schedule goes into effect.
  - Hold a sixty day public comment period on the draft fee schedule.
  - Finalize and post the final budget and fee schedule by December 1 of the year before the new fee schedule goes into effect.
- Update the hourly rate charge in WAC 173-455-050, 173-455-100(2) and 173-455-130 to match current ecology billing rates.
- Edit chapters 173-455 and 173-400 WAC to improve clarity and readability.

Reasons Supporting Proposal:

- The existing registration program structure does not require all sources of air pollution to register. Under this

rule making, we propose requiring all sources to register. Lack of registration hampers and complicates the program because it fails to collect fees from an estimated one hundred forty-eight sources. The remaining three hundred eighty-seven sources currently registered in the program are currently covering the administrative costs for ecology to regulate all five hundred thirty-five sources.

- Existing registration program fees fund approximately fifty percent of the estimated cost of operating the program. The rule making would better align fees to more fully cover program costs.
- The current fee process for the registration program does not equitably distribute fees across all registered sources. The rule making would increase fairness. Establishing a process to determine fees outside of rule making simplifies the process and allows us to recover our costs through more frequent, more predictable, and smaller fee increases.

Statutory Authority for Adoption: Chapter 70.94 RCW, RCW 70.94.151, 70.94.153, and 70.94.892.

Statute Being Implemented: Chapter 70.94 RCW.

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: Jean-Paul Huys, Lacey, 360-407-6827; Implementation and Enforcement: Ecology, Central Regional Office, Union Gap, 509-575-2490 or Ecology, Eastern Regional Office, Spokane, 509-329-3400.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Jean-Paul Huys, Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-407-6827, people with speech disability may call TTY 877-833-6341, people with impaired hearing may call Washington relay service 711, email [jean-paul.huys@ecy.wa.gov](mailto:jean-paul.huys@ecy.wa.gov).

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

#### **Small Business Economic Impact Statement Relevant Information for State Register Publication**

#### **Proposed amendments to chapter 173-455 WAC, Air quality fee rule and chapter 173-400 WAC, General regulations for air pollution sources**

This small business economic impact statement (SBEIS) presents the:

- Compliance requirements of the proposed rule.
- Results of the analysis of relative compliance cost burden.
- Consideration of lost sales or revenue.
- Cost-mitigating action taken by ecology, if required.
- Small business and local government consultation.
- Industries likely impacted by the proposed rule.
- Expected net impact on jobs statewide.



A small business is defined by the Regulatory Fairness Act (chapter 19.85 RCW) as having fifty or fewer employees. Estimated costs are determined as compared to the existing regulatory environment, the regulations in the absence of the rule. The SBEIS only considers costs to "businesses in an industry" in Washington state. This means that impacts, for this document, are not evaluated for nonprofit or government agencies.

The existing regulatory environment is called the "baseline" in this document. It includes only existing laws and rules at federal and state levels.

*This information is excerpted from ecology's complete set of regulatory analyses of the proposed rule. For complete discussion of the likely costs, benefits, minimum compliance burden, and relative burden on small businesses, see the regulatory analyses (Ecology publication no. 18-02-022, June 2018).*

**COMPLIANCE REQUIREMENTS OF THE PROPOSED RULE, INCLUDING PROFESSIONAL SERVICES:**

**Baseline:** The baseline for our analyses generally consists of requirements in existing rules and laws. This is what allows us to make a consistent comparison between the state of the world with and without the proposed amendments.

For this rule making, the baseline includes: The Washington Clean Air Act (chapter 70.94 RCW), which authorizes ecology to:

- Classify air contaminant sources that may cause or contribute to air pollution and require these sources to register or report to ecology.
- Collect fees to cover the costs to [of] operating the registration, and to cover costs to review carbon dioxide mitigation plan components.

Chapter 173-455 WAC, Air quality fee rule, consolidates most of the air quality related fees into one chapter.

Chapter 173-400 WAC, General regulations for air pollution sources, establishes the regulatory framework to ensure that healthy air quality exists in Washington, including meeting federal air quality standards.

**Proposed rule amendments:** For this rule making, the proposed rule amendments that differ from the baseline and are not specifically dictated in the authorizing statute or elsewhere in law or rule include:

- Changing registration coverage and reporting.
- Setting a new registration fee structure and schedule for 2019 - 2021.
- Establishing a process to update the registration fee schedule in 2022 and beyond.
- Updating hourly rates for managing carbon dioxide mitigation.
- Allowing ninety days for payment of fees.
- Housekeeping changes.

**Changing registration coverage and reporting:**

**Baseline:** Ecology's current rule (WAC 173-400-100) explicitly lists source categories required to register. Registered sources are required to submit air emissions inventories annually.

**Proposed:** All air pollutant emissions sources would be required to register, but emissions inventories are due annually or as requested by ecology. This requirement is intended to reduce the frequency of reporting for small sources, but retain ecology's ability to get an emissions report if necessary.

**Expected impact:** Under the proposed amendments, one hundred forty-eight additional facilities would need to register. These facilities would incur registration fees (see 2.3.2), as well as the costs of registration activities such as filling out a form and providing an emissions inventory. The state would benefit through more equitable distribution of fees and broad-based long-term funding of the registration program.

**Setting a new registration fee structure and schedule for 2019 - 2021:**

**Baseline:** The fee structure, under the baseline, sets fees for periodic sources (sources that file emissions inventories with ecology once every three years) based on source emissions category and emission rates. Table 1 summarizes the emissions that define various types of periodic source[s], and associated fees.

Table 1: Baseline Periodic Registration Fee Table

Yearly periodic registration fee	\$450	\$700	\$1,000
Category	Small Periodic Source	Medium Periodic Source	Large Periodic Source
Air Contaminant	Emission Rates		
	Tons per year	Tons per year	Tons per year
Carbon monoxide	5 to < 15	15 to < 30	30 to < 100
Lead	0.005 to < 0.3	0.3 to < 0.45	0.45 to < 0.6
Nitrogen oxides	2.0 to < 5	5 to < 14	14 to < 40
Particulate matter (TSP or total suspended particulates)	1.25 to < 6	6 to < 12	12 to < 25
Particulate matter <sub>10</sub>	0.75 to < 3.5	3.5 to < 7	7 to < 15
Particulate matter <sub>2.5</sub>	0.5 to < 2	2 to < 5	5 to < 10
Sulfur dioxide	2.0 to < 5	5 to < 14	14 to < 40

Yearly periodic registration fee	\$450	\$700	\$1,000
Category	Small Periodic Source	Medium Periodic Source	Large Periodic Source
Air Contaminant	Emission Rates		
Volatile organic compounds	2.0 to < 5	5 to < 14	14 to < 40
Toxic air pollutant	> de minimis emissions (see WAC 173-460-150)	—	—

The current fee structure also sets fees for sources required to submit emissions inventories annually. The fees for these sources (called annual sources) include the following three components:

- A flat fee;
- A complexity fee based on a point-based complexity rating; and
- An emissions fee based on tons of emissions.

Under the current rule, each annual source is assigned a complexity rating of one, three, or five based on the estimated amount of time ecology will need to review and inspect the source.

Table 2 summarizes the emissions thresholds above, which facilities [are] currently required to register with ecology. Table 3 summarizes the current amounts charged for each of the three components of the fees for annual sources. The current fees for annual sources are higher than fees for periodic sources.

Table 2: Baseline Annual Registration Emission Rate Threshold Table

Air Pollutant	Emission Rate (tons per year)
Carbon monoxide	100
Lead	0.6
Fluorides	3
Nitrogen oxides	40
Particulate matter	25
Particulate matter <sub>10</sub>	15
Particulate matter <sub>2.5</sub>	10
Reduced sulfur compounds (including H <sub>2</sub> S)	10
Sulfur dioxide	40
Sulfuric acid mist	7
Total reduced sulfur (including H <sub>2</sub> S)	10

Table 3: Baseline Annual Registration Fee Components

Component	Fee Rate
Flat fee	\$1,057 per year
Complexity	\$469 per complexity rating point
Emissions	\$16 per ton

**Proposed:** The proposed rule amendments replace the current fees with a fee structure that includes six tiers of sources, based on emissions of the following five pollutants:

- Particulate matter (PM10);
- Volatile organic compounds (VOC);
- Carbon monoxide (CO);
- Sulfur oxides (SOx); and
- Nitrogen oxides (NOx).

Table 4 shows how source emissions are broken into six tiers.

Table 5 provides the proposed fees for each tier for 2019, 2020, and 2021. Under the proposed rule, mint distillers would pay \$200 per year in 2019 - 2021. Beyond 2021, they will pay fees based on total emissions like all other sources.

Table 4: Proposed Registration Fee Tiers

Tier	Annual Emissions
Tier 1	Annual Emissions ≤ 0.01 tons/year
Tier 2	0.01 tons per year < Annual Emissions ≤ 10 tons per year
Tier 3	10 tons per year < Annual Emissions ≤ 20 tons per year
Tier 4	20 tons per year < Annual Emissions ≤ 70 tons per year
Tier 5	70 tons per year < Annual Emissions
Tier 6	Synthetic minor source (as defined in WAC 173-400-030) that emits or has potential to emit at or above eighty percent of the threshold for a major source (as defined in WAC 173-401-200).

Table 5: Proposed Fees

Tier	Fee 2019	Fee 2020	Fee 2021
1	\$200	\$200	\$200
2	\$400	\$575	\$700
3	\$700	\$1,000	\$1,300
4	\$1,100	\$1,300	\$1,500
5	\$5,000	\$5,500	\$7,000
6	\$7,000	\$7,500	\$8,000

**Expected impact:** Under the proposed amendments, some facilities would pay higher fees than under the baseline, while others would pay lower fees. The structure of the proposed fees itself is significantly more straightforward than

under the baseline, and would likely result in clearer expectations for fees.

Ecology designed the proposed amendments to set fees to cover ninety-five percent of program costs by 2021, which is more than the current coverage of fifty-four percent of costs. This change would result in benefits to other air quality program functions, since ecology would no longer have to use equivalent tax and fee-payer funds to support the registration program. The proposed fee schedule for 2019 - 2021 also better reflects the program costs incurred by each source, resulting in a fairer distribution of cost coverage burden.

It is important to note that the state clean air act authorizes fees for the funding of the registration program.

**Establishing a process for setting the registration fee schedule for 2022 and beyond:**

**Baseline:** Currently, the fee structure and fee amounts are set in rule. That rule requires ecology to go through rule making to make changes. The rule requires ecology to use the fees to cover the cost of implementing the registration program. However, at this time, they cover only fifty-four percent of the fee-eligible costs of the registration program.

**Proposed:** The proposed amendments retain the assessment of annual fees to cover the costs of the registration program. They clarify the list of program components covered in the fee structure and establish a public process for assessing fees in 2022 and beyond. This process requires ecology to:

- Prepare a budget of annual implementation costs, and comparing [compare] it to the previous year's revenue.
- Adjust fees to fund the registration program budget, as a uniform percentage across all sources.
- Post the draft budget analysis and draft registration fee schedule on ecology's web site no later than August 1 of the year before the fee schedule goes into effect.
- Hold a sixty day public comment period before any fee changes.

**Expected impact:** The proposed amendments would enable ecology to avoid rule making to update fee schedules which would result in significant reductions in expenditure of time and money, as well as reducing the long delay in updating the fees. Including a new public process for updating fees in the amended rule would allow ecology to retain the transparency and public engagement that rule making provides.

The ability to update fees annually starting in 2022 gives ecology more certainty in its ability to fund the registration program as authorized in statute. This additional certainty would potentially be counteracted by the uncertainty for sources resulting from the changes in fees each year based on ecology's updated budget analysis. However, the public process created under the proposed amendments would provide transparency in the fee-setting process.

**Updating hourly rates for managing carbon dioxide mitigation:**

**Baseline:** The existing set of fees for sources requiring carbon dioxide mitigation plans are provided in Table 6.

Table 6: Baseline Fees for Carbon Dioxide Mitigation Program

Activity	Fee
Application review	\$65 per hour with \$500 cap
<b>Mitigation plan approval</b>	
Payment to third party	\$100
Purchase of CO <sub>2</sub> credits	\$65 per hour
Direct investment	\$65 per hour
<b>Routine compliance monitoring</b>	
Payment to third party	\$100 annually until full amount is paid
Purchase of CO <sub>2</sub> credits	\$65 per hour
Applicant controlled project	\$65 per hour

**Proposed:** The proposed amendments raise the hourly rate for sources requiring carbon dioxide mitigation plans to \$95 per hour, as shown in Table 7.

Table 7: Baseline Fees for Carbon Dioxide Mitigation Program

Activity	Fee
Application review	\$95 per hour with \$500 cap
<b>Mitigation plan approval</b>	
Payment to third party	\$100
Purchase of CO <sub>2</sub> credits	\$95 per hour
Direct investment	\$95 per hour
<b>Routine compliance monitoring</b>	
Payment to third party	\$100 annually until full amount is paid
Purchase of CO <sub>2</sub> credits	\$95 per hour
Applicant controlled project	\$95 per hour

**Expected impact:** Ecology is not currently managing any carbon dioxide mitigation plans. Moreover, ecology has never managed such a plan. Sources requiring a carbon dioxide mitigation plan pay their fees to agencies managing approval and monitoring of plans. These are currently the energy facility site evaluation council and local clean air agencies. These agencies set their own fees. Consequently, ecology's proposed amendment would increase incremental fees, there would be zero resulting cost.

**Allowing ninety days for payment of fees:**

**Baseline:** Currently, facilities must pay fees within thirty days of receiving a billing statement from ecology.

**Proposed:** Under the proposed rule, facilities would be required to pay fees within ninety days of receiving their billing statement from ecology.

**Expected impact:** Sixty more days to pay the fee would allow facilities more time to budget for the fees.

**Housekeeping changes:**

**Baseline:** In implementing the requirements of chapter 173-455 WAC, ecology has determined that some parts of the rules were unclear or poorly organized.

**Proposed:** The proposed amendments clarify and organize language and requirements to improve clarity and facilitate compliance. Other changes are necessary to make rules consistent with the substantive proposed changes outlined in the previous sections.

**Expected impact:** No behavioral impact is expected. We do expect facility owners and operators will find it easier to figure out if the rule applies to them and how to comply. This may reduce the transaction costs for those facilities.

**COSTS OF COMPLIANCE: EQUIPMENT:** Compliance with the proposed rule, compared to the baseline, is not likely to impose additional costs of equipment.

**COSTS OF COMPLIANCE: SUPPLIES:** Compliance with the proposed rule, compared to the baseline, is not likely to impose additional costs of supplies.

**COSTS OF COMPLIANCE: LABOR:** The proposed amendments require one hundred forty-eight additional facilities to register. These facilities would incur registration fees (see 3.2.2), as well as the costs of registration activities such as a form and emissions inventory.

The amount of time necessary to complete registration depends on the individual performing registration tasks. We assumed this work would be done by facility employees ranging from administrative staff to engineers, and take between two and eight hours of applied work. Our estimate of annual registration labor costs is provided in Table 8.

Table 8: Annual Registration Labor Costs

Employee Type	Wage <sup>1</sup> (2018-dollars)	Total Cost per Source (low)	Total Cost per Source (high)	Number of Sources	Total Annual Cost (low)	Total Annual Cost (high)
Office and administrative support occupations	\$19.38	\$38.77	\$155.07	148	\$5,738	\$22,951
Industrial engineers	\$52.06	\$104.11	\$416.44	148	\$15,408	\$61,633

<sup>1</sup> US Bureau of Labor Statistics (2016). May 2016 Wages by Area and Occupation. Washington State.

Our assumption gave us an overall range of \$6 thousand to \$62 thousand per year. In twenty year present value, this annual cost is equivalent to approximately \$100 thousand to \$1 million over the next 20 years, depending on level of expertise and experience necessary.

**COSTS OF COMPLIANCE: PROFESSIONAL SERVICES:** Compliance with the proposed rule, compared to the baseline, is not likely to impose additional costs of professional services.

**COSTS OF COMPLIANCE: ADMINISTRATIVE COSTS:** Where applicable, ecology estimates administrative costs ("overhead") as part of the cost of labor and professional services, above.

**COSTS OF COMPLIANCE: OTHER:** Under the proposed amendments, fees for some sources would increase as compared to the baseline. We determined 2019 - 2021 tiers for currently covered sources based on 2016 total emissions. We then compared the fees charged to those tiers under the proposed amendments to estimated baseline fees based on the most recent fee charged to each source in 2017. Fees for 2018 were assumed to be unchanged from 2017. The resulting minimum, median and maximum fee increases are provided in Table 9. All fees are conservatively assumed to be annual, and all calculations are in 2018 dollars.

Table 9: Distribution of Fee Increases in 2019 - 2021

	2019	2020	2021
Minimum	\$99	\$122	\$194
Median	\$396	\$122	\$242
Maximum	\$6,926	\$7,342	\$7,749

Note that fee increase distributions do not change linearly, because fees for some facilities would decrease in 2019 and/or 2020, then increase in 2020 and/or 2021.

When estimating the quantifiable impacts of proposed rule amendments, ecology calculates twenty year present values. This process discounts future streams of costs and benefits to comparable current values, using average historic discount rates. The current average historic rate is 1.07 percent.

We assumed there would be six percent growth in fees each biennium (based on potential wage growth).

Some facilities may experience fee reductions in early years, but see fee increases in later years that result in net increase in twenty year present value costs. Looking at the five hundred seven facilities likely to experience net increases in twenty year present value costs, compared to the baseline, the costs of the proposed amendments were estimated to be approximately \$6.4 million over the next twenty years.

Table 10 summarizes the distribution of twenty year present value fee increases by facility.

Table 10: Twenty Year Present Value Fee Increases

Minimum	\$2,586
Median	\$6,864
Max	\$169,755

**COMPARISON OF COMPLIANCE COST FOR SMALL VERSUS LARGE BUSINESSES:** Ecology calculated the estimated per-entity costs to comply with the proposed amendments, based on the costs estimated in Chapter 3. In this section,

ecology summarizes compliance cost per employee at affected businesses of different sizes.

We selected a random representative sample of covered sources, finding that the average affected small business likely to be covered by the proposed amendments employs approximately twelve people. The largest ten percent of affected businesses employ an average of nearly eighty-seven thousand people. Employment numbers are based on the

highest identifiable operation ownership level, and the lowest identifiable employment number if a range was identified.

Based on quantifiable fee increase estimates from Chapter 3 and fee reduction estimates from Chapter 4, we estimated the impacts to compliance costs per employee in 2019 - 2021 shown in Table 13. The disproportionate impacts found are likely to continue in subsequent years.

Table 13: Ratio of Compliance Cost Impacts Per Employee

	Average Fee Decrease per Employee			Average Fee Increase per Employee		
	2019	2020	2021	2019	2020	2021
<b>Small Businesses</b>	\$66.19	\$119.58	\$105.32	\$149.16	\$130.57	\$173.82
<b>Largest 10% of Businesses</b>	~\$0.00	N/A	N/A	\$0.01	~\$0.00	\$0.01

For facilities for which fees would decrease under the proposed amendments, small businesses would likely see a per-employee fee reduction, while the largest businesses would see none or near zero. This is a positive disproportion in favor of small businesses.

For facilities for which fees would increase under the proposed amendments, small businesses would see a significantly larger per-employee increase than the largest businesses would.

Finally, for the one hundred forty-eight sources that would need to incur registration labor costs, small businesses (averaging sixteen employees) are over one thousand times smaller than the largest ten percent of businesses (averaging twenty-one thousand employees at the highest ownership level). The annual cost of \$150 to \$400 per source would inherently be disproportionately larger for small businesses, even if they employed the lowest wage labor and took the least time to complete registration tasks.

We conclude that the proposed amendments are likely to have disproportionate impacts on small businesses, and therefore ecology must include elements in the proposed amendments to mitigate this disproportion, as far as is legal and feasible.

**CONSIDERATION OF LOST SALES OR REVENUE:** Businesses that would incur costs could experience reduced sales or revenues if the fee changes would significantly affect the prices of the goods they sell. The degree to which this could happen is strongly related to each business's production and pricing model (whether additional lump-sum costs significantly affect marginal costs), as well as the specific attributes of the markets in which they sell goods, including the degree of influence of each firm on market prices, as well as the relative responsiveness of market demand to price changes.

The proposed amendments affect a wide variety of businesses. Those industries that are more able to control their pricing, likely due to geographic restrictions in various types of construction, for example, may trade off price increases for reduced sales (which may or may not result in reduced revenue). Industries with greater competition, such as various wholesale industries, may not be as able to control their pricing, and would not see associated impacts to sales and revenue.

**MITIGATION OF DISPROPORTIONATE IMPACT:** Equitability was a significant consideration during this rule making,

and the proposed amendments decrease fees for small businesses in greater proportion (per employee) than for large businesses, where fees are proposed to decrease.

The baseline rule includes an extreme hardship exemption specifically for small businesses. This is retained in the proposed amendments. In addition, the proposed amendments phase in (delay compliance timetables) during the three years for which numeric fees are specified.

The process established in the proposed amendments to develop subsequent fee schedules using a public process allows small businesses to be involved in fee development, and particularly allows ecology to allow for an up-to-date economic environment and address small business concerns as they develop. The proposed amendments also potentially reduce reporting requirements for some small sources, and while a small source is not necessarily owned by a small business, it may be more likely to be.

**SMALL BUSINESS AND LOCAL GOVERNMENT CONSULTATION:** Ecology involved small businesses and local government in its development of the proposed rule amendments by:

- Communicating through the ECY-AQ-RULE-AND-SIP-UPDATES listserv.
- Email communication specific to the rule making, through the AO#16-09 AQ Fees General Distribution List, including the seven local air agencies and eight business associations.
- Registration fees and process workgroup meetings on March 21, 2017; April 26, 2017; May 24, 2017; June 27, 2017; November 20, 2017; February 7, 2018; and February 28, 2018.
- Postcards sent to approximately five hundred thirty-five registration program source addresses.
- Approximately thirty letters sent to tribal contacts.

**NAICS CODES OF INDUSTRIES IMPACTED BY THE PROPOSED RULE:**

1119	2381	3219	3315	4234	4246	4452	5173	5419
2123	2389	3241	3331	4238	4249	4812	5179	8111
2361	3114	3253	3366	4239	4441	4861	5182	8122
2373	3118	3273	4233	4245	4442	4931	5413	8123

**IMPACT ON JOBS:** Under the proposed amendments' fee increases and decreases relative to the baseline, the Washington state economy could experience the loss of approximately:

- One full-time employee (FTE) equivalent in 2019.
- Two FTE equivalents in 2020.
- Three FTE equivalents in 2021.
- By 2037, this would level off to a loss of approximately one FTE per year.

A copy of the statement may be obtained by contacting Jean-Paul Huys, Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-407-6827, people with speech disability may call TTY 877-833-6341, people with impaired hearing may call Washington relay service 711, email jean-paul.huys@ecy.wa.gov.

June 19, 2018  
Polly Zehm  
Deputy Director

AMENDATORY SECTION (Amending WSR 16-12-099, filed 5/31/16, effective 7/1/16)

**WAC 173-400-060 Emission standards for general process units.** General process units are required to meet all applicable provisions of WAC 173-400-040 and, no person shall cause or allow the emission of particulate material from any general process operation in excess of 0.23 grams per dry cubic meter at standard conditions (0.1 grain/dscf) of exhaust gas. Test methods ~~((in effect on the date in WAC 173-400-025))~~ from 40 C.F.R. Parts 51, 60, 61, and 63 (in effect on the date in WAC 173-400-025) and any other approved test procedures in ecology's "Source Test Manual - Procedures For Compliance Testing" as of September 20, 2004, will be used to determine compliance.

AMENDATORY SECTION (Amending WSR 16-12-099, filed 5/31/16, effective 7/1/16)

**WAC 173-400-100 Source classifications.** (1) **Source classification list.** In counties without a local air pollution control authority, or for sources under the jurisdiction of ecology, the owner or operator of each source within the following source categories shall register the source with ecology:

- (a) Agricultural chemical facilities engaging in the manufacturing of liquid or dry fertilizers or pesticides;
- (b) Agricultural drying and dehydrating operations;
- (c) Any category of stationary source that includes an emissions unit subject to a new source performance standard (NSPS) under 40 C.F.R. Part 60 (in effect on the date in WAC 173-400-025), other than subpart AAA (Standards of Performance for New Residential Wood Heaters);
- (d) Any stationary source~~(s)~~ that includes an emissions unit subject to a National Emission Standard for Hazardous Air Pollutants (NESHAP) under 40 C.F.R. Part 61 (in effect on the date in WAC 173-400-025), other than:
  - (i) Subpart M (National Emission Standard for Asbestos); or

- (ii) Sources or emission units emitting only radionuclides, which are required to obtain a license under WAC 246-247-060, and are subject to 40 C.F.R. Part 61, subparts H and/or I, and that are not subject to any other part of 40 C.F.R. Parts 61, 62, or 63, or any other parts of this section;

- (e) Any source, or emissions unit subject to a National Emission Standard for Hazardous Air Pollutants for Source Categories ~~((Maximum Achievable Control Technology (MACT) standard))~~ under 40 C.F.R. Part 63 (in effect on the date in WAC 173-400-025) that is not subject to chapter 173-401 WAC;

- (f) Any source, stationary source or emission unit with an emission rate of one or more pollutants equal to or greater than an "emission threshold" defined in WAC 173-400-030;

- (g) Asphalt and asphalt products production facilities;

- (h) Brick and clay manufacturing plants, including tiles and ceramics;

- (i) Casting facilities and foundries, ferrous and nonferrous;

- (j) Cattle feedlots with operational facilities which have an inventory of one thousand or more cattle in operation between June 1<sup>st</sup> and October 1<sup>st</sup>, where vegetation forage growth is not sustained over the majority of the lot during the normal growing season;

- (k) Chemical manufacturing plants;

- (l) Composting operations, including commercial, industrial and municipal, but exempting residential composting activities;

- (m) Concrete product manufacturers and ready mix and premix concrete plants;

- (n) Crematoria or animal carcass incinerators;

- (o) Dry cleaning plants;

- (p) Materials handling and transfer facilities that generate fine particulate, which may include pneumatic conveying, cyclones, baghouses, and industrial housekeeping vacuuming systems that exhaust to the atmosphere;

- (q) Flexible vinyl and urethane coating and printing operations;

- (r) Grain, seed, animal feed, legume, and flour processing operations, and handling facilities;

- (s) Hay cubers and pelletizers;

- (t) Hazardous waste treatment and disposal facilities;

- (u) Ink manufacturers;

- (v) Insulation fiber manufacturers;

- (w) Landfills, active and inactive, including covers, gas collections systems or flares;

- (x) Metal plating and anodizing operations;

- (y) Metallic and nonmetallic mineral processing plants, including rock crushing plants;

- (z) Mills such as lumber, plywood, shake, shingle, wood-chip, veneer operations, dry kilns, pulpwood insulating board, or any combination thereof;

- (aa) Mineralogical processing plants;

- (bb) Other metallurgical processing plants;

- (cc) Paper manufacturers;

- (dd) Petroleum refineries;

- (ee) Petroleum product blending operations;

- (ff) Plastics and fiberglass product fabrication facilities;

- (gg) Rendering plants;

- (hh) Soil and groundwater remediation projects;

- (ii) Surface coating manufacturers;
- (jj) Surface coating operations including: Automotive, metal, cans, pressure sensitive tape, labels, coils, wood, plastic, rubber, glass, paper and other substrates;
- (kk) Synthetic fiber production facilities;
- (ll) Synthetic organic chemical manufacturing industries;
- (mm) Tire recapping facilities;
- (nn) Wastewater treatment plants;
- (oo) Any source that has elected to opt-out of the operating permit program by limiting its potential-to-emit (synthetic minor) or is required to report periodically to demonstrate nonapplicability to EPA requirements under Sections 111 or 112 of Federal Clean Air Act.

(2) **Equipment classification list.** In counties without a local authority, the owner or operator of the following equipment shall register the source with ecology:

- (a) Boilers, all solid and liquid fuel burning boilers with the exception of those utilized for residential heating;
- (b) Boilers, all gas fired boilers above 10 million British thermal units per hour input;
- (c) Chemical concentration evaporators;
- (d) Degreasers of the cold or vapor type in which more than five percent of the solvent is comprised of halogens or such aromatic hydrocarbons as benzene, ethylbenzene, toluene or xylene;
- (e) Ethylene oxide (ETO) sterilizers;
- (f) Flares utilized to combust any gaseous material;
- (g) Fuel burning equipment with a heat input of more than 1 million Btu per hour; except heating, air conditioning systems, or ventilating systems not designed to remove contaminants generated by or released from equipment;
- (h) Incinerators designed for a capacity of one hundred pounds per hour or more;
- (i) Ovens, burn-out and heat-treat;
- (j) Stationary internal combustion engines and turbines rated at five hundred horsepower or more;
- (k) Storage tanks for organic liquids associated with commercial or industrial facilities with capacities equal to or greater than 40,000 gallons;
- (l) Vapor collection systems within commercial or industrial facilities;
- (m) Waste oil burners above 0.5 mm Btu heat output;
- (n) Woodwaste incinerators;
- (o) Commercial and industrial solid waste incineration units subject to WAC 173-400-050(4);
- (p) Small municipal waste combustion units subject to WAC 173-400-050(5).

AMENDATORY SECTION (Amending WSR 11-06-060, filed 3/1/11, effective 4/1/11)

**WAC 173-400-101 Registration issuance.** (1) General. Any person operating or responsible for the operation of an air contaminant source for which registration and reporting are required shall register the source emission unit with the permitting authority. The owner or operator shall make reports containing information ~~((as may be))~~ required by the permitting authority concerning location, size and height of contaminant outlets, processes employed, nature and quantity

of the air contaminant emission and such other information as is relevant to air pollution and available or reasonably capable of being assembled.

(2) Registration form. Sources shall provide registration information ~~((shall be provided on forms supplied))~~ in a manner and time prescribed by the permitting authority and shall ~~((be completed and returned))~~ complete and return them within the time specified on the form. Sources shall list each emission unit(s) within the facility ~~((shall be listed))~~ separately unless the permitting authority determines that the facility may combine certain emission units ~~((may be combined))~~ into process streams for purposes of registration and reporting.

(3) Signatory responsibility. The owner, operator, or their designated management representative shall sign the registration form for each source. The owner or operator of the source ~~((shall be))~~ is responsible for notifying the permitting authority of the existence of the source, and for the accuracy, completeness, and timely submittal of registration reporting information and any accompanying fee.

(4) Operational and maintenance plan. Owners or operators of registered sources within ecology's jurisdiction shall maintain an operation and maintenance plan for process and control equipment. The plan shall reflect good industrial practice and shall include a record of performance and periodic inspections of process and control equipment. In most instances, a manufacturer's operations manual or an equipment operation schedule may be considered a sufficient operation and maintenance plan. The source owner or operator shall review and update the plan ~~((shall be reviewed and updated by the source owner or operator))~~ at least annually. The source owner or operator shall make a copy of the plan ~~((shall be made))~~ available to ecology upon request.

(5) Report of closure. The owner or operator shall file a report of closure ~~((shall be filed))~~ with the permitting authority within ninety days after operations producing emissions permanently cease at any applicable source under this section.

(6) Report of change of ownership. A new owner or operator shall report to the permitting authority within ninety days of any change of ownership or change in operator.

(7) Operating permit program source exemption. Permit program sources, as defined in RCW 70.94.030(18), are not required to comply with the registration requirements of WAC 173-400-100 through 173-400-104.

AMENDATORY SECTION (Amending WSR 11-06-060, filed 3/1/11, effective 4/1/11)

**WAC 173-400-102 Scope of registration and reporting requirements.** ~~((1) Administrative options. A source in a listed source category that is located in a county without an active local authority will be addressed in one of several ways:~~

~~((a) The source will be required to register and report once each year. The criteria for identifying these sources are listed in subsection (2) of this section.~~

~~((b) The source will be required to register and report once every three years. The criteria for identifying these sources are listed in subsection (3) of this section.~~

(e) The source will be exempted from registration program requirements. The criteria for identifying these sources are listed in subsection (4) of this section.

(2) ~~Sources requiring annual registration and inspections.~~ An owner or operator of a source in a listed source category that meets any of the following criteria shall register and report once each year:

(a) The source emits one or more air pollutants at rates greater than the "emission threshold" rates defined in WAC 173-400-030;

(b) Annual registration and reporting is necessary to comply with federal reporting requirements or emission standards; or

(c) Annual registration and reporting is required in a reasonably available control technology determination for the source category; or

(d) The director of ecology determines that the source poses a potential threat to human health and the environment.

(3) ~~Sources requiring periodic registration and inspections.~~ An owner or operator of a source in a listed source category that meets any of the following criteria shall register and report once every three years:

(a) The source emits one or more air pollutants at rates greater than the emission rates listed in subsection (5) of this section and all air pollutants at rates less than the "emission threshold" rates defined in WAC 173-400-030; or

(b) More than de minimis amounts of one or more toxic air pollutants listed in WAC 173-460-150.

(4) ~~Sources exempt from registration program requirements.~~ Any source included in a listed source category that is located in a county without an active local air authority is not required to register if:

(a) The source emits pollutants below emission rates specified in subsection (5) of this section; and

(b) The source or emission unit does not emit more than de minimis amounts of toxic air pollutants specified in WAC 173-460-150.

(5) ~~Criteria for defining exempt sources.~~ The following emission rates will be used to identify listed sources that are exempt from registration program requirements:

Pollutant	Tons/Year
Carbon Monoxide.....	5.0
Lead .....	0.005
Nitrogen oxides .....	2.0
<b>PM-10</b> .....	0.75
<b>PM-2.5</b> .....	0.5
Total suspended particulates.....	1.25
Sulfur dioxide .....	2.0
Volatile organic compounds (VOC).....	2.0))

(1) Applicability. This section applies to sources subject to WAC 173-400-100 located in a county without a local air pollution control authority.

(2) A source that is not subject to new source review under WAC 173-400-110(5) must register with ecology.

(3) Emissions inventory report.

(a) An owner or operator must submit an emissions inventory report in a manner specified by ecology:

(i) Annually when mandated by an order of approval or a regulatory order; or

(ii) Upon request from ecology.

(b) An emissions inventory report must include the information required by ecology, an order of approval, or regulatory order:

(i) Emission sources;

(ii) Types and amounts of raw materials and fuels used;

(iii) Types, amounts and concentrations of air contaminants emitted;

(iv) Data on emission units and control devices;

(v) Data on emission points;

(vi) Other information related to the registration program as requested by ecology.

(4) Requesting evaluation of an emissions inventory determination.

(a) Ecology will finalize an emissions inventory by April 30th of each year, or biennially.

(b) A source may request review of an ecology emissions inventory determination by May 31st of each year. The request must include information, such as:

(i) A more recent estimate of annual emissions;

(ii) Documentation on the source(s) of the new data and the calculation methods used to estimate emissions; or

(iii) Other supporting information.

(c) Ecology must notify the source of ecology's decision no later than August 1st.

AMENDATORY SECTION (Amending WSR 95-07-126, filed 3/22/95, effective 4/22/95)

**WAC 173-400-103 Emission estimates.** ~~((1) Procedure for estimating emissions. In counties without an active local air pollution control authority, registration may include an estimate of actual emissions taking into account equipment, operating conditions, and air pollution control measures. Registration may also include a flowchart of plant processes, operational parameters, and specifications of air pollution control equipment. The emissions estimate shall be based upon actual test data or, in the absence of such data, upon procedures acceptable to ecology. Any emission data submitted to ecology shall be verifiable using currently accepted engineering criteria. The following procedures may be used to estimate emissions from individual sources or emissions units:~~

~~(a) Source specific testing data;~~

~~(b) Mass balance calculations;~~

~~(c) A published, verifiable emission factor that is applicable to the source;~~

~~(d) Other engineering calculations; or~~

~~(e) Other procedures to estimate emissions that are acceptable to ecology.~~

(2) Owner or operator review. Ecology will provide the owner or operator of the source an opportunity to review any emission estimates prepared by ecology. An owner or operator may submit additional information and any justification for not using the methods listed above. This information will



be evaluated by ecology to determine whether it is based on currently accepted engineering criteria. If none of the above methods are available or applicable to the source, an appropriate method will be established and approved by ecology on a case-by-case basis.) (1) This section applies to a source subject to WAC 173-400-100 located in a county without a local air pollution control authority.

(2) Procedure for estimating emissions from a source.

(a) An emissions inventory report may include:

(i) An estimate of actual emissions taking into account equipment;

(ii) Operating conditions;

(iii) Air pollution control measures;

(iv) A flowchart of plant processes;

(v) Operational parameters; and

(vi) Specifications of air pollution control equipment.

(b) An owner or operator must base the emissions estimate on actual test data or, in the absence of test data, on procedures acceptable to ecology.

(c) Emission data submitted to ecology must be verifiable using currently accepted engineering criteria. Sources may use the following procedures to estimate emissions from individual sources or emissions units:

(i) Source-specific testing data;

(ii) Mass balance calculations;

(iii) A published, verifiable emission factor applicable to the source;

(iv) Other engineering calculations; or

(v) Other procedures to estimate emissions acceptable to ecology.

(3) Owner or operator review.

(a) By August 1st of each year, ecology will provide the owner or operator of the source an opportunity to review emission estimates prepared by ecology.

(b) An owner or operator may submit additional information and justification for not using the procedures in subsection (2) of this subsection.

(i) The owner or operator may propose a source-specific appropriate method.

(ii) Ecology will evaluate the information provided to determine whether the owner or operator based it on currently accepted engineering criteria.

(iii) If none of these methods are available or applicable to the source, ecology must establish and approve an appropriate method on a case-by-case basis.

(c) When estimating emissions, ecology must consider updates and revisions made to a source's operations during a calendar year to apply to emissions occurring during the entire calendar year.

(d) Emissions inventory review process.

(i) Ecology must:

(A) Notify each source of their draft emissions inventory by August 1st of each year in connection with notice on the draft tier placement in WAC 173-455-039;

(B) Distribute the notice by electronic means or by means of the United States postal service if ecology does not have an electronic means for the source or the source requests postal service notification.

(ii) Comment deadlines. An owner or operator must provide comments to ecology by:

(A) September 30th to change a tier placement or an emissions inventory determined by WAC 173-455-039 for an upcoming year; or

(B) October 1st or later to update a future emissions inventory.

(iii) Ecology must evaluate the request and make a final determination by:

(A) December 1st if a request was sent by September 30th of that year; or

(B) Within sixty days of receiving a request submitted under (ii)(B) of this subsection.

**AMENDATORY SECTION** (Amending WSR 11-06-060, filed 3/1/11, effective 4/1/11)

**WAC 173-400-104 Registration fees.** See chapter 173-455 WAC for ecology's ((~~registration~~)) fee schedule for 2019, 2020, 2021, and ecology's process for establishing registration fees for 2022 and beyond.

**AMENDATORY SECTION** (Amending WSR 16-12-099, filed 5/31/16, effective 7/1/16)

**WAC 173-400-105 Records, monitoring, and reporting.** The owner or operator of a source shall upon notification by ((~~the director of~~)) ecology, maintain records on the type and quantity of emissions from the source and other information deemed necessary to determine whether the source is in compliance with applicable emission limitations and control measures.

(1) **Emission inventory.** The ((~~owner(s) or operator(s)~~)) owner and operator of ((~~any~~)) an air contaminant source shall submit an inventory of emissions from the source each year. The inventory will include stack and fugitive emissions of particulate matter, PM-10, PM-2.5, sulfur dioxide, oxides of nitrogen, carbon monoxide, total reduced sulfur compounds (TRS), fluorides, lead, VOCs, ammonia, and other contaminants. ((~~The format~~)) Sources shall provide registration information in a manner prescribed by the permitting authority for the submittal of these inventories ((~~will be specified by the permitting authority or ecology~~)). When ((~~submittal of~~)) the permitting authority requests emission inventory information ((~~is requested~~)) for a calendar year, the owner or operator shall submit the emissions inventory ((~~shall be submitted~~)) no later than ((~~one hundred five days~~)) April 1st after the end of the calendar year for which the emissions inventory was requested. The ((~~owner(s) or operator(s)~~)) owner and operator shall maintain records of information necessary to substantiate any reported emissions, consistent with the averaging times for the applicable standards. The owner or operator may base emission estimates used in the inventory ((~~may be based~~)) on the most recent published EPA emission factors for a source category, or other information available to the ((~~owner(s) or operator(s)~~)) owner and operator, whichever is the better estimate.

(2) **Monitoring.** Ecology shall conduct a continuous surveillance program to monitor the quality of the ambient atmosphere as to concentrations and movements of air contaminants. As a part of this program, the director of ecology

or an authorized representative may require any source under the jurisdiction of ecology to conduct stack and/or ambient air monitoring and to report the results to ecology.

(3) **Investigation of conditions.** Upon presentation of appropriate credentials, for the purpose of investigating conditions specific to the control, recovery, or release of air contaminants into the atmosphere, personnel from ecology or an authority shall have the power to enter at reasonable times upon any private or public property, excepting nonmultiple unit private dwellings housing one or two families.

(4) **Source testing.** To demonstrate compliance, ~~((ecology or))~~ the permitting authority may conduct or require that the owner or operator of a source conduct a test ~~((be conducted of the source))~~ using approved test methods from 40 C.F.R. Parts 51, 60, 61 ~~((and)), 62, 63, 75 and 1065, as applicable~~ (in effect on the date in WAC 173-400-025) or procedures contained in "Source Test Manual - Procedures for Compliance Testing," state of Washington, department of ecology, as of September 20, 2004, on file at ecology. The permitting authority may require the operator of a source ~~((may be required))~~ to provide the necessary platform and sampling ports for ecology personnel or others to perform a test of an emissions unit. ~~((Ecology shall be allowed))~~ The source owner or operator shall allow the permitting authority to obtain a sample from any emissions unit. The permitting authority shall give the operator of the source ~~((shall be given))~~ an opportunity to observe the sampling and to obtain a sample at the same time.

(5) **Continuous monitoring and recording.** Owners and operators of the following categories of sources shall install, calibrate, maintain and operate equipment for continuously monitoring and recording those emissions specified.

(a) Fossil fuel-fired steam generators.

(i) Opacity, except where:

(A) Steam generator capacity is less than two hundred fifty million BTU per hour heat input; or

(B) Only gaseous fuel is burned.

(ii) Sulfur dioxide, except where steam generator capacity is less than two hundred fifty million BTU per hour heat input or if sulfur dioxide control equipment is not required.

(iii) Percent oxygen or carbon dioxide where such measurements are necessary for the conversion of sulfur dioxide continuous emission monitoring data.

(iv) General exception. These requirements do not apply to a fossil fuel-fired steam generator with an annual average capacity factor of less than thirty percent, as reported to the Federal Power Commission for calendar year 1974, or as otherwise demonstrated to ecology or the authority by the owner(s) or operator(s).

(b) **Sulfuric acid plants.** Sulfur dioxide where production capacity is more than three hundred tons per day, expressed as one hundred percent acid, except for those facilities where conversion to sulfuric acid is ~~((utilized))~~ used primarily as a means of preventing emissions to the atmosphere of sulfur dioxide or other sulfur compounds.

(c) Fluid bed catalytic cracking units catalyst regenerators at petroleum refineries. Opacity where fresh feed capacity is more than twenty thousand barrels per day.

(d) Wood residue fuel-fired steam generators.

(i) Opacity, except where steam generator capacity is less than one hundred million BTU per hour heat input.

(ii) Continuous monitoring equipment. The requirements of (e) of this subsection do not apply to wood residue fuel-fired steam generators, but continuous monitoring equipment required by (d) of this subsection shall be subject to approval by ecology.

(e) Owners and operators of those sources required to install continuous monitoring equipment under this subsection shall demonstrate to ecology or the authority, compliance with the equipment and performance specifications and observe the reporting requirements contained in 40 C.F.R. Part 51, Appendix P, Sections 3, 4 and 5 (in effect on the date in WAC 173-400-025).

(f) Special considerations. If for reason of physical plant limitations or extreme economic situations, ecology determines that continuous monitoring is not a reasonable requirement, the permitting authority will establish alternative monitoring and reporting procedures ~~((will be established))~~ on an individual basis. These will generally take the form of stack tests conducted at a frequency sufficient to establish the emission levels over time and to monitor deviations in these levels.

(g) Exemptions. This subsection (5) does not apply to any emission unit which is:

(i) Required to continuously monitor emissions due to a standard or requirement contained in 40 C.F.R. Parts 60, 61, 62, 63, or 75 (all in effect on the date in WAC 173-400-025) or a permitting authority's adoption by reference of ~~((such))~~ the federal standards. Emission units and sources subject to those standards shall comply with the data collection requirements that apply to those standards.

(ii) Not subject to an applicable emission standard.

(6) No person shall make any false material statement, representation or certification in any form, notice or report required under chapter 70.94 or 70.120 RCW, or any ordinance, resolution, regulation, permit or order in force pursuant thereto.

(7) Continuous emission monitoring system operating requirements. All continuous emission monitoring systems (CEMS) required by 40 C.F.R. Parts 60, 61, 62, 63, or 75 (all in effect on the date in WAC 173-400-025), or a permitting authority's adoption of those federal standards must meet the continuous emission monitoring systems (CEMS) performance specifications and data recovery requirements imposed by those standards. All CEMS required under an order, PSD permit, or regulation issued by a permitting authority and not subject to CEMS performance specifications and data recovery requirements imposed by 40 C.F.R. Parts 60, 61, 62, 63, or 75 must follow the continuous emission monitoring rule of the permitting authority, or if the permitting authority does not have a continuous emission monitoring rule, must meet the following requirements:

(a) The owner or operator shall recover valid hourly monitoring data for at least 95 percent of the hours that the equipment (required to be monitored) is operated during each calendar month except for periods of monitoring system downtime, provided that the owner or operator demonstrated that the downtime was not a result of inadequate design,

operation, or maintenance, or any other (~~reasonable~~) reasonably preventable condition, and the source conducts any necessary repairs to the monitoring system (~~are conducted~~) in a timely manner.

(b) The owner or operator shall install a continuous emission monitoring system that meets the performance specification in 40 C.F.R. Part 60, Appendix B in effect at the time of its installation, and shall operate this monitoring system in accordance with the quality assurance procedures in Appendix F of 40 C.F.R. Part 60 (in effect on the date in WAC 173-400-025), and EPA's "Recommended Quality Assurance Procedures for Opacity Continuous Monitoring Systems" (EPA) 340/1-86-010.

(c) An owner or operator must reduce monitoring data commencing on the clock hour and containing at least forty-five minutes of monitoring data (~~must be reduced~~) to one hour averages. An owner or operator must reduce monitoring data for opacity (~~is to be reduced to~~) six minute block averages unless otherwise specified in the order of approval or permit. An owner or operator will include all monitoring data (~~will be included~~) in these averages except for data collected during calibration drift tests and cylinder gas audits, and for data collected subsequent to a failed quality assurance test or audit. After a failed quality assurance test or audit, a source will collect no valid data (~~is collected~~) until the monitoring system passes a quality assurance test or audit.

(d) An owner or operator will maintain continuous operation of all continuous monitoring systems except for instances of system breakdowns, repairs, calibration checks, and zero and span adjustments required under (~~subsection~~) (a) of this (~~section, all continuous monitoring systems shall be in continuous operation~~) subsection.

(i) Continuous monitoring systems for measuring opacity shall complete a minimum of one cycle of sampling and analyzing for each successive ten second period and one cycle of data recording for each successive six minute period.

(ii) Continuous monitoring systems for measuring emissions other than opacity shall complete a minimum of one cycle of sampling, analyzing, and recording for each successive fifteen minute period.

(e) The owner or operator shall retain all monitoring data averages for at least five years, including copies of all reports submitted to the permitting authority and records of all repairs, adjustments, and maintenance performed on the monitoring system.

(f) The owner or operator shall submit a monthly report (or other frequency as directed by terms of an order, air operating permit or regulation) to the permitting authority within thirty days after the end of the month (or other specified reporting period) in which the owner or operator recorded the data (~~were recorded~~). The owner or operator may combine the report required by this section (~~may be combined~~) with any excess emission report required by WAC 173-400-108. This report shall include:

(i) The number of hours that the monitored emission unit operated each month and the number of valid hours of monitoring data that the monitoring system recovered each month;

(ii) The date, time period, and cause of each failure to meet the data recovery requirements of (a) of this subsection

and any actions taken to ensure adequate collection of such data;

(iii) The date, time period, and cause of each failure to recover valid hourly monitoring data for at least 90 percent of the hours that the equipment (required to be monitored) was operated each day;

(iv) The results of all cylinder gas audits conducted during the month; and

(v) A certification of truth, accuracy, and completeness signed by an authorized representative of the owner or operator.

(8) No person shall render inaccurate any monitoring device or method required under chapter 70.94 or 70.120 RCW, or any ordinance, resolution, regulation, permit, or order in force pursuant thereto.

AMENDATORY SECTION (Amending WSR 12-24-051, filed 11/30/12, effective 12/31/12)

**WAC 173-455-036 Fee increases.** (1) Ecology must follow the processes in subsection(s) (2) (~~and (3)~~) of this section for increasing any of the following fees:

(a) (~~Air contaminant source registration fees in WAC 173-455-040;~~

~~(b))~~ Carbon dioxide mitigation program fees in WAC 173-455-050;

~~((e))~~ (b) Weather modification fees in WAC 173-455-070;

~~((d))~~ (c) Control technology fees in WAC 173-455-100;

~~((e))~~ (d) New source review fees in WAC 173-455-120;

~~((f))~~ (e) Air pollution standards variance fee in WAC 173-455-130; and

~~((g))~~ (f) Nonroad engine permit fee in WAC 173-455-140.

(2) Ecology may propose fee increases (~~in even-numbered years for each year in the upcoming biennium. A workload analysis must support the fee increase. Prior to making any changes, ecology will post the new fees on the agency web site no later than November 30th of the year preceding the date on which the new fees will take place. If directed by RCW 43.135.055, fee increases will only occur after the legislature authorizes the increase.~~

(3) Ecology may adjust fees by the fiscal growth factor calculated under chapter 43.135 RCW as follows:

$$\text{New fee} = \text{Existing fee} \times (1 + \text{FGF})$$

~~Where FGF means the annual fiscal growth factor calculated under chapter 43.135 RCW (expressed as a decimal))~~

for the registration program based on the cost of administering the registration program consistent with RCW 70.94.151(2), and the procedures in WAC 173-455-039 and 173-455-040.

#### NEW SECTION

**WAC 173-455-039 Source registration tiers.** (1) A source loses its registration status when a registration fee has not been paid.

(2) Source registration tiers. For the purpose of assessing registration fees, ecology shall assign sources required to register with ecology to one of six tiers based on emissions in Table 1 in (b) of this subsection.

(a) Ecology will use the following emissions inventory for each source:

(i) Emissions in an inventory include particulate matter 10 (PM<sub>10</sub>), volatile organic compound (VOC), carbon monoxide (CO), nitrogen oxide (NOx) and sulfur dioxide (SO<sub>2</sub>).

(ii) If emissions information is unavailable, ecology will use the enforceable emissions limitations for the source and/or will estimate emissions using the source's maximum capacities and production rates.

(b) Ecology will assign a source to a tier based on Table 1.

**Table 1  
Tiers for Registration Sources**

Tier	Annual Emissions
1	Source with annual emissions less than the tons per year in Tier 2.
2	Source with annual emissions between 0.01 and less than or equal to 10 tons per year.
3	Source with annual emissions greater than 10 and less than or equal to 20 tons per year.
4	Source with annual emissions greater than 20 and less than or equal to 70 tons per year.
5	Source with annual emissions greater than 70 tons per year.
6	Synthetic minor source (as defined in WAC 173-400-030) that emits or has the potential to emit at or above 80 percent of the threshold for a major source (as defined in WAC 173-401-200).

(3) Notice of tier placement.

(a) Draft tier placement. Ecology must notify a source of its draft tier placement by August 1st of the year before a new fee goes into effect, or every other year if ecology proposes a biennial budget.

(b) Ecology must provide electronic notice or notice by the United States postal service if ecology does not have an electronic address for a source or the source requests postal notice.

(c) Ecology must provide a sixty day comment period.

(d) Final tier assignment. Ecology must notify the source of the final tier placement by December 1st of the year before the new fee schedule goes into effect.

(4) Requesting reassignment to a different tier.

(a) A source may submit a request to ecology by September 30th for tier reassignment for the upcoming year if they believe they were assigned to the wrong tier. To request reassignment, the source must provide information sufficient to support a reassignment.

(b) By December 1st of each year or biennially if ecology proposes a two-year budget as provided by WAC 173-455-040 (4)(a)(iii), ecology must notify the source of the final tier determination.

AMENDATORY SECTION (Amending WSR 12-24-051, filed 11/30/12, effective 12/31/12)

**WAC 173-455-040 ((Air contaminant)) Source registration fees.** ((1) Ecology will charge a yearly registration fee to cover the cost of implementing the registration program.

(2) Ecology will determine fee eligibility based on the most current emissions inventory information available for each source.

(3) A registration program source that shut down during the previous year and is not operating in the current year is not subject to a fee for the current calendar year.

(4) Periodic registration program source eligibility and fees are determined as follows:

(a) A source is a periodic registration program source if all of these statements are true:

(i) A source is included on the source classification list in WAC 173-400-100(1) or the equipment classification list in WAC 173-400-100(2);

(ii) The source emits at least one pollutant in Table 173-455-040 (4)(c) within the rates in the table; and

(iii) The source does not emit any pollutant at a rate higher than those in Table 173-455-040 (4)(c).

(b) The registration fee category and fee for periodic registration program source are determined as follows:

(i) Ecology will determine whether the periodic sources is in the small, medium, or large category based on the source's most current emissions inventory information.

(ii) Ecology will determine whether the source's category based on the emission rate of the air contaminant that falls in the category with the highest fee.

(c) A periodic registration program source must pay the applicable yearly registration fee on Table 173-455-040 (4)(e).

**Table 173-455-040 (4)(e)  
Periodic Registration Fee Table**

Yearly periodic registration fee	\$450	\$700	\$1,000
Category	Small Periodic Source	Medium Periodic Source	Large Periodic Source
Air Contaminant	Emission Rates		
	Tons per year	Tons per year	Tons per year
Carbon monoxide	5 to <15	15 to <30	30 to <100
Lead	0.005 to <0.3	0.3 to <0.45	0.45 to <0.6

Nitrogen oxides	2.0 to < 5	5 to < 14	14 to < 40
Particulate matter (TSP or total suspended particulates)	1.25 to < 6	6 to < 12	12 to < 25
Particulate matter <sub>10</sub>	0.75 to < 3.5	3.5 to < 7	7 to < 15
Particulate matter <sub>2.5</sub>	0.5 to < 2	2 to < 5	5 to < 10
Sulfur dioxide	2.0 to < 5	5 to < 14	14 to < 40
Volatile organic compounds	2.0 to < 5	5 to < 14	14 to < 40
Toxic air pollutant	> de minimis emissions*	—	—

\* "De minimis emissions" means trivial levels of toxic air emissions that do not pose a threat to human health or the environment. WAC 173-460-150 contains the de minimis emission rate of a toxic air pollutant in pounds per averaging period (year, 24-hour, 1-hour).

(5) Annual registration program source fees are determined as follows:

(a) Ecology will determine the annual registration fee based on the most current emissions inventory information.

(b) A source that is included on the source classification list in WAC 173-400-100(1) or the equipment classification list in WAC 173-400-100(2) is an annual registration program source if it meets any of the following criteria:

(i) The source emits one or more air pollutants in Table 173-455-040 (5)(b) at rates greater than those in the table; or

**Table 173-455-040 (5)(b)**

**Annual Registration Emission Rate Table**

Air Pollutant	Emission Rate
Carbon monoxide	100 tons per year
Lead	0.6 tons per year
Fluorides	3 tons per year
Nitrogen oxides	40 tons per year
Particulate matter	25 tons per year
Particulate matter <sub>10</sub>	15 tons per year
Particulate matter <sub>2.5</sub>	10 tons per year
Reduced sulfur compounds (including H <sub>2</sub> S)	10 tons per year
Sulfur dioxide	40 tons per year
Sulfuric acid mist	7 tons per year
Total reduced sulfur (including H <sub>2</sub> S)	10 tons per year

(ii) Annual registration and reporting is necessary to comply with federal reporting requirements or emission standards; or

(iii) Annual registration and reporting is required in a reasonably available control technology determination for the source category; or

(iv) The director of ecology determines that the source poses a potential threat to human health and the environment.

(c) Annual registration program sources must pay a yearly registration fee comprised of the following three components:

**Annual Registration Fee Components**

Component	Fee Rate
Flat fee	\$1,057 per year
Complexity	\$469 per complexity rating point
Emissions	\$16 per ton

(i) Flat fee component. Each source must pay the flat fee component plus the other fees.

(ii) Complexity component. Each source is assigned a complexity rating of 1, 3, or 5 which is based on the estimated amount of time needed by ecology to review and inspect the source. The source's complexity rating is multiplied by the complexity fee rate to determine the complexity portion of the yearly registration fee.

(iii) Emissions component. Billable emissions (in tons per year) include nitrogen oxides, sulfur dioxide, particulate matter (except total suspended particulate), and volatile organic compounds. The source's billable emissions are multiplied by the emissions fee rate to determine the emissions portion of the yearly registration fee.

(6)) (1) Registration fee. Each source required to register with ecology shall pay an annual fee based on the source registration tier to which it is assigned in WAC 173-455-039.

(2) Source closure. A source that closes or shuts down temporarily must pay its registration fee to maintain active registration status.

(3) Registration fee schedule for years 2019, 2020, 2021.

(a) Table 2 lists annual registration fees for 2019, 2020, and 2021.

**Table 2**

**Registration Fee Schedule for 2019 Through 2021**

Tier	Fee 2019	Fee 2020	Fee 2021
1	\$200	\$200	\$200
2	\$400	\$575	\$700
3	\$700	\$1,000	\$1,300
4	\$1,100	\$1,300	\$1,500
5	\$5,000	\$5,500	\$7,000
6	\$7,000	\$7,500	\$8,000

(b) The registration fee for mint distilleries is \$200 for 2019, 2020, and 2021. For 2022 and beyond, the registration fee for mint distilleries will be assessed according to their total emissions.

(4) Registration fee schedule for year 2022 and beyond.

(a) Fee schedule:

(i) Starting in 2022, ecology must prepare an annual budget that reflects the cost of the program;

(ii) Ecology will base the budget on the program costs for the previous twelve-month period consistent with RCW 70.94.151(2);

(iii) Ecology may choose to establish fees to cover registration program costs for a two-year period;

(iv) Ecology must compare the revenue from the previous year, or the previous two-year period if appropriate, to the upcoming draft budget. If increases of registration fees are necessary, ecology must evenly distribute the increased program cost as a percentage of the increased costs across all sources subject to the program.

(b) Public notice. Ecology must:

(i) Post the draft budget and draft registration fee schedule on ecology's web site by August 1st of the year before the fee schedule goes into effect.

(ii) Provide a sixty-day public comment period on the draft budget and draft fee schedule.

(iii) Post the final budget and fee schedule on ecology's web site by December 1st of the year before the fee schedule goes into effect.

(5) Registration fees for gasoline dispensing facilities. Gasoline dispensing facilities subject to chapter 173-491 WAC must pay a yearly registration fee of one hundred thirty dollars for each storage tank dispensing gasoline.

~~((7))~~ (6) Fee reductions for economic hardship. If a small business owner ~~((who is subject to a periodic registration program fee under subsection (4) of this section or a gasoline dispensing facility subject to subsection (6) of this section)),~~ as defined in RCW 19.85.020(3), thinks the registration fee results in an extreme economic hardship, the small business owner may request a fee reduction. The small business owner or operator must provide sufficient evidence to support a claim of an extreme hardship. Ecology may reduce the registration fee ~~((may be reduced))~~ by no more than fifty percent.

~~((8))~~ (7) Fee payments.

(a) The owner or operator of a source subject to fees in this section must pay those fees within ~~((thirty))~~ ninety days of receipt of ecology's billing statement.

(b) ~~((A late fee of sixty-eight dollars or ten percent of the fee, whichever is more, may be assessed for any fee not received within the thirty-day period.))~~ Ecology may assess a penalty equal to three times the amount of the original fee owed to sources knowingly under-reporting emissions, or failing to pay registration fees after the ninety-first day past the due date. Failure to pay all or part of a registration fee may result in an enforcement action.

(c) ~~((A source))~~ The owner or operator may request to pay an ecology fee on a payment plan. Ecology will not apply a late fee ~~((will not apply))~~ for fees paid by a payment plan ~~((as long as the following))~~ if a source meets two conditions ~~((are met))~~:

(i) The ~~((source))~~ owner or operator requests a payment plan within thirty days of the receipt of ecology's billing statement.

(ii) The ~~((source))~~ owner or operator pays the fee on time as outlined in the payment plan.

~~((9) Additional registration fee for fossil-fueled electric generating facilities.))~~ (8) Fossil-fueled electric generating facilities must pay registration fees required in this section in addition to carbon dioxide mitigation program fees required in WAC 173-455-050 if the facility is not subject to chapter 173-401 WAC.

AMENDATORY SECTION (Amending WSR 07-11-018, filed 5/3/07, effective 6/3/07)

**WAC 173-455-050 Carbon dioxide mitigation program fees.** (1) **Statutory authorization.** RCW 70.94.892 authorizes ~~((the department))~~ ecology to determine, assess, and collect fees sufficient to cover costs to review and approve or deny the carbon dioxide mitigation plan components of an order of approval for a facility. The order of approval will specify the costs necessary to monitor the source's conformance ~~((related))~~ to the carbon dioxide mitigation plan.

(2) **Fees.** The table in this subsection lists the fees for the carbon dioxide mitigation program ~~((are described in this section and listed in the table below. The fees listed)).~~ These fees are added to the fees established in WAC 173-455-120, when the carbon dioxide mitigation plan requirements are triggered.

Activity	Fee
<b>a. Application review</b>	<del>\$(65.00)</del> 95.00/hr. <sup>1</sup> not to exceed \$500.00
<b>b. Mitigation plan approval</b>	
i. Payment to third party	\$100.00 <sup>2</sup>
ii. Purchase of CO <sub>2</sub> credits	<del>\$(65.00)</del> 95.00/hr. <sup>3</sup>
iii. Direct investment	<del>\$(65.00)</del> 95.00/hr. <sup>4</sup>
<b>c. Routine compliance monitoring</b>	
i. Payment to third party	\$100.00 <sup>5</sup> annually until full amount paid
ii. Purchase of CO <sub>2</sub> credits	<del>\$(65.00)</del> 95.00/hr. <sup>6</sup>
iii. Applicant controlled project	<del>\$(65.00)</del> 95.00/hr. <sup>6</sup>

<sup>1</sup> Estimated using an EE3 per hour rate with a cap.

<sup>2</sup> Small fee primarily to check math and that the source is using an EFSEC approved qualified organization.

<sup>3</sup> Estimated EE3 per hour rate to check that the credits purchased will be verifiable and from a reputable trading or marketing organization.

<sup>4</sup> Estimated using an EE3 per hour rate.

<sup>5</sup> Same as rationale for <sup>2</sup> above.

<sup>6</sup>Verify and confirm credits with the trading or marketing organization.

(3) The department or authority may use RCW 70.94.-085 to structure a cost-reimbursement agreement with the applicant.

AMENDATORY SECTION (Amending WSR 12-24-051, filed 11/30/12, effective 12/31/12)

**WAC 173-455-100 ((Control technology fees.)) Fees related to reasonably available control technology (RACT).** (1) General. Ecology may assess and collect a fee as authorized in RCW 70.94.153 or 70.94.154 and described in subsections (2) through (5) of this section.

(2) Fee schedule for reviews authorized under RCW 70.94.153 for the replacement or substantial alteration of control technology.

(a) Notice of construction application. Review and approval of notice of construction application for replacement or substantial alteration of control technology - Ninety-five dollars per hour.

(b) RACT analysis and determination. Review and approval of a RACT analysis and determination for affected emission unit - Ninety-five dollars per hour.

(3) Fee schedule for source-specific determinations where ecology performs RACT analysis and determination (~~are performed by ecology~~).

(a) Basic RACT analysis and determination fee:

(i) Low complexity (the analysis addresses one type of emission unit) - One thousand five hundred dollars;

(ii) Moderate complexity (the analysis addresses two to five types of emissions units) - Seven thousand five hundred dollars;

(iii) High complexity (the analysis addresses more than five types of emission units) - Fifteen thousand dollars.

(b) Additional charges based on criteria pollutant emissions: In addition to those fees required under (a) of this subsection, ecology will require a fee (~~will be required~~) for a RACT analysis and determination for an emission unit or multiple emission units of uniform design that, individually or in the aggregate, emit one hundred tons per year or more of any criteria pollutant - Two thousand dollars.

(c) Additional charges based on toxic air pollutant emissions: In addition to those fees required under (a) and (b) of this subsection, ecology will require the following fees (~~will be required~~) as applicable:

(i) RACT analysis and determination for an emissions unit or multiple emissions units of uniform design that, individually or in the aggregate, emit more than two tons per year but not more than ten tons per year of any toxic air pollutant - One thousand dollars; or

(ii) RACT analysis and determination for an emissions unit or multiple emissions units of uniform design that, individually or in the aggregate, emit more than ten tons per year of any toxic air pollutant - Two thousand dollars.

~~((3))~~ (4) Fee schedule for source-specific determinations where the source performs the RACT analysis (~~is performed by the source~~) and ecology conducts review and issues a determination (~~conducted by ecology~~).

(a) Basic RACT review and determination fees:

(i) Low complexity (the analysis addresses one type of emission unit) - One thousand dollars;

(ii) Moderate complexity (the analysis addresses two to five types of emissions units) - Five thousand dollars;

(iii) High complexity (the analysis addresses more than five types of emission units) - Ten thousand dollars.

(b) Additional charges based on criteria pollutant emissions: In addition to those fees required under (a) of this subsection, ecology will require a fee (~~will be required~~) for a RACT analysis and determination for an emission unit or multiple emissions units of uniform design that, individually or in the aggregate, emit one hundred tons per year or more of any criteria pollutant - One thousand dollars.

(c) Additional charges based on toxic air pollutant emissions: In addition to those fees required under (a) and (b) of this subsection, ecology will require the following fees (~~will be required~~) as applicable:

(i) RACT analysis and determination for an emissions unit or multiple emissions units of uniform design that, individually or in the aggregate, emit more than two tons per year but not more than ten tons per year of any toxic air pollutant - Five hundred dollars; or

(ii) RACT analysis and determination for an emissions unit or multiple emissions units of uniform design that, individually or in the aggregate, emit more than ten tons per year of any toxic air pollutant - One thousand dollars.

~~((4))~~ ~~Fee schedule for reviews authorized under RCW 70.94.153 for the replacement or substantial alteration of control technology.~~

~~(a) Notice of construction application. Review and approval of notice of construction application (NOCA) for replacement or substantial alteration of control technology - Three hundred fifty dollars.~~

~~(b) RACT analysis and determination. Review and approval of a RACT analysis and determination for affected emission unit - Five hundred dollars.~~

(5) Fee schedule for categorical RACT determinations. Ecology shall assess fees for categorical RACT determinations (for categories with more than three sources) (~~shall be assessed~~) as shown below. Ecology shall base the fees described in (a) of this subsection (~~shall be based~~) on the most complex source within a category. When determining complexity level for the most complex source in the category, the emission rate or number of types of emission units that results in the highest complexity level will determine the fee for the source category. Except as provided in (b) and (d) of this subsection, ecology will determine fees for individual sources in the category (~~will be determined~~) by dividing the total source category fee by the number of sources within the category.

(a) RACT analysis and determination (RACT analysis performed by ecology with assistance from sources):

(i) Low complexity source category (average source emissions of individual criteria pollutants are all less than twenty tons per year, average source emissions of individual toxic air pollutants are all less than two tons per year, or the analysis addresses one type of emission unit) - Twenty-five thousand dollars;

(ii) Moderate complexity source category (average source emissions of one or more individual criteria pollutants are greater than twenty tons per year and less than one hundred tons per year, average source emissions of one or more individual toxic air pollutants are greater than two tons per year and less than ten tons per year, or the analysis addresses two to five types of emissions units) - Fifty thousand dollars; or

(iii) High complexity source category (average source emissions of one or more individual criteria pollutants exceed one hundred tons per year, average source emissions of one or more individual toxic air pollutants exceed ten tons per year, or the analysis addresses more than five types of emission units) - One hundred thousand dollars.

(b) If ecology is evaluating an emission unit (~~is being evaluated~~) for more than one categorical RACT determination within a five-year period, ecology will charge the owner or operator of that emission unit one fee and the fee will reflect the higher complexity categorical RACT determination.

(c) Ecology may adjust the fee to reflect workload savings from source involvement in source category RACT determination.

(d) Ecology may approve alternate methods for allocating the fee among sources within the source category.

(6) Small business fee reduction. Ecology may reduce the RACT analysis and determination fee identified in subsections (2) through (5) of this section (~~may be reduced~~) for a small business.

(a) To qualify for the small business RACT fee reduction, a business must meet the requirements of "small business" as defined in RCW (~~43.31.025~~) 19.85.020.

(b) To receive a fee reduction, the owner or operator of a small business must include information in an application demonstrating that the business meets the conditions of (a) of this subsection (~~have been met. The application must be signed~~). One of the following must sign the application:

(i) (~~By~~) An authorized corporate officer in the case of a corporation;

(ii) (~~By~~) An authorized partner in the case of a limited or general partnership; or

(iii) (~~By~~) The proprietor in the case of a sole proprietorship.

(c) Ecology may verify the application information and if the owner or operator has made false statements, deny the fee reduction request and revoke previously granted fee reductions.

(d) For small businesses determined to be eligible for a small business fee reduction under (a) of this subsection, ecology shall reduce the RACT analysis and determination fee (~~shall be reduced~~) to the greater of:

(i) Fifty percent of the RACT analysis and determination fee; or

(ii) Two hundred fifty dollars.

(e) If due to special economic circumstances, the fee reduction determined under (d) of this subsection imposes an extreme hardship on a small business, the small business may request an extreme hardship fee reduction. The owner or operator must provide sufficient evidence to support a claim of an extreme hardship. The factors which ecology may con-

sider in determining whether an owner or operator has special economic circumstances and in setting the extreme hardship fee include:

(i) Annual sales;

(ii) Labor force size;

(iii) Market conditions which affect the owner's or operator's ability to pass the cost of the RACT analysis and determination fees through to customers; and

(iv) Average annual profits.

In no case will ecology reduce a RACT analysis and determination fee (~~be reduced~~) to an amount below one hundred dollars.

(7) Fee reductions for pollution prevention initiatives. Ecology may reduce RACT analysis and determination fees for an individual source if that source is using approved pollution prevention measures.

(8) Fee payments. A source shall pay fees specified in subsection (4)(a) of this section (~~shall be paid at the time~~) when the source submits a notice of construction application (~~s is submitted to the department~~) to ecology. Sources shall pay other fees specified in subsections (2) through (7) of this section (~~shall be paid~~) no later than thirty days after receipt of an ecology billing statement. For fees specified in subsection (5) of this section, ecology will mail a billing statement for one-half of the payment from each source (~~will be mailed~~) when the source category rule-making effort is commenced as noted by publication of the CR-101 form in the *Washington State Register*. Ecology will mail a billing statement for the second half of the payment (~~will be mailed~~) when the proposed rule is published in the *Washington State Register*. (~~No~~) Ecology will not issue an order of approval or other action approving or identifying a source to be at RACT (~~will be issued by the department~~) until the source has paid all fees (~~have been paid by the source~~). A source shall make all fees collected under this regulation (~~shall be made~~) payable to the Washington department of ecology.

(9) Dedicated account. Ecology shall deposit all control technology fees (~~collected by the department~~) it collects from air operating permit program sources (~~shall be deposited~~) in the air operating permit account created under RCW 70.94.015. Ecology shall deposit all control technology fees collected (~~by the department~~) from (~~nonpermit~~) nonair chapter 173-401 WAC program sources (~~shall be deposited~~) in the air pollution control account.

(10) Tracking revenues, time, and expenditures. Ecology shall track revenues on a source-specific basis. For purposes of source-specific determinations under subsections (2) through (4) of this section, ecology shall track time and expenditures on the basis of source complexity categories. For purposes of categorical determinations under subsection (5) of this section, ecology shall track time and expenditures on a source-category basis.

(11) Periodic review. Ecology shall review and, as appropriate, update this section at least once every two years.



AMENDATORY SECTION (Amending WSR 07-11-018, filed 5/3/07, effective 6/3/07)

**WAC 173-455-130 Air pollution standards variance fee.** The department shall charge a fee of ~~((sixty-five)) ninety-five~~ dollars per hour to process a variance request in accordance with WAC 173-400-180.

**WSR 18-13-110  
PROPOSED RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**  
[Filed June 20, 2018, 8:35 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-03-129 on January 19, 2018.

Title of Rule and Other Identifying Information: WAC 220-354-290 Grays Harbor salmon fall fishery.

Hearing Location(s): On August 1, 2018, at 10:00 a.m. to 12:00 p.m., at the Region 6 Fish and Wildlife Office, Conference Room, 48 Devonshire Road, Montesano, WA 98563.

Date of Intended Adoption: August 2, 2018.

Submit Written Comments to: Scott Bird, Washington Department of Fish and Wildlife (WDFW), Rules Coordinator, P.O. Box 43200, Olympia, WA 98504-3200, email Rules.Coordinator@dfw.wa.gov, fax 360-902-2155, by August 1, 2018.

Assistance for Persons with Disabilities: Contact Delores Noyes, phone 360-902-2349, TTY 360-902-2207, email Dolores.Noyes@dfw.wa.gov, by August 1, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules incorporate the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council for taking harvestable numbers of salmon during the commercial salmon fisheries in Grays Harbor, while protecting species of fish listed as endangered.

Reasons Supporting Proposal: This rule will protect salmon species while also supporting commercial salmon fishing in Grays Harbor.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.045, and 77.12.047.

Statute Being Implemented: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.045, and 77.12.047.

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

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting: Kim Figlar-Barnes, 48 Devonshire Road, Montesano, WA 98563, 360-249-4628; Implementation: Kirt Hughes, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2705; and Enforcement: Chief Steve Bear, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2373.

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

A cost-benefit analysis is not required under RCW 34.05.328. These rule proposals do not affect hydraulics.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule changes will not affect the number of salmon available to harvest for licensed commercial fisheries in Grays Harbor. Therefore, the proposed rule changes are not expected to cause loss of sales or revenue.

A copy of the detailed cost calculations may be obtained by contacting Kim Figlar-Barnes, 48 Devonshire Road, Montesano, WA 98563, phone 360-249-4628, fax 360-249-1229, email Kim.Figlar-Barnes@dfw.wa.gov.

June 20, 2018  
Scott Bird  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-11-052, filed 5/10/18, effective 6/10/18)

**WAC 220-354-290 Grays Harbor salmon fall fishery.** From August 16 through December 31 of each year, it is unlawful to fish for salmon in Grays Harbor for commercial purposes or to possess salmon taken from those waters for commercial purposes, except that:

**Fishing periods:**

(1) Gillnet gear may be used to fish for Chinook, coho, and chum salmon, and shad as provided in this section and in the times and area identified in the chart below.

Time:	Areas:
<del>((12:01 p.m. through 7:00 p.m.))</del>	<del>Area 2A and Area 2D</del>
<del>October 24;</del>	
7:00 a.m. through 7:00 p.m.	
October 25;	
<del>6:00 a.m. through 6:00 p.m.</del>	
<del>October 30;</del>	
6:00 a.m. through 6:00 p.m.	
October 31;	
<del>7:00 a.m. through 7:00 p.m.</del>	
<del>November 6;</del>	
7:00 a.m. through 7:00 p.m.	
November 7;	
<del>7:00 a.m. through 7:00 p.m.</del>	
<del>November 8;</del>	
AND	
7:00 a.m. through 7:00 p.m.	
November 9;	
6:00 a.m. through 6:00 p.m.	Area 2C
October 23;	
<del>6:00 a.m. through 6:00 p.m.</del>	
<del>November 2;</del>	
7:00 a.m. through 7:00 p.m.	
November 6;	
AND	

## Time:

7:00 a.m. through 7:00 p.m.  
November 7:))

7:00 a.m. through 7:00 p.m.  
October 22:

12:00 p.m. through 11:59 p.m.  
October 30:

7:00 a.m. through 7:00 p.m.  
October 31:

7:00 a.m. through 7:00 p.m.  
November 12:

AND

7:00 a.m. through 7:00 p.m.  
November 13:

12:01 a.m. through 12:00 p.m. Area 2C  
October 21:

12:00 p.m. through 11:59 p.m.  
October 24:

AND

12:00 p.m. through 11:59 p.m.  
October 31.

**Gear:**

## (2) Gear restrictions:

(a) It is permissible to have on board a commercial vessel more than one net, provided that the length of any one net does not exceed one thousand five hundred feet in length. Nets not specifically authorized for use in this fishery may be aboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope that is 3/8 (0.375) inches in diameter or greater.

(b) Areas 2A and 2D from October 1 through November 30: Gillnet gear only.

(i) It is unlawful to use set net gear.

(ii) It is unlawful to utilize any object, except the vessel deploying the gear, to impede a gillnet or its attached line or float from drifting.

(iii) Mesh size must not exceed six and one-half inch maximum. (~~Nets may be no more than fifty-five meshes deep:))~~

(iv) It is unlawful to use a gillnet to fish for salmon if the lead line weighs more than two pounds per fathom of net as measured on the cork line. The lead line must not rest on the bottom in such a manner as to prevent the net from drifting. It is permissible to have a gillnet with a lead line weighing more than two pounds per fathom aboard a vessel when the vessel is fishing in or transiting through Grays Harbor.

(c) Area 2C from October 1 through November 30: Gillnet gear only.

(i) It is unlawful to use set net gear.

(ii) It is unlawful to utilize any object, except the vessel deploying the gear, to impede a gillnet or its attached line or float from drifting.

(iii) Mesh size must not exceed nine inches.

## Areas:

Area 2A and Area 2D

Area 2C

(iv) It is unlawful to use a gillnet to fish for salmon if the lead line weighs more than two pounds per fathom of net as measured on the cork line. The lead line must not rest on the bottom in such a manner as to prevent the net from drifting. It is permissible to have a gillnet with a lead line weighing more than two pounds per fathom aboard a vessel when the vessel is fishing in or transiting through Grays Harbor.

**Other:**

## (3) Recovery boxes and soak times:

(a) Each boat must have two operable recovery boxes or one box with two chambers on board when fishing Areas 2A, 2C, and 2D.

(i) Each box and chamber must be operating during any time the net is being retrieved or picked and any time a fish is being held in accordance with (b) and (c) of this subsection. The flow in the recovery box must be a minimum of 16 gallons per minute in each chamber of the box, not to exceed 20 gallons per minute.

(ii) Each chamber of the recovery box must meet the following dimensions as measured from within the box:

(A) The inside length measurement must be at or within 39-1/2 inches to 48 inches;

(B) The inside width measurements must be at or within 8 to 10 inches; and

(C) The inside height measurement must be at or within 14 to 16 inches.

(iii) Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of the chamber and 1-3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole opposite the inflow that is at least 1-1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber. The fisher must demonstrate to department employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river or fresh bay water into each chamber.

(b) When fishing in Grays Harbor Areas 2A and 2D, all steelhead and wild (unmarked) Chinook must be placed in an operating recovery box which meets the requirements in (a) of this subsection prior to being released to the river/bay as set forth in (d) of this subsection.

(c) When fishing in Grays Harbor Area 2C, all steelhead must be placed in an operating recovery box which meets the requirements in (a) of this subsection prior to being released to the river/bay as set forth in (d) of this subsection.

(d) All fish placed in recovery boxes must remain until they are not lethargic and not bleeding and must be released to the river or bay prior to landing or docking.

(e) For Areas 2A and 2D, soak time must not exceed 45 minutes. Soak time is defined as the time elapsed from when the first of the gillnet web is deployed into the water until the gillnet web is fully retrieved from the water.

(4) Retention of any species other than coho, chum, hatchery Chinook marked by a healed scar at the site of the adipose fin, or shad is prohibited in Areas 2A and 2D from October 1 through November 30.

(5) Retention of any species other than Chinook, chum, coho or shad, is prohibited in Area 2C from October 1 through November 30.

(6) Quick reporting is required for original receivers. According to WAC 220-352-320, reports must be made by 10:00 a.m. the day following landing, unless otherwise specified in an electronic fish receiving ticket reporting agreement (see WAC 220-352-035(3)).

(7) Report all encounters of green sturgeon to the quick reporting office via phone at 866-791-1280, fax at 360-249-1229, or email at harborfishtickets@dfw.wa.gov. Fishers may have wholesale fish buyers use the "buyer only" portion of the fish ticket and include encounters with each day's quick reporting.

(8) Do NOT remove tags from white or green sturgeon. Please obtain available information from tags without removing tags. Submit tag information to:

Washington Department of Fish and Wildlife  
48 Devonshire Rd.  
Montesano, WA 98563.

(9)(a) Fishers must take department observers, if requested, by department staff when participating in these openings.

(b) Fishers also must provide notice of intent to participate by contacting Quick Reporting by phone, fax or email. Notice of intent must be given prior to 12:00 p.m. on October ((+)) 12, for openings in Areas 2A, 2C, or 2D.

(10) It is unlawful to fish for salmon with tangle net or gillnet gear in Areas 2A and 2D unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and has in his or her possession a department-issued certification card.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, TTY 800-848-5429 or 711, email amber.lougheed@hca.wa.gov, by July 20, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending WAC 182-550-7500 to comply with ESSB 6032, Section 213 (1)(fff) that provides funding for a fifty percent rate increase of outpatient services for sole community hospitals for state fiscal year 2019. The operating budget becomes effective on July 1, 2018.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, ESSB 6032, Section 213 (1)(fff).

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Vance Taylor, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1344; Implementation and Enforcement: Grant Stromsdorfer, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1678.

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

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

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

Is exempt under RCW 19.85.025(3) as the rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

June 20, 2018

Wendy Barcus

Rules Coordinator

## WSR 18-13-114

### PROPOSED RULES

#### HEALTH CARE AUTHORITY

[Filed June 20, 2018, 9:24 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-09-109.

Title of Rule and Other Identifying Information: WAC 182-550-7500 Outpatient prospective payment system (OPPS) rate.

Hearing Location(s): On July 25, 2018, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, Pear 107, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at <https://www.hca.wa.gov/assets/program/Driving-parking-checkin-instructions.pdf> or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than July 26, 2018.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by July 25, 2018.

AMENDATORY SECTION (Amending WSR 14-22-003, filed 10/22/14, effective 11/22/14)

**WAC 182-550-7500 OPPS rate.** (1) The medicaid agency calculates hospital-specific outpatient prospective payment system (OPPS) rates using all of the following:

(a) A base conversion factor established by the agency;

(b) An adjustment for direct graduate medical education (DGME); and

(c) The latest wage index information established and published by the centers for medicare and medicaid services (CMS) when the OPPS rates are set for the upcoming year. Wage index information reflects labor costs in the cost-based statistical area (CBSA) where a hospital is located.

(2) Base conversion factors. The agency calculates the base enhanced ambulatory patient group (EAPG) conversion factor during a hospital payment system rebasing. The base is calculated as the maximum amount that can be used, along with all other payment factors and adjustments described in

this chapter, to maintain aggregate payments across the system. The agency will publish base conversion factors on its web site.

(3) Wage index adjustments reflect labor costs in the CBSA where a hospital is located.

(a) The agency determines the labor portion of the base rate by multiplying the base rate by the labor factor established by medicare; then

(b) Multiplying the amount in (a) of this subsection is multiplied by the most recent wage index information published by CMS when the rates are set; then

(c) The agency adds the nonlabor portion of the base rate to the amount in (b) of this subsection to produce a hospital-specific wage adjusted factor.

(4) DGME. The agency obtains the DGME information from the hospital's most recently filed medicare cost report as available in the CMS health care cost report information system (HCRIS) dataset.

(a) The hospital's medicare cost report must cover a period of twelve consecutive months in its medicare cost report year.

(b) If a hospital's medicare cost report is not available on HCRIS, the agency may use the CMS Form 2552-10 to calculate DGME.

(c) In the case where a hospital has not submitted a CMS medicare cost report in more than eighteen months from the end of the hospital's cost reporting period, the agency may remove the hospital's DGME adjustment.

(d) The agency calculates the hospital-specific DGME by dividing the DGME cost reported on worksheet B, part 1 of the CMS cost report by the adjusted total costs from the CMS cost report.

(5) The formula for calculating the hospital's final specific conversion factor is:

$$\text{EAPG base rate} \times (.6(\text{wage index}) + .4)/(1-\text{DGME})$$

~~(6) ((Effective January 1, 2015, the agency multiplies the hospital's specific conversion factor by 1.25 if the hospital meets the agency's sole community hospital criteria listed in (a) of this subsection.~~

~~(a))~~ The agency considers an in-state hospital a sole community hospital if all the following conditions apply. The hospital must:

~~((i))~~ (a) Be certified by CMS as a sole community hospital as of January 1, 2013.

~~((ii))~~ (b) Have a level III adult trauma service designation from the department of health as of January 1, 2014.

~~((iii))~~ (c) Have less than one hundred fifty acute care licensed beds in fiscal year 2011.

~~((iv))~~ (d) Be owned and operated by the state or a political subdivision.

~~((b))~~ (7) If the hospital meets the agency's sole community hospital (SCH) criteria listed in subsection (6) of this section, effective:

(a) January 1, 2015, through June 30, 2018, the agency multiplies the hospital's specific conversion factor by 1.25;

(b) July 1, 2018, through June 30, 2019, the agency multiplies an in-state hospital's specific EAPG conversion factor by 1.50;

(c) July 1, 2019, the agency multiplies an in-state hospital's specific EAPG conversion factor by 1.25.

~~(8)~~ The formula for calculating a sole community hospital's final conversion factor is:

$$[\text{EAPG base rate} \times (.6(\text{wage index}) + .4)/(1-\text{DGME})] \times$$

$$((\del{1.25})) \text{ SCH Factor}$$

**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.