

WSR 22-01-017
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed December 2, 2021, 4:00 p.m., effective January 2, 2022]

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

Purpose: This rule clarifies language and adds a program review model for the professional educator standards board (PESB) program standards applicable to school counselor and school psychologist preparation programs. The review model reflects focus group recommendations and ensures that school counselor and school psychologist programs demonstrate the applicable PESB program standards.

Citation of Rules Affected by this Order: Amending WAC 181-78A-100.

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

Adopted under notice filed as WSR 21-19-135 on November 18 [September 21], 2021.

Changes Other than Editing from Proposed to Adopted Version: Amendments were made clarifying existing policy on self study timelines for superintendent, career and technical education (CTE) administrator, and CTE business and industry route programs.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 18, 2021.

Sophia Keskey
Rules Coordinator

OTS-3299.2

AMENDATORY SECTION (Amending WSR 21-15-103, filed 7/20/21, effective 8/20/21)

WAC 181-78A-100 Existing approved programs. Providers of programs approved by the board shall comply with the review process established in this chapter and published by the board.

(1) **Teacher and principal preparation programs:** The board will annually review performance data of all educator preparation programs based on components and indicators established in this chapter and published by the board. The professional educator standards board will provide annual updated written guidance to providers regarding the submission of annual program data.

(a) **Notification:** If annual preparation program data analysis indicates that program performance falls below thresholds during any given review period, the board staff will provide written notification to the educator preparation program provider. The educator preparation program provider may choose to submit a response to the board staff. The response must be received by board staff within four weeks following receipt of the notification by the provider. The response should offer evidence of factors and circumstances that explain why program performance is below board approved thresholds on the indicators identified in the notice. The board staff will offer providers guidance on content and timelines for submission of this optional response. The board will review responses concurrently with annual data analysis reports.

(b) **Interventions:** Providers with program performance below indicator thresholds are subject to graduated levels of intervention as follows:

(i) **Intervention 1 - Required self-study report:** If a provider that received written notification of performance below threshold on one or more indicators during the previous review period has performance below thresholds on the same indicator(s) during the subsequent review period, the board will send the provider a second notification. The provider must complete a self-study report related to the components and domain(s) identified in both notifications and submit it to the board. The board will give providers written timelines and guidance for the submission of these materials. In the self-study report, the provider may also submit evidence and a description of the provider's performance related to the indicator(s), components, and domains identified in the notifications. If the board is satisfied with the self-study report, the board will approve it at a board meeting. If the board is not satisfied with the self-study report, staff will give providers additional written timelines and guidance to address the board's concerns.

(ii) **Intervention 2 - Formal review:** If a provider demonstrates performance below thresholds for a third successive review period or more, the professional educator standards board will provide a third notification. Based on its discretion and authorized by a vote, the board also may require a formal review related to the provider's performance in the domains of practice identified in the notifications. Prior to commencing a formal review, the board will consider the notifications, responses, and self-study report to determine whether to proceed with or postpone a formal review.

(A) The formal review will incorporate the following elements:

(I) The board shall determine the schedule, format, and which forms of validation shall be used to evaluate programs.

(II) The provider will submit requested evidence to the board staff.

(III) A review team will review the evidence and request additional information including information provided through interviews with provider staff or affiliates as needed.

~~(The review team may request additional information including information provided through interviews with provider staff or affiliates as needed.)~~

(IV) The review team will provide a report to the board identifying areas of practice associated with the previous notifications where the provider is out of compliance with educator preparation program requirements, expectations, and outcomes established in chapter 181-78A WAC. The review team may also identify areas of practice where

the provider is out of compliance with educator preparation program requirements that were not associated with previous notifications but were noticed by the review team during the process of review. The report may also identify whether the approved indicators or thresholds are functioning as intended.

(V) Board staff serving on the review team will provide assistance to the review team during the review process but will not serve in an evaluative role.

(VI) The review team will submit its report and other appropriate documentation to the provider and the board within one year of the board designating the program for formal review.

(VII) The board may extend the length of the one-year period for submission of the review team's report up to two years at its discretion.

(B) Providers may submit a reply to the review team report within two weeks following receipt of the report. The reply is to focus on the evidence, conclusions, and recommendations in the report but also may include additional evidence of factors and circumstances that explain why program performance is persistently below board approved thresholds on the indicators identified in the notice and self-study report. The board shall publish the process for submitting and reviewing the reply.

(C) In considering the review team's report, the board may request additional information or review, or take action to extend, or change the program's approval status (~~(per the provisions of)~~) under WAC 181-78A-110.

(c) A provider may request a hearing in instances where it disagrees with the board's decision to extend or change the program's approval status. The hearing will be conducted through the office of administrative hearings by an administrative law judge (~~(per)~~) under chapter 34.05 RCW and will adhere to the process of brief adjudicated hearings. The provider seeking a hearing will provide a written request to the professional educator standards board (~~(in accordance with)~~) under WAC 10-08-035 no more than (~~(thirty)~~) 30 calendar days from the decision date.

(d) **Curriculum and instruction review:** In addition to annual indicator reviews, the board will publish a schedule for focused curriculum and instruction review for fully approved teacher and principal preparation programs.

(e) The professional educator standards board shall conduct formal reviews to evaluate curriculum and instruction, with particular focus on the cultural competency, diversity, equity, and inclusion standards; the social and emotional learning standards and benchmarks; and the approved preservice educator role standards. The board shall determine the schedule, format, and which forms of documentation and validation shall be used to evaluate programs. The result of the review will be a report. Based on the findings of the report, the board will decide to either renew full approval status or designate the program on limited approval under WAC 181-78A-110 pending action on the findings of the review report.

(i) Curriculum and instruction reviews will be conducted at least every five years and not more frequently than every three years.

(ii) Program providers will submit requested evidence to the staff of the board.

(iii) A review team will review the evidence and request additional information including information provided through interviews with provider staff or affiliates as needed. One board staff member

will serve on the review team to provide assistance to the review team during the review process but will not serve in an evaluative role. Members of the review team shall include two preparation program providers at peer programs, at least one P-12 practitioner and one PEAB member with expertise related to the program scheduled for review, and two individuals with expertise related to culturally responsive practice and social and emotional learning.

(iv) Following the review, the review team will provide a report identifying any areas where the program is out of compliance with requirements established under this chapter and the program expectations and outcomes established in WAC 181-78A-220.

(2) **Superintendent programs:** The board will annually review data related to the performance of all superintendent programs according to data reporting guidance published by the board.

(a) **Annual data analysis:** After each annual review period, the board will give superintendent program providers written analysis of the program's annual data submission.

(b) **Superintendent program review:** The professional educator standards board shall determine the schedule for formal reviews.

The board will determine whether a formal review will take place and what forms of documentation and validation shall be used for evaluation.

(i) Superintendent program reviews will be conducted at least every five years and not more frequently than every three years.

(ii) Superintendent program providers will submit requested evidence to the staff of the professional educator standards board.

(iii) A review team will review the evidence and request additional information including information provided through interviews with provider staff or affiliates as needed. One board staff member will serve on the review team to provide assistance to the review team during the review process but will not serve in an evaluative role. Additional members of the review team shall include ((at least)) one member of the program's professional educator advisory board, one P-12 practitioner with expertise related to the program scheduled for review, and two representatives of peer programs. Any two of these review team members, or two additional members, must be identified individuals with expertise related to the domains of practice and standard components identified in annual ((written)) data analyses or in the program's self-study report.

(iv) One of the two providers with peer representatives on the review team will be scheduled for annual review during the subsequent review period.

(v) ((At least three months in advance of)) Prior to the scheduled review, superintendent program providers must complete a self-study report related to the components and domain(s) identified in the written analyses of annual data submissions. The board will give providers written timelines and guidance for the submission of these materials. In the self-study report, the provider may also provide evidence and a description of the provider's performance related to the indicator(s), components, and domains identified in the notifications. Evidence shall include such data and information from the annual data submissions required ((per WAC 181-78A-255(2))) under WAC 181-78A-235 as have been designated by the board as evidence pertinent to the program approval process.

(c) Following the review, the review team will provide a report identifying any areas where the program is out of compliance with re-

quirements, expectations, and outcomes established in chapter 181-78A WAC.

(i) The report may also verify or contradict that the approved indicators or thresholds are functioning as intended.

(ii) The board may extend the length of the one-year report period up to two years at its discretion. The review team's report and other appropriate documentation will be submitted to the provider and the board within one year of the board designating the program for formal review.

(iii) Providers may submit a reply to the review team report within two weeks following receipt of the report. The reply is limited to evidence that the review disregarded state standards, failed to follow state procedures for review, or failed to consider evidence that was available at the time of the review. The board shall publish the process for submitting and reviewing the reply.

(iv) In considering the review team's report, the board may request additional information or review, or take action to extend or change the educator preparation program's approval status (~~per the provisions of~~) under WAC 181-78A-110.

(d) A provider may request a hearing in instances where it disagrees with the professional educator standards board's decision to extend or change the program's approval status. The hearing will be conducted through the office of administrative hearings by an administrative law judge (~~per~~) under chapter 34.05 RCW and will adhere to the process of brief, adjudicated hearings. The provider seeking a hearing will provide a written request to the board in accordance with WAC 10-08-035 no more than (~~thirty~~) 30 calendar days from the decision date.

(3) **Program administrator programs:** The board will annually review data related to the performance of all program administrator programs according to data and reporting guidelines published by the board.

(a) Program administrator programs implemented in conjunction with principal preparation programs will be reviewed concurrently with that provider's principal preparation program.

(b) Program administrator programs implemented in conjunction with superintendent preparation programs will be reviewed concurrently with that provider's superintendent preparation program.

(c) Program administrator programs not implemented in conjunction with a principal or superintendent program will be reviewed on a schedule published by the board.

(4) **School (~~counseling~~) counselor programs (~~-~~):** School (~~counseling~~) counselor program providers shall comply with accrediting procedures for council for the accreditation for counseling and related education programs, unless the program has been specifically approved to operate under alternative national standards (~~per~~) under WAC 181-78A-225. The professional educator standards board will review preparation programs' alignment with any additions to the national standards deemed necessary by the professional educator standards board.

(a) A provider of residency school (~~counseling~~) counselor programs without approval from council for the accreditation for counseling and related education programs shall provide proof to the professional educator standards board that it will seek such accreditation, unless the program has been specifically approved to operate under alternative national standards (~~per~~) under WAC 181-78A-225.

(b) The board will place any existing approved residency school (~~(counseling)~~) counselor program not accredited from the council for the accreditation for counseling and related education programs into disapproval status on November 1, 2022, unless the program provider produces evidence of seeking such accreditation, or unless that program has been specifically approved to operate under alternative national standards (~~(per)~~) under WAC 181-78A-225.

(c) Annual data analysis: After each annual data submission, the board will give school counselor preparation program providers written analysis of the program's annual data submission.

(d) School counselor preparation program review: The board shall determine the schedule, format, and which forms of validation shall be used to evaluate programs under applicable program approval standards listed in WAC 181-78A-225.

(i) School counselor preparation program reviews will be conducted during the same period of time as their council for the accreditation for counseling and related education programs' review. If the program has been specifically approved to operate under alternative national standards under WAC 181-78A-225, the review will take place as scheduled by the board.

(ii) School counselor preparation program providers will submit requested evidence to the staff of the professional educator standards board. Evidence shall include such data and information from the annual data submissions required under WAC 181-78A-235(3) as have been designated by the board as evidence pertinent to the program approval and review processes.

(iii) A review team will review the evidence and request additional information including information provided through documents and interviews with program provider staff or affiliates as needed. One board staff member will serve as chair on the review team during the review process but will not serve in an evaluative role. Additional members of the review team shall include one member of the program's professional educator advisory board, one P-12 practitioner with expertise related to the program scheduled for review, and two representatives of peer programs. Any two of these review team members, or two additional members must be identified individuals with expertise related to the domains of practice and standard components identified in annual data analyses.

(iv) The review team will use multiple data sources to address the specific goals listed in this section.

(A) The review team and the preparation program provider will use preparation program data available at the time of review.

(B) The review team and the preparation program provider will use evidence compiled by the provider that demonstrates performance aligned with all program standards and requirements. Programs' demonstration of upholding board-approved standards and requirements will be used by the review team to write the review report and will be used by the board in consideration of continued approval status. Staff of the board will offer program providers guidance regarding the evidence required, how it may be gathered and used, and how it must be submitted.

(v) The review team will use available evidence to write the review report that will be used by the board in consideration of continued approval status.

(e) Following the review, the review team will provide a report identifying any areas of practice in which program performance is out

of alignment with standards and requirements as listed in WAC 181-78A-225.

(i) The review team's report and other appropriate documentation will be submitted to the provider and the board within six months of the formal review.

(ii) Providers may submit a reply to the review team report within three weeks following receipt of the report. The board shall publish the process for submitting and reviewing the reply.

(iii) In considering the review team's report, the board may request additional information for review, or take action to extend or change the educator preparation program's approval status.

(iv) Based upon the review team's report, the program provider's response, and any subsequent requests for information, as applicable, the board shall take one of the following actions:

(A) The board shall give full approval as described in WAC 181-78A-110 (1) (a).

(B) Limited approval as described in WAC 181-78A-110 (1) (b).

(C) Disapproval as described in WAC 181-78A-110 (1) (c).

(v) A provider may request a hearing in instances where it disagrees with the board's decision to extend or change the program's approval status. The hearing will be conducted through the office of administrative hearings by an administrative law judge under chapter 34.05 RCW and will adhere to the process of brief adjudicated hearings. The provider seeking a hearing will provide a written request to the professional educator standards board in accordance with WAC 10-08-035 no more than 30 calendar days from the decision date.

(5) School ((~~psychology~~)) psychologist programs ((~~-~~)): Providers of school ((~~psychology~~)) psychologist programs shall comply with accrediting procedures for the National Association for School ((~~Psychology~~)) Psychologists. School ((~~psychology~~)) psychologist program providers shall comply with accrediting procedures for the National Association for School ((~~Psychology~~)) Psychologists, unless the program has been specifically approved to operate under alternative national standards ((~~per~~)) under WAC 181-78A-225. The professional educator standards board will review preparation programs' alignment with any additions to the national standards deemed necessary by the professional educator standards board.

(a) A provider of school ((~~psychology~~)) psychologist programs without approval from the National Association for School ((~~Psychology~~)) Psychologists shall provide proof to the professional educator standards board that it will seek such accreditation, unless the program has been specifically approved to operate under alternative national standards ((~~per~~)) under WAC 181-78A-225.

(b) The board will place any existing approved school psychology program not accredited from the National Association of School ((~~Psychology~~)) Psychologists into disapproval status on November 1, 2022, unless the program provider produces evidence of seeking such accreditation, or unless that program has been specifically approved to operate under alternative national standards ((~~per~~)) under WAC 181-78A-225.

(c) Annual data analysis: After each annual data submission, the board will give school psychologist preparation program providers written analysis of the program's annual data submission.

(d) School psychologist preparation program review: The board shall determine the schedule, format, and which forms of validation shall be used to evaluate programs under applicable program approval standards listed in WAC 181-78A-225.

(i) School psychologist preparation program reviews will be conducted during the same period of time as their National Association for School Psychologist's review. If the program has been specifically approved to operate under alternative national standards under WAC 181-78A-225, the review will take place as scheduled by the board.

(ii) School psychologist preparation program providers will submit requested evidence to the staff of the professional educator standards board. Evidence shall include such data and information from the annual data submissions required under WAC 181-78A-235(3) as have been designated by the board as evidence pertinent to the program approval and review processes.

(iii) A review team will review the evidence and request additional information including information provided through documents and interviews with program provider staff or affiliates as needed. One board staff member will serve as chair on the review team during the review process but will not serve in an evaluative role. Additional members of the review team shall include one member of the program's professional educator advisory board, one P-12 practitioner with expertise related to the program scheduled for review, and two representatives of peer programs. Any two of these review team members, or two additional members must be identified individuals with expertise related to the domains of practice and standard components identified in annual data analyses.

(iv) The review team will use multiple data sources to address the specific goals listed in this section.

(A) The review team and the preparation program provider will use preparation program data available at the time of review.

(B) The review team and the preparation program provider will use evidence compiled by the provider that demonstrates performance aligned with all program standards and requirements. Programs' demonstration of upholding board-approved standards and requirements will be used by the review team to write the review report and will be used by the board in consideration of continued approval status. Staff of the board will offer program providers guidance regarding the evidence required, how it may be gathered and used, and how it must be submitted.

(v) The review team will use available evidence to write the review report that will be used by the board in consideration of continued approval status.

(e) Following the review, the review team will provide a report identifying any areas of practice in which program performance is out of alignment with standards and requirements as listed in WAC 181-78A-225.

(i) The review team's report and other appropriate documentation will be submitted to the provider and the board within six months of the formal review.

(ii) Providers may submit a reply to the review team report within three weeks following receipt of the report. The board shall publish the process for submitting and reviewing the reply.

(iii) In considering the review team's report, the board may request additional information for review, or take action to extend or change the educator preparation program's approval status.

(iv) Based upon the review team's report, the program provider's response, and any subsequent requests for information, as applicable, the board shall take one of the following actions:

(A) The board shall give full approval as described in WAC 181-78A-110 (1) (a).

(B) Limited approval as described in WAC 181-78A-110 (1)(b).

(C) Disapproval as described in WAC 181-78A-110 (1)(c).

(v) A provider may request a hearing in instances where it disagrees with the board's decision to extend or change the program's approval status. The hearing will be conducted through the office of administrative hearings by an administrative law judge under chapter 34.05 RCW and will adhere to the process of brief adjudicated hearings. The provider seeking a hearing will provide a written request to the professional educator standards board in accordance with WAC 10-08-035 no more than 30 calendar days from the decision date.

(6) Career and technical education administrator and business and industry route educator preparation programs: The board will annually review data related to the performance of all such programs according to data reporting guidance published by the board.

(a) **Annual data analysis:** After each annual review period, the board will give career and technical education administrator and business and industry route educator preparation program providers written analysis of the program's annual data submission.

(b) **Career and technical education administrator and business and industry route educator preparation program review:** The board shall determine the schedule, format, and which forms of documentation and validation shall be used to evaluate programs.

(i) Career and technical education administrator and business and industry route educator preparation program reviews will be conducted at least every five years and not more frequently than every three years.

(ii) (~~At least three months in advance of~~) Prior to their scheduled review, career and technical education administrator and business and industry route educator preparation program providers must complete a self-study report related to the components and domain(s) identified in the written analyses of annual data submissions. The board will give providers written timelines and guidance for the submission of these materials.

(iii) Career and technical education administrator and business and industry route educator preparation program providers will submit requested evidence to the staff of the professional educator standards board. Evidence shall include such data and information from the annual data submissions required (~~per~~) under WAC 181-78A-235(3) as have been designated by the board as evidence pertinent to the program approval and review processes.

(iv) A review team will review the evidence and request additional information including information provided through documents and interviews with program provider staff or affiliates as needed. One board staff member will serve as chair on the review team during the review process but will not serve in an evaluative role. Additional members of the review team shall include one member of the program's professional educator advisory board, one P-12 practitioner with expertise in career and technical education related to the program scheduled for review, and two representatives of peer programs. Any two of these review team members, or two additional members, must be identified individuals with expertise related to the domains of practice and standard components identified in annual (~~written program feedback~~) data analyses or in the program's self-study report. One of the two providers with peer representatives on the review team will be scheduled for the subsequent program review.

(v) The review team will use multiple data sources to address the specific goals listed in this section.

(A) The review team and the preparation program provider will use the self-study report to identify program provider's goals and strategies for improvement.

(B) The review team and the preparation program provider will use preparation program data available at the time of review.

(C) The review team and the preparation program provider will use evidence compiled by the provider that demonstrates performance aligned with all program standards and requirements. Staff of the board will offer program providers guidance regarding the evidence required, how it may be gathered and used, and how it must be submitted.

(vi) The review team will use available evidence to write the review report that will be used by the board in consideration of continued approval status.

(c) Following the review, the review team will provide a report identifying any areas of practice in which program performance is out of alignment with standards and requirements.

(i) The review team's report and other appropriate documentation will be submitted to the provider and the board within six months of the formal review.

(ii) Providers may submit a reply to the review team report within three weeks following receipt of the report. The board shall publish the process for submitting and reviewing the reply.

(iii) In considering the review team's report, the board may request additional information for review, or take action to extend or change the educator preparation program's approval status.

(iv) Based upon the review team's report, the program provider's response, and any subsequent requests for information, as applicable, the board shall take one of the following actions:

(A) The board shall give full approval as described in WAC 181-78A-110 (1)(a).

(B) Limited approval as described in WAC 181-78A-110 (1)(b).

(C) Disapproval as described in WAC 181-78A-110 (1)(c).

(v) A provider may request a hearing in instances where it disagrees with the board's decision to extend or change the program's approval status. The hearing will be conducted through the office of administrative hearings by an administrative law judge (~~per~~) under chapter 34.05 RCW and will adhere to the process of brief adjudicated hearings. The provider seeking a hearing will provide a written request to the professional educator standards board in accordance with WAC 10-08-035 no more than (~~thirty~~) 30 calendar days from the decision date.

[Statutory Authority: Chapter 28A.410 RCW. WSR 21-15-103, § 181-78A-100, filed 7/20/21, effective 8/20/21; WSR 21-08-023, § 181-78A-100, filed 3/29/21, effective 4/29/21; WSR 20-16-027, § 181-78A-100, filed 7/24/20, effective 8/24/20; WSR 18-17-089, § 181-78A-100, filed 8/14/18, effective 9/14/18. Statutory Authority: RCW 28A.410.210. WSR 15-12-123, § 181-78A-100, filed 6/3/15, effective 7/4/15; WSR 14-24-004, § 181-78A-100, filed 11/19/14, effective 12/20/14; WSR 14-12-018, § 181-78A-100, filed 5/23/14, effective 6/23/14; WSR 13-20-028, § 181-78A-100, filed 9/23/13, effective 10/24/13; WSR 12-23-023, § 181-78A-100, filed 11/13/12, effective 12/14/12; WSR 12-12-033, § 181-78A-100, filed 5/29/12, effective 6/29/12; WSR 12-02-028, § 181-78A-100, filed 12/28/11, effective 1/28/12; WSR 10-08-017, § 181-78A-100, filed 3/29/10, effective 4/29/10; WSR 08-16-005, § 181-78A-100, filed 7/23/08, effective 8/23/08; WSR 06-24-082, § 181-78A-100, filed 12/5/06, effective

1/5/07; WSR 06-14-010, § 181-78A-100, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-78A-100, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.410.010. WSR 05-15-052, § 180-78A-100, filed 7/12/05, effective 8/12/05; WSR 05-04-056, § 180-78A-100, filed 1/28/05, effective 2/28/05; WSR 04-21-038, § 180-78A-100, filed 10/15/04, effective 11/15/04. Statutory Authority: RCW 28A.305.130 and 28A.410.010. WSR 04-04-090, § 180-78A-100, filed 2/3/04, effective 3/5/04; WSR 02-18-037, § 180-78A-100, filed 8/26/02, effective 9/26/02. Statutory Authority: RCW 28A.305.130 (1) and (2). WSR 00-09-049, § 180-78A-100, filed 4/14/00, effective 5/15/00. Statutory Authority: RCW 28A.305.130 (1) and (2), 28A.410.010 and 28A.150.220(4). WSR 99-01-174, § 180-78A-100, filed 12/23/98, effective 1/23/99.]

WSR 22-01-019
PERMANENT RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed December 3, 2021, 8:06 a.m., effective January 3, 2022]

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

Purpose: To align chapter 357-31 WAC with the progression of the novel coronavirus disease 2019 (COVID-19) response including increased availability of testing and vaccines along with updated Centers for Disease Control and Prevention (CDC) requirements/guidelines for preventing the spread of COVID-19. Based on these changed circumstances, leave with pay is no longer needed for individuals to self-quarantine. Removes the requirement for a general government employer to grant leave with pay (LWP) when an employee is required by CDC guidelines to self-quarantine due to COVID-19 but is otherwise healthy and has not tested positive for COVID-19 and the employer has determined the employee does not have the option to telework. Removes the option for higher education employers to grant LWP when an employee is required by CDC guidelines to self-quarantine due to COVID-19 but is otherwise healthy and has not tested positive for COVID-19 and the employer has determined the employee does not have the option to telework.

Citation of Rules Affected by this Order: Amending WAC 357-31-325 and 357-31-326.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 21-20-115 on October 4, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

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

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

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

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

Date Adopted: December 3, 2021.

Roselyn Marcus
Assistant Director of
Legal and Legislative Affairs

OTS-3225.1

AMENDATORY SECTION (Amending WSR 21-12-020, filed 5/24/21, effective 7/1/21)

WAC 357-31-325 When must an employer grant leave with pay for other miscellaneous reasons? Leave with pay **must** be granted to an employee in accordance with WAC 357-31-320 and for the following reasons:

(1) To allow an employee to receive assessment from the employee assistance program.

(2) When an employee is scheduled to take an examination or participate in an interview for a position with a state employer during scheduled work hours.

(a) Employers may limit the number of occurrences or the total amount of paid leave that will be granted to an employee to participate in an interview or take an examination during scheduled work hours.

(b) Employers may deny an employee's request to participate in an interview or take an examination during scheduled work hours based upon operational necessity.

(3) When an employee is required to appear during working hours for a physical examination to determine physical fitness for military service.

(4) To allow a general government employee to take paid leave, not to exceed thirty days in a two-year period to participate in life-giving procedures, such as medical procedures, including testing, sampling, or donation of organs, tissues, and other body components for the purpose of donation, without compensation. For this subsection blood or plasma donations are not considered life-giving procedures.

(a) General government employers may take operational necessity into account and require the employee to provide reasonable advance notice.

(b) Employees must provide written proof from an accredited medical institution, physician, or other medical professional that the employee will or has participated in a life-giving procedure.

~~(5) ((When a general government employee is required by Centers for Disease Control and Prevention guidelines to self-quarantine due to novel coronavirus disease 2019 (COVID-19), but is otherwise healthy and has not tested positive for COVID-19, and the employer has determined the employee does not have the option to telework. An employer may subsequently determine that a telework option exists for the employee and direct the employee to telework. If the employee is directed to telework under this subsection and declines to do so, the employee must use other available leave options. The employee may receive up to fourteen days of leave with pay under this subsection. This subsection is effective until the expiration of proclamation 20-05, issued February 29, 2020, by the governor and declaring an emergency in the state of Washington, or any amendment thereto, whichever is later. An employer may require written verification, including verification submitted electronically, confirming the circumstances warranting the self-quarantine or inability to telework, which may include a signed affidavit from the employee or any other information requested by the employer.~~

~~(6))~~ To allow a general government employee to take a reasonable amount of leave with pay for the employee to travel and receive each dose of COVID-19 immunization if the vaccine is not offered at the workplace. An employer may authorize leave in excess of one day in extraordinary circumstances, such as to accommodate travel where the vaccine is unavailable locally. The employer may require that the request for leave be supported by documentation, which may include proof of the vaccination. This subsection is effective until the expiration of proclamation 20-05, issued February 29, 2020, by the governor and declaring an emergency in the state of Washington, or any amendment thereto, whichever is later. This subsection no longer applies if

state or federal law otherwise provides paid leave specifically for employees to receive the COVID-19 immunization.

[Statutory Authority: Chapter 41.06 RCW. WSR 21-12-020, § 357-31-325, filed 5/24/21, effective 7/1/21; WSR 20-24-019, § 357-31-325, filed 11/20/20, effective 12/28/20; WSR 14-11-033, § 357-31-325, filed 5/14/14, effective 6/16/14; WSR 10-23-041, § 357-31-325, filed 11/10/10, effective 12/13/10; WSR 09-03-014, § 357-31-325, filed 1/9/09, effective 2/13/09; WSR 08-07-062, § 357-31-325, filed 3/17/08, effective 4/18/08; WSR 05-21-055, § 357-31-325, filed 10/13/05, effective 11/15/05; WSR 05-08-138, § 357-31-325, filed 4/6/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 21-12-020, filed 5/24/21, effective 7/1/21)

WAC 357-31-326 When may an employer grant leave with pay? (1) A general government employer **may** grant leave with pay for an employee to perform civil duties as a volunteer including, but not limited to, firefighting, search and rescue efforts, or donating blood. Leave granted to participate in blood and plasma donations must not exceed five days in a two-year period.

(2) A higher education employer may grant leave with pay for an employee to perform civil duties as a volunteer including, but not limited to, firefighting, search and rescue efforts, participating in life-giving procedures, or donating blood. Leave granted to participate in life-giving procedures must not exceed five days in a two-year period.

(3) In the department of natural resources, leave with pay equivalent to one regular workshift **may** be allowed for the purpose of rest and recuperation after ten consecutive calendar days performing emergency work under an incident command system, defined in RCW 38.52.010. The employer may grant one additional day of leave with pay for rest and recuperation after twenty-one consecutive calendar days performing emergency work under an incident command system.

~~(4) ((When a higher education employee is required by Centers for Disease Control and Prevention guidelines to self-quarantine due to novel coronavirus disease 2019 (COVID-19), but is otherwise healthy and has not tested positive for COVID-19, and the employer has determined the employee does not have the option to telework. An employer may subsequently determine that a telework option exists for the employee and direct the employee to telework. If the employee is directed to telework under this subsection and declines to do so, the employee must use other available leave options. The employee may receive up to fourteen days of leave with pay under this subsection. This subsection is effective until the expiration of proclamation 20-05, issued February 29, 2020, by the governor and declaring an emergency in the state of Washington, or any amendment thereto, whichever is later. An employer may require written verification, including verification submitted electronically, confirming the circumstances warranting the self-quarantine or inability to telework, which may include a signed affidavit from the employee or any other information requested by the employer.~~

(5)) A general government employer may grant a reasonable amount of leave with pay for an employee to receive each dose of COVID-19 im-

munization if the vaccine is offered at the workplace. An employer may authorize leave in excess of one day for receipt of the vaccine in extraordinary circumstances, such as to accommodate travel where the vaccine is unavailable locally. The employer may require that the request for leave be supported by documentation, which may include proof of the vaccination. This subsection is effective until the expiration of proclamation 20-05, issued February 29, 2020, by the governor and declaring an emergency in the state of Washington, or any amendment thereto, whichever is later. This subsection no longer applies if state or federal law otherwise provides paid leave specifically for employees to receive the COVID-19 immunization.

~~((+6))~~ (5) A higher education employer may grant a reasonable amount of leave with pay for an employee to receive each dose of COVID-19 immunization if the vaccine is not offered at the workplace. An employer may authorize leave in excess of one day for receipt of the vaccine in extraordinary circumstances, such as to accommodate travel where the vaccine is unavailable locally. The employer may require that the request for leave be supported by documentation, which may include proof of the vaccination. This subsection is effective until the expiration of proclamation 20-05, issued February 29, 2020, by the governor and declaring an emergency in the state of Washington, or any amendment thereto, whichever is later. This subsection no longer applies if state or federal law otherwise provides paid leave specifically for employees to receive the COVID-19 immunization.

[Statutory Authority: Chapter 41.06 RCW. WSR 21-12-020, § 357-31-326, filed 5/24/21, effective 7/1/21; WSR 20-24-019, § 357-31-326, filed 11/20/20, effective 12/28/20; WSR 17-18-029, § 357-31-326, filed 8/28/17, effective 10/2/17. Statutory Authority: RCW 41.06.133. WSR 17-11-049, § 357-31-326, filed 5/15/17, effective 6/19/17. Statutory Authority: Chapter 41.06 RCW. WSR 09-03-014, § 357-31-326, filed 1/9/09, effective 2/13/09.]

WSR 22-01-022
PERMANENT RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed December 3, 2021, 9:09 a.m., effective July 1, 2022]

Effective Date of Rule: July 1, 2022.

Purpose: Align Title 357 WAC with the requirements in RCW 41.06.070. Expands the current civil service rules so that part-time higher education employees may accrue a personal holiday, sick leave, vacation leave and may accrue holiday compensation in the form of holiday credit.

Citation of Rules Affected by this Order: New WAC 357-01-1805, 357-01-2290, 357-28-301, 357-31-021, 357-31-022, 357-31-027 and 357-31-127; and amending WAC 357-01-229, 357-28-255, 357-31-010, 357-31-025, 357-31-030, 357-31-065, 357-31-115, 357-31-121, 357-31-166, 357-31-170, 357-31-175, 357-31-245, 357-31-248, 357-31-250, 357-31-255, 357-31-265, 357-31-295, 357-31-490, 357-31-515, 357-31-530, 357-31-590, 357-31-595, 357-31-687, 357-31-797, and 357-31-895.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 21-20-114 on October 4, 2021.

Changes Other than Editing from Proposed to Adopted Version: Specify a "higher education" employee in the body of WAC 357-01-2290 to correspond to the WAC title. Remove the word "also" in WAC 357-28-301. Remove "compensation" from the body of WAC 357-31-021 and add "holiday credit" to correspond to the WAC title. Remove the word "time" in the body of WAC 357-31-027. Reference WAC 357-31-166 in WAC 357-31-170(2). Correct the placement of the word "higher" in WAC 357-31-175(2). Add the word "accrued" in WAC 357-31-250(3). Pluralize "employee" in the title of WAC 357-31-595. Remove references to "his/her" and replace with gender neutral terms in WAC 357-31-590 and 357-31-595. Add the word "accrued" to "holiday credit" in WAC 357-31-687, 357-31-797, and 357-31-895.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 7, Amended 25, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 7, Amended 25, Repealed 0.

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 7, Amended 25, Repealed 0.

Date Adopted: December 3, 2021.

Roselyn Marcus
Assistant Director of
Legal and Legislative Affairs

OTS-3376.2

NEW SECTION

WAC 357-01-1805 Holiday credit. Holiday credit is a balance of leave that is received in lieu of holiday compensation for higher education part-time employees as defined in WAC 357-01-2290(2).

[]

AMENDATORY SECTION (Amending WSR 05-12-093, filed 5/27/05, effective 7/1/05)

WAC 357-01-229 Part-time general government employee. (~~(A)~~) A general government employee who is scheduled to work less than that required for a full-time employee.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-12-093, § 357-01-229, filed 5/27/05, effective 7/1/05.]

NEW SECTION

WAC 357-01-2290 Part-time higher education employee. A higher education employee who works less than that required for a full-time employee. A part-time higher education employee may be considered one of the following:

(1) Scheduled: An employee who is assigned a schedule with a fixed number of working hours in a workweek that is less than full-time equivalent.

(2) Nonscheduled: An employee who is not assigned a fixed schedule or amount of working time in a workweek.

[]

OTS-3377.2

AMENDATORY SECTION (Amending WSR 05-01-205, filed 12/21/04, effective 7/1/05)

WAC 357-28-255 What constitutes overtime for an overtime eligible employee? (1) The following conditions constitute overtime for overtime eligible employees:

(a) Work in excess of (~~forty~~) 40 hours in one workweek, except for law enforcement positions or hospital personnel assigned to a (~~fourteen-day~~) 14-day schedule.

(i) For hospital personnel assigned to a (~~fourteen-day~~) 14-day schedule, work in excess of eight hours in any workday or (~~eighty~~) 80 hours in a (~~fourteen-day~~) 14-day period constitutes overtime.

(ii) For law enforcement positions, work in excess of the (~~one hundred sixty-hour, twenty-eight-day~~) 160-hour, 28-day work period constitutes overtime.

(b) Work on a holiday per WAC 357-28-200.

(c) For full-time employees, work on a scheduled day off when assigned by the employer.

(2) All paid holidays including the use of holiday credit during the employee's regular work schedule **are** considered time worked. Leave with pay during the employee's regular work schedule is **not** considered time worked for purposes of determining overtime eligibility.

(3) When an overtime eligible employee experiences a schedule change which causes an overlap in workweeks and requires work in excess of (~~forty~~) 40 hours in either the previous or current workweek, the employee must receive overtime compensation.

(4) Compensation under the provisions of this section must be in accordance with the employer's policy, as approved by the director, for the following individuals:

(a) Employees dispatched to emergency response duty under an incident command system as defined in RCW 38.52.010; and

(b) Employees of the department of corrections and department of social and health services who are in charge of offenders assigned to assist in forest fire suppression and other emergency incidents.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-205, § 357-28-255, filed 12/21/04, effective 7/1/05.]

NEW SECTION

WAC 357-28-301 When must holiday credit be paid in cash? All holiday credit must be used annually in accordance with the employer's leave policy. An employee who does not use their accrued holiday credit by the annual date specified in the employer's leave policy will receive monetary compensation. Holiday credit must be paid when:

(1) The employee separates from state service for any reason.

(2) The employee is appointed to a position with a different employer.

(3) The employee is appointed to a position that has a different funding source within the same employer.

[]

OTS-3378.4

AMENDATORY SECTION (Amending WSR 18-17-132, filed 8/20/18, effective 9/21/18)

WAC 357-31-010 Which employees qualify for holiday compensation?

(1) Full-time general government employees who work full monthly schedules qualify for holiday compensation if they are employed before the holiday and are in pay status:

(a) For at least (~~eighty~~) 80 nonovertime hours during the month of the holiday; or

(b) For the entire work shift preceding the holiday.

(c) Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

(2) Full-time higher education employees and cyclic year position employees who work full monthly schedules qualify for holiday compensation if they are in pay status for the entire work shift preceding the holiday. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

(3) Cyclic year position employees scheduled to work less than full monthly schedules throughout their work year qualify for holiday compensation if they work or are in pay status on their last regularly scheduled working day before the holiday(s) in that month. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

(4) Part-time general government employees who are in pay status during the month of the holiday qualify for holiday pay on a pro rata basis in accordance with WAC 357-31-020, except that part-time employees hired during the month of the holiday will not receive compensation for holidays that occur prior to their hire date.

(5) Part-time higher education employees as defined in WAC 357-01-2290(1) who satisfy the requirements of subsection (2) of this section are entitled to the number of paid hours on a holiday that their monthly schedule bears to a full-time schedule. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

(6) Part-time higher education employees as defined in WAC 357-01-2290(2) who are in pay status during the month of the holiday qualify for holiday credit on a pro rata basis in accordance with WAC 357-31-021 except that part-time employees hired during the month of the holiday will not receive credit for holidays that occur prior to their hire date.

[Statutory Authority: Chapter 41.06 RCW. WSR 18-17-132, § 357-31-010, filed 8/20/18, effective 9/21/18; WSR 12-04-016, § 357-31-010, filed 1/24/12, effective 2/24/12; WSR 10-23-040, § 357-31-010, filed 11/10/10, effective 12/13/10; WSR 09-03-013, § 357-31-010, filed 1/9/09, effective 2/13/09; WSR 06-11-049, § 357-31-010, filed 5/11/06, effective 6/12/06; WSR 05-08-136, § 357-31-010, filed 4/6/05, effective 7/1/05.]

NEW SECTION

WAC 357-31-021 For part-time higher education employees, how is holiday credit prorated? Holiday credit for part-time higher education employees who meet the definition in WAC 357-01-2290(2) will be proportionate to the number of hours in pay status in the same month of the holiday to that required for full-time employment, excluding all holiday hours. Part-time employees hired during the month of the holiday will not receive holiday credit for holidays that occur prior to their hire date.

[]

NEW SECTION

WAC 357-31-022 For part-time higher education employees, how is personal holiday prorated? Personal holiday for part-time higher education employees who meet the definition in WAC 357-01-2290(2) will be proportionate to the number of hours in pay status in the same month when the personal holiday is requested to that required for full-time employment, excluding all holiday hours.

[]

AMENDATORY SECTION (Amending WSR 10-23-120, filed 11/17/10, effective 12/18/10)

WAC 357-31-025 How many hours are higher education employees compensated for on a holiday? When a holiday as designated under WAC 357-31-005 falls on a higher education employee's scheduled work day:

(1) Full-time employees receive eight hours of regular holiday pay per holiday. Any differences between the scheduled shift for the day and eight hours may be adjusted by use of vacation leave, use of accumulation of compensatory time as appropriate, or leave without pay.

(2) Part-time higher education employees as defined in WAC 357-01-2290(1) are entitled to the number of paid hours on a holiday that their monthly schedule bears to a full-time schedule. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

(3) Part-time higher education employees as defined in WAC 357-01-2290(2) are entitled to the equivalent paid time off in the form of holiday credit for the holiday on a pro rata basis in accordance with WAC 357-31-021.

[Statutory Authority: Chapter 41.06 RCW. WSR 10-23-120, § 357-31-025, filed 11/17/10, effective 12/18/10; WSR 05-08-136, § 357-31-025, filed 4/6/05, effective 7/1/05.]

NEW SECTION

WAC 357-31-027 When must a higher education employer allow a part-time employee to use accrued holiday credit? Higher education employers must allow a part-time employee as defined in WAC 357-01-2290(2) to use accrued holiday credit for the following reasons:

(1) Employees must request to use accrued holiday credit in accordance with the employer's leave policy. When considering employees' requests to use accrued holiday credit, employers must consider their business needs and the wishes of the employee.

(2) An employee must be granted the use of accrued holiday credit to care for a spouse, registered domestic partner, parent, parent-in-law, or grandparent of the employee who has a serious health condition or an emergency health condition, or to care for a minor/dependent child with a health condition that requires treatment or supervision. In accordance with the employer's leave policy, approval of the em-

ployee's request to use accrued holiday credit may be subject to verification that the condition exists.

(3) An employee must be granted the use of accrued holiday credit if the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.

(4) In accordance with WAC 357-31-373, an employee must be granted the use of accrued holiday credit to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

(5) An employee must be granted the use of accrued holiday credit when requested as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title 50A RCW as provided in WAC 357-31-248. Leave taken under this subsection may be subject to verification that the employee has been approved to receive benefits for approved paid family and/or medical leave under Title 50A RCW.

(6) Employers may require that accumulated holiday credit be used before vacation leave is approved, except in those instances where this requirement would result in loss of accumulated vacation leave.

[]

AMENDATORY SECTION (Amending WSR 05-08-136, filed 4/6/05, effective 7/1/05)

WAC 357-31-030 What happens when a holiday falls on an employee's scheduled day off? When a holiday (as identified in WAC 357-31-005) falls on an employee's regularly scheduled day off, the employer must provide that employee an in-lieu of holiday as follows:

(1) For a full-time employee who is eligible for holiday compensation, the employer may:

- (a) Designate the prior or the following work day as the holiday;
- (b) Provide the employee with equivalent paid time off; or
- (c) Allow the employee to request an alternate work day to observe as the holiday. The employer may require that the employee request an alternate day off within the same pay period as the holiday.

(2) For a part-time general government employee who is eligible for holiday compensation, the employer must compensate the employee on a pro rata basis in accordance with WAC 357-31-020.

(3) For a part-time higher education employee as defined in WAC 357-01-2290(1) who is eligible for holiday compensation, the employee is entitled to the equivalent paid time off for the holiday that their monthly schedule bears to a full-time schedule.

(4) For a part-time higher education employee as defined in WAC 357-01-2290(2) who is eligible for holiday compensation, the employer must provide the employee with equivalent paid time off in the form of holiday credit for the holiday. The amount of holiday credit is calculated on a pro rata basis in accordance with WAC 357-31-021.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-08-136, § 357-31-030, filed 4/6/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 05-08-136, filed 4/6/05, effective 7/1/05)

WAC 357-31-065 How many hours are higher education employees compensated for when taking a personal holiday? (1) Full-time employees receive eight hours of regular holiday pay on a personal holiday. Any differences between the scheduled shift for the day and eight hours may be adjusted by use of vacation leave, use or accumulation of compensatory time as appropriate, or leave without pay.

(2) Part-time higher education employees as defined in WAC 357-01-2290(1) are entitled to the number of paid hours on a personal holiday that their monthly schedule bears to a full-time schedule.

(3) Part-time higher education employees as defined in WAC 357-01-2290(2) are entitled the number of paid hours on a personal holiday on a pro rata basis in accordance with WAC 357-31-022.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-08-136, § 357-31-065, filed 4/6/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 10-23-120, filed 11/17/10, effective 12/18/10)

WAC 357-31-115 How many hours of sick leave does an employee earn each month? (1) Full-time employees earn eight hours of sick leave per month.

(2) Part-time general government employees earn sick leave on a pro rata basis in accordance with WAC 357-31-125.

(3) Part-time higher education employees as defined in WAC 357-01-2290(1) earn sick leave on the same pro rata basis that their appointment bears to a full-time appointment. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

(4) Part-time higher education employees as defined in WAC 357-01-2290(2) earn sick leave on a pro rata basis in accordance with WAC 357-31-127.

[Statutory Authority: Chapter 41.06 RCW. WSR 10-23-120, § 357-31-115, filed 11/17/10, effective 12/18/10; WSR 05-08-136, § 357-31-115, filed 4/6/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 18-05-032, filed 2/10/18, effective 3/13/18)

WAC 357-31-121 Do overtime eligible employees accrue sick leave if they have taken leave without pay during the month? (1) Full-time overtime eligible general government employees who are in pay status for less than ((eighty)) 80 hours in a month, earn a monthly accrual

proportionate to the number of hours in pay status, in the month to that required for full-time employment. Sick leave accruals must not exceed eight hours in a month. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this section.

(2) Full-time and part-time (part-time employee as defined in WAC 357-01-2290(1)) overtime eligible higher education employees with leave without pay exceeding ~~((eighty))~~ 80 hours in a month (prorated for part-time) will ~~((accrue a minimum of one hour for every forty hours worked))~~ earn a monthly accrual proportionate to the number of hours in pay status, in the month to that required for full-time employment. Sick leave accruals must not exceed eight hours in a month.

[Statutory Authority: Chapter 41.06 RCW. WSR 18-05-032, § 357-31-121, filed 2/10/18, effective 3/13/18.]

NEW SECTION

WAC 357-31-127 For higher education part-time employees, how is leave accrual prorated? Vacation and sick leave accruals for part-time higher education employees as defined in WAC 357-01-2290(2) will be proportionate to the number of hours in pay status in the month to that required for full-time employment. Sick leave accruals must not exceed eight hours in a month.

[]

AMENDATORY SECTION (Amending WSR 17-20-052, filed 9/29/17, effective 10/31/17)

WAC 357-31-166 At what rate do higher education employees accrue vacation leave? (1) Full-time higher education employees accrue vacation leave at the following rates:

- (a) During the first year of continuous state employment - ~~((Twelve))~~ 12 days (eight hours per month);
- (b) During the second year of continuous state employment - ~~((Thirteen))~~ 13 days (eight hours, ~~((forty))~~ 40 minutes per month);
- (c) During the third and fourth years of continuous state employment - ~~((Fourteen))~~ 14 days (nine hours, ~~((twenty))~~ 20 minutes per month);
- (d) During the fifth, sixth, and seventh years of total state employment - ~~((Fifteen))~~ 15 days (~~((ten))~~ 10 hours per month);
- (e) During the eighth, ninth, and tenth years of total state employment - ~~((Sixteen))~~ 16 days (~~((ten))~~ 10 hours, ~~((forty))~~ 40 minutes per month);
- (f) During the eleventh year of total state employment - ~~((Seventeen))~~ 17 days (~~((eleven))~~ 11 hours, ~~((twenty))~~ 20 minutes per month);
- (g) During the twelfth year of total state employment - ~~((Eighteen))~~ 18 days (~~((twelve))~~ 12 hours per month);
- (h) During the thirteenth year of total state employment - ~~((Nineteen))~~ 19 days (~~((twelve))~~ 12 hours, ~~((forty))~~ 40 minutes per month);

- (i) During the fourteenth year of total state employment - ((Twenty)) 20 days ((thirteen)) 13 hours, ((twenty)) 20 minutes per month);
- (j) During the fifteenth year of total state employment - ((Twenty-one)) 21 days ((fourteen)) 14 hours per month);
- (k) During the sixteenth and succeeding years of total state employment - ((Twenty-two)) 22 days ((fourteen)) 14 hours, ((forty)) 40 minutes per month).

(2) Higher education employers may establish accrual rates that exceed the rates listed in subsection (1) of this section. This does not apply to individual positions.

(3) The following applies for purposes of computing the rate of vacation leave accrual: Each contract year, or equivalent, of full-time faculty and/or administrative exempt employment with a higher education employer is credited as one year of qualifying service.

(4) Employment exempt by the provisions of WAC 357-04-040, 357-04-045, 357-04-050, and 357-04-055 is not credited for the purposes of computing the rate of vacation leave accrual.

[Statutory Authority: Chapter 43.01 RCW. WSR 17-20-052, § 357-31-166, filed 9/29/17, effective 10/31/17.]

AMENDATORY SECTION (Amending WSR 17-18-028, filed 8/28/17, effective 10/2/17)

WAC 357-31-170 At what rate do part-time employees accrue vacation leave? (1) Part-time general government employees accrue vacation leave hours in accordance with WAC 357-31-165 on a pro rata basis. Proration will be calculated in accordance with WAC 357-31-125.

(2) Part-time higher education employees as defined in WAC 357-01-2290(1) accrue vacation leave in accordance with WAC 357-31-166 on the same pro rata basis that their appointment bears to a full-time appointment. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

(3) Part-time higher education employees as defined in WAC 357-01-2290(2) accrue vacation leave in accordance with WAC 357-31-166 on a pro rata basis. Proration will be calculated in accordance with WAC 357-31-127.

[Statutory Authority: Chapter 43.01 RCW. WSR 17-18-028, § 357-31-170, filed 8/28/17, effective 10/2/17. Statutory Authority: Chapter 41.06 RCW. WSR 10-23-120, § 357-31-170, filed 11/17/10, effective 12/18/10; WSR 05-08-137, § 357-31-170, filed 4/6/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 12-04-016, filed 1/24/12, effective 2/24/12)

WAC 357-31-175 Do employees accrue vacation leave if they have taken leave without pay during the month? (1) Full-time general government employees who are in pay status for less than ((eighty)) 80 nonovertime hours in a month do not earn a monthly accrual of vacation

leave. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

(2) Full-time and part-time (part-time employee as defined in WAC 357-01-2290(1)) higher education employees (~~((who have more than ten working days of))~~) with leave without pay exceeding 80 hours in a month (prorated for part-time) do not earn a monthly accrual of vacation leave. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

[Statutory Authority: Chapter 41.06 RCW. WSR 12-04-016, § 357-31-175, filed 1/24/12, effective 2/24/12; WSR 10-23-040, § 357-31-175, filed 11/10/10, effective 12/13/10; WSR 05-08-137, § 357-31-175, filed 4/6/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 15-11-102, filed 5/20/15, effective 6/22/15)

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

[Statutory Authority: Chapter 41.06 RCW. WSR 15-11-102, § 357-31-245, filed 5/20/15, effective 6/22/15; WSR 11-19-091, § 357-31-245, filed 9/20/11, effective 10/24/11; WSR 09-17-062, § 357-31-245, filed 8/13/09, effective 9/16/09; WSR 05-08-137, § 357-31-245, filed 4/6/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 20-06-008, filed 2/20/20, effective 5/1/20)

WAC 357-31-248 May an employee use vacation leave, sick leave, personal holiday, compensatory time, holiday credit, recognition leave, or holiday pay as a supplemental benefit during a period when the employee is receiving partial wage replacement for paid family and/or medical leave under Title 50A RCW? An employee may use vacation leave, sick leave, personal holiday, compensatory time, holiday credit, recognition leave, or holiday pay during a period when the employee is receiving partial wage replacement under Title 50A RCW as a supplemental benefit.

[Statutory Authority: Chapter 41.06 RCW and RCW 50A.15.060. WSR 20-06-008, § 357-31-248, filed 2/20/20, effective 5/1/20.]

AMENDATORY SECTION (Amending WSR 05-08-137, filed 4/6/05, effective 7/1/05)

WAC 357-31-250 Are employees entitled to paid bereavement leave?

(1) If an employee's family member or household member dies, the employee is entitled to three days of paid bereavement leave. An employee may request less than three days of paid bereavement leave.

(2) In accordance with the employer's leave policy, the employer may require verification of the family member's or household member's death.

(3) In addition to paid bereavement leave, the employer may approve an employee's request to use paid leave (accrued compensatory time, accrued holiday credit, sick leave, vacation leave, and/or a personal holiday) or to take leave without pay for purposes of bereavement.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-08-137, § 357-31-250, filed 4/6/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 15-11-102, filed 5/20/15, effective 6/22/15)

WAC 357-31-255 What types of leave may an employee use when absent from work or arriving late to work because of inclement weather?

When the employer determines inclement weather conditions exist, the employer's leave policy governs the order in which accrued leave ((and)), compensatory time, and holiday credit may be used to account for the time an employee is absent from work due to the inclement weather. The employer's policy must allow the use of accrued vacation leave, accrued sick leave up to a maximum of three days in any calendar year, and the use of leave without pay in lieu of paid leave at the request of the employee. The employer's policy may allow leave with pay when an employee is absent due to inclement weather.

[Statutory Authority: Chapter 41.06 RCW. WSR 15-11-102, § 357-31-255, filed 5/20/15, effective 6/22/15; WSR 11-19-091, § 357-31-255, filed 9/20/11, effective 10/24/11; WSR 07-11-093, § 357-31-255, filed 5/16/07, effective 7/1/07; WSR 05-08-137, § 357-31-255, filed 4/6/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 15-11-102, filed 5/20/15, effective 6/22/15)

WAC 357-31-265 What is the effect of suspended operations on employees who are not required to work during the closure?

At a minimum, employees not required to work during suspended operations must be allowed to use their personal holiday, accrued holiday credit, or accrued vacation leave. Overtime eligible employees must also be allowed to use accrued compensatory time to account for the time lost due to the closure. Overtime eligible employees may be allowed to use leave without pay and given an opportunity to make up work time lost (as a result of suspended operations) within the work week. For overtime eligible employees, compensation for making up lost work time

must be in accordance with WAC 357-28-255, 357-28-260, and 357-28-265 if it causes the employee to work in excess of (~~forty~~) 40 hours in the workweek, and must be part of the employer's suspended operations procedures. The amount of compensation earned under this section must not exceed the amount of salary lost by the employee due to suspended operation.

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

[Statutory Authority: Chapter 41.06 RCW. WSR 15-11-102, § 357-31-265, filed 5/20/15, effective 6/22/15; WSR 11-19-091, § 357-31-265, filed 9/20/11, effective 10/24/11; WSR 07-11-096, § 357-31-265, filed 5/16/07, effective 7/1/07; WSR 05-08-137, § 357-31-265, filed 4/6/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 05-08-137, filed 4/6/05, effective 7/1/05)

WAC 357-31-295 What type of leave may employees use for family care emergencies? (1) After an employee has used all accrued compensatory time and accrued holiday credit, the employee may choose any of the following leave categories to use to account for time away from work for family care emergencies:

- (a) Vacation leave.
- (b) Sick leave in accordance with WAC 357-31-130.
- (c) Leave without pay.
- (d) Personal holiday.

(2) Use of any of these leave categories is dependent on the employee's eligibility to use that leave.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-08-137, § 357-31-295, filed 4/6/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 20-06-008, filed 2/20/20, effective 5/1/20)

WAC 357-31-490 Will time off for parental leave be paid or unpaid? (1) Parental leave may be a combination of vacation leave, personal holiday, compensatory time, holiday credit, shared leave and leave of absence without pay. Sick leave may be used if the criteria in WAC 357-31-130 are met. The combination and use of paid and unpaid leave during a parental leave is at the employee's choice.

(2) If necessary while on approved parental leave, the employee must be allowed to use a minimum of eight hours per month of the accrued paid leave identified in subsection (1) of this section during a parental leave of absence without pay to provide for continuation of benefits as provided by the public employees' benefits board. The employer designates when during the month paid leave will be interspersed to maintain benefits.

[Statutory Authority: Chapter 41.06 RCW and RCW 50A.15.060. WSR 20-06-008, § 357-31-490, filed 2/20/20, effective 5/1/20. Statutory

Authority: Chapter 41.06 RCW. WSR 05-08-140, § 357-31-490, filed 4/6/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 20-06-008, filed 2/20/20, effective 5/1/20)

WAC 357-31-515 Will time off during the period of disability leave due to pregnancy and/or childbirth be paid? Disability leave due to pregnancy and/or childbirth may be a combination of sick leave, vacation leave, personal holiday, compensatory time, holiday credit, shared leave and leave without pay. The combination and use of paid and unpaid leave must be per the choice of the employee.

[Statutory Authority: Chapter 41.06 RCW and RCW 50A.15.060. WSR 20-06-008, § 357-31-515, filed 2/20/20, effective 5/1/20. Statutory Authority: Chapter 41.06 RCW. WSR 05-08-140, § 357-31-515, filed 4/6/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 15-11-102, filed 5/20/15, effective 6/22/15)

WAC 357-31-530 Under the Family and Medical Leave Act of 1993, how is an eligible employee defined? In accordance with 29 C.F.R. Part 825, an eligible employee is an employee who has worked for the state for at least (~~twelve~~) 12 months and for at least (~~one thousand two hundred fifty~~) 1,250 hours during the previous (~~twelve-month~~) 12-month period. Paid time off such as vacation leave, sick leave, personal holiday, compensatory time off, holiday credit, or shared leave and unpaid leave is not counted towards the (~~one thousand two hundred and fifty~~) 1,250 hour eligibility requirement.

[Statutory Authority: Chapter 41.06 RCW. WSR 15-11-102, § 357-31-530, filed 5/20/15, effective 6/22/15; WSR 14-06-008, § 357-31-530, filed 2/20/14, effective 3/24/14; WSR 11-19-091, § 357-31-530, filed 9/20/11, effective 10/24/11; WSR 05-21-061, § 357-31-530, filed 10/13/05, effective 11/15/05; WSR 05-12-090, § 357-31-530, filed 5/27/05, effective 7/1/05; WSR 05-08-140, § 357-31-530, filed 4/6/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 07-11-095, filed 5/16/07, effective 7/1/07)

WAC 357-31-590 When is an employee who participates in a sick leave pool eligible to use sick leave from the pool? A participating employee is eligible to use sick leave from a pool only when the employee has a personal illness, accident, or injury and the employee has exhausted all of (~~his/her~~) their personal holiday and all of (~~his/her~~) their sick, vacation, (~~and~~) compensatory time, and holiday credit.

[Statutory Authority: Chapter 41.06 RCW. WSR 07-11-095, § 357-31-590, filed 5/16/07, effective 7/1/07.]

AMENDATORY SECTION (Amending WSR 07-11-095, filed 5/16/07, effective 7/1/07)

WAC 357-31-595 Is a participant eligible to use sick leave from a pool if ((his/her)) the employee's illness or injury is work-related? If the illness or injury is work-related and the participant has diligently pursued and been found to be ineligible for benefits under chapter 51.32 RCW the participant may be eligible to use leave from a pool if ((he/she)) the employee has exhausted all of ((his/her)) their personal holiday and all of ((his/her)) their sick, vacation, ((and)) compensatory time, and holiday credit.

[Statutory Authority: Chapter 41.06 RCW. WSR 07-11-095, § 357-31-595, filed 5/16/07, effective 7/1/07.]

AMENDATORY SECTION (Amending WSR 20-24-017, filed 11/20/20, effective 12/28/20)

WAC 357-31-687 Must employees use their own leave before receiving shared leave from the uniformed service shared leave pool? Employees who are eligible to receive shared leave from the uniformed service shared leave pool must first use all accrued compensatory time, accrued holiday credit, recognition leave as described in WAC 357-31-565, personal holiday, vacation leave, and paid military leave allowed under RCW 38.40.060 before receiving shared leave from the uniformed service shared leave pool. The employee is not required to deplete all of their accrued vacation leave and paid military leave allowed under RCW 38.40.060 and can maintain up to ((~~forty~~)) 40 hours of vacation leave and ((~~forty~~)) 40 hours of paid military leave.

[Statutory Authority: Chapter 41.06 RCW and RCW 41.04.655. WSR 20-24-017, § 357-31-687, filed 11/20/20, effective 12/28/20. Statutory Authority: Chapter 41.06 RCW. WSR 18-03-080, § 357-31-687, filed 1/15/18, effective 2/16/18.]

AMENDATORY SECTION (Amending WSR 20-24-017, filed 11/20/20, effective 12/28/20)

WAC 357-31-797 Must employees use their own leave before receiving shared leave from the veterans' in-state service shared leave pool? Employees who are eligible to receive shared leave from the veterans' in-state service shared leave pool must first use all accrued compensatory time, accrued holiday credit, recognition leave as described in WAC 357-31-565, personal holiday, sick leave, and vacation leave before receiving shared leave from the veterans' in-state service shared leave pool. The employee is not required to deplete all of their accrued vacation leave and sick leave and can maintain up to

((~~forty~~)) 40 hours of vacation leave and ((~~forty~~)) 40 hours of sick leave.

[Statutory Authority: Chapter 41.06 RCW and RCW 41.04.655. WSR 20-24-017, § 357-31-797, filed 11/20/20, effective 12/28/20. Statutory Authority: Chapter 41.06 RCW. WSR 18-03-080, § 357-31-797, filed 1/15/18, effective 2/16/18.]

AMENDATORY SECTION (Amending WSR 18-03-081, filed 1/15/18, effective 2/16/18)

WAC 357-31-895 Must employees use their own leave before receiving shared leave from the foster parent shared leave pool? Employees who are eligible to receive shared leave from the foster parent shared leave pool must first use all accrued compensatory time, accrued holiday credit, recognition leave as described in WAC 357-31-565, and personal holiday before requesting shared leave from the foster parent shared leave pool. The employee is not required to deplete all of their accrued vacation leave and sick leave and can maintain up to ((~~forty~~)) 40 hours of vacation leave and ((~~forty~~)) 40 hours of sick leave.

[Statutory Authority: Chapter 41.04 RCW. WSR 18-03-081, § 357-31-895, filed 1/15/18, effective 2/16/18.]

WSR 22-01-034
PERMANENT RULES
OFFICE OF THE
INSURANCE COMMISSIONER

[Filed December 6, 2021, 11:55 a.m., effective January 6, 2022]

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

Purpose: To update references to associations involved in the FAIR plan administration and make technical changes that should make the rules clearer and easier to follow.

Citation of Rules Affected by this Order: Amending WAC 284-19-140 and 284-19-150.

Statutory Authority for Adoption: RCW 48.02.060, 48.01.030, and 48.18.480.

Adopted under notice filed as WSR 21-21-100 on October 19, 2021.

A final cost-benefit analysis is available by contacting Shari Maier, 302 Sid Snyder S.W., Suite 200, Olympia, WA 98501, phone 360-725-7173, email ShariM@oic.wa.gov.

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

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

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

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

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

Date Adopted: December 6, 2021

Mike Kreidler
Insurance Commissioner

OTS-3261.3

AMENDATORY SECTION (Amending WSR 14-21-179, filed 10/22/14, effective 11/22/14)

WAC 284-19-140 Administration. (1) This program shall be administered by a governing committee (referred to as the committee) of the facility, subject to the supervision of the commissioner, and operated by a manager appointed by the committee.

(2) The committee consists of nine members, including ~~((five))~~ six insurers, ~~((elected from each of the following))~~ as follows:

(a) ((American Insurance Association (one member);)) Property insurers represented by any trade association(s) shall designate or elect three members. Any such trade association not already represented on the committee may request representation by contacting the FAIR plan manager. The allocation of these three committee members will be made in accordance with applicable committee operating procedures and directives;

~~(b) ((Property Casualty Insurers Association of America (two members))~~

~~(e))~~ All other stock insurers shall elect ((+) one member (+)) by a majority vote counted on a weighted basis in accordance with each insurer's premiums written and the aggregate premiums written for all insurers in this respective group; ~~((and~~

~~(d))~~ (c) All other nonstock insurers shall elect ((+) one member (+)) by a majority vote counted on a weighted basis in accordance with each insurer's premiums written and the aggregate premiums written for all insurers in this respective group;

(d) A sixth member ((shall)) must be an insurer designated as the service insurer under the program((-)), and the commissioner shall designate a sixth member if there is more than one service insurer((-));

(e) The other three members are individuals who are appointed by the commissioner to serve, none of whom have a direct or indirect interest in any insurer except as a policyholder((- The individual members serve for a period of one year or until their successors are appointed.));

(f) Not more than one insurer in a group under the same management or ownership shall serve on the committee at the same time((-)); and

(g) One of the six insurers on the governing committee ((shall)) must be a domestic insurer.

(3) The governing committee may issue operating procedures and other directives to carry out the purposes of this plan and directives of the commissioner.

(4) Each person serving on the committee or any subcommittee, each member of the facility, and each officer and employee of the facility shall be indemnified by the facility against all costs and expenses actually and necessarily incurred in connection with the defense of any action, suit, or proceeding in which he or she is made a party by reason of being or having been a member of the committee, or a member or officer or employee of the facility except in relation to matters as to which he or she has been judged in such action, suit, or proceeding to be liable by reason of willful misconduct in the performance of duties as a member of the committee, or a member or officer or employee of the facility. This indemnification does not apply to any loss, cost, or expense on insurance policy claims under the program. Indemnification is not exclusive of other rights to which such member or officer may be entitled as a matter of law.

(5) Members on the committee serve for a period of one year or until successors are elected, designated or appointed, as applicable.

[Statutory Authority: RCW 48.02.060 and 48.01.030. WSR 14-21-179 (Matter No. R 2014-06), § 284-19-140, filed 10/22/14, effective 11/22/14. Statutory Authority: RCW 48.02.060. WSR 98-13-095 (Matter No. R 98-10), § 284-19-140, filed 6/16/98, effective 7/17/98. Statutory Authority: RCW 48.01.030, 48.02.060, 48.18.480, and 48.30.020. WSR 79-08-019 (Order R 79-3), § 284-19-140, filed 7/11/79; Order R-69-1, § 284-19-140, filed 1/28/69.]

AMENDATORY SECTION (Amending WSR 98-13-095, filed 6/16/98, effective 7/17/98)

WAC 284-19-150 Annual and special meetings. (1) There shall be an annual meeting of the insurers on a date fixed by the committee. (~~((The three associations (WAC 284-19-140(2)) shall designate or elect their representatives to the committee. The two nonassociation groups of companies shall elect their respective representatives by a majority vote counted on a weighted basis in accordance with each insurer's premiums written and the aggregate premiums written for all insurers in the respective groups of companies. Representatives on the committee shall serve for a period of one year or until successors are elected or designated.))~~)

(2) A special meeting may be called at a time and place designated by the committee or upon the written request to the committee of any ten insurers, not more than one of which may be a group under the same management or ownership.

(3) Twenty days' notice of the annual or special meeting (~~((shall))~~) must be given in writing by the committee to the insurers. A majority of the insurers constitutes a quorum. Voting by proxy is permitted. Notice of any meeting (~~((shall))~~) must be accompanied by an agenda for the meeting.

(4) Any matter, including amendment of this program, may be proposed and voted upon by mail, provided the procedure is unanimously authorized by the members of the committee present and voting at any meeting of the committee. If approved by the committee, notice of any proposal is mailed to the insurers not less than (~~((twenty))~~) 20 days prior to the final date fixed by the committee for voting.

(5) At any regular or special meeting at which the vote of the insurers is or may be required on any proposal, including amendment to this program, or any vote of the insurers which may be taken by mail on any proposal, such votes (~~((shall))~~) must be cast and counted on a weighted basis in accordance with each insurer's premiums written. A proposal becomes effective when approved by at least two-thirds of the votes cast on the weighted basis, except amendments to this program that will require administrative action by the commissioner.

[Statutory Authority: RCW 48.02.060. WSR 98-13-095 (Matter No. R 98-10), § 284-19-150, filed 6/16/98, effective 7/17/98; Order R-69-1, § 284-19-150, filed 1/28/69.]

WSR 22-01-036
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed December 6, 2021, 2:49 p.m., effective January 6, 2022]

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

Purpose: The certificate fee of \$5.00 for each year of validity has remained the same since the professional educator standards board began setting certificate fees in 2005. This rule change would increase the certificate fee by one dollar to \$6.00 for each year of validity. In the past 16 years while certificate fees have remained the same, all other costs have increased. This includes increased costs for work of the board, board meetings, staff, internal and external meetings, travel, and goods and services.

Citation of Rules Affected by this Order: Amending WAC 181-79A-130.

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

Adopted under notice filed as WSR 21-19-134 on November 18 [September 21], 2021.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

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

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

Date Adopted: November 18, 2021.

Sophia Keskey
Rules Coordinator

OTS-3274.1

AMENDATORY SECTION (Amending WSR 21-15-085, filed 7/16/21, effective 8/16/21)

WAC 181-79A-130 ((Fees for certificates.)) Certificate fees.

(1) Under provisions of RCW 28A.410.060, 28A.410.062, and 28A.415.010, the fee for certificates that are valid for more than one year, issued ~~((by))~~ under the authority of the state of Washington and authorizing the holder to serve in the common schools of the state, shall be as follows:

(a) For the purposes of this section only, the first issue of the residency certificate shall be calculated as if it had seven years of validity, with a ~~((five-dollar))~~ six-dollar certificate fee for each year of validity;

(b) The continuing certificate, ~~((seventy dollars))~~ \$70.00;

- (c) Renewal of a continuing certificate, one dollar;
- (d) The reinstatement, additional endorsement, or substitute certificate, (~~(fifteen dollars)~~) \$30.00;
- (e) The first peoples' language, culture, and oral tribal traditions teacher certificate, (~~(twenty-five dollars)~~) six dollars for each year of validity;
- (f) All career and technical education certificates, one dollar;
- (g) Any other certificate or credential or any renewal or reissuance thereof, (~~(five)~~) six dollars for each year of validity; and
- (h) ((A)) The one-time late fee for ((a)) the renewed initial or continuing certificate issued under the provisions of WAC 181-79A-123 (7), (8), or (9), for those whose initial certificate ((had)) have already expired, shall be (~~(one hundred dollars)~~) \$100.00.
- (2) The fee for any other certificate or credential, with a validity period of one year or less, or for any renewal or reissuance thereof, issued (~~(by)~~) under the authority of the state of Washington and authorizing the holder to serve in the common schools of the state, shall be (~~(five)~~) six dollars.
- (3) Officials authorized to collect certificate fees are educational service district superintendents, deans and directors of education at colleges and universities, or their designees. Sovereign tribal governments may collect certificate fees for first peoples' language, culture, and oral tribal traditions certificates. The fee must accompany the application for a certificate and shall be transmitted by the receiving district, college or university, sovereign tribal government, or program unit designee at least quarterly to the educational service district within which the application is filed for disposition in accordance with provisions of RCW 28A.410.060 or to the office of the superintendent of public instruction.
- (4) Beginning September 1, 2013, the office of the superintendent of public instruction may collect certificate fees.
- (5) The fee shall not be refunded unless the application is withdrawn before it is finally considered (i.e., the issuance of a certificate or a written communication denying such issuance) by the superintendent of public instruction or their designee.
- (6) The professional educator standards board will review certificate fees every two years to assure the fee is set at a sufficient level for the use of certificate fees under WAC 181-79A-131.

[Statutory Authority: Chapter 28A.410 RCW. WSR 21-15-085, § 181-79A-130, filed 7/16/21, effective 8/16/21; WSR 20-12-064, § 181-79A-130, filed 6/1/20, effective 7/2/20. Statutory Authority: RCW 28A.410.210. WSR 14-11-076, § 181-79A-130, filed 5/20/14, effective 6/20/14; WSR 13-20-027, § 181-79A-130, filed 9/23/13, effective 10/24/13; WSR 08-12-055, § 181-79A-130, filed 6/2/08, effective 7/3/08; WSR 08-03-100, § 181-79A-130, filed 1/20/08, effective 2/20/08; WSR 07-12-006, § 181-79A-130, filed 5/24/07, effective 6/24/07; WSR 06-14-010, § 181-79A-130, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-79A-130, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.410.010. WSR 05-23-043, § 180-79A-130, filed 11/9/05, effective 12/10/05. Statutory Authority: RCW 28A.410.010 and 28A.305.130. WSR 05-15-024, § 180-79A-130, filed 7/7/05, effective 8/7/05. Statutory Authority: RCW 28A.410.010 and 28A.305.130 (1) through (4). WSR 02-04-018, § 180-79A-130, filed 1/24/02, effective 2/24/02. Statutory Authority: RCW 28A.410.010. WSR 01-09-005, § 180-79A-130, filed 4/5/01, effective 5/6/01; WSR

00-03-048, § 180-79A-130, filed 1/14/00, effective 2/14/00; WSR
97-04-088, § 180-79A-130, filed 2/5/97, effective 3/8/97.]

WSR 22-01-037

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed December 6, 2021, 4:19 p.m., effective January 6, 2022]

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

Purpose: Amendments to WAC 388-823-0500 establish criteria for an acceptable diagnostic report. Amendments to WAC 388-823-0720 replace the Woodcock-Johnson Test of Achievement with the Woodcock-Johnson Test of Cognitive Abilities.

Citation of Rules Affected by this Order: Amending WAC 388-823-0500 and 388-823-0720.

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: RCW 71A.12.020, 71A.16.020.

Adopted under notice filed as WSR 21-20-136 on October 6, 2021.

A final cost-benefit analysis is available by contacting Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, fax 360-407-0955, TTY 1-800-833-6388, email Chantelle.Diaz@dshs.wa.gov.

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

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

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

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

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

Date Adopted: December 6, 2021.

Donald L. Clintsman
Acting Secretary

SHS-4880.2

AMENDATORY SECTION (Amending WSR 21-13-164, filed 6/23/21, effective 8/1/21)

WAC 388-823-0500 How do I show that I have autism as an eligible condition? (1) To be considered for eligibility under the condition of autism:

(a) You must be age four or older;

(b) You must have been diagnosed with:

(i) Autism spectrum disorder 299.00 under the diagnostic and statistical manual of mental disorders, fifth edition (DSM-5); or

(ii) Autistic disorder 299.00 under the diagnostic and statistical manual of mental disorders, fourth edition, text revision (DSM-IV-TR) before February 1, 2022;

(c) You must have been diagnosed by:

- (i) A board-certified neurologist;
 - (ii) A board-certified psychiatrist;
 - (iii) A licensed psychologist;
 - (iv) An advanced registered nurse practitioner (ARNP) associated with an autism center, developmental center, or center of excellence;
 - (v) A licensed physician associated with an autism center, developmental center, or center of excellence; or
 - (vi) A board certified developmental and behavioral pediatrician.
- (d) The condition must be expected to continue indefinitely; and
- (e) You must provide evidence of onset before age five.
- (2) An acceptable diagnostic report includes documentation of diagnostic criteria specified in:
- (a) The DSM-5; or
 - (b) DSM-IV-TR for a diagnostic report dated before February 1, 2022.

[Statutory Authority: RCW 71A.12.030, 71A.12.020 and 71A.16.020. WSR 21-13-164, § 388-823-0500, filed 6/23/21, effective 8/1/21. Statutory Authority: RCW 71A.16.020. WSR 19-19-061, § 388-823-0500, filed 9/16/19, effective 10/17/19. Statutory Authority: RCW 71A.12.030, 71A.12.120 and 74.08.090. WSR 14-12-046, § 388-823-0500, filed 5/29/14, effective 7/1/14. Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. WSR 05-12-130, § 388-823-0500, filed 6/1/05, effective 7/2/05.]

AMENDATORY SECTION (Amending WSR 21-13-164, filed 6/23/21, effective 8/1/21)

WAC 388-823-0720 What evidence do I need of my FSIQ? Evidence of a qualifying FSIQ is derived from one of the tests listed in the table below.

Assessment	Qualifying score at more than 2 standard deviations	Qualifying score at more than 1.5 standard deviations	Qualifying score at more than 1 standard deviation
Stanford-Binet 4th edition or earlier editions	67 or less	75 or less	83 or less
Stanford-Binet 5th edition	69 or less	77 or less	84 or less
Wechsler intelligence scales (Wechsler)	69 or less	77 or less	84 or less
Differential abilities scale (DAS)	69 or less	77 or less	84 or less

Assessment	Qualifying score at more than 2 standard deviations	Qualifying score at more than 1.5 standard deviations	Qualifying score at more than 1 standard deviation
Kaufman assessment battery for children (K-ABC)	69 or less	77 or less	84 or less
Das-Naglieri cognitive assessment system (CAS)	69 or less	77 or less	84 or less
Woodcock-Johnson-Test of ((achievement)) <u>cognitive abilities III, III-R, or IV</u>	69 or less	77 or less	84 or less
Reynolds intellectual assessment scales, 2nd edition (RIAS 2)	69 or less	77 or less	84 or less

(1) The test must be administered by a licensed psychologist or Washington certified school psychologist or other school psychologist certified by the National Association of School Psychologists.

(2) The FSIQ score cannot be attributable to mental illness or other psychiatric condition occurring at any age; or other illness or injury occurring after age eighteen:

(a) If you are dually diagnosed with a qualifying condition and mental illness, other psychiatric condition, or other illness or injury, you must provide acceptable documentation that your intellectual impairment, measured by a FSIQ test, would meet the requirements for DDA eligibility without the influence of the mental illness, other psychiatric condition, or other illness or injury.

(b) "Acceptable documentation" means written reports or statements that are directly related to the subject at issue, reasonable in light of all the evidence, and from a source of appropriate authority. The determination of whether a document is acceptable is made by DDA.

(c) If no documentation is provided or DDA determines that the documentation is not acceptable DDA will deny eligibility. The determination may be challenged through an administrative appeal.

(3) If you have a vision impairment that prevents completion of the performance portion of the IQ test, the administering professional may estimate an FSIQ using only the verbal IQ score of the appropriate Wechsler.

(4) If you have a significant hearing impairment, English is not your primary language, or you are nonverbal your FSIQ may be estimated using one of the tests shown in the table below.

Assessment	Qualifying score at more than 2 standard deviations	Qualifying score at 1.5 or more standard deviations	Qualifying score more than 1 standard deviation
Wechsler intelligence scales (WISC, WAIS, WNV)	69 or less on the performance scale, or, on both the perceptual reasoning index and processing speed index	77 or less on the performance scale, or, on both the perceptual reasoning index and the processing speed index	84 or less on the performance scale, or, on both the perceptual reasoning index and the processing speed index
Leiter international performance scale-revised (Leiter-R)	69 or less	77 or less	84 or less
Comprehensive test of nonverbal intelligence (C-TONI)	69 or less on full scale (NVIQ)	77 or less on full scale (NVIQ)	84 or less on full scale (NVIQ)
Kaufman assessment battery for children (K-ABC)	Nonverbal scale index of 69 or less	Nonverbal scale index of 77 or less	Nonverbal scale index of 84 or less

(5) If you are over the age of nineteen at the time of your determination you must have a valid FSIQ obtained at age thirteen or older.

[Statutory Authority: RCW 71A.12.030, 71A.12.020 and 71A.16.020. WSR 21-13-164, § 388-823-0720, filed 6/23/21, effective 8/1/21. Statutory Authority: RCW 71A.12.030, 71A.12.120 and 74.08.090. WSR 14-12-046, § 388-823-0720, filed 5/29/14, effective 7/1/14.]

WSR 22-01-040
PERMANENT RULES
NOXIOUS WEED
CONTROL BOARD

[Filed December 7, 2021, 9:50 a.m., effective January 1, 2022]

Effective Date of Rule: January 1, 2022.

Purpose: The Washington state noxious weed list provides the basis for noxious weed control efforts for county and district weed control boards as well as other entities. This rule-making order amends chapter 16-750 WAC by:

WAC 16-750-011 Proposed Class B additions and designation changes-

- Hanging sedge, *Carex pendula*, *Carex pendula subsp. pendula* and *Carex pendula subsp. agastachys*: Additional as a class B noxious weed species designated in region 1, 3, 4, 5, 6, and region 2 except for King County.
- Rough chervil, *Chaerophyllum temulum*: Additional as a class B noxious weed species designated in region 1, 3, 4, 5, 6, and region 2 except for King County.
- Wild basil/basil savory, *Clinopodium vulgare*: Additional as a class B noxious weed species designated in region 1, 2, 4, 5, 6, and region 3 except for Skamania County.
- Common tansy, *Tanacetum vulgare*: Reclassification and designation change from a class C to a class B noxious weed designated in Clallam County of region 1, Kitsap and San Juan counties of region 2, Cowlitz and Lewis counties of region 3, and Adams and Lincoln counties of region 5.
- Typo correction: Correcting scientific name of common bugloss from *Lycopsis officinalis* back to *Anchusa officinalis* and correcting scientific name of annual bugloss from *Anchusa arvensis*, to *Lycopsis arvensis*.

WAC 16-750-015

- Green alkanet: Addition as a class C noxious weed species.
- Common tansy: Reclassification and designation change from class C noxious weed species to class B noxious weed species.
- Wild carrot: Clarifying definition by adding the wording, to exclude *Daucus carota subsp. sativus* (garden carrot) grown commercially or for food.

Citation of Rules Affected by this Order: WAC 16-750-011 and 16-750-015.

Statutory Authority for Adoption: Chapter 17.10 RCW.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 21-19-130 on September 21, 2021.

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

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

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

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

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

Date Adopted: December 1, 2021.

Wm C. Agosta
Chairman

OTS-3338.2

AMENDATORY SECTION (Amending WSR 20-24-098, filed 11/30/20, effective 1/1/21)

WAC 16-750-011 State noxious weed list—Class B noxious weeds.

Name		Will be a "Class B designate" in all lands lying within:	
(1)	blueweed, <i>Echium vulgare</i>	(a)	regions 1, 2, 3, 4, 6
		(b)	region 5, except Spokane County
(2)	Brazilian elodea, <i>Egeria densa</i>	(a)	region 1, except Grays Harbor County
		(b)	region 2, except Kitsap County
		(c)	King County of region 2, except lakes Dolloff, Fenwick, Union, Washington, and Sammamish, and the Sammamish River
		(d)	region 3, except Wahkiakum County
		(e)	regions 4, 5, and 6
(3)	bugloss, annual, (<i>Anechusa</i>) <i>Lycopsis arvensis</i>	(a)	regions 1, 2, 3, 4, and 6
		(b)	region 5, except Spokane County
(4)	bugloss, common, (<i>Lycopsis</i>) <i>Anechusa officinalis</i>	(a)	regions 1, 2, 3, and 6
		(b)	All of region 4 except those areas lying within the Entiat River Valley between the Columbia River confluence and Stormy Creek in Chelan County
		(c)	region 5, except Spokane County
(5)	butterfly bush, <i>Buddleja davidii</i>	(a)	Grays Harbor County of region 1
		(b)	San Juan County of region 2
		(c)	Cowlitz County of region 3
(6)	camelthorn, <i>Alhagi maurorum</i>	(a)	regions 1, 2, 3, 4, 5, and 6
(7)	common fennel, <i>Foeniculum vulgare</i> (except bulbous fennel, <i>F. vulgare</i> var. <i>azoricum</i>)	(a)	region 1, except Jefferson County
		(b)	region 2, except King and Skagit counties
		(c)	region 3, except Clark County
		(d)	regions 4, 5, and 6
(8)	common reed, <i>Phragmites australis</i> (nonnative genotypes only)	(a)	regions 1, 2, 3, and 4
		(b)	region 5, except Grant County
		(c)	Asotin, Columbia, and Garfield counties of region 6
(9)	common tansy, <i>Tanacetum vulgare</i>	(a)	<u>Clallam County of region 1</u>
		(b)	<u>Kitsap and San Juan counties of region 2</u>
		(c)	<u>Cowlitz and Lewis counties of region 3</u>
		(d)	<u>Adams and Lincoln counties of region 5</u>

Name		Will be a "Class B designate" in all lands lying within:	
<u>(10)</u>	Dalmatian toadflax, <i>Linaria dalmatica</i> ssp. <i>dalmatica</i>	(a)	regions 1, 2, and 3
		(b)	Adams, Kittitas, and Lincoln counties of region 5
		(c)	Benton, Franklin, and Walla Walla counties of region 6
((10)) <u>(11)</u>	Eurasian watermilfoil, <i>Myriophyllum spicatum</i>	(a)	region 1, except Pacific County
		(b)	Island, Kitsap, and San Juan counties of region 2
		(c)	Clark and Cowlitz counties of region 3
		(d)	Chelan and Okanogan counties, and all lakes with public boat launches except Fan Lake in Pend Oreille County of region 4
		(e)	Adams, Kittitas, Lincoln, and Whitman counties of region 5
		(f)	Asotin, Columbia, and Garfield counties of region 6
((11)) <u>(12)</u>	European coltsfoot, <i>Tussilago farfara</i>	(a)	regions 1, 2, 3, 4, 5, and 6
((12)) <u>(13)</u>	fanwort, <i>Cabomba caroliniana</i>	(a)	regions 1, 2, 4, 5, and 6
		(b)	region 3, except Cowlitz County
((13)) <u>(14)</u>	gorse, <i>Ulex europaeus</i>	(a)	region 1, except Grays Harbor and Pacific counties
		(b)	regions 2, 3, 4, 5, 6
((14)) <u>(15)</u>	grass-leaved arrowhead, <i>Sagittaria graminea</i>	(a)	region 1
		(b)	region 2, except Snohomish County
		(c)	regions 3, 4, 5, and 6
((15)) <u>(16)</u>	hairy willow-herb, <i>Epilobium hirsutum</i>	(a)	regions 1, 3, and 4
		(b)	region 2, except Thurston and Whatcom counties
		(c)	region 5, except Klickitat County
		(d)	region 6, except Benton and Franklin counties
((16)) <u>(17)</u>	<u>hanging sedge, <i>Carex pendula</i>, <i>Carex pendula</i> subsp. <i>pendula</i> and <i>Carex pendula</i> subsp. <i>agastachys</i></u>	(a)	<u>regions 1, 3, 4, 5, and 6</u>
		(b)	<u>region 2, except for King County</u>
<u>(18)</u>	hawkweed oxtongue, <i>Picris hieracioides</i>	(a)	regions 1, 2, 4, 5, and 6
		(b)	region 3, except Skamania County
((17)) <u>(19)</u>	hawkweed, orange, <i>Hieracium aurantiacum</i>	(a)	regions 1, 3, and 6
		(b)	region 2, except Whatcom County
		(c)	region 4, except Pend Oreille and Stevens counties
		(d)	region 5, except Kittitas and Spokane counties
((18)) <u>(20)</u>	hawkweeds: All nonnative species and hybrids of the Meadow subgenus (<i>Pilosella</i>), including, but not limited to, mouseear (<i>Hieracium pilosella</i>), pale (<i>H. lactucella</i>), queen-devil (<i>H. glomeratum</i>), tall (<i>H. piloselloides</i>), whiplash (<i>H. flagellare</i>), yellow (<i>H. caespitosum</i>), and yellow-devil (<i>H. x floribundum</i>)	(a)	region 1
		(b)	region 2, except Thurston County
		(c)	region 3, except Cowlitz County
		(d)	region 4, except Pend Oreille and Stevens counties
		(e)	region 5, except Klickitat and Spokane counties
		(f)	region 6

Name	Will be a "Class B designate" in all lands lying within:
((19)) <u>(21)</u> hawkweeds: All nonnative species and hybrids of the Wall subgenus (<i>Hieracium</i>), including, but not limited to, common (<i>Hieracium lachenalii</i>), European (<i>H. sabaudum</i>), polar (<i>H. atratum</i>), smooth (<i>H. laevigatum</i>), spotted (<i>H. maculatum</i>), and wall (<i>H. murorum</i>)	(a) regions 1, 3, 5, and 6 (b) region 2, except King, Skagit, Snohomish, and Whatcom counties (c) region 4, except Stevens County
((20)) <u>(22)</u> herb-Robert, <i>Geranium robertianum</i>	(a) regions 4, 5, and 6
((21)) <u>(23)</u> hoary alyssum, <i>Berteroa incana</i>	(a) regions 1, 2, 3, and 6 (b) region 4, except Pend Oreille and Ferry counties (c) region 5, except Klickitat County
((22)) <u>(24)</u> houndstongue, <i>Cynoglossum officinale</i>	(a) regions 1, 2, and 3 (b) Chelan and Douglas counties of region 4 (c) Yakima, Grant and Adams counties of region 5 (d) Benton and Franklin counties of region 6
((23)) <u>(25)</u> indigobush, <i>Amorpha fruticosa</i>	(a) regions 1, 2, and 4 (b) Lewis County of region 3 (c) region 5, except Klickitat County
((24)) <u>(26)</u> knapweed, black, <i>Centaurea nigra</i>	(a) regions 1, 2, 3, 4, 5, and 6
((25)) <u>(27)</u> knapweed, brown, <i>Centaurea jacea</i>	(a) regions 1, 2, 3, 4, 5, and 6
((26)) <u>(28)</u> knapweed, diffuse, <i>Centaurea diffusa</i>	(a) region 1 (b) region 2 (c) region 3, except Cowlitz County (d) Adams County of region 5
((27)) <u>(29)</u> knapweed, meadow, <i>Centaurea x gerstlaueri</i>	(a) regions 1 and 4 (b) region 2, except Whatcom County (c) Thurston County of region 2, except below the ordinary high-water mark of the Nisqually River (d) Lewis and Wahkiakum counties of region 3 (e) region 5, except Kittitas and Klickitat counties (f) region 6, except Franklin and Walla Walla counties
((28)) <u>(30)</u> knapweed, Russian, <i>Rhaponticum repens</i>	(a) regions 1, 2, and 3 (b) Ferry and Pend Oreille counties of region 4 (c) Lincoln, Spokane, and Whitman counties of region 5 (d) Adams County of region 5, except for the area west of Highway 17 and north of Highway 26 (e) Asotin and Garfield counties of region 6
((29)) <u>(31)</u> knapweed, spotted, <i>Centaurea stoebe</i>	(a) region 1, except Grays Harbor (b) region 2, except Whatcom County (c) Clark, Lewis, and Wahkiakum counties of region 3 (d) Ferry County of region 4 (e) Adams, Grant and Yakima counties of region 5 (f) region 6, except Columbia and Walla Walla counties
((30)) <u>(32)</u> knotweed, Bohemian, <i>Fallopia x bohémica</i>	(a) Island and San Juan counties of region 2 (b) Skamania County of region 3

Name	Will be a "Class B designate" in all lands lying within:
((31)) (33) knotweed, giant, <i>Fallopia sachalinensis</i>	(c) region 4, 5, and 6 (a) region 2, except King, Pierce, and Snohomish counties (b) region 3, except Cowlitz and Lewis counties
((32)) (34) knotweed, Himalayan, <i>Persicaria wallichii</i>	(c) regions 4, 5, and 6 (a) region 1, except Pacific County (b) region 2, except King and Pierce counties (c) region 3, except Wahkiakum County (d) region 4, 5, and 6
((33)) (35) knotweed, Japanese, <i>Fallopia japonica</i>	(a) Island, San Juan, and Whatcom counties of region 2 (b) Skamania County of region 3 (c) region 4, except Okanogan County (d) region 5, except Spokane County (e) region 6
((34)) (36) kochia, <i>Bassia scoparia</i>	(a) regions 1, 2, and 3 (b) Stevens and Pend Oreille counties of region 4 (c) Adams County of region 5
((35)) (37) lesser celandine, <i>Ficaria verna</i>	(a) region 1, 3, 4, 5, and 6
((36)) (38) loosestrife, garden, <i>Lysimachia vulgaris</i>	(b) region 2, except King and Whatcom counties (a) regions 1, 2, 3, 4, 5, 6
((37)) (39) loosestrife, purple, <i>Lythrum salicaria</i>	(a) Clallam, Jefferson, and Mason counties of region 1 (b) region 2, except Kitsap, Skagit, and Snohomish counties (c) Clark, Lewis, and Skamania counties of region 3 (d) region 4, except Douglas County (e) region 5, except Grant and Spokane counties (f) region 6, except Asotin and Franklin counties
((38)) (40) loosestrife, wand, <i>Lythrum virgatum</i>	(a) Clallam, Jefferson, and Mason counties of region 1 (b) region 2, except Kitsap, Skagit, and Snohomish counties (c) Clark, Lewis, and Skamania counties of region 3 (d) region 4, except Douglas County (e) region 5, except Grant and Spokane counties (f) region 6, except Asotin and Franklin counties
((39)) (41) Malta starthistle, <i>Centaurea melitensis</i>	(a) regions 1, 2, and 3 (b) region 4, except T36 R38 in the area contained within Hwy 395/Hwy 20, Pingston Creek Road, and Highland Loop Road in Stevens County
((40)) (42) parrotfeather, <i>Myriophyllum aquaticum</i>	(c) region 5, except Klickitat and Whitman counties (a) region 1, except Pacific County (b) regions 2, 4, 5, and 6
((41)) (43) perennial pepperweed, <i>Lepidium latifolium</i>	(c) Clark and Skamania counties of region 3 (a) regions 1, 2, and 4 (b) region 3, except Clark and Cowlitz counties (c) Kittitas, Lincoln and Spokane counties of region 5 (d) Columbia and Garfield counties of region 6
((42)) (44) poison hemlock, <i>Conium maculatum</i>	(a) Clallam, Mason, and Pacific counties of region 1 (b) region 2, except King, Skagit, and Whatcom counties (c) Clark and Skamania counties of region 3

Name		Will be a "Class B designate" in all lands lying within:	
		(d)	Chelan, Douglas, and Pend Oreille counties of region 4
		(e)	Grant, Kittitas and Lincoln counties of region 5
((43)) <u>(45)</u>	policeman's helmet, <i>Impatiens glandulifera</i>	(a)	region 1, 3, 4, 5, and 6
		(b)	region 2, except Thurston and Whatcom counties
((44)) <u>(46)</u>	puncturevine, <i>Tribulus terrestris</i>	(a)	regions 1, 2, and 3
		(b)	Ferry, Pend Oreille, and Stevens counties of region 4
		(c)	region 5, except Grant, Klickitat, and Yakima counties
((45)) <u>(47)</u>	Ravenna grass, <i>Tripsidium ravennae</i>	(a)	Cowlitz County of region 3
		(b)	region 4
		(c)	region 5, except Yakima County
		(d)	region 6, except Benton County
((46)) <u>(48)</u>	rough chervil, <i>Chaerophyllum temulum</i>	(a)	<u>regions 1, 3, 4, 5, and 6</u>
		(b)	<u>region 2, except for King County</u>
<u>(49)</u>	rush skeletonweed, <i>Chondrilla juncea</i>	(a)	regions 1, 2, and 3
		(b)	region 4, except all areas of Stevens County south of Township 29
		(c)	Kittitas and Yakima counties of region 5, and Adams County, except those areas lying east of Sage Road, the western border of Range 36
		(d)	Asotin County of region 6
((47)) <u>(50)</u>	saltcedar, <i>Tamarix ramosissima</i> (unless intentionally planted prior to 2004)	(a)	regions 1, 3, 4, 5, and 6
		(b)	region 2, except King and Thurston counties
((48)) <u>(51)</u>	Scotch broom, <i>Cytisus scoparius</i>	(a)	regions 4 and 6
		(b)	region 5, except Klickitat County
((49)) <u>(52)</u>	shiny geranium, <i>Geranium lucidum</i>	(a)	regions 1, 4, 5, and 6
		(b)	regions 2, except Thurston County
		(c)	region 3, except Clark County
((50)) <u>(53)</u>	spurge flax, <i>Thymelaea passerina</i>	(a)	region 4, except Okanogan County
		(b)	regions 5 and 6
((51)) <u>(54)</u>	spurge laurel, <i>Daphne laureola</i>	(a)	region 1, except Clallam and Jefferson counties
		(b)	region 2, except King, Kitsap, and Pierce counties
		(c)	region 3
		(d)	regions 4, 5, and 6
((52)) <u>(55)</u>	spurge, leafy, <i>Euphorbia virgata</i>	(a)	regions 1, 2, 3, and 4
		(b)	region 5, except Spokane County
		(c)	region 6, except Columbia County
((53)) <u>(56)</u>	spurge, myrtle, <i>Euphorbia myrsinites</i>	(a)	region 1, except Clallam and Jefferson counties
		(b)	region 2, except King, Kitsap, Pierce, and Whatcom counties
		(c)	regions 3, 5, and 6
		(d)	region 4, except Okanogan County
((54)) <u>(57)</u>	sulfur cinquefoil, <i>Potentilla recta</i>	(a)	region 1
		(b)	region 2, except Pierce and Thurston counties
		(c)	region 3, except Lewis and Skamania counties
		(d)	Adams, Grant, Lincoln, and Whitman counties of region 5
		(e)	region 6, except Asotin County

Name	Will be a "Class B designate" in all lands lying within:
((55)) (58) tansy ragwort, <i>Jacobaea vulgaris</i>	(a) Island and San Juan counties of region 2 (b) Clark and Wahkiakum counties of region 3 (c) regions 4, 5, and 6
((56)) (59) thistle, musk, <i>Carduus nutans</i>	(a) regions 1, 2, 3, and 6 (b) region 4, except Douglas and Ferry counties (c) region 5, except Kittitas County
((57)) (60) thistle, plumeless, <i>Carduus acanthoides</i>	(a) regions 1, 2, 3, 5, 6 (b) region 4, except those areas north of State Highway 20 in Stevens County
((58)) (61) thistle, Scotch, <i>Onopordum acanthium</i>	(a) regions 1, 2, and 3 (b) region 4, except Douglas County (c) region 5, except Spokane and Whitman counties
((59)) (62) velvetleaf, <i>Abutilon theophrasti</i>	(a) regions 1, 2, 3, 4, and 6 (b) region 5, except Yakima County
((60)) (63) water primrose, <i>Ludwigia hexapetala</i>	(a) regions 1, 2, 3, 4, 5, and 6
((61)) (64) white bryony, <i>Bryonia alba</i>	(a) regions 1, 2, 3, and 4 (b) region 5, except Whitman County (c) Benton and Garfield counties of region 6
((62)) (65) <u>Wild basil/basil savory,</u> <u><i>Clinopodium vulgare</i></u>	<u>(a) regions 1, 2, 4, 5, and 6</u> <u>(b) region 3, except for Skamania County</u>
(66) wild chervil, <i>Anthriscus sylvestris</i>	(a) regions 1, 3, 4, and 6 (b) region 2, except Whatcom County (c) region 5, except Whitman County
((63)) (67) yellow archangel, <i>Lamium galeobdolon</i>	(a) Clallam County of region 1 (b) Island, San Juan, Skagit, and Whatcom counties of region 2 (c) Cowlitz, Skamania, and Wahkiakum counties of region 3 (d) regions 4, 5, and 6
((64)) (68) yellow floating heart, <i>Nymphoides peltata</i>	(a) regions 1, 2, 3, and 6 (b) region 4, except Stevens County (c) region 5, except Spokane County
((65)) (69) yellow nutsedge, <i>Cyperus esculentus</i>	(a) regions 1 and 4 (b) region 2, except Skagit and Thurston counties (c) region 3, except Clark County (d) region 5, except Klickitat and Yakima counties (e) region 6, except Franklin and Walla Walla counties
((66)) (70) yellow starthistle, <i>Centaurea solstitialis</i>	(a) regions 1, 2, and 3 (b) region 4, except T36 R38 in the area contained within Hwy 395/Hwy 20, Pingston Creek Road, and Highland Loop Road in Stevens County (c) region 5, except Klickitat, and Whitman counties

[Statutory Authority: Chapters 17.10 and 34.05 RCW. WSR 20-24-098, § 16-750-011, filed 11/30/20, effective 1/1/21; WSR 19-24-052, § 16-750-011, filed 11/26/19, effective 1/1/20; WSR 18-24-010, § 16-750-011, filed 11/26/18, effective 1/1/19; WSR 17-24-035, § 16-750-011, filed 11/29/17, effective 1/1/18; WSR 16-24-031, § 16-750-011, filed 11/30/16, effective 1/1/17; WSR 15-24-078, §

16-750-011, filed 11/30/15, effective 12/31/15; WSR 14-24-103, §
 16-750-011, filed 12/2/14, effective 1/2/15; WSR 14-02-072, §
 16-750-011, filed 12/30/13, effective 1/30/14; WSR 13-01-038, §
 16-750-011, filed 12/12/12, effective 1/12/13; WSR 12-01-050, §
 16-750-011, filed 12/15/11, effective 1/15/12; WSR 10-24-037, §
 16-750-011, filed 11/22/10, effective 12/23/10; WSR 09-01-071, §
 16-750-011, filed 12/15/08, effective 1/16/09; WSR 07-24-023, §
 16-750-011, filed 11/28/07, effective 1/1/08; WSR 06-24-056, §
 16-750-011, filed 12/4/06, effective 1/4/07; WSR 05-24-026, §
 16-750-011, filed 11/30/05, effective 12/31/05; WSR 05-01-012, §
 16-750-011, filed 12/2/04, effective 1/2/05. Statutory Authority:
 Chapter 17.10 RCW. WSR 04-13-014, § 16-750-011, filed 6/4/04, effec-
 tive 7/5/04. Statutory Authority: Chapters 17.10 and 34.05 RCW. WSR
 03-24-012, § 16-750-011, filed 11/20/03, effective 12/21/03; WSR
 03-04-001, § 16-750-011, filed 1/22/03, effective 2/22/03. Statutory
 Authority: Chapter 17.10 RCW. WSR 01-24-035, § 16-750-011, filed
 11/28/01, effective 12/29/01; WSR 00-24-017, § 16-750-011, filed
 11/28/00, effective 1/2/01; WSR 99-24-029, § 16-750-011, filed
 11/23/99, effective 1/3/00; WSR 98-24-026, § 16-750-011, filed
 11/23/98, effective 1/2/99; WSR 97-24-051, § 16-750-011, filed
 11/26/97, effective 1/2/98; WSR 97-06-108, § 16-750-011, filed 3/5/97,
 effective 4/5/97. Statutory Authority: RCW 17.10.080. WSR 96-06-030, §
 16-750-011, filed 2/29/96, effective 3/31/96. Statutory Authority:
 Chapter 17.10 RCW. WSR 95-06-002, § 16-750-011, filed 2/16/95, effec-
 tive 3/19/95; WSR 94-01-076, § 16-750-011, filed 12/10/93, effective
 1/10/94; WSR 93-01-004, § 16-750-011, filed 12/2/92, effective 1/2/93;
 WSR 91-24-072, § 16-750-011, filed 12/2/91, effective 1/2/92; WSR
 91-01-016, § 16-750-011, filed 12/7/90, effective 1/7/91; WSR
 90-01-004, § 16-750-011, filed 12/7/89, effective 1/7/90; WSR
 88-24-002 (Order 26, Resolution No. 26), § 16-750-011, filed 11/29/88;
 WSR 88-18-001 (Order 24, Resolution No. 24), § 16-750-011, filed
 8/25/88. Statutory Authority: RCW 17.10.080. WSR 88-07-016 (Order 22,
 Resolution No. 22), § 16-750-011, filed 3/7/88.]

AMENDATORY SECTION (Amending WSR 20-24-098, filed 11/30/20, effective
 1/1/21)

WAC 16-750-015 State noxious weed list—Class C noxious weeds.

Common Name	Scientific Name
absinth wormwood	<i>Artemisia absinthium</i>
Austrian fieldcress	<i>Rorippa austriaca</i>
babysbreath	<i>Gypsophila paniculata</i>
black henbane	<i>Hyoscyamus niger</i>
blackberry, evergreen	<i>Rubus laciniatus</i>
blackberry, Himalayan	<i>Rubus bifrons</i>
blackgrass	<i>Alopecurus myosuroides</i>
buffalobur	<i>Solanum rostratum</i>
cereal rye	<i>Secale cereale</i>
common barberry	<i>Berberis vulgaris</i>
common catsear	<i>Hypochaeris radicata</i>
common groundsel	<i>Senecio vulgaris</i>
common St. Johnswort	<i>Hypericum perforatum</i>

Common Name	Scientific Name
((common tansy	<i>Tanacetum vulgare</i>
common teasel	<i>Dipsacus fullonum</i>
curly-leaf pondweed	<i>Potamogeton crispus</i>
English hawthorn	<i>Crataegus monogyna</i>
English ivy 4 cultivars only:	<i>Hedera hibernica</i> 'Hibernica' <i>Hedera helix</i> 'Baltica' <i>Hedera helix</i> 'Pittsburgh' <i>Hedera helix</i> 'Star'
Eurasian watermilfoil hybrid	<i>Myriophyllum spicatum</i> x <i>M. sibiricum</i>
field bindweed	<i>Convolvulus arvensis</i>
fragrant water lily	<i>Nymphaea odorata</i>
<u>green alkanet</u>	<u><i>Pentaglottis sempervirens</i></u>
hairy whitetop	<i>Lepidium appelianum</i>
hoary cress	<i>Lepidium draba</i>
Italian arum	<i>Arum italicum</i>
Japanese eelgrass	<i>Nanozostera japonica</i>
jointed goatgrass	<i>Aegilops cylindrica</i>
jubata grass	<i>Cortaderia jubata</i>
lawnweed	<i>Soliva sessilis</i>
longspine sandbur	<i>Cenchrus longispinus</i>
Medusahead	<i>Taeniatherum caput-medusae</i>
nonnative cattail species and hybrids	Including, but not limited to, <i>Typha angustifolia</i> , <i>T. domingensis</i> and <i>T. x glauca</i>
old man's beard	<i>Clematis vitalba</i>
oxeye daisy	<i>Leucanthemum vulgare</i>
pampas grass	<i>Cortaderia selloana</i>
perennial sowthistle	<i>Sonchus arvensis</i> ssp. <i>arvensis</i>
reed canarygrass	<i>Phalaris arundinacea</i>
Russian olive	<i>Elaeagnus angustifolia</i>
scentless mayweed	<i>Tripleurospermum inodorum</i>
smoothseed alfalfa dodder	<i>Cuscuta approximata</i>
spikeweed	<i>Centromadia pungens</i>
spiny cocklebur	<i>Xanthium spinosum</i>
spotted jewelweed	<i>Impatiens capensis</i>
Swainsonpea	<i>Sphaerophysa salsula</i>
thistle, bull	<i>Cirsium vulgare</i>
thistle, Canada	<i>Cirsium arvense</i>
tree-of-heaven	<i>Ailanthus altissima</i>
ventenata	<i>Ventenata dubia</i>
white cockle	<i>Silene latifolia</i>
wild carrot (except subs. <u>sativus</u> where <u>grown</u> commercially ((<u>grown</u>)) or <u>for food</u>)	<i>Daucus carota</i>

Common Name	Scientific Name
yellow flag iris	<i>Iris pseudacorus</i>
yellow toadflax	<i>Linaria vulgaris</i>

[Statutory Authority: Chapters 17.10 and 34.05 RCW. WSR 20-24-098, § 16-750-015, filed 11/30/20, effective 1/1/21; WSR 17-24-035, § 16-750-015, filed 11/29/17, effective 1/1/18; WSR 15-24-078, § 16-750-015, filed 11/30/15, effective 12/31/15; WSR 14-24-103, § 16-750-015, filed 12/2/14, effective 1/2/15; WSR 14-02-072, § 16-750-015, filed 12/30/13, effective 1/30/14; WSR 13-01-038, § 16-750-015, filed 12/12/12, effective 1/12/13; WSR 12-01-050, § 16-750-015, filed 12/15/11, effective 1/15/12; WSR 10-24-037, § 16-750-015, filed 11/22/10, effective 12/23/10; WSR 09-01-071, § 16-750-015, filed 12/15/08, effective 1/16/09; WSR 07-24-023, § 16-750-015, filed 11/28/07, effective 1/1/08; WSR 06-24-056, § 16-750-015, filed 12/4/06, effective 1/4/07; WSR 05-01-012, § 16-750-015, filed 12/2/04, effective 1/2/05. Statutory Authority: Chapter 17.10 RCW. WSR 04-13-014, § 16-750-015, filed 6/4/04, effective 7/5/04. Statutory Authority: Chapters 17.10 and 34.05 RCW. WSR 03-24-012, § 16-750-015, filed 11/20/03, effective 12/21/03; WSR 03-04-001, § 16-750-015, filed 1/22/03, effective 2/22/03. Statutory Authority: Chapter 17.10 RCW. WSR 01-24-035, § 16-750-015, filed 11/28/01, effective 12/29/01; WSR 00-24-017, § 16-750-015, filed 11/28/00, effective 1/2/01; WSR 99-24-029, § 16-750-015, filed 11/23/99, effective 1/3/00; WSR 98-24-026, § 16-750-015, filed 11/23/98, effective 1/2/99; WSR 97-06-108, § 16-750-015, filed 3/5/97, effective 4/5/97. Statutory Authority: RCW 17.10.080. WSR 96-06-030, § 16-750-015, filed 2/29/96, effective 3/31/96. Statutory Authority: Chapter 17.10 RCW. WSR 95-06-002, § 16-750-015, filed 2/16/95, effective 3/19/95; WSR 94-01-076, § 16-750-015, filed 12/10/93, effective 1/10/94; WSR 93-01-004, § 16-750-015, filed 12/2/92, effective 1/2/93; WSR 91-24-072, § 16-750-015, filed 12/2/91, effective 1/2/92; WSR 91-01-016, § 16-750-015, filed 12/7/90, effective 1/7/91; WSR 90-01-004, § 16-750-015, filed 12/7/89, effective 1/7/90; WSR 88-24-002 (Order 26, Resolution No. 26), § 16-750-015, filed 11/29/88. Statutory Authority: RCW 17.10.080. WSR 88-07-016 (Order 22, Resolution No. 22), § 16-750-015, filed 3/7/88.]

WSR 22-01-052
PERMANENT RULES
LIQUOR AND CANNABIS
BOARD

[Filed December 8, 2021, 11:09 a.m., effective January 8, 2022]

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

Purpose: The Washington state liquor and cannabis board (WSLCB) has adopted new rule sections and amendments to existing rule sections in chapters 314-02 and 314-03 WAC to implement E2SHB 1480 (chapter 48, Laws of 2021), which extended certain temporary privileges granted to liquor licensees to mitigate the impact of the coronavirus (COVID-19) pandemic.

The adopted rules implement E2SHB 1480 by: (1) Creating new rule sections for the temporary "to-go" alcohol endorsements for cocktails/wine by the glass, growlers, and manufacturer sealed alcohol products; (2) creating a new rule section for the temporary outdoor alcohol service area requirements; and (3) permanently revising food service menu requirement rules to provide licensees with greater flexibility.

Citation of Rules Affected by this Order: New WAC 314-03-205, 314-03-500, 314-03-505 and 314-03-510; and amending WAC 314-02-010, 314-02-035, 314-02-0411, 314-02-065, 314-02-087, 314-02-112, 314-02-114, and 314-03-200.

Statutory Authority for Adoption: E2SHB 1480 (section 2, chapter 48, Laws of 2021); RCW 66.08.071, 66.08.030.

Other Authority: E2SHB 1480 (chapter 48, Laws of 2021) now codified in RCW 66.08.071, 66.24.630.

Adopted under notice filed as WSR 21-20-066 on September 29, 2021.

A final cost-benefit analysis is available by contacting Robert DeSpain, 1025 Union Avenue S.E., Olympia, WA 98501, phone 360-664-1758, fax 360-704-5027, email rules@lcb.wa.gov, website www.lcb.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 4, Amended 8, Repealed 0.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 4, Amended 8, Repealed 0.

Date Adopted: December 8, 2021.

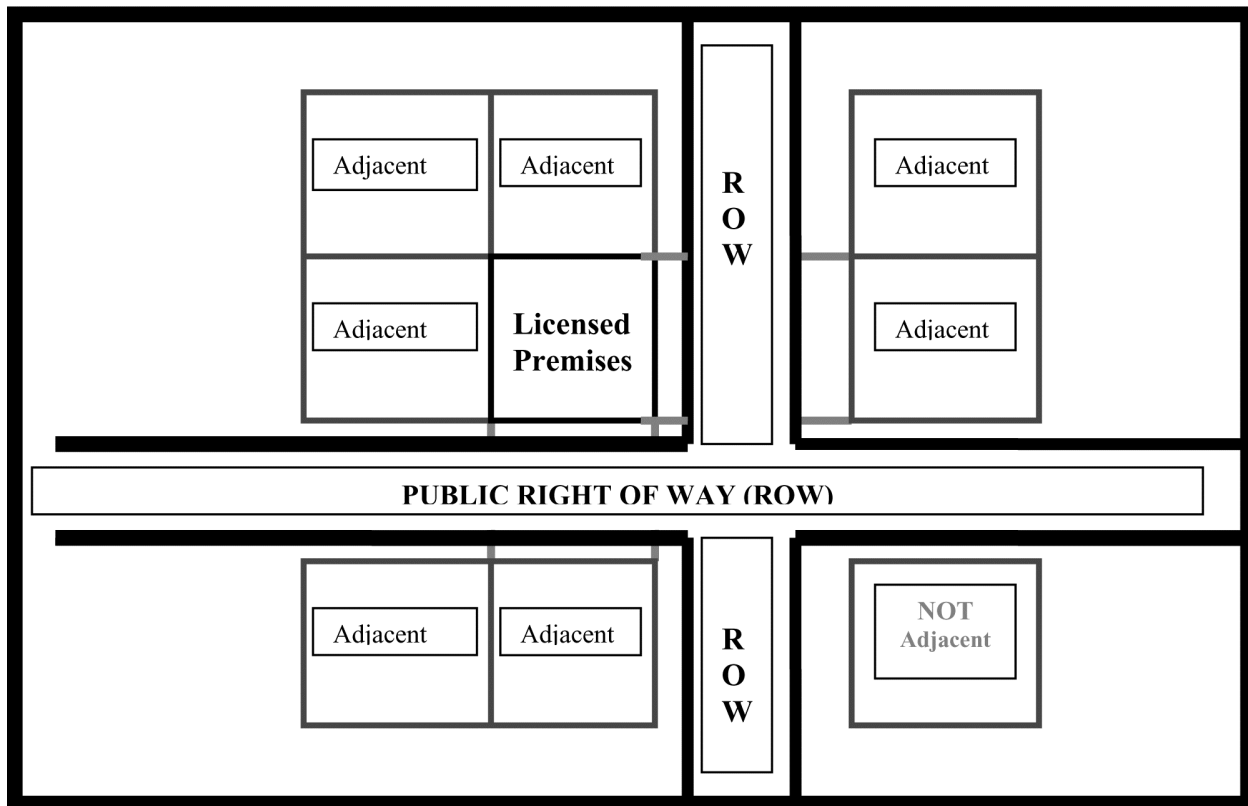
David Postman
Chair

OTS-3247.3

AMENDATORY SECTION (Amending WSR 17-12-030, filed 5/31/17, effective 7/1/17)

WAC 314-02-010 Definitions. ~~The ((following definitions are to~~ clarify the purpose and intent of the rules and laws governing liquor licenses and permits)) definitions in this section apply throughout this title unless the context clearly requires otherwise. Additional definitions can be found in RCW 66.04.010.

(1) "Adjacent" means having a common endpoint or border where the extension of the property lines of the licensed premises contacts that common border.



(2) ~~((~~"Appetizer" means a small portion of food served before the main course of a meal to stimulate the appetite. An appetizer does not qualify as minimum food service.

~~(3)-)~~ "Banquet room" means any room used primarily for the sale and service of food and liquor to private groups.

(3) (a) "Complete meal" means:

(i) An entree with at least one side dish available to order. Side dishes must be offered and available to order with the entree, but are not required to be included; or

(ii) A combination of small plates that are intended to be ordered many at a time or on a rolling basis throughout the meal service.

(b) Menu items that consist solely of the following types of food do not qualify as complete meals: Precooked frozen meals that are reheated, carry-out items obtained from another business, or snack food.

(c) For the purposes of this subsection, the following definitions apply unless the context clearly requires otherwise:

(i) "Entree" means the main course of a meal. Some examples of entrees include, but are not limited to, fish, steak, chicken, pork,

pasta, pizza, burgers, pho, sushi, street tacos, tikka masala, quiche, fufu, curry, seafood salad, Cobb salad, chef's salad, sandwiches, and breakfast items.

(ii) "Side dish" includes soups, vegetables, salads, potatoes, beans, rice, naan, couscous, irio, fruit, bread, banchan, and other similar dishes. Garnishes do not qualify as side dishes. Some examples of garnishes include, but are not limited to, pickles, salsa, and dips.

(iii) "Small plate" means a type of menu item that has a small portion size and is intended to be ordered many at a time or on a rolling basis throughout the meal service. Small plates are often shared among guests. Some examples of small plates include, but are not limited to, tapas, dim sum, and meze. Many cultures have different types of small plates. Small plates do not include snack food.

(4) "Customer service area" means areas where food and/or liquor are normally sold and served to the public, i.e., lounges and dining areas. A banquet room is not considered a customer service area.

(5) "Dedicated dining area." In order for an area to qualify as a dedicated dining area, it must be a distinct portion inside of a restaurant that is used primarily for the sale, service, and consumption of food, and have accommodations for eating, e.g., tables, chairs, booths, etc. See WAC 314-02-025 for more information.

(6) "Designated area" means a space where alcohol may be sold, served, or consumed.

(7) "Entertainer" means someone who performs for an audience such as a disc jockey, singer, or comedian, or anyone providing entertainment services for the licensee. An entertainer is considered an employee of the liquor licensee per WAC 314-01-005. Patrons participating in entertainment are not considered employees.

(8) "Entertainment" means dancing, karaoke, singing, comedy shows, concerts, TV broadcasts, contests with patron participation and/or performing for an audience.

(9) "Food counter" means a table or counter set up for the primary purpose of food service to customers who sit or stand at the counter. Any alcohol served is incidental to food service.

(10) "Game room" means an area of a business set up for the primary purpose of patrons using games or gaming devices.

~~(11) ("Limited food service" means items such as appetizers, sandwiches, salads, soups, pizza, hamburgers, or fry orders.~~

~~(12))~~ (12) "Liquor bar" means a table or counter where alcohol is stored or prepared and served to customers who sit or stand at the bar. Liquor bars can only be in lounges or in premises where minors are not allowed at any time.

~~((13))~~ (13) "Lounge" means the portion of a restaurant used primarily for the preparation, sale, and service of beer, wine, or spirits. Minors are not allowed in a lounge (see RCW 66.44.316 for information on employees and professional musicians under ~~((twenty-one))~~ 21 years of age).

~~((14))~~ (14) (a) "Minimum food service" means that menu items such as sandwiches, salad, soup, pizza, hamburgers, ~~((and fry orders))~~ fries, savory pies, tacos, dumplings, fried rice, and other similar items are available to order.

(b) Menu items that consist solely of the following types of food do not qualify as minimum food service: Precooked frozen meals that are reheated, carry-out items obtained from another business, or snack food.

~~((15))~~ (14) "Minor" means a person under ~~((twenty-one))~~ 21 years of age.

~~((16))~~ (15) "On-premises liquor licensed premises" means a building in which a business is located inside that is allowed to sell alcohol for consumption on the licensed premises.

~~((17))~~ (16) "Service bar" means a fixed or portable table, counter, cart, or similar work station primarily used to prepare, mix, serve, and sell alcohol that is picked up by employees or customers. Customers may not be seated or allowed to consume food or alcohol at a service bar.

~~((18))~~ (17) "Snack food" ~~((means))~~ includes items such as peanuts, popcorn, (and) chips, jerky, candy, cookies, crackers, edamame, and other similar food items.

[Statutory Authority: RCW 66.08.030. WSR 17-12-030, § 314-02-010, filed 5/31/17, effective 7/1/17. Statutory Authority: RCW 66.08.030 and 66.24.363. WSR 11-01-133, § 314-02-010, filed 12/21/10, effective 1/21/11. Statutory Authority: RCW 66.08.030 and 66.24.600. WSR 10-01-091, § 314-02-010, filed 12/16/09, effective 1/16/10. Statutory Authority: RCW 66.08.030 and 66.24.590. WSR 08-17-067, § 314-02-010, filed 8/19/08, effective 9/19/08. Statutory Authority: RCW 66.04.010, 66.08.030, 66.24.410, 66.44.310, and 66.44.420. WSR 05-22-022, § 314-02-010, filed 10/24/05, effective 11/24/05. Statutory Authority: RCW 66.08.030, 66.24.010, 66.24.120. WSR 00-07-091, § 314-02-010, filed 3/15/00, effective 4/15/00.]

AMENDATORY SECTION (Amending WSR 18-13-063, filed 6/14/18, effective 7/15/18)

WAC 314-02-035 ~~((What are the))~~ **Food service requirements for a spirits, beer, and wine restaurant license((?)).** (1) A spirits, beer, and wine restaurant licensee must serve at least ~~((eight))~~ four complete meals. ~~((The board may make an exception to the eight complete meal requirement on a case-by-case basis.))~~ Establishments shall be maintained in a substantial manner as a place for preparing, cooking, and serving of complete meals. ~~((For purposes of this title:~~

~~(a) "Complete meal" means an entree and at least one side dish. Side dishes are not required to be included with the entrée, however must be offered.~~

~~(b) "Entree" means the main course of a meal. Some examples of entrees are fish, steak, chicken, pork, pasta, pizza, burgers, pho, sushi, street tacos, tikka masala, quiche, seafood salad, Cobb salad, chef's salad, sandwiches, and breakfast items (as long as they include a side dish). Entrees do not include snack items, or menu items which consist solely of precooked frozen food that is reheated, or consist solely of carry-out items obtained from another business.~~

~~(c) Examples of side dishes are soups, vegetables, salads, potatoes, rice, fruit, and bread. Garnishes such as, but not limited to, pickles, salsa, and dips do not qualify as a side dish.))~~ "Complete meal" is defined in WAC 314-02-010.

(2) The restaurant must maintain the kitchen equipment necessary to prepare the complete meals required under this section.

(3) The complete meals must be prepared on the restaurant premises.

(4) A chef or cook must be on duty while complete meals are offered.

(5) A menu must be available to customers.

(6) The food items required to maintain the menu must be on the restaurant premises. These items must be edible.

(7) Restaurants that have (~~one hundred~~) 100 percent dedicated dining area must maintain complete meal service any time liquor is available for sale, service, or consumption.

(8) (a) Restaurants with less than (~~one hundred~~) 100 percent dedicated dining area must maintain complete meal service for a minimum of five hours a day during the hours of 8:00 a.m. and 11:00 p.m., three days a week.

~~(Limited food service, such as appetizers, sandwiches, salads, soups, pizza, burgers, or fry orders, must be available outside of these hours. Snacks such as peanuts, popcorn, and chips do not qualify as limited food service.)~~ (b) Minimum food service must be available during hours of alcohol service when complete meal service is not offered. "Minimum food service" is defined in WAC 314-02-010.

(9) The hours of complete meal service must be conspicuously posted on the premises or listed on the menu. A statement that (~~limited~~) minimum food service is available outside of those hours must also be posted or listed on the menu.

[Statutory Authority: RCW 66.24.410. WSR 18-13-063, § 314-02-035, filed 6/14/18, effective 7/15/18. Statutory Authority: RCW 66.08.030. WSR 17-12-030, § 314-02-035, filed 5/31/17, effective 7/1/17. Statutory Authority: RCW 66.08.030 and 66.24.363. WSR 11-01-133, § 314-02-035, filed 12/21/10, effective 1/21/11. Statutory Authority: RCW 66.08.030 and 66.24.600. WSR 10-01-091, § 314-02-035, filed 12/16/09, effective 1/16/10. Statutory Authority: RCW 66.04.010, 66.08.030, 66.24.410, 66.44.310, and 66.44.420. WSR 05-22-022, § 314-02-035, filed 10/24/05, effective 11/24/05. Statutory Authority: RCW 66.08.030, 66.24.010, 66.24.120. WSR 00-07-091, § 314-02-035, filed 3/15/00, effective 4/15/00.]

AMENDATORY SECTION (Amending WSR 11-23-045, filed 11/9/11, effective 12/10/11)

WAC 314-02-0411 ((What are the)) Food service requirements for a hotel license(?).

(1) A hotel licensee must have the ability to serve at least (~~eight~~) four complete meals to hotel guests or any other patron of the hotel who is offered alcohol service for on-premise consumption at a food outlet on the hotel premises. Food outlets include room service, banquets, bars/lounges, restaurants, or coffee shops. "Complete meal" is defined in WAC (~~314-02-035~~) 314-02-010.

(2) Complete meals must be prepared on the hotel premises.

(3) A menu must be available to hotel guests and patrons offered alcohol service that lists, at a minimum, the required complete meals.

(4) The food items required to maintain the menu must be located on the licensed premises. These items must be edible.

(5) (a) Licensees must maintain complete meal service for a minimum of five hours a day between the hours of 11:00 a.m. and 2:00 a.m. on any day that liquor is served. The board may consider written requests for exceptions to this requirement due to a demonstrated hard-

ship and may allow exceptions under terms and conditions the board determines are in the best interests of the public.

(b) Minimum food service must be available during hours of alcohol service when complete meal service is not offered. "Minimum food service" (~~(includes items such as hamburgers or fry orders. Snacks such as peanuts, popcorn, and chips do not qualify as minimum food service)~~) is defined in WAC 314-02-010.

(6) Hours of complete meal service must be listed on the menu. If applicable, a statement must be posted or listed on the menu that minimum food service is available when alcohol is served and complete meal service is unavailable.

[Statutory Authority: RCW 66.08.030 and chapter 66.24 RCW. WSR 11-23-045, § 314-02-0411, filed 11/9/11, effective 12/10/11. Statutory Authority: RCW 66.08.030 and 66.24.363. WSR 11-01-133, § 314-02-0411, filed 12/21/10, effective 1/21/11. Statutory Authority: RCW 66.08.030 and 66.24.590. WSR 08-17-067, § 314-02-0411, filed 8/19/08, effective 9/19/08.]

AMENDATORY SECTION (Amending WSR 11-23-045, filed 11/9/11, effective 12/10/11)

WAC 314-02-065 (~~(What is a)~~) **Snack bar license**(~~(?)~~). (1) Per RCW 66.24.350, a snack bar license allows a licensee to serve beer by the opened bottle or can for on-premises consumption only.

(2) Snack bar licensees must have snack food, as defined in WAC 314-02-010(~~((15))~~), available whenever beer is sold or served.

(3) Snack bars must have designated seating for on-premises consumption of beer.

(4) The annual fee for this license is (~~(one hundred twenty-five dollars)~~) \$125.

[Statutory Authority: RCW 66.08.030 and chapter 66.24 RCW. WSR 11-23-045, § 314-02-065, filed 11/9/11, effective 12/10/11. Statutory Authority: RCW 66.08.030 and 66.24.600. WSR 10-01-091, § 314-02-065, filed 12/16/09, effective 1/16/10. Statutory Authority: RCW 66.08.030, 66.24.010, 66.24.120. WSR 00-07-091, § 314-02-065, filed 3/15/00, effective 4/15/00.]

AMENDATORY SECTION (Amending WSR 17-12-030, filed 5/31/17, effective 7/1/17)

WAC 314-02-087 (~~(What is a)~~) **Spirits, beer, and wine theater license**(~~(?)~~). (1) A spirits, beer, and wine theater is a place of business where motion pictures or other primarily nonparticipatory entertainment or events are shown. The holder of a beer and wine theater license is allowed to sell spirits, beer, strong beer, and wine, at retail, for consumption on the licensed premises.

(2) The requirements for the spirits, beer, and wine theater license are as follows:

(a) The theater has no more than (~~(one hundred twenty)~~) 120 seats per theater room.

(b) All servers of beer and wine are required to attend a mandatory alcohol server training (MAST) program.

(c) The serving size for spirits is one and one quarter ounce. The serving size for wine is five ounces. The serving size for beer is twelve ounces.

(d) There must be tabletop accommodations for in theater dining.

(e) If the theater premises will be frequented by minors an alcohol control plan agreement must be signed and submitted to the board during the application process.

(3) A spirits, beer, and wine theater licensee must ~~((serve at least eight complete meals. Establishments shall be maintained in a substantial manner as a place for preparing, cooking, and serving of complete meals.~~

~~(a) "Complete meal" means an entree and at least one side dish.~~

~~(b) "Entree" means the main course of a meal. Some examples of entrees are fish, steak, chicken, pork, pasta, pizza, hamburgers, seafood salad, Cobb salad, chef's salad, sandwiches, and breakfast items (as long as they include a side dish). Entrees do not include snack items, or menu items which consist solely of precooked frozen food that is reheated, or consist solely of carry-out items obtained from another business.~~

~~(c) Examples of side dishes are soups, vegetables, salads, potatoes, french fries, rice, fruit, and bread. Garnishes such as, but not limited to, pickles, salsa, and dips do not qualify as a side dish.~~

~~(d) The restaurant must maintain the kitchen equipment necessary to prepare the complete meals required under this section.~~

~~(e) The complete meals must be prepared on the restaurant premises.~~

~~(f) A chef or cook must be on duty while complete meals are offered.~~

~~(g) A menu must be available to customers.~~

~~(h) The food items required to maintain the menu must be on the restaurant premises. These items must be edible)) meet the same food service requirements that apply to spirits, beer, and wine restaurant licensees in WAC 314-02-035.~~

(4) The alcohol control plan agreement will be provided on a form by the board and includes the following requirements:

(a) Ensure that alcoholic beverages are not sold to persons under the age of ~~((twenty-one))~~ 21, staff will request identification from any patron who appears to be age ~~((thirty))~~ 30 or under and who is attempting to purchase an alcoholic beverage.

(b) Alcoholic beverages must be served in containers that differ significantly from containers utilized for nonalcoholic beverages.

(c) All alcoholic beverages sold under this license must be sold by the individual drink.

(d) If staff observes a patron who is in the possession of or who is consuming an alcoholic beverage, who appears to be of questionable age, staff will request identification from that patron. If the patron is unable to produce an acceptable form of identification verifying their age, the alcohol will be confiscated.

(e) Staff will accept only those forms of identification that are acceptable per WAC 314-11-025 to verify a person's age for the purpose of selling, serving, or allowing a person to possess or consume alcohol.

(f) All employees involved in the sale, service, and/or supervision of alcoholic beverages will be required to attend MAST to obtain the appropriate permit for their level of service.

(g) Sufficient lighting must be maintained at the point of sale so that identification can be confirmed and patrons observed for signs of intoxication.

(h) To ensure alcoholic beverages are served in a safe, responsible, and controlled manner, sales and service of alcoholic beverages will be limited to one serving per person per transaction.

(i) If a patron is accompanied by another patron who wants to pay for both people's drinks, they may do so, provided that both patrons are of legal age to purchase, and have proper identification, if requested, and are not displaying signs of intoxication.

(j) Alcohol may only be sold, served, and consumed in areas designated in the alcohol control plan agreement and approved by the board.

(k) Staff will refuse to sell an alcoholic beverage to any person who appears to be intoxicated. Alcoholic beverages will be removed from any person who appears to be intoxicated.

(l) This alcohol control plan agreement will be prominently posted on the licensed premises.

(5) Penalties are doubled for a violation involving minors or the failure to follow the signed alcohol control plan agreement.

(6) If the theater premises has a restaurant located outside of the actual theater screening areas, spirits, beer, and wine may be served and consumed in the restaurant area.

(a) Spirits may be sold by the individual drink.

(b) Beer may be sold by the pitcher as well as by individual serving for consumption in the restaurant area.

(c) Wine may be sold by the bottle as well as by the individual serving for consumption in the restaurant area.

[Statutory Authority: RCW 66.08.030, WSR 17-12-030, § 314-02-087, filed 5/31/17, effective 7/1/17. Statutory Authority: RCW 66.24.650 and 66.24.655, WSR 14-03-077, § 314-02-087, filed 1/15/14, effective 2/15/14.]

AMENDATORY SECTION (Amending WSR 17-12-030, filed 5/31/17, effective 7/1/17)

WAC 314-02-112 ((What is a)) Caterer's license((?)). (1) A caterer's license allows the licensee to sell spirits, beer, and wine by the individual serving for consumption on the premises at a catered event location.

(2) The catered event location must be owned, leased, or operated by:

(a) The holder of the caterer's license; or

(b) The sponsor of the event for which the catering services are being provided.

(3) The caterer licensee is responsible for all areas of a location where alcohol is sold, served, consumed, or stored.

(4) If the catered event is open and advertised to the public, the event must be sponsored by a nonprofit society or organization as defined in RCW 66.24.375.

(a) A registered nonprofit holding a public or civic event may invite a caterer to provide alcohol service at a location within the parameters of the event.

(b) If attendance at the catered event is limited to members or invited guests of the sponsoring individual, society, or organization, the requirement in subsection (2) of this section does not apply.

(5) A spirits, beer, and wine caterer licensee must have the ability to serve at least ~~((eight))~~ four complete meals. A commissary kitchen, licensed by the city and/or county health department, shall be maintained in a substantial manner as a place for preparing and cooking complete meals. The caterer licensee must maintain the kitchen equipment necessary to prepare the complete meals required under this section. The complete meals must be prepared at the licensed commissary kitchen premises. ~~((For the purposes of this title:~~

~~(a) "Complete meal" means an entrée and at least one side dish.~~

~~(b) "Entrée" means the main course of a meal. Some examples of entrées are fish, steak, chicken, pork, pasta, pizza, hamburgers, seafood salad, Cobb salad, chef's salad, sandwiches, and breakfast items (as long as they include a side dish). Entrées do not include snack items, or menu items which consist solely of precooked frozen food that is reheated, or consist solely of carry-out items obtained from another business.~~

~~(c) Examples of side dishes are soups, vegetables, salads, potatoes, french fries, rice, fruit, and bread.))~~ "Complete meal" is defined in WAC 314-02-010.

(6) A beer and wine caterer licensee must have the ability to provide minimum food service. A commissary kitchen shall be maintained in a substantial manner as a place for preparing and cooking minimum food service. The caterer licensee must maintain the kitchen equipment necessary to prepare minimum food service required under this section. The minimum food service must be prepared at the licensed commissary kitchen premises. ~~((For purposes of this title:~~

~~"Minimum food service" means items such as sandwiches, salad, soup, hamburgers, pizza, and fry orders.))~~ "Minimum food service" is defined in WAC 314-02-010.

(7) Licensees holding a caterer's license may share a commissary kitchen under the following conditions:

(a) Each licensee has their own secure area for their own liquor stock. Liquor stock cannot be shared.

(b) If using a shared commissary kitchen, each applicant/licensee must provide a sketch of the commissary kitchen to licensing indicating the separate secured area for each licensee.

~~((7))~~ (8) The applicant must provide the liquor and cannabis board with a copy of their commissary kitchen license issued by the city or county health department.

~~((8))~~ (9) (a) The licensee is required to send a list of scheduled catered events to their regional enforcement office on the first of each month. The licensee must provide the following information:

~~((a))~~ (i) Date of the catered events;

~~((b))~~ (ii) Time of the catered events; and

~~((c))~~ (iii) Place and location of catered events.

(b) Any changes to the information provided to the board must be reported to the regional enforcement office ~~((seventy-two))~~ 72 hours prior to the catered event.

~~((9))~~ (10) A caterer's license holder is not allowed to cater events at a liquor licensed premises.

~~((10))~~ (11) The holder of the caterer's license may store liquor on other premises operated by the licensee if the licensee owns or has a leasehold interest at the other premises. Documentation must be

provided to the board showing the licensee owns or has a leasehold interest in the property.

~~((11))~~ (12) All employees that sell or serve alcohol must hold MAST permits.

~~((12))~~ (13) The annual fee for the caterer's license is as follows:

- (a) The annual fee for beer is ~~((two hundred dollars))~~ \$200;
- (b) The annual fee for wine is ~~((two hundred dollars))~~ \$200; and
- (c) The annual fee for a combined spirits, beer, and wine is ~~((one thousand dollars))~~ \$1,000.

[Statutory Authority: RCW 66.08.030. WSR 17-12-030, § 314-02-112, filed 5/31/17, effective 7/1/17. Statutory Authority: RCW 66.24.690. WSR 14-24-128, § 314-02-112, filed 12/3/14, effective 1/3/15.]

AMENDATORY SECTION (Amending WSR 14-20-048, filed 9/24/14, effective 10/25/14)

WAC 314-02-114 ~~((What is a))~~ **Senior center license** ~~((?))~~. (1) A senior center license can only be issued to a nonprofit organization whose primary service is providing recreational and social activities for seniors on the licensed premises.

(2) The senior center license permits the sale of spirits by the individual glass, including mixed drinks and cocktails mixed on the premises only, beer and wine, at retail for consumption on the licensed premises.

(3) To qualify for the senior center license, the applicant must:

(a) Be a nonprofit organization under RCW 24.03.005;

(i) "Corporation" or "domestic corporation" means a corporation not for profit subject to the provisions of this chapter, except a foreign corporation.

(ii) "Foreign corporation" means a corporation not for profit organized under laws other than the laws of this state.

(iii) "Not for profit corporation" or "nonprofit corporation" means a corporation no part of the income of which is distributable to its members, directors or officers.

(b) Only serve alcohol between the hours of 6 a.m. and 2 a.m.; and

(c) Provide ~~((limited))~~ at least minimum food service anytime alcohol is sold. "Minimum food service" is defined in WAC 314-02-010.

~~((Limited food service means foods such as:~~

~~(i) Appetizers;~~

~~(ii) Sandwiches;~~

~~(iii) Salads and soups;~~

~~(iv) Pizza;~~

~~(v) Hamburgers; and~~

~~(vi) Fry orders.))~~

(4) Alcohol may be sold and served at the following types of events:

(a) Events hosted by the senior center; and

(b) Private events where the facility is rented by a private party for an event such as a wedding reception, family reunion, etc.

(5) If minors are allowed on the premises, floor plans must meet the requirements in WAC 314-02-025.

(6) All alcohol servers must have a valid mandatory alcohol server training permit.

(7) The annual fee for this license is ((seven hundred twenty dollars)) \$720.

[Statutory Authority: RCW 66.24.680. WSR 14-20-048, § 314-02-114, filed 9/24/14, effective 10/25/14.]

OTS-3248.4

AMENDATORY SECTION (Amending WSR 20-03-180, filed 1/22/20, effective 2/22/20)

WAC 314-03-200 Outside or extended alcohol service. A licensee must request approval from the board's licensing division for ongoing outside or extended alcohol service. Except as provided in the temporary rules for outdoor alcohol service in WAC 314-03-205 that are effective until July 1, 2023, unless extended by law, the following conditions must be met:

(1) The area must be enclosed with a permanent or movable barrier a minimum of ((~~forty-two~~)) 42 inches in height.

(2) There must be an interior access to the licensed premises. If the interior access is from a minor restricted area of the premises, minors are prohibited in the outside or extended alcohol service area.

(3) There must be an attendant, wait staff, or server dedicated to the outside service area when patrons are present.

(4) Must have leasehold rights to the area and have and be connected to the licensed premises.

(5) Openings into and out of the outside area cannot exceed ((~~ten~~)) 10 feet. If there is more than one opening along one side, the total combined opening may not exceed ((~~ten~~)) 10 feet.

(6) **Exception.** For sidewalk cafe outside service, the board allows local regulations that, in conjunction with a local sidewalk cafe permit, requires a ((~~forty-two~~)) 42 inch barrier or permanent demarcation of the designated alcohol service areas for continued enforcement of the boundaries.

(a) The permanent demarcation must be at all boundaries of the outside service area;

(b) The permanent demarcation must be at least six inches in diameter;

(c) The permanent demarcation must be placed no more than ((~~ten~~)) 10 feet apart;

(d) There must be an attendant, wait staff, or server dedicated to the outside service area when patrons are present;

(e) This exception only applies to restaurant liquor licenses with sidewalk cafe service areas contiguous to the liquor licensed premises. "Contiguous" means touching along a boundary or at a point;

(f) This exception does not apply to beer gardens, standing room only venues, and permitted special events. Board approval is still required with respect to sidewalk cafe barrier requirements.

(7) **Limited exception.** The board may grant limited exceptions to the required ((~~forty-two~~)) 42 inch high barrier for outside alcohol service areas.

(a) The licensee must have exclusive leasehold rights to the outside service area.

(b) There must be permanent demarcations at all boundaries of the outside service area for continued enforcement of the boundaries.

[Statutory Authority: RCW 66.08.030 and 66.44.310. WSR 20-03-180, § 314-03-200, filed 1/22/20, effective 2/22/20. Statutory Authority: RCW 66.08.030. WSR 17-12-030, § 314-03-200, filed 5/31/17, effective 7/1/17.]

NEW SECTION

WAC 314-03-205 Temporary rules for outdoor alcohol service by on-premises licensees. (1) As authorized in section 2(8), chapter 48, Laws of 2021, the temporary rules for outdoor alcohol service described in this section are effective until July 1, 2023, unless extended by law. These rules create a temporary exception to the requirements in WAC 314-03-200. These rules apply to all on-premises licensees.

(2) For ongoing outdoor alcohol service located in privately owned spaces, a licensee must request approval from the board's licensing division and meet the following requirements:

(a) The licensee must have legal authority to use the outdoor alcohol service area including, but not limited to, ownership or leasehold rights;

(b) The licensee must have a building that provides indoor dining or production in order to qualify for an outdoor alcohol service area;

(c) The outdoor alcohol service area must be (i) contiguous to the licensed business, or (ii) located on the same property or parcel of land as the licensed business;

(d) The outdoor alcohol service area must have an attendant, wait staff, or server dedicated to the area when patrons are present;

(e) Interior access to the licensed premises from the outdoor alcohol service area is not required. However, unless there is (i) interior access to the licensed premises from the outdoor alcohol service area, or (ii) an unobstructed direct line of sight from inside the licensed premises to the outdoor alcohol service area, an employee with a mandatory alcohol server training (MAST) permit under chapter 314-17 WAC must be present in the outdoor alcohol service area at all times that patrons are present, in order to monitor alcohol consumption. This requirement is in addition to the requirement in (d) of this subsection that the outdoor alcohol service area must have an attendant, wait staff, or server dedicated to the area when patrons are present;

(f) The same food service offered inside the licensed premises must also be offered in the outdoor alcohol service area;

(g) The outdoor alcohol service area must be enclosed with a permanent or movable barrier a minimum of 42 inches in height. The board may grant limited exceptions to the required 42 inch high barrier for outdoor alcohol service areas if the licensee has permanent boundaries for the outdoor alcohol service area;

(h) Openings into and out of the outdoor alcohol service area cannot exceed 10 feet. If there is more than one opening along one side, the total combined opening may not exceed 10 feet; and

(i) Licensees must comply with local building codes, local health jurisdiction requirements, department of labor and industries requirements, and any other applicable laws and rules.

(3) For ongoing outdoor alcohol service located in public spaces, a licensee must request approval from the board's licensing division and meet the following requirements:

(a) The licensed business must have a permit from their local jurisdiction allowing the business to use the public space as a service area, such as a sidewalk cafe permit or other similar outdoor area permit authorized by local regulation;

(b) The licensee must have a building that provides indoor dining or production in order to qualify for an outdoor alcohol service area;

(c) (i) Except as provided in (c) (ii) of this subsection, the outdoor alcohol service area must be enclosed with a permanent or movable barrier a minimum of 42 inches in height. Openings into and out of the outdoor alcohol service area cannot exceed 10 feet. If there is more than one opening along one side, the total combined opening may not exceed 10 feet;

(ii) Licensees with outdoor alcohol service areas contiguous to the licensed premises may use a permanent demarcation of the designated alcohol service area for continued enforcement of the boundaries, instead of a permanent or movable barrier a minimum of 42 inches in height. If a permanent demarcation is used, the permanent demarcation must be at all boundaries of the outdoor alcohol service area, must be at least six inches in diameter, and must be placed no more than 10 feet apart;

(d) The outdoor alcohol service area must have an attendant, wait staff, or server dedicated to the area when patrons are present;

(e) The same food service offered inside the licensed premises must also be offered in the outdoor alcohol service area; and

(f) Licensees must comply with local building codes, local health jurisdiction requirements, department of labor and industries requirements, and any other applicable laws and rules.

(4) For multiple licensees to share an outdoor alcohol service area, the licensees must request approval from the board's licensing division and meet the following requirements:

(a) The licensees' property parcels or buildings must be located in direct physical proximity to one another. For the purposes of this subsection, "direct physical proximity" means that the property parcels or buildings are physically connected or touching each other along a boundary or at a point;

(b) (i) If the shared outdoor alcohol service area is located on public space, the licensees sharing the space must meet all of the requirements in subsection (3) of this section and shared use of the outdoor service area must be authorized by the licensees' local jurisdiction permits; or

(ii) If the shared outdoor alcohol service area is located in a privately owned space, the licensees sharing the space must meet all of the requirements in subsection (2) of this section and must have legal authority to share use of the outdoor service area including, but not limited to, ownership or leasehold rights;

(c) The licensees must maintain separate storage of products and separate financial records for the shared outdoor alcohol service area. If licensees share any point of sale system, the licensees must keep complete documentation and records for the shared point of sale system showing clear separation as to what sales items and categories belong to each respective licensee;

(d) The licensees must use distinctly marked glassware or serving containers in the shared outdoor alcohol service area to identify the source of any alcohol product being consumed. The distinctive markings

may be either permanent or temporary. Any temporary markings must remain on the glassware or serving containers through the duration of use by the customer;

(e) The licensees must complete an operating plan for the shared outdoor alcohol service area. The operating plan should demonstrate in general how responsibility for the outdoor alcohol service area is shared among the licensees. Licensees are required to submit the operating plan to the board's licensing division at the time of application or alteration and must keep documentation of an up-to-date plan available for inspection on premises; and

(f) Consistent with WAC 314-11-065, a licensee may not permit the removal of alcohol in an open container from the shared outdoor alcohol service area, except to reenter the licensed premises where the alcohol was purchased. Signage prohibiting the removal of alcohol in an open container must be visible to patrons in the shared outdoor alcohol service area.

(5) If multiple licensees use a shared outdoor alcohol service area as described in subsection (4) of this section, all participating licensees are jointly responsible for any violation or enforcement issues unless it can be demonstrated that the violation or enforcement issue was due to one or more licensee's specific conduct or action, in which case the violation or enforcement action applies only to those identified licensees.

(6) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Alcohol service" means service of liquor as defined in RCW 66.04.010.

(b) "Contiguous" means touching along a boundary or at a point.

(c) "Sidewalk cafe" means a designated seating area on the sidewalk, curb space, or other public space where a business provides table service and seating for their patrons during business hours.

(7) This section expires July 1, 2023, pursuant to section 2(11), chapter 48, Laws of 2021, unless extended by law.

[]

OTS-3199.2

NEW SECTION

WAC 314-03-500 Temporary endorsement for sale of manufacturer sealed alcohol products through curbside, takeout, or delivery service. (1) As authorized in section 2, chapter 48, Laws of 2021, the temporary endorsement described in this section is available until July 1, 2023, unless extended by law. There is no fee for a licensee to apply for and obtain this endorsement.

(2) (a) Consistent with section 2(2), chapter 48, Laws of 2021, an endorsement to sell manufacturer sealed alcohol products at retail through curbside, takeout, or delivery service is available to the following licensees: Beer and wine restaurants; spirits, beer, and wine restaurants; taverns; domestic wineries; domestic breweries and microbreweries; distilleries; snack bars; nonprofit arts licensees; and caterers.

(b) This endorsement is separate from the endorsements in WAC 314-03-505 and 314-03-510 that authorize the sale through curbside, takeout, or delivery service of nonmanufacturer or nonfactory sealed premixed cocktails, cocktail kits, wine by the glass, premixed wine and spirits cocktails, premixed wine drinks, or growlers.

(3) In order to obtain and maintain the endorsement described in this section, licensees must meet the following requirements:

(a) Alcohol products must be sold in closed, factory or manufacturer sealed packages or containers, such as cans, bottles, and kegs. Licensees may only sell the types of manufacturer sealed alcohol products under this endorsement that they are authorized to sell under the terms of their license.

(b) (i) Except as provided in (b) (ii) of this subsection, if an alcohol product authorized for sale under this endorsement is enclosed inside a bag, box, or other packaging before the alcohol product is provided to the customer through curbside, takeout, or delivery service, the exterior of the bag, box, or other packaging must be clearly marked or labeled with the words "CONTAINS ALCOHOL, FOR PERSONS 21+" in a size that is legible and readily visible.

(ii) Brewery, winery, and distillery licensees are not required to mark or label the exterior of the bag, box, or other packaging as described in (b) (i) of this subsection if the alcohol product is provided to the customer through takeout service.

(c) If the alcohol products authorized for sale under this endorsement are sold through delivery service:

(i) Licensees must comply with the requirements in the consumer orders, internet sales, and delivery rules in this title. For these requirements, see WAC 314-03-020 through 314-03-040. Delivery by third-party service providers is allowed with approval by the board's licensing division of an added activity application requesting internet sales privileges.

(ii) At the time of delivery, the employee making the delivery must verify that the person receiving the delivery is at least twenty-one years of age using an acceptable form of identification in WAC 314-11-025. See RCW 66.44.270.

(iii) Consistent with section 2(9), chapter 48, Laws of 2021, upon delivery of the alcohol product, the signature of the person age twenty-one or over receiving the delivery must be obtained. Delivery sales records must meet the requirements in the consumer orders, internet sales, and delivery rules. For general record retention requirements, see WAC 314-11-095.

(iv) If no person age twenty-one or over is present to accept the alcohol product at the time of delivery, the alcohol product must be returned. An alcohol product may not be left unattended at a delivery location.

(v) Delivery of an alcohol product may not be made to any person who shows signs of intoxication. See RCW 66.44.200.

(d) (i) In addition to the signs required by WAC 314-11-060, signs provided electronically by the board regarding public consumption and transportation of any alcohol products sold through curbside, takeout, or delivery service must be posted in plain view at:

(A) The main entrance to the area of the premises where alcohol products are sold; and

(B) The areas of the premises where alcohol products are picked up for takeout, curbside, or delivery service.

(ii) The signs will be designed to remind customers purchasing alcohol products through curbside, takeout, or delivery service that

they must comply with applicable laws and rules including, but not limited to, restrictions on consuming alcohol in public in RCW 66.44.100 and restrictions on drinking or having an open container in a vehicle in RCW 46.61.519.

(4) In addition to the requirements listed in this section, licensees must comply with all applicable requirements in Title 66 RCW, Title 314 WAC, and any other applicable laws and rules including, but not limited to: Keg sale requirements in WAC 314-02-115 and restrictions on sales to minors and intoxicated persons in chapter 66.44 RCW and WAC 314-16-150.

(5) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Alcohol product" means liquor as defined in RCW 66.04.010.

(b) "Factory sealed" or "manufacturer sealed" means that a package or container is in one hundred percent resalable condition, with all manufacturer's seals intact.

(6) This section expires July 1, 2023, pursuant to section 2(11), chapter 48, Laws of 2021, unless extended by law.

[]

NEW SECTION

WAC 314-03-505 Temporary endorsement for sale of premixed cocktails, cocktail kits, wine by the glass, premixed wine and spirits cocktails, or premixed wine drinks through curbside, takeout, or delivery service. (1) As authorized in section 2, chapter 48, Laws of 2021, the temporary endorsement described in this section is available until July 1, 2023, unless extended by law. There is no fee for a licensee to apply for and obtain this endorsement.

(2) Consistent with section 2(3) and (4), chapter 48, Laws of 2021:

(a) An endorsement is available to spirits, beer, and wine restaurants to sell premixed cocktails, cocktail kits, wine by the glass, or premixed wine and spirits cocktails through curbside, takeout, or delivery service. This endorsement does not authorize the sale of full bottles of spirits for off-premises consumption, although mini-bottles may be sold as part of cocktail kits. Consistent with section 2(3), chapter 48, Laws of 2021, mini-bottle sales as part of cocktail kits are exempt from the spirits license issuance fee under RCW 66.24.630

(4)(a) and the tax on each retail sale of spirits under RCW 82.08.150.

(b) An endorsement is also available to beer and wine restaurant licensees to sell wine or premixed wine drinks by the glass through curbside, takeout, or delivery service.

(3) In order to obtain and maintain the endorsement described in this section, licensees must meet the following requirements:

(a)(i) For spirits, beer, and wine restaurants, food that qualifies as a complete meal under WAC 314-02-010 must be sold with the premixed cocktails, cocktail kits, wine by the glass, or premixed wine and spirits cocktails authorized for sale through curbside, takeout, or delivery service under this endorsement. Spirits, beer, and wine restaurants can sell up to 3 ounces of spirits per complete meal.

(ii) For beer and wine restaurants, a food item that qualifies as minimum food service under WAC 314-02-010 must be sold with the wine

or premixed wine drinks by the glass authorized for sale through curbside, takeout, or delivery service under this endorsement.

(b) The alcohol products authorized for sale through curbside, takeout, or delivery service under this endorsement must be prepared the same day they are sold.

(c) The alcohol products authorized for sale through curbside, takeout, or delivery service under this endorsement must be packaged in a container that has been sealed in a manner designed to prevent consumption without removal of the tamper-evident lid, cap, or seal. For the purposes of this subsection, "tamper-evident" means a lid, cap, or seal that visibly demonstrates when a container has been opened. Tape is not a tamper-evident seal. The following list of examples is not comprehensive and is not intended to capture all of the possible types of allowed or disallowed containers:

(i) Examples of containers that are allowed:

(A) Containers with a screw top cap or lid that breaks apart when the container is opened.

(B) Containers with a plastic heat shrink wrap band, strip, or sleeve extending around the cap or lid to form a seal that must be broken when the container is opened.

(C) Vacuum or heat-sealed pouches without holes or openings for straws.

(ii) Examples of containers that are not allowed:

(A) Containers with lids with sipping holes or openings for straws.

(B) Containers such as styrofoam, paper, or plastic cups that lack a tamper-evident lid, cap, or seal.

(d) The containers that the alcohol products authorized for sale under this endorsement are packaged in must be clearly marked or labeled with the words "CONTAINS ALCOHOL, FOR PERSONS 21+" in a size and manner that is legible and readily visible. If a container of alcohol authorized for sale under this endorsement is enclosed inside a bag, box, or other packaging before it is provided to the customer through curbside, takeout, or delivery service, the exterior of the bag, box, or other packaging must be clearly marked or labeled with the words "CONTAINS ALCOHOL, FOR PERSONS 21+" in a size and manner that is legible and readily visible.

(e) To deter public consumption or consumption in a vehicle of premixed cocktails, cocktail kits, wine by the glass, premixed wine and spirits cocktails, and premixed wine drinks sold through curbside, takeout, or delivery service, licensees may not put ice directly into the containers that the alcohol products authorized for sale under this endorsement are packaged in, except for frozen or blended drinks. Ice may be provided separately along with the curbside, takeout, or delivery order.

(f) The premixed cocktails, cocktail kits, wine by the glass, premixed wine and spirits cocktails, and premixed wine drinks authorized for sale through curbside, takeout, or delivery service under this endorsement must be placed in the trunk of the vehicle or beyond the immediate reach of the driver or any passengers in compliance with open container requirements in RCW 46.61.519 before being transported off the licensee's premises.

(g) If the premixed cocktails, cocktail kits, wine by the glass, premixed wine and spirits cocktails, and premixed wine drinks authorized for sale under this endorsement are sold through delivery service:

(i) Licensees must comply with the requirements in the consumer orders, internet sales, and delivery rules in this title, except to the extent that those rules allow delivery by third-party service providers and prohibit the sale of nonfactory sealed containers. For these requirements, see WAC 314-03-020 through 314-03-040.

(ii) Delivery must be made by an employee of the licensed business who is at least twenty-one years of age and holds a class 12 mandatory alcohol server training (MAST) permit under chapter 314-17 WAC. Delivery may not be made by third-party service providers.

(iii) At the time of delivery, the employee making the delivery must verify that the person receiving the delivery is at least twenty-one years of age using an acceptable form of identification in WAC 314-11-025. See RCW 66.44.270.

(iv) Consistent with section 2(9), chapter 48, Laws of 2021, upon delivery of the alcohol product, the signature of the person age twenty-one or over receiving the delivery must be obtained. Delivery sales records must meet the requirements in the consumer orders, internet sales, and delivery rules. For general record retention requirements, see WAC 314-11-095.

(v) If no person age twenty-one or over is present to accept the alcohol product at the time of delivery, the alcohol product must be returned. An alcohol product may not be left unattended at a delivery location.

(vi) Delivery of an alcohol product may not be made to any person who shows signs of intoxication. See RCW 66.44.200.

(h)(i) In addition to the signs required by WAC 314-11-060, signs provided electronically by the board regarding public consumption and transportation of any alcohol products sold through curbside, takeout, or delivery service must be posted in plain view at:

(A) The main entrance to the area of the premises where alcohol products are sold; and

(B) The areas of the premises where alcohol products are picked up for takeout, curbside, or delivery service.

(ii) The signs will be designed to remind customers purchasing alcohol products through curbside, takeout, or delivery service that they must comply with applicable laws and rules including, but not limited to, restrictions on consuming alcohol in public in RCW 66.44.100 and restrictions on drinking or having an open container in a vehicle in RCW 46.61.519.

(4) In addition to the requirements listed in this section, licensees must comply with all applicable requirements in Title 66 RCW, Title 314 WAC, and any other applicable laws and rules including, but not limited to, restrictions on sales to minors and intoxicated persons in chapter 66.44 RCW and WAC 314-16-150.

(5) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Alcohol product" or "alcoholic beverage" means liquor as defined in RCW 66.04.010.

(b) "Mini-bottles" has the same meaning as defined in section 2(10), chapter 48, Laws of 2021: Original factory-sealed containers holding not more than 50 milliliters of a spirituous beverage.

(c) "Premixed cocktail" means a drink made by combining spirits with other alcoholic or nonalcoholic beverages and ingredients including, but not limited to, fruit juice, carbonated beverages, flavorings, or cream.

(d) "Premixed wine and spirits cocktail" means a drink made by combining wine and spirits with other alcoholic or nonalcoholic beverage

ages and ingredients including, but not limited to, fruit juice, carbonated beverages, flavorings, or cream.

(e) "Premixed wine drink" means a drink made by combining wine with nonalcoholic beverages and ingredients including, but not limited to, fruit juice, carbonated beverages, flavorings, or cream. A premixed wine drink may not include alcoholic beverages other than wine.

(f) "Spirits" has the same meaning as defined in RCW 66.04.010.

(g) "Wine" has the same meaning as defined in RCW 66.04.010.

(6) This section expires July 1, 2023, pursuant to section 2(11), chapter 48, Laws of 2021, unless extended by law.

[]

NEW SECTION

WAC 314-03-510 Temporary endorsement for sale of growlers through curbside, takeout, or delivery service. (1) As authorized in section 2, chapter 48, Laws of 2021, the temporary endorsement described in this section is available until July 1, 2023, unless extended by law. There is no fee for a licensee to apply for and obtain this endorsement.

(2) Consistent with section 2(5), chapter 48, Laws of 2021, an endorsement to sell growlers for off-premises consumption through curbside, takeout, or delivery service is available to licensees that were authorized by statute or rule before January 1, 2020, to sell growlers.

(a) Licensees eligible for this endorsement include: Taverns; beer and wine restaurants; spirits, beer, and wine restaurants; grocery stores; beer and wine specialty shops; breweries; microbreweries; wineries; combination spirits, beer, and wine licensees; and hotel licenses.

(b) For a beer and wine specialty shop to be eligible for the endorsement described in this section, the beer and wine specialty shop must meet the requirement in RCW 66.24.371(3), as it existed on December 31, 2019, that the licensee's beer and/or wine sales must be more than fifty percent of the licensee's total sales.

(3) In order to obtain and maintain this endorsement, licensees must meet the following requirements:

(a) Sale of growlers must meet federal alcohol and tobacco tax and trade bureau requirements.

(b)(i) Growlers must be filled at the tap by the licensee at the time of sale, except that beer and wine specialty shops licensed under RCW 66.24.371 and domestic breweries and microbreweries with this endorsement may sell prefilled growlers consistent with section 2(7), chapter 48, Laws of 2021. Prefilled growlers must be sold the same day they are prepared for sale and not stored overnight for sale on future days.

(ii) Brewery and microbrewery products that meet federal alcohol and tobacco tax and trade bureau labeling requirements are not considered prefilled growlers and are not subject to the overnight storage prohibition.

(c) Growlers must be filled with alcohol products, such as beer, wine, or cider, that the licensee was authorized by statute or rule before January 1, 2020, to sell in growlers.

(d) If the growlers authorized for sale under this endorsement are sold through delivery service:

(i) Licensees must comply with the requirements in the consumer orders, internet sales, and delivery rules in this title, except to the extent that those rules allow delivery by third-party service providers and prohibit the delivery of growlers. For these requirements, see WAC 314-03-020 through 314-03-040.

(ii) Delivery must be made by an employee of the licensed business who is at least twenty-one years of age. Delivery may not be made by third-party service providers.

(iii) At the time of delivery, the employee making the delivery must verify that the person receiving the delivery is at least twenty-one years of age using an acceptable form of identification in WAC 314-11-025. See RCW 66.44.270.

(iv) Consistent with section 2(9), chapter 48, Laws of 2021, upon delivery of the alcohol product, the signature of the person age twenty-one or over receiving the delivery must be obtained. Delivery sales records must meet the requirements in the consumer orders, internet sales, and delivery rules. For general record retention requirements, see WAC 314-11-095.

(v) If no person age twenty-one or over is present to accept the alcohol product at the time of delivery, the alcohol product must be returned. An alcohol product may not be left unattended at a delivery location.

(vi) Delivery of an alcohol product may not be made to any person who shows signs of intoxication. See RCW 66.44.200.

(e)(i) In addition to the signs required by WAC 314-11-060, signs provided electronically by the board regarding public consumption and transportation of any alcohol products sold through curbside, takeout, or delivery service must be posted in plain view at:

(A) The main entrance to the area of the premises where alcohol products are sold; and

(B) The areas of the premises where alcohol products are picked up for takeout, curbside, or delivery service.

(ii) The signs will be designed to remind customers purchasing alcohol products through curbside, takeout, or delivery service that they must comply with applicable laws and rules including, but not limited to, restrictions on consuming alcohol in public in RCW 66.44.100 and restrictions on drinking or having an open container in a vehicle in RCW 46.61.519.

(4) In addition to the requirements listed in this section, licensees must comply with all applicable requirements in Title 66 RCW, Title 314 WAC, and any other applicable laws and rules including, but not limited to, restrictions on sales to minors and intoxicated persons in chapter 66.44 RCW and WAC 314-16-150.

(5) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Alcohol product" means liquor as defined in RCW 66.04.010.

(b) "Beer" has the same meaning as defined in RCW 66.04.010.

(c) "Cider" has the same meaning as defined in RCW 66.24.210.

(d) "Growlers" has the same meaning as defined in section 2(10), chapter 48, Laws of 2021: Sanitary containers brought to the premises by the purchaser or furnished by the licensee and filled by the retailer at the time of sale.

(e) "Wine" has the same meaning as defined in RCW 66.04.010.

(6) This section expires July 1, 2023, pursuant to section 2(11), chapter 48, Laws of 2021, unless extended by law.

[]

WSR 22-01-061
PERMANENT RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed December 8, 2021, 4:53 p.m., effective January 8, 2022]

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

Purpose: Survivor option changes - to implement chapter 161, Laws of 2020 (SB 6417), allowing members to change their survivor option one time within 90 calendar days following receipt of the first retirement benefit.

Citation of Rules Affected by this Order: Amending WAC 415-103-225 What are my WSPRS Plan 2 retirement benefit options?, 415-104-215 What are my LEOFF Plan 2 retirement benefit options?, 415-106-600 What are my (PSERS) retirement benefit options?, 415-108-326 What are my (PERS) retirement benefit options?, 415-110-610 What are my (SERS) retirement benefit options?, and 415-112-505 What are my TRS Plan 2 or Plan 3 retirement benefit options?

Statutory Authority for Adoption: RCW 41.50.050.

Adopted under notice filed as WSR 21-22-116 on November 3, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 6, Repealed 0.

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

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

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

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

Date Adopted: December 8, 2021.

Tracy Guerin
Director

OTS-3448.1

AMENDATORY SECTION (Amending WSR 20-13-065, filed 6/15/20, effective 7/16/20)

WAC 415-103-225 What are my WSPRS Plan 2 retirement benefit options? This section applies to WSPRS Plan 2 members. Upon retirement for service under RCW 43.43.250, you must choose to have your monthly retirement benefit paid to you by one of the options described in this section.

(1) **Which option will pay my beneficiary a monthly benefit after my death?** Options described in subsection (2)(b) through (d) of this section include a survivor option. The person you name at the time of retirement to receive a monthly benefit after your death is referred to as your "survivor beneficiary." Upon your death your survivor bene-

ficiary will be entitled to receive a monthly benefit for the duration of his or her life. Your monthly retirement benefit will be actuarially reduced to offset the cost of the survivor option. See WAC 415-02-380 for more information on how your monthly benefit is affected by choosing a survivor option.

(2) **What are my benefit options?**

(a) **Option one: Standard benefit (nonsurvivor option).** The department will pay you a monthly retirement benefit throughout your life. Your monthly benefit will cease upon your death.

(b) **Option two: Joint and (~~one hundred~~) 100 percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to your gross monthly benefit.

(c) **Option three: Joint and (~~fifty~~) 50 percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to (~~fifty~~) 50 percent of your gross monthly benefit.

(d) **Option four: Joint and two-thirds survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to two-thirds (66.667 percent) of your gross monthly benefit.

(3) **Do I need my spouse's consent on the option I choose?** The option you select will determine whether spousal consent is required.

(a) If you are married and select a nonsurvivor benefit option, you must submit your spouse's consent, verified by notarization or other means acceptable to the department. If you do not provide verified spousal consent, the department will pay you a monthly retirement benefit based on option three (joint and (~~fifty~~) 50 percent benefit) with your spouse as the survivor beneficiary as required by RCW 43.43.271(2).

(b) If you are married and select a survivor benefit option for your spouse, spousal consent is not required. The department will pay you a monthly benefit based on the option you selected.

(c) If you are married and select a survivor benefit option for someone other than your spouse, verified spousal consent is required. If you do not provide spousal consent, verified by notarization or other means acceptable to the department, the department will pay you a monthly retirement benefit based on option three (joint and (~~fifty~~) 50 percent benefit) with your spouse as the survivor beneficiary as required by RCW 43.43.271(2).

(d) If your survivor beneficiary has been designated by a dissolution order according to subsection (4) of this section, which was filed with the department at least (~~thirty~~) 30 days before your retirement date, spousal consent is not required.

(4) **Can a dissolution order require that a former spouse be designated as a survivor beneficiary?** Yes. A dissolution order may require that a former spouse be designated as a survivor beneficiary. The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

(5) **What happens if I choose a benefit with a survivor option and my survivor beneficiary dies before I do?** If your survivor beneficiary dies before you do, you may request to have your benefit increased as described in WAC 415-02-380.

(6) **May I change my benefit option after retirement?** Your choice of a benefit option is irrevocable with the following (~~three~~) four exceptions:

(a) **Return to membership.** If you retire and then return to membership, you may choose a different retirement option upon your subsequent retirement.

(b) **Postretirement marriage option.** If you select the standard benefit option at the time of retirement and marry after retirement, you may select a benefit option with a survivor option and name your current spouse as survivor, provided that:

(i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-02-500;

(ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;

(iii) You provide a copy of your certified marriage certificate to the department; and

(iv) You provide proof of your current spouse's birth date.

(c) **Removal of a nonspouse survivor option.** If you select a benefit option with a survivor option and name a nonspouse as survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard benefit. You may exercise this option one time only.

(d) **One-time change of survivor.** You may change your benefit option and/or designated survivor one time within 90 days from the date your first benefit payment is issued. Your change request must be in writing, and must comply with other requirements as described in this section. Your new benefit amount will be effective the first of the month following the receipt of your request by the department.

(7) **Who will receive the balance of my accumulated contributions, if any, after my death?**

(a) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(i) To the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

(ii) If you have not designated a beneficiary, or if your designated beneficiary is no longer living or in existence, then to your surviving spouse.

(iii) If not paid according to (a)(i) or (ii) of this subsection, then to your estate.

(b) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(i) To the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(ii) If your survivor beneficiary has not designated a beneficiary, or if the designated beneficiary is no longer living or in existence, then to your survivor beneficiary's spouse.

(iii) If not paid according to (b)(i) or (ii) of this subsection, then to your survivor beneficiary's estate.

(8) For more information, see RCW 43.43.271.

[Statutory Authority: RCW 41.50.050. WSR 20-13-065, § 415-103-225, filed 6/15/20, effective 7/16/20; WSR 20-06-040, § 415-103-225, filed 2/27/20, effective 3/29/20. Statutory Authority: RCW 41.50.050(5). WSR 13-18-034, § 415-103-225, filed 8/28/13, effective 10/1/13. Statutory Authority: RCW 41.50.050(5), 43.43.271. WSR 05-23-062, § 415-103-225, filed 11/14/05, effective 12/15/05. Statutory Authority: RCW 41.50.050(5), 43.43.260, [43.43.]271, [43.43.]280(1), [43.43.]295. WSR 02-23-037, § 415-103-225, filed 11/13/02, effective 1/1/03.]

OTS-3449.1

AMENDATORY SECTION (Amending WSR 20-13-065, filed 6/15/20, effective 7/16/20)

WAC 415-104-215 What are my LEOFF Plan 2 retirement benefit options? If you retire for service under RCW 41.26.430 or nonduty disability under RCW 41.26.470, or if you choose to receive a monthly benefit for duty disability under RCW 41.26.470, you must choose to have your monthly retirement benefit paid to you by one of the options described in this section.

(1) **Which option will pay my beneficiary a monthly benefit after my death?** Options described in subsection (2)(b) through (d) of this section will pay a monthly benefit to your survivor after your death. The person you name at the time of retirement to receive a monthly benefit after your death is referred to as your "survivor beneficiary." After your death, your survivor beneficiary will receive a monthly benefit for the duration of their life. Your monthly retirement benefit will be reduced to offset the cost of the survivor option. See WAC 415-02-380 for more information on how your monthly benefit will be affected if you choose a survivor option.

(2) **What are my benefit options?**

(a) **Option one: Standard benefit (nonsurvivor option).** The department will pay you a monthly retirement benefit throughout your lifetime. Your monthly benefit will cease upon your death.

(b) **Option two: Joint and (~~one hundred~~) 100 percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to your gross monthly benefit.

(c) **Option three: Joint and (~~fifty~~) 50 percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to (~~fifty~~) 50 percent of your gross monthly benefit.

(d) **Option four: Joint and two-thirds benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to two-thirds (66.667%) of your gross monthly benefit.

(3) **Do I need my spouse's consent on the option I choose?** The option you select will determine whether spousal consent is required.

(a) If you are married and select a nonsurvivor benefit option, you must provide your spouse's consent, verified by notarization or other means acceptable to the department. If you do not provide verified spousal consent, the department will pay you a monthly retirement benefit based on option three (joint and (~~fifty~~) 50 percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.26.460(2).

(b) If you are married and select a survivor benefit option for your spouse, spousal consent is not required. The department will pay you a monthly benefit based on the option you selected.

(c) If you are married and select a survivor benefit option for someone other than your spouse, verified spousal consent is required. If you do not provide spousal consent, verified by notarization or other means acceptable to the department, the department will pay you a monthly retirement benefit based on option three (joint and (~~fifty~~) 50 percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.26.460(2).

(d) If your survivor beneficiary has been designated by a dissolution order according to subsection (4) of this section, which was filed with the department at least (~~thirty~~) 30 days before your retirement date, spousal consent is not required.

(4) Can a dissolution order require that a former spouse be designated as a survivor beneficiary? Yes. A dissolution order may require that a former spouse be designated as a survivor beneficiary. The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

(5) What happens if I choose a benefit option with a survivor option and my survivor beneficiary dies before I do? If your survivor beneficiary dies before you do, you may request to have your benefit increased as described in WAC 415-02-380.

(6) May I change my benefit option after retirement? Your choice of a benefit option is irrevocable with the following (~~three~~) four exceptions:

(a) **Return to membership.** If you retire and then return to membership, you may choose a different retirement option upon your subsequent retirement.

(b) **Postretirement marriage option.** If you select the standard benefit option at the time of retirement and marry after retirement, you may select a benefit option with a survivor option and name your current spouse as survivor beneficiary, provided that:

(i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-02-500;

(ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;

(iii) You provide a copy of your certified marriage certificate to the department; and

(iv) You provide proof of your current spouse's birth date.

(c) **Removal of a nonspouse survivor option.** If you select a benefit option with a survivor option and name a nonspouse as survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard benefit. You may exercise this option one time only.

(d) One-time change of survivor. You may change your benefit option and/or designated survivor one time within 90 days from the date your first benefit payment is issued. Your change request must be in writing, and must comply with other requirements as described in this

section. Your new benefit amount will be effective the first of the month following the receipt of your request by the department.

(7) Who will receive the balance of my accumulated contributions, if any, after my death?

(a) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(i) To the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

(ii) If you have not designated a beneficiary, or if the designated beneficiary is no longer living or in existence, then to your surviving spouse.

(iii) If not paid according to (a)(i) or (ii) of this subsection, then to your estate.

(b) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(i) To the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(ii) If your survivor beneficiary has not designated a beneficiary, or if the designated beneficiary is no longer living or in existence, then to your survivor beneficiary's spouse.

(iii) If not paid according to (b)(i) or (ii) of this subsection, then to your survivor beneficiary's estate.

(8) For more information, see RCW 41.26.460.

[Statutory Authority: RCW 41.50.050. WSR 20-13-065, § 415-104-215, filed 6/15/20, effective 7/16/20; WSR 20-06-040, § 415-104-215, filed 2/27/20, effective 3/29/20. Statutory Authority: RCW 41.50.050(5). WSR 13-18-034, § 415-104-215, filed 8/28/13, effective 10/1/13. Statutory Authority: RCW 41.50.050(5), 41.26.460. WSR 05-23-062, § 415-104-215, filed 11/14/05, effective 12/15/05; WSR 03-12-014, § 415-104-215, filed 5/27/03, effective 7/1/03. Statutory Authority: RCW 41.50.050(5), 41.26.460, 41.32.530, 41.32.785, 41.32.851, 41.35.220, 41.40.188, 41.40.660, 41.40.845. WSR 01-10-045, § 415-104-215, filed 4/26/01, effective 6/1/01. Statutory Authority: RCW 41.50.050. WSR 99-16-075, § 415-104-215, filed 8/3/99, effective 9/3/99. Statutory Authority: RCW 2.10.146, 41.26.460, 41.32.530, 41.50.050, 41.32.785, 41.40.188 and 41.40.660. WSR 96-01-047, § 415-104-215, filed 12/14/95, effective 1/14/96. Statutory Authority: RCW 34.05.050 and 1990 c 249. WSR 91-03-014, § 415-104-215, filed 1/7/91, effective 2/7/91.]

OTS-3450.1

AMENDATORY SECTION (Amending WSR 20-13-065, filed 6/15/20, effective 7/16/20)

WAC 415-106-600 What are my retirement benefit options? Upon retirement for service under RCW 41.37.210 or retirement for disabili-

ty under RCW 41.37.230, you must choose to have your retirement benefit paid to you by one of the options described in this section.

(1) **Which option will pay my beneficiary a monthly benefit after my death?** Options described in subsection (2)(b) through (d) of this section will pay a monthly benefit to your survivor after your death. The person you name at the time of retirement to receive a monthly benefit after your death is referred to as your "survivor beneficiary." After your death, your survivor beneficiary will receive a monthly benefit for the duration of their life. Your monthly retirement benefit will be reduced to offset the cost of the survivor option. See WAC 415-02-380 for more information on how your monthly benefit will be affected if you choose a survivor option.

(2) **What are my benefit options?**

(a) **Option one: Standard benefit (nonsurvivor option).** The department will pay you a monthly retirement benefit throughout your lifetime. Your monthly benefit will cease upon your death.

(b) **Option two: Joint and (~~one hundred~~) 100 percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to your gross monthly benefit.

(c) **Option three: Joint and (~~fifty~~) 50 percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to (~~fifty~~) 50 percent of your gross monthly benefit.

(d) **Option four: Joint and two-thirds survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to two-thirds (66.667%) of your gross monthly benefit.

(3) **Do I need my spouse's consent on the option I choose?** The option you select will determine whether spousal consent is required.

(a) If you are married and select a nonsurvivor benefit option, you must provide your spouse's consent, verified by a notarized signature or other means acceptable to the department. If you do not provide verified spousal consent, the department will pay you a monthly retirement benefit based on option three (joint and fifty percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.37.170(2).

(b) If you are married and select a survivor benefit option for your spouse, spousal consent is not required. The department will pay you a monthly benefit based on the option you selected.

(c) If you are married and select a survivor benefit option for someone other than your spouse, spousal consent is required. If you do not provide spousal consent, verified by a notarized signature or other means acceptable to the department, the department will pay you a monthly retirement benefit based on option three (joint and (~~fifty~~) 50 percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.37.170(2).

(d) If your survivor beneficiary has been designated by a dissolution order according to subsection (4) of this section, which was filed with the department at least (~~thirty~~) 30 days before your retirement date, spousal consent is not required.

(4) **Can a dissolution order require that a former spouse be designated as a survivor beneficiary?** Yes. A dissolution order may require that a former spouse be designated as a survivor beneficiary.

The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

(5) **What happens if I choose a benefit with a survivor option and my survivor beneficiary dies before I do?** If your survivor beneficiary dies before you do, you may request to have your benefit increased as described in WAC 415-02-380.

(6) **May I change my benefit option after retirement?** Your choice of a benefit option is irrevocable with the following (~~three~~) four exceptions:

(a) **Return to membership.** If you retire and then return to membership for at least two years of uninterrupted service, you may choose a different retirement option upon your subsequent retirement. See RCW 41.37.050(3).

(b) **Postretirement marriage option.** If you select the standard benefit option at the time of retirement and marry after retirement, you may select a survivor benefit option and name your current spouse as survivor beneficiary, provided that:

(i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-02-500;

(ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;

(iii) You provide a copy of your certified marriage certificate to the department; and

(iv) You provide proof of your current spouse's birth date.

(c) **Removal of a nonspouse survivor option.** If you select a survivor benefit option and name a nonspouse as your survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard benefit. You may exercise this option one time only.

(d) One-time change of survivor. You may change your benefit option and/or designated survivor one time within 90 days from the date your first benefit payment is issued. Your change request must be in writing, and must comply with other requirements as described in this section. Your new benefit amount will be effective the first of the month following the receipt of your request by the department.

(7) **Who will receive the balance of my accumulated contributions, if any, after my death?**

(a) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(i) To the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

(ii) If you have not designated a beneficiary, or if your designated beneficiary is no longer living or in existence, then to your surviving spouse.

(iii) If not paid according to (a)(i) or (ii) of this subsection, then to your estate.

(b) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(i) To the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(ii) If your survivor beneficiary has not designated a beneficiary, or if the designated beneficiary is no longer living or in existence, then to your survivor beneficiary's spouse.

(iii) If not paid according to (b)(i) or (ii) of this subsection, then to your survivor beneficiary's estate. See RCW 41.37.170.

[Statutory Authority: RCW 41.50.050. WSR 20-13-065, § 415-106-600, filed 6/15/20, effective 7/16/20; WSR 20-06-040, § 415-106-600, filed 2/27/20, effective 3/29/20. Statutory Authority: RCW 41.50.050(5). WSR 13-18-034, § 415-106-600, filed 8/28/13, effective 10/1/13. Statutory Authority: RCW 41.37.170, 41.50.050(5), 41.37.050, 41.37.170, 41.37.210, 41.37.230, and 41.50.790. WSR 08-02-046, § 415-106-600, filed 12/27/07, effective 1/27/08.]

OTS-3451.1

AMENDATORY SECTION (Amending WSR 20-13-065, filed 6/15/20, effective 7/16/20)

WAC 415-108-326 What are my retirement benefit options? Upon retirement for service under RCW 41.40.180, 41.40.630, or 41.40.820, or for disability under RCW 41.40.210, 41.40.230, 41.40.670, or 41.40.825, you must choose to have the defined benefit portion of your retirement benefit paid to you by one of the options described in this section. If you are a Plan 1 member, you may also select an optional supplemental cost of living adjustment (COLA).

(1) **Which option will pay my beneficiary a monthly benefit after my death?** Options described in subsection (2)(b) through (d) of this section will pay a monthly benefit to your survivor after your death. The person you name at the time of retirement to receive a monthly benefit after your death is referred to as your "survivor beneficiary." After your death, your survivor beneficiary will receive a monthly benefit for the duration of their life. Your monthly retirement benefit will be reduced to offset the cost of the survivor option. See WAC 415-02-380 for more information on how your monthly benefit will be affected if you choose a survivor option.

(2) **What are my benefit options?**

(a) **Option one: Standard benefit (nonsurvivor option).** The department will pay you a monthly retirement benefit throughout your lifetime. Your monthly benefit will cease upon your death.

(b) **Option two: Joint and (~~one hundred~~) 100 percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to your gross monthly benefit.

(c) **Option three: Joint and (~~fifty~~) 50 percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to (~~fifty~~) 50 percent of your gross monthly benefit.

(d) **Option four: Joint and two-thirds survivor benefit.**¹ The department will pay you a reduced monthly retirement benefit throughout

your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to two-thirds (66.667%) of your gross monthly benefit.

(3) **Do I need my spouse's consent on the option I choose?** The option you select will determine whether spousal consent is required.

(a) If you are married and select a nonsurvivor benefit option, you must provide your spouse's consent, verified by a notarized signature or other means acceptable to the department. If you do not provide spousal consent, the department will pay you a monthly retirement benefit based on option three (joint and (~~fifty~~) 50 percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.40.188, 41.40.660 and 41.40.845.

(b) If you are married and select a survivor benefit option for your spouse, spousal consent is not required. The department will pay you a monthly benefit based on the option you selected.

(c) If you are married and select a survivor benefit option for someone other than your spouse, spousal consent is required. If you do not provide spousal consent, verified by a notarized signature or other means acceptable to the department, the department will pay you a monthly retirement benefit based on option three (joint and (~~fifty~~) 50 percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.40.188, 41.40.660 and 41.40.845.

(d) If your survivor beneficiary has been designated by a dissolution order according to subsection (4) of this section, which was filed with the department at least (~~thirty~~) 30 days before your retirement date, spousal consent is not required.

(4) **Can a dissolution order require that a former spouse be designated as a survivor beneficiary?** Yes. A dissolution order may require that a former spouse be designated as a survivor beneficiary. The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

(5) **What is the supplemental COLA option for Plan 1 members?** If you are a Plan 1 member, in addition to choosing a retirement benefit option described in subsection (2) of this section, you may choose to receive a supplemental annual COLA. If you select this option, your monthly retirement benefit will be actuarially reduced to offset the cost of this benefit.

(6) **What happens if I choose a benefit with a survivor option and my survivor beneficiary dies before I do?** If your survivor beneficiary dies before you do, you may request to have your benefit increased as described in WAC 415-02-380.

(7) **May I change my benefit option after retirement?** Your choice of a benefit option is irrevocable with the following (~~three~~) four exceptions:

(a) **Return to membership.** If you retire and then return to membership for at least two years of uninterrupted service, you may choose a different retirement option upon your subsequent retirement. See RCW 41.40.037.

(b) **Postretirement marriage option.** If you select the standard benefit option at the time of retirement and marry after retirement, you may select a survivor benefit option and name your current spouse as survivor beneficiary, provided that:

(i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-02-500;

(ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;

(iii) You provide a copy of your certified marriage certificate to the department; and

(iv) You provide proof of your current spouse's birth date.

(c) **Removal of a nonspouse survivor option.** If you select a survivor benefit option and name a nonspouse as your survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard benefit. You may exercise this option one time only.

(d) **One-time change of survivor.** You may change your benefit option and/or designated survivor one time within 90 days from the date your first benefit payment is issued. Your change request must be in writing, and must comply with other requirements as described in this section. Your new benefit amount will be effective the first of the month following the receipt of your request by the department.

(8) Who will receive the balance of my accumulated contributions, if any, after my death?

(a) **Plan 1 and 2 members:**

(i) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(A) To the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

(B) If you have not designated a beneficiary, or if your designated beneficiary is no longer living or in existence, then to your surviving spouse.

(C) If not paid according to (a)(i)(A) or (B) of this subsection, then to your estate.

(ii) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(A) To the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(B) If your survivor beneficiary has not designated a beneficiary, or if the designated beneficiary is no longer living or in existence, then to your survivor beneficiary's spouse.

(C) If not paid according to (a)(ii)(A) or (B) of this subsection, then to your survivor beneficiary's estate.

(b) **Plan 3 members:** The defined benefit stops upon your death or upon the death of your survivor beneficiary, if applicable. As a Plan 3 member, you do not contribute to the defined benefit portion of your retirement benefit. The defined contribution portion of your benefit will be distributed according to WAC 415-111-310.

(9) For more information, see RCW 41.40.188 (Plan 1), RCW 41.40.660 (Plan 2) and RCW 41.40.845 (Plan 3).

¹ Available to members retiring on or after January 1, 1996.

[Statutory Authority: RCW 41.50.050. WSR 20-13-065, § 415-108-326, filed 6/15/20, effective 7/16/20; WSR 20-06-040, § 415-108-326, filed 2/27/20, effective 3/29/20. Statutory Authority: RCW 41.50.050(5). WSR 13-18-034, § 415-108-326, filed 8/28/13, effective 10/1/13. Statutory Authority: RCW 41.50.050(5), 41.40.188, 41.40.660, 41.40.845. WSR 05-23-062, § 415-108-326, filed 11/14/05, effective 12/15/05. Statuto-

ry Authority: RCW 41.50.050(5), 41.26.460, 41.32.530, 41.32.785, 41.32.851, 41.35.220, 41.40.188, 41.40.660, 41.40.845. WSR 01-10-045, § 415-108-326, filed 4/26/01, effective 6/1/01. Statutory Authority: RCW 41.50.050. WSR 99-14-008, § 415-108-326, filed 6/24/99, effective 7/25/99. Statutory Authority: RCW 2.10.146, 41.26.460, 41.32.530, 41.50.050, 41.32.785, 41.40.188 and 41.40.660. WSR 96-01-047, § 415-108-326, filed 12/14/95, effective 1/14/96. Statutory Authority: RCW 34.05.050 and 1990 c 249. WSR 91-03-015, § 415-108-326, filed 1/7/91, effective 2/7/91.]

OTS-3452.1

AMENDATORY SECTION (Amending WSR 20-13-065, filed 6/15/20, effective 7/16/20)

WAC 415-110-610 What are my retirement benefit options? Upon retirement for service under RCW 41.35.420 or 41.35.680, or for disability under RCW 41.35.440 or 41.35.690, you must choose to have the defined benefit portion of your retirement benefit paid to you by one of the options described in this section.

(1) **Which option will pay my beneficiary a monthly benefit after my death?** Options described in subsection (2)(b) through (d) of this section will pay a monthly benefit to your survivor after your death. The person you name at the time of retirement to receive a monthly benefit after your death is referred to as your "survivor beneficiary." After your death, your survivor beneficiary will receive a monthly benefit for the duration of their life. Your monthly retirement benefit will be reduced to offset the cost of the survivor option. See WAC 415-02-380 for more information on how your monthly benefit will be affected if you choose a survivor option.

(2) **What are my benefit options?**

(a) **Option one: Standard benefit (nonsurvivor option).** The department will pay you a monthly retirement benefit throughout your lifetime. Your monthly benefit will cease upon your death.

(b) **Option two: Joint and (~~one hundred~~) 100 percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to your gross monthly benefit.

(c) **Option three: Joint and (~~fifty~~) 50 percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to (~~fifty~~) 50 percent of your gross monthly benefit.

(d) **Option four: Joint and two-thirds survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to two-thirds (66.667%) of your gross monthly benefit.

(3) **Do I need my spouse's consent on the option I choose?** The option you select will determine whether spousal consent is required.

(a) If you are married and select a nonsurvivor benefit option, you must provide your spouse's consent, verified by a notarized signa-

ture or other means acceptable to the department. If you do not provide verified spousal consent, the department will pay you a monthly retirement benefit based on option three (joint and (~~fifty~~) 50 percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.35.220.

(b) If you are married and select a survivor benefit option for your spouse, spousal consent is not required. The department will pay you a monthly benefit based on the option you selected.

(c) If you are married and select a survivor benefit option for someone other than your spouse, spousal consent is required, verified by a notarized signature or other means acceptable to the department. If you do not provide verified spousal consent, the department will pay you a monthly retirement benefit based on option three (joint and (~~fifty~~) 50 percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.35.220.

(d) If your survivor beneficiary has been designated by a dissolution order according to subsection (4) of this section, which was filed with the department at least (~~thirty~~) 30 days before your retirement date, spousal consent is not required.

(4) Can a dissolution order require that a former spouse be designated as a survivor beneficiary? Yes. A dissolution order may require that a former spouse be designated as a survivor beneficiary. The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

(5) What happens if I choose a benefit option with a survivor option and my survivor beneficiary dies before I do? If your survivor beneficiary dies before you do, you may request to have your benefit increased as described in WAC 415-02-380.

(6) May I change my benefit option after retirement? Your choice of a benefit option is irrevocable with the following (~~three~~) four exceptions:

(a) **Return to membership.** If you retire and then return to membership for at least two years of uninterrupted service, you may choose a different retirement option upon your subsequent retirement. See RCW 41.35.060.

(b) **Postretirement marriage option.** If you select the standard benefit option at the time of retirement and marry after retirement, you may select a survivor benefit option and name your current spouse as survivor beneficiary, provided that:

(i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-01-500;

(ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;

(iii) You provide a copy of your certified marriage certificate to the department; and

(iv) You provide proof of your current spouse's birth date.

(c) **Removal of a nonspouse survivor option.** If you select a survivor benefit option and name a nonspouse as your survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard benefit. You may exercise this option one time only.

(d) One-time change of survivor. You may change your benefit option and/or designated survivor one time within 90 days from the date your first benefit payment is issued. Your change request must be in writing, and must comply with other requirements as described in this

section. Your new benefit amount will be effective the first of the month following the receipt of your request by the department.

(7) **Who will receive the balance of my accumulated contributions, if any, after my death?**

(a) **Plan 2 members:**

(i) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(A) To the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

(B) If you have not designated a beneficiary, or if your designated beneficiary is no longer living or in existence, then to your surviving spouse.

(C) If not paid according to (a)(i)(A) or (B) of this subsection, then to your estate.

(ii) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(A) To the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(B) If your survivor beneficiary has not designated a beneficiary, or if the designated beneficiary is no longer living or in existence, then to your survivor beneficiary's spouse.

(C) If not paid according to (a)(ii)(A) or (B) of this subsection, then to your survivor beneficiary's estate.

(b) **Plan 3 members:** The defined benefit stops upon your death or upon the death of your survivor beneficiary, if applicable. As a Plan 3 member, you do not contribute to the defined benefit portion of your retirement benefit. The defined contribution portion of your benefit will be distributed according to WAC 415-111-310.

(8) For more information, see RCW 41.35.220.

[Statutory Authority: RCW 41.50.050. WSR 20-13-065, § 415-110-610, filed 6/15/20, effective 7/16/20; WSR 20-06-040, § 415-110-610, filed 2/27/20, effective 3/29/20. Statutory Authority: RCW 41.50.050(5). WSR 13-18-034, § 415-110-610, filed 8/28/13, effective 10/1/13. Statutory Authority: RCW 41.50.050(5), 41.35.220. WSR 05-23-062, § 415-110-610, filed 11/14/05, effective 12/15/05.]

OTS-3453.1

AMENDATORY SECTION (Amending WSR 20-13-065, filed 6/15/20, effective 7/16/20)

WAC 415-112-505 What are my TRS Plan 2 or Plan 3 retirement benefit options? Upon retirement for service under RCW 41.32.765 or 41.32.875, or disability under RCW 41.32.790 or 41.32.880, you must choose to have the defined benefit portion of your retirement benefit paid to you by one of the options described in this section.

(1) **Which option will pay my beneficiary a monthly benefit after my death?** Options described in subsection (2)(b), (c), and (d) of this section will pay a monthly benefit to your survivor after your death. The person you name at the time of retirement to receive a monthly benefit after your death is referred to as your "survivor beneficiary." After your death, your survivor beneficiary will receive a monthly benefit for the duration of their life. Your monthly retirement benefit will be reduced to offset the cost of the survivor option. See WAC 415-02-380 for more information on how your monthly benefit will be affected if you choose a survivor option.

(2) **What are my benefit options?**

(a) **Option one: Standard benefit for service retirement (nonsurvivor option).** The department will pay you a monthly retirement benefit throughout your lifetime. Your monthly benefit will cease upon your death, and any remaining balance of accumulated contributions will be paid according to subsection (7) of this section.

(b) **Option two: Joint and (~~one hundred~~) 100 percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to your gross monthly benefit.

(c) **Option three: Joint and (~~fifty~~) 50 percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to (~~fifty~~) 50 percent of your gross monthly benefit.

(d) **Option four: Joint and two-thirds survivor benefit.**¹ The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to two-thirds (66.667%) of your gross monthly benefit.

(3) **Do I need my spouse's consent on the option I choose?** The option you select will determine whether spousal consent is required.

(a) If you are married and select a nonsurvivor benefit option, you must provide your spouse's consent, verified by a notarized signature or other means acceptable to the department. If you do not provide verified spousal consent, the department will pay you a monthly retirement benefit based on option three (joint and (~~fifty~~) 50 percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.32.785(2) and 41.32.851(2).

(b) If you are married and select a survivor benefit option for your spouse, spousal consent is not required. The department will pay you a monthly benefit based on the option you selected.

(c) If you are married and select a survivor benefit option for someone other than your spouse, spousal consent is required. If you do not provide spousal consent, verified by a notarized signature or other means acceptable to the department, the department will pay you a monthly retirement benefit based on option three (joint and (~~fifty~~) 50 percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.32.785(2) and 41.32.851(2).

(d) If your survivor beneficiary has been designated by a dissolution order under RCW 41.50.790, which was filed with the department at least (~~thirty~~) 30 days before your retirement date, spousal consent is not required.

(4) **Can a dissolution order require that a former spouse be designated as a survivor beneficiary?** Yes. A dissolution order may re-

quire that a former spouse be designated as a survivor beneficiary. The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

(5) **What happens if I choose a benefit option with a survivor option and my survivor beneficiary dies before I do?** If your survivor beneficiary dies before you do, you may request to have your benefit increased as described in WAC 415-02-380.

(6) **May I change my benefit option after retirement?** Your choice of a benefit option is irrevocable with the following (~~three~~) four exceptions:

(a) **Return to membership.** If you retire and then return to membership, you may choose a different retirement option upon your subsequent retirement. See RCW 41.32.044.

(b) **Postretirement marriage option.** If you select the standard benefit option at the time of retirement and marry after retirement, you may select a benefit option with a survivor option and name your current spouse as survivor beneficiary, provided that:

(i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-02-500;

(ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;

(iii) You provide a copy of your certified marriage certificate to the department;

(iv) You provide proof of your current spouse's birth date; and

(v) You exercise this option one time only.

(c) **Removal of a nonspouse survivor option.** If you select a benefit option with a survivor option and name a nonspouse as survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard benefit. You may exercise this option one time only.

(d) **One-time change of survivor.** You may change your benefit option and/or designated survivor one time within 90 days from the date your first benefit payment is issued. Your change request must be in writing, and must comply with other requirements as described in this section. Your new benefit amount will be effective the first of the month following the receipt of your request by the department.

(7) **Who will receive the balance of my accumulated contributions, if any, after my death?**

(a) **Plan 2:**

(i) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(A) To the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

(B) If you have not designated a beneficiary, or if your designated beneficiary is no longer living, then to your surviving spouse.

(C) If not paid according to (a) (i) (A) or (B) of this subsection, then to your estate.

(ii) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(A) To the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(B) If your survivor beneficiary has not designated a beneficiary, or if the designated beneficiary is no longer living, then to your survivor beneficiary's spouse.

(C) If not paid according to (a)(ii)(A) or (B) of this subsection, then to your survivor beneficiary's estate.

(b) **Plan 3:** The defined benefit stops upon your death or upon the death of your survivor beneficiary, if applicable. As a Plan 3 member, you do not contribute to the defined benefit portion of your retirement benefit. The defined contribution portion of your benefit will be distributed according to WAC 415-111-310.

(8) For more information, see RCW 41.32.785 and 41.32.790 (Plan 2) and RCW 41.32.851 (Plan 3).

¹ Available to members retiring on or after January 1, 1996.

[Statutory Authority: RCW 41.50.050. WSR 20-13-065, § 415-112-505, filed 6/15/20, effective 7/16/20; WSR 20-06-040, § 415-112-505, filed 2/27/20, effective 3/29/20. Statutory Authority: RCW 41.50.050(5). WSR 13-18-034, § 415-112-505, filed 8/28/13, effective 10/1/13. Statutory Authority: RCW 41.50.050(5), 41.32.785, 41.32.851, and 41.32.790. WSR 08-10-025, § 415-112-505, filed 4/25/08, effective 5/26/08; WSR 05-23-062, § 415-112-505, filed 11/14/05, effective 12/15/05.]

WSR 22-01-062

PERMANENT RULES

BELLINGHAM TECHNICAL COLLEGE

[Filed December 9, 2021, 9:18 a.m., effective January 9, 2022]

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

Purpose: Changes to WAC 495B-121-380 are necessary as the result of a federal district court decision in Massachusetts (*Victim Rights Law Center et al. v. Cardona*, No. 1:20-cv-11104, 2021 WL 3185743 (D. Mass. July 28, 2021)), which vacated the part of 34 C.F.R. § 106.45 (b)(6)(i) that prohibits a decision-maker from relying on statements that are not subject to cross-examination during the hearing. In accordance with the court's order, the United States Department of Education immediately ceased enforcement of the part of 34 C.F.R. § 106.45 (b)(6)(i) regarding the prohibition against statements not subject to cross-examination. Bellingham Technical College's Title IX regulations (WAC 495B-121-380) must also be updated to reflect this change.

Additional updates include clarification to the appeals procedure (WAC 495B-121-390) and a new invalidation provision in WAC 495B-121-250.

Citation of Rules Affected by this Order: Amending WAC 495B-121-250, 495B-121-380, and 495B-121-390.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.

Adopted under notice filed as WSR 21-21-089 on October 19, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 3, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 0.

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

Date Adopted: December 9, 2021.

Ronda Laughlin
Executive Assistant
to the President

OTS-3326.1

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

WAC 495B-121-250 General policies. (1) Bellingham Technical College is an agency of the state of Washington and adheres to all lo-

cal, state, and federal laws. The college is obligated to demonstrate respect for laws by cooperating in their enforcement.

(2) Bellingham Technical College cannot and will not establish regulations that would abridge constitutional rights.

(3) Proper procedures are established to maintain conditions helpful to the effective function of the college, to protect individual students from unfair penalties, and to assure due process. Bellingham Technical College is granted the right by law to adopt rules to govern its operations.

(4) If these rules are broken, the college has the right and the obligation to take that action which is in the best interest of the entire college.

(5) Bellingham Technical College reserves the right to impose the provisions of this code and provide further sanctions before or after law enforcement agencies, courts, or other agencies have imposed penalties or otherwise disposed of a case. College hearings are not subject to challenge on the grounds that criminal or civil charges involving the same incident have been dismissed or reduced or in which the defendant has been found not guilty or otherwise not liable. In addition, the college reserves the right to refer incidents to the appropriate civilian authorities or law enforcement agencies.

(6) If any provision of this code is invalidated by court order or operation of law, the affected provision of the code will no longer apply.

[Statutory Authority: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.; RCW 28B.50.130. WSR 21-07-085, § 495B-121-250, filed 3/18/21, effective 4/18/21.]

OTS-3307.1

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

WAC 495B-121-380 Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

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

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

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

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

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

(4) ~~((Cross-examination required: If a party or witness does not submit to cross-examination during the live hearing, the committee~~

~~must not rely on any statement by that party or witness in reaching a determination of responsibility.~~

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

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

- (a) Spousal/domestic partner privilege;
- (b) Attorney-client and attorney work product privileges;
- (c) Privileges applicable to members of the clergy and priests;
- (d) Privileges applicable to medical providers, mental health therapists, and counselors;
- (e) Privileges applicable to sexual assault and domestic violence advocates; and
- (f) Other legal privileges identified in RCW 5.60.060.

[Statutory Authority: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.; RCW 28B.50.130. WSR 21-07-085, § 495B-121-380, filed 3/18/21, effective 4/18/21.]

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

WAC 495B-121-390 Appeals. (1) ~~((The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in WAC 495B-121-330.~~

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

~~(3)) All parties, including the student conduct officer in their capacity as a representative of the college, have the right to appeal from the determination of responsibility and/or from a dismissal, in whole or part, of a formal complaint during the investigative or hearing process. Appeals must be in writing and filed with the president's office within 21 days of service of the initial order or notice of dismissal. Appeals must identify the specific findings of fact and/or conclusions of law in the initial order or dismissal that the appealing party is challenging and must contain argument as to why the appeal should be granted. Failure to file a timely appeal constitutes a waiver of the right to appeal and the initial order or dismissal shall be deemed final.~~

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

peal. Upon receipt of written responses, the president's office shall serve copies of the response to the other parties.

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

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

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

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

[Statutory Authority: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.; RCW 28B.50.130. WSR 21-07-085, § 495B-121-390, filed 3/18/21, effective 4/18/21.]

WSR 22-01-068

PERMANENT RULES

WASHINGTON STATE PATROL

[Filed December 9, 2021, 2:24 p.m., effective January 9, 2022]

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

Purpose: Changes to WAC 204-50-030, 204-50-070, and 204-50-110 are needed to coincide with legislative changes to the alcohol set point in RCW 46.20.720, which will become effective January 1, 2022. Additionally, there is a need to clean up, update, and move some of the definitions in WAC 204-50-030 to conform to language in other rules. Finally, updates to WAC 204-50-070 are needed to clean up existing language to provide clarity and consistency in terms to ensure the rule references and complies with current laws in the state of Washington.

Citation of Rules Affected by this Order: Amending WAC 204-50-030, 204-50-070, and 204-50-110.

Statutory Authority for Adoption: RCW 43.43.395, 46.37.005, 46.04.215.

Adopted under notice filed as WSR 21-21-073 on October 18, 2021.

Changes Other than Editing from Proposed to Adopted Version: A number of nonsubstantive changes were made between the proposed and adopted rule versions. Many of the changes was [were] inserted, deleted, or replaced to clarify the meaning of the rule and to avoid confusion for the ignition interlock vendors and the public. The following clarifying changes were made upon adoption of the rule:

WAC 204-50-030 (5)(g): Replaced "excess breath alcohol" with "a BrAC equal to or higher than the alcohol set point."

WAC 204-50-070(5): Replaced "section" with "chapter."

WAC 204-50-110 (1)(k): Replaced "exceeds the lower of .020 BrAC or the alcohol concentration as prescribed by the originating court" with "is equal to or higher than the alcohol set point" and replaced "at a level the lower of .020 BrAC or the maximum allowable alcohol concentration as set by the originating court" with "with a result lower than the alcohol set point."

WAC 204-50-110(5): Replaced "an alcohol concentration equal to or higher than .020 BrAC or a level ordered by the originating court" with "a BrAC equal to or higher than the alcohol set point."

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 0.

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

Date Adopted: December 9, 2021.

John R. Batiste
Chief

OTS-3379.6

AMENDATORY SECTION (Amending WSR 12-17-153, filed 8/22/12, effective 10/1/12)

WAC 204-50-030 Definitions. The ~~((following definitions will))~~ definitions in this section apply throughout this chapter:

(1) "Alcohol" ((-)) means the unique chemical compound ethyl alcohol or ethanol. ~~((For the purpose of ignition interlock devices, all devices will be specific for ethyl alcohol.~~

~~(2) Bogus sample — Any air sample that is altered, diluted, contaminated, stored, or filtered human breath, or which is obtained from an air compressor, hot air dryer, balloon, manual air pump, or other mechanical device, and is provided by an individual attempting to start or continue to operate a vehicle equipped with an ignition interlock device.~~

~~(3)) (2) "Breath alcohol concentration" or "BrAC" ((— Is the amount of alcohol in a person's breath determined by chemical analysis, which shall be measured by grams of alcohol per 210 liters of breath)) has the same meaning as in RCW 46.04.015(1).~~

~~((4)) (3) "Certification" ((-)) means the testing and approval process required by RCW ((46.04.215,)) 43.43.395 and chapter 204-50 WAC.~~

~~((5)) (4) "Chief" ((-)) means the chief of the Washington state patrol ((or his or her designee)).~~

~~((6)) (5) "Circumvent" or "circumvention" ((-)) means the attempted or successful bypass of the proper functioning of an ignition interlock device by any means including, but not limited to:~~

(a) The operation of a vehicle without a properly functioning ignition interlock device;

(b) The push start of a vehicle with ~~((the))~~ an ignition interlock device;

(c) The alteration or disconnection of any part of the ignition interlock device including the control head while the vehicle is in operation ~~((or alteration of the ignition interlock device));~~

(d) The intentional introduction of ~~((a bogus))~~ an air sample ~~((other than a deep-lung sample from the driver of the vehicle))~~ that is altered, diluted, contaminated, stored, or filtered, or that is obtained from an air compressor, hot air dryer, balloon, manual air pump, or other mechanic device, to start or continue to operate a vehicle;

(e) The ~~((introduction of an intentionally contaminated or altered breath sample))~~ intentional introduction of an air sample from an individual who is not the driver of the vehicle to start or continue to operate the vehicle;

(f) The intentional disruption or blocking of a digital image identification device or global positioning system;

(g) The continued operation of the interlock equipped vehicle after the ignition interlock device detects ~~((excess breath alcohol))~~ a BrAC equal to or higher than the alcohol set point.

~~((7)) (6) "Court" ((+) or "originating court ((+))") means the particular ((Washington state)) court, if any, that has required the use of an ignition interlock device by a particular individual or has responsibility for the ~~((preconviction))~~ pretrial or postconviction supervision of an individual required to use or using the ignition interlock device.~~

(7) "Designee" means a person designated by the chief of the Washington state patrol.

~~((8))~~ (8) "DOL" ((-)) means the Washington state department of licensing ((of the state of Washington)).

~~((9))~~ ((Fail level — The BrAC of .025 g/210L or a level set by the originating court, if lower, at which the ignition interlock device will prevent the operator from starting the vehicle, and/or once the vehicle is started, the level at which the operator must record a test below.

~~((10))~~ "Fee" ((-)) means a nonrefundable administrative fee set by schedule and paid to the patrol by the manufacturer through electronic funds transfer.

~~((11))~~ (10) "Ignition interlock device" ((—An electronic device that is installed in a vehicle which requires submitting to a BrAC test prior to the starting of the vehicle and at periodic intervals after the engine has been started. If the ignition interlock device detects a BrAC test result below the alcohol setpoint, the ignition interlock device will allow the vehicle's ignition switch to start the engine. If the ignition interlock device detects a BrAC test result above the alcohol setpoint, the vehicle will be prohibited from starting)) means the same as that term is defined in RCW 46.04.215.

~~((12))~~ (11) "Ignition interlock technician" ((-)) or "technician" means a person employed by the ignition interlock device manufacturer ((or)), vendor or service center and certified by the impaired driving section to install, service, calibrate, remove and monitor certified ignition interlock devices in Washington state.

~~((13))~~ (12) "Impaired driving section" ((-)) means the section of the Washington state patrol that has been designated by the chief ((of the Washington state patrol)) to coordinate and regulate ignition interlock devices, service centers and technicians.

~~((14))~~ Initial start failure — A breath sample introduced into an ignition interlock device when a restricted operator is attempting to start a vehicle with a BrAC higher than .025 g/210L or the alcohol concentration as prescribed by the originating court.

~~((15))~~ (13) "Lessee" ((-)) means a person who has entered into an agreement with a manufacturer, vendor, or service center to lease an ignition interlock device.

~~((16))~~ (14) "Letter of certification" ((-)) or "certificate" means a letter issued by the Washington state patrol that authorizes:

(a) A manufacturer's ignition interlock device to be installed and used ((as an ignition interlock device under)) in Washington state as provided in this chapter; ((or))

(b) An ignition interlock technician to install, service, calibrate, remove and monitor certified ignition interlock devices in Washington state; or

(c) A service center ((location)) to service, install, monitor, and calibrate ignition interlock devices currently certified ((for use)) in Washington state.

~~((17))~~ (15) "Lockout" ((-)) means a period of time where the ignition interlock device will not allow a breath sample to be delivered or a vehicle's engine to be started.

~~((18))~~ (16) "Manufacturer" ((—The)) means a person, company, or corporation ((who)) that produces ((the)) an ignition interlock device ((, and certifies to the impaired driving section that a service center, vendor, or ignition interlock technician is qualified to service, install, monitor, calibrate, remove, instruct, and provide information on the manufacturer's ignition interlock device)).

~~((19))~~ (17) "OAC" (~~(-Office of the administrator)~~) means the administrative office of the courts.

~~((20))~~ (18) "Patrol" (~~(-)~~) means the Washington state patrol as that term is defined in RCW 43.43.010.

~~((21))~~ (19) "Restricted operator" (~~(-)~~) means a person whose driving privileges are restricted by court order or the department of licensing to operating only motor vehicles equipped with (~~an approved,~~) a functioning certified ignition interlock device.

~~((22))~~ (20) "Service center" (~~(-)~~) is the same as service provider as referenced in RCW 43.43.395 and means a location certified by the impaired driving section to service, install, monitor, remove and calibrate certified ignition interlock devices in Washington state.

~~((23))~~ (21) "Tamper" or "tampering" (~~(-)~~) means any act or attempt to disable or circumvent the legal operation of an ignition interlock device.

~~((24))~~ (22) "Vendor" (~~(-)~~) means an impaired driving section approved company, business, or distributor who is contracted by a manufacturer to manage a service center (~~(s and/or technicians)~~), a technician, or both.

~~((25))~~ (23) "Violation reset" (~~(-An unscheduled service of the ignition interlock device which includes the following:~~

~~(a) Calibration as outlined in WAC 204-50-080 (3)(a);~~

~~(b) Visual inspection of wiring harness;~~

~~(c) Download of the ignition interlock device's data storage system))~~ means a feature of the ignition interlock device that activates a service reminder due to a violation.

~~((26))~~ (24) "Wet bath simulator" (~~(-)~~) means a device (~~(which)~~) that provides a vapor sample of a known alcohol concentration when filled with a certified alcohol and water (~~(simulator)~~) solution(~~(,)~~) and maintained at a (~~(known)~~) specific temperature(~~(, provides a vapor sample of a known alcohol concentration)~~).

[Statutory Authority: RCW 43.43.395, 46.37.005, and 46.04.215. WSR 12-17-153, § 204-50-030, filed 8/22/12, effective 10/1/12; WSR 10-24-074, § 204-50-030, filed 11/30/10, effective 1/1/11. Statutory Authority: RCW 46.37.005 and 46.04.215. WSR 09-18-073, § 204-50-030, filed 8/31/09, effective 10/1/09. Statutory Authority: RCW 46.61.688(2). WSR 05-17-065, § 204-50-030, filed 8/11/05, effective 9/11/05. Statutory Authority: RCW 46.04.215 and 46.37.005. WSR 99-01-156, § 204-50-030, filed 12/23/98, effective 1/1/99. Statutory Authority: 1987 c 247. WSR 88-01-020 (Order 87-05-ESR), § 204-50-030, filed 12/9/87.]

OTS-1097.6

AMENDATORY SECTION (Amending WSR 12-17-153, filed 8/22/12, effective 10/1/12)

WAC 204-50-070 (~~(Variable calibration)~~) Alcohol set point of an ignition interlock device. (~~(To be certified,)~~) (1) An ignition interlock device must be capable of being preset (~~(, by only)~~) by the manufacturer (~~(, at any fail level from .02 through .09 g/210L BrAC (plus or minus .005 g/210L BrAC)~~). The actual setting of each ignition

interlock device, unless otherwise mandated by the originating court, must be .025 g/210L BrAC.)) to an alcohol set point from .020 to .070 BrAC.

(2) The alcohol set point of each ignition interlock device must be set at .020 BrAC, unless otherwise mandated by the originating court.

(3) The capability to change ((this setting)) the set point must be made secure((r)) by the manufacturer.

(4) The manufacturer must notify the impaired driving section in writing within seven calendar days of installing an ignition interlock device with an alcohol set point other than .020 BrAC.

(5) As used in this chapter, "alcohol set point" means the BrAC level at which the ignition interlock device will prevent the operator from starting the vehicle, and once the vehicle is started, the level below which the operator must record a test.

[Statutory Authority: RCW 43.43.395, 46.37.005, and 46.04.215. WSR 12-17-153, § 204-50-070, filed 8/22/12, effective 10/1/12; WSR 10-24-074, § 204-50-070, filed 11/30/10, effective 1/1/11. Statutory Authority: RCW 46.37.005 and 46.04.215. WSR 09-18-073, § 204-50-070, filed 8/31/09, effective 10/1/09. Statutory Authority: RCW 46.61.688(2). WSR 05-17-065, § 204-50-070, filed 8/11/05, effective 9/11/05. Statutory Authority: RCW 46.04.215 and 46.37.005. WSR 99-01-156, § 204-50-070, filed 12/23/98, effective 1/1/99. Statutory Authority: 1987 c 247. WSR 88-01-020 (Order 87-05-ESR), § 204-50-070, filed 12/9/87.]

OTS-3373.3

AMENDATORY SECTION (Amending WSR 12-17-153, filed 8/22/12, effective 10/1/12)

WAC 204-50-110 Mandatory requirements for an ignition interlock device. (1) Notwithstanding other provisions of this chapter, a certified ignition interlock device must:

(a) Be designed to permit a "restart" within two minutes of a stall or when the ignition has been turned off, except a "restart" will not be permitted during a violation reset condition.

(b) Automatically and completely purge residual alcohol before allowing subsequent tests.

(c) Allow a minimum of 1500 ml or 1.5 L of breath for an acceptable breath sample.

(d) Allow a minimum of three minutes and a maximum of six minutes for random breath tests to be initiated prior to an indication of a missed test and a violation reset. The device must be capable of notifying the restricted driver of this time period. Acceptable forms of notification are use of an indicator light, audible tone, voice modulation and/or countdown timer.

(e) Be installed in such a manner that it will not interfere with the normal operation of the vehicle after it has been started.

(f) Include a supply of two disposable mouth pieces upon installation, designed to minimize the introduction of saliva into an igni-

tion interlock device, and an additional mouth piece with every (~~sixty to sixty-five~~) 60 to 65 day calibration period.

(g) Have all primary components as identified by the impaired driving section uniquely serial numbered, which includes, but may not be limited to, the storage device, handset, and camera.

(h) Uniquely identify and record each time the vehicle is attempted to be started and/or started, the results of all tests, retests or failures as being a malfunction of the device or from the operator not meeting the requirements, how long the vehicle was operated, and any indication of bypassing or tampering with the ignition interlock device, or tests.

(i) (~~On or before June 10, 2015,~~) Require a restricted operator to wait five minutes before attempting to start the vehicle a second or third time and (~~thirty~~) 30 minutes prior to the fourth or subsequent attempts to initially start the vehicle when the initial start failure occurs.

(j) Require the operator of the vehicle to submit to a random retest within (~~ten~~) 10 minutes of starting the vehicle. A random retest must continue at variable intervals ranging from (~~ten to forty-five~~) 10 to 45 minutes after the previous retest for the duration of the travel. If a bypass is recorded at start up, the random breath testing procedure will continue for the duration of travel.

(k) Be equipped with a method of immediately notifying law enforcement officers if a violation reset occurs from a random retest or the result of the retest (~~exceeds the lower of .025 g/210L BrAC or the alcohol concentration as prescribed by the originating court~~) is equal to or higher than the alcohol set point or any disconnection of the ignition interlock device control head for longer than one minute after vehicle start up. Acceptable forms of notification are repeated honking of the vehicle's horn or the use of an audible signaling device. Such notification may be disabled only by switching the engine off, or by the achievement of a retest (~~at a level the lower of .025 g/210L BrAC or the maximum allowable alcohol concentration as set by the originating court~~) with a result lower than the alcohol set point.

(l) Enter into violation reset when the restricted operator has:

- (i) Recorded a random test failure;
- (ii) Disconnected the control head after start up;
- (iii) Failed to submit to a random retest;

(iv) Failed to have the ignition interlock device serviced within the time period described in this chapter.

(m) Enter into a lockout if a violation reset occurs unless the vehicle is serviced at a mobile or fixed site service center by a certified technician where it will be calibrated, downloaded and the wiring harness physically inspected within five days of when the violation reset occurred.

(n) When reasonably available, contain a digital image identification device as prescribed in RCW 43.43.395. The digital image device will not distract or impede the driver in any manner from safe and legal operation of the vehicle and will:

(i) Encode a digital or photographic image of the vehicle driver including the time, date and BrAC level of all breath attempts. All images and data for a (~~sixty-five~~) 65 day use period must be stored in the device's memory to be downloaded and stored by the manufacturer for three years.

(ii) Capture a digital image or photograph of the driver:

- (A) Within five seconds after starting the vehicle.

(B) Upon initial notification that a random retest is required.

(C) When a violation reset condition is initiated.

(D) Randomly at the discretion of the manufacturer.

(iii) Produce a digital image, identifiable verification or a photograph of the restricted driver in all lighting conditions; extreme brightness, darkness and low light conditions.

(2) The digital image identification device reference in subsection (1)(n) of this section and RCW 43.43.395 is considered reasonably available in the area of Washington state. The digital image identification device must be incorporated into:

(a) Any new ignition interlock device installation and any user in violation of RCW 46.20.720(4) by January 1, 2013.

(b) Any ignition interlock device issued to a user under a five or (~~ten~~) 10 year restriction by June 10, 2013.

(c) All ignition interlock devices by June 10, 2015.

(3) The manufacturer, vendor, ignition interlock technician or service center shall notify the originating court (if any) of such violation reset conditions within five days of servicing the ignition interlock device in a format acceptable to the originating court. The manufacturer, vendor or service center must provide notification to DOL and impaired driving section in an acceptable electronic format should DOL or impaired driving section promulgate rules requiring such notification of a violation reset condition.

(4) In addition to any other information required by DOL, the impaired driving section, or by an originating court, all reports to DOL, the impaired driving section or to an originating court concerning a particular ignition interlock device must include:

(a) The full name, address, and driver's license number of the restricted operator, lessee, and registered owner;

(b) The vehicle license registration number of the single vehicle in which the ignition interlock device was installed;

(c) The unique serial number of the ignition interlock device; and

(d) The toll free telephone number, and certification number of the installing service center and ignition interlock technician who installed and prepared the report for the ignition interlock device.

(5) As used this section, "initial start failure" means the failure of the vehicle to start following the introduction of a breath sample into an ignition interlock device when an operator is attempting to start a vehicle with a BrAC equal to or higher than the alcohol set point.

[Statutory Authority: RCW 43.43.395, 46.37.005, and 46.04.215. WSR 12-17-153, § 204-50-110, filed 8/22/12, effective 10/1/12; WSR 10-24-074, § 204-50-110, filed 11/30/10, effective 1/1/11. Statutory Authority: RCW 46.37.005 and 46.04.215. WSR 09-18-073, § 204-50-110, filed 8/31/09, effective 10/1/09. Statutory Authority: RCW 46.61.688(2). WSR 05-17-065, § 204-50-110, filed 8/11/05, effective 9/11/05. Statutory Authority: RCW 46.04.215 and 46.37.005. WSR 99-01-156, § 204-50-110, filed 12/23/98, effective 1/1/99. Statutory Authority: 1987 c 247. WSR 88-01-020 (Order 87-05-ESR), § 204-50-110, filed 12/9/87.]

WSR 22-01-069
PERMANENT RULES
POLLUTION LIABILITY
INSURANCE AGENCY

[Filed December 9, 2021, 3:16 p.m., effective January 9, 2022]

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

Purpose: The proposed rule changes are strictly technical and not substantive and do not alter the text of the rule. Changes reflect updated citations to recodified statutes.

Citation of Rules Affected by this Order: Amending chapters 374-20, 374-30, 374-40, 374-70, and 374-80 WAC.

Statutory Authority for Adoption: RCW 70A.01.010 and 70A.01.020.

Adopted under notice filed as WSR 21-20-089 on September 30, 2021.

Date Adopted: December 9, 2021.

Phi Ly
Legislative and Policy Manager

OTS-2812.2

AMENDATORY SECTION (Amending WSR 20-02-005, filed 12/18/19, effective 1/18/20)

WAC 374-20-020 Definitions. Unless the context requires otherwise, the definitions in this section shall apply throughout this chapter.

(1) The terms "public record" and "writing" have the same meanings as stated in RCW (~~42.17.020~~) 42.17A.005.

(2) "Agency" means the pollution liability insurance agency established pursuant to chapters (~~70.148~~) 70A.325 and (~~70.149~~) 70A.330 RCW and shall also mean staff or employees of the pollution liability insurance agency.

(3) "Director" means the director of the agency.

(4) "Public records officer" means the designated records manager of the agency.

(5) "Designee" means the employee of the agency designated by the director or the public records officer to serve as the public records officer at the agency in the absence of the officer.

[Statutory Authority: Chapter 42.56 RCW. WSR 20-02-005, § 374-20-020, filed 12/18/19, effective 1/18/20. Statutory Authority: RCW 42.17.250. WSR 90-14-019 (Order 90-4), § 374-20-020, filed 6/27/90, effective 7/28/90.]

AMENDATORY SECTION (Amending WSR 20-02-005, filed 12/18/19, effective 1/18/20)

WAC 374-20-030 Description of organization. (1) The agency's mailing address is:

Pollution Liability Insurance Agency
 State of Washington
 P.O. Box 40930
 Olympia, Washington 98504-0930

The agency's office is located at:

~~((300 Desmond Drive S.E.
 Lacey, Washington 98503))~~
500 Columbia St. N.W.
Olympia, WA 98501

(2) The principal administrative and appointing officer of the agency is the director. The director may designate other officers or employees of the agency to act on his or her behalf in the director's absence in which so doing would enhance the efficiency of the agency's operations.

(3) The agency implements and administers the pollution liability insurance programs established by chapters ~~((70.148, 70.149, and 70.340))~~ 70A.325, 70A.330, and 70A.345 RCW.

(4) Any person wishing to request access to public records of the agency, or seeking assistance in making such a request, should contact the public records officer of the pollution liability insurance agency using one of the following contact methods by mail:

PLIA Public Records Officer
 P.O. Box 40930
 Olympia, WA 98504-0930
 Phone: 800-822-3905
 ((Fax: ~~360-407-0509~~))
 Email: pliamail@plia.wa.gov.

A request form is available on the agency's website at www.plia.wa.gov.

(5) The public records officer will oversee compliance with the Public Records Act, chapter 42.56 RCW. The agency will provide the fullest assistance to requestors; create and maintain an index to public records of the agency for use by the public and agency officials; ensure that public records are protected from damage or disorganization; and prevent fulfilling public records requests from causing excessive interference with essential functions of the agency.

[Statutory Authority: Chapter 42.56 RCW. WSR 20-02-005, § 374-20-030, filed 12/18/19, effective 1/18/20. Statutory Authority: RCW 42.17.250. WSR 90-14-019 (Order 90-4), § 374-20-030, filed 6/27/90, effective 7/28/90.]

OTS-2813.2

AMENDATORY SECTION (Amending WSR 90-14-020, filed 6/27/90, effective 8/1/90)

WAC 374-30-010 Authority and purpose. This chapter is promulgated under the authority conferred by RCW ~~((70.148.040))~~ 70A.325.060. The purpose of this chapter is to implement those provisions of chap-

ter ((70.148)) 70A.325 RCW as amended by Substitute House Bill No. 2609 (chapter 64, Laws of 1990) relating to the establishment of reserves for the pollution liability insurance program.

[Statutory Authority: RCW 70.148.040. WSR 90-14-020 (Order 90-5), § 374-30-010, filed 6/27/90, effective 8/1/90.]

AMENDATORY SECTION (Amending WSR 90-14-020, filed 6/27/90, effective 8/1/90)

WAC 374-30-020 Definitions. Unless the context requires otherwise, the following definitions shall apply:

(1) "Claim" means a properly filed request for insurance benefits made by the holder of a pollution liability insurance policy issued by an insurer with whom the pollution liability insurance program has executed a contract for reinsurance.

(2) "Director" means the director of the pollution liability insurance agency and program appointed by the governor pursuant to chapter ((70.148)) 70A.325 RCW, or a person designated to act on the director's behalf.

(3) "Insurer" means a commercial property and casualty insurance company, risk retention group, or group of insurance companies or risk retention groups.

(4) "Loss reserve" means the amount traditionally set aside by insurers for costs and expenses related to claims that have been made.

(5) "Program" means the pollution liability insurance program created in chapter ((70.148)) 70A.325 RCW.

(6) "Surplus reserve" means the amount traditionally set aside by insurers to provide financial protection from unexpected losses and to serve, in part, as a measure of an insurer's net worth.

(7) "Unrestricted trust account balance" means the cash balance in the pollution liability insurance program trust account created in RCW ((70.148.020)) 70A.325.020 less reserves established under this chapter.

[Statutory Authority: RCW 70.148.040. WSR 90-14-020 (Order 90-5), § 374-30-020, filed 6/27/90, effective 8/1/90.]

AMENDATORY SECTION (Amending WSR 90-14-020, filed 6/27/90, effective 8/1/90)

WAC 374-30-040 Loss reserves—Use and disposition. (1) When the adjustment and settlement of claims for which the program has provided reinsurance has been completed, the insurer shall notify the director of the terms of final settlement and shall provide such documentation as the director may require. The director shall order that the insurer be reimbursed for those costs and expenses in excess of the insurer's contractual net retention that are properly due to the insurer under the ((the)) reinsurance contract. Such payments will be made from the funds set aside as loss reserves for the pertinent claim.

(2) In the event that the program's final reinsurance obligation for any claim differs from the amount set aside as a loss reserve for that claim, adjustment shall be made as follows:

(a) If the program's reinsurance obligation is greater than the amount set aside as a loss reserve, the additional funds required shall be withdrawn from the unrestricted trust account balance.

(b) If the program's reinsurance obligation is less than the amount set aside as a loss reserve, the unutilized funds shall be re-stored to the unrestricted trust account balance.

[Statutory Authority: RCW 70.148.040. WSR 90-14-020 (Order 90-5), § 374-30-040, filed 6/27/90, effective 8/1/90.]

OTS-3386.1

AMENDATORY SECTION (Amending WSR 90-18-057, filed 8/31/90, effective 10/1/90)

WAC 374-40-020 Agency defined. Unless the context requires otherwise, "agency" means the pollution liability insurance agency created pursuant to chapter ((70.148)) 70A.325 RCW.

[Statutory Authority: RCW 70.148.040. WSR 90-18-057 (Order 90-7), § 374-40-020, filed 8/31/90, effective 10/1/90.]

OTS-2814.2

AMENDATORY SECTION (Amending WSR 08-20-013, filed 9/18/08, effective 1/1/09)

WAC 374-70-010 Purpose and authority. (1) The purpose of this chapter is to address a solution to the threat posed to human health and the environment by accidental releases of heating oil from heating oil tanks. It is in the best interest of all citizens for heating oil tanks to be operated safely, and for accidental releases or spills to be dealt with expeditiously in order to ensure that the environment, particularly groundwater, is protected. It is also in the best interest of individual heating oil tank owners to protect them from the unexpected liability and potential financial hardship associated with an accidental release from a heating oil tank.

(2) The pollution liability insurance agency is directed by chapter ((70.149)) 70A.330 RCW to establish the heating oil pollution liability insurance program to assist owners and operators of heating oil tanks.

[Statutory Authority: RCW 70.149.040. WSR 08-20-013, § 374-70-010, filed 9/18/08, effective 1/1/09. Statutory Authority: Chapter 70.149 RCW. WSR 96-01-101, § 374-70-010, filed 12/19/95, effective 1/19/96.]

AMENDATORY SECTION (Amending WSR 08-20-013, filed 9/18/08, effective 1/1/09)

WAC 374-70-020 Definitions. Unless the context requires otherwise, the definitions in this section shall apply throughout this chapter.

(1) "Abandoned heating oil tank" means a heating oil tank that has been left unused and that is no longer connected to an oil-fired furnace used for space heating of human living or working space on the premises where the tank is located.

(2) "Accidental release" means a sudden or nonsudden release of heating oil from a heating oil tank that results in bodily injury, property damage, or a need for corrective action, neither expected nor intended by the owner or operator.

(3) "Agency" means the Washington state pollution liability insurance agency established pursuant to chapter (~~(70.148)~~) 70A.325 RCW. For purposes of chapter (~~(70.149)~~) 70A.330 RCW, agency shall also mean staff or employees of the pollution liability insurance agency.

(4) "Bodily injury" means bodily injury, sickness, or disease sustained by a person, including death at any time, resulting from the injury, sickness, or disease.

(5) "Claim" means a demand made by a named insured, or the insured's representative, for payment of the benefits provided under the heating oil pollution liability insurance program.

(6) (a) "Corrective action" means those actions reasonably required to be undertaken by the insured to remove, treat, neutralize, contain, or clean up an accidental release in order to comply with a statute, ordinance, rule, regulation, directive, order, or similar legal requirement, in effect at the time of an accidental release, of the United States, the state of Washington, or a political subdivision of the United States or the state of Washington. "Corrective action" includes, where agreed to in writing, in advance by the insurer, action to remove, treat, neutralize, contain, or clean up an accidental release to avert, reduce, or eliminate the liability of the insured for corrective action, bodily injury, or property damage. "Corrective action" also includes actions reasonably necessary to monitor, assess, and evaluate an accidental release.

(b) "Corrective action" does not include:

(i) Removal, replacement or repair of heating oil tanks or other receptacles, except reimbursement of new tank replacement costs in accordance with RCW (~~(70.149.120)~~) 70A.330.100;

(ii) Replacement or repair of piping, connections, and valves of tanks or other receptacles; or

(iii) Costs directly associated with tank removal.

(7) "Decommissioned heating oil tank" means a heating oil tank that is no longer connected to an oil-fired furnace used for space heating of human living or working space on the premises where the tank is located and that has been taken out of operation in accordance with the International Fire Code and any pertinent local government requirements.

(8) "Director" means the director of the Washington state pollution liability insurance agency or the director's appointed representative.

(9) "Heating oil" means any petroleum product used for space heating in oil-fired furnaces, heaters, and boilers, including stove oil, diesel fuel, or kerosene. "Heating oil" does not include petroleum products used as fuels in motor vehicles, marine vessels, trains,

buses, aircraft, or any off-highway equipment not used for space heating, or for industrial processing or the generation of electrical energy.

(10) "Heating oil tank" means a tank and its connecting pipes, whether above or below ground, or in a basement, with pipes connected to the tank for space heating of human living or working space on the premises where the tank is located. "Heating oil tank" does not include a decommissioned or abandoned heating oil tank, or a tank used solely for industrial process heating purposes or generation of electrical energy.

(11) "Heating oil tank service provider" is an independent contractor responsible for corrective action including sampling and testing, remedial actions, site restoration, and submittal of required reports to PLIA.

(12) "Insurer" means the commercial insurance company providing pollution liability insurance to registered owners of heating oil tanks under the heating oil pollution liability insurance program. PLIA is the reinsurer of the commercial insurance company and acts as the designated representative of the insurer for the heating oil pollution liability insurance program.

(13) "MTCA" means the Model Toxics Control Act (chapter ~~(70.105B)~~) 70A.305 RCW).

(14) "Named insured" means the individual insureds who are heating oil tank owners registered for coverage under the heating oil pollution liability insurance program.

(15) "Occurrence" means an accident, including continuous or repeated exposure to conditions, that results in an accidental release from a heating oil tank.

(16) "Owner" means the person, or his or her authorized representative, legally responsible for a heating oil tank, its contents, and the premises upon which the heating oil tank is located.

(17) "Owner or operator" means a person in control of, or having responsibility for, the daily operation of a heating oil tank.

(18) "Per occurrence, per site, per year" means one accidental release per site, per year.

(19) "Pollution liability insurance agency" (PLIA) means the Washington state pollution liability insurance agency established pursuant to chapter ~~(70.148)~~) 70A.325 RCW. For purposes of chapter ~~(70.149)~~) 70A.330 RCW, pollution liability insurance agency shall also mean staff or employees of the pollution liability insurance agency.

(20) "Pollution liability insurance agency trust account" means the pollution liability insurance agency trust account established under chapter ~~(70.148)~~) 70A.325 RCW and established in the custody of the state treasurer. Expenditures from the account are used for the purposes of chapter ~~(70.148)~~) 70A.325 RCW including the payment of costs of administering the pollution liability insurance program, and payment of reinsurance claims.

(21) "Property damage" means:

(a) Physical injury to, destruction of, or contamination of tangible property, including the loss of use of the property resulting from the injury, destruction, or contamination; or

(b) Loss of use of tangible property that has not been physically injured, destroyed, or contaminated but has been evacuated, withdrawn from use, or rendered inaccessible because of an accidental release.

(22) "Property damage restoration" means the restoration of property to a similar condition to that of the property prior to the acci-

dental release. Restoration includes the replacement of sod, plants or concrete driveway or walkway, or the replacement of flooring in the case of a basement tank.

(23) "Release" means a spill, leak, emission, escape, or leaching into the environment.

(24) "Third-party claimant" means a person alleged to have suffered property damage requiring corrective action or bodily injury as a direct result of a leak or spill from the heating oil tank of a named insured.

(25) "Third-party liability" means the liability of a heating oil tank owner to another person due to property damage requiring corrective action or bodily injury that results from a leak or spill from a heating oil tank.

[Statutory Authority: RCW 70.149.040. WSR 08-20-013, § 374-70-020, filed 9/18/08, effective 1/1/09. Statutory Authority: Chapter 70.149 RCW. WSR 97-06-080, § 374-70-020, filed 3/3/97, effective 4/3/97; WSR 96-01-101, § 374-70-020, filed 12/19/95, effective 1/19/96.]

AMENDATORY SECTION (Amending WSR 08-20-013, filed 9/18/08, effective 1/1/09)

WAC 374-70-030 Responsibility. (1) The director of the pollution liability insurance agency is directed by chapter ((70.149)) 70A.330 RCW to establish the heating oil pollution liability insurance program to assist owners and operators of heating oil tanks. The agency implements and administers the pollution liability insurance program established by chapter ((70.148)) 70A.325 RCW and the heating oil pollution liability insurance program established by chapter ((70.149)) 70A.330 RCW.

(2) The location of the principal office and the mailing address of the agency is:

Pollution Liability Insurance Agency
State of Washington
((1015 10th Avenue, S.E.))
P.O. Box 40930
Olympia, WA 98504-0930

(3) The principal administrative and appointing officer of the agency is the director. The director may designate other employees of the agency to act in his or her behalf in the director's absence or with respect to those matters in which so doing would enhance the efficiency of the agency's operations.

(4) In administering the heating oil pollution liability insurance program, PLIA acts as the designated representative of the insurer providing pollution liability insurance to registered owners of heating oil tanks.

[Statutory Authority: RCW 70.149.040. WSR 08-20-013, § 374-70-030, filed 9/18/08, effective 1/1/09. Statutory Authority: Chapter 70.149 RCW. WSR 97-06-080, § 374-70-030, filed 3/3/97, effective 4/3/97; WSR 96-01-101, § 374-70-030, filed 12/19/95, effective 1/19/96.]

AMENDATORY SECTION (Amending WSR 08-20-013, filed 9/18/08, effective 1/1/09)

WAC 374-70-060 Coverage. (1) The effective date of coverage under the heating oil pollution liability insurance program is January 1, 1996. Thereafter, individual heating oil tank coverage shall become effective upon receipt, by PLIA, of the completed registration form. Corrective action for an accidental release occurring prior to the effective date of coverage will not be covered under the program.

(2) The heating oil pollution liability insurance program provides coverage for corrective action costs up to sixty thousand dollars per occurrence, per site, per year, exclusive of other valid insurance or warranties.

(3) **Corrective action costs covered under the heating oil pollution liability insurance program include:**

(a) Corrective action if the accidental release occurs after the registration of a heating oil tank;

(b) Actions necessary to determine the extent and severity of an accidental release;

(c) Costs, not to exceed sixty thousand dollars per occurrence, per site, per year;

(d) Costs in excess of other valid insurance or warranties;

(e) Third-party property damage restoration, including landscaping, limited to one thousand five hundred dollars for each third-party claimant per occurrence, per site, per year;

(f) Excavation, treatment and/or removal and proper disposal of any soil or water contaminated by the accidental release and proper disposal of nonrepairable heating oil tank or tanks;

(g) Required soil and water sampling and testing to determine if corrective action standards have been met; and

(h) Reimbursement of new tank replacement costs in accordance with RCW ((~~70.149.120~~)) 70A.330.100.

(4) **Corrective action costs not covered under the heating oil pollution liability insurance program include:**

(a) Corrective action if the accidental release occurred prior to the registration of a heating oil tank;

(b) Costs covered by other valid insurance or warranties;

(c) Costs in excess of sixty thousand dollars per occurrence, per site, per year, exclusive of other valid insurance or warranties;

(d) Cleanup of contamination from other sources;

(e) Removal, repair or replacement of the heating oil tank, lines, or furnace, except reimbursement of new tank replacement costs in accordance with RCW ((~~70.149.120~~)) 70A.330.100;

(f) Emergency heat restoration procedures;

(g) Cleanup of a site beyond the MTCA cleanup levels;

(h) Corrective action associated with an abandoned or decommissioned heating oil tank or site; and

(i) Third-party property damage restoration, including landscaping, in excess of one thousand five hundred dollars for each third-party claimant per occurrence, per site, per year; and

(j) Defense costs, including the costs of legal representation, expert fees, and related costs and expenses incurred in defending against claims or actions brought by or on behalf of:

(i) The United States, the state of Washington, or a political subdivision of the United States or state of Washington to require corrective action or to recover costs of corrective action; or

(ii) A third party for bodily injury or property damage caused by an accidental release.

(5) If a claim exceeds sixty thousand dollars in total damages, coverage within the sixty thousand dollar policy limit shall be on a pro rata basis between the insured heating oil tank owner and third-party claimant(s).

(6) A claim will be accepted for coverage only after an investigation has confirmed the existence of an accidental release which is eligible for coverage under these rules.

[Statutory Authority: RCW 70.149.040. WSR 08-20-013, § 374-70-060, filed 9/18/08, effective 1/1/09. Statutory Authority: Chapter 70.149 RCW. WSR 97-06-080, § 374-70-060, filed 3/3/97, effective 4/3/97; WSR 96-01-101, § 374-70-060, filed 12/19/95, effective 1/19/96.]

AMENDATORY SECTION (Amending WSR 08-20-013, filed 9/18/08, effective 1/1/09)

WAC 374-70-080 Claims. Coverage under the heating oil pollution liability insurance program shall be in excess of other valid insurance and warranties. Payment of a claim will be made only if the cleanup of contamination resulting from an accidental release is not covered by other valid insurance and warranties. Corrective action will be accomplished by the most cost-effective method available. To receive payment from the heating oil pollution liability insurance program for covered corrective action costs, the following actions are required:

(1) The claim must be for corrective action resulting from an accidental release from a heating oil tank which has been registered with PLIA prior to the accidental release;

(2) The claim must satisfy all requirements and restrictions established by chapter ((70.149)) 70A.330 RCW and this chapter. Any failure to satisfy all requirements and restrictions may be a basis for denial of claim;

(3) The heating oil tank owner or operator must provide notice to PLIA that a potential claim exists as soon as practicable after discovery that an accidental release may have occurred;

(4) The claim must be submitted to PLIA not more than thirty calendar days after the date a registered heating oil tank becomes abandoned or decommissioned. The heating oil tank owner or operator has the burden of proving, to the satisfaction of the director, that the tank has not been abandoned or decommissioned longer than thirty calendar days. The date that the tank is abandoned or decommissioned, whichever is earlier, will be considered the first of the thirty calendar days. PLIA may accept claims after thirty calendar days if the abandoned or decommissioned tank was registered with PLIA and was replaced with a new heating oil tank that continues to be registered with PLIA;

(5) Upon receipt of notice of a potential claim, PLIA will commence completion of the notice of claim, and will provide the heating oil tank owner or operator with a list of insurer approved heating oil tank service providers;

(6) The heating oil tank operator may submit reports and forms on behalf of the heating oil tank owner; however, no corrective action

will be initiated or performed without the specific written consent of the heating oil tank owner;

(7) The heating oil tank owner is responsible for investigation to determine the source and extent of a suspected accidental release. The heating oil tank owner is also responsible for providing documentation to PLIA that coverage will not be provided by the owner's homeowners' insurer;

(8) If the claim is determined by PLIA to be valid, PLIA will so notify the heating oil tank owner or operator. The corrective action shall be performed by a heating oil tank service provider approved by the insurer;

(9) The heating oil tank service provider will notify PLIA of selection by the heating oil tank owner or operator. PLIA will then forward to the heating oil tank service provider the following forms:

(a) Scope of work proposal. This form will provide the heating oil tank owner or operator and PLIA a proposal of the extent and elements of corrective action, as well as a specific cost proposal;

(b) Change order. This form provides a proposal for change or deviation from the scope of work proposal;

(c) Project field report. This form provides a record of all corrective action and work elements, as well as a record of detailed costs. The project field report must include color photographs of the project at commencement, completion, and any significant steps in between, as well as appropriate project sketches and/or plans; and

(d) Claim report. This form will include a project closeout report, final cleanup report, and corrective action cost claim;

(10) The heating oil tank service provider will submit for approval to the heating oil tank owner or operator and to PLIA a scope of work proposal for corrective action at the heating oil tank site;

(11) Upon receipt of approval by the heating oil tank owner or operator and PLIA of the scope of work proposal, the heating oil tank service provider may commence work to accomplish corrective action;

(12) All work performed by the heating oil tank service provider on behalf of the heating oil tank owner or operator and PLIA must be within the terms of the contract and the approved scope of work proposal and shall not exceed costs included in the scope of work proposal. Any change(s) or deviation(s) from the approved scope of work proposal must be accomplished through a change order request which must be approved in advance by the heating oil tank owner or operator and PLIA. Any work performed by the heating oil tank service provider that has not been approved, prior to performance, by the heating oil tank owner or operator and PLIA, or is beyond the terms of the scope of work proposal or change order(s), or is in excess of costs approved in the scope of work proposal or change order(s), will not be paid or reimbursed under the heating oil pollution liability insurance program. Such work or excess costs will be the responsibility of the heating oil tank owner and/or heating oil tank service provider;

(13) Corrective action activities and costs must be recorded by the heating oil tank service provider on the project field report form provided by PLIA;

(14) Upon completion of all corrective action, the heating oil tank owner or operator must sign the project closeout report indicating approval of and satisfaction with all work performed by the heating oil tank service provider;

(15) Upon completion of corrective action and approval by the heating oil tank owner or operator, the heating oil tank service provider must submit to PLIA a complete claim report;

(16) Upon completion of corrective action that appears to satisfy the requirements of all applicable state and local statutes, the director will certify that the claim has been closed;

(17) Approval of claims and payment of covered costs are contingent upon the availability of revenue. The director reserves the right to defer payment at any time that claim demands exceed the revenue available for the heating oil pollution liability insurance program. Payment will commence with sufficient revenue;

(18) PLIA will maintain all records associated with a claim for a period of ten years; and

(19) In the case of an emergency, the director may authorize deviation from this procedure to the extent necessary to adequately respond to the emergency.

[Statutory Authority: RCW 70.149.040. WSR 08-20-013, § 374-70-080, filed 9/18/08, effective 1/1/09. Statutory Authority: Chapter 70.149 RCW. WSR 97-06-080, § 374-70-080, filed 3/3/97, effective 4/3/97; WSR 96-01-101, § 374-70-080, filed 12/19/95, effective 1/19/96.]

AMENDATORY SECTION (Amending WSR 08-20-013, filed 9/18/08, effective 1/1/09)

WAC 374-70-090 Third-party claims. Coverage under the heating oil pollution liability insurance program shall be in excess of other valid insurance and warranties. Payment of a claim will be made only if the cleanup of contamination resulting from an accidental release is not covered by other valid insurance and warranties. Corrective action will be accomplished by the most cost-effective method available. For a third party to receive payment from the heating oil pollution liability insurance program for covered corrective action costs, the following actions are required:

(1) The claim must be for corrective action resulting from a leak or spill from a heating oil tank which has been registered with PLIA prior to the leak or spill;

(2) The claim must satisfy all requirements and restrictions established for third-party claims by chapter ((70.149)) 70A.330 RCW and this chapter. Any failure to satisfy all requirements and restrictions may be a basis for denial of claim;

(3) The third-party claimant must provide notice to PLIA that a potential third-party claim may exist as soon as practicable after discovery that damage may have occurred from a leak or spill from a named insured's heating oil tank;

(4) The claim must be submitted to PLIA not more than thirty calendar days after the date a registered heating oil tank is abandoned or decommissioned. The heating oil tank owner or operator has the burden of proving, to the satisfaction of the director, that the tank has not been abandoned or decommissioned longer than thirty calendar days. The date that the tank is abandoned or decommissioned, whichever is earlier, will be considered the first day of the thirty calendar days. PLIA may accept claims after thirty calendar days if the abandoned or decommissioned tank was registered with PLIA and was replaced with a new heating oil tank that continues to be registered with PLIA;

(5) Upon receipt of notice of a potential claim, PLIA will commence completion of the notice of claim;

(6) If an accidental release from a named insured's heating oil tank has been confirmed, PLIA, as designated representative of the insurer will initiate an investigation to determine the extent and source of the contamination. Investigation will be performed by PLIA or a designated representative approved by the insurer. PLIA may also assist the named insured heating oil tank owner in determining if the insured's homeowner's insurance provides coverage for third-party damage. The third-party claimant shall cooperate fully with the investigator and provide any information or access necessary to complete the investigation;

(7) If the claim is determined by PLIA to be valid, the third-party claimant will be notified by PLIA to select a heating oil tank service provider, approved by the insurer, to perform corrective action;

(8) The heating oil tank service provider will notify PLIA of selection by the third-party claimant. PLIA will then forward to the heating oil tank service provider the following forms:

(a) Scope of work proposal. This form will provide the third-party claimant and PLIA a proposal of the extent and elements of corrective action, as well as a specific cost proposal;

(b) Change order. This form provides a proposal for change or deviation from the scope of work proposal;

(c) Project field report. This form provides a record of all corrective action and work elements, as well as a record of detailed costs. The project field report must include color photographs of the project at commencement, completion, and any significant steps in between, as well as appropriate project sketches and/or plans; and

(d) Claim report. This form will include a project closeout report, final cleanup report, and corrective action cost claim;

(9) The heating oil tank service provider will submit for approval to the third-party claimant and to PLIA a scope of work proposal for corrective action;

(10) Upon receipt of approval by the third-party claimant and PLIA of the scope of work proposal, the heating oil tank service provider may commence work to accomplish corrective action;

(11) All work performed by the heating oil tank service provider on behalf of the third-party claimant and the insurer must be within the terms of the contract and the approved scope of work proposal and shall not exceed costs included in the scope of work proposal. Any change(s) or deviation(s) from the approved scope of work proposal must be accomplished through a change order request which must be approved in advance by the third-party claimant and PLIA. Any work performed by the heating oil tank service provider that has not been approved, prior to performance, by the third-party claimant and PLIA, or is beyond the terms of the scope of work proposal or change order(s), or is in excess of costs approved in the scope of work proposal or change order(s), will not be paid or reimbursed under the heating oil pollution liability insurance program. Such work or excess costs will be the responsibility of the third-party claimant and/or heating oil tank service provider;

(12) Corrective action activities and costs must be recorded by the heating oil tank service provider on the project field report form provided by PLIA;

(13) Upon completion of all corrective action, the third-party claimant must sign the project closeout report indicating approval of and satisfaction with all work performed by the heating oil tank service provider;

(14) Upon completion of corrective action and approval by the third-party claimant, the heating oil tank service provider must submit to PLIA a complete claim report. After review and approval of the claim report by PLIA, the heating oil tank service provider will receive payment;

(15) Upon completion of corrective action that appears to satisfy the requirements of all applicable state and local statutes, the director will certify that the claim has been closed;

(16) Approval of claims and payment of covered costs are contingent upon the availability of revenue. The director reserves the right to defer payment at any time that claim demands exceed the revenue available for the heating oil pollution liability insurance program. Payment will commence with sufficient revenue;

(17) PLIA will maintain all records associated with a claim for a period of ten years; and

(18) In the case of an emergency, the director may authorize deviation from this procedure to the extent necessary to adequately respond to the emergency.

[Statutory Authority: RCW 70.149.040. WSR 08-20-013, § 374-70-090, filed 9/18/08, effective 1/1/09. Statutory Authority: Chapter 70.149 RCW. WSR 97-06-080, § 374-70-090, filed 3/3/97, effective 4/3/97; WSR 96-01-101, § 374-70-090, filed 12/19/95, effective 1/19/96.]

OTS-2815.1

AMENDATORY SECTION (Amending WSR 20-02-071, filed 12/26/19, effective 1/26/20)

WAC 374-80-010 Authority and purpose. The purpose of this chapter is to establish a program for providing technical assistance to a person regarding a release or suspected release of (1) heating oil from an active, decommissioned, or abandoned heating oil tank; or (2) petroleum from a qualified petroleum storage tank system. Under this program, the agency will provide advice and technical assistance regarding a completed or proposed independent remedial action and application of chapters ((70.149 and 70.105B)) 70A.330 and 70A.305 RCW.

Any opinion provided by the agency under this program is advisory only and not binding upon either the agency or the department of ecology. Participation in this program is not a settlement with the state under the Model Toxics Control Act. Persons conducting independent remedial actions do so at their own risk, and may be required to take additional remedial actions by the department of ecology if such actions are determined to be necessary under the Model Toxics Control Act.

[Statutory Authority: RCW 70.149.040. WSR 20-02-071, § 374-80-010, filed 12/26/19, effective 1/26/20. Statutory Authority: Chapter 70.148 RCW. WSR 03-06-015, § 374-80-010, filed 2/21/03, effective 3/24/03. Statutory Authority: Chapter 70.149 RCW. WSR 97-20-094, § 374-80-010, filed 9/29/97, effective 10/30/97.]

AMENDATORY SECTION (Amending WSR 20-02-071, filed 12/26/19, effective 1/26/20)

WAC 374-80-020 Definitions. Unless the context requires otherwise, the definitions in this section shall apply throughout this chapter.

(1) "Abandoned heating oil tank" means a consumptive use heating oil tank system that has been abandoned or decommissioned and is no longer in service or use.

(2) "Active heating oil tank" means a consumptive use heating oil tank that is in use.

(3) "Agency" means the Washington state pollution liability insurance agency (PLIA).

(4) "Applicant" means the person seeking advice and assistance from the petroleum technical assistance program, whose application has been accepted by the agency.

(5) "Decommissioned heating oil tank" means a heating oil tank system that has been removed from operation by an approved method such as abandonment in place (e.g., cleaning and filling with an inert material) or by removal from the ground.

(6) "Director" means the director of the Washington state pollution liability insurance agency.

(7) "Heating oil" means any petroleum product used for space heating in oil-fired furnaces, heaters and boilers, including stove oil, diesel fuel, or kerosene. "Heating oil" does not include petroleum products used as fuel in motor vehicles, marine vessels, trains, buses, aircraft, or any off-highway equipment not used for space heating, or the generation of electrical energy or waste oil, hoists, pipelines, spills from transportation or a form of transport.

(8) "Heating oil tank system" means a tank and its connecting pipes, whether above or below ground, or in a basement, with pipes connected to the tank for space heating of human living or working space on the premises where the tank is located.

(9) "MTCA" means the Model Toxics Control Act, chapter ((70.105B)) 70A.305 RCW and implementing regulations in chapters 173-340 and 173-204 WAC.

(10) "Petroleum" means any petroleum-based substance including crude oil or any fraction that is liquid at standard conditions of temperature and pressure. The term petroleum includes, but is not limited to, petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, used oils, mineral spirits, Stoddard solvents, waste oils and heating oils. The term petroleum does not include propane, asphalt, or any other petroleum product that is not liquid at standard conditions of temperature and pressure. Standard conditions of temperature and pressure are at sixty degrees Fahrenheit and 14.7 pounds per square inch absolute.

(11) "Petroleum storage tank system" means a storage tank system that contains petroleum or a mixture of petroleum with de minimis quantities of other substances. The systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, used oils, and heating oils. "Petroleum storage tank system" does not include any storage tank system regulated under chapter ((70.105)) 70A.305 RCW.

(12) "Program" means petroleum technical assistance program.

(13) "Qualified petroleum storage tank system" means a storage tank system that has been identified as eligible for services under the petroleum technical assistance program by the department of ecology based on the relative risk posed by the release to human health and the environment.

(14) "Release" means any intentional or unintentional entry of petroleum into the environment including, but not limited to, a spill, leak, emission, escape, or leaching into the environment.

(15) "Remedial action" has the same meaning as defined in RCW ((70.105D.020)) 70A.305.020.

(16) "Sampling and testing" means a PLIA-approved and recognized technique(s) or procedure(s) for measuring or determining the presence and extent of hydrocarbons in soil and/or water.

(17) "Site" has the same meaning as "facility" as defined in RCW ((70.105D.020)) 70A.305.020.

(18) "Site characterization" means an investigation of the nature and extent of the release.

[Statutory Authority: RCW 70.149.040. WSR 20-02-071, § 374-80-020, filed 12/26/19, effective 1/26/20. Statutory Authority: Chapter 70.149 RCW. WSR 97-20-094, § 374-80-020, filed 9/29/97, effective 10/30/97.]

WSR 22-01-075

PERMANENT RULES

WESTERN WASHINGTON UNIVERSITY

[Filed December 10, 2021, 10:26 a.m., effective December 11, 2021]

Effective Date of Rule: December 11, 2021.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: RCW 34.05.380 (3)(a) A rule may become effective immediately upon its filing with the code reviser or on any subsequent date earlier than that established by subsection (2) of this section, if the agency establishes that effective date in the adopting order and finds that: (a) Such action is required by the state or federal constitution, a statute, or court order.

The United States Department of Education (DOE) issued new federal regulations that required institutional compliance. To remain in compliance during permanent rule making, emergency rules were adopted and filed as WSR 20-18-011, 21-01-155, 21-09-053, and 21-17-084 on August 21, 2020; December 18, 2020; April 16, 2021; and August 13, 2021. The current emergency rule expires December 11, 2021. The permanent rule must be effective on December 11, 2021, to remain in compliance with federal law.

Purpose: To comply with DOE Title IX regulations that went into effect in August 2020, the university edited sections and created new sections to update current chapter 516-21 WAC, Student conduct code. Minor housekeeping changes were made as well.

Citation of Rules Affected by this Order: New 10; and amending 23.

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

Other Authority: 20 U.S.C. 1681-1688.

Adopted under notice filed as WSR 21-20-117 on October 5, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 10, Amended 10, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 15, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 10, Amended 23, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 10, 2021.

Jennifer L. Sloan
Rules Coordinator

OTS-2535.6

AMENDATORY SECTION (Amending WSR 17-05-100, filed 2/15/17, effective 3/18/17)

WAC 516-21-010 Introduction. (~~Western Washington University students enjoy the same basic rights, privileges, and freedoms granted to all members of society. At the same time, acceptance of admission to the university carries with it an obligation to fulfill certain responsibilities and expectations as a member of the Western Washington University community.~~

~~As members of the Western community, students must assume responsibility for their own actions and maintain an environment conducive to academic success. In addition, they are expected to be truthful, respect the rights of others, and abide by all university policies and procedures, as well as all applicable local, state, and federal laws and regulations. All students are responsible for understanding and complying with the responsibilities and expectations set forth in this code both on and off campus.~~

~~The student conduct process is intended to be educational in ensuring that students act in a manner consistent with high standards of scholarship and behavior, while maintaining the safety and well-being of all members of the university community.)~~ The student conduct code is intended to support the mission and values of Western Washington University by promoting integrity, responsibility, and accountability. As a public institution of higher education, the university is committed to maintaining a learning environment that supports student development through fostering community values and promoting holistic wellness for the Western community. As members of this community, students are expected to understand and comply with the student conduct code, as well as other university rules, regulations, procedures, and policies.

The board of trustees of Western Washington University, acting under the authority of RCW 28B.35.120(12) has established the following regulations for student conduct. The responsibility for enforcement of the student conduct code lies with the university president and is delegated to the vice president of enrollment and student services.

[Statutory Authority: RCW 28B.35.120, chapter 34.05 RCW, and 20 U.S.C. 1681-1688. WSR 17-05-100, § 516-21-010, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 28B.35.120(12) and 20 U.S.C. 1681-1688. WSR 12-01-021, § 516-21-010, filed 12/9/11, effective 1/9/12.]

AMENDATORY SECTION (Amending WSR 17-05-100, filed 2/15/17, effective 3/18/17)

WAC 516-21-020 Definitions. As used in this chapter, the following words and phrases mean:

(1) (~~Day. Any day, Monday through Friday (excluding holidays), during which university offices are open.)~~ **Appeals board.** The student conduct appeals board.

(2) **Catalog.** *The Western Washington University General Catalog.*

(3) **Code.** The student conduct code.

(4) (~~Board. The student conduct appeals board.~~

~~(5-))~~ **Conduct hold.** A block placed on a student's official university record at the request of a conduct officer or dean of students. A conduct hold prohibits a student from registering for classes, ~~((requesting))~~ and may prohibit the request of an official transcript, or receiving a degree from the university until the hold has been removed.

~~((6-))~~ (5) **Conduct officer.** A conduct officer or their authorized designee as determined by the dean of students.

(6) **Day.** Any day, Monday through Friday (excluding holidays), during which university offices are open.

(7) **Dean of students.** ((The dean of students or their authorized designee-)) The person designated by the vice president for enrollment and student services for oversight and administration of the code.

(8) **Guest.** Any person who is not a member of the university community, who is on university property or attending an official university function at the invitation and/or hosting of a student.

(9) **Member of the university community.** Any person who is a student, university official, registered volunteer or who is otherwise employed or contracted by the university. Any question regarding a person's status in a particular situation for purposes of this code shall be determined by the dean of students.

(10) **Official university function.** Any live or virtual activity, on or off campus, that is initiated, sponsored, or supervised by any entity of Western Washington University.

(11) **Preponderance of evidence.** Defined as "more likely than not," the standard of responsibility that is used when determining whether a violation of the student conduct code has occurred.

(12) **Reasonable person similarly situated.** The standard of a reasonable person taking into consideration any particularized circumstances, perspectives, and identities of the complainant within the context of the alleged conduct/incident.

(13) **Retaliation.** Retaliation includes, but is not limited to, intimidation, threats, harassment, and/or other adverse action taken against any student or other person for filing a complaint or participating in a university investigation or student conduct proceeding in good faith.

(14) **Sexual violence.** Sexual assault, dating violence, domestic violence, and stalking or any other type of sexual misconduct or gender-based discrimination.

(15) **Student.** Any person who:

(a) Has been formally admitted to the university;

(b) Is enrolled in one or more classes at the university, including nonmatriculated international students attending language institutes or foreign study programs;

(c) Is participating in a certificate, degree, distance learning, or professional enrichment program, through extended education and summer programs;

(d) Is participating in a university-sponsored study abroad program;

(e) Was enrolled in a prior quarter or summer session at the university and is eligible to continue enrollment in the quarter or summer session that immediately follows; or

(f) Withdrew from the university after an alleged violation of the code, for conduct that occurred while they were enrolled in or participating in a program offered by the university.

~~((13-))~~ (16) **Title IX.** Title IX refers to any behavior covered under federal regulation and investigated by Western's office of civil

rights and Title IX compliance. Definitions and regulations related to alleged violations of Title IX begin in WAC 516-21-191.

(17) **Title IX committee.** The student conduct committee that hears cases under Title IX. The committee consists of at least a chair, and may include faculty and/or staff, and is responsible for conferring and drafting an initial conduct order as described in WAC 516-21-298.

(18) **University.** Western Washington University and all associated programs, including those offered online and/or at off-campus program sites.

~~((14))~~ (19) **University official.** Any person employed or contracted by the university, who is performing assigned teaching, administrative, or professional responsibilities. University officials may be full- or part-time, and may include student staff members.

~~((15))~~ (20) **University property.** All land, buildings, facilities, electronic presences, and other property that is owned, used, leased, or controlled by Western Washington University wherever located. University property also includes computer systems, virtual programs and platforms, and adjacent streets and sidewalks.

~~((16))~~ (21) **WAC.** An abbreviation for the Washington Administrative Code.

[Statutory Authority: RCW 28B.35.120, chapter 34.05 RCW, and 20 U.S.C. 1681-1688. WSR 17-05-100, § 516-21-020, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 28B.35.120(12) and 20 U.S.C. 1681-1688. WSR 12-01-021, § 516-21-020, filed 12/9/11, effective 1/9/12.]

AMENDATORY SECTION (Amending WSR 17-05-100, filed 2/15/17, effective 3/18/17)

WAC 516-21-030 Jurisdiction. (1) The student conduct code applies to all conduct that occurs on university property or in connection with any official university function.

(2) ~~((Western Washington University does not act as a policing agent for students when they are off campus. However, the university reserves the right to take action if a student's conduct is determined to adversely affect a substantial university interest.))~~ Student conduct that occurs off campus may be subject to the student conduct code when it:

(a) Adversely affects the safety or well-being of any member of the university community; or

(b) Adversely affects the pursuit of the university's vision, mission, or values; or

(c) Involves academic work or any records, documents, or identifications of the university.

In determining whether to exercise jurisdiction over such conduct, a conduct officer shall consider the seriousness of the alleged offense, the risk of harm involved, and whether the alleged complainant(s) are members of the university community. Any question of interpretation or application of jurisdiction shall be referred to the dean of students for final determination.

(3) Students are responsible for their conduct from the time they have confirmed their enrollment at Western through the awarding of their degree. This includes conduct that occurs before classes begin, after classes end, and during periods between actual terms of enroll-

ment. Students who are found to be in violation of the code may be subject to sanctions under the code.

(4) A student with a pending conduct violation may not avoid the conduct process by withdrawing from the university. In these circumstances, either:

(a) The university will proceed with the conduct process and, if so, the respondent will be provided with a continued opportunity to participate; and/or

(b) A conduct hold ((will)) may be placed on the student's official record, preventing them from registering for classes, requesting an official transcript, or receiving a degree from the university. This hold will remain in place until the student has met with the conduct officer to discuss the alleged conduct violation(s).

(5) The code applies to the conduct of any student employee whose position is conditioned upon their student status.

(6) Sanctions against student organizations are decided by procedures established by the university administrative unit governing that organization's recognition. Conduct proceedings against individual member(s) of a student organization can be initiated under this code, independent of any departmental action(s) taken against the student organization.

[Statutory Authority: RCW 28B.35.120, chapter 34.05 RCW, and 20 U.S.C. 1681-1688. WSR 17-05-100, § 516-21-030, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 28B.35.120(12) and 20 U.S.C. 1681-1688. WSR 12-01-021, § 516-21-030, filed 12/9/11, effective 1/9/12.]

AMENDATORY SECTION (Amending WSR 12-01-021, filed 12/9/11, effective 1/9/12)

WAC 516-21-040 Student responsibility for guests. (1) Guests and visitors on university property or at official university functions are expected to ~~((comply with))~~ follow all university policies and procedures, as well as all applicable local, state, and federal laws and regulations.

(2) Students who invite guests into their campus residence hall or apartment, or to official university functions open only to Western students, are responsible for the behavior of their guests. As a result, a student may be held responsible for any alleged violation(s) of the code committed by their guests. See also WAC 516-24-001 Conduct of campus guests and visitors.

[Statutory Authority: RCW 28B.35.120(12) and 20 U.S.C. 1681-1688. WSR 12-01-021, § 516-21-040, filed 12/9/11, effective 1/9/12.]

AMENDATORY SECTION (Amending WSR 17-05-100, filed 2/15/17, effective 3/18/17)

WAC 516-21-055 Amnesty. (1) In situations involving intoxication, alcohol poisoning, or drug-related medical issues, students are encouraged to seek swift medical assistance for themselves and others without fear of penalty. Students requesting and receiving medical as-

sistance in these situations ((will)) are not typically ((be)) subject to the student conduct process. This policy refers to isolated incidents and does not excuse students who repeatedly or flagrantly violate the alcohol or drug policy, nor does it preclude action arising from other violations of the code. Western will consider the positive impact of reporting a situation when determining any course of action.

(2) Complainants and witnesses who in good faith report sexual violence will not be subject to alcohol or drug violations of the code occurring at or near the time of the sexual violence unless their own conduct placed another person's health or safety at risk. Without imposing sanctions, Western may initiate educational remedies regarding alcohol or drug use.

[Statutory Authority: RCW 28B.35.120, chapter 34.05 RCW, and 20 U.S.C. 1681-1688. WSR 17-05-100, § 516-21-055, filed 2/15/17, effective 3/18/17.]

AMENDATORY SECTION (Amending WSR 17-05-100, filed 2/15/17, effective 3/18/17)

WAC 516-21-060 Conduct that harms or threatens health or safety.

Conduct that harms, attempts to harm, or threatens the health or safety of any member of the Western community by any means (e.g., in person, through a third party, online) (~~(, or others on university property or in connection with any official university function, is a violation of the code)~~). This includes, but is not limited to:

(1) Physical assault.

(2) Any threat(~~(r)~~) stated or implied, to the health, safety or well-being of others.

(3) Any contact or communication of a threatening nature that intimidates, harasses, and would cause a reasonable person similarly situated to fear for their safety or well-being.

(4) Intoxication or impairment through the use of alcohol or other substances to the point that a student is unable to exercise care for their own safety or well-being.

(5) Sexual violence including sexual assault, dating violence, domestic violence, and stalking or any other type of sexual misconduct or gender-based discrimination.

[Statutory Authority: RCW 28B.35.120, chapter 34.05 RCW, and 20 U.S.C. 1681-1688. WSR 17-05-100, § 516-21-060, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 28B.35.120(12) and 20 U.S.C. 1681-1688. WSR 12-01-021, § 516-21-060, filed 12/9/11, effective 1/9/12.]

AMENDATORY SECTION (Amending WSR 17-05-100, filed 2/15/17, effective 3/18/17)

WAC 516-21-070 Disruptive behavior. Behavior that substantially disrupts, disturbs, or interferes with the ability of students to learn or their on-campus living environment or the ability of university officials to perform their assigned duties is a violation of the code. Disruptive behavior includes, but is not limited to:

Any behavior that substantially disrupts, disturbs, or interferes with:

- (1) Classroom activities or other educational pursuits;
- (2) Official university activities or functions including, but not limited to, ceremonies, meetings, office functions, performances, or athletic events;
- (3) Pedestrian or vehicular traffic; or
- (4) The preservation and protection of university property and/or the personal property of members of the university community.

[Statutory Authority: RCW 28B.35.120, chapter 34.05 RCW, and 20 U.S.C. 1681-1688. WSR 17-05-100, § 516-21-070, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 28B.35.120(12) and 20 U.S.C. 1681-1688. WSR 12-01-021, § 516-21-070, filed 12/9/11, effective 1/9/12.]

AMENDATORY SECTION (Amending WSR 17-05-100, filed 2/15/17, effective 3/18/17)

WAC 516-21-115 Discrimination and discriminatory harassment.

Discrimination or discriminatory harassment is prohibited on the basis of race (~~(; sex; sexual orientation; gender identity/expression; religion; age; color; creed; national or ethnic origin; physical, mental, or sensory disability (including disability requiring the use of a trained service animal); marital status; genetic information; and/or veteran status;~~), ethnicity, color, national origin, age, citizenship or immigration status, pregnancy, use of protective leave, genetic status, sex, sexual orientation, gender identity, gender expression, marital status, creed, religion, veteran or military status, disability or the use of a trained guide dog or service animal by a person with a disability; and as defined in Western Washington University policy POL-U1600.02 and POL-U1600.04, which prohibit discrimination, sexual harassment, and sexual misconduct. Anyone (~~(complaining)~~) fil-ing or involved in a complaint of discrimination is protected against retaliation.

(1) Sexual harassment is a violation of the code. Sexual harassment is any unwelcome conduct of a sexual nature including unwelcome sexual advances, requests for sexual favors, or other verbal, nonverbal, electronic, or physical conduct of a sexual nature, when:

(a) It has a tangible impact on a student's education including, but not limited to, classroom experiences, academic grades, living environment, participation in a university activity; or

(b) It is sufficiently severe (~~(and/or)~~), persistent and pervasive to interfere with a member of the university community's ability to work, study, or participate in their regular activities, or benefit from the university's programs or activities and creates a hostile environment.

(2) Gender-based harassment includes nonsexual acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on a person's gender or nonconformity with gender stereotypes, and is a violation of the code. Gender-based harassment violates this code when it is sufficiently severe and/or pervasive, such that it denies or limits another's ability to work, study, participate in, or benefit from the university's programs or activities.

(3) Sexual violence includes sexual assault, dating violence, domestic violence, and stalking or any other type of sexual misconduct or gender-based discrimination.

[Statutory Authority: RCW 28B.35.120, chapter 34.05 RCW, and 20 U.S.C. 1681-1688. WSR 17-05-100, § 516-21-115, filed 2/15/17, effective 3/18/17.]

AMENDATORY SECTION (Amending WSR 17-05-100, filed 2/15/17, effective 3/18/17)

WAC 516-21-140 Drugs and paraphernalia. Except as permitted by law and university policy, the possession, use, cultivation, manufacturing, packaging, distribution, or provision of a controlled or illegal substance or the possession of drug paraphernalia while on university property or at an official university function is a violation of the code. This code violation also includes the intentional misuse or distribution of prescription drugs or inhalants; including volatile, aerosols, gases, and nitrites. See also *Policy Concerning Alcohol and Other Drugs* in the appendices section of the university catalog.

[Statutory Authority: RCW 28B.35.120, chapter 34.05 RCW, and 20 U.S.C. 1681-1688. WSR 17-05-100, § 516-21-140, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 28B.35.120(12) and 20 U.S.C. 1681-1688. WSR 12-01-021, § 516-21-140, filed 12/9/11, effective 1/9/12.]

AMENDATORY SECTION (Amending WSR 17-05-100, filed 2/15/17, effective 3/18/17)

WAC 516-21-150 Interfering with ((the conduct)) a university complaint process. Interfering with ((the conduct)) a university complaint process is a violation of the code. This includes, but is not limited to:

- (1) Giving a false report or claim;
- (2) Attempting to influence the impartiality of ((witnesses or)) any decision maker including appeals board member(s);
- (3) Participating in or encouraging retaliation against a complainant or witness;
- (4) Threatening, harassing, or intimidating complainants or witnesses;
- (5) Disrupting or interfering with the orderly conduct of a hearing or meeting; and
- (6) Failing to comply with any sanction(s) imposed as the result of a code violation.

[Statutory Authority: RCW 28B.35.120, chapter 34.05 RCW, and 20 U.S.C. 1681-1688. WSR 17-05-100, § 516-21-150, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 28B.35.120(12) and 20 U.S.C. 1681-1688. WSR 12-01-021, § 516-21-150, filed 12/9/11, effective 1/9/12.]

AMENDATORY SECTION (Amending WSR 17-05-100, filed 2/15/17, effective 3/18/17)

WAC 516-21-180 Sexual misconduct. Sexual misconduct is a violation of the code and includes nonconsensual sexual contact, sexual exploitation, and sexual violence (sexual assault, dating violence, domestic violence, and stalking or any other type of sexual misconduct or gender-based discrimination). See also WAC 516-21-110 Harassment (other than sexual harassment or discriminatory harassment), WAC 516-21-115 Discrimination or discriminatory harassment, WAC 516-21-060 Conduct that harms or threatens, WAC 516-21-188 Stalking, WAC 516-21-184 Dating violence, and WAC 516-21-186 Domestic violence.

(1) Consent to any sexual activity must be clear, knowing, and voluntary. Anything less is equivalent to a "no." Clear, knowing, and voluntary consent to sexual activity requires that, at the time of the act, actual words or conduct demonstrate clear permission regarding willingness to engage in sexual activity and the conditions of such activity. Silence or passivity is not consent. Consent is ongoing and can be withdrawn at any time. Even if words or conduct alone seem to imply consent, sexual activity is nonconsensual when:

(a) Force or coercion is threatened or used to procure compliance with the sexual activity;

(i) Force is the use of physical violence, physical force, threat, or intimidation to overcome resistance or gain consent to sexual activity.

(ii) Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to obtain consent from another. When an individual makes it clear through words or actions that they do not want to engage in sexual contact, want to stop, or do not want to go past a certain point of sexual interaction, continued pressure beyond that point may be coercive. Other examples of coercion may include using blackmail, extortion, or a position of power to overcome resistance or gain consent to sexual activity.

(b) The person is asleep, unconscious, or physically unable to communicate their unwillingness to engage in sexual activity; or

(c) The person lacks the mental capacity at the time of the sexual activity to be able to understand the nature or consequences of the act, whether that incapacity is produced by illness, the influence of alcohol or another substance, or some other cause. When alcohol or drugs are involved, a person is considered incapacitated or unable to give valid consent if they cannot fully understand the details of the sexual interaction (i.e., who, what, when, where, why, and how), and/or they lack the capacity to reasonably understand the situation and to make rational, reasonable decisions.

(2) Sexual assault is attempted or actual nonconsensual penetration, no matter how slight, of the vagina or anus by any body part or object; or of another's vagina, anus, or mouth by a penis. Sexual assault is also nonconsensual sexual contact or any intentional sexual touching, however slight, with any object or body part, by one person against another person's intimate parts (genitals or genital area, breast, or buttock (clothed or unclothed)). This includes any intentional bodily contact of one's own intimate area with another person.

(3) Sexual exploitation occurs when a person takes nonconsensual or abusive sexual advantage of another for their own advantage or benefit, or to benefit or advantage anyone other than the one being ex-

ploited, and that behavior does not otherwise constitute one of the other sexual misconduct offenses explained above.

(4) Use of alcohol or other drugs is not a valid defense to a violation of this policy.

(5) Sexual misconduct represents a range of behaviors; it can occur between strangers or acquaintances, including individuals involved in an intimate or sexual relationship. Sexual misconduct can be committed by individuals or groups of individuals directed to one or more people and can occur between people of the same or different sex. See also *University Policy U1600.04 Preventing and Responding to ((Sex Discrimination, Including Sexual Misconduct)) Sexual Harassment Under Title IX*.

[Statutory Authority: RCW 28B.35.120, chapter 34.05 RCW, and 20 U.S.C. 1681-1688. WSR 17-05-100, § 516-21-180, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 28B.35.120(12) and 20 U.S.C. 1681-1688. WSR 12-01-021, § 516-21-180, filed 12/9/11, effective 1/9/12.]

AMENDATORY SECTION (Amending WSR 17-05-100, filed 2/15/17, effective 3/18/17)

WAC 516-21-184 Dating violence. Conduct by a student who is or has been in a romantic or intimate relationship with another that intentionally or recklessly causes bodily injury or places another in reasonable fear of ((serious)) bodily injury is a violation of the code. The nature of the relationship is determined by the length, type, and frequency of interaction between them. Sexual violence includes sexual assault, dating violence, domestic violence, and stalking or any other type of sexual misconduct or gender-based discrimination.

[Statutory Authority: RCW 28B.35.120, chapter 34.05 RCW, and 20 U.S.C. 1681-1688. WSR 17-05-100, § 516-21-184, filed 2/15/17, effective 3/18/17.]

AMENDATORY SECTION (Amending WSR 17-05-100, filed 2/15/17, effective 3/18/17)

WAC 516-21-186 Domestic violence. Conduct by a student ((who is a current or former spouse or intimate partner (including between two people that share a child in common) that intentionally or recklessly causes bodily injury, or causes another to be in reasonable fear of serious bodily injury is a violation of the code)) with whom the victim shares a child in common, who is cohabitating with or has cohabitated with another as a spouse or a person situated to a spouse by law with another that includes physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking. Sexual violence includes sexual assault, dating violence, domestic violence, and stalking or any other type of sexual misconduct or gender-based discrimination.

[Statutory Authority: RCW 28B.35.120, chapter 34.05 RCW, and 20 U.S.C. 1681-1688. WSR 17-05-100, § 516-21-186, filed 2/15/17, effective 3/18/17.]

AMENDATORY SECTION (Amending WSR 17-05-100, filed 2/15/17, effective 3/18/17)

WAC 516-21-190 Student violation of the law. Students are expected to abide by all local, state, and federal laws while on campus or at official university functions. Failure to comply with these laws is a violation of the code.

~~((While Western does not act as a policing agent for students when they are off campus, the university reserves the right to take action if a student's conduct is determined to adversely affect a substantial university interest as set forth in WAC 516-21-030 Jurisdiction.))~~ Western reserves the right to take action if a student's off-campus conduct is determined to adversely affect the safety or well-being of any member of the university community or the pursuit of the university's vision, mission, or values as set forth in WAC 516-21-030 Jurisdiction.

Proceedings under the code may be carried out prior to, simultaneously, or following civil or criminal proceedings in the courts. ~~((Since))~~ Due to the standard of proof under the code (preponderance of evidence) ~~((differs))~~ differing from that of criminal law, decisions made through the student conduct process are not subject to challenge on the grounds that criminal charges involving the same incident have been dismissed or reduced by a court of law.

[Statutory Authority: RCW 28B.35.120, chapter 34.05 RCW, and 20 U.S.C. 1681-1688. WSR 17-05-100, § 516-21-190, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 28B.35.120(12) and 20 U.S.C. 1681-1688. WSR 12-01-021, § 516-21-190, filed 12/9/11, effective 1/9/12.]

AMENDATORY SECTION (Amending WSR 17-05-100, filed 2/15/17, effective 3/18/17)

WAC 516-21-195 Notification of criminal arrest. Failure by the student to notify the ~~((dean of students))~~ office of student life of any off-campus felony arrest, or when the arrest is for an offense that is violent, weapons-related, involves kidnapping, or requires that the student register as a sex offender by any legal authority within the U.S., within five calendar days of release from custody is a violation of the code. The university may send a letter to the student requiring that they make an appointment for an interview. During this interview, the dean of students or their designee shall discuss with the student:

- (1) The facts involved in the student's arrest;
- (2) The student's obligation to keep the university informed of the progress of any criminal charge(s);
- (3) The student's obligation to advise the university of the final disposition of any criminal charge(s); and

(4) Whether the behavior falls under jurisdiction of the student code.

The university will cooperate with law enforcement and other agencies administering a corrective or rehabilitative program for the student. See also *POL-U5620.02 Notifying Campus Community About Sex and Kidnapping Offenders*.

[Statutory Authority: RCW 28B.35.120, chapter 34.05 RCW, and 20 U.S.C. 1681-1688. WSR 17-05-100, § 516-21-195, filed 2/15/17, effective 3/18/17.]

AMENDATORY SECTION (Amending WSR 17-05-100, filed 2/15/17, effective 3/18/17)

WAC 516-21-230 Sanctions. ~~Sanctions ((serve many purposes including, but not limited to, educating students about the seriousness of their actions; reinforcing the high standards of scholarship and behavior expected of Western students; promoting student development; and maintaining the safety and well-being of members of the university community. When a student admits responsibility or is found in violation of the code, a conduct officer or dean of students may impose one or more of the sanctions listed in this section. This list of sanctions is not meant to be exclusive. Other sanctions, designed or intended to enhance the educational value of conduct proceedings, may be applied in a given case))~~ are intended to facilitate student learning, promote personal and community development, and maintain the safety of the university community. When a student accepts responsibility or is found in violation of the code, a conduct officer may impose one or more of the sanctions listed in this section. This list of sanctions is not meant to be exclusive. Other sanctions may be applied in each case at the conduct officer's discretion.

(1) **Warning.** A formal written notice to the student that a violation of the code has occurred, and that further violations may result in additional sanctions under the code.

(2) **Conditional status.** A probationary status imposed for a specific period of time, during which the student must demonstrate conduct that ~~((conforms to))~~ meets university ~~((standards))~~ expectations. Conditions restricting the student's privileges or eligibility for activities may be imposed. Violations of any conditions specified in the notice of conditional status or violations of any other university policies or regulations during the period of the sanction, may result in additional sanctions under the code.

(3) **Loss of privileges.** A student may be denied specific privileges ~~((i.e.))~~ e.g., participation in specific activities, restriction from specific areas of campus, etc.) on a temporary or permanent basis. Violations of any conditions specified in the notice of loss of privileges or violations of any other university policies or regulations during the period of the sanction, may result in additional sanctions under the code.

(4) **Restriction from contacting others ("no contact" order).** A student may be restricted from direct or indirect physical, verbal, or electronic contact with another person and/or group. Indirect or direct contact made with another person or group while a "no contact" order is in place may result in additional sanctions under the code.

(5) **Educational activities.** A student may be required to engage in educational activities related to violation(s) of the code. Such activities may include, but are not limited to, required attendance at educational programs, community service, conducting research projects, writing assignments, and/or meeting with campus officials.

(6) **Assessment, counseling, or treatment programs.** A student may be required to participate in an assessment, counseling, and/or treatment program (at the student's expense), to address substance abuse, anger issues, or other issues or types of behaviors that pose a threat to the safety or well-being of others.

(7) **Restitution.** A student may be required to provide compensation for loss, damage, or injury resulting from a violation of the code. Restitution may take the form of monetary or material replacement or appropriate service to repair or otherwise compensate for the loss, damage, and/or injury caused.

(8) **Parental notification.** Parents may be notified of conduct findings when a student under the age of twenty-one is found responsible for violations involving alcohol and/or drugs. When possible, students whose parents are to be notified will be informed before such notification occurs and given an opportunity to initiate contact with their parents.

(9) **Campus residence hall or apartment relocation.** A student's on-campus living arrangements may be transferred to another residence hall or apartment.

(10) **Termination of university residences agreement.** A student may be removed from their campus residence hall or apartment and their housing agreement terminated.

(11) **Suspension from the university.** A student may be removed from the university for a designated period of time, after which the student will be eligible to return. While suspended, the student is trespassed from all university facilities and prohibited from participating in official university functions. Specific conditions for readmission to the university may be imposed (e.g., counseling, completion of substance abuse treatment, etc.).

(12) **Deferred suspension.** A student may receive a notice of deferred suspension from the university, with a provision that they are allowed to remain enrolled contingent on meeting specific conditions. Failure to meet any condition(s) specified in the notice of deferred suspension will result in immediate suspension from the university.

(13) **Expulsion from the university.** A student may be permanently separated from the university. A student who has been expelled is not eligible for readmission.

[Statutory Authority: RCW 28B.35.120, chapter 34.05 RCW, and 20 U.S.C. 1681-1688. WSR 17-05-100, § 516-21-230, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 28B.35.120(12) and 20 U.S.C. 1681-1688. WSR 12-01-021, § 516-21-230, filed 12/9/11, effective 1/9/12.]

AMENDATORY SECTION (Amending WSR 17-05-100, filed 2/15/17, effective 3/18/17)

WAC 516-21-240 Student conduct system. (1) The vice president for enrollment and student services is responsible for administration

of the code. Supervision of the code has been delegated by the vice president to the dean of students.

(2) A conduct officer(s) shall be appointed and supervised by the dean of students or their authorized designee. A conduct officer has the authority to consider complaints, make findings, and administer sanctions for violations of the code. In complaints alleging ~~((dis-erimination or sexual violence, which includes sexual assault, dating violence, domestic violence, and stalking or any other type of sexual misconduct or gender-based discrimination, an investigation and written report of findings from Western Washington University's equal opportunity office (or their designee) will be provided to a conduct officer in lieu of the conduct officer's investigation))~~ a violation of any type of sexual misconduct or gender-based discrimination including Title IX sexual harassment which encompasses quid pro quo harassment, hostile environment, domestic violence, dating violence, stalking or sexual assault which includes nonconsensual sexual intercourse, non-consensual sexual contact, incest or statutory rape, complaints should be made to Western Washington University's office of civil rights and Title IX compliance. A final investigation report from Western Washington University's office of civil rights and Title IX compliance (or their designee) will be provided to the conduct officer in lieu of the conduct officer's investigation. The conduct officer will then consider this report and make a referral to the Title IX committee.

(3) Appeal board members shall be appointed to consider appeals of a conduct officer's findings and sanctions. Appeal board members shall include a pool of the following:

(a) Four faculty members, appointed by the faculty senate; and

(b) ~~((Six student members, appointed by the associated students board of directors and/or residence hall association. Student board members must:~~

~~(i) Have a cumulative grade point average above 2.0;~~

~~(ii) Not currently be under an active sanction of the conduct code or have had previous conduct violations during the current academic year; and~~

~~(iii) Be confirmed by the dean of students; and~~

~~(e)) Four staff members, generally but not exclusively from the division of enrollment and student services, confirmed by the dean of students.~~

(4) An appeals board shall be composed of five members and any three persons constitute a quorum of a board. Generally, an appeals board will be comprised of faculty((~~r~~)) and staff((~~r~~ and students, but in some instances may only be comprised of members from two of the three groups)). The dean of students, or their designee, will appoint a chair from this pool for each board. Board members may not have been involved in consideration of the complaint((~~r~~)) or involved in the complaint. Board members must be properly trained in accordance with state and/or federal guidance. The dean of students or their designee will have final authority to approve all of those serving on a board. The dean of students, or their designee, will work to ensure that any board is balanced and representative.

(5) A staff member appointed by the dean of students may advise the appeals board on technical details of the code and its procedures.

(6) Conduct officers, the appeals board, the Title IX committee, and the dean of students or authorized designees have full authority to administer a decision under the code.

[Statutory Authority: RCW 28B.35.120, chapter 34.05 RCW, and 20 U.S.C. 1681-1688. WSR 17-05-100, § 516-21-240, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 28B.35.120(12) and 20 U.S.C. 1681-1688. WSR 12-01-021, § 516-21-240, filed 12/9/11, effective 1/9/12.]

NEW SECTION

WAC 516-21-245 Interim measures. After receiving a complaint of misconduct, the dean of students may implement interim measures intended to safeguard a member, or members, of the Western community. An interim measure will be as minimally restrictive as possible and will remain in place until the complaint is resolved. Interim measures can include administrative no-contact orders, trespass orders, or similar directives. Notices for interim measures are made in writing and will include how an objection can be raised.

[]

AMENDATORY SECTION (Amending WSR 17-05-100, filed 2/15/17, effective 3/18/17)

WAC 516-21-270 Proceedings for violations of the code. (1) Any member of the university community may file a complaint against a student for a violation of the student conduct code. A complaint should be made in writing to the office of student life. Additionally, information received from any source (police report, third party, online, etc.) may be considered a complaint.

(2) After a consideration of the complaint, a conduct officer may take any of the following actions:

(a) Review the complaint, investigate and make a finding whether the code was violated and impose sanction(s);

(b) Terminate the proceeding and enter a finding that there is no violation of the code and/or that the respondent is not responsible for the alleged conduct violation; or

(c) Dismiss the investigation, which may be reopened at a later date if relevant information that was unknown to the conduct officer arises.

(3) In complaints alleging ((discrimination and/or sexual violence, including sexual assault, dating violence, domestic violence, and stalking or any other type of sexual misconduct or gender-based discrimination, complaints should be made to Western Washington University's equal opportunity office. An investigation and written report of findings from Western Washington University's equal opportunity office)) a violation of any type of sexual misconduct or gender-based discrimination including Title IX sexual harassment which encompasses quid pro quo harassment, hostile environment, domestic violence, dating violence, stalking or sexual assault which includes non-consensual sexual intercourse, nonconsensual sexual contact, incest or statutory rape, complaints should be made to Western Washington University's office of civil rights and Title IX compliance. A final investigation report from Western Washington University's office of civ-

il rights and Title IX compliance (or their designee) will be provided to the conduct officer in lieu of the conduct officer's investigation. The conduct officer will then consider this report and make a finding as to whether the code was violated and impose sanction(s).

(4) Any student charged by a conduct officer with a violation of the student code is provided at least three days written notice of the student's meeting date, time and location. Any request to extend the time and/or date of the conduct officer meeting should be addressed to the conduct officer. The written notice shall include:

(a) A brief summary of the complaint, including the sections of the code allegedly violated;

(b) The approximate time and place of the alleged behavior that forms the factual basis for the charge of violation;

(c) The time, date, and place of the meeting;

(d) A copy of, or link to, the code.

(5) The respondent and complainant (if applicable) are notified in writing of the determination made by the conduct officer, including the basis for any findings and sanctions. The notice includes information regarding the right to request an appeal.

(6) All notifications under the code are delivered by electronic mail to the students' university email account. Any notifications sent via regular U.S. mail (for instance, to students not currently enrolled) may be sent to the party's last known address or the address on file with the university registrar. Students are responsible for maintaining an updated mailing address on file with the registrar. Deadlines described in the code begin the date the notification is sent via electronic means.

(7) Upon written request to the dean of students' office, staff will be available to the respondent and complainant (if applicable) to assist in understanding the student conduct process.

(8) A conduct officer's determinations and findings are made on the basis of a "preponderance of the evidence," that is, whether it is more likely than not that the respondent violated the code.

(9) Evidence is relevant if it tends to make existence of a fact more or less probable. A conduct officer, appeal board chair, or dean of students shall have the discretion to determine admissibility of evidence.

(10) If respondent or complainant (if applicable) to whom notice of a meeting or hearing has been sent does not appear before a conduct officer or appeals board, the complaint may be considered in their absence, and the conduct officer or appeals board may issue a decision based upon that information.

(11) If any provision of this code is invalidated by court order or operation of law, the affected provision of the code will no longer apply.

[Statutory Authority: RCW 28B.35.120, chapter 34.05 RCW, and 20 U.S.C. 1681-1688. WSR 17-05-100, § 516-21-270, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 28B.35.120(12) and 20 U.S.C. 1681-1688. WSR 12-01-021, § 516-21-270, filed 12/9/11, effective 1/9/12.]

AMENDATORY SECTION (Amending WSR 17-05-100, filed 2/15/17, effective 3/18/17)

WAC 516-21-280 Basis for appeal. (1) A student found in violation of the code may appeal the conduct officer's findings and/or the sanctions imposed. For incidents involving violence and/or sexual violence, including sexual assault, dating violence, domestic violence, and stalking or any other type of sexual misconduct or gender-based discrimination, a complainant may also request an appeal. An appeal may be requested for any reason including:

(a) The proceedings were not conducted in conformity with prescribed procedures and significantly impacted the outcome of the student conduct process;

(b) The sanctions imposed are substantially disproportionate to the violation(s) committed;

(c) The decision reached did not properly consider the information presented; and/or

(d) New information becomes available that was unavailable at the time of the original meeting((~~r~~)) and could substantially impact the original decision. A summary of this new information and its potential impact must be included. The dean of students or designee may then refer the complaint to the conduct officer for further action as appropriate.

(2) The appeal must be submitted by the respondent or complainant (if applicable) in writing to the dean of students within ten days of the decision. The appeal must state, as clearly and concisely as possible, the reason for the appeal.

(3) Appeals of a finding that resulted, or may have resulted, in suspension or expulsion are considered by an appeals board. All other appeals are considered by the dean of students.

(4) No sanction will begin while an appeal or request for review is pending(~~(, except)~~). However, interim ((sanctions such as)) measures (e.g., administrative no-contact orders, trespass, ((ete)) loss of privileges) may continue.

[Statutory Authority: RCW 28B.35.120, chapter 34.05 RCW, and 20 U.S.C. 1681-1688. WSR 17-05-100, § 516-21-280, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 28B.35.120(12) and 20 U.S.C. 1681-1688. WSR 12-01-021, § 516-21-280, filed 12/9/11, effective 1/9/12.]

AMENDATORY SECTION (Amending WSR 17-05-100, filed 2/15/17, effective 3/18/17)

WAC 516-21-290 Appeal procedures. (1) Appeals can be made by the respondent (or complainant in incidents involving violence and/or sexual violence, including sexual assault, dating violence, domestic violence, and stalking or any other type of sexual misconduct or gender-based discrimination) and must be made to the dean of students.

(2) The dean of students or their designee reviews the appeal.

(3) Where new information, unavailable at the time of the original meeting, that could substantially impact the original decision, is received, the dean of students or designee may then refer the complaint to the conduct officer for further action as appropriate. The

dean of students or their designee may, at their discretion, refer the complaint to a different conduct officer for reconsideration.

(4) In appeals in which the possible or recommended sanction is not expulsion or suspension as determined by the conduct officer, a designee of the dean of students will consider the appeal and hold an informal meeting, giving each party an opportunity to be informed of the conduct officer's view of the matter and to explain their view of the matter.

(5) In appeals in which the possible or recommended sanction is expulsion or suspension as determined by the conduct officer, an appeals board considers the appeal.

(a) The appeals board will provide the respondent and complainant (if applicable) with five days' notice of an appeals hearing date, time and location. An appeal by respondent or complainant will be shared with the other party (parties).

(b) The appeals board meets (~~in private~~) confidentially and reviews the complaint, the results of the subsequent investigation and its findings, and the conduct officer's decision. The board provides an opportunity for respondent and complainant (if applicable) to share information and the board may call witnesses. The appeals board then deliberates in private.

(c) The chair of the appeals board will ensure that appropriate procedures and due process are in place for any respondent(s) and/or complainant(s), including:

(i) Only one official recording of the meeting is made and no other cameras or recording devices are allowed;

(ii) All written materials are shared with any respondent(s) and/or complainant(s);

(iii) Any respondent(s) and/or complainant(s) may be accompanied through the appeals board by an advisor of their choice and at their own expense;

(iv) Any respondent(s) and/or complainant(s) may make brief opening and closing statements;

(v) Any limits on questioning, including no direct questioning between any complainant and respondent; and

(vi) All witnesses and involved parties are sworn in under oath.

(d) After any appeal, the respondent and complainant (if applicable) may request that a decision be reviewed by the dean of students. This request for review must be made in writing within ten days of the written outcome of an appeal. The dean of students will review the written documentation only; any involved person (e.g., respondent, witnesses, complainant) may be called to meet if necessary and at the discretion of the dean of students.

~~((d))~~ (e) During limited times during the year, such as break periods and summer quarter, when board members are unavailable, an interim board may be appointed by the dean of students.

(6) Respondent and complainant (if applicable) will be informed of the outcome of reviews and/or appeals simultaneously and in writing within ten days.

(7) If there is no request for appeal received by the dean of students within ten days, the decision of the conduct officer is considered final. If there is no request for review within five days (or ten days of an appeals board decision), the decision is considered final.

[Statutory Authority: RCW 28B.35.120, chapter 34.05 RCW, and 20 U.S.C. 1681-1688. WSR 17-05-100, § 516-21-290, filed 2/15/17, effective

3/18/17. Statutory Authority: RCW 28B.35.120(12) and 20 U.S.C. 1681-1688. WSR 12-01-021, § 516-21-290, filed 12/9/11, effective 1/9/12.]

NEW SECTION

WAC 516-21-291 Order of precedence under Title IX. This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R Part 106. To the extent these supplemental hearing procedures conflict with Western Washington University's standard disciplinary procedures, WAC 516-21-240 and 516-21-270, these supplemental procedures shall take precedence.

[]

NEW SECTION

WAC 516-21-292 Jurisdiction under Title IX. (1) This supplemental procedure applies only if the alleged misconduct:

- (a) Occurred in the United States;
- (b) Occurred during a Western Washington University educational program or activity; and
- (c) Meets the definition of sexual harassment as that term is defined in this supplemental procedure.

(2) For purposes of this supplemental procedure, an "educational program or activity" is defined as locations, events, or circumstances over which the Western Washington University exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by Western Washington University.

(3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1)(a), (b), and (c) of this section have not been met. Dismissal under this supplemental procedure does not prohibit Western Washington University from pursuing other disciplinary action based on allegations that the respondent violated other provisions of Western Washington University's student conduct code, chapter 516-21 WAC.

(4) If the Title IX coordinator determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the Title IX coordinator will issue a notice of dismissal in whole or part to both parties explaining why some or all of the Title IX claims have been dismissed.

[]

NEW SECTION

WAC 516-21-293 Prohibited conduct under Title IX. Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, Western Washington University may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

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

(1) Quid pro quo harassment. A Western Washington University employee conditioning the provision of an aid, benefit, or service of Western Washington University on an individual's participation in unwelcome sexual conduct.

(2) Hostile environment. Unwelcome conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to Western Washington University's educational programs or activities, or employment.

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

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

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

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

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

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

(5) Dating violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:

(a) The length of the relationship;

(b) The type of relationship; and

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

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

[]

NEW SECTION

WAC 516-21-294 Initiation of discipline under Title IX. (1)

Upon receiving the Title IX final investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

(2) If the student conduct officer determines that there are sufficient grounds to proceed under these supplemental procedures, the student conduct officer will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice with the chair of the student conduct committee and serving the notice on the respondent and the complainant, and their respective advisors. The notice must:

- (a) Set forth the basis for Title IX jurisdiction;
 - (b) Identify the alleged Title IX violation(s);
 - (c) Set forth the facts underlying the allegation(s);
 - (d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s);
 - (e) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:
 - (i) The advisors will be responsible for questioning all witnesses on the party's behalf;
 - (ii) An advisor may be an attorney; and
 - (iii) Western Washington University will appoint the party an advisor of Western Washington University's choosing at no cost to the party, if the party fails to do so.
- (3) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

[]

NEW SECTION

WAC 516-21-295 Prehearing procedure under Title IX. (1) Upon receiving the disciplinary notice, the chair of the student conduct committee will send a hearing notice to all parties, in compliance with WAC 516-21-250. In no event will the hearing date be set less than ten days after the Title IX coordinator provided the final investigation report to the student conduct officer.

(2) A party may choose to have an attorney serve as their advisor at the party's own expense. This right will be waived unless, at least five days before the hearing, the attorney files a notice of appear-

ance with the committee chair with copies to all parties and the student conduct officer.

(3) In preparation for the hearing, the parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether Western Washington University intends to offer the evidence at the hearing.

[]

NEW SECTION

WAC 516-21-296 Rights of parties under Title IX. (1) Western Washington University's student conduct procedures, WAC 516-21-250 and 516-21-270 and this supplemental procedure shall apply equally to all parties.

(2) Western Washington University bears the burden of offering and presenting sufficient testimony and evidence to establish that the respondent is responsible for a Title IX violation by a preponderance of the evidence.

(3) The respondent will be presumed not responsible until such time as the disciplinary process has been finally resolved.

(4) During the hearing, each party shall be represented by an advisor who will conduct all questioning on the party's behalf. The parties are entitled to an advisor of their own choosing and the advisor may be an attorney. If a party does not choose an advisor, then the Title IX coordinator will appoint an advisor of Western Washington University's choosing on the party's behalf at no expense to the party.

[]

NEW SECTION

WAC 516-21-297 Evidence under Title IX. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

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

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

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

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

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

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

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

- (a) Spousal/domestic partner privilege;
- (b) Attorney-client and attorney work product privileges;
- (c) Privileges applicable to members of the clergy and priests;
- (d) Privileges applicable to medical providers, mental health therapists, and counselors;
- (e) Privileges applicable to sexual assault and domestic violence advocates; and
- (f) Other legal privileges identified in RCW 5.60.060.

[]

NEW SECTION

WAC 516-21-298 Initial conduct order under Title IX. (1) In addition to complying with WAC 516-21-250 and 516-21-270, the student conduct committee will be responsible for conferring and drafting an initial conduct order that:

- (a) Identifies the allegations of sexual harassment;
 - (b) Describes the grievance and disciplinary procedures, starting with filing of the formal complaint through the determination of responsibility, including notices to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and hearings held;
 - (c) Makes findings of fact supporting the determination of responsibility;
 - (d) Reaches conclusions as to whether the facts establish whether the respondent is responsible for engaging in sexual harassment in violation of Title IX;
 - (e) Contains a statement of, and rationale for, the committee's determination of responsibility for each allegation;
 - (f) Describes any disciplinary sanction or conditions imposed against the respondent, if any;
 - (g) Describes to what extent, if any, complainant is entitled to remedies designed to restore or preserve complainant's equal access to Western Washington University's educational programs or activities; and
 - (h) Describes the process for appealing the initial conduct order.
- (2) The committee chair will serve the initial conduct order on the parties simultaneously.

[]

NEW SECTION

WAC 516-21-299 Appeals under Title IX. (1) The parties shall have the right to request a review from the initial conduct order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to request a re-

view will be subject to the same procedures and time frames set forth in WAC 516-21-290 (5)(c). Appeals of initial conduct orders under Title IX move directly to the review stage of the student conduct code's proceedings.

(2) The vice president of enrollment and student services or their delegate will determine whether the grounds for a request for review have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction and condition(s) imposed in the initial conduct order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s).

(3) The vice president of enrollment and student services or their delegate shall serve the final decision on the parties simultaneously.

[]

AMENDATORY SECTION (Amending WSR 17-05-100, filed 2/15/17, effective 3/18/17)

WAC 516-21-310 Confidentiality of conduct proceedings and records. (1) The confidentiality of all conduct proceedings and records will be maintained in compliance with the student records policy((~~r~~)) as (~~well as all~~) applicable with state and federal laws. Conduct records prepared by a conduct officer, the appeals board, the Title IX committee, and/or the dean of students:

(a) Will be held in the (~~dean of students~~) office of student life for six years, except in cases of suspension, interim suspension, or expulsion, which are permanent records; and

(b) Will not be shared with any member of the public, except upon the informed written consent of the student(s) involved or as stated in the student records policy, or as required by law or court order. This includes, but may not be limited to:

(i) Information disclosed in conformance with exceptions to the prior written consent requirement of the Family Educational Rights and Privacy Act (FERPA) and implementing regulations found at 34 C.F.R. Sec. 99.

(ii) Files subjected to public records requests as required by state law.

(iii) In cases involving any crime of violence or a nonforcible sex offense where the complainant is deceased, final results of any disciplinary proceeding may be shared with the complainant's next of kin, upon their written request.

(2) The conduct officer's findings may be shared with the complainant, as required by law, in cases involving violence as defined by FERPA or sexual violence, including sexual assault, dating violence, domestic violence, and stalking or any other type of sexual misconduct or gender-based discrimination.

(3) The findings may also be shared with university officials involved in the completion or supervision of the sanction and/or the student. See also chapter 516-26 WAC, Student records.

[Statutory Authority: RCW 28B.35.120, chapter 34.05 RCW, and 20 U.S.C. 1681-1688. WSR 17-05-100, § 516-21-310, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 28B.35.120(12) and 20 U.S.C.

1681-1688. WSR 12-01-021, § 516-21-310, filed 12/9/11, effective 1/9/12.]

AMENDATORY SECTION (Amending WSR 17-05-100, filed 2/15/17, effective 3/18/17)

WAC 516-21-340 Revision of the code. The code shall be reviewed every five years or more often, if needed, by (~~the committee on the student conduct code. The~~) a committee (~~on student rights and responsibilities~~) which shall include students, faculty, and staff. Once recommendations are complete, they will be forwarded to the vice president for enrollment and student services. See also POL-U1000.11 *Developing and Maintaining University Provisions of the Washington Administrative Code.*

[Statutory Authority: RCW 28B.35.120, chapter 34.05 RCW, and 20 U.S.C. 1681-1688. WSR 17-05-100, § 516-21-340, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 28B.35.120(12) and 20 U.S.C. 1681-1688. WSR 12-01-021, § 516-21-340, filed 12/9/11, effective 1/9/12.]

AMENDATORY SECTION (Amending WSR 12-01-021, filed 12/9/11, effective 1/9/12)

WAC 516-21-350 Referenced policies and regulations in the code. Policies or regulations referenced in the code are available, upon request, in the (~~dean of students~~) office of student life.

[Statutory Authority: RCW 28B.35.120(12) and 20 U.S.C. 1681-1688. WSR 12-01-021, § 516-21-350, filed 12/9/11, effective 1/9/12.]

WSR 22-01-076
PERMANENT RULES
DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed December 10, 2021, 10:33 a.m., effective January 10, 2022]

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

Purpose: For families and child care providers participating in the working connections and seasonal child care subsidy programs, better clarify the administrative hearing process for subsidy benefit and payment decisions, specifically, the separate legal authority for the adjudicative process that participating families and providers must follow, what must be included with hearing requests, and the review rights for families and providers who disagree with the administrative hearing orders.

Citation of Rules Affected by this Order: Amending WAC 110-15-0280.

Statutory Authority for Adoption: RCW 34.05.229 and 43.216.065.

Adopted under notice filed as WSR 21-20-112 on October 4, 2021.

Changes Other than Editing from Proposed to Adopted Version: References to chapter 388-02 WAC removed.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

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

Date Adopted: December 10, 2021.

Brenda Villarreal
Rules Coordinator

OTS-1671.8

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-15-0280 Right to request an administrative hearing.

~~((1) WCCC consumers have a right to request a hearing under chapter 388-02 WAC on any action affecting WCCC benefits.~~

~~(2) Child care providers may request hearings under chapter 388-02 WAC only for WCCC overpayments. A provider's burden of proof is a preponderance of the evidence.~~

~~(3) To request a hearing, a consumer or provider:~~

~~(a) Contacts the DSHS office which sent them the notice; or~~

~~(b) Writes to the office of administrative hearings, P.O. Box 42489, Olympia, WA 98504-2489; and~~

~~(c) Makes the request for a hearing within:~~

~~(i) Ninety days of the date a decision is received for consumers;
or
(ii) Twenty-eight days of the date a decision is received for providers.~~

~~(4) The office of administrative hearings administrative law judge enters initial or final orders as provided in WAC 388-02-0217. Initial orders may be appealed to a DSHS review judge under chapter 388-02 WAC.~~

~~(5) To request a hearing under the seasonal child care program, see WAC 170-290-3860 and 170-290-3865.)~~ (1) **Consumers:** Consumers who disagree with DCYF's decisions affecting their WCCC benefits have administrative hearing rights under chapter 110-03 WAC.

(a) Consumers' requests for hearing:

(i) May be made by contacting DCYF in-person, by telephone, or by serving DCYF with written requests that are also filed with the office of administrative hearings (OAH) as described in WAC 110-03-0060 and 110-03-0080.

(ii) Must include the information and documents described in WAC 110-03-0050(2), if requests are made in writing.

(iii) Must be made within 90 days of the date the consumers received the decisions being appealed.

(b) After completing the administrative hearings, OAH issues initial orders pursuant to WAC 110-03-0460 and 110-03-0480. Consumers who disagree with initial orders may request reviews as provided in WAC 110-03-0510 through 110-03-0550.

(c) When consumers request reviews of the initial orders, review judges issue final orders after considering the requests for review, initial orders, and hearing records. Consumers who disagree with final orders may request reconsiderations as provided in WAC 110-03-0570 through 110-03-0580 or seek judicial reviews as described in WAC 110-03-0590.

(2) **Providers:** Child care providers who disagree with WCCC overpayment decisions may request administrative hearings pursuant to RCW 43.20B.675.

(a) To request administrative hearings, child care providers must:

(i) Make their hearing requests in writing and include the information and documents described in RCW 43.20B.675(3) including, but not limited to, copies of the overpayment notices and statements explaining why they believe the overpayment notices are incorrect; and

(ii) Serve the hearing requests on the Department of Social and Health Services, Office of Financial Recovery, P.O. Box 9501, Olympia, WA 98507-9501, using certified mail return receipt requested or other manner that provides proof of receipt within 28 days of the date they received the overpayment notices being appealed.

(b) After completing the administrative hearings, OAH will issue final orders. Child care providers who disagree with final orders may request reconsideration. Providers may also seek judicial review of final orders.

[WSR 18-14-078, recodified as § 110-15-0280, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060, 43.215.070 and 2017 3rd sp.s. c 1 § 615. WSR 17-23-033, § 170-290-0280, filed 11/7/17, effective 12/8/17. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-0280, filed 4/15/16, effective 5/16/16. Statutory Authority: RCW 43.215.060, 43.215.070, 2006

c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0280, filed 10/28/09, effective 12/1/09.]

WSR 22-01-082

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed December 10, 2021, 3:28 p.m., effective January 10, 2022]

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

Purpose: The amendment updates agency rules to allow rental car companies into the fleet registration process and makes technical changes to update the language to current processes.

Citation of Rules Affected by this Order: Amending WAC 308-96A-161.

Statutory Authority for Adoption: RCW 46.01.110.

Adopted under notice filed as WSR 21-22-115 on November 3, 2021.

A final cost-benefit analysis is available by contacting Ellis Starrett, Department of Licensing, P.O. Box 9030, Olympia, WA 98507-9030, phone 360-902-3846, email rulescoordinator@dol.wa.gov.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 10, 2021.

Ellis Starrett
Rules and Policy Manager

OTS-3465.1

AMENDATORY SECTION (Amending WSR 11-20-066, filed 10/3/11, effective 11/3/11)

WAC 308-96A-161 Fleet registration. (1) **What is the purpose of the fleet program?** The purpose of the fleet program is to provide a process for business and individual registered owners to have the same expiration date for all of their vehicles and to receive a single billing notice.

(2) **What types of fleet programs are available?** There are two types of fleet programs, regular and permanent.

(3) **What is the difference between a regular and a permanent fleet?**

(a) Regular fleets consist of five or more vehicles, all currently titled and registered in exact name agreement (letter for letter and space for space). The owner has the option to purchase monthly gross weight license.

(b) Permanent fleets consist of ((fifty)) 50 or more vehicles, all currently titled and registered in exact name agreement (letter

for letter and space for space). The owner must purchase gross weight for the entire year. Gross weight license may **NOT** be purchased month to month, but may be increased throughout the year.

(4) (~~When do fleet vehicles expire? All fleet vehicles will be assigned a December 31 expiration date.~~

~~(5))~~ **Who does a fleet owner contact to join the fleet program?**

Fleet owners who meet the qualifications may contact the department or their local vehicle licensing office to have a fleet account established and a fleet identifier code issued.

((6)) **(5) Are there any vehicles that may not be part of a fleet?** Yes, the following vehicles may not be part of the fleet program:

(a) Snowmobiles;

(b) Trailers with permanent license plates issued under RCW 46.16A.450;

(c) (~~Rental vehicles as defined in RCW 46.04.465;~~

~~(d))~~ Any vehicle not required to renew annually; and

((e)) **(d)** Prorate vehicles registered under proportional registration as defined in chapter 46.87 RCW.

((7)) **(6) Will the department remove a fleet from the fleet program?** Yes, the department will remove a fleet from the program at the request of the owner or if the number of registered vehicles in the fleet drops below the required minimum.

((8)) **(7) What happens to a fleet once it is removed from the fleet program?** When a fleet is removed from the program the fleet identifier code will be removed from all of the vehicles in the fleet. The owner will then be required to renew them individually.

[Statutory Authority: RCW 46.01.110. WSR 11-20-066, § 308-96A-161, filed 10/3/11, effective 11/3/11. Statutory Authority: RCW 46.01.110 and 46.01.100. WSR 02-11-079, § 308-96A-161, filed 5/14/02, effective 6/14/02. Statutory Authority: RCW 46.01.110, 46.01.100 and 46.16.060. WSR 99-19-026, § 308-96A-161, filed 9/8/99, effective 10/9/99. Statutory Authority: RCW 46.01.110. WSR 97-10-003, § 308-96A-161, filed 4/24/97, effective 5/25/97; WSR 92-15-025, § 308-96A-161, filed 7/6/92, effective 8/6/92. Statutory Authority: RCW 46.01.110 and 46.16.335. WSR 91-15-006, § 308-96A-161, filed 7/8/91, effective 8/8/91.]

WSR 22-01-089

PERMANENT RULES

EASTERN WASHINGTON UNIVERSITY

[Filed December 12, 2021, 2:45 p.m., effective January 12, 2022]

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

Purpose: Adds a new section regarding the imposition of fines for students for failing to follow Eastern Washington University's immunization policies and a process for challenging such fines.

Citation of Rules Affected by this Order: WAC 172-108-110.

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

Adopted under notice filed as WSR 21-21-026 on October 11, 2021.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 0.

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

Number of Sections Adopted using Negotiated Rule Making: New 1, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 10, 2021.

Annika Scharosch
Associate Vice President for Civil Rights,
Compliance and Enterprise Risk Management

OTS-3186.1NEW SECTION**WAC 172-108-110 Enforcement of immunization requirements. (1)**

The university may impose a fine on students who fail to provide documentation of an immunization required by the university or obtain a waiver for medical or religious reasons as set forth in EWU Policy 602-02 (Immunizations). The fine may be up to two hundred fifty dollars per term for each academic term a student is enrolled and fails to comply with university requirements. The fine may be waived if the student complies with the immunization requirements within fourteen calendar days from the date notice of the fine is sent to the student as specified below.

(2) The university will provide written notice of the fine to students who fail to comply with the immunization requirements no later than thirty days after the initial date of the academic term. Notice will be sent via email to students' official university emails. Students will be given an opportunity to contest the notice by filing a request for a brief adjudicative hearing within fourteen calendar days of the date when the initial notice is sent to the student's official university email account. To request review of the fine, the student must submit a written request to: Student Rights and Responsi-

bilities, 129 Showalter Hall, Cheney, WA 99004-2496 or via email to srr@ewu.edu. The request must set forth the reasons why the student disagrees with the fine. If a student fails to timely request a brief adjudicative hearing, the fine will become final.

(3) If a student timely files a request for a brief adjudicative hearing, a presiding officer will be appointed and will consider any materials submitted by the student in writing contesting the initial fine. Within ten calendar days of receipt of the request for a hearing, the presiding officer or designee will send an initial order setting forth the officer's decision and the reasons for such decision. The order should also communicate any appeal options available.

(4) The student may appeal the initial order by filing a written appeal with the dean of students within twenty-one calendar days from the date the initial order was sent to their official university email account. To request an appeal, the student must submit a written request to: Dean of Students, 301 Pence Union Building, Cheney, WA 99004-2496 or via email to dos@ewu.edu. The appeal must set forth the reasons why the student believes the initial order was incorrect. If a student fails to timely appeal, the initial order will be final.

(5) If a student timely files a request for an appeal, a presiding officer will be appointed and will consider any materials reviewed by the presiding officer at the initial hearing along with any materials submitted by the student with the appeal. Within twenty calendar days of the receipt of the appeal, the presiding officer or designee will send a final order setting forth the officer's decision and the reasons for such decision. This order will be the university's final decision. The order should communicate that judicial review of the university's decision may be available under chapter 34.05 RCW.

[]

WSR 22-01-090

PERMANENT RULES

EASTERN WASHINGTON UNIVERSITY

[Filed December 12, 2021, 2:53 p.m., effective January 12, 2022]

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

Purpose: Modifies the admissibility and cross-examination rules for formal Title IX hearings under the student conduct code to be consistent with a recent federal court decision and updated guidance from the Department of Education's Office of Civil Rights.

Citation of Rules Affected by this Order: Amending WAC 172-121-122.

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

Adopted under notice filed as WSR 21-22-013 on October 21, 2021.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 10, 2021.

Annika Scharosch
Associate Vice President for Civil Rights,
Compliance and Enterprise Risk Management

OTS-3400.1

AMENDATORY SECTION (Amending WSR 21-01-102, filed 12/11/20, effective 1/11/21)

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

(2) General provisions.

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

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

(c) Consolidation of hearings: In the event that one or more students are charged with the same misconduct arising from the same oc-

currence, the council may conduct separate hearings for each student or consolidate the hearings as practical, as long as consolidation does not impinge on the rights of any student.

(3) Appearance.

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

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

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

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

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

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

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

(a) Review the written list of allegations;

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

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

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

(e) Explain the conduct review procedures;

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

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

(h) Address any preliminary matters or motions.

(6) Notice of hearing. Following the prehearing conference, the director shall schedule the hearing and notify the respondent and complainant of the date, time, location, participants, and purpose of the hearing. The notices will include information about how to request accommodations or interpreters for any parties or witnesses. Any request for the presence of an emotional support animal or any other accommodation must be directed to disability support services and approved as a reasonable accommodation in advance of the hearing. A person may bring a certified therapy animal with a handler to a hearing. The notice of hearing must be served on the respondent and complainant at least seven business days prior to the hearing. The director may coordinate with the parties to facilitate scheduling, but is not required to do so.

(7) Evidence.

(a) Evidence: Pertinent records, exhibits and written statements may be accepted as information for consideration by the council in accordance with RCW 34.05.452. Any investigation conducted by the university will be admitted into evidence as long as the investigator testifies at the hearing. Evidence, including hearsay evidence, is admissible if in the judgment of the CRO it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs (~~(; however,)~~). Solely for Title IX complaints, ((statements obtained from a person who does not testify at the hearing shall not be considered by the council)) a party or witness's statement made outside of the hearing should not be considered by the board unless: (i) The statement itself is the alleged misconduct (such as a text message, video, or verbal statement); (ii) the party or witness who made the statement appears at the hearing and is willing to answer questions from the parties; or (iii) the statement is adverse to the party who does not appear or is not willing to answer questions (such as a confession of responsibility or admission of providing false information). The CRO shall exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized by Washington courts. The CRO may exclude irrelevant material. If not inconsistent with this section, the CRO shall refer to the Washington rules of evidence as guidelines for evidentiary rulings. For Title IX complaints, prior to allowing a question to be answered during cross-examination, the CRO must determine that the question is relevant, and, if excluded, the CRO must explain on the record the reason for the exclusion.

(b) The respondent and complainant have the right to view all material presented during the course of the hearing, except a respondent's previous disciplinary history which shall be used solely for the purpose of determining the appropriate sanction.

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

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

(e) Official notice may be taken of (i) any easily verifiable facts such as dates or weather conditions, (ii) technical or scientific facts within EWU's specialized knowledge, such as enrollment status or class schedules, and (iii) codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association. Parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material so noticed

and the sources thereof, including any staff memoranda and data, and they shall be afforded an opportunity to contest the facts and material so noticed. A party proposing that official notice be taken may be required to produce a copy of the material to be noticed.

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

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

(9) Subpoenas.

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

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

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

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

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

(11) Witnesses.

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

(b) The person who wishes to call a witness is responsible for ensuring that the witness is available and present at the time of the hearing. An attorney may subpoena a witness to appear at the hearing. Nonattorneys may request the CRO to subpoena witnesses in accordance with subsection (4) of this section. The CRO has the discretion to de-

ny a request to issue a subpoena or to quash a subpoena issued by an attorney if the subpoena is unreasonable, oppressive, or does not conform to EWU's subpoena form.

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

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

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

(12) Questioning:

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

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

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

(14) Deliberations and sanctions. Following the hearing, the council will determine in closed session whether, by a preponderance of the evidence, the respondent violated the student conduct code based on the evidence presented at the hearing. If a student fails to appear, the council shall make a decision based on the information available. If the council determines the respondent violated the student conduct code, the CRO shall then decide what sanctions and remedies shall be imposed. The CRO may review the respondent's previous disciplinary history solely for purposes of determining the appropriate sanction. In addition to sanctions under this code, if the student is also an employee of the university, the CRO's decision may be for-

warded to the student's supervisor to determine whether any employment actions outside of this code should be taken in accordance with university policy.

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

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

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

(c) Identify the allegations at issue;

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

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

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

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

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

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

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

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

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

(b) The complainant's right to appeal;

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

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

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

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

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

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

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

WSR 22-01-096
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed December 13, 2021, 8:35 a.m., effective January 13, 2022]

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

Purpose: The department of labor and industries, with approval of the Washington state apprenticeship and training council (WSATC), is adopting rules to allow the use of special meetings to consider records and enter final orders following adjudication processes. ESHB 1817 (2019) requires owners of petroleum refining or petrochemical manufacturing facilities to use a skilled and trained workforce when contracting for construction, alteration, demolition, installation, repair, or maintenance work. A skilled and trained workforce means a workforce where all the workers are either registered apprentices in a WSATC-approved apprenticeship program or skilled journeypersons as defined by the statute. WSATC is currently limited to adjudicating and issuing final orders at four regularly scheduled meetings. Not only does this delay the decision for programs and make it more difficult to comply with the law, but also WSATC may not have enough time at the regularly scheduled meeting to conduct all needed business and address these adjudicated matters.

Citation of Rules Affected by this Order: Amending WAC 296-05-008.

Statutory Authority for Adoption: Chapter 49.04 RCW; chapter 306, Laws of 2019, ESHB 1817.

Adopted under notice filed as WSR 21-19-125 on September 21, 2021.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: December 13, 2021.

Joel Sacks
Director

OTS-2793.2

AMENDATORY SECTION (Amending WSR 18-17-149, filed 8/21/18, effective 10/10/18)

WAC 296-05-008 Meetings and adjudicative proceedings. (1) Regular meetings: Convened on the third Thursday of January, April, July,

and October, held at locations within Washington, and open to the general public. Members of the public cannot be required to register their name, give any information, or fulfill any condition prior to attending council meetings. All council meetings must be conducted according to the provisions of chapter 42.30 RCW, Open Public Meetings Act and chapter 34.05 RCW, Administrative Procedure Act.

(a) Notice of regular meetings: The supervisor must distribute notice not later than (~~thirty~~) 30 calendar days prior to the meeting date to anyone who has requested notice of the regular meetings.

(b) The supervisor must send notices to all WSATC members, including ex officio members, and approved program sponsors.

(c) The following WSATC activities must take place in open public meetings:

(i) All transactions of official business;

(ii) All commitments or promises;

(iii) All collective discussions;

(iv) All collective decisions; and

(v) All council actions.

(d) The approval or disapproval of committee programs, plant programs, or amendments to those programs can only occur at regular quarterly meetings unless the council is responding to a court mandate, which can occur at a special meeting. The approval or disapproval of committee programs, plant programs, or amendments to those programs can also occur at a special meeting when the council considers the record and enters a final order following an adjudication conducted under subsection (6) of this section.

(2) Special meetings: Called at the request of the chair or by a majority of the WSATC members, and open to the general public.

(a) Procedure for special meetings: To call a special meeting, the calling members must:

(i) Mail a written notice with the date, time, and location of the meeting that specifies the business to be transacted at the meeting, either personally or by mail, at least seven calendar days before the specified date of the meeting, to each member of the WSATC, all approved program sponsors, and those who have requested prior notice of special meetings.

(ii) Waiver: The notice requirements to WSATC members may be waived in writing at or prior to the meeting, but all members must agree to waive notice and file the waiver with the supervisor.

(b) Content of special meetings: The subject matter of the special meeting must not exceed the scope of the written notice. If the WSATC takes action on a matter exceeding the scope of the written notice, the action is not final even if the members waive notice.

(c) Special meetings for rule changes: To call a special meeting to consider rule changes, the WSATC must:

(i) Mail a written notice with the date, time, and location of the meeting that specifies the rules to be changed at the meeting, either personally or by mail, at least (~~twenty~~) 20 calendar days before the meeting.

(ii) Waiver: The notice requirements may not be waived for special meetings when rule changes are contemplated.

(3) Registered apprenticeship standards actions: When a party requests specific action from the WSATC related to apprenticeship standards, such request must:

(a) Be in writing; and

(b) Signed by the committee's elected chair and secretary, or by an authorized signer approved by the petitioning sponsor;

(c) Sent to the apprenticeship supervisor at least (~~forty-five~~) 45 days prior to the date of the regular quarterly meeting.

Requests that are untimely are deferred to the next quarterly meeting.

(4) Other actions: When a party requests specific action or consideration from the WSATC on other issues, such requests must:

(a) Be in writing; and

(b) Sent to the apprenticeship supervisor at least (~~fifteen~~) 15 business days prior to the date of the regular quarterly meeting.

Requests that are untimely are deferred to the next quarterly meeting unless waived by the supervisor.

(5) Voting: All council members, except ex officio members, appointed by the director of the department of labor and industries are voting members of the council.

(a) A quorum is two-thirds of the WSATC members entitled to vote.

(b) The chair shall establish a standing tie-breaker committee comprised of three WSATC members entitled to vote:

(i) An employer representative;

(ii) An employee representative; and

(iii) A public member.

(c) The apprenticeship supervisor or designee shall act as secretary to the tie-breaker committee and furnish all information necessary for a decision.

(d) In case of a tie vote on any proposed standards brought before the WSATC, the tie-breaker committee shall meet or confer, review the record, and render a decision within (~~thirty~~) 30 calendar days.

(6) Adjudicative proceedings: All hearings and adjudication, under chapter 49.04 RCW and these rules, shall be conducted according to chapters 34.05 RCW and 10-08 WAC. The chair (or designee) is the presiding officer for adjudicative proceedings held before the WSATC. The WSATC may either adjudicate matter(s) itself, or refer matter(s) to the office of administrative hearings for initial adjudication.

If the initial adjudication is before the WSATC, the WSATC will enter a final order. If the initial adjudication is held at the office of administrative hearings, the administrative hearings judge shall issue an initial order. The WSATC, upon review of the initial order shall enter the final order. An initial order shall become final without further WSATC action five business days after the next regular quarterly meeting unless:

(a) The WSATC upon its own motion determines that the initial order should be reviewed; or

(b) A party to the proceedings files a petition for review of the initial order.

(7) Final WSATC orders or decisions affecting registration and oversight of apprenticeship programs and agreements for federal purposes may be appealed within (~~thirty~~) 30 calendar days to the director of the department pursuant to the following:

(a) An appellant must file with the director an original and four copies of the notice of appeal.

(i) The notice of appeal must specify findings and conclusions at issue in the appeal;

(ii) The director or designee shall serve notice of receipt of the appeal, including copies of the appeal on all parties within five business days from date of receipt;

(iii) The respondent parties may file with the director or designee written arguments within (~~thirty~~) 30 calendar days after the date the notice of receipt of appeal was served upon them.

(b) The director or designee shall review the record in accordance with the Administrative Procedure Act, chapter 34.05 RCW. The director or designee shall issue a final decision affirming, modifying, or reversing the WSATC final order or decision or may remand the matter to the WSATC for further proceedings.

(c) With respect to cancellation of programs only, any aggrieved party may appeal, for federal purposes, a final decision by the director (or director's designee) by following the procedures in 29 C.F.R. 29.8 (b) (5).

(d) Any aggrieved party may appeal the final decision to superior court pursuant to chapter 34.05 RCW. If no party appeals within the period set by RCW 34.05.542, the director's decision is final and binding on all parties.

(8) Limitations: Nothing in this part or in any apprenticeship agreement will operate to invalidate:

(a) Any apprenticeship provision in any collective bargaining agreement between employers and employees establishing higher apprenticeship standards; or

(b) Any special provision for veterans, minority person, or women in the standards, apprentice qualifications or operation of the program, or in the apprenticeship agreement, which is not otherwise prohibited by law, executive order, or authorized regulation.

(9) Retroactivity: The WSATC may make any action or decision which it takes retroactive to the date of the previous business session.

[Statutory Authority: RCW 49.04.010 and 19.285.040. WSR 18-17-149, § 296-05-008, filed 8/21/18, effective 10/10/18. Statutory Authority: Chapter 49.04 RCW and RCW 19.285.040. WSR 11-11-002, § 296-05-008, filed 5/4/11, effective 7/25/11. Statutory Authority: RCW 49.04.010. WSR 04-10-032, § 296-05-008, filed 4/28/04, effective 6/1/04.]

WSR 22-01-119

PERMANENT RULES

HORSE RACING COMMISSION

[Filed December 13, 2021, 10:00 a.m., effective January 13, 2022]

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

Purpose: To amend the time when the physical transfer takes place of a claimed horse that has been selected for post-race testing to ensure the trainer of record responsible for any possible medication violations discovered has custody to the horse until the sample has been collected.

Citation of Rules Affected by this Order: Amending WAC 260-60-410.

Statutory Authority for Adoption: RCW 67.16.020.

Adopted under notice filed as WSR 21-20-102 on October 4, 2021.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 13, 2021.

Douglas L. Moore
Executive Secretary

OTS-3336.1

AMENDATORY SECTION (Amending WSR 18-03-071, filed 1/12/18, effective 2/12/18)

WAC 260-60-410 Claimed horse—In whose interest run—Delivery and passage of title. Any purse moneys and prizes earned by a claimed horse will be awarded to the owner that entered the horse. All claims are valid and ownership of the claimed horse is official from the time the claimed horse becomes a "starter." The successful claimant becomes the owner of the horse, whether it is sound, unsound, or injured during the race or after it, unless the claim is canceled in accordance with WAC 260-60-460(2). Transfer of possession of a claimed horse will take place immediately after the race has been run unless otherwise directed by the stewards. If the horse is required to be taken to the test barn for post-race testing, the ~~((successful claimant))~~ original trainer or his/her representative must maintain physical custody of the claimed horse ~~((. However, the original owner, trainer))~~ and sign the sample tag. The successful claimant or his/her representative will accompany the horse ~~((,))~~ and observe the testing procedure ~~((and sign the test sample tag)).~~

[Statutory Authority: RCW 67.16.020. WSR 18-03-071, § 260-60-410, filed 1/12/18, effective 2/12/18. Statutory Authority: RCW 67.16.020 and 67.16.040. WSR 08-05-088, § 260-60-410, filed 2/15/08, effective 3/17/08. Statutory Authority: RCW 67.16.040. WSR 96-12-008, § 260-60-410, filed 5/23/96, effective 6/23/96.]

WSR 22-01-120

PERMANENT RULES

HORSE RACING COMMISSION

[Filed December 13, 2021, 10:00 a.m., effective January 13, 2022]

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

Purpose: To update the name of the wager to reflect current industry standards and ARCI model rule.

Citation of Rules Affected by this Order: Amending WAC 260-48-915.

Statutory Authority for Adoption: RCW 67.16.020.

Adopted under notice filed as WSR 21-20-103 on October 4, 2021.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 13, 2021.

Douglas L. Moore
Executive Secretary

OTS-3335.1

AMENDATORY SECTION (Amending WSR 12-03-074, filed 1/13/12, effective 2/13/12)

WAC 260-48-915 ((Quinfecta)) Pentafecta pools with carryover.

(1) The ((quinfecta)) pentafecta requires selection of the first five finishers in their exact order, for a single race.

(2) The net ((quinfecta)) pentafecta pool will be distributed as a single price pool to those who selected the first five finishers in exact order based on the official order of finish. If there are no such wagers, then the net ((quinfecta)) pentafecta pool will be carried forward to the next ((quinfecta)) pentafecta performance as a carryover or added to an existing carryover.

(3) If less than five betting interests finish the race and the race is declared official, the entire ((quinfecta)) pentafecta pool for that performance will be refunded.

(4) If, due to a late scratch or a participant is declared a non-starter, and this causes the number of betting interest in the ((quinfecta)) pentafecta pool to be reduced to fewer than five, the entire ((quinfecta)) pentafecta pool for that performance will be refunded.

(5) If the ((quinfecta)) pentafecta contest is canceled or declared "no contest," the entire ((quinfecta)) pentafecta pool for that performance will be refunded.

(6) If horses representing the same betting interest finish in the first five positions, the (~~Quinfecta~~) Pentafecta pool will be distributed as a single price pool to those selecting the coupled entry or mutuel field combined with the next separate betting interest in the official order of finish.

(7) If there is a dead heat for first involving:

(a) Horses representing five or more betting interests, all of the wagering combinations selecting five betting interests which correspond with any of the betting interests involved in the dead heat will share in a profit split.

(b) Horses representing four betting interests, all of the wagering combinations selecting the four dead-heated betting interests, irrespective of order, along with the fifth-place betting interest will share in a profit split.

(c) Horses representing three betting interests, all of the wagering combinations selecting the three dead-heated betting interests, irrespective of order, along with the fourth-place and fifth-place betting interests will share in a profit split.

(d) Horses representing two betting interests, both of the wagering combinations selecting the two dead-heated betting interests, irrespective of order, along with the third-place, fourth-place and fifth-place betting interests will share in a profit split.

(8) If there is a dead heat for second involving:

(a) Horses representing four or more betting interests, all of the wagering combinations correctly selecting the winner combined with any of the four or more betting interests involved in the dead heat for second will share in a profit split.

(b) Horses representing three betting interests, all of the wagering combinations correctly selecting the winner, the three dead-heated betting interests, irrespective of order, and the fifth-place betting interests will share in a profit split.

(c) Horses representing two betting interests, all of the wagering combinations correctly selecting the winner, the two dead-heated betting interests, irrespective of order, and the fourth-place and fifth-place betting interests will share in a profit split.

(9) If there is a dead heat for third involving:

(a) Horses representing three or more betting interests, all of the wagering combinations correctly selecting the winner, the second-place betting interest, and the three or more dead-heated betting interests will share in a profit split.

(b) Horses representing two betting interests, all the wagering combinations correctly selecting the winner, the second-place betting interest, the two dead-heated betting interests, irrespective of order and the fifth-place betting interest will share in a profit split.

(10) If there is a dead heat for fourth, all wagering combinations correctly selecting the first three finishers, in correct sequence, along with any two of the betting interests involved in the dead heat for fourth will share in a profit split.

(11) If there is a dead heat for fifth, all wagering combinations correctly selecting the first four finishers, in correct sequence, along with any of the betting interests involved in the dead heat for fourth will share in a profit split.

(12) (~~Quinfecta~~) Pentafecta wagering is prohibited on any race in which there is more than one mutuel field, except with written permission of the board of stewards.

(13) Mandatory distribution of the carryover. The ((quinfecta)) pentafecta carryover will be designated for a change in distribution on a specified date and performance under the following circumstances:

(a) Upon approval from the board of stewards. If the designated date of the race for the mandatory distribution is during the race meet and the carryover pool is not distributed, the ((quinfecta)) pentafecta wager must be offered on a subsequent race until the carryover pool is distributed. A written request must contain the following information:

(i) The reason and justification for the change.

(ii) The date of the proposed distribution.

(b) On the closing performance of the meet.

(14) If the ((quinfecta)) pentafecta pool and any carryover are approved for distribution, the net ((quinfecta)) pentafecta pool and carryover, if any, will be distributed as a single price pool to winning wagers based upon the official order of finish.

(a) As a single price pool to those whose combination finished in correct sequence as the first five betting interests; but if there are no such wagers, then

(b) As a single price pool to those whose combination included, in correct sequence, the first four betting interests; but if there are no such wagers, then

(c) As a single price pool to those whose combination included, in correct sequence, the first three betting interests; but if there are no such wagers, then

(d) As a single price pool to those whose combination included, in correct sequence, the first two betting interests; but if there are no such wagers, then

(e) As a single price pool to those whose combination correctly selected the first-place betting interest only; but if there are no such wagers, then

(f) The entire net pool will be refunded on ((quinfecta)) pentafecta wagers for that race and the carryover, if any, will be held over to a ((quinfecta)) pentafecta pool of the subsequent meet.

(15) If, for any reason, the ((quinfecta)) pentafecta carryover must be held over to the corresponding ((quinfecta)) pentafecta pool of a subsequent meet, the carryover will be deposited in an interest-bearing account approved by the executive secretary. The ((quinfecta)) pentafecta carryover plus accrued interest will then be added to the net ((quinfecta)) pentafecta pool of the following meet on a date and performance approved by the board of stewards.

[Statutory Authority: RCW 67.16.020. WSR 12-03-074, § 260-48-915, filed 1/13/12, effective 2/13/12. Statutory Authority: RCW 67.16.020 and 67.16.040. WSR 08-17-049, § 260-48-915, filed 8/14/08, effective 9/14/08.]

WSR 22-01-122
PERMANENT RULES
DEPARTMENT OF
VETERANS AFFAIRS

[Filed December 13, 2021, 10:45 a.m., effective January 13, 2022]

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

Purpose: Modification of a section on alcohol in state veterans' homes. This will allow the state veterans' homes to provide alcohol to residents who have a written order from a health care provider. The Centers for Medicare and Medicaid Services (CMS) regulates nursing homes using a series of standards known as F-Tags. F550 refers to resident rights and requires nursing homes to ensure that residents have a right to a dignified existence and that they have rights guaranteed to them under federal and state laws and regulations. This change is being made to prevent a veteran's home from receiving a citation for failing to meet F550 and violating resident rights.

Citation of Rules Affected by this Order: Amending WAC 484-20-090.

Statutory Authority for Adoption: RCW 43.60A.070; chapter 72.36 RCW.

Other Authority: CMS F-Tag 550.

Adopted under notice filed as WSR 21-19-057 on September 14, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 1, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 13, 2021.

Heidi Audette
 Communications and
 Legislative Director

OTS-3278.1

AMENDATORY SECTION (Amending WSR 16-20-105, filed 10/5/16, effective 11/5/16)

WAC 484-20-090 State veterans home rules. Residents of the state veterans homes are expected to comply with the following facility rules. Facility rules apply to all residents:

(1) Health and safety rules.

(a) Emergency evacuation. Any time a fire or alarm is sounded, ((domiciliary)) all residents must immediately evacuate the building

and report to the designated evacuation area. Residents may not enter the evacuated building until designated staff indicate all is clear. (~~(Nursing care unit)~~) Residents must follow the instructions of the nursing staff.

(b) Community living skills. The condition of residents living quarters must meet existing fire, safety and health-sanitation codes. Residents shall accomplish and/or assist with maintaining their living quarters as defined in their comprehensive care plan. Vacated rooms shall be left in a clean condition.

(c) Electrical appliances. Only low wattage household type electrical appliances such as television sets, electric clocks, electric razors, fans of 150 watts or less with acceptable finger guards, small refrigerators rated at not more than 1.5 amps and approved by the facility, radios, audio and/or video (~~(recorders (VCRs))~~) equipment, and (~~(disc playing machines)~~) portable speakers may be used in resident's rooms. Use of any other electrical equipment requires the written approval of the (~~(superintendent)~~) administrator or designated representative.

(d) Repair of rooms. Residents shall not alter or repair their living quarters or other common use areas. This includes but is not limited to walls (e.g., for hanging pictures), other flat surfaces, electrical systems, television/cable hook-ups, phone hook-ups, heating systems, and plumbing. State veterans home staff shall assist residents in personalizing their rooms (~~(r)~~) including, but not limited to, hanging personal pictures and checking electrical appliances as authorized in (c) of this subsection. Requests for alterations and/or repairs shall be made to the state veterans home facilities manager.

(e) (~~(Alcohol, r)~~) Marijuana and illegal drugs are prohibited on the premises of any state veterans home. (Neither medical nor recreational marijuana use is allowed at a state veterans home. According to the Washington state department of health, health care providers cannot write prescriptions for medical marijuana. They may provide a recommendation for use of medical marijuana; however, this is not considered a prescription for marijuana.) This applies to all residents, family members, staff, visitors and volunteers in the home.

(f) Alcohol is permitted with a physician or other authorized health care provider's written order. Alcohol must be stored by veterans home staff.

(g) Weapons, firearms and edged weapons. Possession of firearms, ammunition, explosives, dangerous or edged weapons is prohibited on the premises of any state veterans home.

(~~(g)~~) (h) Animals. Unauthorized possession or feeding of animals on state veterans home property is prohibited except when specifically sanctioned by the (~~(superintendent)~~) administrator or designated representative.

(~~(h)~~) (i) Tobacco products and electronic smoking devices. No resident smoking is allowed on state veterans home campuses. Residents may not use tobacco products or electronic smoking devices. Exceptions are made only for residents who were authorized to smoke prior to the no smoking rule taking effect. For these residents, use of tobacco products or electronic smoking devices is allowed only in designated outdoor smoking areas.

(2) General facility rules.

(a) Recommended visiting hours. (~~(Normal)~~) Recommended visiting hours for guests are 8:00 a.m. to 10:00 p.m.

(b) Program listening. Radios, TVs, and (~~(tape recording playing devices such as video tape recorders (VCRs) and cassette players)~~)

DVDs and portable speakers may be used in resident's rooms. Volume levels of such equipment must be kept at a level that does not disturb others. Between the hours of 10:00 p.m. and 7:00 a.m., volume on such equipment must be reduced to match reduced noise levels in the general surroundings so that others will not be disturbed. The use of headphones is strongly encouraged for those who wish to use such equipment after 10:00 p.m.

(c) Leave. Pursuant to U.S. Department of Veterans Affairs census reporting requirements, residents leaving the grounds for any purpose must sign out at designated locations. Upon returning, the resident must sign in again. After returning from overnight pass or social leave, the resident must remain on the grounds overnight before permission to go on an additional overnight pass or social leave can be granted, except in the case of emergency. Leaving the grounds without proper authorization, or failure to return from overnight pass or social leave at the prescribed time without obtaining permission for an extension, may result in the resident being discharged in accordance with WAC 484-20-120. Residents being admitted to the facility must remain on the grounds overnight before overnight pass or leave privileges may be exercised unless an exception is granted by the (~~superintendent~~) administrator or designated representative.

(d) Respect for property. No person may deface or destroy walls, buildings, trees, shrubbery, fences, grounds, or any other property or possessions belonging to the state of Washington or to any other person. Appropriation of the property of another person, corporate entity or the state of Washington without permission is also prohibited. Residents are required to reimburse the state veterans home for theft and intentional or negligent injury to state property.

(e) Vehicle registration. Vehicles kept on state veterans home property must be registered at least annually with the state veterans home administration. Residents who drive on the state veterans home property must: Possess a valid Washington state driver's license; provide proof of ownership and/or registration; and, show proof of at least minimal insurance as required by Washington state financial responsibility law. The requirement to register applies to vehicles owned by residents, owned by another and registered in the name of the resident, and/or any vehicle regardless of ownership that is regularly in the possession of the resident. Vehicles must have current license tags. All traffic and parking control signs must be obeyed.

(f) Personal conduct between residents and others. Residents are expected to refrain from obscene, sexually or racially demeaning, threatening language, or behavior, or physically assaultive behavior. Such behavior, directed at another person, whether on the grounds or off the grounds during a state veterans home-sponsored activity, will be considered a violation of this rule.

[Statutory Authority: Chapter 72.36 RCW and 2014 c 184. WSR 16-20-105, § 484-20-090, filed 10/5/16, effective 11/5/16. Statutory Authority: RCW 43.60A.070, chapter 72.36 RCW and 2001 2nd sp.s. c 4. WSR 01-23-001, § 484-20-090, filed 11/7/01, effective 12/8/01. Statutory Authority: RCW 43.60A.070 and chapter 72.36 RCW. WSR 94-22-050, § 484-20-090, filed 10/31/94, effective 12/1/94. Statutory Authority: RCW 43.60A.070. WSR 92-17-046, § 484-20-090, filed 8/14/92, effective 9/14/92; WSR 85-20-099 (Order 85-01), § 484-20-090, filed 10/1/85; WSR 80-09-069 (Order 80-01), § 484-20-090, filed 7/17/80; Order 7659, § 484-20-090, filed 7/28/77.]

WSR 22-01-131
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed December 13, 2021, 3:56 p.m., effective January 13, 2022]

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

Purpose: A new rule in chapter 220-660 WAC is necessary to implement RCW 77.55.480. This statute was passed into law as E2SHB 1382 (chapter 75, Laws of 2021) during the 2021 legislative session. The statute creates a habitat recovery pilot program. The program provides a streamlined permitting process so that qualified habitat recovery projects may advance to construction quickly and efficiently, thereby creating jobs and further bolstering the natural resources and natural resource economy. Washington department of fish and wildlife will evaluate qualified hydraulic project approval applications according to the process described in statute. Other aspects of chapter 220-660 WAC remain unchanged.

Citation of Rules Affected by this Order: New WAC 220-660-490 Habitat recovery projects.

Statutory Authority for Adoption: RCW 77.04.012, 77.12.047, 77.55.021, and 34.05.328.

Adopted under notice filed as WSR 21-19-115 on September 20, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: December 3, 2021.

Larry M. Carpenter, Chair
Fish and Wildlife Commission

OTS-3323.1

NEW SECTION

WAC 220-660-490 Habitat recovery projects. Projects must satisfy the requirements outlined in RCW 77.55.480, to be processed as a streamlined habitat recovery project. Requirements outlined in that statute are incorporated herein by reference as if fully set forth herein. Copies of this statute, available to the public on request, are also available online at <https://app.leg.wa.gov/RCW/default.aspx?cite=77.55.480>.

[]

WSR 22-01-137

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed December 14, 2021, 11:40 a.m., effective January 14, 2022]

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

Purpose: This rule-making order amends chapter 16-306 WAC, Hemp program, by:

- Adding new WAC 16-306-055, which outlines the process for hemp processors to voluntarily register with the department, including specifying the information required on the registration application as well as the registration fee which is set at \$1,200 for a three-year registration; and
- Adding clarifying language to distinguish between hemp processors and hemp producers throughout the rest of the chapter and removed obsolete language regarding hemp producer licensing fees.

Citation of Rules Affected by this Order: New WAC 16-306-055; and amending WAC 16-306-010, 16-306-030, 16-306-040, 16-306-070, 16-306-080, 16-306-130, 16-306-140, 16-306-150, 16-306-170, 16-306-180, 16-306-190, 16-306-200, and 16-306-210.

Statutory Authority for Adoption: RCW 15.140.030, 15.140.060; and chapter 104, Laws of 2021 (ESB 5372).

Adopted under notice filed as WSR 21-22-098 on November 2, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 13, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 13, Repealed 0.

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

Date Adopted: December 14, 2021.

Derek I. Sandison
Director

OTS-3441.2

AMENDATORY SECTION (Amending WSR 20-03-174, filed 1/22/20, effective 2/22/20)

WAC 16-306-010 Purpose of chapter. Under the authority of chapter 15.140 RCW, the department adopts rules to establish a hemp program in accordance with the Agricultural Improvement Act of 2018. These rules include licensing requirements. Licensing is required for persons to produce hemp as provided under this chapter and chapter 15.140 RCW. Registration is voluntary for hemp processors that process hemp for commercial use or sale.

[Statutory Authority: RCW 15.140.030 and chapter 34.05 RCW. WSR 20-03-174, § 16-306-010, filed 1/22/20, effective 2/22/20.]

AMENDATORY SECTION (Amending WSR 20-03-174, filed 1/22/20, effective 2/22/20)

WAC 16-306-030 Definitions. "Acceptable hemp THC level" means the application of the measurement of uncertainty to the reported THC concentration level on a dry weight basis producing a distribution or range that includes 0.3 percent or less.

"Agricultural Improvement Act of 2018" means sections 7605, 10113, 10114, and 12619 of the Agricultural Improvement Act of 2018, P.L. 115-334.

"Applicant" means a person who submits an application for a hemp producer license to participate in the hemp program as required under this chapter.

"Contiguous land area" means a specific field with designated boundaries that is planted with hemp. Separate parcels connected only by thin or narrow plantings of hemp or separated by physical barriers such as ditches or roads are not considered contiguous for the purposes of this rule.

"Continuous licensing" means the hemp producer licensee renews their license annually prior to expiration, such that the licensee is continuously operating under a valid license.

"Corrective action plan" means a plan by the department for a licensed hemp producer to correct a negligent violation of, or noncompliance with, a hemp production plan, its terms, or any other regulation set forth under this chapter.

"Department" means the Washington state department of agriculture.

"Destroyed" means incinerated, tilled under the soil, made into compost, or rendered nonretrievable in another manner approved by the department.

"Disposal" means the material is collected for destruction by a person authorized to handle marijuana such as a Drug Enforcement Agency (DEA)-registered reverse distributor, or in another manner approved by the department.

"Hemp" means the plant *Cannabis sativa* L. and any part of the plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

"Hemp processor" means a person who takes possession of raw hemp material with the intent to modify, package, or sell a transitional or finished hemp product.

"Key participant" means a person or persons who have a direct or indirect financial interest in the entity producing hemp, such as an owner or partner in a partnership. A key participant also includes persons in a corporate entity at executive levels including chief executive officer, chief operating officer and chief financial officer. This does not include such management as farm, field, or shift managers.

"Legal description" means a method of locating or describing land in relation to the public land survey system such as section, township, and range.

"Licensee" means any person who holds a license from the department to grow or produce hemp in Washington state.

"Lot" refers to a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of cannabis throughout. In addition, "lot" is a common term in agriculture that refers to the batch or contiguous, homogeneous whole of a product being sold to a single buyer at a single time. Under the terms of this chapter, "lot" is to be defined by the producer in terms of farm location, field acreage, and variety.

"Measurement of uncertainty" means the parameter, associated with the result of a measurement that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to measurement. The measurement of uncertainty is similar to a margin of error. When the measurement of uncertainty, normally expressed as a +/- with a number, (e.g., +/- 0.05) is combined with the reported measurement, it produces a range and the actual measurement has a known probability of falling within that range.

"Process" means the processing, compounding, or conversion of hemp into hemp commodities or products.

"Produce" or "production" means the planting, cultivation, growing, or harvesting of hemp, including hemp seed.

"Registered land area" means a contiguous land area, including greenhouses and storage areas registered with the department as a condition of licensing, on which a licensee will conduct licensed activities. A registered land area may include more than one field, greenhouse, or storage area so long as those fields, greenhouses, or storage areas are at the same physical address.

"Storage area" means any area, building, plant or facility registered with the department in which a licensee plans to store hemp.

"THC concentration" means the percent of total delta-9 tetrahydrocannabinol, which is the conversion of delta-9 tetrahydrocannabinolic acid into THC.

[Statutory Authority: RCW 15.140.030 and chapter 34.05 RCW. WSR 20-03-174, § 16-306-030, filed 1/22/20, effective 2/22/20.]

AMENDATORY SECTION (Amending WSR 20-03-174, filed 1/22/20, effective 2/22/20)

WAC 16-306-040 Hemp producer license application. (1) An applicant for a hemp producer license must:

(a) Provide the information required for a hemp producer license on a form provided by the department that at a minimum includes the following:

(i) The name and business address of the applicant;

(ii) For corporate applicants, the type of business entity, such as corporation, LLC, or partnership, the state or country where the business is incorporated, and the name and address of the entity's agent in Washington state;

(iii) The legal description (section, township, and range) in which any proposed registered land area is located; and

(iv) Geospatial location coordinates of any proposed field, greenhouse, or other site where hemp is produced.

(b) Apply to the department for participation in the program between January 1st and March 31st. Applications may be received after March 31st but are subject to a late license fee;

(c) Pay fees as required under this chapter;

(d) Consent to entrance of their property by the department to inspect their registered land area with or without prior notice; and

(e) Report hemp crop acreage to USDA Farm Service Agency (FSA). A link to FSA information on how to report hemp crop acreage to FSA is available on the United States Department of Agriculture (USDA) hemp production program website.

(2) Licenses will expire on the last day of April following the year the license is issued.

(3) All applications must be accompanied by a criminal history report completed within (~~sixty~~) 60 days of the application date. If the application is for a business entity, a completed criminal history report must be provided for each key participant.

(a) The criminal history report must indicate the applicant has not been convicted of a state or federal felony related to a controlled substance for the (~~ten~~) 10 years prior to the date of when the report was completed. An exception applies to a person who was lawfully growing hemp under the 2014 Farm Bill before December 20, 2018, and whose conviction also occurred before that date.

(b) A person with a prior felony related to controlled substances within (~~ten~~) 10 years of applying for a producer license is not eligible for the license. Key participants of associations, corporations, and other business entities with a prior felony related to a controlled substance within (~~ten~~) 10 years of applying for a producer license are not eligible for the license under this felony drug conviction limitation. Business entities may still be eligible if the key participant with a prior felony is discharged.

(4) Any person who materially falsifies information in the application shall be ineligible to participate in the program.

[Statutory Authority: RCW 15.140.030 and chapter 34.05 RCW. WSR 20-03-174, § 16-306-040, filed 1/22/20, effective 2/22/20.]

NEW SECTION

WAC 16-306-055 Voluntary hemp processor registration. A hemp processor that processes hemp for commercial use or sale may register with the department if they are a registered business entity in Washington state or a foreign entity compliant with state laws.

(1) An applicant for hemp processor registration must provide the information required for a hemp processor registration on a form provided by the department that at a minimum includes the following:

(a) The name and business address of the registrant;

(b) For corporate registrants, the type of business entity, such as corporation, LLC, or partnership, the state or country where the business is incorporated, and the name and address of the entity's agent in Washington state;

(c) The physical address and the legal description (section, township, and range) of the locations where the hemp is processed or stored; and

(d) If applicable, the Washington state liquor and cannabis board I-502 license number.

(2) The fee for a processor registration is \$1,200.

(3) Processor registrations are valid for three years from date of issuance.

(4) Processors will be provided with a certificate of registration, that includes the business name, registered address, and expiration date.

[]

AMENDATORY SECTION (Amending WSR 20-03-174, filed 1/22/20, effective 2/22/20)

WAC 16-306-070 Hemp seed and propagules. (1) A hemp producer licensee must notify the department of the source of the hemp seed or clones solely for the purpose of maintaining a record of the sources of seeds and clones being used or having been used for hemp production in this state.

(2) The department is not responsible for obtaining seeds on behalf of the licensee.

(3) The department is not liable for and does not warrant that the seed is fit for any purpose.

[Statutory Authority: RCW 15.140.030 and chapter 34.05 RCW. WSR 20-03-174, § 16-306-070, filed 1/22/20, effective 2/22/20.]

AMENDATORY SECTION (Amending WSR 20-03-174, filed 1/22/20, effective 2/22/20)

WAC 16-306-080 Hemp inspection and sampling criteria. (1) All hemp producer licensees are subject to inspection by the department. The department shall inspect registered land areas under a producer license at least once during each license period. The department's inspections of the registered land area may include the following:

(a) Inspections for unauthorized plant growth;

(b) Inspections for hemp in any form on the registered land area;

(c) Inspections for rogue, volunteer, or off-type hemp plants;

(d) Audits of existing business data and reports related to hemp;

(e) Identifying compliance with required signage as specified in WAC 16-306-050; and

(f) Assessing compliance with other applicable licensing terms and conditions.

(2) The department shall take hemp samples from registered land areas licensed under a producer license within (~~(fifteen)~~) 15 days prior to the anticipated harvest of cannabis plants to test for THC concentration.

(3) The licensee or designated employee shall accompany the sampling agent throughout the sampling process.

(4) Registered land areas may be inspected by the department for a period of (~~(three hundred sixty five)~~) 365 days from the end of the license period to check for unauthorized plant growth such as, but not limited to, volunteer plants.

[Statutory Authority: RCW 15.140.030 and chapter 34.05 RCW. WSR 20-03-174, § 16-306-080, filed 1/22/20, effective 2/22/20.]

AMENDATORY SECTION (Amending WSR 20-03-174, filed 1/22/20, effective 2/22/20)

WAC 16-306-130 Transporting hemp. (1) Hemp produced under this chapter may not be transported from a registered land area as identified on the hemp producer license until THC certification by the department as specified in WAC 16-306-120 is obtained by the applicable licensee prior to transport. During transport of hemp off a producer's registered land area, including to a processor, the person in possession of the hemp during transport must have in his or her possession either:

(a) Copies of the hemp producer license and department-issued THC certification, as required by this chapter; or

(b) A bill of lading or other proper documentation demonstrating that the hemp was legally imported or is otherwise legally present in the state of Washington under applicable state and federal laws relating to hemp.

(2) Any hemp from a licensed Washington producer that is found in Washington state at any location off the premises of a registered land area of a licensee without department-issued THC certification as specified in WAC 16-306-120 is deemed to be contraband and subject to seizure by the Washington state patrol or any law enforcement officer. Any such contraband material is subject to destruction at the licensee's expense, and may result in suspension or revocation of the hemp producer license.

[Statutory Authority: RCW 15.140.030 and chapter 34.05 RCW. WSR 20-03-174, § 16-306-130, filed 1/22/20, effective 2/22/20.]

AMENDATORY SECTION (Amending WSR 20-03-174, filed 1/22/20, effective 2/22/20)

WAC 16-306-140 Hemp producer license fees. (1) ~~((Effective January 1, 2020, license fees are as follows:~~

Annual License Fee	License Modification Fee
\$750	\$200 ¹

~~(2) Effective June 1, 2020,~~) Hemp producer license fees are as follows:

Annual License Fee	License Modification Fee	Late License Fee (After March 31)
((1200)) <u>\$1,200</u>	((200+)) <u>\$200</u>	((200/2)) <u>\$200</u>

¹(1 See WAC 16-306-050(8).
²In addition to license fee.)

(2) The license modification fee is required when a licensee submits changes to the registered land area(s) as specified in WAC 16-306-050(8).

(3) The late license fee is added to any application submitted after March 31st and is in addition to the annual license fee.

[Statutory Authority: RCW 15.140.030 and chapter 34.05 RCW. WSR 20-03-174, § 16-306-140, filed 1/22/20, effective 2/22/20.]

AMENDATORY SECTION (Amending WSR 20-03-174, filed 1/22/20, effective 2/22/20)

WAC 16-306-150 Hemp inspection fees. (1) Fees for hemp inspections are paid by the hemp producer licensee.

(2) No renewal licenses will be issued until all fees due to the department are paid in full.

(3) Hemp inspection fees are:

(a) \$200.00 per inspection; plus

(b) Time and mileage per inspection. All time will be charged at a rate of (~~forty dollars~~) \$40 per hour. Mileage will be charged at the rate established by the Washington state office of financial management.

[Statutory Authority: RCW 15.140.030 and chapter 34.05 RCW. WSR 20-03-174, § 16-306-150, filed 1/22/20, effective 2/22/20.]

AMENDATORY SECTION (Amending WSR 20-03-174, filed 1/22/20, effective 2/22/20)

WAC 16-306-170 Hemp noncompliance for THC concentration. (1) (a) If a hemp producer licensee's hemp tests higher than the acceptable hemp THC level, the licensee may be subject to suspension or revocation of their license. The lot must be destroyed or disposed of in a manner approved by the department. If determined to be appropriate, the department may give notice of noncompliance to appropriate law enforcement agencies and the Washington state liquor and cannabis board, with a summary of the actions taken to destroy the noncompliant hemp.

(b) Producers must document the destruction or disposal of all noncompliant hemp. This documentation must be submitted to the department following the completion of the destruction or disposal process.

(2) If a licensee's hemp tests higher than 0.3 percent but less than 0.5 percent THC concentration, the licensee may either request a THC retest within (~~thirty~~) 30 days or resampling of the same lot, at their own expense.

(3) If at any time a licensee's hemp tests higher than the acceptable hemp THC level, the licensee may be subject to revocation or suspension of their license.

[Statutory Authority: RCW 15.140.030 and chapter 34.05 RCW. WSR 20-03-174, § 16-306-170, filed 1/22/20, effective 2/22/20.]

AMENDATORY SECTION (Amending WSR 20-03-174, filed 1/22/20, effective 2/22/20)

WAC 16-306-180 License denial, suspension or revocation, and right to adjudicative proceeding. Upon notice of intent by the department to an applicant to deny a hemp producer license, notice of intent to a licensee to suspend or revoke a license, or notice of intent for destruction of a hemp material or crop, a person may request an adjudicative proceeding under chapter 34.05 RCW, the Administrative Procedure Act, and chapter 16-08 WAC.

[Statutory Authority: RCW 15.140.030 and chapter 34.05 RCW. WSR 20-03-174, § 16-306-180, filed 1/22/20, effective 2/22/20.]

AMENDATORY SECTION (Amending WSR 20-03-174, filed 1/22/20, effective 2/22/20)

WAC 16-306-190 Suspension of hemp license for noncompliance with a child support order. (1) If the department receives notice under RCW 74.20A.320 that a hemp producer licensee is not in compliance with a child support order, the department will suspend or not renew the licensee's hemp license(s) until the department of social and health services provides the department with a release stating that the licensee is in compliance with the child support order. If a licensee's license is suspended, all hemp crops and products in the licensee's possession must remain on the licensee's registered land area until the suspension is lifted.

(2) The department may renew, reinstate, or otherwise extend the licensee's hemp license(s) upon receipt of a copy of the release specified in subsection (1) of this section.

[Statutory Authority: RCW 15.140.030 and chapter 34.05 RCW. WSR 20-03-174, § 16-306-190, filed 1/22/20, effective 2/22/20.]

AMENDATORY SECTION (Amending WSR 20-03-174, filed 1/22/20, effective 2/22/20)

WAC 16-306-200 Corrective action plan. (1) A hemp producer licensee may be subject to a corrective action plan established by the department to correct negligent violations of this chapter including, but not limited to:

(a) Failing to provide a legal description of land on which the producer produces hemp;

(b) Failing to obtain a license or other required authorization from the department; or

(c) Producing *Cannabis sativa* L. with delta-9 tetrahydrocannabinol concentration of more than 0.3 percent on a dry weight basis.

(2) A hemp producer licensee shall comply with a corrective action plan established by the department to correct the negligent violation, including:

(a) A reasonable date by which the hemp producer shall correct the negligent violation;

(b) A requirement that the hemp producer shall periodically report to the department, as applicable, on the compliance of the hemp producer with the regulations under this chapter for a period of at least two calendar years.

(3) Licensees may be subject to license suspension or revocation for violations of chapter 15.140 RCW or this chapter for failing to comply with a corrective action plan.

(4) A hemp producer licensee that negligently fails to comply with the regulations under this chapter three times in a five-year period shall be ineligible to produce hemp for a period of five years beginning on the date of the third violation.

(5) The department will not consider hemp producers as committing a negligent violation by producing plants exceeding the acceptable hemp THC level if they use reasonable efforts to grow hemp and the plant does not have a THC concentration of more than 0.5 percent on a dry weight basis. For sampling and testing violations, the department will consider the entire harvest from a distinct lot in determining whether a violation occurred. This means that if testing determines that each sample of five plants from distinct lots has a THC concentration exceeding the acceptable hemp THC level (or 0.5 percent if the hemp producer has made reasonable efforts to grow hemp), USDA considers this as one negligent violation. If an individual produces hemp without a license, this will be considered one violation.

(6) Negligent violations are not subject to criminal enforcement. However, the department will report the production of hemp without a license issued by the department to the United States Department of Agriculture (USDA) and the Attorney General.

(7) Hemp found to be produced in violation of this chapter such as hemp produced on a property not disclosed by the licensed producer, or without a license, would be subject to the same disposal or destruction as for hemp above the acceptable hemp THC level.

[Statutory Authority: RCW 15.140.030 and chapter 34.05 RCW. WSR 20-03-174, § 16-306-200, filed 1/22/20, effective 2/22/20.]

AMENDATORY SECTION (Amending WSR 20-03-174, filed 1/22/20, effective 2/22/20)

WAC 16-306-210 Culpable violations. If it is determined a violation was committed with a culpable mental state greater than negligence, meaning, acts made intentionally, knowingly or with recklessness, (~~WSDA~~) the department will report the violation to USDA, the attorney general, and the local law enforcement officer as applicable.

[Statutory Authority: RCW 15.140.030 and chapter 34.05 RCW. WSR 20-03-174, § 16-306-210, filed 1/22/20, effective 2/22/20.]

WSR 22-01-143
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed December 15, 2021, 9:31 a.m., effective January 15, 2022]

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

Purpose: The department is amending WAC 388-310-0800 WorkFirst—Support services, and 388-310-1800 WorkFirst—Post employment services, to expand access to support services for WorkFirst participants by allowing more supports for participation activities, increasing the annual support services limit to \$5000 per person per program year, and providing certain post-TANF transportation related supports for up to three months after exiting TANF.

Citation of Rules Affected by this Order: Amending WAC 388-310-0800 and 388-310-1800.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and 74.08A.250.

Adopted under notice filed as WSR 21-21-053 on October 15, 2021.

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

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

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

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

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

Date Adopted: December 15, 2021.

Katherine I. Vasquez
Rules Coordinator

SHS-4873.5

AMENDATORY SECTION (Amending WSR 15-18-024, filed 8/25/15, effective 9/25/15)

WAC 388-310-0800 WorkFirst—Support services. (1) Who can get support services?

People who can get support services include:

- (a) WorkFirst participants who receive a TANF cash grant;
- (b) Sanctioned WorkFirst participants during the required participation before the sanction is lifted or applicants who were terminated while in noncompliance sanction who are doing activities required to reopen cash assistance (WAC 388-310-1600);
- (c) TANF/SFA applicants as needed to meet the WorkFirst orientation requirements under WAC 388-400-0005(2) or 388-400-0010(3);

(d) Unmarried or pregnant minors who are income eligible to receive TANF and are:

(i) Living in a department approved living arrangement (WAC 388-486-0005) and are meeting the school requirements (WAC 388-486-0010); or

(ii) Are actively working with a social worker and need support services to remove the barriers that are preventing them from living in a department approved living arrangement and/or meeting the school requirements.

(e) American Indians who receive a TANF cash grant and have identified specific needs due to location or employment.

(f) Former WorkFirst participants who are working at least 15 hours per week or more, for up to three months after leaving TANF if they need employment-related transportation support services to meet a temporary need or emergency.

(2) Why do I receive support services?

Although not an entitlement, you may receive support services for the following reasons:

(a) To help you participate in work and WorkFirst activities that lead to independence.

(b) To help you to participate in job search, accept a job, keep working, advance in your job, and/or increase your wages.

(c) You can also get help in paying your child care expenses through the working connections child care assistance program. (Chapter ((170-290)) 110-15 WAC describes the rules for this child care assistance program.)

(3) What type of support services may I receive and what limits apply?

There is a limit of ((three)) five thousand dollars per person per program year (July 1st to June 30th) for WorkFirst support services you may receive. ((Some types of support services have dollar limit restrictions.))

The chart below shows the types of support services that are available for the different activities (as indicated by an "x") and the restrictions that apply.

Definitions:

- Work-related activities include looking for work or participating in workplace activities, such as community jobs or a work experience position.

- Safety-related activities include meeting significant or emergency family safety needs, such as dealing with family violence.

- Some support services are available if you need them for other required activities in your IRP.

Type of Support Service	Restrictions	• Work	•• Safety	••• Other
Reasonable accommodation for employment		x		
Clothing/uniforms		x		
Diapers		x	<u>x</u>	<u>x</u>
Haircut		x		
Lunch	Same rate as established by OFM for state employees	x		
Personal hygiene		x	<u>x</u>	<u>x</u>
Professional, trade, association, union and bonds		x		<u>x</u>
Relocation related to employment or safety (can include rent, housing, and deposits)		x	<u>x</u>	

Type of Support Service	Restrictions	• Work	•• Safety	••• Other
Short-term lodging and meals in connection with job interviews/tests	Same rate as established by OFM for state employees	x		
Tools/equipment		x	<u>x</u>	<u>x</u>
Car repair needed to restore car to operable condition		x	x	<u>x</u>
License/fees		x	x	<u>x</u>
Mileage reimbursement	Same rate as established by OFM for state employees	x	x	<u>x</u>
Transportation allotment, <u>including fuel support</u>		x	x	x
Counseling		x	x	x
Educational expenses		x	<u>x</u>	x
Medical exams (not covered by medicaid)		x	x	x
Public transportation		x	x	x
Testing-diagnostic		x	x	x

(4) **What are the other requirements to receive support services?**

Other restrictions on receiving support services are determined by the department or its agents. They will consider whether:

- (a) It is within available funds; and
- (b) It does not assist, promote, or deter religious activity; and
- (c) There is no other way to meet the cost.

(5) **What happens to my support services if I do not participate as required?**

The department will give you ten days notice, following the rules in WAC 388-310-1600, then discontinue your support services until you participate as required.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057. WSR 15-18-024, § 388-310-0800, filed 8/25/15, effective 9/25/15. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.62.030, 74.09.035, 74.08.090, 74.09.530, 41.05.021, 2011 1st sp.s. c 15, and 2013 2nd sp.s. c 10. WSR 14-10-046, § 388-310-0800, filed 4/30/14, effective 6/1/14. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.08A.250. WSR 13-02-048, § 388-310-0800, filed 12/24/12, effective 2/1/13. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, and 74.08.090. WSR 10-22-061, § 388-310-0800, filed 10/29/10, effective 12/1/10; WSR 09-06-053, § 388-310-0800, filed 2/26/09, effective 4/1/09. Statutory Authority: RCW 74.04.050 and 74.04.055. WSR 08-18-045, § 388-310-0800, filed 8/29/08, effective 10/1/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.260, chapter 74.08A RCW. WSR 06-10-035, § 388-310-0800, filed 4/27/06, effective 6/1/06. Statutory Authority: RCW 74.08.090, 74.04.050, 74.08A.340. WSR 05-02-014, § 388-310-0800, filed 12/27/04, effective 1/27/05. Statutory Authority: RCW 74.08.090, 74.04.050, 74.08A.340, and 2003 c 10 § 207. WSR 03-21-154, § 388-310-0800, filed 10/22/03, effective 10/27/03. Statutory Authority: RCW 74.08.090, 74.04.050, 78.08A.340, and [WSR] 99-14-043. WSR 02-11-130, § 388-310-0800, filed 5/21/02, effective 7/1/02; WSR 01-17-053, § 388-310-0800, filed 8/13/01, effective 9/1/01. Statutory Authority: RCW 74.08.090, 74.04.050, and 78.08A.340. WSR 00-13-106, § 388-310-0800, filed 6/21/00, effective 7/1/00. Statutory Authority: RCW 74.08.090 and 74.04.050. WSR 99-14-043, § 388-310-0800, filed

6/30/99, effective 7/31/99; WSR 97-20-129, § 388-310-0800, filed 10/1/97, effective 11/1/97.]

AMENDATORY SECTION (Amending WSR 20-22-020, filed 10/23/20, effective 11/23/20)

WAC 388-310-1800 WorkFirst—Post employment services. (1) What is the purpose of post employment services?

Post employment services help TANF or SFA parents who are working twenty hours or more a week keep and cope with their current jobs, look for better jobs, gain work skills for a career and become self sufficient.

(2) How do I obtain post employment services?

You may obtain post employment services by:

(a) Asking for a referral from the local community service office;

(b) Contacting community or technical colleges; or

(c) Contacting the employment security department.

(3) Who provides post employment services and what kind of services do they provide?

(a) The employment security department may help you increase your wages, increase your job skills or find a better job by providing you with:

(i) Employment and career counseling;

(ii) Labor market information;

(iii) Job leads for a better job (sometimes called job development);

(iv) On the job training;

(v) Help with finding a job that matches your interests, abilities and skills (sometimes called job matching); and

(vi) Help with finding a new job after job loss (sometimes called reemployment).

(b) Any Washington state technical and community college may approve a skill-training program for you that will help you advance up the career ladder. Their staff will talk to you, help you decide what training would work best for you and then help you get enrolled in these programs. The college may approve the following types of training for you at any certified institution:

(i) High school/GED;

(ii) Vocational education training;

(iii) Job skills training;

(iv) Adult basic education;

(v) English as a second language training; or

(vi) Preemployment training.

(4) What other services are available while you receive post employment services?

While you receive post employment services, you may qualify for:

(a) Working connections childcare, if you meet the criteria for this program under chapter 110-15 WAC.

(b) Other support services, such as help in paying for transportation or work expenses if you meet the criteria for this program (WAC 388-310-0800).

(c) Other types of assistance for low-income families such as basic food (~~(stamps)~~) or help with getting child support that is due to you and your children.

(5) Who is eligible for post employment services?

(a) If you are a current TANF or SFA recipient, you may qualify for post employment services if you are working (~~(twenty)~~) 20 hours or more a week, unless you are in sanction status.

(b) If you are a former TANF or SFA recipient, unless you are in sanction status, you may qualify for post-TANF employment transportation support services for up to three months after exiting TANF or SFA, if you are working 15 hours or more per week.

(6) What if I lose my job while I am receiving post employment services?

If you now receive TANF or SFA, help is available to you so that you may find another job and continue in your approved post employment services.

(a) The employment security department will provide you with re-employment services.

(b) At the same time, your case manager may approve support services and childcare for you.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and 74.08A.250. WSR 20-22-020, § 388-310-1800, filed 10/23/20, effective 11/23/20. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and 2011 1st sp.s. c 15. WSR 13-18-004, § 388-310-1800, filed 8/22/13, effective 10/1/13. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, and 74.08.090. WSR 10-22-061, § 388-310-1800, filed 10/29/10, effective 12/1/10. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 34.05.310 (4)(c). WSR 08-15-136, § 388-310-1800, filed 7/22/08, effective 8/22/08. Statutory Authority: RCW 74.08.090, 74.04.050, 74.08A.340, and 2003 c 10 § 207. WSR 03-21-154, § 388-310-1800, filed 10/22/03, effective 10/27/03. Statutory Authority: RCW 74.08A.010(4), 74.08A.340, 74.08.090, 74.04.050. WSR 02-15-067, § 388-310-1800, filed 7/11/02, effective 8/1/02. Statutory Authority: RCW 74.08A.340(2), 45 C.F.R. 260.31, RCW 74.08.090, and chapter 74.04 RCW. WSR 00-16-055, § 388-310-1800, filed 7/26/00, effective 8/1/00. Statutory Authority: RCW 74.08.090 and 74.04.050. WSR 99-10-027, § 388-310-1800, filed 4/28/99, effective 5/29/99; WSR 97-20-129, § 388-310-1800, filed 10/1/97, effective 11/1/97.]

WSR 22-01-153
PERMANENT RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed December 15, 2021, 1:29 p.m., effective July 1, 2022]

Effective Date of Rule: July 1, 2022.

Purpose: To extend the permanent effective date from January 1, 2022, to July 1, 2022, in order to allow an appropriate amount of time for the Washington state public employment relations commission to finalize rule making and clarify bargaining unit descriptions, higher education employers and unions to bargain changes for represented employees, and higher education employers to configure their payroll systems.

Citation of Rules Affected by this Order: New WAC 357-04-046 and 357-19-376; and amending WAC 357-01-210, 357-04-015, 357-04-020, 357-04-025, 357-04-030, 357-04-035, 357-04-045, 357-04-055, 357-19-360, 357-19-365, 357-19-370, 357-19-373, 357-19-377, 357-19-385, 357-19-388, 357-19-400, 357-19-420, 357-19-425, 357-19-430, 357-19-435, 357-19-440, and 357-19-450.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Other Authority: RCW 41.06.070.

Adopted under notice filed as WSR 21-10-018 on April 23, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 2, Amended 22, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 22, Repealed 0.

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 22, Repealed 0.

Date Adopted: December 15, 2021.

Roselyn Marcus
Assistant Director of Legal
and Legislative Affairs

WSR 22-01-175

PERMANENT RULES

STATE BOARD OF HEALTH

[Filed December 17, 2021, 2:22 p.m., effective January 1, 2023]

Effective Date of Rule: January 1, 2023.

Purpose: This filing delays the effective date of revisions to chapter 246-101 WAC, Notifiable conditions, due to technical challenges that prevent rule implementation from being completed by the original effective date of January 1, 2022.

The purpose of the chapter is to provide critical information to public health authorities to aid them in protecting and improving public health through prevention and control of infectious and noninfectious conditions as required under law. Public health authorities use the information gathered under this chapter to take appropriate action, including, but not limited to: Treating ill people; providing preventive therapies for individuals who came into contact with infectious agents; investigating and halting outbreaks; removing harmful health exposures from the environment; assessing broader health-related patterns, including historical trends, geographic clustering, and risk factors; and redirecting program activities and developing policies based on broader health-related patterns. The chapter establishes notification requirements and standards for conditions that pose a threat to public health consistent with this purpose and the authorizing statutes it is adopted under.

Extending the rule revision's effective date allows sufficient time for the Washington state department of health to update its internal processes and data systems to come into compliance with the rule, as well as work with regulated entities to support their compliance.

Action taken by the state board of health on November 10, 2021, extends the effective date of the revised rules to January 1, 2023.

Adopted under notice filed as WSR 21-11-040 on May 12, 2021.

A final cost-benefit analysis is available by contacting Samantha Pskowski, P.O. Box 47990, Olympia, WA 98540-7990 [98504-7990], phone 360-789-2358, TTY 711, email notifiableconditions@sboh.wa.gov, website <https://sboh.wa.gov/Rulemaking/CurrentRulesandActivity/NotifiableCondition>.

Date Adopted: November 10, 2021.

Michelle A. Davis
State Board of Health
Executive Director
Kristin Peterson, JD
Deputy Secretary
Policy and Planning

WSR 22-01-182

PERMANENT RULES

GAMBLING COMMISSION

[Filed December 20, 2021, 10:20 a.m., effective January 20, 2022]

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

Purpose: The gambling commission received a petition requesting that operators running house-banked jackpots be allowed to keep required jackpot money in a separate, off-site account rather than on premises. This change would address operator and player safety concerns. These rule changes address card room licensees keeping funds in a separate, off-site account rather than on premises, and also address maintaining funds and paying out prizes.

Citation of Rules Affected by this Order: New WAC 230-15-673 Paying out house jackpot prizes and 230-15-674 Keeping funds to pay house jackpot prizes; and amending WAC 230-15-050 Minimum cash on hand requirements.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 21-21-092 on October 19, 2021.

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

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

Number of Sections Adopted using Negotiated Rule Making: New 2, Amended 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 7, 2021.

Ashlie Laydon
Rules Coordinator

OTS-3390.1

AMENDATORY SECTION (Amending WSR 09-03-024, filed 1/9/09, effective 2/9/09)

WAC 230-15-050 Minimum cash on hand requirements. (1) Card game licensees must have sufficient cash on hand to redeem all chips issued for play and pay out all prizes.

(2) Within three hours of opening for the business day, at a time included in the internal controls, house-banked card game licensees must have at least the following minimum amount of cash on premises in their cage, safe, and vault combined:

(a) One thousand dollars for each house-banked table on the gambling floor; plus

(b) The amount of the largest single prize available excluding progressive jackpot, player-supported jackpot, and house jackpot pri-

zes ((when WAC rules require a deposit into a separate bank account (for example, player-supported jackpots and progressive jackpots))).

For example: If a house-banked card room has ((fifteen)) 15 house-banked tables and a largest single prize of ((twenty-three thousand dollars)) \$23,000, before opening, the cage must have at least ((thirty-eight thousand dollars)) \$38,000 on hand: 15 tables x \$1,000 = \$15,000 + largest single prize of \$23,000 = \$38,000.

(3) Except for the restrictions on player-supported jackpot pay outs in WAC 230-15-405 and progressive jackpot pay outs in WAC 230-15-690, licensees may pay prizes by check if sufficient funds are available on deposit.

(4) Failure to keep funds to cash in chips, pay prizes, or redeem gambling related checks is prima facie evidence of fraud. Meeting the minimum cage cash amount does not relieve the licensee from the requirement to have sufficient funds available to redeem all chips and pay out all prizes.

[Statutory Authority: RCW 9.46.070. WSR 09-03-024 (Order 640), § 230-15-050, filed 1/9/09, effective 2/9/09; WSR 07-23-081 (Order 620), § 230-15-050, filed 11/20/07, effective 1/1/08; WSR 07-09-033 (Order 608), § 230-15-050, filed 4/10/07, effective 1/1/08.]

NEW SECTION

WAC 230-15-673 Paying out house jackpot prizes. (1) House-banked card room licensees must immediately pay out verified prizes of \$5,000 or less.

(2) For verified prizes over \$5,000, licensees must immediately pay out a minimum of \$5,000 and pay the remaining balance within 24 hours by check. The player may request that the licensee pay up to the entire prize balance by check. Licensees must then issue a check for the entire prize balance within 24 hours.

[]

NEW SECTION

WAC 230-15-674 Keeping funds to pay house jackpot prizes. House-banked card room licensees must maintain at least the amount of the single largest house jackpot prize offered in a bank, mutual savings bank, or credit union located in Washington. Licensees must maintain a monthly record showing the daily amount of each house jackpot prize offered.

[]

WSR 22-01-183

PERMANENT RULES

GAMBLING COMMISSION

[Filed December 20, 2021, 10:58 a.m., effective January 20, 2022]

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

Purpose: The gambling commission recently adopted and/or amended rules for sports wagering and electronic raffles. As part of this rule making, WAC 230-03-210 Applying for a gambling service supplier license, needed to be amended to include performing the testing and certification of both sports wagering systems and gambling equipment as required by Title 230 WAC as services requiring licensure.

Citation of Rules Affected by this Order: Amending WAC 230-03-210 Applying for a gambling service supplier license.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 21-21-093 on October 19, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 7, 2021.

Ashlie Laydon
Rules Coordinator

OTS-3394.1

AMENDATORY SECTION (Amending WSR 19-15-060, filed 7/15/19, effective 8/15/19)

WAC 230-03-210 Applying for a gambling service supplier license.

(1) You must apply for a gambling service supplier license if you perform any of the following gambling-related services for compensation:

(a) Consulting or advisory services regarding gambling activities; or

(b) Gambling management services; or

(c) Financing for more than one licensee for purchases or leases of gambling equipment or financing for providing infrastructure or facilities, or equipment that supports gambling operations:

(i) Once you have financed more than one licensee, you must be a licensed gambling service supplier until all loans with licensees or previous licensees are paid; or

(ii) Once you have been a licensed gambling service supplier, you must be licensed as a gambling service supplier again before financing purchases or leases for any licensee; or

- (d) Acting as a lending agent, or loan servicer, or placement agent; or
- (e) Providing the assembly of components for gambling equipment under a contract with a licensed manufacturer or entering into an on-going financial arrangement for gambling related software with a licensed manufacturer; or
- (f) Installing, integrating, maintaining, or servicing digital surveillance systems that allow direct access to the operating system; or
- (g) Training individuals to conduct authorized gambling activities; or
- (h) Providing any other service or activity where influence may be exerted over any gambling activity licensed by the commission; or
- (i) Performing the testing and certification of tribal lottery systems and sports wagering systems in meeting requirements specified in ~~((the))~~ tribal-state compact; or
- (j) Performing the testing and certification of gambling equipment as required by Title 230 WAC; or
- (k) Providing nonmanagement-related recordkeeping or storage services for punch board and pull-tab operators, when the combined total gross billings from such services exceed ~~((thirty thousand dollars))~~ \$30,000 during any permit period or license year.
- (2) You do not need a gambling service supplier license if you are:
- (a) A bank, mutual savings bank, or credit union regulated by the department of financial institutions or any federally regulated commercial lending institution; or
- (b) A university or college regulated by the Washington state board of community and technical colleges and the higher education coordinating board that trains individuals to conduct authorized gambling activities; or
- (c) An attorney, accountant, or governmental affairs consultant whose primary business is providing professional services that are unrelated to the management or operation of gambling activities; or
- (d) A person who only provides nonmanagement-related recordkeeping or storage services for punch board and pull-tab operators, when the combined total gross billings from such services do not exceed ~~((thirty thousand dollars))~~ \$30,000 during any permit period; or
- (e) A person who provides names, images, artwork or associated copyrights, or trademarks, or patent use, or other features that do not affect the results or outcome of the game, for use in gambling equipment; or
- (f) Regulated lending institutions; or
- (g) A licensed distributor who provides any of the following services for compensation:
- (i) Training to licensed and potential punch board/pull-tab operators; or
- (ii) Providing assistance to gambling license applicants or licensees seeking gambling license renewal.

[Statutory Authority: RCW 9.46.070. WSR 19-15-060, § 230-03-210, filed 7/15/19, effective 8/15/19; WSR 10-19-052 (Order 673), § 230-03-210, filed 9/14/10, effective 1/1/11; WSR 07-21-116 (Order 617), § 230-03-210, filed 10/22/07, effective 1/1/08; WSR 06-24-030 (Order 605), § 230-03-210, filed 11/29/06, effective 1/1/08; WSR 06-07-157 (Order 457), § 230-03-210, filed 3/22/06, effective 1/1/08.]

WSR 22-01-185

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed December 20, 2021, 12:06 p.m., effective January 1, 2022]

Effective Date of Rule: January 1, 2022.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The updated forest land values in WAC 458-40-660 are required by RCW 84.33.140 to be updated on or before December 31 for use the following year. RCW 84.33.091 requires the stumpage values in WAC 458-40-660 to be updated on or before December 31 for use the following January 1 through June 30.

Purpose: WAC 458-40-540 contains the forest land values used by county assessors for property tax purposes; this rule is being revised to provide the forest land values to be used during 2022. WAC 458-40-660 contains the stumpage values used by timber harvesters to calculate the timber excise tax; this rule is being revised to provide updated stumpage values for the period from January 1 through June 30, 2022.

Citation of Rules Affected by this Order: Amending WAC 458-40-540 Forest land values—2021, and 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments.

Statutory Authority for Adoption: RCW 82.01.060(2) and 84.33.096.

Other Authority: RCW 84.33.091, 84.33.140.

Adopted under notice filed as WSR 21-22-103 on November 2, 2021.

A final cost-benefit analysis is available by contacting Jennifer Arnold, P.O. Box 47453, Olympia, WA 98504-7453, phone 360-534-1574, fax 360-534-1606, TTY 1-800-451-7985, email JenniferA@dor.wa.gov, website dor.wa.gov.

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

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

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

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

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

Date Adopted: December 20, 2021.

Atif Aziz
Rules Coordinator

OTS-3466.1

AMENDATORY SECTION (Amending WSR 21-02-020, filed 12/28/20, effective 1/1/21)

WAC 458-40-540 Forest land values—((2021)) 2022. The forest land values, per acre, for each grade of forest land for the ((2021)) 2022 assessment year are determined to be as follows:

LAND GRADE	OPERABILITY CLASS	((2021)) <u>2022</u> VALUES PER ACRE
1	1	\$218
	2	216
	3	202
	4	148
2	1	186
	2	179
	3	172
	4	122
3	1	144
	2	140
	3	138
	4	106
4	1	112
	2	107
	3	106
	4	81
5	1	81
	2	71
	3	70
	4	50
6	1	41
	2	39
	3	39
	4	37
7	1	18
	2	18
	3	17
	4	17
8	1	1

[Statutory Authority: RCW 82.01.060(2), 84.33.096, 84.33.091, and 84.33.140. WSR 21-02-020, § 458-40-540, filed 12/28/20, effective 1/1/21. Statutory Authority: RCW 82.01.060(2) and 84.33.096. WSR 20-02-053, § 458-40-540, filed 12/23/19, effective 1/1/20; WSR 19-02-069, § 458-40-540, filed 12/28/18, effective 1/1/19. Statutory Authority: RCW 82.01.060(2), 82.32.300, and 84.33.096. WSR 18-02-058, § 458-40-540, filed 12/29/17, effective 1/1/18; WSR 17-02-003, § 458-40-540, filed 12/22/16, effective 1/1/17; WSR 16-01-069, § 458-40-540, filed 12/14/15, effective 1/1/16. Statutory Authority: RCW 82.01.060(2), 82.32.300, 84.33.096, 84.33.091, and 84.33.140. WSR 15-01-095, § 458-40-540, filed 12/17/14, effective 1/1/15. Statutory Authority: RCW 82.01.060(2), 82.32.300, 84.33.096, and 84.33.091. WSR 14-01-097, § 458-40-540, filed 12/17/13, effective 1/1/14; WSR 13-02-034, § 458-40-540, filed 12/21/12, effective 1/1/13. Statutory Authority: RCW 82.01.060(2), 82.32.300, 84.33.096, 84.33.091 and 84.33.140. WSR 12-02-040, § 458-40-540, filed 12/29/11, effective 1/1/12. Statutory Authority: RCW 82.01.060(2), 82.32.300, 84.33.096, and 84.33.091. WSR 11-02-019, § 458-40-540, filed 12/29/10, effective 1/1/11; WSR 10-02-031, § 458-40-540, filed 12/29/09, effective 1/1/10;

WSR 09-02-044, § 458-40-540, filed 12/31/08, effective 1/1/09; WSR 08-02-063, § 458-40-540, filed 12/28/07, effective 1/1/08; WSR 07-02-038, § 458-40-540, filed 12/26/06, effective 1/1/07. Statutory Authority: RCW 82.01.060(2), 82.32.300, 84.33.096, and 84.33.140. WSR 06-02-006, § 458-40-540, filed 12/22/05, effective 1/1/06; WSR 05-02-037, § 458-40-540, filed 12/30/04, effective 1/1/05. Statutory Authority: RCW 82.32.300 and 84.33.140. WSR 04-02-018, § 458-40-540, filed 12/30/03, effective 1/1/04. Statutory Authority: RCW 82.01.060(2), 82.32.300, 84.33.096, 84.33.091, and 84.33.140. WSR 03-02-004, § 458-40-540, filed 12/19/02, effective 1/1/03. Statutory Authority: RCW 82.32.300, 84.33.096, 84.33.091 and 84.33.120. WSR 02-02-033, § 458-40-540, filed 12/24/01, effective 1/1/02. Statutory Authority: RCW 82.32.300, 84.33.096 and 84.33.120. WSR 01-02-018, § 458-40-540, filed 12/21/00, effective 1/1/01; WSR 00-02-018, § 458-40-540, filed 12/27/99, effective 1/1/00; WSR 99-02-030, § 458-40-540, filed 12/30/98, effective 1/1/99; WSR 98-02-014, § 458-40-540, filed 12/30/97, effective 1/1/98; WSR 97-07-041, § 458-40-540, filed 3/14/97, effective 4/14/97; WSR 96-02-055, § 458-40-540, filed 12/29/95, effective 1/1/96. Statutory Authority: RCW 82.32.300 and 84.33.120. WSR 95-02-039, § 458-40-540, filed 12/30/94, effective 1/1/95. Statutory Authority: RCW 82.32.300. WSR 94-02-046, § 458-40-540, filed 12/30/93, effective 1/1/94. Statutory Authority: RCW 84.33.120. WSR 93-02-024, § 458-40-540, filed 12/31/92, effective 1/1/93; WSR 91-24-026, § 458-40-540, filed 11/26/91, effective 1/1/92. Statutory Authority: RCW 84.33.120 and 84.08.010. WSR 90-24-012, § 458-40-540, filed 11/27/90, effective 12/28/90; WSR 89-23-095, § 458-40-540, filed 11/21/89, effective 12/22/89. Statutory Authority: RCW 84.33.120 and 84.33.130. WSR 88-23-055 (Order FT-88-3), § 458-40-540, filed 11/15/88; WSR 87-22-068 (Order FT-87-3), § 458-40-540, filed 11/4/87. Statutory Authority: Chapter 84.33 RCW. WSR 87-02-023 (Order 86-4), § 458-40-540, filed 12/31/86.]

AMENDATORY SECTION (Amending WSR 21-13-100, filed 6/18/21, effective 7/1/21)

WAC 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments. (1) **Introduction.** This rule provides stumpage value tables and stumpage value adjustments used to calculate the amount of a harvester's timber excise tax.

(2) **Stumpage value tables.** The following stumpage value tables are used to calculate the taxable value of stumpage harvested from ~~((July 1 through December 31, 2021))~~ January 1 through June 30, 2022:

Washington State Department of Revenue

WESTERN WASHINGTON STUMPAGE VALUE TABLE

~~((July 1 through December 31, 2021))~~

January 1 through June 30, 2022

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾
Starting January 1, 2019, there are no Haul Zone adjustments.

Species Name	Species Code	SVA (Stumpage Value Area)	Stumpage Values
Douglas-fir ⁽²⁾	DF	1	((422)) <u>\$455</u>
		2	((520)) <u>556</u>
		3	((520)) <u>584</u>
		4	((573)) <u>603</u>
		5	((539)) <u>554</u>
		9	((408)) <u>441</u>
Western Hemlock and Other Conifer ⁽³⁾	WH	1	((282)) <u>314</u>
		2	((395)) <u>386</u>
		3	((419)) <u>367</u>
		4	((348)) <u>404</u>
		5	((362)) <u>373</u>
		9	((268)) <u>300</u>
Western Redcedar ⁽⁴⁾	RC	1-5	((1153)) <u>1515</u>
		9	((1139)) <u>1501</u>
Ponderosa Pine ⁽⁵⁾	PP	1-5	((163)) <u>171</u>
		9	((149)) <u>157</u>
Red Alder	RA	1-5	((363)) <u>464</u>
		9	((349)) <u>450</u>
Black Cottonwood	BC	1-5	((19)) <u>39</u>
		9	((5)) <u>25</u>
Other Hardwood	OH	1-5	((123)) <u>198</u>
		9	((109)) <u>184</u>
Douglas-fir Poles & Piles	DFL	1-5	((811)) <u>841</u>
		9	((797)) <u>827</u>
Western Redcedar Poles	RCL	1-5	((1724)) <u>1838</u>
		9	((1710)) <u>1824</u>

Species Name	Species Code	SVA (Stumpage Value Area)	Stumpage Values
Chipwood ⁽⁶⁾	CHW	1-5	1
		9	1
RC Shake & Shingle Blocks ⁽⁷⁾	RCS	1-9	((301)) <u>322</u>
Posts ⁽⁸⁾	LPP	1-9	0.35
DF Christmas Trees ⁽⁹⁾	DFX	1-9	0.25
Other Christmas Trees ⁽⁹⁾	TFX	1-9	0.50

- (1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- (2) Includes Western Larch.
- (3) Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed on this page.
- (4) Includes Alaska-Cedar.
- (5) Includes all Pines in SVA 1-5 & 9.
- (6) Stumpage value per ton.
- (7) Stumpage value per cord.
- (8) Includes Lodgepole posts and other posts, Stumpage value per 8 lineal feet or portion thereof.
- (9) Stumpage value per lineal foot.

Washington State Department of Revenue
EASTERN WASHINGTON STUMPAGE VALUE TABLE
 ((July 1 through December 31, 2021))
January 1 through June 30, 2022

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾
 Starting January 1, 2019, there are no Haul Zone adjustments.

Species Name	Species Code	SVA (Stumpage Value Area)	Stumpage Values
Douglas-fir ⁽²⁾	DF	6	((299)) <u>\$379</u>
		7	((313)) <u>393</u>
Western Hemlock and Other Conifer ⁽³⁾	WH	6	((231)) <u>266</u>
		7	((245)) <u>280</u>
Western Redcedar ⁽⁴⁾	RC	6	((945)) <u>1338</u>
		7	((959)) <u>1352</u>
Ponderosa Pine ⁽⁵⁾	PP	6	((149)) <u>157</u>
		7	((163)) <u>171</u>
Other Hardwood	OH	6	1
		7	9
Western Redcedar Poles	RCL	6	((1594)) <u>1764</u>
		7	((1608)) <u>1778</u>

Species Name	Species Code	SVA (Stumpage Value Area)	Stumpage Values
Chipwood ⁽⁶⁾	CHW	6	1
		7	1
Small Logs ⁽⁶⁾	SML	6	((20)) <u>23</u>
		7	((22)) <u>25</u>
RC Shake & Shingle Blocks ⁽⁷⁾	RCS	6-7	((30+)) <u>322</u>
Posts ⁽⁸⁾	LPP	6-7	0.35
DF Christmas Trees ⁽⁹⁾	DFX	6-7	0.25
Other Christmas Trees ⁽⁹⁾	TFX	6-7	0.50

- (1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- (2) Includes Western Larch.
- (3) Includes all Hemlock, Spruce and true Fir species, and Lodgepole Pine in SVA 6-7, or any other conifer not listed on this table.
- (4) Includes Alaska-Cedar.
- (5) Includes Western White Pine in SVA 6-7.
- (6) Stumpage value per ton.
- (7) Stumpage value per cord.
- (8) Includes Lodgepole posts and other posts, Stumpage value per 8 lineal feet or portion thereof.
- (9) Stumpage value per lineal foot.

(3) **Harvest value adjustments.** The stumpage values in subsection (2) of this rule for the designated stumpage value areas are adjusted for various logging and harvest conditions, subject to the following:

(a) No harvest adjustment is allowed for special forest products, chipwood, or small logs.

(b) Conifer and hardwood stumpage value rates cannot be adjusted below one dollar per MBF.

(c) Except for the timber yarded by helicopter, a single logging condition adjustment applies to the entire harvest unit. The taxpayer must use the logging condition adjustment class that applies to a majority (more than 50%) of the acreage in that harvest unit. If the harvest unit is reported over more than one quarter, all quarterly returns for that harvest unit must report the same logging condition adjustment. The helicopter adjustment applies only to the timber volume from the harvest unit that is yarded from stump to landing by helicopter.

(d) The volume per acre adjustment is a single adjustment class for all quarterly returns reporting a harvest unit. A harvest unit is established by the harvester prior to harvesting. The volume per acre is determined by taking the volume logged from the unit excluding the volume reported as chipwood or small logs and dividing by the total acres logged. Total acres logged does not include leave tree areas (RMZ, UMZ, forested wetlands, etc.,) over ~~((2))~~ two acres in size.

(e) A domestic market adjustment applies to timber which meet the following criteria:

(i) **Public timber** - Harvest of timber not sold by a competitive bidding process that is prohibited under the authority of state or federal law from foreign export may be eligible for the domestic mar-

ket adjustment. The adjustment may be applied only to those species of timber that must be processed domestically. According to type of sale, the adjustment may be applied to the following species:

Federal Timber Sales: All species except Alaska-cedar. (Stat. Ref. - 36 C.F.R. 223.10)

State, and Other Nonfederal, Public Timber Sales: Western Redcedar only. (Stat. Ref. - 50 U.S.C. appendix 2406.1)

(ii) **Private timber** - Harvest of private timber that is legally restricted from foreign export, under the authority of The Forest Resources Conservation and Shortage Relief Act (Public Law 101-382), (16 U.S.C. Sec. 620 et seq.); the Export Administration Act of 1979 (50 U.S.C. App. 2406(i)); a Cooperative Sustained Yield Unit Agreement made pursuant to the act of March 29, 1944 (16 U.S.C. Sec. 583-583i); or Washington Administrative Code (WAC 240-15-015(2)) is also eligible for the Domestic Market Adjustment.

The following harvest adjustment tables apply from (~~July 1 through December 31, 2021~~) January 1 through June 30, 2022:

TABLE 9—Harvest Adjustment Table
Stumpage Value Areas 1, 2, 3, 4, 5, and 9
 (~~July 1 through December 31, 2021~~)
January 1 through June 30, 2022

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of 30 thousand board feet or more per acre.	\$0.00
Class 2	Harvest of 10 thousand board feet to but not including 30 thousand board feet per acre.	-\$15.00
Class 3	Harvest of less than 10 thousand board feet per acre.	-\$35.00
II. Logging conditions		
Class 1	Ground based logging a majority of the unit using tracked or wheeled equipment or draft animals.	\$0.00
Class 2	Logging a majority of the unit: Using an overhead system of winch-driven cables and/or logging on slopes greater than 45% using tracked or wheeled equipment supported by winch-driven cables.	-\$85.00
Class 3	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-\$200.00
III. Remote island adjustment:		
	For timber harvested from a remote island	-\$50.00
IV. Thinning		
Class 1	A limited removal of timber described in WAC 458-40-610 (28)	-\$100.00

TABLE 10—Harvest Adjustment Table
Stumpage Value Areas 6 and 7
 (~~July 1 through December 31, 2021~~)
January 1 through June 30, 2022

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of more than 8 thousand board feet per acre.	\$0.00

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
Class 2	Harvest of 8 thousand board feet per acre and less.	-\$8.00
II. Logging conditions		
Class 1	The majority of the harvest unit has less than 40% slope. No significant rock outcrops or swamp barriers.	\$0.00
Class 2	The majority of the harvest unit has slopes between 40% and 60%. Some rock outcrops or swamp barriers.	-\$50.00
Class 3	The majority of the harvest unit has rough, broken ground with slopes over 60%. Numerous rock outcrops and bluffs.	-\$85.00
Class 4	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-\$200.00
Note:	A Class 2 adjustment may be used for slopes less than 40% when cable logging is required by a duly promulgated forest practice regulation. Written documentation of this requirement must be provided by the taxpayer to the department of revenue.	
III. Remote island adjustment:		
	For timber harvested from a remote island	-\$50.00

TABLE 11—Domestic Market Adjustment

Class	Area Adjustment Applies	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
	SVAs 1 through 5 only:	\$0.00
Note:	This adjustment only applies to published MBF sawlog values.	

(4) **Damaged timber.** Timber harvesters planning to remove timber from areas having damaged timber may apply to the department of revenue for an adjustment in stumpage values. The application must contain a map with the legal descriptions of the area, an accurate estimate of the volume of damaged timber to be removed, a description of the damage sustained by the timber with an evaluation of the extent to which the stumpage values have been materially reduced from the values shown in the applicable tables, and a list of estimated additional costs to be incurred resulting from the removal of the damaged timber. The application must be received and approved by the department of revenue before the harvest commences. Upon receipt of an application, the department of revenue will determine the amount of adjustment to be applied against the stumpage values. Timber that has been damaged due to sudden and unforeseen causes may qualify.

(a) Sudden and unforeseen causes of damage that qualify for consideration of an adjustment include:

(i) Causes listed in RCW 84.33.091; fire, blow down, ice storm, flood.

(ii) Others not listed; volcanic activity, earthquake.

(b) Causes that do not qualify for adjustment include:

(i) Animal damage, root rot, mistletoe, prior logging, insect damage, normal decay from fungi, and pathogen caused diseases; and

(ii) Any damage that can be accounted for in the accepted normal scaling rules through volume or grade reductions.

(c) The department of revenue will not grant adjustments for applications involving timber that has already been harvested but will consider any remaining undisturbed damaged timber scheduled for removal if it is properly identified.

(d) The department of revenue will notify the harvester in writing of approval or denial. Instructions will be included for taking any adjustment amounts approved.

(5) **Forest-derived biomass**, has a \$0/ton stumpage value.

[Statutory Authority: RCW 82.01.060(2) and 84.33.096. WSR 21-13-100, § 458-40-660, filed 6/18/21, effective 7/1/21. Statutory Authority: RCW 82.01.060(2), 84.33.096, 84.33.091, and 84.33.140. WSR 21-02-020, § 458-40-660, filed 12/28/20, effective 1/1/21. Statutory Authority: RCW 82.01.060(2) and 84.33.096. WSR 20-14-067, § 458-40-660, filed 6/26/20, effective 7/1/20; WSR 20-02-053, § 458-40-660, filed 12/23/19, effective 1/1/20; WSR 19-14-013, § 458-40-660, filed 6/21/19, effective 7/1/19; WSR 19-02-069, § 458-40-660, filed 12/28/18, effective 1/1/19. Statutory Authority: RCW 82.01.060(2), 82.32.300, and 84.33.096. WSR 18-14-023, § 458-40-660, filed 6/26/18, effective 7/1/18; WSR 18-02-058, § 458-40-660, filed 12/29/17, effective 1/1/18; WSR 17-14-020, § 458-40-660, filed 6/23/17, effective 7/1/17; WSR 17-02-003, § 458-40-660, filed 12/22/16, effective 1/1/17. Statutory Authority: RCW 82.01.060(2), 82.32.300, 84.33.096, 84.33.091, and 84.33.140. WSR 16-14-035, § 458-40-660, filed 6/28/16, effective 7/1/16. Statutory Authority: RCW 82.01.060(2), 82.32.300, and 84.33.096. WSR 16-01-069, § 458-40-660, filed 12/14/15, effective 1/1/16. Statutory Authority: RCW 82.01.060(2), 82.32.300, 84.33.096, 84.33.091, and 84.33.140. WSR 15-14-019, § 458-40-660, filed 6/22/15, effective 7/1/15; WSR 15-01-095, § 458-40-660, filed 12/17/14, effective 1/1/15. Statutory Authority: RCW 82.01.060(2), 82.32.300, 84.33.096 and 84.33.091. WSR 14-14-079, § 458-40-660, filed 6/27/14, effective 7/1/14; WSR 14-01-097, § 458-40-660, filed 12/17/13, effective 1/1/14; WSR 13-14-056, § 458-40-660, filed 6/28/13, effective 7/1/13; WSR 13-02-034, § 458-40-660, filed 12/21/12, effective 1/1/13; WSR 12-14-065, § 458-40-660, filed 6/29/12, effective 7/1/12. Statutory Authority: RCW 82.01.060(2), 82.32.300, 84.33.096, 84.33.091 and 84.33.140. WSR 12-02-040, § 458-40-660, filed 12/29/11, effective 1/1/12. Statutory Authority: RCW 82.01.060(2), 82.32.300, 84.33.096 and 84.33.091. WSR 11-14-051, § 458-40-660, filed 6/29/11, effective 7/1/11; WSR 11-02-014, § 458-40-660, filed 12/29/10, effective 1/1/11; WSR 10-14-095, § 458-40-660, filed 7/6/10, effective 7/6/10; WSR 10-02-032, § 458-40-660, filed 12/29/09, effective 1/1/10; WSR 09-14-109, § 458-40-660, filed 6/30/09, effective 7/1/09; WSR 09-02-043, § 458-40-660, filed 12/31/08, effective 1/1/09; WSR 08-14-085, § 458-40-660, filed 6/27/08, effective 7/1/08; WSR 08-02-064, § 458-40-660, filed 12/28/07, effective 1/1/08; WSR 07-14-095, § 458-40-660, filed 6/29/07, effective 7/1/07; WSR 07-02-039, § 458-40-660, filed 12/26/06, effective 1/1/07; WSR 06-14-064, § 458-40-660, filed 6/30/06, effective 7/1/06; WSR 06-02-005, § 458-40-660, filed 12/22/05, effective 1/1/06; WSR 05-14-087, § 458-40-660, filed 6/30/05, effective 7/1/05; WSR 05-02-040, § 458-40-660, filed 12/30/04, effective 1/1/05; WSR 04-14-033, § 458-40-660, filed 6/29/04, effective 7/1/04; WSR 04-01-125, § 458-40-660, filed 12/18/03, effective 1/1/04; WSR 03-14-072, § 458-40-660, filed 6/26/03, effective 7/1/03. Statutory Authority: RCW 82.01.060(2), 82.32.300, 84.33.096, 84.33.091, and 84.33.140. WSR 03-02-004, § 458-40-660, filed 12/19/02, effective 1/1/03. Statutory Authority: RCW 82.32.300, 84.33.096, and 84.33.091. WSR 02-14-019, § 458-40-660, filed 6/21/02, effective 7/1/02. Statutory Authority: RCW 82.32.300, 84.33.096, 84.33.091 and 84.33.120. WSR 02-02-033, § 458-40-660, filed 12/24/01, effective 1/1/02. Statutory

Authority: RCW 82.32.300, 84.33.096, and 84.33.091. WSR 01-13-105, § 458-40-660, filed 6/20/01, effective 7/1/01; WSR 01-02-020, § 458-40-660, filed 12/21/00, effective 1/1/01. Statutory Authority: RCW 82.32.300, 84.33.096, 84.33.091, 82.32.060, and 84.33.077. WSR 00-19-067, § 458-40-660, filed 9/19/00, effective 1/1/01. Statutory Authority: RCW 82.32.300, 84.33.096 and 84.33.091. WSR 00-14-011, § 458-40-660, filed 6/27/00, effective 7/1/00; WSR 00-02-019, § 458-40-660, filed 12/27/99, effective 1/1/00; WSR 99-14-055, § 458-40-660, filed 6/30/99, effective 7/1/99; WSR 99-02-032, § 458-40-660, filed 12/30/98, effective 1/1/99; WSR 98-14-083, § 458-40-660, filed 6/30/98, effective 7/1/98; WSR 98-02-015, § 458-40-660, filed 12/30/97, effective 1/1/98; WSR 97-14-068, § 458-40-660, filed 6/30/97, effective 7/1/97. Statutory Authority: RCW 82.32.330, 84.33.096 and 84.33.091. WSR 97-02-069, § 458-40-660, filed 12/31/96, effective 1/1/97; WSR 96-14-063, § 458-40-660, filed 6/28/96, effective 7/1/96; WSR 96-02-057, § 458-40-660, filed 12/29/95, effective 1/1/96. Statutory Authority: RCW 82.32.330, 84.33.096 and 84.33.200. WSR 95-18-027, § 458-40-660, filed 8/25/95, effective 9/25/95. Statutory Authority: RCW 82.32.300 and 84.33.096. WSR 95-02-038, § 458-40-660, filed 12/30/94, effective 1/1/95. Statutory Authority: RCW 84.33.091, 84.32.300 [82.32.300] and 84.33.096. WSR 94-14-048, § 458-40-660, filed 6/30/94, effective 7/1/94; WSR 94-02-047, § 458-40-660, filed 12/30/93, effective 1/1/94; WSR 93-14-051, § 458-40-660, filed 6/30/93, effective 7/1/93; WSR 93-02-025, § 458-40-660, filed 12/31/92, effective 1/1/93; WSR 92-14-083, § 458-40-660, filed 6/29/92, effective 7/1/92; WSR 92-02-067, § 458-40-660, filed 12/31/91, effective 1/1/92. Statutory Authority: RCW 84.33.096 and 82.32.300. WSR 91-14-077, § 458-40-660, filed 6/28/91, effective 7/1/91; WSR 91-09-030, § 458-40-660, filed 4/12/91, effective 5/13/91; WSR 91-02-088, § 458-40-660, filed 12/31/90, effective 1/31/91; WSR 90-14-033, § 458-40-660, filed 6/29/90, effective 7/30/90; WSR 90-02-049, § 458-40-660, filed 12/29/89, effective 1/29/90. Statutory Authority: Chapter 84.33 RCW and RCW 84.33.091. WSR 89-14-051 (Order FT-89-2), § 458-40-660, filed 6/30/89; WSR 89-02-027 (Order FT-88-5), § 458-40-660, filed 12/30/88; WSR 88-14-032 (Order FT-88-2), § 458-40-660, filed 6/30/88; WSR 88-02-026 (Order FT-87-5), § 458-40-660, filed 12/31/87. Statutory Authority: Chapter 84.33 RCW. WSR 87-14-042 (Order 87-2), § 458-40-660, filed 6/30/87; WSR 87-02-023 (Order 86-4), § 458-40-660, filed 12/31/86.]

WSR 22-01-188

PERMANENT RULES

UNIVERSITY OF WASHINGTON

[Filed December 20, 2021, 1:49 p.m.]

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

Purpose: The university filed and completed the expedited rule-making process on December 7, 2021.

WAC 478-121-600(2) states Part VII, which contains WAC 478-121-675(1), applies "only when 34 C.F.R. Part 106 is deemed enforceable by law and/or by United States courts." Accordingly, pursuant to this provision and the *Cardona* decision, portions of WAC 478-121-675(1) no longer apply to proceedings under Part VII or any other part of the university's student conduct code.

The purpose is to remove information that no longer applies to proceedings under Part VII of chapter 478-121 WAC.

Citation of Rules Affected by this Order: Amending WAC 478-121-675(1).

Statutory Authority for Adoption: RCW 28B.20.130.

Adopted under notice filed as WSR 21-20-123 on October 5, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 1, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

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

Date Adopted: December 9, 2021.

Barbara Lechtanski
Director of University
Policy and Rules Office

OTS-3375.1

AMENDATORY SECTION (Amending WSR 21-07-047, filed 3/11/21, effective 4/11/21)

WAC 478-121-675 Evidence. (1) (~~If a party or witness does not submit to questioning or cross-examination at the hearing, the hearing officer cannot rely on any statement of that party or witness in reaching a determination regarding responsibility.~~) The hearing officer may not draw an inference about determination regarding responsibility based solely on a party's or witness's absence from the hearing or refusal to answer questions or submit to cross-examination. This subsection does not apply to allegations of prohibited conduct under Part II of this code, WAC 478-121-103 through 478-121-173. (~~The term~~

~~"statement" does not include statements that constitute verbal conduct.)~~)

(2) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions or evidence about a party's sexual behavior are offered to prove that someone other than the respondent committed the sexual conduct alleged by the complainant or such questions or evidence concern specific incidents of the parties' prior sexual behavior and such information is relevant to determine the presence or absence of consent.

(3) Except as otherwise provided in this section, evidence may be considered if, in the judgment of the hearing officer, it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of such reasonably prudent person's affairs. The relevance of evidence will be determined by the hearing officer at a hearing. The hearing officer may exclude from consideration evidence that is not relevant. Statements of personal opinion or general reputation about a party or witness are generally not considered to be relevant. Evidence that is duplicative of other evidence is generally not considered to be relevant.

(4) An investigator or hearing officer may not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has voluntarily waived the privilege in writing. An investigator or hearing officer also may not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the recipient obtains that party's voluntary, written consent.

[Statutory Authority: RCW 28B.20.130 and 34 C.F.R. Part 106. WSR 21-07-047, § 478-121-675, filed 3/11/21, effective 4/11/21.]

WSR 22-01-193
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed December 21, 2021, 8:30 a.m., effective January 31, 2022]

Effective Date of Rule: January 31, 2022.

Purpose: The purpose of this rule making is to amend the factory assembled structures (FAS) rules that apply to manufactured homes, installations, and installer training and certification under chapters 296-150I and 296-150M WAC. The department of labor and industries (L&I) is updating the existing rules for consistency with United States Department of Housing and Urban Development (HUD) regulations.

In 2017, SEBA Professional Services, LLC (SEBA), a contractor for HUD Office of Manufactured Housing, reviewed and audited the FAS installer program rules and standards to ensure the state's compliance with HUD regulations. The SEBA report identified six findings in the FAS rules and standards for manufactured homes, some of which require changes to the rules for L&I to meet its contractual obligations and be fully compliant with HUD regulations. This rule making addresses those findings to ensure the rules are consistent with the federal regulations.

In addition, L&I is also adopting updates, clarification, house-keeping, and other changes to the rules under chapter 296-150I WAC to bring the rules up-to-date.

This rule making:

- Adopts rules to address HUD findings from the 2017 audit report. This includes, but is not limited to:
 - New requirements that homeowners installing their own manufactured or mobile home must become an "approved homeowner" and meet other requirements to do their own installation work in the state of Washington. This also includes, but is not limited to:
 - Making homeowners attend and pass an installer training class to become "approved" prior to starting the installation work;
 - Making homeowners purchase "installer certification tags" for use on their home and responsible for complying with security, use, and reporting requirements;
 - Adding a new definition to define the meaning of "approved homeowner"; and
 - Adding homeowners to the fees payable to L&I for testing and approval.
 - New requirements that certified installers must verify and acknowledge site preparations for new manufactured homes before commencing any installation work; and
 - Replacing the American National Standards Institute (ANSI) A225.1 standard with the Model Manufactured Home Installation 24 Code of Federal Regulations (C.F.R.) Part 3285 standards that are used to federally regulate all manufactured home installations in the United States.
- Adopts new 2021 HUD codes for mobile and manufactured housing and amendments to align with state building codes, for example:
 - New requirements that carbon monoxide detectors must be installed in some relocated manufactured homes and allowing the devices to be battery operated;

- Removing the ability of local jurisdictions to impose regulations on carbon monoxide detectors, as this is regulated by the federal standards; and
- New requirements for manufactured homes designed to support an "attached accessory building or structure."
- Adopts rules for general updates, for example:
 - Adds requirements that manufactured homes in storage or on display for more than 90 days must have support under the floor to prevent damage to the home prior to installation;
 - Adds requirements that installers must provide an affidavit to L&I when the federal installation standard is used in lieu of the manufacturer's installation manual to assist building inspectors with installation inspections;
 - Clarifies that local jurisdictions can impose the installation of fire sprinklers for manufactured homes if they require sprinklers for all homes in their jurisdiction;
 - Adds requirements that Design Approval Primary Inspection Agency (DAPIA) design plans used for repairs must be submitted to L&I for plan review to verify the repair work is being done correctly;
 - Adds requirements that drainage systems must be installed to divert groundwater from the underside of the home if a home is pit set; and
 - Allows for an alternative location to place installer certification tags where the tag will be better protected from long-term weather exposure.
- Adopts rules pertaining to permit requirements, for example:
 - Prohibits manufactured home installation work without the issuance of a permit by the local building department to allow for consistency with building code requirements and for process improvement; and
 - Removes the requirement for L&I permits when re-leveling a home, installing new skirting and other work for inspections that is the jurisdiction of the local building department.
- Adopts amendments to the fees payable to L&I, for example:
 - Establishes a new fee for L&I manufactured home installation inspection permits that applies to local enforcement agencies and cities and counties with L&I inspection contracts;
 - Removes "training" from the existing fees to allow for on-line training that is now available to the public free of charge; and
 - Clarifies the existing fees that apply to manufactured home installers and inspectors for testing and certification.
- Adopts rules to incorporate L&I's existing policies and practices into rule, for example:
 - Removes the ability for local enforcement agencies to sell installer certification tags, as this process is no longer in use;
 - Removes the ability of manufactured home retailers to issue installer certification tags to certified manufactured home installers, as this process is no longer in use;
 - Clarifies that L&I may investigate complaints about "installer certification tag" usage, when enforcing compliance with the installer certification rules;
 - Clarifies that relocated manufactured homes must be installed according to the manufacturer's installation instructions; and

- Clarifies that installer certification tags must be placed on a home upon completion of each installer's portion of the work, so it is available to local authorities having jurisdiction (AHJ) when doing inspections.
- Adopts rules for consistency with statute, for example:
 - Clarifies that L&I has the discretion to revoke installer certification based on the severity of infractions;
 - Establishes new definitions to clarify terms used throughout the chapter, such as "notice of infraction," "mobile homes," and "local enforcement agency"; and
 - Establishes a new section to clarify that L&I monitors the installation and inspection of manufactured homes in Washington state to assure [ensure] compliance with statute and federal regulations.
- Adopts, repeals, and establishes new definitions to the chapter, for example:
 - Defines "approved homeowner" for consistency with federal regulations;
 - Defines "DAPIA," "HUD," and "IBTS" for clarity of acronyms used throughout the chapter;
 - Defines "installation" to provide clarity on the process of installation;
 - Amends the definition of "manufactured/mobile home dealer" for consistency with department of licensing (DOL) law;
 - Repeals the definition of "compliance inspector," as this is one of several persons who may be issuing corrections and infractions; and
 - Repeals the definitions of "extension of the pressure relief valve for the water heater" and "mobile or manufactured home installation," as these are requirements and not definitions.
- Adopts rules for clarity, simplicity, and to streamline the rules, for example:
 - Replaces "mobile or manufactured home" with "manufactured or mobile home" and "manufactured home" throughout the chapter for consistency with current industry terminology;
 - Replaces "on-site work and equipment installation" for use of the newly defined term of "installation" under the definitions, which serves as a global term that is clearer;
 - Removes the "Washington installer code" throughout the chapter, as the installation requirements are not installation code; and
 - Clarifies that on-site structures are only those that are adjacent structures.
- Adopts rules for general housekeeping, such as punctuation, amending the chapter title, eliminating the question and answer format in section titles, relocating requirements to other rules, typographical and reference corrections, formatting, removal of obsolete language, etc.

Citation of Rules Affected by this Order: New WAC 296-150I-0105 and 296-150I-0375; repealing WAC 296-150I-0150; and amending WAC 296-150I-0010, 296-150I-0020, 296-150I-0030, 296-150I-0040, 296-150I-0050, 296-150I-0070, 296-150I-0080, 296-150I-0090, 296-150I-0100, 296-150I-0110, 296-150I-0120, 296-150I-0130, 296-150I-0140, 296-150I-0160, 296-150I-0170, 296-150I-0200, 296-150I-0210, 296-150I-0220, 296-150I-0230, 296-150I-0240,

296-150I-0250, 296-150I-0260, 296-150I-0270, 296-150I-0280, 296-150I-0290, 296-150I-0300, 296-150I-0310, 296-150I-0320, 296-150I-0330, 296-150I-0340, 296-150I-0350, 296-150I-0360, 296-150I-0370, 296-150I-0380, 296-150I-0390, 296-150I-0400, 296-150I-0410, 296-150I-3000, 296-150M-0020, 296-150M-0100, and 296-150M-3000.

Statutory Authority for Adoption: Chapter 43.22 and 43.22A RCW.

Adopted under notice filed as WSR 21-19-124 on September 21, 2021.

A final cost-benefit analysis is available by contacting Alicia Curry, L&I, Field Services and Public Safety Division, P.O. Box 44400, Olympia, WA 98504-4400, phone 360-902-6244, fax 360-902-5292, email Alicia.Curry@Lni.wa.gov, website <https://lni.wa.gov/licensing-permits/manufactured-modular-mobile-structures/laws-rules#rule-development>.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 41, Repealed 1.

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 41, Repealed 1.

Date Adopted: December 21, 2021.

Joel Sacks
Director

OTS-2099.8

Chapter 296-150I WAC
MANUFACTURED ((HOME INSTALLER TRAINING AND CERTIFICATION PROGRAM)) AND
MOBILE HOME INSTALLATION

AMENDATORY SECTION (Amending WSR 08-12-040, filed 5/30/08, effective 6/30/08)

WAC 296-150I-0010 Authority, purpose, scope. This chapter is authorized by chapter 43.22A RCW, (~~Mobile and manufactured home installation,~~) which requires the department to train and certify manufactured home installers and by chapter 43.22 RCW which authorizes the director of L&I to set installation standards for manufactured and mobile homes. For the purposes of this chapter references to manufactured homes include mobile homes.

[Statutory Authority: Chapter 43.22A RCW and 2007 c 432. WSR 08-12-040, § 296-150I-0010, filed 5/30/08, effective 6/30/08.]

AMENDATORY SECTION (Amending WSR 08-12-040, filed 5/30/08, effective 6/30/08)

WAC 296-150I-0020 ((What)) Definitions that apply to this chapter((?)). (1) **"Administrative law judge"** is any person appointed by the chief administrative law judge (as defined in RCW 34.12.020((~~(2)~~)) (1)) to preside at a notice of infraction appeal hearing convened under chapter 43.22A RCW.

(2) **"Appeal hearing"** is any proceeding in which an administrative law judge is empowered to determine legal rights, duties or privileges of specific parties on behalf of the director.

(3) **"Appellant"** means any person, contractor, firm, partnership, corporation, or other entity that has filed an appeal.

(4) **"Approved homeowner"** is an individual person who owns a manufactured home and who also has passed the departments' installer training class and test, with the intention of installing their home and residing in that home upon completion of the installation work.

(5) **"Authorized representative"** means an employee of a state agency, city, or county acting on behalf of the department.

(6) **"Bottom board"** means the close up material on the bottom side of the manufactured home floor that protects it from rodents and transportation damage and meets the requirements of 24 C.F.R. Part 3280.305(g) (6).

(7) **"Certified manufactured home installer"** means a person who is in the business of installing manufactured or mobile (~~(or manufac-~~
~~tured))~~ homes and who has been issued a certificate by the department as provided in this chapter.

~~((5) "Compliance inspector" refers to the departmental staff responsible for investigating potential violations of chapter 43.22A RCW.~~

~~(6))~~ (8) **"Contractor"** is as defined in chapters 18.27, 18.106, and 19.28 RCW.

~~((7))~~ (9) **"DAPIA"** is a design approval primary inspection agency as approved by the United States Department of Housing and Urban Development and defined by 24 C.F.R. Part 3286.3.

(10) **"Dealer"** is the same as "manufactured/mobile home dealer" below.

(11) **"Department"** refers to the department of labor and industries.

~~((8) "Extension of the pressure relief valve for the water heater" means extension to the outside of the home as described in the Uniform Plumbing Code.~~

~~(9))~~ (12) **"Final infraction"** means an infraction that was not appealed during the time period required by RCW 43.22A.200, or was affirmed by an administrative law judge or any court.

(13) **"HUD"** is the U.S. Department of Housing and Urban Development, Office of Manufactured Housing Programs, Washington D.C. 20140-8000.

(14) **"IBTS"** is the Institute for Building Technology and Safety, 45207 Research Place, Ashburn, VA 20147.

~~(15)~~ **"Infraction"** means a violation of chapter 43.22A RCW ((as cited by the department's compliance inspectors. ~~(10)~~)).

~~(16)~~ **"Installation"** means all on-site work necessary for the setting up and completion of a manufactured or mobile home, starting with the preparation of the building site through final permit approval by the local enforcement agency.

~~(17)~~ **"Local enforcement agency"** means any agency of the governing body of any city, county, or state which enforces laws or ordinances governing the construction of buildings.

~~(18)~~ **"Manufactured home"** means a single-family dwelling built in accordance with the Department of Housing and Urban Development Manufactured Home Construction and Safety Standards Act, which is a national, preemptive building code.

~~((11))~~ ~~(19)~~ **"Manufactured/mobile home dealer"** is a vehicle dealer as defined in ((chapter 46.70)) RCW 46.70.011.

~~((12))~~ ~~(20)~~ **"Manufacturer"** refers to a manufacturer of single-family dwellings built according to the Department of Housing and Urban Development Manufactured Home Construction and Safety Standards Act, which is a national, preemptive building code.

~~((13))~~ ~~"Mobile or manufactured home installation"~~ as defined in RCW 43.22A.010 does not include installation of electrical wires and equipment that convey electrical power to the home or to an outlet in the home, and does not include the ground crossover. Installation of electrical wires and equipment that convey electrical power to the home or to an outlet in the home must be performed by a journeyman or specialty electrician as defined in chapter 19.28 RCW. Equipment does not include plug-in household appliances.

~~(14))~~ ~~(21)~~ **"Mobile home"** means a factory-built dwelling built before June 15, 1976, to standards other than the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401 et seq.), and acceptable under applicable state codes in effect at the time of construction or introduction of the home into this state.

~~(22)~~ **"Notice of infraction"** means a form used by the department to notify contractors or homeowners that an infraction under this chapter has been filed against them.

~~(23)~~ **"Other equivalent experience"** means six months of hands-on experience installing manufactured homes under the guidance of a reputable, recognized manufactured home installer; or two years experience in residential or commercial construction.

~~((15))~~ ~~(24)~~ **"Retailer"** means the same as "dealer" for the purposes of this section.

~~(25)~~ **"Site"** means the parcel of land ((designed)) approved by the local enforcement agency to accommodate the dwelling and auxiliary structures.

~~(26)~~ **"Vapor retarder"** means a ground cover material of 6 mil black polyethylene sheeting or equivalent.

[Statutory Authority: Chapter 43.22A RCW and 2007 c 432. WSR 08-12-040, § 296-150I-0020, filed 5/30/08, effective 6/30/08.]

MANUFACTURED HOME INSTALLER REQUIREMENTS

AMENDATORY SECTION (Amending WSR 08-12-040, filed 5/30/08, effective 6/30/08)

WAC 296-150I-0030 ~~((What should))~~ The manufactured home installer training program ((include?)) requirements. The training program must contain instruction and a written examination. The program curriculum includes, but is not ~~((be))~~ limited to, the following topics:

- Relevant federal, state and local laws and standards;
- Supports, footings, anchors, site preparation, placement, closing in, plumbing, electrical, combustion appliances, skirting, interior, and exterior finishing;
- Operational checks and adjustments;
- Auxiliary or adjacent structures; and
- Alterations.

As part of the training program, the department will provide a training manual to each applicant ~~((as part of the training program)),~~ with the contents of ~~((which will include, but not be limited to,))~~ the above ~~((topics))~~ curriculum.

[Statutory Authority: Chapter 43.22A RCW and 2007 c 432. WSR 08-12-040, § 296-150I-0030, filed 5/30/08, effective 6/30/08.]

AMENDATORY SECTION (Amending WSR 08-12-040, filed 5/30/08, effective 6/30/08)

WAC 296-150I-0040 ~~Examination—Failure—Retaking.~~ The examination ~~((must))~~ will only include topics covered in the training program. In order to pass the examination, applicants must answer seventy percent of the questions correctly. An applicant who fails the examination will be permitted to retake the training course and/or the examination as often as is necessary to secure a passing rate of seventy percent.

[Statutory Authority: Chapter 43.22A RCW and 2007 c 432. WSR 08-12-040, § 296-150I-0040, filed 5/30/08, effective 6/30/08.]

AMENDATORY SECTION (Amending WSR 10-06-043, filed 2/23/10, effective 4/1/10)

WAC 296-150I-0050 ~~((What is the))~~ Manufactured home installer certification—Application process((?)). A person ~~((desiring))~~ wanting to be certified as a manufactured home installer under chapter 43.22A RCW must submit a signed application form and the fee specified

in WAC 296-150I-3000 to the department (~~(, which)~~). The application must contain (~~(s)~~) the following information:

(1) The applicant's full name, date of birth, driver's license number or other government identification number, and Social Security number. Social Security numbers are required on applications for professional licenses pursuant to RCW 26.23.150 and federal law PL 104-193, The Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(2) Written affidavit documenting evidence of experience as required under RCW 43.22A.040.

(3) Business name, phone number, and contractor registration number, if applicable. Status of applicant, i.e., owner or employee.

(4) Training/examination location and date preference.

(5) If the application is denied by the department as a result of the applicant's failure to meet the requirements of chapter 43.22A RCW and this chapter, the department will attempt to notify the applicant prior to the date the applicant is scheduled to attend the training and examination.

[Statutory Authority: Chapter 43.22A RCW and 2009 c 464 [564]. WSR 10-06-043, § 296-150I-0050, filed 2/23/10, effective 4/1/10. Statutory Authority: Chapter 43.22A RCW and 2007 c 432. WSR 08-12-040, § 296-150I-0050, filed 5/30/08, effective 6/30/08.]

AMENDATORY SECTION (Amending WSR 10-06-043, filed 2/23/10, effective 4/1/10)

WAC 296-150I-0070 Manufactured home installer certification renewal—Application process. (1) A certified (~~(manufactured home)~~) installer (~~(desiring to)~~) may renew their certification as a manufactured home installer under chapter 43.22A RCW (~~(must file)~~) by filing a certification renewal application with the department.

(2) The application must:

(a) Be received by the department on or before the installer's certification expiration date.

(b) Be accompanied by the certification renewal fee specified in WAC 296-150I-3000.

(3) If a certified installer fails to apply for renewal and provide proof of continuing education within ninety days prior to the expiration of the installer's current certification, the installer must reapply for installer certification and meet all requirements for installer certification as set forth in chapter 43.22A RCW and this chapter.

(4) Before a (~~(new)~~) certification (~~(is)~~) renewal will be issued, the certified installer must provide proof to the department that the certified installer has met the continuing education requirements set forth in this chapter.

(5) The department will attempt to notify installers prior to expiration; however, it is the installer's responsibility to ensure timely renewal.

[Statutory Authority: Chapter 43.22A RCW and 2009 c 464 [564]. WSR 10-06-043, § 296-150I-0070, filed 2/23/10, effective 4/1/10. Statutory

Authority: Chapter 43.22A RCW and 2007 c 432. WSR 08-12-040, § 296-150I-0070, filed 5/30/08, effective 6/30/08.]

AMENDATORY SECTION (Amending WSR 10-06-043, filed 2/23/10, effective 4/1/10)

WAC 296-150I-0080 Installer certification—Revocation. (1) The department (~~(will)~~) may revoke an installer's certification if they receive three or more "final infractions" during their current three-year certification period. The department (~~(will)~~) may judge the installer to be incompetent due to multiple infractions of the state manufactured home installer requirements and the manufactured home installation (~~code~~) requirements. Revocation of the installer certification will be valid for two years from the effective date of the revocation.

(2) Where applicable, the department must send notice to the certificate holder's employer regarding revocation of an installer certification.

(3) A person may reapply for a manufactured home installer certification two years after the effective date of the revocation by submitting a completed application and payment for training and examination. Upon passing the written examination, a (~~(certificate of)~~) new manufactured home (~~installation~~) installer certification will be issued.

[Statutory Authority: Chapter 43.22A RCW and 2009 c 464 [564]. WSR 10-06-043, § 296-150I-0080, filed 2/23/10, effective 4/1/10. Statutory Authority: Chapter 43.22A RCW and 2007 c 432. WSR 08-12-040, § 296-150I-0080, filed 5/30/08, effective 6/30/08.]

AMENDATORY SECTION (Amending WSR 08-12-040, filed 5/30/08, effective 6/30/08)

WAC 296-150I-0090 Requirement for applicable licenses and registrations. The issuance of a (~~(certificate of)~~) manufactured home (~~(installation)~~) installer certification by the department under chapter 43.22A RCW and these rules does not exempt the certified installer from compliance with any local, state, or federal requirements relative to any business or occupational licenses or registrations.

[Statutory Authority: Chapter 43.22A RCW and 2007 c 432. WSR 08-12-040, § 296-150I-0090, filed 5/30/08, effective 6/30/08.]

AMENDATORY SECTION (Amending WSR 08-12-040, filed 5/30/08, effective 6/30/08)

WAC 296-150I-0100 Manufactured home (~~(on-site work and equipment)~~) installation—Manufactured home installer certification required. (~~(On-site work or equipment)~~) Manufactured home installation work which falls within the scope (~~(of installation as)~~) set forth in

RCW 43.22A.010(6) shall not be performed on a manufactured home ((at any time after the initial installation of a manufactured home)) without the on-site supervision of a certified manufactured home installer(~~(-~~

~~On-site work and equipment installation work shall not be performed until a permit for such work has been issued by the local enforcement agency. On-site work and equipment installation work must be inspected upon completion by the local enforcement agency in the same manner initial home installations are inspected.~~

~~On-site work and equipment installation work include, but are not limited to:~~

~~(1) Releveling a home such as installing all new pier blocks or footings;~~

~~(2) Complete skirting replacement;~~

~~(3) Installing earthquake resistant bracing systems; and~~

~~(4) Any other work described in RCW 43.22A.010(6).~~

~~On-site work and equipment installation work does not include routine maintenance or other routine repairs such as periodic adjustments to piers, replacement of a damaged pier, or skirting repair)). Some categories of installation work are exempt from certification requirements in accordance with RCW 43.22A.120, WAC 296-150I-0105 and 296-150I-0110.~~

[Statutory Authority: Chapter 43.22A RCW and 2007 c 432. WSR 08-12-040, § 296-150I-0100, filed 5/30/08, effective 6/30/08.]

NEW SECTION

WAC 296-150I-0105 Manufactured home installation—Specialty work by licensed electricians and plumbers. Specialty work performed within the scope of their licenses by licensed plumbers and electricians is exempt from the installer certification requirements of this chapter.

[]

AMENDATORY SECTION (Amending WSR 08-12-040, filed 5/30/08, effective 6/30/08)

WAC 296-150I-0110 Manufactured home installation(~~(, on-site work or equipment installation))—Homeowner performing work on their own home—Exceptions.~~ (1) The owner of a ((mobile or)) manufactured home may install or perform ((on-site work or equipment)) installation work on his or her own home without obtaining certification from the department as a certified manufactured home installer if the home is intended for use as the homeowner's primary residence. For the installation of a manufactured home the homeowner must attend and pass an installer training class prior to starting the work.

(2) The installation(~~(, on-site work or equipment installation))~~ work must be performed in compliance with this chapter(~~(, Washington installation code))~~ and be permitted and inspected by the local enforcement agency.

(3) If the owner of a manufactured home hires any individual or business to assist the owner in the installation (~~(, on-site work, or equipment installation)~~) work, a certified installer is required to be on-site supervising such work and must meet all the requirements of this chapter.

(4) For the purposes of this chapter, an "owner" of a manufactured home does not include a manufactured/mobile home dealer, distributor, park owner or manager, contractor, or developer who installs or performs (~~(on-site work or equipment)~~) installation work on a manufactured home intended for resale or rental.

[Statutory Authority: Chapter 43.22A RCW and 2007 c 432. WSR 08-12-040, § 296-150I-0110, filed 5/30/08, effective 6/30/08.]

AMENDATORY SECTION (Amending WSR 10-06-043, filed 2/23/10, effective 4/1/10)

WAC 296-150I-0120 Manufactured home installation permit and inspections—Obligation of the dealer and certified installer. (1)

~~((#))~~ A certified installer (~~(obtains)~~) must assure that a placement permit for the manufactured home installation (~~(or placement permit)~~) has been purchased from the local enforcement agency(~~(7)~~). The certified installer shall ensure that all required installation inspections, relative to the work performed by the certified installer, are completed.

(2) Installer certification (~~(requirements do)~~) does not eliminate any contractor registration requirements of chapter 18.27 RCW (~~(to become a registered contractor)~~).

(3) An out-of-state (~~(mobile/manufactured)~~) manufactured/mobile home dealer who performs (~~(the set-up,~~) installation(~~(, or repair)~~) work must (~~(be an active registered)~~) comply with the contractor registration requirements of chapter 18.27 RCW. The (~~(mobile/manufactured)~~) manufactured/mobile home dealer must employ at least one certified installer to supervise the installation.

[Statutory Authority: Chapter 43.22A RCW and 2009 c 464 [564]. WSR 10-06-043, § 296-150I-0120, filed 2/23/10, effective 4/1/10. Statutory Authority: Chapter 43.22A RCW and 2007 c 432. WSR 08-12-040, § 296-150I-0120, filed 5/30/08, effective 6/30/08.]

AMENDATORY SECTION (Amending WSR 08-12-040, filed 5/30/08, effective 6/30/08)

WAC 296-150I-0130 Manufactured home installer—Responsibilities to the consumer. A certified manufactured home installer shall:

(1) Verify the acceptability of the site preparation before beginning any installation work;

(2) Ensure all phases of the installation work performed by the installer or crew being supervised are complete and in compliance with this chapter(~~(, Washington installation code,~~

~~(2))~~;

(3) Notify the local enforcement agency upon completion of the installation work; and

~~((3))~~ (4) Correct all nonconforming aspects of the installation identified by the local enforcement agency or by an authorized representative of the department within thirty days of issuance of notice of the same.

[Statutory Authority: Chapter 43.22A RCW and 2007 c 432. WSR 08-12-040, § 296-150I-0130, filed 5/30/08, effective 6/30/08.]

AMENDATORY SECTION (Amending WSR 10-06-043, filed 2/23/10, effective 4/1/10)

WAC 296-150I-0140 Manufactured home installation—Installer certification tags required. Prior to installing~~((7))~~ or performing ~~((on-site work or equipment))~~ installation work on a manufactured home, certified manufactured home installers or the retailers by whom they are employed must obtain an "installer certification tag" from the department ~~((or from the local enforcement agency who participates in tag sales))~~. The installer certification tag shall be in the form approved by the department.

No manufactured home may be installed by a certified installer without ~~((an))~~ the installer affixing their certification tag ~~((affixed))~~ thereto. The certified installer must indicate the installation work they have performed or supervised on the installer tag.

Only currently certified manufactured home installers ~~((shall))~~ will be issued installer certification tags.

Approved homeowners performing the installation~~((7 on-site work or equipment installation))~~ work on their own manufactured home ~~((are not required to acquire and affix))~~ are required to purchase an installer certification tag for use on their home.

(1) Installer certification tags may only be purchased by a certified manufactured home installer, an approved homeowner, or by a manufactured home retailer licensed by the Washington state department of licensing.

(a) The certified manufactured home installer, approved homeowner, or manufactured home retailer purchasing the installer certification tag is responsible for complying with the security, use, and reporting requirements of this chapter.

(b) Manufactured home retailers may purchase installer certification tags ~~((in bulk))~~ and issue them to certified manufactured home installers employed by the manufactured home retailer.

(2) In order to purchase installer certification tags, the certified manufactured home installer, approved homeowner, or manufactured home retailer ~~((shall))~~ must submit an application to the department ~~((or local enforcement agency))~~ on a form approved by the department. The application shall be accompanied by the appropriate installer certification tag fee as set forth in WAC 296-150I-3000.

(3) The department ~~((or manufactured home retailer))~~ may issue a maximum of thirty certification tags to a certified manufactured home installer. A certified manufactured home installer may not have more than thirty installer certification tags issued at any one time for which the reporting requirements of this section have not been met.

(4) Installer certification tags cannot be transferred or assigned without the written approval of the department. Fees paid for installer certification tags are not refundable.

(a) If a certified manufactured home installer's certification is suspended, revoked, or expires, all unused installer certification tags assigned to the certified manufactured home installer must be returned to the department.

(b) If a certified manufactured home installer or manufactured home retailer ceases to do business, all unused installer certification tags must be returned to the department.

(c) If a manufactured home retailer changes ownership, unused installer certification tags may be transferred to the new ownership if the department approves the transfer following receipt of a written request for transfer from the manufactured home retailer.

(5) Issuance of installer certification tags may be denied if:

(a) The certified manufactured home installer's certification has been revoked or suspended pursuant to chapter 43.22A RCW;

(b) The certified manufactured home installer has failed to comply with the reporting requirements of this chapter;

(c) The department has evidence that the certified manufactured home installer has misused the installer certification tag by not complying with the requirements of this chapter;

(d) The certified manufactured home installer possesses installer certification tags in excess of the quantity authorized by subsection (3) of this section for which the reporting requirements of this chapter have not been met; or

(e) The certified manufactured home installer is not an active registered contractor or an employee of a manufactured home retailer or active registered contractor licensed in Washington.

[Statutory Authority: Chapter 43.22A RCW and 2009 c 464 [564]. WSR 10-06-043, § 296-150I-0140, filed 2/23/10, effective 4/1/10. Statutory Authority: Chapter 43.22A RCW and 2007 c 432. WSR 08-12-040, § 296-150I-0140, filed 5/30/08, effective 6/30/08.]

AMENDATORY SECTION (Amending WSR 08-12-040, filed 5/30/08, effective 6/30/08)

WAC 296-150I-0160 Installer certification tag—Placement—Removal. (1) The installer certification tag must be placed on the home upon completion of ~~((the installation))~~ each installer's portion of the work and prior to inspection by the local enforcement agency.

(2) The installer certification tags must be placed on the end of a home section directly above or below the HUD certification tag or ~~((temporarily located in plain sight within three feet of the home's front entry))~~ placed on the chassis main I-beam directly adjacent to and visible from the crawl space access.

(3) The local enforcement agency may not issue final approval of a home installation until one or more installer certification tags have been affixed to the home indicating all installation work was performed by a certified manufactured home installer or approved homeowner.

((EXCEPTION: Installation work performed by a homeowner on his or her own residence does not require an installer certification tag.))

(4) The installer certification tag (~~((must))~~) may only be removed (~~((only))~~) by the owner of the home following final approval of the installation of the home by the local enforcement agency.

[Statutory Authority: Chapter 43.22A RCW and 2007 c 432. WSR 08-12-040, § 296-150I-0160, filed 5/30/08, effective 6/30/08.]

AMENDATORY SECTION (Amending WSR 08-12-040, filed 5/30/08, effective 6/30/08)

WAC 296-150I-0170 Monthly certification tag report. Certified manufactured home installers, approved homeowners, and manufactured home retailers who purchase installer certification tags from the department must submit a monthly report to the department on a form approved by the department relative to all installer certification tags issued.

(1) The report is due no later than the **15th day of each month** following the month of installation work being performed on a home. A certification tag report is not required for those months in which no installation work was performed.

(2) A manufactured home retailer who assigns tags to a certified manufactured home installer is responsible for ensuring completion of the monthly report. The manufactured home retailer must file a separate report for each certified manufactured home installer to whom the manufactured home retailer assigned installer certification tag(s).

(3) The installer certification tag report must contain the following information for each installation:

- (a) The installer certification tag number;
- (b) The address of the installation;
- (c) The date of the installation;
- (d) The name and certification number of the certified manufactured home installer; and
- (e) Any other information required by the department.

[Statutory Authority: Chapter 43.22A RCW and 2007 c 432. WSR 08-12-040, § 296-150I-0170, filed 5/30/08, effective 6/30/08.]

AMENDATORY SECTION (Amending WSR 10-06-043, filed 2/23/10, effective 4/1/10)

WAC 296-150I-0200 (~~((How does the department ensure))~~) Departmental assurance of installer compliance with the requirements of chapter 43.22A RCW(??). The department of labor and industries will ensure installers comply with the requirements of RCW 43.22A.130 which requires a certified (~~((manufactured/mobile))~~) manufactured home installer to be present for each phase of the installation being performed by all members of the installation crew by:

(1) Random site inspections of manufactured home installations and verification of installer certification and supervision; (~~((and))~~)

(2) Investigations of complaints and violations reported to the department; and

(3) Audit of installers certification tag reports and usage.

~~((The certified installer must enter their Washington installer certification number on the installer tag for each element they are supervising.))~~

[Statutory Authority: Chapter 43.22A RCW and 2009 c 464 [564]. WSR 10-06-043, § 296-150I-0200, filed 2/23/10, effective 4/1/10. Statutory Authority: Chapter 43.22A RCW and 2007 c 432. WSR 08-12-040, § 296-150I-0200, filed 5/30/08, effective 6/30/08.]

AMENDATORY SECTION (Amending WSR 17-23-173, filed 11/21/17, effective 1/1/18)

WAC 296-150I-0210 ((What)) Violations of RCW 43.22A.130 that can result in the issuance of a notice of infraction(?). (1) Under RCW 43.22A.130, the department can issue a notice of infraction to a person, contractor, manufactured/mobile home dealer, manufacturer, or home dealer's or manufacturer's agent for:

- (a) Failure to have a certified installer on the installation site whenever installation work is being performed;
- (b) Failure to correct all nonconforming aspects of the installation identified by the local enforcement agency or by an authorized representative of the department within thirty days of issuance of notice of the same;
- (c) Failure by a certified installer to affix a certification tag to an installed (~~manufactured/mobile~~) manufactured home;
- (d) Transfer of certification tag(s) from a certified installer to another certified installer without prior written approval of the department;
- (e) Transfer of certification tag(s) from a certified installer to a noncertified installer(~~+~~
- ~~(f) Transfer of unused installer certification tags by a manufactured home retailer to a new ownership without prior written approval of the department).~~

(2) Each worksite and day at which a violation occurs constitutes a separate infraction.

(3) Once a violation of chapter 43.22A RCW or this chapter becomes final, any additional violations within three years become a "second," "third," or "additional" violation subject to an increased penalty as set forth in WAC 296-150I-3000.

(4) See WAC 296-150I-3000 for the specific monetary penalties associated with each of the violations discussed in this section.

[Statutory Authority: Chapter 43.22A RCW. WSR 17-23-173, § 296-150I-0210, filed 11/21/17, effective 1/1/18. Statutory Authority: Chapter 43.22A RCW and 2007 c 432. WSR 08-12-040, § 296-150I-0210, filed 5/30/08, effective 6/30/08.]

AMENDATORY SECTION (Amending WSR 08-12-040, filed 5/30/08, effective 6/30/08)

WAC 296-150I-0220 ((What)) Information that must be included in a notice of infraction(?). When an installer violates chapter

43.22A RCW, the department may issue a notice of infraction (~~(which must contain the following:)~~).

(1) The department shall prescribe the form of the notice of infraction issued under this chapter.

(2) The notice of infraction must include the following:

(a) A statement that the notice represents a determination that the infraction has been committed by the person named in the notice and that the determination is final unless contested as provided in this chapter;

(b) A statement that the infraction is a noncriminal offense for which imprisonment may not be imposed as a sanction;

(c) A statement of the specific infraction for which the notice was issued;

(d) A statement of a monetary penalty that has been established for the infraction;

(e) A statement of the options provided in this chapter for responding to the notice and the procedures necessary to exercise these options;

(f) A statement that, at a hearing to contest the determination, the state has the burden of proving, by a preponderance of the evidence, that the infraction was committed, and that the person may subpoena witnesses including the authorized representative who issued and served the notice of the infraction; and

(g) A statement that failure to respond to a notice of infraction is a misdemeanor and may be punished by a fine or imprisonment in jail.

[Statutory Authority: Chapter 43.22A RCW and 2007 c 432. WSR 08-12-040, § 296-150I-0220, filed 5/30/08, effective 6/30/08.]

AMENDATORY SECTION (Amending WSR 08-12-040, filed 5/30/08, effective 6/30/08)

WAC 296-150I-0230 (~~(Who can be issued)~~) Issuance of a notice of infraction(?). A person, firm, contractor, partnership, or corporation may be issued a notice of infraction for violations of chapter 43.22A RCW and this chapter.

The department must send the written notice, by certified mail, of civil penalties imposed under chapter 43.22A RCW and this chapter to the last known address of the party named in the notice.

[Statutory Authority: Chapter 43.22A RCW and 2007 c 432. WSR 08-12-040, § 296-150I-0230, filed 5/30/08, effective 6/30/08.]

AMENDATORY SECTION (Amending WSR 08-12-040, filed 5/30/08, effective 6/30/08)

WAC 296-150I-0240 (~~(How does a person, firm, contractor, partnership, corporation or certified installer appeal)~~) Appealing a notice of infraction(?). A person, firm, contractor, partnership, corporation or certified installer may appeal a notice of infraction by:

(1) ((File)) Filing two copies of an appeal notice, specifying the reasons for the appeal, at the office designated on the notice of infraction; and

(2) ((File)) Filing the appeal notice within twenty days of the date the infraction is mailed.

[Statutory Authority: Chapter 43.22A RCW and 2007 c 432. WSR 08-12-040, § 296-150I-0240, filed 5/30/08, effective 6/30/08.]

AMENDATORY SECTION (Amending WSR 08-12-040, filed 5/30/08, effective 6/30/08)

WAC 296-150I-0250 ((Who presides over an)) Appeal hearings ((and where is it held?)). An administrative law judge from the office of administrative hearings will preside over the hearing and give a decision. The hearing shall be conducted in the county where the infraction occurred. However, both the appellant and the department have a right to ask the administrative law judge to change the hearing's location.

[Statutory Authority: Chapter 43.22A RCW and 2007 c 432. WSR 08-12-040, § 296-150I-0250, filed 5/30/08, effective 6/30/08.]

AMENDATORY SECTION (Amending WSR 08-12-040, filed 5/30/08, effective 6/30/08)

WAC 296-150I-0260 ((Who will represent the appellant and the department)) Representation at the appeal hearings((?)). Appellants may either represent themselves or be represented by an attorney. The department will be represented by the office of the attorney general.

[Statutory Authority: Chapter 43.22A RCW and 2007 c 432. WSR 08-12-040, § 296-150I-0260, filed 5/30/08, effective 6/30/08.]

AMENDATORY SECTION (Amending WSR 08-12-040, filed 5/30/08, effective 6/30/08)

WAC 296-150I-0270 ((How is the)) Appeal hearing ((conducted?)) process. The hearing process shall be conducted according to chapter 34.05 RCW, Administrative Procedure Act and chapter 10-08 WAC. All appeals of the hearing decision shall be to the superior court according to chapter 34.05 RCW.

[Statutory Authority: Chapter 43.22A RCW and 2007 c 432. WSR 08-12-040, § 296-150I-0270, filed 5/30/08, effective 6/30/08.]

AMENDATORY SECTION (Amending WSR 08-12-040, filed 5/30/08, effective 6/30/08)

WAC 296-150I-0280 (~~(What does the department do with the)~~) Departmental review and consideration of appeal notices (~~(that they receive?)~~). (1) Appeal notices that are received timely are first reviewed by the department for purposes of reconsideration.

(2) Appeal notices that are not received timely will be returned to the appellant with appeal rights stated.

(3) Appeal notices that are received timely and are not reconsidered according to subsection (1) of this section are recorded and forwarded to the office of the attorney general, then to the office of administrative hearings.

[Statutory Authority: Chapter 43.22A RCW and 2007 c 432. WSR 08-12-040, § 296-150I-0280, filed 5/30/08, effective 6/30/08.]

AMENDATORY SECTION (Amending WSR 08-12-040, filed 5/30/08, effective 6/30/08)

WAC 296-150I-0290 (~~(When must a person, contractor, manufactured/mobile home dealer, manufacturer, or home dealer's or manufacturer's agent pay)~~) Payment of assessed monetary penalties (~~(?)~~). (1) If a person, contractor, manufactured/mobile home dealer, manufacturer, or home dealer's or manufacturer's agent named in a notice of infraction does not choose to appeal the notice, then (~~(the person, contractor, manufactured/mobile home dealer, manufacturer, or home dealer's or manufacturer's agent)~~) they must pay the department the amount of the penalty prescribed for the infraction.

(2) After an administrative law judge decides that an infraction has been committed, a person, contractor, manufactured/mobile home dealer, manufacturer, or home dealer's or manufacturer's agent who does not appeal the decision to a superior court has thirty days to pay any outstanding monetary penalties.

[Statutory Authority: Chapter 43.22A RCW and 2007 c 432. WSR 08-12-040, § 296-150I-0290, filed 5/30/08, effective 6/30/08.]

MANUFACTURED HOME INSTALLATION REQUIREMENTS

AMENDATORY SECTION (Amending WSR 08-12-040, filed 5/30/08, effective 6/30/08)

WAC 296-150I-0300 (~~(Who establishes standards for)~~) Installation (~~(of)~~) standards for manufactured homes (~~(?)~~). (1) The director of labor and industries is responsible for establishing uniform (~~(installation)~~) standards (~~(where possible and practical for persons or enti-~~

ties engaged in performing)) and requirements for the installation of manufactured homes within the state.

(2) Local jurisdictions may adopt additional installation requirements only for those installation situations not covered by federal standards. For example, local jurisdictions may impose fire sprinkler requirements, noise control construction ordinances, prescribe the frost depth and soil bearing capacity at the installation site, and adopt requirements to protect manufactured homes in hazardous areas (see WAC ((296-150I-0310)) 296-150I-0340).

Also, local jurisdictions may impose their requirements for snow loads as long as all structures within their jurisdiction are required to comply with the same standard and provided those installing the manufactured home are given options in satisfying that standard. Such an option might include, but not be limited to, allowing an installer to erect an additional structure, which meets local standards, and protects the manufactured home. For example, an installer could erect a ((free-standing ramada)) freestanding roof structure over a manufactured home to protect it from local snow loads.

Local jurisdictions **may not**:

(a) Dictate alternate foundation design and construction ((which)) when a foundation is built according to either the manufacturer's installation instructions or a design created by an engineer or architect licensed in Washington state.

(b) Impose regulations on smoke detectors and carbon monoxide detectors because they are regulated by federal standards.

[Statutory Authority: Chapter 43.22A RCW and 2007 c 432. WSR 08-12-040, § 296-150I-0300, filed 5/30/08, effective 6/30/08.]

AMENDATORY SECTION (Amending WSR 10-06-043, filed 2/23/10, effective 4/1/10)

WAC 296-150I-0310 ((What)) Instructions ((are used)) for ((a)) manufactured home installation((?)). ((To the extent that the installation of a manufactured home is not covered by a manufacturer's, engineer's, or architect's instructions,)) The installation of all manufactured homes shall comply with the ((installation)) requirements of this section.

(1) Installation of a new manufactured home.

(a) The ((initial)) installation of a new manufactured home ((installation)) must be conducted according to the manufacturer's instructions.

(b) If the manufacturer's instructions do not address an aspect of the installation, you may request:

(i) Specific instructions from the manufacturer; or

(ii) Specific instructions from a professional engineer or architect licensed in Washington state.

For example:

- A manufactured home is installed over a basement and the manufacturer's instructions do not address this application;

- A manufactured home is installed on a site where the specific soil bearing capacity is not addressed in the manufacturer's instructions.

(c) All manufactured homes installed in Washington state must be permanently anchored except for those installed on dealer lots. On

dealer lots, temporary sets are permitted without anchoring being installed. A manufactured home must be anchored according to the manufacturer's installation instructions or according to the design of a professional engineer or architect licensed in Washington state. Local jurisdictions **may not** prescribe anchoring methods.

(d) A manufactured home must have a skirting around its entire perimeter. ~~((It))~~ Skirting must be installed ~~((per))~~ in accordance with the manufacturer's installation instructions or if the manufacturer is not specific, to the standards in this section. Do not enclose with skirting, areas under recessed entries, porches or decks, (whether constructed as part of the home or added ~~((on-site))~~ on site) unless skirting is of the fully vented type and installed so as to allow water to freely flow out from under the home. Porch areas open to the crawl space area of the home must have ~~((ground cover))~~ the vapor retarder removed~~((+))~~ and the ground directly below the porch must slope away from the home. ~~((It))~~ Skirting must be vented and allow access to the under floor area ~~((per))~~ in accordance with the manufacturer's installation instructions or ~~((per the standards))~~ as required below if the manufacturer's instructions are not available.

If the manufacturer's skirting and access instructions are not specific, skirting, ventilation and access shall be installed as follows:

(i) Skirting:

- Must be made of materials suitable for ground contact.
- Metal fasteners must be made of galvanized, stainless steel or other corrosion-resistant material.
- Ferrous metal members in contact with the earth, except those made of galvanized or stainless steel, must be coated with an asphaltic emulsion.
- Must not trap water between the skirting and siding or trim.
- Must be recessed behind the siding or trim.

(ii) Ventilation:

For homes sited in a flood plain, contact the local jurisdiction regarding proper skirting ventilation. Except for those manufactured homes sited in a flood plain, all skirting and vent openings must:

- Be covered with corrosion-resistant wire mesh to prevent the entrance of rodents. The size of the mesh opening cannot exceed 1/4 inch.
- Have a net area of not less than one square foot for each one hundred fifty square feet of under floor area.
- Be located as close to corners and as high as practical and ~~((they must))~~ provide cross ventilation on at least two opposite sides.

(iii) Access:

- The under floor area of a manufactured home must have a finished opening at least eighteen inches by twenty-four inches in size.
- Opening must be located so that all areas under a manufactured home are available for inspection.
- Opening must be covered ~~((and that))~~. The cover must be made of ((metal, pressure treated wood or vinyl)) material suitable for skirting or venting as required in this chapter.

(e) A manufactured home site must be prepared ~~((per))~~ in accordance with the manufacturer's installation manual or ~~((per ANSI A225.1, 1994 edition, section 3))~~ to the requirements of the Model Manufactured Home Installation Standards 24 C.F.R. Part 3285, Subpart C.

(f) If the home is pit set, a drainage system must be installed to divert groundwater from the underside of the home.

~~(g)~~ Heat duct crossovers must be installed ~~((per))~~ in accordance with the manufacturer's installation instruction manual or ((per ANSI A225.1 or the following instructions if the manufacturer's instructions are not available:)) if the manufacturer's instructions are not available, to the requirements in the Model Manufactured Home Installation Standards 24 C.F.R. Part 3285.606.

~~Heat duct crossovers ((must be supported at least one inch above the ground by strapping or blocking. They))~~ must be installed to avoid standing water ~~((. Also, they must be))~~ and installed to prevent compression, sharp bends, and to minimize stress at the connections. In all cases, the duct must be supported at least one inch off the ground (exception to the Model Manufactured Home Installation Standards 24 C.F.R. Part 3285).

~~((g))~~ (h) Dryer vents must exhaust to the exterior side of the wall or skirting. Dryer ducts outside the manufactured home shall comply with the dryer manufacturer's specifications or shall be made of metal with smooth interior surfaces.

~~((h))~~ Hot water tank pressure relief lines must exhaust to the exterior side of the exterior wall or skirting and must exhaust downward. The end of the pipe must be at least six inches but not more than two feet above the ground.

~~(i)~~ Water heater pans are only required where the installation instructions ~~((are specific))~~ specifically require a pan for warranty or the home was produced after ((June 2006)) May 31, 2006. The ((pressure relief)) water heater pan drain line must ((exit the skirting)) drain to the exterior of the home ((as well as the relief line for any pan installed and not to)). The water heater pan drain line and the PRV drain line must not be interconnected.

~~((ii))~~ (j) Water heater expansion tanks are not required by the department; however, you ~~((may want to))~~ should check with your local jurisdiction for their requirements prior to installation ~~((of your water heater))~~.

~~((i))~~ (k) Water piping must be protected against freezing ~~((as per))~~ in accordance with the manufacturer's installation instructions or by use of a heat tape listed for use with manufactured homes and installed ~~((per))~~ as required by the heat tape manufacturer's installation instructions.

~~((j))~~ (l) The testing of water lines, waste lines, gas lines, and electrical systems must ~~((be as per))~~ comply with the manufacturer's installation instructions. If the manufacturer's installation instructions require testing of any of these systems, the local jurisdiction is responsible for verifying that the tests have been performed and passed. Electrical connections and testing are the responsibility of the electrical section of labor and industries except where a city has assumed the electrical inspection responsibilities for their jurisdiction. In that case, the city's electrical inspectors are responsible for the electrical connections and testing.

~~((k))~~ During the installation process, a ground cover ~~((m))~~ A vapor retarder must be installed under all manufactured homes. ~~((The ground cover must be a minimum of six mil black polyethylene sheeting or its equivalent (exception to ANSI A225.1 (3.5.2)). The ground cover may be omitted if the under floor area of the home has a concrete slab floor with a minimum thickness of three and one-half inches.~~

~~(l))~~ Joints in vapor retarders must overlap a minimum of twelve inches. Voids, cuts, and tears in the vapor retarder must be patched or repaired with an approved method.

(n) Clearances underneath manufactured homes must be maintained at a minimum of eighteen inches beneath at least seventy-five percent of the lowest member of the main frame (I-beam or channel beam) and the ground or footing. ~~((No more than twenty-five percent of the lowest member of the main frame of the home shall be less than eighteen inches above the ground or footing.))~~ In no case shall clearance be less than twelve inches anywhere under the home ~~((exception to ANSI A225.1 (4.1.3.3)))~~ and eighteen inches at the heat duct cross over locations.

~~((m))~~ (o) Heat pump and air conditioning condensation lines must be extended to the exterior of the manufactured home.

(p) Roof ridge cap or ridge vent must be installed as required by the manufacturer's installation instructions.

(2) Installation of a relocated manufactured ~~((mobile))~~ home.

(a) A relocated manufactured home ~~((installation should be conducted))~~ must be installed according to the manufacturer's installation instructions.

(b) If the manufacturer's instructions are ~~((unavailable))~~ not available, you may use either:

(i) The ~~((American National Standard Institute (ANSI) standard ANSI A225.1 - Manufactured Homes Installation, 1994 edition instructions))~~ Model Manufactured Home Installation Standards 24 C.F.R. Part 3285; or

(ii) The instructions of a professional engineer or architect licensed in Washington state.

(c) ~~((If either (b)(i) or (ii) of this subsection is used))~~ For the installation of a relocated manufactured home, all of the requirements of subsection (1)(c) through ~~((m))~~ (p) of this section must also be followed.

(d) Hot water tank pressure relief valve (PRV) drain lines must be installed in accordance with Sec. 3280.609 of the Manufactured Home Construction and Safety Standards Act (Title 24 C.F.R. Part 3280).

(e) Carbon monoxide alarms shall be installed in accordance with Sec. 3280.211 of the Manufactured Home Construction and Safety Standards Act (Title 24 C.F.R. Part 3280). Carbon monoxide detectors installed in relocated homes are permitted to be battery operated.

[Statutory Authority: Chapter 43.22A RCW and 2009 c 464 [564]. WSR 10-06-043, § 296-150I-0310, filed 2/23/10, effective 4/1/10. Statutory Authority: Chapter 43.22A RCW and 2007 c 432. WSR 08-12-040, § 296-150I-0310, filed 5/30/08, effective 6/30/08.]

AMENDATORY SECTION (Amending WSR 08-12-040, filed 5/30/08, effective 6/30/08)

WAC 296-150I-0320 ~~How ((may I)) to obtain a copy of the ((American National Standards Institute (ANSI) A225.1 -))~~ Model Manufactured Home((s)) Installation((?)) Standards 24 C.F.R. Part 3285. ~~((Contact the department at 1-800-647-0982.))~~ The standard may be obtained from the Institute for Building Technology and Safety (IBTS) or the U.S. Government Publishing Office (GPO).

[Statutory Authority: Chapter 43.22A RCW and 2007 c 432. WSR 08-12-040, § 296-150I-0320, filed 5/30/08, effective 6/30/08.]

AMENDATORY SECTION (Amending WSR 08-12-040, filed 5/30/08, effective 6/30/08)

WAC 296-150I-0330 ~~((What are the))~~ **Requirements for temporary placement of manufactured ((mobile)) homes(?)**. Manufactured ~~((mobile))~~ homes placed on temporary display or in storage by a manufacturer, dealer or distributor in excess of thirty days shall be:

(1) Supported under each main frame beam by supports located within two feet of each end and within four feet of the front and rear axle and other supports so that no span shall exceed sixteen feet; ~~((and))~~

(2) Made weather tight at any marriage line joint at the roof and wall lines; and

(3) In addition to subsections (1) and (2) of this section, manufactured homes in storage or on display longer than ninety days must also be supported at each centerline column and along each rim joist at the manufacturer's identified support points.

[Statutory Authority: Chapter 43.22A RCW and 2007 c 432. WSR 08-12-040, § 296-150I-0330, filed 5/30/08, effective 6/30/08.]

AMENDATORY SECTION (Amending WSR 08-12-040, filed 5/30/08, effective 6/30/08)

WAC 296-150I-0340 ~~((Do))~~ **Special requirements of local enforcement agencies ((have special requirements)) for installing manufactured homes in hazardous areas(?)**. (1) Local enforcement agencies may have special installation requirements for manufactured homes installed in hazardous areas.

(2) A hazardous area is:

(a) An area recognized as a flood plain by the local jurisdiction; or

(b) An area considered hazardous due to the probability of earthquake. In such areas, local jurisdictions may require an earthquake resistant bracing system designed for the earthquake zone in which the home is located by the home manufacturer or by a registered professional engineer or architect.

[Statutory Authority: Chapter 43.22A RCW and 2007 c 432. WSR 08-12-040, § 296-150I-0340, filed 5/30/08, effective 6/30/08.]

AMENDATORY SECTION (Amending WSR 10-06-043, filed 2/23/10, effective 4/1/10)

WAC 296-150I-0350 ~~((Who may install))~~ **Certification requirements for installing a manufactured home(?)**. (1) A manufactured home may be installed by:

- ~~((A))~~ An approved homeowner;
- A certified installer;
- An individual who is supervised by an on-site certified installer; or

• A specialty trades person (~~(, such as a plumber or electrician, for certain aspects of installation)~~) as specified in WAC 296-150I-0105.

(2) A certified installer must be a registered contractor, an employee of a registered contractor, or an employee of a (~~(registered)) licensed~~ dealership. (~~((See chapter 43.22A RCW for details about which aspects of installation require the presence of a certified installer.))~~)

[Statutory Authority: Chapter 43.22A RCW and 2009 c 464 [564]. WSR 10-06-043, § 296-150I-0350, filed 2/23/10, effective 4/1/10. Statutory Authority: Chapter 43.22A RCW and 2007 c 432. WSR 08-12-040, § 296-150I-0350, filed 5/30/08, effective 6/30/08.]

AMENDATORY SECTION (Amending WSR 08-12-040, filed 5/30/08, effective 6/30/08)

WAC 296-150I-0360 (~~((Does a person who installs a))~~) **Manufactured home ((need an)) installation permit((?)) requirements.** (1) A dealer, owner or agent must not deliver a manufactured home to its site without verifying that an installation permit has been obtained; (~~(and)~~)

(2) Manufactured home installation work shall not be performed until a permit for such work has been issued by the local enforcement agency; and

(3) Any permit fees set by the local enforcement agency must be paid in full and included with the permit application.

[Statutory Authority: Chapter 43.22A RCW and 2007 c 432. WSR 08-12-040, § 296-150I-0360, filed 5/30/08, effective 6/30/08.]

AMENDATORY SECTION (Amending WSR 10-06-043, filed 2/23/10, effective 4/1/10)

WAC 296-150I-0370 (~~((Does a))~~) **Manufactured home installation ((require an)) inspections((?)).** All manufactured home installations must be inspected and approved by the local enforcement agency as required by regulations established by HUD for manufactured housing.

Local enforcement agencies may enter into interagency agreements with the department to perform (~~(on-site))~~ installation inspections on their behalf (~~((of the authority having jurisdiction (AHJ)))~~). A permit must be purchased with the department for these inspections.

[Statutory Authority: Chapter 43.22A RCW and 2009 c 464 [564]. WSR 10-06-043, § 296-150I-0370, filed 2/23/10, effective 4/1/10. Statutory Authority: Chapter 43.22A RCW and 2007 c 432. WSR 08-12-040, § 296-150I-0370, filed 5/30/08, effective 6/30/08.]

NEW SECTION

WAC 296-150I-0375 State monitoring of manufactured home installations and inspections. The department monitors the installation and

inspection of manufactured homes within the state to assure compliance with the regulations established by HUD, for manufactured housing.

[]

AMENDATORY SECTION (Amending WSR 08-12-040, filed 5/30/08, effective 6/30/08)

WAC 296-150I-0380 (~~(How does the local enforcement agency gain access to the))~~ **Manufacturer's installation instructions** ~~((?))~~. A manufacturer's installation manual must be provided for the inspecting jurisdiction ~~((whenever any portions of the manufacturer's installation instructions have been used for any portion of the installation))~~ When the manufacturer's original installation instructions are not available for a secondary installation, the installer shall provide an affidavit in lieu of the installation instruction manual, that the home is installed to the provisions of this chapter.

(1) The installation instructions must be located between the I-beam and the bottom board within five feet of the main electrical feeder when the skirting has not been installed.

(2) When the skirting has been installed, the installation instructions shall be located between the I-beam and the bottom board within five feet of the access opening.

(3) Instructions must be returned to ~~((such))~~ this location when the inspection is completed.

[Statutory Authority: Chapter 43.22A RCW and 2007 c 432. WSR 08-12-040, § 296-150I-0380, filed 5/30/08, effective 6/30/08.]

AMENDATORY SECTION (Amending WSR 08-12-040, filed 5/30/08, effective 6/30/08)

WAC 296-150I-0390 (~~(What are the))~~ **Requirements for** ~~((on-site))~~ **structures adjacent to manufactured homes and who regulates them** ~~((?))~~. ~~((On-site))~~ Adjacent structures ~~((, sometimes referred to as auxiliary structures,))~~ such as, but not limited to, ~~((carports))~~ additions, decks, porches, and ~~((steps))~~ awnings should be self-supporting, unless the manufacturer has designed the manufactured home to support an "attached accessory building or structure" as indicated on the HUD data plate posted in the home.

(1) Local enforcement agency jurisdiction.

(a) ~~((On-site))~~ Adjacent self-supporting structures that do not use any of the systems in the manufactured home are ~~((inspected by))~~ under the authority of the local enforcement agency ~~((and they should be contacted for specific on-site structure requirements.~~

~~((b) Awnings and carports that are self-supported by a beam next to a manufactured (mobile) home are inspected by the local enforcement agency.~~

Note: The awning or carport may be flashed to the manufactured (mobile) home.)

for all permitting, review and inspections.

Adjacent self-supporting structures may be attached and flashed to the manufactured home and do not require an L&I permit.

(b) Accessory structure ready homes:

(i) When a manufactured home is designed to support an "attached accessory building or structure," typically a garage or carport, the manufacturer's installation instructions will address the requirements for fire separation, protection of openings, duct penetrations, allowable loads, attachment points, support and anchorage requirements. The garage or carport may be either site built or built in the factory. The design and construction of a site built accessory structure is subject to regulation by the local enforcement agency.

(ii) Extension of one or more of the systems of the manufactured home, and other alterations to the home not covered by the installation instructions require a permit and inspection by the department in accordance with chapter 296-150M WAC.

(2) Department of labor and industries jurisdiction.

~~((a) On-site))~~ Adjacent structures that are ~~((not self-supporting or))~~ supported by the manufactured home, use one or more of the systems of the manufactured home, or have other structural alterations to the home, require ((an)) a permit and inspection by the department ((and)) in accordance with chapter 296-150M WAC. They may also require permits, review and inspection by the local enforcement agency.

~~((b) Awnings and carports that are attached to the manufactured (mobile) home without the benefit of a self-supported beam require approval and inspection by the department.~~

Note: This attachment must be designed and approved by an engineer or an architect licensed in Washington state. Furthermore, these stamped plans must be submitted to the department and approved before an inspection can be conducted.

~~(c) Attached garages:~~

~~(i) If the manufactured (mobile) home is built "garage ready" (one hour fire wall, dormer, etc.) at the factory and is installed by the manufacturer, an alteration inspection may not be required.~~

~~(ii) If the manufactured (mobile) home is not built "garage ready" at the factory, an alteration inspection is required for all changes made to it.)~~

[Statutory Authority: Chapter 43.22A RCW and 2007 c 432. WSR 08-12-040, § 296-150I-0390, filed 5/30/08, effective 6/30/08.]

AMENDATORY SECTION (Amending WSR 08-12-040, filed 5/30/08, effective 6/30/08)

WAC 296-150I-0400 ((What happens if a)) Dispute ((arises)) concerning an installation requirement((?)). (1) If a dispute arises between any person, business, or local enforcement agency concerning an installation requirement of ~~((ANSI A225.1))~~ the Model Manufactured Home Installation Standards 24 C.F.R. Part 3285 or this chapter, the issue may be submitted to the factory assembled structures advisory (FAS) board.

(2) The board may provide an opinion on the requirement.

[Statutory Authority: Chapter 43.22A RCW and 2007 c 432. WSR 08-12-040, § 296-150I-0400, filed 5/30/08, effective 6/30/08.]

AMENDATORY SECTION (Amending WSR 10-06-043, filed 2/23/10, effective 4/1/10)

WAC 296-150I-0410 ~~((What are the))~~ **Requirements if a home is damaged** ~~((during transit))~~ **prior to, or during** ~~((set-up?))~~ **installation.** (1) ~~Manufactured ((and mobile)) homes that are ((structurally)) damaged ((during transportation or when being set up on a new or secondary set-up))~~ **prior to, or during installation** and are repaired at a location other than the manufacturer's facility ~~((shall))~~ require ~~((an))~~ **permits, inspections, and approval** ~~((with))~~ **of the repairs from labor and industries. Permits are not required for the repair of minor damage such as shingle repairs, broken window(s), paint damage, minor siding damage and damaged bottom board or similar.**

Electrical and plumbing repairs to the damaged home shall be performed by a Washington state licensed electrician and/or plumber, except as exempted by RCW 18.27.090 and 18.106.150.

The repair and inspection shall be performed to either:

(a) Plans approved by the manufacturer's ~~((design approval primary inspection agency))~~ **DAPIA and verified by the FAS plan review section;** or

(b) Plans approved by an engineer or architect licensed in Washington and ~~((have the plans))~~ approved by the FAS plan review section ~~((?)).~~

(2) ~~((Electrical and plumbing alterations to the damaged manufactured/mobile home shall be performed by a Washington state licensed electrician and/or plumber.~~

EXCEPTIONS:

~~Damaged home is taken back to the factory.~~

~~Minor damage such as shingles, broken window(s), paint damage, minor siding damage, torn bottom paper etc., would not require a permit.)~~

Manufactured homes that are repaired at the manufacturer's facility do not require an L&I permit.

[Statutory Authority: Chapter 43.22A RCW and 2009 c 464 [564]. WSR 10-06-043, § 296-150I-0410, filed 2/23/10, effective 4/1/10. Statutory Authority: Chapter 43.22A RCW and 2007 c 432. WSR 08-12-040, § 296-150I-0410, filed 5/30/08, effective 6/30/08.]

AMENDATORY SECTION (Amending WSR 21-07-126, filed 3/23/21, effective 4/23/21)

WAC 296-150I-3000 Penalties, fees, and refunds.

Penalties

(1) Monetary penalties for infractions listed in WAC 296-150I-0210 ~~((shall))~~ **may** be assessed for each violation of chapter 43.22A RCW in the following amount:

(a) Failure to have a certified installer on the installation site whenever installation work is being performed:

First Final Violation	\$250.00
Each Additional Final Violation	\$1,000.00

(b) Failure to correct all nonconforming aspects of the installation identified by the local enforcement agency or by an authorized representative of the department within thirty days of issuance of notice of the same:

First Final Violation	Warning
Second Final Violation	\$250.00
Third Final Violation	\$500.00
Each Additional Final Violation	\$1,000.00
(c) Failure by a certified installer to affix a certification tag to an installed (manufactured/mobile) <u>manufactured or mobile</u> home:	
First Final Violation	Warning
Second Final Violation	\$250.00
Third Final Violation	\$500.00
Each Additional Final Violation	\$1,000.00
(d) Transfer of certification tag(s) from a certified installer to another certified installer without prior written approval of the department:	
First Final Violation	Warning
Each Additional Final Violation	\$250.00
(e) Transfer of certification tag(s) from a certified installer to a noncertified installer:	
First Final Violation to Each Contractor in Violation	\$250.00
Each Additional Final Violation to Each Contractor in Violation	\$1,000.00
((f) Transfer of unused installer certification tags by a manufactured home retailer to a new ownership without prior written approval of the department:	
First Final Violation	Warning
Each Additional Final Violation	\$250.00))

Fees and Refunds

The following fees are payable to the department in advance:

((Training)) <u>Installer test and certification</u>	\$286.30
((Training only 10 hours)) <u>Homeowner test and approval</u>	\$143.10
((Manufactured/mobile)) <u>Manufactured home installation inspector (training) test and certificate</u>	\$143.10
Refund	\$28.50
Certification renewal	\$143.10
Continuing education class	\$57.10
Retake failed examination and training <u>at scheduled class</u>	\$42.80
Manufactured home installer training manual <u>(on thumb drive)</u>	\$14.20
Installer certification tag	\$9.90
<u>L&I manufactured home installation inspection permit*</u>	See WAC 296-150M-3000 for fee

* Only available when L&I has an interagency agreement with the local enforcement agency in accordance with WAC 296-150I-0370.

(2) The department shall refund fees paid for training and certification or certification renewal as a manufactured home installer

if the application is denied for failure of the applicant to comply with the requirements of chapter 43.22A RCW or these rules.

(3) If an applicant has paid fees to attend training or to take an examination and is unable to attend the scheduled training or examination, the applicant may:

- (a) Change to another scheduled training and examination; or
- (b) Request a refund.

(4) An applicant who fails the examination shall not be entitled to a refund.

[Statutory Authority: Chapters 43.22 and 43.22A RCW. WSR 21-07-126, § 296-150I-3000, filed 3/23/21, effective 4/23/21. Statutory Authority: Chapters 18.27, 70.87, 43.22, and 43.22A RCW. WSR 18-24-102, § 296-150I-3000, filed 12/4/18, effective 1/4/19. Statutory Authority: Chapter 43.22A RCW. WSR 17-23-173, § 296-150I-3000, filed 11/21/17, effective 1/1/18. Statutory Authority: Chapter 43.22A RCW and 2009 c 464 [564]. WSR 10-06-043, § 296-150I-3000, filed 2/23/10, effective 4/1/10. Statutory Authority: Chapter 43.22A RCW and 2007 c 432. WSR 08-12-040, § 296-150I-3000, filed 5/30/08, effective 6/30/08.]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-150I-0150 Installer certification tag—Issuance by local enforcement agency.

OTS-2098.3

AMENDATORY SECTION (Amending WSR 16-01-163, filed 12/22/15, effective 2/1/16)

WAC 296-150M-0020 What definitions apply to this chapter? "Alteration" is the replacement, addition, modification, or removal of any equipment or installation that affects the construction, planning considerations, fire safety, or the plumbing, mechanical, and electrical systems of a manufactured home. The installation of whole-house water treatment equipment that requires cutting into the existing plumbing is considered an alteration and requires a permit, an inspection and an alteration insignia.

"Alteration insignia" is an insignia issued by the department of labor and industries to verify that an alteration to a manufactured home meets the requirements of federal law 24 C.F.R. 3280 and this chapter.

"Anchoring system" is the means used to secure a mobile home to ground anchors or to other approved fastening devices. It may include straps, cables, turnbuckles, bolts, fasteners, and other components.

"ANSI" is the American National Standards Institute, Inc., (~~and the institute's rules applicable to manufactured homes, ANSI A225.1 Manufactured Homes Installation, 1994 edition, except section 3.5.2 -~~

~~Ground Cover and section 4.1.3.3 - Clearance)) 1899 L Street, N.W., 11th Floor, Washington D.C. 20036.~~

"Authority having jurisdiction" means that either the department of labor and industries or the local jurisdiction is responsible for establishing specific manufactured home standards. The authority for specific manufactured home standards is divided as follows:

- The department of labor and industries establishes standards for manufactured home installation and alterations and performs alteration inspections;
- The local jurisdiction establishes standards for manufactured homes governing the building site and performs installation inspections.

"Building site" is a tract, parcel, or subdivision of land on which a manufactured home is installed.

"DAPIA" is a Design Approval Primary Inspection Agency as approved by the United States Department of Housing and Urban Development.

"Department" is the department of labor and industries. The department may be referred to as "we" or "us" in this chapter. Note: You may contact us at: Department of Labor and Industries, Factory Assembled Structures, P.O. Box ((44440)) 44430, Olympia, WA 98504-((4440)) 4430.

"Design plan" is a design submitted to the department for approval of a manufactured home structural alteration. This also includes other types of work and installations (plumbing, electrical, etc.) that are incidental to the structural alteration.

"Equipment" means the appliances used in the alteration or installation of a manufactured home.

Examples that require an alteration inspection include:

- Furnace;
- Water heater;
- Air conditioner;
- Heat pump; and
- New and extended electrical circuits.

Examples that do not require an alteration inspection include:

- Washer;
- Dryer; and
- Dishwasher and range that are connected to their source of power by a plug-in cord.

"Equivalent air conditioning/heat pump components" is equipment that performs the same function and is compatible with the equipment of another manufacturer, sometimes referred to as mix and match.

"Footing" is the portion of a support system that transmits loads from the manufactured home to the ground.

"Foundation skirting" or **"skirting"** is the material that surrounds and encloses the space under the manufactured home.

"Homeowner" is an individual who owns a manufactured home. Dealers, distributors, and developers are not regarded as homeowners.

"HUD" is the United States Department of Housing and Urban Development with headquarters located in Washington, D.C.

"Indigent" means a person receiving an annual income, after taxes, of one hundred twenty-five percent or less of the most recently published federal poverty level.

"Installation" is the activity needed to prepare a building site and to set a manufactured home within that site. Site means a tract, parcel, or subdivision of land including a mobile home park.

"Installed manufactured or mobile home" is a manufactured or mobile home that has been placed on either private property or in a park and has been installed for occupancy. Installation includes the approval of the blocking of the home, and the connection of the home to all of the utilities, including water, sewer and electrical.

"IPIA" is a manufactured home production Inspection Primary Inspection Agency approved by the United States Department of Housing and Urban Development. The department of labor and industries is the IPIA for Washington state.

"Local enforcement agency" is an agency of city or county government with power to enforce local regulations governing the building site and installation of a manufactured home.

"Manufactured home" is a single-family dwelling built according to the Department of Housing and Urban Development Manufactured Home Construction and Safety Standards Act, which is a national, preemptive building code. A manufactured home also:

- Includes plumbing, heating, air conditioning, and electrical systems;
- Is built on a permanent chassis; and
- Can be transported in one or more sections with each section at least eight feet wide and forty feet long when transported; or when installed on the site is three hundred twenty square feet or greater (see RCW 46.04.302).

Note: Total square feet is based on exterior dimensions measured after installation using the longest horizontal projections. Dimensions may not include bay windows but may include projections containing interior space such as cabinets and expandable rooms.

Exception: A structure that meets the requirements of a manufactured home as set out in 24 C.F.R. 3282.7(u), except the size requirements is considered a manufactured home, if the manufacturer files with the secretary of HUD a certificate noted in C.F.R. 3282.13.

"Mobile home" is a factory-built dwelling built prior to June 15, 1976, to standards other than the HUD Code, and acceptable under applicable state codes in effect at the time of construction or introduction of the home into the state. Mobile homes have not been built since the introduction of the HUD Manufactured Home Construction and Safety Standards Act. For the purposes of this chapter references to manufactured homes include mobile homes.

"Park site" is the installation location of a manufactured home within a residential area for manufactured homes.

"Repair" is to restore an item to sound condition, to fix.

"Replacement" is the act or process of replacing, to substitute.

"State administrative agency (SAA)" the department of labor and industries shall perform all the consumer complaint and related functions that are required for purposes of complying with the regulations established by the federal department of housing and urban development for manufactured housing including the preparation and submission of the state administrative plan.

"Structural alteration-custom design" is a design that can only be used once.

"Structural alteration-master design" is a design plan that can be used more than once. The master plan expires when there is a code change applicable to the design.

"System" is part of a manufactured home designed to serve a particular function such as structural, plumbing, mechanical, or electrical functions.

[Statutory Authority: Chapter 43.22 RCW. WSR 16-01-163, § 296-150M-0020, filed 12/22/15, effective 2/1/16; Chapter 43.22 RCW. WSR 08-12-041, § 296-150M-0020, filed 5/30/08, effective 6/30/08. Statutory Authority: RCW 43.22.340, 43.22.400, 43.22.432, 43.22.433, 43.22.434, 43.22.480, and 43.22.485, 2002 c 268, and chapter 43.22 RCW. WSR 03-12-044, § 296-150M-0020, filed 5/30/03, effective 5/30/03. Statutory Authority: RCW 43.22.340, 43.22.350, 43.22.432, 43.22.434, 43.22.440, and 2001 c 335. WSR 02-03-048, § 296-150M-0020, filed 1/9/02, effective 1/9/02. Statutory Authority: RCW 43.22.340, 43.22.350, 43.22.355, 43.22.360, 43.22.400, 43.22.432, 43.22.433, 43.22.434, 43.22.450, 43.22.480, and 43.22.485. WSR 00-17-148, § 296-150M-0020, filed 8/22/00, effective 9/30/00. Statutory Authority: RCW 43.22.340 and 43.22.480. WSR 99-13-010, § 296-150M-0020, filed 6/4/99, effective 7/5/99. Statutory Authority: Chapter 43.22 RCW. WSR 98-14-078, § 296-150M-0020, filed 6/30/98, effective 7/31/98. Statutory Authority: RCW 43.22.340, [43.22.]355, [43.22.]360, [43.22.]432, [43.22.]440 and [43.22.]480. WSR 96-21-146, § 296-150M-0020, filed 10/23/96, effective 11/25/96.]

AMENDATORY SECTION (Amending WSR 97-16-043, filed 7/31/97, effective 12/1/97)

WAC 296-150M-0100 What happens if I disagree with your decision regarding my compliance with the federal standards, (~~ANSI-7~~) or this chapter?

- (1) If we determine that you are in violation with the federal standards, (~~ANSI A225.1~~) or this chapter, you will receive a notice of noncompliance.
- (2) If you disagree with our decision, you can submit a written request for a hearing, stating why you disagree.
- (3) After we receive your hearing request, we will:
 - (a) Schedule a hearing within thirty days after we receive your request.
 - (b) Notify you of the time, date, and place for the hearing. If you fail to appear, your case will be dismissed.
 - (c) Hear your case.
 - (d) Send you written notice of our decision.

If you disagree with our decision, you may appeal it under the Administrative Procedure Act (chapter 34.05 RCW).

[Statutory Authority: RCW 43.22.340 and 43.22.420. WSR 97-16-043, § 296-150M-0100, filed 7/31/97, effective 12/1/97. Statutory Authority: RCW 43.22.340, [43.22.]355, [43.22.]360, [43.22.]432, [43.22.]440 and [43.22.]480. WSR 96-21-146, § 296-150M-0100, filed 10/23/96, effective 11/25/96.]

AMENDATORY SECTION (Amending WSR 21-07-126, filed 3/23/21, effective 4/23/21)

WAC 296-150M-3000 Manufactured/mobile home fees.

DESIGN PLAN FEES:	
STRUCTURAL ALTERATION	\$192.20

RESUBMITTAL FEE	\$84.90
ADDENDUM (Approval expires on the same date as original plan.)	\$84.90
ELECTRONIC PLAN SUBMITTAL FEE \$5.90 per page for the first set of plans and \$1.00 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
DEPARTMENT INSPECTION FEES:	
Combination permit - Mechanical and electrical inspections	\$210.00
Heat pump	\$210.00
Air conditioning	\$210.00
Air conditioning with replacement furnace	\$210.00
Gas furnace installation includes gas piping	\$210.00
Fire safety inspection	\$210.00
MECHANICAL	
Gas*** piping	\$93.30
Wood stove	\$93.30
Pellet stove	\$93.30
Gas*** Room heater	\$93.30
Gas*** Decorative appliance	\$93.30
Range: Changing from electric to gas***	\$93.30
Gas*** Water heater replacement	\$69.90
ELECTRICAL	
Electric water heater replacement	\$116.80
Electric water heater replacing gas*** water heater	\$116.80
Each added or modified 120 volt circuit (maximum charge is two circuits)	\$116.80
Each added 240 volt circuit (for other than heat pumps, air conditioners, furnaces, water heaters, ranges, hot tubs or spas)	\$116.80
Hot tub or spa (power from home electrical panel)	\$116.80
Replace main electrical panel/permanently installed transfer equipment	\$116.80
Low voltage fire/intrusion alarm	\$116.80
Any combination of furnace, range and water heater changing from electric to gas***	\$116.80
PLUMBING	
Fire sprinkler system	\$262.40
Each added fixture	\$69.90
Replacement of water piping system (this includes two inspections)	\$234.20
STRUCTURAL	
Inspection as part of a mechanical/fire safety installation (cut truss/floor joist, sheet rocking)	\$104.70
Reroofs (may require a plan review)	\$187.10
Changes to home when additions bear loads on home per the design of a professional (also requires a plan review)	\$187.10
Other structural changes (may require a plan review)	\$187.10
MISCELLANEOUS	
OTHER REQUIRED INSPECTIONS (per hour*)	\$76.60
ALL REINSPECTIONS (per hour*)	\$76.60
Manufactured home installation inspection permit (only available in cities and counties with L&I inspection contract)	\$536.20
Refund	\$23.10
INSIGNIA FEES:	
REISSUED - LOST/DAMAGED	\$23.10
IPIA	
DEPARTMENT AUDIT FEES	
REGULARLY SCHEDULED IPIA AUDIT:	
First inspection on each section (one time only)	\$38.40
Second and succeeding inspections of unlabeled sections (per hour*)	\$84.90
OTHER IPIA FEES:	
Red tag removal during a regularly scheduled IPIA audit (per hour* separate from other fees)	\$84.90
Red tag removal at a time other than a regularly scheduled IPIA audit (per hour* plus travel time* and mileage**)	\$84.90
Increased frequency surveillance (per hour* plus travel time* and mileage**)	\$84.90
Attendance at manufacturers training classes (per hour* only)	\$84.90
Subpart "I" investigations (per hour* plus travel time* and mileage**)	\$84.90

Alterations to a labeled unit (per hour* plus travel time* and mileage**)	\$84.90
IPIA Issues/Responses (per hour* plus travel time* and mileage**)	\$84.90
Monthly surveillance during a regularly scheduled IPIA audit (per hour* plus travel time* and mileage**)	\$84.90
Monthly surveillance at a time other than a regularly scheduled IPIA audit (per hour* plus travel time* and mileage**)	\$84.90
Plant certifications, recertifications and addenda updates (per hour* plus travel time* and mileage** per each inspector)	\$84.90
Response to HBT audit during a regularly scheduled IPIA audit (per hour*)	\$84.90
Response to HBT audit at a time other than a regularly scheduled IPIA audit (per hour* plus travel time* and mileage**)	\$84.90
Alternative construction (AC) letter inspections at placement site (per hour* plus travel time* and mileage**)	\$84.90
Replacement of HUD labels (per hour* plus travel time* and mileage**)	\$84.90
State administrative agency (SAA) inspection fee (per hour* plus travel time* and mileage**)	\$84.90
State administrative agency (SAA) dispute resolution filing fee	\$84.90
State administrative agency (SAA) dispute resolution (per hour*)	\$84.90
OTHER FEES:	
FIELD TECHNICAL SERVICE (per hour plus travel time* and mileage**)	\$78.90
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (one free copy per year upon request)	\$15.40
VARIANCE INSPECTION FEE	\$187.10
HOMEOWNER REQUESTED INSPECTION	\$187.10
DECERTIFICATION OF A MOBILE/MANUFACTURED HOME	\$187.10
DEMOLITION OF A MOBILE/MANUFACTURED HOME	\$187.10
ENERGY CONSERVATION PERMIT	\$31.80

NOTE: Local jurisdictions may have other fees that apply.

*Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.

**Per state guidelines.

***Gas means all gases; natural, propane, etc.

[Statutory Authority: Chapters 43.22 and 43.22A RCW. WSR 21-07-126, § 296-150M-3000, filed 3/23/21, effective 4/23/21; WSR 20-04-081, § 296-150M-3000, filed 2/4/20, effective 3/6/20. Statutory Authority: Chapters 18.27, 70.87, 43.22, and 43.22A RCW. WSR 18-24-102, § 296-150M-3000, filed 12/4/18, effective 1/4/19. Statutory Authority: Chapter 43.22 RCW and 2011 1st sp.s. c 50. WSR 12-06-069, § 296-150M-3000, filed 3/6/12, effective 4/30/12. Statutory Authority: Chapters 18.106, 43.22 RCW, 2008 c 285 and c 329. WSR 08-12-042, § 296-150M-3000, filed 5/30/08, effective 6/30/08. Statutory Authority: Chapters 18.27, 18.106, 43.22, and 70.87 RCW. WSR 07-11-128, § 296-150M-3000, filed 5/22/07, effective 6/30/07. Statutory Authority: Chapter 43.22 RCW. WSR 07-05-063, § 296-150M-3000, filed 2/20/07, effective 4/1/07. Statutory Authority: Chapters 18.106, 43.22, and 70.87 RCW. WSR 06-10-066, § 296-150M-3000, filed 5/2/06, effective 6/30/06. Statutory Authority: Chapter 43.22 RCW and 2005 c 399. WSR 05-24-020, § 296-150M-3000, filed 11/29/05, effective 1/1/06. Statutory Authority: Chapters 18.27, 43.22, and 70.87 RCW. WSR 05-12-032, § 296-150M-3000, filed 5/24/05, effective 6/30/05. Statutory Authority: Chapters 18.27 and 43.22 RCW. WSR 04-12-048, § 296-150M-3000, filed 5/28/04, effective 6/30/04. Statutory Authority: RCW 43.22.340, 43.22.400, 43.22.432, 43.22.433, 43.22.434, 43.22.480, and 43.22.485, 2002 c 268, and chapter 43.22 RCW. WSR 03-12-044, § 296-150M-3000, filed 5/30/03, effective 5/30/03. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.070, 18.27.075, 70.87.030, 19.28.041, 19.28.051, 19.28.101, 19.28.121, 19.28.161, 19.28.201, 19.28.211, 19.28.341, 2001 c 159, and chapters 43.22, 19.28, 18.27, and 70.87 RCW. WSR 01-12-035, § 296-150M-3000, filed 5/29/01, effective 6/29/01. Statutory Authority: RCW 43.22.340, 43.22.350, 43.22.355, 43.22.360, 43.22.400, 43.22.432, 43.22.433, 43.22.434,

43.22.450, 43.22.480, and 43.22.485. WSR 00-17-148, § 296-150M-3000, filed 8/22/00, effective 9/30/00. Statutory Authority: Chapters 43.22, 18.27, 70.87 and 19.28 RCW. WSR 99-12-080, § 296-150M-3000, filed 5/28/99, effective 6/28/99. Statutory Authority: Chapters 18.106, 18.27 and 43.22 RCW. WSR 98-12-041, § 296-150M-3000, filed 5/29/98, effective 6/30/98. Statutory Authority: RCW 70.87.030, 18.27.070, [18.27.]075, 43.22.350, [43.22.]355, [43.22.]434 and [43.22.]480(2). WSR 97-11-053, § 296-150M-3000, filed 5/20/97, effective 6/30/97. Statutory Authority: RCW 43.22.340, [43.22.]355, [43.22.]360, [43.22.]432, [43.22.]440 and [43.22.]480. WSR 96-21-146, § 296-150M-3000, filed 10/23/96, effective 11/25/96.]

WSR 22-01-201
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed December 21, 2021, 10:38 a.m., effective February 1, 2022]

Effective Date of Rule: February 1, 2022.

Purpose: The department is amending WAC 388-444-0010 Who is exempt from work registration while receiving basic food?

3SSB 5164 (chapter 136, Laws of 2020) allows individuals applying for T and U visas, asylum, and "victims of human trafficking" to be eligible for the state-funded food assistance program (FAP). These individuals are not eligible to work in the United States and cannot register for work, which is currently required by FAP. This amendment will add an exemption from work registration for individuals who are not legally able to work due to their immigration status.

Citation of Rules Affected by this Order: Amending WAC 388-444-0010.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08A.120, and 74.09.035.

Adopted under notice filed as WSR 21-17-120 on August 17, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: December 21, 2021.

Katherine I. Vasquez
Rules Coordinator

SHS-4884.1

AMENDATORY SECTION (Amending WSR 21-07-132, filed 3/23/21, effective 4/23/21)

WAC 388-444-0010 Who is exempt from work registration while receiving basic food? If you receive basic food, you are exempt from work registration and the requirements in chapter 388-444 WAC if you meet any one of the following conditions:

(1) Are age sixteen or seventeen, and:

(a) Not the head of household;

(b) Attend school; or

(c) Are enrolled at least half time (using the institutions definition) in an employment and training program under:

- (i) The Workforce Innovation and Opportunity Act of 2014 (WIOA);
- (ii) Section 236 of the Trade Act of 1974; or
- (iii) A state or local employment and training program.

(2) You are a student age eighteen or older enrolled at least half time as defined by the institution in:

- (a) Any accredited school;
- (b) A training program; or

(c) An institution of higher education. If you are enrolled in higher education, you must meet the requirements under WAC 388-482-0005 to be eligible for basic food benefits.

(3) You are an employed or self-employed person working at least thirty hours per week, or receiving weekly earnings equal to the federal minimum wage multiplied by thirty;

(4) You are complying with the work requirements of an employment and training program under temporary assistance for needy families (TANF);

(5) You receive unemployment compensation (UC) benefits or have an application pending for UC benefits;

(6) You are responsible to care for:

- (a) A dependent child under age six; or

(b) A person with an incapacity that meets the requirements of WAC 388-310-0350 (1)(d)(i), (ii), (iv), and (v), except the person does not need to be related to you as stated in (1)(d)(v).

(7) You are physically or mentally unable to work as determined below:

(a) A DSHS SSI facilitator has assessed you as likely to be approved for SSI or other benefits and are required to apply for SSI or another type of federal disability benefit (such as railroad retirement or Social Security disability) and your SSI application status may be verified through either the SSI facilitator or state data exchange, or both;

(b) You have a severe and chronic mental, physical, emotional, or cognitive disability that prevents you from participating in work or work activities for at least thirty hours a week; or

(c) We verify your disability using documentation from DDA, DVR, HCS, MHD, or RSN, or by one of the medical or mental health professionals listed in WAC 388-310-0350(2).

(8) You regularly participate in a drug addiction or alcoholic treatment and rehabilitation program as defined by the Food Stamp Act of 1977.

(9) You are not legally able to work due to your immigration status.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and 7 C.F.R. 273.7, 7 C.F.R. 273.24. WSR 21-07-132, § 388-444-0010, filed 3/23/21, effective 4/23/21. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08A.120, 7 C.F.R. 273.7 and 273.24. WSR 16-04-046, § 388-444-0010, filed 1/27/16, effective 2/27/16. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.250, and 2013 c 39. WSR 13-24-043, § 388-444-0010, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.515, 74.08.090, 74.08A.120, 74.08A.903, and 7 U.S.C. 2015 (d)(1); 7 C.F.R. § 273.7. WSR 10-18-048, § 388-444-0010, filed 8/26/10, effective 10/1/10. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-444-0010, filed 7/31/98, effective 9/1/98.]

WSR 22-01-216
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed December 22, 2021, 8:39 a.m., effective January 22, 2022]

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

Purpose: The development disabilities administration (DDA) amended WAC 388-845-2110 to adjust the criteria for who can receive supported employment services. Additional amendments align with approved home and community-based services (HCBS) waivers by: Replacing "community access" with the service's new name, "community inclusion"; and removing prevocational services, which are no longer available through DDA's HCBS waivers.

Citation of Rules Affected by this Order: Amending WAC 388-845-2110.

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: RCW 71A.12.040.

Adopted under notice filed as WSR 21-22-082 on November 1, 2021.

A final cost-benefit analysis is available by contacting Chantelle Diaz, P.O Box 45310, Olympia, WA 98504-5310, fax 360-407-0955, TTY 1-800-833-6388, email Chantelle.Diaz@dshs.wa.gov.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: December 21, 2021.

Donald L. Clintsman
Acting Secretary

SHS-4898.1

AMENDATORY SECTION (Amending WSR 18-03-174, filed 1/23/18, effective 2/23/18)

WAC 388-845-2110 Are there limits to the supported employment services you may receive? The following limits apply to your receipt of supported employment services:

(1) To receive supported employment services, you must be age (~~twenty~~):

(a) 20 and graduating from high school before your July or August twenty-first birthday (~~(age twenty-one)~~):

(b) 21 and (~~(graduated from)~~) no longer eligible to enroll in high school (~~(7)~~); or (~~(age twenty-two)~~)

(c) 22 or older (~~(to receive supported employment services)~~).

(2) Payment for individual supported employment services excludes the supervisory activities rendered as a normal part of the business setting (~~(7)~~).

(3) You will not be authorized to receive supported employment services in addition to community (~~(access or prevocational)~~) inclusion services (~~(7 and)~~).

(4) Your service hours are determined by the assistance you need to reach your employment outcomes as described in WAC 388-828-9325 and might not equal the number of hours you spend on the job or in job related activities.

[Statutory Authority: RCW 71A.12.030, 71A.12.040, 2015 3rd sp.s. c 4, and 42 C.F.R. § 441.301 (c) (4)-(5). WSR 18-03-174, § 388-845-2110, filed 1/23/18, effective 2/23/18. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-2110, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 08-20-033, § 388-845-2110, filed 9/22/08, effective 10/23/08. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-2110, filed 12/13/05, effective 1/13/06.]