

WSR 23-06-002
PROPOSED RULES
BIG BEND
COMMUNITY COLLEGE

[Filed February 15, 2023, 3:53 p.m.]

Continuance of WSR 23-01-129 [Original notice].

Preproposal statement of inquiry was filed as WSR 23-01-129.

Title of Rule and Other Identifying Information: WAC 132R-04-015, 132R-04-017, 132R-04-057, and 132R-04-061.

Hearing Location(s): On April 5, 2023, 2:30 p.m., at Big Bend Community College, 7662 Chanute Street N.E., Moses Lake, WA, ATEC Building, Hardin Community Room.

Date of Intended Adoption: May 10, 2023.

Submit Written Comments to: Melinda Owens Dourte, 7662 Chanute Street N.E., Moses Lake, WA 98837, email melindad@bigbend.edu.

Assistance for Persons with Disabilities: Contact Rebecca Leavell, phone 509-793-2027, TTY 509-793-2325, email Rebeccal@bigbend.edu.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Revisions to meet requirements recently enacted HB 1752 [2SHB 1751] Sam's [Law] bill.

Reasons Supporting Proposal: Revisions to meet requirements recently enacted HB 1752 [2SHB 1751] Sam's [Law] bill.

Statutory Authority for Adoption: RCW 28B.50.140.

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

Name of Proponent: Big Bend Community College, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Owens Dourte, 7662 Chanute Street N.E., Moses Lake, WA, Administration Building 1400, 509-793-2001; Implementation and Enforcement: André Guzman, 7662 Chanute Street N.E., Moses Lake, WA, Administration Building 1400, 509-793-2077.

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

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

The proposed rule does not impose more-than-minor costs on businesses.

February 13, 2023

Melinda Dourte

Executive Assistant to the President

OTS-4368.1

AMENDATORY SECTION (Amending WSR 18-17-026, filed 8/6/18, effective 9/6/18)

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

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

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

(3) "The president" is the president of the college. The president is authorized to delegate any and all of his or her responsibilities as set forth in this chapter as may be reasonably necessary and to reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary.

(4) "Disciplinary action" is the process by which discipline is imposed by the student conduct officer against a student for a violation of the student conduct code.

(5) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of (~~ten~~) 10 instructional days or an expulsion are heard by the disciplinary committee. Appeals of all other appealable disciplinary action may be reviewed through brief adjudicative proceedings.

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

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

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

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

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

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

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

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

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

(9) "College premises" shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

(10) "Student" is defined as all persons taking courses at or through the college, including those concurrently attending secondary or postsecondary institutions and college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses (excluding those trainings occurring through the Center for Business and Industry Service and the Japanese Agriculture Training Program), irrespective of modality. Persons who withdraw after allegedly violating the student code of conduct, who are not officially

enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered "students" for the purposes of this chapter. "Continuing relationship" is established when a student is registered for an upcoming term or has indicated an intent to do so via a transaction, such as submitting a financial aid application for an upcoming term.

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

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

~~((12))~~ (13) "Complainant" means any person who files a complaint alleging that a student or student organization violated the standards of conduct for students. Complainant also refers to the college when the college files the complaint.

~~((13))~~ (14) "Sexual misconduct" has the meaning ascribed to this term in WAC 132R-04-057.

[Statutory Authority: RCW 28B.50.140. WSR 18-17-026, § 132R-04-015, filed 8/6/18, effective 9/6/18; WSR 17-22-054, § 132R-04-015, filed 10/25/17, effective 11/25/17; WSR 16-15-011, § 132R-04-015, filed 7/8/16, effective 8/8/16. Statutory Authority: RCW 28B.50.140 and chapter 34.05 RCW. WSR 03-15-063, § 132R-04-015, filed 7/14/03, effective 8/14/03.]

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

WAC 132R-04-017 Statement of jurisdiction. (1) The student conduct code ~~((adopted herein applies to student conduct))~~ shall apply to conduct by students and student groups that occurs:

(a) On college premises~~((τ)); or~~

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

(c) To off-campus ~~((student))~~ conduct that in the judgment of the college adversely affects the ~~((well-being-of-the))~~ college community ~~((and/))~~ or the pursuit of its objectives.

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

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

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

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

[Statutory Authority: RCW 28B.50.140. WSR 17-22-054, § 132R-04-017, filed 10/25/17, effective 11/25/17; WSR 16-15-011, § 132R-04-017, filed 7/8/16, effective 8/8/16. Statutory Authority: RCW 28B.50.140 and chapter 34.05 RCW. WSR 03-15-063, § 132R-04-017, filed 7/14/03, effective 8/14/03.]

AMENDATORY SECTION (Amending WSR 21-08-012, filed 3/26/21, effective 4/26/21)

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

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

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

(b) Plagiarism includes, but is not limited to, taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

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

(d) This section shall not be construed as preventing an instructor from taking immediate disciplinary action as provided herein where the instructor is required to act upon such breach of academic dishonesty in order to preserve order and prevent disruptive conduct in the classroom.

(e) This section shall also not be construed as preventing an instructor from adjusting the student's grade on a particular project, paper, test, or class grade for academic dishonesty.

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

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

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

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

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

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

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

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

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

(a) Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person.

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

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

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

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

(8) **Weapons.** Possession of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device or any other weapon apparently capable of producing bodily harm, unless previously authorized by the vice president of learning and student success. This policy does not apply to the possession of a personal protection spray device, as authorized by RCW 9.91.160. This policy is subject to the following exceptions:

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

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

(c) The president or designee may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission.

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

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

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

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

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

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

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

(ii) Humiliation by ritual act;

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

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

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

(c) "Hazing" does not include customary athletic events or other similar contests or competitions. See RCW 28B.10.900.

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

(10) Alcohol, drug, and tobacco violations.

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

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

(c) Drugs. The use, possession, delivery, sale, or being observably under the influence of any legend drug (including anabolic steroids, androgens, or human growth hormones), narcotic drug or controlled substance as defined in chapters 69.41 and 69.50 RCW, except in accordance with a lawful prescription for that student by a licensed health care professional.

(d) Tobacco, electronic cigarettes, and related products. The use of tobacco, electronic cigarettes, and related products in any building owned, leased, or operated by the college, or in any location where such use is prohibited, or in any location other than the parking lots, including (~~twenty-five~~) 25 feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased or operated by the college. The use of tobacco, electronic cigarettes, and related products on the college campus is restricted to designated smoking areas.

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

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

(12) **Discriminatory conduct.** Conduct which harms or adversely affects any member of the college community because of race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age (40+); religion; creed; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(13) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX is defined in the supplemental procedures to this code. See WAC 132R-04-103.

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome sexual or gender-based conduct, including unwelcomed sexual advances, requests for sexual favors, quid pro quo harassment, and other verbal, nonverbal, or physical conduct of a sexual or a gendered nature that is sufficiently severe, persistent, or pervasive as to:

(i) Deny or limit the ability of a student to participate in or benefit from the college's educational programs or activities;

(ii) Alter the terms or conditions of employment for a college employee(s); and/or

(iii) Create an intimidating, hostile, or offensive environment for other campus community members.

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

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

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

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

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

(iv) Statutory rape. Consensual intercourse between a person who is (~~eighteen~~) 18 years of age or older, and a person who is under the age of (~~sixteen~~) 16.

(v) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or

stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

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

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

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

(I) The length of the relationship;

(II) The type of relationship; and

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

(vii) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(A) Fear for their safety or the safety of others; or

(B) Suffer substantial emotional distress.

(viii) Consent. Clear, knowing, and voluntary permission by word or action to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be actual words or conduct indicating freely given agreement to the act at the time of the act. Consent cannot be inferred from silence, passivity, or lack of active resistance. Consent can be withdrawn by either party at any point. Consent to engage in one activity, or past agreement to engage in a particular activity, cannot be presumed to constitute consent to engage in a different activity or to engage in the same activity again. There is no consent where there is a threat of force or violence or any other form of coercion or intimidation, physical or psychological. A person cannot consent if they are unable to understand what is happening or are disoriented, or if they are asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapable of consent has engaged in nonconsensual conduct. Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(14) **Harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age (40+); religion; creed; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See supplemental definitions: "Sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic communications.

(15) **Retaliation.** Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such person reported an alleged violation of this code or college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.

(16) **Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

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

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

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

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

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

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

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

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

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

(17) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

(18) **Safety violations.** Safety violation includes any nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

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

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

(b) Falsification or misrepresentation of information;

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

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

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

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

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

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

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

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

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

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

[Statutory Authority: Chapter 34.05 RCW; and RCW 28B.50.140(13) and 34 C.F.R. Part 106; Nelson v. Spokane Community College, 14 Wn. App.2d 40, 469 P.3d 317 (2020). WSR 21-08-012, § 132R-04-057, filed 3/26/21, effective 4/26/21. Statutory Authority: RCW 28B.50.140. WSR 18-17-026, § 132R-04-057, filed 8/6/18, effective 9/6/18; WSR 17-22-054, § 132R-04-057, filed 10/25/17, effective 11/25/17; WSR 16-15-011, § 132R-04-057, filed 7/8/16, effective 8/8/16. Statutory Authority: RCW 28B.50.140 and chapter 34.05 RCW. WSR 03-15-063, § 132R-04-057, filed 7/14/03, effective 8/14/03.]

NEW SECTION

WAC 132R-04-061 Hazing prohibited—Sanctions. (1) Hazing by a student or a student group is prohibited pursuant to WAC 132R-04-057.

(2) No student may conspire to engage in hazing or participate in hazing of another. State law provides that hazing is a criminal offense, punishable as a misdemeanor. See RCW 28B.10.901 (2) and (3).

(3) Washington state law provides that:

(a) Any student group that knowingly permits hazing is strictly liable for harm caused to persons or property resulting from hazing. If the organization, association, or student living group is a corporation whether for profit or nonprofit, the individual directors of the corporation may be held individually liable for damages. RCW 28B.10.901(3).

(b) Any person who participates in the hazing of another shall forfeit any entitlement to state-funded grants, scholarships, or awards for a period of time determined by the college. RCW 28B.10.902(1).

(c) Student groups that knowingly permit hazing to be conducted by its members or by others subject to its direction or control shall be deprived of any official recognition or approval granted by the college. RCW 28B.10.902(2).

(d) Student groups found responsible for violating the code of student conduct, college anti-hazing policies, or state or federal laws relating to hazing or offenses related to alcohol, drugs, sexual assault, or physical assault will be disclosed in a public report issued by the college setting forth the name of the student group, the date the investigation began, the date the investigation ended, a finding

of responsibility, a description of the incident(s) giving rise to the finding, and the details of the sanction(s) imposed.

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WSR 23-06-004
PROPOSED RULES
CENTRALIA COLLEGE

[Filed February 16, 2023, 9:37 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR [22-24-114A on] December 7, 2022.

Title of Rule and Other Identifying Information: Student conduct code with antihazing language.

Hearing Location(s): On April 4, 2023, at 4:00 - 6:00 [p.m.], at Centralia College Campus, Hanson Building Board Room. This public hearing is in-person only.

Date of Intended Adoption: April 4, 2023.

Submit Written Comments to: Robert Cox, 600 Centralia College Boulevard, Centralia, WA 98531, email robert.cox@centralia.edu, by April 4, 2023.

Assistance for Persons with Disabilities: Contact Michael Hoel, phone 360-623-8437, email Michael.hoel@centralia.edu, by April 4, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Includes HB [2SHB] 1751 required anti-hazing language to the student code of conduct.

Reasons Supporting Proposal: Legally required.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B50.140(13).

Statute Being Implemented: Edited WAC 132L-351-020, 132L-351-025, 132L-351-040, and 132L-351-050.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: HB [2SHB] 1751 "Sam's Law" hazing prevention requirements.

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

Name of Proponent: Centralia College, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Robert Cox, TAC, Centralia College Campus, 360-632-8385.

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

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

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: HB [2SHB] 1751 "Sam's Law" hazing prevention requirements.

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Scope of exemption for rule proposal:

Is fully exempt.

February 15, 2023

Robert Cox

Vice President of Student Services

OTS-4249.1

AMENDATORY SECTION (Amending WSR 21-12-044, filed 5/25/21, effective 6/25/21)

WAC 132L-351-020 Definitions. The following definitions shall apply for purpose of this student conduct code:

(1) "Student conduct officer" is a college administrator designated by the president to be responsible for implementing and enforcing the student conduct code.

(2) "Conduct review officer" is the vice president of student services or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code.

(3) "President" is the president of the college. The president is authorized to:

(a) Delegate any of their responsibilities as set forth in this chapter as may be reasonably necessary; and

(b) Reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary.

(4) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.

(5) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ~~((ten))~~ 10 instructional days or an expulsion are heard by the student conduct appeals board. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

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

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

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

(b) By sending the document by email and by certified mail or first class mail to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is emailed and deposited in the mail.

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

(9) "Filing" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

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

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

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

~~((9))~~ (10) "College premises" shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

~~((10))~~ (11) "Student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, persons who are not officially enrolled for a particular term but who have a continuing relationship with the college, and persons who have been notified of their acceptance for admission are considered "students" for purposes of this chapter.

~~((11))~~ (12) "Business day" means a weekday, excluding weekends and college holidays.

~~((12))~~ (13) "Complainant" is an alleged victim of sexual misconduct.

~~((13))~~ (14) "Sexual misconduct" has the meaning ascribed to this term in WAC 132L-351-130.

[Statutory Authority: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-12-044, § 132L-351-020, filed 5/25/21, effective 6/25/21.]

AMENDATORY SECTION (Amending WSR 21-12-044, filed 5/25/21, effective 6/25/21)

WAC 132L-351-025 Jurisdiction. The student conduct code shall apply to student conduct that occurs on college premises, to conduct that occurs at or in connection with college-sponsored activities, or to off-campus conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives. Jurisdiction extends to, but is not limited to, locations in which students are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences or any other college-sanctioned social or club activities. Students are responsible for their conduct from the time of application for admission through the actual receipt of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment. These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending. The college has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct that occurs off-campus.

Hazing:

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

(a) On college premises; or

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

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

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

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

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

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

[Statutory Authority: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-12-044, § 132L-351-025, filed 5/25/21, effective 6/25/21.]

AMENDATORY SECTION (Amending WSR 21-12-044, filed 5/25/21, effective 6/25/21)

WAC 132L-351-040 Prohibited student conduct. The college may impose disciplinary sanctions against a student who commits, attempts to commit, aids, abets, incites, encourages or assists another person to commit, an act(s) of misconduct, which include, but are not limited to, the following:

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

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

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

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

(d) Academic consequences for academic dishonesty or abetting in academic dishonesty may be imposed at the discretion of a faculty member up to and including a failing grade for the course. Students should refer to each of their faculty's course syllabus. Further academic consequences may follow consistent with the provisions in any program handbook. Incidents of academic dishonesty may also be referred to the student conduct officer for disciplinary action consistent with this chapter in addition to the academic consequences identified above.

(2) **Other dishonesty.** Any other acts of dishonesty. Such acts include, but are not limited to:

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

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

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

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

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

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

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

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

(6) **Property violation.** Damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging or destruction of college property or the property of another person. Property for purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.

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

(8) **Weapons.** Carrying, exhibiting, displaying or drawing any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, or any other weapon apparently capable of producing bodily harm, in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons.

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

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

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

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

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

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

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

(ii) Humiliation by ritual act;

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

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

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

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

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

(10) Alcohol, drug, and tobacco violations.

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

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

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

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

(11) **Lewd conduct.** Conduct which is lewd or obscene that is not otherwise protected under the law.

(12) **Discriminatory conduct.** Conduct which harms or adversely affects any member of the college community because of her/his race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age;

religion; creed; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(13) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX is defined in the supplemental procedures to this code. See WAC 132L-351-210.

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome sexual or gender-based conduct, including unwelcome sexual advances, requests for sexual favors, quid pro quo harassment, and other verbal, nonverbal, or physical conduct of a sexual or a gendered nature that is sufficiently severe, persistent, or pervasive as to:

(i) Deny or limit the ability of a student to participate in or benefit from the college's educational program;

(ii) Alter the terms or conditions of employment for a college employee(s); and/or

(iii) Create an intimidating, hostile, or offensive environment for other campus community members.

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

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

(d) **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.

(e) **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.

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

(g) **Statutory rape.** Consensual intercourse between a person who is ((eighteen)) 18 years of age or older, and a person who is under the age of ((sixteen)) 16.

(h) **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.

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

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

(ii) 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,

(j) **Stalking.** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(i) Fear for their safety or the safety of others; or

(ii) Suffer substantial emotional distress.

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

(14) **Harassment.** Unwelcome conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program, that changes the terms or conditions of employment for a college employee, or that creates an intimidating or hostile environment for other campus community members.

Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media, and electronic communications.

(15) **Retaliation.** Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such person reported an alleged violation of this code or college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.

(16) **Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

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

- (b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;
- (c) Unauthorized use or distribution of someone else's password or other identification;
- (d) Use of such time or resources to interfere with someone else's work;
- (e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;
- (f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;
- (g) Use of such time or resources in violation of applicable copyright or other law;
- (h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or
- (i) Failure to comply with the college's electronic use policy.
- (17) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.
- (18) **Safety violations.** Safety violation includes any nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.
- (19) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college traffic and parking rules.
- (20) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

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

[Statutory Authority: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-12-044, § 132L-351-040, filed 5/25/21, effective 6/25/21.]

AMENDATORY SECTION (Amending WSR 21-12-044, filed 5/25/21, effective 6/25/21)

WAC 132L-351-050 Disciplinary sanctions terms and conditions.

- (1) The following disciplinary sanctions may be imposed upon students found to have violated the student conduct code:
- (a) **Disciplinary warning.** A verbal statement to a student that there is a violation and that continued violation may be cause for further disciplinary action.
- (b) **Written reprimand.** Notice in writing that the student has violated one or more terms of this code of conduct and that continua-

tion or repetition of the same or similar may be cause for more severe disciplinary action. This sanction is not subject to appeal.

(c) **Disciplinary probation.** Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation and which may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction, which may include, but is not limited to, a suspension or a dismissal from the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance at the college.

(d) **Summary suspension.** Immediate exclusion from classes and other privileges or activities in accordance with this code.

(e) **Disciplinary suspension.** Dismissal from the college and from the student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action is taken.

(f) **Deferred suspension.** Notice of suspension from the college with the provision that the student may remain enrolled contingent on meeting any condition(s) specified. Not meeting the contingency shall immediately invoke the suspension for the period of time and under the conditions originally imposed.

(g) **Dismissal.** The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the action is taken.

(2) Disciplinary terms and conditions that may be imposed alone or in conjunction with the imposition of a disciplinary sanction include, but are not limited to, the following:

(a) **Restitution.** Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.

(b) **Professional evaluation.** Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(c) **Not in good standing.** A student may be deemed "not in good standing" with the college. If so, the student shall be subject to the following restrictions:

(i) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.

(ii) Ineligible to represent the college to anyone outside the college community in any way, including representing the college at

any official function, or any form of intercollegiate competition or representation.

(d) **No contact order.** An order directing a student to have no contact with a specified student, college employee, a member of the college community, or a particular college facility.

(e) **Disqualification from athletics.** Any student found by the college to have violated this code related to the use, possession, sale, or delivery of legend drugs is subject to additional sanctions, including disqualification from college-sponsored athletic events.

(f) **College or community service.** Assignment of labor or responsibilities to any student or student organization with the college or local community. May also include mandatory attendance at educational programs or courses or other assignments.

(3) Hazing disciplinary sanctions for individual and group incidents prohibited pursuant to WAC 132L-351-040(9):

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

(b) Washington state law provides that:

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

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

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

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

[Statutory Authority: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-12-044, § 132L-351-050, filed 5/25/21, effective 6/25/21.]

WSR 23-06-005

PROPOSED RULES

CENTRALIA COLLEGE

[Filed February 16, 2023, 9:37 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR [22-24-114B on] December 7, 2022.

Title of Rule and Other Identifying Information: WAC 132L-117-170 Fines and penalties.

Hearing Location(s): On April 4, 2023, at 4:00 - 6:00 p[.m.], at Centralia College Campus, Hanson Building Board Rooms. This public hearing is in-person only.

Date of Intended Adoption: April 5, 2023.

Submit Written Comments to: Janet Reaume, 600 Centralia College Boulevard, Centralia, WA 98531, email janet.reaume@centralia.edu, by April 4, 2023.

Assistance for Persons with Disabilities: Contact Michael Hoel, phone 360-623-8437, email Michael.hoel@centralia.edu, by April 4, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HB [2SHB] 2513 prohibits transcript holds for fines and penalties.

Reasons Supporting Proposal: Legally required.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140(13).

Statute Being Implemented: Edited WAC 132L-117-170.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: HB [2SHB] 2513 prohibits transcript holds for fines and penalties.

Name of Proponent: Centralia College, governmental.

Name of Agency Personnel Responsible for Drafting: Janet Reaume, Hanson Administration Building, Centralia College, 360-623-8589; and Implementation: Robert Cox, TAC Building, Centralia College, 360-623-8385.

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

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

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

Is fully exempt.

February 3, 2023

Janet Reaume

Executive Assistant to the President

OTS-4247.1

AMENDATORY SECTION (Amending WSR 04-19-062, filed 9/15/04, effective 10/16/04)

WAC 132L-117-170 Fines and penalties. The chief administrative officer, or designee, is authorized to impose the following fines and penalties for violation of the regulations contained in this chapter:

(1) The president shall set a schedule of fines. The schedule shall be published by the college in the College Policy Manual, on the parking permit request form, and on the traffic parking citation form. In addition, the schedule is available upon request.

(2) Fines will be assessed in accordance with the fees and fines schedules as established by the president for the following violations:

- (a) No valid permit displayed
- (b) Visitor parking violations
- (c) Occupying more than one parking space
- (d) Occupying space/area not designated for parking
- (e) Handicapped parking violation
- (f) Parking in area not authorized by permit
- (g) Parking in reserved staff space without authorization
- (h) Blocking or obstructing traffic (may be towed at owner's expense)
- (i) Parking adjacent to fire hydrant (may be towed at owner's expense)
- (j) Parking in fire lane (may be towed at owner's expense)
- (k) Parking in zone or area marked no parking
- (l) Other violations of college parking traffic regulations.

(3) At the discretion of the chief administrative officer, or designee, an accumulation of citations by a staff, administrator, or faculty member may be turned over to a private collection agency for the collection of past due fines. Other appropriate collection procedures may be initiated as deemed necessary.

(4) Vehicles parking in a manner so as to obstruct traffic, including access to and from parking spaces and areas, may be subject to a fine and may be impounded and taken to such place for storage as the chief administrative officer, or designee, selects. The expenses of such impounding and storage shall be the responsibility of the registered owner or driver of the vehicle.

(5) Vehicles impounded by means of an immobilizing device shall be charged a service fee according to the current fee schedule.

(6) The college shall not be liable for loss or damage of any kind resulting from impounding and storage of vehicles.

(7) Vehicles involved in violations of these regulations may be impounded as provided for in these regulations.

(8) Persons may appeal the issuance of a citation according to WAC 132L-117-180.

(9) In the event a person fails or refuses to pay an uncontested fine which has been outstanding in excess of five days, the chief administrative officer, or designee, may initiate the following actions:

(a) ~~((Student may not be able to obtain transcript of credits until all fines are paid.~~

~~(b))~~ Students will not be able to register for subsequent quarters until all fines are paid.

~~((e))~~ (b) Students may be turned over to a private collection agency for the collection of past due fines.

[Statutory Authority: RCW 28B.50.140 and chapter 34.05 RCW. WSR 04-19-062, § 132L-117-170, filed 9/15/04, effective 10/16/04. Statutory Authority: RCW 28B.50.140(10). WSR 90-17-060 (Order A-4(90)), § 132L-117-170, filed 8/14/90, effective 9/14/90.]

WSR 23-06-006
PROPOSED RULES
CENTRALIA COLLEGE

[Filed February 16, 2023, 9:37 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR [22-24-114C on] December 7, 2022.

Title of Rule and Other Identifying Information: WAC 132L-122-010 Policy.

Hearing Location(s): On April 4, 2023, at 4:00 - 6:00 p[.m.], at Centralia College Campus, Hanson Building Board Rooms. This public hearing is in-person only.

Date of Intended Adoption: April 5, 2023.

Submit Written Comments to: Janet Reaume, 600 Centralia College Boulevard, Centralia, WA 98531, email janet.reaume@centralia.edu, by April 4, 2023.

Assistance for Persons with Disabilities: Contact Michael Hoel, phone 360-623-8437, email Michael.hoel@centralia.edu, by April 4, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HB [2SHB] 2513 prohibits transcript holds for financial obligations.

Reasons Supporting Proposal: Legally required.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140(13).

Statute Being Implemented: Edited WAC 132L-122-010.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: HB [2SHB] 2513 prohibits transcript holds for financial obligations.

Name of Proponent: Centralia College, governmental.

Name of Agency Personnel Responsible for Drafting: Janet Reaume, Hanson Administrative Building, Centralia College, 360-623-8589; and Implementation: Robert Cox, TAC Building, Centralia College, 360-632-8385.

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

A cost-benefit analysis is not required under RCW 34.05.328. There is no cost.

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

Is fully exempt.

February 15, 2023

Janet Reaume

Executive Assistant to the President

OTS-4248.1

AMENDATORY SECTION (Amending WSR 04-19-062, filed 9/15/04, effective 10/16/04)

WAC 132L-122-010 Policy. If any person, including faculty member, staff member, student, or former student, is indebted to the institution for an outstanding overdue debt, the institution need not provide any further services of any kind to such individual(~~(r)~~) including, but not limited to, admission, course registration, library access, transmitting files, records, (~~(transcripts,r)~~) or other services which have been requested by such person.

[Statutory Authority: RCW 28B.50.140 and chapter 34.05 RCW. WSR 04-19-062, § 132L-122-010, filed 9/15/04, effective 10/16/04.]

WSR 23-06-019
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed February 17, 2023, 10:45 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-14-027.

Title of Rule and Other Identifying Information: The department is proposing amendments to WAC 388-454-0006 The department makes background checks on adults who are acting in place of a parent without court-ordered custody.

Hearing Location(s): On April 4, 2023, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtually. Due to the COVID[-19] pandemic, hearings are being held virtually. Please see the DSHS website for the most up-to-date information.

Date of Intended Adoption: No earlier than April 5, 2023.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by April 4, 2023, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email Tencza@dshs.wa.gov, by March 21, 2023, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These amendments clarify eligibility requirements for temporary assistance for needy families and state family assistance "*in loco parentis*" households and outline DSHS responsibilities when supporting these families.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 43.43.832, 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.12.290.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Sarah Mintzer, P.O. Box 45470, Olympia, WA 98504-5770, 360-764-0050.

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

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

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

Is exempt under RCW 19.85.025(4).

Is exempt under RCW 34.05.328 (5)(b)(vii).

Explanation of exemptions: The proposed rules do not impact small businesses. They only impact DSHS clients.

Scope of exemption for rule proposal:

Is fully exempt.

February 15, 2023
Katherine I. Vasquez
Rules Coordinator

SHS-4949.3

AMENDATORY SECTION (Amending WSR 21-23-020, filed 11/8/21, effective 12/9/21)

~~WAC 388-454-0006 ((The department makes background checks on adults who are acting in place of a parent without court-ordered custody. How can I receive TANF/SFA as an *In Loco Parentis* caregiver?~~

~~(1) We check your background when you ask for temporary assistance for needy families (TANF) or state family assistance (SFA) benefits for a child who:~~

~~(a) Is not related to you; and~~

~~(b) Lives with you but you do not have a court order that gives you legal custody of the child.~~

~~(2) A child who is not related to you cannot receive TANF/SFA benefits while living with you until we have completed a background check and the results of the background check meet the criteria in subsection (3) through (5) of this section.~~

~~(3) A child who is not related to you cannot receive benefits while living with you if:~~

~~(a) You have been convicted of a crime listed in WAC 110-04-0100 (1)(a) through (e); or~~

~~(b) You have been convicted of a crime listed in WAC 110-04-0110 (1) through (3) within the last five years; or~~

~~(c) You have a pending criminal charge for a disqualifying crime listed in WAC 110-04-0130 (1)(a) through (b); or~~

~~(d) You are determined by the department to not have the character, suitability, and competence necessary to receive benefits for a child not related to you, as described in subsection (4) and (5) of this section.~~

~~(4) We review your background when you have been convicted of a crime listed in WAC 110-04-0110 (1) through (3), more than five years ago to determine your character, suitability, and competence to receive benefits for a child not related to you. We consider the following factors:~~

~~(a) The amount of time that has passed since you were convicted;~~

~~(b) The seriousness of the crime that led to the conviction;~~

~~(c) The number and types of convictions in your background; and~~

~~(d) Your age at the time of the conviction.~~

~~(5) When you have a conviction for a crime other than those listed in WAC 110-04-0100 (1)(a) through (e), or 110-04-0110 (1) through (3) or have a founded finding of child abuse or neglect, as defined in WAC 110-03-0020, we review your background as described in subsection (4) of this section.~~

~~(6) If you disclose to us that you have received a certificate of parental improvement, as described in WAC 110-05-0001, and we verify it, then the related founded finding of child abuse or neglect, or de-~~

~~pendency finding will not be considered in our determination under this section.~~

~~(7) Expunged, pardoned, sealed, or vacated conviction records, or those convictions for which you received a certificate of rehabilitation, do not count against you.)~~

~~(1) *In Loco Parentis* caregiver means:~~

~~(a) You are acting as a parent for a child living with you;~~

~~(b) The child is not related to you; and~~

~~(c) You do not have a court order that gives you legal custody or guardianship of the child.~~

~~(2) You are required to complete a financial interview to determine eligibility of the child in your care, per WAC 388-400-0005.~~

~~(3) You are eligible to receive a TANF/SFA grant for the child in your care as long as:~~

~~(a) The child meets all of the criteria under WAC 388-400-0005;~~

~~(b) You, and all adults 18 years of age or older, residing in the household must complete, sign, and provide the department a background check authorization form.~~

~~(4) In addition to the cash grant, you will be offered a voluntary assessment from the department to discuss the child's needs. The assessment may include a home visit. During the assessment, you will receive a referral to resources in your local community to provide support for the child in your care.~~

~~(5) If the background check or the assessment with the department raises concerns of child abuse or neglect, per RCW 26.44.030 the department will make a report to the department of children, youth, and families for the safety of the child.~~

~~(6) With regard to *In Loco Parentis* applicants, the department must do the following:~~

~~(a) Determine financial eligibility;~~

~~(b) Notify the child's parents of the approval of the TANF/SFA assistance per WAC 388-454-0025;~~

~~(c) Provide the caregiver information of exemptions under WAC 388-422-0020 from the requirement to cooperate with the division of child support on collection of child support from the non-custodial parents, where there are safety concerns for the caregiver or the child;~~

~~(d) Process the background check of all adults 18 years of age or older residing in the household and evaluate the findings for suitability and competency to care for the child in your home;~~

~~(e) Accept a certificate of parental improvement, from the *In Loco Parentis* applicant, as described in WAC 110-05-0001, and not considering the related finding of child abuse or neglect in the background check;~~

~~(f) Provide a voluntary assessment, voluntary home visit, and offer resources to the child in the home of the *In Loco Parentis* caregiver.~~

[Statutory Authority: RCW 43.43.832, 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.12.290. WSR 21-23-020, § 388-454-0006, filed 11/8/21, effective 12/9/21. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.770, and 74.08.090. WSR 16-24-037, § 388-454-0006, filed 11/30/16, effective 1/1/17. Statutory Authority: RCW 13.32A.080, 13.32A.082, 74.04.050, 74.08.090, 74.12.290, 74.12.450, 74.12.460. WSR 02-01-011, § 388-454-0006, filed 12/7/01, effective 1/7/02.]

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

WSR 23-06-044

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed February 24, 2023, 10:59 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-24-062.

Title of Rule and Other Identifying Information: WAC 182-535-1098 Covered—Adjunctive general services and 182-535-1100 Dental-related services—Not covered.

Hearing Location(s): On April 4, 2023, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_vz25iQmcQVaCXYW6QEDNyw. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: April 5, 2023.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by April 4, 2023, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email Johanna.Larson@hca.wa.gov, by March 17, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending these rules to: (1) Correct a WAC subsection reference in WAC 182-535-1098 (4) (c). Subsection (4) (c) indicates refer to WAC 182-535-1094(3) and should be WAC 182-535-1094(4); and (2) remove subsection (2) (f) (x), replacement of agency-purchased prosthodontics, from WAC 182-535-1100 Not covered. Dentures are a covered service.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Valerie Freudenstein, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-3144; Implementation and Enforcement: Jayson Diaz, P.O. Box 55076, Olympia, WA 98504-5076, 360-725-1822.

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

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

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

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The rule is being revised to fix an incorrect citation and remove a restriction on dentures. Neither of these changes impose a more-than-minor cost.

February 24, 2023

OTS-4328.1

AMENDATORY SECTION (Amending WSR 21-14-055, filed 7/1/21, effective 8/1/21)

WAC 182-535-1098 Covered—Adjunctive general services. Clients described in WAC 182-535-1060 are eligible to receive the adjunctive general services listed in this section, subject to coverage limitations, restrictions, and client-age requirements identified for a specific service.

(1) **Adjunctive general services.** The medicaid agency:

(a) Covers palliative (emergency) treatment, not to include pupal debridement (see WAC 182-535-1086 (2)(b)), for treatment of dental pain, limited to once per day, per client, as follows:

(i) The treatment must occur during limited evaluation appointments;

(ii) A comprehensive description of the diagnosis and services provided must be documented in the client's record; and

(iii) Appropriate radiographs must be in the client's record supporting the medical necessity of the treatment.

(b) Covers local anesthesia and regional blocks as part of the global fee for any procedure being provided to clients.

(c) Covers office-based deep sedation/general anesthesia services:

(i) For all eligible clients age eight and younger and clients any age of the developmental disabilities administration of the department of social and health services (DSHS). Documentation supporting the medical necessity of the anesthesia service must be in the client's record.

(ii) For clients age nine through (~~twenty~~) 20 on a case-by-case basis and when prior authorized, except for oral surgery services. For oral surgery services listed in WAC 182-535-1094 (1)(f) through (l) and clients with cleft palate diagnoses, the agency does not require prior authorization for deep sedation/general anesthesia services.

(iii) For clients age (~~twenty-one~~) 21 and older when prior authorized. The agency considers these services for only those clients:

(A) With medical conditions such as tremors, seizures, or asthma;

(B) Whose records contain documentation of tried and failed treatment under local anesthesia or other less costly sedation alternatives due to behavioral health conditions; or

(C) With other conditions for which general anesthesia is medically necessary, as defined in WAC 182-500-0070.

(d) Covers office-based intravenous moderate (conscious) sedation/analgesia:

(i) For any dental service for clients age (~~twenty~~) 20 and younger, and for clients any age of the developmental disabilities administration of DSHS. Documentation supporting the medical necessity of the service must be in the client's record.

- (ii) For clients age (~~(twenty-one)~~) 21 and older when prior authorized. The agency considers these services for only those clients:
 - (A) With medical conditions such as tremors, seizures, or asthma;
 - (B) Whose records contain documentation of tried and failed treatment under local anesthesia, or other less costly sedation alternatives due to behavioral health conditions; or
 - (C) With other conditions for which general anesthesia or conscious sedation is medically necessary, as defined in WAC 182-500-0070.
- (e) Covers office-based nonintravenous conscious sedation:
 - (i) For any dental service for clients age (~~(twenty)~~) 20 and younger, and for clients any age of the developmental disabilities administration of DSHS. Documentation supporting the medical necessity of the service must be in the client's record.
 - (ii) For clients age (~~(twenty-one)~~) 21 and older, only when prior authorized.
- (f) Requires providers to bill anesthesia services using the current dental terminology (CDT) codes listed in the agency's current published billing instructions.
- (g) Requires providers to have a current anesthesia permit on file with the agency.
- (h) Covers administration of nitrous oxide once per day, per client per provider.
- (i) Requires providers of oral or parenteral conscious sedation, deep sedation, or general anesthesia to meet:
 - (i) The prevailing standard of care;
 - (ii) The provider's professional organizational guidelines;
 - (iii) The requirements in chapter 246-817 WAC; and
 - (iv) Relevant department of health (DOH) medical, dental, or nursing anesthesia regulations.
- (j) Pays for dental anesthesia services according to WAC 182-535-1350.
- (k) Covers professional consultation/diagnostic services as follows:
 - (i) A dentist or a physician other than the practitioner providing treatment must provide the services; and
 - (ii) A client must be referred by the agency for the services to be covered.
- (2) **Professional visits.** The agency covers:
 - (a) Up to two house/extended care facility calls (visits) per facility, per provider. The agency limits payment to two facilities per day, per provider.
 - (b) One hospital visit, including emergency care, per day, per provider, per client, and not in combination with a surgical code unless the decision for surgery is a result of the visit.
 - (c) Emergency office visits after regularly scheduled hours. The agency limits payment to one emergency visit per day, per client, per provider.
- (3) **Drugs and medicaments (pharmaceuticals).**
 - (a) The agency covers oral sedation medications only when prescribed and the prescription is filled at a pharmacy. The agency does not cover oral sedation medications that are dispensed in the provider's office for home use.
 - (b) The agency covers therapeutic parenteral drugs as follows:
 - (i) Includes antibiotics, steroids, anti-inflammatory drugs, or other therapeutic medications. This does not include sedative, anesthetic, or reversal agents.

(ii) Only one single-drug injection or one multiple-drug injection per date of service.

(c) For clients age (~~twenty~~) 20 and younger, the agency covers other drugs and medicaments dispensed in the provider's office for home use. This includes, but is not limited to, oral antibiotics and oral analgesics. The agency does not cover the time spent writing prescriptions.

(d) For clients enrolled in an agency-contracted managed care organization (MCO), the client's MCO pays for dental prescriptions.

(4) **Miscellaneous services.** The agency covers:

(a) Behavior management provided by a dental provider or clinic. The agency does not cover assistance with managing a client's behavior provided by a dental provider or staff member delivering the client's dental treatment.

(i) Documentation supporting the need for behavior management must be in the client's record and including the following:

(A) A description of the behavior to be managed;

(B) The behavior management technique used; and

(C) The identity of the additional professional staff used to provide the behavior management.

(ii) Clients, who meet one of the following criteria and whose documented behavior requires the assistance of one additional professional staff employed by the dental provider or clinic to protect the client and the professional staff from injury while treatment is rendered, may receive behavior management:

(A) Clients age eight and younger;

(B) Clients age nine through (~~twenty~~) 20, only on a case-by-case basis and when prior authorized;

(C) Clients any age of the developmental disabilities administration of DSHS;

(D) Clients diagnosed with autism;

(E) Clients who reside in an alternate living facility (ALF) as defined in WAC 182-513-1301, or in a nursing facility as defined in WAC 182-500-0075.

(iii) Behavior management can be performed in the following settings:

(A) Clinics (including independent clinics, tribal health clinics, federally qualified health centers, rural health clinics, and public health clinics);

(B) Offices;

(C) Homes (including private homes and group homes); and

(D) Facilities (including nursing facilities and alternate living facilities).

(b) Treatment of post-surgical complications (e.g., dry socket). Documentation supporting the medical necessity of the service must be in the client's record.

(c) Occlusal guards when medically necessary and prior authorized. (Refer to WAC 182-535-1094(~~(+3)~~) (4) for occlusal orthotic device coverage and coverage limitations.) The agency covers:

(i) An occlusal guard only for clients age (~~twelve~~) 12 through (~~twenty~~) 20 when the client has permanent dentition; and

(ii) An occlusal guard only as a laboratory processed full arch appliance.

(5) **Nonclinical procedures.**

(a) The agency covers teledentistry according to the department of health, health systems quality assurance office of health professions, current guidelines, appropriate use of teledentistry, and as

follows (see WAC 182-531-1730 for coverage limitations not listed in this section):

(i) Synchronous teledentistry at the distant site for clients of all ages; and

(ii) Asynchronous teledentistry at the distant site for clients of all ages.

(b) The client's record must include the following supporting documentation regarding teledentistry:

(i) Service provided via teledentistry;

(ii) Location of the client;

(iii) Location of the provider; and

(iv) Names and credentials of all persons involved in the teledentistry visit and their role in providing the service at both the originating and distant sites.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 21-14-055, § 182-535-1098, filed 7/1/21, effective 8/1/21; WSR 20-08-103, § 182-535-1098, filed 3/30/20, effective 4/30/20. Statutory Authority: RCW 41.05.021, 41.05.160 and 2017 3rd sp.s. c 1 § 213 (1)(c). WSR 19-09-058, § 182-535-1098, filed 4/15/19, effective 7/1/19. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 17-20-097, § 182-535-1098, filed 10/3/17, effective 11/3/17; WSR 16-18-033, § 182-535-1098, filed 8/26/16, effective 9/26/16; WSR 15-10-043, § 182-535-1098, filed 4/29/15, effective 5/30/15. Statutory Authority: RCW 41.05.021 and 2013 2nd sp.s. c 4 § 213. WSR 14-08-032, § 182-535-1098, filed 3/25/14, effective 4/30/14. Statutory Authority: RCW 41.05.021. WSR 12-09-081, § 182-535-1098, filed 4/17/12, effective 5/18/12. WSR 11-14-075, recodified as § 182-535-1098, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, 74.09.500, 74.09.520. WSR 07-06-042, § 388-535-1098, filed 3/1/07, effective 4/1/07.]

AMENDATORY SECTION (Amending WSR 17-20-097, filed 10/3/17, effective 11/3/17)

WAC 182-535-1100 Dental-related services—Not covered. (1) The medicaid agency does not cover the following under the dental program:

(a) The dental-related services described in subsection (2) of this section unless the services are covered under the early periodic screening, diagnostic, and treatment (EPSDT) program. When EPSDT applies, the agency evaluates a noncovered service, equipment, or supply according to the process in WAC 182-501-0165 to determine if it is medically necessary, safe, effective, and not experimental.

(b) Any service specifically excluded by statute.

(c) More costly services when less costly, equally effective services as determined by the agency are available.

(d) Services, procedures, treatment, devices, drugs, or application of associated services:

(i) That the agency or the Centers for Medicare and Medicaid Services (CMS) considers investigative or experimental on the date the services were provided.

(ii) That are not listed as covered in one or both of the following:

(A) Washington Administrative Code (WAC).

(B) The agency's current published documents.

(2) The agency does not cover dental-related services listed under the following categories of service (see subsection (1)(a) of this section for services provided under the EPSDT program):

(a) **Diagnostic services.** The agency does not cover:

(i) Detailed and extensive oral evaluations or reevaluations.

(ii) Posterior-anterior or lateral skull and facial bone survey films.

(iii) Any temporomandibular joint films.

(iv) Tomographic surveys/3-D imaging.

(v) Comprehensive periodontal evaluations.

(vi) Viral cultures, genetic testing, caries susceptibility tests, or adjunctive prediagnostic tests.

(b) **Preventive services.** The agency does not cover:

(i) Nutritional counseling for control of dental disease.

(ii) Removable space maintainers of any type.

(iii) Sealants placed on a tooth with the same-day occlusal restoration, preexisting occlusal restoration, or a tooth with occlusal decay.

(iv) Custom fluoride trays of any type.

(v) Bleach trays.

(c) **Restorative services.** The agency does not cover:

(i) Restorations for wear on any surface of any tooth without evidence of decay through the dentinoenamel junction (DEJ) or on the root surface.

(ii) Preventative restorations.

(iii) Labial veneer resin or porcelain laminate restorations.

(iv) Sedative fillings.

(v) Crowns and crown related services.

(A) Gold foil restorations.

(B) Metallic, resin-based composite, or porcelain/ceramic inlay/onlay restorations.

(C) Crowns for cosmetic purposes (e.g., peg laterals and tetracycline staining).

(D) Permanent indirect crowns for posterior teeth.

(E) Permanent indirect crowns on permanent anterior teeth for clients age (~~fourteen~~) 14 and younger.

(F) Temporary or provisional crowns (including ion crowns).

(G) Any type of coping.

(H) Crown repairs.

(I) Crowns on teeth one, (~~sixteen, seventeen, and thirty two~~) 16, 17, and 32.

(vi) Polishing or recontouring restorations or overhang removal for any type of restoration.

(vii) Any services other than extraction on supernumerary teeth.

(d) **Endodontic services.** The agency does not cover:

(i) Indirect or direct pulp caps.

(ii) Any endodontic treatment on primary teeth, except as described in WAC 182-535-1086(3).

(e) **Periodontic services.** The agency does not cover:

(i) Surgical periodontal services including, but not limited to:

(A) Gingival flap procedures.

(B) Clinical crown lengthening.

(C) Osseous surgery.

(D) Bone or soft tissue grafts.

(E) Biological material to aid in soft and osseous tissue regeneration.

(F) Guided tissue regeneration.

(G) Pedicle, free soft tissue, apical positioning, subepithelial connective tissue, soft tissue allograft, combined connective tissue and double pedicle, or any other soft tissue or osseous grafts.

(H) Distal or proximal wedge procedures.

(ii) Nonsurgical periodontal services including, but not limited to:

(A) Intracoronal or extracoronal provisional splinting.

(B) Full mouth or quadrant debridement (except for clients of the developmental disabilities administration).

(C) Localized delivery of chemotherapeutic agents.

(D) Any other type of surgical periodontal service.

(f) **Removable prosthodontics.** The agency does not cover:

(i) Removable unilateral partial dentures.

(ii) Any interim complete or partial dentures.

(iii) Flexible base partial dentures.

(iv) Any type of permanent soft reline (e.g., molloplast).

(v) Precision attachments.

(vi) Replacement of replaceable parts for semi-precision or precision attachments.

(vii) Replacement of second or third molars for any removable prosthesis.

(viii) Immediate dentures.

(ix) Cast-metal framework partial dentures.

~~((x) Replacement of agency purchased removable prosthodontics that have been lost, broken, stolen, sold, or destroyed as a result of the client's carelessness, negligence, recklessness, deliberate intent, or misuse as described in WAC 182-501-0050.))~~

(g) **Implant services.** The agency does not cover:

(i) Any type of implant procedures, including, but not limited to, any tooth implant abutment (e.g., periosteal implants, eposteal implants, and transosteal implants), abutments or implant supported crowns, abutment supported retainers, and implant supported retainers.

(ii) Any maintenance or repairs to procedures listed in (g)(i) of this subsection.

(iii) The removal of any implant as described in (g)(i) of this subsection.

(h) **Fixed prosthodontics.** The agency does not cover any type of:

(i) Fixed partial denture pontic.

(ii) Fixed partial denture retainer.

(iii) Precision attachment, stress breaker, connector bar, coping, cast post, or any other type of fixed attachment or prosthesis.

(i) **Oral maxillofacial prosthetic services.** The agency does not cover any type of oral or facial prosthesis other than those listed in WAC 182-535-1092.

(j) **Oral and maxillofacial surgery.** The agency does not cover:

(i) Any oral surgery service not listed in WAC 182-535-1094.

(ii) Vestibuloplasty.

(k) **Adjunctive general services.** The agency does not cover:

(i) Anesthesia, including, but not limited to:

(A) Local anesthesia as a separate procedure.

(B) Regional block anesthesia as a separate procedure.

(C) Trigeminal division block anesthesia as a separate procedure.

(D) Medication for oral sedation, or therapeutic intramuscular

(IM) drug injections, including antibiotic and injection of sedative.

(E) Application of any type of desensitizing medicament or resin.

(ii) Other general services including, but not limited to:

(A) Fabrication of an athletic mouthguard.

- (B) Sleep apnea devices or splints.
 - (C) Occlusion analysis.
 - (D) Occlusal adjustment, tooth or restoration adjustment or smoothing, or odontoplasties.
 - (E) Enamel microabrasion.
 - (F) Dental supplies such as toothbrushes, toothpaste, floss, and other take home items.
 - (G) Dentist's or dental hygienist's time writing or calling in prescriptions.
 - (H) Dentist's or dental hygienist's time consulting with clients on the phone.
 - (I) Educational supplies.
 - (J) Nonmedical equipment or supplies.
 - (K) Personal comfort items or services.
 - (L) Provider mileage or travel costs.
 - (M) Fees for no-show, canceled, or late arrival appointments.
 - (N) Service charges of any type, including fees to create or copy charts.
 - (O) Office supplies used in conjunction with an office visit.
 - (P) Teeth whitening services or bleaching, or materials used in whitening or bleaching.
 - (Q) Botox or dermal fillers.
- (3) The agency does not cover the following dental-related services for clients age (~~twenty-one~~) 21 and older:
- (a) The following diagnostic services:
 - (i) Occlusal intraoral radiographs;
 - (ii) Diagnostic casts;
 - (iii) Sealants (for clients of the developmental disabilities administration, see WAC 182-535-1099);
 - (iv) Pulp vitality tests.
 - (b) The following restorative services:
 - (i) Prefabricated resin crowns;
 - (ii) Any type of core buildup, cast post and core, or prefabricated post and core.
 - (c) The following endodontic services:
 - (i) Endodontic treatment on permanent bicuspid or molar teeth;
 - (ii) Any apexification/recalcification procedures;
 - (iii) Any apicoectomy/periradicular surgical endodontic procedures including, but not limited to, retrograde fillings (except for anterior teeth), root amputation, reimplantation, and hemisections.
 - (d) The following adjunctive general services:
 - (i) Occlusal guards, occlusal orthotic splints or devices, bruxing or grinding splints or devices, or temporomandibular joint splints or devices; and
 - (ii) Analgesia or anxiolysis as a separate procedure except for administration of nitrous oxide.
- (4) The agency evaluates a request for any dental-related services listed as noncovered in this chapter under the provisions of WAC 182-501-0160.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 17-20-097, § 182-535-1100, filed 10/3/17, effective 11/3/17; WSR 15-10-043, § 182-535-1100, filed 4/29/15, effective 5/30/15. Statutory Authority: RCW 41.05.021 and 2013 2nd sp.s. c 4 § 213. WSR 14-08-032, § 182-535-1100, filed 3/25/14, effective 4/30/14. Statutory Authority: RCW 41.05.021. WSR 12-09-081, § 182-535-1100, filed 4/17/12, effective 5/18/12. WSR 11-14-075, recodified as § 182-535-1100, filed 6/30/11,

effective 7/1/11. Statutory Authority: RCW 74.08.090, 74.09.500, 74.09.520. WSR 07-06-042, § 388-535-1100, filed 3/1/07, effective 4/1/07. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, 2003 1st sp.s. c 25, P.L. 104-191. WSR 03-19-078, § 388-535-1100, filed 9/12/03, effective 10/13/03. Statutory Authority: RCW 74.08.090, 74.09.035, 74.09.500, 74.09.520, 42 U.S.C. 1396d(a), 42 C.F.R. 440.100 and 440.225. WSR 02-13-074, § 388-535-1100, filed 6/14/02, effective 7/15/02. Statutory Authority: RCW 74.08.090, 74.09.035, 74.09.520 and 74.09.700, 42 USC 1396d(a), C.F.R. 440.100 and 440.225. WSR 99-07-023, § 388-535-1100, filed 3/10/99, effective 4/10/99. Statutory Authority: Initiative 607, 1995 c 18 2nd sp.s. and 74.08.090. WSR 96-01-006 (Order 3931), § 388-535-1100, filed 12/6/95, effective 1/6/96.]

WSR 23-06-053

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed February 27, 2023, 9:52 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-23-164.

Title of Rule and Other Identifying Information: Within chapter 308-83 WAC, Limousine services, the subject of rule making is WAC 308-83-010 Definitions.

Hearing Location(s): On April 4, 2023, at 11:00 a.m. Virtual hearing via Zoom with an in-person option. Join Zoom meeting <https://dol-wa.zoom.us/j/88409457896?pwd=bUVqbXVCZ0JPRkhCa0hocmNuYmZOZz09>, Meeting ID 884 0945 7896, Passcode 130064, One-tap mobile +12532050468,,88409457896#,,,,*130064# US, +12532158782,,88409457896#,,,,*130064# US (Tacoma); or dial by your location +1 253-205-0468 US, +1 253-215-8782 US (Tacoma), Meeting ID 884 0945 7896, Passcode 130064. Find your local number <https://dol-wa.zoom.us/j/88409457896?pwd=bUVqbXVCZ0JPRkhCa0hocmNuYmZOZz09>. If you experience issues joining the Zoom meeting at the time of the hearing, please call 360-902-3846. In-person attendees can come to the Highways-Licenses Building, 1125 Washington Street S.E., Olympia, WA 98504.

Date of Intended Adoption: April 5, 2023.

Submit Written Comments to: Ellis Starrett, 1125 Washington Street S.E., Olympia, WA 98504, email rulescoordinator@dol.wa.gov, by April 4, 2023.

Assistance for Persons with Disabilities: Contact Ellis Starrett, phone 360-902-3846, email rulescoordinator@dol.wa.gov, by March 27, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of licensing has received a petition from a limousine services company requesting that the agency revise rules to allow for inclusion of modern vehicle sizes. Thus, the agency is considering rule making on WAC 308-83-010 to be more inclusive of modern vehicle sizes. Decreasing the wheelbase requirement for executive sedans and executive SUVs would allow for a greater range of modern vehicle sizes. Decreasing the capacity of executive vans for number of passengers behind the driver would allow for additional modern luxury vans to be included under the definition of a limousine.

Reasons Supporting Proposal: The current definition of a limousine is putting undue burden on limousine services, especially as the department is seeing more environmentally friendly vehicles and other modern luxury vehicles with either smaller wheelbase or seating capacity than the definitions allow for within the limousine category. This rule making is beneficial to, or requested or supported by, the regulated entities, local governments, or businesses it affects.

Statutory Authority for Adoption: RCW 46.72A.030(1), 42.04.274(1), and 46.01.110.

Statute Being Implemented: Chapter 46.72A RCW.

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

Name of Proponent: SRTC Limo Worldwide, private.

Name of Agency Personnel Responsible for Drafting: Shawna Herron, 405 Black Lake Boulevard S.W., Olympia, WA 98502, 360-634-5137; Implementation and Enforcement: Tanya Hessler, 405 Black Lake Boulevard S.W., Olympia, WA 98502, 360-968-4048.

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

A cost-benefit analysis is not required under RCW 34.05.328. This rule eases requirements rather than strengthening them. This rule does not establish or change any qualification for a license or permit. After surveying the industry, the department is confident that this does not qualify as a significant change to a policy or regulatory program. However, we do have information on file on how we determined these findings and the benefits of this rule change.

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

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. After surveying the industry about potential impacts, it was determined that this rule does not impose costs on licensees, including businesses or professionals who own a limousine business or drive a limousine. This rule was proposed after the department received a petition to amend rules to allow for smaller models of vehicles to be authorized for use by limousine companies when those vehicles still meet safety and luxury standards. This should allow more modern and/or greener vehicles to be used by companies who would like to have these vehicles added to their fleets. Licensees did not provide evidence of costs that would be imposed by this rule change.

February 27, 2023
Ellis Starrett
Rules and Policy Manager

OTS-4323.1

AMENDATORY SECTION (Amending WSR 17-20-019, filed 9/26/17, effective 10/27/17)

WAC 308-83-010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter and chapter 46.72A RCW.

(1) "Amenities" means equipment or features added to a vehicle for the comfort or convenience of the occupants:

(a) "Standard amenities" means standard factory amenities normally found in passenger cars;

(b) "Nonstandard amenities" means amenities not normally found in passenger cars. These amenities may include, but are not limited to, a television, musical sound system, telephone, ice storage, refrigerator, power-operated dividers, or additional interior lighting.

(2) "Business license" or "limousine carrier business license" means a license issued under chapter 19.02 RCW, which contains an endorsement indicating the business to which the license is issued is authorized to provide limousine carrier services.

(3) "Business licensing service" means the program within the Washington state department of revenue authorized by chapter 19.02 RCW to issue the business license.

(4) "Business office" refers to the physical location where a limousine carrier business maintains its business records, as defined in WAC 308-83-130. The business office is the physical address on file with the business licensing service. The business office is the place where the business license is posted.

(5) "Business owner" means an individual, partnership, corporation, association, or other person(s), or group that holds a substantial interest in a limousine carrier business.

(6) "Chauffeur" means a person who operates a limousine.

(7) "Decal" means a sticker issued by the department to indicate the vehicle displaying the decal has a valid limousine vehicle certificate.

(8) "Department" means the Washington state department of licensing.

(9) "Dispatch log" refers to a paper or electronic record of assignments made to chauffeurs, and includes all information from the passenger manifest(s) for a given period, as well as the time each ride was arranged, the limousine, and the chauffeur assigned to the customer. The dispatch log also documents passengers referred by or to other drivers or businesses.

(10) "Disqualification" means a prohibition against driving a limousine.

(11) "Drugs" are those substances as defined by RCW 69.04.009 including, but not limited to, those substances defined by 49 C.F.R. 40.3.

(12) "Limousine" has the same meaning as in RCW 46.04.274 and includes vehicles that meet one of the following definitions:

(a) "Stretch limousine" means an automobile with a seating capacity behind the driver of not less than four passengers and not more than (~~fourteen~~) 14 passengers, and a maximum wheelbase of (~~two hundred eighty five~~) 285 inches. The wheelbase has been factory or otherwise altered beyond the original manufacturer's specifications and meets standards of the United States Department of Transportation. A stretch limousine must be equipped with nonstandard amenities in the rear seating area.

(b) "Executive sedan" means a four-door sedan or crossover automobile having a seating capacity behind the driver of not more than three passengers, and a minimum wheelbase of (~~one hundred fourteen and one-half~~) 112 inches or is designated as a large car under 40 C.F.R. 600.315-08, and has a manufacturer's suggested retail price when new of no less than (~~thirty-five thousand dollars~~) \$35,000. The department may provide guidelines for qualified vehicles on our website. An executive sedan must at a minimum be equipped with standard amenities, and the wheelbase may not be altered.

(c) "Executive van" means a van or minivan, having a seating capacity behind the driver of not less than (~~seven~~) five passengers and not more than (~~fourteen~~) 14 passengers.

(d) "Classic car" means a fine or distinctive, American or foreign automobile that is (~~thirty~~) 30 years old or older.

(e) "Executive sport utility vehicle" means a sport utility vehicle with a seating capacity behind the driver of not less than three passengers and not more than six passengers, and a minimum wheelbase of (~~one hundred sixteen~~) 112 inches that has not been altered.

(f) "Stretch sport utility vehicle" means a sport utility vehicle with a seating capacity behind the driver of not less than four and not more than (~~fourteen~~) 14 passengers, and a maximum wheelbase of (~~three hundred twenty five~~) 325 inches that has been factory or oth-

erwise altered beyond the original manufacturer's specifications and meets standards of the United States Department of Transportation. A stretch sport utility vehicle must be equipped with nonstandard amenities in the rear seating area.

(13) "Limousine carrier" or "carrier" is a business licensed, or required to be licensed by the department to provide limousine services, in accordance with RCW 46.04.276 and department regulations.

(14) "Nonresident limousine carrier" refers to a limousine carrier or vehicle owner whose place of business is not in Washington state.

(15) "Operate" refers to a person engaging in the business of a limousine and includes driving, occupying, or otherwise using a limousine to wait for, pick up, transport, or drop off a passenger for compensation. Specific activities included in the definition of operating a limousine are contained in WAC 308-83-210.

(16) "Passenger capacity" means the maximum number of passengers that may be carried in a vehicle as determined by using the information found on the label that is required by the United States Department of Transportation to be affixed to the vehicle under 49 C.F.R., Parts 567 and 568. This label must be affixed to the vehicle in accordance to 49 C.F.R., Parts 567 and 568. In absence of the label, a member of the Washington state patrol or the department may determine the passenger capacity upon visual inspection of the vehicle.

(17) "Passenger manifest" refers to a daily record that verifies prearranged trips. Specific requirements for the passenger manifest are contained in WAC 308-83-200.

(18) "Person" or "persons" means an individual, a corporation, association, sole proprietorship, joint stock association, partnership, limited liability partnership, limited liability company, or other association of people organized to conduct business. It also includes their lessees, trustees, or receivers.

(19) "Prearranged" refers to a customer or customer's agent having secured and agreed to the services and fare. Prearranged means the agreement was made prior to the time of departure and at a place different than the place of departure.

(20) "Public highway" includes every public street, road, or highway in this state.

(21) "Substance abuse professional" means an alcohol and drug specialist meeting the credentials, knowledge, training, and continuing education requirements of 49 C.F.R. 40.281.

(22) "Unified business identifier" or "UBI" is a nine digit number that registers a business with several state agencies and allows an entity to do business in Washington state. It is sometimes called a tax registration number, a business registration number, or a business license number.

(23) "Vehicle certificate" is a document issued by the department, indicating that the vehicle is registered as a limousine. The vehicle certificate must be carried in the limousine at all times. The vehicle certificate is not the vehicle registration document.

[Statutory Authority: Chapters 46.72A, 43.24, and 46.04 RCW. WSR 17-20-019, § 308-83-010, filed 9/26/17, effective 10/27/17. Statutory Authority: RCW 46.72A.120, 43.24.086, chapter 46.04 RCW. WSR 16-08-093, § 308-83-010, filed 4/5/16, effective 5/6/16. Statutory Authority: Chapters 46.72A, 46.04 RCW, RCW 43.24.086 and 2011 c 374. WSR 12-02-035, § 308-83-010, filed 12/29/11, effective 2/1/12.]

WSR 23-06-056

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed February 27, 2023, 11:45 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-23-135.

Title of Rule and Other Identifying Information: WAC 182-550-4400 Services—Exempt from DRG payment; other related rules as appropriate.

Hearing Location(s): On April 4, 2023, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the health care authority (HCA) continues to hold public hearings virtually without a physical meeting place. This promotes social distancing and the safety of the residents of Washington state. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_vz25iQmcQVaCXYW6QEDNyw. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than April 5, 2023.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by April 4, 2023, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email Johanna.Larson@hca.wa.gov, by March 17, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending WAC 182-550-4400 to change a reference to the chemical-using pregnant women program to the substance-using pregnant people program in subsection (2)(b). HCA is also amending subsection (2)(g) to reflect that HCA no longer denies payment for claims grouped to diagnosis-related group (DRG) 469 or DRG 470.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Jason Crabbe, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-9563; Implementation and Enforcement: Melissa Craig, P.O. Box 45500, Olympia, WA 98504-5500, 360-725-0938.

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

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

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

Is not exempt.

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

costs were calculated. The revised rule does not impose more-than-minor costs on small businesses.

February 27, 2023
Wendy Barcus
Rules Coordinator

OTS-4326.3

AMENDATORY SECTION (Amending WSR 21-15-128, filed 7/21/21, effective 8/21/21)

WAC 182-550-4400 Services—Exempt from DRG payment. (1) Inpatient services are exempt from the diagnosis-related group (DRG) payment method only if they qualify for payment methods specifically mentioned in other sections of this chapter or in this section.

(2) Subject to the restrictions and limitations in this section, the agency exempts the following services for medicaid and CHIP clients from the DRG payment method. This policy also applies to covered services paid through medical care services (MCS) and any other state-administered program, except when otherwise indicated in this section. The exempt services are:

(a) Withdrawal management services when provided in a hospital having a withdrawal management provider agreement with the agency to perform these services.

(b) Hospital-based intensive inpatient withdrawal management, medical stabilization, and drug treatment services provided to (~~chemical-using pregnant (CUP) women by a certified~~) substance-using pregnant people (SUPP) clients by an agency-approved hospital. These are medicaid program services and are not covered or funded by the agency through MCS or any other state-administered program.

(c) Acute physical medicine and rehabilitation (acute PM&R) services.

(d) Psychiatric services. An agency designee that arranges to pay a hospital directly for psychiatric services may use the agency's payment methods or contract with the hospital to pay using different methods.

(e) Chronic pain management treatment provided in a hospital approved by the agency to provide that service.

(f) Administrative day services. The agency pays administrative days for one or more days of a hospital stay in which an acute inpatient or observation level of care is not medically necessary, and a lower level of care is appropriate. The administrative day rate is based on the statewide average daily medicaid nursing facility rate, which is adjusted annually. The agency may designate part of a client's stay to be paid an administrative day rate upon review of the claim or the client's medical record, or both.

(g) Inpatient services recorded on a claim grouped by the agency to a DRG for which the agency has not published an all-patient DRG (AP-DRG) or all-patient refined DRG (APR-DRG) relative weight. The agency will deny payment for claims grouped to (~~DRG 469, DRG 470,~~) APR DRG 955(~~7~~) or APR DRG 956.

(h) Organ transplants that involve heart, intestine, kidney, liver, lung, allogeneic bone marrow, autologous bone marrow, pancreas, or simultaneous kidney/pancreas. The agency pays hospitals for these organ transplants using the ratio of costs-to-charges (RCC) payment method. The agency maintains a list of DRGs which qualify as transplants on the agency's website.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 21-15-128, § 182-550-4400, filed 7/21/21, effective 8/21/21; WSR 19-04-004, § 182-550-4400, filed 1/23/19, effective 3/1/19; WSR 16-04-051, § 182-550-4400, filed 1/28/16, effective 3/1/16. Statutory Authority: RCW 41.05.021 and chapter 74.60 RCW. WSR 14-12-047, § 182-550-4400, filed 5/29/14, effective 7/1/14. WSR 11-14-075, recodified as § 182-550-4400, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, 74.09.500 and 2005 c 518. WSR 07-14-051, § 388-550-4400, filed 6/28/07, effective 8/1/07. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 05-12-022, § 388-550-4400, filed 5/20/05, effective 6/20/05. Statutory Authority: RCW 74.08.090 and 42 U.S.C. 1395x(v), 42 C.F.R. 447.271, .11303, and .2652. WSR 01-16-142, § 388-550-4400, filed 7/31/01, effective 8/31/01. Statutory Authority: RCW 74.08.090, 74.09.730, 74.04.050, 70.01.010, 74.09.200, [74.09.]500, [74.09.]530 and 43.20B.020. WSR 98-01-124, § 388-550-4400, filed 12/18/97, effective 1/18/98.]

WSR 23-06-059

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed February 27, 2023, 4:53 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-20-014.

Title of Rule and Other Identifying Information: Occupational therapy licensure compact (compact) fees and renewal cycle. The department of health (department) is proposing new WAC 246-847-991 to implement SB 5518, which creates a new interstate licensure compact for occupational therapy and gives member states the discretion to charge a fee for granting compact privileges. The proposed rule specifies the fees and renewal cycle.

Hearing Location(s): On April 4, 2023, at 9:00 a.m. The department will be holding a virtual-only hearing. Register in advance for this webinar https://us02web.zoom.us/webinar/register/WN_02-K67eS2CmxUGs2Q9Frw. After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: April 11, 2023.

Submit Written Comments to: Kathy Weed, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, email kathy.weed@doh.wa.gov, fax 360-236-2901, <https://fortress.wa.gov/doh/policyreview>, by April 4, 2023.

Assistance for Persons with Disabilities: Contact Kathy Weed, phone 360-236-4883, fax 360-236-2901, TTY 360-833-6388 or 711, email kathy.weed@doh.wa.gov, by March 21, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SB 5518, passed in 2022 and codified in RCW 18.59.180, enacted the occupational therapy licensure compact (compact) in Washington state. The purpose of the compact is to facilitate interstate practice of occupational therapists and occupational therapy assistants. RCW 18.59.180, Article 3(3), allows the state of Washington to collect fees for the compact. The purpose of the proposal is to charge a fee for granting the privilege of licensure in Washington through the compact.

Reasons Supporting Proposal: RCW 43.70.250 requires that the costs of licensing each profession be fully borne by members of that profession. The office of financial management also requires professions to maintain a reasonable cash reserve to cover fluctuations in cash flow and operating expenses. These fees are needed to ensure the department is in line with RCW 43.70.250 and the fees set are sufficient to recover the costs of issuing a license for compact privileges.

Statutory Authority for Adoption: RCW 43.70.110, 43.70.250, and 43.70.280; and SB 5518 (chapter 152, Laws of 2022), codified as RCW 18.59.180.

Statute Being Implemented: RCW 18.59.180.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kathy Weed, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4883.

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

A cost-benefit analysis is not required under RCW 34.05.328. As defined in RCW 34.05.328 (5)(b), the department has determined that no significant analysis is required because the rule sets fees.

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

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

Scope of exemption for rule proposal:

Is fully exempt.

February 27, 2023
Kristin Peterson, JD
Chief of Policy
for Umair A. Shah, MD, MPH
Secretary

OTS-4276.2

NEW SECTION

WAC 246-847-991 Occupational therapy licensure compact privilege fees and renewal cycle. (1) The compact privilege must be renewed no later than the expiration date of the home state license. The compact privilege holder must comply with all occupational therapy compact eligibility requirements in RCW 18.59.180 to maintain the compact privilege.

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
Application - Original license	\$150.00
Compact renewal	\$125.00

[]

WSR 23-06-060
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed February 28, 2023, 8:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-10-067.

Title of Rule and Other Identifying Information: Chapter 296-05 WAC, Apprenticeship rules.

Hearing Location(s): On April 6, 2023, at 1 p.m., virtual and telephonic hearing. Join electronically <https://lni-wa-gov.zoom.us/j/81802286237?pwd=QlBqNVpmdXNlNnJDNzhhaGZqK1hJZz09>, Passcode Hearing6!; or join by phone (audio only) 1-360-209-5623, Meeting ID 818 0228 6237, Passcode 610462506. Find your local number here <https://lni-wa-gov.zoom.us/j/81802286237?pwd=QlBqNVpmdXNlNnJDNzhhaGZqK1hJZz09>. The virtual hearing will begin at 1 p.m., and will continue until all oral comments are received.

Date of Intended Adoption: May 23, 2023.

Submit Written Comments to: Erik Sackstein, Department of Labor and Industries (L&I), Fraud Prevention and Labor Standards, Apprenticeship, P.O. Box 44530, Olympia, WA 98504-4530, email ApprenticeshipRules@Lni.wa.gov, by April 6, 2023, at 5 p.m.

Assistance for Persons with Disabilities: Contact Erik Sackstein, phone 360-485-3313, email ApprenticeshipRules@Lni.wa.gov, by April 1, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to update the rules regarding timelines, procedures, and content for new apprenticeship program applications as detailed in chapter 296-05 WAC. The Washington state legislature passed E2SSB 5600 during the 2022 legislative session, which adds a sustainability assessment requirement to all new apprenticeship program applications. The Washington state apprenticeship and training council (WSATC) now must also consider living wage, presence of a career ladder, and other nonwage benefits for graduating apprentices when considering a new program for approval. To ensure transparency in the approval process, these items need to be included and defined in the rule.

E2SSB 5600 also requires WSATC to establish economic or industry sector-based platforms, which is a new aspect in the apprenticeship system. The bill highlights the industry sectors for which the platforms may be established, that each must consist of an equal number of employer and employee representatives, and outlines the tasks that the platforms must complete. Rule making is required to define how platform members will be selected, the detailed makeup of the platforms (including minimum/maximum number of members, qualifications of platform members, electing a chair and secretary), and further clarify the role of the platforms.

Reasons Supporting Proposal: Rule making is required to implement the requirements of E2SSB 5600 (chapter 156, Laws of 2022). This includes defining terms, outlining the roles and responsibilities of economic or industry sector-based platforms, and adding the new WSATC review requirements in rule.

Statutory Authority for Adoption: Chapter 49.04 RCW.

Statute Being Implemented: RCW 49.04.240 and 49.04.050.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Requested full-time equivalencies were funded in full. Draft rule language was thoroughly stakeholdered and approved by WSATC.

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Erik Sackstein, Tumwater, Washington, 360-485-3313; Implementation and Enforcement: Peter Guzman, Tumwater, Washington, 360-584-3706.

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

A cost-benefit analysis is not required under RCW 34.05.328. This rule making is exempt from conducting a cost-benefit analysis per RCW 34.05.328 (5)(b)(ii) as the amendments are related to internal governmental operations that are not subject to a violation by a nongovernment party; RCW 34.05.328 (5)(b)(iii) as the amendments adopt state statutes without material change; RCW 34.05.328 (5)(b)(iv) make housekeeping changes that clarify the intent of the rule without changing the effect, are procedural rules under RCW 34.05.328 (5)(c)(i), or are interpretive under RCW 34.05.328 (5)(c)(ii) and do not independently impose a penalty or sanction on a person or entity.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of exemptions: This rule proposal is exempt under RCW 19.85.025 because the requirements of the rules apply to WSATC which is not a small business. Additionally, the proposed amendments are exempt under RCW 34.05.310 (4)(b)-(d) because the rule adopts state statutes without material change, housekeeping changes that clarify the rule without changing the effect, and deal with internal governmental operations and procedures that are not subject to a violation by a nongovernment party.

Scope of exemption for rule proposal:

Is fully exempt.

February 28, 2023
Joel Sacks
Director

OTS-4351.3

AMENDATORY SECTION (Amending WSR 20-13-060, filed 6/15/20, effective 7/16/20)

WAC 296-05-003 Definitions. The following definitions apply to this chapter:

(1) Adjudicative proceeding: A proceeding before the WSATC in which an opportunity for a hearing before the WSATC is authorized by chapter 49.04 RCW or these rules before or after the entry of an order by the WSATC.

(2) Apprentice: A worker at least (~~sixteen~~) 16 years of age employed to learn an apprenticeable occupation and registered with a sponsor in an approved apprenticeship program under chapter 49.04 RCW and these rules. Building and construction trade occupations require an apprentice to be at least (~~seventeen~~) 17 years of age to register with a sponsor in an approved apprenticeship.

(3) Apprenticeable occupation: A specified occupation which must:

(a) Involve skills customarily learned in a practical way through a structured, systematic program of on-the-job supervised learning;

(b) Be clearly identified and commonly recognized throughout an industry;

(c) Involve the progressive attainment of manual, mechanical, or technical skills and knowledge which, in accordance with the industry standard for the occupation, would require the completion of at least (~~two thousand~~) 2,000 hours of on-the-job learning to attain;

(d) Require a minimum of (~~one hundred forty-four~~) 144 hours of related instruction per program year to supplement on-the-job work experience;

(e) Involve sufficient skill to establish career sustaining employment;

(f) Not be part of an occupation previously recognized by the registering agency as apprenticeable.

(4) Apprenticeship agreement: A written agreement between an apprentice and either the apprentice's program sponsor, or an apprenticeship committee acting as agent for the program sponsor(s), which contains the terms and conditions of the employment, training and education of the apprentice.

(5) Apprenticeship cohort: The group of individual apprentices registered to a specific program during a one year time frame, not including those whose agreements have been canceled during the initial probationary period.

(6) Apprenticeship committee: A quasi-public entity approved by the WSATC to administer and perform apprenticeship and training services.

(7) Apprenticeship program: A plan for administering an apprenticeship agreement containing all terms and conditions for the qualification, recruitment, selection, employment, and training of apprentices. Apprenticeship programs must include apprenticeship agreements.

(8) Apprenticeship section: The division of the department of labor and industries administering registered apprenticeships for state and federal purposes.

(9) Cancellation: The termination of registration or cancellation of approval for an apprenticeship program at the request of the supervisor or sponsor, or the termination of registration or approval of an apprenticeship agreement at the request of the apprentice, supervisor, or sponsor.

(10) Career ladder: Opportunities for apprenticeship graduates to progress to higher levels of pay and responsibility with an employer.

(11) Certificate of completion: A record of the successful completion of a term of apprenticeship issued by the department on behalf of the WSATC. To be eligible for a certificate of completion, an apprentice must have been registered with the department and an active participant of a committee's program for at least six months and have successfully completed their apprenticeship.

(12) Certification: Written approval from the WSATC that:

(a) A set of apprenticeship standards established by an apprenticeship program sponsor substantially complies with standards established by the WSATC; and

(b) An individual is eligible for probationary employment as a registered apprentice as part of an apprenticeship program.

(13) C.F.R.: Code of Federal Regulations.

(14) Competent instructor: An instructor providing related/supplemental instruction who has demonstrated satisfactory performance in the occupation for a minimum of three years beyond the customary learning period for that occupation and who:

(a) Meets the requirements of the state board for community and technical colleges for a vocational-technical instructor; or

(b) Is recognized within an industry as having expertise in a specific occupation and is a subject matter expert; and

(c) Has training in teaching techniques and adult learning styles. The training may be acquired before, or within one year after, the competent instructor begins to provide related/supplemental instruction.

(15) Competitor: An apprenticeship program providing training in the same or similar occupation as one already existing in a certain geographic area. To determine whether a program provides training in the same or similar occupation, the WSATC may consider:

(a) Approved apprenticeship standards;

(b) Collective bargaining agreements;

(c) Dictionaries of occupational titles;

(d) Experts from organized labor, licensed contractors, and contractors' associations;

(e) Recognized labor and management industry practice;

(f) Scope of work descriptions issued by the department.

(16) Completion rate: The percentage of an apprenticeship cohort receiving a certificate of completion within one year of the projected completion date.

(17) Department: Department of labor and industries.

(18) Employer: Any person or organization with a valid Washington state unified business identifier (UBI) number employing an apprentice.

(19) Federal purposes: Any federal contract, grant, agreement, or arrangement dealing with apprenticeship. Includes any federal financial or other assistance, benefit, contribution, privilege, allowance, exemption, preference, or right pertaining to apprenticeship. See e.g., 29 C.F.R. Part 29.2.

(20) File: To send to:

Supervisor of Apprenticeship and Training
Department of Labor and Industries
Apprenticeship Section
Post Office Box 44530
Olympia, Washington 98504-4530

Or deliver to and receipt at:
Department of Labor and Industries

7273 Linderson Way S.E.
Tumwater, Washington 98501

Filing is complete upon deposit in the United States mail, properly addressed, postage prepaid, or personal service.

(21) First full training cycle: A full training cycle begins with the registration of the first apprentice and continues for one calendar year regardless of completion, cancellation and/or suspension of the apprentice.

(22) Individual agreement: A written agreement between an apprentice and/or trainee and either the apprentice's employer or an apprenticeship committee acting as agent for the employer.

(23) Industry-wide standards: The current, acceptable practices, including technological advancements, being used in the different occupations.

(24) Journey level: An individual having sufficient skills and knowledge of an occupation to be recognized by a state or federal registration agency and/or an industry as being fully qualified to perform the occupation. An individual can be fully qualified either through formal apprenticeship training or practical on-the-job work experience equal to or greater than the term of apprenticeship.

(25) Living wage: The minimum income needed to meet necessities such as food, housing, transportation, health care, and child services in a given area.

(26) On-the-job training program: A program that is set up in the same manner as an apprenticeship program with any exceptions authorized by the WSATC and as further described in WAC 296-05-013.

(27) Other nonwage benefits: Benefits such as health care, dental insurance, vision care, life insurance, paid vacation leave, sick leave, fitness, child care, a retirement plan, and other benefits an employer provides for the employee.

(28) Probationary period: A period of time during which the apprentice has not yet reached full status or is subject to corrective action.

(a) Initial probationary period: A period of time in relation to the full apprenticeship term, with full credit given for such period toward completion of apprenticeship, which cannot exceed (~~twenty~~) 20 percent of the apprenticeship term, or one year from the date of registration, whichever is shorter. Apprentices within the initial probationary period may not file apprenticeship complaints with the program sponsor. Apprentices transferring from another program are not subject to additional initial probationary periods.

(b) Disciplinary probationary period: A period of time after the initial probationary period during which the apprentice's progress is not satisfactory. The program sponsor may withhold periodic wage advancements, suspend or cancel the apprenticeship agreement, or take further disciplinary action. Apprentices subject to a disciplinary probationary period may file complaints with the program sponsor.

(29) Program sustainability:

(a) An assessment of future sustainability of a program will contain the following elements:

(i) A description of program funding:

(A) A description of program funding source and mechanisms, such as grants, trust, apprentice fees, employer fees, public funds, or other;

(B) If a program is relying on public funds to start up, a description of how the program will be funded after public start up funds expire.

(ii) A description of how program funding will be used to maintain the operational and administrative capacity of the program over time including, but not limited to, how the program will meet administrative, staffing, books and materials, rent, equipment, and insurance needs.

(iii) A description of how resources will be used to maintain capacity to deliver related/supplemental instruction over time.

(iv) For group programs as defined in WAC 296-05-009 (1)(a), a description of the structure and mechanisms the program will have in place to ensure it remains adequately funded, in compliance with its financial and legal requirements, and in a manner that promotes the best interests of the apprentice. A program must detail how its contracts, memoranda of understandings, collective bargaining agreements, or other legally binding agreements will be used to ensure program sustainability.

(b) Platforms may develop and request additional sustainability criteria specific to their sector and industries, and can recommend these criteria to the WSATC for consideration in approving programs.

(30) Provisional registration: Initial one-year approval of a registered program meeting the required standards for registration. After one year, the provisional registration may be made permanent or continued as provisional through the first full training cycle, or rescinded following a compliance review.

(31) RCW: Revised Code of Washington.

(32) Registration: Both apprenticeship agreements and apprenticeship program standards are registered.

(a) Apprenticeship agreement registration: The acceptance and recording of an agreement by the apprenticeship section of the department of labor and industries as evidence of the apprentice's participation in a particular registered apprenticeship program.

(b) Apprenticeship program registration: The approval and recording of the program standards by the WSATC and the apprenticeship section as meeting the basic standards and requirements for such approval.

(33) Registration agency: The apprenticeship section of the department of labor and industries responsible for registering apprenticeship programs and apprentices, providing technical assistance, and conducting reviews for compliance with chapter 49.04 RCW and these rules.

(34) Related/supplemental instruction (RSI): An organized and systematic form of instruction designed to provide the apprentice with knowledge of the theoretical and technical subjects related to the apprentice's occupation. It may be provided in any form approved in advance by the WSATC. Apprentices must receive not less than (~~one hundred forty-four~~) 144 hours of RSI per program year.

(35) Secretary: The individual appointed by the director of the department according to RCW 49.04.030.

(36) Sponsor: Any person, firm, association, committee, or organization operating as an apprenticeship and training program and in whose name the program is registered.

(37) Standards: A written agreement containing specific provisions for operation and administration of the apprenticeship program and all terms and conditions for the qualifications, recruitment, se-

lection, employment, and training of apprentices, as further defined in WAC 296-05-015.

(38) Supervision: The necessary education, assistance, and control provided by a journey-level employee to an apprentice. Apprentices must be supervised by a journey-level worker on the same job site at least ~~((seventy-five))~~ 75 percent of each working day, unless otherwise approved by the WSATC.

(39) Supervisor: The individual appointed by the director of the department who acts as the secretary of the WSATC. When these rules create a duty of the supervisor or secretary of the WSATC, the supervisor may designate department of labor and industries' employees to assist in the performance of those duties subject to the supervisor's oversight and direction.

(40) Trainee: An individual enrolled in an on-the-job training program, but who is not registered with a sponsor in an approved apprenticeship program under chapter 49.04 RCW and these rules.

(41) Training agent: Employer of registered apprentices approved by the program sponsor to furnish on-the-job training. The training agent shall use only registered apprentices to perform work processes in accordance with approved program standards.

(42) Training agreement: A written agreement between a training agent and a program sponsor containing the provisions of the apprenticeship program applicable to the training agent and the duties of the training agent in providing on-the-job training.

(43) Transfer: A shift of apprenticeship registration from one sponsor to another with a written agreement between the apprentice and the affected apprenticeship committees or program sponsors.

(44) WAC: Washington Administrative Code.

(45) WSATC: Washington state apprenticeship and training council.

[Statutory Authority: Chapter 49.04 RCW. WSR 20-13-060, § 296-05-003, filed 6/15/20, effective 7/16/20. Statutory Authority: RCW 49.04.010 and 19.285.040. WSR 18-17-149, § 296-05-003, filed 8/21/18, effective 10/10/18. Statutory Authority: Chapter 49.04 RCW, RCW 19.285.040, and 29 C.F.R., Part 29. WSR 14-23-065, § 296-05-003, filed 11/18/14, effective 12/19/14. Statutory Authority: Chapter 49.04 RCW and RCW 19.285.040. WSR 11-11-002, § 296-05-003, filed 5/4/11, effective 7/25/11. Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. WSR 01-22-055, § 296-05-003, filed 10/31/01, effective 1/17/02.]

AMENDATORY SECTION (Amending WSR 20-13-060, filed 6/15/20, effective 7/16/20)

WAC 296-05-011 Apprenticeship and training programs—Approval, registration, and objections. (1) The WSATC approves and registers apprenticeship and training programs. At the regular quarterly meeting, the proposed committee and/or standards will be considered by the WSATC. The WSATC will approve provided the sponsor accepts changes recommended by the WSATC, or disapprove.

At the regular quarterly meeting, the WSATC will allow changes to correct clerical errors. The addition of standard language will be allowed if authorized representatives of the sponsor are present and authorized to accept changes. At the regular quarterly meeting, the

WSATC will not accept changes to the format, language, or provisions of the submitted program standards which are not reasonably consistent with previously approved program standards.

(a) Approval: The WSATC may approve an apprenticeship program when:

(i) If applicable, an apprenticeship and training committee is organized consistent with WAC 296-05-009;

(ii) Standards are proposed by the committee consistent with WAC 296-05-015;

(iii) Standards are presented to the WSATC consistent with WAC 296-05-008;

(iv) An assessment for program sustainability is included with the application;

(v) Consideration is given as to whether graduating apprentices earn a living wage, or gain access to a progressive career ladder, or earn other nonwage benefits.

(b) The WSATC approves the following types of apprenticeship and training programs:

(i) Group joint: Sponsored by both a group of employers and a labor organization with an equal number of representatives from workers and management on the apprenticeship and training committee.

(ii) Individual joint: Sponsored by an individual employer and a labor organization with an equal number of representatives from workers and management on the apprenticeship and training committee.

(iii) Group nonjoint: A program sponsored only by an employer association and administered only by the employer association.

(iv) Individual nonjoint: A program sponsored and administered by an individual employer with no labor organization.

(v) Group waiver: A program sponsored by an employer association and a labor organization but one group waives participation in administering the program.

(vi) Individual waiver: A program sponsored by an individual person or plant and a labor organization, but one party waives participation in administering the program.

(vii) Plant: A program sponsored by the owner of a plant or plants at a particular location or locations. Plant programs are administered in accordance with chapter 49.04 RCW and these rules.

(c) Registration: If a program is approved, it is registered with the WSATC. An initial registration is provisional and lasts one year.

(i) If a program is not approved, the department will inform the sponsor in writing and explain the reasons for denying approval.

(ii) If a program is not initially approved, the WSATC may ask a sponsor to modify the program. The program may be approved with modifications.

(d) Waiver: A party may seek to waive labor union participation in administering a program when apprentices will be union members.

(i) If a program includes labor union participation, the program sponsor must obtain a written statement, known as a "no objection" statement, from the union in support of the program.

(ii) When a labor union chooses not to participate in administering the program, the employer or employers' association must furnish copies of the registration application and the proposed program standards to the union serving as the collective bargaining agent of the employees to be trained. Before taking a final action on the application, the supervisor must give the union (~~forty-five~~) 45 calendar days to respond before final action is taken on the registration.

(iii) If the union fails to comment within (~~forty-five~~) 45 days, it will have waived its right to participate in the program and the supervisor will grant the waiver.

(e) Nonjoint and waiver committees - Additional requirements.

(i) The WSATC shall only recognize nonjoint and waiver standards for a specific occupation or directly related occupations.

(ii) When multiple related occupations are approved on a single standard, each occupation shall be considered as an individual standard.

(iii) Unrelated occupations shall be submitted under separate standards.

(f) Related/supplemental instruction: The WSATC may approve apprentice related/supplemental instruction for apprenticeable occupations based on recommendations from the state board for community and technical colleges. Program sponsors may allow credit for previously completed related/supplemental instruction under WAC 296-05-015(11).

(g) The WSATC will consider economic and industry sector-based platform recommendations on proposed standards and/or occupational objectives.

(2) Objections: If a competitor objects to the proposed standards, proposed amendments to existing standards, or initial committee, the competitor must:

(a) Provide timely and specific objections in writing to the apprenticeship supervisor (~~twenty~~) 20 calendar days prior to the next regular quarterly WSATC meeting on a form provided by the department; if the next regular quarterly WSATC meeting is rescheduled, the objections must still be received 20 days prior to the original scheduled date of the regular quarterly WSATC meeting.

(b) Upon receipt of a competitor's objections, the apprenticeship supervisor notifies the program sponsor within two business days and forwards the matter to the WSATC.

(c) The WSATC may adjudicate the matter itself or refer the matter to the office of administrative hearings for initial adjudication:

(i) If the WSATC decides to adjudicate all or part of the objections to the apprenticeship program standards, a hearing on the objections shall take place at the regular quarterly WSATC meeting or at a special WSATC meeting convened for purposes of hearing the objections. The department shall notify the competitor making the objections and the program sponsor that the objection is on the agenda for consideration and shall give its recommendation (~~ten~~) 10 calendar days prior to the original scheduled date of the regular quarterly WSATC meeting.

(ii) If the WSATC decides to refer all or part of the objections to the office of administrative hearings, the WSATC shall identify the specific matters on which the WSATC is requesting the office of administrative hearings provide findings and conclusions for the initial order.

(d) The department may attempt to facilitate a resolution to any objections during the process identified in this section.

(3) Reciprocity: The WSATC may recognize out-of-state apprenticeship programs when:

(a) The program complies with federal requirements; or

(b) The program is recognized by a recognized state apprenticeship agency; and

(c) The program sponsor agrees to comply with Washington wage and hour laws; and

(d) The program sponsor presents reasonably consistent standards of apprenticeship and asks for recognition from the WSATC.

The WSATC may revoke reciprocity agreements at any time.

[Statutory Authority: Chapter 49.04 RCW. WSR 20-13-060, § 296-05-011, filed 6/15/20, effective 7/16/20. Statutory Authority: RCW 49.04.010 and 19.285.040. WSR 18-17-149, § 296-05-011, filed 8/21/18, effective 10/10/18. Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. WSR 01-22-055, § 296-05-011, filed 10/31/01, effective 1/17/02.]

NEW SECTION

WAC 296-05-219 Economic and industry sector-based platforms.

The WSATC establishes economic and industry sector-based platforms in accordance with chapter 49.04 RCW.

(1) The WSATC shall establish economic and industry sector-based platforms and assign prospective and existing programs to the platforms. The WSATC will consider the number of platforms and program assignments based on industry or sector needs and department resources. The department shall assign an industry liaison to support each platform.

(2) Economic and industry sector-based platforms will be comprised in the following manner:

(a) The WSATC chair will appoint platform representatives with input from the industry.

(b) Consist of at least four and not more than 12 voluntary representatives with an equal number of employer and employee representatives; the WSATC may adjust the number of representatives based on availability.

(c) Economic and industry sector-based platforms must elect a chair and secretary and meet as necessary to comply with reporting and recommendation requirements under RCW 49.04.240.

(d) Rural employer and/or employee representative participation on the economic and industry sector-based platforms is encouraged.

(3) Economic and industry sector-based platform members must be qualified by education and/or experience, or be known to represent the interests of employers/employees within the applicable industry sector.

(4) Economic and industry sector-based platforms must:

(a) Promote collaboration within their sector to expand apprenticeship opportunities;

(b) Collaborate with relevant community and technical college's centers of excellence; the centers shall be invited to serve in an advisory capacity to the platforms;

(c) Review related/supplemental instruction and on-the-job training standards for apprenticeship programs active within their industry sector as needed; and

(d) Review new apprenticeship program applications within their industry sector and forward approval, disapproval, or change recommendations to the department.

(5) Economic and industry sector-based platforms must report on the following items at least annually to the WSATC:

(a) Outreach and collaboration activities to expand apprenticeship opportunities within the economic or sector-based platform;

(b) Participation in approved apprenticeship programs;

(c) Progress in developing new apprenticeship programs; and

(d) Any review of required related/supplemental instruction and on-the-job training standards for apprenticeship programs.

(6) Industry platforms will establish their own meeting frequency based on workload and need. Records of meetings must be kept and forwarded to the WSATC.

(7) Industry platforms will provide consultations and recommendations as follows:

(a) Economic and industry sector-based platforms may suggest adjustments to a sponsor on proposed standards and new occupational objectives prior to a proposal being submitted. Sponsors are encouraged to consult with their economic and industry sector-based platforms prior to submitting proposals.

(b) Industry platforms shall provide recommendations on all new proposed standards and occupational objectives within their sector being considered by the WSATC. Recommendations shall be based on the final proposals forwarded by the department no later than 30 days prior to the next WSATC meeting. Industry platform recommendations must be provided 15 days prior to the meeting.

[]

WSR 23-06-061
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed February 28, 2023, 8:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-13-148.

Title of Rule and Other Identifying Information: Clean energy: Labor standards certification for tax incentives. Chapter 296-140 WAC, Clean energy labor standards certification.

Hearing Location(s): On April 11, 2023, at 2:00 p.m. Join electronically <https://lni-wa-gov.zoom.us/j/82270467354?pwd=a0JZcDV6Q3ZzWW9lM25ySnVPWWgydz09>, Meeting ID 822-7046-7354, Passcode FPLS2023!; join by phone 1-253-215-8782, Meeting ID 822-7046-7354, Passcode 872736513. Find your local number <https://lni-wa-gov.zoom.us/j/82270467354?pwd=a0JZcDV6Q3ZzWW9lM25ySnVPWWgydz09>. The hearing will begin at 2:00 p.m. and will continue until all oral comments are received.

Date of Intended Adoption: May 23, 2023.

Submit Written Comments to: Jordan Guerra, Department of Labor and Industries (L&I), Clean Energy Program, P.O. Box 44274, Olympia, WA 98504-4274, email cleanenergyreview@lni.wa.gov, by April 14, 2023.

Assistance for Persons with Disabilities: Contact Jordan Guerra, phone 360-902-5335, option 4, email cleanenergyreview@lni.wa.gov, by April 4, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: 2SHB 1988 and ESSB 5714 allows for tax deferrals on investment projects in clean technology manufacturing, clean alternative fuels production, and renewable energy storage, as well as solar canopies when the project meets certain labor standards and is certified by L&I, supporting Washington's clean energy economy and transitioning to a clean, affordable, and reliable energy future.

The purpose of this rule making is to:

- Reorganize and add terms to the definition section;
- Identify which definitions apply to different sections of the chapter;
- Provide clarity on each type of qualifying clean energy project identified under the rules; and
- Expand language regarding good faith efforts to align with federal and Washington state department of transportation's good faith efforts standards.

New WAC 296-140-005, 296-140-006, 296-140-007, 296-140-008 and 296-140-009; and amending WAC 296-140-001, 296-140-002, and 296-140-004.

Reasons Supporting Proposal: L&I is required to adopt rules to define and set minimum requirements for all labor standards associated with the certification for tax deferral; set requirements for all good faith efforts; and set other requirements regarding documentation and the certification process.

Statutory Authority for Adoption: RCW 82.08.962, 82.12.962, 89.82.070, and 89.90.060.

Statute Being Implemented: RCW 82.08.962, 82.12.962, 89.82.070, and 89.90.060.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Christina Summers, Tumwater, WA, 360-902-5772; Enforcement: Jordan Guerra, Tumwater, WA, 360-902-6752.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Christina Summers, L&I, Clean Energy Program, P.O. Box 44274, Olympia, WA 98504-4274, phone 360-902-5772, email Christina.summers@lni.wa.gov.

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

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Explanation of exemptions: See explanation below.

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions:

1.	WAC 296-140-001 Definitions.	This section is fully exempt under RCW 34.05.310 (4)(c) because the proposed rule language adopts definitions from state statutes.
2.	WAC 296-140-002 Labor standard certification for Category 1 clean energy projects under RCW 82.08.962 and 82.12.962.	The section is partially exempt under RCW 34.05.310 (4)(c) because it is adopting language from state statutes without material change.
3.	WAC 296-140-004 Application, records and documentation, and certification for Category 1 and Category 2 clean energy projects under RCW 82.08.962 and 82.12.962.	This section is partially exempt under RCW 34.05.310 (4)(g) because it deals with process requirements for applying for certification with L&I.
4.	WAC 296-140-005 Labor standard certification for projects in clean technology manufacturing, clean alternative fuels production, and renewable energy storage under chapter 82.89 RCW.	This section is partially exempt under RCW 34.05.310 (4)(c) because it is adopting language from state statutes without material change.
5.	WAC 296-140-006 Application, records and documentation, and certification for projects in clean technology manufacturing, clean alternative fuels production, and renewable energy storage under chapter 82.89 RCW.	This section is partially exempt under RCW 34.05.310 (4)(c) and (g) because it is adopting language from state statutes without material change, and deals with process requirements for applying for certification with L&I.
6.	WAC 296-140-007 Labor standard certification for solar canopies placed on large-scale commercial parking lots and other similar areas under chapter 82.90 RCW.	This section is partially exempt under RCW 34.05.310 (4)(c) because it is adopting language from state statutes without material change.
7.	WAC 296-140-008 Application, records and documentation, and certification for solar canopies placed on large-scale commercial parking lots and other similar areas under chapter 82.90 RCW.	This section is partially exempt under RCW 34.05.310 (4)(c) and (g) because it is adopting language from state statutes without material change, and deals with process requirements for applying for certification with L&I.

8.	WAC 296-140-009 Request for reconsideration of department decision.	This section is partially exempt under RCW 34.05.310 (4)(g) because it deals with how to seek reconsideration of L&I decision.
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The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The labor standards certification requirement in the proposed rule are voluntary standards for those clean energy project developers who choose to comply with them for the purposes of qualifying for a tax refund. As such, the proposed rules set the criteria for the labor standards and good faith efforts as directed by the statute but do not have any associated costs of compliance.

February 28, 2023
Joel Sacks
Director

OTS-3903.6

AMENDATORY SECTION (Amending WSR 21-21-043, filed 10/13/21, effective 11/13/21)

WAC 296-140-001 Definitions. (1) (~~"Category 1 clean energy project" means a project to:~~

- ~~(a) Develop a facility capable of generating not less than 1000 watts AC of electricity using any of the following principal sources of power: Fuel cells; wind; biomass energy; geothermal resource; tidal or wave energy; or technology that converts otherwise lost energy from exhaust;~~
- ~~(b) Develop solar energy systems capable of generating not less than 500 kilowatts AC of electricity.~~

~~(2) "Category 2 clean energy project" means a project to develop solar energy systems capable of generating more than 100 kilowatts AC, but no more than 500 kilowatts AC of electricity.~~

~~(3))~~ The following definitions apply to the entire chapter:

- (a) "Community workforce agreement (CWA)" means a prehire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project and is an agreement described in 29 U.S.C. Sec. 158(f). To establish the terms and conditions for employment on a single construction project, the CWA must be a single agreement covering all labor organizations representing the building and construction employees involved in the project and covers all contractors and subcontractors working on the project.
- ~~((4))~~ (b) "Department" means the department of labor and industries.
- ~~((5))~~ (c) "Good faith efforts" means the efforts by the project developer or its designated principle contractor that maximize the likelihood that the project will be built in compliance with the standards for certification, but are unable to meet these standards based on availability of qualified businesses or workers. The totality of the circumstances and factors will be reviewed to determine good faith. Good faith efforts are not necessary when the standard requirements have been met.

~~((6))~~ (d) "Labor hours" means the total hours of laborers, workers, or mechanics receiving an hourly wage who are directly employed by the contractor and all subcontractors working upon the project. Labor hours does not include hours worked by foremen, superintendents, or owners except where the hours worked are counted in satisfying the required apprentice to journey supervision ratio as required by apprenticeship standards.

~~((7))~~ (e) "Local resident" means Washington laborers, workers, or mechanics receiving an hourly wage who live within 50 miles of the project being constructed unless the project is being constructed in a rural county, then it is defined as Washington workers who live within 200 miles of the project.

~~((8))~~ "Machinery and equipment" means fixtures, devices, and support facilities that are integral and necessary to the generation of electricity using fuel cells, wind, sun, biomass energy, tidal or wave energy, geothermal resources, or technology that converts otherwise lost energy from exhaust. "Machinery and equipment" does not include:

- ~~(a)~~ Hand-powered tools;
- ~~(b)~~ Property with a useful life of less than one year;
- ~~(c)~~ Repair parts required to restore machinery and equipment to normal working order;
- ~~(d)~~ Replacement parts that do not increase productivity, improve efficiency, or extend the useful life of machinery and equipment;
- ~~(e)~~ Buildings; or
- ~~(f)~~ Building fixtures that are not integral and necessary to the generation of electricity that are permanently affixed to and become a physical part of a building.

~~((9))~~ (f) "Minority-owned business" means a business certified with the office of minority and women's business enterprises (OMWBE) as a minority business enterprise (MBE) or a minority women business enterprise (MWBE) under chapter 326-20 WAC.

~~((10))~~ (g) "Person" has the same meaning as in RCW 82.04.030.

(h) "Project labor agreement (PLA)" means a prehire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project and is an agreement described in 29 U.S.C. Sec. 158(f). To establish the terms and conditions for employment on a single construction project, the PLA must be a single agreement covering all labor organizations representing the building and construction employees involved in the project and covers all contractors and subcontractors working on the project.

~~((11))~~ (i) "Registered apprentice" means an apprentice registered in an apprenticeship program approved by the Washington state apprenticeship and training council according to chapters 49.04 RCW and 296-05 WAC.

~~((12))~~ (j) "Rural county" has the same definition as RCW 82.14.370(5).

~~((13))~~ (k) "Women-owned business" means a business certified with the office of minority and women's business enterprises (OMWBE) as a women business enterprise (WBE) or a minority women business enterprise (MWBE) under chapter 326-20 WAC.

~~((14))~~ (l) "Veteran-owned business" means a business certified by the Washington state department of veteran affairs under RCW 43.60A.190 (~~or a business considered a veteran-owned business under 38 C.F.R. Part 74~~).

(2) The following definitions apply to WAC 296-140-002 through 296-140-004:

(a) "Category 1 clean energy project" means a project under RCW 82.08.962 and 82.12.962 to:

(i) Develop a facility capable of generating not less than 1,000 watts AC of electricity using any of the following principal sources of power: Fuel cells, wind, biomass energy, geothermal resource, tidal or wave energy, or technology that converts otherwise lost energy from exhaust;

(ii) Develop solar energy systems capable of generating not less than 500 kilowatts AC of electricity.

(b) "Category 2 clean energy project" means a project under RCW 82.08.962 and 82.12.962 to develop solar energy systems capable of generating more than 100 kilowatts AC, but no more than 500 kilowatts AC of electricity.

(c) "Machinery and equipment" means fixtures, devices, and support facilities that are integral and necessary to the generation of electricity using fuel cells, wind, sun, biomass energy, tidal or wave energy, geothermal resources, or technology that converts otherwise lost energy from exhaust. "Machinery and equipment" does not include:

(i) Hand-powered tools;

(ii) Property with a useful life of less than one year;

(iii) Repair parts required to restore machinery and equipment to normal working order;

(iv) Replacement parts that do not increase productivity, improve efficiency, or extend the useful life of machinery and equipment;

(v) Buildings; or

(vi) Building fixtures that are not integral and necessary to the generation of electricity that are permanently affixed to and become a physical part of a building.

(3) The following definitions apply to WAC 296-140-005 and 296-140-006:

(a) "Eligible investment project" means an investment project of at least \$2,000,000 in either qualified buildings or qualified machinery and equipment, or both, for any of the following new, renovated, or expanded:

(i) Manufacturing operations;

(ii) Facilities to produce clean fuels, subject to the limitations in RCW 82.89.010 (8) (d), renewable hydrogen, green electrolytic hydrogen, or green hydrogen carriers; or

(iii) Storage facilities.

(b) "Green electrolytic hydrogen" means hydrogen produced through electrolysis and does not include hydrogen manufactured using steam reforming or any other conversion technology that produces hydrogen from a fossil fuel feedstock.

(c) "Green hydrogen carrier" means a chemical compound, created using electricity or renewable resources as energy input and without use of fossil fuel as a feedstock, from renewable hydrogen or green electrolytic hydrogen for the purposes of transportation, storage, and dispensing of hydrogen.

(d) (i) "Initiation of construction" means the date that a building permit is issued under the building code adopted under RCW 19.27.031 for:

(A) Construction of the eligible investment project, if the underlying ownership of the building vests exclusively with the person receiving the economic benefit of the deferral;

(B) Construction of the eligible investment project, if the economic benefits of the deferral are passed to a lessee as provided in RCW 82.89.020;

(C) Tenant improvements for the eligible investment project, if the economic benefits of the deferral are passed to a lessee as provided in RCW 82.89.020.

(ii) "Initiation of construction" does not include soil testing, site clearing and grading, site preparation, or any other related activities that are initiated before the issuance of a building permit for the construction of the foundation of the building.

(iii) If the investment project is a phased project, "initiation of construction" applies separately to each phase.

(e) "Investment project" means an investment in either qualified buildings or qualified machinery and equipment, or both, including labor and services rendered in the planning, installation, and construction of the project.

(f) "Manufacturing" has the same meaning as "to manufacture" in RCW 82.04.120.

(g) "Manufacturing operation" means manufacturing tangible personal property exclusively incorporated as an ingredient or component of or used in the generation of:

(i) Passenger cars, light duty trucks, medium duty passenger vehicles, buses, commercial vehicles as defined in RCW 46.04.140, or motorcycles that emit no exhaust gas from the onboard source of power, other than water vapor;

(ii) Charging and fueling infrastructure for electric, hydrogen, or other vehicle types that emits no exhaust gas from the onboard source of power, other than water vapor;

(iii) Renewable and green electrolytic hydrogen, including preparing renewable and green electrolytic hydrogen for distribution or converting it to a green hydrogen carrier;

(iv) Clean fuel with associated greenhouse gas emissions not exceeding 80 percent of the 2017 levels established under RCW 70A.535.020 or its successor statute under chapter 70A.535 RCW;

(v) Electricity from renewable resources; or

(vi) Storage facilities.

(h) "Operationally complete" means the eligible investment project is capable of being used for its intended purpose as described in the application.

(i) "Qualified buildings" means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity, used for manufacturing, including plant offices and warehouses or other buildings for the storage of raw materials or finished goods if the facilities are an essential or an integral part of a factory, mill, plant, or laboratory used for manufacturing. If a qualified building is used partly for manufacturing and partly for other purposes, the applicable tax deferral must be determined by apportionment of the costs of construction under rules adopted by the department.

(j) "Qualified machinery and equipment" means all new industrial fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing operation. "Qualified machinery and equipment" includes: Computers; software; data processing equipment; laboratory equipment; manufacturing components such as belts, pulleys, shafts, and moving parts; molds, tools, and dies; operating structures; and all equipment used to control, monitor, or operate the machinery.

(k) "Recipient" means a person receiving a tax deferral under chapter 82.89 RCW.

(l) "Renewable resource" has the same meaning as in RCW 82.08.816.

(m) "Storage facility" means a facility that:

(i) Accepts electricity as an energy source and uses a chemical, thermal, mechanical, or other process to store energy for subsequent delivery or consumption in the form of electricity; or

(ii) Stores renewable hydrogen, green electrolytic hydrogen, or green hydrogen carrier for subsequent delivery or consumption.

(4) The following definitions apply to WAC 296-140-007 and 296-140-008:

(a) "Eligible area" means a qualifying commercial center.

(b) "Eligible investment project" means an investment project that is located, as of the date the application required by RCW 82.90.030, is received by the department, in an eligible area.

(c) (i) "Initiation of construction" means the date that a building permit is issued under the building code adopted under RCW 19.27.031 for:

(A) Construction of the eligible investment project, if the underlying ownership of the building vests exclusively with the person receiving the economic benefit of the deferral;

(B) Construction of the eligible investment project, if the economic benefits of the deferral are passed to a lessee as provided in RCW 82.90.080; or

(C) Tenant improvements for the eligible investment project, if the economic benefits of the deferral are passed to a lessee as provided in RCW 82.90.080.

(ii) "Initiation of construction" does not include soil testing, site clearing and grading, site preparation, or any other related activities that are initiated before the issuance of a building permit for the construction of the foundation of the building.

(iii) If the investment project is a phased project, "initiation of construction" applies separately to each phase.

(d) "Investment project" means an investment in a qualified solar canopy including labor and services rendered in the planning, installation, and construction of the project.

(e) "Operationally complete" means the solar canopy has received its final electrical inspection and is connected to the electrical grid.

(f) "Qualified solar canopy" means construction of a new solar canopy that has an area of at least 50,000 square feet.

(g) "Qualifying commercial center" means a property currently used for retail, industrial, office, or other commercial purposes, containing a parking area or other area dedicated for both vehicle use and placement of a solar canopy.

(h) "Recipient" means a person receiving a tax deferral under chapter 82.90 RCW.

(i) "Solar canopy" means an elevated structure, or multiple structures, containing a solar energy system, as defined in RCW 82.16.110, with a nameplate capacity of at least one megawatt of alternating current.

"Solar canopy" includes the solar energy system, power lines, and any equipment required to connect the solar canopy to the electrical grid.

[Statutory Authority: RCW 82.08.962 and 82.12.962. WSR 21-21-043, § 296-140-001, filed 10/13/21, effective 11/13/21.]

AMENDATORY SECTION (Amending WSR 21-21-043, filed 10/13/21, effective 11/13/21)

WAC 296-140-002 Labor standard certification for Category 1 clean energy projects under RCW 82.08.962 and 82.12.962. (1) To qualify for department certification for the 50 percent retail sales and use tax remittance for machinery and equipment installed and the labor and services rendered in respect to installing the machinery and equipment, a Category 1 clean energy project must meet the following minimum requirements:

(a) Standard for procurement from and contracts with women, minority, or veteran-owned businesses.

(i) Consult with OMWBE and DVA to develop a plan to meet the standards or good faith efforts. The plan will identify the necessary and reasonable steps which, by their scope, intensity, and appropriateness, could reasonably be expected to meet the women, minority, and veteran-owned businesses procurement and contract standards, even if they were not fully successful and identify the documentation for the specific good faith efforts in the plan;

(ii) Have ~~((21))~~ 5.5 percent of the contract ~~((s))~~ dollars awarded to ~~((women-owned businesses,))~~ minority-owned businesses, ~~((or))~~ 9.5 percent of the contract dollars awarded to women-owned businesses, and five percent of the contract dollars awarded to veteran-owned businesses; or

~~((iii))~~ (iii) Demonstrate good faith efforts included in the plan required by (a)(i) of this subsection. In developing the plan with OMWBE and DVA, the following are good faith efforts which include, but are not limited to:

(A) Soliciting through all reasonable and available means as identified in the plan including, but not limited to: Proactive outreach to firms that are women, minority, and veteran-owned businesses; advertising in local community publications and publications appropriate to identified firms; ~~((B))~~ participating in ~~((community job fairs,))~~ conferences~~((,))~~ and trade shows; ~~((C))~~ and identification of interested women, minority, and veteran-owned businesses that have the capability to perform the work of the contract~~((D))~~.

(B) Providing reasonable time for women, minority, and veteran-owned businesses to fully and meaningfully respond to bid solicitations, that includes providing adequate information about the plans, specifications, and requirements of the contract along with timely responses to subcontractor inquiries and proposals~~((E))~~.

(C) Negotiating in good faith with interested women, minority, and veteran-owned businesses. The fact that there may be some additional costs involved in finding and using women, minority, and veteran-owned businesses is not in itself sufficient reason for a failure to meet the standard, as long as such costs are reasonable. The project developer or its designated principle contractor are not, however, required to accept higher quotes from women, minority, and veteran-owned businesses if the price difference is excessive or unreasonable.

(D) Selecting portions of the work to be performed by women, minority, and veteran-owned businesses in order to increase the likelihood that the standard will be achieved. This includes apportioning contract work items into economically feasible units to facilitate women, minority, and veteran-owned businesses' participation even when

the project developer or its designated principle contractor might otherwise prefer to perform these work items with its own forces, and where possible, establishing flexible time frames for performance to encourage participation(+)

~~(F) Adequately researching interested subcontractors and their capabilities before rejecting their proposals; and~~

~~(G) Not relying on price alone in the selection of subcontractors and considering reasonable quotes from women, minority, and veteran-owned businesses, even if other quotes are less expensive).~~

(E) Not rejecting women, minority, and veteran-owned businesses as being unqualified without sound reasons based on a thorough investigation of their capabilities. The project developer or its designated principle contractor standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the standard.

(F) Making efforts to assist interested women, minority, and veteran-owned businesses in obtaining necessary equipment, supplies, materials, or related assistance or services.

(G) Effectively using the services of OMWBE and DVA; women, minority, and veteran community organizations; women, minority, and veteran contractors' groups; and other appropriate organizations to provide assistance in the recruitment and placement of women, minority, and veteran-owned businesses.

(H) Mere pro forma efforts are not good faith efforts to meet the women, minority, and veteran business standards.

(I) Other efforts identified by OMWBE or DVA included in the plan required by (a) (i) of this subsection.

(b) Standard for procurement from and contracts with entities that have a history of complying with federal and state wage and hour laws and regulations.

(i) Awards contracts to businesses that have no findings of violation of federal or state wage and hour laws and regulations in a final and binding order by an administrative agency or court of competent jurisdiction in ((the 24)) a 60 month period prior to the bid date; or

(ii) Good faith efforts which include, but are not limited to:

(A) Efforts to hire contractors with a history of compliance with wage and hour laws.

(B) Adequately researching interested subcontractors and their wage and hour history before rejecting their proposals.

(C) If the only qualified contractor is one that does not meet the standard, requiring remedial measures that allow for ongoing review of compliance with wage and hour laws.

(c) Standard for apprenticeship utilization.

(i) Have a minimum of 15 percent of the project's labor hours performed by registered apprentices; or

(ii) Good faith efforts which include, but are not limited to:

(A) The project developer or its designated principle contractor or subcontractors participate in state-approved apprenticeship programs but no apprentices were available or not enough apprentices were available during the project. It is expected that contractors participate in apprenticeship programs for occupations where they have employees being trained;

(B) If apprentices are not available for dispatch at the beginning of the project, it is expected that the contractor check back with the program periodically to see if apprentices are available;

(C) The following situations do not meet the requirements for good faith efforts:

(I) Falling short of the requirement due to subcontractors not using apprentices;

(II) Not using a state-approved apprenticeship program while you are trying to get your own program approved by the Washington state apprenticeship and training council;

(III) Not using a state-approved apprenticeship program due to cost;

(IV) Not using a state-approved apprenticeship program because you are an out-of-state contractor;

(V) Not replacing an apprentice that quit or was fired; or not using enough apprentices because certain work is too dangerous or the apprentices do not have the appropriate skills.

(d) Standard for preferred entry for workers living in the area where the project is being constructed:

(i) Have a minimum of 35 percent of total labor work hours performed by local residents except for projects located in rural counties, which may have a minimum of 20 percent of total labor hours by local residents; or

(ii) Good faith efforts which include, but are not limited to:

(A) Listing the job with the local Washington WorkSource office in advance of the start of the project or contract;

(B) Participating in community job fairs, conferences, and trade shows;

~~(C)~~ Requesting the dispatch of local workers through union halls;

~~((C))~~ (D) Informing community partners/organizations of opportunities in advance of the start of the project or contract;

~~((D))~~ (E) Developing an employment hiring plan prior to the start of the project detailing how the local hiring requirements will be met; and

~~((E))~~ (F) Designating a jobs coordinator to be responsible for the local hire requirements with the experience and qualifications necessary to identify and recruit local workers, and provide referrals as appropriate to comply with local hire requirements.

(2) To qualify for department certification for the 75 percent retail sales and use tax remittance for machinery and equipment installed and the labor and services rendered in respect to installing the machinery and equipment, a Category 1 clean energy project must meet the following minimum requirements:

(a) Meet the standards for certification for the 50 percent tax remittance under WAC 296-140-002(1); and

(b) Pay all workers performing labor hours on the project wages not less than prevailing wages as determined by the department under chapter 39.12 RCW.

(3) To qualify for department certification for the 100 percent retail sales and use remittance for machinery and equipment installed and the labor and services rendered in respect to installing the machinery and equipment, a Category 1 clean energy project must have a signed PLA or CWA for the project prior to construction starting on the project. Separately meeting the standards for certification for the 50 percent and 75 percent tax remittance under subsections (1) and (2) of this section are not required.

(4) The inability to meet any of the standards based on conflicts with state or federal law may constitute good faith.

[Statutory Authority: RCW 82.08.962 and 82.12.962. WSR 21-21-043, § 296-140-002, filed 10/13/21, effective 11/13/21.]

AMENDATORY SECTION (Amending WSR 21-21-043, filed 10/13/21, effective 11/13/21)

WAC 296-140-004 Application, records and documentation, and certification for Category 1 and Category 2 clean energy projects under RCW 82.08.962 and 82.12.962.

(1) For Category 1 and Category 2 clean energy projects under RCW 82.08.962 and 82.12.962, businesses applying for department certification must complete an application in a form required by the department prior to the start of the project.

(2) Businesses must maintain records and documentation open to review to verify compliance with the labor standards or the good faith efforts. Records and documentation include, but are not limited to:

(a) Standard for procurement from and contract ~~((s))~~ dollars with women, minority, or veteran-owned businesses:

(i) A list of all businesses that have had contracts on the project, including information about their certifications for the women-owned businesses, minority-owned businesses, or veteran-owned businesses that have been contracted with on the project, including:

(A) A description of the work of the contract;

(B) The dollar amount of the contract and the total dollar amount paid to the contractor;

(ii) Written confirmation from each women-owned business, minority-owned business, or veteran-owned business that it is participating in the contract;

(iii) A copy of the plan to meet the standards or good faith efforts developed in consultation with OMWBE and DVA;

(iv) A copy of OMWBE's or DVA's review to determine compliance with the good faith efforts in the plan if the standard was not met;

(v) Documentation and evidence to support good faith efforts as necessary as requested by OMWBE, DVA, or the department; and

~~((iv))~~ (vi) Other records and documentation requested by the department, OMWBE, or DVA.

(b) Standard for procurement from and contracts with entities that have a history of complying with federal and state wage and hour laws and regulations.

(i) A list of all the businesses contracted with, including the unified business identifier number, the federal employer identification number, other identifying information requested by the department, and information obtained concerning their federal and state wage and hour laws and regulations compliance history;

(ii) A copy of documents related to the contract invitation or bid such as the contract solicitation, bid request, or request for proposal; a copy of the responding bids, proposals, or offer; and a copy of any final contracts and amendments;

(iii) A description of the process used to determine prospective contractors' compliance with federal and state wage and hour laws and regulations;

(iv) Documentation and evidence to support good faith efforts as necessary; and

(v) Other records and documentation requested by the department.

(c) Standard for apprenticeship utilization.

- (i) The name, occupational title, and registration number for each registered apprentice;
 - (ii) The number of apprentices and labor hours worked, categorized by occupational title and employer;
 - (iii) The number of journey level workers and labor hours worked, categorized by occupational title and employer;
 - (iv) Copies of weekly or monthly reporting forms and payroll records used to capture the required information;
 - (v) A statement affirming the hours reported meeting the definition of "labor hours" as defined by WAC 296-140-001;
 - (vi) Documentation and evidence to support good faith efforts as necessary; and
 - (vii) Other records and documentation requested by the department.
- (d) Standard for preferred entry by local workers.
- (i) The total number of workers performing labor hours on the project;
 - (ii) The total number of workers performing labor hours hired who meet the definition of a local worker under WAC 296-140-001 for the job category selected;
 - (iii) Employment records that contain the address of individuals hired to work on the project;
 - (iv) Documentation and evidence to support good faith efforts as necessary; and
 - (v) Other records and documentation requested by the department.
- (e) Standard for payment of prevailing wages.
- (i) Documentation showing all workers performing labor hours on the project were paid not less than chapter 39.12 RCW prevailing rates of wage; and
 - (ii) Payroll records. For projects that are also public works, labor and industries public work reporting online system for the project will eliminate the need to maintain documents and is acceptable as the system of record.
- (f) Records and documents for a standard PLA or CWA. A signed copy of the PLA or CWA for the project.
- (3) The department may require periodic reporting of compliance in a form and method prescribed by the department. Where a project seeking certification under this rule is also a public works project, public works reporting requirements may satisfy reporting requirements.
- (4) For Category 1 clean energy projects seeking certification for the 50 and 75 percent tax remittance and Category 2 clean energy projects seeking certification for the 50 percent tax remittance, businesses must submit notice of project completion in a form required by the department. After receiving the notice of competition, the department will determine if the certification standards are met based on a review of the documentation as requested by the department. If the standards were met, the department will issue the certification to the applicant.
- (5) For Category 1 clean energy projects seeking certification for the 100 percent tax remittance, the department will issue certification upon the receipt of the required application for certification and a signed copy of the PLA or CWA for the project. In the event there are separate PLAs or CWAs for different phases of construction, all PLAs and CWAs for the project must be submitted to the department before the start of each phase and the department will not certify the

project until the PLAs or CWAs for the construction and installation of the energy producing equipment have all been signed.

[Statutory Authority: RCW 82.08.962 and 82.12.962. WSR 21-21-043, § 296-140-004, filed 10/13/21, effective 11/13/21.]

NEW SECTION

WAC 296-140-005 Labor standard certification for projects in clean technology manufacturing, clean alternative fuels production, and renewable energy storage under chapter 82.89 RCW. (1) To qualify for department certification for the 50 percent reduction in the amount of deferred state sales and use tax to be repaid for under RCW 82.89.060, the eligible investment projects must meet the following minimum requirements:

(a) Standard for procurement from and contracts with women, minority, or veteran-owned businesses.

(i) Consult with OMWBE and DVA to develop a plan to meet the standards or good faith efforts before the initiation of construction of the investment project. The plan will identify the necessary and reasonable steps which, by their scope, intensity, and appropriateness, could reasonably be expected to meet the women, minority, and veteran-owned businesses procurement and contract standards, even if they were not fully successful and identify the documentation for the specific good faith efforts in the plan; and

(ii) Have 5.5 percent of contract dollars awarded to minority-owned businesses, and 9.5 percent of contract dollars awarded to women-owned businesses, and five percent of contract dollars awarded to veteran-owned businesses; or

(iii) Demonstrate good faith efforts included in the plan required by (a)(i) of this subsection. In developing the plan with OMWBE and DVA, the following are good faith efforts which include, but are not limited to:

(A) Soliciting through all reasonable and available means as identified in the plan including, but not limited to, proactive outreach to firms that are women, minority, and veteran-owned businesses; advertising in local community publications and publications appropriate to identified firms and with the office of minority and women's business enterprises; participating in conferences and trade shows; and identification of interested women, minority, and veteran-owned businesses that have the capability to perform the work of the contract;

(B) Providing reasonable time for women, minority, and veteran-owned businesses to fully and meaningfully respond to bid solicitations, that includes providing adequate information about the plans, specifications, and requirements of the contract along with timely responses to subcontractor inquiries and proposals;

(C) Negotiating in good faith with interested women, minority, and veteran-owned businesses. The fact that there may be some additional costs involved in finding and using women, minority, and veteran-owned businesses is not in itself sufficient reason for a failure to meet the standard, as long as such costs are reasonable. The project developer or its designated principle contractor are not, however, required to accept higher quotes from women, minority, and vet-

erant-owned businesses if the price difference is excessive or unreasonable;

(D) Selecting portions of the work to be performed by women, minority, and veteran-owned businesses in order to increase the likelihood that the standard will be achieved. This includes apportioning contract work items into economically feasible units to facilitate women, minority, and veteran-owned businesses' participation even when the project developer or its designated principle contractor might otherwise prefer to perform these work items with its own forces, and where possible, establishing flexible time frames for performance to encourage participation;

(E) Not rejecting women, minority, and veteran-owned businesses as being unqualified without sound reasons based on a thorough investigation of their capabilities. The project developer or its designated principle contractor standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs nonunion employee status) are not legitimate causes for the rejection or nonsolicitation of bids in the contractor's efforts to meet the standard;

(F) Making efforts to assist interested women, minority, and veteran-owned businesses in obtaining necessary equipment, supplies, materials, or related assistance or services;

(G) Effectively using the services of OMWBE and DVA; women, minority, and veteran community organizations; women, minority, and veteran contractors' groups; and other appropriate organizations to provide assistance in the recruitment and placement of women, minority, and veteran-owned businesses;

(H) Mere pro forma efforts are not good faith efforts to meet the women, minority, and veteran business standards;

(I) Other efforts identified by OMWBE or DVA included in the plan required by (a)(i) of this subsection.

(b) Standard for procurement from and contracts with entities that have a history of complying with federal and state wage and hour laws and regulations.

(i) Awards contracts to businesses that have no findings of violation of federal or state wage and hour laws and regulations in a final and binding order by an administrative agency or court of competent jurisdiction in the 60-month period prior to the bid date; or

(ii) Good faith efforts which include, but are not limited to:

(A) Efforts to hire contractors with a history of compliance with wage and hour laws;

(B) Adequately researching interested subcontractors and their wage and hour history before rejecting their proposals; and

(C) If the only qualified contractor is one that does not meet the standard, requiring remedial measures that allow for ongoing review of compliance with wage and hour laws.

(c) Standard for apprenticeship utilization.

(i) Have a minimum of 15 percent of the project's labor hours performed by registered apprentices; or

(ii) Good faith efforts which include, but are not limited to:

(A) The project developer or its designated principle contractor or subcontractors participate in state-approved apprenticeship programs but no apprentices were available or not enough apprentices were available during the project. It is expected that contractors participate in apprenticeship programs for occupations where they have employees being trained;

(B) If apprentices are not available for dispatch at the beginning of the project, it is expected that the contractor check back with the program periodically to see if apprentices are available;

(C) The following situations do not meet the requirements for good faith efforts:

(I) Falling short of the requirement due to subcontractors not using apprentices;

(II) Not using a state-approved apprenticeship program while you are trying to get your own program approved by the Washington state apprenticeship and training council;

(III) Not using a state-approved apprenticeship program due to cost;

(IV) Not using a state-approved apprenticeship program because you are an out-of-state contractor;

(V) Not replacing an apprentice that quit or was fired; or

(VI) Not using enough apprentices because certain work is too dangerous or the apprentices do not have the appropriate skills.

(d) Standard for preferred entry for workers living in the area where the project is being constructed:

(i) Have a minimum of 35 percent of total labor work hours performed by local residents except for projects located in rural counties, which may have a minimum of 20 percent of total labor hours by local residents; or

(ii) Good faith efforts which include, but are not limited to:

(A) Listing the job with the local Washington WorkSource office in advance of the start of the project or contract;

(B) Participating in community job fairs, conferences, and trade shows;

(C) Requesting the dispatch of local workers through union halls;

(D) Informing community partners/organizations of opportunities in advance of the start of the project or contract;

(E) Developing an employment hiring plan prior to the start of the project detailing how the local hiring requirements will be met; and

(F) Designating a jobs coordinator to be responsible for the local hire requirements with the experience and qualifications necessary to identify and recruit local workers, and provide referrals as appropriate to comply with local hire requirements.

(2) To qualify for department certification for the 75 percent reduction in the amount of deferred state sales and use tax to be repaid under RCW 82.89.060, the eligible investment projects must meet the following minimum requirements:

(a) Meet the standards for certification for the 50 percent reduction in the amount of deferred state sales and use tax to be repaid under RCW 82.89.060, under subsection (1) of this section; and

(b) Pay all workers performing labor hours on the project wages not less than prevailing wages as determined by the department under chapter 39.12 RCW.

(3) To qualify for department certification for the 100 percent reduction in the amount of deferred state sales and use tax to be repaid under RCW 82.89.060, the eligible investment projects must have a signed PLA or CWA for the project prior to the initiation of construction of the investment project on the project. Separately meeting the standards for certification for the 50 percent and 75 percent certification under subsections (1) and (2) of this section are not required.

(4) The inability to meet any of the standards based on conflicts with state or federal law may constitute good faith.

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NEW SECTION

WAC 296-140-006 Application, records and documentation, and certification for projects in clean technology manufacturing, clean alternative fuels production, and renewable energy storage under chapter 82.89 RCW. (1) Recipients applying for department certification under chapter 82.89 RCW, must complete an application in a form required by the department prior to the initiation of construction of the investment project.

(2) Businesses must maintain records and documentation open to review to verify compliance with the labor standards or the good faith efforts. Records and documentation include, but are not limited to:

(a) Standard for procurement from and contracts with women, minority, or veteran-owned businesses:

(i) A list of all businesses that have had contracts on the project, including information about their certifications for the women-owned businesses, minority-owned businesses, or veteran-owned businesses that have been contracted with on the project, including:

(A) A description of the work of the contract;

(B) The dollar amount of the contract and the total dollar amount paid to the contractor;

(ii) Written confirmation from each women-owned business, minority-owned business, or veteran-owned business that it is participating in the contract;

(iii) A copy of the plan to meet the standards or good faith efforts developed in consultation with OMWBE and DVA;

(iv) A copy of OMWBE's or DVA's review to determine compliance with the good faith efforts in the plan if the standard was not met;

(v) Documentation and evidence to support good faith efforts as necessary as requested by OMWBE, DVA, or the department; and

(vi) Other records and documentation requested by the department.

(b) Standard for procurement from and contracts with entities that have a history of complying with federal and state wage and hour laws and regulations.

(i) A list of all the businesses contracted with, including the unified business identifier number, the federal employer identification number, other identifying information requested by the department, and information obtained concerning their federal and state wage and hour laws and regulations compliance history;

(ii) A copy of documents related to the contract invitation or bid such as the contract solicitation, bid request, or request for proposal; a copy of the responding bids, proposals, or offer; and a copy of any final contracts and amendments;

(iii) A description of the process used to determine prospective contractors' compliance with federal and state wage and hour laws and regulations;

(iv) Documentation and evidence to support good faith efforts as necessary; and

(v) Other records and documentation requested by the department.

(c) Standard for apprenticeship utilization.

(i) The name, occupational title, and registration number for each registered apprentice;

- (ii) The number of apprentices and labor hours worked, categorized by occupational title and employer;
 - (iii) The number of journey level workers and labor hours worked, categorized by occupational title and employer;
 - (iv) Copies of weekly or monthly reporting forms and payroll records used to capture the required information;
 - (v) A statement affirming the hours reported meeting the definition of "labor hours" as defined by WAC 296-140-001;
 - (vi) Documentation and evidence to support good faith efforts as necessary; and
 - (vii) Other records and documentation requested by the department.
- (d) Standard for preferred entry by local workers.
- (i) The total number of workers performing labor hours on the project;
 - (ii) The total number of workers performing labor hours hired who meet the definition of a local worker under WAC 296-140-001 for the job category selected;
 - (iii) Employment records that contain the address of individuals hired to work on the project;
 - (iv) Documentation and evidence to support good faith efforts as necessary; and
 - (v) Other records and documentation requested by the department.
- (e) Standard for payment of prevailing wages.
- (i) Documentation showing all workers performing labor hours on the project were paid not less than chapter 39.12 RCW prevailing rates of wage; and
 - (ii) Payroll records. For projects that are also public works, labor and industries public work reporting online system for the project will eliminate the need to maintain documents and is acceptable as the system of record.
- (f) Records and documents for a standard PLA or CWA. A signed copy of the PLA or CWA for the project.
- (3) The department may require periodic reporting of compliance in a form and method prescribed by the department. Where a project seeking certification under this rule is also a public works project, public works reporting requirements may satisfy reporting requirements.
- (4) For eligible investment projects seeking certification for the 50 and 75 percent reduction in the amount of deferred state sales and use tax to be repaid under RCW 82.89.060, recipients must submit notice of the project is operationally complete in a form required by the department. After receiving the notice project is operationally complete, the department will determine if the certification standards are met based on a review of the documentation as requested by the department. If the standards were met, the department will issue the certification to the applicant.
- (5) For eligible investment projects seeking certification for the 100 percent reduction in the amount of deferred state sales and use tax to be repaid under RCW 82.89.060, the department will issue certification upon the receipt of the required application for certification and a signed copy of the PLA or CWA for the project. In the event there are separate PLAs or CWAs for different phases of construction, all PLAs and CWAs for the project must be submitted to the department before the start of each phase and the department will not certify the project until the PLAs or CWAs for all phases have all been signed.

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NEW SECTION

WAC 296-140-007 Labor standard certification for solar canopies placed on large-scale commercial parking lots and other similar areas under chapter 82.90 RCW. (1) To qualify for department certification for the 50 percent reduction in the amount of deferred state sales and use tax to be repaid under RCW 82.90.060, the eligible investment projects must meet the following minimum requirements:

(a) Standard for procurement from and contracts with women, minority, or veteran-owned businesses.

(i) Consult with OMWBE and DVA to develop a plan to meet the standards or good faith efforts. The plan will identify the necessary and reasonable steps which, by their scope, intensity, and appropriateness, could reasonably be expected to meet the women, minority, and veteran-owned businesses procurement and contract standards, even if they were not fully successful and identify the documentation for the specific good faith efforts in the plan; and

(ii) Have 5.5 percent of contract dollars awarded to minority-owned businesses, 9.6 percent of the contract dollars awarded to women-owned businesses, and five percent of contract dollars awarded to veteran-owned businesses; or

(iii) Demonstrate good faith efforts included in the plan required by (a)(i) of this subsection. In developing the plan with OMWBE and DVA, the following are good faith efforts which include, but are not limited to:

(A) Soliciting through all reasonable and available means as identified in the plan including, but not limited to, proactive outreach to firms that are women, minority, and veteran-owned businesses; advertising in local community publications and publications appropriate to identified firms and with the office of minority and women's business enterprises; participating in community job fairs, conferences, and trade shows; and identification of interested women, minority, and veteran-owned businesses that have the capability to perform the work of the contract;

(B) Providing reasonable time for women, minority, and veteran-owned businesses to fully and meaningfully respond to bid solicitations, that includes providing adequate information about the plans, specifications, and requirements of the contract along with timely responses to subcontractor inquiries and proposals;

(C) Negotiating in good faith with interested women, minority, and veteran-owned businesses. The fact that there may be some additional costs involved in finding and using women, minority, and veteran-owned businesses is not in itself sufficient reason for a failure to meet the standard, as long as such costs are reasonable. The project developer or its designated principle contractor are not, however, required to accept higher quotes from women, minority, and veteran-owned businesses if the price difference is excessive or unreasonable;

(D) Selecting portions of the work to be performed by women, minority, and veteran-owned businesses in order to increase the likelihood that the standard will be achieved. This includes apportioning contract work items into economically feasible units to facilitate

women, minority, and veteran-owned businesses' participation even when the project developer or its designated principle contractor might otherwise prefer to perform these work items with its own forces, and where possible, establishing flexible time frames for performance to encourage participation;

(E) Not rejecting women, minority, and veteran-owned businesses as being unqualified without sound reasons based on a thorough investigation of their capabilities. The project developer or its designated principle contractor standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs nonunion employee status) are not legitimate causes for the rejection or nonsolicitation of bids in the contractor's efforts to meet the standard;

(F) Making efforts to assist interested women, minority, and veteran-owned businesses in obtaining necessary equipment, supplies, materials, or related assistance or services;

(G) Effectively using the services of OMWBE and DVA; women, minority, and veteran community organizations; women, minority, and veteran contractors' groups; and other appropriate organizations to provide assistance in the recruitment and placement of women, minority, and veteran-owned businesses;

(H) Mere pro forma efforts are not good faith efforts to meet the women, minority, and veteran business standards;

(I) Other efforts identified by OMWBE or DVA included in the plan required by (a) (i) of this subsection.

(b) Standard for procurement from and contracts with entities that have a history of complying with federal and state wage and hour laws and regulations.

(i) Awards contracts to businesses that have no findings of violation of federal or state wage and hour laws and regulations in a final and binding order by an administrative agency or court of competent jurisdiction in the 60-month period prior to the bid date; or

(ii) Good faith efforts which include, but are not limited to:

(A) Efforts to hire contractors with a history of compliance with wage and hour laws;

(B) Adequately researching interested subcontractors and their wage and hour history before rejecting their proposals; and

(C) If the only qualified contractor is one that does not meet the standard, requiring remedial measures that allow for ongoing review of compliance with wage and hour laws.

(c) Standard for apprenticeship utilization.

(i) Have a minimum of 15 percent of the project's labor hours performed by registered apprentices; or

(ii) Good faith efforts which include, but are not limited to:

(A) The project developer or its designated principle contractor or subcontractors participate in state-approved apprenticeship programs but no apprentices were available or not enough apprentices were available during the project. It is expected that contractors participate in apprenticeship programs for occupations where they have employees being trained;

(B) If apprentices are not available for dispatch at the beginning of the project, it is expected that the contractor check back with the program periodically to see if apprentices are available;

(C) The following situations do not meet the requirements for good faith efforts:

(I) Falling short of the requirement due to subcontractors not using apprentices;

(II) Not using a state-approved apprenticeship program while you are trying to get your own program approved by the Washington state apprenticeship and training council;

(III) Not using a state-approved apprenticeship program due to cost;

(IV) Not using a state-approved apprenticeship program because you are an out-of-state contractor;

(V) Not replacing an apprentice that quit or was fired; or

(VI) Not using enough apprentices because certain work is too dangerous or the apprentices do not have the appropriate skills.

(d) Standard for preferred entry for workers living in the area where the project is being constructed:

(i) Have a minimum of 35 percent of total labor work hours performed by local residents except for projects located in rural counties, which may have a minimum of 20 percent of total labor hours by local residents; or

(ii) Good faith efforts which include, but are not limited to:

(A) Listing the job with the local Washington WorkSource office in advance of the start of the project or contract;

(B) Participating in community job fairs, conferences, and trade shows;

(C) Requesting the dispatch of local workers through union halls;

(D) Informing community partners/organizations of opportunities in advance of the start of the project or contract;

(E) Developing an employment hiring plan prior to the start of the project detailing how the local hiring requirements will be met; and

(F) Designating a jobs coordinator to be responsible for the local hire requirements with the experience and qualifications necessary to identify and recruit local workers, and provide referrals as appropriate to comply with local hire requirements.

(2) To qualify for department certification for the 75 percent reduction in the amount of deferred state sales and use tax to be repaid under RCW 82.90.060, the eligible investment projects must meet the following minimum requirements:

(a) Meet the standards for certification for the 50 percent reduction in the amount of deferred state sales and use tax to be repaid under RCW 82.90.060, under WAC 296-140-005(1); and

(b) Pay all workers performing labor hours on the project wages not less than prevailing wages as determined by the department under chapter 39.12 RCW.

(3) To qualify for department certification for the 100 percent reduction in the amount of deferred state sales and use tax to be repaid under RCW 82.90.060, the eligible investment projects must have a signed PLA or CWA for the project prior to construction starting on the project. Separately meeting the standards for certification for the 50 percent and 75 percent certification under subsections (1) and (2) of this section are not required.

(4) The inability to meet any of the standards based on conflicts with state or federal law may constitute good faith.

[]

NEW SECTION

WAC 296-140-008 Application, records and documentation, and certification for solar canopies placed on large-scale commercial parking lots and other similar areas under chapter 82.90 RCW. (1) Recipients applying for department certification for solar canopies placed on large-scale commercial parking lots and other similar areas under chapter 82.90 RCW must complete an application in a form required by the department prior to the initiation of construction of the investment project.

(2) Businesses must maintain records and documentation open to review to verify compliance with the labor standards or the good faith efforts. Records and documentation include, but are not limited to:

(a) Standard for procurement from and contracts with women, minority, or veteran-owned businesses:

(i) A list of all businesses that have had contracts on the project, including information about their certifications for the women-owned businesses, minority-owned businesses, or veteran-owned businesses that have been contracted with on the project, including:

(A) A description of the work of the contract;

(B) The dollar amount of the contract and the total dollar amount paid to the contractor;

(ii) Written confirmation from each women-owned business, minority-owned business, or veteran-owned business that it is participating in the contract;

(iii) A copy of the plan to meet the standards or good faith efforts developed in consultation with OMWBE and DVA;

(iv) A copy of OMWBE's or DVA's review to determine compliance with the good faith efforts in the plan if the standard was not met;

(v) Documentation and evidence to support good faith efforts as necessary as requested by OMWBE, DVA, or the department; and

(vi) Other records and documentation requested by the department, OMWBE or DVA.

(b) Standard for procurement from and contracts with entities that have a history of complying with federal and state wage and hour laws and regulations.

(i) A list of all the businesses contracted with, including the unified business identifier number, the federal employer identification number, other identifying information requested by the department, and information obtained concerning their federal and state wage and hour laws and regulations compliance history;

(ii) A copy of documents related to the contract invitation or bid such as the contract solicitation, bid request, or request for proposal; a copy of the responding bids, proposals, or offer; and a copy of any final contracts and amendments;

(iii) A description of the process used to determine prospective contractors' compliance with federal and state wage and hour laws and regulations;

(iv) Documentation and evidence to support good faith efforts as necessary; and

(v) Other records and documentation requested by the department.

(c) Standard for apprenticeship utilization.

(i) The name, occupational title, and registration number for each registered apprentice;

(ii) The number of apprentices and labor hours worked, categorized by occupational title and employer;

- (iii) The number of journey level workers and labor hours worked, categorized by occupational title and employer;
 - (iv) Copies of weekly or monthly reporting forms and payroll records used to capture the required information;
 - (v) A statement affirming the hours reported meeting the definition of "labor hours" as defined by WAC 296-140-001;
 - (vi) Documentation and evidence to support good faith efforts as necessary; and
 - (vii) Other records and documentation requested by the department.
- (d) Standard for preferred entry by local workers.
- (i) The total number of workers performing labor hours on the project;
 - (ii) The total number of workers performing labor hours hired who meet the definition of a local worker under WAC 296-140-001 for the job category selected;
 - (iii) Employment records that contain the address of individuals hired to work on the project;
 - (iv) Documentation and evidence to support good faith efforts as necessary; and
 - (v) Other records and documentation requested by the department.
- (e) Standard for payment of prevailing wages.
- (i) Documentation showing all workers performing labor hours on the project were paid not less than chapter 39.12 RCW prevailing rates of wage; and
 - (ii) Payroll records. For projects that are also public works, labor and industries public work reporting online system for the project will eliminate the need to maintain documents and is acceptable as the system of record.
- (f) Records and documents for a standard PLA or CWA. A signed copy of the PLA or CWA for the project.
- (3) The department may require periodic reporting of compliance in a form and method prescribed by the department. Where a project seeking certification under this rule is also a public works project, public works reporting requirements may satisfy reporting requirements.
- (4) For eligible investment projects seeking certification for the 50 and 75 percent reduction in the amount of deferred state sales and use tax to be repaid under RCW 82.90.060, recipients must submit notice of the project is operationally complete in a form required by the department. After receiving the notice project is operationally complete, the department will determine if the certification standards are met based on a review of the documentation as requested by the department. If the standards were met, the department will issue the certification to the applicant.
- (5) For eligible investment projects seeking certification for the 100 percent reduction in the amount of deferred state sales and use tax to be repaid under RCW 82.90.060, the department will issue certification upon the receipt of the required application for certification and a signed copy of the PLA or CWA for the project. In the event there are separate PLAs or CWAs for different phases of construction, all PLAs and CWAs for the project must be submitted to the department before the start of each phase and the department will not certify the project until the PLAs or CWAs for all phases have all been signed.

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NEW SECTION

WAC 296-140-009 Request for reconsideration of department decision. (1) Applicants for department certification may request reconsideration of the department's decision to deny certification. The request for reconsideration must be received by the department within 30 calendar days from the date the department's decision is communicated to the applicant.

(2) An applicant must:

(a) Specify the department decision(s) that the applicant is disputing;

(b) State the basis for disputing the department's decision; and

(c) Include documentation to support the provider's position.

(3) The department may request additional information or documentation. The applicant must submit the additional information within 30 calendar days of the date on the department's request.

(4) The department will review the original decision, information supporting the original decision, the applicant's reconsideration request and supporting documentation and will notify the applicant of the status of its reconsideration decision within 90 days. This is the final department decision, and an applicant may appeal according to RCW 34.05.570(4).

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WSR 23-06-063
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)
[Filed February 28, 2023, 10:27 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-17-005, 20-17-133, 20-19-009, 20-21-034, and 21-11-061.

Title of Rule and Other Identifying Information: The department is proposing amendments to WAC 388-97-0300 clinical records for residents in medicare and medicaid certified facilities, and adoption of a new section related to nursing facilities providing clinical records to residents and their representatives during the COVID-19 pandemic, 388-97-0920 resident and family groups, and 388-97-1000 Resident assessment; a new section related to resident assessment during the COVID-19 pandemic, 388-97-1020 Comprehensive plan of care; a new section related to care plans during the COVID-19 pandemic, 388-97-1260 Physician services, for residents in medicare and medicaid certified facilities, new sections related to physician delegation of tasks and visits in nursing homes during the COVID-19 pandemic, 388-97-1380 Tuberculosis—Testing required and 388-97-1580 Tuberculosis—Reporting—Required; new sections related to tuberculosis testing requirements and COVID-19 vaccinations during the COVID-19 pandemic, 388-97-1740 Disaster and emergency preparedness, 388-97-1760 Quality assessment and assurance and 388-97-2400 Resident rooms; and the adoption of three new sections during the COVID-19 pandemic.

Hearing Location(s): On April 25, 2023, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtually. Due to the impacts of COVID-19, hearings are being held virtually. Please see the DSHS website for the most current information.

Date of Intended Adoption: Not before April 26, 2023.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m. on April 25, 2023.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email Tencza@dshs.wa.gov, by 5:00 p.m. on April 11, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DSHS is proposing to adopt rules to identify the requirements in place during the COVID-19 pandemic in Washington state. The purpose of the rule change is to ensure consistent implementation and enforcement of rule requirements in effect during the COVID-19 pandemic in Washington state.

Reasons Supporting Proposal: This rule making will provide clarity for regulated facilities, department inspection, and investigation staff related to requirements in place during the COVID-19 pandemic.

Statutory Authority for Adoption: RCW 74.42.620.

Statute Being Implemented: Chapters 18.51 and 74.42 RCW.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting: Molly McClintock, P.O. Box 45600, Olympia, WA 98504-5600, 360-742-6966; Implementation and Enforcement: Amy Abbott, P.O. Box 45600, Olympia, WA 98504-5600, 360-485-7893.

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

A cost-benefit analysis is not required under RCW 34.05.328. This proposal is exempt from the requirement for a cost-benefit analysis under RCW 34.05.328 (5)(b)(iv) as the proposed rules clarify language of a rule without changing its effect.

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

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

Is exempt under RCW 34.05.328 (5)(b)(iv).

Explanation of exemptions: The rule is exempt under RCW 34.05.328 (5)(b)(iv), as it clarifies language of a rule without changing its effect. The department is proposing to adopt rules to identify the requirements in place during the COVID-19 pandemic in Washington state. The purpose of the rule change is to ensure consistent implementation and enforcement of rule requirements in effect during the COVID-19 pandemic.

Scope of exemption for rule proposal:

Is fully exempt.

February 27, 2023
Katherine I. Vasquez
Rules Coordinator

SHS-4968.2

AMENDATORY SECTION (Amending WSR 14-12-040, filed 5/29/14, effective 6/29/14)

WAC 388-97-0300 Notice of rights and services. The department amended or suspended portions of this section from May 15, 2020, through May 7, 2022, in response to the state of emergency related to the COVID-19 pandemic. For requirements in place during that time, see WAC 388-97-03001.

(1) The nursing home must provide the resident, before admission, or at the time of admission in the case of an emergency, and as changes occur during the resident's stay, both orally and in writing and in language and words that the resident understands, with the following information:

(a) All rules and regulations governing resident conduct, resident's rights and responsibilities during the stay in the nursing home;

(b) Advanced directives, and of any nursing home policy or practice that might conflict with the resident's advance directive if made;

(c) Advance notice of transfer requirements, consistent with RCW 70.129.110;

(d) Advance notice of deposits and refunds, consistent with RCW 70.129.150; and

(e) Items, services and activities available in the nursing home and of charges for those services, including any charges for services not covered under medicare or medicaid or by the home's per diem rate.

(2) The resident has the right:

(a) Upon an oral or written request, to access all records pertaining to the resident including clinical records within (~~twenty-four~~) 24 hours; and

(b) After receipt of (~~his or her~~) their records for inspection, to purchase at a cost not to exceed (~~twenty-five~~) 25 cents a page, photocopies of the records or any portions of them upon request and two working days advance notice to the nursing home. For the purposes of this chapter, "**working days**" means Monday through Friday, except for legal holidays.

(3) The resident has the right to:

(a) Be fully informed in words and language that (~~he or she~~) they can understand of (~~his or her~~) their total health status, including, but not limited to, (~~his or her~~) their medical condition;

(b) Accept or refuse treatment; and

(c) Refuse to participate in experimental research.

(4) The nursing home must inform each resident:

(a) Who is entitled to medicaid benefits, in writing, prior to the time of admission to the nursing facility or, when the resident becomes eligible for medicaid of the items, services and activities:

(i) That are included in nursing facility services under the medicaid state plan and for which the resident may not be charged; and

(ii) That the nursing home offers and for which the resident may be charged, and the amount of charges for those services.

(b) That deposits, admission fees, and prepayment of charges cannot be solicited or accepted from medicare or medicaid eligible residents; and

(c) That minimum stay requirements cannot be imposed on medicare or medicaid eligible residents.

(5) The nursing home must, except for emergencies, inform each resident in writing, (~~thirty~~) 30 days in advance before changes are made to the availability or charges for items, services, or activities specified in section (4)(a)(i) and (ii) of this section, or before changes to the nursing home rules.

(6) The private pay resident has the right to the following, regarding fee disclosure-deposits:

(a) Prior to admission, a nursing home that requires payment of an admission fee, deposit, or a minimum stay fee, by or on behalf of an individual seeking admission to the nursing home, must provide the individual:

(i) Full disclosure in writing in a language the potential resident or (~~his or her~~) their representative understands:

(A) Of the nursing home's schedule of charges for items, services, and activities provided by the nursing home; and

(B) Of what portion of the deposits, admissions fees, prepaid charges, or minimum stay fee will be refunded to the resident if the resident leaves the nursing home.

(ii) The amount of any admission fees, deposits, or minimum stay fees.

(iii) If the nursing home does not provide these disclosures, the nursing home must not keep deposits, admission fees, prepaid charges, or minimum stay fees.

(b) If a resident dies or is hospitalized or is transferred and does not return to the nursing home, the nursing home:

(i) Must refund any deposit or charges already paid, less the home's per diem rate, for the days the resident actually resided or reserved or retained a bed in the nursing home, regardless of any minimum stay or discharge notice requirements; except that

(ii) The nursing home may retain an additional amount to cover its reasonable, actual expenses incurred as a result of a private pay resident's move, not to exceed five days per diem charges, unless the resident has given advance notice in compliance with the admission agreement.

(c) The nursing home must refund any and all refunds due the resident within (~~thirty~~) 30 days from the resident's date of discharge from the nursing home; and

(d) Where the nursing home requires the execution of an admission contract by or on behalf of an individual seeking admission to the nursing home, the terms of the contract must be consistent with the requirements of this section.

(7) The nursing home must furnish a written description of legal rights which includes:

(a) A description of the manner of protecting personal funds, under WAC 388-97-0340;

(b) In the case of a nursing facility only, a description of the requirements and procedures for establishing eligibility for medicaid, including the right to request an assessment which determines the extent of a couple's nonexempt resources at the time of institutionalization and attributes to the community spouse an equitable share of resources which cannot be considered available for payment toward the cost of the institutionalized spouse's medical care in (~~his or her~~) their process of spending down to medicaid eligibility levels;

(c) A posting of names, addresses, and telephone numbers of all relevant state client advocacy groups such as the state survey and certification agency, the state licensure office, the state ombuds program, the protection and advocacy network, and the medicaid fraud control unit; and

(d) A statement that the resident may file a complaint with the state survey and certification agency concerning resident abandonment, abuse, neglect, financial exploitation, and misappropriation of resident property in the nursing home.

(8) The nursing home must:

(a) Inform each resident of the name, and specialty of the physician responsible for (~~his or her~~) their care; and

(b) Provide a way for each resident to contact (~~his or her~~) their physician.

(9) The skilled nursing facility and nursing facility must prominently display in the facility written information, and provide to residents and individuals applying for admission oral and written information, about how to apply for and use medicare and medicaid benefits, and how to receive refunds for previous payments covered by such benefits.

(10) The written information provided by the nursing home pursuant to this section, and the terms of any admission contract executed between the nursing home and an individual seeking admission to the nursing home, must be consistent with the requirements of chapters 74.42 and 18.51 RCW and, in addition, for facilities certified under medicare or medicaid, with the applicable federal requirements.

[Statutory Authority: Chapters 18.51 and 74.42 RCW. WSR 14-12-040, § 388-97-0300, filed 5/29/14, effective 6/29/14. Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. WSR 08-20-062, § 388-97-0300, filed 9/24/08, effective 11/1/08.]

NEW SECTION

WAC 388-97-03001 Notice of rights and services-Requirements in effect May 15, 2020, through May 7, 2022, in response to the state of emergency related to the COVID-19 pandemic. In response to the state of emergency related to the COVID-19 pandemic, the department adopted emergency rules under RCW 34.05.350 on May 15, 2020, to amend and suspend portions of WAC 388-97-0300. The emergency rules remained in effect until May 7, 2022. The following rule was in effect during that time:

(1) The nursing home must provide the resident, before admission, or at the time of admission in the case of an emergency, and as changes occur during the resident's stay, both orally and in writing and in language and words that the resident understands, with the following information:

(a) All rules and regulations governing resident conduct, resident's rights and responsibilities during the stay in the nursing home;

(b) Advanced directives, and of any nursing home policy or practice that might conflict with the resident's advance directive if made;

(c) Advance notice of transfer requirements, consistent with RCW 70.129.110;

(d) Advance notice of deposits and refunds, consistent with RCW 70.129.150; and

(e) Items, services, and activities available in the nursing home and of charges for those services, including any charges for services not covered under medicare or medicaid or by the home's per diem rate.

(2) The resident has the right to purchase at a cost not to exceed 25 cents a page, photocopies of the records or any portions of them upon request and 10 working days advance notice to the nursing home. For the purposes of this chapter, "working days" means Monday through Friday, except for legal holidays.

(3) The resident has the right to:

(a) Be fully informed in words and language that he or she can understand of his or her total health status, including, but not limited to, his or her medical condition;

(b) Accept or refuse treatment; and

(c) Refuse to participate in experimental research.

(4) The nursing home must inform each resident:

(a) Who is entitled to medicaid benefits, in writing, prior to the time of admission to the nursing facility or, when the resident becomes eligible for medicaid of the items, services, and activities:

(i) That are included in nursing facility services under the medicaid state plan and for which the resident may not be charged; and

(ii) That the nursing home offers and for which the resident may be charged, and the amount of charges for those services.

(b) That deposits, admission fees, and prepayment of charges cannot be solicited or accepted from medicare or medicaid eligible residents; and

(c) That minimum stay requirements cannot be imposed on medicare or medicaid eligible residents.

(5) The nursing home must, except for emergencies, inform each resident in writing, 30 days in advance before changes are made to the availability or charges for items, services, or activities specified in section (4)(a)(i) and (ii) of this section, or before changes to the nursing home rules.

(6) The private pay resident has the right to the following, regarding fee disclosure-deposits:

(a) Prior to admission, a nursing home that requires payment of an admission fee, deposit, or a minimum stay fee, by or on behalf of an individual seeking admission to the nursing home, must provide the individual:

(i) Full disclosure in writing in a language the potential resident or his or her representative understands:

(A) Of the nursing home's schedule of charges for items, services, and activities provided by the nursing home; and

(B) Of what portion of the deposits, admissions fees, prepaid charges, or minimum stay fee will be refunded to the resident if the resident leaves the nursing home.

(ii) The amount of any admission fees, deposits, or minimum stay fees.

(iii) If the nursing home does not provide these disclosures, the nursing home must not keep deposits, admission fees, prepaid charges, or minimum stay fees.

(b) If a resident dies or is hospitalized or is transferred and does not return to the nursing home, the nursing home:

(i) Must refund any deposit or charges already paid, less the home's per diem rate, for the days the resident actually resided or reserved or retained a bed in the nursing home, regardless of any minimum stay or discharge notice requirements; except that

(ii) The nursing home may retain an additional amount to cover its reasonable, actual expenses incurred as a result of a private pay resident's move, not to exceed five days per diem charges, unless the resident has given advance notice in compliance with the admission agreement.

(c) The nursing home must refund any and all refunds due the resident within 30 days from the resident's date of discharge from the nursing home; and

(d) Where the nursing home requires the execution of an admission contract by or on behalf of an individual seeking admission to the nursing home, the terms of the contract must be consistent with the requirements of this section.

(7) The nursing home must furnish a written description of legal rights which includes:

(a) A description of the manner of protecting personal funds, under WAC 388-97-0340;

(b) In the case of a nursing facility only, a description of the requirements and procedures for establishing eligibility for medicaid, including the right to request an assessment which determines the extent of a couple's nonexempt resources at the time of institutionalization and attributes to the community spouse an equitable share of resources which cannot be considered available for payment toward the

cost of the institutionalized spouse's medical care in his or her process of spending down to medicaid eligibility levels;

(c) A posting of names, addresses, and telephone numbers of all relevant state client advocacy groups such as the state survey and certification agency, the state licensure office, the state ombuds program, the protection and advocacy network, and the medicaid fraud control unit; and

(d) A statement that the resident may file a complaint with the state survey and certification agency concerning resident abandonment, abuse, neglect, financial exploitation, and misappropriation of resident property in the nursing home.

(8) The nursing home must:

(a) Inform each resident of the name, and specialty of the physician responsible for his or her care; and

(b) Provide a way for each resident to contact his or her physician.

(9) The skilled nursing facility and nursing facility must prominently display in the facility written information, and provide to residents and individuals applying for admission oral and written information, about how to apply for and use medicare and medicaid benefits, and how to receive refunds for previous payments covered by such benefits.

(10) The written information provided by the nursing home pursuant to this section, and the terms of any admission contract executed between the nursing home and an individual seeking admission to the nursing home, must be consistent with the requirements of chapters 74.42 and 18.51 RCW and, in addition, for facilities certified under medicare or medicaid, with the applicable federal requirements.

[]

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-0920 Participation in resident and family groups.

The department repealed this section from April 13, 2020, through May 7, 2022, in response to the state of emergency related to the COVID-19 pandemic. The requirements of this section were not in effect during that time.

(1) A resident has the right to organize and participate in resident groups in the nursing home.

(2) The nursing home must provide a resident or family group, if one exists, with private space.

(3) Staff or visitors may attend meetings only at the group's invitation.

(4) The nursing home must provide a designated staff individual responsible for providing assistance and responding to written requests that result from group meetings.

(5) When a resident or family group exists, the nursing home must listen to the views and act upon the grievances and recommendations of residents and families concerning proposed policy and operational decisions affecting resident care and life in the nursing home.

(6) A resident's family has the right to meet in the nursing home with the families of other residents in the facility.

[Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. WSR 08-20-062, § 388-97-0920, filed 9/24/08, effective 11/1/08.]

AMENDATORY SECTION (Amending WSR 18-11-001, filed 5/2/18, effective 6/2/18)

WAC 388-97-1000 Resident assessment. The department amended or suspended portions of this section from April 13, 2020, through May 10, 2021, in response to the state of emergency related to the COVID-19 pandemic. For requirements in place during that time, see WAC 388-97-10001.

- (1) The nursing home must:
 - (a) Provide resident care based on a systematic, comprehensive, interdisciplinary assessment, and care planning process in which the resident participates, to the fullest extent possible;
 - (b) Conduct initially and periodically a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity;
 - (c) At the time each resident is admitted:
 - (i) Have physician's orders for the resident's immediate care; and
 - (ii) Ensure that the resident's immediate care needs are identified in an admission assessment.
 - (d) Ensure that the comprehensive assessment of a resident's needs describes the resident's capability to perform daily life functions and significant impairments in functional capacity.
- (2) The comprehensive assessment must include at least the following information:
 - (a) Identification and demographic information;
 - (b) Customary routine;
 - (c) Cognitive patterns;
 - (d) Communication;
 - (e) Vision;
 - (f) Mood and behavior patterns;
 - (g) Psychosocial well-being;
 - (h) Physical functioning and structural problems;
 - (i) Continence;
 - (j) Disease diagnosis and health conditions;
 - (k) Dental and nutritional status;
 - (l) Skin conditions;
 - (m) Activity pursuit;
 - (n) Medications;
 - (o) Special treatments and procedures;
 - (p) Discharge potential;
 - (q) Documentation of summary information regarding the assessment performed; and
 - (r) Documentation of participation in assessment.
- (3) The nursing home must conduct comprehensive assessments:
 - (a) No later than (~~fourteen~~) 14 days after the date of admission;
 - (b) Promptly after a significant change in the resident's physical or mental condition; and
 - (c) In no case less often than once every (~~twelve~~) 12 months.

(4) The nursing home must ensure that:

(a) Each resident is assessed no less than once every three months, and as appropriate, the resident's assessment is revised to assure the continued accuracy of the assessment; and

(b) The results of the assessment are used to develop, review, and revise the resident's comprehensive plan of care under WAC 388-97-1020.

(5) The skilled nursing facility and nursing facility must:

(a) For the required assessment, complete the state approved resident assessment instrument (RAI) for each resident in accordance with federal requirements;

(b) Maintain electronic or paper copies of completed resident assessments in the resident's active medical record for (~~fifteen~~) 15 months; this information must be maintained in a centralized location and be easily and readily accessible;

(c) Place the hard copies of the signature pages in the clinical record of each resident if a facility maintains their RAI data electronically and does not use electronic signatures;

(d) Assess each resident not less than every three months, using the state approved assessment instrument; and

(e) Transmit all state and federally required RAI information for each resident to the department:

(i) In a manner approved by the department;

(ii) Within (~~fourteen~~) 14 days of completion of any RAI assessment required under this subsection; and

(iii) Within (~~fourteen~~) 14 days of discharging or admitting a resident for a tracking record.

[Statutory Authority: Chapter 74.42 RCW and 42 C.F.R. 483.20. WSR 18-11-001, § 388-97-1000, filed 5/2/18, effective 6/2/18. Statutory Authority: Chapters 18.51 and 74.42 RCW. WSR 13-04-093, § 388-97-1000, filed 2/6/13, effective 3/9/13. Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. WSR 08-20-062, § 388-97-1000, filed 9/24/08, effective 11/1/08.]

NEW SECTION

WAC 388-97-10001 Resident assessment-Requirements in effect April 13, 2020, through May 10, 2021, in response to the state of emergency related to the COVID-19 pandemic. In response to the state of emergency related to the COVID-19 pandemic, the department adopted emergency rules under RCW 34.05.350 on April 13, 2020, to amend and suspend portions of WAC 388-97-0300. The emergency rules remained in effect until May 10, 2021. The following rule was in effect during that time:

(1) The nursing home must:

(a) Provide resident care based on a systematic, comprehensive, interdisciplinary assessment, and care planning process in which the resident participates, to the fullest extent possible;

(b) Conduct initially and periodically a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity;

(c) As soon as practicable after each resident is admitted:

(i) Have physician's orders for the resident's immediate care;

and

(ii) Ensure that the resident's immediate care needs are identified in an admission assessment.

(d) Ensure that the comprehensive assessment of a resident's needs describes the resident's capability to perform daily life functions and significant impairments in functional capacity.

(2) The comprehensive assessment must include at least the following information:

- (a) Identification and demographic information;
- (b) Customary routine;
- (c) Cognitive patterns;
- (d) Communication;
- (e) Vision;
- (f) Mood and behavior patterns;
- (g) Psychosocial well-being;
- (h) Physical functioning and structural problems;
- (i) Continence;
- (j) Disease diagnosis and health conditions;
- (k) Dental and nutritional status;
- (l) Skin conditions;
- (m) Activity pursuit;
- (n) Medications;
- (o) Special treatments and procedures;
- (p) Discharge potential;

(q) Documentation of summary information regarding the assessment performed; and

(r) Documentation of participation in assessment.

(3) The nursing home must ensure that:

(a) As appropriate, the resident's assessment is revised to assure the continued accuracy of the assessment; and

(b) The results of the assessment are used to develop, review, and revise the resident's comprehensive plan of care under WAC 388-97-1020.

(4) The skilled nursing facility and nursing facility must:

(a) For the required assessment, complete the state approved resident assessment instrument (RAI) for each resident in accordance with federal requirements;

(b) Maintain electronic or paper copies of completed resident assessments in the resident's active medical record for 15 months; this information must be maintained in a centralized location and be easily and readily accessible;

(c) Place the hard copies of the signature pages in the clinical record of each resident if a facility maintains their RAI data electronically and does not use electronic signatures;

(d) Transmit all state and federally required RAI information for each resident to the department in a manner and time period approved by the department.

[]

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-1020 Comprehensive plan of care. The department amended or suspended portions of this section from April 13, 2020, through May 10, 2021, in response to the state of emergency related to

the COVID-19 pandemic. For requirements in place during that time, see WAC 388-97-10201.

(1) The nursing home must develop a comprehensive plan of care for each resident that includes measurable objectives and timetables to meet a resident's medical, nursing and mental, and psychosocial needs that are identified in the comprehensive assessment.

(2) The comprehensive plan of care must:

(a) Describe the services that are to be furnished to attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being as required under WAC 388-97-1060;

(b) Describe any services that would otherwise be required, but are not provided due to the resident's exercise of rights, including the right to refuse treatment (refer to WAC 388-97-0300 and 388-97-0260);

(c) Be developed within seven days after completion of the comprehensive assessment;

(d) Be prepared by an interdisciplinary team that includes the attending physician, a registered nurse with responsibility for the resident, and other appropriate staff in disciplines as determined by the resident's needs;

(e) Consist of an ongoing process which includes a meeting if desired by the resident or the resident's representative; and

(f) Include the ongoing participation of the resident to the fullest extent possible, the resident's family, or the resident's surrogate decision maker.

(3) The nursing home must implement a plan of care to meet the immediate needs of newly admitted residents, prior to the completion of the comprehensive assessment and plan of care.

(4) The nursing home must:

(a) Follow the informed consent process with the resident as specified in WAC 388-97-0260, regarding the interdisciplinary team's plan of care recommendations;

(b) Respect the resident's right to decide plan of care goals and treatment choices, including acceptance or refusal of plan of care recommendations;

(c) Include in the interdisciplinary plan of care process:

(i) Staff members requested by the resident; and

(ii) Direct care staff who work most closely with the resident.

(d) Respect the resident's wishes regarding which individuals, if any, the resident wants to take part in resident plan of care functions;

(e) Provide reasonable advance notice to and reasonably accommodate the resident family members or other individuals the resident wishes to have attend, when scheduling plan of care meeting times; and

(f) Where for practical reasons any individuals significant to the plan of care process, including the resident, are unable to attend plan of care meetings, provide a method for such individuals to give timely input and recommendations.

(5) The nursing home must ensure that each comprehensive plan of care:

(a) Designates the discipline of the individuals responsible for carrying out the program; and

(b) Is reviewed at least quarterly by qualified staff, as part of the ongoing process of monitoring the resident's needs and preferences.

[Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. WSR 08-20-062, § 388-97-1020, filed 9/24/08, effective 11/1/08.]

NEW SECTION

WAC 388-97-10201 Comprehensive plan of care-Requirements in effect April 13, 2020, through May 10, 2021, in response to the state of emergency related to the COVID-19 pandemic. In response to the state of emergency related to the COVID-19 pandemic, the department adopted emergency rules under RCW 34.05.350 on April 13, 2020, to amend and suspend portions of WAC 388-97-0300. The emergency rules remained in effect until May 10, 2021. The following rule was in effect during that time:

(1) The nursing home must develop a comprehensive plan of care for each resident that includes measurable objectives and timetables to meet a resident's medical, nursing and mental, and psychosocial needs that are identified in the comprehensive assessment.

(2) The comprehensive plan of care must:

(a) Describe the services that are to be furnished to attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being as required under WAC 388-97-1060;

(b) Describe any services that would otherwise be required, but are not provided due to the resident's exercise of rights, including the right to refuse treatment (refer to WAC 388-97-0300 and 388-97-0260);

(c) Be prepared by an interdisciplinary team that includes the attending physician, a registered nurse with responsibility for the resident, and other appropriate staff in disciplines as determined by the resident's needs;

(d) Consist of an ongoing process which includes a meeting if desired by the resident or the resident's representative; and

(e) Include the ongoing participation of the resident to the fullest extent possible, the resident's family, or the resident's surrogate decision maker.

(3) The nursing home must implement a plan of care to meet the immediate needs of newly admitted residents, prior to the completion of the comprehensive assessment and plan of care.

(4) The nursing home must:

(a) Follow the informed consent process with the resident as specified in WAC 388-97-0260, regarding the interdisciplinary team's plan of care recommendations;

(b) Respect the resident's right to decide plan of care goals and treatment choices, including acceptance or refusal of plan of care recommendations;

(c) Include in the interdisciplinary plan of care process:

(i) Staff members requested by the resident; and

(ii) Direct care staff who work most closely with the resident.

(d) Respect the resident's wishes regarding which individuals, if any, the resident wants to take part in the resident's plan of care functions;

(e) Provide reasonable advance notice to and reasonably accommodate the resident family members or other individuals the resident wishes to have attend, when scheduling plan of care meeting times; and

(f) Where for practical reasons any individuals significant to the plan of care process, including the resident, are unable to attend plan of care meetings, provide a method for such individuals to give timely input and recommendations.

(5) The nursing home must ensure that each comprehensive plan of care:

(a) Designates the discipline of the individuals responsible for carrying out the program; and

(b) Is reviewed at least quarterly by qualified staff, as part of the ongoing process of monitoring the resident's needs and preferences.

[]

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-1260 Physician services. The department amended or suspended portions of this section from April 28, 2020, through May 7, 2022, in response to the state of emergency related to the COVID-19 pandemic. For requirements in place during that time, see WAC 388-97-12601.

(1) The nursing home must ensure that the resident is seen by the physician whenever necessary.

(2) Except as specified in RCW 74.42.200, a physician must personally approve in writing a recommendation that an individual be admitted to a nursing home.

(3) The nursing home must ensure that:

(a) Except as specified in RCW 74.42.200, the medical care of each resident is supervised by a physician;

(b) Another physician supervises the medical care of residents when their attending physician is unavailable; and

(c) Physician services are provided (~~(twenty-four)~~) 24 hours per day, in case of emergency.

(4) The physician must:

(a) Write, sign, and date progress notes at each visit;

(b) Sign and date all orders; and

(c) In medicare and medicare/medicaid certified facilities, review the resident's total program of care, including medications and treatments, at each federally required visit.

(5) Except as specified in subsections (6), (7), and (9) of this section, a physician may delegate tasks to a physician's assistant or advanced registered nurse practitioner who is:

(a) Licensed by the state;

(b) Acting within the scope of practice as defined by state law; and

(c) Under the supervision of the physician.

(6) The physician may not delegate a task when the delegation is prohibited under state law or by the facility's own policies.

(7) If the resident's primary payor source is medicare, the physician may:

(a) Alternate federally required physician visits between personal visits by:

(i) The physician; and

(ii) An advanced registered nurse practitioner or physician's assistant; and

(b) Not delegate responsibility for the initial required physician visit. This initial visit must occur within the first ~~((thirty))~~ 30 days of admission to the facility.

(8) If the resident's payor source is medicaid, the physician may delegate any federally required physician task, including tasks which the regulations specify must be performed personally by the physician, to a physician's assistant or advanced registered nurse practitioner who is not an employee of the facility but who is working in collaboration with a physician.

(9) If the resident's payor source is not medicare or medicaid:

(a) In the medicare only certified facility or in the medicare certified area of a medicare/medicaid facility, the physician may alternate federally required physician visits between personal visits by the physician and an advanced registered nurse practitioner or physician's assistant. The physician may not delegate responsibility for the initial required physician visit.

(b) In the medicaid only certified facility or in the medicaid certified area of a medicare/medicaid facility, the physician may delegate any federally required physician task, including tasks which the regulations specify must be performed personally by the physician, to a physician's assistant or advanced registered nurse practitioner who is not an employee of the facility but who is working in collaboration with a physician.

(10) The following table describes the physician visit requirements related to medicare or medicaid certified area and payor type.

	Beds in medicare only certified area	Beds in medicare/medicaid certified area	Beds in medicaid only certified area
Payor source:	Initial by physician	Initial by physician	N/A
medicare	Physician may delegate alternate visits	Physician may delegate alternate visits	
Payor source:	N/A	Delegate all tasks	Delegate all tasks
medicaid		Nonemployee	Nonemployee
Payor source:	Initial by physician	Initial by physician	Delegate all tasks
Others: such as insurance, private pay, Veteran Affairs	Physician may delegate alternate visits	Physician may delegate alternate visits	Nonemployee

(11) The attending physician, or the physician-designated advanced registered nurse practitioner or physician's assistant must:

(a) Participate in the interdisciplinary plan of care process as described in WAC 388-97-1020;

(b) Provide to the resident, or where applicable the resident's surrogate decision maker, information so that the resident can make an informed consent to care or refusal of care (see WAC 388-97-0260); and

(c) Order resident self-medication when appropriate.

(12) The nursing home must obtain from the physician the following medical information before or at the time of the resident's admission:

(a) A summary or summaries of the resident's current health status, including history and physical findings reflecting a review of systems;

(b) Orders, as necessary for medications, treatments, diagnostic studies, specialized rehabilitative services, diet, and any restrictions related to physical mobility; and

(c) Plans for continuing care and discharge.

[Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. WSR 08-20-062, § 388-97-1260, filed 9/24/08, effective 11/1/08.]

NEW SECTION

WAC 388-97-12601 Physician services-Requirements in effect April 28, 2020, through May 7, 2022, in response to the state of emergency related to the COVID-19 pandemic. In response to the state of emergency related to the COVID-19 pandemic, the department adopted emergency rules under RCW 34.05.350 on April 28, 2020, to amend and suspend portions of WAC 388-97-1260. The emergency rules remained in effect until May 7, 2022. The following rule was in effect during that time:

(1) The nursing home must ensure that the resident is seen by the physician whenever necessary.

(2) Except as specified in RCW 74.42.200, a physician must personally approve in writing a recommendation that an individual be admitted to a nursing home.

(3) The nursing home must ensure that:

(a) Except as specified in RCW 74.42.200, the medical care of each resident is supervised by a physician;

(b) Another physician supervises the medical care of residents when their attending physician is unavailable; and

(c) Physician services are provided 24 hours per day, in case of emergency.

(4) The physician must:

(a) Write, sign, and date progress notes at each visit;

(b) Sign and date all orders; and

(c) In medicare and medicare/medicaid certified facilities, review the resident's total program of care, including medications and treatments, at each federally required visit.

(5) Except as specified in subsection (6) of this section, a physician may delegate tasks, including tasks that, under state law, must be performed personally by the physician, to a physician's assistant or advanced registered nurse practitioner who is:

(a) Licensed by the state;

(b) Acting within the scope of practice as defined by state law;

(c) Under the supervision of, and working in collaboration with the physician; and

(d) Not an employee of the facility, if caring for a resident whose payor source is medicaid.

(6) The physician may not delegate a task when the delegation is prohibited under state law or by the facility's own policies.

(7) The attending physician, or the physician-designated advanced registered nurse practitioner or physician's assistant must:

(a) Participate in the interdisciplinary plan of care process as described in WAC 388-97-1020;

(b) Provide to the resident, or where applicable the resident's surrogate decision maker, information so that the resident can make an informed consent to care or refusal of care (see WAC 388-97-0260); and

(c) Order resident self-medication when appropriate.

(8) The nursing home must obtain from the physician the following medical information before or at the time of the resident's admission:

(a) A summary or summaries of the resident's current health status, including history and physical findings reflecting a review of systems;

(b) Orders, as necessary for medications, treatments, diagnostic studies, specialized rehabilitative services, diet, and any restrictions related to physical mobility; and

(c) Plans for continuing care and discharge.

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AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-1380 Tuberculosis—Testing required. The department amended or suspended portions of this section from January 25, 2021, through September 23, 2021, in response to the state of emergency related to the COVID-19 pandemic. For requirements in place during that time, see WAC 388-97-13801.

(1) The nursing home must develop and implement a system to ensure that facility personnel and residents have tuberculosis testing within three days of employment or admission.

(2) The nursing home must also ensure that facility personnel are tested annually.

(3) For the purposes of WAC 388-97-1360 through 388-97-1580 "**person**" means facility personnel and residents.

[Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. WSR 08-20-062, § 388-97-1380, filed 9/24/08, effective 11/1/08.]

NEW SECTION

WAC 388-97-13801 Tuberculosis-Testing required-Requirements in effect January 25, 2021, through September 23, 2021, in response to the state of emergency related to the COVID-19 pandemic. In response to the state of emergency related to the COVID-19 pandemic, the department adopted emergency rules under RCW 34.05.350 on January 25, 2021, to amend and suspend portions of WAC 388-97-1380. The emergency rules remained in effect until September 23, 2021. The following rule was in effect during that time:

(1) Unless the nursing home decides to defer tuberculosis testing in accordance with subsection (2) of this section, or the resident or staff person is excluded from testing from WAC 388-97-1440, the nursing home must:

(a) Ensure that facility personnel and residents have tuberculosis testing within three days of employment or admission; and

(b) Ensure that facility personnel are tested annually.

(2) The nursing home may defer tuberculosis testing of facility personnel and residents to complete the COVID-19 vaccination process if the nursing home has considered the risks and benefits of such delay and if the delay is consistent with the current centers for disease control and prevention COVID-19 vaccination guidance.

(3) If testing is deferred for a resident or facility staff person, in accordance with subsection (2) of this section, the nursing home must:

(a) Assess the person for symptoms of tuberculosis within three days of employment or admission, and if the person has tuberculosis symptoms, follow WAC 388-97-1560; and

(b) Complete tuberculosis testing in accordance with WAC 388-97-1400 through 388-97-1580 as soon as indicated by the centers for disease control and prevention COVID-19 vaccination guidelines.

(4) For the purposes of WAC 388-97-1360 through 388-97-1580, "person" means facility personnel and residents.

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AMENDATORY SECTION (Amending WSR 10-02-021, filed 12/29/09, effective 1/29/10)

WAC 388-97-1580 Tuberculosis—Test records. (1) The department amended or suspended portions of this section from January 25, 2021, through September 23, 2021, in response to the state of emergency related to the COVID-19 pandemic. For requirements in place during that time, see WAC 388-97-15801.

(2) The nursing home must:

~~((1))~~ (a) Keep the records of tuberculin test results, reports of X-ray findings, and any physician or public health provider orders in the nursing home;

~~((2))~~ (b) Make the records readily available to the appropriate health authority and licensing agency;

~~((3))~~ (c) Retain the records for ~~((eighteen))~~ 18 months beyond the date of employment termination; and

~~((4))~~ (d) Provide the person a copy of ~~((his/her))~~ their test results.

[Statutory Authority: Chapters 18.51 and 74.42 RCW. WSR 10-02-021, § 388-97-1580, filed 12/29/09, effective 1/29/10. Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. WSR 08-20-062, § 388-97-1580, filed 9/24/08, effective 11/1/08.]

NEW SECTION

WAC 388-97-15801 Tuberculosis-Test records-Requirements in effect January 25, 2021, through September 23, 2021, in response to the state of emergency related to the COVID-19 pandemic. (1) In response to the state of emergency related to the COVID-19 pandemic, the department adopted emergency rules under RCW 34.05.350 on January 25, 2021, to amend and suspend portions of WAC 388-97-1580. The emergency rules remained in effect until September 23, 2021. The following rule was in effect during that time:

(2) The nursing home must:

(a) Keep the records of tuberculin test results, reports of X-ray findings, and any physician or public health provider orders in the nursing home;

(b) Keep the records of the tuberculosis symptom assessment and the documented rationale for deferring the tuberculosis testing in the nursing home, if tuberculosis testing is deferred in accordance with WAC 388-97-1380(2);

(c) Make the records readily available to the appropriate health authority and licensing agency;

(d) Retain the records for 18 months beyond the date of employment termination; and

(e) Provide the person a copy of their test results.

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AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-1740 Disaster and emergency preparedness. The department amended or suspended portions of this section from June 23, 2020, through June 7, 2022, in response to the state of emergency related to the COVID-19 pandemic. For requirements in place during that time, see WAC 388-97-17401.

(1) The nursing home must develop and implement detailed written plans and procedures to meet potential emergencies and disasters. At a minimum the nursing home must ensure these plans provide for:

- (a) Fire or smoke;
- (b) Severe weather;
- (c) Loss of power;
- (d) Earthquake;
- (e) Explosion;
- (f) Missing resident, elopement;
- (g) Loss of normal water supply;
- (h) Bomb threats;
- (i) Armed individuals;
- (j) Gas leak, or loss of service; and
- (k) Loss of heat supply.

(2) The nursing home must train all employees in emergency procedures when they begin work in the nursing home, periodically review emergency procedures with existing staff, and carry out unannounced staff drills using those procedures.

(3) The nursing home must ensure emergency plans:

- (a) Are developed and maintained with the assistance of qualified fire, safety, and other appropriate experts as necessary;
- (b) Are reviewed annually; and
- (c) Include evacuation routes prominently posted on each unit.

[Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. WSR 08-20-062, § 388-97-1740, filed 9/24/08, effective 11/1/08.]

NEW SECTION

WAC 388-97-17401 Disaster and emergency preparedness-Requirements in effect June 23, 2020, through June 7, 2022, in response to the state of emergency related to the COVID-19 pandemic. In response

to the state of emergency related to the COVID-19 pandemic, the department adopted emergency rules under RCW 34.05.350 on June 23, 2020, to amend and suspend portions of WAC 388-97-1740. The emergency rules remained in effect until June 7, 2022. The following rule was in effect during that time:

(1) The nursing home must develop and implement detailed written plans and procedures to meet potential emergencies and disasters. At a minimum the nursing home must ensure these plans provide for:

- (a) Fire or smoke;
- (b) Severe weather;
- (c) Loss of power;
- (d) Earthquake;
- (e) Explosion;
- (f) Missing resident, elopement;
- (g) Loss of normal water supply;
- (h) Bomb threats;
- (i) Armed individuals;
- (j) Gas leak, or loss of service; and
- (k) Loss of heat supply.

(2) The nursing home must train all employees in emergency procedures when they begin work in the nursing home, and periodically re-view emergency procedures with existing staff.

(3) The nursing home must ensure emergency plans:

- (a) Are developed and maintained with the assistance of qualified fire, safety, and other appropriate experts as necessary;
- (b) Are reviewed annually; and
- (c) Include evacuation routes prominently posted on each unit.

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AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-1760 Quality assessment and assurance. The department amended or suspended portions of this section from June 23, 2020, through May 7, 2022, in response to the state of emergency related to the COVID-19 pandemic. For requirements in place during that time, see WAC 388-97-17601.

(1) The nursing home must maintain a process for quality assessment and assurance. The department may not require disclosure of the records of the quality assessment and assurance committee except in so far as such disclosure is related to ensuring compliance with the requirements of this section.

(2) The nursing home must ensure the quality assessment and assurance process:

- (a) Seeks out and incorporates input from the resident and family councils, if any, or individual residents and support groups; and
- (b) Reviews expressed concerns and grievances.

[Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. WSR 08-20-062, § 388-97-1760, filed 9/24/08, effective 11/1/08.]

NEW SECTION

WAC 388-97-17601 Quality assessment and assurance-Requirements in effect June 23, 2020, through May 7, 2022, in response to the state of emergency related to the COVID-19 pandemic. In response to the state of emergency related to the COVID-19 pandemic, the department adopted emergency rules under RCW 34.05.350 on June 23, 2020, to amend and suspend portions of WAC 388-97-1760. The emergency rules remained in effect until May 7, 2022. The following rule was in effect during that time:

(1) The nursing home must maintain a process for quality assessment and assurance. The department may not require disclosure of the records of the quality assessment and assurance committee except in so far as such disclosure is related to ensuring compliance with the requirements of this section.

(2) The nursing home must ensure the quality assessment and assurance process:

(a) Seeks out and incorporates input from the residents and resident representatives; and

(b) At a minimum, reviews adverse events and infection control.

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AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-2400 Resident rooms. The department amended or suspended portions of this section from June 23, 2020, through June 7, 2022, in response to the state of emergency related to the COVID-19 pandemic. For requirements in place during that time, see WAC 388-97-24001.

(1) The nursing home must ensure that each resident bedroom:

(a) Has direct access to a hall or corridor;

(b) Is located on an exterior wall with a transparent glass window; and

(c) Is located to prevent through traffic.

(2) **In a new building or addition**, each resident bedroom must:

(a) Have an exterior transparent glass window:

(i) With an area equal to at least (~~one-tenth~~) 1/10th of the bedroom usable floor area;

(ii) Located (~~twenty-four~~) 24 feet or more from another building or the opposite wall of a court, or (~~ten~~) 10 feet or more away from a property line, except on street sides;

(iii) Located eight feet or more from any exterior walkway, paved surface, or driveway; and

(iv) With a sill three feet or less above the floor.

(b) Be located on a floor level at or above grade level except for earth berms. "Grade" means the level of ground adjacent to the building floor level measured at the required exterior window. The ground must be level or slope downward for a distance of at least (~~ten~~) 10 feet from the wall of the building. From there the ground may slope upward to the maximum sill height of the required window at a rate of one foot vertical for two feet horizontal.

[Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. WSR 08-20-062, § 388-97-2400, filed 9/24/08, effective 11/1/08.]

NEW SECTION

WAC 388-97-24001 Resident rooms-Requirements in effect June 23, 2020, through June 7, 2022, in response to the state of emergency related to the COVID-19 pandemic. In response to the state of emergency related to the COVID-19 pandemic, the department adopted emergency rules under RCW 34.05.350 on June 23, 2020, to amend and suspend portions of WAC 388-97-2400. The emergency rules remained in effect until June 7, 2022. The following rule was in effect during that time:

- (1) The nursing home must ensure that each resident bedroom:
 - (a) Has direct access to a hall or corridor; and
 - (b) Is located to prevent through traffic.
- (2) In a new building or addition, unless otherwise necessary for infection control, each resident bedroom must:
 - (a) Have an exterior transparent glass window:
 - (i) With an area equal to at least 1/10th of the bedroom usable floor area;
 - (ii) Located 24 feet or more from another building or the opposite wall of a court, or 10 feet or more away from a property line, except on street sides;
 - (iii) Located eight feet or more from any exterior walkway, paved surface, or driveway; and
 - (iv) With a sill three feet or less above the floor.
 - (b) Be located on a floor level at or above grade level except for earth berms. "Grade" means the level of ground adjacent to the building floor level measured at the required exterior window. The ground must be level or slope downward for a distance of at least 10 feet from the wall of the building. From there the ground may slope upward to the maximum sill height of the required window at a rate of one foot vertical for two feet horizontal.

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WSR 23-06-067
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed February 28, 2023, 2:32 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-17-071.

Title of Rule and Other Identifying Information: Proposed changes to the factory assembled structures (FAS) rules under chapter 296-150C WAC, Commercial coaches; chapter 296-150F WAC, Factory-built housing and commercial structures; chapter 296-150P WAC, Recreational park trailers; chapter 296-150R WAC, Recreational vehicles; and chapter 296-150V WAC, Conversion vendor units and medical units.

Hearing Location(s): On April 4, 2023, at 9:00 a.m., at Department of Labor and Industries (L&I), 7273 Linderson Way S.W., Tumwater, WA 98501; join by Zoom meeting at <https://lni-wa-gov.zoom.us/j/86477040744?pwd=aHlWbGt5WFcyMHlTbWlnK0VaVElvUT09>, Passcode FASPH@1!; or join by phone 1-253-215-8782, Meeting ID 864 7704 0744, Passcode 87842912. The in-person and virtual/telephonic hearing starts at 9:00 a.m. and will continue until all oral comments are received.

Date of Intended Adoption: April 11, 2023.

Submit Written Comments to: Alicia Curry, L&I, Field Services and Public Safety Division, P.O. Box 44400, Olympia, WA 98504-4400, email Alicia.Curry@Lni.wa.gov, fax 360-902-5292, by 5 p.m. on April 4, 2023.

Assistance for Persons with Disabilities: Contact Alicia Curry, phone 360-902-6244, fax 360-902-5292, email Alicia.Curry@Lni.wa.gov, by March 20, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: L&I is proposing amendments to FAS rules for review and approval of design plans by licensed professional engineers, architects, and firms for commercial coach trailers, factory-built housing and commercial structures, recreational park trailers (also known as park model recreational vehicles and park trailers), recreational vehicles, and conversion vendor units.

Since 2021, L&I has adopted emergency rules allowing third party reviews by approved licensed professionals to reduce a backlog of design plans for review and approval in the FAS program. The emergency rule clarifies the procedures for review and approval of design plans for commercial coaches and factory-built and commercial structures by licensed professional engineers, architects, or firms under chapters 296-150C and 296-150F WAC. The emergency rules also allow licensed professionals or firms to review and approve design plans for recreational park trailers, recreational vehicles, and conversion vendor units under chapters 296-150P, 296-150R, and 296-150V WAC. This rule making proposes the adoption of permanent rules.

The proposed amendments to the rules are in two parts. The first part proposes amendments to update and clarify existing rules for review and approval of design plans for commercial coaches (chapter 296-150C WAC) and factory-built housing and commercial structures (chapter 296-150F WAC). The proposed amendments:

- Allow L&I to suspend or revoke a licensed professional's approval to review plans for submittal of substandard plans or a conflict of interest. This also includes, but is not limited to:
 - o Adds new requirements for suspending and revoking a licensed professional authorization for substandard plans. For example:

- ◆ Requires that plans must first be audited and found to be incomplete or contain multiple violations of the building code and other codes.
- ◆ Establishes a minimum threshold that allows suspension or revocation if three or more approved plans are found during audit to be incomplete or contain multiple code violations in a one-year period.
- ◆ Adds new language to establish what constitutes as an "incomplete plan."
 - Establishes administrative processes and timeline for a licensed professional to reapply to regain their authorization to approve plans and a remedy to hear appeals of a suspension or revocation.
 - Establishes the actions L&I will take if a licensed professional's authorization to approve plans is revoked or suspended.
- Adopt current FAS procedures allowing for electronic submittal of plans and for engineer/architects stamping of plans in accordance with department of licensing (DOL) and engineers board of registration requirements.
- Clarify the requirements for accepting plans to reflect the existing practice of the FAS program. This includes, but is not limited to:
 - Allows licensed professionals 90 days to correct design plans and information and resubmit the plan to L&I for acceptance, unless under an audit.
 - Clarifies that audits may be random or for noncompliance and subjects licensed professionals or firms to fees for L&I's review and approval of plans that do not comply with the requirements of the chapter.
 - Clarifies the existing procedures that audits include determining whether a plan complies with the program's written guidelines, as well as the provisions of the chapter.
 - Clarifies that, for plans that do not comply with requirements, L&I will notify the applicant who submitted the design plan approved by the licensed professional rather than the licensed professional plan reviewer.
- Clarify that a professional includes professional engineers, architects, or firms.
- Clarify that a professional engineer, architect, or firm cannot approve plans submitted for multistate approval under a reciprocal agreement.
- Remove obsolete fees for electronic plan submittal.
- Create new hourly fees for resubmittal of design plans approved by a professional or firm.
- Modify rules for general housekeeping and cleanup, such as punctuation, relocating requirements to other rules, typographical and reference corrections, formatting, section title changes, etc.

The second part proposes amendments by adding new requirements for review and approval of design plans for recreational park trailers (chapter 296-150P WAC), recreational vehicles (chapter 296-150R WAC), and conversion vendor units and medical units (chapter 296-150V WAC), among other changes. The proposed amendments:

- Modify the definition of "recreational park trailer" to further clarify its meaning.

- Allow licensed professionals or firms to review and approve design plans for recreational park trailers and recreational vehicles, excluding design plans for quality control manuals which must be reviewed and approved by L&I.
- Allow licensed professionals or firms to review and approve design plans for conversion vendor units, excluding design plans for medical units which must be reviewed and approved by L&I.
- Establish the licensed professionals or firms authorized to approve design plans and specify the restrictions on authorization to approve plans.
- Establish requirements for the information that licensed professionals and firms must provide to L&I to become authorized to approve design plans.
- Establish requirements for notices of approval and denial for requests for authorization from licensed professionals and firms.
- Establish the time frame that licensed professionals or firms are authorized to review and approve plans and the requirements for maintaining authorization. This also includes, but is not limited to:
 - Allows L&I to suspend or revoke a licensed professional's approval to review plans for submittal of substandard plans or a conflict of interest.
 - Adds new requirements for suspending and revoking a licensed professional authorization for substandard plans. For example:
 - ◆ Requires that plans must first be audited and found to be incomplete or contain multiple violations of the building code and other codes.
 - ◆ Establishes a minimum threshold that allows suspension or revocation if three or more approved plans are found during audit to be incomplete or contain multiple code violations in a one-year period.
 - ◆ Adds new language to establish what constitutes as an "incomplete plan."
 - Establishes administrative processes and timeline for a licensed professional to reapply to regain their authorization to approve plans and a remedy to hear appeals of a suspension or revocation.
 - Establishes the actions the agency will take if a licensed professional's authorization to approve plans is revoked or suspended.
- Establish requirements for information that manufacturers must provide to L&I when submitting design plans approved by licensed professionals or firms.
- Adopt current FAS procedures allowing for electronic submittal of plans and for engineer/architects stamping of plans in accordance with DOL and engineers board of registration requirements.
- Establish requirements for the design plan approval process to reflect the existing practice of the FAS program. This includes, but is not limited to:
 - Allows licensed professionals 90 days to correct design plans and information and resubmit the plan to L&I for acceptance, unless under an audit.
 - Clarifies that audits may be random or for noncompliance and subjects licensed professionals or firms to fees for L&I's review and approval of plans that do not comply with the requirements of the chapter.

- o Clarifies the existing procedures that audits include determining whether a plan complies with the program's written guidelines, as well as the provisions of the chapter.
- o Clarifies that, for plans that do not comply with requirements, L&I will notify the applicant that submitted the design plan approved by the licensed professional rather than the licensed professional plan reviewer.
- Establish that L&I maintains a list of authorized licensed professionals and firms that approve design plans.
- Require addendums to a design plan to be approved by the professional or firm that initially approved the plan and, if they are no longer on the list of professionals or firms, then L&I will approve the addendum.
- Remove obsolete fees for electronic plan submittal.
- Create new fees for plans approved by licensed professionals.
- Create new hourly fees for resubmittal of design plans approved by a professional or firm.
- Modify rules for general housekeeping and cleanup, such as adding new section headers, section title changes, etc.

Reasons Supporting Proposal: Due to staffing shortages, the FAS program developed a backlog of design plans for review and approval. Since 2021, L&I has filed emergency rules (WSR 22-01-190, 22-09-063, 22-17-070, 23-01-038) to allow for third party reviews by licensed professionals, which has successfully reduced the backlog of design plans for review and approval in the FAS program. A CR-101 preproposal statement of inquiry (WSR 22-17-071) was filed on August 16, 2022, to initiate the permanent rule-making process.

This rule making proposes the adoption of permanent rules and is necessary to continue allowing manufacturers an alternative method to obtain approved plans in a timely manner.

Statutory Authority for Adoption: Chapter 43.22 RCW.

Statute Being Implemented: Chapter 43.22 RCW.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Dale Partin, Program Manager, Tumwater, Washington, 360-575-6933; Implementation and Enforcement: Steve Reinmuth, Assistant Director, Tumwater, Washington, 360-902-6348.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting 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.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

Explanation of exemptions: See explanation below.

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions:

	Proposed WAC Sections and Title	This proposed rule section is not exempt —Analysis is required	This proposed rule section is exempt. Provide RCW to support this exemption.
1.	WAC 296-150C-0310 Who can approve design plans?	<input type="checkbox"/>	This section is exempt under RCW 34.05.310 (4)(d) because it adopts changes that clarify language of the rule without changing the substance or effect of requirements.
2.	WAC 296-150C-0420 Who can be authorized to approve design plans?	<input type="checkbox"/>	This section is exempt under RCW 34.05.310 (4)(d) because it adopts changes that clarify language of the rule without changing the substance or effect of requirements.
3.	WAC 296-150C-0430 What information must a professional or firm provide to be authorized to approve design plans?	<input type="checkbox"/>	This section is exempt under RCW 34.05.310 (4)(d) because it adopts changes that clarify language of the rule without changing the substance or effect of requirements.
4.	WAC 296-150C-0450 How long is a licensed professional or firms authorization effective?	X	This section is partially exempt under RCW 34.05.310 (4)(d) because it adopts changes that clarify language of the rule without changing the substance or effect of requirements.
5.	WAC 296-150C-0460 What information must a manufacturer provide when a professional or firm does the design-plan approval?	X	This section is partially exempt under RCW 34.05.310 (4)(d) because it adopts changes that clarify language of the rule without changing the substance or effect of requirements.
6.	WAC 296-150C-0480 Do you have a list of professionals or firms that are authorized to approve design plans?	<input type="checkbox"/>	This section is exempt under RCW 34.05.310 (4)(d) because it adopts changes that clarify language of the rule without changing the substance or effect of requirements.
7.	WAC 296-150C-3000 Commercial coach fees.	<input type="checkbox"/>	This section is exempt under RCW 34.05.310 (4)(d) and 34.05.310 (4)(f) because it adopts changes that clarify language of the rule without changing the substance or effect of requirements and sets or adjusts fees or rates according to legislative standards pursuant to chapter 43.22 RCW.
8.	WAC 296-150F-0310 Who can approve design plans?	<input type="checkbox"/>	This section is exempt under RCW 34.05.310 (4)(d) because it adopts changes that clarify language of the rule without changing the substance or effect of requirements.
9.	WAC 296-150F-0420 Who can be authorized to approve design plans?	<input type="checkbox"/>	This section is exempt under RCW 34.05.310 (4)(d) because it adopts changes that clarify language of the rule without changing the substance or effect of requirements.
10.	WAC 296-150F-0430 What information must a professional or firm provide to be authorized to approve design plans?	<input type="checkbox"/>	This section is exempt under RCW 34.05.310 (4)(d) because it adopts changes that clarify language of the rule without changing the substance or effect of requirements.

	Proposed WAC Sections and Title	This proposed rule section is not exempt—Analysis is required	This proposed rule section is exempt. Provide RCW to support this exemption.
11.	WAC 296-150F-0450 How long is a licensed professional or firms authorization effective?	X	This section is partially exempt under RCW 34.05.310 (4)(d) because it adopts changes that clarify language of the rule without changing the substance or effect of requirements.
12.	WAC 296-150F-0460 What information must a manufacturer provide when a professional or firm does the design-plan approval?	X	This section is partially exempt under RCW 34.05.310 (4)(d) because it adopts changes that clarify language of the rule without changing the substance or effect of requirements.
13.	WAC 296-150F-0480 Do you have a list of professionals or firms that are authorized to approve design plans?	<input type="checkbox"/>	This section is exempt under RCW 34.05.310 (4)(d) because it adopts changes that clarify language of the rule without changing the substance or effect of requirements.
14.	WAC 296-150F-3000 Factory-built housing and commercial structure fees	<input type="checkbox"/>	This section is exempt under RCW 34.05.310 (4)(d) and 34.05.310 (4)(f) because it adopts changes that clarify language of the rule without changing the substance or effect of requirements and sets or adjusts fees or rates.
15.	WAC 296-150P-0020 What definitions apply to this chapter?	<input type="checkbox"/>	This section is exempt under RCW 34.05.310 (4)(d) because it adopts changes that clarify language of the rule without changing the substance or effect of requirements.
16.	WAC 296-150P-3000 Recreational park trailer fees.	<input type="checkbox"/>	This section is exempt under RCW 34.05.310 (4)(d) and 34.05.310 (4)(f) because it adopts changes that clarify language of the rule without changing the substance or effect of requirements and sets or adjusts fees or rates.
17.	WAC 296-150R-3000 Recreational vehicle fees.	<input type="checkbox"/>	This section is exempt under RCW 34.05.310 (4)(d) and 34.05.310 (4)(f) because it adopts changes that clarify language of the rule without changing the substance or effect of requirements and sets or adjusts fees or rates.
18.	WAC 296-150V-0800 What codes apply to conversion vendor units or medical units?	<input type="checkbox"/>	This section is exempt under RCW 34.05.310 (4)(d) because it adopts changes that clarify language of the rule without changing the substance or effect of requirements.
19.	WAC 296-150V-3000 Conversion vendor units and medical units—Fees.	<input type="checkbox"/>	This section is exempt under RCW 34.05.310 (4)(d) and 34.05.310 (4)(f) because it adopts changes that clarify language of the rule without changing the substance or effect of requirements and sets or adjusts fees or rates.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. According to the Regulatory Fairness Act (RFA) under RCW 19.85.030, an agency shall prepare a small business economic impact statement (SBEIS): (i) If the proposed rule will impose more-than-minor costs on businesses in an industry; or (ii) if requested to do so by a majority vote of the joint administrative rules review committee within 45 days of receiving the notice of proposed rule making under RCW 34.05.320. The proposed rule does not impose additional

costs on affected entities and individuals; rather the proposed rule generates a cost savings by providing an alternative for obtaining design plan approval. As such, L&I is exempt from conducting an SBEIS for this rule making.

February 28, 2023

Joel Sacks

Director

OTS-4263.2

AMENDATORY SECTION (Amending WSR 98-14-078, filed 6/30/98, effective 7/31/98)

WAC 296-150C-0310 Who can approve design plans? (1) Design plans can be approved by us or by a licensed professional or firm authorized by us. (See WAC 296-150C-0420 and 296-150C-0430.)

(2) All electrical design plans for new or altered electrical installations for educational institutions, health care facilities, and other buildings required by chapter 296-46B WAC, Safety standards—Installing electric wires and equipment—Administrative rules, must be reviewed and approved by us.

(3) ~~((A professional cannot approve plans submitted under a reciprocal agreement.))~~ All design plans submitted under a reciprocal agreement for multistate approval must be reviewed and approved by us.

[Statutory Authority: Chapter 43.22 RCW. WSR 98-14-078, § 296-150C-0310, 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, § 296-150C-0310, filed 10/23/96, effective 11/25/96.]

AMENDATORY SECTION (Amending WSR 96-21-146, filed 10/23/96, effective 11/25/96)

WAC 296-150C-0420 Who can be authorized to approve design plans?

(1) A professional engineer, architect, or firm licensed by the state of Washington according to the Engineers Registration Act, chapter 18.43 RCW and/or the Architects Registration Act, chapter 18.08 RCW; or

(2) A professional engineer, architect, or firm licensed in another state that has licensing or certification requirements that meet or exceed Washington requirements.

(3) A professional engineer, architect, or firm who designs and certifies that the commercial coach design meets state requirements cannot also approve the design plan in the plan approval process;

(4) A professional engineer, architect, or firm cannot approve those electrical designs listed in WAC 296-150C-0310(2); and

(5) A professional engineer, architect, or firm cannot approve plans submitted for multistate approval under a reciprocal agreement.

[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, § 296-150C-0420, filed 10/23/96, effective 11/25/96.]

AMENDATORY SECTION (Amending WSR 96-21-146, filed 10/23/96, effective 11/25/96)

WAC 296-150C-0430 What information must a professional or firm provide to be authorized to approve design plans? (1) Name, a copy of your certificate of registration or authority, and address of the professional engineer (~~(or)~~), architect(~~(or)~~), or firm;

(2) (~~(Name, a copy of your certificate of authority, and address of the firm; and~~

~~(3))~~) A description of the services the professional engineer, architect, or firm will provide in the areas of structural, fire and life safety, energy, mechanical, plumbing, and electrical plan review for commercial coaches; and

~~((4) A description))~~ (3) A summary of the professional's (~~(area(s) of))~~ or firm's expertise and qualifications (~~(which include:~~

~~(a) A summary of the professional's or firm's experience; and~~

~~(b) Verification of experience in your area of expertise such as structural, mechanical, plumbing, energy, electrical, fire and life safety, and ventilation and indoor air quality))~~ to review plans in the areas identified by the description of services.

[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, § 296-150C-0430, filed 10/23/96, effective 11/25/96.]

AMENDATORY SECTION (Amending WSR 96-21-146, filed 10/23/96, effective 11/25/96)

WAC 296-150C-0450 How long is a licensed professional or firms authorization effective? Your authorization to approve design plans is effective until your license expires, is revoked or (~~(is))~~ suspended or until your authorization to approve plans is revoked or suspended in accordance with subsection (3) or (4) of this section.

(1) You must notify us of your license renewal at least (~~(fifteen))~~ 15 days before your license expires, to prevent your name from being removed from our licensed professional and firm list.

(2) You must notify us immediately if your license is revoked or suspended. Your name is then removed from the list of licensed professionals and firms authorized to approve design plans.

(3) Your authorization to approve plans may be revoked or suspended if during any one year we receive three or more approved plans that after audit are found to be incomplete or contain multiple code violations. Incomplete plans are those that do not meet the requirements of this chapter and our written plan review guidelines that we provided to you. If your authorization is revoked you may reapply for authorization in accordance with WAC 296-150C-0430, after one year from the date of revocation. Suspensions may be up to one year. If you

disagree with our decision, you can send us a written request for a hearing, stating why you disagree. (See WAC 296-150C-0100.)

(4) Your authorization to approve plans may be revoked if we find the licensed professional has a conflict of interest. If your authorization is revoked you may reapply for authorization in accordance with WAC 296-150C-0430, after one year from the date of revocation. If you disagree with our decision, you can send us a written request for a hearing, stating why you disagree. (See WAC 296-150C-0100.)

(5) If we revoke or suspend your authorization in accordance with subsection (3) or (4) of this section, your name will be removed from the list of licensed professionals and firms authorized to approve design plans.

[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, § 296-150C-0450, filed 10/23/96, effective 11/25/96.]

AMENDATORY SECTION (Amending WSR 98-14-078, filed 6/30/98, effective 7/31/98)

WAC 296-150C-0460 What information must a manufacturer ((provide)) send to the department when a professional or firm does the design-plan approval? You must ((provide)) send us the following information ((with)) in your approved design plans:

- (1) A completed departmental design-plan approval request form;
- (2) ~~((Two or more))~~ A set((s)) of the design plan(~~s plus elevation~~) drawings, specifications, engineering analysis, and test results and procedures necessary for a complete code evaluation of the design. These design plans must ~~((have an original wet stamp, be signed, and dated))~~ be sealed by the ~~((approving))~~ design professional(s) ~~((see WAC 296-150C-0340 and 296-150C-0350))~~ in accordance with chapters 196-23 and 308-12 WAC;
- (3) A cover sheet on the design plan noting which professional approved each portion of the design plan;
- (4) A copy of the authorization letter from us; and
- (5) The design plan fee for design plans approved by professionals or firms ~~((+))~~ (see WAC 296-150C-3000 ~~((+))~~).
- ~~((6) A professional who designs and certifies that the commercial coach design meets state requirements cannot also approve the design plan in the plan approval process;~~
- ~~((7) A professional cannot approve those electrical designs listed in WAC 296-150C-0310(2); and~~
- ~~((8) A professional cannot approve plans submitted under a reciprocal agreement.)~~

[Statutory Authority: Chapter 43.22 RCW. WSR 98-14-078, § 296-150C-0460, 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, § 296-150C-0460, filed 10/23/96, effective 11/25/96.]

AMENDATORY SECTION (Amending WSR 96-21-146, filed 10/23/96, effective 11/25/96)

WAC 296-150C-0470 What happens after we receive the professional or firm approved design plan and information? (1) After we receive your approved design plans and information, we will (~~review~~) check the design plans and information ((and assign a plan approval number. We will)) to reasonably assure they contain the documents and plan information outlined in our written guidelines for plan reviews as provided to approved licensed professionals. Once accepted we will assign a plan approval number and send a copy of the design plan with the plan approval number to the manufacturer.

(2) If our check of the design plans and information finds that they are not acceptable we will notify you in writing of the reasons why. Unless being audited in accordance with subsection (3) of this section, design plans and information may be corrected and resubmitted for acceptance within 90 days of our notification. We may charge the applicant an additional hourly fee to process revised submittals (see WAC 296-150C-3000).

(3) We may (~~periodically~~) audit design plans approved by a professional engineer, architect, or firm to ensure compliance with (~~design plan requirements~~) this chapter and our written guidelines for plan reviews. Audits may be either random audits or they may be audits of plans that were not accepted in accordance with subsection (2) of this section. The department's (~~periodic~~) audit should not be construed as certifying that the plans are safe.

(~~(3)~~) (4) If the audit (~~reveals~~) finds that the design plans approved by the professionals and firms do not comply with this chapter (~~, you~~) and our written guidelines for plan reviews, the applicant will be notified and may be required to pay our fees for review and approval of the design plans. (See WAC 296-150C-3000.)

[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, § 296-150C-0470, filed 10/23/96, effective 11/25/96.]

AMENDATORY SECTION (Amending WSR 96-21-146, filed 10/23/96, effective 11/25/96)

WAC 296-150C-0480 Do you have a list of professionals or firms that are authorized to approve design plans? Yes. We will maintain a list of the licensed professionals and firms that are authorized to approve design plans for commercial coaches.

[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, § 296-150C-0480, filed 10/23/96, effective 11/25/96.]

AMENDATORY SECTION (Amending WSR 22-19-074, filed 9/20/22, effective 11/1/22)

WAC 296-150C-3000 Commercial coach fees.

GENERAL INFORMATION	
Manufacture:	Manufacturer #
1. Building use:	2. Building occupancy:
3. Type of construction: VB	4. Square footage of building:
5. Valuation of the building shall be based on the following:	
• Square footage of the building multiplied by the amount in the BVD valuation table	\$
6. Total valuation:	\$
PERMIT FEE	
7. Calculate from building permit fee table using the total valuation	\$
STRUCTURAL PLAN REVIEW FEE*	
8. One year design review: (Valid for one year) multiply the total on line 7 by 0.428.	\$
9. Master plan review: (Valid for the code cycle) multiply the total on line 7 by 0.611.	\$
* Minimum plan review fee is 2 1/2 hours x \$93.00 per hour	
FIRE AND LIFE-SAFETY PLAN REVIEW FEE (if required)	
10. Fire and life-safety plan review:	
a. One year design—Multiply the total on line 7 by 0.183.	\$
b. Master plan design—Multiply the total on line 7 by 0.305.	\$
• Required for all structures that are more than 4,000 square feet and for all A and I occupancy	
PLUMBING PLAN-REVIEW FEE	
11. Plumbing \$21.90 + \$7.10 per fixture	\$
12. Medical gas \$21.90 + \$7.10 per gas outlet	\$
DESIGN RENEWAL OR ADDENDUM	
13. 12.23% of building permit + \$93.00	\$
RESUBMITTAL	
14. 12.23% of building permit + \$93.00	\$
ELECTRICAL PLAN-REVIEW FEE	
15. See WAC 296-46B-906(9) for electrical review fees	
INSIGNIA FEES	
16. FIRST SECTION	\$ 27.80
17. EACH ADDITIONAL SECTION	\$ 17.10
TOTAL FEES	
18. Total plan review fees: Add lines 8 or 9 and 10 through 15	\$
19. Total fees due: Includes plan fees and insignia fees	\$
20. Total amount paid	\$

Square Foot Construction Costs (BVD Table)^{a, b, c, and d}

Group (2009 International Building Code)	IA	IB	IIA	IIB	IIIA	IIIB	IV	VA	VB
A-1 Assembly, theaters, with stage	211.15	203.98	198.73	190.05	178.25	173.30	183.31	162.97	156.05
A-1 Assembly, theaters, without stage	193.16	185.99	180.74	172.06	160.31	155.36	165.32	145.04	138.12
A-2 Assembly, nightclubs	163.22	158.56	154.17	148.00	138.96	135.24	142.52	126.06	121.36
A-2 Assembly, restaurants, bars, banquet halls	162.22	157.56	152.17	147.00	136.96	134.24	141.52	124.06	120.36
A-3 Assembly, churches	195.10	187.93	182.68	174.00	162.21	157.26	167.26	146.94	140.02
A-3 Assembly, general, community halls, libraries, museums	163.81	156.64	150.39	142.71	129.91	125.96	135.97	114.63	108.71

Group (2009 International Building Code)	IA	IB	IIA	IIB	IIIA	IIIB	IV	VA	VB
A-4 Assembly, arenas	192.16	184.99	178.74	171.06	158.31	154.36	164.32	143.04	137.12
B Business	164.76	158.78	153.49	145.97	132.45	127.63	139.92	116.43	110.93
E Educational	176.97	170.85	165.64	158.05	146.37	138.98	152.61	127.91	123.09
F-1 Factory and industrial, moderate hazard	97.87	93.28	87.66	84.46	75.44	72.26	80.79	62.17	58.48
F-2 Factory and industrial, low hazard	96.87	92.28	87.66	83.46	75.44	71.26	79.79	62.17	57.48
H-1 High hazard, explosives	91.74	87.15	82.53	78.33	70.49	66.31	74.66	57.22	N.P.
H-2, 3, 4 High hazard	91.74	87.15	82.53	78.33	70.49	66.31	74.66	57.22	52.53
H-5 HPM	164.76	158.78	153.49	145.97	132.45	127.63	139.92	116.43	110.93
I-1 Institutional, supervised environment	164.82	159.04	154.60	147.90	135.84	132.25	144.15	121.88	117.55
I-2 Institutional, hospitals	277.07	271.09	265.80	258.28	243.90	N.P.	252.23	227.88	N.P.
I-2 Institutional, nursing homes	193.00	187.02	181.74	174.22	160.98	N.P.	168.16	144.96	N.P.
I-3 Institutional, restrained	187.72	181.73	176.45	168.93	156.64	150.82	162.87	140.63	133.13
I-4 Institutional, day care facilities	164.82	159.04	154.60	147.90	135.84	132.25	144.15	121.88	117.55
M Mercantile	121.57	116.92	111.53	106.36	96.96	94.25	100.88	84.07	80.36
R-1 Residential, hotels	166.21	160.43	155.99	149.29	137.39	133.80	145.70	123.43	119.10
R-2 Residential, multiple family	139.39	133.61	129.17	122.47	111.23	107.64	119.54	97.27	92.94
R-3 Residential, one and two family	131.18	127.60	124.36	121.27	116.43	113.53	117.42	108.79	101.90
R-4 Residential, care/assisted living facilities	164.82	159.04	154.60	147.90	135.84	132.25	144.15	121.88	117.55
S-1 Storage, moderate hazard	90.74	86.15	80.53	77.33	68.49	65.31	73.66	55.22	51.53
S-2 Storage, low hazard	89.74	85.15	80.53	76.33	68.49	64.31	72.66	55.22	50.53
U Utility, miscellaneous	71.03	67.02	62.71	59.30	52.86	49.43	56.33	41.00	39.06

- a Private garages use utility, miscellaneous
- b Unfinished basements (all use group) = \$15.00 per sq. ft.
- c For shell only buildings deduct 20 percent
- d N.P. = not permitted

Building Permit Fees

Total Valuation	Fee
\$1.00 to \$500.00	\$23.50
\$501.00 to \$2,000.00	\$23.50 for the first \$500.00 plus \$3.05 for each additional \$100.00, or fraction thereof, to and including \$2,000.00
\$2,001.00 to \$25,000.00	\$69.25 for the first \$2,000.00 plus \$14.00 for each additional \$1,000.00, or fraction thereof, to and including \$25,000.00
\$25,001.00 to \$50,000.00	\$391.25 for the first \$25,000.00 plus \$10.10 for each additional \$1,000.00, or fraction thereof, to and including \$50,000.00
\$50,001.00 to \$100,000.00	\$643.75 for the first \$50,000.00 plus \$7.00 for each additional \$1,000.00, or fraction thereof, to and including \$100,000.00
\$100,001.00 to \$500,000.00	\$993.75 for the first \$100,000.00 plus \$5.60 for each additional \$1,000.00, or fraction thereof, to and including \$500,000.00
\$500,001.00 to \$1,000,000.00	\$3,233.75 for the first \$500,000.00 plus \$4.75 for each additional \$1,000.00, or fraction thereof, to and including \$1,000,000.00

Total Valuation	Fee
\$1,000,001.00 and up	\$5,608.75 for the first \$1,000,000.00 plus \$3.65 for each additional \$1,000.00, or fraction thereof
INITIAL FILING FEE (first time applicants)	\$45.90
DESIGN PLAN FEES:	
INITIAL FEE - MASTER DESIGN (code cycle), 50% of permit fee \times 1.223*	
INITIAL FEE - ONE YEAR DESIGN, 35% of permit fee \times 1.223*	
RENEWAL FEE - 10% of permit fee \times 1.223 +	\$93.00
RESUBMIT FEE - 10% of permit fee \times 1.223 +	\$93.00
ADDENDUM (approval expires on same date as original plan) - 10% of permit fee \times 1.223 +	\$93.00
((ELECTRONIC PLAN SUBMITTAL FEE \$6.40 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:))	
PLUMBING PLAN FEE, \$21.90 + PER FIXTURE FEE of	\$7.10
MEDICAL GAS PLAN FEE, \$21.90 + PER OUTLET FEE of	\$7.10
Note: Mechanical systems are included in the primary plan fee	
FIRE SAFETY PLAN REVIEW AS REQUIRED (Required for all structures that are more than 4,000 square feet and for all A, I, and H occupancy)	
MASTER DESIGN - 25% of permit fee \times 1.223	
One year design 15% of the permit fee \times 1.223	
ELECTRICAL PLAN REVIEW - Find fee @ http://apps.leg.wa.gov/wac/default.aspx?cite=296-46B-906	
RECIPROCAL PLAN REVIEW:	
INITIAL FEE - MASTER DESIGN (minimum 3 hours)	\$93.00 per hour
INITIAL FEE - ONE YEAR DESIGN (minimum 2 hours)	\$93.00 per hour
RENEWAL FEE (minimum 1 hour)	\$93.00 per hour
ADDENDUM (minimum 1 hour)	\$93.00 per hour
PLANS APPROVED BY LICENSED PROFESSIONALS - 10% of permit fee \times 1.223 +	\$93.00
FEES FOR RESUBMITTAL OF DESIGN PLANS APPROVED BY A PROFESSIONAL OR FIRM	\$93.00 per hour
APPROVAL OF EACH SET OF DESIGN PLANS BEYOND FIRST TWO SETS - 5% of permit fee \times 1.223 +	\$93.00
DEPARTMENT INSPECTION FEES	
INSPECTION/REINSPECTION (Per hour** plus travel time* and mileage***)	\$93.00
TRAVEL (Per hour)	\$93.00
PER DIEM***	
HOTEL****	
MILEAGE***	
RENTAL CAR****	
PARKING****	
AIRFARE****	
DEPARTMENT AUDIT FEES:	
AUDIT (Per hour*)	\$93.00
TRAVEL (Per hour**)	\$93.00
PER DIEM***	
HOTEL****	
MILEAGE***	
RENTAL CAR****	
PARKING****	
AIRFARE****	
ALTERATION INSPECTION (one hour minimum + alteration insignia fee)	\$120.80
INSIGNIA FEES:	
FIRST SECTION (NEW or ALTERATION)	\$27.80
EACH ADDITIONAL SECTION (NEW or ALTERATION)	\$17.10
REISSUED-LOST/DAMAGED	\$17.10
OTHER FEES:	
FIELD TECHNICAL SERVICE (Per hour** plus travel time** and mileage***)	\$93.00
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year upon request)	\$17.10

REFUND FEE

\$30.50

*Minimum plan review fee is 2 1/2 hours at the field technical service rate

**Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments

***Per state guidelines

****Actual charges incurred

[Statutory Authority: Chapters 43.22 and 43.22A RCW. WSR 22-19-074, § 296-150C-3000, filed 9/20/22, effective 11/1/22; WSR 21-07-126, § 296-150C-3000, filed 3/23/21, effective 4/23/21; WSR 20-04-081, § 296-150C-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, § 296-150C-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, § 296-150C-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, § 296-150C-3000, filed 5/30/08, effective 6/30/08. Statutory Authority: Chapter 43.22 RCW. WSR 07-19-086, § 296-150C-3000, filed 9/18/07, effective 10/19/07. Statutory Authority: Chapters 18.27, 18.106, 43.22, and 70.87 RCW. WSR 07-11-128, § 296-150C-3000, filed 5/22/07, effective 6/30/07. Statutory Authority: Chapters 18.106, 43.22, and 70.87 RCW. WSR 06-10-066, § 296-150C-3000, filed 5/2/06, effective 6/30/06. Statutory Authority: Chapter 43.22 RCW. WSR 05-23-002, § 296-150C-3000, filed 11/3/05, effective 12/4/05. Statutory Authority: Chapters 18.27, 43.22, and 70.87 RCW. WSR 05-12-032, § 296-150C-3000, filed 5/24/05, effective 6/30/05. Statutory Authority: Chapter 43.22 RCW and 2003 c 291. WSR 05-01-102, § 296-150C-3000, filed 12/14/04, effective 2/1/05. Statutory Authority: Chapters 18.27 and 43.22 RCW. WSR 04-12-048, § 296-150C-3000, filed 5/28/04, effective 6/30/04. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 70.87.030, 18.106.070, 18.106.125, 2001 c 7, and chapters 18.106, 43.22, and 70.87 RCW. WSR 03-12-045, § 296-150C-3000, filed 5/30/03, effective 6/30/03. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.040, 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 7, 2002 c 249, and chapters 19.28, 43.22, 18.27, and 70.87 RCW. WSR 02-12-022, § 296-150C-3000, filed 5/28/02, effective 6/28/02. 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, § 296-150C-3000, filed 5/29/01, effective 6/29/01. Statutory Authority: Chapters 43.22, 18.27, 70.87 and 19.28 RCW. WSR 99-12-080, § 296-150C-3000, filed 5/28/99, effective 6/28/99. Statutory Authority: Chapters 18.106, 18.27 and 43.22 RCW. WSR 98-12-041, § 296-150C-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, § 296-150C-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, § 296-150C-3000, filed 10/23/96, effective 11/25/96.]

OTS-4265.2

AMENDATORY SECTION (Amending WSR 12-15-061, filed 7/17/12, effective 9/1/12)

WAC 296-150F-0310 Who can approve design plans? (1) Design plans can be approved by us or by a licensed professional or firm authorized by us (see WAC 296-150F-0420 and 296-150F-0430).

(2) All electrical design plans for new or altered electrical installations for educational, institutional, health care facilities, and other buildings (see WAC 296-46B-900) must be reviewed and approved by us.

(3) All design plans submitted under a reciprocal agreement for multistate approval must be reviewed and approved by us.

[Statutory Authority: Chapter 43.22 RCW. WSR 12-15-061, § 296-150F-0310, filed 7/17/12, effective 9/1/12. 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, § 296-150F-0310, filed 10/23/96, effective 11/25/96.]

AMENDATORY SECTION (Amending WSR 96-21-146, filed 10/23/96, effective 11/25/96)

WAC 296-150F-0420 Who can be authorized to approve design plans?

(1) A professional engineer, architect, or firm licensed by the state of Washington according to the Engineers Registration Act, chapter 18.43 RCW and/or the Architects Registration Act, chapter 18.08 RCW; or

(2) A professional engineer, architect, or firm licensed in another state that has licensing or certification requirements that meet or exceed Washington requirements;

(3) A professional engineer, architect, or firm who designs and certifies that the factory-built home or commercial structure design meets state requirements cannot also approve the design plan in the plan approval process;

(4) A professional engineer, architect, or firm cannot approve those electrical designs listed in WAC 296-150F-0310(2); and

(5) A professional engineer, architect, or firm cannot approve plans submitted for multistate approval under a reciprocal agreement.

[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, § 296-150F-0420, filed 10/23/96, effective 11/25/96.]

AMENDATORY SECTION (Amending WSR 96-21-146, filed 10/23/96, effective 11/25/96)

WAC 296-150F-0430 What information must a professional or firm provide to be authorized to approve design plans? (1) Name, a copy of your certificate of registration or authority, and address of the professional engineer ~~((or))~~, architect, or firm; ~~((or))~~ and

~~((Name, a copy of your certificate of authority, and address of the firm; and~~

~~(3))~~ A description of the services the professional engineer, architect, or firm will provide in the areas of structural, fire and life safety, energy, mechanical, plumbing, and electrical plan review for factory-built housing and commercial structures; and

~~((4) A description))~~ (3) A summary of the professional's ((area(s) of)) or firm's expertise and qualifications ((which include:
~~(a) A summary of the professional's or firm's experience; and~~
~~(b) Verification of experience in your area of expertise such as structural, mechanical, plumbing, energy, electrical, fire and life safety, and ventilation and indoor air quality))~~ to review plans in the areas identified by the description of services.

[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, § 296-150F-0430, filed 10/23/96, effective 11/25/96.]

AMENDATORY SECTION (Amending WSR 96-21-146, filed 10/23/96, effective 11/25/96)

WAC 296-150F-0450 How long is a licensed professional or firms authorization effective? Your authorization to approve design plans is effective until your license expires, is revoked or ~~((is))~~ suspended or until your authorization to approve plans is revoked or suspended in accordance with subsection (3) or (4) of this section.

(1) You must notify us of your license renewal at least ~~((fif- teen))~~ 15 days before your license expires, to prevent your name from being removed from our licensed professional and firm list.

(2) You must notify us immediately if your license is revoked or suspended. Your name is then removed from the list of licensed professionals and firms authorized to approve design plans.

(3) Your authorization to approve plans may be revoked or suspended if during any one year we receive three or more approved plans that after audit are found to be incomplete or contain multiple code violations. Incomplete plans are those that do not meet the requirements of this chapter and our written plan review guidelines that we provided to you. If your authorization is revoked you may reapply for authorization in accordance with WAC 296-150F-0430, after one year from the date of revocation. Suspensions may be up to one year. If you disagree with our decision, you can send us a written request for a hearing, stating why you disagree. (See WAC 296-150F-0100.)

(4) Your authorization to approve plans may be revoked if we find the licensed professional has a conflict of interest. If your authorization is revoked you may reapply for authorization in accordance with WAC 296-150F-0430, after one year from the date of revocation. If you disagree with our decision, you can send us a written request for a hearing, stating why you disagree. (See WAC 296-150F-0100.)

(5) If we revoke or suspend your authorization in accordance with subsection (3) or (4) of this section, your name will be removed from the list of licensed professionals and firms authorized to approve design plans.

[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, § 296-150F-0450, filed 10/23/96, effective 11/25/96.]

AMENDATORY SECTION (Amending WSR 98-14-078, filed 6/30/98, effective 7/31/98)

WAC 296-150F-0460 What information must a manufacturer ((provide)) send to the department when a professional or firm does the design plan approval? You must ((provide)) send us the following information ((with)) in your approved design plan:

- (1) A completed departmental design plan approval request form;
- (2) ~~((Two or more))~~ A set((s)) of the design plan((s plus elevation)) drawings, specifications, engineering analysis, and test results and procedures necessary for a complete code evaluation of the design. These design plans must ((have an original wet stamp, be signed, and dated)) be sealed by the ((approving)) design professional(s) ((see WAC 296-150F-0340 and 296-150F-0350)) in accordance with chapters 196-23 and 308-12 WAC;
- (3) A cover sheet on the design plan noting which professional approved each portion of the design plan;
- (4) A copy of the authorization letter from us; and
- (5) The design plan fee for design plans approved by professionals or firms (see WAC 296-150F-3000) ~~((~~
- ~~(6) A professional who designs and certifies that the factory-built home or commercial structure design meets state requirements cannot also approve the design plan in the plan approval process;~~
- ~~(7) A professional cannot approve those electrical designs listed in WAC 296-150F-0310(2); and~~
- ~~(8) A professional cannot approve plans submitted under a reciprocal agreement).~~

[Statutory Authority: Chapter 43.22 RCW. WSR 98-14-078, § 296-150F-0460, 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, § 296-150F-0460, filed 10/23/96, effective 11/25/96.]

AMENDATORY SECTION (Amending WSR 96-21-146, filed 10/23/96, effective 11/25/96)

WAC 296-150F-0470 What happens after we receive the professional or firm approved design plan and information? (1) After we receive your approved design plans and information, we will ~~((review))~~ check the design plans and information ((and assign a plan approval number. We will)) to reasonably assure they contain the documents and plan information outlined in our written guidelines for plan reviews as provided to approved licensed professionals. Once accepted we will assign a plan approval number and send a copy of the design plan with the plan approval number to the manufacturer.

(2) If our check of the design plans and information finds that they are not acceptable we will notify you in writing of the reasons why. Unless being audited in accordance with subsection (3) of this section, design plans and information may be corrected and resubmitted for acceptance within 90 days of our notification. We may charge the applicant an additional hourly fee to process revised submittals (see WAC 296-150F-3000).

(3) We may ~~((periodically))~~ audit design plans approved by a professional engineer, architect, or firm to ensure compliance with ~~((de-~~

sign plan requirements)) this chapter and our written guidelines for plan reviews. Audits may be either random audits or they may be audits of plans that were not accepted in accordance with subsection (2) of this section. The department's (~~periodic~~) audit should not be construed as certifying that the plans are safe.

~~((3))~~ (4) If the audit (~~reveals~~) finds that the design plans approved by the professionals and firms do not comply with this chapter(~~, you~~) and our written guidelines for plan reviews, the applicant will be notified and may be required to pay our fees for review and approval of the design plans. (See WAC 296-150F-3000.)

[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, § 296-150F-0470, filed 10/23/96, effective 11/25/96.]

AMENDATORY SECTION (Amending WSR 96-21-146, filed 10/23/96, effective 11/25/96)

WAC 296-150F-0480 Do you have a list of professionals or firms that are authorized to ((submit)) approve design plans? Yes. We will maintain a list of the licensed professionals and firms that are authorized to approve design plans for factory-built housing and commercial structures.

[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, § 296-150F-0480, filed 10/23/96, effective 11/25/96.]

AMENDATORY SECTION (Amending WSR 22-19-074, filed 9/20/22, effective 11/1/22)

WAC 296-150F-3000 Factory-built housing and commercial structure fees.

GENERAL INFORMATION	
Manufacture:	Manufacturer #
1. Building use:	2. Building occupancy:
3. Type of construction:	4. Square footage of building:
5. Valuation of the building shall be based on the following:	
• Square footage of the building multiplied by the amount in the BVD valuation table	\$
6. Total valuation:	\$
PERMIT FEE	
7. Calculate from building permit fee table using the total valuation	\$
STRUCTURAL PLAN REVIEW FEE*	
8. One year design review: (Valid for one year) multiply the total on line 7 by 0.428 ..	\$
9. Master plan review: (Valid for the code cycle) multiply the total on line 7 by 0.611	\$
* Minimum plan review fee is 2 1/2 hours x \$104.60 per hour	
FIRE AND LIFE-SAFETY PLAN REVIEW FEE (if required)	

10.	Fire and life-safety plan review:		
a.	One year design—Multiply the total on line 7 by 0.183	\$
b.	Master plan design—Multiply the total on line 7 by 0.305	\$
	• Required for all structures that are more than 4,000 square feet and for all A, I, and H occupancy		
PLUMBING PLAN-REVIEW FEE			
11.	Plumbing \$21.90 + \$7.10 per fixture	\$
12.	Medical gas \$21.90 + \$7.10 per gas outlet	\$
DESIGN RENEWAL OR ADDENDUM			
13.	12.23% of building permit + \$104.60	\$
RESUBMITTAL			
14.	12.23% of building permit + \$104.60	\$
ELECTRICAL PLAN-REVIEW FEE			
15.	See WAC 296-46B-906(9) for electrical review fees		
NOTIFICATION TO LOCAL ENFORCEMENT AGENCY (NLEA)			
16.	Notification to local enforcement agency fee:	\$	45.00
INSIGNIA FEES			
17.	FIRST SECTION	\$	334.80
18.	EACH ADDITIONAL SECTION	\$	29.80
TOTAL FEES			
19.	Total plan review fees: Add lines 8 or 9 and 10 through 15	\$
20.	Total fees due: Includes plan fees, insignia fees, and NLEA fees	\$
21.	Total amount paid	\$

Square Foot Construction Costs (BVD Table)^{a, b, c, and d}

Group (2009 International Building Code)	IA	IB	IIA	IIB	IIIA	IIIB	IV	VA	VB
A-1 Assembly, theaters, with stage	211.15	203.98	198.73	190.05	178.25	173.30	183.31	162.97	156.05
A-1 Assembly, theaters, without stage	193.16	185.99	180.74	172.06	160.31	155.36	165.32	145.04	138.12
A-2 Assembly, nightclubs	163.22	158.56	154.17	148.00	138.96	135.24	142.52	126.06	121.36
A-2 Assembly, restaurants, bars, banquet halls	162.22	157.56	152.17	147.00	136.96	134.24	141.52	124.06	120.36
A-3 Assembly, churches	195.10	187.93	182.68	174.00	162.21	157.26	167.26	146.94	140.02
A-3 Assembly, general, community halls, libraries, museums	163.81	156.64	150.39	142.71	129.91	125.96	135.97	114.63	108.71
A-4 Assembly, arenas	192.16	184.99	178.74	171.06	158.31	154.36	164.32	143.04	137.12
B Business	164.76	158.78	153.49	145.97	132.45	127.63	139.92	116.43	110.93
E Educational	176.97	170.85	165.64	158.05	146.37	138.98	152.61	127.91	123.09
F-1 Factory and industrial, moderate hazard	97.87	93.28	87.66	84.46	75.44	72.26	80.79	62.17	58.48
F-2 Factory and industrial, low hazard	96.87	92.28	87.66	83.46	75.44	71.26	79.79	62.17	57.48
H-1 High hazard, explosives	91.74	87.15	82.53	78.33	70.49	66.31	74.66	57.22	N.P.
H-2, 3, 4 High hazard	91.74	87.15	82.53	78.33	70.49	66.31	74.66	57.22	52.53
H-5 HPM	164.76	158.78	153.49	145.97	132.45	127.63	139.92	116.43	110.93
I-1 Institutional, supervised environment	164.82	159.04	154.60	147.90	135.84	132.25	144.15	121.88	117.55

Group (2009 International Building Code)	IA	IB	IIA	IIB	IIIA	IIIB	IV	VA	VB
I-2 Institutional, hospitals	277.07	271.09	265.80	258.28	243.90	N.P.	252.23	227.88	N.P.
I-2 Institutional, nursing homes	193.00	187.02	181.74	174.22	160.98	N.P.	168.16	144.96	N.P.
I-3 Institutional, restrained	187.72	181.73	176.45	168.93	156.64	150.82	162.87	140.63	133.13
I-4 Institutional, day care facilities	164.82	159.04	154.60	147.90	135.84	132.25	144.15	121.88	117.55
M Mercantile	121.57	116.92	111.53	106.36	96.96	94.25	100.88	84.07	80.36
R-1 Residential, hotels	166.21	160.43	155.99	149.29	137.39	133.80	145.70	123.43	119.10
R-2 Residential, multiple family	139.39	133.61	129.17	122.47	111.23	107.64	119.54	97.27	92.94
R-3 Residential, one and two family	131.18	127.60	124.36	121.27	116.43	113.53	117.42	108.79	101.90
R-4 Residential, care/assisted living facilities	164.82	159.04	154.60	147.90	135.84	132.25	144.15	121.88	117.55
S-1 Storage, moderate hazard	90.74	86.15	80.53	77.33	68.49	65.31	73.66	55.22	51.53
S-2 Storage, low hazard	89.74	85.15	80.53	76.33	68.49	64.31	72.66	55.22	50.53
U Utility, miscellaneous	71.03	67.02	62.71	59.30	52.86	49.43	56.33	41.00	39.06

- a Private garages use utility, miscellaneous
- b Unfinished basements (all use group) = \$15.00 per sq. ft.
- c For shell only buildings deduct 20 percent
- d N.P. = not permitted

Table 1-A - Building Permit Fees

Total Valuation	Fee
\$1.00 to \$500.00	\$23.50
\$501.00 to \$2,000.00	\$23.50 for the first \$500.00 plus \$3.05 for each additional \$100.00, or fraction thereof, to and including \$2,000.00
\$2,001.00 to \$25,000.00	\$69.25 for the first \$2,000.00 plus \$14.00 for each additional \$1,000.00, or fraction thereof, to and including \$25,000.00
\$25,001.00 to \$50,000.00	\$391.25 for the first \$25,000.00 plus \$10.10 for each additional \$1,000.00, or fraction thereof, to and including \$50,000.00
\$50,001.00 to \$100,000.00	\$643.75 for the first \$50,000.00 plus \$7.00 for each additional \$1,000.00, or fraction thereof, to and including \$100,000.00
\$100,001.00 to \$500,000.00	\$993.75 for the first \$100,000.00 plus \$5.60 for each additional \$1,000.00, or fraction thereof, to and including \$500,000.00
\$500,001.00 to \$1,000,000.00	\$3,233.75 for the first \$500,000.00 plus \$4.75 for each additional \$1,000.00, or fraction thereof, to and including \$1,000,000.00
\$1,000,001.00 and up	\$5,608.75 for the first \$1,000,000.00 plus \$3.65 for each additional \$1,000.00, or fraction thereof
INITIAL FILING FEE (first time applicants)	\$81.70
DESIGN PLAN FEES:	
INITIAL FEE - MASTER DESIGN (code cycle), 50% of permit fee × 1.223*	
INITIAL FEE - ONE YEAR DESIGN, 35% of permit fee × 1.223*	
RENEWAL FEE - 10% of permit fee × 1.223 +	\$104.60
RESUBMIT FEE - 10% of permit fee × 1.223 +	\$104.60
ADDENDUM (approval expires on same date as original plan) - 10% of permit fee × 1.223 +	\$104.60
((ELECTRONIC PLAN SUBMITTAL FEE \$6.40 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.))	
PLUMBING PLAN FEE, \$21.90 + PER FIXTURE FEE of	\$7.10
MEDICAL GAS PLAN FEE, \$21.90 + PER OUTLET FEE of	\$7.10

Note: Mechanical systems are included in the primary plan fee	
FIRE SAFETY PLAN REVIEW AS REQUIRED (Required for all structures that are more than 4,000 square feet and for all A, I, and H occupancy)	
MASTER DESIGN - 25% of permit fee × 1.223	
One year design - 15% of the permit fee × 1.223	
ELECTRICAL PLAN REVIEW - Find fees @ http://apps.leg.wa.gov/wac/default.aspx?cite=296-46B-906	
RECIPROCAL PLAN REVIEW:	
INITIAL FEE-MASTER DESIGN (minimum 3 hours)	\$104.60 per hour
INITIAL FEE-ONE YEAR DESIGN (minimum 2 hours)	\$104.60 per hour
RENEWAL FEE (minimum 1 hour)	\$104.60
ADDENDUM (minimum 1 hour)	\$104.60 per hour
PLANS APPROVED BY ((DESIGN)) LICENSED PROFESSIONALS - 10% of permit fee × 1.223 +	\$104.60
FEES FOR RESUBMITTAL OF DESIGN PLANS APPROVED BY A PROFESSIONAL OR FIRM	\$104.60 per hour
APPROVAL OF EACH SET OF DESIGN PLANS BEYOND FIRST THREE SETS - 5% of permit fee × 1.223 +	\$104.60
DEPARTMENT INSPECTION FEES	
INSPECTION/REINSPECTION (Per hour** plus travel time** and mileage***)	\$104.60
TRAVEL (Per hour**)	\$104.60
PER DIEM***	
HOTEL****	
MILEAGE***	
RENTAL CAR****	
PARKING****	
AIRFARE****	
DEPARTMENT AUDIT FEES:	
AUDIT (Per hour**)	\$104.60
TRAVEL (Per hour**)	\$104.60
PER DIEM***	
HOTEL****	
MILEAGE***	
RENTAL CAR****	
PARKING****	
AIRFARE****	
INSIGNIA FEES:	
FIRST SECTION	\$334.80
EACH ADDITIONAL SECTION	\$29.80
REISSUED-LOST/DAMAGED	\$81.70
OTHER FEES:	
FIELD TECHNICAL SERVICE (Per hour** plus travel time** and mileage***)	\$104.60
NOTIFICATION TO LOCAL ENFORCEMENT AGENCY (NLEA)	\$45.00
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year upon request)	\$16.60
REFUND FEE	\$30.50

*Minimum plan review fee is 2 1/2 hours at the field technical service rate.

**Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.

***Per state guidelines.

****Actual charges incurred.

[Statutory Authority: Chapters 43.22 and 43.22A RCW. WSR 22-19-074, § 296-150F-3000, filed 9/20/22, effective 11/1/22; WSR 21-07-126, § 296-150F-3000, filed 3/23/21, effective 4/23/21; WSR 20-04-081, § 296-150F-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, § 296-150F-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, § 296-150F-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, § 296-150F-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, § 296-150F-3000, filed 5/22/07, effective 6/30/07. Statutory Authority: Chapter 43.22 RCW. WSR 07-05-063, § 296-150F-3000, filed 2/20/07, effective 4/1/07. Statutory Authority: Chapters 18.106, 43.22, and 70.87 RCW. WSR 06-10-066, § 296-150F-3000, filed 5/2/06, effective 6/30/06. Statutory Authority: Chapter 43.22 RCW. WSR 05-23-002, § 296-150F-3000, filed 11/3/05, effective 12/4/05. Statutory Authority: Chapters 18.27, 43.22, and 70.87 RCW. WSR 05-12-032, § 296-150F-3000, filed 5/24/05, effective 6/30/05. Statutory Authority: Chapter 43.22 RCW and 2003 c 291. WSR 05-01-102, § 296-150F-3000, filed 12/14/04, effective 2/1/05. Statutory Authority: Chapters 18.27 and 43.22 RCW. WSR 04-12-048, § 296-150F-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, § 296-150F-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, § 296-150F-3000, filed 5/29/01, effective 6/29/01. Statutory Authority: Chapters 43.22, 18.27, 70.87 and 19.28 RCW. WSR 99-12-080, § 296-150F-3000, filed 5/28/99, effective 6/28/99. Statutory Authority: Chapters 18.106, 18.27 and 43.22 RCW. WSR 98-12-041, § 296-150F-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, § 296-150F-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, § 296-150F-3000, filed 10/23/96, effective 11/25/96.]

OTS-4266.2

AMENDATORY SECTION (Amending WSR 12-15-061, filed 7/17/12, effective 9/1/12)

WAC 296-150P-0020 What definitions apply to this chapter? "Alteration" is the replacement, addition, modification, or removal of any equipment or material that affects the fire and life safety provisions, structural system, plumbing systems, fuel systems and equipment or electrical systems of a recreational park trailer.

The following changes are not considered alterations for purposes of this chapter:

- Repairs with approved parts;
- Modification of a fuel-burning appliance according to the terms of its listing; and
- Adjustment and maintenance of equipment.

"Alteration insignia" is an insignia which indicates a recreational park trailer alteration was approved by the department.

"ANSI" is the American National Standards Institute, Inc., and the institute's rules applicable to recreational park trailers. For the purposes of this chapter, references to ANSI mean ANSI A119.5 Recreational Park Trailers, current edition.

"Approved" is approved by the department of labor and industries.

"Audit" by the department is the department inspection of a manufacturer's quality control procedures, comprehensive plans, and recreational park trailers.

"Comprehensive design plan" consists of the design plans and copies of drawings such as:

- Floor plans relating to fire and life safety, structural, electrical, plumbing, liquefied petroleum (LP) and/or natural gas systems and appliances and air conditioning systems, if applicable to the plan of each recreational park trailer.
- Plumbing line drawings which describe the size, length and location of gas piping lines, liquid and body waste lines, liquid and body waste tanks, and potable water tanks.
- Electrical drawings. (See WAC 296-150P-0330.)

"Consumer" is a person or organization who buys or leases recreational park trailers.

"Dealer" is a person or organization whose business is offering recreational park trailers for sale or lease.

"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, Specialty Compliance, P.O. Box 44430, Olympia, WA 98504-4430.

"Equipment" is all material, appliances, fixtures, and accessories used in the manufacture or alteration of recreational park trailers.

"Manual" is a reference containing instructions, procedures, responsibilities and other information used to implement and maintain the quality control program of a recreational park trailer manufacturer.

"National Electrical Code" see Appendix 'C' of ANSI A119.5 for reference to the appropriate edition to use for compliance.

"Recreational park trailer" also known as a "park model recreational vehicle" is a trailer-type unit that is primarily designed to provide temporary living quarters for recreational, camping or seasonal use, that meets the following criteria:

- Built on a single chassis, mounted on wheels;
- Having a gross trailer area not exceeding 400 square feet (37.15 square meters) in the set-up mode; and
- Certified by the manufacturer as complying with ANSI A119.5.

"Quality control" is the plan and method for ensuring that the manufacture, fabrication, assembly, installation, storing, handling, and use of materials complies with this chapter and ANSI.

"State-plan insignia" is an insignia which is obtained under the state design-plan approval process.

"System" is a part of a recreational park trailer that is designed to serve a particular function such as plumbing, electrical, heating, mechanical or structural system.

[Statutory Authority: Chapter 43.22 RCW. WSR 12-15-061, § 296-150P-0020, filed 7/17/12, effective 9/1/12. 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, § 296-150P-0020, filed 5/30/03, effective 6/30/03. Statutory Authority: RCW 43.22.340 and 43.22.480. WSR 99-13-010, § 296-150P-0020, filed 6/4/99, effective 7/5/99. Statutory Authority: RCW 43.22.340 and 43.22.420. WSR 97-16-043, § 296-150P-0020, filed 7/31/97, effective 12/1/97.]

NEW SECTION

WAC 296-150P-0315 Who can approve design plans? (1) Comprehensive design plans for recreational park trailers can be approved by us or by a licensed professional or firm authorized by us. (See WAC 296-150P-0520 and 296-150P-0530.)

(2) All design plans for quality control manuals must be reviewed and approved by the department.

[]

DESIGN-PLAN APPROVAL BY A LICENSED PROFESSIONAL OR FIRMNEW SECTION

WAC 296-150P-0520 Who can be authorized to approve design plans?

(1) A professional engineer, architect, or firm licensed by the state of Washington according to the Engineers Registration Act, chapter 18.43 RCW and/or the Architects Registration Act, chapter 18.08 RCW; or

(2) A professional engineer, architect, or firm licensed in another state that has licensing or certification requirements that meet or exceed Washington requirements.

(3) A professional engineer, architect, or firm cannot approve quality control plans.

[]

NEW SECTION

WAC 296-150P-0530 What information must a professional or firm provide to be authorized to approve design plans? (1) Name, a copy of your certificate of registration or authority, and address of the professional engineer, architect, or firm; and

(2) A description of the services the professional engineer, architect, or firm will provide in the areas of structural, fire and life safety, mechanical, plumbing, and electrical plan review for park model recreational vehicles; and

(3) A summary of the professional's or firm's expertise and qualifications to review plans in the areas identified by the description of services.

[]

NEW SECTION

WAC 296-150P-0540 How will I know whether I am authorized to approve design plans? Within 60 days after you submit the information requested in WAC 296-150P-0530, we will send you a letter either approving or denying your authorization request.

(1) If we approve your request, your name is added to the list of licensed professionals and firms authorized to approve design plans.

(a) We will authorize a professional to approve portions of a design plan within his or her area of expertise.

(b) We will authorize an engineering or architectural firm to approve plans if the firm employs or contracts with professionals within the area of expertise necessary for the design plan.

(2) If we do not approve your request, we will notify you in writing why we are denying your request for authorization. If you disagree with our decision, you can send us a written request for a hearing, stating why you disagree. (See WAC 296-150P-0100.)

[]

NEW SECTION

WAC 296-150P-0550 How long is a licensed professional or firms authorization effective? Your authorization to approve design plans is effective until your license expires, is revoked, or suspended or until your authorization to approve plans is revoked or suspended in accordance with subsection (3) or (4) of this section.

(1) You must notify us of your license renewal at least 15 days before your license expires, to prevent your name from being removed from our licensed professional and firm list.

(2) You must notify us immediately if your license is revoked or suspended. Your name is then removed from the list of licensed professionals and firms authorized to approve design plans.

(3) Your authorization to approve plans may be revoked or suspended if during any one year we receive three or more approved plans that after audit are found to be incomplete or contain multiple code violations. Incomplete plans are those that do not meet the requirements of this chapter and our written plan review guidelines that we provided to you. If your authorization is revoked you may reapply for authorization in accordance with WAC 296-150P-0530, after one year from the date of revocation. Suspensions may be up to one year. If you disagree with our decision, you can send us a written request for a hearing, stating why you disagree. (See WAC 296-150P-0100.)

(4) Your authorization to approve plans may be revoked if we find the licensed professional has a conflict of interest. If your authorization is revoked you may reapply for authorization in accordance with WAC 296-150P-0530, after one year from the date of revocation. If you disagree with our decision, you can send us a written request for a hearing, stating why you disagree. (See WAC 296-150P-0100.)

(5) If we revoke or suspend your authorization in accordance with subsection (3) or (4) of this section, your name will be removed from the list of licensed professionals and firms authorized to approve design plans.

[]

NEW SECTION

WAC 296-150P-0560 What information must a manufacturer send to the department when a professional or firm does the design-plan approval? You must send us the following information in your approved design plans:

- (1) A completed departmental design-plan approval request form;
- (2) A set of the design plan drawings, specifications, engineering analysis, and test results and procedures necessary for a complete code evaluation of the design. When required by chapter 196-23 or 308-12 WAC, design documents prepared by licensed professionals must be sealed;
- (3) A cover sheet on the design plan noting which professional approved each portion of the design plan;
- (4) A copy of the authorization letter from us; and
- (5) The design plan fee for design plans approved by professionals or firms. (See WAC 296-150P-3000.)

[]

NEW SECTION

WAC 296-150P-0570 What happens after we receive the professional or firm approved design plan and information? (1) After we receive your approved design plans and information, we will check the design plans and information to reasonably assure they contain the documents and plan information outlined in our written guidelines for plan reviews as provided to approved licensed professionals. Once accepted, we will assign a plan approval number and send a copy of the design plan with the plan approval number to the manufacturer.

(2) If our check of the design plans and information finds that they are not acceptable we will notify you in writing of the reasons why. Unless being audited in accordance with subsection (3) of this section, design plans and information may be corrected and resubmitted for acceptance within 90 days of our notification. We may charge the applicant an additional hourly fee to process revised submittals (see WAC 296-150P-3000.)

(3) We may audit design plans approved by a professional engineer, architect, or firm to ensure compliance with this chapter and our written guidelines for plan reviews. Audits may be either random audits or they may be audits of plans that were not accepted in accordance with subsection (2) of this section. The department's audit should not be construed as certifying that the plans are safe.

(4) If the audit finds that the design plans approved by the professionals and firms do not comply with this chapter and our written guidelines for plan reviews, the applicant will be notified and may be required to pay our fees for review and approval of the design plans. (See WAC 296-150P-3000.)

[]

NEW SECTION

WAC 296-150P-0580 Do you have a list of professionals or firms that are authorized to approve design plans? Yes. We will maintain a list of the licensed professionals and firms that are authorized to approve design plans for park model recreational vehicles.

[]

NEW SECTION

WAC 296-150P-0590 Who approves addendums to design plans approved by a professional or firm? (1) You must have the professional or firm approve an addendum to a design plan, if they initially approved your design plan.

(2) If the professional or firm who approved your design plan is no longer on the department list, you may have us approve your addendum.

[]

AMENDATORY SECTION (Amending WSR 22-19-074, filed 9/20/22, effective 11/1/22)

WAC 296-150P-3000 Recreational park trailer fees.

INITIAL FILING FEE	\$42.30
DESIGN PLAN FEES:	
NEW PLAN REVIEW FEE WITHOUT STRUCTURAL REQUIREMENTS	\$120.10
NEW PLAN REVIEW FEE WITH STRUCTURAL REQUIREMENTS	\$158.80
RESUBMITTAL FEE	\$85.90
ADDENDUM (Approval expires on same date as original plan.)	\$85.90
((ELECTRONIC PLAN SUBMITTAL FEE \$6.20 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.))	
<u>PLANS APPROVED BY LICENSED PROFESSIONALS</u>	<u>\$30.00</u>
<u>FEES FOR RESUBMITTAL OF DESIGN PLANS APPROVED BY A PROFESSIONAL OR FIRM</u>	<u>\$85.90 per hour</u>
DEPARTMENT AUDIT FEES:	
AUDIT (per hour)*	\$85.90
TRAVEL (per hour)*	\$85.90
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
DEPARTMENT INSPECTION FEES:	
INSPECTION (per hour)*	\$85.90
TRAVEL (per hour)*	\$85.90
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	

PARKING***	
AIRFARE***	
ALTERATION INSPECTION (One hour plus insignia alteration fee)	\$128.30
INSIGNIA FEES:	
STATE CERTIFIED	\$30.50
ALTERATION	\$42.30
REISSUED-LOST/DAMAGED	\$15.60
OTHER FEES:	
FIELD TECHNICAL SERVICE (per hour* plus travel time* and mileage**)	\$85.90
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year upon request)	\$15.80
REFUND FEE	\$30.50

*Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.

**Per state guidelines.

***Actual charges incurred.

[Statutory Authority: Chapters 43.22 and 43.22A RCW. WSR 22-19-074, § 296-150P-3000, filed 9/20/22, effective 11/1/22; WSR 21-07-126, § 296-150P-3000, filed 3/23/21, effective 4/23/21; WSR 20-04-081, § 296-150P-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, § 296-150P-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, § 296-150P-3000, filed 3/6/12, effective 4/30/12. Statutory Authority: Chapters 18.27, 18.106, 43.22, and 70.87 RCW. WSR 07-11-128, § 296-150P-3000, filed 5/22/07, effective 6/30/07. Statutory Authority: Chapters 18.27, 43.22, and 70.87 RCW. WSR 05-12-032, § 296-150P-3000, filed 5/24/05, effective 6/30/05. Statutory Authority: Chapters 18.27 and 43.22 RCW. WSR 04-12-048, § 296-150P-3000, filed 5/28/04, effective 6/30/04. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 70.87.030, 18.106.070, 18.106.125, 2001 c 7, and chapters 18.106, 43.22, and 70.87 RCW. WSR 03-12-045, § 296-150P-3000, filed 5/30/03, effective 6/30/03. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.040, 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 7, 2002 c 249, and chapters 19.28, 43.22, 18.27, and 70.87 RCW. WSR 02-12-022, § 296-150P-3000, filed 5/28/02, effective 6/28/02. 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, § 296-150P-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, § 296-150P-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, § 296-150P-3000, filed 5/28/99, effective 6/28/99. Statutory Authority: Chapters 18.106, 18.27 and 43.22 RCW. WSR 98-12-041, § 296-150P-3000, filed 5/29/98, effective 6/30/98. Statutory Authority: RCW 43.22.340 and 43.22.420. WSR 97-16-043, § 296-150P-3000, filed 7/31/97, effective 12/1/97.]

OTS-4264.2

NEW SECTION

WAC 296-150R-0315 Who can approve design plans? (1) Comprehensive design plans for recreational vehicles can be approved by us or by a licensed professional or firm authorized by us. (See WAC 296-150R-0520 and 296-150R-0530.)

(2) All design plans for quality control manuals must be reviewed and approved by the department.

[]

DESIGN-PLAN APPROVAL BY A LICENSED PROFESSIONAL OR FIRMNEW SECTION**WAC 296-150R-0520 Who can be authorized to approve design plans?**

(1) A professional engineer, architect, or firm licensed by the state of Washington according to the Engineers Registration Act, chapter 18.43 RCW and/or the Architects Registration Act, chapter 18.08 RCW; or

(2) A professional engineer, architect, or firm licensed in another state that has licensing or certification requirements that meet or exceed Washington requirements.

(3) A professional engineer, architect, or firm cannot approve quality control plans.

[]

NEW SECTION

WAC 296-150R-0530 What information must a professional or firm provide to be authorized to approve design plans? (1) Name, a copy of your certificate of registration or authority, and address of the professional engineer, architect, or firm; and

(2) A description of the services the professional engineer, architect, or firm will provide in the areas of fire and life safety, mechanical, plumbing, and electrical plan review for recreational vehicles; and

(3) A summary of the professional's or firm's expertise and qualifications to review plans in the areas identified by the description of services.

[]

NEW SECTION

WAC 296-150R-0540 How will I know whether I am authorized to approve design plans? Within 60 days after you submit the information requested in WAC 296-150R-0530, we will send you a letter either approving or denying your authorization request.

(1) If we approve your request, your name is added to the list of licensed professionals and firms authorized to approve design plans.

(a) We will authorize a professional to approve portions of a design plan within his or her area of expertise; and

(b) We will authorize an engineering or architectural firm to approve plans if the firm employs or contracts with professionals within the area of expertise necessary for the design plan.

(2) If we do not approve your request, we will notify you in writing why we are denying your request for authorization. If you disagree with our decision, you can send us a written request for a hearing, stating why you disagree. (See WAC 296-150R-0100.)

[]

NEW SECTION

WAC 296-150R-0550 How long is a licensed professional or firms authorization effective? Your authorization to approve design plans is effective until your license expires, is revoked, or suspended or until your authorization to approve plans is revoked or suspended in accordance with subsection (3) or (4) of this section.

(1) You must notify us of your license renewal at least 15 days before your license expires to prevent your name from being removed from our licensed professional and firm list.

(2) You must notify us immediately if your license is revoked or suspended. Your name is then removed from the list of licensed professionals and firms authorized to approve design plans.

(3) Your authorization to approve plans may be revoked or suspended if during any one year we receive three or more approved plans that after audit are found to be incomplete or contain multiple code violations. Incomplete plans are those that do not meet the requirements of this chapter and our written plan review guidelines that we provided to you. If your authorization is revoked you may reapply for authorization in accordance with WAC 296-150R-0530, after one year from the date of revocation. Suspensions may be up to one year. If you disagree with our decision, you can send us a written request for a hearing, stating why you disagree. (See WAC 296-150R-0100.)

(4) Your authorization to approve plans may be revoked if we find the licensed professional has a conflict of interest. If your authorization is revoked you may reapply for authorization in accordance with WAC 296-150R-0530, after one year from the date of revocation. If you disagree with our decision, you can send us a written request for a hearing, stating why you disagree. (See WAC 296-150R-0100.)

(5) If we revoke or suspend your authorization in accordance with subsection (3) or (4) of this section, your name will be removed from the list of licensed professionals and firms authorized to approve design plans.

[]

NEW SECTION

WAC 296-150R-0560 What information must a manufacturer send to the department when a professional or firm does the design-plan approval? You must send us the following information in your approved design plans:

- (1) A completed departmental design-plan approval request form;
- (2) A set of design plan drawings and specifications necessary for a complete code evaluation of the design;
- (3) A cover sheet on the design plan noting which professional approved each portion of the design plan;
- (4) A copy of the authorization letter from us; and
- (5) The design plan fee for design plans approved by professionals or firms. (See WAC 296-150R-3000.)

[]

NEW SECTION

WAC 296-150R-0570 What happens after we receive the professional or firm approved design plan and information? (1) After we receive your approved design plans and information, we will check the design plans and information to reasonably assure they contain the documents and plan information outlined in our written guidelines for plan reviews as provided to approved licensed professionals. Once accepted we will assign a plan approval number and send a copy of the design plan with the plan approval number to the manufacturer.

(2) If our check of the design plans and information finds that they are not acceptable we will notify you in writing of the reasons why. Unless being audited in accordance with subsection (3) of this section, design plans and information may be corrected and resubmitted for acceptance within 90 days of our notification. We may charge the applicant an additional hourly fee to process revised submittals (see WAC 296-150R-3000.)

(3) We may audit design plans approved by a professional engineer, architect, or firm to ensure compliance with this chapter and our written guidelines for plan reviews. Audits may be either random audits or they may be audits of plans that were not accepted in accordance with subsection (2) of this section. The department's audit should not be construed as certifying that the plans are safe.

(4) If the audit finds that the design plans approved by the professionals and firms do not comply with this chapter and our written guidelines for plan reviews, the applicant will be notified and may be required to pay our fees for review and approval of the design plans. (See WAC 296-150R-3000.)

[]

NEW SECTION

WAC 296-150R-0580 Do you have a list of professionals or firms that are authorized to approve design plans? Yes. We will maintain a

list of the licensed professionals and firms that are authorized to approve design plans for recreational vehicles.

[]

NEW SECTION

WAC 296-150R-0590 Who approves addendums to design plans approved by a professional or firm? (1) You must have the professional or firm approve an addendum to a design plan, if they initially approved your design plan.

(2) If the professional or firm who approved your design plan is no longer on the department list, you may have us approve your addendum.

[]

AMENDATORY SECTION (Amending WSR 20-04-081, filed 2/4/20, effective 3/6/20)

WAC 296-150R-3000 Recreational vehicle fees.

STATE PLAN	
INITIAL FILING FEE	\$36.70
DESIGN PLAN FEES:	
NEW PLAN REVIEW FEE	\$102.50
RESUBMITTAL FEE	\$74.00
ADDENDUM (Approval expires on same date as original plan.)	\$74.00
((ELECTRONIC PLAN SUBMITTAL FEE \$5.50 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.))	
<u>PLANS APPROVED BY LICENSED PROFESSIONALS</u>	\$15.00
<u>FEES FOR RESUBMITTAL OF DESIGN PLANS APPROVED BY A PROFESSIONAL OR FIRM</u>	\$74.10 per hour
DEPARTMENT AUDIT FEES:	
AUDIT (per hour)*	\$74.10
TRAVEL (per hour)*	\$74.10
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING	
AIRFARE***	
DEPARTMENT INSPECTION FEES:	
INSPECTION (per hour)*	\$74.10
TRAVEL (per hour)*	\$74.10
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
ALTERATION INSPECTION (One hour plus insignia alteration fee)	\$110.90
INSIGNIA FEES:	

STATE CERTIFIED	\$27.30
ALTERATION	\$36.70
REISSUED-LOST/DAMAGED	\$13.10
OTHER FEES:	
FIELD TECHNICAL SERVICE (per hour* plus travel time* and mileage**)	\$74.10
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year)	\$13.80

*Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.

**Per state guidelines.

***Actual charges incurred.

SELF CERTIFICATION	
INITIAL FILING FEE	\$36.70
DESIGN PLAN FEES:	
NEW PLAN REVIEW FEE (one time fee)	\$103.90
RESUBMITTAL FEE	\$74.10
ADDENDUM (Approval expires on same date as original plan.)	\$74.10
ELECTRONIC PLAN SUBMITTAL FEE \$5.50 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 AUDIT FEES:	
AUDIT (per hour)*	\$74.10
TRAVEL (per hour)*	\$74.10
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING	
AIRFARE***	
DEPARTMENT INSPECTION FEES:	
INSPECTION (per hour)*	\$74.10
TRAVEL (per hour)*	\$74.10
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
INSIGNIA FEES:	
SELF CERTIFIED	\$27.30
ALTERATION	\$36.70
REISSUED-LOST/DAMAGED	\$13.10
OTHER FEES:	
FIELD TECHNICAL SERVICE (per hour* plus travel time* and mileage**)	\$74.10
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year)	\$13.80
REFUND FEE	\$27.30

*Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.

**Per state guidelines.

***Actual charges incurred.

[Statutory Authority: Chapters 43.22 and 43.22A RCW. WSR 20-04-081, § 296-150R-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, § 296-150R-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, § 296-150R-3000, filed 3/6/12, effective 4/30/12. Statutory Authority: Chapters 18.27, 43.22, and 70.87 RCW. WSR 05-12-032, § 296-150R-3000, filed 5/24/05, effective 6/30/05. Statutory Authority: Chapters 18.27

and 43.22 RCW. WSR 04-12-048, § 296-150R-3000, filed 5/28/04, effective 6/30/04. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 70.87.030, 18.106.070, 18.106.125, 2001 c 7, and chapters 18.106, 43.22, and 70.87 RCW. WSR 03-12-045, § 296-150R-3000, filed 5/30/03, effective 6/30/03. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.040, 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 7, 2002 c 249, and chapters 19.28, 43.22, 18.27, and 70.87 RCW. WSR 02-12-022, § 296-150R-3000, filed 5/28/02, effective 6/28/02. 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, § 296-150R-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, § 296-150R-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, § 296-150R-3000, filed 5/28/99, effective 6/28/99. Statutory Authority: Chapters 18.106, 18.27 and 43.22 RCW. WSR 98-12-041, § 296-150R-3000, filed 5/29/98, effective 6/30/98. Statutory Authority: RCW 43.22.340 and 43.22.420. WSR 97-16-043, § 296-150R-3000, 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, § 296-150R-3000, filed 10/23/96, effective 11/25/96.]

OTS-4262.2

AMENDATORY SECTION (Amending WSR 99-18-069, filed 8/31/99, effective 10/1/99)

WAC 296-150V-0310 Who can approve design plans? (~~Your design plan must be approved by the department.~~) (1) Design plans for conversion vendor units can be approved by us or by a licensed professional or firm authorized by us. (See WAC 296-150V-0420 and 296-150V-0430.)

(2) All design plans for medical units must be reviewed and approved by the department.

[Statutory Authority: Chapter 43.22 RCW. WSR 99-18-069, § 296-150V-0310, filed 8/31/99, effective 10/1/99.]

DESIGN-PLAN APPROVAL BY A LICENSED PROFESSIONAL OR FIRM

NEW SECTION**WAC 296-150V-0420 Who can be authorized to approve design plans?**

(1) A professional engineer, architect, or firm licensed by the state of Washington according to the Engineers Registration Act, chapter 18.43 RCW and/or the Architects Registration Act, chapter 18.08 RCW; or

(2) A professional engineer, architect, or firm licensed in another state that has licensing or certification requirements that meet or exceed Washington requirements.

(3) A professional engineer, architect, or firm cannot approve medical units.

[]

NEW SECTION

WAC 296-150V-0430 What information must a professional or firm provide to be authorized to approve design plans? (1) Name, a copy of your certificate of registration or authority, and address of the professional engineer, architect, or firm; and

(2) A description of the services the professional engineer, architect, or firm will provide in the areas of fire and life safety, mechanical, plumbing, and electrical plan review for conversion vendor units; and

(3) A summary of the professional's or firm's expertise and qualifications to review plans in the areas identified by the description of services.

[]

NEW SECTION

WAC 296-150V-0440 How will I know whether I am authorized to approve design plans? Within 60 days after you submit the information requested in WAC 296-150V-0430, we will send you a letter either approving or denying your authorization request.

(1) If we approve your request, your name is added to the list of licensed professionals and firms authorized to approve design plans.

(a) We will authorize a professional to approve portions of a design plan within his or her area of expertise; and

(b) We will authorize an engineering or architectural firm to approve plans if the firm employs or contracts with professionals within the area of expertise necessary for the design plan.

(2) If we do not approve your request, we will notify you in writing why we are denying your request for authorization. If you disagree with our decision, you can send us a written request for a hearing, stating why you disagree. (See WAC 296-150V-0100.)

[]

NEW SECTION

WAC 296-150V-0450 How long is a licensed professional or firms authorization effective? Your authorization to approve design plans is effective until your license expires, is revoked or suspended or until your authorization to approve plans is revoked or suspended in accordance with subsection (3) or (4) of this section.

(1) You must notify us of your license renewal at least 15 days before your license expires, to prevent your name from being removed from our licensed professional and firm list.

(2) You must notify us immediately if your license is revoked or suspended. Your name is then removed from the list of licensed professionals and firms authorized to approve design plans.

(3) Your authorization to approve plans may be revoked or suspended if during any one year we receive three or more approved plans that after audit are found to be incomplete or contain multiple code violations. Incomplete plans are those that do not meet the requirements of this chapter and our written plan review guidelines that we provided to you. If your authorization is revoked you may reapply for authorization in accordance with WAC 296-150V-0430, after one year from the date of revocation. Suspensions may be up to one year. If you disagree with our decision, you can send us a written request for a hearing, stating why you disagree. (See WAC 296-150V-0100.)

(4) Your authorization to approve plans may be revoked if we find the licensed professional has a conflict of interest. If your authorization is revoked you may reapply for authorization in accordance with WAC 296-150V-0430, after one year from the date of revocation. If you disagree with our decision, you can send us a written request for a hearing, stating why you disagree. (See WAC 296-150V-0100.)

(5) If we revoke or suspend your authorization in accordance with subsection (3) or (4) of this section, your name will be removed from the list of licensed professionals and firms authorized to approve design plans.

[]

NEW SECTION

WAC 296-150V-0460 What information must a manufacturer send to the department when a professional or firm does the design-plan approval? You must send us the following information in your approved design plans:

(1) A completed departmental design-plan approval request form;

(2) A set of the design plan drawings, specifications, engineering analysis, and test results and procedures necessary for a complete code evaluation of the design. When required by chapter 196-23 or 308-12 WAC, design documents prepared by licensed professionals must be sealed;

(3) A cover sheet on the design plan noting which professional approved each portion of the design plan;

(4) A copy of the authorization letter from us; and

(5) The design plan fee for design plans approved by professionals or firms. (See WAC 296-150V-3000.)

[]

NEW SECTION

WAC 296-150V-0470 What happens after we receive the professional or firm approved design plan and information? (1) After we receive your approved design plans and information, we will check the design plans and information to reasonably assure they contain the documents and plan information outlined in our written guidelines for plan reviews as provided to approved licensed professionals. Once accepted we will assign a plan approval number and send a copy of the design plan with the plan approval number to the manufacturer.

(2) If our check of the design plans and information finds that they are not acceptable we will notify you in writing of the reasons why. Unless being audited in accordance with subsection (3) of this section, design plans and information may be corrected and resubmitted for acceptance within 90 days of our notification. We may charge the applicant an additional hourly fee to process revised submittals (see WAC 296-150V-3000).

(3) We may audit design plans approved by a professional engineer, architect, or firm to ensure compliance with this chapter and our written guidelines for plan reviews. Audits may be either random audits or they may be audits of plans that were not accepted in accordance with subsection (2) of this section. The department's audit should not be construed as certifying that the plans are safe.

(4) If the audit finds that the design plans approved by the professionals and firms do not comply with this chapter and our written guidelines for plan reviews, the applicant will be notified and may be required to pay our fees for review and approval of the design plans. (See WAC 296-150V-3000.)

[]

NEW SECTION

WAC 296-150V-0480 Do you have a list of professionals or firms that are authorized to approve design plans? Yes. We will maintain a list of the licensed professionals and firms that are authorized to approve design plans for conversion vendor units.

[]

NEW SECTION

WAC 296-150V-0490 Who approves addendums to design plans approved by a professional or firm? (1) You must have the professional or firm approve an addendum to a design plan, if they initially approved your design plan.

(2) If the professional or firm who approved your design plan is no longer on the department list, you may have us approve your addendum.

[]

CONVERSION VENDOR UNIT AND MEDICAL UNIT CONSTRUCTION CODE GENERAL

AMENDATORY SECTION (Amending WSR 12-15-061, filed 7/17/12, effective 9/1/12)

WAC 296-150V-0800 What codes apply to conversion vendor units (~~(or)~~) and medical units? (1) A conversion vendor unit or medical unit must comply with the following codes where applicable:

(a) The current edition of the International Mechanical Code, with the amendments made by the Washington State Building Code Council, chapter 51-52 WAC.

(b) (i) For conversion vending/medical units Article 551, Parts I through VI of National Electrical Code/National Fire Protection Agency (NFPA) 70, current edition or Article 552, Parts I through V Article of National Electrical Code/National Fire Protection Agency (NFPA) 70, current edition.

(ii) For medical units the National Electrical Code (NFPA 70, current edition) as referenced in Article 517 for Patient Care Areas and chapter 296-46B WAC.

(c) Chapter 7 of the National Fire Protection Association (NFPA 1192), current edition or the Uniform Plumbing Code as adopted and amended according to chapter 19.27 RCW.

(d) The Washington State Building Code Council, chapter 51-50 WAC, International Building Code, Chapter 11, Accessibility as applies to the exterior of the unit relating to customer service facilities in section 1105.4.7.

(2) Provide minimum health and safety to the occupants of conversion vendor units and medical units and the public, and demonstrate journeyman quality of work of the various trades.

(3) Requirements for any size, weight, or quality of material modified by the terms "minimum," "not less than," "at least," and similar expressions are minimum standards. The conversion vendor unit or medical unit may exceed these rules provided the deviation does not result in inferior installation or defeat the purpose and intent of this chapter.

Exception: Sign circuits required by Article 600 of the National Electrical Code will not be required.

[Statutory Authority: Chapter 43.22 RCW. WSR 12-15-061, § 296-150V-0800, filed 7/17/12, effective 9/1/12. 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, § 296-150V-0800, filed 5/30/03, effective 6/30/03. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.040, 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 7, 2002 c 249, and chapters 19.28, 43.22, 18.27, and 70.87 RCW. WSR 02-12-022, § 296-150V-0800, filed 5/28/02, effective 6/28/02. Statutory Authority: Chapter 43.22 RCW. WSR 99-18-069, § 296-150V-0800, filed 8/31/99, effective 10/1/99.]

CONVERSION VENDOR UNIT AND MEDICAL UNIT FEES

AMENDATORY SECTION (Amending WSR 22-19-074, filed 9/20/22, effective 11/1/22)

**WAC 296-150V-3000 Conversion vendor units and medical units—
Fees.**

INITIAL FILING FEE	\$45.90
DESIGN PLAN FEES:	
INITIAL FEE - MASTER DESIGN	\$319.00
INITIAL FEE - ONE YEAR DESIGN	\$130.30
RENEWAL FEE	\$55.20
RESUBMIT FEE	\$93.00
ADDENDUM (Approval expires on same date as original plan)	\$93.00
((ELECTRONIC PLAN SUBMITTAL FEE \$6.30 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.))	
PLANS APPROVED BY LICENSED PROFESSIONALS	\$81.10
FEES FOR RESUBMITTAL OF DESIGN PLANS APPROVED BY A PROFESSIONAL OR FIRM	\$85.80 per hour
ELECTRICAL PLAN REVIEW - For medical units, find fees at http://apps.leg.wa.gov/wac/default.aspx?cite=296-46B-906	
RECIPROCAL PLAN REVIEW:	
INITIAL FEE - MASTER DESIGN	\$142.00
INITIAL FEE - ONE YEAR DESIGN	\$85.80
RENEWAL FEE	\$85.80
ADDENDUM	\$85.80
APPROVAL OF EACH SET OF DESIGN PLANS BEYOND FIRST TWO SETS	\$17.10
DEPARTMENT INSPECTION FEES:	
INSPECTION/REINSPECTION (Per hour* plus travel time* and mileage**)	\$93.00
TRAVEL (Per hour)*	\$93.00
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
ALTERATION INSPECTION (One hour plus insignia alteration fee)	\$139.30
INSIGNIA FEES:	
FIRST SECTION/ALTERATION	\$26.60
REISSUED-LOST/DAMAGED	\$17.10
EXEMPT	\$45.90
OTHER FEES:	
FIELD TECHNICAL SERVICE (Per hour* plus travel time* and mileage**)	\$93.00
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year upon request)	\$17.10
REFUND FEE	\$30.50

*Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.

**Per state guidelines.

***Actual charges incurred.

[Statutory Authority: Chapters 43.22 and 43.22A RCW. WSR 22-19-074, § 296-150V-3000, filed 9/20/22, effective 11/1/22; WSR 21-07-126, §

296-150V-3000, filed 3/23/21, effective 4/23/21; WSR 20-04-081, § 296-150V-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, § 296-150V-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, § 296-150V-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, § 296-150V-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, § 296-150V-3000, filed 5/22/07, effective 6/30/07. Statutory Authority: Chapters 18.106, 43.22, and 70.87 RCW. WSR 06-10-066, § 296-150V-3000, filed 5/2/06, effective 6/30/06. Statutory Authority: Chapter 43.22 RCW. WSR 05-23-002, § 296-150V-3000, filed 11/3/05, effective 12/4/05. Statutory Authority: Chapters 18.27, 43.22, and 70.87 RCW. WSR 05-12-032, § 296-150V-3000, filed 5/24/05, effective 6/30/05. Statutory Authority: Chapter 43.22 RCW and 2003 c 291. WSR 05-01-102, § 296-150V-3000, filed 12/14/04, effective 2/1/05. Statutory Authority: Chapters 18.27 and 43.22 RCW. WSR 04-12-048, § 296-150V-3000, filed 5/28/04, effective 6/30/04. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 70.87.030, 18.106.070, 18.106.125, 2001 c 7, and chapters 18.106, 43.22, and 70.87 RCW. WSR 03-12-045, § 296-150V-3000, filed 5/30/03, effective 6/30/03. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.040, 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 7, 2002 c 249, and chapters 19.28, 43.22, 18.27, and 70.87 RCW. WSR 02-12-022, § 296-150V-3000, filed 5/28/02, effective 6/28/02. 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, § 296-150V-3000, filed 5/29/01, effective 6/29/01. Statutory Authority: Chapter 43.22 RCW. WSR 99-18-069, § 296-150V-3000, filed 8/31/99, effective 10/1/99.]

WSR 23-06-075
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-10—Filed March 1, 2023, 10:21 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-10-090 on May 3, 2022.

Title of Rule and Other Identifying Information: The department of fish and wildlife (WDFW) proposes to amend and clarify existing rules and establish new rules associated with program modifications and accessibility permits for individuals with disabilities.

Amending WAC 220-200-160 Definition of a person with a disability, 220-200-170 Special use permits, 220-200-180 Suspension of a special use permit—Appeal hearing, 220-200-190 Disability designation, and 220-305-120 Harvesting of shellfish, food fish or game fish by persons with a disability.

New WAC 220-200-200 Crossbow, 220-200-210 Scope, 220-200-220 Shooting from a vehicle (blue placard), 220-200-230 Alternative angling gear in fly-fishing waters, and 220-200-240 Accessibility special use permit for a person with a disability.

Hearing Location(s): On April 10, 2023, at 1:00 p.m., virtual meeting via Zoom <https://us06web.zoom.us/j/85114526308>. The deadline for written public comment submissions is April 10, 2023, by midnight. All public comments will be considered, however, to have your comment incorporated into the director's decision briefing presentation, your comment must be submitted no later than 8 a.m. on April 3, 2023. If you are interested in providing verbal public comments during the virtual meeting, please register here [contact agency for link]. Registration for public testimony closes at April 7, 2023, at 8 a.m.

Date of Intended Adoption: On or after April 11, 2023.

Submit Written Comments to: Katherine Waldrop, P.O. Box 43200, Olympia, WA 98504, email special-use-permits@PublicInput.com, fax 360-902-2349, website <https://publicinput.com/special-use-permits>, voicemail comments 855-925-2801, project code 2656, by April 10, 2023.

Assistance for Persons with Disabilities: Contact civil rights/ADA coordinator, phone 360-902-2349, fax 360-902-2392, TTY 711, email Title6@dfw.wa.gov. For more information, see dfw.wa.gov/accessibility/requests-accommodation by March 17, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amended:

WAC 220-200-160 Definition of a person with a disability. This rule proposal provides clarity by addressing formatting errors. It also adds new definitions for the terms used in related rules and proposed rules.

WAC 220-200-170 Special use permits. This rule proposal adds standard terms and conditions that apply to all special use permits.

WAC 220-200-180 Suspension of a special use permit—Appeal hearing. This rule proposal increases agency options for managing special use permits, including the ability to modify and revoke those permits. It requires the department to notify a person of the basis for a suspension, modification, revocation, or denial of a special use permit. This rule proposal also establishes appeal rights and time frames when a special use permit is modified, revoked, or denied.

WAC 220-200-190 Disability designation—Suspension or denial—Appeal hearing. This rule proposal allows the agency to suspend a per-

son's disability designation and related benefits if the person submits fraudulent information in support of their disability designation application. The rule requires WDFW to notify a person of the basis for a suspension or denial of a person's disability designation. This rule proposal also establishes appeal rights and time frames.

WAC 220-305-120 Harvesting of shellfish, food fish or game fish by persons with a disability. This rule proposal updates and clarifies terminology to align with terms used in the proposed rules.

New WAC 220-200-200 through 220-200-240, these new rule proposals establish specific and consistent criteria for the standard special use permits provided to persons with disabilities under RCW 77.32.237.

WAC 220-200-200 Crossbow. This rule proposal allows use of a crossbow during archery or muzzleloader season by a person with a disability that impairs the person's ability to hold and safely utilize a long bow, recurve bow, or compound bow. The rule includes requirements for use of a crossbow special use permit.

WAC 220-200-210 Scope. The proposed rule sets requirements that allow a person who is blind or visually impaired to utilize a scope device during archery or muzzleloader season.

WAC 220-200-220 Shooting from a vehicle (blue placard). The rule as proposed sets criteria by which a person with a disability will be allowed to operate their hunting device from within a motorized vehicle. This rule includes requirements for utilizing this special use permit.

WAC 220-200-230 Alternate casting gear. The proposed rule provides the option to utilize alternate casting gear in fly-fishing only seasons or waters to a person with a disability whose permanent impairment renders the person incapable of holding and safely operating conventional fly-fishing gear. This rule proposal includes requirements for utilizing this special use permit.

WAC 220-200-240 Accessibility special use permit for a person with a disability. This rule allows WDFW to consider requests for specific special use permits other than the standard criteria specified in WAC 220-200-200 through 220-200-230. The rule proposal includes criteria that WDFW will consider in determining whether to grant unique requests not covered by the standard criteria.

Reasons Supporting Proposal: WDFW seeks to increase the diversity of individuals afforded recreational hunting and fishing opportunities. The proposed rule making is to simplify the process of applying for program modifications and accessibility permits by specifying the criteria for the most common special use permits (WAC 220-200-200 through 220-200-230). The changes are intended to reduce barriers that may impede participation by persons with disabilities by streamlining the administrative processes associated with these common requests. The proposed changes are also intended to ensure consistent application of permit standards, allowing for increased equity and efficiency of department services to Washington communities.

The proposed rules at WAC 220-200-240 are also intended to ensure that WDFW may appropriately consider requests for program modifications based on unique circumstances not covered by WAC 220-200-200 through 220-200-230.

Finally, the proposed rules seek to clarify existing definitions, provide new definitions, and to provide appropriate appeal rights for decisions to deny, revoke, suspend, or modify special use permits and disability designations.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.047, 77.32.237, 77.04.020.

Statute Being Implemented: RCW 77.32.237.

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

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting: Katherine Wal-drop, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2567; Implementation: Amy Windrope, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2720; and Enforcement: Chief Steve Bear, 1111 Washington Street S.E., Olympia, WA 98501, 360-338-2895.

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

A cost-benefit analysis is not required under RCW 34.05.328. This proposal is exempt under RCW 34.05.328 (5) (a).

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

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: WDFW is exempt from the requirements of chapter 19.85 RCW because the proposed rules associated with program modifications and accessibility permits for persons with disabilities do not regulate small businesses; rather, the department's proposed rules facilitate opportunities for persons with disabilities to participate in recreational hunting, fishing, trapping, shell fishing, and other department programs, services, and activities. In doing so, the proposed rules only regulate those individuals by governing the requirements, processes, and limitations of the disability designation and special use permit programs. The economic effect of these rule creations and amendments do not constitute the direct imposition of any regulatory compliance costs on small businesses.

Scope of exemption for rule proposal:

Is fully exempt.

March 1, 2023

Chris Fredley

Acting Agency Rules Coordinator

OTS-4358.2

AMENDATORY SECTION (Amending WSR 18-16-074, filed 7/30/18, effective 8/30/18)

WAC 220-200-160 Definitions ~~((of a person with a disability))~~.

~~((1) "Person with a disability" for purposes of eligibility under disability designation means a person who has a permanent physical disability or permanent developmental disability which substantially impairs the person's ability to participate in recreational activities or to access department lands including, but not limited to:~~

~~(a) "Lower extremity disability," which means the person has a permanent lower extremity impairment and is not ambulatory over natural terrain without a lower extremity prosthesis or must permanently~~

~~use a medically prescribed assistive device every time for mobility including, but not limited to, a wheelchair, crutch, walker, or oxygen bottle; or~~

~~(b) "Upper extremity disability," which means the person has a permanent upper extremity impairment and is physically limited in their ability to hold and safely operate a legal hunting or harvesting device.~~

~~(c) These definitions include, but are not limited to, persons with a permanent upper or lower extremity impairment who have lost the use of one or both upper or lower extremities, or who have a severe physical limitation in the use of one or both upper or lower extremities, or who have a diagnosed permanent disease or disorder which substantially impairs or severely interferes with mobility or the use of one or both upper or lower extremities.~~

~~(2) "Blind" or "visually impaired," which means:~~

~~(a) Having a central visual acuity that does not exceed 20/200 in the better eye with corrective lenses, or the widest diameter of the visual field does not exceed twenty degrees; or~~

~~(b) Having a severe loss of visual acuity ranging from 20/70 to 20/200 while retaining some visual function; or~~

~~(c) Having inoperable visual impairments including, but are not limited to: Albinism, aniridia, aphakia, cataracts, glaucoma, macular degeneration, or other similar diagnosed disease or disorder.~~

~~(3) "Developmental disability," which means a cognitive intellectual disability such as: Cerebral palsy, down syndrome, epilepsy, autism, or another neurological condition of an individual found to be closely related to an intellectual disability or to require treatment similar to that required for individuals with intellectual disabilities, which originates before the individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial limitation to the individual.)~~

The following definitions apply to WAC 220-200-170 through 220-200-240:

(1) "Person with a disability" for purposes of eligibility under disability designation means a person who has a permanent physical disability or permanent developmental disability which substantially impairs the person's ability to participate in recreational activities or to access department lands including, but not limited to:

(a) "Extremity disability" which means the person has lost the use of one or both upper or lower extremities, or has a severe physical limitation in the use of one or both upper or lower extremities, or has a diagnosed permanent disease or disorder which substantially impairs or severely interferes with mobility or the use of one or both upper or lower extremities. This definition includes, but is not limited to, the definitions in (a) (i) and (ii) of this subsection.

(i) "Lower extremity disability" which means the person has a permanent lower extremity impairment and is not ambulatory over natural terrain without a lower extremity prosthesis or must permanently use a medically prescribed assistive device every time for mobility including, but not limited to, a wheelchair, crutch, walker, or oxygen bottle; or

(ii) "Upper extremity disability" which means the person has a permanent upper extremity impairment and is physically limited in their ability to hold and safely operate a legal hunting or harvesting device.

(b) "Blind" or "visually impaired" which means:

(i) Having a central visual acuity that does not exceed 20/200 in the better eye with corrective lenses, or the widest diameter of the visual field does not exceed 20 degrees; or

(ii) Having a severe loss of visual acuity ranging from 20/70 to 20/200 while retaining some visual function; or

(iii) Having inoperable visual impairments including, but not limited to: Albinism, aniridia, aphakia, cataracts, glaucoma, macular degeneration, or other similar diagnosed disease or disorder.

(c) "Developmental disability" which means a cognitive intellectual disability such as: Cerebral palsy, down syndrome, epilepsy, autism, or another neurological condition of an individual found to be closely related to an intellectual disability or to require treatment similar to that required for individuals with intellectual disabilities, which originates before the individual attains age 18, which has continued or can be expected to continue indefinitely, and which constitutes a substantial limitation to the individual.

(2) "Approved medical professional" means a medical doctor (MD), doctor of osteopathy (DO), advanced registered nurse practitioner (ARNP), physician assistant (PA), physician assistant of osteopathy (PAO).

(3) "In good standing" means:

(a) The applicant has received and maintains a disability designation under WAC 220-200-190 and that disability designation is not currently suspended under WAC 220-200-190;

(b) The applicant's hunting or fishing license or privileges are not currently revoked or suspended in Washington or in another state; and

(c) No special use permit previously awarded to the applicant is currently suspended under WAC 220-200-180.

[Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.047, 77.32.237, 77.32.238, and 77.32.400. WSR 18-16-074 (Order 18-162), § 220-200-160, filed 7/30/18, effective 8/30/18. Statutory Authority: RCW 77.04.020, 77.12.045, and 77.12.047. WSR 17-17-109, recodified as § 220-200-160, filed 8/21/17, effective 9/21/17. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), recodified as § 220-413-150, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.12.047, 77.12.240, and 77.32.070. WSR 14-10-019 (Order 14-95), § 232-12-825, filed 4/25/14, effective 5/26/14.]

OTS-4359.2

AMENDATORY SECTION (Amending WSR 18-16-074, filed 7/30/18, effective 8/30/18)

WAC 220-200-170 Special use permits. (1) A special use permit issued by the department sets forth terms and conditions determined by the director to allow for reasonable accommodations for persons granted disability designation.

(2) The following terms and conditions apply to all special use permits:

(a) A special use permit(s) must be carried on the person named on the permit, who is acting under or using devices authorized by the special use permit(s);

(b) A special use permit holder must, upon request, surrender the permit(s) for inspection to any authorized law enforcement officer or department employee; and

(c) A special use permit holder must deny use of the permit to any other person.

(3) The terms ~~((for use granted by))~~ and conditions of a special use permit ~~(, when provided as a reasonable modification,)~~ supersede department rules that conflict with the terms and conditions of the special use permit.

(4) When utilizing a special use permit, the person named on the permit must comply with all applicable statutes and rules other than those department rules specifically superseded by the special use permit.

(5) It is unlawful to fail to abide by the terms and conditions of a special use permit. Violation of this subsection is punishable under RCW 77.15.160(6) ~~((b))~~, 77.15.230, or 77.15.750, or other statutes under chapter 77.15 RCW depending on the circumstances of the violation.

[Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.047, 77.32.237, 77.32.238, and 77.32.400. WSR 18-16-074 (Order 18-162), § 220-200-170, filed 7/30/18, effective 8/30/18. Statutory Authority: RCW 77.04.020, 77.12.045, and 77.12.047. WSR 17-17-109, recodified as § 220-200-170, filed 8/21/17, effective 9/21/17. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), recodified as § 220-413-130, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.12.047, 77.12.240, and 77.32.070. WSR 14-10-019 (Order 14-95), § 232-12-819, filed 4/25/14, effective 5/26/14.]

OTS-4360.1

AMENDATORY SECTION (Amending WSR 18-16-074, filed 7/30/18, effective 8/30/18)

WAC 220-200-180 Special use permit—Suspension ((of a special use permit)), modification, revocation, or denial—Appeal hearing.

(1) The department may suspend a person's special use permit for the following reasons and corresponding lengths of time:

(a) Upon conviction or any outcome in criminal court whereby a person voluntarily enters into a disposition that continues or defers the case for dismissal upon the successful completion of specific terms or conditions or is found to have committed an infraction under Title 77 RCW or the department's rules for an act committed while the person is using the special use permit, the department shall suspend the person's special use permit for two years;

(b) Upon conviction or any outcome in criminal court whereby a person voluntarily enters into a disposition that continues or defers the case for dismissal upon the successful completion of specific

terms or conditions or is convicted of a misdemeanor or gross misdemeanor under Title 77 RCW or the department's rules for an act committed while the person is using the special use permit, the department shall suspend the person's special use permit for five years;

(c) Upon conviction or any outcome in criminal court whereby a person voluntarily enters into a disposition that continues or defers the case for dismissal upon the successful completion of specific terms or conditions or is convicted of trespass, reckless endangerment, criminal conspiracy, or making a false statement to law enforcement while hunting, fishing, or engaging in any activity regulated by the department, the department shall suspend the person's special use permit for life;

(d) Upon conviction or any outcome in criminal court whereby a person voluntarily enters into a disposition that continues or defers the case for dismissal upon the successful completion of specific terms or conditions or is convicted of a felony violation under Title 77 RCW for an act committed while the person is using the special use permit, the department shall suspend the person's special use permit for life;

(e) If the person has a hunting or fishing license revoked or has hunting or fishing license privileges suspended in another state, the department shall suspend the person's special use permit for the duration of the underlying suspension or revocation;

(f) If the person is cited, or charged by complaint, for an offense under Titles 76, 77, 79, 79A, 9, and 9A RCW; or for unlawful use of a department permit, trespass, reckless endangerment, criminal conspiracy, or making a false statement to law enforcement while hunting, fishing, or engaging in any activity regulated by the department for an act committed while the person is using the special use permit, the department shall immediately suspend the person's special use permit until the offense has been adjudicated; or

(g) If the person submits fraudulent information to the department related to the person's special use permit, the department shall suspend the person's special use permit for five years.

(2) The department may suspend a person's special use permit for two years if the person fails to abide by the terms or conditions of the special use permit issued to that person.

(3) The department may modify or revoke a person's special use permit in order to:

(a) Address conservation management needs relating to the special use permit;

(b) Ensure the safety of the public and WDFW employees;

(c) Avoid a fundamental alteration of the program, service or activity facilitated by the special use permit;

(d) Incorporate appropriate updates in adaptive equipment;

(e) Address changes in federal or state law or regulations; or

(f) Address other compelling circumstances identified by the WDFW director.

(4) The department will provide written notice of suspension, modification, or revocation of a special use permit to the permit holder. The notice will describe the circumstances underlying the suspension, modification, or revocation. Any person with a disability issued a special use permit, who is notified of an intended suspension, modification, or revocation, may request an appeal hearing under chapter 34.05 RCW. A written request for hearing must be received by the department within (~~twenty~~) 20 days of the date of the notice of suspension, modification, or revocation.

(5) Any person with a disability designation in good standing, as defined in WAC 220-200-160, whose application for a special use permit is denied by the department may request an appeal hearing under chapter 34.05 RCW. A written request for a hearing must be received by the department within 20 days of the date of the notice of denial.

[Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.047, 77.32.237, 77.32.238, and 77.32.400. WSR 18-16-074 (Order 18-162), § 220-200-180, filed 7/30/18, effective 8/30/18.]

OTS-4361.1

AMENDATORY SECTION (Amending WSR 18-16-074, filed 7/30/18, effective 8/30/18)

WAC 220-200-190 Disability designation—Suspension or denial—Appeal hearing. (1) A person meeting the definition of "person with a disability" under WAC 220-200-160, and who submits the required application (~~and accompanying documentation~~) properly completed and certified, shall be granted a disability designation by the department.

(2) If a person submits fraudulent information to the department related to the person's application for disability designation, the department shall suspend the person's disability designation for five years.

(3) The department will provide written notice of suspension to the permit holder. The notice will describe the circumstances underlying the suspension.

(4) A person whose application for a disability designation is denied or whose disability designation is suspended by the department may request ((a)) an appeal hearing to contest the denial or suspension under chapter 34.05 RCW. A written request for a hearing must be received by the department within ((twenty)) 20 days of the date of the notice of denial or suspension.

[Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.047, 77.32.237, 77.32.238, and 77.32.400. WSR 18-16-074 (Order 18-162), § 220-200-190, filed 7/30/18, effective 8/30/18.]

OTS-4343.2

NEW SECTION

WAC 220-200-200 Crossbow special use permit—Eligibility—Terms and conditions. (1) A crossbow special use permit issued by the department allows a person with a disability, meeting the requirements of subsection (2) of this section, to utilize a crossbow device during archery or muzzleloader season with the corresponding license and

transport tag. The permit also allows the use of a manufacturer-equipped scope, and a tripod system or mount support for the crossbow.

(2) A special use permit for a crossbow device is available to any person who:

(a) Has applied for, received, and maintains a disability designation in good standing; and

(b) Accounting for the department's recommended processing time, submits the required application completed by an approved medical professional, as defined in WAC 220-200-160(2), who certifies that:

(i) The applicant has an upper extremity disability or a developmental disability as defined in WAC 220-200-160(1); and

(ii) The applicant's upper extremity or developmental disability permanently limits the person's ability to hold and safely operate a long bow, recurve bow, or compound bow.

(3) In addition to the terms and conditions in WAC 220-200-170, the following terms and conditions also apply under the crossbow special use permit:

(a) The crossbow must meet the requirements of WAC 220-414-100 (1)(b) through (f);

(b) The crossbow must be equipped with a cocking assistive device which must be employed prior to firing the crossbow; and

(c) Other individual terms and conditions as set forth on the permit or award letter.

(4) It is unlawful to fail to abide by the terms and conditions of this special use permit. Violation of this subsection is punishable under RCW 77.15.160(6), 77.15.230, 77.15.400, 77.15.410, 77.15.430, 77.15.750, or other statutes under chapter 77.15 RCW, depending on the circumstances of the violation.

[]

NEW SECTION

WAC 220-200-210 Scope special use permit—Eligibility—Terms and conditions. (1) A scope special use permit issued by the department allows a person who is blind or visually impaired, and who meets the requirements of subsection (2) of this section, to utilize a scope device during archery or muzzleloader season, with the corresponding license and transport tag. The permit also authorizes the use of a tripod system or mount support, and an iScope or similar visual aid for assistance.

(2) A special use permit for a scope device is available to any person who:

(a) Has applied for, received, and maintains a disability designation in good standing; and

(b) Accounting for the department's recommended processing time, submits the required application completed by a doctor of ophthalmology, doctor of optometry, or an approved medical professional, who certifies that:

(i) The applicant is blind or visually impaired as defined in WAC 220-200-160(1) as a result of a condition other than hyperopia, myopia, astigmatism, presbyopia, or other similar conditions; and

(ii) The applicant's blindness or visual impairment, as those terms are defined in WAC 220-200-160(1), is significant enough to ren-

der the person unable to safely operate a muzzleloader or archery device without a scope.

(3) In addition to the terms and conditions in WAC 220-200-170, other individual terms and conditions as set forth on the permit or award letter also apply under the scope special use permit.

(4) It is unlawful to fail to abide by the terms and conditions of this special use permit. Violation of this subsection is punishable under RCW 77.15.160(6), 77.15.230, 77.15.400, 77.15.410, 77.15.430, 77.15.750, or other statutes under chapter 77.15 RCW depending on the circumstances of the violation.

[]

NEW SECTION

WAC 220-200-220 Shooting from a vehicle (blue placard) special use permit—Eligibility—Terms and conditions. (1) A person with a disability who meets the requirements of subsection (2) of this section is eligible for a special use permit to operate their hunting device from within a motorized vehicle in accordance with WAC 220-413-140.

(2) A disabled hunter "shooting from a vehicle" identification placard (blue placard) special use permit is available to any person who:

(a) Has applied for, received, and maintains a disability designation in good standing; and

(b) Has been issued a department of licensing disability parking placard or disability vehicle license plate, or equivalent from another state, for a permanent disability; and

(c) Accounting for the department's recommended processing time, submits the required application completed by an approved medical professional who certifies that the applicant:

(i) Has a lower extremity disability or developmental disability as defined in WAC 220-200-160(1); and

(ii) Meets one of the following:

(A) Requires physical assistance from another individual, a wheelchair lift, ramp, or other boarding assistance device to help the applicant board (enter) and disembark (exit) from a motorized vehicle each and every time; or

(B) Requires the assistance of a portable DC life-sustaining medical device (oxygen generator, heart pump machine, etc.) every time to board, ride, and disembark from a motorized vehicle; and

(iii) The applicant's lower extremity disability or developmental disability is significant enough to render the person unable to hunt without this permit.

(3) In addition to the terms and conditions in WAC 220-200-170, the following terms and conditions also apply under the "shooting from a vehicle - blue placard" special use permit:

(a) When utilizing this special use permit, the "blue placard" must be placed on the vehicle and clearly visible to the public;

(b) This special use permit does not allow for illegal travel cross-country, behind locked gates, or onto private property;

(c) It is unlawful for any person to shoot from upon or from within a motorized vehicle unless they are named on the special use

permit. The designated hunter companion is not permitted to utilize this special use permit on behalf of the hunter with a disability; and

(d) Other individual terms and conditions as set forth on the permit or award letter.

(4) It is unlawful to fail to abide by the conditions of this special use permit. Violation of this subsection is punishable under RCW 77.15.160(6), 77.15.230, 77.15.400, 77.15.410, 77.15.430, or 77.15.750, or other statutes under chapter 77.15 RCW depending on the circumstances of the violation.

[]

NEW SECTION

WAC 220-200-230 Alternate casting gear special use permit—Eligibility—Terms and conditions. (1) A person with a disability who meets the requirements of subsection (2) of this section is eligible for a special use permit to utilize alternate casting gear in fly fishing only waters or seasons in accordance with WAC 220-305-120.

(2) An "alternate casting gear" special use permit is available to any person who:

(a) Has applied for, received, and maintains a disability designation in good standing; and

(b) Accounting for the department's recommended processing time, submits the required application completed by an approved medical professional who certifies that:

(i) The applicant has an upper extremity disability or a developmental disability as defined in WAC 220-200-160(1); and

(ii) The applicant's upper extremity disability or developmental disability is such that the person is physically incapable of holding and safely operating conventional fly fishing gear.

(3) In addition to the terms and conditions in WAC 220-200-170, the following terms and conditions also apply under the "alternate casting gear" special use permit:

(a) Hook size and barb restrictions, fishing fly requirements, and bait and weight prohibitions as provided for in WAC 220-310-150; and

(b) Other individual terms and conditions as set forth on the permit or award letter.

(4) It is unlawful to fail to abide by the terms and conditions of this special use permit. A violation of this section is punishable under RCW 77.15.160(6), 77.15.380, or other statutes under chapter 77.15 RCW depending on the circumstances of the violation.

[]

NEW SECTION

WAC 220-200-240 Accessibility special use permit for a person with a disability. (1) In addition to the specific criteria provided elsewhere in this chapter, the department may issue an accessibility

special use permit to a person with a disability, as defined in WAC 220-200-160(1), who:

- (a) Has applied for, received, and maintains a disability designation in good standing; and
- (b) Requests an accessibility special use permit;
- (c) Specifically identifies the department rule(s) for which an exception is requested;
- (d) Clearly describes the need and justification for a departure from an existing department rule(s) as a result of a disability condition; and

(e) Accounting for the department's recommended processing time, submits the required application completed by an approved medical professional, as defined in WAC 220-200-160(2), who certifies that all of the following are true:

- (i) The applicant is a person with a disability, as defined in WAC 220-200-160(1);
- (ii) The applicant's disability condition, as defined in WAC 220-200-160(1), prevents the applicant from meaningfully and equally participating in a department program, service, or activity; and
- (iii) The requested accessibility special use permit would enable the applicant to participate in the relevant program, service, or activity in a meaningful and equal manner.

(2) In addition to the terms and conditions in WAC 220-200-170, other individual terms and conditions, as set forth on the permit or award letter, also apply under the accessibility special use permit.

(3) It is unlawful to fail to abide by the conditions of this special use permit. A violation of this section is punishable under RCW 77.15.160(6), 77.15.230, 77.15.380, 77.15.410, 77.15.430, 77.15.750, or other statutes under chapter 77.15 RCW depending on the circumstances of the violation.

(4) The department may deny a special use permit request submitted under subsection (1) of this section if:

- (a) The requested special use permit would fundamentally alter the nature of the program, service, or activity;
- (b) The requested special use permit would result in an undue financial or administrative burden;
- (c) The requested special use permit would create a safety risk;
- (d) The requested special use permit would create a conservation concern; or
- (e) Alternate appropriate means, other than the requested accessibility special use permit, are available that would facilitate the person's participation in the relevant program, service, or activity.

[]

OTS-4349.2

AMENDATORY SECTION (Amending WSR 18-16-074, filed 7/30/18, effective 8/30/18)

WAC 220-305-120 Harvesting of shellfish, food fish or game fish by persons with a disability. (1) Definitions:

(a) "Harvester with a disability" means a person who has been granted a disability designation and who possesses a valid disabled harvester endorsement issued by the department;

(b) "Disabled harvester endorsement" means an endorsement to a license issued by the department to a person who has been granted a disability designation;

(c) "Designated harvester companion" means a designated person who only assists with that physical function the harvester with a disability is unable to perform during his or her recreational activity in the taking of shellfish, food fish, or game fish;

(d) "Designated harvester companion card" means an identification card issued by the department to a harvester with a disability for use by another person in assisting or acting on the behalf of the harvester with a disability while engaging in fishing or harvesting activities.

(2) A designated harvester companion card will be issued to the holder of a disabled harvester endorsement along with the issuance of a harvesting license.

(3) It is unlawful for a harvester with a disability to fail to obtain all licenses, permits and catch record cards prior to fishing.

(4) The designated harvester companion, when accompanied by the harvester with a disability, may assist the harvester with a disability in taking shellfish, game fish and food fish or engage in the taking of shellfish, game fish, and food fish on behalf of the harvester with a disability.

(5) It is unlawful for a designated harvester companion to assist a harvester with a disability unless the harvester with a disability is present and participating in the fishing activity, except:

(a) The harvester with a disability is not required to be present at the location where the designated harvester companion is harvesting shellfish for the harvester with a disability. The harvester with a disability is required to be in the direct line of sight of the designated harvester companion who is harvesting shellfish for him or her, unless it is not possible to be in a direct line of sight because of a physical obstruction or other barrier. If such a barrier or obstruction exists, the harvester with a disability is required to be within one-quarter mile of the designated harvester companion who is harvesting shellfish for him or her and must have a form of reliable and direct communication.

(6) It is unlawful for a designated harvester companion to assist a harvester with a disability unless the designated harvester companion has a valid equivalent harvesting license issued by Washington state or another state.

(7) It is unlawful for a designated harvester companion to assist a harvester with a disability unless the designated harvester companion is licensed and has the designated harvester companion card on his or her person.

(8) Shellfish, game fish or food fish harvested by a designated harvester companion on behalf of a harvester with a disability becomes part of the harvester with a disability's daily or possession limit, and must be kept separate from the designated harvester companion's daily or possession limit.

(9) It is unlawful for a harvester with a disability to utilize (~~spin-casting~~) any angling gear other than fly fishing gear during fly fishing only season, unless the harvester with a disability has been issued a special use permit from the department.

(a) Such person may use (~~spin~~) alternate casting gear with a casting bubble and monofilament line with no limit on breaking strength; and

(b) Hook size and barb restrictions, fishing fly requirements, and bait and weight prohibitions as provided for in WAC 220-310-150, apply to both conventional fly fishing and (~~spin-casting~~) alternate casting gear fly fishing under a special use permit.

(10) A violation of this section is punishable under RCW 77.15.380, or other statutes under chapter 77.15 RCW depending on the circumstances of the violation.

[Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.047, 77.32.237, 77.32.238, and 77.32.400. WSR 18-16-074 (Order 18-162), § 220-305-120, filed 7/30/18, effective 8/30/18. Statutory Authority: RCW 77.04.020, 77.12.045, and 77.12.047. WSR 17-17-109, amended and recodified as § 220-305-120, filed 8/21/17, effective 9/21/17. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), recodified as § 220-220-240, filed 2/15/17, effective 3/18/17. Statutory Authority: 1998 c 191 and RCW 75.08.080. WSR 99-03-029 (Order 99-02), § 220-55-065, filed 1/13/99, effective 2/13/99. Statutory Authority: RCW 75.08.080. WSR 94-01-001, § 220-55-065, filed 12/1/93, effective 1/1/94; WSR 91-08-054 (Order 91-13), § 220-55-065, filed 4/2/91, effective 5/3/91; WSR 88-05-002 (Order 88-03), § 220-55-065, filed 2/4/88; WSR 87-09-066 (Order 87-16), § 220-55-065, filed 4/21/87; WSR 80-13-064 (Order 80-123), § 220-55-065, filed 9/17/80; WSR 79-09-021 (Order 79-58), § 220-55-065, filed 8/10/79.]

WSR 23-06-076
PROPOSED RULES
COMMISSION ON
JUDICIAL CONDUCT

[Filed March 1, 2023, 10:34 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-23-156.

Title of Rule and Other Identifying Information: Access to commission on judicial conduct (commission) complaint records and access to commission administrative records.

Hearing Location(s): On Friday, April 21, 2023, at 1:30 p.m., teleconference via Zoom. The public hearing will be held in conjunction with the commission's regular business meeting. Internet and phone login instructions will be posted on the commission's website the morning of the hearing at www.cjc.state.wa.us.

Date of Intended Adoption: April 21, 2023.

Submit Written Comments to: Commission on Judicial Conduct, P.O. Box 1817, Olympia, WA 98507, email RulesComments@cjcc.state.wa.us, fax 360-586-2918, by Wednesday, April 12, 2023.

Assistance for Persons with Disabilities: Contact Tanya Calahan, phone 360-753-4585, fax 360-586-2918, email tcalahan@cjcc.state.wa.us, by Wednesday, April 12, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Implements Rule 12 and 12.1 of the Commission on Judicial Conduct Rules of Procedure (CJCRP) and repeals chapter 292-10 WAC in its entirety. The CJCRP is the constitutionally required avenue to establish rules regarding access to commission complaint and administrative records. Case law has established that the Public Records Act, chapter 42.56 RCW, does not apply to the judicial branch. WAC regulations implemented under chapter 42.56 RCW therefore do not apply.

Reasons Supporting Proposal: Case law has established that the Public Records Act, chapter 42.56 RCW, does not apply to the judicial branch, so as a constitutionally created agency of the judicial branch, directed under Constitution Article IV, Section 31(10) to establish rules of procedure governing confidentiality of proceedings, the commission prepared these rules under the CJCRP governing public access to commission complaint and administrative records.

Statutory Authority for Adoption: Washington State Constitution, Article IV, Section 31.

Statute Being Implemented: Not applicable.

Rule is necessary because of state court decision, *Nast v. Michels*, 107 Wn.2d 300 (1986); *Cowles Publishing Co. v. Murphy*, 96 Wn.2d 584 (1981); *City of Federal Way v. Koenig*, 167 Wn.2d 241 (2009); *Yakima County v. Yakima Herald-Republic*, 170 Wn.2d 775 (2011); and *West v. Washington State Association of District and Municipal Court Judges*, 190 Wn.2d 931 (2015).

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Implements Rule 12 and 12.1 and repeals chapter 292-10 WAC in its entirety. No fiscal impact.

Name of Proponent: Commission on judicial conduct, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Tanya Calahan, Records Request Officer, 1110 Capitol Way South, Suite 120, Olympia, WA, 360-753-4585; Enforcement: J. Reiko Callner,

Executive Director, 1110 Capitol Way South, Suite 120, Olympia, WA, 360-753-4585.

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

A cost-benefit analysis is not required under RCW 34.05.328. Does not apply. No fiscal impact.

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

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

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

February 28, 2023
J. Reiko Callner
Executive Director

**Commission on Judicial Conduct Rules of Procedure
Rule 12**

ACCESS TO COMMISSION COMPLAINT RECORDS

(a) Policy and Purpose.

It is the policy of the Commission on Judicial Conduct (Commission) to facilitate access to complaint records as provided by Article IV, Section 31 of the Washington State Constitution. Access to Commission case records is not absolute and shall be consistent with confidentiality requirements as provided by Article IV, Section 31 of the Washington State Constitution, with reasonable expectations of personal privacy as provided by Article I, Section 7 of the Washington State Constitution, and shall not unduly burden the Commission or substantially interfere with agency operations and the administration of justice.

(b) Scope.

This rule applies to all Commission complaint and investigative records, regardless of the physical form of the record, the method of recording the record or the method of storage of the record. Administrative records are not within the scope of this rule.

(c) Definitions.

(1) "Access" means the ability to view or obtain a paper or electronic copy of a Commission record.

(2) "Administrative record" means any record pertaining to day-to-day agency operations or the administration of the Commission, including any committee appointed by the commission.

(3) "Commission" means collectively, the appointed regular and alternate members comprising the Commission on Judicial Conduct and its staff as an organization, including temporary or contract employees.

(4) "Executive Director" means the Commission's chief executive appointed by Commission members to supervise and administer day-to-day agency operations.

(5) "Investigation records" include but are not limited to: All pleadings, papers, evidence records, and files of the commission, including complaints and the identity of complainants, compiled, or obtained during an investigation or initial proceeding of a complaint alleging judicial misconduct or disability.

(6) "Panel deliberation materials," regardless of physical format, are those materials used or created by a Commission hearing panel during case deliberations.

(7) "Probable cause records" include only those specific records of the initial proceeding that were the basis of a finding of probable cause as identified by the Commission members pursuant to CJCRP 17 (d) (4) (C).

(8) "Fact-finding records" include probable cause records, statement of charges, and subsequent records filed as part of official fact-finding proceedings and any stipulated agreement, and excluding records sealed by the presiding officer.

(9) "Identifiable public record" means existing public records that do not require substantial alteration or manipulation, as determined by the Commission, to produce.

(d) Access.

(1) The Commission's records on complaints that are under investigation or are dismissed are investigation records and are permanently exempt from public access and disclosure as required by Article IV, Section 31 of the Washington State Constitution, and established case law. Once a Statement of Charges is served on the respondent judge, documents filed thereafter are presumptively considered public records. Stipulated resolutions must be filed at a public meeting and are thereafter public records. Records requests for public complaint records are deemed satisfied and the Commission is not obligated to respond further if requesters are directed to the Commission's website, www.cjc.state.wa.us, and all the releasable and identifiable case records in the request are available in this location. There is no charge for records available on the Commission's website. Records requested and provided in an alternative manner, outside the Commission's website, are subject to the Commission's published fee schedule.

(2) The public shall have access to probable cause records as of the date of a public hearing except those specifically excluded under Commission rules.

(3) Requests for general information about the Commission do not constitute requests for identifiable public records. The Commission is not obligated to respond to requests that are not for existing and identifiable public records. Merely including the phrase "public records request" or similar language in a request does not in and of itself, constitute a proper request for identifiable public records and does not obligate the Commission to respond to the request as a public records request. The Commission is not obligated to respond more than once to a requester for the same records.

(4) Panel deliberation materials are not public and shall not be provided as public records.

(5) It is the Commission's policy to respond to requests for public records within five business days of receipt with either (1) the requested records or (2) an explanation why the Commission cannot provide the records. The Commission may seek clarification of requests. If no clarification is received, the Commission is not obligated to respond further, and the request is deemed satisfied. If additional time is required for a response, the Commission will state this to the requester and provide a new estimated timeline for response. The Commission may provide records in batches as they are available to provide the fullest assistance to requesters.

(6) The Commission will provide access to identifiable public records during regular business hours as published on its website after arrangements for viewing the records is made in advance.

(7) A fee may not be charged to view identifiable public records at the Commission's office.

(8) Fees charged for research, scanning, and copying shall be determined by the Executive Director and published on the Commission's website. The Executive Director will evaluate fee schedules from time to time and cause such fees to be updated and published on the Commission's website.

(9) If a fee is assessed, it must be paid in full prior to the Commission fulfilling a partial or complete request. The Commission is not obligated to fulfill a partial request, or complete request if the required fee is not paid. The request is deemed satisfied if no fee is paid and the Commission will close the request without further obligation to respond further.

(e) Method for requesting records.

The public records form provided on the Commission's website should be used for expediency. Alternatively, written requests shall include the following: current date, name, mailing address or email address, and phone number of the requester, preferred delivery method of the records and a description of the identifiable public records requested. Requests are directed to the Commission's Public Records Officer.

(f) Appeals.

Appeals of denials of access to Commission records shall be made within 30 days of the denial, and directed to the Commission's Executive Director. A denial by the Executive Director may be appealed within 30 days to the Executive Committee of the Commission. The decision of the Executive Committee is final. Requests for appeals should be made in the same manner as above.

[Adopted effective _____.]

**Commission on Judicial Conduct Rules of Procedure
Rule 12.1**

ACCESS TO COMMISSION ADMINISTRATIVE RECORDS

(a) Policy and Purpose.

It is the policy of the Commission on Judicial Conduct (Commission) to facilitate access to administrative records as provided by Article IV, Section 31 of the Washington State Constitution. Access to Commission administrative records is not absolute and shall be consistent with confidentiality requirements as provided by Article IV, Section 31 of the Washington State Constitution and shall not unduly burden the Commission or substantially interfere with agency operations and the administration of justice.

(b) Scope.

This rule applies to all Commission administrative records, regardless of the physical form of the record, the method of recording the record or the method of storage of the record. Complaint records are not within the scope of this rule.

(c) Definitions.

(1) "Access" means the ability to view or obtain a paper or electronic copy of a Commission record.

(2) "Administrative record" means any record pertaining to day-to-day agency operations or the administration of the Commission, including any committee appointed by the commission.

(3) "Commission" means collectively, the appointed regular and alternate members comprising the Commission on Judicial Conduct and its staff as an organization, including temporary or contract employees.

(4) "Executive Director" means the Commission's chief executive appointed by Commission members to supervise and administer day-to-day agency operations.

(5) "Preliminary investigation records" include but are not limited to: All pleadings, papers, evidence records, and files of the commission, including complaints and the identity of complainants, compiled, or obtained during an investigation or initial proceeding of a complaint alleging judicial misconduct or disability.

(6) "Probable cause case records" include only those specific records of the initial proceeding that were the basis of a finding of probable cause pursuant to CJCRP 17 (d) (4) (C).

(7) "Identifiable public record" means existing records that do not require substantial alteration or manipulation, as determined by the Commission to produce. Requests for information or answers to questions do not constitute requests for identifiable public records. The Commission is not obligated to respond to requests that are not for existing and identifiable public records. Merely including the phrase "public records request" or similar language in a request does not in and of itself, constitute a proper request for identifiable public records and does not obligate the Commission to respond to the request. The Commission is not obligated to respond more than once to a requester for duplicative requests for the same public records.

(8) "Public" includes an individual, partnership, joint venture, public or private corporation, association, federal, state, or local governmental entity or agency, however constituted, or any other organization or group of persons, however organized.

(d) Access.

(1) Administrative Records—Access. Commission administrative records are subject to public disclosure unless access is exempted or prohibited under this rule, other Commission rules, federal statutes, state statutes, court orders, or case law. To the extent that records access would be exempt or prohibited if the Public Records Act applied to the Commission's administrative records, access is also exempt or prohibited under this rule. In addition, to the extent required to prevent a significant risk to individual privacy or safety interests, the Commission shall redact identifying details in a manner consistent with this rule when it makes available or publishes any public record; however, in each instance, the justification for the redaction shall be provided in writing.

(2) Public records requests for administrative records are deemed satisfied and the Commission is not obligated to respond further if requesters are directed to the Commission's website, www.cjc.state.wa.us, and all the releasable records are available in this location. There is no charge for records available on the Commission's website. Records requested and provided in an alternative manner, outside the Commission's website, are subject to the Commission's published fee schedule.

(3) It is the Commission's policy to respond to requests for public records within five (5) business days of receipt with either (1)

the requested records or (2) an explanation why the Commission cannot provide the records. The Commission may seek clarification of requests. If no clarification is received, the Commission is not obligated to respond further, and the request is deemed satisfied. If additional time is required for a response, the Commission will state this to the requester and provide a new estimated timeline for response. The Commission may provide records in batches as they are available to provide the fullest assistance to requesters.

(4) The Commission will provide access to identifiable public records during regular business hours as published on its website after arrangements for viewing the records is made in advance.

(5) A fee may not be charged to view identifiable public records at the Commission's office.

(6) Fees charged for research, scanning, and copying shall be determined by the Executive Director and published on the Commission's website. The Executive Director will evaluate fee schedules from time to time and cause such fees to be updated and published on the Commission's website.

(7) If a fee is assessed, it must be paid in full prior to the Commission fulfilling a partial or complete request. The Commission is not obligated to fulfill a partial request, or complete request if the required fee is not paid. The request is deemed satisfied if no fee is paid and the Commission will close the request without further obligation to respond further.

(8) RECORDS REQUESTS THAT INVOLVE HARASSMENT, INTIMIDATION, THREATS TO SECURITY, OR CRIMINAL ACTIVITY. The Commission may deny a records request if it determines that: the request was made to harass or intimidate the Commission or its employees; fulfilling the request would likely threaten the security of the Commission; fulfilling the request would likely threaten the safety or security of Commission members, staff, family members of Commission members or staff, or any other person; or fulfilling the request may assist criminal activity.

(e) Method for requesting records.

The public records form provided on the Commission's website should be used for expediency. Alternatively, written requests shall include the following: current date, name, mailing address or email address, and phone number of the requester, preferred delivery method of the records and a description of the identifiable public records requested. Requests shall be made to the Commission's Public Records Officer.

(f) Appeals.

Appeals of denials of access to Commission records shall be made within 30 days of the denial, and directed to the Commission's Executive Director. The decision of the Executive Director may be appealed within 30 days to the Executive Committee of the Commission. The decision of the Executive Committee is final. Requests for appeals should be made in the same manner as above.

[Adopted effective _____.]

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

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 292-10 PUBLIC RECORDS.