

WSR 23-11-124
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed May 23, 2023, 8:37 a.m., effective June 23, 2023]

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

Purpose: The purpose of the adopted rules 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 and 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 and the detailed make-up 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.

Citation of Rules Affected by this Order: New WAC 296-05-219; and amending WAC 296-05-003 and 296-05-011.

Statutory Authority for Adoption: RCW 49.04.010.

Adopted under notice filed as WSR 23-06-060 on February 28, 2023.

Changes Other than Editing from Proposed to Adopted Version: WAC 296-05-219 was updated to specify that the WSATC, WSATC chair, "or designee" is responsible for certain actions related to establishing economic and industry sector-based platforms and appointing platform representatives. Adding "or designee" makes it clear that the WSATC or WSATC chair may not be the individual(s) actually establishing platforms or appointing representatives.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 2, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 23, 2023.

Joel Sacks
Director

OTS-4351.4

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, selection, 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 or designee shall establish economic and industry sector-based platforms and assign prospective and existing programs to the platforms. The WSATC or designee 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 or designee 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 or designee 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.

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